CARLTON FIELDS

CFPB Rule Will Ban Use of Arbitration Agreements to Block Class Actions

June 03, 2016

If you've ever read the fine print in your credit card agreement, there is a good chance it states you agree to arbitrate any claims and waive the right to bring a class action against the bank that issued it. Such class action waivers may become a thing of the past under a new rule proposed by the Consumer Financial Protection Bureau. The CFPB is the federal agency established by the Dodd-Frank Wall Street Consumer Protection Act of 2010 to enforce consumer financial law and further regulate consumer financial products in the wake of the 2008 financial crisis precipitated by the mortgage meltdown. Dodd-Frank prohibited arbitration agreements in home mortgages and authorized the bureau to regulate the use of arbitration clauses in other consumer financial products if it found, based upon study, that doing so would protect consumers and serve the public interest. In October 2015, the bureau announced it intended to propose a new rule limiting pre-dispute arbitration agreements in contracts for consumer financial products and services based on its findings that such agreements "effectively prohibit" class litigation and "prevent consumers from obtaining remedies for harm caused by providers of certain consumer financial products or services." The CFPB has issued thousands of pages of regulations impacting mortgages and other consumer financial products over the last few years, but the rule proposed last month may have the broadest impact of any of its regulation to date. **What It Does**

The proposed rule will apply to pre-dispute arbitration agreements for nearly all "consumer financial products and services" as defined in Dodd-Frank. It includes two limitations on such agreements: 1. Prohibition on class action waivers. First, the rule will prohibit inclusion of arbitration clauses that block class action claims in contracts with consumers for consumer financial products and services including credit cards, checking and deposit accounts, auto loans, consumer mortgage and other credit servicing, prepaid cards, consumer debt acquisition, credit reporting, debt relief and debt collection services. Providers of covered products and services will be prohibited from relying on any pre-dispute arbitration agreement entered into after the rule's effective date to block a class action. In addition, any arbitration agreement in a contract for such products or services would be required

to expressly state that the provider agrees not to use such arbitration agreement "to stop the consumer from being part of a class action case in court." 2. Submission of information on all arbitration proceedings. Second, for any pre-dispute arbitration agreements entered into after the effective date, covered entities will be required to provide the CFPB with certain records of all arbitration claims relating to consumer financial products or services filed by or against them, including initial claim filings, the arbitration agreement, and the judgment or award issued by the arbitrator, with personal consumer information redacted. The CFPB "intends to use the information it collects to continue monitoring arbitral proceedings to determine whether there are developments that raise consumer protection concerns that may warrant further bureau action" and to publish redacted informational materials on its website. **Impact On Consumers**

The bureau claims the new regulation will benefit consumers and the public interest by providing companies with incentive to comply with consumer laws in order to avoid lawsuits, bringing public attention to questionable business practices, and making the individual arbitration process more transparent. Any such benefits are likely to be outweighed by the consequences that will flow from the massive increase in litigation costs to financial service providers sure to result. For example, these increased costs will ultimately be passed on to consumers in pricing, and, may drive some providers out of the market, limiting consumer choice.

Impact On Business

The final rule is not expected to take effect until March 2017. Certain businesses, including brokers regulated by the SEC, insurance, certain state, local, and tribal governmental units that provide consumer financial services, and those who provide 25 or fewer consumer products or services annually are excluded. However, once in effect, most banks, auto lenders, credit card issuers and other consumer lenders will become subject to costly class actions based on minor and often questionable claims, vastly increasing the cost of doing business for covered entities. Critics have questioned the findings in the CFPB's study used to justify the new rule and, according to the 2016 Carlton Fields Class Action Survey, corporate counsel from a variety of surveyed industries expressed concern about an anticipated increase in class actions as a result of the rule. Opening the private arbitration process to regulatory scrutiny is also of concern to covered entities. They will still be able to privately arbitrate individual claims, but the advantages of doing so will be diminished by the fact that the CFPB will now monitor and publish information concerning the proceedings. Elizabeth Bohn are Julianna Thomas McCabe are shareholders at Carlton Fields. Bohn co-chairs the firm's consumer finance and banking practice. McCabe chairs the firm's national class action practice group.

Read more: http://www.dailybusinessreview.com/id=1202759063000/Consumer-Finance-Rule-Will-Ban-Use-of-PreDispute-Arbitration-Agreements#ixzz4AWPj4PZB

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