

Cabinet News and Views

Informed analysis for the financial services industry



CFPB Issues Proposed Rule on Form Contracts



By **Mercedes Kelley Tunstall**
Partner | Financial Regulation

The Consumer Financial Protection Bureau (“CFPB”) issued a proposed rule last week addressing the [“Registry of Supervised Nonbanks that Use Form Contracts to Impose Terms and Conditions that Seek to Waive or Limit Consumer Legal Protections.”](#) Comments on the proposed rule must be received by the CFPB by March 13, 2023 or thirty (30) days following publication of the proposed rule in the Federal Register, whichever date is later.

The CFPB has a long history battling against the use of arbitration clauses in consumer financial services, and [issued a final rule](#) regarding their use in 2017 (“arbitration rule”). However, Congress intervened and issued a joint resolution disapproving of the arbitration agreement rule, pursuant to the Congressional Review Act, rendering the final rule null and void, with no force or effect. This new proposed rule has a more limited applicability but a broader scope, in terms of substance, than the arbitration rule and does not seek to directly forbid or prohibit arbitration clauses and other types of limitations on the ways consumers can contest agreements with financial institutions. With respect to its limited applicability, the rule would apply only to nonbank financial institutions that are subject to supervision by the CFPB, unless their total annual receipts are less than \$1 million. However, with respect to its more expansive scope, the rule would require such supervised financial institutions to register and provide copies of so-called “form agreements” that include any provision deemed by the CFPB to “pose risks to consumers.” Such provisions definitely include arbitration clauses, but also include such pedantic provisions as choice of forum or venue and caps limiting liability.

Implicit in the way the rule is written is that the CFPB would use the registration information to effectively cast a negative light on the companies that have such clauses, and “[m]ost immediately, the information collected by the registry would facilitate the [CFPB]’s prioritization and implementation of examination work in its statutorily-mandated risk-based nonbank supervision program.”

Cadwalader will be providing a more in-depth memo on the proposed rule shortly.
