

Credit Arbitration Clauses Favor Banking Corporations

Although arbitration is often associated with labor unions, millions of consumers are also affected by it and don't even know it. Often consumers find the extremely small print of credit agreements difficult to read. Others become bewildered by the legal jargon embedded in these clauses.

In either case, consumers should take note. The adage, 'the devil is in the details' still holds true.

A new report released by the Consumer Financial



RESPONSIBLE LENDING

Charlene Crowell

Protection Bureau (CFPB) found that more than three in four consumers surveyed did not know whether they were subject to a credit arbitration clause. Checking accounts, credit cards, mobile wireless providers,

payday loans and prepaid cards were the six financial areas that CFPB analyzed.

Even worse, CFPB determined that despite arbitration clauses dominant presence in consumer credit agreements, the clauses work more in favor of corporations than consumers. All too often, credit terms are seldom negotiable. Only in a few instances are consumers given a one-time chance to opt out of these

terms. Additionally, when disputes arise, consumers seldom choose the arbitrator and creditors typically pay for arbitration services.

As consumers accept credit terms, they often forfeit their rights to legal action as an individual or as part of a class action. In short, from a consumer perspective the choice becomes 'take it or leave it'.

"Tens of millions of consumers are covered by arbitration clauses, but few know about them or understand their impact," said

Richard Cordray, CFPB Director. "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."

In reaction to CFPB's new report, business lobbyists and organizations spoke up on how arbitration remains a cost-saving tool and as a result, helps to preserve affordability in financial services.

Yet many consumer advocates held a near-opposite view.

"Forced arbitration isn't an alternative forum for resolving disputes; it's a get-out-of-jail-free card for corporations," said Ellen

stores, CFPB obtained data on more than 99 percent of store locations.

The remaining credit areas studied still made significant use of arbitration agreements: mobile wireless (88 percent), private student loans (86 percent), credit cards (53 percent) and checking accounts (44 percent).

Other CFPB findings include:

- Over the five years studied, 1,847 arbitration disputes were filed but the total amount of relief and debt forbearance that consumers received was less than \$400,000;
- Corporations obtained decisions that required consumers to pay \$2.8 million, largely for disput-

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Taverna, legislative director of the National Association of Consumer Advocates.

"The findings of the CFPB study are crystal clear," said David Seligman, an attorney with the National Consumer Law Center. "These clauses are written by corporations to set up a secret and lawless process that prevents consumers from holding corporations accountable for unlawful conduct."

Over a five-year period, CFPB analyzed evidence from consumer contracts, court data, surveys and more to determine whether arbitration clauses offered a fair and transparent resolution of consumer complaints in six consumer financial markets. The findings were as eye-opening as they were broad in impact.

Payday loans and prepaid cards were found to have the highest usage of arbitration clauses, at 99 and 92 percent, respectively. It should be noted that in California and in Texas, two states with some of the highest numbers of payday

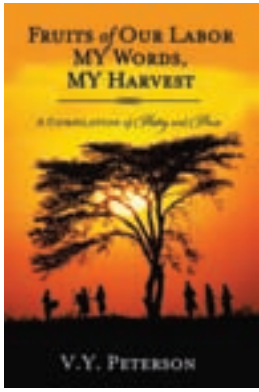
ed debts during the same period;

- Nearly 34 million consumers could have been eligible for at least \$1.1 billion in cash payments; and
- At the same time, among those not affected by forced arbitration clauses, at least 160 million class action members, were eligible for \$2.7 billion in cash, in-kind relief, expenses and fees through federal legal proceedings.

"Companies claim that arbitration is simpler, easier, and cheaper – but they fail to mention that forced arbitration rarely provides the impartiality or meaningful review that a consumer can get in a court of law," says Mitria Wilson, a vice-president with the Center for Responsible Lending.

"This report is an important one – and we hope it serves as a precursor to a strong and robust rule prohibiting this practice," concluded Wilson.

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