

United States Senate
Washington, D.C. 20510

February 28, 2019

The Honorable Mike Crapo
Chairman
Banking, Housing, and Urban Affairs Committee
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Banking, Housing, and Urban Affairs Committee
Washington, D.C. 20510

Dear Chairman Crapo & Ranking Member Brown:

We, the undersigned organizations, strongly support the Arbitration Fairness for Consumers Act. This legislation would prohibit lenders and other financial services companies from using pre-dispute forced arbitration or joint-action waivers to push consumers into private arbitration proceedings, instead of allowing consumers to exercise their constitutional right to seek justice. Pre-dispute forced arbitration clauses, which are found in the vast majority of consumer financial contracts, including but not limited to credit cards, debt settlement, auto financing, and payday loans, restrict consumers' rights and, as such, are contrary to public interest. It is time for Congress to act and put an end to this rigged practice.

Consumers are harmed when lenders and financial services companies use forced arbitration in lender and consumer financial services contracts because these arbitration proceedings insulate companies from accountability for wrongdoings by eliminating consumers' right to hold the companies responsible under the law and by prohibiting consumers from joining together in a class action. Specifically, eliminating the right to trial strips important legal protections away from consumers, notably those found in the Servicemembers Civil Relief Act, the Fair Debt Collections Practice Act, the Fair Credit Reporting Act, the Truth in Lending Act, and the Equal Credit Opportunity Act, and instead applies forced arbitration rules that significantly hinder discovery by limiting consumers' ability to obtain crucial evidence needed to prove their claim. Further, forced arbitration rules also limit consumers' rights to any meaningful appeal to a forced arbitrator provider's ruling.

In addition to the total deprivation of rights that arises from forced arbitration, such proceedings also yield a fundamentally unfair process because forced arbitration providers often rely on the companies for repeat business and, consequently, are significantly biased against consumers. This bias is demonstrated by the Economic Policy Institute's finding that consumers obtain relief regarding their claims in only 9 percent of disputes whereas companies are granted relief 93 percent of the time when they make claims or counterclaims.¹

Even more concerning, the Consumer Financial Protection Bureau's (CFPB) Arbitration Study: Report to Congress, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a) found that 75 percent of consumers surveyed were unaware that their consumer financial contracts subjected them to forced arbitration. In the context of lenders and financial services companies, consumers are not voluntarily entering into forced arbitration; lenders and financial services companies employ a "take it or leave it" approach without offering consumers any alternative options.

All in all, forced arbitration and joint-action waivers make it difficult for consumers to obtain justice by hiding systemic wrongdoing and allowing the wrongdoers to evade accountability for their bad acts.

¹ Shierholz, Heidi. (2017, August 1). *Correcting the record: Consumers fare better under class actions than arbitration*. Retrieved from <https://www.epi.org/publication/correcting-the-record-consumers-fare-better-under-class-actions-than-arbitration/>.

Sincerely,

Alliance for Justice

American Association for Justice

Americans for Financial Reform

Center for Justice and Democracy

Consumer Action

Consumers for Auto Reliability and Safety

Earthjustice

Florida Alliance for Consumer Protection

National Association of Consumer Advocates

National Consumer Voice for Quality Long-Term Care

Texas Watch

Workplace Fairness