**Arbitrations Are OUT!**

In a new rule released today, the CFPB made it clear that *“Financial Companies Can No Longer Block Consumers From Joining Together to Sue Over Wrongdoing”*

***Here is the Background:***

Financial services companies began inserting into their “Terms of Service” or contract agreements that a consumer must agree to mandatory arbitration. Arbitrators are generally privately appointed individuals. This was done to prevent consumers from banding together under class action suits against the company for wrongdoing. This “divide and conquer” technique made it nearly impossible for consumers who had similar acts perpetrated against them, like the Wells Fargo opening of fraudulent accounts, to get together and sue a company. Instead, they had to do it alone and let’s face it suing costs more money per consumer than the actual wrongdoing in most cases.

Dodd-Frank mandated that Arbitration clauses be studied, and as a result of that studying and comments from the public, mandatory arbitration clauses are no longer permitted. Consumers can now unite in suing for wrongdoing.

It is important to note, that residential lenders are already prohibited from arbitration agreements courtesy of Congress.

Employees that are offered these products by their financial services employer are exempt, sorry!

If you are regulated by the SEC or Commodity Futures Trading Commission, you have your own arbitration rules to abide by and therefore are not subject to this rule change.

The Military Lending Act prohibits these agreements already to the servicemembers and their family. Hoorah (or is it oo-rah) for that!

***What does this mean for your company?***

If you lend money, store money, and move or exchange money this will likely apply to your company.

Arbitration clauses can still be a part of the contract for services, but they cannot be mandatory. If they are included in the contract for services, you guessed it; there will be more paperwork and monitoring over the resolution of the arbitration by the CFPB. In addition to that, the CFPB will publish these materials in a redacted manner (taking out personally identifiable information) on their website starting in 2019 to be more transparent. My guess is that the legal teams are going to be meeting over the pros and cons of including any arbitration clause in their agreements, considering the burden this will place on the company.

Class action attorneys are super happy and celebrating over fine wine, steak, and seafood, but arbitrators, not so much.

Financial services companies are wide open to class action suits and no longer have the protections that mandatory arbitration gave them.

Like drug companies, financial services consumers will likely be contacted when a company is fined for wrongdoing, and they will be encouraged to join in the action.

As a side note, lenders should pay close attention to the “gray areas” of regulation such as fair lending. Not only are fair lending issues a reputational nightmare, but they also can lead to large groups of affected individuals.

If you would like to read the Arbitration Agreements Rule, all 775 pages are right here!