

United States Senate

June 7, 2019

Mr. Jamie Dimon
Chairman and Chief Executive Officer
JPMorgan Chase
270 Park Avenue
New York, NY 10017

Dear Mr. Dimon:

We write to express our serious concerns regarding the forced arbitration clause that JPMorgan Chase recently added to some of its consumer credit card agreements.

As recently reported, JPMorgan Chase sent emails informing consumers that the company is updating its account terms.¹ The notice covers a variety of changes, with the final change being that a new binding arbitration clause will be imposed on consumers, unless cardholders “opt out” of forced arbitration by sending Chase a physical letter containing personal information via a mail service within 60 days of receiving notice.

Forced arbitration is unfair and unjust to consumers. One of the fundamental principles of our democracy is that everyone should get their day in court. Forced arbitration deprives Americans of that basic right. It limits the ability of consumers to seek justice and accountability before a judge or jury, and it prevents consumers from banding together to increase their power through class action lawsuits. As acknowledged in the May 30th email sent by Chase to customers, there is very limited review of forced arbitration by a court. Even worse, in many instances, consumers are unaware that they have even “agreed” to forced arbitration in the first place. The only real winners are large corporations, like JPMorgan Chase.

Moreover, the recent addition of a forced arbitration clause is an about-face from the company’s prior stance on this issue. In 2009, JPMorgan Chase removed a forced arbitration clause from its credit card agreements. A company spokesperson said: “Our decision is the right thing for our customers and our business and reflects our commitment to clearer and simpler communication with our customers.”² We agree that this was the right thing to do. That is no less true today.

The percentage of Americans who oppose forced arbitration continues to rise. In 2017, 67% of Americans supported the Consumer Financial Protection Bureau’s (CFPB) rule, which would have limited forced arbitration clauses in consumer financial contracts.³ A national poll conducted this year found that a staggering 84% of voters would support federal legislation to

¹ <https://www.fastcompany.com/90357331/chase-adds-forced-arbitration-clause-to-slate-credit-cards>

² <https://www.reuters.com/article/hold-jpmorgan-cards-arbitration-idUSN2038019720091120>

³ See Sylvan Lane, *GOP Polling Firm: Bipartisan Support for Consumer Bureau Arbitration Rule*, The Hill, Oct. 2017.

end arbitration requirements for consumers and employees.⁴ It is curious that at a time of intense public scrutiny of the reviled practice of forced arbitration, Chase would decide to take this step to deny customers their rights. Google employees walked out on the job,⁵ the #MeToo movement continues to expose workplace harassers who force survivors into arbitration,⁶ and just two weeks ago the House of Representatives voted in a bipartisan fashion to protect consumers from this very practice.⁷

We urge JPMorgan Chase to withdraw the forced arbitration clause in its credit card agreements and request that you answer the following questions by **Friday, June 28, 2019**:

1. To what extent did the company consider the impact of forced arbitration on consumers before adding the provision?
2. According to Chase's new forced arbitration clause, consumers may only opt out of the clause and preserve their Seventh Amendment constitutional right to a trial by jury by sending a written letter by *postal mail* to an address in Delaware, which must include the name of the customer, their bank account numbers, their address and personal signature, within a certain time frame (approximately 60 days from receiving the notice). To what extent did the company simply consider allowing customers to *opt in* to forced arbitration and to do so via an electronic process or by phone?
3. Data shows that most consumers are unaware that they are bound by a forced arbitration clause, let alone understand the ramifications of failing to opt out of forced arbitration. In fact, it has been shown that only 1 in 1,000 consumers ever opt-out of forced arbitration clauses because they do not realize they have the option, do not know how to go about it, or are unaware they have "signed" a forced arbitration contract in the first place.⁸ The 2015 Consumer Financial Protection Bureau study on the use of forced arbitration in financial consumer products found that only one single consumer whose credit card contract permitted him to opt out of the forced arbitration clause in his credit card contracts recalled being offered such an opportunity.⁹ Given the significant evidence that

⁴ Johana Bhuiyan, *Tech workers' fight against forced arbitration gets a boost in Congress*, *LA Times*, Feb 29, 2019, <https://www.latimes.com/business/technology/la-fi-tn-forced-arbitration-google-walkout-blumenthal-20190228-story.html>.

⁵ Daisuke Wakabayashi, *Google Ends Forced Arbitration for All Employee Disputes*, *New York Times*, Feb. 21, 2019, <https://www.nytimes.com/2019/02/21/technology/google-forced-arbitration.html>.

⁶ Alexis Keenan, *Ex-Fox anchor Gretchen Carlson says corporations use arbitration to hide 'dirty laundry'*, *Yahoo Finance*, May 16, 2019, <https://finance.yahoo.com/news/gretchen-carlson-forced-arbitration-212229128.html>.

⁷ Tracey Longo, *House Bill Seeks End To Mandatory Arbitration Agreements*, *Financial Advisor (FA-Mag)*, May 23, 2019, <https://www.fa-mag.com/news/house-approves-bill-to-end-mandatory-arbitration-agreements-45063.html?section=3>.

⁸ Sovern et al., *"Whimsy Little Contracts" with Unexpected Consequences: An Empirical Analysis of Consumer Understanding of Arbitration Agreements*, *Maryland Law Review*, Vol.75, Issue 1, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2516432.

⁹ *Arbitration Study: Section 2: How prevalent are pre-dispute arbitration clauses and what are their main features*, Consumer Financial Protection Bureau, March 2015, http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

opt out clauses do not provide an effective avenue for consumers to preserve their legal and constitutional rights, will JPMorgan Chase instead commit to allowing consumers to choose whether to arbitrate voluntarily *after* a claim has arisen?

4. Will JPMorgan Chase commit to restoring the rights of its customers and once again do the “right thing for [your] customers” by removing the forced arbitration clause from its contracts?

We look forward to your cooperation with this matter.

Sincerely,



KAMALA D. HARRIS
United States Senator



RICHARD BLUMENTHAL
United States Senator