CFPB Proposes New Rule to Regulate Non-Banking Financial Services Industry Companies

May 25, 2012 - The Consumer Financial Protection Bureau is proposing new rules that would allow it to regulate companies within the financial services industry that are not engaged in traditional banking. Under the new rule, not all financial services companies would be regulated, or "supervised" as they are calling it. Instead, the agency would consider regulating individual organizations based on consumer complaints or other "reasonable" criteria. The real question is, would this new power be used like a scalpel to weed out bad actors or like a sword with broad, unanticipated consequences?

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The proposed new rule could result in regulation of debt collectors, consumer reporting agencies and other entities involved in "activities that pose risks to consumers." On its face, the rule is appealing. There is no doubt that many debt collectors and the CRAs are involved in activities that can have dire consequences for individual consumers.
But there is also a flip side to the rule.

There are still a number of small CRA's scattered about the country that do good work. And by the very nature of their business, debt collectors are bound to generate complaints. If the new rules are not applied fairly to these organizations, they could result in unnecessary regulations that only force consumer prices higher.

More importantly, since the criteria for the CFPB to consider regulating various industry players includes consumer complaints, it is quite possible that some unscrupulous businesses could easily game the system to bring on unnecessary regulations for their competitors.

And because the CFPB proposal would create a haphazard regulatory framework in which some businesses within an industry were regulated and other were not, there is also possibility that this new authority could be used for political purposes by whichever party is in power at the time. That's a frightening prospect.

There is no doubt that there is additional room for regulation of bad players within the financial services industry. But the idea that regulatory authority could be applied to companies on a purely subjective basis is unsettling. This is doubly so when you consider the fact that the proposed rule, as currently written, would not allow the companies being considered for "supervision" to present witnesses and no discovery would be allowed.

byJim Malmberg
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