

[CFPB Final Rule – Procedures for Supervisory Designation Proceedings](#)

COMMENT LETTER

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May 23, 2024

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Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Comment Intake – Procedures for Supervisory Designation Proceedings
c/o Legal Division Docket Manager
Docket No. CFPB-2024-0006

Re: *Final Rule – Procedures for Supervisory Designation Proceedings*

Dear Sir or Madam:

The Conference of State Bank Supervisors¹ (“CSBS”) provides the following comments regarding the Consumer Financial Protection Bureau’s (“CFPB”) nonbank supervisory designations process in light of its final rule entitled *Procedures for Supervisory Designation Proceedings*² (“final rule”) and observations from the CFPB’s initial round of nonbank supervisory designations. The final rule updates procedures for designating a nonbank company for CFPB supervision when the agency has reasonable cause to determine the entity poses risks to consumers in providing a consumer financial product or service pursuant to Section 1024(a)(1)(C) of the Dodd-Frank Act.³ While the CFPB established a 2013 rule⁴ implementing how it would carry out such nonbank supervisory designation proceedings, it was not until 2022 that the CFPB announced that it would begin exercising this “dormant authority.”⁵ In 2023, the CFPB initiated its first supervisory designation proceedings.

State regulators license and supervise a wide array of nonbank financial services companies, many of which are not currently supervised by the CFPB. While the final rule notes that the CFPB “anticipates it will continue to conduct a limited number of proceedings relative to the [estimated 154,430 nonbank entities] subject to this rule,”⁶ it is likely that a nonbank entity subject to such proceeding is already licensed and supervised by one or more state regulatory agencies. State regulators have an obvious and critical stake in how the CFPB conducts supervisory designation proceedings, particularly as it relates to the need for clear and consistent consultation, information sharing, and coordination regarding state- licensed and supervised nonbank entities.

The Dodd-Frank Act requires robust collaboration and partnership between state regulators and the CFPB when supervising nonbank entities.

Section 1024 of the Dodd-Frank Act⁷ established the CFPB’s nonbank supervisory authorities, including the scope of nonbank entities that the CFPB is required to or may supervise, how it conducts its examinations, supervisory, and enforcement coordination, and much more. Congress recognized the critical, existing, and evolving role that state regulators play in supervising nonbank entities for consumer protection when it established the CFPB’s supervisory authorities, envisioning a close and complementary supervisory partnership between the CFPB and state regulators. For example, the CFPB is required to, among other things:

- Conduct a risk-based assessment of consumer risks that considers, among other factors, the extent to which an entity is already subject to state oversight for consumer protection;⁸
- Coordinate its supervisory activities with state regulators, including scheduling of state and CFPB examinations and respective reporting requirements;⁹ and
- Utilize existing state agency reports on such nonbanks to the “fullest extent possible.”¹⁰

These requirements apply to the CFPB’s supervision of any nonbank entity, irrespective of whether the entity is already subject to its supervision or is designated for supervision under a Section 1024(a)(1)(C) proceeding.

The CFPB should consult with state regulators as it seeks to determine whether a nonbank is engaging in conduct that poses risks to consumers, and whether a nonbank should be subject to CFPB supervision.

In addition to mortgage, private student loan, payday lending companies, and “larger participants,” the CFPB may subject other nonbank entities to supervision if it has reasonable cause to determine the entity poses risks to consumers. The supervisory designation process is governed by statute and requires the CFPB to use consumer complaints data and/or “information from other sources” to determine the risks a nonbank entity may pose to consumers.¹¹ State regulators are uniquely positioned to provide critical and helpful information to the CFPB regarding the risks a nonbank entity may pose to consumers, including the scope and manner of states’ existing supervision.

As noted earlier, the CFPB is required to have a risk-based supervision program that assesses the extent to which a nonbank entity is subject to existing state oversight for consumer protection.¹² It seems logical for the CFPB to conduct such an assessment in consultation with state regulators while it is evaluating whether a nonbank should be subject to CFPB supervision in the first place. Moreover, under the 2013 CFPB-State Supervisory Coordination Framework, “the [State Coordinating Committee] and the CFPB will coordinate and consult on the *identification* and supervision of Covered Non-Depository Entities that are to be examined under this Framework.”¹³

Once a nonbank entity is designated for CFPB supervision, the agency is required to coordinate with state regulators regarding that entity’s examinations, reporting requirements, and more.

As noted earlier, the CFPB is required by the Dodd-Frank Act to coordinate with state regulators on examinations and reporting requirements and to leverage existing state reports for nonbanks subject to state licensing and oversight. It is unclear, however, how many nonbank entities have been designated (or are currently being considered) for CFPB supervision. For example, CSBS and most, if not all, of its state regulatory agency members became aware via a February 2024 press release¹⁴ that the CFPB had subjected a state-licensed nonbank entity to supervision in November 2023 following a contested designation proceeding.¹⁵ To the extent that other state-licensed and supervised nonbanks have already been designated for CFPB supervision, CSBS

requests prompt notification to the relevant state regulators of any and all such designated entities.

Notwithstanding our recommendation that the CFPB consult with state regulators during supervisory designation proceedings, going forward, CSBS anticipates the primary state regulators of these nonbanks will receive advance notice if and when the CFPB chooses to designate such an entity for supervision. Additionally, CSBS expects the CFPB will comply with the Dodd-Frank Act and coordinate its supervisory activities with the relevant state regulators for any nonbank designated for supervision.

CSBS appreciates the commitment by CFPB Director Rohit Chopra to a robust partnership with the states and believes effective coordination on potential designation and examination activities will further promote consumer protections in the provision of financial services by nonbanks. State regulators are similarly committed to a strong, effective supervisory partnership with the CFPB, and stand ready to work with the agency to that end.

Sincerely,

Brandon Milhorn
President and CEO

Endnotes

1 - CSBS is the nationwide organization of state banking and financial regulators from all 50 states, the District of Columbia, and the U.S. territories.

2 - CFPB, Final Rule, *Procedures for Supervisory Designation Proceedings*, 89 Fed. Reg. 30259 (April 23, 2024).

3 - 12 U.S.C. 5514(a)(1)(C).

4 - *See Procedural Rule to Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination*, 78 Fed. Reg. 40352 (July 3, 2013).

5 - CFPB, Press Release, [CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers](#) (April 25, 2022).

6 - *Supra* note 2 at 30262-3.

7 - 12 U.S.C. 5514.

8 - 12 U.S.C. 5514(b)(2)(D).

9 - 12 U.S.C. 5514(b)(3).

10 - 12 U.S.C. 5514(b)(4).

11 - *Supra* note 3.

12 - *Supra* note 8.

13 - [2013 CFPB-State Supervisory Coordination Framework](#), at III.B.2 (May 7, 2013) (emphasis added). The Framework covers “any [non-depository] person that engages in offering or providing a consumer financial product or service, as defined in 12 U.S.C. 5481(5), subject to supervisory authority of both the CFPB and one or more State Regulators.”

14 - CFPB, Press Release, [CFPB Orders Federal Supervision for Installment Lender Following Contested Designation](#) (February 23, 2024).

15 - CFPB, *Supervisory Designation Proceeding*, File No. 2023-CFPB-SUP-0001 (November 30, 2023).