



## TILA Prohibition on Mandatory Arbitration Provisions in Mortgage Agreements Takes Effect June 1, 2013

The Consumer Financial Protection Bureau has enacted a new [rule](#) that will prohibit the inclusion of mandatory arbitration provisions and waivers of federal statutory causes of action in consumer mortgage and home equity loan agreements.

The new prohibitions, which go into effect June 1, 2013, implement changes included in Section 1414 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 and amend provisions of the Truth in Lending Act.

The new rule provides:

(h) Prohibition on mandatory arbitration clauses and waivers of certain consumer rights.

(1) Arbitration. A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

(2) No waivers of Federal statutory causes of action. A contract or other agreement relating to a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal

dwelling) may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any Federal law. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

Mortgage providers should determine whether the new rules apply to them and, if so, review existing mortgage forms and loan agreements to determine whether any of these provisions must be removed before the June 1 deadline.

### [Loeb & Loeb LLP's Consumer Financial Protection Bureau Task Force](#)

Our Task Force is composed of experienced litigators and trial attorneys who defend investigations and enforcement actions alleging violations of consumer protection and unfair competition laws, including consumer financial laws. Our goal is to provide clients with efficient, cost-effective representation in complex consumer-related litigation encompassing a diverse range of legal areas. We strive to keep our clients "off the radar" by training them to prepare for and defend claims and investigations before they arise. For those clients who engage us after litigation has already been filed, we focus on the economics of litigation and endeavor to develop defense strategies that maximize business objectives while capturing and implementing the valuable lessons that can be derived from every litigation or investigation. For more information, please [click here](#).

*This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.*

This client alert is a publication of Loeb & Loeb LLP and is intended to provide information on recent legal developments. This client alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

Circular 230 Disclosure: To assure compliance with Treasury Department rules governing tax practice, we inform you that any advice (including in any attachment) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer, and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

© 2013 Loeb & Loeb LLP. All rights reserved.

## *Attorneys*

---

MICHAEL W. JAHNKE	MJAHNKE@LOEB.COM	212.407.4285
LIVIA M. KISER	LKISER@LOEB.COM	312.464.3170
MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2263
MICHAEL A. THURMAN	MTHURMAN@LOEB.COM	310.282.2122

---