



Bureau of Consumer Financial Protection Issues Proposed Rules for Exercising Supervisory Authority over Certain Nonbanks, as Required under Dodd-Frank

06.20.2012

BY: EDMUND D. HARLLEE

On Friday, May 25, 2012, the Bureau of Consumer Financial Protection (the "Bureau") issued proposed rules to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act") described below. Comments must be received by July 24, 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.

This proposed rule sets 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.

Under the proposed regulation, the Bureau would 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. 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.
2. A supplemental oral response, if requested by the respondent, in order to present its arguments to the Assistant 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 Assistant Secretary 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 respondent would have two years (and annually thereafter) to seek a termination of the order.

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.

Covered businesses and other interested persons may comment, and should do so if they think that these rules, or the specifics of the implementation of these rules as published in the notice, will have an adverse effect on their businesses. According to the notice of proposed rulemaking, there are various methods for the submission of comments. Those commenting should review pages 31226 and 31227 of the *Federal Register* dated May 25, 2012 (Volume 77, Number 102) for instructions.

Related People

- Edmund D. "Ed" Harlee ? 703.760.5208 ? eharlee@williamsmullen.com