June 13, 2025
Comment Intake—Procedures for Supervisory Designation Proceedings
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552.

To Whom It May Concern:

Better Markets, Inc.[1] appreciates the opportunity to comment on the above-captioned proposed rule ("Proposal"), issued by the Consumer Financial Protection Bureau ("CFPB" or "Bureau").[2]

Rooted in the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau's central mission is to protect consumers by ensuring transparency, accountability, and fairness in financial markets. Over the past several years, the CFPB adopted amendments—most recently in 2022 and 2024—to its supervisory designation procedures that advanced these values.[3] Although the Bureau now wishes to abandon these amendments, we urge the Bureau to reconsider.

Under Section 1024(a)(1)(C) of the Dodd-Frank Act, the CFPB may supervise a nonbank entity 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."[4] In other words, under this provision, the Bureau may supervise a nonbank if it has good cause to believe that the nonbank poses risks to consumers. Under the 2022 and 2024 amendments to this process, known as Supervisory Designation Proceedings, an entity could contest the Bureau's decision to supervise them, but doing so would result in public release of the Bureau's findings that the nonbank posed risk to consumers. Alternatively, if the nonbank consented to supervision, the Bureau's determination that the nonbank poses risks to consumers would remain nonpublic. These changes aimed to enhance accountability and transparency in the supervision of nonbank financial entities.

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

2 Procedures for Supervisory Designation Proceedings, Docket No. CFPB-2025-0013, 90 Fed. Reg. 20401 (May. 14, 2025) (hereinafter, "Proposal"), https://www.federalregister.gov/documents/2025/05/14/2025-08347/procedures-for-supervisory-designation-proceedings.

3 Procedures for Supervisory Designation Proceedings, Docket No. CFPB-2024-0006, 89 Fed. Reg. 30259 (Apr. 23, 2024), https://www.federalregister.gov/documents/2024/04/23/2024-08430/procedures-for-supervisory-designation-proceedings.

4 12 U.S.C. § 5514.

Now, the Bureau proposes to reverse course. In its May 2025 proposed rule, the CFPB now argues that the possibility of public disclosure could unfairly coerce companies into consenting to supervision to protect their reputations. But this justification undermines the very purpose of public transparency: to hold powerful institutions accountable when they are alleged to engage in risky conduct that threatens the public interest. Rescinding these transparency-enhancing procedures would harm consumers, undermine the Bureau's mission, and weaken the regulatory ecosystem designed to protect the most vulnerable.

I. The Current Supervisory Designation Proceedings Process Fosters Transparency and Accountability.

The 2022 and 2024 amendments were designed to improve the Bureau's ability to oversee nonbank financial institutions that may pose risks to consumers. A central feature of these reforms was that decisions and orders issued when an entity contested designation would be made public. Despite suggestions to the contrary from new Bureau leadership, this public designation is not punitive or coercive; it is a commonsense measure to ensure that the public—consumers, journalists, economists, advocates, and even competitors—can see who is being scrutinized and why.

Rescinding these rules would replace the current system of transparency with a new opaque regime in which powerful, risk-laden financial actors may operate more freely in the shadows. The proposed revisions to the supervisory designation proceedings represent a structural shift that tilts the balance of power away from consumers and toward the very financial actors the CFPB is tasked with regulating.

Transparency is not only good for regulators; it's good for democracy. A public that cannot see regulatory decisions cannot meaningfully evaluate whether the CFPB is fulfilling its mandate. For watchdog organizations, legal advocates, journalists, and even responsible market actors, access to these public orders is vital. Without transparency tools like the public supervisory designations at issue in this rule, the public lacks meaningful opportunities to discern patterns of misconduct, monitor systemic risks, or inform policy development.

II. The Proposed Rule Promotes a False Dichotomy between Reputational Harm and Due Process.

The CFPB justifies its proposal by pointing to a "procedural disparity": under the current rules, entities that consent to supervision avoid public exposure, while those who contest may be publicly identified. This, the Bureau argues, might pressure businesses to give up their right to contest.

But this argument misunderstands what is at stake. The current system does not penalize contesting entities—it simply ensures that when the government makes a formal finding that a company poses risks to consumers, that finding is public. If companies want to avoid public scrutiny, the onus should be on them to operate in a way that doesn't trigger regulatory concern—not on the Bureau to hide its findings.

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Indeed, the greater risk lies in the opposite scenario: that powerful companies will opt into quiet supervision, shielded from public view, in order to avoid the reputational consequences of a public designation. Such opacity could allow companies with troubling histories to be supervised without adequate public accountability or market correction. In other words, the incentive becomes not to improve practices but to keep them concealed.

This undermines both the public's right to know and the integrity of the regulatory process. There is no right to avoid reputational damage if that damage stems from credible regulatory findings. And there is no justice in a system that cloaks bad actors in secrecy while the consumers they harm remain unaware.

III. The Proposed Rule Jeopardizes Consumers' Interest in Disclosure.

Public decisions do more than just inform. They empower. When consumers, journalists, and advocates know which companies have been identified by the CFPB as posing risks, they can make more informed choices. Communities disproportionately harmed by predatory financial practices—low-income households, communities of color, servicemembers, the elderly—are especially in need of this information. It helps level the playing field in an economy where information is power.

The CFPB's own proposed rescission acknowledges that under the amendments, public disclosure occurs only when a decision and order are issued following a contested proceeding. That is, only when the Bureau has concluded that an entity is subject to supervision due to risky behavior. This is not premature disclosure; it is a reasoned, deliberate judgment. The public deserves to know when and why such decisions are made.

Rescinding this transparency denies consumers access to critical information that could affect their financial health and well-being.

IV. The Current Supervisory Designation Proceedings Rules Better Align the Bureau with Its Founding Principles and Statutory Mission.

The Dodd-Frank Act was clear about the importance of transparency. Section 1022(c) requires the Bureau to consider "the potential benefits and costs to consumers and covered persons" when adopting regulations, including "transparency in the functioning of the market."[5] Transparency is therefore not a secondary concern—it is fundamental.

The amendments adopted in 2022 and 2024 brought the Bureau into close alignment with this congressional directive. Rescinding them now would be a step backward. It sends the wrong message to consumers and markets alike: that regulatory discretion should be exercised in secrecy, and that the reputational interests of companies outweigh the public's right to know.

[5] 12 U.S.C. § 5512(c).

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This is especially troubling in an era of rising financial complexity. Nonbank entities—from payday lenders to fintech firms—are increasingly central to Americans' financial lives. In 2020, three of the top-five lenders in the U.S. were nonbanks.[6] Since 2017, nonbanks have controlled over 50 percent of the U.S. lending market.[7] And there is also some evidence that, as nonbanks have increased their market share, the overall risk profile to consumers of credit has risen.[8] Yet nonbanks often operate with fewer regulatory constraints than traditional banks, making CFPB oversight all the more important. Weakening transparency around such supervision is not just unwise—it is dangerous.

V. The Bureau Should Consider Reasonable Alternatives That Better Address Its Concerns without Jeopardizing the Benefits of the 2022 and 2024 Amendments.

If the CFPB is genuinely concerned about procedural fairness for firms designated for supervision, there are better ways to address those concerns without sacrificing the transparency of the 2022 and 2024 Amendments. For example, the Bureau could:

- Offer clearer guidance on the threshold for public disclosure;
- Allow limited redactions to protect sensitive information in specific circumstances; or
- Provide additional due process protections for entities facing public orders.

But abandoning public disclosure altogether, as the proposed rule effectively does, is an overcorrection. It is a blunt instrument that harms the very people the Bureau was created to protect.

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6 These lenders were Quicken Loans, United Wholesale Mortgage, and Penny Mac. *See* Alicia Phaneuf, *The Growing Market Share of Nonbanks and Alternative Financing in the Online Mortgage Lending Industry*, BUS. INSIDER (Jan. 19, 2021), https://www.businessinsider.com/alternative-nonbank-mortgage-lending; John Bancroft, *The Battle for Origination Supremacy: Nonbanks at 63% Market Share*, INSIDE MORTG. FIN. (Jun. 25, 2020), https://www.insidemortgagefinance.com/articles/218443-the-battle-for-origination-supremacy-nonbanks-at-63-market-share. *See generally* Kayla Shoemaker, *Trends in Mortgage Origination and Servicing: Nonbanks in the Post-Crisis Period*, 13 FDIC Q. 51 (2019), https://www.fdic.gov/bank/analytical/quarterly/2019-vol13-4/fdic-v13n4-3q2019-article3.pdf (discussing mortgage trends since the 1970s).

7 *See* Kathryn Fritzdixon, *Bank and Non-Bank Lending Over the Last 70 Years*, 13 FDIC Q. 31, 34 (2019), https://www.fdic.gov/bank/analytical/quarterly/2019-vol13-4/fdic-v13n4-3q2019-article1.pdf; *see also* Pedro Gete & Michael Rehr, *Mortgage Securitization and Shadow Bank Lending* 34 REV. OF FIN. STUD. 2236 (2020) (discussing the market share of nonbanks in mortgage origination).

8 As of 2020, the average mortgage down-payment had dropped to 11.4% from 20%. Sara Ventiera, *Where Buyers Are Making the Lowest -- and the Highest -- Down Payments*, REALTOR.COM (Mar. 18, 2020), https://www.realtor.com/news/trends/lowest-down-payment-cities/. Meanwhile, FICO scores have dropped to a median of 710 out of 850, *What's the Average Credit Score in America?*, CAPITALONE (June 10, 2021), https://www.capitalone.com/learn-grow/money-management/average-credit-score-in-america/ (reporting an average FICO score of 710 for 2020), concerningly close to the Crisis-era "subprime cutoff." Marshall Lux & Robert Greene, *What's Behind the Non-Bank Mortgage Boom?* 22 (Harv. Kennedy Sch., Mossavar-Rahmani Ctr. for Bus. & Gov., Working Paper No. 42, 2015).

Conclusion

The Dodd-Frank Act envisions a financial system that is fair, transparent, and accountable. That vision is only possible when regulators operate with transparency. The 2022 and 2024 Amendments promote those ends. The proposed rescission abandons them. While the 2022 and 2024 Amendments acknowledged that meaningful consumer protection requires public knowledge and oversight, the proposed rescission privileges secrecy over sunlight. We urge the Bureau to reconsider. Consumers cannot afford a regulatory system that hides as much as it reveals.

We hope these comments are helpful in guiding the Bureau's important and ongoing work to make the financial system more fair, stable, and transparent for the benefit of all Americans.

Sincerely,

Brady Williams

Brady Williams
Legal Counsel
bwilliams@bettermarkets.org

Better Markets, Inc.
2000 Pennsylvania Avenue, NW, Suite 4008
Washington, DC 20006
(202) 618-6464

http://www.bettermarkets.org/