Consumer Federation of America

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CFPB Study Finds that Pre-dispute, Forced Arbitration Agreements in Financial Services Contracts Harm Consumers
Tens of Millions of Consumers Unwittingly Affected by Forced Arbitration Agreements; CFPB should Prohibit these Clauses in Financial Services Contracts

(March 10, 2015)—In its Arbitration Study released today, the Consumer Financial Protection Bureau (CFPB) found that across substantially all consumer finance markets, pre-dispute forced arbitration clauses are extremely prevalent and detrimental to consumers' ability to seek legal relief when they are wronged. Moreover, the vast majority of consumers are not aware that these clauses exist and do not fully understand how these clauses can be used to deny their access to court.

Forced arbitration clauses are included in contracts for a good or service and direct any dispute that arises with the company providing the good or service, to proceed not to a court with a judge, jury and known rules, but instead, to be heard by a private entity selected by the company. When consumers purchase goods or services, they generally cannot negotiate the terms of the purchase contract and often must agree to forced arbitration, waiving their right to sue a company in court, if a dispute arises in the future or else forgo the good or service. Arbitration clauses often include class action bans, which prohibit consumers from joining together to litigate claims involving common legal and factual issues.

"Forced arbitration clauses are hidden in complicated language in many contracts that consumers sign to obtain services or products," stated Rachel Weintraub, Legislative Director and General 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."

The CFPB's Arbitration Study, required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, § 1028(a) – the most comprehensive empirical study of consumer financial arbitration conducted to date – found:

- **Arbitration agreements affect tens of millions of consumers.** For example, in the credit card market, credit card issuers representing more than 50 percent of credit card debt have arbitration clauses. Similarly, in the checking account market, banks representing 44 percent of insured deposits have arbitration clauses. Given the size of these markets, the CFPB concluded that tens of millions of consumers are covered by one or more such arbitration clauses. For credit card accounts alone, the number could be as high as 80 million consumers.

- **Consumers don't often bring claims against companies on their own.** The CFPB's analysis shows that from 2010 to 2012, consumers filed an average of just over 1,150 consumer financial cases relating to five product markets in federal court each year. Further, while most arbitration clauses that the CFPB reviewed contained small claims court carve-outs, consumers rarely file cases in small claims court against companies. For example, in 2012, consumers in jurisdictions with a combined total population of around 85 million filed fewer than 870 small claims court credit card claims. The CFPB also surveyed consumers and, when asked what they would do if they were charged a fee by their credit card issuers that they knew to be wrong and they had already exhausted all possible efforts to obtain relief from the company, only 2 percent of consumers said they would consider bringing formal legal proceedings or would consult a lawyer.
- **When consumers do bring claims against companies, they are much more likely to do so in court instead of through arbitration.** The CFPB's analysis shows that from 2010 to 2012, consumers filed roughly 600 arbitration cases per year on average in the markets studied.
- **Consumer finance class actions allow consumers an effective mechanism to collectively seek economic reimbursement when they are harmed by companies, and to remediate business practices.** According to the CFPB's research, roughly 32 million consumers on average are eligible for relief through consumer finance class action settlements each year. In the class settlements the CFPB reviewed, the annual average of the aggregate amount of the settlements was around $540 million per year.
- **Arbitration clauses can act as a barrier to class actions.** The CFPB found that it is 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.
- **Consumers don't know they are bound by arbitration clauses and don't fully understand how these clauses can limit their rights.** In surveying credit card consumers, the CFPB found that 75 percent of respondents did not know if they were subject to 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.

"Forced arbitration is often justified on the premise that it is beneficial for everyone, but the results of this study show that it is not beneficial for consumers," said CFA Financial Services Counsel Micah Hauptman. "Forced arbitration cannot persist if it is used by financial services firms to prevent consumers from vindicating their legal rights, and to insulate themselves from being held accountable for their actions."

The Dodd-Frank Act gives the Bureau the authority 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 has compellingly shown why restricting forced arbitration in consumer financial contracts would be in the public interest and necessary for the protection of consumers," stated Weintraub. "We urge the Bureau to begin rulemaking as soon as possible."

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The Consumer Federation of America is an association of more than 250 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.
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