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CONSUMER FINANCIAL PROTECTION BUREAU: NON-FINANCIAL FIRMS IN THE CROSSHAIRS?

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POWERS OF THE CONSUMER FINANCIAL PROTECTION BUREAU

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Jurisdiction

- Legal prohibitions generally apply to **covered persons** and their **service providers**
- The Bureau has a complex structure of differing levels of authority with respect to different types of covered persons, including an array of carve-outs, but the legal prohibitions themselves apply to anyone who meets the statutory definitions
- Other agencies have authority to enforce the Dodd-Frank Act with fewer strictures
- The parallelism between the Dodd-Frank Act and the Federal Trade Commission Act (and state law) creates further risk

(6) Covered person

The term "covered person" means—
(A) any person that engages in offering or providing a consumer financial product or service; and
(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(5) Consumer financial product or service

The term "consumer financial product or service" means any financial product or service that is described in one or more categories under—
(A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or
(B) clause (i), (iii), (ix), or (x) of paragraph (15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(26) Service provider

(A) In general

The term "service provider" means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—
(i) participates in designing, operating, or maintaining the consumer financial product or service; or
(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

12 U.S.C. § 5481

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Enforcement

- The Bureau has the power to bring enforcement actions in federal court or in its own administrative courts—and to obtain the same remedies in either forum:

Consumer Relief

- Restitution
- Refunds
- Damages
- Rescission

Conduct Relief

- Limits on activities
- Reformation of contracts
- Public notification

Public Relief

- Disgorgement
- Civil penalties
- Costs of investigation

12 U.S.C. § 5565

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Enforcement Jurisdiction

>\$10 billion in assets

All, unless an exception applies

<\$10 billion in assets

Depository Institutions

- Auto dealers
- Broker-dealers, RIAs, commodities brokers
- Real estate agents
- Manufactured home sellers
- Accountants
- Lawyers
- Insurers
- ERISA plans

Non-Depository CFS Providers

12 U.S.C. §§ 5516(d), 5517, 5519

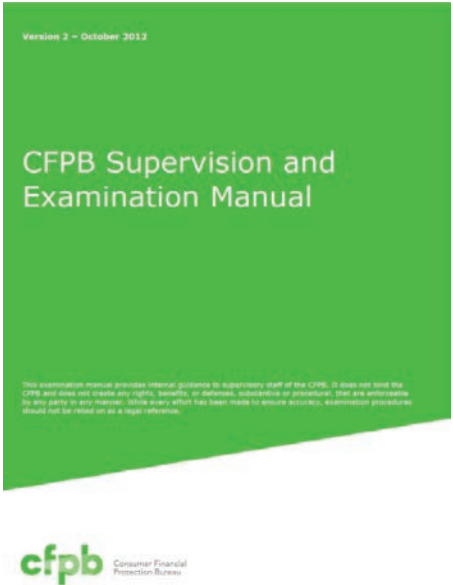
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Supervision

- **Depository Institutions:** Assets over \$10 billion (and all affiliates)
 - 12 U.S.C. § 5515
- **Non-Depository Covered Persons:**
 - Mortgage lenders and servicers
 - Private education lenders
 - Payday lenders
 - “Larger participants,” determined by regulation
 - Auto finance, credit reporting, student loan servicing, debt collection, remittance transfers
 - “Reasonable cause” firms, determined by adjudication
 - 12 U.S.C. § 5514(a)(1)

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Regulation

- Extraordinary range of transferred rulemaking functions under “enumerated” federal consumer financial laws
- Power to define unfair, deceptive, and abusive acts or practices

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"Consumer Financial Protection Bureau: Non-Financial Firms Now in the Crosshairs?"