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CFPB PROPOSED RULE CHANGE: REPEAT OFFENDER REGISTRY

Compliance Burdens Increase While Industry Does the Government's Work

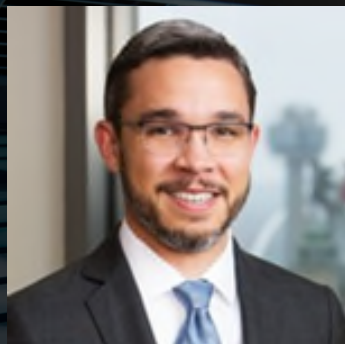
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Overview of CFPB Rule- Change Proposal: The Top Line

1

Require non-banks to report most resolutions with federal, state, and local agencies to the CFPB (resolutions would then be made available for public inspection and likely form the basis for CFPB enforcement investigations, regulatory actions); and

2

Require large non-bank institutions – those subject to the CFPB’s examination authority – to certify to the CFPB that they are in compliance with all of the above orders under the signature of a senior company officer; and

3

Consider expanding the certification requirement to all non-bank financial institutions.

What does this mean for you?

- Implementation of the proposed rule change would:
 - Add compliance work for businesses,
 - Increase risk of error in compliance work, and
 - Increase risk of drawing attention to one-off 'under the radar' resolutions:
 - CFPB attention
 - Other federal agencies
 - State agencies (Attorney General, Banking regulator, etc.)
 - Plaintiff's lawyer(s)
 - Sources of capital
 - Licensing and acquisition



Proposed Rule Change: Small Institutions

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What the proposed rule would do

- Smaller institutions:
 - Annually report all resolutions related to consumer financial products and services (Judgements, settlements, agreements, and similar)
 - “Covered Order”: Must be public and final (note: “Final” could be under appeal); Could be issued by either court or agency, and might include license revocations or suspensions
 - “Covered Order” includes cease and desist orders, preliminary injunctions, orders partially granting or denying motions to dismiss or summary judgement and other non-final orders (interlocutory); Covered does not include non-public resolutions.

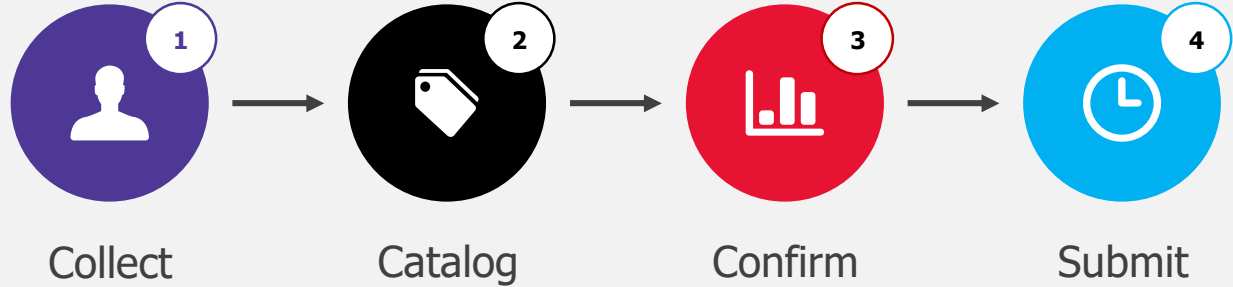
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 - “Covered Order”: Must be public and final (note: “Final” could be under appeal); Could be issued by either court or agency, and might include license revocations or suspensions
 - Judgement of a court, whether issued after trial or by consent
 - Agency order, whether after hearing or by consent
 - General public agreements which have the force of law (Assurance of Discontinuance)
 - “Covered Order” includes cease and desist orders, preliminary injunctions, orders partially granting or denying motions to dismiss or summary judgment and other non-final orders (interlocutory); Covered does not include non-public resolutions.
 - Informal consumer complaints resolved by agency mediation service
 - Complaints not adjudicated

Burden

Proposed Procedure

Institutions reporting all resolutions related to consumer financial products and services must:



CFPB could have done all of this itself – it's all public!



Risk



Human Error

Failure to properly report, or omission respecting a one-off minor state matter can result in federal enforcement action which can include an industry ban for D&O.



Over-Inclusion

The provided definition can be easily mis-interpreted, suggestion over-inclusiveness in reporting that goes back to burden and error.



Ease for Plaintiff's

Public release will make it increasingly easy for Plaintiff's lawyers; Made to order "low-hanging fruit".



Capital, M&A

While DD will likely lead to compliance discussion that can be nuanced and explained; It can become increasingly easy to focus in on single official and delay capital raises, licensing, and sale.



Proposed Rule Change: Large Institutions

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What the proposed rule would do (large institutions)

- Applies only to those subject to CFPB examination now (note: NPRM states that CFPB will consider expanding to all)
- Requires certification of compliance for each order by designated senior official
- Certifications are non-public, but name and title of official are public to provide consumers information on “escalated” complaints; Senior office will be deluged
- **Burden:** Certification requires resources to review, confirm compliance
- **Risk:** Error and reliance, possible federal individual civil liability to include industry ban
- **Access to capital and M&A:** While DD will likely lead to compliance discussion that can be nuanced and explained; It can become increasingly easy to focus in on single official and delay capital raises, licensing, and sale.

What's next?

(Process)

Publish

Publish in Federal Register

Lead Time

Sixty (60) days from publication to comment

Comment

File comments:

- Focus on real life: Leave the screeds to others,
- Focus on consumer harm: The harder it is for you to do business, the less consumers benefit from your product – the more expensive it may be for them – resulting in **decreased attractiveness to investors who make company growth and hires possible**,
- Cost benefit: It's all public, CFPB has unlimited funds, and there is no reason to require business to do the government's job – it's a disguised tax.

Questions? Contact us:



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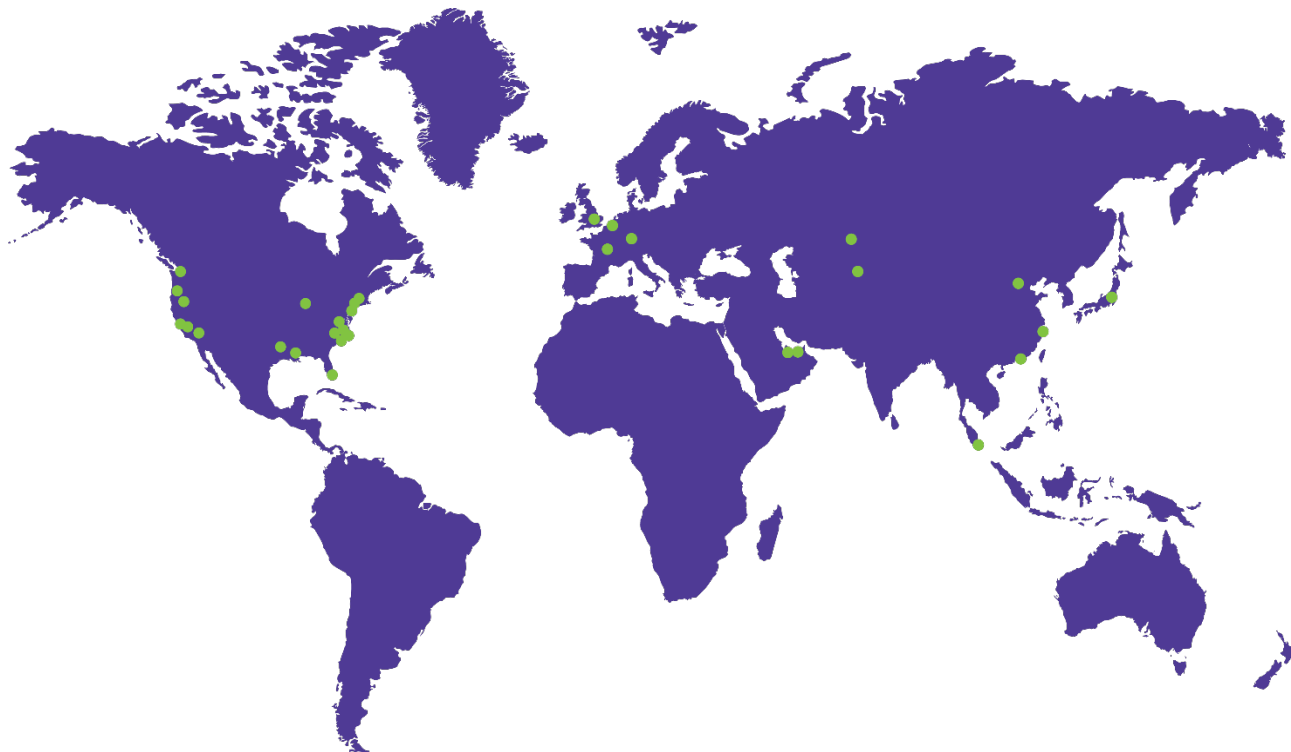
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