Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—CFPB rule creates corporate registry to detect repeat offenders, (Jun. 4, 2024)

Banking and Finance Law Daily Wrap Up

Click to open document in a browser

By Thomas G. Wolfe, J.D.

The CFPB emphasizes that the new registry for nonbanks is part of the Bureau's "ongoing focus on holding lawbreaking companies accountable and stopping corporate recidivism."

The Consumer Financial Protection Bureau has announced the establishment of a new registry to "detect and deter corporate offenders that have broken consumer laws and are subject to federal, state, or local government or court orders." Noting that the new registry will help the Bureau to identify repeat offenders and recidivism trends, CFPB Director Rohit Chopra stated, "It's important that both the CFPB and other federal and state law enforcement authorities are aware of lawbreakers operating within their jurisdictions." Along these lines, the CFPB promulgated a final rule, titled "Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders" (12 C.F.R. Part 1092). According to the CFPB's 486-page notice for publication in the *Federal Register*, while the final rule takes effect on Sept. 16, 2024, there are various allowances beyond that date for implementation of the agency's rule.

By way of background, the CFPB initially conceptualized the registry in a December 2022 proposal, maintaining that such a registry would not only facilitate identifying and mitigating financial risks to American households but also would facilitate the Bureau's supervision of nonbank companies (see *Banking and Finance Law Daily*, December 13, 2022).

Final rule summary. In announcing its final rule, the CFPB also provided an "Executive Summary" outlining the nature, scope, and core features of the new registry system. Aiming to help the Bureau more effectively monitor and reduce risks to consumers posed by nonbank entities that have violated consumer protection laws, the CFPB's final rule:

- authorizes the Bureau to consolidate collected information "in an online registry for use by the public and other regulators;"
- requires certain nonbank "covered persons" (with specified exclusions for "insured depository institutions, insured credit unions, related persons, States, certain other entities, and natural persons") to register with the Bureau upon becoming subject to a public written order imposing obligations based on violations of certain consumer-protection laws;
- requires covered entities registering in the system to "provide basic identifying information about the company and the order (including a copy of the order);"
- requires covered entities that have registered to "periodically update the registry to ensure its continued accuracy and completeness;"
- calls upon the CFPB to publish some of this same information on its website "and potentially in other forms;"
- requires certain nonbanks subject to the CFPB's supervisory authority (under the Consumer Financial Protection Act) to: (i) annually identify "an executive (or executives) responsible for and knowledgeable of the firm's efforts to comply with the orders identified in the registry;" and (ii) annually submit "a written statement signed by the applicable executive regarding the entity's compliance with each order in the registry;"

© 2024 CCH Incorporated and its affiliates and licensors. All rights reserved.

- provides that nonbanks that are subject to an order published on the "Nationwide Multistate Licensing System's Consumer Access website (except for orders issued or obtained at least in part by the Bureau) may elect to comply with a one-time registration option in lieu of complying with the rule's notification and written-statement requirements with respect to that order;"
- provides that nonbank registrants follow the provisions of the CFPB's final rule pertaining to implementation deadlines—including various implementation deadlines set for "larger participants, other supervised nonbanks, and other nonbanks not subject to Bureau supervision;" and
- communicates that further details about the new registration system "will be provided through filing instructions."

Initial reactions to registry. Initial reactions to the CFPB's final rule creating the new registry system were somewhat mixed. For instance, Dennis Kelleher, the President, CEO, and Co-founder of Better Markets, commended the Bureau's final rule. "Consumers will be able to go to one place and see which nonbanks have been violating the law and how often, as well as those nonbanks that have not," he said. "By creating this 'one-stop-shop' registry, where the public, financial consumers, academics, regulators, prosecutors, and state and local policymakers alike can see and evaluate nonbanks' activities, the CFPB continues to create a safer and fairer consumer financial system that reduces lawbreaking," Kelleher stated.

Similarly, Public Citizen weighed in favorably on the Bureau's new registry system. "Creating a RAP sheet (records of arrests and prosecutions) for financial firms will help police fraudsters who move their scams across jurisdictions. This will aid state and local law enforcers as well as astute consumers offered deals too good to be true," the organization stated.

In contrast, the Conference of State Bank Supervisors (CSBS) expressed its concerns and reservations about the CFPB's final rule. In a release, CSBS President and CEO Brandon Milhorn asserted, "We are disappointed that the CFPB is proceeding with its Public Orders Registry and stand by the concerns expressed by state regulators during the consultation process and in CSBS's comment letter. CSBS's primary focus now is to help ensure alignment between the CFPB's Registry and the Nationwide Multistate Licensing System to prevent consumer and industry confusion and redundant reporting. We encourage the CFPB to further consult with state regulators on requirements for coordinated systems as mandated by the Dodd-Frank Act," Milhorn added.

Companies: Better Markets; Conference of State Bank Supervisors; Public Citizen

MainStory: TopStory BankingFinance CFPB CrimesOffenses DirectorsOfficersEmployers DoddFrankAct EnforcementActions FedTracker GCNNews OversightInvestigations Privacy StateBankingLaws UDAAP

© 2024 CCH Incorporated and its affiliates and licensors. All rights reserved.