



Consumer Federation of America

For Immediate Release:
December 12, 2013

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CFPB Study Finds that the Majority of Balances at Large Institutions are Covered by Pre-dispute, Binding Arbitration Clauses

Consumers Do Not Choose Arbitration Over Class Action When Given a Choice

In its [Arbitration Study Preliminary Results](#) report released today, the Consumer Financial Protection Bureau (CFPB) found that a large number of consumers are subject to arbitration clauses and that in the wake of several supreme court cases, courts regularly enforce pre-dispute arbitration clauses in consumer (and other) contracts that are not subject to negotiation.

Arbitration clauses are clauses in contracts that state that if a dispute arises with the company providing the good or service, that such disputes would not go to a court with a judge, jury and known rules, but instead, would be heard by a private entity selected by the company.

When a consumer purchases a good or service, they generally cannot negotiate the terms of the purchase contract and often must agree to arbitration, waiving their right to sue a company in court, if a dispute arises in the future or else forgo the good or service.

“Mandatory arbitration clauses are hidden in complicated language in many contracts that consumers sign to obtain services or products,” stated Rachel Weintraub, Legislative Director and Senior Counsel at Consumer Federation of America. “These clauses prevent access to the judicial system by forcing people to agree to a private, often secretive, decision making system before a problem has arisen.”

Preliminary Results

The CFPB’s Arbitration Study Preliminary Results report found:

- **Credit Cards:** 50.2% of outstanding credit card loans are subject to mandatory arbitration, with large issuers more likely to include such provisions. This number would be 94% but for a 2009 antitrust class action settlement which required several large banks to remove arbitration clauses for several years.
- **Checking:** Checking accounts representing 44% of insured deposits at 7.7% of banks include arbitration clauses. Like with credit cards, the use of arbitration clauses is concentrated in the largest banks, with the largest 50 banks having 61.5% of insured deposits covered by arbitration clauses.
- **Prepaid Cards:** 81% of the prepaid cards examined contained arbitration clauses, though this was a smaller sample than credit cards or checking accounts.

- **Arbitration Clauses are Complex and Hard to Understand:** Credit card arbitration clauses, the only clauses examined for complexity by CFPB, are almost always more complex and written at a higher grade level than other sections of credit card contracts.
- **Class Actions Barred by Arbitration:** Nine out of ten arbitration clauses prevent consumers from filing a class action lawsuit.
 - **Increasing Limits on Class Actions:** Some contracts with arbitration clauses waive the right of consumers to participate in class actions even for cases **not subject to arbitration.**

“The CFPB’s preliminary findings show how pervasive arbitration clauses are in contracts that consumers must sign to obtain a service or product particularly at large financial institutions,” stated Michael Best, advocate at Consumer Federation of America. “They have become standard provisions in these contracts.”

When Given the Choice Consumers Choose the Legal System over Arbitration

The CFPB looked at a number of credit cards, deposit accounts, or payday loan class actions that originated from a contract that allowed consumers to choose arbitration. Of the 13 million consumer class members, “only a handful” opted to file an arbitration case.

“The CFPB found that ninety percent of the time, arbitration clauses prevent consumers from filing a class action lawsuit,” stated Rachel Weintraub, Legislative Director and Senior Counsel with Consumer Federation of America. “When individual harms are small but the harm impacts many people, class actions are often the only way to hold a company responsible for the harm they caused. The consequence of the vast proliferation of arbitration clauses is that that consumers have no remedy, companies are immune from accountability, and companies have no incentives to end their misconduct or improve their products or services.”

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