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The CFPB issues procedural rule on supervising nonbanks that pose risks to consumers

WASHINGTON, D.C. — Today, the Consumer Financial Protection Bureau (CFPB) issued a rule that establishes procedures to bring under its supervisory authority certain nonbanks whose activities it has reasonable cause to determine pose risks to consumers. Nonbanks subject to the rule are companies that offer or provide consumer financial products or services but do not have a bank, thrift, or credit union charter.

“This is an important step in our effort to continue building a strong supervision program,” said CFPB Director Richard Cordray. “This rule clearly lays out how we plan to implement our supervisory authority over nonbanks that we determine pose risk to consumers. We are also providing industry with a streamlined process that is fair and efficient.”

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the CFPB has the authority to supervise, after following certain procedures, any nonbank that it has reasonable cause to determine has engaged or is engaging in conduct that poses risks to consumers with regard to consumer financial products or services. Such conduct may involve, for example, potentially unfair, deceptive, or abusive acts or practices, or other acts or practices that potentially violate federal consumer financial law. The Bureau must base such reasonable cause determinations on complaints collected by the Bureau, or on information from other sources, such as judicial opinions and administrative decisions.

This rule outlines procedures to notify a nonbank that it is being considered for supervision because the CFPB may have reasonable cause to determine that it poses a risk to consumers. The rule also sets out the procedures that the CFPB will follow to give the nonbank in question a reasonable opportunity to respond to such notice. For example, the rule dictates what the CFPB requires in both the notice and the response. And, the rule creates a mechanism for nonbanks to file a petition to terminate the CFPB’s supervisory authority after two years.

Importantly, notifying a nonbank under this rule simply means that the CFPB may be supervising it. The Bureau is authorized to require reports from and conduct examinations of nonbanks subject to its supervision.

In addition to the authority to bring nonbanks under the CFPB’s supervisory authority based on risk determinations, the Bureau also has authority under the Dodd-Frank Act to supervise nonbanks, regardless of size, in certain specific markets: mortgage companies (originators, brokers, and servicers including loan modification or foreclosure relief services); payday lenders; and private education lenders. The CFPB can also supervise the “larger participants” in other nonbank markets as the Bureau defines by rule. The Bureau has issued two rules defining larger participants: one rule for the consumer reporting market that went into effect in September 2012, and the other for the debt collection market that went into effect in January 2013. A proposed larger-participant rule for the student loan servicing market was issued in March 2013.

Although the Dodd-Frank Act does not require that the CFPB issue this rule, the CFPB is issuing it to be transparent in the procedures it intends to use to implement its authority under the Dodd-Frank Act. In May 2012 the CFPB issued a notice of proposed rulemaking for public comment. Based on feedback received from the public and stakeholders, the CFPB is issuing the final rule today. The rule is effective 30 days after publication in the Federal Register.

The rule is available online at http://www.consumerfinance.gov/f/201206_cfpb_final-rule_certain-nonbank-covered-persons-risk-determination.pdf

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit <http://www.consumerfinance.gov/>.



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