



Consumer Financial
Protection Bureau

CFPB Considers Proposal to Ban Arbitration Clauses that Allow Companies to Avoid Accountability to Their Customers

Proposal Would End the Free Pass Companies Use Against Group Lawsuits

WASHINGTON, D.C. — Today the Consumer Financial Protection Bureau (CFPB) announced it is considering proposing rules that would ban consumer financial companies from using “free pass” arbitration clauses to block consumers from suing in groups to obtain relief. Buried in many contracts for consumer financial products like credit cards and bank accounts, most arbitration clauses deny consumers the right to participate in group lawsuits against companies. With this free pass, companies can sidestep the legal system, avoid big refunds, and continue to pursue profitable practices that may violate the law and harm countless consumers. The CFPB’s proposals under consideration would give consumers their day in court and deter companies from wrongdoing.

“Consumers should not be asked to sign away their legal rights when they open a bank account or credit card,” said CFPB Director Richard Cordray. “Companies are using the arbitration clause as a free pass to sidestep the courts and avoid accountability for wrongdoing. The proposals under consideration would ban arbitration clauses that block group lawsuits so that consumers can take companies to court to seek the relief they deserve.”

Many contracts for consumer financial products and services include arbitration clauses. These clauses typically state that either the company or the consumer can require disputes about that product to be resolved by privately appointed individuals (arbitrators), rather than through the court system. Where such a clause exists, either side can generally block lawsuits from proceeding in court. These clauses also typically

bar consumers from bringing group claims through the arbitration process. There are arbitration clauses in all kinds of consumer financial products, from bank accounts to private student loans. They affect tens of millions of consumers. As a result, no matter how many consumers are injured by the same conduct, consumers must resolve their claims individually against the company, which few consumers do.

In the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress required the CFPB to study the use of arbitration clauses in consumer financial markets and gave the Bureau the power to issue regulations that are in the public interest, for the protection of consumers, and consistent with the study's findings. The CFPB's study – released in March of this year – showed that arbitration clauses restrict consumers' relief for disputes with financial service providers by allowing companies to block group lawsuits.

The study also found that, in the consumer finance markets studied, very few consumers individually seek relief through arbitration or the federal courts, while millions of consumers are eligible for relief each year through group settlements. According to the study, more than 75 percent of consumers surveyed in the credit card market did not know whether they were subject to an arbitration clause in their contract. Fewer than 7 percent of those consumers covered by arbitration clauses realized that the clauses restricted their ability to sue in court.

Today, the Bureau is publishing an outline of the proposals under consideration in preparation for convening a Small Business Review Panel to gather feedback from small industry stakeholders. This is the first step in the process of a potential rulemaking on this issue. The proposals being considered would ban companies from including arbitration clauses that block class action lawsuits in their consumer contracts. This would apply to most consumer financial products and services that the CFPB oversees, including 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.

The proposals being considered would not ban arbitration clauses in their entirety. However, the clauses would have to say explicitly that they do not apply to cases filed as class actions unless and until the class certification is denied by the court or the class claims are dismissed in court. The proposals under consideration would also require that companies that choose to use arbitration clauses for individual disputes submit to the CFPB the arbitration claims filed and awards issued. This will allow the Bureau to monitor consumer finance arbitrations to ensure that the process is fair for consumers.

The Bureau is also considering publishing the claims and awards on its website so the public can monitor them.

The benefits of the proposals would include:

- **A day in court for consumers:** The proposals under consideration would give consumers their day in court to hold companies accountable for wrongdoing. Often the harm to an individual consumer may be too small to make it practical to pursue litigation, even where the overall harm to consumers is significant. Previous CFPB survey results reported that only around 2 percent of consumers surveyed would consult an attorney to pursue an individual lawsuit as a means of resolving a small-dollar dispute. In cases involving small injuries of anything less than a few thousand dollars, it can be difficult for a consumer to find a lawyer to handle their case. Congress and the courts developed class litigation procedures in part to address concerns like these. With group lawsuits, consumers have opportunities to obtain relief they otherwise might not get.
- **Deterrent effect:** The proposals under consideration would incentivize companies to comply with the law to avoid lawsuits. Arbitration clauses enable companies to avoid being held accountable for their conduct; that makes companies more likely to engage in conduct that could violate consumer protection laws or their contracts with customers. When companies can be called to account for their misconduct, public attention on the cases can affect or influence their individual business practices and the business practices of other companies more broadly.
- **Increased transparency:** The proposals under consideration would make the individual arbitration process more transparent by requiring companies that use arbitration clauses to submit the claims filed and awards issued in arbitration to the CFPB. This would enable the CFPB to better understand and monitor arbitration cases. The proposal under consideration to publish the claims filed and awards issued on the CFPB's website would further increase transparency.

In addition to consulting with small business representatives, the Bureau will continue to seek input from the public, consumer groups, industry, and other stakeholders before continuing with the process of a rulemaking. When the Bureau issues proposed regulations, the public is invited to submit written comments which will be carefully considered before final regulations are issued.

An outline of the proposals under consideration is available

at:http://www.consumerfinance.gov/f/201510_cfpb_small-business-review-panel-packet-explaining-the-proposal-under-consideration.pdf

A list of questions on which the Bureau will seek input from the small business representatives providing feedback to the Small Business Review Panel will be available on Wednesday

at:http://www.consumerfinance.gov/f/201510_cfpb_small-business-representatives-providing-feedback-to-the-small-business-review-panel.pdf

The March 2015 report on arbitration is available

at:<http://www.consumerfinance.gov/reports/arbitration-study-report-to-congress-2015/>

A factsheet summarizing the Small Business Review Panel process can be found at:

http://www.consumerfinance.gov/f/201510_cfpb_fact-sheet-small-business-review-panel-process.pdf

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit www.consumerfinance.gov