September 25, 2025

Submitted via Regulations.gov
Comment Intake
Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Legal Standard Applicable to Supervisory Designation Proceedings
90 Fed. Reg. 41520

The National Consumer Law Center (on behalf of its low-income clients) and Consumer Federation of America appreciate the opportunity to submit these comments on the Consumer Financial Protection Bureau's notice of proposed rulemaking (NPRM) to define "risks to consumers with regard to the offering or provision of consumer financial products or services" within the meaning of 12 U.S.C. § 5514(a)(1)(C). We oppose this proposed rule, as it directly contravenes the intention of Congress to give the Bureau considerable discretion in its exercise of this supervision authority, and it attempts to greatly reduce the Bureau's ability to address emerging threats in the financial marketplace.

Congress granted the Bureau with the authority to supervise nonbank financial companies in order to "ensur[e] 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."[1] This includes the authority to supervise a nonbank financial company that the Bureau has "reasonable cause to believe" 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."[2] "Reasonable cause" and "risks" are not defined in the statute, nor are they preceded by limiting terms or phrases that would evidence an intent of Congress to neuter this provision in the manner proposed in this NPRM. This is in contrast to other provisions of the Dodd-Frank Act where Congress expressly requires a showing of "substantial risk," "significant risk," or some other specified level of risk before regulatory action is authorized.[3] Clearly, Congress knew how to include these qualifiers and chose not to in § 5514(a)(1)(c), leading to the conclusion that it intended to grant the Bureau considerable discretion in how it exercises this supervisory authority.

The Bureau's risk-based supervision process is not a death knell for a company, nor is it a statement or finding that the company has violated the law. It simply allows the Bureau to review the conduct of a financial company that is engaging in risky conduct - this is the epitome of a financial regulator. If the financial company that receives a designation notice is in compliance

[1] 12 U.S.C. §5511(a).
[2] 12 U.S.C. §5514(a)(1)(c).
[3] 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").

with the law, this process and any resulting exams should not be concerning or burdensome. Each of the companies that could be designated has obligations to comply with federal consumer financial laws (and other applicable laws) regardless of whether the Bureau is supervising them–changing the definition of the “risks” does not affect those obligations.

Supervision generally is intended to be a cooperative process, whereby “bank management must be open and forthcoming in response to the inquiries of bank examiners, and the examiners must in turn be frank in expressing their concerns about the bank.”[4] This confidential process is mutually beneficial: the company can demonstrate its compliance or fix problems without a public enforcement action, and the Bureau can learn more about the market and its players and become more adept at identifying problems and solutions.

The purpose of supervision is to *prevent* violations of law by cooperatively working with a company to evaluate its conduct and provide guidance before harm occurs or spreads. The collaborative “back and forth” that is at the heart of supervisory exams is confidential, and most supervisory activity does not result in an enforcement action. But changing the definition as proposed in the NPRM to limit the Bureau’s supervision to instances where there is a “high likelihood of significant harm to consumers” would make this entire category of supervision duplicative of enforcement. This duplicative result cannot be what Congress intended, and falls far short of the “best reading of the statute” the Bureau ostensibly seeks to achieve with this NPRM. Enforcement is, and should be, different than supervision. A company who receives a civil investigative demand or ends up in litigation is facing a very different situation than one who converses with the Bureau about its conduct and has an opportunity to confidentially resolve problems.

The Bureau’s process for designating a company for risk-based supervision is set forth in great detail in its procedural rule finalized in 2013, and it is designed to provide adequate notice and an opportunity for companies to respond.[5] This notice and response process mirrors the intent of supervision generally: to collaboratively discuss potential issues, resolve problematic conduct, and better inform the Bureau about the marketplace. Changing the definition to essentially require a violation of law will render this process significantly less collaborative, more expensive for all parties involved due to the increased likelihood of enforcement and private litigation, and allows companies to actively harm many consumers before the Bureau is able to stop the bleeding.

Amending the definition of “risks” to instances with a high likelihood of significant harm will certainly harm consumers, as demonstrated by the two § 5514(a)(1)(C) designation proceedings which have been publicly disclosed. World Acceptance is one of the largest small loan companies in the country, servicing hundreds of thousands of loans and over $1 billion in loans receivable, and Google is one of the largest tech companies in the world. In each of these cases, the Bureau initiated the designation proceedings with the understanding that failing to do so could potentially allow massive financial losses to occur or go unaddressed. These

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[4] *In re Subpoena Served upon the Comptroller of the Currency*, 967 F.2d 630, 634 (D.C. Cir. 1992).
[5] 78 Fed. Reg. 40352

designation proceedings almost certainly had an impact on the companies' conduct in a way that helped mitigate the potential for harm - Google changed its procedures during the course of the proceedings. Had the Bureau not exercised its authority to initiate the designation proceedings, it is entirely possible that consumers could have lost vast sums of money before it weighed in. Of course, both of these proceedings have now been dismissed, reopening the significant potential for harm as the Bureau systematically attempts to dismantle itself.

The Bureau claims in the NPRM that leaving "risks" undefined injects uncertainty into the process for companies who could be designated, but amending the definition does not actually solve this hypothetical problem. There will always be some level of uncertainty about which companies the Bureau decides to designate, even under a heightened standard, but so long as companies are complying with the law, it should not present a problem. This argument also ignores the manner in which the Bureau has applied § 5514(a)(1)(c) to date and the steps it has taken to ensure that the Bureau's process here is significantly more public. The fact that "risks" are not defined in the statute does not itself mean that the Bureau will inconsistently apply the statute when it evaluates companies for supervisory designation. In the two orders which have been made public to date (Google Pay and World Acceptance), the Bureau applies an identical analysis to the facts in each case by evaluating the company and the conduct in accordance with the factors listed in § 5514(b)(1). This was part of the Bureau's reasoning for finalizing the 2022 Rule–so that companies had insight into how the Bureau evaluates companies for designation under § 5514(a)(1)(c), and to provide accountability for itself.

The NPRM also hypothesizes that financial companies face uncertainty because of the possibility that the Bureau's precedent may not be applicable to new contexts, and "also because the agency may depart from an existing precedent in a later case." But the NPRM's approach is a sledgehammer that effectively nullifies the statute altogether, rather than an acknowledgement that the Bureau must *retain* flexibility to effectively address new contexts and emerging threats. The NPRM proposes a drastic change to the statute to address a concern that is hypothetical at best, but this is not altogether surprising given the dramatic direction that new leadership has taken the Bureau in 2025.[6]

Finally, should the Bureau wish to exercise its discretion and wait until it is positive that a company has substantially harmed consumers before it proceeds with a supervisory designation proceeding, there is nothing preventing it from doing so under the current statutory regime. The NPRM's proposed amendment is wholly unnecessary if the Bureau's goal is to change its approach to supervision, and instead represents a thinly veiled attempt to hamstring any future Bureau leadership from using this Congressionally designated authority.

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[6] When new leadership was installed at the Bureau in February 2025, they immediately halted all supervision and enforcement work. Shortly thereafter, and in the midst of massive attempted layoffs amounting to 90% of the agency, Chief Legal Officer Mark Paoletta stated that the Bureau would "decrease the overall number of [supervision] 'events by 50%" and significantly reduce nonbank supervision. The Bureau is concurrently seeking to slash its authority to monitor larger participants in the nonbank marketplace, and recent reporting indicated that the Bureau dismissed 99% of bank supervision "matters requiring attention."

Congress intended the tool of risk-based supervision to be a flexible, forward looking mechanism that helps it forestall another financial crisis. Reducing it in the way the NPRM suggests will render this tool unnecessary and duplicative of enforcement.

Thank you for the opportunity to submit these comments. If you have questions, please contact Erin Witte at ewitte@consumerfed.org or Lauren Saunders at lsaunders@nclc.org.

Sincerely,

Consumer Federation of America
National Consumer Law Center, on behalf of its low income clients