Primer on the CFPB Arbitration Rule

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.
  
  o 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.
  
  o 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.
  
  o 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.