

September 25, 2025

Via Electronic Delivery

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

Re: Docket No. CFPB– 2025–0018 (Legal Standard Applicable to Supervisory Designation Proceedings)

To Whom It May Concern:

The Consumer Bankers Association (CBA)¹ and the American Bankers Association (ABA)² appreciate the opportunity to respond to the request for comment on the proposal by the Consumer Financial Protection Bureau (CFPB) 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 CFPB in proceedings to designate nonbank covered persons for CFPB supervision (the Proposed Rule).³ While CBA and ABA support efforts to provide regulatory clarity, particularly in the context of supervision and enforcement, CBA and ABA caution that adopting the Proposed Rule could create gaps in the supervision of market participants, potentially resulting in consumer harm. Accordingly, CBA and ABA respectfully recommend that the CFPB refrain from adopting the Proposed Rule and instead retain its current flexible framework.

The CFPB Has a Congressional Mandate to Ensure Consistent Enforcement of Federal Consumer Financial Laws

In creating the CFPB, Congress established that the CFPB’s primary objectives under Section 1021 of the Dodd-Frank Act include ensuring that “Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition.”⁴ Congress enacted this provision because the mere existence of consumer protection laws and regulations does not ensure compliance with those laws. Instead, the laws must be enforced fairly, comparably, and transparently to ensure that legal and regulatory obligations are observed.

¹ The Consumer Bankers Association is a member-driven trade association, and the only national financial trade group focused exclusively on retail banking—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members operate in all 50 states. They include the nation’s largest bank holding companies as well as regional and super-community banks. Eighty-three percent of CBA’s members are financial institutions holding more than \$10 billion in assets.

² The American Bankers Association is the voice of the nation’s \$25 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$19.7 trillion in deposits and extend \$13.1 trillion in loans.

³ Legal Standard Applicable to Supervisory Designation Proceedings, 90 Fed. Reg. 41520 (Aug. 26, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-08-26/pdf/2025-16352.pdf>.

⁴ 12 U.S.C. § 5511(b)(4).

As part of ensuring fair competition, the CFPB must examine nonbank financial service providers engaged in similar financial activities as depository institutions. The potential for supervision encourages entities to expend the resources to develop the practices, procedures, training, and other components of an effective compliance management system that promotes the entity's compliance with consumer protection laws. Without the possibility of supervision, nonbanks may operate without the consumer protections that banks are required to uphold.

Banks are Robustly Supervised and Examined under Overlapping Regulatory Regimes

To facilitate this mandate, the CFPB has supervisory authority over certain banks and nonbanks. With respect to banks, the CFPB has supervisory authority over “insured depository institutions” and “insured credit unions,” and the affiliates thereof, with total assets of more than \$10 billion.⁵ Following initial passage of the Dodd-Frank Act, the CFPB supervised 107 depository institutions and 49 affiliates of depository institutions, for a total of 156 supervised depository institutions and depository affiliates.⁶ As of the March 31, 2025 Call Report, the CFPB now has supervisory authority over 178 depository institutions and 21 affiliates of depository institutions for a total of 199 depository institutions and depository affiliates.⁷ These institutions are supervised by the CFPB in connection with their consumer financial products and services, but are also subject to supervision by their prudential banking regulator for safety, soundness, and compliance with capital, liquidity, and risk management standards. Depository institutions not subject to examination by the CFPB remain subject to supervision and examination by their relevant prudential regulator. The net result is that all of the 4,462 insured commercial banks and savings institutions currently in operation⁸ are regularly examined.

The CFPB is the Only Regulator Able to Supervise and Examine Nonbanks, and Only under Narrow Conditions

The landscape for Federal supervision and examination of nonbanks is radically different. The CFPB is expressly authorized supervise nonbanks. No other Federal financial services regulator has the ability to exercise supervision and examination authority over such nondepository covered persons regarding consumer financial protection laws; as a result, if such nondepository covered persons are not supervised

⁵ 12 U.S.C. § 5515(a).

⁶ See CFPB, Institutions subject to CFPB supervisory authority, CFPB Depository Institutions (Based on 06/30/2011 Total Assets), available at https://files.consumerfinance.gov/f/201106_cfpb_depository-institutions.pdf.

⁷ See CFPB, Institutions subject to CFPB supervisory authority, CFPB Depository Institutions (Based on 03/31/2025 Total Assets), available at https://files.consumerfinance.gov/f/documents/cfpb_depository-institutions_2025-03.pdf.

⁸ See Press Release, Federal Deposit Insurance Corporation, Insured Institutions Report Return on Assets of 1.16 Percent and Net Income of \$70.6 Billion in the First Quarter (May 28, 2025), available at <https://www.fdic.gov/news/press-releases/2025/fdic-insured-institutions-reported-return-assets-116-percent-and-net>.

and examined by the CFPB, they are not supervised and examined regarding consumer protection at the Federal level at all.

Section 1024 of the Dodd-Frank Act outlines the CFPB’s ability to supervise five types of nondepository covered persons. Three of the five classifications of the nondepository covered persons that the CFPB may supervise and examine are very narrow. The CFPB can supervise a nondepository covered person that “offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans,”⁹ that “offers or provides to a consumer any private education loan,”¹⁰ or that “offers or provides to a consumer a payday loan.”¹¹ These three categories are relatively precise and narrowly tailored, and Congress granted this examination authority regardless of the size of the nondepository covered person engaged in these markets.

The fourth classification of noncovered depository person subject to CFPB supervision – referred to as the CFPB’s “larger participant authority” – is mildly broader. Specifically, the CFPB can supervise and examine a nondepository covered person that “is a larger participant of a market for other consumer financial products or services...”¹² To date, the CFPB has issued six rules defining larger participants of markets, five of which remain in effect¹³ and cover the following markets: the consumer reporting market;¹⁴ the consumer debt collection market;¹⁵ the student loan servicing market;¹⁶ the international money transfers market;¹⁷ and the automobile financing market.¹⁸ The CFPB recently solicited feedback on potentially reducing the thresholds for supervision most of these markets, which would decrease the number of nondepository covered

⁹ 12 U.S.C. § 5514(a)(1)(A).

¹⁰ 12 U.S.C. § 5514(a)(1)(D).

¹¹ 12 U.S.C. § 5514(a)(1)(E).

¹² 12 U.S.C. § 5514(a)(1)(B).

¹³ In December 2024 the CFPB issued the General-Use Digital Payment Applications Rule. Defining Larger Participants of a Market for General-Use Digital Consumer Payments Applications, 89 Fed. Reg. 99582 (Dec. 10, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-12-10/pdf/2024-27836.pdf>. However, the General-Use Digital Payment Applications Rule was made ineffective by a joint resolution of disapproval by Congress under the Congressional Review Act. S.J.Res.28—119th Congress (2025–2026), Public Law 119–11; see also 5 U.S.C. § 801 *et seq.*

¹⁴ Defining Larger Participants of the Consumer Reporting Market, 77 Fed. Reg. 42874 (Jul. 20, 2012), available at <https://www.govinfo.gov/content/pkg/FR-2012-07-20/pdf/2012-17603.pdf>.

¹⁵ Defining Larger Participants of the Consumer Debt Collection Market, 77 Fed. Reg. 65775 (Oct. 21, 2012), available at <https://www.govinfo.gov/content/pkg/FR-2012-10-31/pdf/2012-26467.pdf>.

¹⁶ Defining Larger Participants of the Student Loan Servicing Market, 78 Fed. Reg. 73383 (Dec. 6, 2013), available at <https://www.govinfo.gov/content/pkg/FR-2013-12-06/pdf/2013-29145.pdf>.

¹⁷ Defining Larger Participants of the International Money Transfer Market, 79 Fed. Reg. 56631 (Sept. 23, 2014), available at <https://www.govinfo.gov/content/pkg/FR-2014-09-23/pdf/2014-22310.pdf>.

¹⁸ Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, 80 Fed. Reg. 37496 (Jun. 30, 2015), available at <https://www.govinfo.gov/content/pkg/FR-2015-06-30/pdf/2015-14630.pdf>.

persons in these markets that the CFPB could exercise their supervisory authority over.¹⁹

The CFPB’s Risk-Based Supervision Authority Purposefully Affords Flexibility to Oversee Otherwise Unexamined and Unsupervised Nonbanks

Recognizing that risk to consumers could arise outside of these markets by a nondepository financial services provider of any size, the Dodd-Frank Act also gave the CFPB’s authority to supervise entities it has received complaints about that are “engaging, or [have] engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.”²⁰ This authority is intentionally, and necessarily, broader. Absent this broad risk-based supervision authority, the only nonbanks that would be supervised and examined to ensure they are not engaged in conduct that would harm consumers would be those (i) involved in real estate-secured loan origination, brokerage, or servicing, (ii) offering private education loans, (iii) offering payday loans, or (iv) larger players in the market for consumer reporting, consumer debt collection, student loan servicing, remittance transfers, or automobile financing.

The presence of nonbanks in consumer financial services markets is significantly broader than these outlined categories. For example, in 2023 the CFPB itself found that nondepository, independent mortgage companies accounted for 63.1% of first lien, 1-4 family, site-built, owner-occupied, closed-end home-purchase loans, an increase from 60.2 percent in 2022 and originated 67.1 percent of first lien, 1-4 family, site-built, owner-occupied, closed-end refinance loans.²¹ PayPal and Chime drove nearly 21% of all new checking accounts opened in 2024.²² Additionally, 72% of consumers have adopted online or mobile payment accounts in 2023.²³ As such, nonbanks play a central role in the financial lives of most Americans across various products, and the only regulator who can supervise or examine their behavior is the CFPB.

¹⁹ Defining Larger Participants of the Consumer Reporting Market, 90 Fed. Reg. 38409 (Aug. 8, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-08-08/pdf/2025-15088.pdf>; Defining Larger Participants of the International Money Transfer Market, 90 Fed. Reg. 38412 (Aug. 8, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-08-08/pdf/2025-15090.pdf>; Defining Larger Participants of the Automobile Financing Market, 90 Fed. Reg. 38415 (Aug. 8, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-08-08/pdf/2025-15089.pdf>; Defining Larger Participants of the Consumer Debt Collection Market, 90 Fed. Reg. 38418 (Aug. 8, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-08-08/pdf/2025-15091.pdf>.

²⁰ 12 U.S.C. § 5514(a)(1)(C).

²¹ CFPB, Summary of 2023 Data on Mortgage Lending (Jul. 4, 2024), available at <https://www.consumerfinance.gov/data-research/hmda/summary-of-2023-data-on-mortgage-lending/>.

²² Ron Chevlin, Why Fintechs Are Beating The Banks In New Checking Accounts, Forbes (Jan. 6, 2025), available at <https://www.forbes.com/sites/ronshevlin/2025/01/06/why-fintechs-are-beating-the-banks-in-new-checking-accounts/>.

²³ Research Data Report, Federal Reserve Bank of Atlanta, 2023 Survey and Diary of Consumer Payment Choice: Summary Results (Jun. 3, 2024), available at https://www.atlantafed.org/-/media/documents/banking/consumer-payments/survey-diary-consumer-payment-choice/2023/sdcpc_2023_report.pdf.

It is for this reason that Congress granted the CFPB broad risk-based supervision authority. It affords the CFPB the ability to nimbly respond to “risks to consumers” in the market presented by existing or emerging products that otherwise no other regulator could address. Indeed, the CFPB has exercised this authority on a number of occasions, demonstrating the important role this provision plays in facilitating quick agency action to supervise entities that present an immediate risk of harm to consumers.²⁴

Notably, the phrase “risks to consumers” is not defined in the Dodd-Frank Act. This ad hoc nature of the CFPB’s nonbank risk-based supervision due to the lack of a definition is a feature – not a deficiency – in this authority, intended to allow the agency to respond to the evolving acts and practices of nondepository covered persons that may harm consumers. As CBA and ABA have previously explained, the CFPB’s nonbank risk-based supervision authority “allows the [CFPB] to move quickly to supervise entities that present an immediate risk of harm to consumers.”²⁵ Moreover, this flexibility will help the CFPB achieve its frequently stated intent²⁶ of focusing “its enforcement and supervision activities on pressing threats to consumers.”²⁷

The CFPB’s Concerns Over the Risk-Based Supervision Authority Can Be Addressed Through Principled Use of the Agency’s Flexibility

The CFPB notes that these changes are motivated by three concerns:

- (i) desire to avoid the “danger that the [CFPB’s] application of ‘risks to consumers’ may not be consistent between orders”;

²⁴ The CFPB in the Proposed Rule states that it has exercised its supervisory authority under this provision “over fewer than twenty covered entities.” Legal Standard Applicable to Supervisory Designation Proceedings, 90 Fed. Reg. 41520, 41521 (Aug. 26, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-08-26/pdf/2025-16352.pdf>.

²⁵ CBA & ABA, *Letter re: Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders*, Docket No. CFPB-2022-0024 (May 31, 2022), available at https://consumerbankers.com/wp-content/uploads/2024/03/ABA_CBA_Comment_Letter_Nonbank_Supervision_2022_05_31_final.pdf; see also CBA & ABA, *Letter re: Procedures for Supervisory Designation Proceedings*, Docket No. CFPB-2025-0013, RIN 3170-AB34, 90 Fed. Reg. 20,401 (May 14, 2025) (Jun. 12, 2025), available at <https://www.aba.com/-/media/documents/comment-letter/jointclnonbankriskdeterminations20250612.pdf?rev=e3ff6174f6b14fbfbb3c4b63be53e1bc>.

²⁶ The CFPB under the current Administration has articulated its policy goal of recalibrating supervision and enforcement activities to target activities in the markets that are actually harming consumers. The activities of nondepository covered persons are evolving and new products by these entities are continuously being introduced into the marketplace. These new activities and products could have the potential to harm consumers based on the specific facts and circumstances. The flexibility of the risk-based supervisory authority thus actually will help the CFPB more effectively effectuate its stated aims of targeting activities in the market that will harm consumers, because the CFPB will be able to rapidly address harms in an ever-evolving marketplace.

²⁷ See CFPB, *CFPB Offers Regulatory Relief from Registration Requirements for Small Loan Providers* (Apr. 11, 2025), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-offers-regulatory-relief-from-registration-requirements-for-small-loan-providers/>; see also CFPB, *CFPB Offers Regulatory Relief for Small Loan Providers* (Mar. 28, 2025), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-offers-regulatory-relief-for-small-loan-providers/>.

- (ii) concern that the agency may depart from existing precedent interpreting “risks to consumers” in a later case “creates uncertainty for institutions facing potential designation about what standard the [CFPB] will apply to their case”; and
- (iii) “without a binding framework on the meaning of ‘risks to consumers,’ the [CFPB] may not conform to the best reading of section 1024(a)(1)(C) in individual cases.”²⁸

With respect to the first two points, we appreciate that it is incumbent upon the CFPB and its staff to exercise supervisory authority in a consistent and principled manner. Our concern, however, is that imposing limitations on that authority when not required by statute can risk undermining the agency’s Congressional mandate under Section 1021. We respectfully suggest that, regarding the third point, the best reading of Section 1024(a)(1)(C) is that Congress sought to preserve the agency’s flexibility in responding to evolving market risks. If Congress had intended for the CFPB to define “risks to consumers” in evaluating whether to exercise the agency’s nonbank risk-based supervision authority, Congress would have explicitly required the agency to do so.

CBA and ABA agree with the CFPB that ensuring consistency and foreseeability are vital for promoting a well-functioning market. We suggest that consistency and foreseeability, though, do not necessitate the CFPB restricting its statutory supervision authority in such a manner. While the other provisions of Section 1024 clearly define the scope of the CFPB’s supervisory authority, the nonbank risk-based supervision authority is purposefully broad. It ensures the CFPB can supervise nonbank market participants whose actions may harm consumers, but whose activities do not fall within the other provisions of Section 1024. In light of the foregoing, CBA and ABA respectfully recommend that the CFPB *not* modify its nonbank risk-based supervision authority²⁹ as suggested in the Proposed Rule.

Sincerely,

/s/
Brian Fritzsche
Vice President, Associate General Counsel
Consumer Bankers Association

/s/
Jonathan Thessin
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American Bankers Association

²⁸ Legal Standard Applicable to Supervisory Designation Proceedings, 90 Fed. Reg. 41520, 41520 (Aug. 26, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-08-26/pdf/2025-16352.pdf>.

²⁹ Adopting the Proposed Rule also will impact other provisions in the Dodd-Frank Act. While the Proposed Rule seeks to define “risks to consumers with regard to the offering or provision of consumer financial products or services” for purposes of 12 U.S.C. § 5514(a)(1)(C), the phrase “risks to consumers” appears in several other sections of the Dodd-Frank Act. *See, e.g.*, 12 U.S.C. § 5515(b)(1)(C). Adopting the Proposed Rule necessarily will implicate the understanding of “risks to consumers” in these contexts. While CBA urges the CFPB to not adopt the changes in the Proposed Rule, if the CFPB does adopt the changes to the Proposed Rule, the agency should explicitly clarify that the definition of “risks to consumers” should consistently apply to all instances in which that term is used under the Dodd-Frank Act.