



## ALERTS

### Nonbank Financial Companies Now Covered By Consumer Laws

May 9, 2022

#### Highlights

The Consumer Financial Protection Bureau intends to examine and supervise nonbank financial providers, products and services under broad authority granted under Dodd-Frank Act

“Nonbank covered persons” – consumer financial product and service providers, and their affiliates – are now required to comply with federal consumer protection laws, just like traditional banking institutions

Consumer complaints, news reports, judicial opinions, and state and federal CFPB partner agencies can trigger examinations and supervisions

The Consumer Financial Protection Bureau (CFPB) recently welcomed nonbank fintech companies to the world of CFPB regulation. It did so [by announcing](#) its intent to use its long-dormant authority to hold nonbank financial companies to the same standards as traditional banking institutions when it comes to consumer financial products and services.

The CFPB will now have the authority to supervise certain nonbanks “whose activities the CFPB has reasonable cause to determine pose risks

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to consumers” under federal consumer protection laws.

## New Nonbank Territory

The CFPB has not in recent years targeted nonbanks, nonbank covered persons, services, and products for examination and oversight. Given the breadth of services covered in the proposed rule, this anticipated oversight may implicate financial technology and fintech market participants and service providers. Significant care must be taken to assess services and products offered to consumers and address any possible repercussions.

Reaching deep into the vault of regulatory obsolescence, the CFPB’s intent to begin examining certain consumer products and services offered by nonbank financial institutions and affiliates is in line with a [2013 CFPB final rule](#), which defined the CFPB process for supervising “nonbank covered persons.”

In its new foray into nonbank regulation, the CFPB also invoked “dormant authority” provisions of the Dodd-Frank Act, to increase the agility and oversight with which it supervises entities in markets outside of existing nonbank supervision programs, products and services. The announcement brings numerous financial technology providers – implicating money transmitters, custodians, payment product providers, and data processors – under potential CFPB examination and supervision.

While the 2013 final rule did not establish consumer protection requirements or particular consumer financial products or services to be regulated, it does define a series of risk indicators that may indicate that consumer harm is possible and trigger CFPB examination and supervision.

The following products and services offered by nonbanks may be subject to supervision and examination:

- Extending credit
- Lending activities
- Real estate services
- Taking deposits
- Acting as a custodian of funds or financial instruments
- Transmitting and exchanging funds
- Issuing stored value and payment instruments
- Providing payment and financial data processing
- Financial advisory services and consumer reporting
- Other financial products and services as may be defined by the CFPB

The 2013 rule does not define “risk to consumers,” but does note that

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potentially unfair, deceptive, or abusive acts or practices, or other acts or practices that potentially violate federal consumer financial law, would pose a risk to consumers.

The CFPB may base reasonable cause determinations for examination and supervision on complaints or on information from other sources, such as judicial opinions and administrative decisions. This includes whistleblower complaints, as well as those from state and federal CFPB partners and news reports.

The announcement was accompanied by a [proposed procedural rule](#) that relates to certain notice, confidentiality, and reporting terms. The proposed rule defines a public reporting framework for final decisions and orders relating to the supervision of “nonbank covered persons” and industry participation relating to information appropriate for release.

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