

March 31, 2023

**SUBMITTED via Federal E-rulemaking Portal ([www.regulations.gov](http://www.regulations.gov))**

Comment Intake – Nonbank Registration of Certain Agency and Court Orders  
c/o Legal Division Docket Manager  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

***RE: Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders;  
Docket Number CFPB–2022–0080***

Dear Director Chopra:

This comment letter is submitted on behalf of INFiN, a Financial Services Alliance (“INFiN”), in response to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed rule for a “Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders” with request for public comment (“NPRM” or “Rule Proposal”).<sup>1</sup> INFiN appreciates the opportunity to provide comments on this NPRM and respectfully requests that the CFPB withdraw its proposal to establish this new and unnecessary federal registry.

### **INFiN, A Financial Services Alliance**

INFiN is the leading national trade association representing the diverse and innovative consumer financial services industry. INFiN’s membership includes more than 350 companies, operating approximately 8,000 locations throughout the United States and online. Headquartered in Washington, DC, INFiN serves as the voice of the vital and rapidly evolving consumer financial services industry to advocate on behalf of its customers. INFiN’s membership consists of both large companies operating in multiple states, and small “mom and pop” operators.

INFiN members offer critical access to financial services to millions of Americans, particularly middle-income working families, who are often underserved by banks and credit unions and value the wide range of services provided by community-based financial service providers. Consumers choose these providers because they are affordable, offer integrated services through multiple convenient channels, and deliver services in a transparent and regulated environment.

The consumer financial services offered by INFiN members include check cashing, money orders, pre-paid cards, money transfers, electronic bill payments, and small-dollar loans, among others. These simple, popular financial solutions play an integral role in the financial lives of millions of American households, helping them to manage their financial obligations and challenges and providing essential financial inclusion and stability. Consumer financial services are available across a range of platforms and channels – from community-based storefronts to online tools powered by the latest technology.

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<sup>1</sup> Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders, 88 Fed. Reg. 6088 (January 30, 2023) (12 C.F.R. pt. 1092).

INFiN offers the following comments about the Rule Proposal for consideration:

### **Rule Proposal's Lack of Benefit to Consumers and Taxpayers**

Despite the Bureau's attempted justification for this rule proposal, this federal registry is duplicative, unduly burdensome, and would provide no real benefit to consumers.

The Bureau proposes that certain nonbank entities report on both the existence of any final public orders obtained or issued by a Federal, State, or local agency in connection with an offered consumer financial product or service and all final public written orders and judgments obtained or issued by the Bureau or other government agency for violation of certain consumer protection laws. However, the CFPB already has the tools it needs to identify agency and court orders, as the information that would be contained in this proposed registry is already publicly available. In fact, the CFPB readily admits that "much public information about such orders already exists."<sup>2</sup> For example, all states that regulate small-dollar lending publish any final regulatory agency orders on their websites. This information is public and available for consumers to review. The same goes for state attorneys general and other federal regulatory agencies. Creating a federal registry for the same information is redundant and duplicative.

The proposed nonbank registry is clearly duplicative of what already exists in the public domain – particularly the Nationwide Multi-State Licensing System and Registry (NMLS). For years the NMLS, owned and operated by the Conference of State Bank Supervisors ("CSBS") (through the State Regulatory Registry LLC), has been the system of record for state agencies for non-depository, financial services licensing, and registration. The stated goal of the NMLS is to "employ the benefits of local, state-based financial services regulation on a nationwide platform that provides for improved coordination and information sharing among regulators, increased efficiencies for industry, and enhanced consumer protection." The information that the CFPB believes is necessary for a federal registry is already provided to, and made available at, the NMLS system.

The Bureau also suggests in its Rule Proposal that a new public registry is necessary to more effectively monitor supervised entities. However, such duplicate reporting structure is unduly burdensome and unnecessary. There would be numerous additional staffing and compliance costs associated with these new rulemaking requirements – especially for small businesses. There are vastly simpler, less burdensome, and less costly ways in which the CFPB could provide public information to consumers without creating a new federal registry. For example, why couldn't CFPB simply create and maintain a webpage that links to all of the online locations where the public could access such information? It would seem there are many other ways in which the location for finding such orders and judgments could be promoted to better ensure consumer familiarity and access that would be as effective and even less costly than what would be involved in creating and maintaining a federal registry.

In addition, the Bureau already monitors supervised entities through the supervisory examination process. The CFPB – as well as all state agencies – conducts regular exams of supervised entities,

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<sup>2</sup> Id. at 6100.

which is the proper place to request and receive information related to agency or court orders and judgments.

The CFPB has long held Memorandums of Understandings (MOUs) with all 50 states and could easily work with their state partners. Were the states sufficiently consulted on this rule proposal, or given the opportunity to provide their perspective on future participation in this type of nonbank registry?

With over 1,500 employees, it would certainly seem that the CFPB has the necessary resources on its own to consolidate this type of public information it suggests needs to be housed into a single place, without manufacturing new reporting requirements for supervised entities to do the job for the agency.

The CFPB has a history of creating web portals for consumers that are under-utilized. For instance, the CFPB has long required that supervised entities report to a consumer complaint portal. However, this complaint portal is unfortunately more known for publishing allegations and is not reliable evidence of misconduct or violations.

Despite the Bureau's assertions, consumers are unlikely to utilize the type of registry that this rule proposal would create. Agency and court orders are already made public and there are current ways in which consumers may become aware of them as noted above. Furthermore, agency and court orders are legal documents which may convey the impression that a company has committed some type of violation, when the resolution in fact does exactly the opposite. A new federal registry is more likely to cause confusion rather than to assist consumers.

The CFPB also asserts that this new registry will give "ability of consumer advocacy organizations, researchers, firms conducting due diligence, and the media to locate, review, and monitor orders enforcing the law."<sup>3</sup> Thus, the proposal seems to be more designed to assist consumer groups and the plaintiffs' attorney bar rather than consumers.

The CFPB estimates that: there are approximately 155,043 covered nonbanks, 1-5% would be subject to the covered orders; and the rule proposal will ultimately impact between 1,550 and 7,752 covered nonbanks. It seems that the CFPB is merely guessing on the potential scope of its rule and has not made much of an attempt to use data to support the need for the rule requirements. Additionally, the CFPB has not properly estimated the number of small entities that would be impacted by the proposal.

In short, from our perspective, the CFPB has manufactured a "solution" where there is not a problem. INFiN urges the CFPB to take the time to consider these comments, as well as any comments and concerns expressed by the state regulatory offices and the CSBS.

### **Requirement Types Are Overinclusive**

The Rule Proposal would require the reporting of final public written orders and judgments, including consent and stipulated orders and judgments. This would seem to include even those

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<sup>3</sup> Id. at 6094.

agency consent orders and settlements in which the company does not admit to any wrongdoing. Surely the CFPB is aware that businesses often enter into such agreements without admitting fault and do so for a variety of reasons. For instance, the businesses: may not be able to afford to fight the allegations; may wish to avoid protracted legal costs; or may wish to simply move on. Agency enforcement actions are often resolved through such consent orders to avoid undue expenses and to lengthy periods of time of high legal costs. Companies often conduct a cost-benefit analysis to determine whether it makes more sense for the business to accept the order rather than to continue to fight it.

If the CFPB were to create a national registry that would only serve to unfairly characterize consent orders, then it would likely deter companies from agreeing to settle and instead result in forcing more cases to go to court. Unfortunately, that scenario would serve to negatively impact those businesses that would otherwise be making sound financial decisions, and the regulatory agencies that will also be burdened by increased litigation.

Additionally, the rule proposal would create a number of different state law and regulation complexities that cannot be easily compared to each other. For instance, states have different laws, regulations, policies, interpretive guidance, priorities, etc. One state regulatory agency may consider a final order that involves a corrected issue to be closed, while another state may not.

Therefore, the CFPB should provide further clarity on the required types of orders, as well as more detailed definitions.

### **Inherent Unfairness of Rule Proposal and “Repeat Offender”**

The Bureau asserts that recidivism poses risks to consumers, whether in the form of a company repeatedly violating the law and thus subject to multiple orders or in the form of a company that violates the orders to which it is subject. However, any consent order is often based on allegations of perceived harm only, not necessarily actual harm nor a company agreeing to allegations. A consent order does not automatically mean that a company is admitting any fault whatsoever.

As previously noted, a company may agree to an agency consent order after conducting a cost-benefit analysis and to avoid protracted litigation and legal costs. For some, a company may not be able to continue to operate if it doesn't agree to the consent order. Presence of one or more orders could be due to a company making prudent financial decision, moving on as quickly as possible (not agreement with allegations).

Unfortunately, the Rule Proposal is the latest example of another unnecessary federal requirement that will penalize businesses. The registry requirement is inherently unfair, as it would serve to harm supervised entities because there is no opportunity for companies to remove the “repeat offender” label that it has received. Despite its assertions, the Rule does not truly address “repeat offenders” but rather perhaps those businesses who are not able to afford defending themselves from government attacks.

Additionally, because states have different laws, regulations, and policies, they handle supervisory issues differently. As such, all agency orders are not equal. Yet, if all agency orders are presented

as equal, it could serve to highlight allegedly wrong behavior in one state that does not appropriately compare to other states. The Rule Proposal would only serve to increase the publication of unfair treatment.

### **Confidentiality Concerns**

The Rule Proposal also requires certain supervised nonbanks to submit annual written statements regarding compliance with the orders. These statements would be signed by an attesting executive who has knowledge of, and is responsible for, the entity's relevant systems and procedures for compliance and control over compliance efforts.

Having supervised entities identify senior executive names and titles to be published in registry is unnecessary and brings up confidentiality and privacy concerns. The determination regarding compliance is also highly subjective and can expose senior executive to liability even if the certification is made in good faith. Attesting executives would certainly have concerns about their personal information being made public. Such a requirement could adversely affect company employees and have a chilling effect throughout the nonbank industry. It would seem that a number of qualified individuals may ultimately decide to not serve in nonbank compliance roles because of these concerns.

While the Rule Proposal states that any written statement would be kept confidential, there is certainly no guarantee of that. The CFPB could elect to change such a policy at any time. Additionally, there are concerns about how the CFPB will maintain and protect such information, as well as work to prevent any data breaches.

### **Failure to Appropriately Follow the Regulatory Flexibility Act**

The CFPB is required by law, namely the Regulatory Flexibility Act ("RFA"), to conduct an initial regulatory flexibility analysis ("IRFA") and a final regulatory flexibility analysis of a federal rule subject to notice-and-comment rulemaking unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau is also subject to certain additional steps pursuant to the RFA regarding the convening of a panel of small business representatives before proposing a rule for which an IRFA is required. The SBREFA process is particularly important to the rulemaking process as it provides small businesses the opportunity to help to educate the CFPB and its rule-writers in advance of an actual rule proposal.

However, for this rule proposal, the Bureau quickly and summarily dismisses the RFA requirements, incorrectly concluding that the creation of a nonbank registry, and new registration requirements, would not have a significant impact on a substantial number of small entities. Unfortunately, this Bureau failed to properly conduct a thorough small-business analysis and thus skip over the important step of hearing from small businesses who would be adversely affected by this rule. The CFPB fails to provide clear information and data about the number of small entities that will be impacted by the rulemaking and thus cannot clearly explain why the rulemaking will not have significant economic impact on a substantial number of small entities.

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INFiN and our members appreciate the opportunity to provide comments with respect to the CFPB's Rule Proposal. We hope the Bureau will truly consider these concerns and ultimately withdraw this NPRM Rule Proposal for a nonbank registry.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. D'Alessio". The signature is written in a cursive, flowing style.

Edward D'Alessio  
Executive Director