



Consumers Want the Right to Resolve Bank Disputes in Court

An update to the arbitration findings in 2015 *Checks and Balances*

The Pew Charitable Trusts

Susan K. Urahn, *executive vice president*

Travis Plunkett, *senior director*

Team members

Nick Bourke, *director*

Joy Hackenbracht, *research officer*

Thaddeus King, *officer*

Andrew Scott, *senior associate*

Rachel Siegel, *senior associate*

External reviewers

The chartbook benefited from the insights and expertise of external reviewers Brian Fitzpatrick, professor of law, Vanderbilt University Law School, and Fred Gaudios, research director, Zeldis Research Associates. Although they reviewed the chartbook, neither they nor their organizations necessarily endorse its findings or conclusions.

Acknowledgments

The project team thanks Steven Abbott, Sultana Ali, Erika Compart, Jennifer V. Doctors, Carol Hutchinson, David Merchant, Mark Wolff, and Clifford Zukin for providing valuable feedback on the report, and Dan Benderly, Molly Mathews, and Kodi Seaton for design and web support. Many thanks to former director Susan Weinstock as well as other current and former colleagues who made this work possible.

Overview

Checking accounts are among the most widely used financial tools in the United States, and disputes can arise between consumers and their banks over fees and other policies. Customers wishing to pursue legal remedies often find that their options are limited, however; previous research from The Pew Charitable Trusts shows that many account agreements restrict the legal recourse available to consumers who have disputes with their banks.¹

Each year since 2013, Pew has evaluated the dispute resolution policies and practices disclosed by the 50 largest retail banks in the U.S., which represent two-thirds of deposits nationwide.² The latest review finds that almost three-quarters of the banks' account agreements include clauses that mandate pre-dispute arbitration—a private process involving a third-party decision-maker whose decision is largely binding, giving the consumer limited opportunity to appeal—and prohibit consumers from seeking remedy in a court of law. Nearly three-quarters of the banks studied prohibit class-action lawsuits, which allow consumers to join together to bring a case that might be inefficient or impractical for them to bring individually. Ninety-one percent of the banks also bar consumers from having their disputes heard by a jury rather than a judge. Overall, more than 90 percent of these banks include at least one provision restricting consumers' dispute resolution options.

Results from Pew's November 2015 nationally representative survey of more than 1,000 individuals show that, overwhelmingly, consumers across generations, genders, and the political spectrum want access to the legal system and believe that banks should not be allowed to deny it. Pew's study, and similar research from the Consumer Financial Protection Bureau (CFPB)

on credit cards, indicates that although cost and time constraints would preclude most consumers from taking independent legal action if an issue arose, they want the right to pursue a class-action lawsuit.³ Such actions can hold companies accountable when consumers are unable to do so independently.

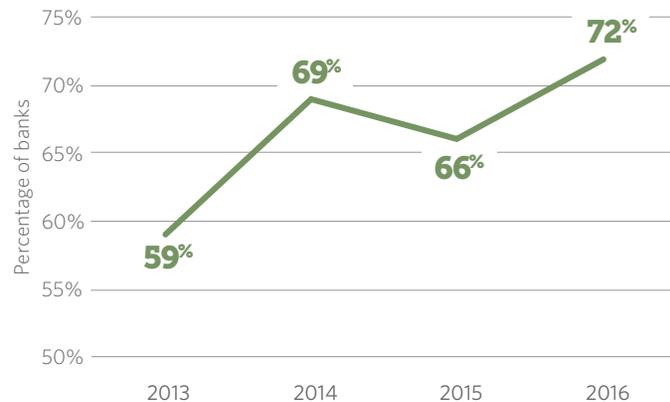
The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the CFPB to limit or ban provisions in account agreements that restrict access to class-action litigation, and the bureau proposed rules in May 2016 that would bar financial institutions from denying customers this access.⁴

Pew's research clearly demonstrates this divide between bank policies and customer preferences on dispute resolution limitations. The public wants access to the justice system, including the right to join and pursue a class action, while banks continue to restrict such access. Pew urges the CFPB to expeditiously finalize rules that give consumers the ability to choose how they pursue a dispute, rather than allowing financial institutions to limit their options.

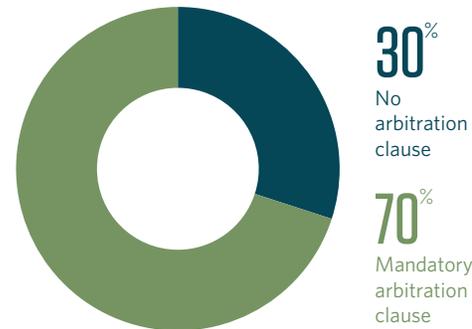
Figure 1

Banks' Use of Mandatory Arbitration Clauses to Restrict Consumer Options Has Risen

4-year trend among the 29 banks studied since 2013



Among the 44 banks studied in 2016



The largest banks are increasingly limiting consumers' access to legal action. Over the past four years, banks' use of mandatory binding arbitration clauses has expanded. Among the banks common to Pew's four annual studies, the percentage of institutions with an arbitration clause has risen from 59 to 72 percent. Among the 44 banks that were studied in 2016, almost three-quarters have an arbitration clause.

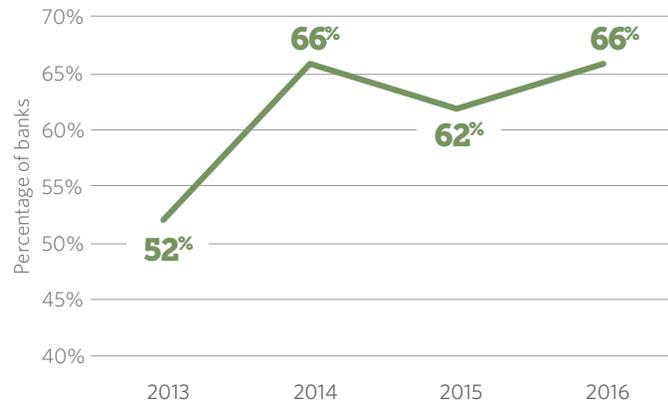
Notes: From 2013 to 2016, Pew studied account disclosures from the 50 largest banks that offer consumer checking accounts; for this analysis, 44 of the banks made their documents available. Twenty-nine banks were common to all four studies, and the line chart shows the trend of those banks. The doughnut chart shows the ratio of the 44 banks in the 2016 study. In previous studies, trends were reported based on banks that did not require arbitration; for this year's analysis, trends are reported based on those that do. These differences indicate trends but do not imply statistical significance.

© 2016 The Pew Charitable Trusts

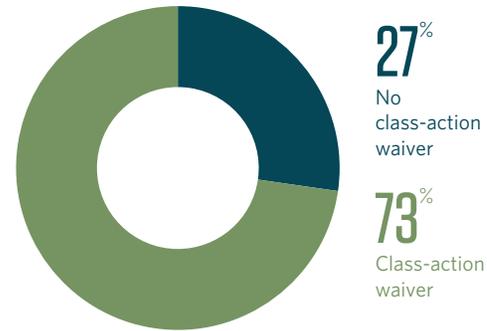
Figure 2

More Banks Are Restricting Participation in Class-Action Lawsuits

4-year trend among the 29 banks studied since 2013



Among the 44 banks studied in 2016



Among the 29 banks common to all of Pew's studies, the percentage of banks with class-action waivers has risen from 52 percent to 66 percent since 2013, and nearly three-quarters (73 percent) of the 44 banks studied in 2016 have such language in their account agreements. Notably, banks in this study with mandatory binding arbitration clauses are more likely than banks without them to limit class actions.⁵

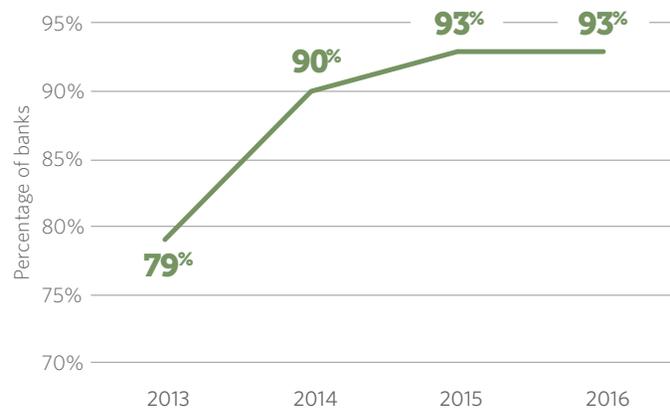
Notes: From 2013 to 2016, Pew studied account disclosures from the 50 largest banks that offer consumer checking accounts; for this analysis, 44 of the banks made their documents available. Twenty-nine banks were common to all four studies, and the line chart shows the trend of those banks. The doughnut chart shows the ratio of the 44 banks in the 2016 study. In previous studies, trends were reported based on banks that did not require arbitration; for this year's analysis, trends are reported based on those that do. These differences indicate trends but do not imply statistical significance.

© 2016 The Pew Charitable Trusts

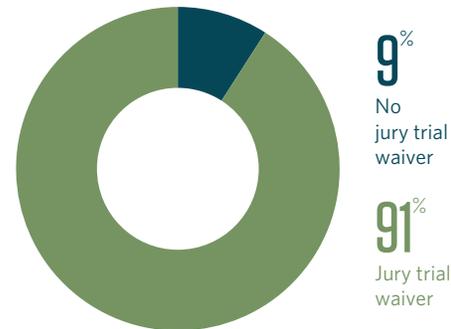
Figure 3

More Banks Are Including Jury Trial Waivers in Checking Account Agreements

4-year trend among the 29 banks studied since 2013



Among the 44 banks studied in 2016



By definition, if a bank has a mandatory binding arbitration clause, customers must waive their right to a jury trial, but some banks without arbitration clauses still require customers to waive their right to a jury trial in favor of one heard by a judge. The percentage of banks with a jury trial waiver among the 29 banks common to Pew's studies has risen from 79 percent to 93 percent since 2013. Almost all (91 percent) of the 44 banks studied in 2016 have jury trial waivers in their account agreements.

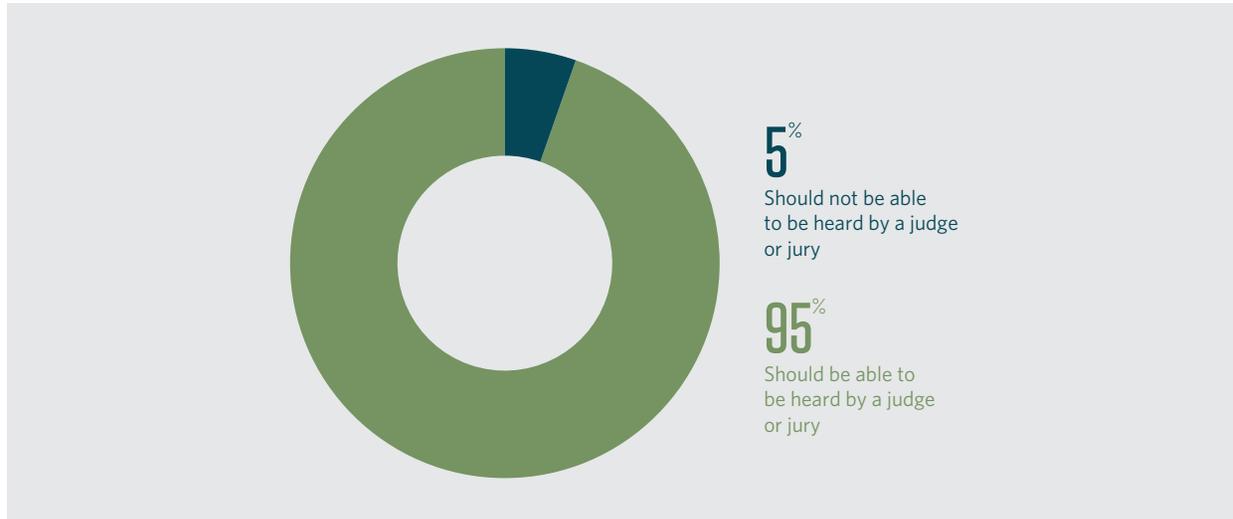
Notes: From 2013 to 2016, Pew studied account disclosures from the 50 largest banks that offer consumer checking accounts; for this analysis, 44 of the banks made their documents available. Twenty-nine banks were common to all four studies, and the line chart shows the trend of those banks. The doughnut chart shows the ratio of the 44 banks in the 2016 study. In previous studies, trends were reported based on banks that did not require arbitration; for this year's analysis, trends are reported based on those that do. These differences indicate trends but do not imply statistical significance.

© 2016 The Pew Charitable Trusts

Figure 4

Most Consumers Want the Right to Bring Bank Disputes to a Judge or Jury

Percentage of respondents



Ninety-five percent of consumers want to be able to have a dispute with their banks heard in court.

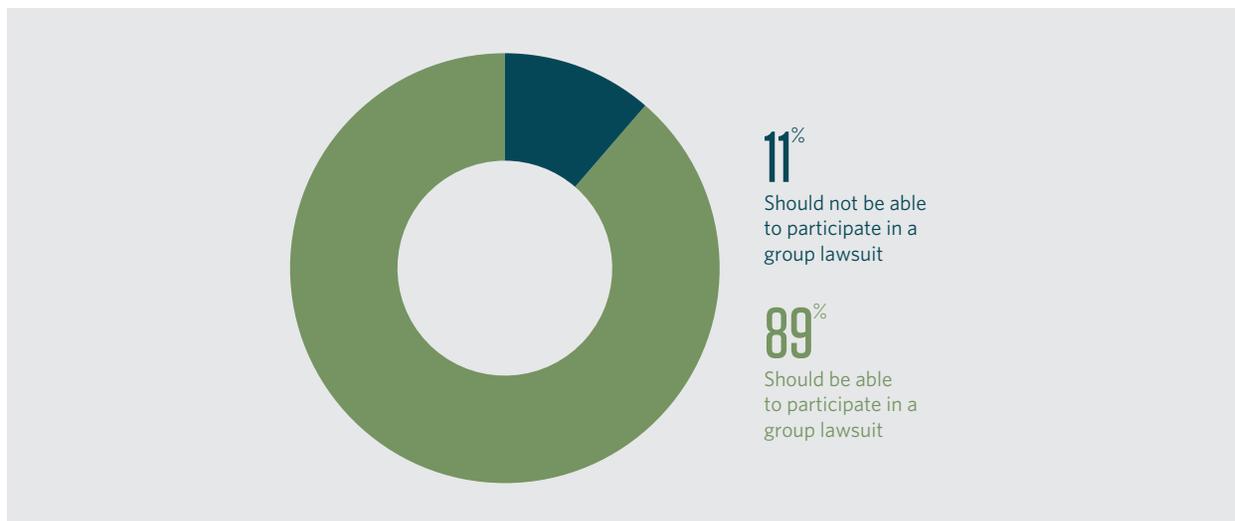
Notes: Results are based on 1,008 survey participants. Respondents were told: "I am going to describe a situation to you, and then ask how you would respond. Imagine that you looked at your bank account statement and noticed that your bank had been charging you a fee for a service that you are sure you did not sign up for. They may have been charging you this fee for a while now. You called the customer service line, but the bank refused to do anything about the fees." They were then told: "I'm going to read you a list of legal options for what to do next in this situation. For each, just tell me if you should or should not be allowed to do each of the following."

© 2016 The Pew Charitable Trusts

Figure 5

Almost 90% of Consumers Want the Right to Participate in Class-Action Lawsuits Against Their Banks

Percentage of respondents



Almost 9 in 10 consumers want to be able to participate in a group lawsuit. Class-action lawsuits enable customers to join together to try to hold financial institutions accountable for injuries that may be small individually but amount to significant harm in the aggregate. The waivers deny consumers access to these remedies, leaving many with limited recourse to address low-dollar but systemic issues.

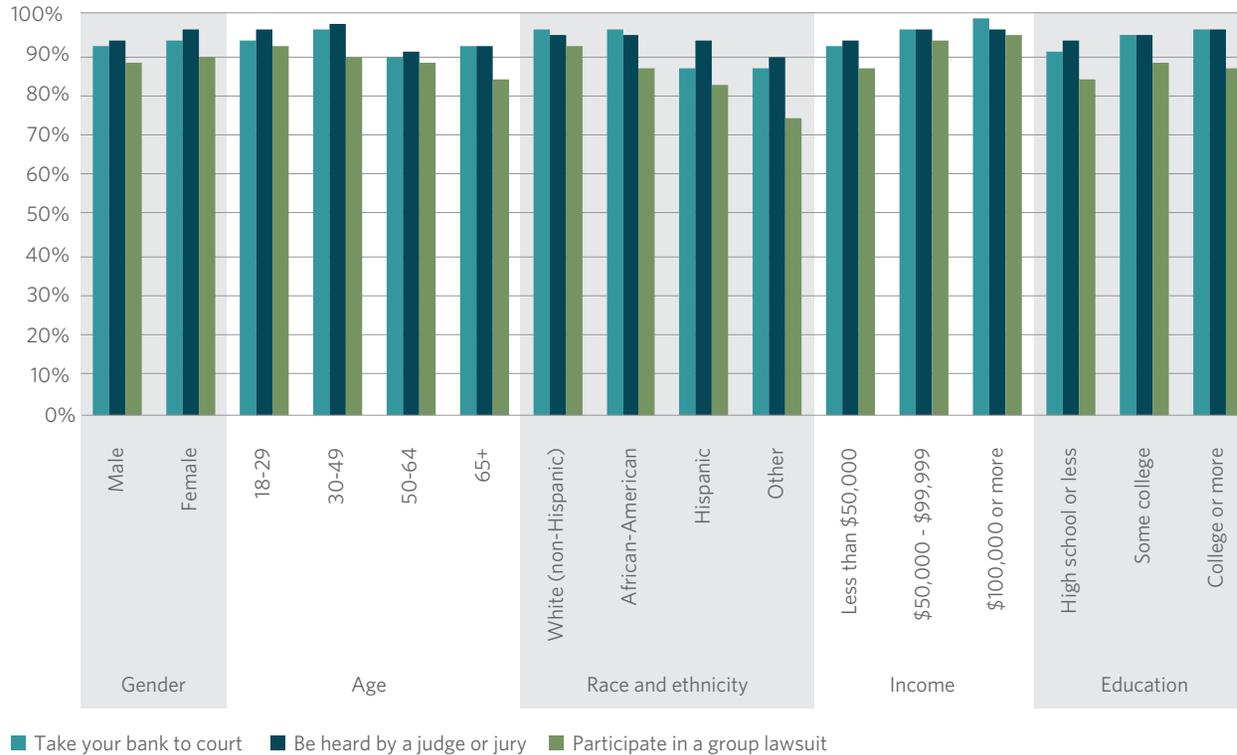
Notes: Results are based on 1,008 survey participants. Respondents were told: "I am going to describe a situation to you, and then ask how you would respond. Imagine that you looked at your bank account statement and noticed that your bank had been charging you a fee for a service that you are sure you did not sign up for. They may have been charging you this fee for a while now. You called the customer service line, but the bank refused to do anything about the fees." They were then told: "I'm going to read you a list of legal options for what to do next in this situation. For each, just tell me if you should or should not be allowed to do each of the following."

© 2016 The Pew Charitable Trusts

Figure 6

Diverse Consumers Agree That They Should Have Access to Legal Remedies in a Dispute With Their Banks

Percentage of respondents, by demographic categories



The high level of interest in access to legal options is consistent across demographic groups such as gender, age, race, income, and education.

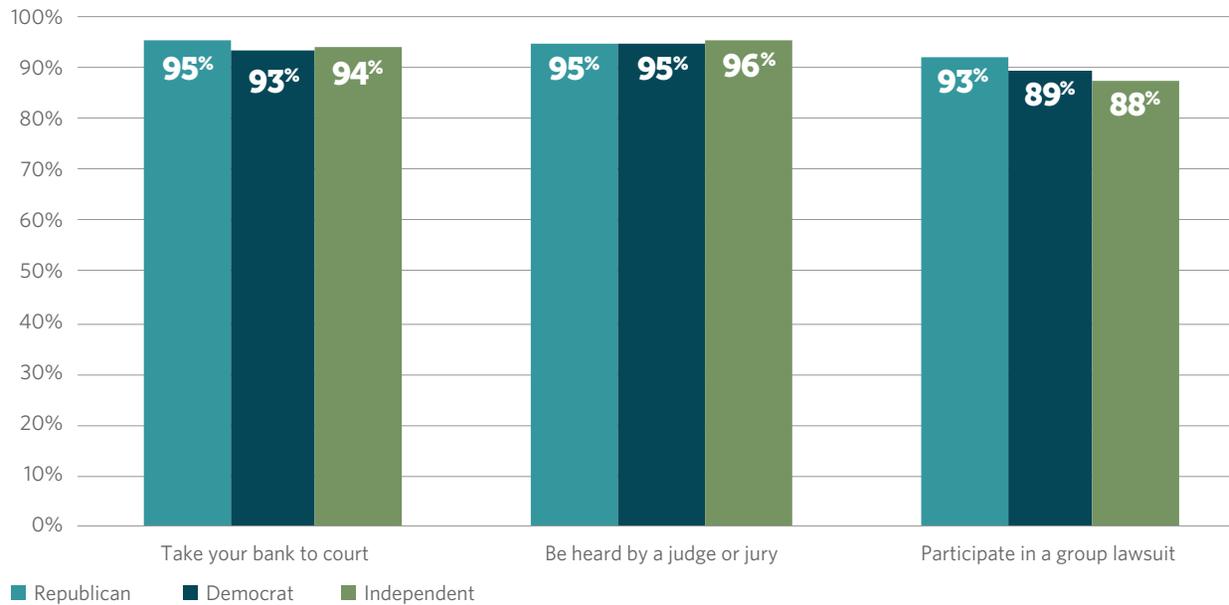
Notes: Results are based on 1,008 survey participants. Respondents were told: "I am going to describe a situation to you, and then ask how you would respond. Imagine that you looked at your bank account statement and noticed that your bank had been charging you a fee for a service that you are sure you did not sign up for. They may have been charging you this fee for a while now. You called the customer service line, but the bank refused to do anything about the fees." They were then told: "I'm going to read you a list of legal options for what to do next in this situation. For each, just tell me if you should or should not be allowed to do each of the following." Income reflects total annual household income.

© 2016 The Pew Charitable Trusts

Figure 7

Consumer Support for Access to Legal Recourse in Bank Dispute Crosses Political Lines

Percentage of respondents, by party affiliation



Consumers from all political persuasions overwhelmingly want access to legal options in dispute resolution with their banks. For instance, 93 percent of Republicans and 89 percent of Democrats want to be able to participate in a class action.

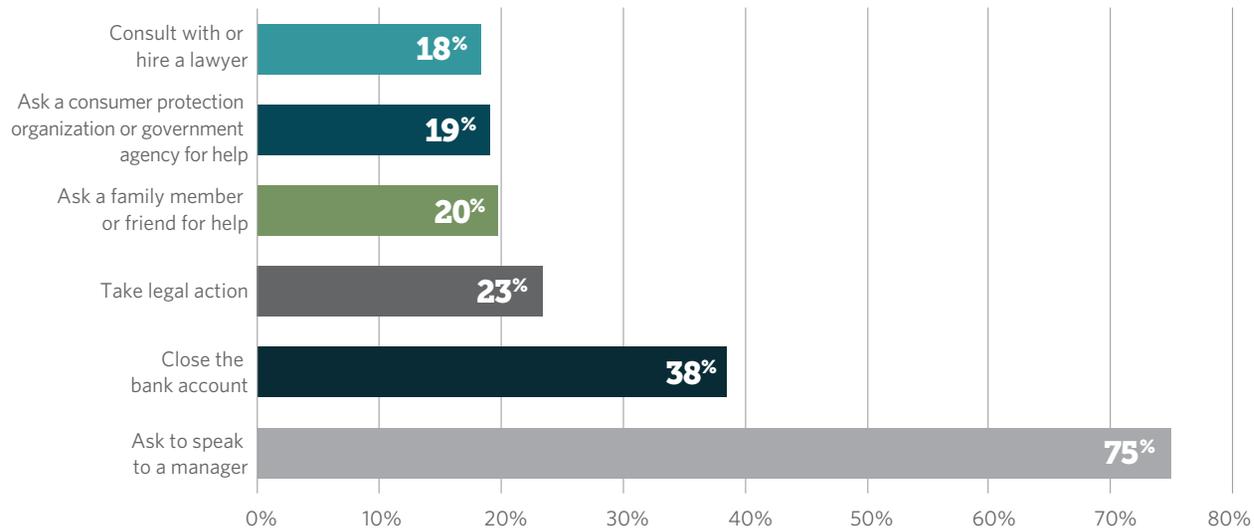
Notes: Results are based on 1,008 survey participants. Respondents were told: "I am going to describe a situation to you, and then ask how you would respond. Imagine that you looked at your bank account statement and noticed that your bank had been charging you a fee for a service that you are sure you did not sign up for. They may have been charging you this fee for a while now. You called the customer service line, but the bank refused to do anything about the fees." They were then told: "I'm going to read you a list of legal options for what to do next in this situation. For each, just tell me if you should or should not be allowed to do each of the following."

© 2016 The Pew Charitable Trusts

Figure 8

Despite Wanting the Option, Most Consumers Say They Would Not Be Likely to Pursue Legal Action Against Their Banks

Percentage of respondents who would take steps, by action type



Notes: Results are based on 1,008 survey participants. Respondents were told: "I am going to describe a situation to you, and then ask how you would respond. Imagine that you looked at your bank account statement and noticed that your bank had been charging you a fee for a service that you are sure you did not sign up for. They may have been charging you this fee for a while now. You called the customer service line, but the bank refused to do anything about the fees." Then they were told: "I'm going to read you a list of options for what to do next in this situation. For each of the options I read, please tell me if this is something you would definitely, maybe, or probably not do." Then they were asked: "How likely are you to take legal action in this situation?" This graph shows the percentage of respondents who answered "Definitely."

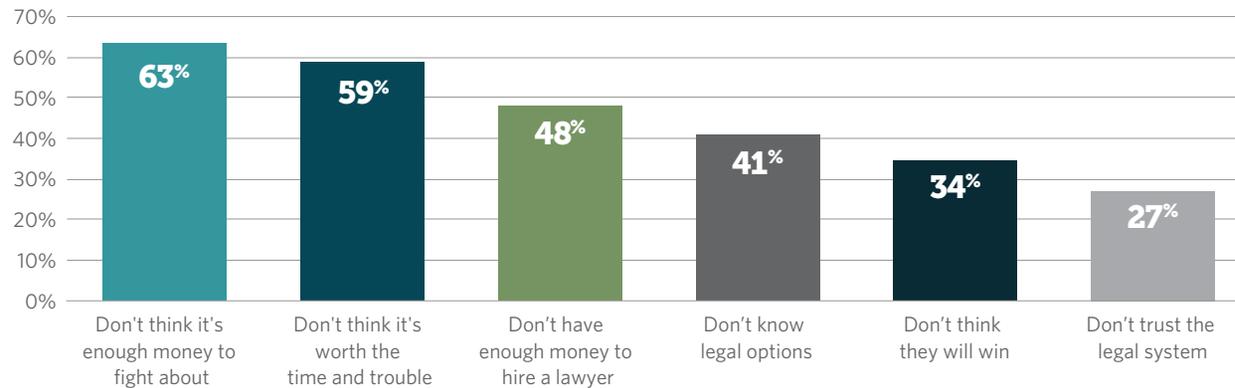
© 2016 The Pew Charitable Trusts

When faced with a hypothetical problem at their bank, most customers are willing to speak to a manager but not to take further action. Only 38 percent of respondents say they would close their account, and less than 20 percent would contact a government agency or seek out legal advice. Even though consumers want to leave their dispute resolution options open, only 23 percent say they would take legal action if a dispute arose.

Figure 9

Money and Time Are the Biggest Barriers to Taking Legal Action Against Banks

Percentage of respondents, by reason cited



Notes: Results are based on 1,008 survey participants. Respondents were told: "I am going to describe a situation to you, and then ask how you would respond. Imagine that you looked at your bank account statement and noticed that your bank had been charging you a fee for a service that you are sure you did not sign up for. They may have been charging you this fee for a while now. You called the customer service line, but the bank refused to do anything about the fees." Then they were told: "I'm going to read you some reasons why people may not take legal action in this situation. For each of the reasons I read, please tell me if this is or is not a reason for you."

© 2016 The Pew Charitable Trusts

Only 23 percent of consumers say that, if faced with an issue at their bank, they would definitely take legal action; when asked why they might not pursue a case, most cite money and time as the leading reasons. Sixty-three percent of consumers say that the amount of money in a dispute over fees charged on their checking accounts is probably not enough to worry about; 59 percent say that it would not be worth their time. Almost half say they don't have the money to hire a lawyer. Notably, only one-third say they don't think they will win, and about a quarter say they don't trust the legal system.

Conclusion

Pew's research shows that, although most consumers say they would not take legal action on their own if they had a dispute with their banks, they believe that banks should not be able to restrict their access to the courts. However, bank arbitration agreements routinely bar customers from bringing independent legal action or participating in class-action lawsuits, which can involve thousands or even millions of claimants and enable them to hold companies accountable for illegal actions that might be individually small but are significant in the aggregate.

On May 5, 2016, the CFPB proposed rules that would prohibit class-action waivers in mandatory arbitration clauses included in checking account agreements and other consumer financial product contracts. The draft regulation is informed by the bureau's March 2015 comprehensive arbitration study, which was required by the Dodd-Frank Act. The CFPB's study and this poll make clear that, in most cases, consumers would not take individual legal actions over a dispute but want the right to join class actions to hold companies accountable.

Consumers should be able to pursue legal action against their banks. Class action, in particular, is a cost-effective dispute resolution option for groups of consumers with small claims. Pew urges the CFPB to move forward expeditiously with these new regulations.

Methodology

Pew studied the disclosures of 44 of the 50 largest banks based on domestic deposit volume as tabulated in June 2015 by the Federal Deposit Insurance Corp. Banks that did not offer checking accounts were excluded, and subsidiaries and affiliated institutions were grouped with their parent or with the largest affiliated bank. Each bank's basic checking account was used for the analysis. The basic account that provided checks and debit cards was defined as the cheapest account available to all consumers—not a specialty account for students, seniors, or the military—and one that was not online only if branch banking was available. When a bank's terms differed by state, Pew examined accounts in the state where the bank held the plurality of its deposits by volume.

From 2015 to 2016, Pew examined the disclosure boxes, fee schedules, and account agreements for each bank. These are the documents that prospective checking account customers rely on when choosing among financial institutions. Using these methods, Pew was able to obtain full documentation for 44 of the 50 largest banks. Banks that provided only some of their disclosures were omitted.

On behalf of The Pew Charitable Trusts, Social Science Research Solutions (SSRS) conducted a nationally representative random-digit-dialing telephone survey of 1,008 adults on their attitudes toward arbitration and dispute resolution alternatives. Interviews were conducted Nov. 24-29, 2015. The margin of sampling error including the design effect is plus or minus 3.8 percentage points. SSRS conducted 504 interviews via cellphone and 38 in Spanish.⁶

Appendix

This chartbook reviews the dispute resolution policies from 44 of the 50 largest U.S. banks that offer checking accounts, as measured by domestic deposit volume and as of June 2015.⁷ Forty-four banks provided information online for their basic checking accounts; six (in blue) did not provide this information online and were omitted from the 2016 study.

Banks Studied

Ally Bank	Citibank	First Citizens Bank	People's United Bank	Union Bank
Associated Bank	Citizens Bank	First Niagara	PNC	USAA
Bank of America	City National Bank	First Republic	Popular	Webster Bank
Bank of Oklahoma	Comerica	First Tennessee	Regions	Wells Fargo
Bank of the West	Commerce Bank	FirstMerit Bank	Santander	Compass Bank
BB&T	Discover Bank	Frost	Signature Bank	Hudson City Savings Bank
BMO Harris Bank	E*Trade Bank	HSBC	SunTrust	New York Community Bank
Capital One Bank	East West Bank	Huntington	TD Bank	Prosperity Bank
Charles Schwab Bank	EverBank	KeyBank	U.S. Bank	Synovus Bank
Chase	Fifth Third Bank	M&T Bank	Umpqua Bank	Whitney Bank

Endnotes

- 1 The Pew Charitable Trusts, *Checks and Balances: 2015 Update*, May 2015, http://www.pewtrusts.org/~media/assets/2015/05/checks_and_balances_report_final.pdf?la=en.
- 2 Domestic deposit volume as measured by the Federal Deposit Insurance Corp. Among banks that offer consumer checking accounts, the 50 banks studied represent two-thirds of domestic deposit volume.
- 3 Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)*, Section 1: 11, 15–16 (March 2015), http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.
- 4 Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 111 Pub. L. No. 203 §1028(b), 12 U.S.C. § 5518(b); and Consumer Financial Protection Bureau, “Arbitration Agreements; Proposed Rule,” 81 Fed. Reg. 32830 (May 2016).
- 5 The Pew Charitable Trusts, *Checks and Balances: 2015 Update*.
- 6 Pew’s survey extended the CFPB’s survey research on arbitration to consumer bank accounts. Specifically, respondents were first asked, “Do you currently have a checking or savings account, or not?” Respondents who answered “No,” didn’t know, or refused to respond were read, “I am going to describe a situation to you, and then ask how you would respond. Imagine that you had a bank account, you looked at your account statement, and noticed that your bank had been charging you a fee for a service that you are sure you did not sign up for. They may have been charging you this fee for a while now. You called the customer service line, but the bank refused to do anything about the fees.”
- 7 As reported by the Federal Deposit Insurance Corp. Statistics on Depository Institutions, https://www5.fdic.gov/idaspp/advSearch_warp_download_all.asp?intTab=1.

For further information, please visit:

pewtrusts.org/banking

Cover photo: iStock

Contact: Sultana Ali, communications officer

Email: sali@pewtrusts.org

Project website: pewtrusts.org/banking

The Pew Charitable Trusts is driven by the power of knowledge to solve today's most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public, and invigorate civic life.