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## New CFPB Rules Threaten More Consumer Class Actions Against Financial Institutions

June 1, 2016

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Recently, the Consumer Financial Protection Bureau (CFPB) announced that it is seeking public comment on proposed rules that would significantly change two aspects of consumer finance dispute resolution.

First, the proposed rules limit the effect of mandatory arbitration clauses for consumer finance transactions. Financial Institutions could continue to offer arbitration as a means for dispute resolution, but could no longer make it mandatory. Contracts for covered consumer financial products and services would be required to state: *"We agree that neither we nor anyone else will use this agreement to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it."*

Second, the rules would make it easier to find out the result of consumer arbitrations for banks and financial companies which were traditionally kept confidential. Certain arbitral records related to the financial institutions, including the initial claim and counterclaim, the arbitration agreement, and any judgment or award, would be required to be submitted to the CFPB within 60 days of their filing or receipt. CFPB intends to publish the records on its website (with appropriate redactions or aggregation) to allow for more transparency in the arbitration of consumer disputes for financial institutions.

The proposed rules would apply to a wide area of companies in the financial sector including banks, credit unions, payday lenders, certain auto lenders, auto title lenders, credit card issuers, private student lenders, loan servicers, foreclosure rescue firms, debt settlement firms, installment lenders, money transfer services, certain payment processors, virtual currency firms and others. Under the proposed rules, only individual consumer disputes can be committed to arbitration, and financial institutions would still face significant exposure to class action lawsuits. This is a significant shift in the current legal landscape for these banks and financial companies because arbitration clauses containing a class action waiver have generally been upheld in the financial sector since the U.S. Supreme Court's decision in *AT&T Mobility LLC v. Concepcion* in 2011.

The CFPB issued the proposed rules following the release of a study on arbitration. The public comment period will begin when the proposed rules are published in the Federal Register and will continue for 90 days thereafter. It is anticipated that the CFPB will make an attempt to have the final rule in place prior to November's presidential elections. Therefore, since the new ruling would apply to banks and financial companies' agreements entered into 210 days after the rule is issued, the new restrictions would most likely apply to those agreements that are

entered into after mid-2017 with financial institutions.