

April 3, 2023

Via E-Rulemaking Portal

Comment Intake – Nonbank Registration and Collection of Contract Information
Consumer Financial Protection Bureau
c/o Legal Division Docket Manager
1700 G Street NW
Washington, DC 20552

Re: Comments Regarding Nonbank Registration and Collection of Contract Information - Docket No. CFPB-2023-0002 and RIN 3170-AB14

Dear Director Chopra:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts on the Consumer Financial Protection Bureau’s (“CFPB”) proposed rule to require nonbanks subject to its supervisory authority to annually register their use of certain terms and conditions in form contracts for consumer financial products and services that attempt to limit or waive consumer rights.

ETA’s members are dedicated to providing innovative, convenient, secure, and timely financial services and products that make their customers’ lives easier. However, if the CFPB should consider the negative impact this rule may have. This rule, as proposed, would impact a large swath of consumer financial services industry participants—specifically, nonbanks in markets for mortgage lending, payday lending, and private student lending, and what the CFPB defines as “larger participants” in markets for consumer reporting, consumer debt collection, student loan servicing, international money transfers, and automobile financing. This, in particular, would impact entities such as online lending platforms and financial technology businesses, generally, that service consumers but do not hold bank charters.

Who We Are

ETA is the world’s leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing more than \$44 trillion in purchases worldwide and deploying payments innovation to merchants and consumers.

ETA’s Comments on the CFPB’s Proposed Rule

Adequately Protecting Privacy Concerns

In the interest of consumer privacy, we believe the CFPB should expand the exception of information released publicly to include “identifying information,” as proposed in § 1092.301(e).

Breaches of private information collected and maintained by companies and government entities – affecting millions or even tens of millions of consumers and small business owners – have become commonplace, making information protection and data security a matter of highest priority to our members. Data collected and made available to the public in combination with other publicly available data sources, if provided for all proposed data fields, could easily enable bad actors and others to reidentify confidential data and exploit it for their own purposes.



To protect against a potential data breach, we urge the CFPB to detail the types of data security safeguards it will undertake and publish them for public comment. The possibility of a breach of confidential financial data is even more troubling when entities cannot control distribution of data concerning them.

Stifling Innovation

ETA understands the CFPB's intention to protect consumers and prevent nonbanks from using unfair contract terms and conditions, however, this proposed rule would have unintended consequences that would ultimately harm consumers and small businesses.

The proposed rule is overly broad and could potentially encompass a wide range of nonbanks, including those that pose little to no risk to consumers. This would impose significant compliance costs on these businesses, potentially driving some out of the market altogether. This would ultimately limit competition and choice for consumers, who may be left with fewer options for accessing the financial products and services they need.

Additionally, the proposed rule could stifle innovation in the financial services industry. Many nonbanks are small, innovative startups that are developing and deploying new ways of delivering financial services to consumers. Imposing burdensome regulatory requirements on these businesses could prevent consumers from benefiting from new and innovative financial products and services.

Similar to the 2017 Arbitration Rule?

ETA questions if the CFPB has legal authority to publish this rule, given the general nature of their statutory authorities under Dodd-Frank Act. It could be argued that the creation of a vast database of contract terms and conditions has major economic and political significance and thus, cannot be created by the CFPB under its general registration authority.

In the proposed rule, the CFPB states that it is recommending the rule pursuant to Dodd-Frank Act § 1022(b) and (c), 1024(b), 1022(b)(1), 1022(c)(1)-(4), 1022(c)(7)(A), 1022(c)(3), 1024(b), and 1024(b)(7)(C). These various sections authorize the CFPB to provide general rulemaking authority and rulemaking authority under the CFPB's market monitoring function and registration authority.

However, in October 2017, Congress disapproved the CFPB's 2017 Arbitration Rule under the Congressional Review Act, which prohibits the CFPB from issuing a rule that is substantially similar to that 2017 rule. The 2017 rule would have required companies to submit information regarding their arbitration proceedings, including their arbitration clauses, to the CFPB for publication.

* * *

ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott at stalbott@electran.org.

Sincerely,





1620 L Street NW, Suite 1020
Washington, DC 20036

202.828.2635
electron.org

Jeff Patchen
Director of Government Affairs
Electronic Transactions Association
jpatchen@electron.org
(202) 677-7418

