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CFPB STUDY SHINES LIGHT ON THE WIDESPREAD, UNJUST CORPORATE PRACTICE OF SECRET, FORCED ARBITRATION

Advocates Decry Harm Done to Consumers by a Get-Out-of-Jail-Free Card for Businesses

(Washington, D.C.) The fine print of millions of contracts deprives consumers of their statutory and constitutional right to a day in court, according to [a study released today](#) by the Consumer Financial Protection Bureau (CFPB) on arbitration clauses. Forced arbitration clauses cloak large corporations in immunity and require consumers to give up their basic rights if they want to use products like credit cards, bank accounts, nursing homes, cell phones, car financing and many others that we all rely on every day. “Allowing companies to force consumers into an often biased, secretive, and lawless system deprives millions of people of their right to justice,” said Lauren Saunders, managing attorney of the National Consumer Law Center.

For example, Bernardita Duran of New York contracted with an Arizona debt relief company to settle her credit card debts and was scammed of \$4,000. Due to a forced arbitration clause buried in the contract, she must travel to Arizona to argue before the arbitrator. Making the trip would cost more than a month’s worth of her \$700 monthly Social Security income, thereby preventing her from paying her rent.

“Forced arbitration clauses give corporate wrongdoers immunity from justice if they sell a shoddy product, commit fraud, violate consumer protection laws, or fail to do what they promised,” said Ellen Taverna, legislative director of the National Association of Consumer Advocates. “The ordinary consumer has absolutely no idea he or she is giving up constitutional, statutory, and common law rights and surrendering his or her ‘day in court.’ ”

The CFPB study demonstrates that forced arbitration clauses are becoming standard business practice in contracts for financial products like payday loans, credit cards and checking accounts. The study also found that 9 out of 10 arbitration clauses prevent consumers from banding together to bring collective claims. The CFPB study did not cover the widespread use of forced arbitration clauses in other nonfinancial contracts for car purchases, cell phones, nursing homes and more.

“The study confirms that the main impact of arbitration is to stop injured consumers from getting any relief at all, not to help them get relief in a different manner,” Saunders said. In the increasingly rare cases where arbitrators were allowed to order the company to repay all injured consumers, the study found that more than 13 million class members made claims or received payments. But with a class-action ban, the arbitrator would be able to order relief only for the individual consumer who brought the case. The study found only 900 arbitration cases brought by consumers from 2010 to 2012 involving credit cards, checking accounts, payday loans or prepaid cards.

The use of forced arbitration clauses has skyrocketed due to U.S. Supreme Court decisions that broadly interpret the Federal Arbitration Act. Companies now use forced arbitration clauses to eliminate the ability of consumers to band together, which in many circumstances is the only means to vindicate their rights. “The federal law that governs arbitration has been interpreted to the point where it has warped all sense of fairness or justice, and has given corporations a get-out-of-jail free card,” said Christine Hines, consumer and civil justice counsel at Public Citizen. “The mere existence of a forced arbitration clause and class-action ban in a contract can squash thousands of valid consumer claims and shield companies from being held liable for their misconduct.”

The rise of forced arbitration clauses has enormous consequences for consumers. It allows businesses to engage in unfair and deceptive practices without fearing that consumers will seek relief for harm in court. Further, forced arbitration clauses in consumer financial contracts mean that many serious violations of law will go undetected, either because cases will never be brought or because the evidence presented and decisions rendered in private arbitration are not made public. Additionally, companies write the clauses, which typically state who the arbitrator will be, under what rules the arbitration will take place, the state in which the arbitration will occur, and the payment terms for the arbitration. Arbitrators have an incentive to favor the company that gives them repeat business, not the consumer who they will never see again.

“Unfair arbitration clauses encourage unfair corporate practices and sloppy customer service,” said Ed Mierzwinski, consumer program director at U.S. PIRG. “If your customers cannot take you to court, why should you care about their complaints? We urge the CFPB to act quickly to ban forced arbitration clauses in financial products and services contracts.”

Background Information

What is forced arbitration? Forced arbitration clauses are buried in the fine print of employment, cell phone, credit card, retirement account, home building, and nursing home contracts. Just by taking a job or buying a product or service, individuals are forced to give up their right to go to court if they are harmed by a company. Because the private system of forced arbitration benefits companies — and disadvantages consumers and employees — more and more industries are using forced arbitration to evade accountability. In arbitration, there is no

publicly accountable judge, jury, or right to an appeal. The arbitrators do not have to follow the facts or the law, and there is no public review of decisions to ensure the arbitrator got it right. Moreover, contracts typically name the arbitration firm that must be used—the one preferred by the company. Arbitrators have an incentive to favor the company, which can give them repeat business or not.

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>.

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Americans for Financial Reform is a nonpartisan and nonprofit coalition of more than 250 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, we are working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole.

<http://ourfinancialsecurity.org/>

The **National Association of Consumer Advocates** (NACA) is a nonprofit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means. www.naca.net

Since 1969, the nonprofit **National Consumer Law Center**® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

www.nclc.org

Public Citizen is a national, nonprofit consumer advocacy organization that champions the public interest in the halls of power. www.citizen.org

U.S. PIRG, the federation of state Public Interest Research Groups, is a consumer group that stands up to powerful interests whenever they threaten our health and safety, our financial security, or our right to fully participate in our democratic society. www.uspirg.org