

CFPB Proposes Banning Use of Pre-Dispute Arbitration Agreements in Consumer Class Actions

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The CFPB has proposed prohibiting application of pre-dispute arbitration agreements to class litigation involving certain consumer financial products. Citing concerns that such agreements “effectively prohibit” class litigation and prevent consumers from obtaining remedies for harm caused by providers of consumer financial products or services, the proposal would apply to most products subject to Bureau oversight. 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, and if any proposed rule included findings consistent with study results. In March, the CFPB released the results of a three-year study of pre-dispute arbitration agreements, concluding that such agreements restricted consumer relief in disputes with financial service providers by limiting class actions. Specifically, the Bureau reported that arbitration agreements could be used to move class action lawsuits to arbitration, and typically prohibited class arbitration, thus blocking any form of class-wide relief for such claims. The study, which is available at consumerfinance.gov, focused on credit cards, prepaid cards, and deposit accounts, and excluded cases involving investors, securities, brokerage accounts, or investor services. Insurance cases not involving an add-on to a consumer financial product such as title or credit card insurance were also excluded. The Bureau’s proposal would prohibit inclusion of arbitration clauses that block class action claims in contracts with consumers for credit cards, checking and deposit accounts, prepaid cards, money transfer services, certain auto loans, auto title loans, small dollar or payday loans, private student loans, and installment loans. More specifically, any arbitration agreement in a contract for one of these products would be required to explicitly state that it is inapplicable to cases filed in court on behalf of a class unless and until class certification is denied or the class claims are dismissed. The Bureau also proposed to require companies that choose to arbitrate individual disputes to submit arbitration claims and awards issued to the CFPB. Specifically, covered entities that use arbitration

agreements in their contracts with consumers would be required to submit initial claim filings and written awards in consumer finance arbitration proceedings to the Bureau through a process it expects to establish as part of the rulemaking. It is also considering whether to publish the claims or awards to its website and make them available to the public.

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