

Who's Next? The CFPB Advises of Intention to Supervise Nonbank Financial Companies

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Aylix K. Jensen offers analysis and insights for the debt collection industry in her monthly newsletter, *The Safe Harbor: Debt Collection Law Update by Aylix Jensen*. This monthly newsletter provides an update of changes and developments in the law that impact the debt collection industry. It highlights new debt collection laws and practices, discusses what these may mean for the collection industry, and provides tips to ensure compliance. This article is featured in the May 2022 edition.

On April 25, 2022, the CFPB announced that it intends to use its “dormant authority” to examine nonbank financial companies that pose risks to consumers and then publicly release the results. Specifically, the CFPB plans to invoke its authority under the Dodd-Frank Wall Street Reform to “conduct examinations of financial companies posing risks to consumers and stop harm before it spreads.” The CFPB does not define “risky conduct” but explains that it may involve unfair, deceptive, or abusive acts or practices, or other acts or practices that potentially violate federal consumer financial law. In its announcement, the CFPB advises that it plans to identify “risky conduct” by examining complaints collected by the CFPB, judicial opinions, administrative decisions, whistleblower complaints, state partners, federal partners, and news reports.

While the CFPB notes that its authority to supervise nonbanks is not specific to any particular consumer financial product, it advises that it will oversee entities that may be fast-growing or are in markets outside the existing nonbank supervision program.

In its announcement, the CFPB also issued an amendment to its 2013 procedural rule, which provides an exception regarding final decisions and orders by the CFPB. The amendment permits the CFPB to release certain information about any final determinations that a company poses risks to consumers. The CFPB acknowledges that a central principle of the supervisory process is confidentiality, but attempts to justify this amendment by focusing on the public interest in transparency and that public decisions or orders would be available as a precedent in future proceedings.

To determine whether all or part of a decision or order should be publicly released, the respondent will have the option of filing a submission on the issue within seven days of service of the decision or order. The CFPB will then determine whether the decision or order will be released on the CFPB’s website, in whole or in part. The CFPB notes that it is not endeavoring to codify a standard on the issue of public release but anticipates applying Exemption 4 (trade secrets and commercial or

financial information) and Exemption 6 (personnel and medical files) of the Freedom of Information Act to information submitted by respondents that is reflected in final decisions and orders. The CFPB explains that this will not trigger public release of decisions and orders, but that the rule merely establishes a procedure to consider the publication issue. The CFPB further advises that it would consider whether there are other reasons to not publicly release a final decision or order, in whole or part.

In light of the CFPB's renewed focus on non-bank supervision, any companies that offer or provide consumer financial products or services may want to shift their focus onto their compliance department for the time being.

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Practice Areas

Financial Services

