CSBS today sent a comment letter to the U.S. Small Business Administration (SBA) recommending that the agency consult with state regulators before implementing proposed rules that would update SBA loan program rules for nonbank institutions.

The proposed rule, SBA Supervised Lenders Application Process published on January 13, would revise current regulations applying to non-federally regulated lenders that want to participate in the SBA’s loan program. The proposed rule would limit the lending area to the state in which the lender’s “primary state regulator” is located as well as establish minimum capital requirements and an application and review process for these lenders.

However, as CSBS states in the letter, the SBA’s proposed rule does not fully consider the range of non-depositories and how states supervise them.

State financial supervisors regulate nearly 80% of the nation’s banks and are the primary regulator of nonbank financial service companies involved in mortgage lending, money services businesses, consumer finance, debt collectors, and commercial lenders. The supervision of these two industries is different in some ways.

Unlike depositories, there is no primary single state regulator of a nonbank financial institution. Each nonbank company is supervised, and in many cases licensed, by the state in which it operates. Each state can have different requirements, which leads to states collaborating with each other.

Ultimately, states supervision is activities-based for nonbanks – a concept rooted in the federalism principal that consumer protection is traditionally a matter of local concern.
The SBA’s misunderstanding of how the state supervisory system operates underscores the need for the SBA to consult with CSBS before moving forward with the proposed rules, the letter said.