CFPB Supervision Alert from Hudson Cook; CFPB Updates Supervision Designation Procedures for Nonbanks Posing Risks

April 16th, 2024 | Lucy Morris and Kristen Yarows

On April 16, 2024, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") issued a rule to update its procedures for designating nonbank covered persons for supervision. Section 1024(a)(1)(C) of the Consumer Financial Protection Act authorizes the Bureau to supervise a nonbank covered person that the Bureau "has reasonable cause to determine. . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services." In 2013, the CFPB issued a procedural rule to govern the supervisory designation proceedings. After years of largely not using this authority, the CFPB issued an amended procedural rule in 2022 and established a process to publicize the Director's final decisions and orders. In February 2024, the Bureau published its first decision and order, and now the Bureau seeks to update its procedures through a new procedural rule. We previously wrote about the 2022 procedural rule here and the February 2024 decision and order here.

The new procedural rule clarifies that a consent agreement does not constitute an admission by the respondent. It further clarifies that when a respondent voluntarily consents to supervisory authority, they are not subject to the public release process. Orders because a respondent failed to file a response or has defaulted in the process are subject to public release, however. If a respondent consented to supervision under the 2022 procedural rule, the term was limited to a two-year period of supervision. Under the new procedural rule, the notice of reasonable cause will continue to include a proposed consent agreement, but instead of a two-year supervision period, the duration of the supervision will be on a case-by-case basis. The Bureau noted that it still expects most of the consent agreements to create a two-year period of supervision.

According to supplementary information to the rule, in February 2024, the Bureau began a transition to a new organizational structure for its supervision and enforcement work. Specifically, the functions of the Associate Director of the Division of the Supervision, Enforcement, and Fair Lending ("SEFL") are being transferred to the Supervision Director as head of a Division of Supervision and the Enforcement Director as head of a Division of Enforcement. Although not yet on the Bureau's website, it appears that the SEFL Division is being discontinued and that Enforcement and Supervision will now be their own Divisions and report directly to the CFPB Director. In light of this restructuring, the procedural rule transfers certain functions to the Supervision Director. The Bureau is hopeful that this will streamline the internal decision-making process.

The procedural rule allows the initiating official to withdraw a notice of reasonable cause and request supplemental briefing. It also imposes word limits for the notice, response, and certain key filings.

The procedural rule is effective upon its Federal Register publication and applies to all proceedings issued on or after that date. It also applies to proceedings that are pending, unless the Director determines that it is not just or practicable. Although the procedural rule is exempt from the notice-and-comment requirements, the Bureau is accepting comments on the rule.