

Morgan Lewis

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

September 15, 2022

David Monteiro • Morgan, Lewis & Bockius LLP
Donna Daniels • Ernst & Young LLP
David Tallman • McGlinchey Stafford PLLC

© 2022 Morgan, Lewis & Bockius LLP

1

POWERS OF THE CONSUMER FINANCIAL PROTECTION BUREAU

Morgan Lewis

2

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

Morgan Lewis

3

3

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

Morgan Lewis



Enforcement Jurisdiction

>\$10 billion in assets

<\$10 billion in assets

Depository Institutions

All, unless an exception applies

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

Non-Depository CFS Providers

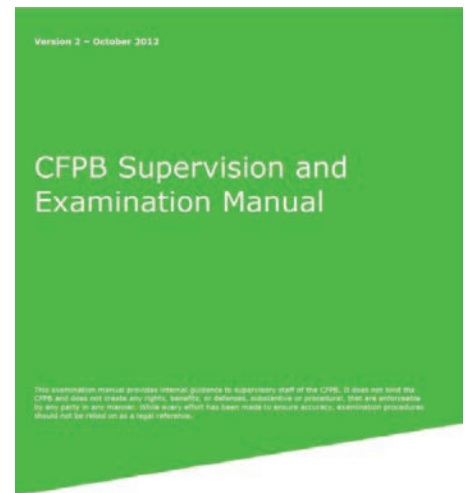
12 U.S.C. §§ 5516(d), 5517, 5519

4

4

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)



cfpb Consumer Financial Protection Bureau

Morgan Lewis

Regulation

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

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

Part		Page
1000	[Reserved]	
1001	Financial products or services	7
1002	Equal Credit Opportunity Act (Regulation B)	7
1003	Home mortgage disclosure (Regulation C)	67
1004	Alternative mortgage transaction parity (Regulation D)	135
1005	Electronic fund transfers (Regulation E)	139
1006	Fair Debt Collection Practices Act (Regulation F) (Eff. until 11-30-21)	321
1006	Debt Collection Practices (Regulation F) (Eff. 11-30-21)	325
1007	S.A.F.E. Mortgage Licensing Act—Federal registration of residential mortgage loan originators (Regulation G)	357
1008	S.A.F.E. Mortgage Licensing Act—State compliance and bureau registration system (Regulation H)	364
1009	Disclosure requirements for depository institutions lacking Federal deposit insurance (Regulation I)	379
1010	Land registration (Regulation J)	381
1011	Purchasers’ revocation rights, sales practices and standards (Regulation K)	439
1012	Special rules of practice (Regulation L)	443
1013	Consumer leasing (Regulation M)	447
1014	Mortgage acts and practices—Advertising (Regulation N)	473
1015	Mortgage assistance relief services (Regulation O)	476
1016	Privacy of consumer financial information (Regulation P)	483
1022	Fair credit reporting (Regulation V)	517
1024	Real Estate Settlement Procedures Act (Regulation X)	612
1025	[Reserved]	

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION (CONTINUED)

Part		Page
1026	Truth in lending (Regulation Z)	5
1030	Truth in savings (Regulation DD)	1094
1041	Payday, vehicle title, and certain high-cost installment loans	1132
1070	Disclosure of records and information	1168
1071	Rule implementing Equal Access to Justice Act	1200
1072	Enforcement of nondiscrimination on the basis of disability in programs and activities conducted by the Bureau of Consumer Financial Protection	1206
1073	Procedures for bureau debt collection	1212
1074	Procedure relating to rulemaking	1222
1075	Consumer financial civil penalty fund rule	1222
1076	Claims against the United States	1227
1080	Rules relating to investigations	1228
1081	Rules of practice for adjudication proceedings	1234
1082	State official notification rules	1268
1083	Civil penalty adjustments	1270
1090	Defining larger participants of certain consumer financial product and service markets	1271
1091	Procedural rule to establish supervisory authority over certain nonbank covered persons based on risk determination	1278
1092-1099	[Reserved]	

Morgan Lewis

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

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

Also available as part of the eCourse

[2022 Government Enforcement eConference](#)

First appeared as part of the conference materials for the
8th Annual Government Enforcement Institute session

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