



The House recently sided with banks over consumers

BY MARTHA MCCLUSKEY, OPINION CONTRIBUTOR - 08/04/17 01:45 PM EDT

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Did you read the fine print when you signed up for your credit card, a loan on your car, or a new checking account? Chances are, you missed an important provision called a "forced arbitration clause." This provision says that if the bank or credit card company has made a mistake it refuses to correct, or even cheated you out of money, you cannot sue to attempt to get your money back. Instead, you must pursue your claim in a secretive, privately run forum called "arbitration." In contrast to the courts, the arbitration process is full of pitfalls that discourage people from bringing claims, has rules that disadvantage consumers, and, for the few consumers who prevail, provides inadequate compensation. And that's exactly why banks and lenders force you to use it.

It's also why last month, the Consumer Financial Protection Bureau (CFPB) took an important step to crack down on the abusive use of forced arbitration, issuing a rule banning some of these clauses – those blocking consumers from joining class action lawsuits with thousands of other victims of the same illegal banking practices. The CFPB's final rule focuses on such lawsuits, because, as the [Wells Fargo fake account scandal](#) demonstrates, this form of litigation is particularly important for consumers of financial services and products where the dollars at stake in their individual cases are not large enough to justify individual lawsuits.

This victory for consumers might be short-lived, however, because Republicans in the House of Representatives have already begun the process of repealing the rule by passing a resolution using a controversial

law known as the Congressional Review Act (CRA). But Congress did not always take such a dim view of consumer financial protections: In 2010, members passed a [law](#) directing the CFPB to study the effects of forced arbitration clauses on consumers. The law directed that, if the CFPB found that these clauses were harming the public, it should issue a regulation that restricts their use.

In 2015, after three years of intense study, the CFPB released a 700-page [report](#) on forced arbitration clauses, which documented the harmful effects these provisions have on the financial security of hard-working families. The CFPB then launched a two-year rulemaking process that culminated in the new regulation prohibiting banks and credit card companies from blocking class actions.

The careful process that the CFPB relied on to develop this rule stands in stark contrast to the one that Congress is set to rely on to repeal it. In effect, [the CRA short-circuits the normal process](#) of democracy, allowing Congress to pass a special kind of bill known as a "resolution of disapproval" to repeal recently completed regulations without committee hearings, floor debates, conference committees, and most notably, the now-standard 60-vote threshold in the Senate – the very procedures meant to ensure that legislation is carefully vetted and accountable to the people.

To make matters worse, if Congress passes the resolution, the CRA further prohibits the CFPB from instituting a similar rule addressing forced arbitration clauses unless Congress gives it explicit authority to do so sometime in the future.

If this CRA resolution takes effect, it's clear who the losers will be: ordinary Americans and small businesses. Financial giants like big banks and credit card companies will be the big winners. They can continue to engage in illegal practices that take a few dollars here and there from consumers without worrying about real accountability. Thanks to the volume of business these large corporations do, that will add up quickly.

It should come as no surprise that the members of Congress backing the CRA resolution against the forced arbitration rule have close ties to the financial industry. A recent [report](#) from Public Citizen found that the financial industry has given more than \$100 million in campaign contributions to Senate Republicans backing the resolution. The main sponsor of the resolution in the House, [Rep. Keith Rothfus \(R-Pa.\)](#), received [\\$212,909 in campaign contributions](#) from commercial banks and the securities and investments industries in the most recent election cycle alone.

Fortunately, the CFPB's rule still has a chance at survival. Passage of the CRA resolution in the Senate is far from certain. Let's hope our elected representatives do the right thing and stand up for families and small businesses instead of big banks.

Martha McCluskey is a professor at the University at Buffalo School of Law, State University of New York, and a Member Scholar at the Center for Progressive Reform.

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