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Consumer Financial Protection Bureau Proposes Rule to Create a Public Registry of Terms and Conditions in Consumer Contracts

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By: Tal Ratner Solovey

On January 11, 2023, the U.S. Consumer Financial Protection Bureau (the "CFPB") proposed a new rule to create a public registry of terms and conditions in form contracts that waive or limit consumer rights. The registry would pertain to supervised nonbanks, including those operating in payday lending, private student loan origination, mortgage lending and servicing, as well as larger participants operating in student loan servicing, automobile financing, consumer reporting, consumer debt collection, and international remittances. The new rule would require those nonbanks to submit information on the terms and conditions of the form contracts they provide to customers that purport to waive the customers' rights.

The CFPB provided several examples of the types of contracts and nonbanks that would be affected by the proposed new rule. It included credit monitoring products that require consumers to waive the right to seek legal action by limiting liability to a class of consumers "when a consumer reporting agency fails to reasonably investigate inaccurate information on numerous consumer reports." The rule would also affect mortgage lenders' ability to use waivers and limitations that are inconsistent with the Truth in Lending Act.

The rule would "identify and collect information" on form contracts that seek to limit or waive "any constitutional, statutory, or common law legal protection, right, or defense; restrict the ability of consumers to complain; limit the time or place for consumers to bring legal actions; limit liability amounts; waive class action rights; and impose arbitration provisions."

The government intends to use the proposed registry as a "risk-based oversight" tool to help prioritize its "supervision and enforcement resources." The proposed rule is now open for public comment. More information is available at the CFPB website.

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