

Correcting the record

Consumers fare better under class actions than arbitration

Fact Sheet • By Heidi Shierholz • August 1, 2017

The new arbitration **rule** from Consumer Financial Protection Bureau (CFPB) restores consumers' ability to join together in class action lawsuits against financial institutions. Based on five years of careful study, the July 2017 final rule stems from a congressional directive instructing the agency to study forced arbitration and restrict or ban the practice if it harms consumers. Many financial institutions use forced arbitration clauses in their contracts to block consumers with disputes from banding together in court, instead requiring each consumer to argue their case separately in private arbitration proceedings.

In recent weeks, members of Congress **have introduced legislation** to repeal the CFPB rule and take away consumers' newly restored right to band together in court. Opponents of the rule **have suggested** that the bureau's own findings show consumers on average receive greater relief in arbitration (\$5,389) than class action lawsuits (\$32). This is enormously misleading.

While the average consumer who *wins* a claim in arbitration recovers \$5,389, this is *not even close* to a typical consumer outcome. Why? Consumers obtain relief regarding their claims in only 9 percent of disputes. On the other hand, when *companies* make claims or counterclaims, arbitrators grant them relief 93 percent of the time—meaning they order the consumer to pay. If you consider both sides of this equation, *in arbitration, the average consumer is ordered to pay \$7,725 to the bank or lender*. That's right: the average consumer ends up *paying* financial institutions in arbitration.

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But let's consider the consumers who do win in arbitration. How do those numbers stack up against class action lawsuits? In an average year:

- *At least* 6,800,000 consumers get cash relief in class actions—compared with just 16 consumers who receive cash relief in arbitration, according to **available data**.
- Consumers recover *at least* \$440,000,000 in class actions, *after* deducting all attorneys' fees and

court costs—compared with a *total* of \$86,216 in arbitration.

Banning consumer class actions lets financial institutions keep *hundreds of millions of dollars* that would otherwise go back to harmed consumers every year.

The financial industry often claims that arbitration is cheaper and faster for consumers. How do these claims stand up to the data?

- Consumers pay an average cost of \$161 to file a claim in arbitration. Consumers generally don't pay anything to join a class action.
- Consumers typically wait 150 days for a decision in arbitration, compared with a typical wait of around 215 days for a conclusion in most class actions.

Arbitration is certainly *not* cheaper—especially considering the average consumer pays a bank or lender \$7,725 in the end—and only a couple months faster.

Finally, opponents of the rule argue that allowing consumers to join together in court will increase consumer costs and decrease available credit. This claim is *contradicted by real-life experience*. Consumers saw *no increase* in price after Bank of America, JPMorgan Chase, Capital One, and HSBC dropped their arbitration clauses as a result of court-approved settlements, and mortgage rates *did not increase* after Congress banned forced arbitration in the mortgage market.

The numbers are clear: class actions *return hundreds of millions* to consumers, while forced arbitration *only* pays off for banks and lenders.

Sources: Consumer Financial Protection Bureau, “[New Protections against Mandatory Arbitration](#),” web page accessed July 31, 2017; Sylvan Lane, “[GOP Lawmakers Introduce Measures to Repeal Consumer Bureau Arbitration Rule](#),” The Hill, July 20, 2017; U.S. Senate Committee on Banking, Housing, and Urban Affairs, “[Senators File Resolution Disapproving of CFPB Arbitration Rule](#)” (press release), July 20, 2017; Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress, pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act § 1028(a)*, 2015; Adam J. Levitin, “[Mandatory Arbitration Offers Bargain-Basement Justice](#),” *American Banker BankThink* (blog), May 13, 2014.

Unless otherwise hyperlinked, the data in this fact sheet are EPI computations of data from Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress, pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act § 1028(a)*, 2015