

LEGAL UPDATES

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CFPB Signals New Proposed Rule on Nonbank Supervision in the Consumer Payments Market

The Consumer Financial Protection Bureau (CFPB) recently released its Spring 2023 rulemaking agenda, signaling an expansion of its supervisory authority over the payments market. Of particular interest is the introduction of a new rule that aims to supervise larger nonbank participants in the consumer payments space. The Bureau anticipates releasing the notice of proposed rulemaking next month.

The proposed rule will be a continuation of the CFPB's ongoing efforts to regulate the payments industry. Since Director Rohit Chopra took over the helm, the CFPB has expressed concerns about large technology companies entering the financial services sector, particularly in connection with payments. Regulators are troubled by these entities' capacity to collect and monetize consumer data and the purported challenges they pose to consumer protection.

In October 2021, the Bureau used its market monitoring power to issue orders to six large technology platforms, seeking information on their payments products and services and their use of consumer payments data. The findings from these monitoring orders are yet to be released; however, it is clear that the Bureau is targeting these business practices for potential regulatory action.

This newly proposed "larger participant rule," if finalized, would place the largest players in the consumer payments industry under the CFPB's supervisory purview. Despite these companies already being subject to state regulation and oversight, this rule would present a new challenge for many companies: CFPB supervisory examinations.

Aside from the larger participant rule, the Spring 2023 rulemaking agenda includes several ongoing rulemakings and potential areas of future concern. These range from registration of nonbanks and fees for insufficient funds to more controversial issues such as credit card penalty fees and personal financial data rights. There's even speculation that the Bureau may consider rulemaking in areas like buy-now-pay-later services, earned wage access, and liability for peer-to-peer payment fraud.

As the CFPB expands its supervisory authority, it also faces potential legal challenges. The CFPB's final rule on credit card late fees is likely to face a legal challenge, and the Bureau's registry rules could be on shaky ground. Adding to the complexity, if the U.S. Supreme Court rules in the CFSA case that the CFPB's funding mechanism is unconstitutional, this could put all CFPB rules in jeopardy.

The forthcoming larger participant rule comes at a time where the CFPB seems to be using its supervisory authority more expansively. The recent influx of information requests sent to nonbanks, inquiring about their status as larger participants, signals the Bureau's intention to extend its jurisdiction. Furthermore, the Bureau's plan to use the "risks to consumers" provision in Dodd-Frank more extensively signifies its intention to utilize supervision as a tool to advance policy objectives more assertively, particularly within the payments industry.

What this means to you

The landscape is evolving quickly. Nonbank payment companies, particularly those that may fall under the definition of "larger participants," must prepare for potential regulatory changes and understand the new challenges that may emerge from this expansion of CFPB authority. The future will demand not only compliance with existing laws and regulations but also the flexibility to adapt to new regulatory frameworks and the readiness to respond to increasingly assertive regulators.

Contact us

If you have any questions regarding how potential CFPB rulemaking could impact the payments industry, please contact Chris Friedman, Shelby Lomax, or your Husch Blackwell attorney.