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July 10, 2017

Executive Summary of the Arbitration Agreements Rule

The Consumer Financial Protection Bureau (Bureau) has issued a final rule to regulate pre-dispute arbitration agreements in contracts for specified consumer financial products and services (Arbitration Agreements Rule or Rule). The Rule is effective on the 60th day after publication in the *Federal Register*. However, as explained below, it only applies to pre-dispute arbitration agreements for covered products or services entered into on or after the 241st day after publication in the *Federal Register*. The Rule refers to this date as the “compliance date.”

Although this executive summary provides a high-level overview of the Arbitration Agreements Rule, it is not a substitute for reviewing the Rule. The Rule is the definitive source regarding its requirements.

Providers

The Arbitration Agreements Rule applies to “providers” of covered consumer financial products and services. The Rule defines the term “provider” to mean either of the following:

1. A person¹ that engages in an activity that is a covered consumer financial product or service to the extent that the person is not specifically excluded from coverage under the Arbitration Agreements Rule; or
2. An affiliate² of such a person when the affiliate is acting as that person’s service provider consistent with 12 U.S.C. 5481(6)(B).

¹ For this purpose, a “person” includes an individual, partnership, company, corporation, association, trust, estate, cooperative organization, or other entity.

The following³ are excluded from coverage and are not “providers” under the Arbitration Agreements Rule:

1. A person regulated by the Securities and Exchange Commission.
2. A person to the extent regulated by a state securities commission as either a broker dealer or an investment adviser.
3. A person regulated by the Commodity Futures Trading Commission or a person with respect to any account, contract, agreement, or transaction to the extent subject to the jurisdiction of the Commodity Futures Trading Commission.
4. A federal agency.
5. A state (including the District of Columbia and territories and possessions of the United States), federally recognized Indian tribe, or other person to the extent the person has federal sovereign immunity from private suit.
6. A person to the extent the person’s activities are not subject to the Bureau’s rulemaking authority. These persons may include auto dealers, attorneys, and other persons.
7. Merchants, retailers, or other sellers of nonfinancial goods or services to the extent they:
 - a. Offer or provide an extension of consumer credit and are either not subject to the Bureau’s rulemaking authority or would only be subject to the Bureau’s rulemaking authority under a statutory provision relating to certain factoring activity; or
 - b. Purchase or acquire such an extension of consumer credit.
8. An employer to the extent that the employer is providing a covered consumer financial product or service to its employees as an employee benefit.
9. A person to the extent that the person is engaged in offering or providing a product or service that does not meet the numeric threshold set forth in the Rule. A product does not meet this threshold if the person and any of its affiliates collectively provide the

² An affiliate for this purpose is any person that controls, or is controlled by, or is under common control with another person as defined in 12 U.S.C. 5481(1).

³ Generally, these exclusions refer to terms in particular statutes. For example the terms “person regulated by the [Securities and Exchange] Commission” and “person regulated by the [Commodity Futures Trading Commission]” are defined in 12 U.S.C. 5481. For more information on the precise scope of each exclusion, see the Rule.

product to 25 or fewer consumers in the current calendar year and collectively provided the product to 25 or fewer consumers in the preceding calendar year.

A person is not covered by the Rule to the extent that any exclusion above applies. Similarly, to the extent that an affiliate is a service provider to a person to whom an exclusion applies, the affiliated service provider is not covered under the second prong of the definition of provider. However, the affiliated service provider may be covered under the first prong of the definition of provider.

Covered Consumer Financial Products and Services

A provider is only required to comply with the Rule for products and services that are covered consumer financial products and services under the Rule. For example, a provider under the first prong of the definition of “provider” must comply with the Rule only for covered consumer financial products and services. A provider under the second prong of the definition of “provider” must comply with the Rule only when it is acting as a service provider with regard to a covered consumer financial product or service.

In order for a product or service to be a covered consumer financial product or service under the Rule, it must be both of the following:

1. A consumer financial product or service as defined by 12 U.S.C. 5481(5). Generally, this prong of the definition requires that a financial product or service be offered or provided to consumers primarily for personal, family, or household purposes or that it be offered or provided in connection with another financial product or service that is offered or provided to consumers primarily for personal, family, or household purposes.
2. Included in the Rule’s list of covered consumer financial products and services, which the Rule often defines by reference to particular statutes or regulations. Generally, the list includes extending consumer credit, participating in consumer credit decisions, engaging in certain creditor referral or selection activity for consumer credit, acquiring or selling consumer credit, servicing an extension of consumer credit or collecting a consumer debt arising from a product or service covered by the Rule, extending or brokering certain automobile leases, providing consumers with information derived from their consumer credit file, engaging in credit repair or debt management activities, providing consumer asset accounts including deposit accounts and prepaid accounts, providing remittance transfers, accepting financial data for the purpose of initiating certain payments or card charges, and providing check cashing, check guaranty, or check collection services.

Pre-Dispute Arbitration Agreements

The Arbitration Agreements Rule contains requirements that apply with regard to a provider's use of a "pre-dispute arbitration agreement" that is entered into on or after the compliance date. The Rule defines "pre-dispute arbitration agreement" to mean an agreement that is:

1. Between a covered person⁴ and a consumer;⁵ and
2. That provides for arbitration of any future dispute concerning a covered consumer financial product or service.

Under the Rule's definition, a pre-dispute arbitration agreement may be between a consumer and a covered person, who may or may not be a provider under the Rule. Although the Rule's requirements do not apply to a covered person that is not also a provider, the requirements may apply to a provider who later relies on or enters into a pre-dispute arbitration agreement that was initially between a consumer and a covered person, other than the provider.

The form or structure of the agreement is not determinative. An agreement can be a pre-dispute arbitration agreement under the Rule regardless of whether it is a standalone agreement, an agreement or provision that is incorporated into, annexed to, or otherwise made a part of a larger contract, is in some other form, or has some other structure.

Prohibition on Relying on Pre-dispute Arbitration Agreements

The Arbitration Agreements Rule prohibits a provider from relying on a pre-dispute arbitration agreement with respect to any aspect of a class action that concerns any covered consumer financial product or service. This prohibition only applies to pre-dispute arbitration agreements entered into by a provider or a covered person on or after the compliance date.

As noted above, this prohibition may apply to a provider with respect to a pre-dispute arbitration agreement initially entered into between a consumer and a covered person other

⁴ For this purpose, a "covered person" is any person that engages in offering or providing a consumer financial product or service, and any affiliate of a covered person if such affiliate acts as a service provider to the covered person as defined in 12 U.S.C. 5481(6). Persons excluded from the Bureau's rulemaking authority or otherwise not included within or excluded from the Arbitration Agreements Rule's definition of "provider" may still meet the definition of "covered person."

⁵ The Arbitration Agreements Rule defines "consumer" to mean an individual or an individual's agent, trustee, or representative.

than the provider. For example, if an automobile dealer includes a pre-dispute arbitration agreement in a consumer motor vehicle installment sales contract, a provider (such as an indirect automobile lender or debt collector) is prohibited from relying on such a pre-dispute arbitration agreement in a dispute concerning the installment sales contract.

Provisions Required in Pre-dispute Arbitration Agreements

The Arbitration Agreements Rule requires that, upon entering into a pre-dispute arbitration agreement on or after the compliance date, a provider must ensure that certain language set forth in the Rule is included in the agreement. Generally, the required language informs consumers that the agreement may not be used to block class actions. The Rule allows a provider to use an alternative method of providing required language for a pre-dispute arbitration agreement that existed between other parties prior to the provider entering into the agreement. If such an agreement does not already contain the language required by the Rule, the provider must amend the agreement to include language required by the Rule or provide a written notice to each consumer subject to the agreement within 60 days of entering into the pre-dispute arbitration agreement.

In certain circumstances, the Arbitration Agreements Rule permits a provider to use different or additional language in a pre-dispute arbitration agreement. Additionally, if certain conditions are met, the requirement to add certain language does not apply to a pre-dispute arbitration agreement for a general-purpose reloadable prepaid card if the agreement was packaged with the card prior to the compliance date.

The Arbitration Agreements Rule includes the following examples of when a provider enters into a pre-dispute arbitration agreement after the compliance date:

1. The provider provides to a consumer a new covered consumer financial product or service that is subject to a pre-existing agreement to arbitrate future disputes between the parties, and the provider is a party to that arbitration agreement.
2. The provider acquires or purchases a covered consumer financial product or service that is subject to a pre-dispute arbitration agreement and becomes a party to that pre-dispute arbitration agreement.
3. The provider adds a pre-dispute arbitration agreement to an existing product or service.

Submission of Records to the Bureau

The Arbitration Agreements Rule requires a provider to submit to the Bureau certain arbitration-related records concerning a covered consumer financial product or service. The requirement to submit these records only applies to:

1. Specified records filed in any arbitration or court proceedings in which a party relies on a pre-dispute arbitration agreement entered into on or after the compliance date.
2. Communications the provider receives from an arbitrator or arbitral administrator pertaining to a determination that a pre-dispute arbitration agreement entered into on or after the compliance date does not comply with an arbitral administrator's due process or fairness standards.
3. Communications the provider receives from an arbitrator or arbitral administrator regarding a dismissal of or refusal to administer a claim due to the provider's failure to pay required filing or administrative fees.

Generally, if the provider is required to submit a record to the Bureau, it must submit a copy of the record within 60 days of the date that the record was filed with the arbitrator, arbitral administrator, or court. The provider must submit the record in the manner and form specified by the Bureau and must redact certain personally identifiable information from the record prior to submitting it. The Bureau will post the redacted records it obtains from providers (subject to additional redactions) on a publicly available website that the Bureau will establish and maintain by July 1, 2019. The Bureau will publish details of how providers should comply with these requirements. The Bureau expects that such instructions will be published in the *Federal Register*, on the Bureau's website, and in a compliance guide the Bureau will make available.