

Mandatory Arbitration Clauses

The Consumer Financial Protection Bureau recently announced a plan to limit mandatory arbitration clauses in the financial services industry. The plan would eliminate bans on class action waivers in consumer financial contracts such as those for credit cards, checking accounts, and payday loans.

The CFPB's proposed plan arose from a March 2015 study of arbitration agreements in contracts for consumer financial products and services that showed consumers almost universally unaware that they were subject to such agreements and that few ever used them to pursue their claims.

Though the plan would not take effect in the near term, it has already generated much debate. CFPB director Richard Cordray supports a ban on class action waivers because class actions, imperfect as they can be, may represent the only means consumers have for pursuing meaningful relief for harm that involves a relatively small amount of money for an individual plaintiff. Meanwhile, critics say that the proposal merely opens the door to even more frivolous lawsuits. With the battle lines drawn, the two sides may find themselves taking their fight all the way to the highest court in the land.

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