



February 14, 2023

**CHLA Comment Letter
Proposed CFPB Rule - Registry of Offenders
Docket No. CFPB-2022-0080. RIN 3170-AB13**

The Honorable Rohit Chopra
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Chopra:

The Community Home Lenders of America (CHLA)¹ writes to provide comments in response to the Bureau's "*Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders*" rule.

CHLA supports the objectives cited in the Bureau press release, which is to "*track and mitigate the risks posed by repeat offenders, while also being able to monitor all lawbreakers subject to agency and court orders.*" We also understand why the Bureau would want to establish a requirement for the wide range of non-bank financial firms and products that have no reporting requirement for agency and court orders, are subject to few specific federal consumer protection laws, and have cursory state regulatory supervision.

However, we see no real consumer benefit of imposing a redundant requirement on independent mortgage banks (IMBs) through a complex 212-page rule to report agency and court orders IMBs already routinely provide to the Nationwide Multi-State Licensing System and Registry (NMLS).

CFPB already has the tools it needs to identify IMB agency and court orders, through the NMLS reporting mechanism and the registry NMLS maintains. A duplicative reporting burden would add additional compliance burdens on smaller IMBs - in turn exacerbating other factors already contributing to industry consolidation, which in turn hurts consumers by reducing competition and loan choices.

Therefore, we ask CFPB to create a compliance safe harbor for this new requirement if an IMB - or at the least, any smaller IMB - complies with NMLS reporting requirements.

The draft rule also includes a requirement to "*designate a senior executive to attest to the firm's compliance with covered rules.*" The Bureau press release on this proposed rule claims this would only apply to "*larger supervised nonbanks.*" This would be consistent with Section 1024(b)(2) of Dodd/Frank, which requires the Bureau to tailor regulation by size, volume, risk, and extent of state supervision.

However, the rule's \$1 million in gross receipts exemption threshold is meaningless for IMBs. IMBs over that level can hardly be considered to be "larger" nonbanks. Moreover, owners of smaller IMBs already have more personal accountability than any person at a large IMB. Therefore, the Bureau should create a more meaningful exemption - for all but the largest IMBs.

¹ CHLA is the only national trade association focused exclusively on small and mid-sized independent mortgage banks (IMBs).

Statutory Requirement to Tailor Supervision by Size, Volume, and Risk

Section 1024(b)(2) of Dodd Frank requires the Bureau to tailor supervision of non-banks by asset size, volume, risks to consumers, and degree of state oversight:

SECTION 1024(b)(2) OF DODD-FRANK:

“(2) RISK-BASED SUPERVISION PROGRAM. The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a)(1), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

(A) the asset size of the covered person;

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection;

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

For new requirements such as this offender registry, the Bureau should exempt smaller IMBs when the compliance burdens for smaller IMBs substantially outweighs the consumer benefit.

The Rule’s Submission Requirement Compliance Burden on Smaller IMBs

This requirement is redundant with existing NMLS requirements for IMBs. Per NMLS MU1 forms, an IMB has to disclose all state or federal regulatory actions and certain court actions in the last 10 years: [[https://mortgage.nationwidelicencingsystem.org/licensees/resources/LicenseeResources/NMLS%20Company%20\(MU1\)%20Form.pdf](https://mortgage.nationwidelicencingsystem.org/licensees/resources/LicenseeResources/NMLS%20Company%20(MU1)%20Form.pdf)]

Moreover, IMBs that don’t comply with these NMLS reporting requirements are subject to fines.

The Bureau’s draft rule estimates that only between 1 and 5% of all non-banks will be subject to the requirement to report agency actions and court orders. Though apparently intended to show a minimal compliance burden, counter-intuitively, this strengthens the case for an exemption for smaller IMBs.

Ironically, since IMBs are subject to so many more specific federal consumer protection laws than most non-banks, this means that the burden of this requirement will be greater on IMBs than other non-banks.

Additionally, because IMBs are subject to much more extensive regulation by every state in which they do business than most other nonbanks (including being subject to an extensive SAFE Act licensing regime in each state), the compliance burden will be greater for IMBs than other non-banks.

These two points stand the purpose of Section 1024(b)(2) on its head with respect to IMBs.

In practice IMBs will have to undertake a complex legal analysis of what state court orders might be required under this new requirement, analyze what new liabilities the rule might create, and spend time and energy to submit and monitor this reporting. States have already made a determination of which state orders merit inclusion in the NMLS reporting system; we see no reason for CFPB to second guess their decisions.

The simplest way to address this redundancy is to grant IMBs (or at least all smaller IMBs) safe harbor compliance if they comply with required NMLS reporting.

Instead, this 212-page proposed rule imposes a disproportionate impact on smaller IMBs, for many reasons:

- (1) Smaller IMBs lack the volume economies of scale necessary to spread compliance costs over a larger revenue base, making smaller IMBs less able to offer competitive loan rates and fees.
- (2) This impact is exacerbated by the current substantial reduction in mortgage loan volume.
- (3) Smaller IMBs may have to hire third-party lawyers and consultants to make complex legal determinations about which state orders meet the rule’s submission requirements.

- (4) IMBs' staff time will be diverted from work on new mortgage loan originations or compliance with more impactful consumer laws to make the required submissions and monitoring.

Failure to provide a smaller IMB safe harbor (or exemption) will exacerbate market and other factors that are already contributing to mortgage market industry concentration. More concentration means less competition, higher prices, and fewer choices for consumers.

The Rule's Requirement to Designate an Executive Responsible for Compliance

We understand that the CFPB might want to ensure accountability for large IMBs - e.g. for publicly traded firms where individuals can make large bonuses without having any meaningful personal liability or accountability for consumer damage and financial penalties for the very same bad actions that helped generate those bonuses.

But owners of smaller IMBs are already personally on the hook for such penalties and for compliance.

The CFPB's press release and rule both claim this designation requirement is limited to "larger nonbanks." But the proposed \$1 million in gross receipts exemption threshold is meaningless for IMBs, since by our calculations an IMB could do fewer than 10 loans a month and still not have an exemption.

Additionally, specific language in the proposed rule with regard to this requirement raises concerns about "regulation by enforcement."

The rule is particularly vague in discussing the responsibilities of an executive designated to ensure compliance under the rule. Specifically, the rule states that:

"To be clear, the proposed rule would not establish any minimum procedures or otherwise specify the steps the attesting executive must take in order to review and oversee the supervised registered entity's activities. Nor would the proposal establish any minimum level of compliance management or expectation for compliance systems and procedures at such entities. However, as explained above, the Bureau expects that most supervised registered entities will be at least somewhat hesitant to repeatedly report the absence of good faith efforts to comply with covered orders."

Concerns about regulation by enforcement are particularly a problem for smaller IMBs that lack the economies of scale to hire consultants and lawyers that have expertise in how the CFPB might interpret and enforce the rule. Here, the lack of clarity about what is required magnifies this concern.

Therefore, the CFPB should create a much higher, more meaningful exemption from this designation requirement - e.g., an exemption for all but the largest IMBs.

Thank you for consideration of these comments and requests.

Sincerely Yours,

COMMUNITY HOME LENDERS OF AMERICA

CC: Mr. James M. Cooper
President and CEO
Conference of State Bank Supervisors