CFPB's Arbitration Agreement Rule

Prepare for court. The Consumer Financial Protection Bureau's (CFPB) rule change regarding pre-dispute arbitration agreements appears to be slated for implementation. The change applies to dealers and finance companies engaged in consumer credit sales for motor vehicles. In general, the change prohibits the use of pre-dispute arbitration agreements that do not make allowance for class-action lawsuits.

For a period of time, it appeared that Congress might act to stop implementation of the rule, but that window of opportunity has now passed. Under the Congressional Review Act (CRA), a bureaucratic rule can be overturned by a simple majority vote if both houses of Congress act within 60 "continuous days of session." The calculated deadline date, September 18, passed without action by the Senate. The timeline is as follows:

- July 10, 2017: CFPB announces the final arbitration agreement rule change.
- July 19, 2017: The final rule change language is published in the Federal Register.
- July 20, 2017: House Joint Resolution 111 is introduced by Rep. Keith Rothfus (R-PA).
- July 25, 2017: H.J. Res. 111 passes in a vote in the House and is sent to the Senate.
- September 18, 2017: H.J. Res 111 dies for lack of action in the Senate.
- September 18, 2017: Effective date per CFPB.
- March 19, 2018: Compliance date per CFPB.

Effective March 19, 2018, arbitration clauses applying to consumer credit sale or lease transactions must include specific language dictated by the new rule. According to the CFPB, "Companies can still include arbitration clauses in their contracts. But companies subject to the rule may not use arbitration clauses to stop consumers from being part of a group action." The rule change also applies if a third-party, such as a finance company, obtains or acquires a contract after March 19, 2017, even though the contract is dated prior to that date.

The new rule also levies additional reporting requirements on creditors and financial institutions. Affected companies must submit to the CFPB certain records, including initial claims and counterclaims, answers to these claims and counterclaims, and awards issued in arbitration. Companies will have 60 days from a triggering event to submit the required documentation. The Bureau will collect correspondence companies received from arbitration administrators regarding a company's non-payment of arbitration fees and its failure to follow the arbitrator's fairness standards. Companies must accomplish redaction of personal information in the records prior to submission to the CFPB. Then, the CFPB will publish those redacted materials on its website beginning in 2019.

The Congressional Review Act effort to overturn the CFPB's arbitration rule change ended when the Senate failed to bring the issue up for a vote by the deadline. Legislative efforts to bring the CFPB's budget under Congressional control and to institute board-governance, rather than director-governance, have also failed to gain traction in the face of more highly publicized

political issues. Rep. Jeb Hensarling's (R-TX) "Financial Choice Act" would roll back much of Dodd-Frank's authorization for the CFPB. That bill passed out of the House on June 8, 2017, and was sent to the Senate Committee on Banking, Housing, and Urban Affairs. This particular bill appears to have White House support, but is a strictly partisan effort by the Republicans. Assuming that the broad powers of the CFPB will not be subjected to meaningful Congressional action any time soon, dealers and their related finance companies can expect the arbitration agreement rule to be implemented on schedule.