
Money Transmitter Regulators
ASSOCIATION

September 26, 2011

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, DC 20036

Dear Ms. Jackson,

The Conference of State Bank Supervisors ("CSBS"), American Association of Residential Mortgage Regulators ("AARMR"), American Council of State Savings Supervisors ("ACSSS"), National Association of Consumer Credit Administrators ("NACCA"), and Money Transmitter Regulators Association ("MTRA"), collectively "the state regulators," appreciate the opportunity to comment on the Consumer Financial Protection Bureau's interim final rule regarding State Official Notification Rules, Docket No. CFPB-2011-0005, RIN 3170-AA02. State regulators recognize the value of state-federal collaboration and the value of consistency in interpretation of federal consumer financial laws. Further, state regulators look forward to using notification requirements as a means of furthering a productive and efficient relationship with the Consumer Financial Protection Bureau ("CFPB" or "Bureau") under a cooperative federalism framework. To that end, the state regulators strongly recommend that notification of state actions be explicitly limited to actions filed in a court or administrative hearing and respectfully request additional clarity on several aspects of the notification rules.

I. FURTHER ACTION REQUIRED

A. Clarity is needed to determine what actions require notice.

The state regulators strongly urge the CFPB to clarify that the notification rule only applies to actions filed in a court or administrative hearing. The purpose of notification requirements is to ensure consistency and collaboration on significant issues, and providing notice of actions submitted in the courts or an administrative hearing addresses these concerns. For other regulatory activities, state regulators believe the continued development of a professional relationship with the CFPB will create the proper communication channels required for regulators to efficiently work together to protect consumers from financial harm.

Mirroring the requirements in Section 1042 of the Dodd-Frank Act, the interim final rule states, "every State attorney general and State regulator shall provide . . . notice . . . prior to initiating

any action or proceeding in any court or other administrative or regulatory proceeding . . . ." Regulators pursue many courses of action with regulated entities to ensure these institutions are compliant with consumer financial laws. Most of these courses of actions are less formal than the casual understanding of an "action." As currently written, regulators are unable to determine what actions and what sorts of administrative and regulatory proceedings trigger the rule's requirements for state regulators to notify the CFPB.

State regulators pursue many regulatory paths that might be considered "actions," but are not "initiat[ed] . . . in . . . a court or other administrative or regulatory proceeding." These "actions" take many forms both public and private. At the most simplistic level, an examination finding could be considered an "action" because findings are used to substantiate the report of examination, which are part of the administrative record and potentially subject to subsequent administrative or regulatory proceedings. Additionally, states often enter into confidential memorandums of understanding with their regulated institutions that require the institution to resolve consumer compliance violations. Similarly, Consent Orders or Agreements are utilized by regulators to agree to remedies for compliance violations, but these tools are not initiated in a court or proceeding.

Due to the potential broad understanding of "action," clarification must be provided to ensure only actions filed with a court or administrative tribunal trigger the notification requirement. State regulators can clearly identify when an action is filed in a court or administrative hearing and report to the CFPB accordingly. Notification requirements beyond actions filed before a substantiated adjudicative body would place an unacceptable burden on state regulators. For regulatory information beyond such actions, state regulators stand committed to the development of a streamlining of regulator communication.[1]

B. Clarity is required to determine the scope of "the Act."

The interim final rule requires state regulators to provide notice of an action "to enforce any provision of the Act or any regulation prescribed thereunder . . . ." It is not clear from this requirement whether the CFPB incorporates the federal consumer laws and regulations that transferred to the Bureau via Title X as part of the Act. While it is clear that a state would be required to notify the CFPB of an action in court to enforce a CFPB rule regarding unfair and deceptive practices, it is unclear whether a state would be required to notify the CFPB if they filed an action in court regarding the Truth in Lending Act.

It is also unclear how state regulators should treat state laws that require institutions to comply with federal law. Many states require their institutions to comply with federal law as a condition of state law. Other states pass laws that mirror federal law. States routinely cite these state laws in reports and subsequent actions, which are not technically provisions of "the Act." Open communication between the States and CFPB over the intersection of state and federal law should prove beneficial to all parties. Further, state regulators are committed to developing a broad communication framework that can include discussion of state consumer financial laws. However, all parties must be mindful that Section 1042 preserved the States' authority to "bring

[1] For example, in 2012, the NMLS will include regulatory disciplinary actions in NMLS Consumer Access. This process can be leveraged to share information between the States and CFPB.

an action or other regulatory proceeding arising solely under the law in effect in that State." State regulators respectfully requests that the CFPB clarify the expected scope of notification under the Act and the applicability of related state laws.

C. Confidentiality issues must be addressed.

State confidentiality laws present a problem for the transfer of confidential information. As a practical matter, the States are hesitant to send highly confidential information to two anonymous email addresses. It is a criminal offense to share confidential financial institution information in some states, and all states treat confidentiality as a fundamental cornerstone of the regulatory process. Accordingly, the States and CFPB must address this communication issue by developing processes that encourage confidential information sharing. The processes must result in a situation where both sides to a communication know the boundaries of who has access to information and the security parameters established to protect information.

II. POLICY IMPLICATIONS AND PRACTICAL RAMIFICATIONS

A. Ten Days

As a policy matter, notification requirements should not impede a prudent regulator's ability to apply the law in a timely manner. While we understand that notification requirements are a means to establishing better coordination and collaboration, it will often be in the "public interest" to execute an action in fewer than ten days after completion. Ten days is not an insignificant amount of time when regulators are ready to pursue legal and regulatory remedies. While there are clearly instances when a compliance problem unfolds over time and thoughtful collaboration with federal regulators would be the proper course of action, it will more often than not be in the public interest for regulators to stop consumer harm as soon as possible. To that end, states will not delay necessary actions for ten days simply because of notification requirements.

Ideally, the CFPB will be aware of significant Title X problems as they unfold, not just during a ten day period between when an action is completed and when it is executed. This should be achieved explicitly through information sharing procedures developed by the States and the CFPB and implicitly through the continued development of a collaborative professional relationship. In the meantime, to facilitate continued involvement in areas where the CFPB does not have jurisdiction (e.g. depository institutions with less than $10 billion in assets), the state regulators recommend that the CFPB establish Title X liaisons that state regulators can contact early and often in the examination process to facilitate collaboration. This will allow the CFPB to remain on notice and give state regulators an outlet when questions arise regarding Title X.

B. Scale and Scope

The scale and scope of the CFPB's interpretations of "action" and "any provision of the Act" have deep implications. In the non-depository mortgage arena alone, the States issued 672 disciplinary actions or fines, 5957 cease and desist orders, and 2489 criminal actions or

revocations in 2009.[2] Aggregated, this means the CFPB would have received 9118 notices on mortgage compliance alone if each of these regulatory remedies was considered an "action or proceeding in any court or other administrative or regulatory proceeding" brought under the Act if the Act includes CFPB's general jurisdiction over mortgages and the relevant laws that transfer to the CFPB.

State regulatory activity related to the SAFE Act provides an excellent illustration of the importance of defining the scope of an "action" and the scale of "the Act." The SAFE Act is a federal consumer financial law that transferred to the CFPB on July 21, 2011. The SAFE Act requires the individual states to pass state laws implementing minimum requirements for mortgage licensing, education, and logging mortgage loan originator information on the Nationwide Mortgage Licensing System. State regulators enforce the state laws passed to be compliant with the federal SAFE Act.

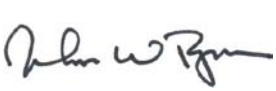
In the interim rule's current form, it is conceivable that state regulators will have to notify the CFPB of each mortgage license revocation (an administrative "action") when a state law based on a transferred federal law (the SAFE Act) is violated. From August 16, 2011 to September 16, 2011, the States suspended 157 mortgage loan originator licenses. License suspensions typically trigger administrative rights. Accordingly, if an "action" falls to the level of suspending a mortgage license under SAFE Act requirements, the CFPB will be receiving a large number of small notifications. Compounding the volume issue are the policy implications: it is illogical for a state to wait ten days after notification to suspend a license because such individuals would be operating outside the boundaries of the law.

The intersection of state and federal law and regulatory enforcement is vast. The scale and scope of notification requirements must be clarified and narrowed to ensure collaboration is efficient and in the best interest of the consumers Title X aims to protect.

III. CONCLUSION

The state regulators are confident that the notification requirements of Title X will be a beneficial tool for both the States and the CFPB as we continue to develop a cooperative relationship. We look forward to working with the CFPB to solve the issues present in Section 1042 of Dodd-Frank to enhance consumer protection across the country.

Sincerely,



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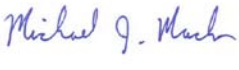

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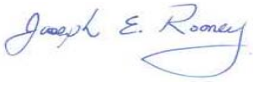

Joseph E. Rooney
President & Director
MTRA

[2] Source: LexisNexis Mortgage Asset Research Institute