

PUBLICATION

Arbitration Update

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Following up on the Consumer Financial Protection Bureau (CFPB) announcement of controversial rulemaking on arbitration provisions, CFPB Director Richard Cordray offered further insight into the CFPB's intentions in remarks to a meeting of the Consumer Advisory Board. Importantly, he re-affirmed that the CFPB would not pursue a complete ban on all pre-dispute arbitration agreements for consumer financial products and services, but instead would focus on prohibiting the use of such agreements to block class action lawsuits.

The proposed rulemaking, announced on October 7, is the latest development stemming from the CFPB's multi-year study of consumer finance arbitration. Released in March of this year, the CFPB study concluded that very few consumers of financial services and products seek relief individually through arbitration or the courts. However, arbitration clauses were found to deter consumers from filing claims, and the CFPB believes that millions of consumers may have sought relief if class action lawsuits were available to them.

Director Cordray hopes the rulemaking will produce benefits for consumers by allowing consumers to "get their day in court." He also hopes that the proposals "would deter wrongdoing on a broader scale" and "restore to consumers the rights that most do not even know had been taken away from them." As we [previously reported](#), the financial services industry has roundly condemned these conclusions, and many critics believe that the CFPB's rulemaking will harm both financial companies and consumers alike by encouraging meritless class action litigation and increasing the costs of credit for consumers.

Notably, Director Cordray left the door open for a complete ban of arbitration provisions in the future. He indicated, "...we will continue to monitor the effects of such clauses on the resolution of individual disputes" so that "over time we will be able to refine our evaluation of how such proceedings may affect consumer protection, if at all." To this end, the CFPB is considering proposals requiring companies to report all arbitration claims and awards, which may or may not be made publicly available by the CFPB.

As we have noted before, it remains to be seen how arbitration restrictions will fare in the face of inevitable challenges in court, particularly after a string of Supreme Court decisions favoring mandatory consumer arbitration provisions with class action bans.

Director Cordray's remarks are available in their entirety [here](#). The CFPB has published an outline of the proposals under consideration [here](#).

If you have questions about this or any other CFPB-related issue, please contact Will Routt, your regular Baker Donelson attorney or any member of our CFPB team.