



CFPB Issues Final Rules for Exercising Supervisory Authority over Certain Nonbanks, as Required under Dodd-Frank

07.15.2013

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On Wednesday, July 3, 2013, the Consumer Financial Protection Bureau (the "Bureau") issued final rules implementing the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act") described below. The proposed rules were discussed in this publication of June 20, 2012.

Section 1024(a)(1)(C) of the Act gives the Bureau the authority to supervise a "nonbank covered person" when the Bureau has reasonable cause to determine (after issuance of an order and a reasonable opportunity of the person to respond) that the person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offer or provision of consumer financial products or services. A "nonbank covered person" is generally defined as any person that is not an insured depository institution or credit union, and that engages in the offering or providing of a consumer financial product or service. The term also includes an affiliate of such person if the affiliate acts as a service provider to the person.

The final rules set forth procedures by which a nonbank covered person may become subject to the supervision of the Bureau. Supervision by the Bureau means, among other things, that the Bureau may require reports from, and conduct examinations of, the supervised entity.

The final rules generally adopt the provisions of the proposed rules referenced above, with the major substantive modifications noted below.

Under the final rules, the Bureau must provide the nonbank covered person with a notice stating that the Bureau may have reasonable cause to determine that such person is engaging, or has engaged, in conduct that poses risks to consumers arising from the person's offering or providing consumer financial services. Modifications to the proposed rules require the Bureau to provide a summary of the documents, records and other items relied on by the Bureau in issuing the notice, in addition to the

current requirement that the Bureau summarize the basis for its determination that such a notice is proper. The person would then have two opportunities to respond, as follows:

1. A written response, which would include records, documents and other materials in support of its argument. In response to the concerns of those commenting on the proposed rules, the Bureau is increasing the response time from 20 days to 30 days.
2. A supplemental oral response, if requested by the respondent, in order to present its arguments to the Associate Director (or designee) of the Bureau. This response would not be considered a hearing on the record, so there would be no opportunity for discovery, witnesses, and the like.

The Associate Director would then make a recommendation to the Director as to whether or not supervisory authority by the Board is appropriate, and the Director would make the final determination. The proposed rules were modified to require that a copy of the recommendation to the Director be sent to the respondent. The respondent would have two years (and annually thereafter) to seek a termination of the order. Under a modification to the proposed rules, the Associate Director and the Director have been given more latitude to permit extensions of the various time periods set forth in the final rule.

There are also provisions allowing the respondent to consent to the Bureau's supervisory authority. In such case, there would be no ability of the respondent to seek a termination of the order at a later date.

Modifications were made to the proposed rules to clarify that all records, documents and conversations in connection with a proceeding under the final rule are to be considered confidential supervisory information.

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