Nonbank Supervision

Combined CBAC & CUAC Meeting | November 3, 2022

Consumer Financial Protection Bureau

Disclaimer

This presentation is being made by a Consumer Financial Protection Bureau representative on behalf of the Bureau. It does not constitute legal interpretation, guidance, or advice of the Bureau.

Background

The CFPB is the first federal agency with supervisory and enforcement authority over both banks and nonbanks to oversee compliance with Federal consumer financial protection laws.

We seek to apply our supervisory and enforcement authorities to banks and nonbanks in a consistent manner, regardless of charter type.

Supervised Entities

Under the Consumer Financial Protection Act (CFPA), the Bureau has authority over:

- Banks and credit unions with total assets over $10 billion and their affiliates (Section 1025).
- Nonbanks, regardless of size, in certain specific markets (Section 1024):
  - Mortgage brokers, originators, and servicers;
  - Covered persons who offer or provide to a consumer a payday loan; and
  - Covered persons who offer or provide to a consumer any private education loan.

Supervised Entities (Continued)

- Other nonbanks that meet a "larger participant" standard, as defined by Bureau rule (Section 1024).

  The CFPB has issued larger participant rules for:

  - Consumer reporting,
  - Debt collection,
  - Student loan servicing,
  - Remittances, and
  - Automobile financing.

Supervised Entities (Continued)

- Nonbanks the Bureau has reasonable cause to determine are engaging or have engaged in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services (Section 1024(a)(1)(c)).
- Service providers to CFPB supervised entities, both banks and nonbanks (Section 1024 and 1025) or to "a substantial number" of small banks (Section 1026).

Section 1024(a)(1)(C) Supervisory Authority

The Bureau can supervise nonbanks whose activities the Bureau has *reasonable cause to determine* pose risks to consumers.

This authority comes from Section 1024(a)(1)(C) of the CFPA:

> "...this section shall apply to any covered person who...
>
> **the Bureau has reasonable cause to determine, by order**, after notice to the covered person and a reasonable opportunity for such covered person to respond, **based on complaints collected** through the system under section 5493(b)(3) of this title **or information from other sources, that such 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" 12 U.S.C. § 5514(a)(1)(C).

Why use this authority?

- **Agility**
  - Allows the CFPB to supervise entities that it has cause to determine pose risk to consumers but may not be larger participants – or providers of the specifically-enumerated categories of consumer financial products and services under 1024.
- **Fairness**
  - Evens the playing field by holding banks and nonbanks to the same standards.
- **Consumer Protection**
  - Provides a mechanism for the CFPB to assess nonbanks engaged in risky activities through the supervisory process.

The CFPB's Supervisory Authority

- The CFPB may "require reports" and "conduct examinations" of persons subject to its supervisory authority for purposes of:
  - Assessing compliance with the requirements of Federal consumer financial law,
  - Obtaining information about the activities and compliance systems or procedures of such person, and
  - Detecting and assessing risks to consumers and to markets for consumer financial products and services. (Section 1024(b)(1))

Prioritization of Supervisory Activities

- The CFPB uses a risk-based prioritization process and considers several factors, including:
  - The risks of the product market,
  - Size of the market,
  - Supervised entity's market share, and
  - Entity-specific risks.

- The CFPB also uses field and market intelligence in its prioritization process.

Prioritization of Supervisory Activities (Continued)

- In the past, CFPB supervisory activities were usually evenly split between banks and nonbanks. However, for the last few years, the CFPB's risk-based prioritization process has led to a higher number of supervisory activities at nonbanks.
- As a result of our risk-based prioritization process and direction from leadership, some of our current priorities include:
  - Overdraft and other junk fees
  - Fair lending
  - Consumer reporting
  - Repeat offenders

Prioritization of Supervisory Activities (Continued)

- To reduce regulatory burden, the CFPA requires the CFPB to coordinate supervisory activities with the prudential regulators and the state banking regulatory authorities. The CFPB begins coordinating with these partners during the prioritization process, by among other things, sharing field and market intelligence, potential areas of risk, and exam schedules.

The Importance of Service Provider Oversight

- Supervised entities regularly outsource significant functions to service providers. However, the supervised entity is still responsible for complying with Federal consumer financial law.
- Effective service provider oversight is a crucial component of any compliance management system (CMS), and the CFPB reviews an institution's service provider oversight as part of its review of the institution's CMS.
- The CFPB issued a compliance bulletin regarding service provider oversight. This bulletin includes recommendations to institutions and recognizes that entities may want to tailor their CMS program for service providers depending on the service being performed—its size, scope, complexity, importance, and potential for consumer harm.

The Importance of Service Provider Oversight

- The CFPB also supervises service providers directly. Because issues at a single service provider could have widespread implications, direct examination of service providers gives the CFPB insight into a large segment of the market.
- Addressing weaknesses at a service provider could also improve compliance for multiple institutions.
- If issues are identified, the CFPB can take appropriate action.

Discussion Questions

- In connection with service providers, what risks are you seeing in the marketplace that the CFPB's Supervision program should focus on?
- What are some of the emerging risks in the non-bank space that the CFPB should be thinking about and, should Supervision consider these risks as it plans future examinations?

Discussion Questions (Continued)

- What should the public know about our Supervision program? Alternatively, is there any aspect of our Supervision program that we should make clearer to the public?
- Do you have feedback on the CFPB's *Supervisory Highlights* publication, such as the usefulness and quality of the information provided, the publication's organization, and frequency of publication?