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CFPB: Reverse Mortgages Subject to Scrutiny

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In a likely preview of an area subject to future regulation and enforcement, on June 4, 2015, the Consumer Financial Protection Bureau (CFPB) released results of a focus group study on reverse mortgage advertisements and also issued an advisory regarding such ads.¹ A reverse mortgage is a home loan that allows older homeowners (typically age 62 or older) to access the equity in their homes and defer payment of the loan until they pass away, sell or

move. The loan proceeds are generally provided to the borrowers as lump-sum payments, monthly payments, or as lines of credit. Industry reports indicate that the reverse mortgage market is only about 1 percent of the size of the traditional mortgage market, but with an aging population it is anticipated that the market will grow.

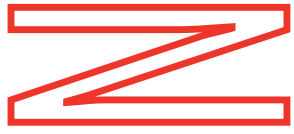
The study involved a review by focus groups of 97 advertisements for reverse mortgages on TV, radio, in print and on the Internet. Following interviews, the study found that the focus groups were confused about reverse mortgages being loans, there was a false impression that the loans are a type of government benefit or that a reverse mortgage guaranteed the borrower could remain in the home for the rest of their lives. In addition to the interviews, the CFPB itself reviewed the advertisements and concluded that, “[A]mong the advertisements we collected, on their face, many contained confusing, incomplete, and inaccurate statements regarding borrower requirements, government insurance and borrower risks.”

The study identified various potential problems with the ads including:

- Ambiguity regarding the fact that reverse mortgages are loans
- False impressions about government affiliation
- Difficult-to-read fine print
- Celebrity endorsements that imply reliability and trust
- False impressions about financial security and staying in the home for the rest of the consumer’s life

The concerns identified in the study could each be a potential target for regulatory initiatives such as enhanced or modified disclosure requirements for reverse mortgages. The identified areas also raise implications for exposure as a result of the CFPB’s continued aggressive pursuit of enforcement actions targeting conduct it deems to be an “unfair, deceptive, abusive act or practice” (UDAAP). Baker Donelson will monitor developments involving reverse mortgages and the CFPB and keep you updated.

¹ http://files.consumerfinance.gov/f/201506_cfpb_a-closer-look-at-reverse-mortgage-advertising.pdf



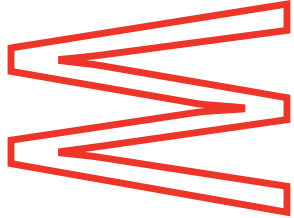
June 2015

This is an advertisement.



CFPB Report Likely Precursor to Regulatory Limits on Mandatory Arbitration Provisions

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The Consumer Financial Protection Bureau (CFPB) released a study in March 2015 criticizing the use of mandatory, pre-dispute arbitration agreements in financial contracts with consumers. As expected, the CFPB found arbitration to be detrimental to consumers' interests when compared to litigation, particularly class action litigation. The study is widely perceived as a precursor to regulatory action that will substantially curtail or even eliminate the use of arbitration

agreements in the consumer financial space.

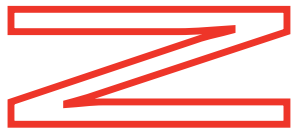


The CFPB was established by Congress through the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Through Dodd-Frank, Congress empowered the CFPB to review the use of pre-dispute arbitration agreements in consumer financial markets and restrict their use if deemed necessary. The CFPB conducted a study of the use of mandatory arbitration provisions in contracts for checking accounts, credit cards, prepaid cards, payday loans, private student loans and mobile wireless contracts.

A primary emphasis in the March 2015 report concerns the prohibition of class action lawsuits, a standard component in consumer arbitration provisions. The CFPB found that consumers recover substantially less in arbitration proceedings than in traditional litigation, particularly when compared to class action lawsuits. Moreover, consumers were found to be generally unaware of whether their financial services contracts contain arbitration provisions and often wrongly believe that they have the right to sue in court. The CFPB cites a host of additional concerns including the contention that there is no evidence that arbitration clauses lead to lower prices for consumers and that, contrary to traditional wisdom, arbitration is not cheaper and more efficient than litigation.

In the coming months, the CFPB will likely take action based on the report and could, for instance, bar class action bans or bar the use of pre-dispute arbitration agreements with consumers entirely. If the CFPB bans arbitration provisions, consumer arbitration will likely all but disappear in the financial markets space. Moreover, the CFPB's actions could influence other regulatory bodies, such as the Securities & Exchange Commission, to implement similar bans on mandatory arbitration provisions, thereby broadly impacting dispute resolution with consumers across the entire financial industry.

If such regulatory bans are put into place, the industry will face additional uncertainty as any ban will undoubtedly be challenged in court. The Federal Arbitration Act (FAA) provides that pre-dispute arbitration agreements involving interstate commerce – such as those used in the consumer financial industry – are valid and enforceable as written. Whether the CFPB can be delegated the power to unilaterally restrict the provisions of a U.S. law such as the FAA will be a substantial hurdle for the CFPB to overcome. While the outcome of any such litigation is uncertain, the limited powers of administrative agencies and the pro-arbitration policies adopted by the courts suggest that any CFPB action may be unenforceable without Congressional action and a Presidential signature. The only thing we know for sure is that we'll be watching this issue for quite some time.



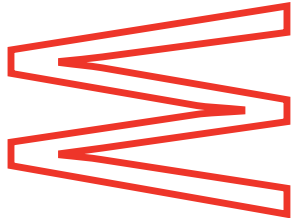
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CFPB Spring 2015 Agenda Significant Rulemaking Actions on the Horizon

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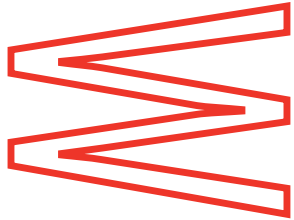
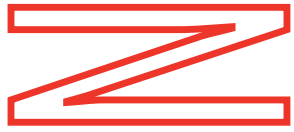
Just as we were easing into Memorial Day weekend and the official beginning of summer, the Consumer Financial Protection Bureau (the CFPB or Bureau) released its Spring 2015 Rulemaking agenda. Despite earlier reports that it would announce its rulemaking for debt collection – one of the more highly anticipated sets of rules – in April of 2015, the Bureau announced that the debt collecting rules are now not expected for release until December of this year.

The Agenda is a voluntary update in conjunction with a broader initiative led by the Office of Management and Budget to publish a Unified Agenda of Regulatory and Deregulatory Actions (the Agenda) across the federal government. The full Unified Agenda is available [here](#).

In addition to debt collection activities, major initiatives of the Bureau also involve mortgages, prepaid financial products, payday and other similar loans, overdraft services, defining auto lending larger participants and arbitration. The Agenda categorizes rulemaking actions by state as “pre-rule,” “proposed rule,” “final rule,” “long term actions” or “completed actions.” The next semi-annual agenda, typically released in the fall, will reflect the results of the CFPB’s further prioritization and planning.

- **Debt collection:** As mentioned, the Bureau issued an Advance Notice of Proposed Rulemaking concerning debt collection in November of 2013. The Agenda indicates, however, that further pre-rule activities, which are expected to involve the convening of a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel, are now expected to occur in December of 2015.
- **Home Mortgage Disclosure Act:** The Agenda indicates that the Bureau will issue a final rule in August 2015, to follow up on the July 2014 issuance of a proposed rule to implement Dodd-Frank Act amendments to the Act.
- **Mortgage rules:** In February of this year, the CFPB issued a proposal to modify specific mortgage loan requirements for small creditors, including those that operate predominantly in “rural or underserved” areas. The final rule should be issued in September 2015. The Bureau also announced a March 2016 date for issuance of a final rule which will amend various provisions of its mortgage servicing rules.
- **Prepaid financial products:** In November of 2014, the CFPB issued a proposed rule for prepaid financial products, including general purpose reloadable prepaid cards and certain digital and mobile wallets. The Agenda indicates that the CFPB believes it will issue a final rule in January of 2016.





June 2015

This is an advertisement.

CFPB Spring 2015 Agenda Significant Rulemaking Actions on the Horizon, *continued*

- **Payday and deposit advance loans:** The CFPB issued proposals in March 2015 that it is considering for payday loans, in addition to other small-dollar, high-rate loans, in preparation for convening a Small Business Review Panel, as required by the SBREFA and Dodd-Frank. The Agenda states that the CFPB plans to issue a Notice of Proposed Rulemaking “later in 2015 after additional outreach and analysis.”
- **Overdrafts:** The CFPB issued a June 2013 white paper and a July 2014 report on checking account overdraft services. In the Agenda, the CFPB states that it “plans to release the results of further studies on overdraft programs and their effects on consumers. The CFPB is also considering whether rules governing overdraft and related services are warranted, and, if so, what types of rules would be appropriate.” Although the CFPB’s last agenda set a July 2015 date for further action, the new Agenda offers an October 2015 date for further pre-rule activities.
- **Larger participants:**
 - Auto finance: Last September, the CFPB issued a proposed “larger participant” rule for the auto finance market. The agenda gives a June 2015 date for issuance of a final rule.
 - Installment and auto title loans: The Agenda confirms that the Bureau is considering one or more new “larger participant” rules for “consumer installment loans and vehicle title loans.” It set a January 2016 date for pre-rule activities. The confirmation follows April 2015 reports that installment lending was the next non-bank industry that might be subject to a larger participant rule and thus the CFPB’s ever-increasing reach.
- **Arbitration:** In December of 2013, the CFPB issued preliminary results of its study of consumer arbitration, which was mandated by §1028 of the Dodd-Frank Act. The Bureau issued its final study results in March 2015. The Agenda provides a September 2015 deadline for further pre-rule activities and only states that the CFPB “is considering whether rules governing pre-dispute arbitration agreements are warranted, and, if so, what types of rules would be appropriate.”

We will continue to monitor the CFPB’s actions and report accordingly.



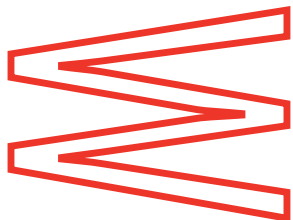
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UPDATE: CFPB Publishes Rule Authorizing it to Supervise Auto Finance Companies

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On June 10, 2015, the CFPB published a new regulation that has been dreaded by the auto finance industry for more than a year. Following up on the rule it proposed in June 2014, the CFPB published a final rule on June 10, which allows the Bureau to supervise larger nonbank auto finance companies for the first time in history.



The rule will take effect 60 days after publication in the Federal Register. In conjunction with the announcement of the rule, the Bureau also detailed the examination procedures to be used by its examiners in order to ensure that auto finance companies are following the law. Stating, “Auto loans and leases are among the most significant and complex financial transactions in a typical consumer’s life,” CFPB Director Richard Cordray said that the issuance of the new rule and resultant regulations “will help ensure that larger auto finance companies treat consumers fairly.”

At present, the CFPB supervises auto financing at only the largest banks and credit unions. The June 10 rule, however, extends that control to “any nonbank auto finance company that makes, acquires or refinances 10,000 or more loans or leases” within a one-year period. These companies are considered “larger participants” under the rule, and the Bureau will watch over their activity to ensure that they are in compliance with federal consumer protection laws. The rule now gives the Bureau authority to supervise and regulate approximately 34 of the largest nonbank auto finance companies and their affiliates, which – in the aggregate – originate almost 90% of the nation’s nonbank auto loans and leases.

In order to provide guidance to its examiners on how the Bureau will monitor the bank and nonbank auto finance companies, the CFPB has also updated its Supervisory and Examination Manual. Examiners will be evaluating potential risks to consumers and making determinations as to whether auto finance companies are complying with federal consumer financial laws. Among other things, examiners will now be assessing whether auto finance companies are:

- Fairly marketing and disclosing auto financing terms
- Providing accurate information to credit bureaus
- Treating consumers fairly when collecting debts
- Lending fairly, i.e., in compliance with the Equal Credit Opportunity Act

Stay tuned.

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