

Alert | Financial Regulatory & Compliance



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CFPB to Examine Nonbank Financial Companies – Including Fintechs – that Pose Risk to Consumers

As nonbanks comprise an ever-greater share of the consumer-finance market, on April 25, 2022, the Consumer Financial Protection Bureau (CFPB, or the Bureau) **announced** it would invoke its “unused” legal authority to examine nonbanks “that pose risks to consumers.” CFPB Director Rohit Chopra explained that leveraging this “dormant” authority would allow the Bureau to hold nonbanks to the same standards banks are held to, as well as enable the Bureau to rein in risky behavior and more quickly prevent consumer harm. Concurrent with its announcement, the CFPB issued a procedural rule to complement the 2013 rule it now plans to invoke. The proposed rule would enable the CFPB to publish certain information about any final determination made using its supervisory powers.

The dormant authority the CFPB plans to invoke was granted to it under the Dodd-Frank Act and implemented by rule in 2013. But the Bureau’s decision to leverage it now signals a plan to expand, perhaps markedly, the universe of entities that, in practice, the Bureau will examine. Enforcement actions and litigation typically are conducted at arm’s length, subject to rules and protections of the courts. Supervisory examinations, on the other hand, provide the Bureau with a closer, more intimate look at the affairs of the subject entity. Further, unlike enforcement actions, where respondent entities have time to retain counsel and plan a response, supervisory exams are often unplanned and, thus, less controlled. Nonbank entities across all sectors of consumer finance, including, for example, “buy now, pay later,” (BNPL), peer-to-peer payment companies, and other fintechs, would immediately be subject to the new supervisory authority.

The April 25 announcement represents another in a sequence of CFPB actions to implement new rules or utilize dormant ones that enable it to scrutinize providers of consumer financial products and services and advantage it in administrative actions. For example, in February 2022, the Bureau amended its Rules of Practice for Adjudicating Proceedings. And in October and December 2021, the CFPB leveraged its power to issue Market Monitoring Orders to open inquiries into BNPL and big tech's practices regarding consumer payment systems. In light of the announcement, nonbank entities not otherwise subject to the Bureau's supervisory jurisdiction, larger fintechs in particular, may consider reviewing their compliance management systems to ensure readiness for a CFPB exam should the Bureau seek to conduct one.

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