

ICBA Summary of the Consumer Arbitration Agreements Proposed Rule

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I. Summary

On May 5, 2016, the Consumer Financial Protection Bureau (CFPB or Bureau) issued a proposed rule that would prohibit providers of financial services from using a pre-dispute arbitration agreement to block consumer class actions in court and would require providers to insert language into their arbitration agreements reflecting this limitation. Under the proposal, providers would still be able to include arbitration clauses in their consumer contracts and invoke them to require arbitration in court cases not filed as class actions.

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. The Bureau is also considering publishing information it would collect in some form so the public can monitor the arbitration process as well.

Applicability to Community Banks

The proposed rule would apply to all providers of consumer financial services, including community banks.

Comments on the proposed rule must be received by the CFPB within 90 days of publication in the Federal Register.

Link to the CFPB press release and proposed rule - <http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-proposes-prohibiting-mandatory-arbitration-clauses-deny-groups-consumers-their-day-court/>

II. Scope

The proposal would apply to most providers of consumer financial products and services in the core consumer financial markets of lending money, storing money, and moving or exchanging money, including most providers that are engaged in:

- Extending or regularly participating in decisions regarding consumer credit;
- Providing referrals or selecting creditors for consumers to obtain such credit, and the acquiring, purchasing, selling, or servicing of such credit;
- Extending or brokering of automobile leases;
- Providing services to assist with debt management or debt settlement, modify the terms of any extension of consumer credit, or avoid foreclosure;

- Providing directly to a consumer a consumer report, a credit score, or other information specific to a consumer from a consumer report, except for adverse action notices provided by an employer;
- Providing savings accounts or remittance transfers;
- Transmitting or exchanging funds (except when integral to another product or service not covered by the proposed rule), certain other payment processing services, and check cashing, check collection, or check guaranty services; and
- Collecting debt arising from any of the above products or services by a provider, affiliate, or purchaser of any of the above products or services.

The proposal excludes any provider who with its affiliates provided financial consumer products and services to 25 or fewer consumers in the current calendar year and to 25 or fewer consumers in the previous calendar year.

Note: The Dodd-Frank Act prohibited the use of arbitration agreements in connection with mortgage loans which the CFPB implemented through the loan originator compensation amendments to Regulation Z.