

UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

In the Matter of:

Google Payment Corp.

Supervisory Designation Proceeding

File No. 2024-CFPB-SUP-0001

DECISION AND ORDER (PUBLIC VERSION)

The matter before the Consumer Financial Protection Bureau (CFPB or Bureau) is a supervisory designation proceeding. Unlike an administrative enforcement proceeding, which entails findings of fact and conclusions of law on whether an entity violated federal consumer financial protection laws, this matter is different. The proceeding addresses whether the CFPB has reasonable cause to determine that the conduct of a covered person under the Consumer Financial Protection Act “poses risks to consumers with regard to the offering or provision of consumer financial products or services,” for the purpose of designating the entity for supervision.¹

Importantly, the question of whether an entity poses such risks does not require a determination of whether the entity is violating laws or regulations. There are multiple indicia that Google Payment Corporation (Google) meets the standard for supervision under the CFPA. For the reasons set forth below, a supervisory designation is warranted and is so ordered.

I. Background

A. Statutory Framework

Congress charged the CFPB with “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.”² One of the key tools that Congress gave the CFPB is the authority to supervise certain nonbank financial companies under CFPA section 1024.³ This order describes the relevant statutory framework in detail.

1. CFPA Section 1024(a)(1): Who Is Supervised

Section 1024(a)(1) establishes five categories of nonbank financial companies that are subject to CFPB supervision. Relevant to this proceeding, section 1024(a)(1)(C) authorizes CFPB supervision of:

¹ See Consumer Financial Protection Act of 2010 (CFPA) § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)). Congress enacted the CFPA as title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² *Id.* § 1021(a) (codified at 12 U.S.C. § 5511(a)).

³ *Id.* § 1024 (codified at 12 U.S.C. § 5514).

any [nonbank] covered person who ... 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, based on complaints collected through the system under section 1013(b)(3) [“Collecting and Tracking Complaints”] or information from other sources, that such covered person 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.⁴

This provision contains several key terms, many of which are defined in the statute itself. The term “consumer financial product or service” includes a range of enumerated activities.⁵ A “covered person” is “any person that engages in offering or providing a consumer financial product or service.”⁶ The term “consumer” is defined as “an individual or an agent, trustee, or representative acting on behalf of an individual.”⁷

“Risk” is not defined in the statute but is a familiar term referring to “the possibility of loss or injury.”⁸ In contrast to other Dodd-Frank Act provisions,⁹ CFPB section 1024(a)(1)(C) does not specify the character or magnitude of “risks to consumers” that is required to subject a covered person to supervision. Instead, Congress empowered the CFPB to determine whether the risks to consumers posed by a covered person’s conduct warrant supervisory oversight. Congress cabined this discretion with the requirements that the CFPB (1) identify risks to consumers, which it has reasonable cause to determine exist; (2) notify the entity of those risks; and (3) give the entity a reasonable chance to respond. Moreover, final CFPB agency action may not be arbitrary or capricious.¹⁰ Congress’s election not to use more specific or directive language in CFPB section 1024(a)(1)(C), however, indicates that Congress intended to delegate to the CFPB the discretion to determine whether the character and magnitude of the risks posed by a particular covered person’s conduct merit supervision.

Section 1024(a)(1)(C) only requires that the CFPB have “reasonable cause to determine” that the covered person’s conduct poses risks to consumers.¹¹ Whatever the precise meaning of “reasonable cause,” it must be less demanding than the default preponderance-of-the-evidence

⁴ *Id.* § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).

⁵ *Id.* § 1002(5), (15) (codified at 12 U.S.C. § 5481(5), (15)).

⁶ *Id.* § 1002(6) (codified at 12 U.S.C. § 5481(6)). Certain affiliates of a covered person are also deemed covered persons. *Id.*

⁷ *Id.* § 1002(4) (codified at 12 U.S.C. § 5481(4)).

⁸ *Risk*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2009); accord *Risk*, Black’s Law Dictionary (11th ed. 2019) (“the chance of injury, damage, or loss”).

⁹ See 12 U.S.C. § 5466(f)(1) (requiring reasonable cause to conclude that an “imminent risk of substantial harm” exists (emphasis added)); *id.* § 5467(e)(2)(A)(iv)(II) (requiring “reasonable cause to believe that the financial institution’s noncompliance ... poses a substantial risk to other financial institutions, critical markets, or the broader financial system” (emphasis added)); *id.* § 5467(e)(2)(B)(iii)(II) (requiring “reasonable cause to believe that the financial institution’s noncompliance ... poses significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States” (emphasis added)).

¹⁰ See 5 U.S.C. § 706(2)(A).

¹¹ CFPB § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).

standard generally applicable in noncriminal matters.¹² If Congress had intended for the default preponderance standard to apply, there would have been no need to insert the phrase “reasonable cause” in section 1024(a)(1)(C), and if Congress had intended a standard more demanding than the preponderance standard, such as the “clear and convincing” evidence standard, it would have used language different than “reasonable cause,” which resembles the relatively lenient standards of “reasonable suspicion” or “probable cause” from criminal-procedure case law.¹³

Congress’s decision in section 1024(a)(1)(C) to grant the CFPB discretion in designating covered persons for supervision, and to make the exercise of that discretion subject to a relatively lenient burden of persuasion (“reasonable cause”), reflects the limited consequences of a section 1024(a)(1)(C) determination. As explained further below, such a determination merely means that the CFPB may periodically “require reports” from, and “conduct examinations” of, the covered person.¹⁴ It does not necessarily entail a finding that the covered person has violated any law. Nor does it impose any monetary penalties or new legal requirements (other than the requirement to provide reports or participate in examinations in accordance with lawful supervisory directives). It does not even definitively label the covered person as a “risky” business; it merely indicates that the CFPB has “reasonable cause” to determine that the covered person’s conduct poses risks to consumers.¹⁵ The relatively low bar for subjecting a covered person to supervision under section 1024(a)(1)(C) reflects the relatively limited impact of such a determination on the entity.

2. CFPA Section 1024(b)(1): Purposes of Supervision

CFPA section 1024(b)(1) sets out the purposes of CFPB supervision of nonbank covered persons:

The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—
(A) assessing compliance with the requirements of Federal consumer financial law;
(B) obtaining information about the activities and compliance systems or procedures of such person; and

¹² See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 253 (1989) (plurality op.) (discussing the “[c]onventional rule[]” that “parties to civil litigation need only prove their case by a preponderance of the evidence”); accord, e.g., *Conley v. United States*, 5 F.4th 781, 794-95 (7th Cir. 2021); see also *United States v. Chen*, 99 F.3d 1495, 1503 (9th Cir. 1996) (explaining, in the context of applying the crime-fraud exception to attorney-client privilege, that “[r]easonable cause is more than suspicion but less than a preponderance of evidence”).

¹³ See, e.g., *Kansas v. Glover*, 140 S. Ct. 1183, 1187-88 (2020); *Kaley v. United States*, 571 U.S. 320, 338 (2014); *Florida v. Harris*, 568 U.S. 237, 243-44 (2013). Congress has defined the term “reasonable cause to believe” in the context of other statutory provisions. See 12 U.S.C. § 4003(c)(1) (“For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person.”); id. § 5006(d)(2)(C) (providing that a bank “has reasonable cause to believe that [a] claim is fraudulent” where the facts “would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent”). It is unclear whether any meaningful difference exists between those definitions and the concepts of “reasonable suspicion” or “probable cause.” Regardless, Congress chose not to import those definitions from other statutes into CFPA section 1024(a)(1)(C).

¹⁴ See CFPA § 1024(b)(1) (codified at 12 U.S.C. § 5514(b)(1)).

¹⁵ Id. § 1024(a)(1)(C) (codified at 12 U.S.C. § 1024(a)(1)(C)); see also Procedural Rule to Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination, 78 Fed. Reg. 40352, 40359 (July 3, 2013) (“Supervision alone does not impose any penalty on a person, does not deprive it of any property, and does not restrict its ability to engage in a viable business.”).

- (C) detecting and assessing risks to consumers and to markets for consumer financial products and services.¹⁶

Accordingly, under paragraph (A), one of the purposes of CFPB supervision is assessing compliance with Federal consumer financial law. “Federal consumer financial law” covers the provisions of the CFPB, such as the CFPB’s prohibition on unfair, deceptive, or abusive acts or practices, as well as various other laws that the CFPB administers, such as the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E.¹⁷

Congress, however, did not limit the CFPB’s supervisory authority to assessing compliance with Federal consumer financial law under paragraph (A); it added paragraphs (B) and (C) as well. With respect to paragraph (C), Congress recognized that risks to consumers are not necessarily limited to violations of the laws administered by the CFPB—many of which had been found wanting in the 2008 financial crisis.¹⁸ Instead, the CFPB was charged with using supervisory reports and examinations to detect a range of potential harms to consumers.

3. CFPB Section 1024(b)(2): Mandate for “Risk-Based Supervision Program”

Section 1024(b)(2), titled “Risk-Based Supervision Program,” provides that the Bureau’s exercise of its supervisory authority under paragraph (b)(1) should be:

based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

- (A) the asset size of the covered person;
- (B) the volume of transactions involving consumer financial products or services in which the covered person engages;
- (C) the risks to consumers created by the provision of such consumer financial products or services;
- (D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and
- (E) any other factors that the Bureau determines to be relevant to a class of covered persons.¹⁹

This risk assessment governs when the CFPB is deciding how to exercise its supervisory authority under section 1024(b)(1)—not, as here, when the CFPB is making a threshold determination to designate an entity for supervision under section 1024(a)(1)(C). Nevertheless,

¹⁶ CFPB § 1024(b)(1) (codified at 12 U.S.C. § 5514(b)(1)). The CFPB also has certain additional supervision-related authorities under CFPB § 1024(b)(7) (codified at 12 U.S.C. § 5514(b)(7)).

¹⁷ CFPB §§ 1002(12), (14), 1031, 1036 (codified at 12 U.S.C. § 5481(12), (14), 5531, 5536).

¹⁸ The conclusion that Congress did not intend to limit the objectives of CFPB supervision under CFPB section 1024 to identifying legal violations is bolstered by the contrast between the use of “risks” in section 1024 and the use of “violate” or “violation” in the CFPB’s enforcement provisions. *See, e.g.*, CFPB § 1051(1), (5) (codified at 12 U.S.C. § 5561(1), (5)); CFPB § 1052(c)(1) (codified at 12 U.S.C. § 5562(c)(1)); *id.* § 1054(a) (codified at 12 U.S.C. § 5564(a)); *id.* § 1055(c)(1) (codified at 12 U.S.C. § 5565(c)(1)). The enforcement provisions demonstrate that if Congress had intended for the CFPB to consider only whether a covered person may have violated the law in making designations under section 1024(a)(1)(C), “Congress knew how to draft” the provision to accomplish that objective. *City of Chicago v. Env’t Def. Fund*, 511 U.S. 328, 337-38 (1994) (citation omitted).

¹⁹ CFPB § 1024(b)(2) (codified at 12 U.S.C. § 5514(b)(2)).

because section 1024(b)(2), like section 1024(a)(1)(C), is focused on assessing risks to consumers, the CFPB “may consider the (b)(2) factors to the extent applicable in making a reasonable-cause determination” under section 1024(a)(1)(C).²⁰

4. Distinction Between Supervision and Enforcement

Under the CFPB, the CFPB’s enforcement authority is governed by a separate set of provisions from its supervisory authority. The CFPB can issue civil investigative demands, which are a type of administrative subpoena.²¹ After an investigation concludes, the CFPB may bring an enforcement action in federal district court or an administrative enforcement proceeding.²² The CFPB’s enforcement authority extends, with certain exceptions, to “any person” who “violates a Federal consumer financial law.”²³ Accordingly, a defendant in a CFPB enforcement action is not necessarily a supervised entity.

If CFPB supervisory examiners identify a violation of Federal consumer financial law by a supervised entity, these examiners may decide to refer the matter to the Office of Enforcement, but that is not the primary purpose of supervision. Instead, when examiners detect activities that violate Federal consumer financial law or otherwise pose risks to consumers, the CFPB may take a variety of actions other than enforcement. “Most supervisory activities do not result in a referral to Enforcement.”²⁴ For example, responsible companies generally share the CFPB’s goals of avoiding violations of law and harm to their customers, so examiners often work informally and collaboratively with supervised institutions to address issues. As another example, supervisory findings may help inform the CFPB’s research, market monitoring, and rulemaking functions. For instance, Congress required the CFPB to analyze and report on “developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers.”²⁵ Congress also gave the CFPB rulemaking authorities that it can use to address risks to consumers.²⁶

Unlike the enforcement process, the purpose of supervision is not to impose sanctions for legal violations. Similarly, a determination under section 1024(a)(1)(C) that supervision is warranted is not a finding that an entity is guilty of wrongdoing.

B. Factual Background

Google is a wholly owned subsidiary of Google LLC, which is a wholly owned subsidiary of Alphabet, Inc., a publicly traded company.²⁷ Google operates or has operated two payment products: (1) a peer-to-peer (P2P) payment platform and (2) a stored-value product known as

²⁰ 78 Fed. Reg. at 40358.

²¹ CFPB § 1052(c) (codified at 12 U.S.C. § 5562(c)); 12 C.F.R. pt. 1080.

²² CFPB §§ 1053-1054 (codified at 12 U.S.C. §§ 5563-5564).

²³ CFPB § 1054(a) (codified at 12 U.S.C. § 5564(a)); *see also id.* § 1053(a) (codified at 12 U.S.C. § 5563(a)).

²⁴ CFPB, *An Introduction to CFPB’s Exams of Financial Companies* 3 (Jan. 9, 2023), https://files.consumerfinance.gov/f/documents/cfpb_an-introduction-to-cfpbs-exams-of-financial-companies_2023-01.pdf.

²⁵ CFPB § 1013(b)(1)(A) (codified at 12 U.S.C. § 5493(b)(1)(A)).

²⁶ E.g., CFPB §§ 1022(b)(1), 1031, 1032 (codified at 12 U.S.C. §§ 5512(b)(1), 5531, 5532).

²⁷ Google Response to Notice of Reasonable Cause (“Google Resp.”) at 2.

Google Pay Balance.²⁸ Both products were accessible through the Google Pay App, a mobile app available on both Android and iOS devices.²⁹

The P2P payment platform allowed users to send and receive funds to and from other users of the Google Pay App.³⁰ Users could fund transactions on the P2P payment platform with certain debit cards, from certain ACH-enabled checking and savings accounts, or from a Google Pay Balance account.³¹ The P2P payment platform also allowed users to transfer funds received from other users to a linked bank account or debit card.³²

Google Pay Balance was a stored-value product.³³ Users could add funds to a Google Pay Balance account by transferring money from a debit card, a checking account, or a savings account, or by receiving funds through a P2P transaction.³⁴ A Google Pay Balance account could be used to fund P2P transactions.³⁵ The funds in a Google Pay Balance account could also be used with a Google Pay Balance Card, a virtual card that allows users to conduct in-store contactless and online payments.³⁶ The Google Pay Balance Card allowed users to conduct in-store contactless and online payments by utilizing two other Google products: Tap and Pay and the GPay Button.³⁷ According to Google, “[b]oth Tap and Pay and the GPay Button are not operated by GPC but instead are the responsibility of Google LLC.”³⁸

In February 2024, Google announced that the U.S. version of the Google Pay App would be discontinued.³⁹ According to Google, as of early June 2024, the U.S. version of the Google Pay App and the related P2P payment platform were no longer available to consumers.⁴⁰ The Google Pay Balance stored-value product remains available for limited purposes following the discontinuation of the Google Pay App and the P2P payment platform.⁴¹ Users can continue to hold funds in an existing Google Pay Balance account and to withdraw funds, but are not able to add funds to an account or to create new accounts.⁴² Moreover, Google users can continue to spend funds in an existing Google Pay Balance account with the Google Pay Balance Card.⁴³

C. Procedural History

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 3.

³⁹ Google Response to Supplemental Brief of Initiating Official (“Google Supp. Br.”) at 1; *see also* Joris van Mens, Google Pay, *Simplifying Our Payment Apps in the U.S.* (Feb. 22, 2024), <https://blog.google/products/google-pay/payment-apps-update/>; Google Pay Help, *Changes to the Google Pay App in the US* (last visited October 28, 2024), <https://support.google.com/googlepay/answer/14555219>.

⁴⁰ Response to Director’s Request for Supplemental Briefing (“Google Sec. Supp. Br.”) at 2-4.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

The CFPB has issued a procedural rule at 12 C.F.R. part 1091 that governs proceedings under CFPA section 1024(a)(1)(C). On March 20, 2023, the Assistant Director for Supervision, who acted as the “initiating official” under the procedural rule, began this proceeding by issuing what the rule terms a “Notice of Reasonable Cause.”⁴⁴ Google submitted its written response on May 19, 2023.⁴⁵ Google provided a supplemental oral response on July 17, 2023.⁴⁶ On July 27, 2023, the Associate Director invited supplemental briefing from the initiating official and Google. On August 31, 2023, the initiating official filed her supplemental brief including copies of certain relevant consumer complaints.

On November 22, 2023, Google requested that this matter be held in abeyance in light of a potential material product change and the Bureau’s issuance of a proposed rule that would subject certain digital payment companies to its supervisory authority.⁴⁷ Google’s request for an abeyance was denied, but Google’s deadline to file a response to the initiating official’s supplemental brief was extended and Google was directed to include in its response complete information pertaining to the forthcoming product change. On February 2, 2024, Google filed its response. On February 14, the initiating official filed a reply. On February 23, Google provided a second supplemental oral response. The Associate Director then submitted a recommended determination.⁴⁸

On April 23, 2024, the Bureau requested additional supplemental briefing. On May 23, 2024, Google submitted a supplemental brief.

II. Analysis

A. Google Is a Covered Person That Offers or Provides a Consumer Financial Product or Service

To be subject to supervision under section 1024(a)(1)(C), an entity must generally be a “covered person” that offers or provides a “consumer financial product[] or service[.]”⁴⁹ Consumer financial products or services include issuing stored value or payment instruments and engaging in transmitting or exchanging funds.⁵⁰ Google does not dispute that it is a “covered person” under the CFPA.⁵¹

⁴⁴ See 12 C.F.R. § 1091.102 (2023).

⁴⁵ See *id.* § 1091.105 (2023).

⁴⁶ See *id.* §§ 1091.105(b)(3), 106 (2023).

⁴⁷ See Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 88 Fed. Reg. 80197 (Nov. 17, 2023). The proposed rule would define a market for general-use digital consumer payment applications. Larger participants in this market would be subject to the Bureau’s supervisory authority under CFPA section 1024(a)(1)(B), CFPA § 1024(a)(1)(B) (codified at 12 U.S.C. § 5514(a)(1)(B)).

⁴⁸ My decision and order here fully set forth the factual findings and reasoning underlying my decision to designate Google for supervision under CFPA section 1024(a)(1)(C). To the extent the findings and reasoning in this decision and order differ from the recommended determination, I have exercised my authority to modify the recommended determination under 12 C.F.R. § 1091.109 (2023) to the extent that provision may continue to apply. After submission of the recommended determination in this matter, the CFPB amended part 1091 to omit recommended determinations from the process going forward, in light of an organizational change of the CFPB’s internal structure. See Procedures for Supervisory Designation Proceedings, 89 Fed. Reg. 30259, 30260, 30261 (Apr. 23, 2024).

⁴⁹ CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).

⁵⁰ CFPA § 1002(15)(A)(iv)-(v) (codified at 12 U.S.C. § 5481(15)(A)(iv)-(v)).

⁵¹ Google Resp. (“Google Resp.”) at 3 n.2.

B. The CFPB Has Reasonable Cause to Determine That Google Has Engaged in Conduct Posing Risks to Consumers

There is reasonable cause to determine that Google has engaged in conduct that poses risks to consumers. Google’s conduct presented two such risks.⁵² First, the CFPB has reasonable cause to determine that Google’s practices in connection with investigating allegedly erroneous transactions have posed risks to consumers. Second, the CFPB has reasonable cause to determine that Google’s practices in connection with the prevention of fraudulent and unauthorized transactions have posed risks to consumers. Each of these risks is a sufficient basis to exercise the CFPB’s supervisory authority under section 1024(a)(1)(C). Further, Google’s discontinuation of the Google Pay App and the P2P payment platform is not a basis to refrain from designating Google for supervision, though it may influence whether the CFPB determines whether to conduct an examination.

1. Risks Related to Error Resolution

The consumer complaints submitted to the CFPB provide reasonable cause to determine that Google’s practices in connection with investigating allegedly erroneous transactions have posed risks to consumers. Those complaints indicate: (1) that Google failed to adequately investigate allegedly erroneous transfers made via its P2P payment platform; (2) failed to adequately explain the results of its investigations when it determined that no erroneous transfer had occurred; (3) failed to provide consumers any further recourse or offer to provide supporting documentation after making a determination that no erroneous transfer had occurred; and (4) failed to protect consumers from liability for erroneous transfers.

First, there is reasonable cause to determine that Google failed to adequately investigate allegedly erroneous transfers made via its P2P payment platform. Many consumers submitted complaints to the Bureau after they notified Google that a transfer was unauthorized or otherwise

⁵² The Notice of Reasonable Cause discusses other risks related to Google’s digital payments products, including risks associated with products that allow consumers to make “purchases from select merchants, including in-store contactless, and online.” Notice of Reasonable Cause at 2. The Notice states, “In providing the Google Pay service, Respondent stores payment credentials or stores, encrypts, and authenticates tokenized credentials associated with eligible payment methods, securely transmits these credentials to initiate payment transactions requested by consumers, and communicates the results of the payment transactions back to consumers.” Google claims that these “tokenized transactions” are made possible by two Google products known as “Tap and Pay” and the “GPay Button.” Google Resp. at 3. Google asserts that “[b]oth Tap and Pay and the GPay Button are not operated by GPC but instead are the responsibility of Google LLC,” and, therefore, are “beyond the scope” of this proceeding. *Id.* at 3. This array of features found in Google-branded payment products appears to be interrelated, and Google’s efforts to opportunistically invoke the corporate form to disassociate itself from tokenized payment features is not entirely convincing. Nevertheless, it is necessary to consider these features in order to resolve this proceeding and designate Google under section 1024(a)(1)(C). Separate from this proceeding, the Bureau intends to evaluate whether Google LLC or other Google affiliates involved in tokenized transactions should be subject to the Bureau’s supervisory oversight, including under other provisions of the CFPA. For instance, the record suggests that “over 3,500 depository institutions in the United States participate in” Google Wallet’s Tap and Pay feature which allows contactless instore payments. Notice of Reasonable Cause (“NRC”) at 4; *see also id.* at 2 n.8; Google Resp. at 17; Initiating Official’s Supplemental Brief (“IO Supp. Br.”) at 16. Congress authorized the Bureau to supervise service providers to large insured depository institutions and service providers to a “substantial number” of other insured depository institutions under sections 1025(d) and 1026(e) of the CFPA, respectively. 12 U.S.C. §§ 5515(d), 5516(e). The Bureau will make full use of this service-provider supervisory jurisdiction if warranted.

erroneous and Google refused to issue a refund or take other steps to remediate the error.⁵³ Numerous consumers expressed a concern that Google did not adequately investigate the allegedly unauthorized or erroneous transfer.⁵⁴ Some consumers noted that Google did not provide them a sufficient opportunity to provide relevant information about their dispute or denied the dispute soon after it was submitted.⁵⁵ Other complaints indicate that while Google determined a transaction was neither unauthorized nor erroneous, the consumer’s account-holding institution reached the opposite conclusion.⁵⁶ For example, one consumer “received an overdraft notification from [their] bank” after “a fraudulent charge had been posted from Google in the amount of [REDACTED].”⁵⁷ The consumer’s bank “agreed that it was fraudulent and reimbursed” the consumer.⁵⁸ However, Google “declared that they didn’t believe the transaction to be fraudulent, without [providing] any reason why” and disabled the consumer’s Google Pay account.⁵⁹ Similarly, another consumer explained that they disputed certain transactions with their bank, which determined them to be fraudulent, but the bank “retracted” that determination “once Google claimed that [the transactions] were legitimate charges.”⁶⁰ The consumer not only lost the “significant amount” of money which was taken from their account, but also lost access to their Google Pay account.⁶¹

Second, there is reasonable cause to determine that Google failed to adequately explain the results of its investigation after it determined that no erroneous transfer had occurred. Many consumers complained that Google failed to provide any explanation as to why it determined that no erroneous transfer had occurred.⁶² In some complaints, consumers excerpted or attached communications sent to them by Google explaining that their claims had been denied. These communications demonstrate that Google failed to explain why it concluded that no erroneous transfer occurred. The messages sent to consumers generally stated, “After reviewing your claim,

⁵³ See IO Supp. Br. at 11-14 (citing consumer complaints).

⁵⁴ See, e.g., Complaint No. 4052880 (“Purchases were made that were not authorized by me and the company failed to properly investigate.”); Complaint No. 3766681 (“[W]ith hardly any investigation, Google Pay informed me that they cannot issue a refund and that my money is no longer available and that the case was not decided in my favor. Just like that, in seconds I had lost \$1200.”); Complaint No. 3635026 (May 3, 2020) (“I attempted to get them to escalate the case because I didn’t make the transaction, don’t know who it went to and am shocked that with a fraud report 16 minutes after the transaction that they could do nothing to stop it … I have stated in my communications with Google Pay support that I believe the transaction is fraudulent, that I believe I know how the unauthorized use of my account happened, but they refused to review the case further or provide any details to why.”).

⁵⁵ See, e.g., Complaint No. 3522067 (“The Google customer service said the investigation team is the only one to give the result, but all they allowed me to do is to fill a form for amount and date with no choice to explain my situation nor attach any files. I really don’t know what to do to get my money back.”); Complaint No. 3766681 (consumer received a decision “suddenly in minutes” after receiving confirmation of dispute).

⁵⁶ See, e.g., Complaint No. 5930030; Complaint No. 3766482; see also Complaint No. 3522067 (“My credit card company … said their investigation would be based on Google’s result, so I may never get my money back.”).

⁵⁷ Complaint No. 5930030.

⁵⁸ Id.

⁵⁹ Id.

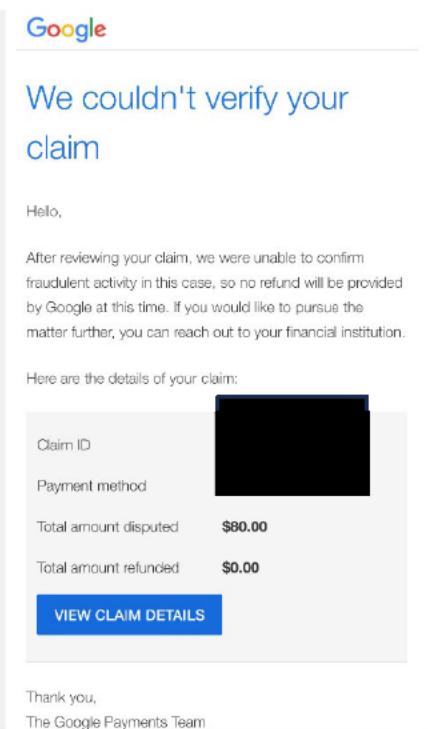
⁶⁰ Complaint No. 3766482.

⁶¹ Id.

⁶² See, e.g., IO Supp. Br. at 11-13 (citing complaints); Complaint No. 4048256 (“I tried to call them and you can’t talk to a live person so I made the complaint online later that day they sent me an email saying they weren’t refunding the [money]. That’s all I got from them. I wanted to know why that was their decision, I didn’t get answer.”); Complaint No. 5930030 (“They declared that they didn’t believe the transaction to be fraudulent, without any reason why.”); Complaint No. 3635026 (“Google Pay support replied back to my support ticket saying ‘no fraudulent activity’ was found on my account … Over the next few days I continued emailing with Google Pay support, but they refused to give any more details on the case.”).

we were unable to confirm fraudulent activity in this case, so no refund will be provided by Google at this time. If you would like to pursue the matter further, you can reach out to your financial institution.”⁶³ Other messages sent to consumers included similar form language that stated, “We were unable to confirm fraudulent activity on the purchases. Often, these purchases were made by a family member or friend.”⁶⁴ Generally, Google appears to have responded to all claims, disputes and consumer complaints by using language from a template regardless of the facts presented by the consumer.⁶⁵

To illustrate, below are two images that consumers submitted to the CFPB of the messages sent to them by Google conveying that their claims had been denied. These images, which exemplify others submitted to the CFPB, suggest the cursory nature of the communications, the limited information provided to the consumer, and the complete absence of any substantive explanation of Google’s reasoning for determining that no erroneous transfer occurred.



⁶³ See, e.g., Complaint No. 5909862; Complaint No. 5604763.

⁶⁴ See, e.g., Complaint No. 3766681.

⁶⁵ See, e.g., Complaint No. 3741459; Complaint No. 4061770; Complaint No. 3581116; Complaint No. 3437311; Complaint No. 3732041; Complaint No. 3824336; Complaint No. 3529062; Complaint No. 4039850; Complaint No. 3775433; Complaint No. 3616121; Complaint No. 3430260; Complaint No. 3375432; Complaint No. 3766681; Complaint No. 3393075; Complaint No. 3635026; Complaint No. 3373809. See also Complaint No. 4065775; Complaint No. 4429014; Complaint No. 4061770; Complaint No. 4192574; Complaint No. 3393075; Complaint No. 3741459; Complaint No. 3581116; Complaint No. 3437311; Complaint No. 3732041; Complaint No. 3824336; Complaint No. 3529062; Complaint No. 4039850; Complaint No. 3775433; Complaint No. 3616121; Complaint No. 3430260; Complaint No. 3375432.



We couldn't verify your claim

Here are the details of our review. You can [view your claim status](#) at any time.

We were unable to confirm fraudulent activity on the purchases. Often, these purchases were made by a family member or friend.

Claim ID	[REDACTED]
Payment method	[REDACTED]
Total amount disputed	\$600.00
Total amount refunded	\$0.00
View claim status	

Third, there is reasonable cause to determine that Google failed to advise consumers whose claims had been denied what additional options or recourse may have been available to them, other than by suggesting that they reach out to their financial institution. Critically, in none of the communications noted above in which Google relayed that it was denying the consumer's claim, did Google advise the consumer they could request any additional information or supporting documentation. In fact, Google's internal policy, which it submitted as part of this proceeding, states that "[i]f the user requests supporting documentation on the decision, do not offer documentation."⁶⁶

Fourth, there is reasonable cause to determine that Google failed to limit consumers' liability for unauthorized transactions. Google's own policy stated that if a consumer informed Google within two business days of an unauthorized transaction then the consumer's losses were capped at \$50.⁶⁷ However, the consumer complaints submitted to the Bureau indicate that Google may not have followed this policy. For example, one consumer stated, "Following their own EFT Error Resolution Policy they state that if I reported the unauthorized use within 2 days the most I can lose is \$50. However Google Pay support says that policy may not apply but will not give me a reason."⁶⁸ Numerous other consumer complaints indicate that the consumer promptly reported an unauthorized transaction but was nonetheless required to cover the resultant losses contrary to Google's stated policy.⁶⁹

⁶⁶Google Supp. Br. at App. 22a.

⁶⁷ See Google Resp. at 43a ("If you inform us within 2 business (or 4 business days for your P2P Payment funded from your checking or savings account or from your debit card) days after you learn of the loss or theft of your Google Pay account username and password or your GPB Card PIN, you can lose no more than \$50 if someone used your Google Pay account username and password or GPB Card without your permission.").

⁶⁸ Complaint No. 3635026.

⁶⁹ See, e.g., supra notes 53-54.

Collectively, these complaints demonstrate that there is reasonable cause to determine that Google’s practices in connection with error resolution have posed risks to consumers and that a supervisory designation is therefore warranted.

There is no need to determine whether Google’s conduct with regard to error resolution rises to the level of a legal violation because, as discussed above, section 1024(a)(1)(C) does not require an entity to have violated any law in order to be eligible for supervision.⁷⁰ Nonetheless, there is reason to believe that Google’s practices pertaining to the investigation of allegedly erroneous transactions may violate EFTA and its implementing regulation, Regulation E.⁷¹ Regulation E requires that financial institutions conduct a reasonable investigation of alleged errors.⁷² The complaints discussed above provide reasonable cause to determine that Google has failed to conduct a reasonable investigation of alleged errors. Additionally, Regulation E requires that, after determining that no error occurred, a financial institution must, in reporting the results of an error investigation, include a written explanation of the institution’s findings.⁷³ As the CFPB’s *Supervisory Highlights* publication has noted, “[f]inancial institutions must go beyond just providing the findings to actually explain or give the reasons for or cause of those findings.”⁷⁴ The complaints discussed above provide reasonable cause to determine that Google has failed to adhere to this requirement and instead provided users form denials that offer no substantive explanation of the basis for its determination. Moreover, Regulation E requires that, after determining no error occurred, a financial institution must, in reporting the results of an error investigation, explain the consumer’s right to request the documents that the institution relied on in making its determination.⁷⁵ The complaints discussed above, as well as Google’s internal policy pertaining to error resolution, provide reasonable cause to determine that Google has failed to adhere to this requirement and refused to allow consumers to review any underlying documentation. Finally, Regulation E requires financial institutions to limit consumer’s liability

⁷⁰ See *supra* at 3-4; see also *Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders*, 87 Fed. Reg. 70703, 70704 (Nov. 21, 2022) (“[T]he Bureau notes that Congress authorized the Bureau to make a risk designation when it has reasonable cause to determine there are risks to consumers. Congress did not require the Bureau to make findings that a respondent has violated the law . . . instead, that is part of the purpose of subsequent examinations of the respondent. . . . Through the supervisory process, CFPB examiners can work with the company in question to fully understand and manage its risks. This preferably would occur before there has been any violation of law . . . rather than after.” (quotation omitted)); IO Supp. Br. at 5-6 (arguing that a violation of law is not necessary for a risk designation under section 1024(a)(1)(C)).

⁷¹ Google concedes that it must comply with Regulation E. See Google Resp. at 15 (“GPC agrees that Regulation E applies to the two primary products offered by GPC, including all P2P transactions and all transactions involving GPC’s Google Pay Balance.”).

⁷² 12 C.F.R. § 1005.11(c).

⁷³ 12 C.F.R. § 1005.11(d)(1).

⁷⁴ *Supervisory Highlights, Issue 22 (Summer 2020)*, 85 Fed. Reg. 55828, 55831 (Sept. 10, 2020). Notably, a financial institution’s failure to adequately explain its reasoning not only violates 12 C.F.R. § 1005.11(d)(1), which require the institution to provide the consumer “a written explanation of the institution’s findings,” but is also persuasive evidence that the institution has violated, 12 C.F.R. § 1005.11(c), which imposes the underlying obligation that the institution conduct a reasonable investigation of the alleged error. See *Sparkman v. Comerica Bank*, No. 23-cv-02028-DMR, 2023 WL 5020269, at *10 (N.D. Cal. Aug. 4, 2023) (finding allegation that “Defendants quickly denied [consumer’s] claim via a form letter ‘lacking individualized information’ . . . support[ed] the inference that Defendants did not conduct a reasonable, adequate investigation”); *In re Bank of Am. Cal. Unemployment Benefits Litig.*, 674 F. Supp. 3d 884, 912 (S.D. Cal. 2023) (“[T]he allegation[] that . . . [Defendant] issued form letters lacking individualized information support[s] the inference [it] didn’t conduct a reasonable review.”).

⁷⁵ 12 C.F.R. § 1005.11(d)(1).

for unauthorized transactions.⁷⁶ The complaints discussed above provide reasonable cause to determine that Google has required some consumers to bear all of the financial losses for unauthorized transactions.

2. Risks Related to Fraud Prevention

Further, there is reasonable cause to determine that Google failed to take adequate steps to prevent fraud on its P2P payment platform. P2P payment platforms, such as Google's P2P payment product, are susceptible to fraud because the transactions conducted through these platforms are typically instantaneous, not easily reversible, and free.⁷⁷ P2P payment platforms may have other features that put consumers at risk of fraud, including, for example, making it easy for scammers to hide their identity.⁷⁸ The consumer complaints discussed above suggest that Google has not taken adequate steps to monitor, prevent, and detect fraud or to alert consumers to the risk of fraud and steps that can be taken to prevent fraud. Indeed, one-third of all consumers who submitted a complaint about Google alleged that they were a victim of a fraud, scam, or unauthorized transaction perpetrated on Google's P2P payment platform.⁷⁹

For example, one consumer complained that they paid \$200 using Google Pay for a pair of shoes that were never delivered.⁸⁰ The consumer wrote:

I purchased a pair of shoes ... for \$200. The purchase was made through Google Pay ... I [eventually] realized [that] there was no update ... on my shoes being sent to me and I also noticed that [the seller] didn't send a tracking number and blocked me from contacting them. As soon as I found out I was being scammed, I contacted Google Pay to dispute the payment ... Google Pay supposedly did an investigation [but] it got nowhere on my end. It was obvious that I was scammed [but] Google Pay did [not do] anything about it. I was willing to provide adequate evidence to ... Google Pay but they wouldn't allow me. I waited patiently and after months, I still have no justice. I was scammed in the middle of the pandemic and Google Pay allowed it.⁸¹

This consumer later learned that another individual was previously scammed by the same person.⁸² That individual was able to get a refund from Google, suggesting that the perpetrator had a history of scamming Google's users.⁸³ Accordingly, it appears that even when Google made a determination that fraud occurred, it did not take sufficient steps to prevent the perpetrator of the fraud from victimizing other consumers.

⁷⁶12 C.F.R. § 1005.6.

⁷⁷ See IO Supp. Br. at 15.

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ Complaint No. 4061770.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

In another example,

180

There is no need to determine whether Google’s conduct with regard to fraud prevention rises to the level of a legal violation because, as discussed above, section 1024(a)(1)(C) does not require an entity to have violated any law in order to be eligible for supervision.⁸⁷ Nonetheless, there is reason to believe that Google’s failure to take reasonable measures to prevent **fraud** may violate the provisions in the CFPA that make it illegal for any covered person to “engag[e] in an unfair, deceptive, or abusive act or practice.”⁸⁸

3. Supervision Is Warranted Even if Google Has Changed Its Business Practices.

Google claims that a supervisory designation is unwarranted given its decision to discontinue the Google Pay App and P2P payment platform. That argument is unpersuasive for the following independent reasons.

First, section 1024(a)(1)(C) expressly contemplates past conduct serving as the basis for a supervisory designation. Pursuant to Section 1024(a)(1)(C), the Bureau has the authority to supervise any covered person who the Bureau has reasonable cause to determine “*is engaging, or has engaged, in* conduct that poses risks to consumers.”⁸⁹ Because the record establishes reasonable cause that Google has engaged in conduct that poses risks to consumers, Google

84 Complaint No. 3775433

85 *Id.*

86 *Id.*

⁸⁷ See *supra* at 3-4; see also *Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders*, 87 Fed. Reg. 70703, 70704 (Nov. 21, 2022) (“[T]he Bureau notes that Congress authorized the Bureau to make a risk designation when it has reasonable cause to determine there are risks to consumers. Congress did not require the Bureau to make findings that a respondent has violated the law … instead, that is part of the purpose of subsequent examinations of the respondent. . . . Through the supervisory process CFPB examiners can work with the company in question to fully understand and manage its risks. This preferably would occur before there has been any violation of law … rather than after.” (quotation omitted)); IO Supp. Br. at 5-6 (arguing that a violation of law is not necessary for a risk designation under section 1024(a)(1)(C)).

⁸⁸ CFPA §§ 1031(a), 1036(a)(1)(B) (codified at 12 U.S.C. §§ 5531(a), 5536(a)(1)(B)). In *FTC v. Walmart Inc.*, 664 F. Supp. 3d 808 (N.D. Ill. 2023), the court held that Walmart may have committed an unfair practice by failing to protect users of its money transfer service from fraud. The court noted “a series of failings in Walmart’s fraud prevention and mitigation systems” including that “Walmart either didn’t establish or failed to follow an effective antifraud program, didn’t train or adequately supervise its employees, failed to adequately monitor suspicious activity, and didn’t adequately report fraud to others.” *Id.* at 836. Of particular relevance, “[c]onsumers didn’t know that money transfers were riskier than other forms of payment, and Walmart routinely either didn’t warn consumers about fraud at all or provided insufficient warnings.” *Id.*

⁸⁹ CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)) (emphasis added).

meets the standard for supervision, regardless of what products it presently offers or its future business plans. Google’s contrary argument, that the Bureau may supervise an entity only if there is the “possibility of harm in the future,”⁹⁰ overlooks the statute’s specific reference to risky conduct that the entity “has engaged in.” As the Bureau has previously explained, “past conduct may pose risks to consumers, even if the identical conduct is not likely to recur, to the extent that such conduct indicates weak compliance systems that might lead to other potential … harms to consumers.”⁹¹

Second, the decision to designate Google for supervision is distinct from the decision to conduct an examination.⁹² If Google is correct that the discontinuation of the Google Pay App has eliminated some risks to consumers and lessens the need for supervision, then the Bureau may elect not to exercise its authority to examine Google or to exercise that authority in a manner proportional to the magnitude of Google’s ongoing operations and the risks to consumers posed by those operations. Under the statute, a supervisory designation is appropriate so long as the respondent “has engaged[] in conduct that poses risks to consumers.”⁹³ Once an entity has been designated for supervision, the decision of whether to conduct an examination is guided by separate factors set forth in the statute including, for example, the volume of relevant transactions and the nature of the risks posed by those transactions.⁹⁴ The decision to discontinue the Google Pay App may be relevant to the statutory framework that guides the Bureau’s exercise of supervisory authority, but it is not determinative of the threshold inquiry of whether a supervisory designation is appropriate.

Third, Google may reenter the P2P payment market or engage in other conduct that poses similar risks to consumers. Indeed, Google has acknowledged that companies routinely modify their product offerings, including by discontinuing existing products.⁹⁵ If a company’s decision to discontinue a product or modify its product offerings foreclosed the possibility of a supervisory designation, regulated entities would have a clear roadmap to evade supervision. This is particularly true when, as here, the product change was announced after the entity was named as a respondent in a supervisory designation proceeding. Google cannot evade supervision based on its decision to leave the P2P payment market while remaining free to reinitiate its risky conduct as soon as this proceeding is terminated. Just as a defendant’s voluntary cessation of unlawful

⁹⁰ Google Supp. Br. at 4.

⁹¹ Procedural Rule to Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination, 78 Fed. Reg. 40352, 40358 (July 3, 2013).

⁹² See CFPA § 1024(b)(2) (codified at 12 U.S.C. § 5514(b)(2)) (listing factors that the Bureau should consider when determining whether to “exercise” its supervisory authority).

⁹³ CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)) (emphasis added).

⁹⁴ CFPA § 1024(b)(2) (codified at 12 U.S.C. § 5514(b)(2)).

⁹⁵ See Second Supp. Oral Resp. Tr. at 20:20-21 (“But more importantly companies deprecate products all the time.”). Indeed, though not relied upon here, Google’s digital payments products have been constantly evolving. See Nelson Aguilar, *Google Pay vs. Google Wallet: What’s the Difference?*, CNET (July 26, 2022), <https://www.cnet.com/tech/mobile/google-pay-vs-google-wallet-whats-the-difference/> (discussing the convoluted history of Google Pay, Google Wallet, and Android Pay). Google’s recent announcement that it will discontinue the Google Pay App is only the most recent in a long history of changes to Google’s digital payments products, how those products function, and how they are branded. See, e.g., Rabab Ahsan, *Say Goodbye to Google Pay*, Tearsheet (March 4, 2024), <https://tearsheet.co/payments/say-goodbye-to-google-pay/> (“Google claims the sunsetting of its Google Pay app, which operated separately from Google Wallet, is an attempt at simplification … But this isn’t the first time Google has tried to rehome its payments apps. About 6 years ago, Google was trying to do something similar, but this time it was the wallet-based functionalities that were going into Google Pay. The fact that Google plays this type of convoluted Jenga with its payments often mars any argument for simplification.”).

conduct does not moot a civil action, a section 1024(a)(1)(C) respondent's voluntary cessation of conduct that poses risks to consumers does not render a supervisory designation unwarranted.⁹⁶

Fourth, the unwinding of Google's P2P payment platform itself poses risks to consumers. In fact, Google itself has acknowledged that there are "risk[s] [to] consumers potentially posed by a winddown," and claims that it is "fully aware that [it] need[s] to be attentive to" those risks.⁹⁷ According to Google, consumers are still able to hold funds in Google Pay Balance accounts, although they are no longer to use those funds on the now defunct P2P payment platform. This may lead to confusion as to whether and how consumers can access funds stored in their accounts at the time the P2P platform was shut down. Moreover, consumers may be confused as to how to seek remediation for fraudulent or otherwise erroneous transfers that occurred while the platform was still in operation. Similar issues have arisen in other consumer financial markets during periods of transition, and supervision has allowed the Bureau to ensure that consumers are protected through the transition and uncertainty.⁹⁸

C. Google's Other Arguments

None of the other arguments Google makes in its response or supplemental briefing provide a basis to refrain from designating Google for supervision.

1. Google's Argument that Risk to Consumers Must Be "Material" or "Substantial" Does Not Foreclose a Supervisory Designation.

Google argues that section 1024(a)(1)(C)'s reference to "risks to consumers" is implicitly limited to "material" risks to consumers and that, therefore, a supervisory designation is only warranted if there is a "meaningful possibility of substantial harm to consumers."⁹⁹ However, section 1024(a)(1)(C) refers to "conduct that poses risks to consumers" without using the terms "material" or "substantial" or any other qualifier to specify the amount or degree of risk necessary to justify supervision.¹⁰⁰ The absence of a qualifier is notable because other provisions in Dodd-Frank authorize regulatory action only upon a showing of "substantial risk," "significant risk," or some other specified level of risk.¹⁰¹ This context suggests that Congress knew how to specify a higher level of risk when it so desired. Its failure to do so in section 1024(a)(1)(C) indicates that risks to consumers are sufficient to warrant supervision even if those risks are

⁹⁶ See *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) ("It is well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.'") (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982))).

⁹⁷ Sec. Supp. Oral Resp. Tr. at 54:3-5; see also *id.* at 54:10-12 ("[W]e acknowledge that, of course, in any sort of product change, there is at least a potential for consumer concerns to arise.").

⁹⁸ See *id.* at 53:7-16 ("[T]he supervision process looks at those types of transfers and changes in services. It's occurred in the transfer of mortgage servicing. It's occurred with student loan servicing transfers. And it's been noted in a supervisory highlight that these processes create risks for consumers. The supervisory process can be helpful there, particularly here where there is confusion among consumers about their ability and the ways in that they can get funds off of this platform.").

⁹⁹ Google Resp. at 6.

¹⁰⁰ CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).

¹⁰¹ See, e.g., 12 U.S.C. § 5467(e)(2)(A)(iv)(II) ("substantial risk"); *id.* § 5467(e)(2)(B)(iii)(II) ("significant ... risks"); § 5466(f)(1)(A)(i) ("imminent risk"); § 1844(e)(1) ("serious risk").

neither material nor substantial. In any case, there is reasonable cause to determine that Google has engaged in conduct posing material and substantial risks to consumers, as evidenced by the numerous consumer complaints discussed above, the substance and severity of those complaints, and the fact that the complaints, individually and collectively, suggest systemic violations of important consumer protection laws.

The other provisions in Section 1024(a)(1) giving the Bureau supervisory authority over certain specified markets and the larger participants in other markets (as defined by rulemaking) do not provide any support for Google’s argument.¹⁰² Google asserts that these provisions would be pointless if the Bureau could simply designate entities for supervision via section 1024(a)(1)(C). That does not follow. Congress reasonably determined that certain categories of entities should be subject to the Bureau’s supervisory authority without the specific findings and procedure set out in section 1024(a)(1)(C). Those provisions in no way conflict with Congress’s choice to also authorize the Bureau to designate other entities for supervision after making the requisite finding and providing notice and an opportunity to respond set out in section 1024(a)(1)(C).

2. The Bureau’s Reading of Section 1024(a)(1)(C) Does Not Implicate the Major Questions Doctrine.

Google argues that the CFPB’s reading of section 1024(a)(1)(C) implicates the major questions doctrine because it would afford the CFPB “unfettered discretion” to supervise any non-bank that offers a consumer financial product or service. But even accepting Google’s reading of section 1024(a)(1)(C) as requiring material or substantial risks, a supervisory designation is still appropriate. As discussed above, the Bureau has reasonable cause to determine that Google has engaged in conduct that poses material or substantial risks to consumers. For that reason alone, the major questions doctrine poses no obstacle to designating Google for supervision.

In any event, section 1024(a)(1)(C) does not implicate the major questions doctrine. That doctrine requires agencies to point to “clear congressional authorization” when they claim the power to make decisions of vast ‘economic and political significance.’¹⁰³

For one, the question of what nonbank entities are eligible for supervision is not a question of vast economic or political significance. Government supervision of financial institutions is nothing new. The CFPB is one of many federal and state agencies that have supervisory authority over various categories of financial service providers.¹⁰⁴ The CFPB alone has supervisory authority over a variety of institutions, including all large depository institutions and certain specified nonbank entities, and it also has rulemaking authority that allows it to supervise other nonbank entities.¹⁰⁵ The interpretive question at issue here pertains only to the precise breadth of one of the many statutory provisions conferring the CFPB with supervisory authority. In the context of the broader national economy, the significance of that question is marginal. Moreover, the answer to that question has limited practical consequence even for the designated

¹⁰² See CFPA § 1024(a)(1)(A), (D), (E) (codified at 12 U.S.C. § 5514(a)(1)(A), (D), (E)).

¹⁰³ *West Virginia v. EPA*, 597 U.S. 697, 735 (2022) (Gorsuch, J. concurring).

¹⁰⁴ See generally *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework*, Congressional Research Service (Oct. 13, 2023), <https://sgp.fas.org/crs/misc/R44918.pdf>.

¹⁰⁵ See CFPA § 1025(b) (codified at 12 U.S.C. § 5515(b)) (supervision of large depository institutions); CFPA § 1024(a)(1)(A), (B), (D), (E) (codified at 12 U.S.C. § 5514(a)(1)(A), (B), (D), (E)) (supervision of non-depository institutions).

entity: “Supervision alone does not impose any penalty on a person, does not deprive it of any property, and does not restrict its ability to engage in a viable business.”¹⁰⁶ In short, the interpretive question of whether the plain language of section 1024(a)(1)(C) requires only “risks to consumers” or whether that provision impliedly requires “material risks to consumers” is not a major question.

And even if this matter did implicate a major question, it would not matter because Congress spoke clearly in enacting section 1024(a)(1)(C). That provision plainly and unambiguously authorizes the supervision of nonbank entities whose conduct poses risk to consumers. As noted above, if Congress had intended to limit this provision to material or substantial risk, it knew how to say so but remained silent.

3. Section 1024(a)(1)(C) Does Not Implicate the Non-Delegation Doctrine.

Google argues that section 1024(a)(1)(C) would violate the non-delegation doctrine, which prevents Congress from delegating “powers which are strictly and exclusively legislative.”¹⁰⁷ As an initial matter, the Bureau’s case-by-case decision whether to pursue supervisory examinations of a specific party is a quintessential executive function to which the non-delegation doctrine does not apply. And even where that doctrine does apply, all that is required is that Congress provided “an intelligible principle to guide the delegee’s use of discretion.”¹⁰⁸ The text of section 1024(a)(1)(C) supplies intelligible limits that guide the Bureau’s exercise of discretion. First, the provision applies only to “covered persons,” a term defined by the statute.¹⁰⁹ Second, the Bureau “must have reasonable cause to determine … that such covered person is engaging, or has engaged in, conduct that poses risks to consumers.” Third, risks to consumers must be “with regard to the offering or provision of consumer financial products or services,” which is also a defined term in the statute. Fourth, the CFPB’s determination must be “based on complaints collected through the system under [the provision of the CFPA governing the collection of consumer complaints] or information from other sources.” Fifth, the Bureau must provide the covered person “notice … and an opportunity to respond.” In other words, the statute limits the type of entities that are eligible for a supervisory designation, articulates a risk-based standard to guide the determination, and dictates the process that must precede the determination. In addition, a designation under section 1024(a)(1)(C) is a threshold step: before the Bureau actually examines an entity, it has to make additional decisions guided by Congress under section 1024(b)(1), which governs the nature and purposes of examinations, and section 1024(b)(2), which requires the Bureau to assess specified factors in deciding whether to conduct an examination. These guardrails are more than sufficient to pass constitutional muster.

4. Consumer Complaints Are Sufficient to Establish Reasonable Cause That Google’s Conduct Poses Risks to Consumers.

Consumer complaints are an adequate basis for a supervisory designation, and Google’s arguments to the contrary are unpersuasive. For one, Google mischaracterizes the record when it

¹⁰⁶ 78 Fed. Reg. at 40359.

¹⁰⁷ *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (plurality opinion) (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42-43 (1825)).

¹⁰⁸ E.g., *id.*

¹⁰⁹ CFPA § 1002(6) (codified at 12 U.S.C. § 5481(6)).

asserts that the initiating official relies on “33 cherry-picked complaints.”¹¹⁰ In fact, the initiating official relied on 267 relevant consumer complaints pertaining to Google’s conduct. The specific complaints discussed in the initiating official’s supplemental brief (as well as those relied on in this order) are emblematic of the larger universe of consumer complaints. All of those complaints support a finding that Google’s conduct poses risks to consumers.¹¹¹ As the initiating official explained, “[m]ost complaints raised Regulation E concerns, and a third pertained to fraud, scams, and unauthorized transactions.”¹¹² In any event, nothing in the statute requires a unique volume of complaints to support a risk determination. Consumer complaints often exemplify wider problems experienced by a number of other consumers who lacked the time, knowledge, or inclination to file their own complaint with the CFPB. As explained above, the determination that Google’s conduct poses risks to consumers is based not only the quantity of complaints the Bureau has received about Google but also on the substance and seriousness of those complaints.

Nor does the fact that these consumer complaints are “unverified” mean that supervision is unwarranted.¹¹³ Section 1024(a)(1)(C) expressly states that a risk designation may be “based on complaints.”¹¹⁴ The absence of any reference to “verified complaints” or the use of any similar qualifier confirms that Congress did not intend to limit the types of complaints that can serve as the basis for a risk determination. The CFPB is only required to establish reasonable cause that Google’s conduct poses risks to consumers. Consumer complaints, even if unverified, are sufficient to satisfy that burden, particularly where, as here, Google generally does not dispute the veracity of the relevant complaints.

Relatedly, Google’s reliance on the report of a consulting firm examining some of the relevant consumer complaints is misplaced. That cursory report, while styled an “independent review,” was in fact drafted at the request of Google’s counsel for use in this proceeding.¹¹⁵ It provides no meaningful analysis to support its findings “that Google was responsive to complaints and meaningfully engaged with consumers to resolve their concerns” and “that the complaints do not indicate a material risk to consumers.”¹¹⁶ The evidence in the record, discussed throughout this order, shows that those conclusory findings are wrong. Further, the report’s primary conclusion appears to be that the number of consumer complaints submitted to the Bureau that pertain to Google “is a relatively low amount compared to financial institutions of similar size,” but the report does not explain how it reached that conclusion.¹¹⁷ Instead, the report’s description of its methodology indicates its findings are based solely on a review of complaints about Google.¹¹⁸ There is no discussion of how the volume of complaints about Google was compared to the volume of complaints about other financial institutions, nor is there any indication of which other financial institutions were used as comparators. In any event, as discussed above, nothing in the statute requires a particular volume of complaints to support a risk determination, nor does

¹¹⁰ Google Supp. Br. at 7.

¹¹¹ IO Reply Br. at 2.

¹¹² *Id.*

¹¹³ Google Supp. Br. at 3. While the CFPB does not independently verify the accuracy of consumers’ complaints, consumers must affirm that the information they provide is true to the best of their knowledge and belief. See Disclosure of Consumer Complaint Data, 78 Fed. Reg. 21218, 21222 (Apr. 10, 2013).

¹¹⁴ CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).

¹¹⁵ Google Resp. at 88a.

¹¹⁶ See Google Supp. Br. at 13 (citing Google Resp. at 86a-91a).

¹¹⁷ See Google Resp. at 89a.

¹¹⁸ See Google Resp. at 90a-91a.

anything in the statute require a unique volume of complaints relative to other companies operating in the same industry.

5. Neither the Existence of a Compliance Program nor Past State Supervision Inoculate Google from Supervision.

Google points to its purportedly “comprehensive compliance program” and the fact that it is “supervised by state regulators” to suggest that its conduct does not pose risks to consumers.¹¹⁹ However, the mere existence of a compliance program does not mean that supervision is unwarranted. The Bureau routinely supervises entities with existing compliance programs, and one of the statutory purposes of supervision is to assess the adequacy of those programs.¹²⁰ Moreover, if the fact of a compliance program inoculated an entity from supervision, section 1024(a)(1)(C) would be rendered meaningless as even superficial or ineffective efforts at compliance would be sufficient to prevent a supervisory designation. Moreover, Google is misguided in asserting that “[t]he Bureau has previously suggested that it would focus its supervisory authority on companies with ‘weak compliance systems.’”¹²¹ The Bureau has not stated that it would defer to an entity’s self-serving descriptions of the strength of its compliance program. Rather, the Bureau has stated that conduct posing risks to consumers (including, notably, past conduct) may “indicate[] weak compliance systems.”¹²² That is the case here. The evidence in this proceeding indicates that Google’s conduct poses risks to consumers. That evidence undercuts Google’s self-serving assertions pertaining to the adequacy of its compliance program and is, under section 1024(a)(1)(C), a sufficient basis for a supervisory designation.

Similarly, the fact that Google has been examined by state regulators does not mean that its conduct does not pose risks to consumers. Google asserts that state regulators have not identified “any deficiencies in complaint handling or other consumer-protection areas in the past five years.”¹²³ However, Google notably withholds the scope of the examinations conducted by state regulators and provided no basis to conclude that those examinations adequately covered the risks identified in this order. Moreover, the evidence in this proceeding indicates that existing state supervisory efforts have not obviated the need for Federal supervision to address the risks to consumers posed by Google’s conduct.

6. The Bureau Adhered to the Appropriate Process.

Before issuing a supervisory designation, section 1024(a)(1)(C) requires that the CFPB provide “notice to the covered person and a reasonable opportunity for such covered person to respond.” The CFPB has adopted informal procedures designed to ensure an “efficient” and “expeditious”

¹¹⁹ Google Supp. Br. at 2, 12.

¹²⁰ See CFPA § 1024(a)(1)(A), (D), (E) (codified at 12 U.S.C. § 5514(a)(1)(A), (D), (E)).

¹²¹ Google Supp. Br. at 13 n.4 (quoting Procedural Rule to Establish Supervisory Authority over Certain Nonbank Covered Persons Based on Risk Determination, 78 Fed. Reg. 40352, 40358 (July 3, 2013)).

¹²² 78 Fed. Reg. at 40358

¹²³ Google Supp. Br. at 12-13.

process for determining whether to issue a supervisory designation under section 1024(a)(1)(C).¹²⁴ The Bureau followed those procedures here.

Google nonetheless contends that it was not afforded the appropriate process for four reasons. First, Google argues that the Associate Director’s decision to allow the initiating official to file a supplemental brief denied it notice of the Bureau’s basis for the supervisory designation and that the decision to allow supplemental briefing deviated from the Bureau’s procedural rule.¹²⁵ That is not the case because the Notice adequately described the initiating official’s bases for asserting that there is reasonable cause to designate Google for supervision, provided a summary of the documents relied on, and included all of the other contents required by the Bureau’s procedural rule. Google was afforded an opportunity to respond to the Notice, and it provided both a written and supplemental oral response. Nothing more is required by either the statute or the procedural rule.

Moreover, while the initiating official was allowed to file a supplemental brief expounding on the risks identified in the notice, Google was provided an ample opportunity to respond to the supplemental brief. It filed a lengthy supplemental brief of its own, as well as accompanying declarations, and later provided a second supplemental oral response. In fact, Google has used supplemental briefing to present new arguments, submit new evidence, and to advise the Bureau of changes in circumstances that it believes counsel against a supervisory designation. Put simply, no credible argument can be made that Google was denied a meaningful opportunity to contest the initiating official’s arguments or to advance its own.

Moreover, nothing in the Bureau’s procedural rule precludes supplemental briefing.¹²⁶ While Google has a statutory right to notice and a reasonable opportunity to respond,¹²⁷ it does not have a substantial interest in precisely when or how it is provided such notice and opportunity to respond. And Google’s contention that it has faced “uncertainty, burden, and expense” as a result of having been afforded *additional* process is not persuasive.¹²⁸ Google cannot have it both ways by arguing that it was afforded insufficient process and that it was prejudiced by the burden accordant to the process it was afforded.

Second, Google argues that, even if it was afforded an adequate opportunity to respond to the initiating official, that opportunity was “meaningless” because “the Bureau’s interpretation of the statute is so amorphous and so open-ended.”¹²⁹ However, as explained above, the Bureau’s statutory authority is guided by appropriate limiting principles.¹³⁰ Moreover, Google’s argument

¹²⁴ See 78 Fed. Reg. at 40360.

¹²⁵ See Google Supp. Br. at 14, 19 n.9.

¹²⁶ After the supplemental briefing requested by the Associate Director in this matter, the Bureau finalized amendments to the procedural rule. One of the miscellaneous provisions in the amendments “codifies the fact that the Director may sometimes request supplemental briefing before making a final determination, which is consistent with the 2013 rule but was not expressly discussed in the 2013 rule.” Procedures for Supervisory Designation Proceedings, 89 Fed. Reg. 30259, 30260 (Apr. 23, 2024) (discussing current 12 CFR 1091.206(b)). The amendments do not address specifically supplemental briefing by the Associate Director, given that the amendments remove the Associate Director’s adjudicative role under the procedural rule going forward, due to an organizational change in the CFPB’s internal structure. *See id.*

¹²⁷ 12 U.S.C. § 5514(a)(1)(C).

¹²⁸ Google Supp. Br. at 14.

¹²⁹ Google Supp. Br. at 19.

¹³⁰ See *supra* at 2-3.

confuses a disagreement on the merits with a process deficiency. In this proceeding, the Bureau has, as Google contends is required, articulated a standard for supervision and put forward specific evidence to satisfy that standard. The fact that Google disagrees with the standard articulated by the initiating official and believes the evidence submitted falls short of satisfying the standard does not compel the conclusion that Google has been denied notice or an opportunity to respond. Regardless, even assuming the statute could be characterized as vague, “in fleshing out the contours of vague statutory terms” the Bureau is “entitled to proceed case by case” and is not required to expound at once on the precise contours of its authority.¹³¹

Third, Google argues that the Bureau prejudged this proceeding in light of prior statements by the Bureau’s Director pertaining to Google.¹³² An analysis of this claim “must start, however, from the presumption that [administrative adjudicators] … are unbiased.”¹³³ “Mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not … disqualify” an agency adjudicator.¹³⁴ “Nor is a decisionmaker disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that he is not ‘capable of judging a particular controversy fairly on the basis of its own circumstances.’”¹³⁵ The statements cited by Google take no position on the current proceeding (which was not even underway at the time) and say nothing specific about whether Google’s products pose risks to consumers.¹³⁶ Those statement fall far short of the high burden necessary to disqualify an agency adjudicator.¹³⁷

III. Conclusion

For the reasons discussed above, the CFPB has reasonable cause to determine that the Respondent, Google Payment Corporation, is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of one or more consumer financial products or services.

IT IS ORDERED, that:

As of the date of this Order, the Consumer Financial Protection Bureau has supervisory authority over Respondent pursuant to section 1024(a)(1)(C) of the Consumer Financial Protection Act of 2010. The Bureau shall have authority over Respondent until such time as this Order is terminated consistent with 12 C.F.R. § 1091.301. Respondent may petition for termination of the Bureau’s supervisory authority no sooner than two years from the date of this Order, and no more than annually thereafter.

¹³¹ *PDK Lab’ys Inc. v. DEA*, 438 F.3d 1184, 1194 (D.C. Cir. 2006).

¹³² See Google Resp. at 23.

¹³³ *Schweiker v. McClure*, 456 U.S. 188, 195 (1982).

¹³⁴ *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass’n*, 426 U.S. 482, 493 (1976).

¹³⁵ *Id.* (quoting *United States v. Morgan*, 313 U.S. 409, 421 (1941)).

¹³⁶ See Google Resp. 23.

¹³⁷ Google argues in a footnote that the proceeding is “unfairly coercive” because a final decision designating Google for supervision could be publicly released. Google Resp. at 23 n.11. Specifically, Google asserts that it was informed that if it consented to supervision “staff would recommend that the designation not be made public.” *Id.* at 24. Google’s footnote does not identify what law it is relying on in making this objection, or point to any evidence in the record to support the footnote’s cursory characterization, so it is waived. Moreover, there simply is no consent agreement that is the product of purported coercion—Google has vigorously contested designation—and so it is unclear what prejudice Google claims to have suffered.

While this Order establishes that the Bureau has supervisory authority over the Respondent, it does not require any immediate action on the part of Respondent. The Bureau will notify Respondent if it determines that it is appropriate to require reports from, or conduct an examination of, Respondent pursuant to CFPA section 1024(b).

This Order has no bearing on, and does not preclude, the Bureau's exercise of any of its other authorities, including other supervisory authority, over Respondent. Within ten days after service of this Order, Respondent may file a submission regarding the publication of this order, pursuant to 12 C.F.R. § 1091.405(b). In that submission, Respondent should state whether it objects to publication of any portion of this Order on the basis that it is exempt from disclosure under 5 U.S.C. 552(b)(4) or (b)(6) or there is other good cause for the Director to withhold it from publication.

Dated: November 8, 2024

Rohit Chopra

Rohit Chopra
Director
Consumer Financial Protection Bureau