



This Week in Wall Street Reform | April 30–May 6, 2016

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THE CFPB’S ARBITRATION PROPOSAL

[Is This the End of Mandatory Arbitration](#) | St. Louis Post-Dispatch

The proposed ban has a long legislative and political history. It was initiated by the Dodd-Frank financial reform bill, which instructed the Consumer Financial Protection Bureau to study the issue and make rules after the study as needed. (The CFPB study was released in March 2015.) The bureau then released its first version of the potential rule and convened a commission to study its impact on small business last fall.

[Rule on Arbitration Would Restore Right to Sue Banks](#) | NY Times

The rule would apply only to the consumer financial companies that the agency regulates. It would not apply to arbitration clauses tucked into contracts for cellphone service, car rentals, nursing homes or employment.

“It is a good start,” said Berle M. Schiller, a federal judge in Philadelphia who has been critical of arbitration clauses that dismantle class actions and tip the scales in favor of companies. “Class actions are the only way that companies can be brought to heel.”

The agency’s proposed rule would be the first significant check on arbitration since a pair of Supreme Court decisions in 2011 and 2013 blessed its widespread use. Those decisions signaled the culmination of an effort by a coalition of credit card companies to stop the tide of class-action lawsuits.

[Proposed Rule Would Allow Class-Action Suits Against Banks](#) | NBC

Lauren Saunders, associate director of the National Consumer Law Center, said class-action suits are important, because even if a customer loses a few hundred dollars or more over improper practices, the logistical and financial hurdles of filing a suit make the likelihood that he or she would go to court small to nonexistent. A collective complaint that obtains class-action status, on the other hand, can make whole a large group of customers, some of whom might not even realize they had been wronged.

[White House and business sector battle over arbitration](#) | USA Today

The Obama administration and U.S. business leaders are poised to add a new front to their escalated battle over mergers and corporate tax inversions: financial arbitration clauses.

Capping months of study on the issue, the U.S. Consumer Financial Protection Bureau on Thursday is [scheduled to propose a rule](#) that would restrict banks, credit card companies and other businesses from requiring customers to pursue disputes through arbitration, rather than group lawsuits in the court system. The CFPB is an independent regulator whose director is appointed by the president.

[New Mexico AG Backs Rule Changes to Protect Borrowers](#) | Santa Fe New Mexican

[The CFPB Just Took a Huge Bite Out of Predatory Lending](#) | Huffington Post

[Proposed Rules Would Take Away Banks' 'Get Out of Jail Free' Card](#) | Consumerist

[Proposed Rule Would Allow Consumers to Sue Banks, Credit-Card Companies](#) | Wall St. Journal

[Suing Banks Will Be Much Easier If U.S. Regulator Gets Its Way](#) | Bloomberg

[Will Workers and Consumers Get Their Day in Court?](#) | American Prospect

[Suing your bank or credit card issuer may get easier](#) | CNBC

[It Sounds Crazy, but You Might Be Able to Sue Your Bank Again Soon](#) | Gawker

[Bank Customers Get a Fighting Chance](#) | NY Times Editorial

[Business groups heap scorn on proposed arbitration ban](#) | The Hill

[House Financial Services Committee investigating CFPB arbitration rulemaking](#) | CFPB Monitor

[Arbitration Rule Vulnerable to Legal Challenge, Industry Lawyers Say](#) | Wall St. Journal

[How the Industry May Challenge CFPB's Arbitration Plan](#) | American Banker

[Proposed consumer class action rules don't cover everybody](#) | Marketplace

[Hillary Clinton Supports Ending Forced Arbitration](#) | Time

[Labor, Consumer Groups Push CFPB to Toughen Proposal to Ban Arbitration Clauses](#) | National Law Journal

[Why You Should be Fired Up About the CFPB's Announcement](#) | WhiteHouse.gov

See [prepared remarks of Richard Cordray](#).

See [joint statement by 12 consumer advocacy groups](#) and statements by [AFR](#), [CFA](#), [NCLC](#), [Public Citizen](#) and [Senator Elizabeth Warren](#)

CONSUMER FINANCE & THE CFPB

[Could Courts Take Down the CFPB?](#)

Bloomberg

The dispute over the CFPB is the latest attempt by business interests to limit the scope of Dodd-Frank. Backed by Wall Street and corporate lobbyists, Republicans in Congress have tried to roll back various provisions of the law. That effort has so far failed, and now the courts have become an alternative venue for the campaign. “The financial industry is using all the tools available to resist the regulation mandated under Dodd-Frank,” says Brian Marshall, policy counsel at **Americans for Financial Reform**, an advocacy group.

[Constitutional Challenge Could Be 'Very Messy' for the CFPB](#) | **American Banker**

A federal appeals court case challenging the constitutionality of the Consumer Financial Protection Bureau is raising concerns that if the agency loses, it could open the floodgates for a flurry of other lawsuits against the CFPB.

[Declaring Independence from the CFPB](#) | **Daily Caller**

[Lawmakers Urge FTC to Investigate 'Dark Money' Group Attacking Consumer Watchdog Group](#) | **ABC News**

[Payday Lending: Will Anything Better Replace It?](#) | **The Atlantic**

One problem with the payday-lending industry—for regulators, for lenders, for the public interest—is that it defies simple economic intuition. For instance, in most industries, more competition means lower prices for consumers. That maxim surely helped guide the deregulation of the fringe lending business in the 1990s—and some advocates still believe that further deregulation is the key to making payday loans affordable. Yet there’s little evidence that a proliferation of payday lenders produces this consumer-friendly competitive effect. Quite the contrary: While states with no interest-rate limits do have more competition—there are more stores—borrowers in those states (Idaho, South Dakota, Texas, and Wisconsin) pay the highest prices in the country, more than double those paid by residents of some other states, according to Pew. In states where the interest rate is capped, the rate that payday lenders charge gravitates right toward the cap. “Instead of a race to the lowest rates, it’s a race to the highest rates,” says Tom Feltner, the director of financial services at the Consumer Federation of America.

The explanation for this is not simple, and a variety of economic jargon floats around the issue. But it all begins with this: The typical payday-loan consumer is too desperate, too unsophisticated, or too exhausted from being treated with disrespect by traditional lenders to engage in price shopping. So demand is what economists call price inelastic. As Clarence Hodson, who published a book in 1919 about the business of small loans, put it, “Necessity cannot bargain to advantage with cupidity.” In its last annual financial report, Advance America, one of the country’s biggest payday lenders, wrote, “We believe that the principal competitive factors are customer service, location, convenience, speed, and confidentiality.” You’ll notice it didn’t mention price.

[**A Private Equity Alum's Guide to Better Payday Lenders**](#) | NY Times

Thanks to [James Zhang's] efforts, New Jersey rid itself of a stake in the industry earlier this year. And starting Friday, through [a new guide](#) on the website [NerdWallet](#), where he now works, Mr. Zhang hopes to redirect as many people as possible who are seeking these loans.

[**Hauling a Load of Breakdowns and Broken Hearts**](#) | NY Times

To recap: American Truck's rent-to-own program is for truckers who lack the credit rating to get a bank loan. For a down payment (\$4,000 to \$10,000) and then a year or so of weekly payments (\$500 to \$1,000), a driver can become a self-employed trucker, known as an owner-operator. At the end of the year, the driver has an option to buy the truck outright for an additional lump sum.

This is a fine idea in theory. But a few dozen American Truck customers have told the Better Business Bureau that they spent thousands on a down payment and on rental fees — in some cases a total of \$50,000 or more — only to have the truck repossessed before they had the chance to buy it. Some contend that the company's business model is to milk as much as possible from renters, grab the truck, then rent it out again.

[**Nebraska Settles Suit Against Payday Lender For \\$1M**](#) | Law360

[**Lawmakers kill a bill to lure subprime lenders to Colorado**](#) | Colorado Independent

See [Center for Responsible lending survey of Colorado voters](#)

[**Colorado Voters Oppose Raising Rates on Consumer Loans, Says Survey**](#)

[**First Cash Buys Cash America**](#) | Dallas Morning News

[**Is the CFPB Tough Enough?**](#) | DS News

[**Payday Lender Tries to Duck Interest Rates Suit In Ky.**](#) | CNBC

[**Billboards Hit Rep. Wasserman Schultz for Undermining Payday Reform**](#) | Allied Progress

[**Online car title lender banned from NC for unlawful loans, AG says**](#) | NC Dept of Justice

[**Banks need to improve and accelerate payment systems**](#) | Albany Times-Union

We worked with Spring Bank, a community bank headquartered in the South Bronx, to understand why customers use high-fee check cashing instead of low-cost alternatives like checking accounts. Spring Bank offers low-cost checking accounts and charges well below competitors' prices to cash checks. This gave us a window to see how customers responded. The results were surprising and sobering.

The typical Spring Bank customer depositing a paper check on a Friday faced a three-day hold over the weekend to access her funds.

[**CFPB Penalty Fund Compliant with law, says IG**](#) | [regreformtracker.aba.com](#)

THE ELECTION AND WALL STREET

[Intense Battle for Wall Street Cash](#) | Politico

On Thursday, Trump named Steven Mnuchin, head of private investment firm Dune Capital Management and a former partner at Goldman Sachs, as his national finance chairman. Mnuchin himself has donated to Clinton in the past, highlighting the politically ambidextrous nature of many Wall Street donors. But Mnuchin's hiring could open Wall Street doors for Trump that might otherwise be closed, making the Clinton effort event more important. Two major Bush donors who received calls from Clinton supporters said they would not switch their allegiance to the likely Democratic nominee despite misgivings about Trump's ability to win and his rhetoric on trade, immigration and government spending. But both suggested it was a smart play for Clinton supporters to try and peel off establishment Republicans who might otherwise grudgingly support Trump.

Goldman Sachs now has a former partner high up in the Clinton campaign (Gary Gensler) and the Trump campaign [has Mnuchin]. Mnuchin's hiring should theoretically make it very hard for Trump to slam Clinton's ties to Wall Street. But like everything with Trump he will do it anyway and probably get away with it.

[Trump Names Hedge Fund Manager as National Finance Chairman](#) | Bloomberg

The two men have known each other for 15 years and have done business together, Mnuchin said, declining to comment further on the nature of their dealings. Trump sued lenders including Dune Capital in 2008 seeking to extend the term of a construction loan for Trump's 92-story luxury hotel and condominium tower in downtown Chicago. In March 2009, Trump and the lenders agreed to suspend legal action between them.

Mnuchin said he particularly likes Trump's economic platform, including a plan for simplifying the tax code, and expects the real estate developer to surround himself with smart people.

Mnuchin is part of a group of businesspeople Trump has excoriated. In August, Trump said hedge fund managers were "getting away with murder" as he touted his proposal to end the so-called carried interest loophole, which gives private equity and hedge fund managers preferential tax treatment.

"The hedge fund guys didn't build this country," Trump said at the time on CBS' *Face the Nation*. "These are guys that shift paper around and they get lucky," he said. "They are energetic. They are very smart. But a lot of them—they are paper-pushers. They make a fortune. They pay no tax. It's ridiculous."

[Trump on Dodd-Frank](#) | Politico Morning Money

"Dodd-Frank has to be - has to be either eliminated or changed greatly. I will tell you, I have so many friends who are very good business people, and it's impossible for them to do business with the banks. The regulators are running the banks. And you know, you'll have bankers that get big salaries and that are very capable and all of that. But they're not running the banks. The regulators are running the banks."

[The securities analyst who took on Donald Trump – and won](#) | Politico

ENFORCEMENT

[U.S. Issues Rule Requiring Banks to Identify Shell Company Owners](#) | NY Times

The Obama administration is issuing a long-delayed rule requiring the financial industry to identify the real owners of companies and proposing a bill that would require companies to report the identities of their owners to the federal government, U.S. officials said on Thursday. The Customer Due Diligence (CDD) rule, in the works since 2012, and the proposed legislation are meant to hinder criminals from using shell companies to hide ownership and launder money, finance terror, and commit other threats to the global financial system.

[Seven big banks settle U.S. rate-rigging lawsuit for \\$324 million](#) | Reuters

The settlement made public on Tuesday, which requires court approval, resolves antitrust claims against Bank of America Corp, Barclays Plc, Citigroup Inc, Credit Suisse Group AG, Deutsche Bank AG, JPMorgan Chase & Co and Royal Bank of Scotland Group Plc.

Several pension funds and municipalities accused 14 banks, including those that settled, of conspiring to rig the "ISDAfix" benchmark for their own gain from at least 2009 to 2012.

EXECUTIVE PAY

[Why We Can't Rely on Shareholders to Fix CEO Pay](#) | Sarah Anderson, The Nation

Shareholder advocacy group [As You Sow](#) has tracked mutual fund voting at the 100 firms whose CEOs the group has deemed "most overpaid," based on various performance indicators. Although these firms all claim to care about carefully aligning the interests of CEOs and shareholders, As You Sow found 10 funds that rubber stamp pay packages at phenomenal rates. The giant Vanguard mutual fund family, for example, gave bloated CEO pay packages the thumbs up 97 percent of the time last year...

Some shareholders have certainly taken solid advantage of the Dodd-Frank Act provision that requires non-binding votes on executive compensation packages. They've leveraged this "say on pay" into consultations with management, and in some particularly egregious cases, strong "no" votes have embarrassed boards into altering pay.

But dozens of companies have also ignored majority "no" votes... Given this track record, we have every reason to question why we treat executive pay excess differently from other categories of corporate misbehavior. We don't, after all, expect shareholders to come to the rescue when corporations pollute or discriminate in their employment practices. We fight to pass tough regulations. And as the 2008 financial crisis taught us all too well, a reward system that encourages reckless executive behavior threatens all of us — not just shareholders.

[Meet Mr. Ticker](#) | Bart Naylor, Medium.com

Meet Mr. Ticker. He's the hypothetical rogue banker described in Washington's newly proposed rule to reform Wall Street pay.

Six federal agencies charged with overseeing Wall Street—from credit unions to mega-banks—are proposing rules to implement Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. [This section](#) charges them to write rules that prevent "excessive" pay packages that lead to "inappropriate risk-taking."

[They're Coming for Your Bonus](#) | Wall St. Journal

[Vote on the Most Overpaid CEOs in the U.S](#) | Fortune

See [Federal Reserve Board announcement](#) of proposed joint rule to implement incentive compensation provisions of section 956 of the Dodd Frank Act.

HEDGE FUNDS AND PRIVATE EQUITY FUNDS

[Ending Tax Break for Ultrawealthy May Not Take Act of Congress](#) | NY Times

Forcing these managers to pay ordinary income taxes on the gains they reap in their funds would accomplish two things. It would take away an enormous benefit enjoyed almost exclusively by some of the country's wealthiest people. And, tax experts say, it would generate billions in revenue to the government each year, though there are wide differences over exactly how much.

But doesn't changing the carried interest loophole require an act of Congress? Not according to an array of tax experts. Just as Mr. Obama's Treasury Department recently changed the rules to curb [corporate inversions](#), in which companies shift their official headquarters to another country to lower their tax bills, the Treasury secretary, Jacob J. Lew, and his colleagues could jettison the carried interest loophole.

Alan J. Wilensky is among those urging such a change. He was a deputy assistant Treasury secretary in charge of tax policy in the early 1990s when the carried interest loophole came about.

[Warren Buffett says hedge funds get 'unbelievable' fees for bad results](#) | Live Mint

Hedge funds traditionally charge a management fee that's 2% of assets, plus 20% on any profits. That's "a compensation scheme that is unbelievable to me," Buffett said. He added that some pension funds have disregarded his advice, and gone ahead and hired consultants.

The billionaire made a bet in 2008 against Protege Partners that its strategy that invests in hedge funds couldn't beat a Vanguard mutual fund that tracks the S&P 500 Index. The winner's charity of choice gets \$1 million when the wager ends at the end of next year.

The bundle of hedge funds in Protege's bet returned 21.9% for the eight years through 2015, according to a Berkshire presentation Saturday. That compares with the 65.7% climb in the S&P Index fund. "I hope you realize that for the population as a whole, American business has done wonderfully, and the net result of hiring professional management is a huge minus," Buffett said.

[One Top Taxpayer Moved, and New Jersey Shuddered](#) | NY Times

[Private equity titans warn attendees to expect lower returns](#) | Pensions & Investments

[Tough Private Equity Transparency Bill in Illinois](#) | NakedCapitalism.com

[Updated: the Kocks' Wealth VS the Commonwealth of Puerto Rico](#) | realkochfacts.americanbridge.org/

[Puerto Rico: Pain and Profit](#) | Hedgeclippers.org

INVESTOR PROTECTION AND THE SEC

[The Quiet War on Corporate Accountability](#) | New York Times

Last year, a market regulator called the [Financial Accounting Standards Board released a proposal](#) that could make it easier for corporations to withhold important financial information from shareholders. This could put the economy at greater risk of another huge accounting fraud, like Enron or Lehman Brothers. But the board's proposal, which could become a final rule any day now, has gotten nowhere near the strong dose of sunlight it deserves.

MORTGAGES & HOUSING

[Lawsuit says reverse-mortgage companies cheated 95-year-old with drive-by home inspections](#) | The Eye

[Student debt not holding the housing market back, says economist](#) | Washington Post

[In a Big Hole for a Detroit House, but Happy](#) | NY Times

RETIREMENT SECURITY & FIDUCIARY DUTY RULE

[Opponents of New Retirement Rule Renew Efforts to Kill It](#) | Wall St. Journal

Trade groups, after keeping relatively quiet as they sought to digest the regulation known as the fiduciary rule, have come out strongly to support the Republican-led efforts aimed at preventing it from taking effect.

Any legislative attempt to block the new rule has a slim chance of success. The White House issued a statement Wednesday saying the president would veto the bill. Still, the lawmakers' swift action and the unified front of industry groups show opposition to the rule remains strong.

[Cease-fire by DOL fiduciary rule opponents may not last long](#) | Investment News

[House OKs Anti-Fiduciary Rule Measure on Party-Line Vote](#) | Bloomberg BNA

[MetLife to Pay \\$25 Million Finra Penalty Over Variable Annuities](#) | Wall St. Journal

[Insurance groups opposed to DOL fiduciary rule step up campaign spending](#) | Investment News

STUDENT LOANS & FOR-PROFIT EDUCATION

[Case Builds against For-Profit Colleges Denying Students Legal Rights](#) | Huffington Post

Nothing that advocates have been promoting would prevent students and their schools from mutually agreeing to take an existing dispute to a private arbitration. Rather, the issue on the table is whether colleges can include in the fine print of their enrollment agreements, [at the time students sign up](#), a clause forcing students to take any future dispute to private arbitration, where school misconduct is hidden away from the public and regulators and where corporate parties tend to have [the upper hand](#)...

See Century Foundation report, “[How College Enrollment Contracts Limit Students’ Rights](#)”

See [Leadership Conference letter](#) to Department of Education

[For-profit college Latin lesson: caveat emptor](#) | Idaho Statesman

[Harkin: Protect against abuses by for-profit colleges](#) | DesMoines Register

[Minnesota wants for-profit college students’ loans forgiven](#) | Prairie Business

SYSTEMIC RISK

[Eight Senators Urge SEC to Finalize Rule on Conflicts of Interest](#) RealBankReform
Alexis Goldstein

Recently, a former SEC trial attorney has [placed a bright spotlight](#) on the failure of his old agency to charge more individuals at Goldman Sachs over securities fraud in the “Abacus” deal. Abacus was composed of mortgage securities that Goldman knew were toxic. But they packaged them up and sold to investors anyway, and then actively bet against those investors. It is a stark example of a serious conflict of interest.

Unfortunately, not only have the bankers responsible for the conflicted deals gone unpunished, but also the Dodd-Frank rule targeted at stopping material conflicts of interest remains unfinished.

TRADE TALKS

[Leaked TTIP Documents: Threats to Regulatory Protections](#) | Public Citizen

OTHER TOPICS

[Everyone Wants to Get Tough on Antitrust Policy, but Not Really](#) | NY Times

Markets are now so concentrated and ripe for abuse, and the political will for enforcement so lacking, that our antitrust laws seem increasingly hopeless. So we resort instead to some small regulatory interventions to tame a beast we could have kept from creating by just enforcing antitrust in the first place.

[The Misguided Manifesto of Regulatory Reform](#) | RegBlog.org

Like any attempted manifesto, the policies ring with rhetoric extolling sensible and soothing values, such as economic growth, job creation, and the protection of lower income households. But behind the rhetoric lies a legislative agenda that attempts a roots-and-branches upheaval and dismantling of a system of federal regulation that has worked for decades to protect clean air, clean water, food safety, financial markets, workers, consumers, and all Americans.

The actual bills behind the manifesto [weaken](#) and delay federal safeguards; [tailor](#) regulations to impose the least costs on corporations even if that denies Americans vastly higher net benefits; [adopt](#) a one-house legislative veto to block regulations and obstruct executive branch law enforcement; [stop](#) federal agencies from using the best peer-reviewed science to better protect Americans’ health and environment; [adopt](#) a mindless “cut-go” system to eliminate an existing

regulation for every new one adopted; and [undermine](#) citizens' ability to hold government accountable when it breaks the law, and obstruct enforcement of important federal safeguards.

[Federal regulations cost economy \\$1.9T in 2015, controversial study claims](#) | **the Hill**

[Inversion rule: latest example of government overreach](#) | **The Hill**

