

**BILLING CODE: 4810-25-P**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1082**

**Docket No.: CFPB -2011-0005**

**RIN 3170-AA02**

**State Official Notification Rules**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** Section 1042(c) of the Consumer Financial Protection Act of 2010 (“Act”), requires the Bureau of Consumer Financial Protection (“CFPB” or “Bureau”) to prescribe rules establishing procedures that govern the process, described in section 1042(b) of the Act, by which state officials notify the CFPB of actions or proceedings undertaken pursuant to the authority granted in section 1042(a) to enforce the Act or regulations prescribed thereunder. This interim final rule with a request for public comment sets forth those rules.

**DATES:** This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments are invited and must be received on or before [INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB -2011-0005, by any of the following methods:

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- Electronic: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail or Hand Delivery/Courier in Lieu of Mail: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, N.W., Washington, D.C. 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1801 L Street, N.W., Washington, D.C. 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, N.W., Washington, D.C. 20036, (202) 435-7275.

**SUPPLEMENTARY INFORMATION:**

The CFPB issues these State Official Notification Rules (“Rules”), pursuant to sections 1042(b) and (c) of the Consumer Financial Protection Act of 2010 (“Act”),<sup>1</sup> 12 U.S.C. 5552(b), (c). These Rules are promulgated as an interim final rule with a request

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<sup>1</sup> The Act is Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended, Public Law 111-203 (July 21, 2010), Title X, 12 U.S.C. 5481 *et seq.* Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury publishes these Rules on behalf of the CFPB.

for comment. The CFPB invites interested members of the public to submit written comments addressing the issues raised herein.

#### **A. Background**

These Rules will govern the process by which state officials notify the CFPB of actions or proceedings undertaken under section 1042(a) of the Act, 12 U.S.C. 5552(a), to enforce the Act, or regulations prescribed thereunder.

The Rules implement a procedure for the timing and content of the notice required to be given to the CFPB, set forth the responsibilities of CFPB employees and others who receive the notice, and specify the rights of the CFPB to participate in an action brought by a state official. In drafting these Rules, the CFPB endeavored to create a process that would both provide the CFPB and the relevant prudential regulators with timely notice of pending actions and account for the investigation and litigation needs of state law enforcement agencies. In keeping with this approach, the Rules provide for a default notice period of at least 10 days, with exceptions for emergencies and other extenuating circumstances, and require substantive notice that is both straightforward and comprehensive. The Rules further make clear that the CFPB can participate as appropriate in an action brought by state officials under the Act or a regulation prescribed thereunder, provide for confidential treatment of information disclosed to the CFPB and prudential regulators under these Rules, and establish that provision of notice shall not constitute a waiver of any applicable privilege. In addition, the Rules specify that the notice provisions do not create any procedural or substantive rights for parties in litigation against the United States or against a state which brings an action under the Act or a regulation prescribed thereunder.

## B. Section Summary

The Rules are set forth in a single section, with several paragraphs, each of which is addressed below.

### Paragraph 1082.1(a) Notice requirement.

This paragraph sets out the timing and process for the provision of notice by state officials under non-emergency circumstances. The paragraph requires state officials to provide notice no later than 10 days prior to initiating an action to enforce the Act or any regulation prescribed thereunder. The paragraph also identifies to whom and how the notice should be sent and sets out an exception to the timing of notice.

### Paragraph 1082.1(b) Emergency actions.

Paragraph 1082.1(b) sets out the process for the provision of notice in emergency circumstances. The paragraph lays out the reasons for not providing notice in accordance with paragraph 1082.1(a), and establishes a deadline to provide notice of no more than 48 hours after the initiation of an action. The paragraph also identifies to whom and how the notice should be sent, and also sets out an exception to the timing of notice.

### Paragraph 1082.1(c) Contents of notice.

In this paragraph, the CFPB specifies the information that must be included in the notice provided by state officials. This paragraph also details certain additional information that must be provided when notice is not given until after an action has been initiated.

### Paragraph 1082.1(d) Bureau response.

Paragraph 1082.1(d) describes how the CFPB may intervene or otherwise participate in an action initiated by a state official.

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**Paragraph 1082.1(e) Confidentiality and privilege.**

Paragraph 1082.1(e) provides that the CFPB and any prudential regulator who receives notice shall not disclose any non-public information about the notice, and also establishes certain exceptions to this requirement. In addition, the paragraph states that the provision of notice shall not constitute a waiver of any applicable privilege.

**Paragraph 1082.1(f) No private right of action or defense.**

This paragraph clarifies that the Rules do not create any right, benefit, or defense which is enforceable against the United States or state officials enforcing the Act or any regulation prescribed thereunder.

**C. Procedural Requirements**

**1. Regulatory Requirements**

The Rules relate solely to “agency organization, procedure, or practice” and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act (“APA”). See 5 U.S.C. 551 et seq. Even if these requirements did apply, the CFPB for good cause finds that in these circumstances providing advance notice and opportunity for comment would be impracticable and contrary to the public interest. See 5 U.S.C. 553(b). The Bureau also finds that there is good cause to issue this rule effective immediately. See 5 U.S.C. 553(d). Pursuant to the Act, state officials are permitted to begin bringing actions under the Act on July 21, 2011. In order to ensure that the CFPB, which is the primary agency responsible for administration of the Act and promulgating regulations under the Act, is aware of all legal developments related to the Act and situated to take appropriate action, it is necessary that the CFPB be informed of pending actions. The failure to promptly enact the Rules 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. Thus, the CFPB has determined that this interim rule should be issued, effective immediately, without advance notice and opportunity for comment.

Nevertheless, the CFPB invites public comment on the Rules.

Because no notice of proposed rulemaking is required, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2), do not apply.

The collection of information contained in this rule has been approved by the Office of Management and Budget (“OMB”) for review in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), under control number 1505-0237. The estimated time per response is 30 minutes. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

## **2. Section 1022(b)(2) Provisions**

The CFPB has conducted an analysis of benefits, costs, and impacts<sup>2</sup> and consulted with the prudential regulators, the Department of Housing and Urban Development, the Securities and Exchange Commission, the Department of Justice, and the Federal Trade Commission, including with respect to whether the Rules are consistent with any relevant prudential, market, and systemic objectives administered by such agencies.<sup>3</sup>

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<sup>2</sup> Section 1022(b)(2)(A) addresses the consideration of the potential benefits and costs of regulation to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services; the impact of proposed rules on depository institutions and credit unions with \$10 billion or less in total assets as described in Section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

<sup>3</sup> The President’s July 11, 2011, Executive Order 13579 entitled “Regulation and Independent Regulatory Agencies,” asks the independent agencies to follow the cost-saving, burden-reducing principles in Executive Order 13563; harmonization and simplification of rules; flexible approaches that reduce costs;

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The CFPB concludes that the Rules will benefit consumers and covered persons alike. The Rules do not impose any obligations on consumers or covered persons, nor do they have any direct relevance to consumers' access to consumer financial products and services. Rather, they provide for notice to the CFPB and prudential regulators when a state initiates an action under the Act, or a regulation prescribed thereunder. The notice provided to the CFPB may result in a CFPB decision to join an enforcement action, which may result in marginal additional costs to the relevant covered person. On the other hand, the Rules will help ensure more efficient and consistent implementation of the Act, which benefits both consumers and covered persons.

Further, the Rules have no unique impact on insured depository institutions or insured credit unions with less than \$10 billion in assets described in section 1026(a) of the Act, and do not have a unique impact on rural consumers.

## **LIST OF SUBJECTS IN 12 CFR PART 1082**

Banks, banking, Consumer protection, Credit, Credit unions, Federal Reserve System, Investigations, Law enforcement, National banks, Savings associations, State and local governments, Trade practices.

**ISSUANCE:** For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1082 to Chapter X in Title 12 of the Code of Federal Regulations to read as set forth below.

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and scientific integrity. In the spirit of Executive Order 13563, the CFPB has consulted with the Office of Management and Budget regarding this interim final 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

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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.

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(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.

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(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

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- (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

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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.

Dated: July 22, 2011

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Sam Valverde

Deputy Executive Secretary, Department of the Treasury.