

March 31, 2023

Via E-Rulemaking Portal

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: Comments Regarding Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders - Docket No. CFPB-2022-0080 and RIN 3170-AB13

Dear Director Chopra:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts on the Consumer Financial Protection Bureau’s (“CFPB”) advanced notice of proposed rulemaking relating to the implementation of a public registry that would require certain nonbank entities to report to the CFPB if they are subject to court or regulatory enforcement orders.

ETA’s members are dedicated to providing innovative, convenient, secure, and timely financial services and products that make their customers’ lives easier. However, if the CFPB should consider the negative impact this rule may have. This rule, as proposed, could create potential public relations concerns for companies, may chill the ability to self-report and negotiate with state, local and federal regulators, and includes complex compliance requirements.

Who We Are

ETA is the world’s leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing more than \$44 trillion in purchases worldwide and deploying payments innovation to merchants and consumers.

ETA’s Input on the CFPB’s ANPRM

Regulatory Coordination – Different from NMLS?

ETA supports the objectives cited by the CFPB including to, “track and mitigate the risks posed by repeat offenders, while also being able to monitor all lawbreakers subject to agency and court orders.”

However, as drafted, we fail to see how the consumer benefits by the CFPB imposing a redundant reporting requirement, that is already provided to the Nationwide Multistate Licensing System and Registry (“NMLS”). The CFPB has the tools it needs to identify public written

orders and judgments (including consent and stipulated orders and judgments), through the reporting mechanism and the registry maintained by the NMLS. This rule would require a duplicative reporting burden that would add additional compliance burdens on entities, including time and cost, ultimately impacting innovation in financial services.

ETA encourages the CFPB to work with and facilitate coordination and cooperation among state and federal regulatory agencies. The willingness to facilitate coordination makes the reporting process more efficient and thorough for potential entities within the jurisdiction of multiple state and federal regulatory agencies. ETA suggests that the CFPB creates a compliance safe harbor for those entities complying with the NMLS reporting requirements.

Settlements Without Wrongdoing

Many consent decrees are settlements where no wrongdoing is admitted; rather, some such decrees are business decisions made not to incur the cost, delay, and uncertainty of defense. The inclusion of such an entity on a public registry may have a chilling effect of discouraging settlement in future cases. This action may have the adverse effect of protecting consumers.

An entity would likely face a negative impact to their reputation if they were included in a public registry and may face consumer perception that they are engaging in unsafe and unsound practices, even if this is not the case.

As a result, ETA requests that the name of any entity engaged in any CFPB registry can publish an explanation or statement so that other financial institutions in the market and consumers can better understand the reason for the entity's consent decree. Additionally, entities that are added to a public registry should be entitled to an appeals process and the CFPB should establish a process for entities to be removed from a public registry after a specific set of criteria is met. This effort led by the CFPB would ensure that agencies and firms build a strong, collaborative relationship that will help ensure further collaboration.

Registration Requirements and Enforcement

The proposed rule requires a nonbank company to register with the CFPB and file with the CFPB an FTC-related order if the order relates to a violation of “the prohibition on unfair or deceptive acts or practices under section 5” of the FTC Act and the violation arises out of conduct in connection with the offering or provision of a consumer financial service. We believe that this is an appropriate scope because, as the CFPB suggests in the Supplementary Information to the proposed rule, such orders may be probative of violations of federal consumer financial protection laws that are within the CFPB's jurisdiction.

However, ETA believes the treatment of CFPB-supervised nonbank companies in the proposed rule is a jurisdictional overreach that turns every consumer protection order with every state government authority into a CFPB consent order through the attestation process that the proposed rule requires.

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ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott at stalbott@electran.org.

Sincerely,



Jeff Patchen
Director of Government Affairs
Electronic Transactions Association
jpatchen@electran.org
(202) 677-7418

