

June 20, 2025

By electronic submission to 2025-DFR-State-Rescission@cfpb.gov

Comment Intake— Rescission of State Official Notification Rules

c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Rescission of State Official Notification Rules Docket No. CFPB-2025-0016

Acting Director Vought:

The undersigned organizations write today regarding the Consumer Financial Protection Bureau’s (“Bureau”) Direct Final Rule entitled “Recission of State Official Notification Rules,” 90 Fed. Reg. 21,691 (May 21, 2025) (the “1042(b) Recission”). While we appreciate and applaud your deregulatory focus and respect for state autonomy, as well as the steps you have taken to correct past overreach by the Bureau, the 1042(b) Recission may be a step in the wrong direction. Below we suggest a few changes that might help better align the authority granted states to enforce the Consumer Financial Protection Act (“CFPA”), and related regulations, with administration priorities and the interests of fair, consistent, and reasonable interpretation of federal financial law.

As an initial matter, we note that CFPA Section 1042 *requires* the Bureau to promulgate regulations to implement the statutory requirement that states give notice to the Bureau prior to initiating any action pursuant to authority granted under Section 1042(a).¹ The 1042(b) Recission appears to simply repeal the existing regulations, without promulgating replacement regulations that would govern when and how states provide the statutorily required notice.

We agree with the observation in the 1042(b) Recission that much of the existing regulatory text simply restates the statutory notice requirements that states must follow before initiating an enforcement action.² But the regulations include key provisions that make the notice effective: they instruct states to provide the notice to specific individuals at the Bureau via specific email addresses;³ identifies additional information to be provided to the Bureau beyond what is required by the statute;⁴ and, importantly, requires states to submit the notice “at least ten days prior to initiating any action against any covered person.”⁵

In addition to fulfilling the statutory mandate that the Bureau promulgate regulations implementing the notice requirement, the existing regulations aid the Bureau in determining how

¹ 15 U.S.C. § 5552(c).

² 90 Fed. Reg. at 21,691.

³ 12 C.F.R. § 1082.1(a)(2).

⁴ Id. at § 1082.1(c)(1).

⁵ Id. at § 1082.1(a)(1).

it will respond to the proposed state action consistent with its options outlined in CFPA § 1042(b)(2).

Indeed, it may be better for the Bureau to retain the current notice requirements while amending the rule to *lengthen* the lead time states must give before initiating action. This would allow the Bureau more time to, among other things:

- consult with the relevant state authorities as required by statute;
- evaluate the strength of the state’s legal case against the proposed defendant, including legal and factual sufficiency of allegations;
- determine whether the proposed legal theory is consistent with Bureau interpretations of the relevant statutory and/or regulatory language and policy priorities;
- analyze whether the proposed legal theory would have adverse and/or unintended consequences that could be detrimental to consumers or competition;
- determine whether the proposed legal theories are consistent with other laws;
- determine whether the matter should be brought in the appropriate federal court, if the action would not be originally brought there, to ensure uniform development of federal law; and
- determine whether the proposed theory of liability could implicate the authorities of other Federal agencies. For example, if a state proposed to bring an action to enforce the CFPA’s prohibition on unfair, deceptive, or abusive acts and practices against a covered person that also provides services to a regulated depository institution, the Bureau may want to consult with Federal banking regulators to ensure that the state action would not unduly interfere with the operations of those depository institutions.

Given these concerns, a **one hundred twenty-day** notification window is likely more appropriate. That window would also align with the existing requirement in the CFPA that other Federal agencies can bring enforcement actions against large depository institutions if the Bureau fails to act on a referral during that time period.⁶

The Bureau could also impose a requirement that the state provide notice to the proposed defendants (or allow for the Bureau to provide such notice after receiving notice from the state) where it is practicable—such as where there is no flight risk or other facts or circumstances that would support an *ex parte* temporary restraining order. Such notice could further assist the CFPB in its decision to intervene, since it could engage directly with the potential defendants to better assess the seriousness of the proposed state action. This would be similar to the NORA process undertaken by the CFPB before it decides whether to take enforcement action.

The Bureau could also consider making other changes that would help ensure efficient Bureau operations, consistent application of CFPA substantive provision and regulations, and meaningful consultation with the relevant state authority. For example, Section 1042 allows states to file suit without giving notice in situations if doing so “is not practicable.”⁷ The Bureau could promulgate regulations defining the circumstances under which notice is not practicable, and

⁶ 12 U.S.C. § 5515(c)(3).

⁷ 12 U.S.C. § 5552(b)(1)(B).

provide procedures to allow for expedited Bureau review of state concerns in situations where the state makes a showing that the proposed review window is too long.

Consistent with the Bureau's repeal of a prior CFPB interpretive rule on the scope of states' authority to enforce provisions of Federal consumer financial law,⁸ the Bureau could also amend the existing regulations to make clear that states only have authority to enforce the substantive provisions of the CFPA, and not all of the substantive requirements of all Federal consumer financial laws.

* * *

Thank you for your attention to these matters and dedication to ensuring that the markets for consumer financial products and services are fair, free, and competitive.

Consumer Data Industry Association

Online Lenders Alliance

Professional Background Screening Association

⁸ "Authority of States To Enforce the Consumer Financial Protection Act of 2010; Recission," 90 Fed. Reg. 20,565 (May 15, 2025).