July 24, 2012

Richard Cordray
Director
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Procedural Rules to Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination
Docket No. CFPB-2012-0021

Dear Director Cordray:

AARP\(^1\) appreciates the opportunity to comment on the Bureau of Consumer Financial Protection ("Bureau") proposed Procedural Rules to Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination. The procedural rules proposed demonstrates the Bureau’s sensitivity to meeting the legitimate needs of those entities over which it has both authority and an obligation to supervise, without sacrificing its ability to protect consumers. The procedure also ensures quick resolution of the most critical threshold question before the Bureau – whether it has authority to supervise the entity at all. AARP applauds the Bureau’s common-sense approach and supports the proposed rules.

The proposed procedural rules establish an informal process for a non-bank entity to challenge the Bureau’s supervisory authority. Upon the Bureau sending a notice detailing the specific practices of concern, the non-bank entity will have an opportunity to respond for the purposes of challenging the Bureau’s claim of authority over the non-bank entity. Thus, even before such an entity is served with compulsory process or subpoenas, it will have an opportunity to challenge the Bureau’s ability to investigate at all. This process, moreover, does not create a record that can be used against the non-bank entity or that prejudices the rights of either the non-bank entity or the Bureau. It permits both an opportunity to respond in writing and to present testimony orally.

The procedures proposed are eminently reasonable and sensible. Neither the Bureau nor the non-bank entity is forced to invest time and resources into an investigation until after the question of the Bureau’s authority to supervise the entity is clearly resolved. It also enables quick resolution of this important threshold question. Should the entity voluntarily choose to submit to the agency’s supervision, it may do so at this stage. In so doing, it can reach an agreement about future practices that will quickly resolve the concerns raised by the Bureau and avoid a lengthy and potentially expensive investigatory process.

\(^1\) AARP is a nonprofit, nonpartisan membership organization that helps people 50+ have independence, choice, and control in ways that are beneficial and affordable to them and society as a whole. We produce AARP The Magazine, AARP Bulletin, AARP Viva, NRTA Live and Learn, and provide information via our website, [www.aarp.org](http://www.aarp.org). AARP publications reach more households than any other publication in the United States. AARP advocates for policies that enhance and protect the economic security of individuals.
Indeed, the proposed rules are a sound response to the supervisory challenges posed by the unique authority of the Bureau. Unlike many other federal agencies, the Bureau’s authority to supervise certain non-bank entities is contingent on various flexible factors but is primarily driven by the harmful impact of their practices on the consumer. This provides the non-bank entity with a variety of defenses to the Bureau’s supervision that makes quick resolution of this threshold question essential.

In contrast, an agency that has clear supervisory authority over various entities and legal claims, does not need to evaluate authority as a threshold question. For example, the FTC is recently sought comment on its proposed revised enforcement procedures. See 77 Fed. Reg. 3191 (Jan. 23, 2012). Unlike the Bureau, the Federal Trade Commission has established a more formal and rigid process governing its investigations. While the FTC seeks to improve its procedures to make them more fair, take into account changing technological tools, and keep pace with the way business manage their documents, it does not include an informal process to permit a challenge to its authority. This is logical since the FTC’s authority to supervise an entity is more clearly defined.

Conclusion

AARP applauds the efforts of the Bureau to establish clear, fair and flexible procedures that will expeditiously resolve the most pressing threshold question regarding the Bureau’s supervisory authority, eliminate the unnecessary expenditure of investigative or defense resources until that question is resolved, treat all parties fairly, and end practices that are particularly harmful to consumers’ financial security in the most expeditious manner.

If you have any questions or need further assistance, please do not hesitate to contact Cristina Martin Firvida on our Government Affairs staff at (202) 434-6194.

Sincerely,

David M. Certner
Legislative Counsel