



441 G St. N.W.
Washington, DC 20548

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August 2, 2017

The Honorable Michael Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Bureau of Consumer Financial Protection: Arbitration Agreements*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Bureau of Consumer Financial Protection (CFPB) entitled "Arbitration Agreements" (RIN: 3170-AA51). We received the rule on July 10, 2017. It was published in the *Federal Register* as a final rule; official interpretations on July 19, 2017, with an effective date of September 18, 2017. 82 Fed. Reg. 33,210.

The final rule prohibits covered providers of certain consumer financial products and services from using an agreement with a consumer that provides for arbitration of any future dispute between the parties to bar the consumer from filing or participating in a class action concerning the covered consumer financial product or service. Additionally, the final rule requires covered providers that are involved in arbitration pursuant to a pre-dispute arbitration agreement to submit specified arbitral records to CFPB and also to submit specified court records.

Enclosed is our assessment of CFPB's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that CFPB complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Anand Das
Senior Counsel, Legal Division
Bureau of Consumer Financial Protection

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
BUREAU OF CONSUMER FINANCIAL PROTECTION
ENTITLED
“ARBITRATION AGREEMENTS”
(RIN: 3170-AA51)

(i) Cost-benefit analysis

The Bureau of Consumer Financial Protection (CFPB) summarized the costs and benefits of this final rule. CFPB estimates that the final class rule will create class action exposure for about 53,000 providers. CFPB estimates that this class action exposure will result, on an annual basis, in about 103 additional class settlements in federal court. In these cases, CFPB estimates that an additional \$342 million will be paid out to consumers, an additional \$66 million will be paid out to plaintiffs’ attorneys, and an additional \$39 million will be spent by providers on their own attorneys’ fees and internal staff and management time. Using \$15,000 per individual case as a defense cost estimate, CFPB also estimates that the cost of 501 class cases would be between \$8 and \$76 million per year. CFPB provides a table of estimated additional federal class action settlements in the final rule.

CFPB determined that consumers will benefit from the final rule to the extent that providers will have a larger incentive to comply with the law; from the class payments in any class settlement that occurs due to a provider not being able to invoke an arbitration agreement in a class proceeding; and, from any new compliance with the law consumers experience as a result of injunctive relief in a settlement or as a result of changes in practices that a provider adopts in the wake of the settlement to avoid future litigation. Furthermore, CFPB stated that consumers will benefit from the final rule to the extent that the rule provides transparency into the arbitration process.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

CFPB does not certify that the final rule will not have a significant economic impact on a substantial number of small entities. Instead, CFPB stated that it completed a final regulatory flexibility analysis (FRFA). CFPB also stated that it believes the arguments and calculations outlined in the section 1022(b)(2) analysis and the FRFA, as well as the comments received on the initial regulatory flexibility analysis, suggest that the final rule will not have a significant economic impact on a substantial number of small entities in any of the covered markets.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, CFPB is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On May 24, 2016, CFPB published a proposal to establish 12 C.F.R. part 1040 to address certain aspects of consumer finance dispute resolution. 81 Fed. Reg. 32,830. CFPB responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

CFPB found that this final rule contains information collection requirements that have not yet been approved by the Office of Management and Budget (OMB) and, therefore, are not effective until OMB approval is obtained. CFPB stated that a complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request that CFPB has submitted to OMB under the requirements of PRA.

Statutory authorization for the rule

CFPB stated that it promulgated this rule pursuant to 12 U.S.C. §§ 5512(b) and (c) and 12 U.S.C. § 5518(b).

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, CFPB is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, CFPB is not subject to the Order.