

Protecting Our Service Members and Veterans: The CFPB Arbitration Rule

When the brave men and women of the U.S. Armed Forces are deployed, their primary mission is to protect our nation. That mission can be jeopardized when their lives are interrupted with consumer scams, abuses, and fraud. Predatory schemes are commonplace and often specifically target service members, leading to significant financial strain on service members, veterans, and their families. Indeed, a study by the U.S. Army Reserve found that financial stressors were the [second leading cause](#) of suicide among service members in 2013.



Recognizing this, Congress extended financial and civil protections to our military and their families in 2003 through the Servicemembers Civil Relief Act (“SCRA”). SCRA was intended to ease economic burdens on military personnel called to service and ensure military readiness by extending rights to service members and protecting them against default judgments, foreclosures, and repossessions. However, SCRA assumes service members will be able to access the court system to enforce these crucial protections.

The Problem: Service Members and their Families are hurt by Forced Arbitration

In the years since SCRA passed, banks and lenders began quietly stripping service members of these rights through a growing practice known as forced arbitration. Buried in the fine print of standard contracts, “ripoff clauses” block service members from court and instead funnel all claims into secretive arbitration systems set up by the very corporation that broke the law. Recent changes to the Military Lending Act prohibit this practice for specific types of transactions, but banks and lenders can still push service members into arbitration in many circumstances.

Forcing service members to arbitrate with handpicked firms that rely on banks and lenders for repeat business raises serious questions of bias. To make matters worse, most contracts also ban service members from joining together to file similar claims as a class, ensuring small-dollar scams can never be challenged. The result is that banks and lenders violating SCRA or other constitutional and statutory protections are immune from accountability, service members have no way to enforce their rights, and our military readiness and national security are threatened.

Indeed, the Office of Servicemember Affairs at the Consumer Financial Protection Bureau (CFPB) [reports](#) the agency received more than 19,000 complaints about financial fraud and abuse from service members in 2015 alone. The negative effects of forced arbitration on service members and their families are so widespread that a 2006 Department of Defense [report](#) concluded the following:

“Service members should maintain full legal recourse against unscrupulous lenders. Loan contracts to Service members should not include mandatory arbitration clauses or onerous notice provisions, and should not require the Service member to waive his or her right of recourse, such as the right to participate in a plaintiff class. Waiver isn’t a matter of ‘choice’ in take-it-or-leave-it contracts of adhesion.”

—U.S. Department of Defense, 2006

Service Member Spotlight: Sergeant Charles Beard

Sergeant [Charles Beard](#) asked for some help making his car payments before deploying to Iraq. His lender offered to postpone his payments for a few months, but in exchange, required Sergeant Beard to sign a modified lease agreement. Little did he know, a forced arbitration provision was buried in the fine print.

While serving his country in Iraq, Sergeant Beard fell behind on his payments. The lender repossessed the car – violating SCRA, which protects active duty soldiers by requiring lenders to obtain court orders before seizing their possessions. Sergeant Beard brought a class action against the lender with other soldiers, but their claims were thrown out due to a class action ban in the arbitration clause.



The Solution: The CFPB Arbitration Rule

- Acting on a Congressional mandate to study the effect of forced arbitration, the CFPB spent over three years compiling data. The result is the most comprehensive [empirical study](#) on arbitration, documenting the practice's inherent unfairness to consumers. Some key findings:
 - **Forced arbitration is everywhere, impacting tens of millions of Americans including service members and veterans.** For example, 99% of payday loans, 92% of prepaid cards, and 85% of private student loans studied were subject to these clauses. Service members must effectively opt out of the marketplace to keep their basic rights.
 - **Americans are blindsided by forced arbitration.** Just 7% of people studied realized that these clauses restricted their rights to hold banks and lenders accountable in court.
 - **Most people simply give up when forced to arbitrate, especially for small-dollar claims.** Without the option to join a class action, only 25 consumers with claims of less than \$1,000 pursued arbitration annually. In contrast, actions returned \$2.2 billion in cash relief to 34 million Americans from 2008-2012, *not including* attorneys' fees and litigation costs.
 - **Consumers lose in arbitration, even when they win.** In the handful of arbitration claims filed in 2010 and 2011, only 9% of those with affirmative claims obtained relief. When consumers did win, they recovered only 12 cents of every dollar claimed. In contrast, 93% of companies won in arbitration – recovering an average of 98 cents on the dollar.
- The data is clear: forced arbitration is not simply an alternate forum to hear disputes; these ripoff clauses – particularly class action bans – effectively wipe out service member claims altogether.
- Tracking the clear results of its study, the CFPB has proposed to address the harms caused by forced arbitration in two central ways:
 1. Restore the right of consumers to join together in court by prohibiting class action bans, giving service members a way to hold corporations accountable for systemic SCRA violations, including small-dollar claims too costly and onerous to bring alone;
 2. Return transparency to individual arbitration and allow further study on process and outcomes by requiring companies to submit information on customer claims, which would be posted publicly with identifying information removed.

To ensure service members can defend their rights and enforce SCRA protections against banks and lenders that target our military, Congress must protect the CFPB arbitration rule.