

January 5, 2023

### **CFPB Proposes That Non-Bank Consumer Finance Companies Must (1) Register all Federal, State and Local Regulator Enforcement Orders and Court Judgments; and (2) Have an Annual Attestation from an Executive that Each Order and Judgment Has Not Been Violated**

By: [Michael Flynn](#)

#### **Registration of Regulator Orders and Court Judgments**

On December 12, 2022, the CFPB issued a proposed rule regarding non-bank consumer finance firms registration of all settlements and enforcement orders. The proposed rule would require covered non-bank consumer finance firms to register with the CFPB all consent orders, judgments and other enforcement actions from any regulator, federal, state or local, with the registry to be made available to regulators and the public. The proposed rule may be found [here](#). The CFPB has indicated that the registry and the filing requirements would not be implemented until at least January 2024.

The proposed rule would apply to non-banks that are “covered persons” subject to CFPB oversight and enforcement. This would not include:

- An insured depository institution, insured credit union, or related person;
- A State;
- A natural person;
- Most motor vehicle dealers;
- A person that qualifies as a covered person based solely on conduct that is the subject of, and that is not otherwise exempted from, an exclusion from the Bureau’s rulemaking authority under 12 U.S.C. 5517.

The registration requirement would apply to any regulatory order or court order related to a “covered law”, which would include:

- A Federal consumer financial law or any other law as to which the Bureau may exercise enforcement authority;
- The prohibition on unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act
- A State law prohibiting unfair, deceptive, or abusive acts or practices
- A rule or order issued by a State agency for the purpose of implementing a prohibition on unfair, deceptive, or abusive acts or practices contained in such a State law described.

While the CFPB's proposal indicated that it is designed in part to enable regulators to monitor repeat offenders (including those who move from state to state), first time offenders would be required to register as well.

More generally, the CFPB stated that it may use the registry information "to support its objectives and functions, including in determining when to exercise its authority under 12 U.S.C. 5514 to conduct examinations and when to exercise its enforcement powers under subtitle E of the CFPB."

### **Registrants' Submission of Annual Written Statements Regarding Compliance with Each Underlying Order**

The proposal would also require most supervised nonbanks to submit annual written statements regarding compliance with each underlying order. For each order contained in the annual report, an executive must provide a written attestation which states:

whether, to the attesting executive's knowledge, the supervised registered entity during the preceding calendar year identified any violations or other instances of noncompliance with any obligations that were imposed in a public provision of the covered order by the applicable agency or court based on a violation of a covered law.

Each attestation is to be signed by an attesting executive. The requirements for the attesting executive are specific; the executive must be:

its highest-ranking duly appointed senior executive officer (or, if the supervised registered entity does not have any duly appointed officers, the highest-ranking individual charged with managerial or oversight responsibility for the supervised registered entity) whose assigned duties include ensuring the supervised registered entity's compliance with Federal consumer financial law, who has knowledge of the entity's systems and procedures for achieving compliance with the covered order, and who has control over the entity's efforts to comply with the covered order.

This aspect of the proposal may be particularly troubling to executives who already face Department of Justice settlement certification requirements, and who are aware of the CFPB's intent to name individual responsible executives and managers in enforcement actions, and (as the CFPB has done previously) in separate announcements about enforcement actions against a company. [\*See Buchalter Client Alert, DOJ Indicates That in DOJ Settlements, Chief Compliance Officers Will Be Required to Provide a Certification, Suggests Specific Steps to Create an Effective Compliance Program, June 23, 2022\*](#)

Buchalter is a leading nationally recognized financial services law firm, having served large, medium and small financial institutions for over 90 years. Our Financial Services Regulatory Industry Group provides counseling and analysis across the wide range of regulatory and compliance issues facing such institutions, and the Group's seasoned attorneys are experienced in the corporate, compliance and risk management issues such as those raised by this proposal. You can reach out to any members of the Financial Services Regulatory Industry Group for assistance.



**Michael Flynn**

Of Counsel  
(303) 253-6750  
[mflynn@buchalter.com](mailto:mflynn@buchalter.com)



**Melissa Richards**

Of Counsel  
(415) 227-3543  
[mrichards@buchalter.com](mailto:mrichards@buchalter.com)



**Anna Crivelli**

Senior Counsel  
(916) 945-5177  
[acrivelli@buchalter.com](mailto:acrivelli@buchalter.com)



**Artin Betpera**

Shareholder  
(949) 224-6422  
[abetpera@buchalter.com](mailto:abetpera@buchalter.com)



**R. Chad Pugh**

Shareholder  
(801) 401-8637  
[cpugh@buchalter.com](mailto:cpugh@buchalter.com)



**Robert McWhorter**

Shareholder  
(916) 945-5188  
[rmcwhorter@buchalter.com](mailto:rmcwhorter@buchalter.com)

This communication is not intended to create or constitute, nor does it create or constitute, an attorney-client or any other legal relationship. No statement in this communication constitutes legal advice nor should any communication herein be construed, relied upon, or interpreted as legal advice. This communication is for general information purposes only regarding recent legal developments of interest, and is not a substitute for legal counsel on any subject matter. No reader should act or refrain from acting on the basis of any information included herein without seeking appropriate legal advice on the particular facts and circumstances affecting that reader. For more information, visit [www.buchalter.com](http://www.buchalter.com).