

and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.” As explained in Revision 7 of RG 1.101, applicants and licensees generally are not required to comply with the positions in the RG.

## V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC’s public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the “Regulatory Guide” series.

## VI. Executive Order (E.O.) 12866

The Office of Information and Regulatory Affairs determined that RG 1.101 Revision 7, is not a significant regulatory action under E.O. 12866.

Dated: September 23, 2025.

For the Nuclear Regulatory Commission.

**Meraj Rahimi,**

*Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

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## CONSUMER FINANCIAL PROTECTION BUREAU

### 12 CFR Part 1091

[Docket No. CFPB–2025–0013]

RIN 3170–AB34

### Procedures for Supervisory Designation Proceedings

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Financial Protection Bureau (CFPB or Bureau) is rescinding the amendments it adopted in April 2022, November 2022, and April 2024, to the Procedures for Supervisory Designation Proceedings, with the exception of some limited process adjustments.

**DATES:** This final rule is effective October 27, 2025.

**FOR FURTHER INFORMATION CONTACT:** Dave Gettler, Paralegal Specialist, Office of Regulations, at 202–435–7700 or <https://reginquiries.consumerfinance.gov/>. If you require

this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

## SUPPLEMENTARY INFORMATION:

### I. Background

The Consumer Financial Protection Act of 2010 (CFPA) established the Bureau. Section 1024(a)(1)(C) of the CFPA authorizes the Bureau to supervise a nonbank covered person that the Bureau “has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.”<sup>1</sup>

In 2013, the CFPB issued procedures to govern these supervisory designation proceedings (2013 rule).<sup>2</sup> Under the 2013 rule, information regarding the proceedings was treated as confidential supervisory information and not publicly disclosed. The process under the 2013 rule began when the “initiating official” from the Bureau’s supervision function served a notice of reasonable cause on the respondent. The respondent had an opportunity to submit a written response. The respondent could then provide a “supplemental oral response” before the Associate Director of the Division of Supervision, Enforcement, and Fair Lending (Associate Director of SEFL), in which the initiating official also participated alongside the respondent. The Associate Director of SEFL then formulated a recommended determination to the Director of the Bureau (the Director) about whether to designate the respondent. After considering the recommended determination, the Director made a final determination, which like other information about the proceeding was confidential supervisory information. It was also possible for a respondent to elect to voluntarily consent to supervision, as an alternative to this contested process.

In April 2022, November 2022, and April 2024, the Bureau issued a series of rules (collectively, the 2022–2024 rules) that amended the 2013 rule.<sup>3</sup> Most significantly, the new rules enabled the Director to publicly release

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

<sup>2</sup> 78 FR 40352 (July 3, 2013); *see also* 85 FR 75194 (Nov. 24, 2020) (updating certain cross-references).

<sup>3</sup> 87 FR 25397 (Apr. 29, 2022); 87 FR 70703 (Nov. 21, 2022); 89 FR 30259 (Apr. 23, 2024).

the Director’s final decisions and orders designating respondents for supervision. The Bureau also removed the role of the Associate Director of SEFL from the process, citing an internal reorganization that abolished that position, and instead specified that the Director would preside over the proceeding without receiving a recommended determination. The Bureau also made various other changes.

In May 2025, the Bureau issued a notice of proposed rulemaking that requested public comment on rescinding the 2022–2024 rules and restoring the 2013 rule.<sup>4</sup> The Bureau received eight comments.<sup>5</sup> After considering the comments, the Bureau has decided to rescind the 2022–2024 rules, except that the Bureau is retaining some limited process adjustments that were contained in the 2024 rule.

### II. Legal Authority

Section 1024(b)(7) of the CFPA authorizes the CFPB to “prescribe rules to facilitate supervision” of the nonbank covered persons described in section 1024(a), as well as to facilitate “assessment and detection of risks to consumers.”<sup>6</sup> Additionally, section 1022(b)(1) provides, in relevant part, that the CFPB Director “may prescribe rules . . . as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.”<sup>7</sup> The CFPB issues this rule based on its authority under section 1024(b)(7) and section 1022(b)(1).

### III. Discussion

#### A. Public Release of Decisions and Orders

##### Proposed Rule

The proposed rule explained that the Bureau has particular concerns about the manner in which the 2022–2024 rules provided for public release of decisions and orders. If an entity consents to supervisory designation, under the procedures as amended there is no decision or order issued by the Director that is eligible for public release. However, if it exercises its statutory right to contest designation, that choice may ultimately result in a public decision and order asserting that the entity “is engaging, or has engaged, in conduct that poses risks to

<sup>4</sup> 90 FR 20401 (proposed May 14, 2025).

<sup>5</sup> The comments are available at <https://www.regulations.gov/document/CFPB-2025-0013-0001/comment>.

<sup>6</sup> 12 U.S.C. 5514(b)(7).

<sup>7</sup> 12 U.S.C. 5512(b)(1).

consumers.”<sup>8</sup> Because businesses are concerned about their public reputations, this procedural disparity may put inappropriate pressure on entities to consent to designation, even when they have good arguments that designation is unwarranted. The Bureau also requested comment on the impact of public release on supervised entities and the supervisory process. With respect to other changes made by the amendments, the Bureau’s preliminary view subject to considering comments is that they were largely unnecessary.

#### Comments

A trade association representing the U.S. business community, a trade association of financial technology firms, and a trade association whose members include installment lenders submitted comments opposing any public release of decisions and orders. Accordingly, they supported the Bureau’s proposed rescission. All three of these trade associations cited unfair reputational harm from public release. Two associations identified a risk to competition, because firms that contest designation may be competitively disadvantaged by a public order compared to firms that consent to designation and so are not the focus of a public order. Also, if a published order raises concerns about a particular type of product, competitors may be more hesitant to enter into the market and risk being labeled as an entity whose products pose a risk to consumers. The same two associations also argued that public release is inconsistent with supervisory confidentiality and harms the supervisory relationship between the Bureau and the entity.<sup>9</sup>

Two trade associations representing the banking industry submitted a comment opposing public release of decisions and orders, but instead recommended public release of the names of designated nonbank entities. These two associations argued that supervisory confidentiality is important because it encourages candid communication between an entity’s management, an entity’s board of directors, and the supervising agency. Public release discourages entities from fully and freely responding to a potential designation because

information shared in the response could be included in a published decision and order. The associations also argued that, because decisions and orders are issued at a preliminary stage before the Bureau’s supervisory examination, there will be uncertainty about whether the Bureau would ultimately find that the conduct described in the decision and order violates the law. This uncertainty could discourage conduct that the Bureau ultimately would not deem illegal, including innovative ways of designing and delivering financial services. According to the two banking trade associations, by instead publishing a list of designated nonbank entities, the Bureau would provide transparency to the public and to other market participants about which nonbanks are subject to Bureau supervision, without causing the harms from publishing decisions and orders.

Two consumer advocacy organizations, an individual commenter, and an anonymous commenter favored public release and opposed the proposed rescission. According to one organization, the current procedure helps the market, other financial firms, and the public better understand why the Bureau chose to proceed with a risk-designation for that nonbank, in a way that protects confidential information, trade secrets, and other sensitive private information. According to another organization, without transparency, the public cannot meaningfully evaluate whether the Bureau is fulfilling its mandate, and it would also deny consumers access to information about conduct by entities that could be important to their financial well-being. The organization argued that the current system does not unfairly penalize entities that contest designation because a decision and order is the product of a formal administrative process. If the Bureau nevertheless changes the current system, this organization argued that it should consider the following alternatives: offering clearer guidance on the threshold for public disclosure; allowing limited redactions to protect sensitive information in specific circumstances; or providing additional due process protections for entities facing public orders. An individual commenter argued that withholding decisions and orders from publication would obscure the Bureau’s statutory work from the public and invite litigation by advocates of public disclosure against the Bureau. Finally, an anonymous commenter argued that the public has a right to know which entities are being supervised and why;

that the possibility of public disclosure should not be viewed as coercive but as a natural consequence of engaging in a public regulatory process; and that there is no evidence that the current rules have caused harm.

#### Final Rule

After considering the comments, the Bureau is restoring the 2013 rule’s treatment of decisions and orders in supervisory designation proceedings as confidential supervisory information. As the proposed rule explained, the 2022–2024 rules can create a strong incentive for respondents to consent to designation in order to avoid a public decision and order discussing alleged risks to consumers from respondents, even in situations where a respondent may have meritorious responses to the initiating official’s notice of reasonable cause. In the Bureau’s experience, the financial services industry is highly focused on reputational concerns. The public interest is not served if the Bureau designated entities that ought not be designated but accede to designation out of fear of reputational harm. The Bureau notes that this harm could still arise if the Bureau publishes a list of designated nonbank entities, as the banking industry commenters advocated, and the reputational impact might even be greater because the reasons for the Bureau’s designations would be unclear to the public and subject to speculation.

The Bureau’s concern about reputational pressure leading to unmeritorious designations is not outweighed by interests in disclosure. A supervisory designation proceeding has a limited purpose of answering the threshold question of whether or not an entity should be subject to supervision, based on limited evidentiary material, because the Bureau has not yet engaged in supervision of the entity. Its purpose is not to guide the substantive conduct of other market participants or consumers, and so the Bureau does not accept comments arguing that the Bureau should publish decisions and orders for those purposes. The Bureau does recognize that the April 2022 and November 2022 rules placed weight on a different benefit of public release, which was transparency about Bureau decisionmaking. However, the Bureau is concerned that the redactions to decisions and orders that are necessary to protect the confidentiality of future Bureau supervisory activity, personal privacy, and commercial information can risk rendering the redacted decisions and orders potentially misleading to readers, by leaving an incomplete impression of the basis for

<sup>8</sup> 12 U.S.C. 5514(a)(1)(C).

<sup>9</sup> One association also requested that the Bureau codify a provision that states that the Bureau will not publish decisions and orders. The Bureau notes that, because of § 1091.115(c) of the proposed and final rules, the Bureau is required to treat decisions and orders as confidential supervisory information under the Bureau’s confidentiality rules, and the Bureau does not consider any further amendment on this subject to be necessary.

the designation.<sup>10</sup> Separately, because the large majority of respondents have historically voluntarily consented, the ability of the public to use decisions and orders from the minority of contested cases to understand the Bureau's supervision program is limited. Overall, the Bureau believes that the harm from publication outweighs the benefits.

Finally, the Bureau recognizes that the April 2022 and November 2022 rules invoked the parties' ability to cite published decisions and orders from past proceedings as a benefit of public release, promoting consistency and predictability. However, the Bureau has concluded that a better means of ensuring consistency and predictability is a rulemaking in which all stakeholders can provide public comments, to better define the legal standard applicable to supervisory designation proceedings. The Bureau has separately published a notice of proposed rulemaking to consider such a rule.<sup>11</sup>

#### B. Other Issues

The proposed rule stated that, with respect to other changes made by the 2022–2024 rules, the Bureau's preliminary view subject to considering comments was that they were largely unnecessary. Commenters did not provide specific comments on these other changes made by the 2022–2024 rules.

The final rule rescinds the 2022–2024 rules and reinstates the 2013 rule, with the following limited adjustments. The 2024 rule removed the role of the Associate Director of SEFL in providing a recommended determination before the Director makes a final determination, on the grounds that position no longer existed at the Bureau due to a 2024 reorganization. This final rule reinstates recommended determinations, to be made by a "recommending official" designated by the Director.<sup>12</sup> The Bureau believes that a recommended determination will enhance the Bureau's deliberative process by providing the Director with additional analysis.

The Bureau is also retaining the following process adjustments made by the 2024 rule: (a) a provision authorizing the initiating official to file

<sup>10</sup> The November 2022 rule predicted that redactions about the entity's potential violations of law and potential compliance management deficiencies, which are necessary to protect the confidentiality of future supervisory activity at the entity, would not be needed in most decisions and orders. 87 FR at 70704. However, this has not been the Bureau's experience in practice.

<sup>11</sup> 90 FR 41520 (proposed Aug. 26, 2025).

<sup>12</sup> 12 CFR 1091.108 and generally pt. 1091, subpt. B.

a written reply to the respondent's written response, which helps provide the respondent with fair notice of points the initiating official might subsequently raise orally during the "supplemental oral response";<sup>13</sup> (b) an option for the recommending official to direct that the supplemental oral response be conducted by video, as a third alternative alongside telephonic and in-person options under the 2013 rule;<sup>14</sup> (c) provisions that codify the possibility of additional supplemental briefing from the parties, which can help ensure that the recommending official and Director have full information and that respondents have a fair opportunity to respond to new issues;<sup>15</sup> (d) simplification of the provisions governing the mechanics of voluntary consent agreements, which led to some confusion under the 2013 rule;<sup>16</sup> and (e) a nomenclature update to the definition of "initiating official," in order to reflect a 2024 reorganization that replaced the two former "Assistant Directors for Supervision" with the "Supervision Director."<sup>17</sup> Unlike other changes made the 2022–2024 rules, the Bureau believes these limited changes simplify and clarify the process, and contribute to a more fair and effective process.

The Bureau is not retaining any of the other changes made by the 2024 rules, including: changes to the elements in a notice of reasonable cause; a provision stating that notices of reasonable cause can be withdrawn; changes regarding time limits, word limits, and methods of service; provisions governing proceedings with multiple respondents; and issue exhaustion provisions. The Bureau concludes that these provisions either added unnecessary complexity to the procedures or in some cases were unnecessary because they were implicit in the 2013 rule.

#### IV. Section 1022(b)(2) Analysis

In developing this rule, the Bureau has considered its benefits, costs, and impacts in a manner consistent with section 1022(b)(2)(A) of the CFPA.<sup>18</sup> In addition, the Bureau has consulted with the prudential regulators and the Federal Trade Commission, including regarding consistency of the rule with any prudential, market, or systemic objectives administered by those

agencies, in a manner consistent with section 1022(b)(2)(B) of the CFPA.<sup>19</sup>

There are generally limited data with which to quantify potential costs, benefits, and impacts of the final rule. The Bureau has conducted a limited number of supervisory designation proceedings under the existing rules, but the Bureau does not have quantitative data regarding the costs to respondents or other impacts of those proceedings. The Bureau also lacks comprehensive data that would allow quantification of any reputational costs associated with potential publication of a supervisory designation order or to assess costs associated with how such a public release may impact the supervisory process. Commenters also did not provide quantitative data in their comments.

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

In evaluating the benefits, costs, and impacts of the final rule, the Bureau considers the impacts against a baseline that includes the legal and procedural framework that currently exists regarding supervisory designation proceedings for nonbank covered persons; that is, the existing regulation as amended by the 2022–2024 rules.

The final rule would apply to covered persons as defined in the CFPA, which are generally entities that engage in offering or providing a consumer financial product or service. There is a large population of firms potentially affected by this final rule.<sup>20</sup> The Bureau does not currently have access to comprehensive data on the number of nonbank covered persons that may be subject to supervisory authority. To establish an estimate of the population of nonbank covered entities potentially subject to the final rule, the Bureau uses

<sup>19</sup> 12 U.S.C. 5512(b)(2)(B). In order to inform the rulemaking more fully the Bureau performed the described analysis and consultations.

<sup>20</sup> The procedures in the existing 12 CFR part 1091 are only to assess whether a nonbank covered person will be made subject to the Bureau's supervisory authority based on a determination under section 1024(a)(1)(C) of the CFPA, 12 U.S.C. 5514(a)(1)(C). In general, there is no reason to make a determination under section 1024(a)(1)(C) with respect to a nonbank covered entity subject to the Bureau's supervisory authority under some other provision of section 1024(a) of the CFPA, 12 U.S.C. 5514(a). However, this is possible. Therefore, the Bureau does not exclude from its analysis nonbank covered entities that may be subject to supervision under a separate provision of section 1024(a).

<sup>13</sup> 12 CFR 1091.105(f).

<sup>14</sup> 12 CFR 1091.103(a)(2)(iii), 1091.105(b)(3), 1091.106(b)(1).

<sup>15</sup> 12 CFR 1091.108(g) 1091.109(f).

<sup>16</sup> 12 CFR 1091.103(b), 1091.110.

<sup>17</sup> 12 CFR 1091.102.

<sup>18</sup> 12 U.S.C. 5512(b)(2)(A).

publicly available data from the 2022 Economic Census (the most recent version currently available), which provides counts of firms by North American Industry Classification System (NAICS) industry codes.<sup>21</sup> Based on the 2022 Economic Census data for NAICS codes that align with financial services,<sup>22</sup> the Bureau estimates there are approximately 154,430 entities in these covered industries. It should also be noted that this estimate does not include other nonbank covered entities not categorized in one of the enumerated industries, *e.g.*, if consumer financial services are not their primary business activity. To date, the Bureau has exercised its supervisory authority under 12 CFR part 1091 over fewer than 20 covered entities.<sup>23</sup>

The final rule makes two major changes relative to the existing regulation in the procedure for designating covered entities for supervision.<sup>24</sup> First, it reinstates recommended determinations, to be made by a “recommending official” designated by the Director,<sup>25</sup> which was formerly performed by the Associate Director of SEFL. The 2024 amendment eliminated the role of the Associate Director of SEFL in supervisory designation proceedings, on the grounds that the position no longer existed at the Bureau due to a 2024 reorganization.

The final rule reinstates a role for a recommending official, who is the recipient of any written response, reply, and supplemental oral response, may request a supplemental briefing, and drafts a recommended determination for the Director. After this, the Director considers the materials and recommended determination and may

<sup>21</sup> U.S. Census Bureau, “2022 Economic Census,” <https://www.census.gov/programs-surveys/economic-census/year.2022.html> (accessed August 18, 2025).

<sup>22</sup> The relevant NAICS codes examined are 5222 (Nondepository credit intermediation); 5223 (Activities related to credit intermediation); 523940 (Portfolio management and investment advice); 532112 (Passenger car leasing); 532120 (Truck, utility trailer, and recreational vehicle rental and leasing); 5313 (Activities related to real estate); 561450 (Consumer reporting); and 561440 (Debt collection). Four-digit industry codes are used for broad industries that are likely to be entirely made up of firms that are subject to this rule whereas six-digit industry codes are used for narrower industries when the broad classification is likely to include firms not subject to this rule.

<sup>23</sup> The Bureau’s designations of Google Payment Corp., which formerly provided a peer-to-peer payment product, and World Acceptance Corp., which is an installment lender, have been publicly disclosed.

<sup>24</sup> Separately, the Bureau is considering amending 12 CFR 1091 to explicitly address the meaning of “risks to consumers,” *see* 90 FR 41520 (proposed Aug. 26, 2025).

<sup>25</sup> 12 CFR 1091.108 and generally pt. 1091, subpt. B.

request a supplemental briefing or consult with decisional employees, and makes a final determination to accept, modify, or reject the recommending official’s recommendation.

Relative to the 2024 rule, the final rule could extend the timeline of the supervisory designation process in contested proceedings given that both the recommending official and Director must consider the matter. Under both the 2024 rule and the final rule, a respondent who opts for contested proceedings would provide a written response and have the option to request a supplemental oral response. After this, under the final rule the recommending official may request a supplemental briefing and, after the recommending official makes their recommendation to the Director, the Director may request a supplemental briefing. In contrast, under the 2024 rule, after the optional supplemental oral response, only the Director may request a supplemental briefing. There is a possibility that, under the final rule, the recommending official might request some supplemental briefing from the respondent that the Director would not have chosen to request as sole decisionmaker under the 2024 rule, if the recommending official has a different perspective than the Director about what information should be considered. To the extent respondents are asked to prepare additional supplemental briefing, that could hypothetically represent an increase in cost for the respondent, although the Bureau does not have reason to think that increased supplemental briefing will be common. If it arises, the additional supplemental briefing could contribute to enhancing the Bureau’s decisionmaking as noted below, which could ultimately benefit respondents.

The final rule could increase the information available to respondents, since it requires both a recommended determination and a final determination and associated rationale be made available to the respondent. This could increase respondents’ insight into the Bureau’s decision-making process, which could benefit respondents insofar as it clarifies the risk assessment the Bureau undertakes in supervisory designation procedures.<sup>26</sup>

The final rule would provide the Director with additional analysis from the recommending official prior to

<sup>26</sup> Due to the second major change outlined below, the rescission of the Director’s option to publish a version of orders after contested proceedings, these benefits would be limited to only the respondent and not other covered persons.

making a final determination.<sup>27</sup> In some cases, as noted above, the recommending official’s analysis may be informed by supplemental briefing that the Director would not have requested if the Director were the sole decisionmaker. But the Bureau also believes a recommended determination will be beneficial when there is no supplemental briefing. The Bureau believes that a recommended determination will enhance the Bureau’s deliberative process. Mandating the consultation of at least one other employee could have an ambiguous impact on covered persons in contested proceedings. The recommending official and Director could have different interpretations of the evidence which may affect whether the Director finds a reasonable basis for a supervisory designation, depending on the particulars of the case. It is possible that in situations where the evidence presented for supervisory designation is not clear cut, mandating the Director to consider at least one other official’s analysis may increase the likelihood of designation in cases where conduct poses risks to consumers while also decreasing the likelihood of designation in cases where no risk exists, which would generally benefit both consumers and covered persons; that is, it may decrease the probability of both “false positives” and “false negatives” in the supervisory designation process. It should be noted, however, that under the current and final rule the Director may consult with other decisional employees in coming to a final determination.

The second major change is the elimination of the power for the Director to determine whether to publicly release a supervisory designation order. At the time of the 2022–2024 rules, the Bureau believed that publication of orders may benefit covered persons by allowing both respondents and the Bureau to rely on reasoning in prior public orders as precedent in future contested proceedings and also provide insight into the Bureau’s decision-making process and risk assessments. The Bureau believed this may benefit covered persons and consumers by reducing uncertainty around the decision-making process and risk

<sup>27</sup> Under the current rule, the Director has the option to consult with decisional employees, an option the Director retains under the new rule. The new rule mandates that the designated recommending official submit a recommendation and associated reasoning to the Director for consideration. In both scenarios, the Director ultimately retains the power to accept, reject, or modify any recommendations the Director may receive.

assessment the Bureau undertakes. The Bureau is also aware of arguments from public comments that orders may benefit consumers by providing information regarding particular potentially harmful practices by covered persons that arguably could inform consumer behavior, although that was not the intended purpose of publication and as discussed below this potential benefit is likely limited. To the extent the above effects materialized as benefits of the 2022–2024 rules, they would be costs of this rule.

The Bureau now believes that the above benefits are limited. There have only been two published orders under the 2022 rules, offering limited insight to the public into the decision-making process and risk assessment undertaken by the Bureau.<sup>28</sup> Additionally, there is a risk that the redactions to decisions and orders that are necessary to protect the confidentiality of future Bureau supervisory activity, personal privacy, and commercial information can risk rendering the redacted decisions and orders potentially misleading to readers, reducing the value of publication. Moreover, as emphasized by the Bureau in the November 2022 rule,<sup>29</sup> the finding of reasonable cause in a supervisory designation proceeding does not mean there has been any wrongdoing on the part of respondents. If consumers interpret published orders as evidence of wrongdoing or a higher likelihood of wrongdoing, then publishing orders may result in reputational costs for respondents which could lead them to enter into consent agreements even if they have a reasonable probability of a finding of no reasonable cause for designation after contested proceedings or could lead them to avoid entering into a consumer finance product market altogether.<sup>30</sup> It is

<sup>28</sup> 12 CFR 1091 proceedings have been initiated a limited number of times, and fewer than ten percent of orders have been published because the remainder were entered by consent.

<sup>29</sup> See 87 FR at 70703.

<sup>30</sup> The ability for respondents to enter a consent agreement under the current rule mitigates this effect to a degree. Consider a simple setting where firms enter a market if expected net benefits of entry,  $b$ , exceed expected costs associated with a supervisory designation process being started,  $q(\min\{p(s+c)+k, s\})$ , where  $q$  is the probability the Bureau begins 1091 proceedings,  $p$  is the probability reasonable cause is found in contested proceedings,  $s$  is the cost of supervision which is assumed to be the same after reasonable cause is found in contested proceedings or after a consent agreement is entered,  $c$  is reputational cost associated with a public order, and  $k$  is the cost of entering into contested proceedings. Firms that will be induced to enter a market by the proposed rule eliminating costs  $c$  would have an expected net benefit of entering into a market  $q(ps+k) \leq b \leq q\min\{p(s+c)+k, s\}$ . That is, their expected benefits must exceed the expected costs associated

also possible that publishing orders may result in respondents being less candid in their responses to the Notice of Reasonable Cause.<sup>31</sup>

Ultimately, due to the limited number of times the Bureau has initiated supervisory designation proceedings, the limited number of public orders, and the lack of data on costs associated with contested hearing, reputational costs, supervisory costs and how they are affected by relations between the Bureau and covered persons, and benefits associated with a public record of orders, the Bureau is unable to quantify the relevant benefits and costs associated with the proposed rule to a reasonable degree of certainty. Although not quantifiable, as discussed earlier in this preamble, the Bureau's judgment is that the harm from publication is more compelling as a policy matter than the benefits.

This final rule will not have an impact on insured depository institutions or insured credit unions with \$10 billion or less in assets as described in section 1026(a) of the CFPA.<sup>32</sup> Nor will the final rule have a unique impact on rural consumers.

## V. Executive Order 12866

The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that this action is not a “significant regulatory action” under Executive Order 12866, as amended.<sup>33</sup>

with contested proceedings under the new rule but be less than the minimum of expected costs associated with contested proceedings under the new rule and the expected costs associated with supervision after a consent agreement. This model makes many simplifying assumptions, but the intuition here is that firms with expected benefits that exceed expected supervisory costs but are less than expected costs associated with contested proceedings under the current rule are not marginal firms when considering entry, since they may already opt for a consent agreement to avoid any expected reputational costs.

<sup>31</sup> Note that this effect is likely mitigated by provisions in the current rule that prohibit publication of any materials that are exempt from disclosure by 5 U.S.C. 552(b)(4) or (b)(6).

<sup>32</sup> 12 U.S.C. 5516(a).

<sup>33</sup> Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

## VI. Other Regulatory Requirements

This is a rule of agency organization, procedure, or practice, and, therefore, exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.<sup>34</sup> However, the Bureau accepted comments on the rule and is issuing this rule after considering those comments.

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>35</sup> Moreover, the Bureau's Director certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, an analysis is also not required on that basis.<sup>36</sup> This is because the number of entities that will be subject to supervisory designation proceedings is small, and within that group the number that would be small entities is likely to be either none or in the single digits each year, representing a very small fraction of small entities in the relevant consumer finance markets.

The Bureau has determined that this rule does not contain any new or substantively revised information collection requirements that would require approval by OMB under the Paperwork Reduction Act.<sup>37</sup>

In an abundance of caution, pursuant to the Congressional Review Act,<sup>38</sup> the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. OMB has designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

### List of Subjects in 12 CFR Part 1091

Administrative practice and procedure, Consumer protection, Credit, Trade practices.

### Authority and Issuance

■ As discussed above, the Bureau revises 12 CFR part 1091 to read as follows:

### PART 1091—PROCEDURES FOR SUPERVISORY DESIGNATION PROCEEDINGS

Sec.

#### Subpart A—General

1091.100 Scope and purpose.  
1091.101 Definitions.

<sup>34</sup> 5 U.S.C. 553(b).

<sup>35</sup> 5 U.S.C. 603, 604.

<sup>36</sup> 5 U.S.C. 605(b).

<sup>37</sup> 44 U.S.C. 3501–3521.

<sup>38</sup> 5 U.S.C. 801 *et seq.*

**Subpart B—Determination and Voluntary Consent Procedures**

- 1091.102 Issuance of Notice of Reasonable Cause.
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**Authority:** 12 U.S.C. 5512(b)(1), 5514(a)(1)(C), 5514(b)(7).

**Subpart A—General****§ 1091.100 Scope and purpose.**

This part sets forth procedures to implement section 1024(a)(1)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203 (12 U.S.C. 5514(a)(1)(C)) (Dodd-Frank Act), and establishes rules to facilitate the Bureau's supervisory authority over certain nonbank covered persons pursuant to section 1024(b)(7) of the Dodd-Frank Act (12 U.S.C. 5514(b)(7)).

**§ 1091.101 Definitions.**

For the purposes of this part, the following definitions apply:

*Bureau* means the Consumer Financial Protection Bureau.

*Consumer* means an individual or an agent, trustee, or representative acting on behalf of an individual.

*Consumer financial product or service* means any financial product or service, as defined in 12 U.S.C. 5481(15), that is described in one or more categories under:

- (1) 12 U.S.C. 5481(15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or
- (2) Clause (i), (iii), (ix), or (x) of 12 U.S.C. 5481(15)(A) and is delivered, offered, or provided in connection with a consumer financial product or service referred to in paragraph (1) of this definition.

*Decisional employee* means any employee of the Bureau who has not engaged in:

(1) Assisting the initiating official in either determining whether to issue a Notice of Reasonable Cause, or presenting the initiating official's position in support of a Notice of Reasonable Cause, either in writing or in a supplemental oral response, to the recommending official; or

(2) Assisting the recommending official in the preparation of a recommended determination.

*Director* means the Director of the Bureau or his or her designee. If there is no Director, the term shall mean a person authorized to perform the functions of the Director under this part, or his or her designee.

*Executive Secretary* means the Executive Secretary of the Bureau.

*Initiating official* means the Supervision Director or another Bureau employee designated by the Director to initiate proceedings under this part.

*Nonbank covered person* means, except for persons described in 12 U.S.C. 5515(a) and 5516(a):

- (1) Any person that engages in offering or providing a consumer financial product or service; and
- (2) Any affiliate of a person described in paragraph (1) of this definition if such affiliate acts as a service provider to such person.

*Notice of Reasonable Cause and Notice* mean a Notice issued under § 1091.102.

*Person* means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

*Recommending official* means an employee designated by the Director to make a recommended determination under this part.

*Respondent* means a person who has been issued a Notice of Reasonable Cause under § 1091.102.

*Response* means the response to a Notice of Reasonable Cause filed by a respondent with the recommending official under § 1091.105.

**Subpart B—Determination and Voluntary Consent Procedures****§ 1091.102 Issuance of Notice of Reasonable Cause.**

(a) An initiating official is authorized to issue a Notice of Reasonable Cause to a person stating that the Bureau may have reasonable cause to determine that the respondent 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 consumer financial products or services.

(b) A Notice of Reasonable Cause shall be based on:

(1) Complaints collected through the system under 12 U.S.C. 5493(b)(3); or

(2) Information from other sources.

(c) Except as provided in § 1091.111, a Notice of Reasonable Cause shall contain the information set forth in § 1091.103, and be served on respondent as described in § 1091.104.

**§ 1091.103 Contents of Notice.**

(a) A Notice of Reasonable Cause shall contain the following:

- (1) A description of the basis for the assertion that the Bureau may have reasonable cause to determine that a respondent 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 consumer financial products or services, including a summary of the documents, records, or other items relied on by the initiating official to issue a Notice. Such summary will be consistent with the protection of sensitive information, including compliance with Federal privacy law and whistleblower protections; and
- (2) A statement informing a respondent that:
  - (i) A respondent may file with the recommending official a written response to a Notice of Reasonable Cause no later than 30 days after the Notice is served on the respondent;
  - (ii) The written response shall include the elements addressed in § 1091.105(b);
  - (iii) A respondent may request in its written response to a Notice an opportunity to present a supplemental oral response to the recommending official as set forth in § 1091.106, including its preference that the supplemental oral response be by telephone, by video conference, or in person at the Bureau's headquarters in Washington, DC;
  - (iv) A failure timely to file a response to a Notice shall constitute a waiver of a respondent's right to respond, and may result in a default determination by the Director, based on the Notice, that a respondent 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 consumer financial products or services and the issuance of a decision and order subjecting a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C);
  - (v) The recommending official shall serve a respondent with a notice of the date and time of a supplemental oral response, if a respondent has requested the opportunity to present a supplemental oral response, within 14

days of the recommending official's receipt of a timely-filed response;

(vi) If a respondent has not requested the opportunity to present a supplemental oral response, the recommending official shall, not later than 45 days after receiving a timely-filed response, or not later than 45 days after the service of a Notice of Reasonable Cause when a respondent fails to file a timely response, provide a recommended determination to the Director including either a proposed decision and order subjecting a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C), or a proposed notification that the Bureau has determined not to subject a respondent to the Bureau's supervisory authority at that time, pursuant to § 1091.108; and

(vii) In connection with a proceeding under this part, including a petition for termination under § 1091.113, all documents, records or other items submitted by a respondent to the Bureau, all documents prepared by, or on behalf of, or for the use of the Bureau, and any communications between the Bureau and a person, shall be deemed confidential supervisory information under 12 CFR 1070.2(i).

(b) A Notice shall be accompanied by a proposed consent agreement under § 1091.110.

(c) Nothing in this section shall be construed as requiring the Bureau to produce any documents or other information to a respondent other than as set forth in this section.

#### § 1091.104 Service of Notice.

(a) A Notice of Reasonable Cause shall be served on a respondent as follows:

(1) *To individuals.* A Notice shall be served on a respondent that is a natural person by delivering a copy of the Notice to the individual or to an agent authorized by appointment or by law to receive such a Notice. Delivery, for purposes of this paragraph, means handing a copy of a Notice to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of a Notice addressed to the individual through the U.S. Postal Service by Registered Mail, Certified Mail or Express Mail delivery, or by third-party commercial carrier, for overnight delivery and obtaining a confirmation of receipt.

(2) *To corporations or entities.* Notice shall be served on a person other than an individual by delivering a copy of a

Notice to an officer, managing or general agent, or any other agent authorized by appointment or law to receive such a Notice, by any method specified in paragraph (a)(1) of this section.

(3) *Upon persons registered with the Bureau.* In addition to any other method of service specified in paragraph (a)(1) or (2) of this section, Notice may be served on a person registered with the Bureau by sending a copy of a Notice addressed to the most recent business address shown on the person's registration form by U.S. Postal Service Certified, Registered, or Express Mail and obtaining a confirmation of receipt or attempted delivery.

(4) *Upon persons in a foreign country.* Notice may be served on a person in a foreign country by any method specified in paragraph (a)(1) or (2) of this section, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(5) *Record of service.* The Bureau shall maintain a record of service of a Notice on a respondent, identifying the party given Notice, the method of service, the date of service, the address to which service was made, and the person who made service. If service is made in person, the certificate of service shall state, if available, the name of the individual to whom a Notice was given. If service is made by U.S. Postal Service Registered Mail, Certified Mail, or Express Mail, the Bureau shall maintain the confirmation of receipt or attempted delivery.

(6) *Waiver of service.* In lieu of service as set forth in paragraph (a)(1) or (2) of this section, a person may be provided a copy of a Notice by First Class Mail or other reliable means if a written waiver of service is obtained from the person to be served. In the case of a respondent that is not a natural person, a written waiver may be provided by an officer, managing or general member, or partner authorized to represent the respondent.

(b) The initiating official shall promptly submit a copy of a Notice and a copy of the certificate of service to the recommending official.

#### § 1091.105 Response.

(a) *Timing.* Within 30 days of service of a Notice, a respondent shall file any response with the recommending official according to the instructions set forth in a Notice.

(b) *Content of the response.* (1) The response shall set forth the basis for a respondent's contention that the respondent is not 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 consumer financial products or services.

(2) The response shall include all documents, records, or other evidence a respondent wishes to use to support the arguments or assertions set forth in the response.

(3) Any request to present a supplemental oral response, including the respondent's preference that the supplemental oral response be by telephone, by video conference, or in person at the Bureau's headquarters in Washington, DC, must be included in the response. A respondent's failure to request to present a supplemental oral response shall constitute a waiver of the opportunity to present a supplemental oral response.

(4) A response shall include an affidavit or declaration, made by the individual respondent if a natural person, or, if a corporate or other entity that is not a natural person, by an officer, managing or general member, or partner authorized to represent the respondent, affirming that the response is true and accurate and does not contain any omissions that would cause the response to be materially misleading.

(5) Notwithstanding any other provisions of this paragraph (b), a respondent may respond to a Notice of Reasonable Cause by voluntarily consenting to the Bureau's authority to supervise the respondent under 12 U.S.C. 5514 by completing and executing the consent agreement form provided to the respondent with a Notice of Reasonable Cause in accordance with § 1091.103(b).

(c) *Default.* Failure of a respondent to file a response within the time period set forth in paragraph (a) of this section shall constitute a waiver of the respondent's right to respond, and shall, based on the Notice, authorize the recommending official, without further notice to the respondent, to issue a proposed decision and order as provided in § 1091.108(c)(1) and the Director to issue a decision and order as provided in § 1091.109(a)(1).

(d) *Waiver.* A respondent shall be deemed to have waived the right, at any future stage of the recommending official's or the Director's consideration of a matter, and in any petition for judicial review of an order issued pursuant to § 1091.109(a)(1), to rely on any argument, record, document, or other information that the respondent does not raise or include in its response.

(e) *No discovery.* There shall be no discovery in connection with a response.

(f) *Reply by initiating official.* If the respondent files a written response, within 21 days the initiating official may file a reply with the recommending official and serve it on the respondent.

**§ 1091.106 Supplemental oral response.**

(a) A respondent may request in a response under § 1091.105 the opportunity to present to the recommending official a supplemental oral response in support of a respondent's assertion that the respondent is not 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 consumer financial products or services.

(b) The conduct of a supplemental oral response shall be subject to the following procedures:

(1) The recommending official will determine whether the supplemental oral response will be by telephone, by video conference, or in person at the Bureau's headquarters in Washington, DC, after considering the preference of the respondent stated in the written response;

(2) The recommending official may impose any limitations on the conduct of a supplemental oral response, including but not limited to establishing a time limit for the presentation of a supplemental oral response, and limiting the subjects to be addressed in a supplemental oral response;

(3) There shall be no discovery permitted or witnesses called in connection with a supplemental oral response;

(4) If a respondent is a corporate or other entity, and not a natural person, the respondent shall be represented in any supplemental oral response by:

(i) An officer, managing or general member, or partner authorized to represent the respondent; or

(ii) An attorney in good standing of the bar of the highest court of any State.

(5) If a respondent is a natural person, the respondent shall be represented in any supplemental oral response by:

(i) Himself or herself; or

(ii) An attorney in good standing of the bar of the highest court of any State.

(6) The recommending official shall cause an audio recording of a supplemental oral response to be made by a court reporter. A respondent may purchase a copy or transcript of the recording at the respondent's own expense.

(c) The initiating official may participate in any supplemental oral response conducted under this section.

(d) The Associate Director shall serve on a respondent, within 14 days after

the Associate Director receives the respondent's timely-filed response requesting a supplemental oral response, a notice setting forth the date, time, and general information relating to the conduct of a supplemental oral response. The date of a supplemental oral response shall be scheduled not less than ten days after the date the respondent is served with the notice of supplemental oral response.

(e) The notice of supplemental oral response shall be served on a respondent pursuant to § 1091.107.

(f) The recommending official shall send a copy of the notice of supplemental oral response to the initiating official.

(g) A respondent's failure to participate in a supplemental oral response scheduled by the recommending official shall constitute the respondent's waiver of the opportunity to present a supplemental oral response.

**§ 1091.107 Manner of filing and serving papers.**

Unless otherwise specified by the recommending official or Director, a respondent shall file the response and any other paper with the Executive Secretary at the mailing or electronic address provided by the Bureau, and the initiating official, recommending official, and Director shall serve any paper, other than a Notice as set forth in § 1091.104, on a respondent, by:

(a) Electronic transmission upon any condition specified by the recommending official or Director; or

(b) Any of the following methods if a respondent demonstrates electronic filing is not practicable and the recommending official or Director permits:

(1) Personal delivery;

(2) Delivery through a reliable commercial courier service or overnight delivery service; or

(3) Mailing the papers by U.S. Postal Service First Class, Registered, Certified, or Express Mail.

**§ 1091.108 Recommended determination.**

(a) If a respondent did not voluntarily consent to the Bureau's supervision authority, and did not request the opportunity to present a supplemental oral response, not later than 45 days after receipt of a timely-filed response, or not later than 45 days after the service of a Notice of Reasonable Cause when a respondent fails to file a timely response, the recommending official shall make a recommended determination whether there is reasonable cause for the Bureau to determine that the respondent 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 consumer financial products or services which should result in an order subjecting the respondent to the Bureau's authority under 12 U.S.C. 5514(a)(1)(C).

(b) If a respondent did request the opportunity to present a supplemental oral response, not later than 90 days after service of a Notice of Reasonable Cause, the recommending official shall make a recommended determination whether there is reasonable cause for the Bureau to determine that the respondent 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 consumer financial products or services which should result in an order subjecting the respondent to the Bureau's authority under 12 U.S.C. 5514(a)(1)(C).

(c) Upon making the recommended determination described in paragraph (a) or (b) of this section, the recommending official shall submit to the Director either:

(1) A proposed decision and order that would subject a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C) if adopted by the Director; or

(2) A proposed notification that a respondent should not be subjected to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C) based on the proceedings. Such a notification shall have no precedential effect and shall not prevent the issuance of another Notice of Reasonable Cause pursuant to either § 1091.102, or the procedures set forth in § 1091.111, at any time, or from issuance of a decision and order based on another Notice recommending that a respondent be subject to the Bureau's authority pursuant to either of those sections.

(d) Any proposed decision and order issued by the recommending official pursuant to paragraph (c)(1) of this section shall set forth:

(1) A statement that the recommending official has preliminarily determined based on reasonable cause that a respondent 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 consumer financial products or services;

(2) The basis for the recommending official's determination; and

(3) A proposed order directing that, pursuant to this determination, as of a specified date a respondent shall be

subject to the Bureau's supervisory authority under 12 U.S.C. 5514.

(e) The recommending official shall include with the recommended determination submitted to the Director copies of the following:

- (1) The Notice of Reasonable Cause;
- (2) The record of service of a Notice of Reasonable Cause;
- (3) A respondent's response and any documents, records, or other items filed with the written response;
- (4) Any document, record, or other item considered by the recommending official to be material in making a recommended determination; and
- (5) An audio recording of a supplemental oral response, if a supplemental oral response was conducted, and/or a transcript if a transcript was prepared at a respondent's request or if requested by the Director.

(f) The requirement that the recommending official provide to the Director the items described in paragraph (e) of this section shall confer no substantive rights on a respondent and any omission of an item may be cured by the recommending official to the extent applicable.

(g) *Supplemental briefing.* The recommending official may, at any time before making a recommended determination, request that the respondent and initiating official provide any supplemental briefing that the recommending official considers appropriate.

**§ 1091.109 Determination by the Director.**

(a) Not later than 45 days after receipt of the recommending official's recommended determination, the Director shall, after considering the recommended determination and all documents, records, and other items submitted therewith by the recommending official, make a determination either adopting without revision, modifying, or rejecting the recommended determination, and shall issue to respondent, with copies to the recommending official and the initiating official:

- (1) A decision and order subjecting the respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C); or
- (2) A notification that the Director has determined that the respondent is not subject to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C) as a result of the proceedings. Such notification shall have no precedential effect and shall not prevent the issuance of another Notice of Reasonable Cause pursuant to either § 1091.102, or the procedures set forth in § 1091.111, at

any time, or the issuance of an order based on another Notice subjecting the respondent to the Bureau's authority pursuant to either of those sections.

(b) Any decision and order issued by the Director pursuant to paragraph (a)(1) of this section shall include:

- (1) A statement that the Director adopts the recommending official's proposed decision and order without revision as the Director's decision and order, or that the Director rejects or modifies the recommending official's proposed determination for reasons set forth by the Director;
- (2) A statement that the Director has determined that the Bureau has reasonable cause to determine that a respondent 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 consumer financial products or services;
- (3) The basis for the Director's determination, which may be an adoption of the basis set forth in the recommending official's proposed decision;

(4) An order directing that, pursuant to this determination, as of a specified date a respondent shall be subject to the Bureau's supervisory authority under 12 U.S.C. 5514 and informing a respondent that the respondent may petition for termination of the Bureau's supervisory authority no sooner than two years from the date of the order, and no more than annually thereafter; and

(5) A copy of the recommended determination issued by the recommending official.

(c) Only decisional employees may advise and assist the Director in the consideration and disposition of a proceeding under this part.

(d) A decision and order issued pursuant to paragraph (a)(1) of this section shall constitute final agency action under 5 U.S.C. 704.

(e) Any item required to be served on a respondent under this section shall be served pursuant to § 1091.107.

(f) The Director may, at any time before making a determination, request that the respondent and initiating official provide any supplemental briefing that the Director considers appropriate.

**§ 1091.110 Voluntary consent to Bureau's authority.**

(a) At any time, a person and the initiating official may enter into a consent agreement by which the person voluntarily consents to the Bureau's supervisory authority under 12 U.S.C. 5514. The consent agreement shall

constitute an order authorized by 12 U.S.C. 5514(a)(1)(C).

(b) A consent agreement under this section does not constitute an admission that a person 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 consumer financial products or services.

(c) A consent agreement may specify a period of time that the person will be subject to the Bureau's authority under 12 U.S.C. 5514. If the consent agreement specifies a period of time, it shall not be eligible for a petition for termination pursuant to § 1091.113. If the consent agreement does not specify a period of time, the consent agreement will continue until terminated pursuant to § 1091.113.

(d) A consent agreement under this section shall state that the person waives any right to judicial review of the consent agreement.

(e) The initiating official encloses a proposed consent agreement with the Notice of Reasonable Cause under § 1091.103(b).

**§ 1091.111 Notice and response included in adjudication proceeding otherwise brought by the Bureau.**

(a) Notwithstanding §§ 1091.102 through 1091.106, the Bureau may, in its discretion, provide the notice and opportunity to respond required by 12 U.S.C. 5514(a)(1)(C) in a notice of charges otherwise brought by the Bureau pursuant to 12 CFR 1081.200 and the adjudication proceedings pursuant to part 1081. Also, a person may agree to submit to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C) as part of a consent order entered into in connection with an adjudication proceeding or civil action.

(b) If the Bureau chooses to proceed in the manner described in paragraph (a) of this section, it shall so indicate in the notice of charges, and any order of the Director resulting from the notice of charges shall constitute the order referred to in 12 U.S.C. 5514(a)(1)(C).

(c) If the Bureau proceeds pursuant to paragraph (a) of this section, the provisions of §§ 1091.101 through 1091.110, and §§ 1091.113 through 1091.115 will be inapplicable to such proceeding.

**§ 1091.112 No limitation on relief sought in civil action or administrative adjudication.**

Nothing in this part shall be construed to limit the relief the Bureau may seek in any civil action or administrative adjudication, including but not limited to, seeking an order to have a person deemed subject to the

Bureau's supervisory authority under 12 U.S.C. 5514, including for the reasons set forth in 12 U.S.C. 5514(a)(1)(C).

### Subpart C—Post-Determination Procedures

#### § 1091.113 Petition for termination of order.

(a) Any person subject to an order issued pursuant to § 1091.109(a)(1) may, no sooner than two years after issuance of such an order and no more frequently than annually thereafter, petition the Director for termination of the order.

(b) A petition for termination submitted pursuant to paragraph (a) of this section shall set forth the reasons supporting termination of the order, including any actions taken by a respondent since issuance of the order to address the conduct that led to issuance of the order, and may include any supporting information or evidence that the petitioner believes is relevant to the Director's determination of the matter.

(c) A petition for termination shall be filed by the petitioner with the Executive Secretary at the mailing or electronic address provided by the Bureau.

(d) The Director shall, promptly upon receipt of a petition for termination, send a copy of the same to the initiating official.

(1) The initiating official may, within 30 days of his or her receipt of a copy of a petition for termination, file with the Director a response to the petition stating whether the initiating official recommends that the order be terminated, or modified, or that the petition for termination be denied and the basis for such recommendation.

(2) The initiating official shall serve a copy of the response to a petition for termination on the petitioner pursuant to § 1091.107 at the time of filing it with the Director.

(e) Not later than 90 days after submission of a petition under paragraph (a) of this section, the Director shall issue a written decision either terminating or modifying the order, or denying the petition. If the Director modifies the order or denies the petition, the Director shall explain the basis for his or her decision with respect to the petition and send the written decision to the petitioner and the initiating official.

(1) The Director shall serve the written decision on a petition for termination of order on a respondent pursuant to § 1091.107.

(2) The Director shall send a copy of the written decision on a petition for termination of order to the

recommending official and initiating official promptly upon issuing the written decision.

(3) The decision of the Director made pursuant to this paragraph (e) shall constitute final agency action under 5 U.S.C. 704.

### Subpart D—Time Limits and Deadlines

#### § 1091.114 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this part, or by order of the recommending official or Director, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday as set forth in 5 U.S.C. 6103(a). When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except when the time period within which an act is to be performed is ten days or less, not including any additional time allowed for in paragraph (c) of this section.

(b) *Filing or service of papers.* Filing and service are deemed to be effective:

(1) In the case of personal service or same day commercial courier delivery, upon actual receipt by the person served;

(2) In the case of overnight commercial delivery service, U.S. Postal Service Express Mail delivery, or First Class, Registered, or Certified Mail, upon deposit in or delivery to an appropriate point of collection; or

(3) In the case of electronic transmission, including email, upon transmission.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by U.S. Postal Service First Class, Registered, or Certified Mail, add three calendar days to the prescribed period;

(2) If service is made by Express Mail or overnight delivery service, add one calendar day to the prescribed period; or

(3) If service is made by electronic transmission, add one calendar day to the prescribed period.

#### § 1091.115 Change of time limits and confidentiality of proceedings.

(a) Except as otherwise provided by law, the recommending official until the issuance of a recommended determination, or the Director at any

time thereafter, at their respective discretion, may extend the time limits prescribed by this part or by any notice or order issued pursuant to this part. Any request for an extension of a time limit by a respondent must be for good cause shown, in writing, and filed with the recommending official or Director, as appropriate. The mere filing of a written request for an extension does not alleviate a respondent of the obligation to meet an applicable time limit absent written confirmation that an extension has been granted.

(b) Deadlines for action by the initiating official, recommending official, or the Director established in this part confer no substantive rights on respondents.

(c) In connection with a proceeding under this part, including a petition for termination under § 1091.113, all documents, records or other items submitted by a respondent to the Bureau, all documents prepared by, or on behalf of, or for the use of the Bureau, and any communications between the Bureau and a person, shall be deemed confidential supervisory information under 12 CFR 1070.2(i).

**Russell Vought,**

*Acting Director, Consumer Financial Protection Bureau.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1

[Docket No. FDA-2011-N-0179]

RIN 0910-A175

### Prior Notice: Adding Requirement To Submit Mail Tracking Number for Articles of Food Arriving by International Mail and Timeframe for Post-Refusal and Post-Hold Submissions

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to amend its prior notice regulation to add a requirement that prior notice and food facility registration information be submitted within a certain timeframe after certain notices of refusal or hold have been issued (“post-refusal” and “post-hold” submission) or responses to