

August 4, 2016

Mr. Richard Cordray
Director
Bureau of Consumer Financial Protection
1275 First St. NE
Washington, DC 20002

Re: Docket No. CFPB-2016-0020; RIN 3170-AA51 – Arbitration Agreements

Dear Director Cordray:

On behalf of the National Association of Insurance Commissioners (NAIC)¹, we write today regarding the Bureau of Consumer Financial Protection (Bureau) proposed rule on arbitration agreements. The NAIC respectfully submits the following comments to the Notice of Proposed Rulemaking and Request for Comment published in the May 24, 2016 issue of the Federal Register.

As the regulators of all insurance providers and products in the United States, we appreciate the bureau's acknowledgement that a number of state laws already in place restrict the use of arbitration agreements in insurance products. We believe state law remains the appropriate vehicle for any such restrictions related to the business of insurance.

Policy Loans are the Business of Insurance

Specifically, as the regulators of life insurance providers and products, we are concerned with the proposed rule's application to extensions of credit by providers of whole life insurance policies. The proposal states that the proposed rule will apply to such companies "to the extent that these companies are ECOA creditors and that activity is not the "business of insurance" under the Dodd-Frank section 1002(15)(C)(i) and 1002(3) and arbitration agreements are used for such policy loans."² We appreciate that the Bureau appears to be attempting to separate out the "business of insurance" from the scope of the rule, but as a function of state law and regulation, policy loans are the "business of insurance" and therefore should be fully outside the scope of this proposal.

¹ Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

² Proposed rule at 318.

Policy loans are defined in the NAIC’s Statement of Statutory Accounting Principles 49: “A policy (or contract) loan shall be defined as a loan to a policyholder, under the provisions of an insurance contract that is secured by the cash surrender value or collateral assignment of the related policy or contract. Policy loans shall include: (a) Cash loans, including loans resulting from early payment benefits or accelerated payment benefits, on contracts when the terms of the contract specify that such payments are policy loans secured by the policy; and (b) Automatic premium loans, which are loans made in accordance with policy provisions whereby delinquent premium payments are automatically paid from the cash value at the end of the established grace period for premium payments.”

Policy loans are not consumer loans made in the traditional sense – they are more appropriately understood as advances that are features of the whole life insurance contract. The parameters of the loan are based upon the cash surrender value of the life insurance policy. Without an insurance policy in place, no loan could occur. Without cash surrender value associated with the insurance policy, no loan could occur. In either case, the key to the loan is the existence of the insurance policy with cash surrender value. The policy loan is an explicit mechanism to allow the policyholder to access their cash surrender value while still maintaining the policy in force – the primary purpose of insurance is the benefit, and that is a longer-term provision than any immediate need for cash. Additionally, policy loans have historically not been considered debt because the policy owner is not obligated to repay the loan.

Furthermore, whole life insurance policy providers are not “creditors” under the Equal Credit Opportunity Act.³ They do not regularly extend, renew, or continue credit; nor do they arrange for such transactions. The policyholder taking out a policy loan is not an applicant seeking credit to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment. While there is a general expectation that the policy loan will be repaid, that alone does not make the policy provider a creditor as defined by the ECOA. If a policyholder does not repay the loan, the policy benefits are simply reduced by the outstanding balance of the loan.

The Business of Insurance is Outside the Bureau’s Jurisdiction

Section 1027(f)(2) of the Dodd-Frank Act makes clear that the bureau has no authority to alter, amend, or affect the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by a state insurance regulator, except to the extent such a person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H of the Act. Policy loans are not products for which authorities were transferred to the bureau. Federal restrictions imposed by the bureau on arbitration agreements related to policy loans would affect the authority of the State insurance regulator, and are thus beyond the appropriate jurisdiction of the bureau.

Conclusion

It is our view that policy loans made under whole life insurance contracts are governed by the terms of the contract, which is ultimately the “business of insurance.” We respectfully encourage you to remove extensions of credit by providers of whole life insurance policies from the scope of the rule.

³ 15 U.S.C. 1691 *et seq.*

Sincerely,



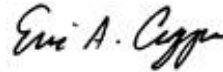
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