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CFPB Declares Supervision Authority in a Contested Matter for the First Time



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On February 23rd the Consumer Financial Protection Bureau ("CFPB") [published](#) its first supervisory designation order in a contested matter. While the decision was reached in November 2023, the announcement of the decision publicly is intended to "provide transparency about how it assesses risks using consumer complaints and other factors."

[In April 2022](#), the CFPB "[invoked](#)" what it characterized as "dormant authority" in the Consumer Financial Protection Act to allow it to conduct examinations of and otherwise supervise "nonbank financial companies that pose risks to consumers." When the CFPB exercises this authority to declare the right to supervise a nonbank, the entity has the right to consent to supervision, or the entity may contest the supervision authority pursuant to [CFPB procedural rules](#). Pursuant to those rules, the entity may contest the notice of supervision, albeit through the echo chamber of the CFPB.

First, the process involves submitting to the applicable CFPB Associate Director written materials, and the option to provide oral testimony. The Associate Director then makes a determination and recommendation to the CFPB Director, who can then adopt, modify or supersede the Associate Director's recommendation and take a "final agency action" with respect to supervision of the entity.

In the contested matter announced, the CFPB did have the grace to say that, "importantly, the CFPB's order does not constitute a finding that the entity has engaged in wrongdoing." Nevertheless, [in his decision](#), the CFPB Director, Rohit Chopra, pointed to four elements of the entity's conduct that lead to the decision to supervise the entity – a licensed lender that makes unsecured personal loans, which the CFPB reports sometimes have APRs as high as 100%.

The elements that led to supervision include concerns that: 1) customers do not understand that insurance coverage tied to the loans is optional; 2) the lender uses

“excessive, harassing and coercive collection practices”; 3) the lender both does not engage in accurate credit reporting and does not respond adequately to consumer disputes of credit reporting; and 4) serial refinancing of loans made by the lender “may harm consumers in a variety of ways.”

Based upon the concerns highlighted by the CFPB in this order, it is not unreasonable to wonder why the CFPB did not use enforcement powers such as a civil investigative demand ("CID") to obtain the information it needs to determine if violations of law have occurred, and why it is bothering to declare supervision first. Simply put, supervision grants the CFPB full access to the entity's documents, systems, employees and information, whereas a CID necessarily provides limited information to the CFPB. Should the CFPB, after having full access to the entity through supervision and determine that there are indeed problems, the CFPB can address those problems by issuing a supervision exam report with a number of Matters Requiring Attention ("MRAs") and Matters Requiring Immediate Attention ("MRIAs") that should be resolved within prescribed time limits. But, the CFPB supervisory team may also choose to make a recommendation to the enforcement side to take enforcement action, based upon the materials gathered by the supervisory team. In that case, because the agency already has as many materials as it wants and the enforcement team can take immediate and decisive action, leaving little room for the entity to defend itself.
