

June 30, 2014

Consumer Financial Protection Bureau
Attention: PRA Office
1700 G Street NW,
Washington, DC 20552

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

**Comments of GROUPS to the Consumer Financial Protection Bureau on the Proposed New Information Collection, titled “Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit card Agreements,”
Docket No.: CFPB-2014-0011**

INTRODUCTION

The undersigned organizations appreciate the opportunity to offer new comments concerning the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed national telephone survey of 1,000 credit card holders as part of its study of pre-dispute binding mandatory (or “forced”) arbitration, which is required under Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We continue to believe that this proposed survey is worthwhile, that it will provide additional useful information, and we urge that it be undertaken and completed as promptly as possible.

On June 7, 2013, the CFPB issued its first Request for Information (“RFI”) regarding this telephone survey of credit card customers. Many of the same undersigned public interest organizations submitted comments to the CFPB in response to its RFI notice.¹ (See attached document.) We continue to support the Bureau’s plan to inquire into the awareness and understanding of consumers as to the nature and use of forced arbitration clauses in contracts for consumer financial services and products. We appreciate that the CFPB has taken our recommendations to include simpler and more concise survey questions that will be easier for the respondents to answer. We believe that the CFPB’s updated consumer telephone survey will confirm, with its own research, what the available empirical research already demonstrates: that not only are forced arbitration clauses harmful to consumers and designed to immunize corporations, but very few consumers are actually aware of and meaningfully agree to forced arbitration clauses in these contracts.

As discussed below, additional evidence has developed since the CFPB’s previous RFI, further demonstrating that forced arbitration clauses are opposed by many consumers once they are made aware that their rights could be taken away. Meanwhile, new legal developments have only further undermined the ability of consumers to effectively vindicate their rights under consumer protection statutes.

¹ Comments to the Consumer Financial Protection Bureau on the Proposed Information Collection, “Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements,” Docket ID: CFPB-2013-0016, August 6, 2013, <http://www.citizen.org/documents/coalition-comments-on-cfpb-consumer-survey.pdf>.

CONSUMERS DISAPPROVE OF FORCED ARBITRATION WHEN INFORMED OF THE CONSEQUENCES

Two recent incidents demonstrate that consumers object to forced arbitration when they are informed about being subject to it and about its consequences. One incident involves General Mills; the other involves Charles Schwab.

In April 2014, General Mills Inc., one of the nation's largest food companies, inserted a forced arbitration clause into the legal terms of its privacy policy online, under which any consumer who downloaded a coupon, joined its online communities, or participated in a promotion and sweepstakes by General Mills would be subject to arbitration should a dispute arise. After an article in *The New York Times* exposed General Mills' offensive terms, consumers reacted quickly and strongly against General Mills taking away their rights.² A lot of angry customers publicly opposed General Mills' actions and contacted the company. Here are some comments posted on the General Mills' Cheerios Facebook page calling on General Mills to drop the forced arbitration clause from its terms:

*"Hey cheerios, nice try to take away my legal rights. I will never buy another general mills product again."*³

*"Dear General Mills, I'm hereby informing you that due to your ridiculous, sneaky and underhanded policy update that effectively removes my consumer rights simply by liking this page, I will no longer "like" this page. I will also stop buying any of your other products on any of your other platforms, the \$.50 coupon for Cheerios is not worth you taking away my right to sue you if you taint my food supply. I'm sure Kellogg's will appreciate my business a whole lot more than you have. Sincerely, Disgruntled former customer."*⁴

*"No way. You seriously did NOT do this. We like your page, you can, risk-free, accidentally or purposefully harm us and we have no legal recourse? NO WAY."*⁵

After a wave of overwhelmingly negative consumer reactions, General Mills recanted and dropped the forced arbitration clause.⁶ In its statement of apology, General Mills admitted that "consumers didn't like" the new arbitration terms,⁷ adding that "we never imagined this reaction."⁸

² Stephanie Strom, *General Mills Reverses Itself on Consumers' Right to Sue*, *The New York Times*, April 20, 2014, <http://nyti.ms/1heDMAg>.

³ [Kevin Price](#) posted on General Mills' Cheerios Facebook page on April 17, 2014 at 10:22am.

⁴ [John Loureiro](#) posted on General Mills' Cheerios Facebook page on April 17, 2014 at 7:41pm.

⁵ [Rebecca Hammond](#) posted on General Mills' Cheerios Facebook page on April 17, 2014 at 4:17pm.

⁶ Kirstie Foster, "We've listened – and we're changing our legal terms back," *Taste of General Mills Blog*, April 19, 2014, <http://www.blog.generalmills.com/2014/04/weve-listened-and-were-changing-our-legal-terms-back-to-what-they-were/#sthash.gzVifgDR.dpuf>.

⁷ *Id.*

⁸ *Id.*

On April 24, 2014, Charles Schwab & Co., Inc. agreed in a settlement with the Financial Industry Regulatory Authority (FINRA) to refrain from adding language to its investor contracts that prohibits its customers from participating in class actions. Charles Schwab had added the class-action ban to a provision in the contract terms that forces customers to use arbitration to resolve disputes. Almost a year ago, Schwab bowed to public pressure after negative publicity over its class-action ban, removing the unfair provision from its customer contracts while it continued its dispute with FINRA over the legality of its new terms. More than 15,000 activists joined a petition launched by Public Citizen calling on Charles Schwab to drop the class-action ban and the forced arbitration clause from its terms.⁹

The angry public reactions to General Mills and Charles Schwab and their subsequent policy retreats are examples of what happens when consumers become informed about the injustices of forced arbitration and publicly demand industry to change. Unfortunately these types of success stories of industry bowing to public pressure are the exception. As we fully expect your survey to further substantiate, most consumers are unaware of, or substantially misinformed about, forced arbitration provisions, and so are not in a position to demand that a company get rid of a forced arbitration clause.

USE OF FORCED ARBITRATION CLAUSES CONTINUES TO UNDERMINE CONSUMER PROTECTION

The Supreme Court decisions *AT&T Mobility v. Concepcion*¹⁰ and *American Express v. Italian Colors*¹¹ have left little room remaining for consumers to challenge the legality of forced arbitration clauses. A recent report from Public Citizen and the National Association of Consumer Advocates, titled “Cases That Would Have Been: Three Years After *AT&T Mobility v. Concepcion*, Claims of Corporate Wrongdoing Continue to Pile Up,” demonstrates that in the past three years, consumers and workers are increasingly being shut out of the courthouse.¹² The report identifies 140 cases affecting thousands of consumers or employees over the past three years where a court enforced a forced arbitration clause and barred the claimants from participating in a class action.¹³

In addition, the preliminary findings of the CFPB’s arbitration study suggest that financial institutions are responding to Supreme Court decisions like *Concepcion* by increasing the use of forced arbitration clauses in their consumer contracts.¹⁴ The CFPB study also confirmed a high prevalence of forced arbitration clauses in the terms of credit cards, checking accounts and

⁹Public Citizen Petition to Charles Schwab at http://action.citizen.org/p/dia/action/public/?action_KEY=12178.

¹⁰ *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011).

¹¹ *Am. Exp. Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 186 L. Ed. 2d 417 (2013).

¹² Christine Hines and Ellen Taverna, et al, “Cases That Would Have Been: Three Years After *AT&T Mobility v. Concepcion*, Claims of Corporate Wrongdoing Continue to Pile Up,” May 1, 2014, http://www.naca.net/sites/default/files/2014%2005%2001%20Concepcion3rdAnniversary_1.pdf.

¹³ *Id.* at 4.

¹⁴ CFPB Arbitration Study Preliminary Results, Section 3.5 (“Only limited data on changes in checking account contracts since *Concepcion* are available, but those data reveal a noticeable increase in the inclusion of arbitration clauses among large banks since mid-2012.”), 53-54, December 12, 2013, http://files.consumerfinance.gov/f/201312_cfpb_arbitration-study-preliminary-results.pdf.

prepaid cards. Additionally, nearly all of the forced arbitration clauses (about 90 percent) contained terms denying their customers the ability to participate in class actions.¹⁵

Despite the prevalence of forced arbitration clauses in consumer financial services contracts, restricting the rights of millions of consumers, arbitration provides almost no relief to consumers harmed by predatory or abusive practices in the financial services industry, including conduct causing widespread financial losses. The CFPB's initial study confirmed that, because of the significant costs and other burdens involved, consumers rarely go to arbitration for small-dollar disputes, which highlights the importance of class actions for combining claims seeking recovery for small-dollar amounts individually.¹⁶ When an individual arbitration is the only course of action available to consumers, thousands of valid claims simply go unaddressed in any forum, whether in a court of law or arbitration.

CONCLUSION

We believe that the results of the CFPB survey will offer further concrete evidence of consumers' limited awareness of forced arbitration clauses. This information, along with indications of consumer dissatisfaction whenever they learn of the use of arbitration clauses and understand their effects, should add to the ample evidence demonstrating that a rule is essential to protect consumers. The CFPB should act quickly to complete this consumer awareness survey and its overall examination of the use of forced arbitration clauses, and then use its statutory authority to ban the use of forced arbitration clauses in contracts for consumer financial products and services.

If you need additional information regarding these comments, please contact Ellen Taverna at ellen@naca.net or at 202-452-1989 ext 109.

Respectfully,

American Association for Justice
Americans for Financial Reform
Alliance for Justice
Center for Justice & Democracy
Center for Responsible Lending
Citizen Works
Consumer Action
Consumers for Auto Reliability and Safety
Consumers Union
Homeowners Against Deficient Dwellings
Home Owners for Better Building
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)

¹⁵ See generally CFPB Arbitration Study Preliminary Results, Section 3 "Clause incidence and features."

¹⁶ Id., Section 2 "Summary of results to date," p. 12-15, "From 2010 through 2012, almost no AAA arbitration filings for these three product markets had under \$1,000 at issue."

National Consumers League
National Council of La Raza
National Fair Housing Alliance
Public Citizen
U.S. PIRG