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October 16, 2012

Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Via: <http://www.regulations.gov>

Re: Docket No. CFPB-2012-0037 or RIN 3170-AA13

Comments to the Bureau of Consumer Financial Protection regarding its proposed rule to implement amendments to the Truth in Lending Act and specifically, the restrictions on predispute mandatory binding arbitration in Section 1414(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

Public Citizen, a national nonprofit consumer advocacy organization with more than 300,000 members and supporters, respectfully submits these comments on the Consumer Financial Protection Bureau's (CFPB) proposed rule to implement amendments to the Truth in Lending Act made by the Dodd-Frank Act, and specifically regarding the implementation of the restrictions on predispute mandatory binding (or forced) arbitration contained in Section 1414(e). Public Citizen represents consumer interests on a broad range of issues including consumer rights in the marketplace and financial regulation. Our supporters are interested in protecting the rights of all Americans and are concerned with how the proliferation of forced arbitration in consumer and employment contracts, including in the terms of service for financial products and services has stripped away some of our most basic rights.

Congress made it clear in the Dodd-Frank Act that forced arbitration harms homeowners, whistleblowers, investors and consumers, in general.¹ Throughout the statute, Congress imposed restrictions on forced arbitration, and granted authority to federal agencies, including the Bureau, to restrict the practice. In the case of residential mortgage loans, Congress had determined the impact of forced arbitration on homeowners and ensured that residential mortgage loans could not abolish homeowners' legal rights.

¹ See, Dodd-Frank Act, Sections 748, 921, 1028, and 1414.

Public Citizen was pleased with the inclusion of Section 1414(e) in the Dodd-Frank Act. Paragraph (1) bars forced arbitration and “other nonjudicial procedures” from the terms of residential mortgage loans as well as the terms of open-ended home equity loans. Paragraph (2) permits parties to enter into arbitration contracts only after a dispute arises, and paragraph (3) states that a consumer cannot be barred from bringing an action in court for covered claims, including where a post-dispute arbitration contract exists.

The Bureau mentions and discusses the ban on forced arbitration numerous times throughout the proposed rulemaking, however the Bureau’s implementation of Section 1414(e) appear to have little impact on the statute. The Bureau should reject any attempts or arguments that would delay or interfere with the clear and unambiguous meaning of the statute, that is, to eliminate forced arbitration from mortgage loan terms.

The Bureau notes in the rulemaking that the statutory amendments to TILA take effect in the absence of the Bureau’s regulation. Given that the Bureau has initiated rulemaking on the provision and that it is not in consumers’ interest or benefit to sign away their right to sue for predatory mortgage lending and other illegal practices, the Bureau should ensure that the effective date of Section 1414(e) is not delayed.

Sincerely,

Public Citizen, Congress Watch division

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Director

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