

volume of affiliated companies. The annual covered consumer payment transaction volume of each affiliated company of a nonbank covered person is first calculated separately, treating the affiliated company as if it were an independent nonbank covered person for purposes of the calculation. The annual covered consumer payment transaction volume of a nonbank covered person then must be aggregated with the separately-calculated annual covered consumer payment transaction volume of each person that was an affiliated company of the nonbank covered person at any time in the preceding calendar year. However, if any two or more of these companies facilitated a single consumer payment transaction denominated in U.S. dollars, that consumer payment transaction shall only be counted one time in the aggregated annual covered consumer payment volume calculation. The annual covered consumer payment transaction volumes of the nonbank covered person and its affiliated companies are aggregated for the entire preceding calendar year, even if the affiliation did not exist for the entire calendar year.

(ii) [Reserved]

[89 FR 99653, Dec. 10, 2024]

EFFECTIVE DATE NOTE: At 89 FR 99653, Dec. 10, 2024, §1090.109 was added, effective Jan. 9, 2025.

PART 1091—PROCEDURES FOR SUPERVISORY DESIGNATION PROCEEDINGS

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AUTHORITY: 12 U.S.C. 5512(b)(1), 5514(a)(1)(C), 5514(b)(7).

SOURCE: 89 FR 30264, Apr. 23, 2024, unless otherwise noted.

Subpart A—General

§ 1091.100 Scope and purpose.

This part sets forth procedures to implement section 1024(a)(1)(C) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5514(a)(1)(C)) and establishes rules to facilitate the Bureau's supervisory authority over certain nonbank covered persons pursuant to section 1024(b)(7) of the Act (12 U.S.C. 5514(b)(7)).

§ 1091.101 Definitions.

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

Bureau, consumer, consumer financial product or service, and covered person have the definitions in 12 U.S.C. 5481.

Decisional employee means an employee of the Bureau who has not engaged in 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 Director.

Director means the Director of the Bureau or his or her designee. If there is no Director, the term means a person authorized to perform the functions of the Director under this part, or his or her designee. For purposes of when the Director receives, files, or serves documents, the Director includes an employee acting on behalf of the Director.

Initiating official means the Supervision Director or another Bureau employee designated by the Director. For purposes of receiving, filing, and serving documents or participating in a supplemental oral response, the initiating official includes an employee acting on behalf of the initiating official.

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

Notice of Reasonable Cause and *Notice* mean a Notice issued under § 1091.202.

Person has the definition in 12 U.S.C. 5481.

Respondent means a person who has been issued a Notice of Reasonable Cause under § 1091.202 or who has entered into a consent agreement under § 1091.201.

State has the definition in 12 U.S.C. 5481.

Subpart B—Determination and Voluntary Consent Procedures

§ 1091.201 Voluntary consent to supervisory 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 § 1091.301. If the consent agreement does not specify a period of time, the consent agreement will continue until terminated pursuant to § 1091.301.

(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 in accordance with § 1091.202(c)(6).

§ 1091.202 Notice of Reasonable Cause.

(a) *Generally.* The 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) *Basis of Notice.* A Notice of Reasonable Cause shall be based on:

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

(2) Information from other sources.

(c) *Contents of Notice.* A Notice of Reasonable Cause is subject to the word limit in § 1091.403 and 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;

(2) A statement that this proceeding is governed by 12 U.S.C. 5514(a)(1)(C) and 12 CFR part 1091;

(3) A statement that failure to respond within 30 days, in the manner specified by § 1091.203, will constitute a waiver of the right to respond and may result in a default determination by the Director;

(4) Instructions for filing documents with the Director;

(5) Instructions for serving documents on the initiating official; and

(6) In an appendix, a proposed consent agreement under § 1091.201.

(d) *Service of Notice.* A Notice of Reasonable Cause shall be served on a respondent by any means that are reasonably calculated to give notice. This includes, but is not limited to, the methods available under 12 CFR 1081.113(d)(1). The initiating official shall promptly file a copy of the Notice and a record of service with the Director.

(e) *Withdrawal of Notice.* The initiating official may withdraw the Notice at any time. Such a withdrawal shall not prevent the initiation of another proceeding under this part.

§ 1091.203 Response.

(a) *Timing and word limit.* Within 30 days of service of a Notice, a respondent shall file any response with the Director and serve it on the initiating official, according to the instructions set forth in the Notice. The response is subject to the word limit in § 1091.403.

(b) *Content of the response.* (1) If the respondent disputes that it 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, the response shall set forth the basis for the respondent's position.

(2) The response shall be accompanied by appendices that include (and are limited to) all documents, records, or other evidence a respondent wishes to use to support the arguments or assertions set forth in the response.

(3) If the respondent wishes to present a supplemental oral response, the response must include that request. The respondent may also include, for the Director's consideration, the respondent's preference for the supplemental oral response to be by telephone, by video conference, or in person at the Bureau's headquarters in Washington, DC. 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) The response shall include an email address for serving documents on the respondent, which may be its attorney's email address.

(5) The response shall be accompanied, as an appendix, by 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.

(c) *Default.* If a respondent does not file a response within the time period set forth in paragraph (a) of this section, it shall constitute a waiver of the respondent's right to respond. At the initiating official's request, the Director may issue a decision and order as provided in § 1091.206(a)(1).

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

§ 1091.204 Reply by initiating official.

If the respondent files and serves a response, within 21 days the initiating official may file a reply with the Director and serve it on the respondent. The reply is subject to the word limit in § 1091.403.

§ 1091.205 Supplemental oral response.

(a) If the respondent makes a timely request in a response under § 1091.203 for the opportunity to present a supplemental oral response, the Director shall issue an order setting forth the date, time, and general information relating to the conduct of a supplemental oral response.

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

(c) 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:

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

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

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

(1) The respondent personally; or

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

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

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

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

§ 1091.206 Determination by the Director.

(a) Within 60 days after the supplemental oral response, or, if there is no supplemental oral response, the deadline for the reply, the Director shall issue either:

(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 is terminating the proceeding. Such notification shall have no precedential effect and shall not prevent the initiation of another proceeding under this part.

(b) The Director may, on the Director's own motion at any time before making a determination under paragraph (a) of this section, request that the respondent, initiating official, or both provide any supplemental briefing that Director considers appropriate.

(c) Any decision and order issued by the Director pursuant to paragraph (a)(1) of this section shall include the basis for the decision and an effective date for the order.

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

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

Subpart C—Post-Determination Procedures

§ 1091.301 Petition for termination of order.

(a) Any person subject to an order under 1091.206(a)(1) may, no sooner than two years after issuance of such an order and no more frequently than annually thereafter, petition for termination of the order. The same applies to an order under § 1091.201, subject to the limitations in § 1091.201(c).

(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. A petition for termination must be filed with the Director and served on the initiating official and is subject to the word limit in § 1091.403.

(c) The initiating official shall, within 30 days of receipt of a petition for termination, file a recommendation with the Director and serve it on the respondent. The initiating official's recommendation shall state 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. The recommendation is subject to the word limit in § 1091.403.

(d) 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. At any time before issuing a decision, the Director may, on the Director's own motion, request that the respondent and initiating official provide any supplemental briefing that Director considers appropriate.

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

Subpart D—Miscellaneous Provisions

§ 1091.401 Methods of filing and serving documents.

(a) *By the respondent.* The respondent files documents with the Director, and serves documents on the initiating official, in accordance with the instructions in the Notice.

(b) *By the initiating official.* The initiating official serves documents on the respondent at the email address specified in the Response (except for service of the Notice, which is governed by § 1091.202(d)). The initiating official files documents with the Director by any appropriate method.

(c) *By the Director.* The Director serves documents on the respondent at the email address specified in the Response. The Director serves documents on the initiating official by any appropriate method.

(d) *Changes.* Changes to the methods of filing and serving documents are addressed in § 1091.404.

§ 1091.402 Time limits.

In computing any period of time prescribed by this part, or by order of the 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. Changes to time limits are addressed in § 1091.404.

§ 1091.403 Word limits.

(a) *Calculation of word limits.* A Notice, response, reply, petition for termination, or recommendation on a petition for termination must contain no more than 13,000 words. This word limit does not apply to any cover page, table of contents, table of citations, signature block, or appendices. Changes to word limits are addressed in § 1091.404.

(b) *Certification of word count.* A document referenced in paragraph (a) of this section must be accompanied by an appendix stating the number of words in the document, not including any cover page, table of contents, table of citations, signature block, or appendices. It must be signed by counsel for the party filing the document, or by another representative if that party does not have counsel.

§ 1091.404 Changes to methods of filing and service, time limits, and word limits.

(a) *Generally.* This section governs a change to a method of filing or service, to a time limit, or to a word limit, whether prescribed by this part or by the Director. Changes to time limits or word limits are disfavored.

(b) *Change upon consent.* The initiating official and respondent may agree in writing to a change, unless the Director specifies otherwise. The initiating official shall file notice of the change with the Director.

(c) *Change upon written request to Director.* The initiating official or the respondent may file a written request to the Director for a change, for good cause shown. The mere filing of a written request for a change does not alleviate the obligation to meet an applicable requirement, absent written confirmation that the request has been granted.

(c) *Change upon Director's own motion.* The Director may make a change on the Director's own motion.

(e) *No conferral of rights.* Deadlines for action by the Bureau established in this part do not confer any rights on respondents.

§ 1091.405 Confidentiality of proceedings.

(a) *General rule.* In connection with a proceeding under this part, including a petition for termination under § 1091.301, 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)(1). However, this paragraph does not apply

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to the version of a document that is released on the Bureau's website under paragraph (b) of this section.

(b) *Publication of final decisions and orders by the Director.* The Director will make a determination regarding whether a decision or order under § 1091.206(a)(1) or § 1091.301(d) will be publicly released on the Bureau's website, in whole or in part. The respondent may file a submission regarding that issue, within ten days after service of the decision or order. The Director will not release information in a decision or order to the extent it would be exempt from disclosure under 5 U.S.C. 552(b)(4) or (b)(6) or the Director determines there is other good cause. The Director may also decide that any determination regarding public release will itself be released on the website, in whole or in part. Section 1091.206(d) is not applicable to determinations under this paragraph.

§ 1091.406 Multiple respondents.

(a) *Notice issued to multiple respondents.* The initiating official may issue and serve a Notice with respect to multiple respondents. The respondents may elect to make either joint or separate responses to such a Notice under § 1091.203 and be jointly or separately represented at a supplemental oral response under § 1091.205.

(b) *Supplemental Notice to add respondents.* The initiating official may issue a supplemental Notice in a pending proceeding to add one or more respondents. The Director will adopt such procedural steps as may be appropriate to ensure that the added respondents have a reasonable opportunity to respond to the supplemental Notice.

§ 1091.407 Adjudication proceedings otherwise brought by the Bureau.

(a) 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 §§ 1091.201 to 1091.206 and 1091.401 to 1091.406 will be inapplicable to such proceeding.

§ 1091.408 Issue exhaustion.

(a) *Scope.* This section applies to any argument to support a respondent's position, including any argument that could be a basis for setting aside Bureau action under 5 U.S.C. 706 or any other source of law.

(b) *Duties to raise arguments.* A respondent must raise an argument in its written response, or else it is not preserved for judicial review of a proceeding under subpart B. A respondent must raise an argument in its petition for termination, or else it is not preserved for judicial review of a proceeding under subpart C. If the Director requests supplemental briefing, and if a given argument is within the scope of the supplemental briefing requested, the respondent must raise the argument in the supplemental briefing or else it is not preserved for judicial review of a proceeding under subpart B or subpart C, as applicable.

(c) *Manner of raising arguments.* An argument must be raised in a manner that complies with this part and that provides a fair opportunity to consider the argument.

(d) *Discretion to consider unpreserved arguments.* The Director has discretion to consider an unpreserved argument, including by considering it in the alternative. If the Director considers an unpreserved argument in the alternative, the argument remains unpreserved.

§ 1091.409 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).

PART 1092—NONBANK REGISTRATION

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Subpart C—[Reserved]

APPENDIX A TO PART 1092—LIST OF STATE COVERED LAWS

AUTHORITY: 12 U.S.C. 5512(b) and (c); 12 U.S.C. 5514(b).

SOURCE: 89 FR 56150, July 8, 2024, unless otherwise noted.

Subpart A—General

§ 1092.100 Authority and purpose.

(a) *Authority.* The regulation in this part is issued by the Bureau pursuant to section 1022(b) and (c) and section 1024(b) of the Consumer Financial Protection Act of 2010, codified at 12 U.S.C. 5512(b) and (c), and 12 U.S.C. 5514(b).

(b) *Purpose.* The purpose of this part is to prescribe rules governing the registration of nonbanks, and the collection and submission of registration information by such persons, and for public release of the collected information as appropriate.

(1) This subpart contains general provisions and definitions used in this part.

(2) Subpart B of this part sets forth requirements regarding the registration of nonbanks subject to certain agency and court orders.

§ 1092.101 General definitions.

For the purposes of this part, unless the context indicates otherwise, the following definitions apply:

(a) *Affiliate, consumer, consumer financial product or service, covered person, Federal consumer financial law, insured credit union, person, related person, service provider, and State* have the same meanings as in 12 U.S.C. 5481.

(b) *Bureau* means the Consumer Financial Protection Bureau.

(c) *Include, includes, and including* mean that the items named may not encompass all possible items that are covered, whether like or unlike the items named.

(d) *Nonbank registry* means the Bureau's electronic registry identified and maintained by the Bureau for the purposes of this part.

(e) *Nonbank registry implementation date* means, for a given requirement or subpart of this part, or a given person or category of persons, the date(s) determined by the Bureau to commence the operations of the nonbank registry in connection with that requirement or subpart.

§ 1092.102 Submission and use of registration information.

(a) *Filing instructions.* The Bureau shall specify the form and manner for electronic filings and submissions to the nonbank registry that are required or made voluntarily under this part. The Bureau also may provide for extensions of deadlines or time periods prescribed by this part for persons affected by declared disasters or other emergency situations.

(b) *Coordination or combination of systems.* In administering the nonbank registry, the Bureau may rely on information a person previously submitted to the nonbank registry under this part and may coordinate or combine systems in consultation with State agencies as described in 12 U.S.C. 5512(c)(7)(C) and 12 U.S.C. 5514(b)(7)(D).