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CFPB Study Finds That Arbitration Agreements Limit Relief for Consumers

WASHINGTON, D.C. — Today, the Consumer Financial Protection Bureau released a study indicating that arbitration agreements restrict consumers' relief for disputes with financial service providers by limiting class actions. The report found that, in the consumer finance markets studied, very few consumers individually seek relief through arbitration or the federal courts, while millions of consumers are eligible for relief each year through class action settlements. The Bureau's report also found that more than 75 percent of consumers surveyed did not know whether they were subject to an arbitration clause in their agreements with their financial service providers, and fewer than 7 percent of those covered by arbitration clauses realized that the clauses restricted their ability to sue in court.

"Tens of millions of consumers are covered by arbitration clauses, but few know about them or understand their impact," said CFPB Director Richard Cordray. "Our study found that these arbitration clauses restrict consumer relief in disputes with financial companies by limiting class actions that provide millions of dollars in redress each year. Now that our study has been completed, we will consider what next steps are appropriate."

Arbitration is a way to resolve disputes outside the court system. In recent years, many contracts for consumer financial products and services have included a "pre-dispute arbitration clause" stating that either party can require that disputes that may arise about that product or service be resolved through arbitration instead of the court system. Where such a clause exists, either side can generally block lawsuits, including class actions, from proceeding in court.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) mandates that the CFPB conduct a study on the use of pre-dispute arbitration clauses in consumer financial markets. The Dodd-Frank Act specifically prohibits the use of arbitration clauses in mortgage contracts. And it gives the Bureau the power to issue regulations on the use of arbitration clauses

in other consumer finance markets if the Bureau finds that doing so is in the public interest and for the protection of consumers, and if findings in such a rule are consistent with the results of the Bureau's study.

The Bureau first launched a [public inquiry](#) on arbitration clauses in April 2012 and released [preliminary research](#) in December 2013. Today's report uses a careful analysis of empirical evidence, including consumer contracts and court data, to understand the resolution of consumer finance disputes – both in arbitration and in the courts. The CFPB studied arbitration clauses in a number of different consumer finance markets including credit cards and checking accounts, which have the largest numbers of consumers. The report results indicate that:

- **Tens of millions of consumers are covered by arbitration clauses:** The CFPB's research indicates that tens of millions of consumers are covered by arbitration clauses in the consumer finance markets studied. For example, in the credit card market, card issuers representing more than half of all credit card debt have arbitration clauses – impacting as many as 80 million consumers. In the checking account market, banks representing 44 percent of insured deposits have arbitration clauses.
- **Consumers filed roughly 600 arbitration cases and 1,200 individual federal lawsuits per year on average in the markets studied:** The CFPB's review of case data from the leading arbitration administrator indicates that between 2010 and 2012, across six different consumer finance markets, 1,847 arbitration disputes were filed. More than 20 percent of these cases may have been filed by companies, rather than consumers. In the 1,060 cases that were filed in 2010 and 2011, arbitrators awarded consumers a combined total of less than \$175,000 in damages and less than \$190,000 in debt forbearance. Arbitrators also ordered consumers to pay \$2.8 million to companies, predominantly for debts that were disputed. Between 2010 and 2012, consumers filed 3,462 individual lawsuits in federal court about consumer finance disputes in five of these markets. The Bureau analyzed all individual cases filed in four of these markets and a random sample of the credit card cases and found that of the relatively few cases that were decided by a judge, consumers were awarded just under \$1 million.

- **Roughly 32 million consumers on average are eligible for relief through consumer finance class action settlements each year:** Bureau research found that millions of consumers are eligible for financial redress through class action settlements. Across substantially all consumer finance markets, at least 160 million class members were eligible for relief over the five-year period studied. The settlements totaled \$2.7 billion in cash, in-kind relief, and attorney's fees and expenses – with roughly 18 percent of that going to expenses and attorneys' fees. Further, these figures do not include the potential value to consumers of class action settlements requiring companies to change their behavior. Based on available data, the Bureau estimates that the cash payments to class members alone were at least \$1.1 billion and cover at least 34 million consumers.
- **Arbitration clauses can act as a barrier to class actions:** By design, arbitration clauses can be used to block class actions in court. The CFPB found that it is rare for a company to try to force an individual lawsuit into arbitration but common for arbitration clauses to be invoked to block class actions. For example, in cases where credit card issuers with an arbitration clause were sued in a class action, companies invoked the arbitration clause to block class actions 65 percent of the time.
- **No evidence of arbitration clauses leading to lower prices for consumers:** The CFPB looked at whether companies that include arbitration clauses in their contracts offer lower prices because they are not subject to class action lawsuits. The CFPB analyzed changes in the total cost of credit paid by consumers of some credit card companies that eliminated their arbitration clauses and of other companies that made no change in their use of arbitration provisions. The CFPB found no statistically significant evidence that the companies that eliminated their arbitration clauses increased their prices or reduced access to credit relative to those that made no change in their use of arbitration clauses.
- **Three out of four consumers surveyed did not know if they were subject to an arbitration clause:** The CFPB surveyed credit card consumers to analyze the extent to which they were aware of, and understood the implications of, arbitration agreements. Among those who said they understood what arbitration is, over three quarters acknowledged they did not know whether their credit card agreement

contained an arbitration clause. Of those who thought they did know, more than half were incorrect about whether their agreement actually contained an arbitration clause. Among consumers whose contract included an arbitration clause, fewer than 7 percent recognized that they could not sue their credit card issuer in court.

The Bureau looked at nearly 850 consumer-finance agreements to examine the prevalence of arbitration clauses and their terms. The CFPB also reviewed more than 1,800 consumer finance arbitration disputes filed over a period of three years and more than 3,400 individual federal court lawsuits. The Bureau also looked at 42,000 credit card cases filed in selected small claims court in 2012.

The Bureau supplemented this research by assembling and analyzing a set of roughly 420 consumer financial class action settlements in federal courts over a period of five years and over 1,100 state and federal public enforcement actions in the consumer finance area. The CFPB also conducted a national survey of 1,000 consumers with credit cards concerning their knowledge and understanding of arbitration and other dispute resolution mechanisms.

A fact sheet on the report is available

at:http://files.consumerfinance.gov/f/201503_cfpb_factsheet_arbitration-study.pdf

The complete report on arbitration will be available on March 10, 2015 at 8 a.m. at: <http://www.consumerfinance.gov/reports/arbitration-study-report-to-congress-2015/>

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.