



July 10, 2017

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1275 First St. NE
Washington DC 20002

Dear Rich:

I am requesting the Consumer Financial Protection Bureau's (CFPB) share with OCC data used to develop and support its proposed final rule banning class-action waivers in arbitration agreements and to have our agencies work together to resolve potential safety and soundness concerns with the proposal.

The OCC has a mandate to ensure the safety and soundness of the federal banking system. A variety of OCC staff have reviewed the CFPB's arbitration proposal from this perspective and have expressed concerns about its potential impact on the institutions that make up the federal banking system and its customers. We feel obligated to communicate our safety and soundness concerns regarding this proposal given the requirements of section 1023 of the Dodd-Frank Act.

As you know, arbitration can be an effective alternative dispute resolution mechanism that can provide better outcomes for consumers and financial service providers without the high costs associated with litigation. As some have noted, the CFPB's proposal may effectively end the use of arbitration in cases related to consumer financial products and services. Eliminating the use of this tool could result in less effective consumer protection and remedies, while simply enriching class-action lawyers. At the same time, the proposal may potentially decrease the products and services offered to consumers, while increasing their costs.

The proposal also may force institutions to confront “potentially ruinous liability” and to settle unmeritorious claims to mitigate the significant costs and risks associated with class-action law suits.¹ The increased cost associated with litigation and the loss of arbitration as a viable alternative dispute resolution mechanism could adversely affect reserves, capital, liquidity, and reputations of banks and thrifts, particularly community and midsize institutions.

While staff have raised these questions, we can only answer them through shared analysis of your agency’s data. We would like to work with you and your staff to address the potential safety and soundness implications of the CFPB’s arbitration proposal. That is why I am requesting the CFPB share its data, which will be given appropriate confidential treatment. I have directed OCC staff to work expeditiously with CFPB staff to examine the data once we receive it and determine if our concerns are allayed by the data or to work with CFPB staff to resolve any safety and soundness concerns that persist.

Finally, I want to commend you and your staff for the work the CFPB has done on this important issue. At the OCC, we share the mission of ensuring that our supervised institutions provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations.

Sincerely,



Keith A. Noreika
Acting Comptroller of the Currency

¹ *Shady Gove orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1465 n.3 (Ginsburg, J., dissenting)(observing that defendants in class actions suits face “pressure . . . to settle even unmeritorious claims” once a class is certified due to the “potentially ruinous liability” of such suits).