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CFPB To Oversee Credit Reporting, Debt Collection Cos.

By **Evan Weinberger**

Law360, New York (February 16, 2012, 2:05 PM ET) -- The nation's largest credit reporting and debt collection agencies will for the first time be subject to federal regulatory scrutiny under a proposal announced Thursday by the Consumer Financial Protection Bureau.

Under the proposed rule, debt collection agencies with more than $10 million in annual receipts from debt collection activities and credit reporting agencies with over $7 million in annual receipts from consumer reporting activities will be subject to the bureau's nonbank supervision program.

“Consumer financial products and services have become more complex over the years and they have expanded well beyond traditional banks,” said CFPB Director Richard Cordray. “Our proposed rule would mean that those debt collectors and credit reporting agencies that qualify as larger participants are subject to the same supervision process that we apply to the banks.”

The Dodd-Frank Wall Street Reform and Consumer Protection Act gave the CFPB the authority to regulate residential mortgage companies, payday lenders and private education lenders, while giving the CFPB time to determine which other “larger participants” in consumer financial markets should be regulated.

The sweeping financial reform bill, which also created the CFPB, gave the bureau until July 21 to determine which nonbank financial companies will be determined to be “larger participants.”

Currently, credit reporting companies and debt collection agencies are regulated by states and the Federal Trade Commission under the Fair Debt Collections Practices Act, and state agencies. The law specifically bans certain deceptive and potentially abusive activities.

The CFPB, however, will be able to take a far broader view as to what is deceptive because Dodd-Frank does not provide specific definitions for what constitutes abusive practices, said Foley & Lardner Partner LLP partner Michael Leffel. That means that a broader range of actions could be deemed abusive.

“They haven't defined the parameters yet,” he said.

According to the CFPB, around 175 debt collection firms, or around 4 percent of total debt collection firms, would be subject to federal regulation once the rule goes into effect. Those firms represent around 63 percent of the total debt collection market in the U.S., the bureau said.

But representatives of the debt collection industry said it was unclear how the CFPB made that determination.

“I don't know where the methodology came from to pick based on revenue. It's not something our members report to us,” said Mark Shiffman, a spokesman for ACA International, an industry trade group.

ACA International had provided comments to the CFPB when it announced that it was looking into regulating debt collection agencies over the summer.

“We knew they were trying to set a limit. We certainly were looking for something higher as a threshold,” Shiffman said.

The CFPB's threshold for credit reporting agencies, which supply credit reports and other information on consumer debt, will touch around 30 consumer reporting agencies, or approximately 7 percent of such companies, the bureau said.

However, the consumer reporting market is highly centralized and dominated by companies like Equifax Inc. and Experian Information Solutions Inc. Because of that, although only around 7 percent of companies in the market are covered, those companies account for around 94 percent of the annual receipts from consumer reporting the CFPB said.

“Equifax looks forward to working with the CFPB in ensuring that we continue to provide the most accurate and complete information in a timely way to businesses and consumers, and in a way that protects their privacy and is in compliance with all federal and state regulatory requirements,” said Demitra Wilson, a spokeswoman for Equifax.

Experian could not immediately be reached for comment Thursday.

Norm Magnuson, a spokesman for the Consumer Data Industry Association, a trade group for credit reporting companies, had no comment because the group had not yet reviewed the 55-page rule.

The proposed rule will be open for comment for 60 days after it is published in the Federal Register.

The CFPB said Thursday's announcement is the first in a series of determinations of which nonbank financial companies will be subject to federal regulation.

The bureau, and President Barack Obama's recess appointment of Cordray to head it, have come under withering attack from Republicans in Congress and financial industry groups. The CFPB could not make any rules without a director in place.

At a Wednesday hearing of a subcommittee of the House Financial Services Committee, Republicans complained that there was no congressional oversight for the bureau and its proposed $448 million budget for 2013 and that there was too much power invested in the director's position.

“The truth is [Cordray] could tell us the CFPB spent $100 million on paper clips last year and there is nothing Congress could do about it. Nothing,” Financial Services Committee Chairman Spencer Bachus, R-Ala., said.

But the assertion that the bureau — which used $123 million in its first year of existence in 2011 and estimates that it will spend $356 million in 2012 and $448 million in 2013 — can use funds on blatantly unnecessary resources is unfounded, according to Cordray, who noted that the bureau’s budget justification, financial statements, and clean U.S. Government Accountability Office and independent audits are publicly available on its website.

Senate Republicans say they plan on filing a lawsuit challenging Cordray's recess appointment, as well as recess appointments for three members of the National Labor Relations Board.

--Additional reporting by Allison Grande. Editing by John Quinn.