

August 30, 2025

**RE:** Legal Standard Applicable to Supervisory Designation Proceedings, Docket No. CFPB-2025-0018, RIN 3170-AB41

Dear Director Vought:

The National Community Reinvestment Coalition (NCRC) strongly opposes the Consumer Financial Protection Bureau's proposed rule limiting the definition of "conduct that poses risks to consumers" for supervisory designation proceedings. We urge the CFPB to withdraw this proposed rule, which contradicts clear Congressional intent, violates Executive Order 12866, and would undermine the Bureau's fundamental mission to protect consumers through comprehensive market oversight.

NCRC is a network of more than 700 community-based organizations dedicated to creating opportunities for all Americans to build wealth and attain quality of life. We work with community leaders and policymakers to advance solutions for America's persistent racial and socio-economic wealth, income, and opportunity divides. Our member organizations depend on robust consumer protection to ensure fair access to financial services for traditionally underserved communities.

## **The Proposed Rule Violates Executive Order 12866 on All Three Grounds**

The Bureau has requested comment on the application of Executive Order 12866 to this rulemaking. Section 1 of E.O. 12866 states that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets."<sup>47</sup> The proposed rule fails all three standards.

### **Not Required by Law**

The proposed rule is not required by law; it directly contradicts Congressional intent. 12 U.S.C. § 5514(a)(1)(C) grants supervisory authority when the Bureau has "reasonable cause to determine" entities pose "risks to consumers with regard to the offering or provision of consumer financial products or services."<sup>1</sup> Congress deliberately chose this broad language, not the constrained "high likelihood of significant harm" standard the Bureau now proposes in [§ 1091.501](#).<sup>2</sup>

The statutory text employs intentionally expansive language. The risk-based supervision program mandated by § 5514(b)(2) requires assessment based on "risks to consumers created by the provision of such consumer financial products or services" and "any other factors that the

Bureau determines to be relevant."<sup>3</sup> This catch-all provision grants maximum discretion to identify and respond to emerging systemic risks.

Congress explicitly rejected efforts to narrow CFPB authority. The 2013 "Consumer Financial Protection Safety and Soundness Improvement Act" (H.R. 3193), which would have limited CFPB powers, passed the Republican-controlled House but was never considered in the Democratic-controlled Senate, demonstrating Congress's commitment to preserving broad authority.<sup>4</sup>

Elizabeth Warren's Congressional testimony confirms this broad mandate: "one of the consumer bureau's chief responsibilities will be to supervise certain non-bank financial companies that provide consumer financial products and services," including "this will be the first time that many of these non-bank financial services companies will be subject to federal compliance examinations."<sup>5</sup>

## **Not Necessary to Interpret the Law**

The proposed rule is not necessary to interpret clear Congressional language; it actively misinterprets it. "Risks to consumers" requires no judicial construction. The statutory framework consistently employs broad, preventive language throughout Title X of Dodd-Frank.

12 U.S.C. § 5511(a) mandates ensuring markets are "fair, transparent, and competitive." Section 5531(a) grants authority to "prevent" unfair, deceptive, or abusive practices. The word "prevent" appears throughout the statute, demonstrating Congressional intent for prophylactic authority.<sup>6</sup>

Warren's testimony reveals Congressional intent for "effective tools to set the rules for and oversee the whole market."<sup>7</sup> This comprehensive authority needs no narrow interpretation requiring "high likelihood of significant harm."

The Bureau's admission of "generally limited data" proves this rule is not interpretive necessity but ideological preference. As Warren warned, the CFPB "should not blindly follow the conventional wisdom of the time" but must be "committed to examining data and making its decisions based on data" to "avoid capture by ideology or intellectual fashion."<sup>8</sup>

## **No Compelling Public Need**

The Bureau identifies no compelling public need; instead, it creates consumer protection failures. Executive Order 12866<sup>9</sup> requires "compelling public need, such as material failures of private markets." The Bureau provides no evidence that current supervisory designation authority has failed.

The evidence shows success: CFPB has returned \$21 billion to consumers through comprehensive oversight.<sup>9</sup> NCRC testing reveals systematic discrimination requiring supervisory intervention before "significant harm" accumulates. Warren's crisis analysis demonstrates that

waiting for "significant harm" enables "one bad mortgage at a time" aggregation into systemic failure.<sup>[10](#)</sup>

The proposed rule would create the market failures Executive Order 12866<sup>[47](#)</sup> seeks to prevent. NCRC's research demonstrates emerging discrimination patterns that require supervisory intervention before they reach "significant harm" thresholds. "What could be more unfair than discrimination?" As NCRC notes, "Congress instructed the CFPB to combat both discrimination and unfair and deceptive practices" through comprehensive oversight.<sup>[11](#)</sup>

## **Congressional Intent Demands Broad Supervisory Authority**

### **The Statutory Framework Employs Deliberately Broad Language**

Congress created the CFPB with deliberately expansive, prophylactic authority following the catastrophic failure of fragmented consumer protection that enabled the 2008 financial crisis. The statutory framework consistently employs forward-looking language designed to prevent consumer harm before it occurs.

12 U.S.C. § 5511(a) mandates that the CFPB "shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."<sup>[12](#)</sup> This market-wide mandate requires prospective oversight of systemic issues, not reactive responses limited to individual violations meeting artificially high thresholds.

The Act's core objectives in § 5511(b) consistently employ preventive language, directing the Bureau to ensure consumers are "protected from" unfair, deceptive, or abusive practices. Congress deliberately used prophylactic terminology indicating authority to prevent harm before consumers suffer "significant" damage. The sixth core function in § 5511(c)(3) explicitly grants market monitoring authority for "identifying risks to consumers and the proper functioning of such markets."<sup>[13](#)</sup>

Most importantly, 12 U.S.C. § 5514(a)(1)(C) grants supervisory authority over nonbanks when the Bureau has "reasonable cause to determine" they pose "risks to consumers with regard to the offering or provision of consumer financial products or services."<sup>[14](#)</sup> This forward-looking standard requires only reasonable determination of risks, not proof of high likelihood of significant harm as proposed in [§ 1091.501](#).

### **Elizabeth Warren's Vision Confirms Congressional Intent**

Elizabeth Warren, the CFPB's intellectual architect, consistently advocated for comprehensive supervisory authority. In "Unsafe at Any Rate," Warren argued that financial products should

undergo the same safety screening as consumer goods, with authority to "require modification of dangerous products before they can be marketed to the public."<sup>15</sup>

Warren's March 16, 2011 testimony articulated Congress's comprehensive vision, emphasizing that previously, "consumer financial protection had not been the primary focus of any federal agency, and no agency had effective tools to set the rules for and oversee the whole market."<sup>16</sup>

Warren directly addressed systemic prevention: "If there had been basic rules of the road in place for mortgages, consistently enforced at the federal level by an agency fully accountable for protecting consumers, the current economic crisis would not have developed in the way it did." She noted that "the current economic crisis began one bad mortgage at a time," underscoring Congress's intent to prevent systemic risks through comprehensive oversight.<sup>17</sup>

Warren's February 2025 speech reinforced this broad vision: "The CFPB is the cop on the beat, and that cop is the one that caught the crooks and, so far, has made them give back \$21 billion."<sup>18</sup>

## **The Bureau's "Speculative and Trivial" Argument Ignores Crisis Lessons**

The Bureau argues Congress would not have expected it to expend supervisory resources on issues that are "speculative in likelihood or trivial in impact." This dismissal directly contradicts Warren's foundational understanding of how systemic crises develop. Warren testified that "the current economic crisis began one bad mortgage at a time."

Each individual mortgage may have seemed "speculative" in harm likelihood and "trivial" in systemic impact when originated. Congress created the CFPB precisely because this narrow view enabled the crisis. NCRC's experience demonstrates this aggregation principle: in 43% of lending tests, "the White tester received more favorable treatment than the Black tester" in pre-application interactions.<sup>19</sup> Each individual incident might seem "immaterial" under the Bureau's proposed standard, yet these patterns create the systemic discrimination that Congress intended the CFPB to prevent.

## **The Bureau's Data Void Undermines the Entire Rulemaking**

### **Warren's Data-Driven Vision Rejected**

Elizabeth Warren's 2011 testimony established data and evidence as fundamental to CFPB operations: "Just as important, in my opinion, is the need for data and data analytics to be a defining focus of the agency. In my years teaching, writing, and researching, economic data and statistical analysis were indispensable tools."<sup>20</sup>

Warren explicitly envisioned the CFPB as "a data-driven agency by making research and market analysis core to all of its work" and emphasized that "the consumer bureau should not blindly

follow the conventional wisdom of the time, but must be a thinking, investigating, questioning agency."<sup>21</sup>

The Bureau's admission of "generally limited data" directly contradicts Warren's foundational vision and suggests the proposed rule is driven by exactly the "ideology or intellectual fashion" she warned against.

## **The Bureau's Devastating Data Admission**

The Bureau admits: "There are generally limited data with which to quantify potential costs, benefits, and impacts of the proposed rule. The Bureau conducted a limited number of supervisory designation proceedings under the existing rules, but the Bureau does not have quantitative data regarding the costs to respondents or other impacts of those proceedings. The Bureau also does not have quantitative data to predict most of the impacts of the changes made by this rule."<sup>22</sup>

This data void makes evidence-based advocacy impossible. How can consumer organizations like NCRC evaluate the rule's impact on vulnerable communities without quantitative analysis of current supervisory designation effectiveness, costs, and consumer protection outcomes?

Warren envisioned the CFPB using "state-of-the-art technology" and "data analysis" to enable the CFPB to "collect and analyze data faster and get on top of problems almost as they occur, not years later after the damage has spread and many more families have been hurt."<sup>23</sup> If the Bureau had implemented Warren's data-collection vision, it would have comprehensive analytics on consumer harm patterns, effectiveness of current interpretations, and cost-benefit analysis of supervisory intervention timing.

## **NCRC's Evidence-Based Approach**

NCRC has consistently emphasized that "data drives the movement for social justice" and that effective consumer protection requires comprehensive empirical analysis. "Data allows the public, both through agencies such as the CFPB and individually, to ensure the market health of our economy and the ability of all people to participate in that economy fairly, and without fear of predatory abuse."<sup>24</sup>

NCRC has conducted rigorous empirical research demonstrating why broad supervisory authority is essential. Our fair lending testing found "27 out of 63 (43%) tests, there was a difference in treatment with the White tester receiving more favorable treatment than the Black tester" in PPP lending interactions.<sup>25</sup>

## **The Bureau Violated Multiple Congressional Mandates for Procedural Requirements**

## **Failed Mandatory Stakeholder Engagement**

Warren's 2011 testimony established "to engage the American public in everything we do" as the first design principle for CFPB operations. She envisioned "technology can be used to solicit information from the American people far more efficiently than ever before, giving them not one, but thousands of seats at the table as we set priorities or determine policies."<sup>26</sup>

There is no evidence the Bureau conducted meaningful public engagement before proposing to constrain its supervisory authority. Warren specifically intended the CFPB to use "data from the public" to "inform priorities and signal problems."<sup>27</sup>

## **Failed Mandatory Impact Analysis**

Warren's testimony explicitly highlighted Congressional requirements: "Congress also took special steps to require the CFPB to carefully assess the impact of its actions by way of various internal process requirements. For example, in prescribing a rule under the federal consumer financial laws, the consumer bureau is specifically charged with: Considering the potential costs and benefits both to consumers and to providers of consumer financial products and services; Considering the impact of proposed rules on community banks and smaller credit unions and on consumers in rural areas."<sup>28</sup>

The Bureau's admission of "generally limited data" demonstrates it failed to conduct the mandatory analysis that Senator Snowe authored an amendment to require through "small business impact panels."<sup>29</sup>

## **Failed Consultation Requirements**

Warren's testimony noted Congress required "Consulting with other federal banking regulators and considering any written objections raised during the consultation process."<sup>30</sup> There is no evidence of meaningful consultation with the Federal Reserve, OCC, FDIC, or other regulators about how constraining CFPB supervisory authority would affect overall consumer protection or create regulatory gaps.

## **The Bureau's False Consistency Problem Misunderstands Congressional Design**

### **Congress Intended Flexible Application**

The Bureau states it has "three independent concerns about this status quo. First, the ad hoc nature of individual orders creates a danger that the Bureau's application of 'risks to consumers' may not be consistent between orders. Second, because the applicability of the precedents in past orders to new contexts can be unclear, and also because the agency may depart from an

existing precedent in a later case, the status quo creates uncertainty for institutions facing potential designation about what standard the Bureau will apply to their case."<sup>31</sup>

This justification fundamentally misunderstands Congressional intent. The three "concerns" identified by the Bureau actually reflect exactly the flexible, adaptive approach Congress intended when it crafted the broad "risks to consumers" standard.

12 U.S.C. § 5514(b)(2) demonstrates Congress's intent for case-by-case flexibility. The risk-based supervision provision's catch-all provision grants maximum discretion precisely to avoid the rigid constraints the proposed rule seeks to impose.

The "ad hoc nature of individual orders" is not a defect but a feature. Congress designed the CFPB with broad supervisory authority specifically because the 2008 crisis demonstrated that rigid, category-based regulation failed to address evolving consumer risks.

## **The Proper Solution: Guidance, Not Constraints**

The proper solution to the Bureau's stated concerns is adequate staffing and guidance, not artificial rule constraints. Congress provided funding authority in 12 U.S.C. § 5497 precisely to enable the Bureau to provide meaningful guidance while maintaining adaptive supervisory authority.<sup>32</sup>

Instead of constraining statutory authority, the Bureau should expand industry guidance, increase staffing in supervision, enhance transparency in decisions while maintaining flexibility, and develop sector-specific examination manuals.

## **NCRC's Analysis Confirms Need for Comprehensive Consumer Protection**

NCRC has consistently defended the CFPB's broad authority as essential to addressing systemic discrimination in financial services. "The CFPB is the only agency explicitly authorized to protect consumers when they use financial services."<sup>33</sup> This unique mission requires comprehensive supervisory authority.

"After unrestrained risk-taking by many financial institutions led to the financial crisis of 2008, Congress created the CFPB to restore fairness to the economy."<sup>34</sup> Our organization has repeatedly emphasized that the Bureau's mission extends beyond reactive enforcement to preventive oversight.

Our analysis confirms the need for broad supervisory authority: "What could be more unfair than discrimination? It seems obvious, and yet the US Chamber of Commerce, American Bankers Association, Consumer Bankers Association and other financial industry players want the federal courts to protect banks' imagined right to discriminate from the oversight that Congress obviously intended CFPB to conduct."<sup>35</sup>



## NCRC's Testing Demonstrates Need for Proactive Oversight

NCRC's fair lending testing reveals why preventive supervision is essential: "Discouragement is discrimination, and it is rampant in small business lending. When we send testers into banks to present the same material, even though both testers have equivalent financial profiles, the White tester often experiences better customer service and is given more information on available products, whereas the Black testers often get the bare minimum information and little, if any, follow up."<sup>36</sup>

This testing demonstrates conduct that poses risks to consumers but might not meet artificial "high likelihood of significant harm" thresholds. "The creation of an Office of Fair Lending Testing at the CFPB is a critical step in preventing the types of fair lending violations that limit economic mobility, slow economic growth and perpetuate the racial wealth gap."<sup>37</sup>

As we found in PPP lending testing: "27 out of 63 (43%) tests, there was a difference in treatment with the White tester receiving more favorable treatment than the Black tester" in pre-application interactions. Such discriminatory practices require supervisory intervention before they aggregate into significant systemic harm.<sup>38</sup>

## Statutory Framework Enables Prophylactic Market Intervention

The enforcement provisions in 12 U.S.C. § 5531(a) grant authority to "prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice."<sup>39</sup> The repeated use of "prevent" throughout the statute demonstrates Congressional intent for prophylactic authority inconsistent with requiring "high likelihood of significant harm" before supervision as proposed in § 1091.501.

The unfairness standard in § 5531(c) includes practices "likely to cause substantial injury to consumers," enabling preventive action based on risk assessment without requiring proof of significant harm.<sup>40</sup> The abusiveness standard in § 5531(d) protects vulnerable consumers from practices that "materially interfere with the ability of a consumer to understand" terms or "take unreasonable advantage" of consumer vulnerabilities.<sup>41</sup>

Under 12 U.S.C. § 5512, the Director may prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."<sup>42</sup> This explicit grant of authority to prevent circumvention demonstrates Congress anticipated need for flexible approaches incompatible with rigid "high likelihood of significant harm" limitations.

The Bureau's "larger participant" authority under 12 U.S.C. § 5514(a)(1)(B) enables systematic expansion of supervision to emerging markets. Since 2012, expansions to consumer reporting, debt collection, student loan servicing, international money transfers, automobile financing, and digital payments demonstrate Congressional intent for adaptive supervisory reach.<sup>43</sup>



# The Proposed Limitations Contradict CFPB's Congressional Mission

The proposed requirement for "high likelihood of significant harm" contradicts the Bureau's foundational purposes established in 12 U.S.C. § 5491(a): "to ensure that all consumers have access to markets for consumer financial products and services and that such markets are fair, transparent, and competitive."<sup>44</sup> Markets cannot be "fair" if supervision requires waiting for significant consumer harm before addressing problematic practices.

Congress created the CFPB as "the only agency whose sole purpose is to protect consumers when they use financial services."<sup>45</sup> This unique mission demands comprehensive authority to address all practices that pose risks to consumers, not artificial limitations requiring proof of significant harm likelihood before supervision.

The Bureau's own analysis acknowledges its success: over its first decade, "the CFPB returned \$14.4 billion to approximately 183 million consumers and consumer accounts."<sup>46</sup> This record demonstrates the effectiveness of broad supervisory authority that the proposed rule would constrain.

## Recommendation

We urge the CFPB to withdraw this proposed rule entirely. The Bureau's own analysis demonstrates the rule:

1. Violates Executive Order 12866<sup>47</sup> by failing all three requirements for valid rulemaking
2. Contradicts clear Congressional intent for broad, preventive supervisory authority established in 12 U.S.C. § 5514(a)(1)(C)
3. Lacks any empirical foundation due to the Bureau's admission of "generally limited data"
4. Bypassed mandatory procedural requirements established by Warren and required by Congress
5. Creates consumer protection gaps that could enable another financial crisis

The statutory language in 12 U.S.C. § 5514(a)(1)(C) requiring only "reasonable cause to determine" risks to consumers directly contradicts the proposed [§ 1091.501](#) standard requiring "high likelihood of significant harm." Legislative history, Congressional testimony, and stakeholder analysis uniformly demonstrate that Congress intended broad supervisory authority over any conduct posing risks to consumers.

Congress designed the CFPB to prevent another financial crisis through comprehensive market oversight, not react to problems after consumers suffer harm. The Bureau's supervisory designation authority represents a core Congressional tool for identifying and addressing emerging risks before they metastasize into systemic problems.

Thank you for the opportunity to comment on this important matter. If you have questions, please contact Jesse Van Tol at [jvantol@ncrc.org](mailto:jvantol@ncrc.org).

Sincerely,

Jesse Van Tol  
President & CEO  
National Community Reinvestment Coalition

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<sup>2</sup> Consumer Financial Protection Bureau. (2025). Legal Standard Applicable to Supervisory Designation Proceedings, 90 FR 41520, § 1091.501.

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<sup>39</sup> U.S. House of Representatives. (2011). 12 U.S.C. § 5531(a).  
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<sup>40</sup> U.S. House of Representatives. (2011). 12 U.S.C. § 5531(c).  
[https://uscode.house.gov/view.xhtml?req=\(title:12+section:5531+edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:12+section:5531+edition:prelim))

<sup>41</sup> U.S. House of Representatives. (2011). 12 U.S.C. § 5531(d).  
[https://uscode.house.gov/view.xhtml?req=\(title:12+section:5531+edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:12+section:5531+edition:prelim))

<sup>42</sup> Legal Information Institute. (2011). 12 U.S.Code § 5512 - Rulemaking authority. Cornell Law School. <https://www.law.cornell.edu/uscode/text/12/5512>

<sup>43</sup> U.S. House of Representatives. (2011). 12 U.S.C. § 5514(a)(1)(B).  
[https://uscode.house.gov/view.xhtml?req=\(title:12+section:5514+edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:12+section:5514+edition:prelim))

<sup>44</sup> U.S. House of Representatives. (2011). 12 U.S.C. § 5491 - Establishment of the Bureau of Consumer Financial Protection.  
[https://uscode.house.gov/view.xhtml?req=\(title:12+section:5491+edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:12+section:5491+edition:prelim))

<sup>45</sup> National Community Reinvestment Coalition. (2020, August 27). Consumer Action: Advocates call foul as CFPB hides consumer complaint narratives from public view.  
<https://ncrc.org/consumer-action-advocates-call-foul-as-cfpb-hides-consumer-complaint-narratives-from-public-view/>

<sup>46</sup> Consumer Financial Protection Bureau. (2021). Building the CFPB.  
<https://www.consumerfinance.gov/data-research/research-reports/building-the-cfpb/>

<sup>47</sup> Executive Order 12866. (1993, September 30). Regulatory Planning and Review. Federal Register. <https://www.federalregister.gov/executive-order/12866>