

May 14, 2026

Brian Moynihan, CEO
Lauren Mogensen, Global General Counsel
Bank of America Corporate Center
100 North Tryon Street
Charlotte, NC 28255

RE: Bank of America Adoption of Forced Arbitration Provisions in its Online Banking Service Agreement

Dear Mr. Moynihan and Ms. Mogensen:

The undersigned public interest organizations condemn Bank of America's decision to add an arbitration provision to its "Online Banking Service Agreement," governing its online or mobile banking services.¹ As you know, the revised terms, which become effective May 18, 2026, block customers' access to the court system and eliminate their right to a jury trial, should they have disputes with the bank. Particularly at a time when your customers are facing rising costs and federal regulators have abandoned their role in holding corporations accountable, we are deeply disappointed that the bank is once again moving to subject its customers to a forced arbitration provision. We call on Bank of America to immediately restore its customers' access to the public court system and remove the recently adopted arbitration provision from its Online Banking Service Agreement and any other agreement governing its consumer products and services.

In 2009, Bank of America stopped using its consumer contracts to force customers into binding arbitration before any dispute arose.² At the time, Bank of America, along with Capital One, JPMorgan Chase, Discover, and HSBC were defendants in an antitrust lawsuit where credit card borrowers alleged that these banks, and other large banks, colluded to implement arbitration provisions in their credit card agreements to prevent their customers from enforcing their rights under state and federal law in individual and class action cases.³ In 2010, the above-named banks entered into a settlement where they agreed to stop enforcing their arbitration clauses and class action bans against consumer and small business credit card cardholders. They also agreed to remove the arbitration clauses and class action bans from their credit card terms for 3.5 years.⁴

For almost 17 years, Bank of America customers retained the ability to hold the bank accountable in the public court system. In a 2017 letter to Sen. Elizabeth Warren, a Bank of America official noted that its 2009 removal of arbitration clauses from its consumer agreements was the "right business

¹ Bank of America, Online Banking Service Agreement, effective May 18, 2026, *available at*, <https://www.bankofamerica.com/content/documents/agreement/OnlineBankingServiceAgreementUpdateEN.pdf>.

² See, Kathey Chu, *Bank of America Ends Arbitration of Credit Card Disputes*, abcnews.com, *available at*: <https://abcnews.com/Business/story?id=8324675&page=1>. See, *Bank of America Drops Credit Card Arbitration Requirement*, Aug. 14, 2009, cnbc.com, *available at*: <https://www.cnbc.com/2009/08/14/bofa-drops-credit-card-arbitration-requirement.html>.

³ *Ross, et al. v. Bank of America, N.A. et al*, (USA), No. 05-cv-7116 (S.D.N.Y.).

⁴ *Cardholders May Access Website for Information Concerning Settlements Reached in Ross v. et al. v. Bank of America, N.A., (USA), No. 05-cv-7116 (S.D.N.Y)*, pmnewswire.com, Apr. 19, 2010, *available at*: <https://www.pnewswire.com/news-releases/cardholders-may-access-website-for-information-concerning-settlements-reached-in-ross-et-al-v-bank-of-america-na-usa-no-05-cv-7116-sdny-91542474.html>.

practice to maintain relationships with its clients and customers.”⁵ The new revisions to the Online Banking Services Agreement to include a forced arbitration clause marks a serious and unjustified departure from transparency and accountability.

The new forced arbitration clause prohibits your customers from joining their claims together in class actions, which in practice thwarts their ability to seek redress when systemic, widespread harm occurs, particularly where each individual consumer may have only a small-dollar claim. With respect to mass arbitrations, the new clause mandates procedures that severely limit claimants’ ability to engage legal representation of their choosing and could significantly delay the amount of time a claimant would have to wait to have their case heard in arbitration.

The forced arbitration clause also violates principles of fairness, starting with the ability for customers to access the public court system. In addition, the clause limits the availability of discovery, hindering claimants’ ability to access internal records and collect evidence for their case.⁶ It also severely restricts customers’ right to appeal decisions, even those that are clearly contrary to the law and evidence. Because arbitration proceedings are generally private, and decisions often remain hidden, forced arbitration can also keep corporate wrongdoing from public view affording corporations protection against large-scale public accountability, weakening compliance with laws, and eroding public trust in the financial system.

Finally, the banking agreement gives customers a mere 60 days “of first delivery of this Arbitration provision” to opt out of the arbitration clause—meaning the clock has already started ticking for tens of millions of your customers who likely are unaware of this material change to their legal rights. Most customers will never notice the opt out provision or be sufficiently put on-notice of the limited window of opportunity to opt-out of the forced arbitration clause and the important reasons to take advantage of it.⁷ Further, the bank could unilaterally revise its terms again with changed arbitration requirements and new “opt out” conditions.

The forced predispute consumer arbitration system is rigged. Large and powerful companies like banks become “repeat players” of arbitration firms, which then have an incentive to decide disputes against consumers and in the bank’s favor. There is ongoing litigation addressing whether the American Arbitration Association (AAA), which is the sole arbitration forum designated to decide disputes between Bank of America and its customers in the updated forced arbitration clause, has monopoly power in the consumer arbitration market.⁸ A federal court recently denied AAA’s motion to dismiss the case, concluding that “plaintiffs’ allegations raise the plausible inference that the AAA heavily influences the corporate entities to include exclusivity provisions in their arbitration agreements, including by way of providing to them sample arbitration clauses, an AI Tool, and Consumer Rules, in

⁵ See, Letter to The Honorable Eliabeth Warren from John Collingwood, Director of Federal Government Affairs for Bank of America dated Sep. 1, 2017, at 5, *available at*: https://www.warren.senate.gov/files/documents/2017_09_12_Responses_to_Arb_Letter.pdf.

⁶ See, fn. 1. “To the extent permitted by law, the discovery exchanged between Bank of America and you as to any Claim is presumptively limited to the exchange of documents directly relevant to the Claim, absent an order from the arbitrator that good cause exists to require the exchange of additional discovery.”

⁷ See, Roseanna Sommers, *What do consumers understand about predispute arbitration agreements? an empirical investigation*, PLOS ONE, Feb. 23, 2024, *available at*: <https://doi.org/10.1371/journal.pone.0296179>.

⁸ See, *Stephens v. American Arbitration Association Incorporated*, 2:25-cv-01650, D. Ariz. (May 15, 2025).

combination with attracting and keeping the corporate entities' business by providing favorable arbitration results to them at a low cost.”⁹

The public, including Bank of America customers, should be able to choose the public court system after disputes arise, instead of being forced into a private arbitration system dictated by corporate fine print. Bank of America must uphold the highest standards of fairness and respect the legal rights of its tens of millions of customers as it did for almost 17 years.

We urge you to reinstate customers' right to choose to go to court when disputes arise and remove the forced arbitration clauses from all customer agreements, including your deposit accounts and credit products.

Thank you for your attention and consideration.

Sincerely,

Alliance for Justice
American Association for Justice
American Economic Liberties Project
Americans For Financial Reform Education Fund
Better Markets
Center for Justice & Democracy
Consumer Action
Consumer Federation of America
DC Consumer Rights Coalition
Economic Action Maryland Fund
Economic Empowerment Center DBA Lending Link
Impact Fund
Legal Action of Wisconsin, Inc.
National Association of Consumer Bankruptcy Attorneys
National Association of Consumer Advocates
National Consumer Law Center, on behalf of its low-income clients
National Consumers League
New Economy Project
New Jersey Institute for Social Justice
Oregon Consumer Justice
Oregon Consumer League
Public Citizen
Public Justice
Texas Watch
Virginia Citizens Consumer Council

⁹ ORDER, *Stephens v. Am. Arbitration Ass'n*, No. CV-25-01650-PHX-JJT, at 7 (D. Ariz. March 31, 2026), <https://storage.courtlistener.com/recap/gov.uscourts.azd.1441165/gov.uscourts.azd.1441165.23.0.pdf>.