June 13, 2025
Comment Intake—Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders; Proposed Rescission
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552.

To Whom It May Concern:

Better Markets, Inc.[1] appreciates the opportunity to comment on the above-captioned proposed rule ("Proposal"), issued by the Consumer Financial Protection Bureau ("CFPB" or "Bureau").[2]

The Proposal would rescind the Bureau's "Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders" rule ("Registry"), which was finalized in July 2024.[3] This rule requires nonbank companies that have been subject to public orders for violations of consumer protection laws to publicly register those orders with the CFPB and, in certain cases, submit annual compliance statements. Should new CFPB leadership choose to rescind this rule, it is essential to consider how doing so would not only limit regulatory insight but also result in tangible financial and informational costs to consumers.

After briefly detailing the increasing prevalence of nonbank financial companies in consumer financial services, this comment letter will go on to explain how eliminating the Registry will impose costs on consumers. These costs would arise from reduced market transparency, increased risk of consumer harm from repeat offenders, and the weakening of regulatory deterrence and accountability mechanisms, among other harms.

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

2 Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders; Proposed Rescission, Docket No. CFPB–2025–0011, 90 Fed. Reg. 20406 (May. 14, 2025) (hereinafter, "Proposal"), https://www.federalregister.gov/documents/2025/05/14/2025-08345/registry-of-nonbank-covered-persons-subject-to-certain-agency-and-court-orders-proposed-rescission.

3 Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders, Docket No. CFPB–2022–0080, 89 Fed. Reg. 56028 (July 08, 2024), https://www.federalregister.gov/documents/2024/07/08/2024-12689/registry-of-nonbank-covered-persons-subject-to-certain-agency-and-court-orders.

I. <u>Background: The Registry Is a Necessary Balance Against the Rising Market Power of Nonbanks and The Dearth of Information About Their Practices.</u>

When large actors in consumer financial services, such as very large banks, engage in various forms of unlawful conduct, the misconduct is typically unearthed amid widespread news coverage. Consumers, notified of wrongdoing, may consult the websites of the relevant regulators, such as the CFPB or the Federal Trade Commission ("FTC"), for more information. This coverage informs those actors' customers (as well as potential customers), who may choose to continue doing business with them or may take their business elsewhere. Regulators who are not directly responsible for bringing an enforcement action related to the wrongdoing take note of the action, learning from the nature of the offense(s) and identifying any regulatory and enforcement gaps that may warrant attention, all to further their regulatory missions.

Yet an enormous amount of consumer finance has shifted away from chartered commercial banks with familiar brand names. In 2020, three of the top-five lenders in the U.S. were nonbanks.[4] Since 2017, nonbanks have controlled over 50 percent of the U.S. lending market.[5] And there is also some evidence that, as nonbanks have increased their market share, the overall risk profile to consumers of credit has risen.[6] Even more recently, financial technology ("FinTech") companies have joined the influx of nonbank consumer financial companies. FinTech nonbanks originate mortgages much faster than traditional banks and are more likely to offer mortgages to consumers with lower income and credit scores and to offer personal loans to individuals who recently have been denied credit by another lender.[7] Some of these FinTech nonbanks (such as SoFi) have

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4 These lenders are Quicken Loans, United Wholesale Mortgage, and Penny Mac. *See* Alicia Phaneuf, *The Growing Market Share of Nonbanks and Alternative Financing in the Online Mortgage Lending Industry*, BUS. INSIDER (Jan. 19, 2021), https://www.businessinsider.com/alternative-nonbank-mortgage-lending; John Bancroft, *The Battle for Origination Supremacy: Nonbanks at 63% Market Share*, INSIDE MORTG. FIN. (Jun. 25, 2020), https://www.insidemortgagefinance.com/articles/218443-the-battle-for-origination-supremacy-nonbanks-at-63-market-share. *See generally* Kayla Shoemaker, *Trends in Mortgage Origination and Servicing: Nonbanks in the Post-Crisis Period*, 13 FDIC Q. 51 (2019), https://www.fdic.gov/bank/analytical/quarterly/2019-vol13-4/fdic-v13n4-3q2019-article3.pdf (discussing mortgage trends since the 1970s).

5 *See* Kathryn Fritzdixon, *Bank and Non-Bank Lending Over the Last 70 Years*, 13 FDIC Q. 31, 34 (2019), https://www.fdic.gov/bank/analytical/quarterly/2019-vol13-4/fdic-v13n4-3q2019-article1.pdf; *see also* Pedro Gete & Michael Rehr, *Mortgage Securitization and Shadow Bank Lending* 34 REV. OF FIN. STUD. 2236 (2020) (discussing the market share of nonbanks in mortgage origination).

6 As of 2020, the average mortgage down-payment had dropped to 11.4% from 20%. Sara Ventiera, *Where Buyers Are Making the Lowest -- and the Highest -- Down Payments*, REALTOR.COM (Mar. 18, 2020), https://www.realtor.com/news/trends/lowest-down-payment-cities/. Meanwhile, FICO scores have dropped to a median of 710 out of 850, *What's the Average Credit Score in America?*, CAPITALONE (June 10, 2021), https://www.capitalone.com/learn-grow/money-management/average-credit-score-in-america/ (reporting an average FICO score of 710 for 2020), concerningly close to the Crisis-era "subprime cutoff." Marshall Lux & Robert Greene, *What's Behind the Non-Bank Mortgage Boom?* 22 (Harv. Kennedy Sch., Mossavar-Rahmani Ctr. for Bus. & Gov., Working Paper No. 42, 2015).

7 Dennis Kelleher & Philip Basil, *Fact Sheet: FinTech, Crypto, the Banking Industry and Regulation*, BETTER MKTS. (Jan. 19, 2023), https://bettermarkets.org/analysis/fact-sheet-fintech-crypto-the-banking-industry-and-regulation/ (citing Andreas Fuster, Matthew Plosser & James Vickery, *How Is Technology Changing the Mortgage Market?*, FED. RSRV. BANK OF N.Y. (June 25, 2018), https://libertystreeteconomics.newyorkfed.org/2018/06/how-is-technology-changing-the-mortgage-market/; Erik Dolson & Julapa Jagtiani, *Which Lenders Are More Likely to Reach Out to Underserved Consumers:*

entered the banking regulatory scheme via mergers, while others remain nonbanks who may partner with chartered banks to offer various consumer financial products.[8] Meanwhile, many payday lenders, a significant source of nonbank consumer financing, continue to predate vulnerable borrowers with deceptive and abusive lending practices that ensnare consumers in debt traps that accumulate mountains of interest charges and fees.[9]

Given the increasing relevance of nonbanks in consumer finance, the CFPB occupies an increasingly important regulatory role. Consumers are now able to access high-risk financial products via their smartphones and online portals without realizing that the nonbank providers of these financial services are often evading crucial state consumer protections and safety and soundness laws through partnerships with banks.[10] And when nonbanks partner with chartered banks, consumers are far too often left in the dark about their bank's relationship with a nonbank that is not subject to supervision.[11]

These factors justified the creation of the Nonbank Registry in the first place, and they remain no less salient today.

Banks versus FinTechs versus Other Nonbanks?, Fed. Rsrv. Bank of Phila., Working Paper No. 21-17 (2021)).

8 Kelleher & Basil, *supra* note 7 at 5 ("The largest FinTech firms are taking yet another approach by acquiring banks or even seeking their own bank charters. LendingClub acquired a bank last year, after 12 years as a nonbank online lending platform, to take advantage of the cheaper funding source of bank deposits—reportedly, a 90% savings for them—and the ability to warehouse its own loans. SoFi applied for a national bank charter from the OCC but eventually acquired a bank to expedite the process.").

9 *See generally* Ronald Mann, *Assessing the Optimism of Payday Loan Borrowers*, 21 SUP. CT. ECON. REV. 105 (2013).

10 Christopher K. Odinet, *Predatory Fintech and the Politics of Banking*, 106 IOWA L. REV. 1739, 1743 (2021):

> This spike in borrowing is being fueled, in part, by what has become known as America's new credit addiction — loans made over the internet and facilitated by partnerships between a small handful of state banks and flashy fintech companies. Many of these loans made to struggling families come at an extremely high-cost, carrying annual interest rates well over 100 percent. Moreover, these loans are made using a structure that aims to take advantage of the special legal treatment given to banks — benefits that have been forged over a long history and that are tied to a social contract between the banking sector and the public. Through these fintech-bank partnerships, nonbank credit accessed through smart phone apps and online portals is able to escape important state consumer protections and safety and soundness laws.

11 Nonbanks target banks chartered in states with high and/or flexible interest rate limits for partnerships, and the chartered banks tend to obfuscate their relationships with predatory nonbank entities while framing their partnership-driven financial products in flowery terms. *Id.* at 1783-1785. In the lending context, these interstate practices often become usury problems, which the CFPB is explicitly prohibited from regulating against. *Id.* at 1786-87; 12 U.S.C. § 5517(o).

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II. Eliminating the Registry Would Impose Costs on Consumers by Depriving Them of Material Information, Reducing Deterrence and Compliance Incentives, Weakening Competition, and More.

Now that we have detailed the increasing significance of nonbank actors in consumer financial services—and the CFPB's unique role in overseeing this space—we move on to detail several ways in which eliminating this public registry will likely harm consumers.

1. Reduced Transparency and Consumer Choice

One of the primary benefits of the Repeat Offender Registry is the creation of a publicly accessible database that allows consumers, researchers, and regulators to identify financial companies with a history of violating consumer protection laws. Rescinding the rule would eliminate this transparency mechanism, depriving consumers of crucial information that could guide their financial choices and help produce more efficient, competitive markets. The harder it is for consumers to identify bad actors, the more likely consumers are to unknowingly transact with companies with a repeated pattern of ignoring the rules. The removal of the Registry will thus reduce the competitiveness of the market for consumer financial services by depriving consumers of an important informational tool that can be used for comparison shopping and other purposes. This information gap could also disproportionately affect vulnerable consumers who already face challenges in assessing the reliability of financial service providers.

While some may complain that much of the information that the CFPB includes in the Registry is already "publicly available," we do not believe that this makes the Registry redundant. Presently, there is no other public repository containing all the orders that have been issued by multiple regulators to nonbank entities across multiple product markets and geographies and jurisdictions related to consumer financial products and services. Without the Registry, any consumer or regulator seeking to gather this information would be required to conduct an exhaustive, time-consuming search across many state and federal court dockets, agency databases, and private registries—an unrealistic, if not impossible task. Eliminating the Registry would therefore impose a considerable informational cost on consumers, further widening the information asymmetry between consumers and nonbanks.

2. Increased Risk of Repeat Offenses

One of the key advantages of the registry is that it helps the Bureau and other agencies keep track of recurring legal violations from companies that treat enforcement penalties as a cost of doing business. The "name-and-shame" function of a public registry naming companies subject to court orders creates an incentive for companies to reform their behavior to avoid the public scrutiny of the Registry. Take that tool away, and it not only reduces deterrence but also becomes harder for regulators to spot patterns. Companies that have shown a willingness to flout the rules may continue to do so if they believe no one is paying attention. That risk translates directly into greater chances for fraud, predatory lending, or deceptive advertising—all of which take a real toll on everyday consumers, from financial loss to damaged credit.

3. Weakening of Executive Accountability

Another important element of the rule is the requirement for certain firms to have an executive certify compliance with legal orders each year. This kind of written accountability can play a powerful role in driving cultural change inside companies. Without it, the pressure to take legal obligations seriously weakens, and so does the willingness of leadership to prevent repeat issues. The chain of responsibility breaks down, and with it, consumers face greater exposure to harm.

4. Missed Warnings and Enforcement Delays

If the rule is withdrawn and the Registry is removed, the Bureau will undoubtedly have a harder time spotting emerging risks early. The registry would have helped prioritize investigations and supervision where the likelihood of misconduct was highest. In its absence, problems could fly under the radar until they've already caused significant damage. This is particularly dangerous in newer financial sectors like online lending, where misconduct from underregulated nonbank financial companies can scale quickly and harm large groups of consumers before anyone notices.

5. Weaker Coordination Across Agencies

The Repeat Offender Registry was designed not only for the CFPB but also for state regulators, local authorities, consumers, and even researchers. Everyone would have access to the same, current information—making oversight more consistent and efficient. Without the registry, each agency must duplicate efforts and gather facts on its own, creating silos and leaving gaps that bad actors can exploit. The result is an inefficient and fragmented system that leaves consumers more vulnerable and undermines public trust.

Conclusion

The Nonbank Repeat Offender Registry offered a mechanism to illuminate bad behavior, enhance compliance and deterrence, and inform both consumers and regulators. Rescinding it would shift risk and cost onto the very consumers the Bureau was created to protect. These costs include reduced transparency, increased consumer vulnerability to harm, weakened enforcement capability, and the erosion of cross-agency collaboration. In a market increasingly dominated by lightly regulated nonbank financial actors, such a rollback would mark a significant step backward in consumer protection. Instead of retreating, regulators should be strengthening the tools designed to protect the public from repeat offenders and prevent future harm.

We hope these comments are helpful in guiding the Bureau's important and ongoing work to make the financial system more fair, stable, and transparent for the benefit of all Americans.

Sincerely,

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