September 25, 2025

Comment Intake – Legal Standard Applicable to Supervisory Designation Proceedings
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2025-0018, RIN 3170-AB45 – Legal Standard Applicable to Supervisory Designation Proceedings

The Independent Community Bankers of America ("ICBA") appreciates the opportunity to comment on the Bureau's proposed rule defining "risks to consumers" for purposes of supervisory designation under section 1024(a)(1)(C) of the Consumer Financial Protection Act ("CFPA").

ICBA strongly opposes the Bureau's proposal to narrow its supervisory designation authority by requiring both a "high likelihood" and "significant harm" directly connected to consumer financial products. Such a rule would undermine consumer protection, create competitive inequities between supervised banks and unsupervised nonbanks, and contradict Congress's intent in establishing flexible authority for the Bureau to address evolving risks.

Background

Section 1024(a)(1)(C) of the CFPA authorizes the Bureau to supervise a nonbank covered person if it has "reasonable cause to determine, by order, after notice … and a reasonable opportunity to respond," that the entity "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." Congress omitted limiting modifiers such as "substantial" or "material" to limit supervisory discretion.

After enactment of the CFPA, the Bureau issued procedures in 2013 implementing this authority. It established notice-and-response processes for designation proceedings, yet did not act on this authority until a 2022 Amendment.

In 2022, the Bureau amended the rule to allow public release of final designation orders, emphasizing transparency and accountability. In April 2024, the Bureau issued a further final rule revising procedures to streamline adjudication, clarify consent agreements, and enhance transparency in supervisory designation proceedings. That rule preserved the Bureau's substantive flexibility to evaluate consumer risks on a case-by-case basis, while increasing procedural fairness and efficiency.

The current proposal marks a sharp departure. By adopting a rigid definition requiring both "high likelihood" and "significant harm," and by imposing a "direct connection" test, the Bureau would arbitrarily impose a higher standard than is mandated by statute, thereby undermining the black letter of the law.

The Proposed Rule Would Create Dangerous Consumer Protection Gaps

Inflexible "High Likelihood" and "Significant Harm" Standard

The proposed rule requires that conduct both (1) present a high likelihood of occurring and (2) cause significant harm. However, many consumer harms arise from low-likelihood but catastrophic events—such as massive data breaches—or widespread but individually small fees. These harms can devastate households and markets even if they do not meet the proposed rigid standard.

Two recent examples demonstrate the harm caused by low-likelihood, yet harmful conduct:

> Synapse Bankruptcy
> Synapse Financial Technologies, a middleware fintech provider, entered bankruptcy and left banks, fintech partners, and consumers in limbo, with millions of dollars in customer funds frozen or unaccounted for. Consumers who believed their deposits were safeguarded found themselves unable to access funds for months, illustrating the dangers of unsupervised intermediaries.
>
> Cryptocurrency Collapses
> The failures of firms such as FTX (2022), Celsius (2022), and Voyager (2022) left retail consumers bearing billions in losses. Many of these entities operated in regulatory gray areas, marketing themselves as consumer-friendly while lacking transparency, prudential standards, or effective oversight.

Both examples demonstrate that nonbanks can present systemic risks to consumers even when the likelihood of failure appears remote. Under the Bureau's proposed standard, such entities might never have been subject to supervision until after catastrophic collapse.

Arbitrary "Direct Connection" Requirement

The proposal also requires that conduct be "directly connected" to the offering or provision of a consumer financial product or service. This addition is unnecessary—section 1024(a)(1)(C) already applies to "covered persons"—and would enable evasion by outsourcing harmful practices to third parties. Lead generators, data brokers, and vendors that engage in unfair or discriminatory practices could escape supervision despite materially harming consumers.

The Bureau should not adopt rigid thresholds that Congress did not require. The proposed rule rejects a prior Bureau interpretation without explanation and will only engender continued legal uncertainty, making it easier for supervisory designations to be challenged. Furthermore, adopting a rule that allows some probability of harm that does not meet the "high likelihood of significant harm" threshold would impose costs on consumers. The Bureau should not risk consumer harm to provide firms with a benefit.

Competitive and Market Harms of Narrowing Oversight
Community banks are subject to strict examinations, data privacy rules, and consumer compliance requirements. By contrast, many large nonbanks and technology companies harvest and monetize sensitive consumer data without GLBA-equivalent safeguards.

Nonbanks frequently escape oversight even as they dominate market share in payments, lending, and data aggregation. ICBA previously warned that unsupervised nonbanks—including credit union service organizations (CUSOs), data aggregators, and big technology firms—create competitive inequities and expose consumers to risks that banks could never assume under federal supervision. Weakening the Bureau’s authority at this juncture would exacerbate those inequities and encourage further regulatory arbitrage.

ICBA has consistently supported the examination and supervision of nonbanks to ensure compliance with federal consumer protection laws and to prevent an unfair competitive environment. The proposed rule would "substantially reduce supervisory actions against nonbank financial institutions" and would create an uneven playing field between supervised banks and unsupervised nonbanks. The Bureau's procedural amendments in the 2024 final rule are designed to make proceedings more efficient, but the proposed substantive narrowing of authority would run counter to the goal of protecting consumers from potential harm committed by nonbanks, particularly as they continue to grow in size and expand their products. The Bureau should intensify, not retreat from, supervision of fintechs, big tech firms, and other unsupervised entities.

Inconsistency with the Bureau’s 2024 Final Rule

The Bureau’s 2024 final rule revised designation procedures to make proceedings fairer, more efficient, and more transparent, without constraining substantive discretion. That framework balanced industry clarity with consumer protection.

The current statutory framework already requires a "reasonable cause" standard to determine conduct posing "risks to consumers". This is the standard the CFPB is authorized to use under Section 1024(a)(1)(C) of the CFPA. This flexible standard allows the CFPB to address evolving risks and base its determinations on information such as consumer complaints, whistleblower reports, and data from state and federal partners. The 2024 final rule itself notes that the CFPB's supervisory authority under this section of the CFPA is based on whether an entity "is engaging, or has engaged, in conduct that poses risks to consumers". By keeping this standard, the CFPB can uphold Congress's intent in establishing flexible authority to address evolving risks.

Coordination with State Regulators

The CFPA requires coordination with state regulators in supervising nonbanks, including consultation, information sharing, and reliance on state reports. State regulators play a critical role in identifying risks and overseeing many nonbanks already subject to licensing regimes. Restricting federal authority altogether, however, undermines both state and federal oversight and leaves consumers vulnerable to regulatory gaps.

The Bureau should continue to consult and share information with state regulators while exercising federal authority. This ensures that both state and federal oversight are strong and that consumers are not left vulnerable to regulatory gaps.

Conclusion

The Bureau's proposed rule to narrow its supervisory designation authority is inconsistent with statutory intent, prior Bureau interpretations, and the realities of the modern financial market. The rule's requirement of "high likelihood" and "significant harm" directly connected to consumer financial products creates a dangerous consumer protection gap that undermines the CFPB's mandate. Consumers deserve consistent protections whether they engage with a community bank or a nonbank fintech.

ICBA appreciates the Bureau’s consideration of our views and would welcome the opportunity to discuss these comments further.

Sincerely,

Michael Emancipator
Senior Vice President, Regulatory Counsel
Independent Community Bankers of America