



CFPB PROPOSES RULE ESTABLISHING FINTECH REGISTRY

On December 12, 2022 the Consumer Financial Protection Bureau (“CFPB”) issued a proposed [rule](#) that would require certain nonbank entities falling under CFPB supervision to register with the CFPB after becoming subject to a public written order or judgment based upon violations of certain consumer protection laws. The entities would be required to self-report the applicable order to the CFPB and provide basic identifying and administrative information about the entity as well as information regarding the orders (including copies of the orders). The resulting registry will be made available to the public to mitigate risks to consumers and “unify the efforts of consumer financial protection enforcers.”

The proposed rule would apply to “covered nonbanks” and excludes insured depository institutions and credit unions; however, the CFPB has indicated that it may consider collecting or publishing similar information from insured banks and credit unions later. Generally any nonbank subject to CFPB supervision would be a covered nonbank required to report information to the registry.

“Covered orders” likewise is broadly defined to include a final public order issued by an agency or court that (i) has an effective date on or after January 1, 2017 and (ii) was issued in any action or proceeding brought by a federal, state or local agency. The order must publically impose obligations on the covered nonbank to take or refrain from taking certain actions based on an alleged violation of a covered law. The reporting obligation for a covered order ceases at the later of (i) 10 years following the effective date or (ii) an expressly provided termination date if that date is more than 10 years after the effective date.

In conjunction with the registry, the proposed rule requires covered nonbanks to submit a written statement regarding the company’s compliance with outstanding registered orders annually. The statement would be signed by a designated senior executive and generally describe the steps the executive has undertaken to review and oversee the company’s activities subject to the order. The designated executive must attest to the company’s compliance. The rule requires that the designated executive be the highest-ranking duly appointed senior executive officer or individual charged with managerial or oversight responsibility whose assigned duties include ensuring the entity’s compliance with consumer financial law, who

has knowledge of the entity’s systems and procedures for achieving compliance with the order and who has control over the entity’s efforts to comply with the covered order. Such designee would be personally responsible for compliance and their name would be published on the registry.

The CFPB is proposing the rule pursuant to its authority under the Consumer Financial Protection Act of 2012 to require covered persons to file annual or special reports with the CFPB and its authority to make non-confidential information available to the public “in the public interest”.

The CFPB argues that having a centralized list of all relevant orders entered against nonbanks would be beneficial to the CFPB, state agencies and consumers alike, increasing the CFPB’s ability to monitor the market so that the CFPB can identify, better understand and ultimately prevent further harm to consumers, especially from repeat offenders. According to the CFPB, the existence of multiple orders requiring registration could be probative of a need for supervisory examination. Additionally, the CFPB argues that a comprehensive collection of orders would help identify enforcement gaps and trends across the states. The proposed rule recognizes that the various federal and state agencies and the Nationwide Multistate Licensing System (“NMLS”) publish their own orders, some of which may be covered orders under the rule, but argues that there would be “significant value” in creating a single public registry of such information that is administered by the CFPB.

The registry represents a new mechanism for the CFPB to police nonbanks in an already heavily policed market. The proposed rule will be open to public comment 60 days after its publication in the Federal Register. We will continue to monitor and report on the status of this proposal.

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