

- Restoring American Financial Stability Act -
Pass the Bureau of Consumer Financial Protection & Maintain Authority
to Limit Abusive Forced Arbitration

The greedy, selfish, and reckless behavior by Wall Street caused the collapse of our economy, resulting in the loss of 7 million American jobs. The Senate must pass strong reform that holds Wall Street accountable. The more Congress delays, the greater the risk of another collapse that will cost more jobs and end the economic recovery. The Bureau of Consumer Financial Protection (CFPB) is an essential part of this reform package. Its purpose will be to protect the American consumer from unfair, deceptive, and abusive financial products.

As part of that mission, the Congressional legislation provides the CFPB and the Securities and Exchange Commission (SEC) with the power to limit or prohibit the use of mandatory pre-dispute arbitration clauses from consumer and investment contracts. This language must remain in the bill and amendments to remove these sections should be opposed for the following reasons:

Consumers Need Protection from Forced Arbitration.

- The widespread use of forced arbitration clauses in contracts for financial services like credit cards, bank accounts, and auto financing is one of the most abusive and deceptive practices harming consumers today.
- Forced arbitration clauses are hidden in the fine print of consumer and investment contracts and strip the consumer and investor of the right to file claims against these major Wall Street firms; instead, these clauses result in the funneling of all claims into a secret and biased system controlled by Wall Street. These clauses are presented on a take-it-or-leave-it basis, an individual has no choice unless s/he forgoes the product altogether – not a realistic choice when it comes to a cell phone, bank account, or credit card.
- Forced arbitration clauses eliminate incentives for Wall Street to treat consumers and investors fairly because they know they will never be held publicly accountable for their actions.

The approach in the Senate bill is modest and narrowly targeted.

- Section 931 would provide the SEC with the authority to limit forced arbitration in investment contracts. The issue of forced arbitration within the securities context has already been studied and found to be grossly unfair to investors.¹ Accordingly, the SEC needs the discretion to address the issue of forced arbitration. Section 921 merely provides that the SEC “may” issue rules to “impose conditions or limitations” on the use of forced arbitration; it would be under no obligation to do so.
- Similarly, Section 1028 would allow the CFPB to restrict and or ban forced arbitration from financial service contracts but only after it studies the issue

¹ David Serchuk, **When Arbitration Fails**, Forbes, 05.15.09, available at http://www.forbes.com/2009/05/14/arbitration-finra-disputes-intelligent-investing-resolution_print.html

and makes recommendations. Also, Section 1028 merely provides that the Bureau “may” issue rules to “impose conditions or limitations” on the use of forced arbitration; it would be under no obligation to do so.

Forced arbitration threatens the goals of transparency, fairness, and accountability.

- **Secret Proceedings.** Consumer arbitration is a private, unregulated system. When claims are heard in arbitration there is no public record kept of the proceedings or outcomes, no requirement that the law be applied, no mandatory uniform standards for arbitrators, and no way for the public to learn about a company’s bad practices.
- **Arbitrator Bias.** Typically, Wall Street firms select the arbitrator and determine the rules of procedure. Likewise arbitrators depend on the repeat business of Wall Street, referring to these Wall Street firms that use their services as their “clients,” thus ensuring that these “clients” are kept happy by continuously rendering them favorable decisions. In such a biased system, consumers are denied the opportunity to have their claims heard by a neutral party.
- **Elimination of Statutory Rights.** Rights are meaningless if unenforceable and under the present system of forced arbitration, long fought for and well-established statutory rights are undermined and often negated by a biased arbitrator. In the consumer context, the following statutory rights are often not enforced by the arbitrator: the Truth in Lending Act, portions of the Magnuson-Moss Warranty Act, the Fair Debt Collection Practices Act, the civil provisions of the Racketeer Influenced and Corrupt Organizations Act, the Home Owners Equity Protection Act, the Consumer Leasing Act, the Credit Repair Organizations Act, and the Fair Credit Reporting Act.

A Federal Solution is the Only Solution.

- The Federal Arbitration Act (FAA) trumps state consumer protection laws; states have been left powerless to protect their own citizens through state law because of the breadth and reach of the FAA.
- The problem of forced consumer arbitration must be addressed by Congress and/or federal agencies because current law dictates that all state regulations limiting forced arbitration are preempted by the FAA. Accordingly, it is critical that the new Bureau of Consumer Financial Protection be empowered to investigate and restrict the practice where necessary.