

# CFPB Tackles Fine Print in Consumer Financial Contracts

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Downloading an app, buying a product or service, or otherwise interacting with a company frequently requires consumers to consent to multi-page contracts. In a new [proposed](#) rule, the CFPB would require nonbank financial companies subject to the CFPB's supervisory jurisdiction to register any use of such form contracts if they contain terms that seek to waive or limit consumer rights and legal protections. Here are more details:

Registration requirements would apply to companies using form contracts (contracts drafted prior to the transaction for use in multiple transactions between the company and consumers). In addition, the form contracts must contain certain "covered terms and conditions," as described below. This information would be made publicly available on the CFPB's website.

The terms and conditions targeted by the CFPB proposed rule are:

- limits on consumer ability to bring a legal action by dictating the time frame, forum, or venue for a consumer to bring a legal action;
- inclusion of arbitration agreements;
- limits on ability to bring or participate in class action lawsuits;
- limits on the company's liability to consumers including by capping the amount of recovery or type of remedy;
- waivers of claims consumers can bring in a legal action;
- limits on the ability of consumers to complain or post reviews; and
- waivers of other identified legal protections afforded under Constitutional law, a statute or regulation, or common law.

Some of these limitations are already prohibited under other statutes. For example, any contract term limiting consumers' ability to complain or post reviews is already prohibited under the Consumer Review Fairness Act, discussed in more detail [here](#).

But many other proposed terms and conditions are ubiquitous in financial company form contracts. For example, many companies include arbitration agreements in their terms and conditions and place limits on consumers' ability to bring a legal action by specifying the time frame, forum, or venue for such legal action. Such contractual terms would trigger the need for CFPB registration under the new proposed rule, which could in turn trigger subsequent scrutiny under the Bureau's UDAAP authority. Similarly, many form contracts limit the company's liability to a consumer in one

way or another, which is another “covered” term requiring registration. Indeed, as currently drafted, the CFPB’s proposed rule may result in the majority (if not all) of nonbank financial institutions needing to register contracts in the CFPB’s registry for public disclosure.

In promulgating this proposed rule, the CFPB relies on its CFPB mandate to monitor for risks to consumers in consumer financial products and services, and to conduct a risk-based supervision program for nonbanks (see CFPB §§ 1022(c) and 1024(b)). The information gathered in the registry would be used to aid in such monitoring and supervision efforts, as well as to inform the agency’s enforcement, consumer education, and rulemaking functions. Finally, the registry is intended to aid in enforcement actions by other regulators and raise public awareness about the use of covered terms.

Given the widespread use of form agreements, now is a good time to determine whether any of your company’s contract terms are covered under the proposed CFPB rule, and, if so, whether changes are in order. The specific terms and conditions included in the CFPB proposed rule signal regulators’ particular interest and likely increased scrutiny of these types of provisions in financial contracts.

Comments on the proposed rule are due by March 13, 2023.