

Department of the Treasury, Departmental Offices,
Bureau of Consumer Financial Protection
Request for Emergency Processing and Approval
State Official Notification Rules

EMERGENCY JUSTIFICATION

The Department of the Treasury (“Treasury”), on behalf of itself and the Bureau of Consumer Financial Protection (“CFPB”), respectfully requests emergency processing and approval of the collection of information related to the State Official Notification Rules, which is to be issued by the Consumer Financial Protection Bureau (“CFPB”) pursuant to sections 1042(b) and (c) of the Consumer Financial Protection Act of 2010 (“Act”), Public Law No. 111-203, Title X (“Act”), 12 U.S.C. § 5552(b) and (c).

On July 21, 2011, pursuant to section 1042(a) of the Act, 12 U.S.C. § 5552(a), certain state officials will be permitted to begin bringing actions to enforce the Act and regulations prescribed thereunder. Section 1042(b) of the Act requires states to provide notice to the CFPB (and relevant prudential regulators) before initiating any action to enforce the Act or regulations prescribed thereunder, and Section 1042(c) of the Act requires the Bureau to prescribe regulations to implement the notice requirement. The State Official Notification Rules fulfill this statutory mandate. In order to ensure that the CFPB is aware of all legal developments related to the Act and situated to take appropriate action in response (including consulting with state officials), it is necessary that the CFPB be informed of pending actions. The failure to promptly enact this rule as mandated by the Act will leave the CFPB without the necessary information to evaluate actions taken pursuant to the Act and determine an appropriate response, which may impair the efficiency and consistency with which the Act is enforced. The proposed interim final rule as of the date of this submission is attached as Appendix A.

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1. CIRCUMSTANCES NECESSITATING THE COLLECTION OF INFORMATION

Section 1042 of the Act, 12 U.S.C. § 5552, gave authority to certain state officials to enforce the Act and regulations prescribed thereunder. Section 1042 also requires that the CFPB issue a rule establishing how states are to provide notice to the CFPB before taking action to enforce the Act (or, in emergency situations, immediately after taking such an action).

In accordance with the requirements of the Act, the CFPB has proposed interim final rule establishing that notice should be provided at least 10 days before the filing of an action, with certain exceptions, and setting forth the following limited set of information which is to be provided with the notice (which substantially tracks the statutory language):

- (A) the court or body in which the action or proceeding is to be initiated;
- (B) the identity of the parties to the action or proceeding;
- (C) the nature of the action or proceeding to be initiated;
- (D) the anticipated date of initiating the action or proceeding;
- (E) the alleged facts underlying the action or proceeding;
- (F) a contact name, electronic mail address, and phone number of an individual involved with the matter in the office of the State Official with whom the Bureau may consult;
- (G) a determination as to whether there may be a need to coordinate the prosecution of the action or proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency; and
- (H) a complete and unredacted copy of any complaint, motion for relief, or similar document that is the subject of the notice, in its form as of the date the notice is provided.¹

¹ To the extent the complaint, motion for relief, or similar document contains the information described above, provision of the complaint, motion for relief, or similar document shall be deemed sufficient notice of that information. If the State Official, after providing notice, intends to file a complaint, motion for relief, or similar document that is materially different from the document included with the notice, the State Official shall provide a copy of that document prior to filing.

When notice is provided after the initiation of an action, the written description shall also include the following information:

- (A) a brief description of any proceeding that occurred as a result of the initiation of the action or proceeding, including any orders issued by a court or other body;
- (B) any case number, matter number, or designation assigned to the action;
- (C) information on scheduled court or other administrative or regulatory proceedings; and
- (D) a complete, unredacted copy of any document filed by any party in relation to the action and any orders issued by the court or other body.

By statute, as noted above, state officials are required to provide notice and the CFPB is required to issue a rule implementing that requirement. As previously indicated, this notice is necessary to ensure that the CFPB is informed of pending matters and can evaluate those matters and determine a course of action. Without this rule, the CFPB's awareness of how new authorities granted by the Act are being implemented will be substantially hindered.

2. USE OF THE DATA

The data will be received each time a state official files an action to enforce the Act or a regulation promulgated thereunder. It will be collected by the CFPB (through electronic mail submissions), and specifically by the Division of Enforcement and the Executive Secretary, who will share it as necessary and appropriate within the CFPB and elsewhere in government, pursuant to the process set out in the rules. It will also be collected by the prudential regulators (through postal mail or electronic mail submissions) where relevant. Unless used as part of a legal proceeding in which the CFPB is engaged, it is not expected that the information will be shared with the public by those receiving the notice, unless the information is already made public by the state official providing the notice.

As discussed above, the information provided in the notice will be used by the CFPB (and prudential regulators, where relevant) to stay informed about the enforcement activities of state officials enforcing the Act and to decide when and how, if at all, to react to such activities.

3. USE OF INFORMATION TECHNOLOGY

To ensure that the process of providing notice is both easy and fast, notice to the CFPB will be provided by electronic mail. State officials have the option of providing notice electronically or by postal mail to prudential regulators.

4. EFFORTS TO IDENTIFY DUPLICATION

The CFPB is not aware of any other formal process by which the CFPB would be notified of pending state enforcement actions.

5. IMPACT ON SMALL ENTITIES

Not applicable. The information collected will come from state officials.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION AND OBSTACLES TO BURDEN REDUCTION

As discussed above, failing to collect this information may leave the CFPB without the necessary information as to pending state actions in an area of law for which the CFPB has primary regulatory authority, which will limit the CFPB's ability to consult with states and become involved as appropriate before a case is filed.

7. CIRCUMSTANCES REQUIRING SPECIAL INFORMATION COLLECTION

Not applicable.

8. SOLICITATION OF COMMENTS ON INFORMATION COLLECTION

The CFPB has solicited information during the process of drafting this rule. As the preamble to the rule explicitly states, after the rule is published in the Federal Register, the CFPB welcomes public comment on the interim final rule prior to it becoming a final rule.

9. PROVISION OF PAYMENTS TO RESPONDENTS

The information collection does not provide for making payments or gifts to respondents.

10. ASSURANCE OF CONFIDENTIALITY

As set forth in the rule, unless and until the information becomes publically available, the substance and fact of the notice will not be disclosed by the CFPB or any relevant prudential regulator who received the notice except:

- (A) as required by law;
- (B) with the permission of the state official who provided the notice; or
- (C) by the CFPB to another state or federal entity when necessary to protect the public interest, after consultation with the state official who provided the notice.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The information sent under the notice provisions of the rule is primarily information which the state officials providing the notice would have already collected and have available at the time notice is given. It is unlikely that compiling and sending the requested information would require more than 30 minutes of additional work. As this is a new area of law, at this time, it would be impossible to estimate the number of actions which state officials will file under the Act and, accordingly, the number of notices which the CFPB will receive.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There should be minimal annualized costs for the state officials to collect and submit this information, consisting of only the *de minimis* costs related to downloading docket information (for which a court may charge), printing, copying and mailing.

14. ESTIMATED COST TO THE FEDERAL GOVERNMENT

The cost of the collection of this information to the federal government is *de minimis*.

15. REASONS FOR CHANGE IN BURDEN

Not applicable. This is a new requirement for states.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION

Not applicable. The information will not be published.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

Not applicable. No forms are being used.

18. EXCEPTIONS TO CERTIFICATION REQUIREMENT OF OMB FORM 83-I

There are no exceptions to the certification statement in item 19 of Form 83-I.

APPENDIX A: Proposed State Official Notification Rule

Title 12—Banks and Banking

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

Part 1082—State Official Notification Rules

AUTHORITY: Pub. L. No. 111-203, Title X.

§ 1082.1— Procedures for notifying the Bureau of Consumer Financial Protection when a state official takes an action to enforce the Consumer Financial Protection Act of 2010.

(a) Notice requirement.

(1) Pursuant to 12 U.S.C. 5552(b) and except as discussed in paragraph (b) of this section, every State attorney general and State regulator (collectively “State Official”) shall provide the notice described in paragraph (c) of this section to the Division of Enforcement of the Bureau of Consumer Financial Protection (“Bureau”), the division of the Bureau responsible for enforcement of Federal consumer financial law pursuant to the Consumer Financial Protection Act of 2010, as amended, Public Law 111-203 (July 21, 2010), Title X, 12 U.S.C. 5481 et seq. (“Act”), and the Office of the Executive Secretary of the Bureau at least 10 days prior to initiating any action or proceeding in any court or other administrative or regulatory proceeding against any covered person to enforce any provision of the Act or any regulation prescribed thereunder, including but not limited to the filing of a complaint, motion for relief, or other document which initiates an action or proceeding.

(2) Notice shall be provided to the Division of Enforcement and the Office of the Executive Secretary, or their successor offices, via electronic mail to Enforcement@cfpb.gov and

ExecSec@cfpb.gov. In the event of technical problems preventing the delivery of notice, the Division of Enforcement or its successor entity should be contacted.

(3) On the same date that notice is provided to the Division of Enforcement and the Office of the Executive Secretary pursuant to paragraph (a)(1) of this section, a copy of the notice shall be sent to the relevant prudential regulator, if any, or the designee thereof, by mail or electronic mail.

(4) Notice shall be deemed to have been provided as of the date of mailing the materials described in paragraph (c) of this section.

(5) The Division of Enforcement, or its successor entity, in consultation with a State Official, may provide, for good cause shown, an alternative deadline for the notice described in paragraph (a)(1) of this section.

(b) Emergency actions.

(1) Pursuant to 12 U.S.C. 5552(b), in the event that a State Official initiates or intends to initiate an action or proceeding and, in order to protect the public interest or prevent irreparable and imminent harm, is unable to provide timely notice as described in paragraph (a) of this section, the State Official shall provide the notice described in paragraph (c) of this section as soon as is practicable and not later than 48 hours after initiation of the action or proceeding.

(2) Notice shall be provided in accordance with the procedures set forth in paragraphs (a)(2) through (a)(4) of this section.

(3) The Division of Enforcement, or its successor entity, in consultation with a State Official, may provide, for good cause shown, an alternative deadline for the notice described in paragraph (b)(1) of this section.

(c) Contents of notice.

(1) Pursuant to 12 U.S.C. 5552(b), the notice required under paragraphs (a) and (b) of this section shall include a written description of the anticipated action or proceeding, including:

(i) The court or body in which the action or proceeding is to be initiated;

(ii) The identity of the parties to the action or proceeding;

(iii) The nature of the action or proceeding to be initiated;

(iv) The anticipated date of initiating the action or proceeding;

(v) The alleged facts underlying the action or proceeding;

(vi) A contact name, electronic mail address, and phone number of an individual involved with the matter in the office of the State Official with whom the Bureau may consult; and

(vii) A determination as to whether there may be a need to coordinate the prosecution of the action or proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) The notice required under paragraphs (a) and (b) of this section shall further include a complete and unredacted copy of any complaint, motion for relief, or similar document that is the subject of the notice, in its form as of the date the notice is provided. To the extent the complaint, motion for relief, or similar document contains the information described in paragraph (c)(1) of this section, provision of the complaint, motion for relief, or similar document shall be deemed sufficient notice of that information.

(3) In the event that notice is provided after the initiation of an action or proceeding, the written description shall also include the following, in addition to the information described in paragraph (c)(1) of this section:

(i) A brief description of any proceeding that occurred as a result of the initiation of the action or proceeding, including any orders issued by a court or other body;

(ii) Any case number, matter number, or designation assigned to the action or proceeding;

and

(iii) Information on scheduled court or other administrative or regulatory proceedings.

(4) In the event that notice is provided after the initiation of an action or proceeding, in addition to the requirements set forth in paragraph (c)(3) of this section, the notice shall further include a complete, unredacted copy of any document filed by any party in relation to the action or proceeding and any orders issued by the court or other body.

(5) If the State Official, after providing the notice described in paragraphs (c)(1) and (c)(2) of this section, intends to file a complaint, motion for relief, or similar document that is materially different from the document included with the notice, the State Official shall provide a copy of that document prior to filing, in accordance with the method described in paragraph (a)(2) of this section.

(d) Bureau response. In any action or proceeding described in paragraphs (a) and (b) of this section, the Bureau may:

(1) Intervene in the action or proceeding as a party;

(2) Upon intervening,

(i) Remove the action to the appropriate United States district court, if the action or proceeding was not originally brought there; and

(ii) Be heard on all matters arising in the action;

(3) Appeal any order or judgment, to the same extent as any other party in the proceeding may; and

(4) Otherwise participate in the action as appropriate.

(e) Confidentiality and privilege.

(1) Unless and until such information becomes publically available, the substance and fact of the notice described in paragraph (c) of this section, including the complaint, motion for relief, or other document, shall not be disclosed by the Bureau or any relevant prudential regulator who received the notice except as permitted by paragraphs (e)(3) and (e)(4) of this section or as required by law.

(2) Provision of notice by a State Official and disclosure of notice pursuant to paragraphs (e)(3) and (e)(4) of this section shall not be deemed a waiver of any applicable privilege.

(3) Notwithstanding paragraph (e)(1) of this section, the Bureau and any relevant prudential regulator who received the notice described in paragraph (c) of this section may share the substance or fact of the notice with another entity pursuant to the consent of the State Official who provided the notice.

(4) Notwithstanding paragraphs (e)(1) and (e)(3) of this section, the Bureau may share the substance and fact of the notice described in paragraph (c) of this section with another state or federal government entity when necessary to protect the public interest, after consultation with the State Official who provided the notice.

(f) No private right of action or defense. The requirements set forth in this section are not intended to, do not, and may not be relied upon to create any right, benefit, or defense, substantive or procedural, enforceable at law by a party against the United States or any State enforcing the provisions of the Act or any regulation prescribed thereunder.