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VIEWPOINT

How a hidden clause helps banks and others rip you off

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After he was called up to serve in Afghanistan in 2007, Captain Matthew Wolf, a member of the Army Reserve, tried to end his car lease using rights granted by the Servicemembers Civil ReliefAct. His car dealer refused, so he tried to get a court to refund the $400 he had paid in advance toward the lease.

The courts wouldn't intervene because he had signed a lease contract containing a forced arbitration clause. When he tried to get his money back by using arbitration, he was told he could end up paying as much as $8,200 in fees. Captain Wolf had a legitimate claim, but the forced arbitration clause gave him no real way to vindicate his rights.

Like Captain Wolf, millions of unsuspecting Americans have been strong-armed into giving up their rights to hold corporations accountable and seek justice. In order to get a credit card, open a bank account, or to obtain a home, car, or student loan, most consumers agree to forced arbitration. At least 53 percent of regular credit card contracts contain these clauses, and financial services companies include them at even higher rates in products targeted to vulnerable populations like low-income families and students.

In the Dodd-Frank financial reform law, passed in the wake of the Wall Street debacle that crashed our economy, Congress ordered the newly created Consumer Financial Protection Bureau (CFPB) to study the impact of forced arbitration on consumers and to regulate these clauses.

Because the agency's study found that consumers are regularly harmed by these clauses, it has a legal obligation to develop safeguards to protect people. The agency announced its proposed rule on May 5 and took crucial steps in this direction, but the CFPB can and should go further.

The CFPB's proposed rule bans arbitration language that blocks class action lawsuits, but it doesn't restore individual rights to hold big banks and credit card companies accountable in court. And the proposed rule does not forbid companies from hiding forced arbitration clauses in the mountains of fine print in financial contracts, fails to eliminate exorbitant arbitration fees, does not ensure that arbitration hearings aren't held in locations far from where consumers live, and does not prohibit corporations from choosing biased arbitrators.

Our review of the CFPB study for the Center for Progressive Reform (CPR) finds evidence justifying the regulation of the abuses just mentioned. For example, less than 14 percent of consumers who challenge disputed debt prevail in forced arbitration.

The financial industry objects to CFPB regulation, but opponents have presented no persuasive evidence that forced arbitration clauses reduce consumer costs, expand access to credit, or benefit consumers in other significant ways. In fact, when several big banks phased out forced arbitration for many of their products, consumer prices did not increase.

The theory of contract law assumes two fully informed parties have to voluntarily agree to a contract. This is not true in the case of forced arbitration clauses. This is why Congress ordered the CFPB to regulate the powerful financial institutions with which we must deal. The agency's proposed regulation to restore consumers' rights to bring class actions is a first step. We hope the CFPB will not end its work there and will move to effectively protect American consumers by regulating all forms of forced arbitration.

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