



May 5, 2016

CFPB ISSUES PROPOSED ARBITRATION RULE

As expected, the CFPB issued a proposed Rule on arbitration that does not prohibit pre-dispute arbitration clauses, but does prohibit arbitration clauses that waive participation in a class action. The Rule includes proposed official interpretations and was released the same day that the CFPB held a field hearing on arbitration in New Mexico. The Rule applies generally to any person offering or providing consumer financial products or services as defined by the Dodd-Frank Act, including extensions of credit. "Pre-dispute arbitration agreement" means an agreement between a provider and a consumer providing for arbitration of any future dispute between the parties.

Under the proposed Rule, a pre-dispute arbitration agreement for a product or service covered by the Rule must state:

"We agree that neither we nor anyone else will use 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 even if you do not file it."

When the pre-dispute arbitration agreement is for multiple products or services, only some of which are covered by the Rule, the following alternative statement may be used:

"We are providing you with more than one product or service, only some of which are covered by the Arbitration Agreements Rule issued by the Consumer Financial Protection Bureau. We agree that neither we nor anyone else will use 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 even if you do not file it. This provision applies only to class action claims concerning the products or services covered by that Rule."

The proposed Rule provides that when a pre-dispute arbitration agreement exists in a contract that is acquired by a new company, the company that acquires the contract must amend the contract or provide the consumer a notice that includes the following language within 60 days of entering into the pre-dispute arbitration agreement:

(1) *Agreement provision.* "We agree that neither we nor anyone else who later becomes a party to this pre-dispute arbitration agreement will use it 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 even if you do not file it."

(2) *Notice.* "We agree not to use any pre-dispute arbitration 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 even you do not file it."

Thus, although the Rule does not impact existing pre-dispute arbitration clauses, the Rule attempts to apply the new restrictions to existing contracts if the contract changes hands.

The proposed Rule also requires companies with arbitration clauses to submit to the CFPB information on claims, awards and certain other information related to arbitration cases and the pre-dispute arbitration agreement filed with the arbitrator. Certain personal information may be redacted before information is provided.

Comments on the Rule must be submitted within 90 days from publication in the Federal Register, likely early to mid August. The Rule states that the final Rule will take effect 211 days after the Final Rule is published in the Federal Register.

Please let us know if you have questions. We will continue to analyze the proposed Rule and follow the proposal's progress. □

✧ *Elizabeth Anstaett and Susan Manship Seaman*

Darrell L. Dreher
ddreher@dltlaw.com

Elizabeth L. Anstaett
eanstaett@dltlaw.com

Margaret M. Stolar
mstolar@dltlaw.com

Robin R. De Leo
robin@dreher-la.com

Susan M. Seaman
sseaman@dltlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DLTLAW.COM

To see previously sent ALERTS, visit our website at www.dltlaw.com

To decline future ALERTS, please contact us at ALERTS@DLTLAW.COM.
This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies
mtomkies@dltlaw.com

Charles V. Gall
cgall@dltlaw.com

Judith M. Scheiderer
jscheiderer@dltlaw.com

Susan L. Ostrander
sostrander@dltlaw.com

Emily C. Barlage
ebarlage@dltlaw.com