Date 3/31/2923

By electronic submission to:

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

Re: Proposed Rule: Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders Docket Number CFPB-2022-oo8

Dear Sirs and Madams:

The Online Lenders Alliance (OLA) welcomes the opportunity to respond to the Bureau's Proposed Rule to establish and maintain a registry that would collect information about certain public agency and court orders.

About OLA

OLA represents the growing industry of innovative companies that develop and deploy pioneering financial technology, including proprietary underwriting methods, sophisticated data analytics and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors and service providers to lenders, consumer reporting agencies, payment processors and online marketing firms. Fintech companies are at the vanguard of innovative online tools that reach new customers, prevent, and mitigate fraud, manage credit risk, and service loans.

As technology evolves and the public's consumer comfort with online financial transactions grows, protecting consumers will be more important than ever. OLA is leading the way to improve consumer protections, with a set of consumer protection standards to ensure that borrowers are fully informed, fairly treated, and using lending products responsibly. To accomplish this, OLA members voluntarily agree to hold themselves to a set of Best Practices, a set of rigorous standards above and beyond the current legal and regulatory requirements. These are standards that OLA members, the industry, and any partners with whom OLA members work

use to stay current on the changing legal and regulatory landscape. OLA Best Practices cover all facets of the industry, including advertising and marketing, privacy, payments, and mobile devices. Most importantly, OLA Best Practices are designed to help consumers make educated financial decisions by ensuring that the industry fully discloses all loan terms in a transparent, easy-to-understand manner.[1]

Much of the innovation undertaken by OLA members has given consumers greater control over their financial future. This is especially the case when it comes to access to capital. Whether purchasing a home, starting a business, financing an education, or even paying for auto repairs, the ability to find and secure credit is often a determining factor in a consumer's financial wellbeing. Online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices that simply are not available through traditional lending markets.

Overview

The proposed rule would require "certain nonbank covered person entities" to register with and submit information to the CFPB when they become subject to certain orders from local, state or federal agencies or courts, involving violation of consumer protection laws. The registry would apply to all non-banks that are considered covered non-banks regardless of whether the non-bank is already being supervised or examined by CFPB. Under the proposed rule, all registration information will be publicly available on the Bureau's website. According to the CFPB, this will allow it to monitor and reduce the risks to consumers more effectively.

However, OLA has serious concerns about the Bureau's proposed registry, which appears to be more of a "name and shame" tactic rather than a useful tool for consumers, and is duplicative of efforts by the states, and the Nationwide Multistate Licensing System (NMLS). Furthermore, the Bureau undermines its core rationale for this registry by applying it to only non-banks since the entity that has received the largest Bureau fine ever over allegations that it harmed more than 16 million people will not be listed in this new registry.

OLA would like to take this opportunity to highlight our specific concerns with this proposal.

The Registry's Purpose is Inconsistent with Statutory Authority.

In undertaking this rulemaking, the Bureau cites its market-monitoring directive under Dodd/Frank. The market-monitoring authority gives CFPB the ability to request information and monitor the market for trends to drive further rulemaking. Historically, this has been employed by the Bureau for studies and information collection. However, the registry proposed by the CFPB is a substantive requirement, making it inconsistent with the statutory basis outlined in Dodd/Frank for the Bureau's market monitoring authority and past agency practices.

[1] Online Lenders Alliance Best Practices https://onlinelendersalliance.org/best-practices/

A Registry Would Add to Growing Regulatory and Compliance Burdens.

Failure to comply with the registry would be an independent violation of CFPB regulations and could lead to significant federal penalties against both the entity and individuals. Furthermore, the compliance and related attestation obligation with respect to state or local orders and other regulatory actions would effectively import these items into federal law or export these unique laws, orders, or actions to other state and local jurisdictions.

This will create significant new compliance burdens on affected nonbank financial entities, particularly smaller fintech companies that often possess limited resources. These companies will have to divert funding that could be directed towards serving their customers toward monitoring all resolutions, such as those provided by many state and local agencies, as well as investing in the development of new reporting mechanisms. When the additional training for staff to ensure that reports are made in a timely manner is factored in, this proposed rule becomes a substantial new cost driver that could impact financial services providers' ability to offer products and services to their customers.

A Registry is Redundant to Current Efforts at the State and National Level

Many of the requirements contained in the proposed order registry are repetitive of existing efforts at the state and national levels. Currently, non-banks are required to hold state licenses in order to engage in a variety of regulated activities, including but not limited to commercial and residential mortgage brokerage, lending, loan servicing, lead generation, commercial financing, private student lending and servicing, as well as a host of other regulated industries. In order to obtain a license, a company applies through the NMLS, which is a nationwide, multi-state license registry. While there are some licenses that are administrated outside this process, by and large most are covered in the NMLS.

During this process a company is required to submit an MU1 Form[2] that includes disclosure questions and complete a disclosure explanation section that requires a company to answer to a host of regulatory action disclosure questions. As part of this process, companies are required to disclose whether, in the past 10 years, any state or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO):

- "found the entity or a control affiliate to have made a false statement or omission or been dishonest, unfair or unethical;
- "found the entity or a control affiliate to have been involved in a violation of a financial services-related [regulation] or [statute];
- "found the entity or a control affiliate to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted;

[2] https://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/Company%20(MU1)%20Form%20Filing%20Instructions.pdf

- "entered an order against the entity or a control affiliate in connection with a financial services-related activity; and

- "denied, suspended, or revoked the entity's or a control affiliate's registration or license or otherwise, by otherwise, by order, prevented it from associating with a financial services-related business or restricted its activities?" [3]

Under this process, companies are required to answer affirmatively anytime there is a public consent order or other action and provide an explanation, including a copy of the order. This covers final adverse actions, consent degrees and orders in which the respondent has neither admitted nor denied the findings. This encompasses much of what is considered a covered order in the proposal by the Bureau. That means any action entered into with a regulator that isn't labelled as some type of private settlement agreement or a minor administrative penalty would be considered public, requiring the entity to answer affirmatively to the NMLS disclosure questions and provide the proper explanation. Furthermore, there are proposals currently under consideration to broaden these disclosure questions, which will expand the number of triggers that will require companies to provide even more details regarding orders or actions as a part of a company's disclosure.

Once a respondent has submitted an affirmative response and provided the required explanation, other state regulators are notified to the action, therefore accomplishing one of the stated goals of the proposed registry, the need to better inform consumers. It should be noted that that state regulators already have the discretion to list these actions on a specific registry.[4] In addition, the State Regulatory Registry (SRR) that governs the NMLS has created "NMLS Consumer Access"[5], a public-facing website that consumers can utilize to look up lenders, brokers or service providers to see what enforcement actions exist.

The proposed registry would require registration of consent orders, not just litigated cases or judgments. In most consent orders, the company does not admit any wrongdoing under terms agreed to by the government entity (including the CFPB); indeed, enforcement actions are often resolved through consent orders – not because the company engaged in the wrongful conduct alleged by the enforcement agency but to avoid the high cost of protracted litigation. This would make the proposed registry an inconsistent measurement of risk to consumers.

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[3] Microsoft Word - NMLS Company Form (nationwidelicensingsystem.org)

[4] Illinois Department of Financial and Professional Regulation's Monthly Consolidated Reports on Enforcement Actions https://idfpr.illinois.gov/News/Disciplines/DiscReportsDefault.asp

[5] https://www.nmlsconsumeraccess.org/

Registration and Attestation Record-Keeping is Burdensome, Without Clear Benefits to Consumers.

A non-bank identified by name as a party subject to a covered order will have 90 days to register. Covered orders have a fairly lengthy lifespan and are assumed to be in existence for 10 years from the effective date, unless there is an expressly provided termination date. However, most regulatory, and supervisory agencies are reluctant to agree to termination dates.

In addition to the general requirements that entities submit a copy of the order that identifies the issuing government entity, effective date, expiration date, and any laws that were violated or alleged -- a subset of entities that are subject to supervisory jurisdiction by the CFPB, and that meet other thresholds, would face an additional requirement to have an executive file an attestation that the company is in full compliance with any and all orders. If this person's attestation is deemed to be incorrect, they would potentially face penalties. Adherence and compliance with orders can be open to interpretation between the entities involved. An officer could attest to full compliance in good faith with the government entity disagreeing. The number of nonbank covered person entities under the CFPB is expansive, and as a result, this proposed rule will have consequential implications for a large number of companies, making finding and retaining qualified compliance personnel all the more difficult.

The Bureau claims two primary benefits: first, that there is a public interest in transparency when it comes to potentially significant orders; and second, that if publicly released, such orders would be available as a precedent in future proceedings. As to the first claimed benefit around transparency, the Bureau has provided no data detailing what additional benefit this transparency would yield, either in an absolute sense or a relative sense when weighed against the drawbacks of publishing these orders and providing the name of the company's senior officer that has signed the attestation.

With respect to the second claimed benefit, while financial regulators often use prior decisions and orders to inform current and future regulatory policy and supervisory actions, this can be accomplished without the need to publish these documents on a website. If the Bureau's claim is that publishing decisions and orders will help establish regulatory standards (much like the publication of enforcement/consent orders), it has offered no evidence that listing the name of the respondents enhances the public's ability to understand the facts and circumstances regarding the supervisory actions taken by the Bureau.

Conclusion

Since its inception, the Bureau has had the dual mandate of supervising both traditional financial institutions and non-banks. This was intended by Congress to enhance federal consumer protection in the financial regulatory space. Since then, the Bureau has struggled with how to manage the large and diverse nonbank market. The Bureau itself has acknowledged that the potential community covered by the orders registry could be as large as 155,000 non-banks, with

the Bureau further estimating that 1 to 5 percent may have a covered order that would cause them to register.[6]

Considering the dubious statutory authority for the registry, its redundancy and the potential burdens it will place on nonbank entities, it appears to be little more than a "name and shame" tactic rather than a useful tool. Given these types of registries currently exist in multiple other forums, in more user-friendly options, it is unclear what additional benefit consumers will derive from this registry. The group that would appear to benefit the most from the registry would be plaintiffs' attorneys and others seeking to file endless lawsuits. This would not justify the sizable compliance and regulatory costs to nonbanks, which may result in the reduction of services available to American consumers.

OLA appreciates the opportunity to provide input on this initiative. If you have question or need additional information, please feel free to contact me at mday@OLADC.org.

Respectfully submitted,

Michael Day
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Online Lenders Alliance

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[6] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf