



September 25, 2025

The Honorable Russell Vought
Acting Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

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

Dear Acting Director Vought:

The American Financial Services Association (AFSA)¹ and the American Fintech Council (AFC)² (together, Associations) appreciate the opportunity to provide feedback on the Consumer Financial Protection Bureau (CFPB) proposal to clarify the definition of risk in connection with the CFPB's authority to impose supervision on non-bank providers of consumer financial products and services. This proposal is a step in the right direction, and we are pleased to share some additional ideas and information that might provide further clarity.

The Associations agree that the statutory language granting the CFPB authority to impose risk-based supervision is vague. The statute refers to "conduct that poses risks to consumers" relating to consumer financial products and services. The statute is drafted so that the CFPB's perception of risk can dictate whether a non-bank entity will be subjected to supervision or not. This is problematic for businesses as there are no clear "rules of the road." Perceptions of risk are subjective and can vary considerably from person to person and administration to administration. Subjective risk perception creates, for example, the phenomenon where some people experience anxiety and discomfort even in objectively low-risk situations such as public speaking, social gatherings, and air travel.

¹ Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

² A standards-based organization, the American Fintech Council (AFC) is the premier trade association representing the largest financial technology (Fintech) companies and innovative banks offering embedded finance solutions. AFC's mission is to promote a transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial services and encouraging sound public policy. AFC members foster competition in consumer finance and pioneer products to better serve underserved consumer segments and geographies. AFC's membership spans lenders, banks, payments providers, loan servicers, credit bureaus, earned wage access providers, and personal financial management companies.

The CFPB's proposal here attempts to provide more certainty in a definition of risk by reducing the subjective nature of the risk definition by including additional concepts. The proposal suggests for the purpose of imposing risk-based supervision, conduct must present a high likelihood of significant harm to consumers and be directly connected to the offering or provision of a consumer financial product or service. The Associations agree that Congress likely did not intend for the CFPB to use this authority for trivial or speculative harms to consumers. The proposal's references to a high likelihood of significant harm are helpful. Specifying a direct connection to the offering or provision of consumer financial products or services is also helpful. The Associations respectfully suggest we might be able to go further.

Consumer financial products and services always contain some amount of risk to the companies offering and providing them as well as to consumers. There is always a risk that a consumer may default on a loan or credit obligation because of life events and then must manage the consequences of the default such as repossession, foreclosure, and negative credit score effects. Creditors carry a great deal of risk, because in order to have a sustainable business, they are relying on consumers to repay their debts over the course of the term of the obligation. These risks are routine and well understood by consumers and creditors alike. It seems unlikely that Congress meant to empower the CFPB to invoke special supervisory authority over companies whose conduct involves routine risk.

To highlight how the current definition of "risk" fails to provide clarity to businesses, the CFPB previously held that one complaint — even an unverified complaint — was sufficient to label a company as one that poses risks to consumers that would trigger imposition of risk-based supervision authority. The exercise of this authority should only be considered in circumstances when conduct presents an **extraordinary risk**, which is readily and objectively verifiable to be greater than the routine risks associated with similar consumer financial products and services.

The Associations request that the CFPB revise its proposal to clarify that risk sufficient to trigger the risk-based supervisory authority must be extraordinary in nature. The Associations also request that the CFPB explain that consumer financial products and services that are offered and provided in compliance with applicable laws are presumed not to pose extraordinary risk sufficient to trigger risk-based supervisory authority. The Associations' members have seen many instances where the CFPB has threatened or imposed sanctions on companies that were acting in compliance with applicable law, often in misguided attempts to create national standards for market conduct where none exist. The CFPB's authority should not be used in that manner.

Given the potential jurisdictional overlap between the CFPB's oversight authority and those of other agencies, the Associations believe that the Bureau should not take up risk-based supervision on issues that are already directly regulated by another agency. For well-established consumer financial products and services that are amply regulated under state and federal laws and regulations, it should be exceedingly rare for risk-based supervision to be warranted. Such supervision should be imposed only in instances when extraordinary events have occurred, causing significant, objectively and readily verifiable harm to consumers that is outside the routine amount of risk associated with similar consumer financial products or services. To prevent regulatory agencies from inventing standards where none exist, risk-based supervision should not be imposed

unless there is clear evidence of a violation of law applicable to the consumer financial product or service offered or provided.

Finally, more transparency and clarity about the factors and methodology the CFPB will use when considering imposing risk-based supervision would be extremely helpful. Markets work best when market participants understand the “rules of the road” so they can plan and make decisions with some degree of understanding regarding how regulators will act. While adding more detail to the risk definition will be helpful to industry and consumers alike, the Associations encourage the CFPB to consider if there are any quantitative factors it can identify that would indicate the presence of “high risk of significant harm to consumers.” Identifying any particular aspects of credit transactions that are more likely to pose “significant harm to consumers” would also be beneficial.

The Associations welcome the CFPB’s efforts to provide clarity on the definition of risks to consumers in connection with the CFPB’s risk-based supervision authority. We appreciate the opportunity to provide feedback on this important issue.

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