

Bureau of Consumer Financial Protection

The Bureau Can Further Enhance Certain Aspects of Its Approach to Supervising Nondepository Institutions



Office of Inspector General
Board of Governors of the Federal Reserve System
Bureau of Consumer Financial Protection



Office of Inspector General

Board of Governors of the Federal Reserve System
Bureau of Consumer Financial Protection

Executive Summary, 2021-SR-C-017, December 8, 2021

The Bureau Can Further Enhance Certain Aspects of Its Approach to Supervising Nondepository Institutions

Findings

The Bureau of Consumer Financial Protection's Division of Supervision, Enforcement and Fair Lending (SEFL) applies consistent examination procedures to depository and nondepository institutions. Further, SEFL uses the same approach to follow up on Matters Requiring Attention. These approaches help to ensure that the Bureau consistently supervises these two types of financial institutions.

We found opportunities for SEFL to further improve its approach to supervising nondepository institutions. Specifically, we found that SEFL has issued consumer compliance ratings to nondepository institutions less frequently than depository institutions. Additionally, although SEFL uses a variety of data sources to identify and collect information on nondepository institutions, we found that SEFL faces challenges gathering information from these sources to identify the total population of nondepository institutions within the Bureau's jurisdiction. We also found that limited staffing levels in SEFL's Office of Supervision Examinations, resulting from a hiring freeze from 2017 to 2019 and an increase in the number of depository institutions within the Bureau's jurisdiction, constrain the Bureau's ability to examine nondepository institutions. Lastly, we found that SEFL's guidance lacked definitions for tracking certain examination data and we identified inconsistent and missing data in SEFL's system of record.

Recommendations

Our report contains recommendations designed to further enhance the Bureau's approach to supervising nondepository institutions. In its response to our draft report, the Bureau concurs with our recommendations and outlines actions that will be taken to address each recommendation. We will follow up to ensure that the recommendations are fully addressed.

Purpose

We conducted this evaluation to assess SEFL's approach to supervising nondepository institutions. We focused our review on SEFL's supervision of nondepository institutions from 2018 through 2020 as well as on data regarding SEFL's supervisory activities for depository and nondepository institutions dating back to 2011.

Background

SEFL is responsible for ensuring compliance with federal consumer financial laws by supervising market participants and initiating enforcement actions when appropriate. The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the Bureau to supervise depository institutions and their affiliates with more than \$10 billion in total assets and certain nondepository institutions.

The Dodd-Frank Act requires the Bureau to use a risk-based approach for its nondepository institution supervision program and to consistently enforce federal consumer financial law regardless of whether a financial service provider is a depository or nondepository institution.



Office of Inspector General

Board of Governors of the Federal Reserve System
Bureau of Consumer Financial Protection

Recommendations, 2021-SR-C-017, December 8, 2021

The Bureau Can Further Enhance Certain Aspects of Its Approach to Supervising Nondepository Institutions

Finding 1: SEFL Applies Consistent Examination Procedures to Both Depository and Nondepository Institutions but Does Not Consistently Issue Ratings to Nondepository Institutions

Number	Recommendation	Responsible office
1	Issue guidance to clarify when SEFL should issue a consumer compliance rating to nondepository institutions and include criteria for selecting the examination type.	Division of Supervision, Enforcement and Fair Lending

Finding 2: SEFL Faces Challenges Gathering Data to Identify Nondepository Institutions Within the Bureau's Jurisdiction

Number	Recommendation	Responsible office
2	Develop a plan to identify additional information sources for nondepository institutions within the Bureau's jurisdiction; as part of developing this plan, consider implementing a registration system for nondepository institutions.	Division of Supervision, Enforcement and Fair Lending

Finding 3: SEFL Allocates Examination Resources Using a Risk-Based Approach, but Limited Staffing Levels Pose Challenges

Number	Recommendation	Responsible office
3	Develop a plan to help ensure that OSE's staffing resources are commensurate with the office's responsibilities for supervising institutions within the Bureau's jurisdiction.	Division of Supervision, Enforcement and Fair Lending

Finding 4: SEFL Should Clarify Its Guidance Regarding the Use of Certain Fields in SES

Number	Recommendation	Responsible office
4	Determine what the <i>Participating Agencies</i> field should represent and revise the <i>SES Data Entry Directive</i> accordingly.	Division of Supervision, Enforcement and Fair Lending
5	Identify the specific fields that represent examination start and end dates, clearly describe and define these fields across SES guidance, and apply controls to require SES users to complete the fields accurately.	Division of Supervision, Enforcement and Fair Lending



Office of Inspector General

Board of Governors of the Federal Reserve System
Bureau of Consumer Financial Protection

MEMORANDUM

DATE: December 8, 2021

TO: Dave Uejio
Acting Associate Director, Division of Supervision, Enforcement and Fair Lending
Bureau of Consumer Financial Protection

FROM: Michael VanHuysen 
Associate Inspector General for Audits and Evaluations

SUBJECT: OIG Report 2021-SR-C-017: *The Bureau Can Further Enhance Certain Aspects of Its Approach to Supervising Nondepository Institutions*

We have completed our report on the subject evaluation. We conducted this evaluation to assess the Division of Supervision, Enforcement and Fair Lending’s (SEFL) approach to supervising nondepository institutions.

We provided SEFL with a draft of our report for review and comment. In its response, SEFL concurs with our recommendations and outlines actions that will be taken to address our recommendations. We have included SEFL’s response as appendix B to our report.

We appreciate the cooperation that we received from SEFL during our evaluation. Please contact me if you would like to discuss this report or any related issues.

- cc: Jan Singelmann
- David Bleicken
- Dana James
- Lorelei Salas
- Tim Siwy
- Alice Hrdy
- Kerry Morse
- Lauren Hassouni
- Anya Veledar
- Carlos Villa



Contents

Introduction	7
Objective	7
Background	7
The Division of Supervision, Enforcement and Fair Lending	7
The Bureau’s Approach to Nondepository Institution Supervision	8
The Bureau’s Coordination With State Regulators	9
Adjustments to the Bureau’s Supervision Approach During the COVID-19 Pandemic	10
Finding 1: SEFL Applies Consistent Examination Procedures to Both Depository and Nondepository Institutions but Does Not Consistently Issue Ratings to Nondepository Institutions	11
SEFL Applies the Same Examination Procedures to Depository and Nondepository Institutions	11
SEFL Should Finalize Revised Guidance for Issuing Consumer Compliance Ratings to Nondepository Institutions	12
Management Actions Taken	13
Recommendation	14
Management Response	14
OIG Comment	14
Finding 2: SEFL Faces Challenges Gathering Data to Identify Nondepository Institutions Within the Bureau’s Jurisdiction	15
SEFL Uses a Variety of Data Sources to Identify Nondepository Institutions	15
SEFL Should Consider Implementing a Registration System for Nondepository Institutions	16
Recommendation	18
Management Response	18
OIG Comment	18
Finding 3: SEFL Allocates Examination Resources Using a Risk-Based Approach, but Limited Staffing Levels Pose Challenges	19
The Bureau’s Hiring Freeze and the Increased Number of Depository Institutions Within the Bureau’s Jurisdiction Has Strained OSE’s Resources	19
Recommendation	20
Management Response	20

OIG Comment	20
Finding 4: SEFL Should Clarify Its Guidance Regarding the Use of Certain Fields in SES	21
SES Does Not Have Complete Data on State-Coordinated Examinations	21
SEFL Uses Various Fields to Identify Examination Start and End Dates	22
SEFL Should Issue Comprehensive SES Documentation to Effectively Implement Upcoming Technology Initiatives	23
Recommendations	23
Management Response	23
OIG Comment	23
Appendix A: Scope and Methodology	24
Appendix B: Management Response	25
Abbreviations	27



Introduction

Objective

We conducted an evaluation of the Division of Supervision, Enforcement and Fair Lending’s (SEFL) supervision program. Our objective was to assess the Bureau of Consumer Financial Protection’s approach to supervising nondepository institutions.

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act established the Bureau to regulate the offering and provision of consumer financial products and services under federal consumer financial laws. The Dodd-Frank Act authorizes the Bureau to supervise depository institutions and their affiliates with more than \$10 billion in total assets¹ and certain nondepository institutions. Among nondepository institutions, the Bureau has the authority to supervise entities in the consumer mortgage lending, payday lending, and private education lending markets regardless of size; larger participants in markets for other consumer financial products or services as defined by the Bureau;² and entities the Bureau has reasonable cause to determine, by order, are “engaging, or ha[ve] engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.”³

The Dodd-Frank Act requires the Bureau to take a risk-based approach to its nondepository institution supervision program. As of June 2021, the Bureau had the authority to supervise 186 depository institutions and their affiliates, along with potentially thousands of nondepository institutions.

The Division of Supervision, Enforcement and Fair Lending

SEFL is responsible for ensuring compliance with federal consumer financial laws by supervising market participants and bringing enforcement actions when appropriate. Before the creation of the Bureau under the Dodd-Frank Act, nondepository institutions were not subject to federal supervision. Although the Federal Trade Commission was the primary federal regulator for nondepository institutions and had certain authorities for enforcing applicable consumer protection laws and regulations, it did not have statutory authority to regularly examine nondepository institutions to assess their compliance with consumer protection laws and regulations.

When the Bureau commenced its activities in July 2011, two SEFL offices were responsible for launching supervision programs. The Office of Large Bank Supervision developed the Bureau’s depository

¹ Primary consumer protection supervisory authority for depository institutions with total assets of \$10 billion or less was retained by those institutions’ prudential regulators.

² The Bureau has promulgated rules, often referred to as the *larger participant rules*, in phases, defining which institutions are large enough to fall under its supervisory jurisdiction, including nondepository institutions in the consumer reporting, consumer debt collection, student loan servicing, international money transfer, and automobile financing markets. See 12 C.F.R. § 1090.

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1024(a)(1)(C), 124 Stat. 1376, 1987 (2010) (codified at 12 U.S.C. § 5514(a)(1)(C)(2010)).

supervision program in July 2011 to examine depository institutions and their affiliates with total assets of more than \$10 billion. By law, the Bureau could not exercise its authority to supervise nondepository institutions until its director was appointed. The Office of Nonbank Supervision launched the first federal nondepository supervision program to examine certain nondepository institutions in January 2012, at which time a director had been appointed.

In 2012, the Bureau restructured SEFL by eliminating the Office of Large Bank Supervision and the Office of Nonbank Supervision and establishing the Office of Supervision Examinations (OSE) and the Office of Supervision Policy (OSP). Both offices address depository and nondepository institution supervision. The Bureau combined its large depository and nondepository institution supervision programs to strengthen the efficiency and consistency of these programs.

As of June 2021, SEFL had three offices: OSE, OSP, and the Office of Enforcement.⁴ We focused the scope of our evaluation on the Bureau's supervision program for nondepository institutions, which is managed by OSE and OSP.

OSE is responsible for supervising and examining depository and nondepository institutions to ensure compliance with federal consumer financial laws. OSE has four regional offices: New York (Northeast), Atlanta (Southeast), Chicago (Midwest), and San Francisco (West). Regional OSE staff are responsible for conducting examinations; performing monitoring activities; and coordinating with federal and state regulators, as necessary. Within OSE, the Reporting, Analytics, Monitoring, Prioritization and Scheduling team leads the Bureau's annual risk assessment and prioritization process, which determines SEFL's annual examination schedule.

OSP is responsible for developing SEFL's supervision strategy and providing subject-matter expertise to OSE's examiners on legal and policy matters. OSP seeks to ensure that SEFL takes a consistent supervisory approach across depository and nondepository institutions as well as a consistent approach across all four regions.

The Bureau's Approach to Nondepository Institution Supervision

The Dodd-Frank Act requires the Bureau to use a risk-based approach for its nondepository institution supervision program.⁵ SEFL annually assesses the risk that institutions and product lines pose to consumers. SEFL refers to each product line of a supervised institution as an *institution product line* (IPL), which serves as the unit of analysis for the risk assessment and prioritization framework. During its annual assessment, SEFL analyzes financial services institutions according to IPL, such as mortgage servicing, mortgage origination, payday lending, debt collection, student loan servicing, consumer reporting, and automobile financing. SEFL determines the risk posed by each institution's IPL or IPLs based on factors including market size, market risk, and IPL size.⁶ Depository institutions generally offer multiple IPLs,

⁴ The Office of Enforcement enforces federal consumer financial laws by investigating potential wrongdoing and taking legal action where appropriate.

⁵ 12 U.S.C. § 5514(b)(2).

⁶ *IPL size* refers to the market share of an institution within that particular product market.

whereas nondepository institutions generally provide one IPL or two related IPLs, such as mortgage origination and mortgage servicing.

The Dodd-Frank Act requires the Bureau to consistently enforce federal consumer financial law regardless of whether a financial service provider is a depository or nondepository institution.⁷ According to the *CFPB Supervision and Examination Manual*, SEFL will apply consistent standards to the extent possible by using the same examination procedures for both depository and nondepository institutions that offer the same consumer financial products or services or perform similar activities. The *Examination Manual*, however, indicates that the Bureau does not expect uniformity in how institutions achieve compliance with federal consumer laws and recognizes differences in compliance oversight and management systems resulting from variances in institutions' size, products, and services.

At the culmination of certain examinations, the Bureau issues a consumer compliance rating to some depository and nondepository institutions.⁸ A compliance rating reflects examiners' assessment of the effectiveness of the institution's compliance management system in ensuring compliance with consumer protection laws and regulations and reducing the risk of harm to consumers. The agency adopted the Federal Financial Institutions Examination Council (FFIEC) Uniform Interagency Consumer Compliance Rating System as the framework for its consumer compliance ratings.⁹ Under the FFIEC rating system, SEFL assigns an institution a rating of 1 through 5, in increasing order of supervisory concern, based on SEFL's evaluation of the institution's performance in three broad categories: (1) board and management oversight, (2) compliance program, and (3) violations of law and consumer harm. According to the *Examination Manual*, examiners use the first two categories to assess an institution's compliance management system and use the third category to evaluate identified violations or consumer harm.

The Bureau's Coordination With State Regulators

The Dodd-Frank Act requires the Bureau to coordinate with state regulators to reduce regulatory burden when conducting supervisory activities for nondepository institutions that offer consumer financial products and services.¹⁰ Coordination with state regulators is a significant part of the Bureau's supervision of nondepository institutions. According to a Bureau official, the agency has more formal practices for coordinating with state regulators on nondepository institution supervision than on depository institution supervision.

SEFL coordinates with state regulators on nondepository institution supervisory activities through the Conference of State Bank Supervisors (CSBS). Coordination includes sharing information, such as

⁷ 12 U.S.C. § 5511(b)(4).

⁸ The Bureau conducts three primary types of examinations: roll-up examinations, targeted reviews, and point-in-time examinations. According to SEFL's internal guidance on supervisory event categories, both roll-up examinations and point-in-time examinations require that consumer compliance ratings be issued. Targeted reviews do not require the issuance of such ratings.

⁹ The FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Bureau, and state bank supervisors. It makes recommendations to promote uniformity in the supervision of financial institutions.

¹⁰ 12 U.S.C. § 5514(b)(3).

examination schedules and examination reports, and conducting concurrent examinations.¹¹ SEFL and CSBS host meetings for state officials and staff to discuss current issues and consumer risk by product area, share examination schedules, and identify which examinations present coordination opportunities. When conducting concurrent examinations, Bureau and state examiners are typically onsite together, but each agency issues its own examination report.

Adjustments to the Bureau’s Supervision Approach During the COVID-19 Pandemic

Because of the COVID-19 pandemic, the Bureau developed prioritized assessments and adjusted its supervision program and priorities. According to the Bureau’s *Prioritized Assessments FAQs*, *prioritized assessments* are a higher-level of inquiry than traditional examinations and are designed to obtain real-time information from institutions operating in markets that pose an elevated risk of consumer harm due to pandemic-related issues.¹² As a result, SEFL rescheduled some, but not all, of the examinations that it had originally planned for 2020.

SEFL sent targeted information requests to institutions subject to prioritized assessments; these requests were specific to the product market, that market’s attendant risks to consumers, and the institution. According to an interviewee, the prioritized assessments were a “pivot” in the examiners’ approach on how to examine institutions. The prioritized assessments did not require examiners to review as much information as they would typically analyze for traditional examinations, allowing them to expand SEFL’s supervisory oversight by capturing and reviewing more institutions than traditional examination work. We also learned that SEFL used the results of the prioritized assessments to help determine which institutions to include in its 2021 examination calendar.

¹¹ CSBS represents various state regulators that supervise institutions engaged in the offering and provision of consumer financial products and services.

¹² The *Prioritized Assessments FAQs*, last updated on July 20, 2020, indicates that the Bureau is focusing its prioritized assessments on areas that present heightened risks to consumers who have experienced a loss of employment or income and are having trouble making loan payments. In addition, the Bureau is prioritizing markets for which Congress provided special provisions to help consumers in the Coronavirus Aid, Relief, and Economic Security Act.



Finding 1: SEFL Applies Consistent Examination Procedures to Both Depository and Nondepository Institutions but Does Not Consistently Issue Ratings to Nondepository Institutions

We found that SEFL applies consistent examination procedures to both depository and nondepository institutions as required by the *Examination Manual*, but it does not consistently issue consumer compliance ratings to nondepository institutions and has issued consumer compliance ratings to a smaller percentage of nondepository institutions as compared with depository institutions. SEFL issued a directive on supervisory plans that included limited guidance on consumer compliance ratings in 2015; however, SEFL's current practices for rating nondepository institutions do not align with the directive and provide less guidance on rating nondepository institutions than on rating depository institutions. SEFL employees said that issuing a consumer compliance rating to nondepository institutions would provide the division with a straightforward method for comparing institutions. Further, a CSBS interviewee said that state regulators would accept consumer compliance ratings based on examinations conducted by other regulators. Representatives from the nondepository institutions we interviewed stated that receiving a consumer compliance rating would help them understand how their compliance management system is performing.

SEFL Applies the Same Examination Procedures to Depository and Nondepository Institutions

According to Bureau officials, SEFL ensures consistency in the supervision of depository and nondepository institutions by applying (1) the risk-based examination prioritization process that focuses on risks to consumers rather than institution type and (2) the same examination procedures to the same IPLs at different institutions regardless of whether they are depository or nondepository. Several SEFL regional staff members stated that applying the same examination procedures to both depository and nondepository institutions is a key way that SEFL ensures consistency in supervision.

Our review of 32 examination reports¹³ related to examinations of depository and nondepository institutions that began during 2018 or 2019 showed that SEFL applied consistent procedures to depository and nondepository institutions within the same IPLs. For example, we found that examiners used the same *Examination Manual* procedures to review mortgage origination activities for both depository and nondepository institutions.

¹³ The Bureau refers to final examination reports that do not contain a consumer compliance rating as *supervisory letters*. We reviewed both supervisory letters and examination reports. For simplicity, we refer to both as *examination reports*.

In addition, our analysis showed that SEFL examined a nearly even distribution of depository and nondepository institutions. Specifically, an average of 45 percent of 750 examinations conducted from 2015 through 2019 were of nondepository institutions.¹⁴

Several interviewees stated that there is no difference in SEFL's follow-up approach to Matters Requiring Attention (MRAs) for depository and nondepository institutions. These interviewees noted that any variation in follow-up approach is related to the complexity of individual MRAs rather than whether an institution is depository or nondepository. In 2019, we reported that SEFL used three approaches to follow up on MRAs, including limited-scope examinations, offsite follow-up reviews, and periodic monitoring.¹⁵ During our interviews, most SEFL staff reiterated that they use these three approaches to follow up on MRAs for both depository and nondepository institutions. In addition, in July 2020, SEFL revised and updated the existing standard operating procedure and issued another procedure to standardize the process for following up on MRAs.¹⁶

SEFL Should Finalize Revised Guidance for Issuing Consumer Compliance Ratings to Nondepository Institutions

SEFL issues a consumer compliance rating based on the FFIEC Uniform Interagency Consumer Compliance Rating System at the culmination of certain examinations. However, we found that SEFL does not consistently issue ratings to nondepository institutions. In January 2015, SEFL issued a directive on supervisory plans, which includes limited guidance on consumer compliance ratings. We found that the directive does not include necessary details on consumer compliance ratings and provides less guidance on consumer compliance ratings for nondepository institutions than for depository institutions, which may be the reason why SEFL rated a smaller percentage of nondepository institutions as compared with depository institutions.

We also found that current practices do not align with the directive. For example, the directive states that supervisory plans—which determine the frequency of assigning a consumer compliance rating—are required for all depository and certain nondepository institutions; however, according to a SEFL official, SEFL no longer uses supervisory plans. In addition, the directive does not provide the criteria for determining which nondepository institutions should be rated or the type of examination that nondepository institutions should receive.¹⁷ Further, the directive does not identify which SEFL office is responsible for determining when a nondepository institution should receive a consumer compliance rating. During our interviews, we learned that Bureau regional officials determine which nondepository

¹⁴ We calculated the average number of nondepository institution examinations starting in 2015 because the last larger participant rule, which defines the Bureau's jurisdiction in nondepository markets, was finalized in 2015.

¹⁵ Office of Inspector General, *The Bureau Can Improve Its Follow-Up Process for Matters Requiring Attention at Supervised Institutions*, [OIG Report 2019-SR-C-001](#), January 28, 2019.

¹⁶ These standard operating procedures include *SOP-1320-O-S-013A: Supervisory Event-SES Type 21* and *SOP-1320-O-S-054A: Follow-up of Actions and Subactions*.

¹⁷ As noted previously, the Bureau conducts three primary types of examinations: roll-up examinations, targeted reviews, and point-in-time examinations. SEFL's guidance on supervisory event categories states that both roll-up examinations and point-in-time examinations require consumer compliance ratings; targeted reviews do not.

institutions will receive consumer compliance ratings as part of the annual examination scheduling process.

Our July 2021 analysis of data from SEFL's system of record, the Supervision and Examination System (SES), from 2011 through 2019 shows that a smaller percentage of nondepository institutions were rated as compared with depository institutions. Specifically, SEFL rated 70 percent of the depository institutions within the Bureau's jurisdiction but only 52 percent of the nondepository institutions that it has examined.

In January 2021, a Bureau official told us that the Bureau was developing a policy that outlines when a nondepository or depository institution should receive a consumer compliance rating. The official said that the new policy will formalize existing practices. In March 2021, another Bureau official stated that the policy was on hold because of ongoing leadership changes.

SEFL regional employees and a CSBS interviewee said that rating nondepository institutions would help provide a common benchmark for these institutions. SEFL employees added that issuing a consumer compliance rating would provide the division with a straightforward method for comparing institutions. For example, an interviewee noted that nondepository institutions in one industry that have nationwide operations each run their business operations differently, so a consumer compliance rating would provide a mechanism to compare their compliance management systems. In addition, a CSBS interviewee said that expanding the use of consumer compliance ratings for nondepository institutions would be valuable because the uniformity and structure of the FFIEC system provides a common system that enables state regulators to rely on examinations conducted by other regulators.

Further, during our interviews with representatives from six nondepository institutions supervised by SEFL, some interviewees discussed the benefits of receiving a consumer compliance rating. A representative from one firm stated that a compliance rating indicates the state of the firm's compliance management system and helps the firm plan how to improve it. An official from another firm that has not received a consumer compliance rating stated that the firm would welcome a rating because receiving a rating would give it an opportunity to improve its compliance program.

Management Actions Taken

In July 2021, SEFL issued its *Issuing Examination Reports and Ratings* directive and rescinded the 2015 directive on supervisory plans. The new directive clarifies that point-in-time examinations and roll-up examinations are required to include a consumer compliance rating. However, the directive does not provide criteria for determining which type of examination an institution should receive or the office responsible for determining when a nondepository institution should receive a consumer compliance rating.

Through its prioritization process, SEFL determines which nondepository institutions to examine but does not determine which type of examination—roll-up examination, point-in-time examination, or targeted review—should occur. According to a SEFL official we interviewed, SEFL selects the examination type after the prioritization process, during the scheduling process. The official noted that there is no guidance for selecting the examination type, which ultimately determines whether SEFL will issue a consumer compliance rating to a nondepository institution.

Recommendation

We recommend that the associate director of SEFL

1. Issue guidance to clarify when SEFL should issue a consumer compliance rating to nondepository institutions and include criteria for selecting the examination type.

Management Response

In its response to our draft report, the Bureau concurs with our recommendation. Specifically, in response to recommendation 1, the Bureau states that by the end of the third quarter of 2022, SEFL will issue guidance to clarify when it should issue consumer compliance ratings to nondepository institutions and include criteria for selecting the examination types.

OIG Comment

The planned action described by the Bureau appears to be responsive to our recommendation. We will follow up to ensure that the recommendation is fully addressed.



Finding 2: SEFL Faces Challenges Gathering Data to Identify Nondepository Institutions Within the Bureau’s Jurisdiction

Although SEFL uses a variety of data sources to identify and obtain information about nondepository institutions, we found that SEFL faces challenges gathering data from these sources to identify nondepository institutions within the Bureau’s jurisdiction. Many nondepository institutions are not subject to the same reporting requirements as depository institutions. Further, nondepository institutions can be created or dissolved with little notice, and asset and transaction levels for these firms can fluctuate significantly. As a result, SEFL does not know the total population of nondepository institutions within the Bureau’s jurisdiction, and the known nondepository institutions within the Bureau’s jurisdiction can change frequently. We believe that additional data sources, such as data that could be available from a registration system, would allow SEFL to better understand the population of nondepository institutions within the Bureau’s jurisdiction, which would inform SEFL’s supervisory approach and better equip it to identify potential harm to consumers.

SEFL Uses a Variety of Data Sources to Identify Nondepository Institutions

Although SEFL knows the population of depository institutions under its jurisdiction because depository institutions are subject to a lengthy chartering process and significant reporting requirements, SEFL officials indicated that the total population of nondepository institutions within the Bureau’s jurisdiction is unknown. Through interviews, we learned that once SEFL selects a nondepository institution for an examination, examiners can obtain adequate information to conduct the examination; interviewees explained that examiners are able to obtain information from the institution and leverage information collected by state regulators. Interviewees described challenges in identifying institutions subject to the agency’s jurisdiction due to the limited information available for such institutions.

SEFL currently uses a variety of data sources to identify nondepository institutions within the Bureau’s jurisdiction. For example, the Nationwide Multistate Licensing System (NMLS) is one of SEFL’s primary data sources. It is a system of record for nondepository institutions that are licensed and registered with participating state regulators.¹⁸ SEFL reviews NMLS call reports, state licensing information, and financial statements for participating institutions in the consumer mortgage lending, payday lending, debt collection, and remittance markets in NMLS. SEFL also uses data sources such as the Bureau’s consumer complaint database to identify nondepository institutions named in consumer-submitted complaints regarding consumer financial products and services. Finally, SEFL reviews information from state

¹⁸ NMLS is the sole system that manages licenses for mortgage companies for all 50 states. NMLS has expanded to manage additional types of licenses in other markets, such as money services, debt collection, student loan servicing, and payday lending. State usage of NMLS varies for markets other than mortgage markets. For example, 49 state agencies use NMLS to manage money service business licenses, and 45 state agencies use NMLS to manage other licenses for institutions in various consumer finance markets.

regulators as well as publicly available Home Mortgage Disclosure Act data, institutions' securities filings, media articles, and other publicly available information.

The amount of readily available information SEFL uses to identify nondepository institutions within the Bureau's jurisdiction varies based on the market. For example, interviewees noted that SEFL is able to obtain a significant amount of information on the mortgage lending market through Home Mortgage Disclosure Act reports and NMLS call reports. Conversely, less information is available to identify payday lenders. To accumulate data on payday lenders, the Reporting, Analytics, Monitoring, Prioritization and Scheduling team gathered information from state regulatory agencies to consolidate a list of payday lenders.

Further, interviewees noted that SEFL might have insufficient information to determine whether a known nondepository institution is within the Bureau's jurisdiction. For example, SEFL could learn from available data sources that a debt collector has total revenue that would meet the larger participant threshold. However, certain types of debt, including medical debt, are excluded from the larger participant calculation, so SEFL must send the entity a questionnaire to determine whether the entity is actually within the Bureau's jurisdiction. Additionally, an interviewee indicated that another challenge is that available financial statements could be unaudited or outdated, in some cases by as much as 3 years.

SEFL Should Consider Implementing a Registration System for Nondepository Institutions

Multiple interviewees noted that a registration system would make it easier for SEFL to determine which nondepository institutions are subject to the Bureau's jurisdiction. A 2019 internal SEFL memorandum noted that without a registration system, the Bureau must rely on limited public and nonpublic information to identify nondepository institutions within its jurisdiction. The SEFL internal memorandum also noted that nondepository institutions can be created or dissolved with little notice and asset and transaction levels can fluctuate significantly from quarter to quarter. Therefore, the number of nondepository institutions within the Bureau's jurisdiction is unknown and the institutions that are known can change frequently. As a result, SEFL faces significant challenges in identifying and maintaining an updated universe of nondepository institutions subject to its jurisdiction.

Two U.S. Government Accountability Office (GAO) reports discuss the Bureau's data availability for select nondepository markets. A March 2016 GAO report found that the Bureau did not have a mechanism to develop a comprehensive list of nondepository mortgage servicers under its purview and recommended that the agency take action to collect more comprehensive data on the identity and number of nondepository mortgage servicers in the market, for example, by requiring the registration of all nondepository servicers.¹⁹ Rather than implement a registration system, the Bureau conducted a point-in-time analysis and identified additional servicers to close this recommendation. Additionally, a February 2019 GAO report found that the Bureau lacked the data to identify with certainty all the consumer reporting agencies under its supervision, in part, because the sources it was using were not

¹⁹ U.S. Government Accountability Office, *Nonbank Mortgage Servicers: Existing Regulatory Oversight Could Be Strengthened*, GAO-16-278, reissued April 14, 2016.

comprehensive.²⁰ GAO recommended that the Bureau identify additional sources of information, such as through registering consumer reporting agencies or leveraging state information. This recommendation was open as of September 2021.

Although the Dodd-Frank Act authorizes the Bureau to prescribe rules regarding registration requirements for nondepository institutions within its jurisdiction,²¹ the Bureau has not implemented a registration system. According to a SEFL official, the Bureau has considered implementing a registration system for market participants. We learned that in 2016, the Bureau issued a request for information and solicited information on vendor capabilities to develop an automated technology solution for registering nondepository institutions. The request noted that the Bureau was considering whether to propose a rule that would require the registration of nondepository institutions. Additionally, a SEFL official indicated that the Bureau had established a team to develop a registration system but that implementing such a system would require the agency to write accompanying rules to require nondepository institutions to register with it. Another SEFL official indicated that at the time, the Bureau had competing priorities and was unable to write these rules.

During our interviews, several SEFL officials and staff highlighted the potential benefits of a registration system for nondepository institutions. One regional director noted that a registration system would make it easier to identify nondepository institutions that meet the larger participant rules. Another regional director stated that SEFL needs a registration system to know the scope of nondepository institutions within its jurisdiction. This regional director noted that a registration system would also help SEFL know the size of each market so that it could tailor its supervision approach for each market. Additionally, a SEFL official stated that SEFL could use information collected through such a system to monitor markets.

Further, during our interviews, we asked officials and staff from six nondepository institutions supervised by the agency to describe the anticipated effect of a registration requirement on nondepository institutions within the Bureau's jurisdiction. Some representatives from these institutions stated that because their institutions are already required to register and upload relevant documentation to registration systems such as NMLS, a Bureau registration requirement would not be a significant challenge. An interviewee noted that although an additional reporting portal would require nondepository institutions to perform more work, it would be beneficial for SEFL to have access to the data submitted by nondepository institutions.

We believe that additional data sources, such as a registration system, would allow SEFL to better understand the population of nondepository institutions within the Bureau's jurisdiction, which would inform SEFL's supervisory approach and better equip it to identify potential harm to consumers.

²⁰ U.S. Government Accountability Office, *Consumer Data Protection: Actions Needed to Strengthen Oversight of Consumer Reporting Agencies*, GAO-19-196, February 21, 2019.

²¹ 12 U.S.C. § 5512(c)(7)(A).

Recommendation

We recommend that the associate director of SEFL

2. Develop a plan to identify additional information sources for nondepository institutions within the Bureau's jurisdiction; as part of developing this plan, consider implementing a registration system for nondepository institutions.

Management Response

In its response to our draft report, the Bureau concurs with our recommendation. Specifically, in response to recommendation 2, the Bureau states that by the fourth quarter of 2022, SEFL will develop a plan to identify additional information sources for nondepository institutions within the Bureau's jurisdiction. Further, SEFL will consider implementing a registration system for nondepository institutions as part of developing this plan.

OIG Comment

The planned actions described by the Bureau appears to be responsive to our recommendation. We will follow up to ensure that the recommendation is fully addressed.



Finding 3: SEFL Allocates Examination Resources Using a Risk-Based Approach, but Limited Staffing Levels Pose Challenges

We found that OSE faces staffing constraints for examining nondepository institutions. We attribute OSE's staffing constraints to (1) a hiring freeze from 2017 to 2019 and (2) the increase in the number of depository institutions within the Bureau's jurisdiction. We believe that additional staff will allow OSE to strengthen its oversight of nondepository institutions.

The Bureau's Hiring Freeze and the Increased Number of Depository Institutions Within the Bureau's Jurisdiction Has Strained OSE's Resources

Although the prioritization process aids SEFL in its resource allocation efforts, interviewees indicated that OSE has limited staff resources with which to supervise both depository and nondepository institutions. Several interviewees highlighted staffing constraints, with one regional director estimating that the Bureau needs to double the size of its examination staff. This regional director stated that the additional staff would allow the Bureau to conduct more examinations of both depository and nondepository institutions but that the increase would likely focus more on the supervision of nondepository institutions.

During the 2017–2019 hiring freeze, the size of OSE's examination staff decreased by approximately 15 percent. While the OSE regional offices have begun to hire additional examiners, staffing levels have not returned to the pre-hiring freeze level. According to Bureau data, in 2017, before the hiring freeze, OSE had 509 employees; in fiscal year 2020, OSE had 431. The Bureau has begun to hire additional examiners, and as of June 2021, OSE had 452 employees. Additionally, interviewees noted that OSE has lost experienced examiners because of attrition and that newly hired examiners do not initially contribute at a similar level.

OSE's resources are further constrained by the expansion of the number of depository institutions within the Bureau's jurisdiction. As noted previously, the Bureau supervises insured depository institutions and their affiliates with more than \$10 billion in total assets. The number of depository institutions and their affiliates with total assets above this threshold increased from 154 in June 2011 to 186 in June 2021. Through our interviews, we learned that this increase has strained OSE's resources because the growth in new hires has not kept pace with the growth in the number of depository institutions within the Bureau's jurisdiction. A SEFL official indicated that the Bureau anticipates the number of depository institutions subject to its supervision to continue to grow each year. This growth has increased OSE's workload, but examination staffing levels have not grown accordingly.

As the number of depository institutions subject to the Bureau’s supervision increases, OSE will continue to face challenges in effectively supervising both depository and nondepository institutions. We believe that additional staffing resources will allow OSE to strengthen its oversight of nondepository institutions.

Recommendation

We recommend that the associate director of SEFL

3. Develop a plan to help ensure that OSE’s staffing resources are commensurate with the office’s responsibilities for supervising institutions within the Bureau’s jurisdiction.

Management Response

In its response to our draft report, the Bureau concurs with our recommendation. Specifically, in response to recommendation 3, the Bureau states that by the fourth quarter of 2022, SEFL will develop a plan to help ensure that OSE’s staffing resources are used efficiently to address consumer and market risk and are appropriately sized considering competing needs across the agency.

OIG Comment

The planned action described by the Bureau appears to be responsive to our recommendation. We will follow up to ensure that the recommendation is fully addressed.



Finding 4: SEFL Should Clarify Its Guidance Regarding the Use of Certain Fields in SES

We found that SEFL’s SES guidance—which includes the *SES Data Entry Directive* and *SES End User ‘How To’ Guide*—lacked clear definitions of certain SES fields. We also found that SEFL does not clearly define or consistently track examination start and end dates in SES, and various start and end date fields contain missing values for both depository and nondepository institutions. The Bureau’s *Information Governance Policy* states that “whenever reasonably possible, information should be brought on board with formats, field names, and definitions consistent with preexisting usage and standards that have been set across the Bureau.”²² SEFL’s inconsistent use of SES data fields may result in inaccurate examination data. The completeness and accuracy of SES data may determine the success of SEFL’s near-term and future efforts to enhance examination tools and conduct advanced data analysis.

SES Does Not Have Complete Data on State-Coordinated Examinations

We reviewed SES data on 1,164 examinations of depository and nondepository institutions that the Bureau had started from 2011 through 2019 and had completed as of June 2021. We limited our assessment of SES data to SEFL’s roll-up examinations, point-in-time examinations, and targeted reviews. To meet our objective, we assessed those SES fields needed to evaluate the consistency in supervision approach between nondepository and depository institutions.

We assessed the Bureau’s data on examinations coordinated with state regulators by comparing SES data to a list of state-coordinated examinations provided by SEFL. In doing so, we reviewed the SES *Participating Agencies* field that covers state regulator participation in Bureau-led examinations. Our review of this SES field found that SEFL coordinated 34 nondepository institution examinations with state regulators from 2014 through 2019.²³ For each of these examinations, examiners documented coordination with at least one state in SES. However, SEFL’s list of state-coordinated examinations included 81 nondepository institution examinations that were either formally or informally coordinated with state regulators from 2014 through 2019, more than twice the number in SES.

According to the *SES Data Entry Directive*, the *Participating Agencies* field requires users to document which agencies are participating in an examination, such as other federal and state financial regulators. However, we found that in practice, SEFL staff use the SES *Participating Agencies* field to document planned coordination with state regulators rather than actual coordination. SEFL employees stated that state regulator participants sometimes changed shortly before the examination began. In addition, SEFL staff told us that until 2016, coordinated examinations were tracked outside SES by OSP. As a result, SEFL analysts assessing SES data may not know how to properly interpret the information in the *Participating*

²² Consumer Financial Protection Bureau, *Policy on Information Governance at the CFPB*, July 22, 2014.

²³ SEFL’s guidance on state-coordinated examinations was issued in 2014.

Agencies field because SEFL staff use the field to identify planned examination coordination rather than to document actual examination coordination.

SEFL Uses Various Fields to Identify Examination Start and End Dates

In our data analysis, we found that SEFL did not consistently track examination start and end dates in SES. We found missing values in examination start and end date fields; for example, the *Calendar Start Date* field was missing for 19 percent of SEFL's examinations, and the *Calendar End Date* field was missing for 32 percent of SEFL's examinations. According to the *SES End User 'How To' Guide*, SEFL uses *Calendar Start Date* and *Calendar End Date* to identify available staff for the purpose of scheduling examinations. In addition, the *SES Data Entry Directive* states that the *Calendar Start Date* and *Calendar End Date* are required fields. However, SEFL staff told us that they use data in the *Scheduled On-site Start Date* field for performance reporting on point-in-time examinations and targeted reviews.²⁴

We also learned that examiners use various SES fields to identify examination start dates. We found that examiners used the SES fields *Initial Information Request Date* and *Scheduled Scope Start Date* as the examination start date in examination reports.²⁵ Examiners' approach to filling in these date fields may not fully capture the examination cycle time for the purpose of performance reporting, and inconsistent use of these date fields may lead to inaccurate SES data.

In our review of SEFL's *SES Data Entry Directive*, data analyses, and interviews with SEFL staff, we found that the *SES Data Entry Directive* provides definitions or usage guidance for some but not all SES fields. SEFL staff said that the *SES Data Entry Directive*, which was last revised in April 2020, may not be up to date. Because the variable names, definitions, and actual usage described in the directive do not align with what is in practice, SEFL risks producing inaccurate examination data in SES.

The Bureau's *Information Governance Policy* states that "whenever reasonably possible, information should be brought on board with formats, field names, and definitions consistent with preexisting usage and standards that have been set across the Bureau." In addition, according to the agency's Office of Research, data standards are documented agreements on the representation, format, definition, structuring, tagging, transmission, manipulation, use, and management of data. The Office of Research notes that data standards enable transparency by promoting common, clear meanings for data and promote quality, which makes data easier to analyze and facilitates informed decisionmaking.

²⁴ According to the *Data Entry Directive*, the *Scheduled On-site Start Date* is the first day an examiner is scheduled to start onsite work and it is a required field.

²⁵ We compared examination start dates included in the 32 depository and nondepository institution examination reports in our selection to related dates in SES.

SEFL Should Issue Comprehensive SES Documentation to Effectively Implement Upcoming Technology Initiatives

In March 2020, SEFL initiated efforts to enhance SES to automate information sharing and examination tools and to conduct advanced data analysis. In June 2021, SEFL staff told us that staff from the Office of Technology and Innovation are joining SEFL staff in implementing the initiative, which comprises three primary phases: (1) examination information sharing, (2) artificial intelligence and machine learning, and (3) data analytics and data science.

All three of these efforts will rely on SES data, so the success of this initiative will depend on the completeness and accuracy of examination information in SES. Further, key portions of these initiatives will be led by non-SEFL offices whose staff may not be as familiar with SES data or understand how it is used in practice. If the SES data documentation does not accurately describe the data, this initiative may not be as effective as possible.

Recommendations

We recommend that the associate director of SEFL

4. Determine what the *Participating Agencies* field should represent and revise the *SES Data Entry Directive* accordingly.
5. Identify the specific fields that represent examination start and end dates, clearly describe and define these fields across SES guidance, and apply controls to require SES users to complete the fields accurately.

Management Response

In its response to our draft report, the Bureau concurs with our recommendations. Specifically, in response to recommendation 4, the Bureau states that by the second quarter of 2022, SEFL will review the use of the *Participating Agencies* field in SES and make needed changes to the *SES Data Entry Directive*.

In response to recommendation 5, the Bureau states that by the end of the fourth quarter of 2022, SEFL will identify the specific fields that represent examination start and end dates, clearly describe and define these fields across SES guidance, and apply controls to require SES users to complete the fields accurately.

OIG Comment

The planned actions described by the Bureau appear to be responsive to our recommendations. We will follow up to ensure that the recommendations are fully addressed.



Appendix A: Scope and Methodology

We initiated this evaluation to assess SEFL’s approach to supervising nondepository institutions. The scope of our evaluation included the Bureau’s supervision of nondepository institutions from 2018 through 2020. Our scope also included historical data on the Bureau’s supervisory activities for depository and nondepository institutions since 2011. In addition, we reviewed the Bureau’s supervisory approach in response to the pandemic.

To accomplish our objective, we interviewed 39 SEFL employees involved in the Bureau’s supervision of nondepository institutions. These interviewees included several SEFL headquarters staff and employees from the four regions, including examiners, field managers, and regional directors. We interviewed CSBS officials and GAO team members who participated in reviews of the Bureau’s supervision activities of nonbank mortgage servicers and consumer reporting agencies. We also reviewed Bureau policies and procedures related to the supervision of nondepository institutions, including the *CFPB Supervision and Examination Manual*.

We selected 10 nondepository institutions for our review for which SEFL started examinations during 2018 and 2019 and 5 depository institutions for comparison. For those selected institutions, we reviewed 32 total examination reports and supervisory letters.

In addition, we requested interviews with representatives from seven selected nondepository institutions to obtain their perspectives on the Bureau’s approach to supervising nondepository institutions. In selecting those seven nondepository institutions, we considered several factors, such as the SEFL region responsible for supervising the institution, IPLs, consumer compliance ratings, state coordination, and market size, to ensure that we captured a cross-section of IPLs and all SEFL regions. We interviewed officials from six of the seven nondepository institutions. The remaining one institution declined our request for interview. Our results cannot be projected to the entire population of examinations.

We reviewed available SES data and conducted data analyses for examinations and other supervisory activities for depository institutions and nondepository institutions conducted from 2011 through 2019, which included information on examination time frames and state coordination. We also reviewed the *SES Data Entry Directive* issued in 2020 and the *SES End User ‘How To’ Guide*. We conducted analyses of SES data to determine whether the data were reliable and determined that certain elements of SES data were not complete. Specifically, we found that SES does not have complete state coordination examination information and some SES date fields were incomplete. We provided the Bureau with a recommendation in this report to address the identified data reliability issues. To mitigate the incomplete SES data in certain fields, we identified information from other documents or other SES fields for our analysis.

We conducted our fieldwork from October 2020 through August 2021. We conducted this evaluation in accordance with the *Quality Standards for Inspection and Evaluation*, issued by the Council of the Inspectors General on Integrity and Efficiency in January 2012.

Appendix B: Management Response



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

October 19, 2021

Mr. Michael VanHuysen
Associate Inspector General for Audits and Evaluations
Board of Governors of the Federal Reserve System
Consumer Financial Protection Bureau
20th and Constitution Avenue NW
Washington, DC 20551

Dear Mr. VanHuysen,

Thank you for the opportunity to review and comment on the Office of Inspector General's draft report *The Bureau Can Further Enhance Certain Aspects of Its Approach to Supervising Nondepository Institutions*.

The Bureau appreciates the OIG's review and agrees with the recommendations for improving its approach to supervision as discussed below. The Bureau is committed to addressing all of the recommendations.

Thank you again for your review and the opportunity to provide comments on the report.

Sincerely,

David H. Bleicken Digitally signed by David H. Bleicken
Date: 2021.10.19 11:43:06 -04'00'

David Bleicken
Acting Associate Director,
Division of Supervision, Enforcement, and Fair Lending

consumerfinance.gov

Responses to Specific Recommendations

1. As indicated in the report, SEFL issued a new directive in July 2021 that requires consumer compliance ratings for point-in-time examinations and roll-up examinations. SEFL will issue additional guidance to clarify when SEFL should issue consumer compliance ratings to nondepository institutions and include criteria for selecting the examination types. Estimated year and quarter of completion: FY 2022 Q3
2. SEFL will develop a plan to identify additional information sources for nondepository institutions within the Bureau's jurisdiction. As a part of developing the plan, SEFL will consider implementing a registration system for nondepository institutions. Estimated year and quarter of completion: FY 2022 Q4
3. SEFL will develop a plan to help ensure that OSE's staffing resources are used efficiently to address consumer and market risk and appropriately sized in light of competing needs across the Bureau. Estimated year and quarter of completion: FY 2022 Q4
4. After reviewing the appropriate use of the Participating Agencies field in SES, SEFL will make needed changes to the SES Data Entry Directive. FY 2022 Q2
5. SEFL will identify the specific fields that represent examination start and end dates, clearly describe and define these fields across SES guidance, and apply controls to require SES users to complete the fields accurately. Estimated year and quarter of completion: FY 2022 Q4



Abbreviations

CSBS	Conference of State Bank Supervisors
FFIEC	Federal Financial Institutions Examination Council
GAO	U.S. Government Accountability Office
IPL	institution product line
MRA	Matter Requiring Attention
NMLS	Nationwide Multistate Licensing System
OSE	Office of Supervision Examinations
OSP	Office of Supervision Policy
SEFL	Division of Supervision, Enforcement and Fair Lending
SES	Supervision and Examination System

Report Contributors

Chie Hogenmiller, Project Lead

Kamry Bennett, Auditor

Matthew Gibbons, Auditor

Sarah Martin, Auditor

Taylor Winzenburg, Auditor

Michael Zeitler, OIG Manager, Supervision and Regulation

Laura Shakarji, Senior OIG Manager for Supervision and Regulation

Michael VanHuysen, Associate Inspector General for Audits and Evaluations

Contact Information

General

Office of Inspector General
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Mail Stop K-300
Washington, DC 20551

Phone: 202-973-5000

Fax: 202-973-5044

Media and Congressional

OIG.Media@frb.gov



Hotline

Report fraud, waste, and abuse.

Those suspecting possible wrongdoing may contact the OIG Hotline by mail, [web form](#), phone, or fax.

OIG Hotline
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Mail Stop K-300
Washington, DC 20551

Phone: 800-827-3340

Fax: 202-973-5044