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The Consumer Financial Protection Bureau (CFPB) Finalizes Rule for a Registry of Nonbank Covered Orders

Nonbank consumer finance companies offer consumer finance products or services but do not have traditional bank or credit union charters and are subsequently less regulated, in general, at the federal level. Examples of nonbanks include financial technology companies (fintechs), payday lenders, and debt collectors. The Consumer Financial Protection Bureau (CFPB) is the primary federal supervisory regulator tasked with consumer financial protection for larger nonbank participants, as defined by the CFPB, and all nonbanks in certain sectors such as mortgages and payday lending.

The CFPB's regulatory and enforcement scrutiny of nonbanks has increased in recent years. The CPFB has been increasingly focused on regulatory actions that it argues would improve transparency and accountability among nonbanks and that it argues could alleviate the potential risks they could pose to consumers.

In July 2024, the CFPB issued a final rule mandating that nonbanks register previous public actions—including consent orders and enforcement actions—undertaken by financial regulators (such as the CFPB), other federal agencies, state or local governments, or the courts. The CFPB "intends to publish this information on its website." In addition to the registration of covered orders, this rule requires a company executive to issue annual statements to the CFPB attesting compliance with these covered orders. The CFPB argues that this rule will help bring transparency to the financial marketplace and enable the agency and other regulators to more effectively monitor risks in the nonbank market. Nonbank industry groups disagreed with the CFPB's characterizations of the rule and argued that this rule duplicates existing public registries, is costly, and acts as a "scarlet letter registry" that ultimately discourages settlements and encourages lengthy litigation.

H.R. 8773, the FY2025 Financial Services and General Government appropriations bill in the House, includes provisions in Section 501 that would bring the CFPB under normal congressional appropriations and in Section 504 that would prohibit those congressionally appropriated funds from being used to implement this final rule.

Nonbank Markets and Regulation

Since the Great Recession, nonbanks have become increasingly important in financial markets including small business lending and mortgage lending. Nonbanks originated roughly two-thirds of all mortgages in 2023 and made roughly half of personal loans by loan balance in 2019. Nonbanks have traditionally dominated financial services such as debt collection, payday lending, and credit reporting.

Nonbanks have arguably succeeded in part due to regulatory arbitrage, where they are sometimes not subject to the same level of regulatory scrutiny as banks are. For example, nonbanks generally avoid costly capital requirements and stress tests. One study by academic economists found that 60% of the growth in nonbanks in the mortgage lending sphere from 2007 to 2015 was as a result of this regulatory arbitrage. New pricing technologies that nonbanks have adopted are arguably enabled by this different regulatory regime. According to research, these new pricing technologies has resulted in nonbanks making increased loan originations to traditionally underserved borrowers with faster origination speeds.

Since its establishment, the CFPB "has brought nearly 350 enforcement actions against nonbanks." The regulatory scrutiny of nonbanks by the CFPB and other financial regulators has increased in recent years, including this final rule. In general, the CFPB is concerned about potentially risky conduct by nonbanks that might cause harms to consumers. For example, recent CFPB rulemakings included new federal oversight and examinations of digital wallets and payment apps primarily developed by nonbanks. In addition, the CFPB has mandated Truth in Lending Act (TILA) disclosures for certain alternative products popularized by nonbanks: buy now, pay later and earned wage access.

Final Rule Details

Nonbanks must have at least $1 million in total annual receipts for consumer-finance-related transactions to be covered by this rule. This rule includes nonbanks that are affiliates or subsidiaries of banks or credit unions. In total, the CFPB estimates that there are 155,043 nonbanks that are large enough to potentially report. Of those potentially eligible nonbanks, 1-5% of these nonbanks, or "between 1,550 and 7,752 nonbanks," have previous public actions issued since 2017 that they would have to report to the nonbank registry.

To comply with the final rule, nonbanks are required to submit copies of each final "covered order." Covered orders are the final, public, written action undertaken by regulators for violations of consumer financial laws, including consent orders and public enforcement actions. Generally, these orders spell out the alleged misconduct undertaken by the nonbanks and the actions they must (or were required to) undertake to remedy the violations for the future. Such restitution could include monetary penalties for consumer relief and/or corrective actions required to remedy the violation. The CFPB plans to use these final covered orders to create a public online registry.

The final rule imposes additional annual attestation requirements for CFPB-supervised nonbanks. For each of these nonbanks, a senior executive is required to attest that the firm is complying with the covered order and detail the compliance steps it has taken in the past year under the covered order. This attestation requirement lasts while the covered order is still in effect. Failure to comply with the registration requirements after a nonbank has been notified of the requirement or knowingly and willfully filing a false attestation could result in the CFPB bringing an enforcement action against the nonbank or criminal penalties against the executive.

The final rule argues that this registry will help the CFPB to better track repeat offenders. In 2022, the CFPB established a "Repeat Offender Unit" focused on reviewing the actions of financial institutions that have multiple distinct violations.

These covered orders may be duplicative with other public databases, including in the National Multistate Licensing System (NMLS), which contains a number of local, state, and federal nonbank enforcement actions. The CFPB provided a streamlined registration method for those covered orders already registered in NMLS and not issued or obtained by the CFPB.

This rule has phased-in implementation as detailed in **Figure 1**, with compliance first in January 2025 for CFPB-defined large participant nonbanks. The CFPB has previously issued rules identifying larger participants for a number of different consumer finance markets.

Figure 1. Implementation Timeline for the Nonbank Enforcement Registry

Covered Nonbank Type	Registration Submission Period	Registration Deadline
Larger Participant[2] CFPB-Supervised Covered Nonbanks	October 16, 2024 through January 14, 2025	January 14, 2025
Other CFPB-Supervised Covered Nonbanks	January 14, 2025 through April 14, 2025	April 14, 2025
All Other Covered Nonbanks	April 14, 2025 through July 14, 2025*	July 14, 2025*

Source: CFPB.

Policy Issues

As noted by the CFPB in the final rule, much of the registry would be duplicative with covered orders in existing public information, chiefly the NMLS and information found on individual regulator websites. The CFPB argues that this registry still offers substantial benefits, as NMLS is limited to certain industry sectors and regulators and might exclude orders by some state and federal regulators. Providing all of this information in one place might allow for increased transparency into regulatory actions against nonbanks.

The CFPB argues that this rule will demonstrate risks across the marketplace to help prioritize future rulemaking, supervisory, and enforcement activities by the CFPB and other government agencies. The final rule states that nonbanks with previous enforcement actions could be a "good indication of continuing risks to consumers." A pattern of enforcement actions across a particular industry could lead the CFPB to prioritize that industry for additional rulemaking or consumer education.

Additionally, the CFPB argues that this registry will help consumers make informed choices about their financial services providers. Consumers may also use the registry to facilitate private legal action against alleged misconduct undertaken by nonbanks.

Industry groups contend that the largely duplicative nature of the CFPB's final rule renders the new registry unnecessary and that it provides limited value to consumers or regulators. The Housing Policy Council stated that the CFPB could have created this registry using NMLS data supplemented by data drawn directly from other federal regulators without involving additional compliance costs from nonbanks.

Nonbank industry groups pointed to the inclusion of consent orders as distorting the potential usefulness of this registry into a "scarlet letter." Consent orders often require no admission of wrongdoing on the behalf of nonbanks and as result nonbank industry groups, and the Small Business Administration (SBA) Office of Advocacy argued that they should not be included.

The Online Lenders Alliance, a fintech industry group, argued that consent orders are not proportionate to litigated cases with established violations and are often a means to avoid expensive and lengthy litigation. The SBA Office of Advocacy contends that the inclusion of consent orders might negatively impact a nonbank's business, although such an order is not an acknowledgement of wrongdoing. The Electronic Transactions Association argues that the overall result of this rule is that nonbanks are increasingly *less likely* to settle with the additional public stigma associated the CFPB registry.

Selected Legislation: 118th Congress

On June 17, 2024, the House Committee on Appropriations reported its FY2025 Financial Services and General Government appropriations bill (H.R. 8773). One of the provisions proposed bringing the CFPB under congressional appropriations in Section 501 and provided a few policy riders for the CFPB. Specifically, Section 504 would prohibit the use of congressionally appropriated funds to implement this rule.

CRS Resources

CRS Insight IN12409, *Financial Services and General Government FY2025 Appropriations: CFPB's Funding and Structure Provisions*, by Karl E. Schneider and David H. Carpenter

Karl E. Schneider, Analyst in Financial Economics

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