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CFPB Executes on Promise to Utilize 'Dormant' Authority to Supervise High-Risk Nonbanks

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On February 23, 2024, the Consumer Financial Protection Bureau (CFPB) made public an **order establishing supervisory authority over a nonbank installment lender** on the basis the institution poses risks to consumers. The order gives insight into the procedural aspects of the CFPB's exercise of this **never-before-used authority** – and the standards it might use to assess whether an institution poses risk to consumers, and therefore warrants ongoing supervision. While the CFPB has a long-standing nonbank supervision program in the mortgage, student lending, and short-term, small-dollar lending space, and can also examine larger participants in certain financial markets (e.g., auto and debt collection), the order sets forth the path for the CFPB to supervise smaller, yet "risky," nonbank financial services providers, as well as fintechs offering novel products.

Consumer complaints, product offerings can drive CFPB's supervisory determination

Consistent with the CFPB's April 25, 2022, announcement, the CFPB's determination that the installment lender poses risks to consumers was based on a mixture of consumer complaints and the nature of the lender's products, services, and operations. Specifically, the CFPB said it has reasonable cause for concern based on:

- The manner in which the lender describes optional insurance products to consumers and incorporates them into loans.
- Debt collection practices, including claims of harassment and coercion that jeopardize consumer employment or cause stress.
- Accuracy in furnishing information to consumer reporting agencies.
- The percentage of existing small-dollar loans that are refinanced with new small-dollar loans.

The CFPB's determination appears to rely heavily upon the content of consumer complaints – reliance the lender cautioned against during the determination proceeding because those complaints may be inaccurate, not credible or contradicted by other evidence. Interestingly, the CFPB turned this argument against the lender during the proceeding, suggesting this is the very reason supervision is necessary – to learn more about the lender's practice and resolve any factual uncertainty between the conduct alleged in the complaints and reality. The CFPB also uses the order to criticize the manner in which the lender responds to customer complaints, saying the institution's responses inappropriately disregard the substance of the complaint, offer a conclusory denial of wrongdoing, or describe the relevant facts differently than those presented by the consumer without substantiating evidence.

Designation process took approximately eight months, required at least three submissions by now-supervised lender

The order makes clear that the designation process will take up significant institutional resources. The CFPB issued the lender its official notice of intent to supervise on March 10, 2023 – one year after it announced its intent to begin utilizing the authority. The lender submitted a written response to the notice on April 12, 2023, then made an oral presentation to the CFPB on May 17, 2023. The CFPB reviewed the file and the lender's briefings, collected additional information – including what appeared to be an in-depth review of consumer complaints – and permitted the lender to file a supplemental briefing on October 16, 2023, even though this is not required under the CFPB's procedures. CFPB Director Rohit Chopra made his determination the CFPB would subject the lender to supervision on November 30, 2023, although the order, which was lightly redacted, was made public three months after it was issued.

What's next?

This order serves as a warning to entities not subject to the CFPB's automatic supervisory authority that the CFPB is still monitoring the broader marketplace. For those in need of a reminder, the CFPB has automatic supervisory authority over institutions engaged in mortgage lending and servicing, private student lending, payday lending, and larger participants involved in consumer reporting, debt collection, student loan servicing, international money transfers, and auto lending. In November 2023, the CFPB also **proposed establishing supervisory authority over digital wallet and payment app providers**. Institutions not subject to the CFPB's supervisory authority must still maintain comprehensive compliance management systems and properly resolve consumer complaints filed with the CFPB, as well as other regulatory agencies.

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