



BETTER MARKETS

FACT SHEET: WHY THE CFPB CUSTOMER PROTECTION ARBITRATION RULE IS SO IMPORTANT **It Protects Consumers While Promoting Fairness, Accountability, and Transparency**

THE CONSUMER PROTECTION RULE. On July 10, 2017, the Consumer Financial Protection Bureau issued a new rule prohibiting financial firms from depriving their customers of the right to join class action lawsuits to recover damages when they are victimized by widespread fraud and abuse, including everything from deliberate overcharges to fake accounts in customer names. The rule is under assault by the financial services industry and its allies on the Hill. Contrary to their claims, however, the rule is reasonable, fair, and necessary to protect consumers of financial products and services, inform the public of misconduct, and hold wrongdoers accountable.

IT'S REASONABLE AND MEASURED. Critics say the CFPB went rogue when it adopted the rule. Just the opposite is true. Congress, only seven years ago, recognized the injustices in the arbitration system and gave the CFPB clear authority to limit or ban forced arbitration clauses altogether. The CFPB could have gone further but instead struck a middle ground: It didn't ban all mandatory arbitration agreements, such as those covering individual claims, only those that prevent a customer from participating in class actions.

IT'S FUNDAMENTALLY FAIR. If a bank, credit card company, or payday lender adopts business practices that cheat thousands of customers, it's only fair that those victims have the right to band together and seek damages in court. If every single customer is left with only a David v. Goliath battle with the lawyered-up banks in individual arbitrations, those claims just won't be brought—especially if each individual suffers a significant injury but one that is small compared to the expense of bringing a claim.

IT'S ALSO ABOUT MAKING SURE THE PUBLIC KNOWS ABOUT MISCONDUCT. Because arbitrations are conducted in secret, banks and other institutions can conceal abusive practices even when some of the many injured customers seek relief in arbitration. Even regulators can be kept in the dark. That's exactly what happened in the Wells Fargo scandal that broke last Fall: For years, the bank had been ripping off millions of customers by opening fake accounts in their names, and attempts by some clients to push back in arbitration went unnoticed. Regulators caught on, but only after years of abuse. With the rule in place, abusive practices will be exposed more quickly, through open and public class actions filed in court.

IT'S GOING TO HELP FIX THE ARBITRATION SYSTEM. The rule takes another important step toward fixing a broken arbitration system. In addition to protecting the right to join class actions, the rule will help the CFPB collect data to assess how the process for *individual* arbitrations is working. For years, consumer advocates have highlighted a host of problems that make arbitration unfair to consumers: (1) The process is sprung on unsuspecting customers in fine print contract clauses; (2) arbitrators are often biased in favor of industry; (3) there's limited discovery so it's hard for consumers to pry key evidence loose from the banks; (4) it entails the cost of an attorney, since going it alone against the banks' lawyers is a recipe for disaster; (5) the rules typically limit the types of damages recoverable; and (6) the rights of appeal are extremely limited. That's why consumers usually receive a token award, if anything, that doesn't come close to the losses they've suffered. With more data in hand, the CFPB can make more fully informed decisions about what the appropriate next steps might be best to address these flaws in the mandatory arbitration system.