Negative: Arbitration - good

By “Coach Vance” Trefethen

***Resolved: The United States Federal Government should substantially reform its banking, finance, and/or monetary policy***

Summary: Most (not all) large financial institutions have fine print in the contract you sign that says any disputes cannot be taken to court, but must instead be taken to a private arbitration process. This is allegedly bad for consumers because most of the time consumers lose their case, and AFF will argue they’d be better served by lawsuits in court. Several years ago the CFPB made a rule banning mandatory arbitration clauses that block a consumer from going to court, but Congress repealed it in 2017. AFF plan reinstates this rule or something like it, such that consumers cannot be forced to sign away their right to their day in court. This is a NEG brief against that and in favor of mandatory arbitration clauses.

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Negative: Arbitration - good

SOURCE INDICTMENT

Consumer Financial Protection Bureau (CFPB) study supporting a Rule against mandatory arbitration was flawed

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The Rule follows the Bureau’s study of arbitration, summarized in a 2015 report to Congress. The Arbitration Study attempted an empirical analysis of both the arbitral awards and class action settlements that consumers obtained for a variety of claims. But the data the Bureau considered were limited in ways that raise serious questions about its conclusions and undermine the foundation of the Rule itself. More fundamentally, the Bureau failed to meaningfully evaluate whether prohibiting mandatory arbitration clauses in consumer financial contracts would serve either consumer protection or the public interest—its two statutory mandates. Neither the Study nor the Rule makes that requisite showing.

MINOR REPAIR

1. Better disclosure would solve.

Consumers would be protected if we just require companies to more prominently disclose their arbitration policy

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The Bureau failed reasonably to consider whether improved disclosures regarding arbitration would serve consumer interests better than its regulatory ban. The Bureau’s own data show that the financial marketplace offers choices to consumers regarding arbitration; the vast majority of contracts in the major market segments do not contain mandatory arbitration clauses. 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.

Minor repairs are better because of the inefficiency of a lawsuit system with the high cost of attorney fees

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

It is true that financial transfers from defendants—whether to plaintiffs or to their lawyers—do not register as pure costs of the Rule as a matter of economic theory. But the percentage of defendants’ costs attributable to plaintiffs’ lawyers—and the percentage of settlement value nominally available to plaintiffs but actually paid to their lawyers—do speak to the efficiency of the class mechanism as a tool for achieving value for plaintiffs. That is an analysis the Bureau should have undertaken—particularly in comparison to other regulatory options.

INHERENCY

1. Plenty of options to avoid arbitration

Multiple options exist for consumers who don’t want mandatory arbitration

Fred O. Williams and Caitlin Mims 2019 (financial journalists) 20 Aug 2019 Mandatory arbitration: Most credit cards allow a way out <https://www.creditcards.com/credit-card-news/avoid-arbitration-study.php>

A CreditCards.com review of 29 large card issuers finds that 23 use mandatory arbitration clauses to block customers’ access to court, based on their current credit card agreements filed with the CFPB and other company communications.However, there are significant exceptions. Card users who want to keep their rights to a day in court can:  
- **Pick a card that doesn’t require arbitration**. Six of the banks don’t have a mandatory arbitration clause in their terms and conditions, including two of the largest – Bank of America and Capital One.  
- **Opt out of arbitration early in the contract**. Of the issuers that do have an arbitration requirement, nearly half allow customers to reject the clause by sending an opt-out letter. The letter must be sent within the first month or two of opening the account. Opting out won’t cause you to be treated differently by the company, the opt-out clauses say.   
- **Take the dispute to small claims court, or the equivalent in your jurisdiction.**Most of the banks with mandatory arbitration clauses made an exception for disputes brought in small claims court, allowing them as long as they only involve individual claims.

Even with mandatory arbitration, they can still go to small claims court

Fred O. Williams and Caitlin Mims 2019 (financial journalists) 20 Aug 2019 Mandatory arbitration: Most credit cards allow a way out <https://www.creditcards.com/credit-card-news/avoid-arbitration-study.php>

Of the 29 card issuers reviewed, most made an exception to arbitration for actions brought in [small claims court](https://www.creditcards.com/credit-card-news/loaned-card-unpaid-bill-small-claims-court.php). “Most of the mandatory arbitration clauses we see almost everywhere these days do carve out an exemption for small claims court,” said Martin Wegbreit, director of litigation at the Central Virginia Legal Aid Society in Richmond. Although the rules differ from state to state, most small claims courts are characterized by low dollar limits on claims – usually with ceilings of $2,000 to $7,000, with an upper limit of $15,000, according to a paper by the American Bar Association.

2. Mandatory arbitration uncommon

Most credit card and checking account contracts do NOT have mandatory arbitration

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf> (brackets in original)

Regulators should trust informed consumers to make choices, and the Bureau’s data demonstrate that the financial marketplace offers consumers broad choices to avoid agreements containing arbitration clauses. For example, according to the Study, 84.2% of contracts for credit cards and 92.3% of contracts for checking accounts do not contain mandatory arbitration clauses.

3. Court rulings solve abuse

Supreme Court rulings allow lawsuits to go ahead if an arbitration agreement is abusive

Keith Noreika 2017 (acting Comptroller of the Currency) “Senate should vacate the harmful consumer banking arbitration rule” 13 Oct 2017 <https://thehill.com/opinion/finance/355274-cfpb-rule-increases-consumer-costs-and-makes-banks-less-safe>

Finally, the U.S. Supreme Court repeatedly has upheld the use of arbitration in dispute resolution, and when courts have found arbitration agreements to be “unconscionable,” they have struck them down and allowed class action cases to proceed.

4. Informal resolution

People complain and companies resolve disputes all the time. No evidence that this isn’t enough to solve or that abolishing arbitration would be better

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf> (brackets in original)

What is more, the Bureau did not adequately account for pre-arbitration benefits to consumers in the form of market-based provider responses to consumer complaints. Scholars and commenters have suggested that aggrieved consumers would be more likely to change providers than to call a lawyer over a small-dollar dispute—and that financial institutions respond in kind by waiving various fees upon complaint instead of losing business or defending in arbitration. The Bureau responds that informal dispute resolution of this kind gives providers the incentive to correct issues only for consumers who complain directly, and then to prioritize the most valuable complainers. But once again, the Bureau has not shown that the existing level of compliance with consumer financial laws is sub-optimal—much less that banning arbitration entirely would obtain optimal compliance more efficiently than market-based provider responses.

HARMS / SIGNIFICANCE

1. Arbitration isn’t hurting anyone

Rule against arbitration wouldn’t change anything because there’s no harm in Status Quo

Keith Noreika 2017 (acting Comptroller of the Currency) “Senate should vacate the harmful consumer banking arbitration rule” 13 Oct 2017 <https://thehill.com/opinion/finance/355274-cfpb-rule-increases-consumer-costs-and-makes-banks-less-safe>

Further, there is no evidence to suggest that banks will change their behavior as result of the rule. The CFPB’s data tell us that while 53 percent of credit card issuers use arbitration clauses today, nothing in the data demonstrates that the 47 percent that do not to use arbitration clauses have fewer compliance issues, behave better, or treat their customers better in meaningful ways.

2. A/T “Arbitration biased against consumers – they don’t win as often as in lawsuits”

Here’s why: Lawsuits create pressure to pay frivolous claims. Companies settle to make the problem go away, even when they did nothing wrong. “Winning” doesn’t mean you were actually right

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf> (brackets in original)

While it acknowledged that providers may feel “some pressure to settle contested matters of all kinds to avoid defense costs or the risk of a judgment,” the Bureau insisted that “a defendant’s assessment of the merits of the plaintiff’s claim—specifically, the plaintiff’s likelihood of succeeding at trial—is a key factor influencing a defendant’s decision to settle.” But of course a “key factor” may not be the decisive factor in many cases, and scholars of civil litigation recognize that settling with “the proponent of the meritless claim … rather than incurring the greater expense of litigating to have it dismissed may well be the [defendant’s] rational (and expected) course of action.” In such cases, where the cost of defense exceeds the amount of the settlement, the merits of the plaintiff’s claim are not likely a factor at all. That is all the more true in class action litigation. As Justice Ginsburg has explained, class certification “places pressure on the defendant to settle even unmeritorious claims.” In cases seeking statutory damages, the “pressure to settle may be heightened because a class action poses the risk of massive liability unmoored to actual injury.”

3. Settlement outcomes better under arbitration

Consumers get higher settlements more quickly under arbitration than with lawsuits

Keith Noreika 2017 (acting Comptroller of the Currency) “Senate should vacate the harmful consumer banking arbitration rule” 13 Oct 2017 <https://thehill.com/opinion/finance/355274-cfpb-rule-increases-consumer-costs-and-makes-banks-less-safe>

The CFPB’s own data also show that when consumers turn to arbitration, they receive higher settlements more quickly than when they are forced to rely on class action lawyers to fight their case. Class action lawsuits often involve more claimants and may generate big headline settlement figures, but the people making millions are the lawyers when the average individual payout of such suits is just $32.

SOLVENCY

1. Consumers don’t win lawsuits

Even CFPB (advocating AFF plan) – their data shows most consumers don’t benefit from lawsuits

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The vast majority of consumer class actions deliver zero relief to the putative members of the class. According to the Bureau’s own data, only 13% of consumer class action lawsuits filed result in class-wide recovery—meaning that in 87% of cases, either no plaintiffs or only named plaintiffs receive relief of any kind. The Bureau projects that, out of the 3,000 additional class actions the Rule will generate, four in five cases will yield no recovery for the putative class of consumers.

2. Tiny payouts to a tiny fraction

0.52% get peanuts. Even when consumers win, only 4% of them actually collect any lawsuit settlement money. And when they do, it’s $32

**Analysis: This whole debate round boils down to making sure we have a 4% chance of collecting from a 13% chance of winning, and those lucky 0.52% (4% of 13%) will get $32.**

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

In the fraction of class actions that generate class-wide relief, few affected consumers demonstrate interest in recovery. On average, only 4% of plaintiffs entitled to claim class settlement funds actually do so. This suggests that consumers value class action litigation far less than the Bureau believes they should. This is not surprising given that plaintiffs who do claim funds from class action settlements receive, on average, $32.35 per person.

Investor disputes that go to lawsuits pay only 1%-5% of shareholder losses

George H. Friedman 2017 (adjunct Professor of Law at Fordham Law School ) 29 June 2017 “What's a Regulator to Do? Mandatory Consumer Arbitration, Dodd-Frank, and the Consumer Financial Protection Bureau” <https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2014/summer/what-s-a-regulator-to-do--mandatory-consumer-arbitration--dodd-f/>

The arbitration supporters at the Dallas field hearing stressed that class action*litigation* is not consumer-friendly, with consumers getting cents on the dollar. Recently released data would seem to back them up. The *Wall Street Journal*reported in March that: “Generally, aggrieved investors get only pennies on the dollar. The average settlement amounts to 1% to 5% of shareholder losses, according to the Stanford Securities Litigation Analytics database, which tracks securities litigation since 2000.” The arbitration supporters at the hearing argued that arbitration, in contrast to class action litigation, works and that the focus should be ensuring procedural fairness.

3. Winning a lawsuit doesn’t mean collecting

“Winning” a lawsuit doesn’t mean “collecting” anything. Even the winners don’t usually recover anything

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

Importantly, the Bureau itself acknowledges that the relief available to plaintiffs by way of class action settlement is not the same as what the plaintiffs actually recover. The Bureau’s data on settlement agreements show that in approximately 60% of class action settlements, payment to class members is not automatic. These “claims-made” settlement agreements state the nominal amount a defendant could be required to pay, but each plaintiff is required to make a settlement claim to recover anything. According to the Bureau, the weighted average claims rate— the average percentage of class members who actually make a claim to recover from a claims made settlement—is only 4%. In a typical case, then, only a small percentage of plaintiffs recover anything.

Attorney fees take an average of 31% and sometimes over half the money away from the “winners”

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The Study concludes that attorneys’ fees comprise 24% of cash payments in the settlements the Bureau studied. The Bureau reaches this figure by considering attorneys’ fees as a percentage of payments to the class and attorneys’ fees—that is, total payout by defendants. In other words, the Bureau measures the value of a settlement to the class not by actual payment to the class, but by transfers from defendants, including to plaintiffs’ lawyers. In doing so, it does not assess the efficiency of class action litigation as a mechanism for obtaining relief for consumers. Attorneys’ fees as a percentage of payments that class members actually receive are higher—approximately 31% on average based on the Bureau’s data. And as scholars have pointed out, that average number skyrockets in different individual types of cases; it is not uncommon for fee awards to exceed the aggregate amount recovered by plaintiffs.

4. Threat of lawsuits doesn’t mean consumers are treated better

No evidence that companies not using arbitration treat their customers better than those that do, so no benefit to a Rule against arbitration

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The Bureau offered no foundation for its assumption that the Rule will improve compliance with federal consumer financial laws. The Bureau “assumes that the current level of compliance in consumer finance markets is generally sub-optimal” and insists that the Rule will protect consumers by remedying that assumed compliance gap. But after years of study, the Bureau has identified no evidence indicating that firms that do not use arbitration clauses treat their customers better or have higher levels of compliance with the law. As a result, the Bureau cannot credibly claim that the Rule would yield more efficient levels of compliance.

DISADVANTAGES

1. Big consumer costs

Rule against arbitration will cost consumers billions

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The Rule will impose extraordinary costs—based on the Bureau’s own incomplete estimates. The Bureau projects that the Rule will generate more than 3,000 additional class action lawsuits over the next five years. Meanwhile, affected businesses will spend more than $500 million in additional legal defense fees, $330 million in payments to plaintiffs’ lawyers, and $1.7 billion in additional settlements. Remarkably, the Bureau’s estimates do not account for expected increases in state court litigation. Affected businesses are unlikely to simply absorb these new financial burdens. The Office of the Comptroller of the Currency recently reported that the Bureau’s own data show that the Rule’s costs will very likely be passed through to consumers in the form of higher borrowing costs for credit card users, among other burdens.

Negative net benefits: Economic costs of a rule against arbitration far outweigh the speculative possible benefits

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The Bureau has not made a reasoned showing that increased consumer class action litigation will result in a net benefit to consumers or to the public as a whole. Based on the Bureau’s own data, it is far more likely that the Rule will generate massive economic costs—borne by businesses and consumers alike—that dwarf the speculative benefits of the Bureau’s theorized increase in compliance.

Reason why: Lawyers get the money. Even using the flawed numbers by AFF advocate CFPB

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

Even given these substantial omissions, the Bureau predicts a massive increase in class action litigation as a result of the Rule. Over the next five years, the Bureau predicts an incremental increase of more than 3,000 federal cases asserting claims on a class-wide basis. The Bureau projects that only one in five of these cases will produce any relief at all on a class-wide basis. At the same time, the Rule will transfer $330 million in payments to plaintiffs’ lawyers and impose on providers nearly $575 million in additional defense costs and payments to individual named plaintiffs—costs separate from any relief to a class of consumers.

OCC Study: 88% chance cost of credit would go up with a Rule against arbitration

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The Office of the Comptroller of the Currency (“OCC”) conducted an independent review of the Bureau’s data and econometric analysis and identified many of these very concerns. OCC concluded that there is an 88% chance that the total cost of credit will increase as a result of the Rule and a 56% chance that it will increase by three percentage points or more. This independent review underscores Treasury’s concern: that the Bureau’s analysis does not convincingly rule out higher credit costs for consumers.

2. Frivolous lawsuits

Link: Courts aren’t that good at weeding out frivolous lawsuits  
Impact: It costs a lot of money to get them dismissed

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The Bureau also noted that the law allows courts to limit frivolous litigation by dismissing complaints that fail to state a claim, granting summary judgment in cases presenting no material factual disputes, and sanctioning attorneys who file claims with no evidentiary basis. But this, too, is an incomplete and unpersuasive response. Dispositive motions do not reliably measure the likelihood of a class’s success at trial because they test only legal sufficiency—and in a manner most protective of the non-moving party. Federal courts evaluate a motion to dismiss on the assumption that the plaintiffs’ allegations are true and consider a defendant’s summary judgment motion in the light most favorable to the plaintiff. And there are significant defense costs associated with obtaining dismissal or summary judgment, which often comes only after costly class discovery is complete.

2 additional Impacts: 1) Injustice. 2) Reduces AFF solvency – because firms would have no incentive to improve behavior, since they’re going to get sued no matter what they do

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

Payouts for meritless class actions are significant because they represent transfers that would reduce fairness—by imposing costs on firms unrelated to violations affecting consumers—rather than enhance it. And even meritless actions dismissed without payouts by defendants impose litigation costs unconnected to any consumer or social benefit. Evidence suggesting that some share of consumer class actions lack merit raises the possibility that even providers in full compliance with federal consumer financial laws may be sued and may agree to settlements in order to avoid defense costs. In this environment, it is unclear how effectively the Rule would increase provider incentives to invest in more compliance—because even full compliance does not guarantee immunity from class actions.

Quantification: CFPB estimated 10% frivolous lawsuits if Plan is enacted. At that rate Plan would have to save consumers $500 million/year to achieve any net benefit (and there’s no evidence it will)

US Treasury Department 2017. “LIMITING CONSUMER CHOICE, EXPANDING COSTLY LITIGATION: AN ANALYSIS OF THE CFPB ARBITRATION RULE” 23 Oct 2017 <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>

The Bureau does not estimate social benefits in the Rule, so we consider hypothetical benefits valuations ranging from $50 to $500 million annually—in other words, scenarios where the Rule achieved reduction in consumer harm worth these amounts. Even positing the Bureau’s assumption that 10% of additional class action lawsuits will be meritless, the Rule would have to reduce harm to consumers by $500 million per year to demonstrate any net benefit to society. The Rule does not come close to making that showing.

3. Big Bank Consolidation

Link: Small banks can’t afford the lawsuit risk and will disappear, leaving only big banks

Keith Noreika 2017 (acting Comptroller of the Currency) “Senate should vacate the harmful consumer banking arbitration rule” 13 Oct 2017 <https://thehill.com/opinion/finance/355274-cfpb-rule-increases-consumer-costs-and-makes-banks-less-safe>

Community bankers also tell me that the increased costs of fighting spurious lawsuits make it more difficult to operate. Small bankers, already struggling to compete with big banks and nonbank financial service providers, tell me that the cost of defending specious legal claims and the increased risk of such legal battles could threaten their very existence because they just do not have the same financial and legal resources of larger institutions. That means one unintended consequence of the rule may be that only companies big enough to fight frivolous lawsuits will flourish.

Impact 1: Fraud. Bigger banks commit more fraud

Prof. Joseph Stiglitz 2018 (Nobel prize winner in economics, professor of econ. At Columbia Univ.) “Ten Years Later” Sept 2018 <https://www8.gsb.columbia.edu/faculty/jstiglitz/sites/jstiglitz/files/Roosevelt%2010-Years-After-the-Financial-Crisis.pdf>

Such clear abuses of market power contribute to Americans’ sense that the political system and the institutions it controls are rigged. Captured institutions undermine faith in the political system, and a disregard for the rule of law does, as well. There was a proliferation of fraud in the credit rating agencies and investment banks before the crisis. Banks even refused to comply with contracts in which they had provided “money back guarantees” to investors and others who bore the risks of the mortgages that the mortgages were as described--that, for instance, they were for owner-occupied housing rather than rental properties (the default on the former is typically much lower than on the latter). And yet these contracts' provisions were seemingly well-designed to contain moral hazard. But if a legal system is broken, contracts aren’t worth the paper they’re written on. This type of trust is foundational to the functioning of our society.

Impact 2: Big banks increase the risk of financial crash and massive taxpayer cost

Dennis Kelleher 2018 (president and CEO of Better Markets, a Washington-based independent, nonpartisan, nonprofit organization that promotes the public interest in financial reform, financial markets and the economy) 1 Aug 2018 “BankThink ‘Too big to fail’ is alive and kicking” <https://www.americanbanker.com/opinion/too-big-to-fail-is-alive-and-kicking>

“Too big to fail” financial firms, those that would crash the entire financial system and global economy if they failed, were at the core of causing and spreading the financial crash of 2008. That was the worst meltdown since the Great Crash of 1929 and caused the worst economy since the Great Depression of the 1930s. A second Great Depression was only avoided due to unprecedented and incredibly costly government and taxpayer bailouts for those “too big to fail” global financial giants like JP Morgan Chase, Citigroup, Bank of America, Goldman Sachs, Morgan Stanley and many others. While most people think of the $700 billion Troubled Asset Relief Program when they think of bailouts, that was only the tip of the bailout iceberg, which [totaled in the trillions](https://www.gpo.gov/fdsys/pkg/CHRG-112shrg64832/pdf/CHRG-112shrg64832.pdf)