

THE WALL STREET JOURNAL.

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <http://www.djreprints.com>.

<http://www.wsj.com/articles/sue-the-bank-you-may-get-your-shot-1444190642>

MARKETS

Sue the Bank? You May Get Your Shot

Consumer Financial Protection Bureau set to propose rules curbing mandatory arbitration in contracts for credit cards, bank accounts and loans



Consumer Financial Protection Bureau Director Richard Cordray, pictured in center at panel discussion in March, is now targeting mandatory arbitration clauses. *PHOTO: STEVE HELBER/ASSOCIATED PRESS*

By **YUKA HAYASHI**

Oct. 7, 2015 12:04 a.m. ET

WASHINGTON—The Consumer Financial Protection Bureau is moving toward new rules giving borrowers more rights to sue banks and credit-card companies, the agency's latest attempt to shift the balance of power to consumers from financial institutions.

The CFPB is set Wednesday to propose rules that curb mandatory arbitration. The plan throws the new federal agency into the center of a national debate over whether consumers are helped or harmed by arbitration agreements that block class-action lawsuits. Such clauses are common for a range of products and services such as mobile phones, home mortgages and nursing homes.

The proposals under consideration would ban companies from including arbitration

clauses that block class-action lawsuits in their consumer contracts for a broad range of financial products including credit cards, checking and deposit accounts, prepaid cards, money transfer services, certain auto loans, payday loans and private student loans.

After publishing the proposals Wednesday, the agency will convene a panel of small businesses to gather feedback. A formal proposal of the rule will follow later in the year, kicking off a public comment period. It is unclear when a final rule would likely take effect.

Financial-industry executives and some lawmakers are poised to fight the proposals, arguing that arbitration provides faster and more cost-effective dispute resolution for many consumers.

The concept behind class-action suits, combining many small claims, “is a good, practical idea,” said Stephen Ware, a law professor at the University of Kansas who looks at arbitration. “On the other hand, what actually happens in consumer class-action litigation is it often has a lot of costs to businesses and doesn’t seem to yield much benefit to consumers at least in terms of payout.”

The use of arbitration clauses in consumer contracts is widespread, particularly following a string of Supreme Court decisions finding that federal policy favoring arbitration clauses pre-empts state laws giving consumers the right to file lawsuits.

According to a study conducted by the CFPB in March to justify the pending regulations challenging the high court’s directive, “tens of millions of consumers” are affected by mandatory arbitration clauses. That includes 53% of the credit-card market, 44% of the checking-account market, and virtually all payday loan and mobile wireless customers.

Amid criticism that such clauses hurt consumers at the expense of companies, lawmakers and regulators have taken steps toward reversing the trend. The Centers for Medicare and Medicaid Services proposed in July a new rule that imposes tougher requirements on arbitration agreements that nursing homes sign with residents upon their admission.

And the 2010 Dodd-Frank financial-overhaul law that created the CFPB gave it a long list of widespread financial business practices to review, among them the use of arbitration clauses in consumer financial markets, and granted it the power to issue regulations based on its findings.

Advocates of the new rules say Dodd-Frank signals that Congress intended to keep the

legal channel open to consumers. As such, they argue, it supersedes Congress's intent in the 1925 Federal Arbitration Act, which has largely been the basis of the Supreme Court rulings favoring arbitration over lawsuits.

In a news release, the CFPB said that most arbitration clauses, placed in the fine print of contracts for products such as credit cards and bank deposit accounts, deny consumers the right to participate in group lawsuits against companies.

The CFPB said in its March study on the use of arbitration clauses that three in four credit-card holders surveyed didn't know whether they were subject to an arbitration clause in their contract. Only 7% of those consumers covered by arbitration clauses were aware that the clauses restricted their ability to sue in court, the CFPB said in the 728-page report.

The CFPB's review of arbitration clauses is the bureau's latest in a series of moves intended to curb the power and discretion of the financial industry, a campaign that has made the young agency a target of criticism from financial-services providers and conservative lawmakers, while being lauded by consumer advocates and liberal politicians.

The bureau, headed by director Richard Cordray, has imposed tougher new limits on the mortgage and auto loan markets. In the coming months, it plans to move ahead with drafting rules for such areas as payday lending, bank overdraft fees, and debt collection.

Copyright 2014 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com.