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Russell Vought, Acting Director
Consumer Financial Protection Bureau
Office of Administrative Adjudication
1700 G St. NW
Washington, DC 20552

Rules of Practice for Adjudication Proceedings; Rescission, 90 Fed. Reg. 20,241 (May 13, 2025)

Dear Director Vought:

I am grateful for the opportunity to comment on the proposed rulemaking of the Consumer Financial Protection Bureau (CFPB or Bureau) to rescind an amendment that expanded the CFPB Director's authority over dispositive motions. This amendment, among others, was adopted as a procedural rule in 2022.¹ After receiving and considering comments, the Bureau decided to retain the amendments.² The amendment in question expanded the Director's authority by revising 12 C.F.R. § 1081.213 and repealing 12 C.F.R. § 1081.212(h). Section 1081.213 now provides in part, "The Director will rule on a dispositive motion, refer the motion to the hearing officer, or rule on the motion in part and refer it in part." 12 C.F.R. § 1081.213(a).

Rescinding this amendment to CFPB's Rules of Practice for Adjudication (Rules for Practice) will restore the proper sequence in the agency's administrative proceedings. According to the Bureau's proposed rescission to its Rules for Practice, only hearing officers will be authorized to grant or deny dispositive motions. This rescission would restore the original procedure for ALJ review of such motions under repealed section 1081.212(h).³ This requirement establishes that the Bureau's ALJ or hearing officer possesses the sole authority to review any and all dispositive motions. If the ALJ decides to grant the motion, he must submit a recommended decision to the Director. The 2022 amendment places too much authority with the Director to issue informal orders in proceedings. Many of these orders consist of dispositive motions, which are often utilized to dismiss or instantly resolve legal disputes before they can

¹ Rules of Practice for Adjudication Proceedings, 87 Fed. Reg. 10,028, 10,500 (Feb. 22, 2022).

² Rules of Practice for Adjudication Proceedings, 88 Fed. Reg. 18,382 (Mar. 29, 2023).

³ § 1081.212(h) Dispositive motions. Specifically, the section read, "Within 30 days following the expiration of the time for filing all responses and replies to any dispositive motion, the hearing officer shall determine whether the motion shall be granted. If the hearing officer determines that dismissal or summary disposition is warranted, he or she shall issue a recommended decision granting the motion."

proceed to the hearing stage. Such authority shouldn't reside with the Director, who can already issue the final say on all proceedings unilaterally and is authorized to greenlight public enforcement actions. The CFPB should relinquish the Director's authority over dispositive motions and, in return, restore proper oversight of these motions to its administrative law judges (ALJs).

CFPB adjudications should follow proper sequence under the APA

The CFPB's amendment disrupts the traditional sequence of events in agency adjudication. In virtually every other federal agency, informal motions in adjudication are first managed by the assigned ALJ. The amendment reverses that presumption by funneling all dispositive motions directly to the CFPB's Director without the ALJ's consideration. The preamble to the proposed rules states that the CFPB's current "approach is atypical in the Executive Branch, where the norm is for hearing officers to decide dispositive motions, and industry commenters criticized it for concentrating authority in the Director at the expense of the hearing officer."⁴ Prior to this amendment, the Bureau's ALJ served as the presiding officer for all informal motions, including dispositive motions.

The only exception to this process can be found with interlocutory review. The Director is authorized to issue interlocutory orders whenever he chooses. However, the Rules provide that the Director must wait until after the ALJ has certified the motion for review. So, even with interlocutory orders, the ALJ is entitled to review such informal actions prior to the Director's consideration. In fact, the Rules of Practice assert that interlocutory review is the "exclusive remedy for review of a hearing officer's ruling or order prior to the Director's consideration of the entire proceeding" (§1081.211). This means that the Director, unless he deems otherwise, cannot consider the motion for interlocutory review until it has been certified by the ALJ.

Beyond the CFPB's own Rules for Practice, the Administrative Procedure Act (APA) contemplates that an ALJ's initial decision or recommended decision precedes a final decision of the agency, which in this case would be the Director. *See* 5 U.S.C. § 557(b). This suggests that under APA standards, the ALJ should review all matters prior to the Director's influence.

The amendment inappropriately reroutes motions in a case to the Director, disregarding what the APA traditionally permits. Prior to the amendment, the Director was required to wait until the ALJ first reviewed dispositive motions. The Director was only authorized to intervene if the dispute has reached the hearing stage and after a recommended decision was rendered by the ALJ.

Lastly, the amendment conflicts with the Director's role as the final adjudicator at the agency. Because all ALJ decisions are recommended opinions, the Director reserves the right to review all cases at his discretion. Other agency frameworks require that a party to a case first appeals the matter to the final adjudicator. The 2022 amendment, however, reverses this order of operations to place the Director as the initial decider of all dispositive motions with the option to send these matters to the ALJ. Such an arraignment risks tainting the legal process when the final

⁴ Rules of Practice for Adjudication Proceedings; Rescission, 90 Fed. Reg. 20,241, 20,241 (May 13, 2025).

adjudicator can also see motions in a case before receiving the entire record on appeal. And it appears to taint the legal process from the perspective of a respondent who may wonder “why did the Bureau’s Director reach down into my case to deny my motion to dismiss?” The Director has a greater incentive to reject any motions for dismissal by the private party because he/she approves all public enforcement actions in the first place. By allowing the Director to rule on dispositive motions rather than a more politically neutral ALJ, the amendment further stacks the deck in the CFPB’s system of adjudication.

Like most agencies, the CFPB’s adjudicatory system is set up where the Bureau is always the petitioner suing the private firm for perceived rule violations.⁵ In this lopsided legal system, the private parties are always on defense and the CFPB can remain invulnerable to any offense from the other side seeking to dismiss cases brought against them. Such an arrangement reeks of corruption, especially for an agency that already consolidates much power in the hands of a single director.

Since most of the CFPB’s proceedings are informal, the amendment grants the Director too much oversight

The vast majority (95%) of the CFPB’s adjudications are resolved by settlement orders.⁶ This is unusual when compared to the estimated 41 other agencies with APA-regulated adjudication. The only other entity that closely follows this settlement-dominant model is the Public Company Accounting Oversight Board, which resolves close to 100% of its disputes through settlement orders.⁷ Every proposed settlement must be reviewed by the Director and can only be approved by his signature. The resulting consent order serves as the final word on the dispute between the parties. Consent orders typically see the private financial institution agree to pay notable civil monetary penalties for the infraction in question. While slightly reduced from the CFPB’s proposed penalty request, these settlements still impose hefty penalty costs. The Bureau renders the stipulation and consent orders prior to the notice of charges being posted.

The problem with the amendment for dispositive orders is that it captures some of the few remaining cases once handled exclusively by the ALJ. Given that the Director already resolves every settlement through his consent orders (95% of all cases), reviewing dispositive

⁵ CFPB, “Docket of the Office of Administrative Adjudication,” n.d., <https://www.consumerfinance.gov/administrative-adjudication-proceedings/>. Nearly every reported case on the CFPB’s docket begins with “the Bureau issued an order against” X firm. It remains unclear how many unsuccessful attempts were made by private party to sue the CFPB in-house. With the Director’s power over dispositive motions, it will become all but inevitable for these suits to be dismissed.

⁶ See, CFPB, “Docket of the Office of Administrative Adjudication.” The 95% figure derives from the currently 157 CFPB proceedings that were resolved through consent orders, leaving only nine cases that were formally adjudicated (5%).

⁷ Public Accounting Oversight Board, “Enforcement Actions,” n.d., <https://pcaobus.org/oversight/enforcement/enforcement-actions?sort=oldest&pg=2&enforcementordertypes=Settled%20Disciplinary%20Order>. Similar to the CFPB, nearly all recorded PCAOB enforcement actions fall under “settlement disciplinary orders.” Note that the PCAOB is a self-regulatory organization that in many ways resembles its parent agency, the Securities and Exchange Commission. The PCAOB derives its adjudicatory authority from the SEC.

motions expands his access to many of the remaining cases on the Bureau's docket.⁸ Thus, the Director becomes the de jure gatekeeper over all informal adjudication to include settlements and dispositive motions. Because of the amendment, the CFPB is the only federal agency that consolidates all adjudicatory authority into one person: the Director. While the Bureau's 2022 amendment was modeled after a similar process at the Federal Trade Commission (FTC), such motions were to be reviewed by a panel of commissioners at the FTC, rather than a single Director.⁹ The only cases reserved for the CFPB's ALJ are those that aren't already settled and matters lacking a dispositive motion, the latter of which have typically been raised by Enforcement staff at the CFPB.

The CFPB sets a poor precedent by consolidating this much authority with the Bureau Director. The Bureau Director already wields vast power over an agency that is essentially insulated from and unaccountable to Congress. While the CFPB's Enforcement Director, a subordinate to the Bureau Director, initiates all punitive actions, the Bureau Director must approve requests for such actions to proceed or go public. This means that no enforcement action can move forward without the authorization of the Bureau Director.¹⁰ The Director also reserves the final decision on those actions that are adjudicated. This includes the right to reject, modify, or adopt the initial decision of the ALJ. The Bureau Director also oversees the agency's vast Civil Penalty Fund.¹¹ This represents the accumulation of all collected civil monetary penalties from private actors charged by the Bureau for violating its regulations.

The Director also possesses unfettered discretion to spend these civil monetary proceeds as he deems fit.¹² As stated before, nearly all CFPB proceedings culminate in consent orders issued by the CFPB, containing monetary fees that must be paid by the guilty firms. There has been widespread criticism against prior directors for allowing much of this money to go not to the victims of consumer financial fraud but to a host of left-wing activist groups.¹³ Former CFPB

⁸ Based on the CFPB's docket, there have been approximately two cases containing dispositive orders at the CFPB. These are the: (1) Integrity Advance, LLC and James R. Carnes; and (2) the PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation cases. For both cases, the Enforcement staff filed motions for summary disposition.

⁹ Rules of Practice for Adjudication Proceedings, 87 Fed. Reg. 10,028, 10,500 (Feb. 22, 2022), pg. 10032. According to the amendment, "The Bureau is amending Rule 213 to adopt a new procedure for rulings on dispositive motions, based on a procedure used by the Federal Trade Commission (FTC)."

¹⁰ Office of Enforcement, "The Bureau's Enforcement Work," CFPB, November 25, 2020, <https://www.consumerfinance.gov/about-us/blog/the-bureaus-enforcement-work/>. See the following statement, "When warranted by an investigation, we may seek authority from the Director to take a public enforcement action or we may close the investigation." The term "Director" is only mentioned once in this blog post and as a separate individual from the Office of Enforcement, since the term "we" should encompass all the Enforcement staff, including the Enforcement Director. Thus, we can reasonably assume that this is referring to the Bureau Director and not the Enforcement Director, who is a separate person and is subordinate to the Bureau Director.

¹¹ CFPB, "Civil Penalty Fund," n.d., <https://www.consumerfinance.gov/enforcement/payments-harmed-consumers/civil-penalty-fund/>

¹² See, Robert Bowes, "Mandate for Leadership: The Conservative Promise," *Project 2025*, October 26, 2023, pg. 838. <https://www.documentcloud.org/documents/24088042-project-2025s-mandate-for-leadership-the-conservative-promise/>

¹³ According to a 2015 *Investors Business Daily* article, the CFPB has been "diverting potentially millions of dollars in settlement payments for alleged victims of lending bias to a slush fund for poverty groups tied to the Democratic Party."

Director Richard Cordray approved many million-dollar payouts to “bankroll some 60 liberal non-profits, many of whom are radical ACORN-style pressure groups.”¹⁴ And as mentioned, the Bureau Director possesses the sole authority to greenlight public enforcement actions proposed by enforcement staff.¹⁵ This requirement follows a similar framework at the Securities and Exchange Commission’s Division of Enforcement, which, following a recent rule change, must have each of its enforcement actions reviewed and affirmed by the agency’s commissioners. Where this power is shared by up to five commissioners at the Securities and Exchange Commission, the CFPB by contrast consolidates this approval power into the hands of one Director.

Conclusion

The Director of the CFPB is perhaps one of the most powerful roles in the fourth branch of the federal government. Regarding adjudication, no other agency reserves as much power and discretion to the final adjudicator as does the CFPB with its Director. The CFPB Director not only issues consent orders that cover nearly all of its administrative proceedings, but he can also oversee dispositive orders for the few cases that see adversarial disputes between the Bureau and private parties. The amendment targeted for rescission has concentrated virtually all of the decision-making authority into the hands of the CFPB Director. This leaves the Bureau’s ALJs with far less oversight of the sliver of informal adjudication once reserved to them.

Rescinding the amendment will help ensure that the CFPB can no longer operate under a separate standard from other adjudicatory agencies. Every other agency among the roughly 42 APA-governed entities allow dispositive motions to be managed by the ALJ. No agency outside of the CFPB and FTC allows its final adjudicators to determine dispositive motions prior to an ALJ’s initial decision. The CFPB’s amendment undermines both of these standards and imposes arbitrary interference by the Director that risks biasing the process. The amendment to the Rules for Practice should be rescinded to allow for proper procedural adjudication at the CFPB.

On behalf of the Competitive Enterprise Institute, I thank you for the opportunity to assist the Bureau in explaining why its proposed rescissions are much needed.

Sincerely,

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¹⁴ Editorial, “CFPB Joins Justice in Shaking Down Banks for Democrat Activist Groups,” Investor’s Business Daily, June 17, 2015, <https://www.investors.com/politics/editorials/cfpb-diverts-civil-penalty-funds-to-democrat-activist-groups/>

¹⁵ CFPB, “Lifecycle of an enforcement action,” n.d., <https://www.consumerfinance.gov/enforcement/life-cycle-of-enforcement-action/>. “When warranted by the investigation, Enforcement may seek authority from the [Bureau] Director to take a public enforcement action.”