Fair Arbitration Now

What is Forced Arbitration?

- Forced arbitration is a **tactic devised by corporate attorneys for Wall Street banks** to block consumers from challenging illegal behavior in court. Big banks and payday lenders bury "**ripoff clauses**" in the fine print of take-it-or-leave-it contracts to **kick charges of lawbreaking out of public courts** and move them into **secret proceedings weighted against the consumer.**
- Since arbitration is secret, consumers are often **barred from sharing their stories with law enforcement** or press, **allowing big banks like Wells Fargo to cover up widespread fraud**.
- These clauses often **ban consumers from joining together in class action lawsuits** as well, allowing **banks to opt of out of state laws and federal protections**, since it is too expensive for millions of consumers with small-dollar disputes to pursue individual claims in arbitration.
- The few consumers who can pursue arbitration face a **rigged system** where a firm handpicked by the corporation decides the outcome, with **little hope of appeal**. Since firms **rely on big banks for repeat business**, it's no surprise they **side with the corporation 93% of the time**.

The CFPB Arbitration Rule

- The Consumer Financial Protection Bureau finalized a rule to prohibit banks and lenders that break the law from stripping customers of the right to join together and hold them accountable in class action lawsuits. The rule **fulfills a Congressional directive** in Dodd-Frank tasking the agency to study forced arbitration and restrict or ban the practice if it harms consumers.
- The rule centers on **two commonsense measures**:
    1. Restores the right of consumers to join together in court by prohibiting class action bans, ensuring consumers can hold banks accountable for widespread harm;
    2. Brings transparency to individual arbitration by publishing claims and outcomes with sensitive information redacted, ensuring banks cannot cover up hide illegal behavior.
- The rule has been met with **widespread support** – including strong statements from the Military Coalition (representing 5.5 million servicemembers) and 310 groups that advocate on behalf of consumers, civil rights, faith communities, labor unions, and more.
- According to a Pew Charitable Trusts poll, **nearly 90% of consumers want their right to class action lawsuits restored**. More than 100,000 individual consumers across the country wrote in to support the rule during its public comment period. **Timeline and process**:

Class Action Lawsuits Help Consumers Hold Bad Actors Accountable

- Class action lawsuits ***hold bad actors accountable*** and ensure harmed consumers recover:
    - Without the option to join together, **only 25 consumers** with claims under $1,000 pursue arbitration each year. In contrast, **class actions returned $2.2 billion** to **34 million Americans** from 2008-12, ***after*** **deducting attorneys' fees** and court costs.

  - When banks ban class actions, **bad actors can pocket billions in stolen money** and, in fact, gain a **competitive edge in the marketplace** by harming consumers.

- Corporations that block class actions prevent consumers from getting their money back when they are ripped off, ***even where others receive relief***.
  - For example, in 2010 and 2011, five class action lawsuits were filed against payday lenders in North Carolina state court. **Three of these cases settled for $45 million**, with payments sent to over 200,000 consumers. But because of arbitration clauses with class action bans, the other **two cases were dismissed and resulted in no compensation** to the harmed consumers.

- Class action lawsuits ***do not increase consumer cost***:
  - Empirical analysis shows **class action bans do not lower consumer costs** – they simply **increase profits for bad actors**, making it good business to break the law.
  - Real-life experience bears this out: **consumers saw no increase in price** after Bank of America, JPMorgan Chase, Capital One, and HSBC **dropped their forced arbitration clauses and class action bans** litigation about arbitration abuses.

Wells Fargo Used Forced Arbitration to Hide its Fake Account Scandal

- After CFPB led a $185 million enforcement action against Wells Fargo for opening as many as 3.5 million fraudulent accounts and credit cards, it was revealed **the bank's customers had been trying to sue over fake accounts since at least 2013**.

- However, due to ripoff clauses buried in the fine print of their contracts, customers were forced individually into secret arbitration – and **Wells Fargo continued stealing** from its own customers for years. Even now, **Wells Fargo continues to insist** that defrauded customers should be barred from having their day in court.

The Rule Protects Servicemembers and Veterans

- Predatory schemes often specifically target our military, leading to **significant financial strain** on servicemembers, veterans, and their families. Congress has extended financial and civil protections to military families – such as the Servicemembers Civil Relief Act ("SCRA") – to **protect servicemembers** against default judgments, foreclosures, and repossessions.

- However, in years since, many banks and lenders have used forced arbitration to escape **accountability**, leaving servicemembers unable to enforce their rights. A 2006 Department of Defense report emphasized that "loan contracts to Servicemembers **should not include mandatory arbitration clauses** or…require the Servicemember to waive his or her right of recourse, such as the right to participate in a plaintiff class [action lawsuit]."

- The CFPB rule is necessary to ensure servicemembers can defend their rights and enforce protections against lenders that target our military. It has received **strong support from the Military Coalition** (representing 5.5 million servicemembers) and **29 military groups**.

The Bottom Line?

Without the CFPB arbitration rule, **bad actors like Wells Fargo will continue to pocket billions in stolen money** and, in fact, gain a **competitive edge in the marketplace** by harming consumers. This new rule will restore crucial consumer rights and increase accountability and transparency, making our financial system **stronger and safer** for all of us.