CFPB Invokes Dormant Authority to Examine Fintech Companies

By Giorgio Bovenzi | April 26, 2022

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The Consumer Financial Protection Bureau (CFPB) announced on April 25, 2022, that it is invoking a largely unused legal provision to examine nonbank financial companies that pose risks to consumers, and is seeking comments on a proposed procedural rule that will authorize the release of its decisions so that they are available as a precedent in future proceedings. The CFPB specifically identified fintechs among the nonbanks that would be subject to such authority.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), section 1024(a)(1)(C) (codified at 12 U.S.C. 5514(a)(1)(C)), gave the CFPB the authority to supervise nonbank covered persons (defined as "any person that engages in offering or providing a consumer financial product or service" and any affiliate that "acts as a service provider to such person") where the Bureau has reasonable cause to determine that such nonbank covered person "is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services". The CFPB's supervision authority is directed at: (1) assessing compliance with the requirements of Federal consumer financial law; (2) obtaining information about such persons' activities and compliance systems or procedures; and (3) detecting and assessing risks to consumers and to markets for consumer financial products and services. 12 U.S.C. 5514(b). This provision enables the CFPB to conduct examinations of various scopes of supervised entities and require reports or request information from supervised entities without conducting examinations. This Dodd-Frank statute was implemented through a 2013 procedural rule, however such authority had largely not been invoked to date.

The CFPB announced that it is invoking such "dormant authority" "to examine nonbank financial companies that pose risks to consumers" and with the intent to "level the playing field between banks and nonbanks." The CFPB Director, Rohit Chopra, stated that such dormant authority will enable the CFPB to "hold nonbanks to the same standards that banks are held to [and] to conduct examinations of financial companies posing risks to consumers and stop harm before it spreads."

The CFPB release specifically identifies "fintechs" as among the targets, explaining that many nonbanks "today operate nationally and brand themselves as 'fintechs'". The enumerated types of "risky conduct" include (in non-exclusive terms) "potentially unfair, deceptive, or abusive acts or practices, or other acts or practices that potentially violate federal consumer financial law."

For the stated purpose of increasing the transparency of the risk determination process, the CFPB also issued a proposed procedural rule to authorize the release of all or part of any decision or order it makes pursuant to its supervision authority over nonbank covered persons. Such release, according to the CFPB, would address the public interest in transparency with respect to potentially significant rulings and would make the decisions available as a precedent in future proceedings. The proposed procedural rule also gives the nonbank respondent affected by the CFPB decision the option of filing submissions regarding the CFPB's publication of its decision or order.

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Comments to the proposed rule can be submitted within 30 days after its publication in the Federal Register.

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