**SUPPORTING STATEMENT FOR**

**Registry of Nonbank Covered Persons Subject to**

**Certain Agency and Court Orders**

**OMB CONTROL NUMBER: 3170-0076**

1. **JUSTIFICATION**
2. **Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

This information collection is necessary to:

* Support Bureau functions by monitoring for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services, pursuant to 12 U.S.C. 5512(c)(1);
* Prescribe rules regarding registration requirements applicable to nonbank covered persons, pursuant to 12 U.S.C. 5512(c)(7);
* Facilitate supervision of persons described in 12 U.S.C. 5514(a)(1), pursuant to 12 U.S.C. 5514(b);
* Assess and detect risks to consumers, pursuant to 12 U.S.C. 5514(b); and
* Ensure that persons described in 12 U.S.C. 5514(a)(1) are legitimate entities and are able to perform their obligations to consumers, pursuant to 12 U.S.C. 5514(b).

The Bureau is issuing this final rule to require certain nonbank covered person entities (with exclusions for insured depository institutions, insured credit unions, related persons, States, certain other entities, and natural persons) to register with the Bureau if they are subject to certain final public orders obtained or issued by a Federal, State, or local agency based on an alleged violation of a “covered law.” Under the rule, the term “covered law” includes, to the extent that the violation of law found or alleged arises out of conduct in connection with the offering or provision of a consumer financial product or service:

* A Federal consumer financial law, as that term is defined by 12 U.S.C. 5481.
* 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, 15 U.S.C. 45, or a rule or order issued for the purpose of implementing that prohibition.
* A State law prohibiting unfair, deceptive, or abusive acts or practices that is identified in Appendix A to the final rule.
* A State law amending or otherwise succeeding such a State law, to the extent such law is materially similar to its predecessor, or
* A rule or order issued by a State agency for the purpose of implementing such a prohibition of unfair, deceptive, or abusive acts or practices.

*Legal authority to register nonbanks*

Sections 1022 and 1024 of the Dodd-Frank Act[[1]](#footnote-3) provide authority to register nonbanks.  A discussion of these authorities is provided below.

Sections 1022(b) and (c)

Section 1022(b) of the Dodd-Frank Act authorizes the Bureau to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

Section 1022(c)(1) of the Dodd-Frank Act provides that, in order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in the markets for such products or services.  Section 1022(c)(2) of the Dodd-Frank Act authorizes the Bureau to allocate resources to perform monitoring required by section 1022(c)(1) by considering specified factors, among others. The specified factors are “likely risks and costs to consumers associated with buying or using a type of consumer financial product or service,” “understanding by consumers of the risks of a type of consumer financial product or service,” “the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers,” “rates of growth in the offering or provision of a consumer financial product or service,” “the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers,” and “the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.”

Section 1022(c)(4)(A) of the Dodd-Frank Act also authorizes the Bureau to conduct monitoring required by section 1022(c)(1) by “gather[ing] information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.” Section 1022(c)(4)(B)(ii) of the Dodd-Frank Act provides that the Bureau is authorized to gather this information by, among other things, requiring covered persons and service providers participating in markets for consumer financial products and services to file annual or special reports, or answers in writing to specific questions, furnishing the information “as necessary for the Bureau to fulfill its monitoring, assessment, and reporting responsibilities imposed by Congress.” The Bureau may require such reports to be filed “in such form and within such reasonable period of time as the Bureau may prescribe by rule or order.”

Section 1022(c)(7)(A) of the Dodd-Frank Act further authorizes the Bureau to prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

Finally, sections 1022(c)(3) and 1022(c)(7)(B) authorize the Bureau to publicly release information obtained pursuant to Dodd-Frank Act section 1022(c), subject to limitations specified therein.  Specifically, section 1022(c)(3)(B) states that the Bureau “may make public such information obtained by the Bureau under [section 1022] as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with [specified protections in section 1022].”  And section 1022(c)(7)(B) states that “[s]ubject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.”  Information submitted to the Bureau’s registry is protected by, among other things, section 1022(c)(8), which states that “[i]n … publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under [the Freedom of Information Act, 5 U.S.C. § 552(b)] or [the Privacy Act of 1974, 5 U.S.C. 552a], or any other provision of law, is not made public under [the CFPA].”

Section 1024(b)

Section 1024(b)(7)(A) of the Dodd-Frank Act authorizes the Bureau to “prescribe rules to facilitate supervision” of nonbank covered persons subject to the Bureau’s supervisory authority and “assessment and detection of risks to consumers.” Section 1024(b)(7)(B) authorizes the Bureau to require such persons “to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.”  Section 1024(b)(7)(C) authorizes the Bureau to prescribe rules “to ensure that such persons are legitimate entities and are able to perform their obligations to consumers.”

In addition, Section 1024(b)(2) requires that the Bureau exercise its supervisory authority over nonbank covered persons based on its assessment of 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; and (E) any other factors that the Bureau determines to be relevant to a class of covered persons.”

1. **Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

*Purposes of Bureau Rule*

This is a new information collection. The purpose of the rule is to:

* Support Bureau functions by monitoring for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services, pursuant to 12 U.S.C. 5512(c)(1);
* Prescribe rules regarding registration requirements applicable to nonbank covered persons, pursuant to 12 U.S.C. 5512(c)(7).
* Facilitate the supervision of persons described in 12 U.S.C. 5514(a)(1), pursuant to 12 U.S.C. 5514(b).
* Assess and detect risks to consumers, pursuant to 12 U.S.C. 5514(b); and
* Ensure that persons described in 12 U.S.C. 5514(a)(1) are legitimate entities and are able.

To achieve these ends the rule requires:

*Reporting obligation via registration*

Covered nonbanks are required to register all applicable final public orders and judgments, including consent and stipulated orders. The requirement to report the existence of orders applies to orders with an effective date on or later than January 1, 2017, that remain in effect or take effect on or after the final rule’s effective date.

Registered nonbanks are required to submit and maintain updated identifying and administrative information, along with an accurate and updated copy of each covered order, for a period of up to the later of ten years after the order’s effective date or, if the covered order expressly provides for a termination date more than ten years after its effective date, the expressly provided termination date. Only public portions of covered orders must be submitted.

Covered nonbanks that are subject to an order published on the Nationwide Multistate Licensing System’s (NMLS) 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 other requirements with respect to that order. If an order is published through the NMLS system. The respondent must also provide, information that the Bureau determines is appropriate for the purpose of identifying the covered nonbank and order and coordinating the Bureau’s nonbank registry with the NMLS. Upon providing such information, the covered nonbank shall have no further obligation under the rule to provide information to, or update information provided to, the nonbank registry regarding the NMLS-published covered order.

*Annual reporting requirement for supervised registered entities.*

The rule imposes additional reporting requirements on certain registered entities subject to Bureau nonbank supervision and examination authority under 12 U.S.C. 5514(a). Entities subject to these additional reporting requirements must annually designate one attesting executive for each registered order whose assigned duties include ensuring the supervised registered entity’s compliance with Federal consumer financial law. This person must who has have knowledge of and control over the entity’s systems and procedures for achieving compliance with the order.

Entities must, on or before March 31 of each year, submit a written statement for each covered order that is signed by the attesting executive that (1) generally describes the steps that the attesting executive has undertaken to review and oversee activities subject to the applicable covered order for the preceding calendar year, and (2) attests whether, they identified any violations or other instances of noncompliance with any obligations that were imposed in a public provision of the covered order.

These additional requirements apply only to covered orders that are registered or required to be registered under the rule and have an effective date on or after the applicable nonbank registry implementation date. The supervised registered entities must maintain records that provide reasonable support for the written statement for a period of five years after submission.

These additional reporting requirements do not apply to any NMLS-published covered order registered under the one-time registration option described above. Also, these requirements do not apply to entities with less than $5 million in annual receipts from offering or providing all consumer financial products and services described in 12 U.S.C. 5514(a). They also do not apply to service providers that are subject to Bureau supervision and examination solely in their capacities as service providers and that are not otherwise subject to Bureau supervision and examination. In addition, they do not apply to certain other entities excluded from the exercise of the Bureau’s supervisory authority under circumstances described in 12 U.S.C. 5517 and 5519. .

The Bureau may publish certain registration information on its publicly available website.

1. **Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.**

The information that nonbanks report under the rule will be collected via an electronic system that permits electronic submission of responses.  See section 1092.101(d).  Only electronic submissions will be accepted. See section 1092.102(a).  Electronic submission allows for an efficient, trackable means of information collection and reduce burden and risk of error. The Bureau believes that covered nonbanks already have the technological resources necessary for electronic submission (i.e., computer(s), an appropriately secure operating system, and an Internet connection).

1. **Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item A.2 above.**

The Bureau recognizes that much public information about covered orders is scattered across various websites in the public domain. The applicable Federal and State regulators generally each publish their own orders enforcing consumer financial law; thus, potential users may be able to access some of this information by means of the various websites and other databases maintained by individual agencies. Some information is also available to potential users through certain multiagency websites such as the Nationwide Multistate Licensing System & Registry (NMLS) Consumer Access website, which is owned and operated by the State Regulatory Registry LLC, a wholly owned subsidiary of the Conference of State Bank Supervisors. Other information is also published and maintained by private actors.

However, there appears to be limited collective information regarding all the orders that have been issued by regulators to particular entities across multiple product markets and geographic markets related to consumer financial products and services. To the Bureau’s knowledge, there is currently no public government system at the Federal or State level for the collection of information about such orders across the entities subject to the Bureau’s jurisdiction (though privately maintained databases may exist). No government agency appears to maintain a publicly available repository of such orders and other related information with respect to particular entities as they relate to consumer financial products and services. While certain State regulators provide information about certain public enforcement actions through the NMLS, including in some cases publishing related orders on the NMLS Consumer Access website, such information does not extend to all of the orders and all of the agencies that are addressed by the final rule. It is also limited to only certain industry sectors. The Bureau believes that consumers will benefit from a registration system that is maintained by the Federal government for the purpose of providing comprehensive information regarding covered orders, including copies of the orders.

1. **If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The rule does not apply to insured depository institutions, insured credit unions, related persons, States, certain other entities, and natural persons. Additionally, entities are not subject to the requirement to submit annual written statements if they have annual average receipts of less than $5 million from offering or providing all consumer financial products and services described in 12 U.S.C. 5514(a). The Bureau believes the relative burden on supervised registered entities with $5 million or more in annual average receipts will not be significant, particularly in comparison to the value of that information for the purposes described above.

The rule also contains an additional means of providing flexibility to those entities where uncertainty raises good-faith concerns that they do not meet the definition of a covered nonbank or that an order does not meet the definition of a covered order. Under the rule, such persons could elect to file a notice. When a person makes a non-frivolous filing stating that it has a good-faith basis to believe that it is not a covered nonbank or that an order is not a covered order, the Bureau would not bring an enforcement action against that person based on the person’s failure to comply with the rule’s requirements unless the Bureau has first notified the person that the Bureau believes the person does in fact qualify as a covered nonbank (or that an order does qualify as a covered order) and has provided the person with a reasonable opportunity to comply with the rule’s registration requirements. The rule also contains a similar provision with respect to supervised registered entities that are required to file annual written statements.

1. **Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The Bureau’s requirement that nonbanks report certain public agency and court orders is intended to aid the Bureau in fulfilling its statutory mandate to monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services. The requirement will allow the Bureau to more effectively monitor for potential risks to consumers. The Bureau believes that a comprehensive collection of public orders will help it identify broader trends related to risks to consumers in the offering and provision of consumer financial products and services. The Bureau believes that requiring entities to maintain up-to-date information filed with the nonbank registry will significantly enhance the usefulness of the nonbank registry.

In addition, the Bureau believes that consumers, the public, and other potential users of the registry will benefit from the publication of a central repository for information regarding public orders that have been imposed upon nonbank covered persons. The Bureau anticipates that making a registry of these orders publicly available will, among other things, benefit the public, and will allow other regulators at the Federal, State, and local level tasked with protecting consumers to realize the same market monitoring benefits that the Bureau anticipates obtaining from this rule.

1. **Explain any special circumstances that would cause an information collection to be conducted in a manner:**

* **requiring respondents to report information to the agency more often than quarterly;**
* **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
* **requiring respondents to submit more than an original and two copies of any document;**
* **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
* **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
* **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**
* **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
* **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentially to the extent permitted by law.**

Section 1092.204(e) of the final rule requires a supervised registered entity to maintain documents and other records sufficient to provide reasonable support for its annual written statement and to otherwise demonstrate compliance with the requirements of section 1092.204 with respect to any submission under section 1092.204 for five years after such submission is required.

Section 1092.204(e) also requires supervised registered entities to make such documents and other records available to the Bureau upon request. These requirements are designed to promote effective and efficient enforcement and supervision of section 1092.204.

The Bureau is relying on its rulemaking authorities under CFPA section 1024(b)(7)(A)–(C) in imposing section 1092.204’s recordkeeping requirements. The purpose of this requirement is to enable the Bureau to assess, as part of its normal supervisory process, the supervised registered entity’s compliance with section 1092.204.

The Bureau believes that the five-year time period would appropriately facilitate the Bureau’s examination and enforcement capabilities with respect to compliance with section 1092.204’s requirements.

1. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency’s notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection-of-information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

The Bureau engaged in robust consultations with Federal and State agencies, including State financial regulators, State and tribal attorneys general, and tribal representatives. For further discussion of these consultations, see the preamble to the final rule. The Bureau also consulted with a non-profit organization regarding data it maintains regarding orders entered against companies for violating a wide range of laws. The Bureau consulted with external entities regarding an early prototype of the nonbank registry’s design to obtain feedback on certain aspects of the information collection, including usability and accessibility focused on the user experience.

In accordance with 5 CFR 1320.8(d), at the proposal stage, the Bureau published a notice in the Federal Register allowing the public to comment on the Notice of Proposed Rulemaking. *See* 88 FR 6088 (Jan. 30, 2023). The comment period ended 60 days from publication in the Federal Register. For a discussion of comments received, see the preamble to the final rule.  The comments on the rule generally, and those relating to its burdens and utility, are summarized in the preamble to the final rule.

1. **Explain any decision to provide any payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are provided to respondents.

1. **Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

Consistent with CFPA section 1022(c)(8), the Bureau will not publish information protected from public disclosure under 5 U.S.C. 552(b) or 552a of title 5, United States Code, or any other provision of law.

To the extent that information collected under the rule is considered Bureau confidential supervisory information, any discretionary public release of such information under section 1092.205 would be authorized by CFPA section 1022(c)(6)(A) (authorizing promulgation of the Bureau’s confidentiality rules) and 12 CFR 1070.46 (providing that the Director may authorize in writing the disclosure of confidential information).

Publication under section 1092.205(a)(1) will not include the written statement submitted under section 1092.204, and such information will be treated as confidential supervisory information subject to the provisions of the Bureau’s confidentiality rules at 12 CFR part 1070.

Under section 1092.205(b), the Bureau may, at its discretion, compile and aggregate information submitted by persons under the rule and may publish such compilations or aggregations (in addition to any other publication under section 1092.205(a)). Any such publication that relates to annual written statements submitted under section 1092.204 would be in a form that is consistent with the Bureau’s treatment of those annual written statements as Bureau confidential supervisory information.

1. **Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

Not applicable

1. **Provide estimates of the hour burden of the collection of information**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Requirement** | **Number of Respondents** | **Frequency** | **Number of Responses** | **Response Time (Hours)** | **Burden (Hours)** |
| Registration Provision  (Initial identification) | 7,752[[2]](#footnote-4) | 1 | 7,752 | 5 | 38,760 |
| Supervisory Reports Provision | 7,7522 | 1 | 7,752 | 30 | 232,560 |
| **TOTAL** | 7,752 |  | 15,504 |  | 271,320 |

1. **Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)**

There are no material costs associated with this information collection.

# Provide estimates of the annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 into a single table.

The Bureau estimates the annual costs to the Federal Government to operate this registry to be $2.5 million for external vendor support and 10,400 hours of Federal staff time. External vendor support was calculated by using current contracts at the Bureau for equivalent system developers and user support functions that support existing mission programs with similar business process execution needs to the nonbank registration program.

The breakdown for these functions is roughly $1,900,000 for developer support to operate and maintain the data collection system, $600,000 for an online user support function (including technical writing support for user help articles). Internal Federal staff time was calculated based on five (5) Full Time Equivalents (FTE) to support the program with inherently governmental functions, such as responding to respondents’ substantive questions regarding rule compliance, data intake and quality control, managing technical system updates for mission critical needs, and overseeing external vendor work.

# Explain the reasons for any program changes or adjustments.

This is a new collection of information. There are no program changes or adjustments.

# For collections of information whose results will be published, outline plans for tabulations, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Under the rule, the Bureau may publish the information submitted to the nonbank registry, including through the Bureau’s publicly available website. The Bureau will not publish the annual written statement submitted by supervised registered entities or administrative information as defined in section 1092.201(a) of the final rule. The Bureau may publish the name and title of the attesting executive who signs a supervised registered entity’s annual written statement.

The Bureau does not plan to conduct any tabulations or analytics of such data at this time. Rather, the Bureau plans to build features in its database so that members of the public and external organizations can search, sort, and filter for information relevant to their needs. Any publication of information will begin sometime after the initial compliance date for registration submission with no set end date.

1. **If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

# The OMB control number and expiration date associated with this Paperwork Reduction Act (PRA) submission will be displayed on the Federal government’s electronic PRA docket at www.reginfo.gov, as well as on the relevant information collection instruments.

1. **Explain each exception to the certification statement.**

# The Bureau certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9 and the related provisions of 5 CFR 1320.8(b)(3) and is not seeking an exemption to these certification requirements.

1. Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, tit. X, 124 Stat. 1376, 1955-2113 (2010). [↑](#footnote-ref-3)
2. The total number of respondents for this information collection is at most 7,752 across both respondent categories. The separate respondent categories are not totaled for the burden estimate. [↑](#footnote-ref-4)