

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

December 23, 2015

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](http://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.

## Related Practices

[Consumer Finance](#)

[Consumer Finance](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.