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CFPB Proposes Prohibiting Mandatory Arbitration Clauses that Deny Groups of Consumers their Day in Court

Bureau Seeks Comment on Proposal to Ban a Contract Gotcha that Prevents Groups of Consumers from Suing Consumer Financial Companies

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WASHINGTON, D.C. — Today the Consumer Financial Protection Bureau (CFPB) is seeking comments on proposed rules that would prohibit mandatory arbitration clauses that deny groups of consumers their day in court. Many consumer financial products like credit cards and bank accounts have contract gotchas that generally prevent consumers from joining together to sue their bank or financial company for wrongdoing. These widely used clauses leave consumers with no choice but to seek relief on their own – usually over small amounts. With this contract gotcha, companies can sidestep the legal system, avoid accountability, and continue to pursue profitable practices that may violate the law and harm countless consumers. The CFPB's proposal is designed to protect consumers' right to pursue justice and relief, and deter companies from violating the law.

"Signing up for a credit card or opening a bank account can often mean signing away your right to take the company to court if things go wrong," said CFPB Director Richard Cordray. "Many banks and financial companies avoid accountability by putting arbitration clauses in their contracts that block groups of their customers from suing them. Our proposal seeks comment on whether to ban this contract gotcha that effectively denies groups of consumers the right to seek justice and relief for wrongdoing."

In recent years, many contracts for consumer financial products and services – from bank accounts to credit cards – have included mandatory arbitration clauses. They affect hundreds of millions of consumer contracts. These clauses typically state that either the company or the consumer can require that disputes between them be resolved by privately appointed individuals (arbitrators) except for cases brought in small claims court. Where these clauses exist, either side can generally block lawsuits from proceeding in court. These clauses also typically bar consumers from bringing group claims through the arbitration process. As a result, no matter how many consumers are injured by the same conduct, consumers must

proceed to resolve their claims individually against the company.

Through the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress required the CFPB to study the use of mandatory arbitration clauses in consumer financial markets. Congress also gave the Bureau the power to issue regulations that are in the public interest, for the protection of consumers, and consistent with the study.

Released in March 2015, the CFPB's study showed that very few consumers ever bring – or think about bringing – individual actions against their financial service providers either in court or in arbitration. The study found that class actions provide a more effective means for consumers to challenge problematic practices by these companies. According to the study, class actions succeed in bringing hundreds of millions of dollars in relief to millions of consumers each year and cause companies to alter their legally questionable conduct. The study showed that at least 160 million class members were eligible for relief over the five-year period studied. Those settlements totaled \$2.7 billion in cash, in-kind relief, and attorney's fees and expenses. In addition, these figures do not include the potential value to consumers of class action settlements requiring companies to change their behavior. However, where mandatory arbitration clauses are in place, companies are able to use those clauses to block class actions.

The CFPB proposal is seeking comment on a proposal to prohibit companies from putting mandatory arbitration clauses in new contracts that prevent class action lawsuits. The proposal would open up the legal system to consumers so they could file a class action or join a class action when someone else files it. Under the proposal, companies would still be able to include arbitration clauses in their contracts. However, for contracts subject to the proposal, the clauses would have to say explicitly that they cannot be used to stop consumers from being part of a class action in court. The proposal would provide the specific language that companies must use.

The proposal would also require companies with arbitration clauses to submit to the CFPB claims, awards, and certain related materials that are filed in arbitration cases. This would allow the Bureau to monitor consumer finance arbitrations to ensure that the arbitration process is fair for consumers. The Bureau is also considering publishing information it would collect in some form so the public can monitor the arbitration process as well.

The benefits to the CFPB proposal would include:

- **A day in court for consumers:** The proposed rules would allow groups of consumers to obtain relief when companies skirt the law. Most consumers do not even realize when their rights have been violated. Often the harm may be too small to make it practical for a single consumer to pursue an individual dispute, even when the cumulative harm to all affected consumers is significant. The CFPB study found that only around 2 percent of consumers with credit cards who were surveyed would consult an attorney or otherwise pursue legal action as a means of resolving a small-dollar dispute. With class action lawsuits, consumers have opportunities to obtain relief from the legal system that, in practice, they otherwise would not receive.
- **Deterrent effect:** The proposed rules would incentivize companies to comply with the law to avoid group lawsuits. Arbitration clauses enable companies to avoid being held accountable for their conduct. When companies know they can be called to account for their misconduct, they are less likely to engage in unlawful practices that can harm consumers. Further, public attention on the practices of one company can affect or influence their business practices and the business practices of other companies more broadly.
- **Increased transparency:** The proposed rules would make the individual arbitration process more transparent by requiring companies that use arbitration clauses to submit any claims filed and awards issued in arbitration to the CFPB. The Bureau would also collect correspondence from arbitration administrators regarding a company's non-payment of arbitration fees and its failure to adhere to the arbitration forum's standards of

conduct. The collection of these materials would enable the CFPB to better understand and monitor arbitration. It would also provide insight into whether companies are abusing arbitration or whether the process itself is fair.

The proposed rules which the CFPB is seeking comment on would apply to most consumer financial products and services that the CFPB oversees, including those related to the core consumer financial markets that involve lending money, storing money, and moving or exchanging money. Congress already prohibited arbitration agreements in the largest market that the Bureau oversees – the residential mortgage market.

In October 2015, the Bureau published an outline of the proposals under consideration and convened a Small Business Review Panel to gather feedback from small companies. In addition to consulting with small business representatives, the Bureau sought input from the public, consumer groups, industry, and other stakeholders before continuing with the rulemaking. That process concluded in December 2015 with a written report to the Bureau's director, which is also being released today.

The public is invited to comment on these proposed regulations when they are published in the Federal Register. Written comments will be carefully considered before final regulations are issued.

The proposal will be available by 6 p.m. EDT at:

http://files.consumerfinance.gov/f/documents/CFPB_Arbitration_Agreements_Notice_of_Proposed_Rulemaking.pdf

The Small Business Review Panel report is available at:

http://files.consumerfinance.gov/f/documents/CFPB_SBREFA_Panel_Report_on_Pre-Dispute_Arbitration_Agreements_FINAL.pdf

The March 2015 CFPB report on arbitration is available at:

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

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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

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