Rescission of CFPB Nonbank Registry Regulation

COMMENT LETTER

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The Honorable Russell Vought

Acting Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: *Executive Order 14219 – Rescission of CFPB Nonbank Registry Regulation*

Dear Acting Director Vought:

In furtherance of Executive Order ("EO") 14219, 1the Conference of State Bank Supervisors 2("CSBS") recommends formal rescission of the Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders 3("Nonbank Registry").

The Nonbank Registry is unnecessary, unlawful, and unduly burdensome and should be rescinded. 4 The Nonbank Registry:

I. Constitutes government waste.

II. Fails the necessary cost-benefit analysis as required by statute.

III. Unlawfully encroaches on state authority.

IV. Is unnecessary to address potential "repeat offenders."

CSBS supports the measures you have already taken to limit further regulatory burden and confusion from this misguided rule. 5

I. The Nonbank Registry constitutes government waste.

Since its inception, the CFPB has utilized the Nationwide Multistate Licensing System and Registry 6("NMLS") for various recordkeeping purposes, including publishing CFPB orders pertaining to nonbank entities, at no cost to the Agency. In 2010, state regulators launched NMLS Consumer Access, a fully searchable website that allows consumers to view company information and regulatory orders for state-licensed nonbank entities. Despite this fact, the CFPB has spent millions of dollars to construct a functionally similar nonbank registration system of its own and populate it with publicly available information that is easily accessed through other sources.7The Nonbank Registry is therefore unnecessary, duplicative of existing resources available to consumers, and a waste of federal funds.

II. The CFPB failed to perform the necessary cost-benefit analysis as required by statute.

The CFPB is required to consider the costs of regulations on small entities under the Regulatory Flexibility Act ("RFA"). This includes requirements to conduct an initial and final regulatory flexibility analysis and convene a panel of small business representatives ("SBREFA panel") for any federal rule subject to notice-and-comment rulemaking .8The only exception to this requirement is if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities .9However, such certification must have a factual basis ,10which the CFPB never provided in either the proposed or final Nonbank Registry rule ,11thus violating RFA requirements.

As a result of forgoing the required RFA analysis, the CFPB's cost estimates for the Nonbank Registry were unrealistically low. For example, the CFPB estimated that registering and reporting a covered order would cost about $350 per firm ,12a drastic underestimate that ignores the resources needed to develop new reporting processes, procedures, and internal controls; enhance technological systems; or engage outside counsel for a rule that mandates a 10-year registration and compliance requirement. 13An accurate estimate of costs, coupled with the negligible benefits of replicating an already existing registration system and republishing already available public information, suggests that the Nonbank Registry would likely violate the statutory cost-benefit analysis requirement.

III. The Nonbank Registry unlawfully encroaches on state authority.

The Nonbank Registry regulation is an explicit infringement on the basic tenets of federalism. Monitoring for, and reporting on, compliance with orders based on state law is *exclusively* the authority and responsibility of states, not the federal government. Congress did not give the CFPB any authority over state and local consumer financial laws, nor did it vest the CFPB with the power to adjudicate orders issued by independent state agencies and state courts.

IV. The Nonbank Registry is unnecessary to address potential "repeat offenders."

The CFPB failed to prove that there is a recidivism problem among nonbanks that required the creation of the Nonbank Registry. Neither the proposed nor final rule provided data or examples of increased recidivism among nonbank companies. In fact, the only justification regarding recidivism provided is incredibly thin:

"Since passage of the [Consumer Financial Protection Act], the Bureau has brought more than 350 enforcement actions against nonbanks… On *numerous occasions,* the Bureau has uncovered companies that failed to comply with consent orders that the companies entered into with the Bureau voluntarily."14

Presumably, the CFPB was wholly capable of detecting non-compliance with its own orders prior to establishing the Nonbank Registry. Similarly, it should be able to detect and deter non-compliance with any of its own orders

in the future without the Nonbank Registry.

Conclusion

Under the parameters of EO 14219, CSBS encourages the formal rescission of the Nonbank Registry as it is unnecessary, unlawful, and unduly burdensome.

Sincerely,

Brandon Milhorn
President and CEO

- 1Exec. Order No. 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, 90 Fed. Reg. 10583 (Feb. 19, 2025).
- 2CSBS is the nationwide organization of state banking and financial regulators from all 50 states, the District of
- 3CFPB, Final Rule, Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders, 89 Fed. Reg. 56028 (July 8, 2024).
- 4CSBS, AARMR, NACCA, NACARA, and MTRA, Joint Comment Letter re: Proposed Rulemaking – Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders, (Mar. 31, 2023).
- 5CFPB, Press Release, CFPB Offers Regulatory Relief from Registration Requirements for Small Loan Providers (Apr. 11, 2025).
- 6NMLS serves as the licensing and registration system for nonbank entities subject to state supervisory authority. Congress codified the use of NMLS as a comprehensive licensing and supervisory database with the passage of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. P.L. 110-289, Title V (2008) (codified at 12 U.S.C. § 5101 et seq.).
- 7The CFPB budgeted $2.4 million to develop its nonbank registration system, which would facilitate the Registry rule, as well as a proposed rule regarding contract terms and conditions. CFPB, FY 2023 Annual Performance Plan and Report, and Budget Overview (Feb. 2023); see also CFPB, Proposed Rule, Registry of Supervised Nonbanks that Use Form Contracts to Impose Terms and Conditions that Seek to Waive or Limit Consumer Legal Protections, 88 Fed. Reg. 6906 (Feb. 1, 2023).
- 85 U.S.C. §§ 603, 604.
- 95 U.S.C. § 605(b).
- 10The U.S. Small Business Administration's ("SBA") Office of Advocacy criticized the basis for the CFPB's certification and noted it must convene a SBREFA panel absent additional analysis on small entity impacts, neither of which the CFPB ever did. See U.S. SBA Office of Advocacy, Comment Letter Re: Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders (Mar. 28, 2023).
- 11The CFPB simply estimated that there were 155,043 nonbanks offering a "consumer financial product or service," and that only 1% to 5% of such firms would likely have a covered order subject to the Registry rule. However, it never provided an analysis of how many entities with covered orders would be small entities. Supra note 3, at 56136.
- 12Id. at 56146.
- 13The CFPB acknowledged that hiring outside counsel could be costly for firms. Given the nuances and complexities of public orders, firms will presumably do so to ascertain whether they are even subject to the rule. To avoid such legal costs, the CFPB made the astounding and blithe suggestion that firms could simply register with the Nonbank Registry, even if they are not legally required to do so. Id. at 56137.
- 14Supra note 3, at 56028 - 56029 (emphasis added).

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