

ARBITRATION FAIRNESS FOR CONSUMERS ACT

Banks and other financial institutions force consumers to agree to contracts with arbitration clauses that take away their right to justice in order to access credit bank accounts, credit cards, prepaid cards, student loans, and other essential financial services. These arbitration clauses take away consumers' choice to pursue justice through the forum they think best. Consumers may wish choose to join a class action lawsuit, which is often the only cost-effective means to pursue their claims, but consumers are forced to sign away their right to decide what is best for them to corporations. To end this predatory practice, Chairman Brown is introducing the *Arbitration Fairness for Consumers Act*, which would prohibit arbitration clauses in consumer financial products.

- **“Take it or leave it” agreements** – Companies exploit their power over consumers to draft agreements that include arbitration clauses and other terms in their favor, which are non-negotiable and that consumers must agree to in order to receive the contracted goods or services.
- **Consumers do not know that their rights have been taken away** – Companies tuck arbitration clauses into customer agreements that are lengthy and dense. Studies have shown consumers cannot understand these arbitration agreements.¹
- **Secretive proceedings** – The arbitration process occurs in a closed-door forum, rather than in open court, which makes it difficult for consumers to obtain information that would otherwise be revealed during the discovery process to win their case.

A 2015 CFPB study showed that only 25 consumers with claims under \$1,000 pursued arbitration annually.² This is while over half of all credit card issuers include arbitration clauses in their agreements with consumers. Additionally, according to one 2019 study, “eighty-one companies in the Fortune 100, including subsidiaries or related affiliates, have used arbitration agreements in connection with consumer transactions.”³

These consumers are forced into private, closed-door arbitration proceedings that are not only inconvenient and costly, but also ones in which consumers rarely prevail. Indeed, studies have shown that consumers are granted relief in only 9% of arbitration disputes—compared to corporations winning relief against consumers in 93% of cases brought against consumers.⁴

Arbitration clauses also serve as a tool to hide illegal conduct. Wells Fargo, for example, concealed its illegal account opening practices for years by forcing individual consumers into closed-door arbitration proceedings.⁵ In 2017, after a devastating breach at Equifax resulted in the disclosure of Social Security numbers and other personal data for more than 145 million

¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2516432.

² https://files.consumerfinance.gov/f/201503_cfpb_factsheet_arbitration-study.pdf

³ <https://lawreview.law.ucdavis.edu/online/vol52/52-online-Szalai.pdf>

⁴ <https://www.epi.org/publication/correcting-the-record-consumers-fare-better-under-class-actions-than-arbitration/>

⁵ <https://www.cbsnews.com/news/wells-fargo-uncovers-1-4-million-additional-fake-accounts/> and <https://www.nytimes.com/2016/12/06/business/dealbook/wells-fargo-killing-sham-account-suits-by-using-arbitration.html>

Americans, Equifax tried to trick consumers into signing away their rights to access the courts in exchange for credit monitoring.⁶

The *Arbitration Fairness for Consumers Act* bans these abusive practices. The Act amends Title X of the Consumer Financial Protection Act of 2010 to prohibit predispute arbitration agreements and class-action waivers in contracts for consumer financial products or services. Under the Act, such agreements would be neither valid nor enforceable.

Endorsements

The *Arbitration Fairness for Consumers Act* has been endorsed by the by American Association for Justice (AAJ), Public Citizen, UnidosUS, US PIRG, Center for Responsible Lending, Consumer Federation of America, Americans for Financial Reform, National Association of Consumer Advocates, and the National Consumer Law Center (on behalf of its low-income clients).

⁶ <https://www.nytimes.com/2019/07/19/business/equifax-data-breach-settlement.html>