



1700 G Street NW, Washington, D.C. 20552

March 5, 2024

The Honorable Vicente Gonzalez
United States House of Representatives
154 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Gonzalez,

Thank you for your letter, dated January 22, 2024, regarding the Consumer Financial Protection Bureau's (CFPB) supervision of nonbank financial institutions. Your letter raises a number of important issues, and I appreciate your thoughtful approach to it.

The CFPB has law enforcement authority over a wide range of participants in consumer finance markets. However, law enforcement is best suited to address harmful practices *after* they take place. One of the best tools to prevent harm is the supervisory examination process. This process is also less adversarial and gives an opportunity for entities to correct problems before they harm consumers.

While insured banks and credit unions are subject to federal supervision, many nondepository institutions are not subject to the same oversight, even when offering identical products and services as their bank and credit union counterparts. Depository institutions and other stakeholders have urged the CFPB to use its authorities to ensure that there is a level playing field.

In the Consumer Financial Protection Act, Congress authorized the CFPB to supervise three different categories of nonbank entities.¹ First, the CFPB is authorized to examine all nonbank entities in the mortgage, private student loan, and payday loan industries, regardless of size. Second, the CFPB is authorized to examine "larger participants," as defined by rulemaking, in

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Consumer Financial Protection Act") § 1024, 12 U.S.C. § 5514.

other nonbank markets for consumer financial products and services. And third, the CFPB can examine nonbank covered entities that the CFPB has reasonable cause to determine are “engaging, or ha[ve] engaged, in conduct that poses risks to consumers.”²

The CFPB issued a procedural rule in 2013 to implement this third category of supervisory jurisdiction.³ In 2022, the CFPB finalized updates to this procedural rule, in order to provide increased transparency into how we make such determinations.⁴ Given the rapid growth of consumer offerings by nonbanks, the CFPB is now utilizing this authority to help protect consumers and level the playing field between nonbanks and banks. Fast-growing companies in nontraditional areas of the consumer finance market may be engaged in activities that warrant supervisory attention. There can also be supervisory gaps in more traditional areas of the market that ought to be filled. Any institution that may be subject to this supervisory authority is already subject to the CFPB’s enforcement authority. In many instances, the supervisory process may offer advantages over the exercise of the CFPB’s enforcement authority, as it allows CFPB examiners to work constructively with a company to manage risks and address potential concerns without the need for enforcement action.

Congress authorized the CFPB to supervise nonbank financial companies where the CFPB has reasonable cause to believe that the company is posing risk to consumers.⁵ Such conduct may involve, for example, potentially unfair, deceptive, or abusive acts or practices, or other acts or practices that potentially violate federal consumer financial law. The CFPB may base such reasonable cause determinations on tips, complaints collected by the CFPB, or on information from other sources, such as judicial opinions and administrative decisions. The CFPB may also learn of such risks through whistleblower complaints, state partners, federal partners, or news reports.

As your letter notes, in 2022 the CFPB updated its procedural rule to clarify the process for making risk-based determinations under its third category of nonbank supervisory authority and provide transparency into how the CFPB evaluates risk to consumers through public release of

² Consumer Financial Protection Act § 1024(a)(1)(C), 12 U.S.C. § 5514(a)(1)(C).

³ See Procedural Rule to Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination, 78 FR 40351 (July 3, 2013).

⁴ See Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders, 87 Fed. Reg. 70703 (Nov. 21, 2022).

⁵ The CFPB has explained that, in evaluating risks to consumers under section 1024(a)(1)(C), it may consider (among other things) the Bureau’s “written reports or judgments;” “the objectives” of the CFPB specified in CFPA section 1021(b); the risk-based supervisory prioritization factors set forth in CFPA section 1024(b)(2); whether the covered person’s conduct “involves potentially unfair, deceptive, or abusive acts or practices” or “otherwise potentially violates applicable Federal consumer financial law;” and whether the covered person at issue is a “fast-growing compan[y] in nontraditional areas of the consumer finance market.” 78 Fed. Reg. at 40357-58; 87 Fed. Reg. at 70704.

determination decisions.⁶ Under the 2013 procedural rule, any nonbank entity the CFPB determines should be subject to supervision based on risk is given notice and an opportunity to respond. The 2022 update to the CFPB's procedures does not change this process. The recent update authorized public disclosure of certain information about how the CFPB makes a determination that a nonbank entity is engaging, or has engaged, in conduct that poses risks to consumers and is subject to supervisory examination.⁷ Further, public release of these decisions will also allow nonbank entities themselves to cite past decisions when making arguments to the CFPB about whether they should be designated or not. This update is intended to provide greater transparency, and clearer expectations, to entities and the public about *how* the CFPB makes these risk determinations.

Your letter underscores the importance of giving greater clarity about the analysis the CFPB uses to implement this critical part of the statute. On February 23, 2024, the CFPB released its first public determination order pursuant to the supervisory designation process.⁸ The order details the factors that led the CFPB to determine that World Acceptance Corporation meets the legal requirements for supervision. By making this order public, the CFPB aims to provide transparency about how it assesses risks using consumer complaints and other factors.

I would be happy to discuss this with you and other interested members. If you have any questions, please feel free to reach out to me, or have your staff contact Ted Lovett in the CFPB Office of Legislative Affairs. Mr. Lovett can be reached at (202) 435-9699.

Sincerely,



Rohit Chopra
Director

cc: The Honorable Wiley Nickel, Member of Congress

The Honorable Henry Cuellar, Member of Congress

⁶ See <https://www.consumerfinance.gov/about-us/blog/the-cfpb-finalizes-rule-to-increase-transparency-regarding-key-nonbank-supervision-tool/>.

⁷ Prior to the public release of any information, the nonbank has an opportunity to provide input to the CFPB on the potential release of this information.

⁸ See *World Acceptance Corp.*, File No. 2023-CFPB-SUP-0001 (Nov. 30, 2023), available at https://files.consumerfinance.gov/f/documents/cfpb_world-acceptance_decision-and-order_2023-11.pdf.

The Honorable Gregory W. Meeks, Member of Congress

The Honorable Donald G. Davis, Member of Congress

The Honorable Mike Flood, Member of Congress

The Honorable Sanford D. Bishop, Jr., Member of Congress

The Honorable David Rouzer, Member of Congress