



BankThink Why CFPB's arbitration rule is essential (two words: Wells Fargo)

By Lauren Saunders

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The Consumer Financial Protection Bureau's long-awaited [financial arbitration rule](#) is being opposed by banking lobbyists, and a resolution has already been filed in Congress to block it. This would be a grave mistake.

The rule, which will take effect next year, will forbid forced arbitration clauses that ban class actions in contracts governing bank accounts, credit cards, student loans, payday loans, debt collection, credit reporting and auto loans originated or bought by finance companies.

Financial institutions should support the rule, which will right the scales of justice and discourage bad actors from dragging down the industry.



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A look at the Wells Fargo fake-accounts scandal — where the bank is using [arbitration clauses](#) to block class actions over accounts people never authorized — reveals why the final rule is much-needed. It's outrageous that banks and other companies can violate the law, harm millions of people and [then tell them](#): "Too bad. You signed away your day in court. Not even an arbitrator can look at how many people we harmed or hold us fully accountable."

True, Wells Fargo has chosen to settle one of the fake-account cases [as a class action](#) (while still trying to force arbitration in others). But it is the rare case that receives the degree of publicity and public pressure that the Wells Fargo case has. Moreover, the threat of forced arbitration undoubtedly helped the bank negotiate a lower settlement with the plaintiffs. In another case involving unfair and fraudulent practices to increase overdraft fees, Wells Fargo (the [lone big bank](#) still fighting these charges) is trying [to defeat](#) a decadelong 49-state class action by forcing one-by-one arbitrations.

Forced arbitration is not a different way of resolving disputes; it is a way of blocking justice. Indeed, a [2015 CFPB study](#) found few people with small claims pursue their claims individually, either in court or arbitration. More troubling, companies can easily pay off those people who do pursue their claims. Then those same companies can keep violating the law at scale and hold onto the profits from those customers who haven't figured out what happened or made the effort to pursue a claim.

Class actions, meanwhile, can solve that problem and are essential in assessing how outrageous and broad a company's misconduct is and holding the company fully accountable for what it has done. The public could chalk up a single case of a fake account to a rogue employee, for instance. It is only by looking at the now 3 million and counting fake Wells Fargo's accounts that we see that the scandal was a systemic problem at the highest levels of the bank. And it's not just about the numbers: to figure out what the bank knew and how the problem happened simply isn't possible in a single case over a few hundred dollars.

History already shows us banks can remain profitable without forced arbitration clauses. Capital One eliminated such clauses years ago. Bank of America no longer uses them in consumer contracts. JPMorgan Chase removed the clauses from credit card contracts after the 2009 [National Arbitration Forum scandal](#). [Smaller banks](#) and [credit unions](#) — with no compelling need to rely on forced arbitration — are also less likely to use forced arbitration clauses than large institutions.

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Contrary to lobbyist claims, giving people their day in court does not significantly raise costs and prices either. The same CFPB study found that the interest rates on credit cards and mortgages did not change after banks eliminated arbitration clauses. Additionally, banks that are exposed to class actions are likely to be more careful about violating the law — avoiding litigation costs and government enforcement actions.

Bottom line: Allowing access to the courts levels the playing field against unscrupulous competitors and thereby benefits law-abiding financial institutions. When consumers can't challenge widespread illegal behavior, companies that charge a transparent price are at a disadvantage against ones that can make money off illegal trickery. Some conservative legislators have [also supported](#) class actions as a market-based solution that focuses enforcement on bad actors engaged in widespread wrongdoing. While people may disagree on the need for more regulations, everyone should support strong enforcement of our laws against those who break the law.

Banks get their day in court when they want it. They should give their customers the same right.



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