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Friday, January 13, 2012

CFPB: Nonbank Supervision Program

On January 5, 2012, the Consumer Financial Protection Bureau (CFPB) launched its nonbank supervision program.

This program has the goal of implementing supervisory audits and reviews of nonbanks, such as mortgage loan originators, lenders, mortgage bankers, mortgage brokers, servicers, and loan modification or foreclosure relief services (including also payday lenders and private education lenders).

This nonbank supervision program is in many ways an extension of the development of CFPB's bank supervision program that began last July.

We have issued several newsletters about certain aspects of the bank and nonbank supervision programs and I have written several articles about the CFPB.

Six days after the CFPB launched its nonbank supervision program, on January 11, 2012 the CFPB began its very first investigation of a nonbank mortgagee, PHH Corp. of Mount Laurel, NJ. The allegations against PHH Corp. involve violation of RESPA, with respect to the prohibitions against kickbacks. Although there is no mention of the PHH Corp. investigation on the CFPB website, nor is there a press release from the CFPB, we know of the investigation because PHH Corp. filed notice about it with the Securities and Exchange Commission.

Our firm is committed to providing comprehensive audit and due diligence reviews in preparation for the CFPB's nonbank and bank Supervision and Examination Manual (Manual), a basic tool in the CFPB's supervision programs.

Our audit and examination group provides an independent and thorough due diligence review of the CFPB examination requirements, offering corrective actions for enforcement.

I would urge you to contact us and find out about preparing for a CFPB examination.

In this newsletter, I would like to give you a brief overview of the CFPB's nonbank supervision program.

Jonathan Foxx
President & Managing Director
Lenders Compliance Group

In This Newsletter

Scope of the Nonbank Supervision Program

By the term "nonbank," the CFPB refers to a financial institution that is not a depository, but offers or provides consumer financial products or services. The nonbank does not have a bank, thrift, or credit union charter.

Nonbanks include, but are not limited to, mortgage lenders (i.e., mortgage bankers), mortgage servicers, loan modification or foreclosure relief services, payday lenders, consumer reporting agencies (CRAs), mortgage loan originators, debt collectors, money services companies, lenders (i.e., creditors), mortgage brokers, and private education lenders.

The CFPB also has authority to supervise any nonbank that it determines is posing a risk to consumers.

Under the law, the CFPB has the authority to oversee nonbanks, regardless of size, in certain specific markets.

The CFPB can also supervise the larger players, or "larger participants."

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Please read our newsletter on the "larger participant" supervision.

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Supervision Process

Similar to the bank supervision program, the CFPB's nonbank supervision program is designed to ensure that nonbanks comply with federal consumer financial laws. It assesses risk to consumers arising from these businesses.

The nonbank supervision program includes conducting individual examinations, while also requiring reports from companies that determine where companies need to put greater focus.

How often and to what degree the examinations are performed will depend on CFPB's analysis of risks posed to consumers based on factors such as the nonbank's volume of business, types of products or services, and the extent of state oversight.

Supervision and Examination Manual

The CFPB's approach to nonbank examination will be to some extent the same as its approach to bank examination. The Supervision and Examination Manual (Manual) acts also as a field guide to examiners, which we outlined here; therefore, essentially, examiners will use the Manual for both nonbank and bank examinations.

This first edition of the CFPB Supervision and Examination Manual (Version 1) is a guide to how the CFPB will supervise and examine consumer financial service providers under its jurisdiction for compliance with Federal consumer financial law.

The Manual is divided into three parts.

- The first part describes the supervision and examination process.
- The second part contains examination procedures, including both general instructions and procedures for determining compliance with specific regulations.
- The third part presents templates for documenting information about supervised entities and the examination process, including examination reports.

We have compiled a Compendium of all parts and each section of the Manual, freely offered here.

Our Library contains the full Version 1 of the Manual.

Examinations

Prior to examiners contacting a company or going on-site, they will review information that is available publicly or from state or federal regulators. Examiners will be looking at the company's consumer financial products and services with a focus on risk to consumers.

Procedurally, the company generally will be told of an upcoming examination and will receive status updates throughout the process.

When the examination commences, the examiners will review the company's compliance with federal consumer financial laws for the entire life cycle of the product or service, including how a product is developed, marketed, sold, and managed.

In accordance with the Examination guidelines, examiners will conduct interviews with personnel and observe the company's operations.

One important component that examiners will be looking for the company's internal ability to detect, prevent, and remedy violations that may harm consumers.

If a company is in violation of federal consumer financial laws, the CFPB will seek corrective actions, programs, and processes to ensure that violations do not recur and, where appropriate, that remedies are instituted.

Enforcement: when necessary, examiners will coordinate and work closely with CFPB's enforcement staff to bring appropriate legal actions to address harm to consumers.

Staffing and Training

The CFPB examiners will include staff examiners from the Federal Deposit Insurance Corporation, the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, state banking regulatory bodies, and industry.

The examiners will be trained in both bank and nonbank supervision.

Examiners will cover the country and report to field offices in New York, Chicago, San Francisco, and Washington, D.C.

State Coordination

The CFPB's nonbank supervision program will be coordinated with state regulators, when applicable.

Actually, the CFPB has already begun to work with the states by developing, in cooperation with the Conference of State Bank Supervisors, a Memorandum of Understanding (MOU) to share information between the CFPB, state regulators, and state regulatory associations. We discussed this initiative here.

To date, regulators in 42 states and Puerto Rico, representing 45 regulatory agencies, have joined the MOU.

Five state regulatory associations have also signed the MOU, including the American Association of Residential Mortgage Regulators (AARMR) and the National Association of Consumer Credit Administrators (NACCA).

Future Plans

The following are some of the future plans that the CFPB expects to implement:

- Expand its ongoing supervision of mortgage servicers to nonbank mortgage servicers
- Publish additional examination procedures tailored to the types of consumer financial products and services offered by nonbanks
- Propose an initial rule to begin defining who meets the test for "larger participants" in certain nonbank markets
- Publish rules to establish procedures to supervise a nonbank company where the CFPB has reasonable cause to believe it poses risks to consumers
- Continue ongoing communications with state and federal regulators with a more specific focus on examination planning
- Continue to obtain feedback on its supervision program from nonbank financial services companies, banks, thrifts, and credit unions, federal and state agencies, consumer and community groups, and the public

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