Alert | Financial Regulatory & Compliance

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CFPB Streamlines Nonbank Supervisory Designation Procedures

Go-To Guide:
• On April 16, 2024, the Consumer Financial Protection Bureau (CFPB) issued a revised procedural rule updating how the agency designates nonbanks for supervision. • The revised rule demonstrates again the agency's commitment to asserting its supervisory authority over nonbanks that, in its view, create risks for consumers accessing financial products or services.

On April 16, 2024, the CFPB issued a revised rule aimed at streamlining its procedures for designating nonbank covered entities for supervision. The CFPB said the revised procedures "reflect changes to the CFPB's organizational structure," but also noted that the revised procedures would lead to a "reduction in time and general streamlining of the decisional process" by which nonbanks are designated for supervision.

Background & Revised Procedures

Under section 1024(a)(1)(C) of the Consumer Financial Protection Act of 2010 (CFPA), the CFPB has authority to supervise any nonbank covered person that the CFPB "has reasonable cause" to believe is engaged "in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services."

To exercise that authority, however, the CFPB must provide the nonbank covered person with notice and opportunity to respond prior to designating the entity, by order, for supervision.

In 2013, the CFPB issued a rule establishing procedures to govern its supervisory designation proceedings, but until recently the agency had generally not exercised its authority to designate nonbanks for supervision.

In 2022, however, the CFPB announced it would begin to exercise its authority, made limited amendments to its procedures for supervisory designation proceedings, and then initiated a number of supervisory designation proceedings. And in February 2024, the CFPB issued its first order in a contested supervisory designation proceeding.

With its revised procedural rule for supervisory designation proceedings, the CFPB seeks to simplify its supervisory designation procedures and formalize practices that were previously informal. The updates cover various aspects, including confidentiality, voluntary consent, notice procedures, responses, multiple respondents, and decision-making.

Regarding confidentiality, the updated rule maintains the CFPB's ability to publish final decisions and orders but specifies that consent agreements will not be publicly released. The rule also standardizes pathways for voluntary consent and emphasizes that such agreements do not imply admission. Additionally, it allows for case-by-case determination of agreement durations.

In terms of notices, the rule revises their contents and allows initiating officials to retract them, adding flexibility. The CFPB gains the ability to respond to nonbank replies, enabling officials to address concerns before final decisions.

Moreover, the rule permits the naming of multiple respondents, streamlining related proceedings. Lastly, the rule eliminates the associate director role, streamlining decision-making under the director.

Takeaways

The CFPB's revised procedural rule for supervisory designation proceedings demonstrates again that the agency is committed to asserting its supervisory authority over nonbanks that, in its view, create risks for consumers accessing financial products or services.

The CFPB's revised rule will be effective when it published in the Federal Register. The CFPB will then accept comments on the revised rule for 30 days.

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