

# CFPB Takes Aim at Corporate Get-Out-of-Jail Cards

## Proposal Bans Forced Arbitration of Group Claims but Not Individual Claims

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(Washington, D.C.) The Consumer Financial Protection Bureau (CFPB) proposed today to ban forced arbitration clauses that block consumers from joining together to pursue claims against banks, credit card companies, payday lenders, and others. But the agency declined to go further to stop forced arbitration clauses altogether in individual claims. The proposal targets fine print clauses in millions of contracts that deprive consumers of their statutory and constitutional right to a day in court.

"The CFPB proposal would stop a company that has harmed millions of Americans from avoiding accountability for widespread wrongdoing," said Lauren Saunders, associate director of the National Consumer Law Center. "If a company violates the law, a judge should be able to order the company to repay all of its victims and not force each person to hire their own attorney. Class action bans are a corporate get-out-of-jail-free card."

A CFPB study released last March of consumer claims involving credit cards, checking accounts, payday loans, and prepaid cards found that, in the rare cases where class actions could go forward, more than 13 million class members made claims or received payments, whereas very few arbitration cases were brought by individual consumers.

Saunders called the proposal a "tremendous step forward," though she expressed disappointment that it did not go further and prohibit forced arbitration clauses altogether. "Forced arbitration is a biased, secretive, and lawless process that stops accountability by companies that violate the law, whether by charging illegal fees, refusing to reimburse an unauthorized charge, or pursuing debt that a consumer does not owe."

Most consumers do not realize that most of the agreements they sign for credit cards, bank accounts, student loans, and many other products nullify their right to take the company to court. Instead, the clauses require claims to be resolved before a private arbitrator that the company must agree to, whose decisions are reviewable by no one. The clauses also frequently prevent consumers from banding together in class actions if their own individual claim is not large enough to justify the hiring an attorney.

The CFPB only has authority to address forced arbitration in consumer financial products, but the problem is much broader. Forced arbitration clauses also give corporate wrongdoers immunity from justice if they sell a dangerous car, neglect elderly nursing home residents, charge deceptive cell phone fees, or engage in other unlawful conduct.

The CFPB's proposal will first be considered in small business review panels and then the CFPB will issue a formal proposed rule. "The CFPB's proposal is an important first step and we applaud the proposal to stop corporate immunity from widespread wrongdoing. As the CFPB prepares a

proposed rule, we urge the agency to prohibit forced arbitration altogether,” Saunders noted. A final rule is not expected to be in place until 2017.

NCLC is part of the Fair Arbitration Now coalition, which works to restore access to justice. For more information about forced arbitration and additional stories of real people harmed by this practice, please visit the Fair Arbitration Now website at <http://www.fairarbitrationnow.org>.

### **Related NCLC Resources**

The Model State Consumer and Employee Justice Enforcement Act (State Model Law): <https://nclc-old.ogosense.net/images/pdf/arbitration/model-state-arb-act-2015.pdf>

Consumer Arbitration Agreements (legal manual): <https://library.nclc.org/ARB>

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