

CONSUMER FINANCIAL PROTECTION BUREAU

THE BASICS

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CONSUMER FINANCIAL PROTECTION BUREAU (“CFPB”)

- Created by Consumer Financial Protection Act of 2010 (Article X of Dodd-Frank)
- Purpose – insure that markets for consumer financial products and services are fair, transparent and competitive
- Very broad authority to regulate providers of consumer financial products and services
 - Rulemaking
 - Supervision

CONSUMER FINANCIAL PRODUCT OR SERVICE – DEFINITION

- Statute identifies 11 types of products and services (e.g., extending credit, check cashing, debt collection, consumer reporting, advisory services)
- 3 are particularly relevant to our nonbank clients
 - Stored value products
 - Transmission or exchange of funds
 - Payment processing

STORED VALUE PRODUCTS

- Selling, providing or issuing stored value or payment instruments (e.g., prepaid debit card), but only if seller exercises substantial control over terms of the stored value
- “stored value” means
 - funds or monetary value represented in any electronic format
 - stored on electronic media
 - capable of being retrieved and transferred electronically

STORED VALUE – EXERCISE OF SUBSTANTIAL CONTROL

- Not exercising substantial control if
 - seller not party to contract with consumer, and
 - another person is principally responsible for establishing terms
- Advertising nonfinancial goods/services of seller on card does not, by itself, constitute exercising substantial control

STORED VALUE PRODUCTS – EXCLUSION

- Definition excludes closed-loop stored value that is:
 - Issued by merchant, retailer or other seller of nonfinancial goods/services
 - Redeemable only for transactions with seller
 - Issued in a specific amount and cannot be reloaded (except for telephone services)
 - Purchased on a prepaid basis in exchange for payment
 - Honored only by the seller

TRANSMISSION OR EXCHANGE OF FUNDS

- Transmitting or exchanging funds
- Deposit taking
- Acting as custodian of funds or any financial instrument for use by or on behalf of a consumer

PAYMENT PROCESSING

- Providing payments or other financial data processing products to a consumer by any technological means, specifically includes payments made through:
 - mobile telecommunications network
 - online banking system
- But not covered by this definition solely because:
 - Provide access to a host server enabling establishment/maintenance of a website; or
 - Merchant, retailer or seller of nonfinancial goods/services transmitting data to initiate payment to complete a sale by such merchant, retailer or seller

CFPB RULEMAKING – GENERAL

- Broad authority to issue rules, orders, guidance regarding Federal consumer financial laws
- Federal consumer financial laws means approximately 20 laws (or portions thereof), including:
 - Consumer Financial Protection Act of 2010
 - Truth in Lending Act
 - Gramm-Leach-Bliley Act
 - Electronic Fund Transfer Act
- Specifically excludes Federal Trade Commission Act

CFPB RULEMAKING – EXCLUSIVITY/DEFERENCE

- To extent CFPB and another Federal agency have rulemaking authority with respect to a Federal consumer finance law, CFPB now has exclusive authority
- Court must afford CFPB deference regarding meaning of Federal consumer finance law as if CFPB were only agency authorized to enforce, interpret or administer such laws

CFPB SUPERVISION – GENERAL

- Purposes of supervision
 - Assessing compliance with Federal consumer financial laws
 - Obtaining information about activities and compliance
 - Detecting and assessing risks to consumers and markets
- Power to require reporting (periodic or otherwise)
- Power to conduct examinations
- Model for supervisory authority is supervision of banks by bank examiners

CFPB SUPERVISION – NONBANKS SUBJECT TO SUPERVISION

- Person must be engaged selling/providing consumer financial product or service
- Specified nonbanks subject to supervision
 - Mortgage companies
 - Payday lenders
 - Private education lenders
- Other nonbanks subject to supervision if
 - “Larger participant” in a market for other consumer financial products or services
 - Bad actor

CFPB SUPERVISION – NONBANK – “LARGER PARTICIPANT”

- Definition of “larger participant” and “market” left to CFPB rulemaking
- CFPB identified following 6 markets for initial “larger participant” rulemaking
 - Debt collection
 - Consumer reporting
 - Consumer credit and related activities (auto loans and consumer installment loans)
 - Money transmitting, check cashing and related activities
 - Prepaid cards
 - Debt relief services

CFPB SUPERVISION – NONBANK – “LARGER PARTICIPANT” cont.

- February, 2012 initial proposed rulemaking
 - Covered two markets: debt collection and consumer reporting
 - “Larger” defined by annual receipts from activities in market
 - \$10 million for debt collection market
 - \$7 million for consumer reporting market
 - Gross receipts measured on consolidated basis and over a period of three years – lessens gamesmanship opportunities
 - Used SBA definition of gross receipts, therefore readily determinable from existing business records
 - Stated that different metrics may be used for subsequent markets

CFPB SUPERVISION – NONBANK – “LARGER PARTICIPANT” cont.

- Proposed procedures for challenging designation as “larger participant”
 - CFPB will give written notice of designation
 - May dispute designation only by providing CFPB with affidavit within 30 days setting forth basis for dispute
 - Failure to provide affidavit constitutes waiver of right to challenge “larger participant” designate
 - If submit affidavit, deemed to have waive any basis for challenge not presented in affidavit

CFPB SUPERVISION – BAD ACTORS

- Authority to supervise person engaged in conduct posing risks to consumers regarding consumer financial products/services
- CFPB anticipates publishing procedural guidelines implementing this authority “in the next few months”
- Presumably will be complaint-driven

WHERE IS CFPB HEADED?

- Will gradually evolve as a superagency with an enormous range of powers and involvement
- Short-term will focus on politically charged topics (mortgage companies, payday lenders, bank overdraft fees)
- End of January, 2012 identified 12 rules, orders and initiatives it will focus on over next six months, one of which was defining scope of supervision of nonbanks
 - Covered 2 of the 6 initial markets in February proposed rulemaking
 - 2 of remaining 4 markets initially identified relate to activities in which our nonbank clients are involved
 - Money transmitting and related activities
 - Prepaid cards