



MBA SUMMARY

CFPB Final Rule Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders (June 5, 2024)

Overview

On June 3, 2024, the Consumer Financial Protection Bureau (CFPB) published a [Final Rule](#) creating a Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders (the Final Rule). The Final Rule requires covered nonbanks that are subject to certain agency or court orders to register those orders with the CFPB, with a limited exception for orders currently available on the Nationwide Multistate Licensing System. MBA's comment letter to the proposed nonbank registry is available [here](#) and a summary of the initial proposal is available [here](#).

Covered Entities and Orders

The Final Rule applies to nonbanks that are covered persons under the Dodd-Frank Act and thus does not apply to insured depository institutions and insured credit unions. The rule does contain an exemption for nonbanks with less than \$5 million in annual receipts resulting from offering or providing all consumer financial products and services.

The Final Rule only extends to “covered orders”, which are final public orders – including consent orders – issued by an agency or court that, identifies a covered nonbank as a named party, was issued in part in any action or proceeding brought by a federal, state, or local agency, contains a public provision that impose an obligation on the covered nonbank based on an alleged violation of a covered law, and has an effective or issued date **on or after January 1, 2017**. Covered nonbanks must only register if the violation arises out of conduct in connection with federal consumer financial law, other laws that the Bureau enforces, a UDAP under Section 5 of the Federal Trade Commission Act, or certain state laws prohibiting unfair, deceptive, or abusive acts or practices. It does not apply to individuals or State licensing orders or orders issued under the S.A.F.E Mortgage Licensing Act of 2008.

Substantive Requirements for Registration

Covered nonbanks must submit certain information about the order and themselves for the registry, including:

- 1) identifying information,
- 2) administrative information, such as contact information,
- 3) a complete copy of the order, not including nonpublic information,
- 4) the agencies and courts that issued or obtained the covered order,
- 5) the effective or issued date of the covered order,
- 6) the expiration date of the covered orders,
- 7) the covered laws violated or allegedly violated in the case of consent orders, and

8) any identifying code or number of the covered order.

By March 31 of each year, covered nonbanks that are subject to CFPB supervision must submit annual statements regarding the covered orders submitted to the registry. These statements must be signed by an attesting executive that has access to information about the covered order and covered entity, ensures the entity's compliance with federal consumer financial law, and has control over compliance with the covered order. The statement must describe the steps taken to ensure compliance with covered orders and whether there was any instance of noncompliance with those orders.

On a go-forward basis, covered nonbanks will need to register any new covered orders within 90 days of the effective date of the order. Additionally, if there is any update to the nonbanks identifying or administrative information, any amendments to previously registered covered orders, or if a previously registered order is terminated or expires, the covered nonbanks must update their filings in the registry within 90 days of the change. Covered nonbanks may remove an order from the registry if the order is terminated by an agency or court. Covered nonbanks may also remove an order after the termination date in the order or, if the order does not have a termination date, 10 years after its effective date.

Although the Final Rule is **effective on September 16, 2024**, it is phased in over time depending on the type of covered entity. The implementation deadline is dependent on the type of nonbank and provides a 90-day window for registration. Larger participant CFPB-supervised nonbanks must register between October 16, 2024, and January 14, 2025.¹ CFPB-supervised nonbanks must register between January 14, 2025, and April 14, 2025. All other covered nonbanks must register between April 14, 2025, and July 14, 2025. Covered nonbanks must register any orders effective between January 1, 2017, and the registration deadline.

Special One-Time Registration Option for NMLS-Published Covered Orders

The Final Rule provides a limited one-time, alternative registration option for certain covered orders that are already published on the Nationwide Multistate Licensing System (NMLS). This is an alternative process separate from the regular registration process described above. However, the rule does not go into great detail about this registration process which will likely have to be specified in subsequent guidance. This alternative registration process is only available for orders that were not issued or obtained – even in part – by the CFPB.² The covered nonbank registering orders using this limited process will not be required to update the order on an ongoing basis or file an annual written statement about the order.

Takeaway: MBA commented that the proposed registry would be duplicative of the NMLS and overly burdensome for registered entities. While not all orders published in the NMLS are exempted, the exception for certain orders in NMLS if implemented as described will help reduce some of the implementation burden on registered entities should the entity participate in the simplified process. As stated above, it is still unclear what the one-time filing process will look like, whether participants will elect to use this process, and whether this ultimately will help reduce the duplication of orders.

¹ Larger participant institutions are those designated in rulemaking using a process described in 12 U.S.C. 5514(a)(1).

² NMLS-published covered order means a covered order that is published on the NMLS Consumer Access website, www.NMLSCustomerAccess.org, except that no covered order issued or obtained at least in part by the Bureau shall be an NMLS-published covered order. See also §1092.203 Optional one-time registration of NMLS-published covered orders.

Possible Penalties for Non-Compliance

The CFPB has the power to bring enforcement actions against covered nonbanks for violating federal consumer financial law and can pursue both equitable and monetary relief. Failure to comply with the registration requirements of this rule may constitute a violation of federal consumer financial law subject to CFPB enforcement. Civil monetary penalties are assessed for each day the law is violated, along three tiers of intent. The penalties are \$5000 per day for a violation of the law, \$25,000 per day for recklessly violating the law, and \$1,000,000 each day for knowingly violating the law. Additionally, the CFPB must notify the relevant state Attorney General that they are bringing an enforcement action. The Attorney General may also bring an enforcement action against a covered nonbank for violating those laws.

Next Steps

The ultimate impact and benefit of this database remains to be seen. MBA will continue to monitor and inform members of any new updates to the rule. Covered nonbanks should consult with inside and outside counsel to determine what orders should and should not be submitted to the nonbank registry.

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