

Special Alert: CFPB Issues Arbitration Rule Banning Future Use of Mandatory Arbitration Clauses

On July 10, the Consumer Financial Protection Bureau (CFPB) issued its [Arbitration Agreements Rule](#) (Rule), which prohibits the use of mandatory pre-dispute arbitration clauses in certain contracts for consumer financial products and services. The Rule is a product of the CFPB's rulemaking process, which received more than 110,000 comments on its May 2016 [proposed arbitration rule](#), and the CFPB's March 2015 [Arbitration Study](#). The Rule is set to take effect 60 days after publication in the *Federal Register*, and will generally apply to contracts entered into on or after the 241st day after publication in the *Federal Register*. The Rule has the potential to profoundly impact the way disputes concerning consumer financial products and services are resolved. Thus, today's action by the CFPB will likely lead to an effort pursuant to the Congressional Review Act to overturn the Rule before it becomes effective.

Background

Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the CFPB to conduct a study of the use of arbitration agreements in the offering or providing of consumer financial products or services. In March 2015, the CFPB published its 728-page Arbitration Study to Congress, noting the widespread use of mandatory arbitration clauses in connection with consumer financial products and services, as well as their purported adverse effect on consumers and class action activity.

Section 1028(b) of the Dodd-Frank Act authorizes the CFPB to issue regulations relating to arbitration agreements, requiring that the "findings in such rule shall be consistent with the study conducted under subsection (a)." On May 5, 2016, in a purported exercise of this authority and its general rulemaking authority in Section 1022, the CFPB proposed an arbitration rule and requested comment from the public, which resulted in the submission of more than 110,000 comments from industry and consumer advocate associations alike. On July 10, the Bureau published its final Rule alongside [prepared remarks](#) from its Director, Richard Cordray.

The Rule

The Rule applies to persons who offer or provide certain consumer financial products and services, as well as their service providers, and applies to contracts entered into on or after the 241st day after publication in the *Federal Register* (Applicable Date). With respect to these persons and service providers, the Rule prohibits reliance on pre-dispute arbitration clauses "with respect to any aspect of a class action" that concerns the covered consumer financial products and services. In addition, for all pre-dispute arbitration clauses entered into on or after the Applicable Date, the Rule requires that they contain specific language stating "We agree that neither we nor anyone else will rely on this agreement to stop you from being part

of a class action case in court. You may file a class action in court or you may be a member of a class action filed by someone else.” Finally, the Rule also requires that providers submit arbitration-related records to the CFPB, such as records relating to arbitration or court proceedings that occur on or after the Applicable Date. Upon receipt, review and redaction, the Bureau will publish the arbitration-related records on a publicly available website.

Next Steps

In his prepared remarks concerning the Rule, Director Cordray acknowledged the possibility that Congress can overturn the Rule under the Congressional Review Act. Indeed, shortly after the CFPB issued the Rule, Jeb Hensarling, the Chairman of the House Financial Services Committee, declared that as “a matter of principle, policy, and process, this anti-consumer rule should be thoroughly rejected by Congress under the Congressional Review Act.” Under the current Congressional Review Act, Congress has 60 session days from the issuance of a major rule – including those that will have an annual impact on the economy of \$1 million dollars or more – to override the rule by a joint resolution signed by the president. All told, given its potentially significant implications for the consumer financial services sector, the Rule will likely face significant scrutiny from Congress and the current administration, and an effort to overturn it.

If you have questions about the rule or other related issues, please visit our [Consumer Financial Protection Bureau](#) practice page, or contact a Buckley Sandler attorney with whom you have worked in the past.