

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2012-0017]

**Request for Information Regarding Scope, Methods, and Data Sources for
Conducting Study of Pre-Dispute Arbitration Agreements.**

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and Request for Information.

SUMMARY: Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 (the “Dodd-Frank Act”) requires the Bureau of Consumer Financial Protection (the “Bureau”) to “conduct a study of, and . . . provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services” (the “Study”). As a preliminary step in undertaking the Study, the Bureau requests specific suggestions from the public to help identify the appropriate scope of the Study, as well as appropriate methods and sources of data for conducting the Study. Based on the information received, the Bureau may consider soliciting further feedback.

DATES: Comments must be submitted on or before June 23, 2012.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2012-0017, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of information and other comments. All submissions must include the agency name and docket number. Please note the number of the question to which you are responding at the top of each response. In general, all submissions received will be posted without change to <http://www.regulations.gov>. In addition, submissions will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Will Wade-Gery, Division of Research, Markets and Regulations, Consumer Financial Protection Bureau, at (202) 435-7700, or william.wade-gery@cfpb.gov.

Authority: 12 U.S.C. 5518(a).

SUPPLEMENTARY INFORMATION:

The Bureau seeks information in response to the questions listed below, which are intended to help identify the appropriate scope, methods, and sources of data for the Study required by section 1028(a) of the Dodd-Frank Act. Please feel free to respond to any or all of the questions below, but please be sure to identity the specific question or questions to which you are responding. Comments could include, where appropriate, data sources and study methods that the Bureau might consider. Submissions on scope or subject matter are more likely to provide useful information to the Bureau if the commenter also identifies associated data and applicable methods of study.

The Bureau is not seeking comment on how, if at all, it should exercise its rulemaking authority under section 1028(b) of the Dodd-Frank Act (12 U.S.C. 5518(b)). Thus, the Bureau is not seeking comment on either: (a) whether it should, by regulation, prohibit or impose conditions or limitations on the use of pre-dispute arbitration agreements with respect to consumer financial products or services; or (b) whether any such regulation would serve to protect consumers or otherwise be in the public interest. Instead, this Notice and Request for Information is directed to the Bureau's mandate under section 1028(a) of the Dodd-Frank Act (12 U.S.C. 5518(a)) to complete a study of, and report to Congress on, the use of pre-dispute arbitration agreements in connection with the offering or providing of consumer financial products or services.

For purposes of this Notice and Request for Information, “consumers” means “consumers” of “consumer financial products and services” as the Dodd-Frank Act defines those terms at sections 1002(4) and (5) (12 U.S.C. 5481(4)-(5)); “covered person” has the meaning given at section 1002(6) of the Dodd-Frank Act (12 U.S.C. 5481(6));

and “pre-dispute arbitration agreements,” unless otherwise noted, “provid[e] for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services” (12 U.S.C. 5518(a)).

Questions

1. Prevalence of Use

The Dodd-Frank Act requires the Bureau to study the “use” of pre-dispute arbitration agreements. The Bureau believes that obligation encompasses, at a minimum, a study of the prevalence of such agreements. As a result, the Bureau seeks information in response to the following questions.

- i. Other than with respect to credit card agreements,¹ how should the Bureau determine the prevalence of pre-dispute arbitration agreements in different consumer financial services markets?
- ii. Should the Bureau focus on particular markets for consumer financial products and services in reviewing prevalence?
- iii. Should the Bureau focus on the prevalence of particular terms in pre-dispute arbitration agreements?
- iv. Should the Bureau address how the prevalence of pre-dispute arbitration agreements and the prevalence of particular terms within them have changed over time?

¹ Subject to certain *de minimis* exceptions, U.S. issuers must file with the Bureau copies of their consumer credit card agreements. Thus, the Bureau has data to assess the prevalence and features of pre-dispute arbitration agreements for credit cards. The Bureau makes these credit card agreements available online at <http://www.consumerfinance.gov/credit-cards/agreements/>. Prior to the Dodd-Frank Act, the Federal Reserve Board maintained a similar credit card agreement database.

v. To address the questions above, what new data, if any, should the Bureau seek and from which entities? What existing studies or sources of empirical data should the Bureau rely upon to address any of the above questions?

2. Use and Impact in Particular Arbitral Proceedings

A. *Claims That Consumers Bring in Arbitration*

Pre-dispute arbitration agreements generally provide that the consumer may or must bring claims in arbitration.² The Bureau seeks information responsive to the following questions about claims that consumers bring in arbitration.

- i. Should the Bureau determine how often consumers bring claims in arbitration?
- ii. Should the Bureau analyze the types of claims that consumers bring in arbitration?
- iii. For claims that consumers bring in arbitration, should the Bureau seek to analyze: (a) the cost and speed of dispute resolution; and/or (b) the outcome of disputes?
- iv. For consumers who bring claims in arbitration, should the Bureau seek to assess their understanding of, and satisfaction with, the resulting dispute resolution process? Should the Bureau seek to determine the factors that impact consumer understanding and satisfaction?
- v. If the Bureau should address some or all of the issues addressed in 2.A.i-iv above, should the Bureau distinguish between claims that a consumer brings in arbitration: (a) in

² In some consumer arbitrations, the consumer files his or her claim in arbitration in the first instance, relying on the terms of the pre-dispute arbitration agreement to do so. In other cases, however, the consumer may first file in court and only later file a claim in arbitration after acceding to—or opposing and then losing on—a covered person’s (or third party’s) demand, under the same arbitration clause, that the consumer’s dispute proceed, if at all, in arbitration. The Bureau intends to cover both types of consumer arbitration within the terms of this set of questions, except to the extent specifically noted in question 2.v.

the first instance; and (b) after a covered person (or third party³) successfully invokes the terms of a pre-dispute arbitration agreement to end or limit that consumer’s earlier court proceeding? Or should the Bureau consider both forms of arbitration as a single, combined category of consumer use?

vi. If the Bureau should address some or all of the issues identified in 2.A.i-v above, what methods of study should it use? What new data, if any, should the Bureau seek and from which entities? What existing studies or empirical data, if any, should the Bureau use? Should the Bureau focus on particular product markets? Should the Bureau focus on the impact to arbitral proceedings of particular terms in pre-dispute arbitration agreements?

B. *Claims That Covered Persons Bring in Arbitration*

Pre-dispute arbitration agreements also generally provide that a covered person may or must bring claims in arbitration. As a result, covered persons have brought claims—in particular, debt-collection claims—in arbitration.⁴ The Bureau seeks information responsive to the following questions about such covered person or third-party claims.

i. The Bureau is not aware of recent practice by covered persons to bring claims against consumers in arbitration.⁵ Do such arbitrations, in fact, exist at this point? If there

³ In some cases, an entity that is not a party to a particular pre-dispute arbitration agreement has invoked that agreement to demand that a consumer’s claim proceed only in arbitration.

⁴ In some cases, an entity that is not a party to a particular pre-dispute arbitration agreement has invoked that agreement to bring claims against a consumer in arbitration. The Bureau intends the following set of questions to cover such third-party claims as well.

⁵ Prior to July 2009, the National Arbitration Forum (“NAF”) administered each year a significant number of debt collection arbitrations that various covered persons or third-

are such arbitrations, should the Bureau determine their frequency? If there are no longer such arbitrations, should the Bureau analyze whether covered persons will, in the future, return to bringing claims against consumers in arbitration?

ii. Should the Bureau analyze the types of claims that covered persons bring in arbitration? If covered persons no longer bring claims in arbitration, should the Bureau seek to answer this question for a period in which they did?

iii. For claims that covered persons have brought in arbitration, should the Bureau seek to analyze: (a) the cost and speed of dispute resolution; and/or (b) the outcome of disputes? If covered persons no longer bring claims in arbitration, should the Bureau seek to answer these questions for a period in which they did?

iv. For consumers involved in any such cases, should the Bureau seek to assess their understanding of, and satisfaction with, the resulting arbitration process? If covered persons no longer bring claims in arbitration, should the Bureau seek to answer this question for a period in which they did?

v. If the Bureau should address some or all of the issues identified in 2.B.i-iv above, what methods of study should it use? What new data, if any, should the Bureau seek and from which entities? What existing studies or empirical data, if any, should the Bureau use? Should the Bureau focus on particular product markets? Should the Bureau focus on

parties brought against consumers. In July 2009, however, NAF agreed that it would no longer handle consumer arbitrations, including debt collection cases brought against consumers. NAF reached this agreement to settle claims by the Minnesota Attorney General that NAF violated Minnesota's consumer-fraud, deceptive-trade-practices, and false-advertising statutes. Following the NAF settlement, the American Arbitration Association ("AAA") announced that it would not administer any consumer finance debt collection arbitrations filed by companies. The AAA's policy is still in effect according to a "Notice on Consumer Debt Collection Arbitrations" that is available on the organization's website, www.adr.org.

the impact to arbitral proceedings of particular terms in pre-dispute arbitration agreements?

3. Impact and Use Outside Particular Arbitral Proceedings

Independent of their role in particular arbitral proceedings, pre-dispute arbitration agreements may impact consumers and/or covered persons in other ways. Thus, academics and other parties have claimed that the existence of pre-dispute arbitration agreements may impact:

- The incidence and nature of consumer claims against covered persons;
- The price and availability of financial services products to consumers;
- Compliance with consumer financial protection laws;
- Consumer awareness of potential legal claims against covered persons;
- Consumer awareness and understanding of how potential legal claims against covered persons may be resolved; and
- The development, interpretation, and application of the rule of law.

i. Should the Bureau seek to evaluate how the use of pre-dispute arbitration agreements impacts consumers and/or covered persons in one or more of these ways?

ii. Should the Bureau seek to evaluate how the use of pre-dispute arbitration agreements impacts consumers and/or covered persons in any other ways that are independent of their role in particular arbitral proceedings?

iii. If so, and in either case, what methods of study should the Bureau use? What new data, if any, should the Bureau seek and from which entities? What existing studies or empirical data, if any, should the Bureau use? Should the Bureau focus on particular

product markets? Should the Bureau focus on the impact of particular terms in pre-dispute arbitration agreements?

Dated: April __, 2012

Meredith Fuchs,

Chief of Staff, Bureau of Consumer Financial Protection.