

CFPB Attempts to Expand Scope of Nonbank Surveillance

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BUREAU PROPOSES TO CREATE REGISTRY OF SUPERVISED NONBANK ENTITIES AND COLLECT STANDARD CONTRACT TERMS

Without its typical fanfare, the CFPB has revealed a plan to propose a rule titled “Nonbank Registration – Terms and Conditions” in its “Agency Rule List - Fall 2022.” The description of the proposed rule is scant, a mere two-and-a-half lines. The description indicates an intent by the CFPB to require supervised nonbank entities to register with the agency and to collect “standard terms used [by non-bank entities] in contracts that are not subject to negotiating or that are not prominently advertised in marketing.” It is unclear exactly what the CFPB would target, including whether just certain terms would have to be registered or if the CFPB would require registration of any form that contains certain terms. According to a recent article appearing in *Law360*, one of CFPB’s focus areas will be on arbitration agreements.

The short description of the proposed rule also does not state that the registry would be made public, but it would not be surprising if the registry were made so. Currently, the CFPB collects prepaid account agreements and credit card agreements and publishes them on its website.

This is on the heels of the CFPB’s announcement in December 2022 of a proposed rule that would require the reporting and registration to the CFPB of enforcement orders by nonbank covered persons—whether supervised or not—in connection with financial products and services (“enforcement registry”). And the December 2022 announcement follows the agency’s indication earlier in the year that it would “invoke [its] dormant authority” to supervise nonbank-covered entities that are not otherwise subject to its supervisory authority.

What this means for you

All of these actions taken together indicate that the CFPB intends to continue its scrutiny of non-bank entities and look for ways to inject itself into such industries. As new rules are proposed and finalized, and guidance is issued, we will continue to monitor and assess their impacts. For more information about any of the CFPB's rulemaking activities or guidance or their potential regulatory impact on your business, contact Maureen Clark, Marci Kowski, Susan Seaman or your Husch Blackwell attorney.