

CLIENT ALERT

## CFPB Proposes Registry of Terms and Conditions in Form Contracts

FEBRUARY 14, 2023

On January 11, 2023, the Consumer Financial Protection Bureau (“CFPB”) proposed a rule that would establish a public registry of supervised nonbanks’ “take it or leave it” form contract provisions that effect a waiver or limitation of consumer rights and protections, such as bankruptcy rights, liability amounts, or complaint rights (collectively, “Consumer Rights”). The term “nonbanks” refers to financial institutions that provide financial services but do not have bank, thrift, or credit union charters. The CFPB is authorized to supervise mortgage companies, payday lenders, private education lenders, nonbank institutions the CFPB determines are larger participants in consumer financial markets, and other nonbanks that, based on consumer complaints or other sources, the CFPB has reasonable cause to determine is engaging in conduct that poses risks to consumers.

With limited exceptions, under the proposed rule, certain nonbank covered entities would be required to submit information annually to the CFPB regarding their contractual terms and conditions that seek to waive or limit Consumer Rights. Such information would be published and accessible to the public via an online registry in an attempt to provide greater transparency to the CFPB, other federal and state financial regulatory agencies, and the general public.

The CFPB stated that nonbanks’ financial products and services require that consumers sign lengthy form contracts, often containing unconscionable terms and conditions that attempt to strip away consumer protection, limit how consumers exercise their rights, quiet consumer complaints, or generally undermine consumer financial protection laws, while misleading consumers into thinking those terms and conditions are legally enforceable.

The proposed rule is broadly focused on the following types of terms and conditions impairing Consumer Rights, which would be included in the registry. The CFPB claims that these types of terms and conditions have long been disfavored as a matter of public policy:

- Waivers of any constitutional, statutory, or common law legal protection, right, or defense.
- Waivers of claims a consumer could file in a legal action.
- Limits on the consumer’s ability to bring legal action, including through class action lawsuits, by dictating the time frame, forum, or venue for a legal action.
- Limits on liability amounts.

- Limits on the ability of a consumer to bring or participate in collective legal actions, including class actions.
- Restrictions on the ability of consumers to complain or post reviews.
- Bans on arbitration agreements.

Under the proposed rule, the CFPB would utilize data from the registry to identify supervised nonbanks and the risks their terms and conditions pose, prioritize which firms to examine, and plan the scope of the exams.

The CFPB is soliciting public input on the proposed rule through the [CFPB's website](#) or by calling (855) 411-CFPB (2372). The deadline for submitting comments is March 12, 2023.

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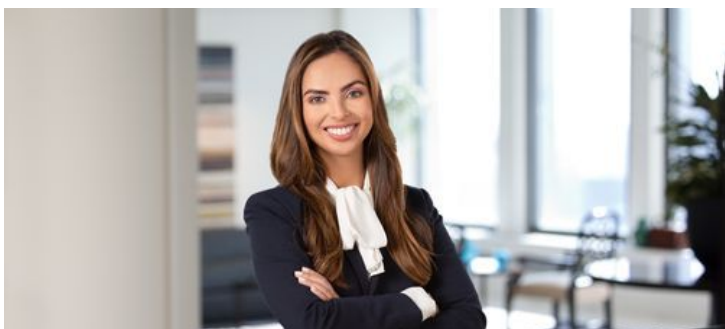
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