Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Consumer Financial Protection Bureau

July 20, 2020

Briefing memorandum for Listening Session with the Conference of State Bank Supervisors (CSBS)

Taskforce on Federal Consumer Financial Law / CSBS Meeting

DATE	Wednesday, July 22, 2020
TIME	9:00 am – 10:00 pm Eastern
LOCATION	WebEx
PARTICIPANTS	Todd Zywicki, Taskforce Chair Mike Stevens, CSBS Senior Executive Vice President Cheryl Parker-Rose, Assistant Director, CFPB Office of Intergovernmental Affairs Nat Weber, Taskforce Staff Director Jeff Magliato, Taskforce Paralegal
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Objective

The primary objective of this meeting is to continue the Taskforce engagement plan with outside entities to gather information to help inform the Taskforce report. Previous outreach efforts include March meetings with stakeholders, the March Request for Information (RFI), the staff Public Research project, and the July 16 Public Hearing.

Timing Considerations

The goal is to have this meeting no later than July 24, 2020.

Background of the Conference of State Bank Supervisors

The Conference of State Bank Supervisors (CSBS) is headquartered in Washington, DC. It is an association of state banking officials that represents the interests of state financial regulators. Voting membership and elected office in the conference is limited to state officers having responsibility for the supervision of state-chartered banking institutions in each state (includes DC, Guam, Puerto Rico, Virgin Islands). Other classes of membership in CSBS include state-chartered banking institutions, state bankers' associations, and associates (non-bank financial businesses). As per the organization's 2018 Form 990 filing, CSBS is a tax-exempt organization. More than 33.3% of its income is received from contributions, membership fees, and gross receipts related to its exempt functions. In 2018, CSBS had approximately $84 million of income. John Ryan is the current President/CEO of CSBS. As an indication of how well funded the CSBS is, Mr. Ryan is paid over $600,000 per year. Mr. Ryan is unavailable to attend the July 22 appointment. You will meet with Michael Stevens. He is the Senior Executive Vice President. He leads the public policy, financial supervision, federal coordination, communications, industry relations, and professional development functions (Tab 2).

The CSBS mission is to support the leadership role of state banking supervisors in advancing the state banking system, enhancing consumer protection, ensuring safety and soundness, promoting economic growth, and fostering innovative state regulation of the financial services industry thereby lessening the burdens of the government.

CSBS serves as a forum for policy and supervisory process development. It facilitates effective and efficient state regulation through training, educational programs and examiner tools.

CSBS collaborates with federal financial regulators and connects with members of Congress in the effort to promote and ensure the continued existence of a dual federal-state banking system. CSBS works to ensure that the state financial regulatory system is strongly represented in formation of federal public policy. CSBS government relations staff focus their efforts on promoting the diversity (state-federal) of the banking industry helping to tailor regulation and new federal policy.

CSBS operates the Nationwide Multi-State Licensing System and Registry (NMLS). The NMLS allows state licensed nonbank companies and individuals to apply for, amend, update, or renew a license online for all participating state agencies using a single set of uniform applications. This system helps state regulators monitor financial services. Mortgage loan originators employed by insured depository institutions are registered through NMLS in accordance with federal regulations.

CSBS Views on Financial Regulation

CSBS is committed to a dual banking system, federal-state oversight of financial institutions.

The CSBS view on financial regulation was recently stated in its June 1, 2020 letter to the CFPB offered in response to the request for comments issued in the March 2020 Taskforce Request for Information (RFI) (See Tab 4). CSBS expressed concern with the form of some of the questions posed in the RFI. The RFI's questions left CSBS with the impression that federal preemption of state law and state regulatory authority was a paramount and settled goal of the Taskforce. CSBS believes the questions imply that shared jurisdiction between state and federal authorities leads to increased burden on regulated entities. CSBS takes shared jurisdiction as a positive in that state activity can act as a force multiplier to federal resources and allows for state action in situations where the federal authorities lack initiative or interest.

CSBS helped create, and is a party to, a cooperative agreement between the CFPB, the CSBS, and state financial regulating authorities. The agreement spells out how CFPB and state-initiated examinations of depository and non-depository institutions will be coordinated between the CFPB and interested state entities. This agreement, titled "2013 CFPB-State Supervisory Coordination Framework" was executed in May 2013.

CSBS views the state role as critical in making sure financial businesses effectively serve local markets. With states positioned close to the front line of markets state regulators serve as the first regulatory contact for new consumer issues. State regulators can act on local knowledge and address issues of individual concern in their states that may not exist within the national marketplace.

CSBS believes in robust collaboration and coordination between state and federal authorities. CSBS pushes for systematic integrated laws and regulations across state lines to foster efficiency apart from overriding federal rules. For example, CSBS and state regulators launched an initiative in 2017 called Vision 2020 to modernize state regulation of non-banks. The effort involves a call by state regulators for the adoption of an integrated 50 state licensing and supervisory system that recognizes standards across state lines using technology and smart regulatory policy to transform the interaction between industry, regulators, and consumers.

Preemption and Fintech Bank Charters

CSBS does not favor preemption of state interests. It actively argues its viewpoint where it perceives the use of preemption against state interests.

On June 17, 2020, the OCC issued Bulletin 2020-62, in which it reminded stakeholders (state regulatory authorities) that OCC chartered banks are governed primarily by uniform federal standards and generally are not subject to state law limitations. The bulletin was issued out of OCC concern over the proliferation of state driven initiatives to assist consumers during the COVID-19 pandemic that might ultimately affect the safety and soundness of banks (see Tab 5). In response, CSBS proactively published an opinion explaining that for OCC to properly declare a preemption, OCC is required to follow specific procedures to effectuate a preemption (see Tab 6). Therefore, absent such procedures, state COVID-19 relief measures are not preempted by simple OCC declaration.

Another example of CSBS efforts to counter federal preemption activity is found in its work to halt the OCC from issuing special national charters to non-depository fintechs that engage in core banking activity (ex: paying checks or lending money). CSBS filed two suits against the OCC over the power of the OCC to issue national bank charters to these entities. One suit filed in April 2017 (dismissed May 2018) and the other filed in October 2018 (dismissed September 2019). At the time the actions were brought, the OCC had not yet issued any fintech bank charters. Both actions were dismissed by the United States District Court for the District of Columbia based on the fact that no actual claim of harm existed so no standing and not ripe.

CSBS supports a similar suit by the NY State Department of Financial Services against the OCC. In an October 21, 2019 decision the United States District Court - Southern District of New York found for the NY State Department of Financial Services based on the provision in the National

Bank Act (NBA) that describes the business of banking as requiring the receiving of deposits as an aspect of the business. The Court found that this provision of the NBA limits the ability of the OCC to issue special purpose national bank charters to fintech entities. The OCC appealed the decision to the United States Court of Appeals 2nd Circuit on December 19, 2019. On April 23, 2020 the OCC filed its opening brief arguing three points:

- Lack of standing since the OCC is yet to receive an application by a fintech for a special purpose national bank charter
- Error by the District Court in holding that the OCC decision to define the ambiguous term of the "business of banking" in the NBA does not qualify for Chevron defense
- The District Court decision should be limited to NY and not offer nationwide relief.

Attachment

Tab 1: Agenda.
Tab 2: CSBS Factsheet with Bios for John Ryan and Michael Stevens
Tab 3: CSBS Primer
Tab 4: CSBS Comment Letter on Taskforce RFI
Tab 5: OCC Bulletin Covid-19 Relief Programs Preemption.
Tab 6: CSBS – Why OCC preemption Bulletins Do Not Impact State Covid-19 Relief Measures.
Tab 7: Taskforce -CSBS Discussion Prompts