

CFPB Proposes Rule to Protect Consumers from Unfair Contract Clauses

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On January 13, 2025, the CFPB [announced](#) a proposed [rule](#) aimed at prohibiting companies from including in consumer agreements terms that operate to waive consumers' legal rights, allow companies to unilaterally change key terms, or restrict consumers' lawful free expression. The CFPB has made a preliminary determination that the use of such terms may constitute an unfair or deceptive act or practice under the Consumer Financial Protection Act (CFPA). See 12 U.S.C. 5531(b).

In its proposal, the CFPB expresses concern that certain contract clauses can force consumers to waive important rights or face restrictions on their freedom of speech and are presented to consumers on a "take it or leave it" basis. The Bureau is particularly focused on contract clauses buried in fine print that it alleges suppress free speech, rule of law, or undermine due-process. The Bureau asserts that these types of clauses can create an unfair advantage for companies and ultimately deceive and harm consumers. (We previously discussed the CFPB's treatment of fine print terms [here](#) and [here](#)).

Specifically, the proposed rule aims to prevent companies from using contract terms that:

- **Undermine the Rule of Law.** The proposed rule prohibits the use of clauses that force consumers to opt out of statutes passed by Congress or state legislatures, including protections for servicemembers, preventing elder abuse, or ensuring corporate accountability.
- **Suppress Speech.** The rule proposes to prohibit companies from imposing fines, initiating lawsuits, or removing users from platforms based on consumer comments, reviews, or political or religious beliefs. The Bureau stated that consumers' First Amendment rights allow them to share negative feedback without facing repercussions.
- **Unilaterally Amend Key Terms.** The rule seeks to prevent companies from altering contracts without consumer consent, ensuring consumers have a clear and consistent understanding of their rights and obligations under agreements they have entered into.
- **Unfair Credit Practices** The CFPB is proposing to codify existing prohibitions under the FTC's

Credit Practices Rule including against confessions against judgment, an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, assignment of wages, and a non-possessory interest in household goods. See Credit Practices Rule, 49 FR 7740 (Mar. 1, 1984). The Bureau does not anticipate that this provision of the rule will have a substantial material effect on the market, as covered persons are already likely to be in compliance with the relevant requirements.

Putting It Into Practice: With Chopra's term drawing to a close, the CFPB continues its last-minute push to propose and enact rulemaking. It remains to be seen whether the Trump administration will share this focus and ultimately finalize the rule. Consumer finance companies should nonetheless review their existing consumer contracts and identify any clauses that may fall under the categories outlined in the proposed rule.

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