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LEGAL STATUS

Legal Standard Applicable to Supervisory Designation Proceedings

A Proposed Rule by the [Consumer Financial Protection Bureau](#) on 08/26/2025

 This document has a comment period that ends in 26 days. (09/25/2025)

9 comments received. [View posted comments](#)

PUBLISHED CONTENT - DOCUMENT DETAILS

Agency: Consumer Financial Protection Bureau

Agency/Docket Number: Docket No. CFPB-2025-0018

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Consumer Financial Protection Bureau

12 CFR Part 1091

[Docket No. CFPB-2025-0018]

RIN 3170-AB45

AGENCY:

Consumer Financial Protection Bureau.

ACTION:

Proposed rule; request for comment.

SUMMARY:

The Consumer Financial Protection Bureau (Bureau or CFPB) is proposing to adopt a standard definition of “risks to consumers with regard to the offering or provision of consumer financial products or services” that will bind the Bureau in proceedings to designate nonbank covered persons for Bureau supervision. This will ensure that the Bureau acts within the bounds of its statutory authority and provide clarity to institutions about the standard the Bureau applies.

DATES:

Comments must be received on or before September 25, 2025.

ADDRESSES:

You may submit responsive information and other comments, identified by Docket No. CFPB-2025-0018, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov> (<https://www.regulations.gov>). Follow the instructions for submitting comments. A brief summary of this document will be available at <https://www.regulations.gov/docket/CFPB-2025-0018> (<https://www.regulations.gov/docket/CFPB-2025-0018>).
- *Email:* 2025DesignationStandardNPRM@cfpb.gov (<mailto:2025DesignationStandardNPRM@cfpb.gov>). Include Docket No. CFPB-2025-0018 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Legal Standard Applicable to Supervisory Designation Proceedings, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number. Additionally, where the Bureau has asked for specific comment on a topic, commentors should seek to highlight the topic to which its comment is applicable. Because paper mail is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov> (<https://www.regulations.gov>). All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Dave Gettler, Paralegal Specialist, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov* (*mailto:CFPB_Accessibility@cfpb.gov*).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Section 1024(a)(1)(C) of the Consumer Financial Protection Act of 2010 (CFPA) authorizes the Bureau to supervise a nonbank covered person that the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. 12 U.S.C. 5514(a)(1)(C) (<https://www.govinfo.gov/link/uscode/12/5514>).^[1] The Bureau has existing procedures at 12 CFR part 1091 (<https://www.ecfr.gov/current/title-12/part-1091>) that govern the process by which the Bureau provides notice and a reasonable opportunity to respond. The Bureau has separately requested public comment on amendments to that process. 90 FR 20401 (/citation/90-FR-20401) (May 14, 2025).

The Bureau has not, to date, issued a rule addressing the meaning of “risks to consumers” in the context of section 1024(a)(1)(C). Instead, the Bureau has issued orders in individual cases. The Bureau 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. Third, without a binding framework on the meaning of “risks to consumers,” the Bureau may not conform to the best reading of section 1024(a)(1)(C) in individual cases. The proposed rule is intended to address these issues by binding the Bureau to a standard that is consistent, foreseeable, and based on the best reading of section 1024(a)(1)(C).

II. Legal Authority

Section 1024(b)(7) of the CFPA authorizes the Bureau to “prescribe rules to facilitate supervision” of the nonbank covered persons described in section 1024(a). 12 U.S.C. 5514(b)(7) (<https://www.govinfo.gov/link/uscode/12/5514>). Additionally, section 1022(b)(1) provides, in relevant part, that the Bureau's 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.” 12 U.S.C. 5512(b)(1) (<https://www.govinfo.gov/link/uscode/12/5512>). The Bureau issues this proposed rule based on its authority under section 1024(b)(7) and section 1022(b)(1).

III. Discussion of Proposal

The proposed rule would explain that, for purposes of section 1024(a)(1)(C) of the CFPA, “conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services” consists of conduct that: (a) presents a high likelihood of significant harm to consumers; and (b) is directly connected to the offering or provision of a consumer financial product or service as defined in section 1002 of the CFPA.

In the Bureau's preliminary view, Congress would not have expected it to expend its supervisory resources on issues that are speculative in likelihood (□ printed page 41521) or trivial in impact. Although some prior orders have adopted a broad approach to the phrase

“risks to consumers” under section 1024(a)(1)(C), asserting that it can include even immaterial potential harms, the Bureau proposes to reconsider this approach.^[2] The context of section 1024(a)(1)(C) indicates that Congress intended the Bureau to be squarely focused on serious conduct.

In addition, the Bureau proposes to find that the phrase “with regard to the offering or provision of consumer financial products or services” requires a direct connection to a statutorily defined “consumer financial product or service.” It is essential that the Bureau focus only on the specific categories of products and services that Congress charged the Bureau with overseeing.

The Bureau requests comment on all aspects of this standard. The Bureau specifically requests comment on whether “risks to consumers” must be potential violations of law in the context of section 1024(a)(1)(C).

IV. Proposed Effective Date of Final Rule

The Bureau proposes that the final rule take effect 30 days after publication in the **Federal Register**, consistent with the Administrative Procedure Act, 5 U.S.C. 553(d) (<https://www.govinfo.gov/link/uscode/5/553>). However, if the final rule is determined to be a “major rule” as defined in the Congressional Review Act, 5 U.S.C. 804(2) (<https://www.govinfo.gov/link/uscode/5/804>),^[3] the Bureau proposes that it take effect 60 days after publication in the **Federal Register**, consistent with 5 U.S.C. 801(a)(3)(A) (<https://www.govinfo.gov/link/uscode/5/801>).

V. Consumer Financial Protection Act Section 1022(b)(2) Analysis

In developing this proposed rule, the Bureau has considered its potential benefits, costs, and impacts in accordance with section 1022(b)(2)(A) of the CFPA. 12 U.S.C. 5512(b)(2)(A) (<https://www.govinfo.gov/link/uscode/12/5512>).

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 relative to the current state of affairs based on the broad understanding of “risks to consumers” drawn from prior orders, which is the comparison that is relevant for this analysis.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs and impacts of the proposed rule. General economic principles and the Bureau's experience and expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

In evaluating the benefits, costs, and impacts of the proposed rule, the Bureau considers the impacts against a baseline that includes the legal and procedural framework that currently exists regarding supervisory designation proceedings for nonbank covered persons.

The proposed rule would apply to covered persons as defined in the CFPB, which are generally persons that engage in offering or providing a consumer financial product or service. There is a large population of firms potentially affected by this proposed rule.^[4] The Bureau does not currently have access to comprehensive data on the number of nonbank covered persons subject to supervisory authority. To establish an estimate of the population of nonbank covered entities potentially subject to the proposed rule, the Bureau uses publicly available data from the 2022 Economic Census (the most recent version currently available), which provides counts of firms by North American Industry Classification System (NAICS) industry codes. Based on the 2022 Economic Census data for NAICS codes that align with financial services,^[5] the Bureau estimates there are approximately 154,430 entities in these covered industries. It should also be noted that this estimate does not include other nonbank covered entities not categorized in one of the enumerated industries, e.g., if consumer financial services are not their primary business activity. To date, the Bureau has exercised its supervisory authority under existing 12 CFR part 1091 (<https://www.ecfr.gov/current/title-12/part-1091>) over fewer than twenty covered entities.^[6]

The Bureau expects that under the proposed rule it will be less likely to designate any particular entity for supervision, all other factors being equal. This would reduce the costs of supervision for entities that might otherwise have been designated. The proposed rule also could influence behavior for entities that would otherwise have seen themselves as being on the margin of being designated or not. Because supervision is costly for entities, entities on the margin of being designated may be more likely to avoid conduct that could be seen as posing risks to consumers, and thus may spend more on compliance reviews in order to avoid being designated. Under the proposed rule, firms will have more clarity as to what conduct might trigger supervision, potentially lowering compliance review costs. At the same time, firms may be more likely to engage in conduct that could be said to present

some probability of harm to consumers, but does not rise to the level of a high likelihood of significant harm. To the extent this occurs, it would impose costs on consumers and may provide some benefits to firms, depending on the nature of the conduct. Given that the Bureau has exercised the supervisory authority that the proposed rule would clarify in only a limited number of cases, and given the many other factors incentivizing compliance with Federal consumer financial laws, including private litigation and State and Federal enforcement actions, the aggregate impact of these effects on entities on the margin of being designated is likely to be small. The Bureau requests comments that provide additional data (□ printed page 41522) on estimates of behavioral changes as a result of this proposed rule, including impacts on consumers and the population of entities potentially subject to this rule.

To the extent that some entities would be designated under the current understanding of “risks to consumers,” but would not be under the proposed rule, the proposed rule would reduce the direct costs of supervision to those entities. The Bureau has previously estimated the cost of compliance with supervisory activity based on reported average exam length and labor costs incurred by firms to participate in supervisory exams.^[7] This calculation results in an estimate of approximately \$27,000 in labor costs to comply with a supervisory examination. The Bureau recognizes that this estimate reflects national average labor costs and are thus subject to variability with respect to specific firms' realized costs. Furthermore, the Bureau recognizes that the staffing estimates are assessments for an average firm's needs and may also be subject to variability with respect to specific firms' requirements. The Bureau requests comments that provide additional data on estimates of staffing requirements and costs for compliance with supervisory activities.^[8] Because the Bureau has exercised the supervisory authority that the proposed rule would clarify in a

limited number of cases, and because the Bureau does not conduct exams of all supervised entities each year, it is unlikely that the proposed rule would reduce the aggregate number of exams by much more than one exam per year across the entire economy.

The proposed rule would not have an impact on insured depository institutions or insured credit unions with \$10 billion or less in assets as described in section 1026(a) of the CFPB. See 12 U.S.C. 5512(b)(2)(A)(ii) (<https://www.govinfo.gov/link/uscode/12/5512>), 5516(a) (<https://www.govinfo.gov/link/uscode/12/5516>). Nor would the proposed rule have a unique impact on rural consumers. 12 U.S.C. 5512(b)(2)(A)(ii) (<https://www.govinfo.gov/link/uscode/12/5512>).

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 601 (<https://www.govinfo.gov/link/uscode/5/601>) *et seq.* The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required. 5 U.S.C. 609 (<https://www.govinfo.gov/link/uscode/5/609>).

The number of entities that will be subject to supervisory designation proceedings is small, and within that group the number that would be small entities is likely to be either none or in the single digits each year, representing a very small fraction of small entities in the relevant consumer finance markets.

Accordingly, the Acting Director hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comment on the analysis above.

VII. Executive Order 12866 (/executive-order/12866)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 (/executive-order/12866) defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that this action is a “significant regulatory action” under Executive Order (E.O.) 12866 as amended. Accordingly, OMB has reviewed this action.

Section 1 of E.O. 12866 (/executive-order/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. . . .” The Bureau requests comment on the application of that standard to this rulemaking.

List of Subjects in 12 CFR Part 1091

(<https://www.ecfr.gov/current/title-12/part-1091>)

- Administrative practice and procedure
- Consumer protection
- Credit
- Trade practices

Authority and Issuance

As discussed above, the Bureau proposes to amend 12 CFR part 1091 (<https://www.ecfr.gov/current/title-12/part-1091>) as follows:

PART 1091—PROCEDURES FOR SUPERVISORY DESIGNATION PROCEEDINGS

1. The authority citation for part 1091 continues to read as follows:

Authority: 12 U.S.C. 5512(b)(1) (<https://www.govinfo.gov/link/uscode/12/5512>), 5514(a)(1)(C) (<https://www.govinfo.gov/link/uscode/12/5514>), 5514(b)(7) (<https://www.govinfo.gov/link/uscode/12/5514>).

2. Add subpart E, consisting of § 1091.501, to read as follows:

Subpart E—Scope of Designation Authority

§ 1091.501 Legal Standard Applicable to Proceedings.

For purposes of 12 U.S.C. 5514(a)(1)(C) (<https://www.govinfo.gov/link/uscode/12/5514>), conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services consists of conduct that:

(a) Presents a high likelihood of significant harm to consumers; and

(b) Is directly connected to the offering or provision of a consumer (□ printed page 41523) financial product or service as defined in 12 U.S.C. 5481 (<https://www.govinfo.gov/link/uscode/12/5481>).

Russell Vought,

Acting Director, Consumer Financial Protection Bureau.

Footnotes

1. *The Bureau must base such reasonable-cause determinations on complaints collected by the Bureau under 12 U.S.C. 5493(b)(3) (<https://www.govinfo.gov/link/uscode/12/5493>), or on information collected from other sources. 12 U.S.C. 5514(a)(1)(C) (<https://www.govinfo.gov/link/uscode/12/5514>).*

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2. *See, e.g., Google Payment Corp., File No. 2024-CFPB-SUP-0001, at 16-17 (Nov. 8, 2024), https://files.consumerfinance.gov/f/documents/cfpb_Publication-Redacted-Decision-and-Order-Designating-Google-Payment-for-Su_6EZQyMz.pdf*

(https://files.consumerfinance.gov/f/documents/cfpb_Publication-Redacted-Decision-and-Order-Designating-Google-Payment-for-Su_6EZQyMz.pdf), withdrawn (May 7, 2025), https://files.consumerfinance.gov/f/documents/cfpb_gpc-withdrawal_2025-05.pdf (https://files.consumerfinance.gov/f/documents/cfpb_gpc-withdrawal_2025-05.pdf).

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3. *A major rule is a rule that the that Office of Information and Regulatory Affairs finds has resulted in or is likely to result in: (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. 5 U.S.C. 804(2) (<https://www.govinfo.gov/link/uscode/5/804>).*

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4. *The procedures in the existing 12 CFR part 1091 (<https://www.ecfr.gov/current/title-12/part-1091>) are only to assess whether a nonbank covered person will be made subject to the Bureau's supervisory authority based on a determination under section 1024(a)(1)(C) of the CFPB, 12 U.S.C. 5514(a)(1)(C) (<https://www.govinfo.gov/link/uscode/12/5514>). In general, there is no reason to make a determination under section 1024(a)(1)(C) with respect to a nonbank covered entity subject to the Bureau's supervisory authority under some other provision of section 1024(a) of the CFPB, 12 U.S.C. 5514(a) (<https://www.govinfo.gov/link/uscode/12/5514>). However, this is possible. Therefore, the Bureau does not exclude from its analysis nonbank covered entities that may be subject to supervision under a separate provision of section 1024(a).*

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5. *The relevant NAICS codes examined are 5222 (Nondepository credit intermediation); 5223 (Activities related to credit intermediation); 523920 (Portfolio management); 523930 (Investment advice); 532112 (Passenger car leasing); 532120 (Truck, utility trailer, and*

recreational vehicle rental and leasing); 5313 (*Activities related to real estate*); 561450 (*Consumer reporting*); and 561440 (*Debt collection*).

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6. *The Bureau's designations of Google Payment Corp., which formerly provided a peer-to-peer payment product, and World Acceptance Corp., which is an installment lender, have been publicly disclosed. The Bureau is currently reconsidering its approach to publication of designation orders. 90 FR 20401 (/citation/90-FR-20401) (May 14, 2025).*

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7. *For an estimate of the length of examination, see Office of the Inspector General of the Board of Governors of the Federal Reserve System and the CFPB, "The Bureau Can Improve Its Risk Assessment Framework for Prioritizing and Scheduling Examination Activities" (Mar. 25, 2019) at 13, available at <https://oig.federalreserve.gov/reports/bureau-risk-assessment-framework-mar2019.pdf> (<https://oig.federalreserve.gov/reports/bureau-risk-assessment-framework-mar2019.pdf>).*

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8. *The Bureau has previously estimated the cost of compliance with supervisory activity based on reported average exam lengths, which would average one supervisory examination per year and require one-tenth of a full-time equivalent attorney and one full-time compliance officer. Furthermore, the Bureau estimates that supervisory examinations would last for 8 weeks on average, with an additional two weeks of preparation. Using the national average hourly labor cost of \$84.84 for attorneys and \$38.55 for compliance officers, the Bureau estimates that the direct labor costs for a supervisory examination would total approximately \$19,000 (See U.S. Bureau of Labor Statistics, National Occupational Employment and Wage Estimates United States, May 2023, <https://www.bls.gov/oes/current/oes-nat.htm> (<https://www.bls.gov/oes/current/oes-nat.htm>)). Assuming that wages represent approximately 70.4% of the total labor costs using the estimate of total compensation for private employees (See U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation: Private Industry Database, March 2024,*

private-dataset.xlsx (https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx)), this results in an estimate of approximately \$27,000 in labor costs to comply with a supervisory examination.

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