



## CONSUMER FINANCIAL PROTECTION BUREAU

### 12 CFR Part 1091

[Docket No. CFPB–2024–0006]

#### Procedures for Supervisory Designation Proceedings

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Final rule; request for public comment.

**SUMMARY:** The Consumer Financial Protection Bureau (CFPB or Bureau) is updating the CFPB’s procedures for designating nonbank covered persons for supervision, to conform to a recent organizational change and to further ensure that proceedings are fair, effective, and efficient for all parties.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2024-0006, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. A brief summary of this document will be available at <https://www.regulations.gov/docket/CFPB-2024-0006>.
- *Email:* 2024-SupervisoryDesignationProceedings@cfpb.gov. Include Docket No. CFPB-2024-0006 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Procedures for Supervisory Designation Proceedings, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

*Instructions:* The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number for this rule. Commenters are encouraged to

submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** George Karithanom, Regulatory Implementation & Guidance Program Analyst, 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:**

##### **Background**

The Consumer Financial Protection Act of 2010 (CFPA) establishes the CFPB as an independent bureau in the Federal Reserve System and assigns the CFPB a range of rulemaking, enforcement, supervision, and other authorities.<sup>1</sup>

One of the supervisory authorities under the CFPA is section 1024(a)(1)(C). It authorizes the CFPB to supervise a nonbank covered person that the CFPB “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>2</sup> In 2013, the CFPB issued procedures to govern these supervisory designation proceedings (2013

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<sup>1</sup> Pub. L. 111-203, title X, 124 Stat. 1376, 1955-2113 (2010).

<sup>2</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.*

rule).<sup>3</sup> However, the authority was largely unused for a number of years.<sup>4</sup> In 2022, the CFPB announced that it would begin to make active use of the supervisory designation authority, and it made a limited amendment to the procedures to establish a specific process for public release of final decisions and orders (2022 rule).<sup>5</sup>

The CFPB has initiated a number of supervisory designation proceedings since the 2022 rule. On February 23, 2024, the CFPB publicly released the first decision and order in a contested proceeding, which discusses the CFPB’s view of the section 1024(a)(1)(C) authority.<sup>6</sup> Other institutions have consented to CFPB supervision, in some cases without a proceeding and in other cases during a proceeding. The CFPB looks forward to a productive supervisory relationship with all the institutions that are now within its supervisory authority.

In late February 2024, the CFPB began a transition to a new organizational structure for its supervision and enforcement work. The functions of the Associate Director of the Division of Supervision, Enforcement, and Fair Lending are being transferred to the Supervision Director as head of a Division of Supervision and the Enforcement Director as head of a Division of Enforcement. This rule is in part intended to implement that change in the context of supervisory designation proceedings.

## **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>7</sup> Additionally, section 1022(b)(1) provides, in relevant part, that the CFPB Director “may prescribe rules . . . as may be necessary or

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

<sup>4</sup> The CFPB did, from time to time, issue enforcement consent orders that included the entity’s consent to supervision.

<sup>5</sup> 87 FR 70703 (Nov. 21, 2022); *see also* 87 FR 25397 (Apr. 29, 2022).

<sup>6</sup> *World Acceptance Corp.*, File No. 2023-CFPB-SUP-0001 (Nov. 30, 2023), *available at* <https://www.consumerfinance.gov/compliance/supervision-examinations/institutions/>.

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

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>8</sup> The CFPB issues this rule based on its authority under section 1024(b)(7) and section 1022(b)(1).

## **Discussion**

### ***Subpart A—General***

#### *1091.101 Definitions.*

The rule makes technical changes to definitions.

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

#### *1091.201 Voluntary consent to supervisory authority.*<sup>9</sup>

The initiating official and respondents have resolved the large majority of proceedings by consent. Under the 2013 rule, there were two provisions that established separate procedural avenues for entering into a consent agreements. One provision (former § 1091.103(b)) required the initiating official to enclose a proposed consent agreement with the Notice of Reasonable Cause (Notice), and the other provision (former § 1091.110) authorized consent agreements to be agreed at any time. There were small differences between the two provisions.

Under this rule, a proposed consent agreement will continue to be enclosed with the Notice, and consent agreements can also be agreed at any other time. However, the Bureau is combining the two previous provisions into one provision (§ 1091.201) and harmonizing their differences, in order to reduce complexity and risk of confusion. One of the two previous provisions stated that the consent agreement does not constitute an admission by the respondent, while the other did not address that point expressly; new § 1091.201 clarifies that a consent agreement does not constitute an admission. One of the two previous provisions contemplated a two-year period for supervision while the other allowed duration to be addressed on a case-by-case basis; new § 1091.201 takes the latter course. All consent agreements under both previous

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<sup>8</sup> 12 U.S.C. 5512(b)(1).

<sup>9</sup> Formerly §§ 1091.103(b) and 1091.110.

provisions were for two years, and the CFPB anticipates that will continue to be the typical duration. But addressing duration on a case-by-case basis rather than by rule will provide flexibility if a longer or shorter period were hypothetically warranted.

*1091.202 Notice of Reasonable Cause.*<sup>10</sup>

The Supervision Director as initiating official commences a contested proceeding by serving the respondent with a Notice of Reasonable Cause (Notice). The Notice is the ordinary means by which the CFPB provides notice under section 1024(a)(1)(C) of the CFPA, although there may sometimes be proceedings in which additional notice is provided at later points in the proceeding, for example through supplemental briefing.

Paragraph (c) simplifies certain general background information about the section 1024(a)(1)(C) process that was included in the Notice under the 2013 rule.

Paragraph (d) includes an update to the method for serving the Notice. The 2013 rule included methods of service that were patterned on how a notice of charges is served under the Rules of Practice for Adjudication Proceedings.<sup>11</sup> In order to provide an additional measure of flexibility, this rule also permits other methods that are “reasonably calculated to give notice.”

Paragraph (e) codifies that the initiating official may withdraw a Notice. The 2013 rule did not expressly address this subject.

*1091.203 Response.*<sup>12</sup>

This provision governs the response, which is the respondent’s opportunity to respond to the Notice. The rule makes minor technical changes to the provision.

*1091.204 Reply by initiating official.*

This new provision provides the initiating official with the option of filing a written reply to the response. Under the 2013 rule, there was no such reply. Because of the initiating

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<sup>10</sup> Formerly §§ 1091.102 to 1091.104.

<sup>11</sup> See 12 CFR 1081.113(d)(1).

<sup>12</sup> Formerly § 1091.105.

official's role in formulating the Notice, the initiating official will likely have observations that are useful to the Director in considering the response.

*1091.205 Supplemental oral response.*<sup>13</sup>

This provision governs a supplemental oral response before the Director, which a respondent can request in its response under § 1091.203. Under the 2013 rule, a respondent presented the supplemental oral response to the Associate Director for Supervision, Enforcement, and Fair Lending. However, as discussed in connection with § 1091.206 below, in light of the elimination of the Associate Director position, the rule merges the Associate Director's and Director's adjudicative roles.<sup>14</sup> The rule also gives the Director more flexibility regarding whether a supplemental oral response is in person at the Bureau's headquarters, by telephone, or by video conference, consistent with ongoing changes to working practices and possible future public health needs.<sup>15</sup>

*1091.206 Determination by the Director.*<sup>16</sup>

After the Notice, response, reply (if any), and supplemental oral response (if any), the rule provides for the Director to make a final determination in a proceeding.

Under the 2013 rule, the Associate Director of the Division of Supervision, Enforcement, and Fair Lending submitted a recommended determination to the Director, and then the Director issued a final determination. But as noted above, the role of Associate Director will no longer exist under the new organizational structure. The Associate Director's supervision-related functions are being transferred to the Supervision Director, who serves as initiating official in the context of supervisory designation proceedings. Accordingly, this rule merges the adjudicative roles of the Associate Director and Director in these proceedings. This change, in addition to

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<sup>13</sup> Formerly § 1091.106.

<sup>14</sup> Because the existing definition of the term Director under § 1091.101 includes a designee of the Director, there might be circumstances where the Director delegates the responsibility for being present at a supplemental oral response to a designee.

<sup>15</sup> See also § 1091.203(b)(3).

<sup>16</sup> Formerly § 1091.109.

aligning with the new organizational structure, will make proceedings more efficient. The former two-stage process resulted in a more complex and resource-intensive process and a longer timeline for resolving proceedings. Merging the adjudicative roles of Associate Director and Director does not diminish any of the respondent's opportunities to express its views to the Bureau, but merely streamlines the Bureau's internal decision-making process after those views are expressed.

Paragraph (b) codifies the fact that the Director may sometimes request supplemental briefing before making a final determination, which is consistent with the 2013 rule but was not expressly discussed in the 2013 rule.

Paragraph (d) requires a separation of functions between Bureau employees who advise the Director in the Director's adjudicative role on the one hand and Bureau employees who advise the initiating official on the other. This separation is not required by the Administrative Procedure Act, but the Bureau maintains it as a matter of policy. The 2013 rule included a similar separation of functions at the Director level, although at the Associate Director level it did not mandate a separation between the Associate Director's advisers and initiating official's advisers.

### ***Subpart C—Post-Determination Procedures***

#### *1091.301 Petition for termination of order.*<sup>17</sup>

This provision governs petitions by respondents to terminate an existing order. The rule makes technical changes to conform to changes elsewhere in the procedures. It also codifies the fact that the Director might sometimes request supplemental briefing, similar to § 1091.206(b).

### ***Subpart D—Miscellaneous Provisions***

#### *1091.401 Methods of filing and serving documents.*<sup>18</sup>

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<sup>17</sup> Formerly § 1091.113.

<sup>18</sup> Formerly § 1091.107.

The rule clarifies the method of filing and serving documents, which will generally be by e-mail. The service of the Notice at the start of a proceeding, when a respondent's e-mail address may not be known, is governed by a specific rule under § 1091.202(d).

*1091.402 Time limits.*<sup>19</sup>

The rule simplifies the former method for calculating time limits under the 2013 rule, which varied by delivery channel to allow additional time for mail or delivery services to arrive. This complexity has generated confusion for some respondents and is no longer warranted because e-mail is generally instantaneous.

*1091.403 Word limits.*

The rule introduces a word limit for the Notice, response, and certain other key filings, based on Federal Rules of Appellate Procedure 32(a)(7)(B) and 32(f). Relatedly, it introduces a certification of word count based on Federal Rule of Appellate Procedure 32(g). In past proceedings, some parties' outside counsel submitted very lengthy filings in the absence of any page or word limit. Like any word limit, the CFPB intends the new limit to help focus arguments and mitigate expense for all participants.

*1091.404 Changes to methods of filing and service, time limits, and word limits.*<sup>20</sup>

This provision governs changes to the methods set out in §§ 1091.401 to 1091.403. In the case of changes to time limits or word limits, the provision notes that they are disfavored. Under the provision, a change can be approved in one of three ways: by consent of the initiating official and the respondent, with notice to the Director; by written request to the Director; or upon the Director's own motion. The possibility of changes by consent is intended to avoid the need for the Director to become involved in minor issues that are not controversial between the initiating official and the respondent. However, the provision states that the Director can direct otherwise. There may also be circumstances where the initiating official believes that a potential

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<sup>19</sup> Formerly § 1091.114.

<sup>20</sup> Formerly § 1091.115(a) and (b).

change warrants a decision by the Director through a written request and so withholds consent, even if the initiating official does not oppose the change.

*1091.405 Confidentiality of proceedings.*<sup>21</sup>

The 2022 rule created a process for the CFPB to publicly release final decisions and orders. This rule maintains the 2022 rule’s approach, although it clarifies that consent agreements entered into by the initiating official and respondent under § 1091.201 are not subject to the public release process. These agreements are generally short formal documents without reasoning that is significant or could form the basis for precedent. Relatedly, the CFPB notes that an order entered as provided in §1091.206(a)(1), because a respondent has failed to file a response and so has defaulted under § 1091.203(c), would typically not have content that warrants public release. However, such orders are subject to the process under § 1091.405 for considering public release, because of the possibility that some may include reasoning that warrants public release.

*1091.406 Multiple respondents.*

The rule clarifies that multiple respondents might be named in a Notice, as well as clarifying the process for adding an additional respondent or respondents to a pending proceeding. Including multiple respondents in one proceeding—for example, business partners—may, in appropriate cases, avoid the delay and inefficiency of serial proceedings and also would allow the Bureau to consider related issues at once.<sup>22</sup>

*1091.408 Issue exhaustion.*<sup>23</sup>

The Supreme Court has explained that: “Administrative review schemes commonly require parties to give the agency an opportunity to address an issue before seeking judicial

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<sup>21</sup> Formerly § 1091.115(c).

<sup>22</sup> Because additional respondents might be added to a proceeding at any stage, the provision gives the Director flexibility to decide what process is appropriate in order to provide the additional respondents a reasonable opportunity to respond to the supplemental Notice.

<sup>23</sup> Formerly § 1091.105(d).

review of that question.”<sup>24</sup> New § 1091.408 is an express issue exhaustion provision that parallels § 1081.408 of the Rules of Practice for Adjudication Proceedings. The CFPB is adopting it for the same reasons that the CFPB explained in the context of the Rules of Practice.<sup>25</sup> The new issue exhaustion provision is generally similar to former § 1091.105(d), which was titled “Waiver,” together with principles of administrative law that would apply in the absence of an express issue exhaustion provision.

#### *Effective Date and Transitional Arrangements*

This rule is effective upon *Federal Register* publication. It applies to proceedings initiated on or after the effective date. It also applies to proceedings that are pending on the effective date, except to the extent the Director determines that is not just or practicable.<sup>26</sup>

#### **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>27</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>28</sup>

Among other sources of supervisory authority, the Bureau can supervise a nonbank covered person that the Bureau “has a 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

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<sup>24</sup> *Carr v. Saul*, 141 S. Ct. 1352, 1358 (2021).

<sup>25</sup> See 88 FR 18382, 18387-88 (Mar. 29, 2023) (discussing 12 CFR 1081.408).

<sup>26</sup> The CFPB notes the Supreme Court commonly applies rule changes, “insofar as just and practicable,” to pending proceedings in Federal courts. *E.g.*, 344 F.R.D. 850, 851 (U.S. 2023); 340 F.R.D. 810, 811 (U.S. 2022); 337 F.R.D. 813, 814 (U.S. 2021). The CFPB also notes that the above transitional arrangements, although not codified, form an operative part of the rule.

<sup>27</sup> 12 U.S.C. 5512(b)(2)(A).

<sup>28</sup> 12 U.S.C. 5512(b)(2)(B). Whether section 1022(b)(2)(A) and section 1022(b)(2)(B) are applicable to this rule is unclear, but in order to inform the rulemaking more fully the Bureau performed the described analysis and consultations.

of consumer financial products or services.”<sup>29</sup> The Bureau established a rule to implement a procedure to fulfil this statutory authority in 2013 (2013 rule) and amended this rule in 2022 (2022 rule). The Bureau is issuing this final rule to amend the procedures governing the CFPB’s supervisory designation proceedings.

#### *A. Data Limitations and Quantification of Benefits, Costs, and Impacts*

The data are generally limited with which to quantify potential costs, benefits, and impacts of the rule’s provisions. The CFPB has conducted a limited number of supervisory designation proceedings under the prior 2013 and 2022 rules, but the CFPB does not have quantitative data regarding the costs to respondents or other impacts of those proceedings. The CFPB also does not have quantitative data to predict the impacts of the changes made by this rule relative to the prior legal and procedural framework, which is the comparison that is relevant for this analysis.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs and impacts of the 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.

#### *B. Baseline for Analysis*

In evaluating the rule’s benefits, costs, and impacts of the rule, the CFPB considers the impacts against a baseline that includes the legal and procedural framework regarding supervisory designation proceedings for nonbank covered persons that existed before the issuance of the rule. Therefore, the baseline for the analysis of the rule includes separate adjudicative roles for the Director and the Associate Director for Supervision, Enforcement, and Fair Lending—that is, the statutory baseline implemented by the 2013 rule as amended by the 2022 rule.

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<sup>29</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.*

### *C. Potential Benefits and Costs to Consumers and Covered Persons*

The rule would apply to covered persons as defined in the CFPA, which are generally persons that engage in offering or providing a consumer financial product or service.<sup>30</sup> Relative to the statutory baseline, this rule implements several changes that the Bureau believes streamlines and improves transparency in the decision-making process, and clarifies the rights of nonbank covered entities subject to this rule. Notably, this rule eliminates the role of the Associate Director in filing a recommendation prior to the Director's final determination and instead assigns the Director to receive responses, including optional supplementary oral responses, in order to make a final determination. Furthermore, it clarifies the process by which persons may enter consent agreements with the Bureau, among other procedural changes. Overall, the Bureau believes these changes will not diminish the rights of respondents to reply to a Notice of Reasonable Cause, do not impose significant costs relative to the statutory baseline, increase transparency in the decision-making process, and clarify the processes by which covered persons may either respond or enter into a consent agreement with the Bureau.

The rule eliminates the role of the Associate Director in making a recommendation to the Director. This reflects a broader organizational structural change at the CFPB that eliminates the position of Associate Director of Supervision, Enforcement, and Fair Lending. Relative to the baseline, the rule makes no changes to the rights to respond by nonbank covered entities, maintains separation of roles between the initiating official and decisional employees in the determination process, maintains the requirement that the Director include the basis for their decision in their final determination, and should reduce the amount of time on net between service of the Notice and the final determination.<sup>31</sup> The rule also codifies the ability for the Director to request additional briefing from the respondent, the initiating official, or both.

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<sup>30</sup> For the full scope of the term "covered person," see 12 U.S.C. 5481(6).

<sup>31</sup> The length of time that the Director has to make a final determination is increased relative to baseline; however, the elimination of the role of the Associate Director and streamlining of the decisional process reduces the total amount of time between Notice and determination.

Because there is no reduction in the ability of nonbank covered entities to respond to the Notice and access information constituting the basis for the Director's determination, there are no additional costs imposed on nonbank covered entities. Furthermore, the Bureau believes the reduction in time and general streamlining of the decisional process will benefit nonbank covered entities by improving the efficiency of this rule's application.

The rule allows for the initiating official to reply to the respondent's response to the Notice. The Bureau believes this may benefit respondents by allowing for more transparency in the determination process. The 2013 rule did not allow for the initiating official to respond to the written reply but did allow for the initiating official to participate in the optional supplementary oral response. Moreover, the 2013 rule did not preclude the initiating official from advising the Associate Director in drafting their recommendation. By allowing for a reply by the initiating official to the respondent's written response, the Bureau believes respondents could gain more insight into the decisional process which could then be incorporated into an optional supplementary oral response.

The rule also sets out changes in the process by which a person may voluntarily consent to the Bureau's supervisory authority. Specifically, the rule consolidates two previous provisions regarding consent agreements. Under one provision of the 2013 rule, a respondent could respond to a Notice by signing an enclosed consent agreement that led to the respondent being supervised for two years. Under a separate provision, the respondent and the Bureau could enter into a consent agreement at any time, with a duration to be determined by case-by-case negotiation. Under the new rule, a proposed consent agreement will continue to be enclosed with the Notice and an agreement can also be reached at any other time, but the rule will no longer mandate a two-year period in the former case.

Relative to the baseline, the removal of the default option of a two-year consent agreement, to be replaced with the option for a consent agreement with a negotiated length of time, may impose additional costs on covered entities subject to this rule. However, the Bureau

believes several factors limit the expected realized costs of this change. First, as mentioned above, the Bureau has conducted a limited number of supervisory designation proceedings under this authority. The Bureau anticipates it will continue to conduct a limited number of proceedings relative to the size of the market of covered entities subject to this rule. Second, based on prior experience and expertise, the Bureau anticipates that the majority of consent agreements will continue to last for a period of two years. Third, in a case where the complexity or severity of potential consumer risks merits a supervisory relationship longer than two years in the initiating official's assessment, there are other features of the rule that limit any additional realized costs relative to baseline on the covered entity, notably the option to contest the Notice and the ability for the Bureau to issue a new Notice at the end of the initial two-year order under the baseline.<sup>32</sup>

There is a large population of firms potentially subject to this rule.<sup>33</sup> The Bureau does not currently have access to comprehensive data on the number of nonbank covered persons subject to supervisory authority. To establish an estimate of the population of nonbank covered entities potentially subject to this rule, the Bureau uses the latest Economic Census publicly available data and North American Industry Classification System (NAICS) industry codes that align with financial services.<sup>34</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

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<sup>32</sup> As noted elsewhere in this analysis, the substantive costs associated with contested proceedings have not changed appreciably between the statutory baseline and the proposed rule. Hence, a covered entity issued Notice has the option to accept a negotiated consent agreement with potentially different costs relative to baseline or undergo contested proceedings with similar costs relative to baseline.

<sup>33</sup> The procedures established in the 2013 rule and this rule are only to assess whether a nonbank covered person will be made subject to the Bureau's supervisory authority based on a reasonable-cause determination. In general, there is no reason to make a determination under the 2013 rule or this rule 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, as discussed in the 2013 rule this is possible. Therefore, the Bureau does not exclude from coverage of the 2013 rule or this final rule nonbank covered entities that may be subject to supervision under a separate provision of section 1024(a).

<sup>34</sup> The relevant NAICS codes examined are 5222 (Nondepository credit intermediation); 5223 (Activities related to credit intermediation); 523920 (Portfolio management); 523930 (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).

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 the 2013 and 2022 rules on fewer than a dozen covered entities and in any given year, and the Bureau anticipates exercising authority under this rule on the same number of entities. Hence, the Bureau believes the impact of this rule will be relatively limited, mitigating the realization of any potential costs associated with changes relative to baseline.

The majority of cases initiated under the 2013 rule have been settled by consent agreement and all past consent agreements have been for two years. The Bureau expects similar outcomes under this rule. However, the initiating official may assess that a longer period of time is necessary to maintain an effective supervisory relationship if a particular case is complex or poses severe risks to consumers.<sup>35</sup> In this case, a covered entity undergoing a supervisory proceeding under this rule may receive Notice with a proposed consent agreement lasting longer than two years.<sup>36</sup>

An order lasting longer than two years may pose additional costs relative to the baseline for the covered entity via additional supervisory activity. The Bureau has previously estimated the cost of compliance with supervisory activity based on reported average exam length and labor costs incurred by firms to participate in supervisory exams.<sup>37</sup> This calculation results in an estimate of approximately \$27,000 in labor costs to comply with a supervisory examination. The Bureau recognizes that this estimate reflects national average labor costs and are thus subject to variability with respect to specific firms' realized costs. Furthermore, the Bureau recognizes that

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<sup>35</sup> In principle, an initiating official may assess that a shorter period of time is sufficient for a supervisory relationship. While the Bureau anticipates that this would be a rare occurrence given the Bureau's experience and expertise suggest that the minimum period of time to allow for an examination and follow-up is generally two years, this would likely lessen the costs associated with application of this rule on a nonbank covered entity.

<sup>36</sup> The respondent may otherwise understand that the Bureau and initiating official propose a consent agreement lasting longer than two years, e.g., via other communications with the Bureau and initiating official.

<sup>37</sup> For an estimate of the length of examination, *see* Office of the Inspector General of the Board of Governors of the Federal Reserve System and the CFPB, "The Bureau Can Improve Its Risk Assessment Framework for Prioritizing and Scheduling Examination Activities" (Mar. 25, 2019) at 13, available at <https://oig.federalreserve.gov/reports/bureau-risk-assessment-framework-mar2019.pdf>.

the staffing estimates are assessments for an average firm's needs and may also be subject to variability with respect to specific firms' requirements. The Bureau is open to public comments that provide additional data on estimates of staffing requirements and costs for compliance with supervisory activities.<sup>38</sup>

The Bureau anticipates that the majority of consent agreements under this rule will continue to be for two years, posing no significant additional costs on covered entities. The Bureau recognizes that for some entities undergoing supervisory activity under this rule, the complexity of the entity or the severity of consumer risk may result in a consent agreement lasting longer than two years, with each additional year imposing additional costs relative to baseline of approximately \$27,000. In principle, it is possible that entities undergoing supervisory activity under this rule may enter into a consent agreement longer than three years; however, the Bureau anticipates this to be unlikely.

Finally, the Bureau notes that there are features of this rule and the statutory baseline that further limit any expected realized costs posed by the proposed rule. First, by their nature, consent agreements necessitate both parties' agreement to the order. A respondent may negotiate with the initiating official over the parameters of a consent agreement or may enter contested proceedings.<sup>39</sup> In general, entering into contested proceedings represents a cost on the respondent; however, insofar as there have been no substantive changes in the costs associated

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<sup>38</sup> The Bureau has previously estimated the cost of compliance with supervisory activity based on reported average exam lengths, which would average one supervisory examination per year and require one-tenth of a full-time equivalent attorney and one full-time compliance officer. Furthermore, the Bureau estimates that supervisory examinations would last for 8 weeks on average, with an additional two weeks of preparation (*supra* note 38). Using the national average hourly labor cost of \$84.84 for attorneys and \$38.55 for compliance officers, the Bureau estimates that the direct labor costs for a supervisory examination would total approximately \$19,000 (*See* U.S. Bureau of Labor Statistics, National Occupational Employment and Wage Estimates United States, May 2023, <https://www.bls.gov/oes/current/oes-nat.htm>). Assuming that wages represent approximately 70.4% of the total labor costs using the estimate of total compensation for private employees (*See* U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation: Private Industry Database, March 2024, <https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx>), this results in an estimate of approximately \$27,000 in labor costs to comply with a supervisory examination.

<sup>39</sup> Under the 2013 rule, there have been substantive communications between respondents and the Bureau prior to entering into any consent agreement, regardless under which provision of the 2013 rule the consent agreement was made. The Bureau anticipates that substantive communications will continue under this final rule and does not assess there to be significant changes in costs associated with these communications relative to baseline.

with entering contested proceedings relative to the baseline, the difference between these costs and the costs associated with the 2013 rule's provision to accept a two-year consent agreement represents an upper limit on the additional costs represented by this final rule relative to baseline.<sup>40</sup> Second, in cases where the initiating official assesses that there is substantial complexity or severe consumer risks that merit supervisory activity beyond two years, under the statutory baseline a nonbank covered entity subject to application of the rule could opt for a two-year consent agreement; however, the Bureau could reissue a Notice at the end of this period, leading to additional costs associated with receipt, consideration, and reply to a fresh Notice. Under this final rule, the initiating official could propose a longer consent agreement that, subject to negotiation and acceptance of this consent agreement by the respondent, could avoid the potential need for another designation after two years and costs associated with receipt, consideration, and reply to a fresh Notice.

In summary, while the elimination of the two-year default option for consent agreement, to be replaced with the option for a consent agreement with negotiated length of time, may impose additional costs relative to baseline, the Bureau assesses these additional costs to be negligible. First, that the Bureau would be authorized to undertake supervisory activities with respect to a nonbank under this rule would not necessarily mean that the Bureau would in fact undertake such activities regarding that covered person in the near future. Rather, the supervision of any particular covered person as a result of this rule would be probabilistic in nature. Second, for a covered person undergoing supervisory activity under this rule, the Bureau anticipates the majority of cases will be settled by consent agreements lasting two years, imposing no additional

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<sup>40</sup> A hypothetical firm that would contest the Notice under the 2013 rule would presumably continue to contest under this proposed final rule and incur no additional costs relative to baseline. A firm that would accept a two-year consent agreement under the 2013 rule but opt for contested proceedings under this rule would incur additional costs relative to baseline equivalent to the difference in costs between a contested proceeding and the two-year consent agreement. Hence, their realized costs would be this difference. Similarly, a firm that would accept a two-year consent agreement under the 2013 rule and a possibly longer consent agreement under this final rule would incur additional costs relative to baseline equivalent to the difference between the costs associated with the consent agreement under this rule and those associated with the consent agreement under the 2013 rule. Moreover, the costs associated with a possibly longer consent agreement would be necessarily less than the costs of contested proceedings.

costs. Third, for those entities where supervisory activity results in a proposed consent agreements lasting longer than two years, these potential realized costs are further mitigated by other features of the rule.<sup>41</sup>

The rule also makes certain other procedural changes to the processes for making and terminating designations, including: codifying the Director's authority to request supplemental briefing; imposing a word limit on key filings; clarifying procedures for filing and serving documents, with documents being generally filed and served by email; clarifying applicable procedures when there are multiple respondents; and codifying an issue exhaustion requirement that is generally similar to existing law. The rule further clarifies that the process for publicly releasing decisions and orders does not apply to consent agreements, because they lack sufficient content to serve as a precedent for future proceedings. The Bureau does not believe these changes impose significant additional costs onto nonbank covered persons relative to the baseline.

The 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>42</sup> Nor will the proposed rule have a unique impact on rural consumers.

## **Regulatory Matters**

As a rule of agency organization, procedure, or practice, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.<sup>43</sup> However, the Bureau is accepting comments on the rule.

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<sup>41</sup> The Bureau acknowledges that there are limitations in the estimates associated with relevant costs; however, with the estimates presented here, the Bureau believes the additional costs imposed on nonbank covered entities subject to this rule relative to baseline would be negligible (based on the limited number of supervisory activities the Bureau anticipates each year under this rule, the probabilistic nature that any particular entity would undergo supervisory activities under this rule, and the likelihood any supervisory activities would result in a consent agreement longer than two years).

<sup>42</sup> 12 U.S.C. 5516(a)

<sup>43</sup> 5 U.S.C. 553(b).

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>44</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>45</sup> This is for two independent reasons. First, the costs associated with the changes made by this rule relative to the baseline of the existing procedures are limited, as discussed above. Second, the number of entities that will be subject to the procedures 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 also determined that this rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.<sup>46</sup>

### **Severability**

If any provision of part 1091, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect.

### **List of Subjects in 12 CFR Part 1091**

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

### **Authority and Issuance**

For the reasons set forth above, the Bureau revises 12 CFR part 1091 as set forth below:

## **PART 1091—PROCEDURES FOR SUPERVISORY DESIGNATION PROCEEDINGS**

### **Subpart A--General**

Sec.

1091.100 Scope and purpose.

1091.101 Definitions.

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<sup>44</sup> 5 U.S.C. 603, 604.

<sup>45</sup> 5 U.S.C. 605(b).

<sup>46</sup> 44 U.S.C. 3501-3521.

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

Sec.

- 1091.201 Voluntary consent to supervisory authority.
- 1091.202 Notice of Reasonable Cause.
- 1091.203 Response.
- 1091.204 Reply by initiating official.
- 1091.205 Supplemental oral response.
- 1091.206 Determination by the Director.

## **Subpart C—Post-Determination Procedures**

Sec.

- 1091.301 Petition for termination of order.

## **Subpart D—Miscellaneous Provisions**

Sec.

- 1091.401 Methods of filing and serving documents.
- 1091.402 Time limits.
- 1091.403 Word limits.
- 1091.404 Changes to methods of filing and service, time limits, and word limits.
- 1091.405 Confidentiality of proceedings.
- 1091.406 Multiple respondents.
- 1091.407 Adjudication proceedings otherwise brought by the Bureau.
- 1091.408 Issue exhaustion.
- 1091.409 No limitation on relief sought in civil action or administrative adjudication.

## **PART 1091—PROCEDURES FOR SUPERVISORY DESIGNATION PROCEEDINGS**

**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 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 e-mail address for serving documents on the respondent, which may be its attorney's e-mail 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 e-mail 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 e-mail 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 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).

**Rohit Chopra,**

*Director,*

*Consumer Financial Protection Bureau.*