



August 22, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Re: Proposed Rule on Arbitration, Docket No. CFPB-2016-0020

Dear Ms Jackson:

The Main Street Alliance, and the undersigned state chapters and affiliates, write to express strong support for the Consumer Financial Protection Bureau's proposed rule to restrict the financial industry's use of forced arbitration. The Main Street Alliance is a national network of small businesses working to build a new voice for small businesses on important public policy issues that work for business owners, their employees, and the communities they serve. Promoting a more equitable, transparent financial system is central to this mission. We applaud the Bureau for moving to restore crucial class action rights and establish reporting requirements to bring sorely-needed transparency to the arbitration process.

Big banks and predatory lenders use fine-print arbitration clauses to block harmed consumers and small businesses from accessing an impartial jury or judge to challenge illegal behavior. Instead, the harmed party must plead their case to a private arbitration firm, often chosen by their opponent, with no chance to appeal. To make matters worse, most arbitration clauses further prevent victims of corporate abuses from joining together to challenge systemic harms and even bar them from sharing their stories, keeping widespread scams and fraud out of the public eye.

Reform of these practices is long overdue, and the Bureau's proposed rule represents a major step forward in addressing the various harms forced arbitration pushes on consumers and small businesses. In particular, restoring the right of consumers and small business owners to join together in class action suits against banks and lenders who break the law will return crucial accountability to the financial marketplace.

Class actions are an invaluable tool for small businesses contesting the use of monopoly power to increase prices. New York University's Center for Justice and Democracy compiled a [list of major recent price-fixing lawsuits](#) involving the cost of air-freight shipping, commercial insurance, auto parts, LCD screens, and random access memory chips. These cases have already

delivered substantial relief, ranging from \$5,000 to more than \$2 million, to a wide array of small- and medium-sized business plaintiffs.

Yet many arbitration clauses bar small businesses from joining their claims together in this way. In a controversial 2003 Supreme Court decision, *American Express Co. v. Italian Colors Restaurant*, a group of restaurants tried to sue American Express for using its monopoly power to extract unfair credit-card processing fees – nearly a third higher than Visa’s or MasterCard’s. Because of a class action ban in their contracts with the company, the restaurants were blocked from suing and American Express was free to continue exerting monopolistic control and subjecting small businesses to higher costs.

While small businesses may still pursue their claims individually in arbitration, data revealed in the CFPB’s extensive study make clear that forced arbitration overwhelmingly favors the more powerful party. For instance, 93% of companies won their claims in arbitration – recovering an average of 98 cents on the dollar. In a dispute between a small business and a big bank or predatory lender, the outcome is likely to be similarly skewed to favor the large corporations that arbitrators rely on for repeat business.

Forced arbitration causes additional harm to small businesses by reinforcing a rigged system tipped in favor of bad corporate actors. Because consumers are unable to enforce their statutory rights in court, large corporations have an effective license to break environmental, consumer protection, financial, and health laws—and pocket the profits associated with these gains—with little recourse. Law-abiding small businesses who *do not* engage in these unethical practices are then left at competitive disadvantage.

Though forced arbitration poses many unique harms to small business owners, it also impacts our members in their capacity as consumers. Because almost 20% of business owners rely on credit cards as a source of investment capital – many of which contain arbitration clauses – forced arbitration makes it nearly impossible for small businesses and consumers alike to protest hidden fees, illegal debt collection, and other deceptive practices.

There is no question that the Bureau’s proposed rule is in the public interest and for the benefit of consumers. It is also clear to us that this reform will allow small businesses to thrive on a more level playing field with their more powerful competitors. On behalf of the thousands of small business owners we represent, we commend the CFPB’s proposed rule and encourage the Bureau to issue a strong final rule in the coming months.

Signed,

Main Street Alliance
Main Street Alliance of California- San Diego
Main Street Alliance of Florida
Main Street Alliance of Iowa
Main Street Alliance of Minnesota
Main Street Alliance of New Jersey
Main Street Alliance of New York

Main Street Alliance of Ohio
Main Street Alliance of Oregon
Main Street Alliance of Vermont
Main Street Alliance of Washington
Maine Small Business Coalition
DMV Small Business Alliance