

Credit Reports and Forced Arbitration: Will Congress Strip Americans of Their Day in Court?

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Equifax was slow to alert the public to the data breach exposing the sensitive personal information of 143 million Americans. But the company was quick to protect itself by attempting to take away our day in court. Buried in the fine print of the website it set up to offer free credit monitoring was a **forced arbitration clause and class action ban**. The terms purported to apply to any controversy “relating in any way to Your relationship with Equifax” and to be interpreted in “the broadest possible” manner. Equifax eventually relented and removed the clause under intense pressure. But other credit reporting agencies also use “ripoff clauses,” and Equifax continues to do so for other products.

That is why Congress must reject efforts by Equifax and big bank lobbyists to block the new Consumer Financial Protection Bureau (CFPB) rule that restores Americans’ day in court when big credit bureaus, Wall Street banks, and predatory lenders violate the law.

The CFPB rule restores Americans’ day in court, holds companies accountable when they violate the law, and brings transparency to the secretive arbitration process. It prohibits the fine print of financial contracts from having forced arbitration clauses that bar thousands or millions of consumers from banding together in court to address widespread wrongdoing. **The rule applies to companies providing credit reports, credit scores, credit monitoring and other services provided to consumers based on information in the consumer’s file.**

Beyond Equifax, the two other big credit bureaus also include forced arbitration clauses with class action bans in their products. For example, rip-off clauses can be found in:

- TransUnion’s TrueIdentity
- Experian’s ProtectMyID
- Fraud Resolution by Experian

A court of appeals found that TransUnion’s website “actively misleads consumers” into thinking that clicking “I agree” merely authorized TransUnion to obtain the person’s information, not to bind them to a forced arbitration clause.

Numerous problems with credit reporting companies include:

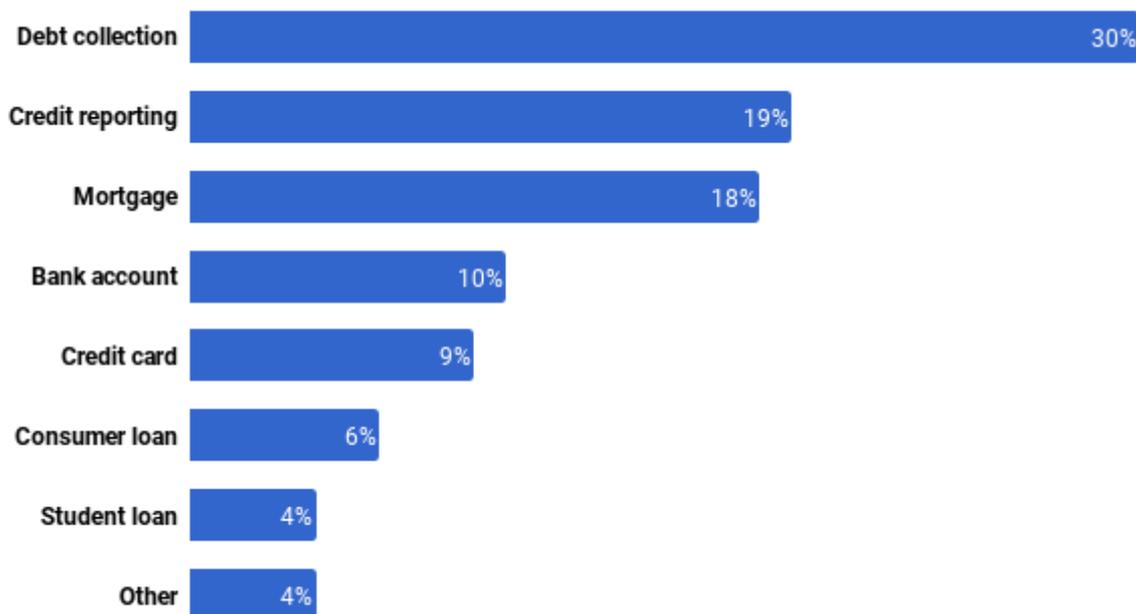
- Widespread credit report errors and mismatching of people with similar names;

- Refusal to correct errors despite numerous requests;
- Deceptive marketing of credit monitoring and identity theft prevention products;
- Steering people away from the free credit report they are entitled to by law. (In July, a Texas judge kicked one such suit out of court and forced arbitration.)
- Misleading people about the credit scores they sell.
- Difficulty canceling unwanted services and getting refunds.

Access to the courts is critical for credit reporting problems. A jury recently ordered TransUnion to pay \$60 million to 8,185 people - including active duty servicemembers serving abroad - who were carelessly mismatched with persons with similar names on a government watch list of suspected terrorists and drug traffickers.

Credit reporting is consistently a top subject of complaints to the CFPB.

CONSUMER COMPLAINT VOLUME BY PRODUCT HANDLED BY CFPB IN 2016



Source: CFPB (August 2017)

The CFPB’s arbitration rule gives Americans back their constitutional right to their day in court when credit reporting companies violate the law. The rule protects our rights so they don’t depend on the whims of big companies or the pressure of intense media scrutiny.

But Equifax and bank lobbyists are urging Congress to block the rule. The House voted to strike down the rule and protect bad corporate actors. It is now up to the Senate.

The arbitration rule has broad, bipartisan support. Almost 9 in 10 consumers polled want the choice to participate in a class action. The Military Coalition, representing 5.5 million servicemembers, and 310 consumer, civil rights, labor, and small business groups

support the rule. Polling by the American Future Fund, a conservative super political action committee, found support from two-thirds of voters in Alaska, Louisiana, Maine, and Ohio. Leading conservative voices supporting the rule include the American Legion, Dean Clancy, the former vice president for public policy at FreedomWorks, and Tea Party Nation founder Judd Phillips.

Our Founders fought hard to ensure that Americans would have access to a robust system of legal justice. The Senate must not do the bidding of Equifax and Wall Street banks by taking away Americans' day in court.

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