



Treasury Report on CFPB Arbitration Rule Echoes AAF Research

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Earlier this week, the Department of the Treasury (Treasury) released a report on the recent arbitration rule from the Consumer Financial Protection Bureau (CFPB) which would result in consumers being forced into class action lawsuits when they have a grievance with a financial company with which they interact. Research from the American Action Forum (AAF) found the rule would increase annual costs by over \$17,000 per firm for the over 50,000 firms affected by the rule. Further, the rule would mean exceptionally longer average trial times for consumers (25.9 months versus 6.3 months) and exponentially smaller average financial recoveries (\$5,389 versus \$32). The report from Treasury echoes those findings and highlights the extraordinary costs the rule would levy on consumers.

Treasury's report contains seven main conclusions regarding the rule:

1. Even based on CFPB's own estimates, the rule would be extremely costly for affected firms, with many of those costs being passed on to their consumers. Specifically, the rule would result in over 3,000 additional class action lawsuits over the next five years, causing affected firms to spend more than \$500 million in additional legal fees, \$330 million in payments to plaintiffs' attorneys, and \$1.7 billion in additional legal settlements.
2. A majority of consumer class action suits result in no relief for the plaintiff consumers. CFPB itself admits that only 13 percent of consumer class action suits result in monetary relief for the entire class, which means that 87 percent of cases result in no monetary relief for the class or only monetary relief for the named plaintiffs. CFPB estimates that of the 3,000 additional class actions caused by the rule, only approximately 600 would result in monetary recovery for the class.
3. In the rare instance when a class action suit results in a class wide recovery, only 4 percent of consumer plaintiffs who are entitled to a portion of the settlement actually claim their settlement funds. As Treasury notes, this shows the consumers do not value class actions as highly as CFPB reports that they do. Considering that, as stated above, the average recovery is \$32, this should not come as a surprise.
4. The biggest beneficiaries of the rule are plaintiffs' trial attorneys. As AAF research has shown, in the average class action lawsuit, plaintiffs' attorneys collect over \$1 million, while their clients only receive an average of \$32. As the CFPB reports, the rule would result in an additional \$330 million over the next five years going to the trial attorneys.
5. CFPB did not adequately assess whether additional and improved disclosures regarding arbitration would benefit consumers more than its regulatory ban, which moves complaints to class actions. As Treasury suggests, "If the Bureau is concerned that consumers are unaware of arbitration clauses, more prominent disclosure of such clauses would be a lower cost, choice-preserving means to advance consumer protection."

6. CFPB did not adequately consider the number of class action lawsuits that are without merit and that are unable to even certify as a class. Based on CFPB's own database of consumer complaints, as AAF research found, 90 percent of claims consumers may bring would not be able to certify as a class because of their highly individualized nature.

7. Last, Treasury found that the CFPB "offered no foundation for its assumption that the Rule will improve compliance with federal consumer financial laws." Specifically, Treasury points out that even after years of studying the issue, CFPB found no evidence showing that financial firms that do not use arbitration clauses treat their customers any differently or have any higher level of compliance with consumer financial laws. That lack of evidence means that CFPB cannot claim with any credibility that the arbitration rule would increase compliance.

The data now seems clearer than ever: the CFPB's arbitration rule helps nobody but the trial lawyers. Luckily, the rule is still within the window of time when Congress can repeal it through the Congressional Review Act (CRA). However, that window is rapidly closing. Congress should move with haste to have a CRA vote on the arbitration rule to prevent huge consumer-funded subsidies for the trial lawyers.