



# Fair Arbitration Now

Forced arbitration stacks the deck against consumers and workers. It's time we even the scales.

## **CFPB Must End Abusive Forced Arbitration**

A top priority of the Consumer Financial Protection Bureau (CFPB) is to protect American consumers from unfair, deceptive, and abusive financial products. Few practices are as abusive, unfair, and deceptive as the widespread use of forced arbitration clauses buried in the fine print of most consumer contracts, including credit cards, student loans, debt settlement, credit repair, auto financing, and payday loans. Forced arbitration clauses eliminate Americans' access to the courts, forcing them instead into a private system set up by corporations to favor corporations.

In Section 1028 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Congress required the CFPB to conduct a study on the use of forced arbitration in consumer financial products and services.<sup>1</sup> The CFPB released findings in December 2013 and its final report in March 2015 that supports what previous empirical research and consumers' experiences have long proven. The high prevalence of forced arbitration clauses and class action bans have given corporations a virtual get-out-of-jail free card, shielding them from being held accountable for bad behavior.<sup>2</sup> Meanwhile, consumers are unable to seek redress for the harm.

### **Consumers Need Protection from Forced Arbitration**

Forced arbitration threatens the CFPB's goals of transparency, fairness, and accountability:

- **Elimination of Statutory Rights.** Under the present system of forced arbitration, well-established statutory rights are undermined and often negated in private arbitration. In the consumer context, laws at risk include provisions of the Civil Rights Acts of 1964 and 1991, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Servicemembers Civil Relief Act, the National Defense Authorization Act for Fiscal Year 2013 (amending the Military Lending Act), the Telephone Consumer Protection Act, the Fair Debt Collection Practices Act, the Credit Repair Organizations Act, the Electronic Fund Transfer Act, the Fair Credit Reporting Act, the Real Estate Settlement Procedures Act, and the Truth in Lending Act. These laws also specifically grant consumers and employees private rights of action to pursue remedies in court. But those provisions are superseded by the Federal Arbitration Act.
- **Secret, Lawless Process.** Arbitration is a private system normally closed to the public and press. There is no discovery or impartial judge, jury, or meaningful review. When arbitrators make glaring errors of law, courts still cannot overturn arbitrators' decisions. Arbitrators can do what

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111-203 § 1028(a).

<sup>2</sup> Consumer Financial Protection Bureau, *Arbitration Study Preliminary Results, Section 1028(a) Study Results to Date* (Dec. 12, 2013), <http://1.usa.gov/18WUWEy>.

they want for the party who will give them repeat business, operating in an essentially lawless environment.

- **Wrongdoers escape accountability.** In many cases, arbitration clauses are simply a vehicle for shielding wrongdoing from scrutiny by anyone – a court or an arbitrator. Widespread wrongdoing goes unaddressed because arbitration clauses often also prohibit consumers from participating in class actions.

### **A Federal Solution is the Only Solution**

The national problem of forced arbitration must be addressed on a federal level, because state regulations limiting forced arbitration are preempted by the Federal Arbitration Act (FAA). States consequently have been left powerless to protect their own citizens through their own statutes or common law.

In addition, a series of recent decisions by the U.S. Supreme Court have broadly interpreted the FAA to allow corporations to insert arbitration clauses in one-sided, non-negotiable contracts. The Court further expanded the FAA's meaning to effectively overcome not only state laws but other federal laws, including those that exhibit a clear congressional intent to preserve consumers' rights, and make it significantly more difficult to challenge even the most abusive forced arbitration clauses. A [2014 report](#) by Public Citizen and the National Association of Consumer Advocates (NACA) identifies 140 cases affecting thousands of consumers or employees over the past three years where a court enforced an arbitration clause and barred the claimants from participating in class actions.

### **Examples of Individuals Harmed by Forced Arbitration Clauses**

- An arbitration clause required [Bernardita Duran of Queens, NY](#), a disabled victim of a \$4,000 debt relief scam, to first travel across the country to Arizona to argue to the arbitrator that it's unfair and unconscionable to force her to arbitrate her case in Arizona.
- [Matthew Kilgore, of Rohnert Park, Calif.](#), a former student of a failed helicopter trade school who, along with other students, was left with tens of thousands of dollars in student loan debt, no certification and no access to the courts.
- [Wendy Betts, a Sanford, Fla.](#), resident who was victimized by illegal payday loans and spent years fighting to seek redress for herself and others, but was ultimately blocked by a provision tucked into the fine print of the loan document.

With arbitration clauses, companies get a free pass to violate consumer rights without repercussions. The CFPB's study confirms that forced arbitration clauses are widespread and immunize corporations from justice. Now that the CFPB has finalized its study, the Bureau should act to restore consumers' legal rights in all financial sectors by issuing a rule that eliminates forced arbitration in their contracts.

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