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CFPB Launches Rulemaking to Supervise Nonbanks

On May 24, 2012, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) proposed a rule that will set up a process to supervise nonbanks that may have engaged in activities that pose risks to consumers. The CFPB is authorized to require reports from and conduct examinations of nonbanks subject to its supervision.

CFPB Director Richard Cordray said in the Bureau’s press release that “[t]his proposal allows us to reach nonbanks that we would not otherwise supervise, while providing industry with a streamlined process that is fair and efficient.”

The proposed rule sets out procedures to notify a nonbank that it is being considered for supervision because the Bureau may have reasonable cause to determine that it poses risks to consumers in connection with offering or providing a consumer financial product or services.

The CFPB’s proposed rule includes the following:

- **Notice of Reasonable Cause** – The Bureau would provide a nonbank that provides a consumer financial product or service a notice stating that the Bureau may have a reasonable cause to determine that it is engaging, or has engaged, in conduct that poses risks to consumers.
- **Opportunity to Respond** – If the nonbank contests the notice, the nonbank would have 20 days to respond, and may provide a supplemental oral response to provide arguments to the Bureau’s Assistant Director or designee. Otherwise, the nonbank may execute a consent agreement to supervision in lieu of a response. In addition, a respondent may voluntarily consent to the Bureau’s supervisory authority at any time during a proceeding.
- **Petition to Terminate Supervision** – The proposal also sets up a process for nonbanks to file a petition to terminate supervision authority after two years.

The statutory authority to supervise nonbanks that pose a risk to consumers is in addition to the Bureau’s authority to (1) oversee nonbanks, regardless of size, in certain specific markets of: mortgage companies (originators, brokers, and servicers including loan modification or foreclosure relief services); payday lenders; and private education lenders; and (2) supervise the larger players, or “larger participants,” in other markets, such as those included in an initial proposal on consumer reporting companies and debt collectors (for additional information on this “larger participants” proposal, see the article on [our website](#)).

Importantly, nonbank entities are also subject to the Bureau’s regulatory and enforcement authority and any applicable Federal consumer financial law, regardless of whether they are subject to the CFPB’s supervisory authority.

The proposed rule was published in the *Federal Register* on May 25, 2012. The deadline for comments is July 23, 2012. The proposed rule is available [online](#) and contains information about how to submit a response.

For more information, please contact Jonathan Pompan at 202.344.4383 or jjpompan@Venable.com.

Jonathan Pompan is Of Counsel at Venable LLP in the Washington, DC office. He represents nonprofit and for-profit companies in regulated industries in a wide variety of areas such as before the Consumer Financial Protection Bureau (“CFPB”), compliance with applicable federal and state regulations, and in connection with CFPB, Federal Trade Commission and state investigations and law enforcement actions.

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