



Dodd-Frank Financial Reform Law

ALERT

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CFPB Seeks Input on Study of Mandatory Arbitration Clauses

The Consumer Financial Protection Bureau (CFPB) has launched the preliminary stage of its study into the use of mandatory arbitration clauses by issuing a [Request for Information](#) to the public asking for suggestions about how it should conduct the study.

“Arbitration clauses are found in many contracts for consumer financial products,” explained CFPB Director Richard Cordray in a [statement](#) announcing the Request for Information. “We want to learn how arbitration clauses affect consumers, and how effective arbitration is in resolving consumers’ issues. This inquiry will help the Bureau assess whether rules are needed to protect consumers.”

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 explicitly directed the CFPB to study the effect of these arbitration clauses on consumer financial markets, and to report its findings to Congress. The statute also gives the agency the power to issue any necessary regulation limiting or prohibiting the use of these clauses, based on the information it receives from the study.

How this mandate will square with the U.S. Supreme Court’s ongoing protection of arbitration as a means of resolving consumer disputes is unclear. As recently as April 2011, after the Dodd-Frank Act’s passage, the Supreme Court once again supported consumer arbitration in *AT&T Mobility v. Concepcion, et. al.*, 131 S.Ct. 1740 (2011), based on provisions of the Federal Arbitration Act.

The CFPB’s Request for Information seeks “specific suggestions” from the public about how to conduct the mandated study - “to help identify the appropriate scope of the Study, as well as appropriate methods and sources of data

for conducting the Study,” in the form of answers to specific questions relating to:

- The prevalence of arbitration clauses in consumer financial products and services;
- What claims consumers bring in arbitration against financial services companies;
- Whether claims are brought by financial services companies against consumers in arbitration;
- How consumers and companies are affected by actual arbitrations; and
- How consumers and companies are affected by arbitration clauses outside of actual arbitrations.

The Request for Information makes clear that at this time the CFPB is not seeking comments on whether it should issue regulations prohibiting or imposing limitations or conditions on the use of arbitration clauses in agreements relating to consumer financial products or services, or whether any regulations would protect consumers or be in the public interest. The CFPB’s investigation of arbitration clauses should be followed carefully, however, since its outcome could have a significant impact on what has been a cost-effective means of resolving consumer disputes for several decades.

Comments on the Request for Information must be submitted by June 23, 2012. The CFPB has not indicated when it expects to complete the study.

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For more information about the content of this alert, please contact Michael Thurman at mthurman@loeb.com or Michael Mallow at mmallow@loeb.com.

Loeb & Loeb's Dodd-Frank Financial Reform Task Force monitors key issues surrounding approval of the Dodd-Frank Wall Street Reform and Consumer Protection Act that are relevant to a broad spectrum of firm clients in the financial services industry. The multidisciplinary Task Force is comprised of attorneys across core practice areas – including general corporate, private equity, securities, mergers and acquisitions, consumer protection and banking and finance – who are focused on analyzing the historic legislation and interpreting the significant business implications for financial institutions and commercial companies nationwide.

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