

CFPB Targets Contractual Provisions That Limit Consumer Rights

January 23, 2025

On January 13, 2025, the Consumer Financial Protection Bureau (CFPB) proposed a rule to prohibit provisions in agreements for consumer financial products or services that “limit fundamental freedoms,” such as those that require consumers to waive substantive legal rights and protections. According to the CFPB, these provisions are commonly found in non-negotiable form contracts (i.e., “contracts of adhesion”), and the proposed rule is intended to protect consumers from encroachment of their constitutional rights (such as due process and free expression) by private actors in connection with these “take-it-or-leave-it” contracts. Noting that many of the terms discussed are already unenforceable, the CFPB proposed the rule to “create a bright line of prohibition and heightened accountability” by empowering state attorneys general to enforce these prohibitions, including against national banks and other prominent consumer financial service providers.

Who would be subject to the proposed rule?

The proposed rule would apply to a “covered person,” which is defined in the Consumer Financial Protection Act (CFPA) as “any person that engages in offering or providing a consumer financial product or service” and any affiliate providing services to such person.¹ However, the proposed rule would exclude from coverage small businesses and small organizations, as defined in the Regulatory Flexibility Act.

What restrictions would the proposed rule impose?

The proposed rule would prohibit covered persons from including in any contract for the provision of consumer financial goods or services the types of provisions we’ve listed below.

Waivers of law

These are provisions that waive or disclaim state or federal laws designed to protect or benefit consumers, including causes of action to enforce such laws and the remedies available under such laws.

Unilateral amendments

These provisions allow for a covered person to make unilateral amendments to material terms.

Restraints on expression

These are provisions that limit or inhibit free and lawful expression by the consumer. Prohibition on these provisions is intended to, among other things, protect a consumer’s right to free speech (such as speech regarding a company’s financial products or services) and prevent companies from closing consumer accounts based on political views or comments, a concept that has become known as “debanking.” CFPB Director Rohit Chopra stated that “[c]ompanies should not weaponize fine print to deplatform or purge people from the financial system.”

Codification of Federal Trade Commission’s Credit Practices Rule

The proposed rule would codify the FTC’s Credit Practices Rule to apply to covered persons subject to the CFPA, which include banks, savings associations and federal credit unions. The proposed rule mirrors the Credit Practices Rule by prohibiting the following practices by covered persons:

- Entering into or enforcing an agreement with certain provisions including a confession of judgment, a waiver of exemption, an

assignment of wages, or a security interest in household goods.

- Misrepresenting cosigner liability to any person or obligating a cosigner without providing a disclosure regarding its liability.
- Collecting delinquency charges subject to late fees or prior delinquency charges.

Looking ahead

The CFPB is accepting public comments on the proposed rule until April 1, 2025. However, it remains to be seen how the new Trump administration will alter CFPB priorities, including with respect to finalizing proposed rules such as this.

Note

1. 12 US Code § 5481(6).

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Key Contacts

Elyse Moyer Washington, DC	emoyer@cooley.com +1 202 776 2113
Dana N. Levin New York	dlevin@cooley.com +1 212 479 6192

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