STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

212.416.8050

September 25, 2025

BY ELECTRONIC
SUBMISSION & EMAIL

Russell Vought
Acting Director, Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, DC 20552

Letter in Opposition to Proposed Rule on the Legal Standard Applicable to Supervisory Designation Proceedings (Docket No. CFPB-2025-0018)

Dear Acting Director:

The exceptional growth of digital and financial services provided by entities other than banks, such as digital wallet providers, peer-to-peer payment processors, neobanks, and online or mobile-app lenders, is a fundamental story in the evolution of consumer financial markets in the past two decades. The Federal Reserve has described the "profound transformations" of the financial system as "nonbank financial institutions" have "increasingly taken on roles traditionally dominated by banks."[1] The FDIC has found that use of nonbank payment services continues to increase among all households.[2] The Financial Stability Board has reported that nonbank financial services grew at twice the rate of banking services in recent years.[3] News agency,[4] after news

---

1 Gabriel, Ricardo Duque & Sterling, Julianna, FEDS Notes, *Shifting Dynamics in Bank Funding of BNFIs: The Rise of Credit Lines* (Jul. 14, 2025), *available at* https://doi.org/10.17016/2380-7172.3822.

2 Federal Deposit Insurance Corporation, *2023 FDIC National Survey of Unbanked and Underbanked Households* (Nov. 14, 2024), *available at* https://www.fdic.gov/household-survey.

3 Financial Stability Board, *FSB Reports Strong Growth in Non-Bank Financial Intermediation in 2023* (Dec. 16, 2024), *available at* https://www.fsb.org/2024/12/fsb-reports-strong-growth-in-non-bank-financial-intermediation-in-2023/.

4 New York Times, *The Youths Have Spoken: Wallets Are Uncool. Go Digital.* (Mar. 4, 2024), *available at* https://www.nytimes.com/2024/03/06/technology/personaltech/mobile-wallet-app.html.

agency,[5] after news agency[6] has published articles on American consumers' increasing reliance on nonbank digital and financial services on a daily basis. And less than two years ago, the Consumer Financial Protection Bureau ("CFPB" or "the Bureau") itself acknowledged in proposed rulemaking that consumers "rely on general-use digital consumer payment applications for many aspects of their everyday lives," that nonbanks offering these financial services have a "large and increasing significance to the everyday financial lives of consumers," and that digital financial services provided by nonbanks was likely to experience "further growth well into the future."[7]

The CFPB's ability to designate nonbanks for supervision is a key tool to protect consumers and promote fair and transparent consumer financial markets. Yet in the face of rapidly growing and evolving markets that increasingly touch the financial lives of American consumers every day, the Bureau is now proposing a rule that will impose artificial and arbitrary limits on its oversight of the entities that are responsible for digital payments. The Bureau's effort to redefine the statutory standard governing its designation authority is unduly restrictive, cannot be squared with the statutory scheme Congress adopted in Dodd-Frank, and constitutes bad public policy that needlessly increases risks of financial harm for millions of Americans. We, the undersigned attorneys general for New York, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii,[8] Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, North Carolina, Oregon, Rhode Island, Vermont, and Washington (the "State AGs") thus write to comment in opposition and to urge the Bureau to abandon its proposed rule.

Illegal & Unduly Restrictive. Congress established the CFPB based on "the failure of the federal banking and other regulators to address significant consumer protection issues" that led to the Great Recession and, with it, "millions of . . . lost jobs," the loss of "trillions of dollars in net worth" for American consumers, and the loss of "retirement, college, and other savings."[9] Among many other powers, Congress granted the Bureau authority to "require reports and conduct examinations on a periodic basis" of significant nonbank entities,[10] including those that are active in the mortgage market,[11] that are large participants in the financial or student loan markets,[12] and other significant entities. This statutory grant of supervisory authority was a response to "the lack of any effective supervision" over nonbanks that existed before the enactment of Dodd-Frank,

---

5 Bloomberg, *Americans' Reliance on Mobile Banking, Short-Term Funding Climbs* (Nov. 12, 2024), *available at* https://www.bloomberg.com/news/articles/2024-11-12/americans-reliance-on-mobile-banking-short-term-funding-climbs.

6 Wall Street Journal, *Credit and Debit Cards Ate Cash. So What's Eating Cards?* (Nov. 1, 2024), *available at* https://www.wsj.com/finance/credit-and-debit-cards-ate-cash-so-whats-eating-cards-ad58ceb6.

7 Consumer Financial Protection Bureau, *Proposed Rule: Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications*, 88 F.R. 80197, 80200 (Nov. 17, 2023).

8 S. Rep. 111-176, at 10 (Apr. 30, 2010).

9 In addition to the Hawaii Attorney General, the Hawaii Office of Consumer Protection joins this comment.

10 12 U.S.C. § 5514(a)–(b).

11 *Id*. § 5514(a)(1)(A).

12 *Id*. § 5514(a)(1)(B) & (D).

which Congress found had "led to a 'race to the bottom' in which the institutions with the least effective consumer regulation and enforcement attracted more business."[13]

In connection with this grant, Congress authorized the CFPB to designate nonbanks that the Bureau "has reasonable cause to determine," after notice and a reasonable opportunity to respond, are engaging in "conduct that poses risks to consumers."[14] This flexible standard is consistent with the CFPB's overall design, which was to "have enough flexibility to address future problems as they arise" rather than limiting the Bureau to "the authority to address the problems of the past," as Congress expressly recognized "that consumer protections must adapt to new practices and new industries."[15] And the Bureau has used this tool judiciously; the proposed rule acknowledges that the Bureau has designated for supervision "fewer than twenty covered entities" under Section 5514[16]—or just about one nonbank per year since the CFPB's inception.

Notwithstanding clear congressional commands, the prior reasoned application of its designation authority, and the context for enactment of Dodd-Frank, the Bureau is proposing to impose two artificial restrictions on its own future ability to designate nonbanks for supervision. Specifically, the proposed rule transforms Congress's grant of authority to designate nonbanks for supervision when they are engaging in conduct "that poses risks to consumers" into a tool that is available only where the Bureau first determines that the conduct in question (i) "presents a high likelihood of significant harm to consumers" and (ii) is "directly connected to the offering or provision of a consumer financial product or service as defined" by Dodd-Frank.[17] These arbitrary limits on CFPB authority are unsupported and inconsistent with congressional command.

The proposed rule's first limitation—redefining "risks to consumers" to mean only risks that present "a high likelihood of significant harm"—simply does not reflect *what Congress actually said*. Congress elsewhere has demonstrated an ability to impose these limitations on grants of authority when it desires, such as requiring the Secretary of Defense to report to Congress on counterintelligence failures considered "likely to cause *significant harm*"[18] or defining "*high likelihood*" for purposes of determining whether products are "biosimilar."[19] Indeed, Congress expressly modified certain Dodd-Frank requirements in this same way, such as requiring the Bureau to provide semi-annual reports on only "significant" issues.[20] Given Congress's concern that the Great Recession resulted from the proliferation of dangerous "risks and products" that flourished "outside the view of those responsible for overseeing the financial system,"[21] artificially

---

13 S. Rep. 111-176 at 10.

14 12 U.S.C. § 5514(a)(1)(C).

15 S. Rep. 111-176, at 11.

16 CFPB, *Legal Standard Applicable to Supervisory Designation Proceedings*, 90 F.R. 41520, 41521 (Aug. 26, 2025) (hereinafter, "Proposed Rule").

17 *Id*. at 41520.

18 10 U.S.C. § 2723(a) (emphasis added).

19 42 U.S.C. § 1320f-1(f)(3) (emphasis added).

20 *E.g.*, 12 U.S.C. § 5496(c)(1) (requiring the Bureau to report semi-annually on "*significant* problems faced by consumers in shopping for or obtaining consumer financial products or services") (emphasis added).

21 S. Rep. 111-176 at 43.

limiting the scope of the Bureau's authority to designate nonbanks for supervision by employing restrictive modifiers that Congress could have, but chose not to, adopt is unsupportable.

Similar concerns arise with respect to the Bureau's request to comment on whether "risks to consumers" must be "potential violations" of law.[22] This proposal resolves no possible concern cited by the proposed rule—the phrase "potential violation" is vague and the definition itself is circular. Moreover, the statutory factors that Congress instructed the CFPB to consider when exercising supervisory authority do not include potential violations of law,[23] and imposing such a requirement is inconsistent with statutory command. Nor is such a limitation consistent with the purpose of supervision, which is to assess compliance systems;[24] requiring the Bureau to identify potential violations before exercising supervisory authority gets this backwards.

The proposed rule's second limitation—to restrict its designation authority to only where the products or services are those expressly "defined" by Dodd-Frank—likewise is not in keeping with Congress's vision for the Bureau. In adopting Dodd-Frank, Congress explained that "consumer protections must adapt to new practices and new industries."[25] To that end, Congress granted the CFPB substantial discretion, including the ability to define new financial products and services subject to its authority.[26] Arbitrarily limiting the CFPB's authority to designate a nonbank for supervision merely because its product or service did not yet exist or was not foreseen by Congress nearly two decades ago is utterly inconsistent with the Bureau's mandate.

The proposed rule does not engage in any meaningful way with Dodd-Frank's statutory text or the history and context in which Congress granted designation authority to the CFPB. Nor does the proposed rule offer detailed policy justifications for restricting the Bureau's future authority—to the contrary, it acknowledges the "generally limited data with which to quantify potential costs, benefits, and impacts of the proposed rule."[27] Instead, the Bureau briefly, and without any evidence, posits three bases for the proposed rule, none of which can justify the rule's unduly restrictive redefinition of Congress's statutory grant of authority.

First, the proposed rule asserts that because the CFPB has historically designated nonbanks for supervision in individual orders, the result is an "ad hoc" process that "may not be consistent between orders."[28] But the *ad hoc* nature of designation determinations is precisely what Congress envisioned. Specifically, Dodd-Frank provides that the Bureau has authority to designate a nonbank for supervision only after an individualized inquiry that requires "notice to the covered person and a reasonable opportunity for such covered person to respond."[29] Innumerable factors,

---

22 Proposed Rule, 90 F.R. at 41521.

23 12 U.S.C. § 5514(a)(1).

24 *See* CFPB, *Supervision* (Jul. 3, 2024), *available at* https://www.consumerfinance.gov/about-us/careers/supervision/ ("The purpose of the CFPB's supervision program is to assess compliance with Federal consumer financial laws").

25 S. Rep. 111-176 at 11.

26 12 U.S.C. § 5481(15)(A)(xi).

27 Proposed Rule, 90 F.R. at 41521.

28 *Id*. at 41520.

29 12 U.S.C. § 5514(a)(1)(C).

case-specific circumstances, and policy considerations might warrant differential determinations when applying this standard. The CFPB has, moreover, established binding procedures that provide nonbanks significant rights to raise arguments, including those related to consistency with prior designation orders, in written responses and at oral presentations, before the Bureau makes determinations.[30] And the proposed rule does not, in any event, prevent inconsistency: Because individualized determinations are required, the proposed rule simply shifts the risk from inconsistency as to what products or services "pose risks" to consumers to inconsistency as to what products or services impose a "high likelihood" of harm. In the absence of a uniform designation without case-specific context—which would be inconsistent with the congressional mandate—the proposed rule simply does not solve for the entirely hypothetical problem that it posits.

Second, in its proposed rule the Bureau argues that "because the applicability of the precedents in past orders can be unclear" and the Bureau "may depart from an existing precedent in a later case," regulated entities will face "uncertainty" regarding the "standard the Bureau will apply to their case." The proposed rule reinterprets the phrase "risks to consumers" to mean only those risks to consumers that present a "high likelihood of significant harm." That standard may be more *restrictive* in scope than the statutory language itself, but there is no inherent reason why it is any *clearer*. The proposed rule does not even attempt to make such a showing. To the contrary, inherently vague phrases such as "high" likelihood and "significant" harm are more likely to introduce, rather than reduce, uncertainty as to future applications. Nor does the proposed rule prevent the Bureau from departing from existing precedent in the future.

Finally, the proposed rule claims that a "binding framework" is necessary to ensure that the CFPB conforms "to the best reading" of Section 5514(a)(1)(C) "in individual cases."[31] This is circular reasoning at its finest, as the "binding framework" being proposed is to interpret the statutory term "risks to consumers" as encompassing only those risks that pose a "high likelihood of significant harm"—a framework that presupposes that this is the "best" interpretation of the statutory language that Congress employed. The proposed rule, however, mounts no serious argument as to why this is the "best" interpretation of the statutory language from Dodd-Frank. Nor could it, as Congress granted the CFPB flexible designation authority in response to its findings that the preexisting regulatory environments had lacked flexibility and incentives to respond to new products and services in a manner that would protect consumers.[32]

Public Policy. Beyond inconsistency with statutory text and history, placing artificial limits on the CFPB's designation authority over rapidly evolving nonbank consumer financial markets is bad policy and will cripple the CFPB's ability to use its statutory supervision designation authority to supervise potential bad actors in already established consumer markets.[33] In the past few years alone, the CFPB has issued orders against nonbank money transmitters for deceptive marketing and disclosures,[34] a nonbank peer-to-peer payment provider for failures to

---

30 CFPB, *Final Rule: Procedures for Supervisory Designation Proceedings*, 89 F.R. 30259 (Apr. 23, 2024).

31 Proposed Rule, 90 F.R. at 41520.

32 S. Rep. 111-176, at 10.

33 *See, e.g.*, CFPB Supervisory Designation Proceeding Decision & Order, *In re World Acceptance Corp.*, No. 2023-CFPB-SUP-0001 (Nov. 30, 2023).

34 *In re Wise US Inc.*, No. 2025-CFPB-0004 (Jan. 30, 2025).

comply with federal laws, including the Electronic Funds Transfer Act and Regulation E,[35] a nonbank debt collector for illegally collecting on student loan balances,[36] a nonbank seller of debt-relief services for deceptive practices and violations of federal law,[37] a nonbank financial technology company for unfair practices when failing to provide account balance refunds to consumers,[38] a nonbank auto lending company for unfair and abusive practices when lending to consumers or failing to provide rebates,[39] and a nonbank finance company for unfairly denying access to transaction documentation and prohibiting the return of goods.[40]

In recent years, the State AGs similarly have resolved repeated violations and brought enforcement actions against nonbanks operating in digital and financial markets, demonstrating a serious need to maintain and allow for expansion of supervision in these markets. In New York, for example, an investigation of one nonbank found thousands of violations of state laws designed to protect low-income families and limit employer paycard fees,[41] while another investigation resulted in a billion-dollar settlement with a nonbank predatory lender that pushed expensive loans on small businesses.[42] The New York State Office of the Attorney General also has brought enforcement actions against a nonbank for digitally operating a rent-to-own scheme outside of state law,[43] and digital payday lenders for marketing abusive, high-cost loans to low-wage workers.[44] The District of Columbia has brought a similar lawsuit against another online, nonbank, high-cost payday lender,[45] while multiple attorneys general have entered into consent agreements to prevent a nonbank from making predatory online loans in their states.[46]

---

35 *In re Block, Inc.*, No. 2025-CFPB-0001 (Jan. 16, 2025).

36 *In re Performant Recovery, Inc.*, No. 2024-CFPB-0016 (Dec. 9, 2024).

37 *In re Western Benefits Group, LLC*, No. 2024-CFPB-0003 (May 20, 2024).

38 *In re Chime Financial, Inc.*, No. 2024-CFPB-0002 (May 7, 2024).

39 *In re Toyota Motor Credit Corp.*, No. 2023-CFPB-0015 (Nov. 20, 2023).

40 *In re Tempoe LLC*, No. 2023-CFPB-0010 (Sep. 11, 2023).

41 New York State Office of the Attorney General, *Attorney General James Secures More than $1 Million from Netspend for Charging Illegal Fees and Misleading New Yorkers* (Jan. 30, 2025), *available at* https://ag.ny.gov/press-release/2025/attorney-general-james-secures-more-1-million-netspend-charging-illegal-fees-and.

42 New York State Office of the Attorney General, *Attorney General James Announces $1 Billion Settlement with Predatory Lender Yellowstone Capital for Harming Small Businesses* (Jan. 22, 2025), *available at* https://ag.ny.gov/press-release/2025/attorney-general-james-announces-1-billion-settlement-predatory-lender.

43 New York State Office of the Attorney General, *Attorney General James Sues Predatory Lender for Cheating Thousands of New Yorkers* (Aug. 14, 2024), *available at* https://ag.ny.gov/press-release/2024/attorney-general-james-sues-predatory-lender-cheating-thousands-new-yorkers.

44 New York State Office of the Attorney General, *Attorney General James Sues Payday Lending Companies for Exploiting Workers with Illegal Loans* (Apr. 14, 2024), *available at* https://ag.ny.gov/press-release/2025/attorney-general-james-sues-payday-lending-companies-exploiting-workers-illegal.

45 Office of the Attorney General for the District of Columbia, *Attorney General Schwalb Sues 'Pay Advance' Company EarnIn for Deceiving More than 20,000 DC Borrowers* (Nov. 19, 2024), *available at* https://oag.dc.gov/release/attorney-general-schwalb-sues-pay-advance-company.

46 *See, e.g.*, *In re Duvera Billing Services, LLC d/b/a EasyPay Finance*, Assurance of Discontinuance (Mass. Sup. Ct. May 21, 2024); *In re Duvera Billing Services, LLC d/b/a EasyPay Finance*, Assurance of Voluntary

In the face of these ever-evolving threats, the Bureau's attempt to artificially limit its statutory tools to promote nonbank compliance with consumer protections will increase, not decrease, the risk of harm to everyday Americans. The proposed rule concedes as much: "firms may be more likely to engage in conduct that could be said to present some probability of harm to consumers" and thus, where "this occurs, it would impose costs on consumers."[47] The proposed rule feebly justifies itself by hoping for a reduction of "the direct costs of supervision by" nonbanks and setting forth an undercooked attempt to quantify the impact.[48] But Congress's express mandate was for the CFPB to ensure both consumer "access to markets for consumer financial products and services" and markets that "are fair, transparent, and competitive,"[49]—not to reduce nonbanks' potential compliance costs by unduly limiting the Bureau's authority to protect consumers. As Congress explained, the CFPB was necessary to "stop regulatory arbitrage" by enforcing key protections "without regard to whether a mortgage, credit card, auto loan, or any other consumer financial product or service is sold by a bank, a credit union, a mortgage broker, an auto dealer, or *any other nondepository financial company*."[50] And, in any event, the Bureau already is statutorily obligated to ensure that its nonbank supervision is reasonable through implementation of "risk-based" supervision and coordination with state and federal regulators to minimize regulatory burdens,[51] rendering the justification for the proposed rule entirely superfluous.

Troublingly, the proposed rule does not even attempt to present concrete examples of harm to businesses or markets that have been caused by the current approach to nonbank designation. Nor could it, as the Bureau concedes that it "does not have quantitative data regarding the costs to respondents" who have been subject to prior nonbank designations[52] and does not "have quantitative data to predict most of the impacts of the changes made" by the proposed rule.[53] Regardless of these data limitations, however, the actual impacts of the existing regime are undoubtedly minimal, as the Bureau acknowledges that it has designated nonbanks for supervision "fewer than twenty" times.[54] As a result, the proposed rule admits, "the aggregate impact" of the proposed changes "is likely to be small,"[55] resulting in little to no supposed cost savings.

Indeed, the sole specific event referenced at all in the proposed rule is the CFPB's since-rescinded designation of Google as subject to nonbank supervision.[56] But in the last several months alone, a federal appellate court has upheld a verdict that Google violated federal and state

---

Compliance (D.C. Attorney General Jul. 10, 2023); *In re Duvera Billing Services, LLC DBA EasyPay Finance*, Stipulation and Final Agency Order (Colorado Attorney General and the Administrator, UCC Apr. 20, 2023).

47 Proposed Rule, 90 F.R. at 41521.

48 *See id*. at 41522.

49 12 U.S.C. § 5511(a).

50 S. Rep. 111-176 at 11 (emphasis added).

51 *Id*. § 5514(b)(2)–(3).

52 Proposed Rule, 90 F.R. at 41521.

53 *Id*.

54 *Id*.

55 *Id*.

56 *Id*. at 41521 n.2.

antitrust laws in the market for Android in-app billing,[57] a federal district court has found Google liable in the Department of Justice's landmark antitrust lawsuit for its monopolization of consumer advertising,[58] which was followed by a $3.5 billion fine assessed by the European Union for similar conduct,[59] a jury has ordered Google to pay more than $425 million in damages for improperly tracking consumers' smartphone activity,[60] and Google has agreed to pay $30 million to settle claims it illegally collected children's data.[61] To the extent Google is an example of an entity that should *not* be at risk of designation for supervision under Section 5514, that determination raises serious questions regarding the Bureau's view of what entities pose risks to consumers.

* * *

For all the above reasons, the State AGs vigorously oppose the CFPB's proposed rule and urge the Bureau to abandon its effort to redefine statutory standards in manners that are unduly restrictive and contrary to the statutory language and congressional intent.

Respectfully submitted,

LETITIA JAMES
ATTORNEY GENERAL
STATE OF NEW YORK

ROB BONTA
ATTORNEY GENERAL
STATE OF CALIFORNIA

PHILIP J. WEISER
ATTORNEY GENERAL
STATE OF COLORADO

WILLIAM TONG
ATTORNEY GENERAL
STATE OF CONNECTICUT

---

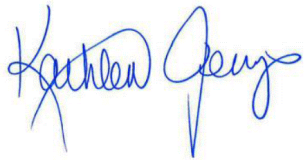
57 *Epic Games, Inc. v. Google LLC*, 147 F.4th 917 (9th Cir. 2025).

58 DOJ, *Department of Justice Prevails in Landmark Antitrust Case Against Google* (Apr. 17, 2025), *available at* https://www.justice.gov/opa/pr/department-justice-prevails-landmark-antitrust-case-against-google.

59 LAW360, *EU Fines Google $3.5B for Giving Leg Up to Company's Ad Tech* (Sep. 5, 2025), *available at* https://www.law360.com/articles/2384775.

60 CBS, *Google Ordered to Pay $425.7 Million in Damages for Improperly Tracking Smartphone Activity* (Sep. 17, 2025), *available at* https://www.cbsnews.com/news/google-ordered-pay-425-million-privacy-tracking-case/.

61 Reuters, *Google Settles YouTube Children's Privacy Lawsuit* (Aug. 19, 2025), *available at* https://www.reuters.com/sustainability/boards-policy-regulation/google-settles-youtube-childrens-privacy-lawsuit-2025-08-19/.



KATHLEEN JENNINGS
ATTORNEY GENERAL
STATE OF DELAWARE

BRIAN L. SCHWALB
ATTORNEY GENERAL
DISTRICT OF COLUMBIA

ANNE E. LOPEZ
ATTORNEY GENERAL
STATE OF HAWAII

MANA MORIARTY
EXECUTIVE DIRECTOR
HAWAII OFFICE OF
CONSUMER PROTECTION

KWAME RAOUL
ATTORNEY GENERAL
STATE OF ILLINOIS

AARON M. FREY
ATTORNEY GENERAL
STATE OF MAINE

ANTHONY G. BROWN
ATTORNEY GENERAL
STATE OF MARYLAND

ANDREA JOY CAMPBELL
ATTORNEY GENERAL
COMMONWEALTH OF|
MASSACHUSETTS

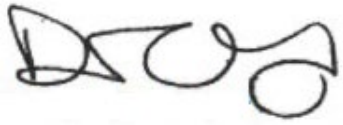
DANA NESSEL
ATTORNEY GENERAL
STATE OF MICHIGAN

KEITH ELLISON
ATTORNEY GENERAL
STATE OF MINNESOTA

AARON D. FORD
ATTORNEY GENERAL
STATE OF NEVADA

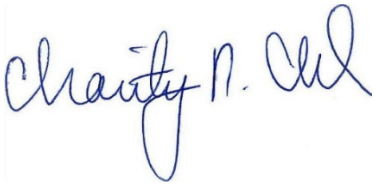
MATTHEW J. PLATKIN
ATTORNEY GENERAL
STATE OF NEW JERSEY

JEFF JACKSON
ATTORNEY GENERAL
STATE OF NORTH CAROLINA



DAN RAYFIELD
ATTORNEY GENERAL
STATE OF OREGON

PETER NERONHA
ATTORNEY GENERAL
STATE OF RHODE ISLAND



CHARITY R. CLARK
ATTORNEY GENERAL
STATE OF VERMONT

NICK BROWN
ATTORNEY GENERAL
STATE OF WASHINGTON