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June 30, 2014

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

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

**Comments on a Proposed Information Collection Activity of the Consumer Financial Protection Bureau Titled “Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements,”
Docket No. CFPB-2014-0011**

Public Citizen, a national nonprofit consumer advocacy organization with more than 300,000 members and supporters, respectfully submits comments in response to the Consumer Financial Protection Bureau’s (CFPB) proposal to conduct a national telephone survey of 1,000 credit card holders as part of its study of predispute binding mandatory (or forced) arbitration, pursuant to Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹

Public Citizen supports the Bureau’s survey in form and substance. Consumers’ awareness and understanding (or lack thereof) of forced arbitration should provide helpful information to the agency as it finalizes its study on the use of forced arbitration in consumer financial services contracts. Consumers’ unfamiliarity with forced arbitration is a factor in the widespread use of the provisions in consumer contracts and the ongoing suppression of legal claims. Further, where the Bureau’s previously released data from the study² focuses on contract language and case study, the national telephone survey provides an avenue for the agency to hear directly from persons affected.

The Office of Management and Budget (OMB) should promptly approve the information collection so that the Bureau can conduct the survey and complete the arbitration study.

¹ Public Law 111-203.

² Consumer Financial Protection Bureau, *Arbitration Study Preliminary Results, Section 1028(a) Study Results To Date*, December 12, 2013.

BACKGROUND AND PROCESS

Public Citizen and other public interest organizations submitted a set of comments in response to the Bureau's first notice on its survey.³ In those comments we supported the survey and suggested changes, some of which the agency has addressed in its latest form, to address such issues as the complexity of proposed questions. The revised survey's questions are more focused and streamlined in a way that we think will help survey participants. Further, the survey asks pertinent questions regarding consumers' knowledge and experience of the arbitration terms in their credit card contracts.

We also wish to note the Bureau's effort to obtain feedback from stakeholders including consumer advocacy organizations and financial institutions and industry associations. It is clear from its public notices, its requests for comment, and the roundtables it has held that the Bureau has spent significant time seeking public reactions to the survey.⁴

DISCUSSION

Below are brief observations regarding the issues involved in conducting the survey:

Consumer awareness of arbitration provisions that proliferate in standard form, take-it-or-leave-it financial contracts and that waive consumers' constitutional rights is plainly relevant to the CFPB's arbitration study. Consumers' lack of awareness of arbitration clauses in the fine print is one of many fundamental issues of fairness facing private dispute arbitration. Are consumers aware of the elimination of their constitutional rights to a trial by jury in contracts that they cannot negotiate? Do they understand that a requirement to go to arbitration means that they cannot go to court? We believe not, but these are essential questions.

Financial institutions benefit when consumers are unaware of arbitration clauses because the more powerful industry players are able to manipulate dispute resolution provisions even further to their advantage. They use consumers' lack of awareness as they decide how to draft arbitration clauses, where to place them in contracts, and which additional procedural or substantive rights to grant or take away from consumers.⁵ Further, we have observed that when consumers learn about and come to understand the implications of arbitration and the severe restrictions it imposes on their ability to seek remedies, including prohibitions on joining other customers to seek remedies via a class action, that their reactions to such clauses are usually swift and disapproving.⁶

³ Public Citizen et al, *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 CFPB-2013-0016, August 6, 2013.

⁴ Consumer Financial Protection Bureau, *Information Collection Request – Supporting Statement A, Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements (OMB Control Number; 3170-XXXX)*, Docket CFPB-2014-0011, at 12.

⁵ See, *Ting v. AT&T*, 319 F.3d 1126, 1134 (9th Cir. 2003) and Brief for Respondent at 3-5, *AT&T Mobility v. Concepcion*, No. 09-893 (U.S.), <http://bit.ly/1m279gy>.

⁶ See, Stephanie Strom, *General Mills Reverses Itsself on Consumers' Right to Sue*, THE NEW YORK TIMES, April 20, 2014, <http://nyti.ms/1iB8ifH>.

The CFPB has noted that parties with which it consulted had already reached conclusions about the likely results of a survey.⁷ For example, the American Financial Services Association, self-described as the “national trade association for the consumer credit industry,”⁸ stated that “the Survey is likely to show that consumers are not generally aware of the arbitration provision in their credit card agreement.”⁹ In our view, the statement underscores the potential for the consumer survey to become a useful feature in the arbitration study. As other appraisals of consumers’ lack of awareness have noted in other contexts, the survey may provide additional evidence of the fundamental unfairness and threat to legal rights that arbitration clauses pose to consumers.

We agree with the Bureau’s statement that consumer awareness of forced arbitration could inform the survey’s assessment of consumers’ credit card acquisition decisions and their default assumptions. If the Bureau finds that credit card holders generally are unaware that arbitration clauses exist in their credit card (and other financial services) contracts, and don’t understand that their right to sue has been eliminated and replaced by private, individual arbitration, then they are unlikely to consider the potential removal of that right when choosing credit cards. If they don’t know or understand the consequences of the provisions, then they don’t have the ability to make decisions based on the issue.

Finally, as we mentioned in our original comments – and as the Bureau has since documented in its preliminary data – arbitration clauses are prevalent in credit card as well as other financial services contracts. We believe that the survey, though focusing on credit cards, will also help to inform the Bureau on the level of consumer awareness of forced arbitration as they relate to other financial contracts.

We urge the OMB to promptly approve the information collection activity so that the Bureau can conduct the survey and complete the arbitration study in a timely manner.

Sincerely,

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⁷ CFPB, *Supporting Statement A*, at 15.

⁸ American Financial Services Association, http://www.afsaonline.org/about_us/index.cfm.

⁹ Comments of American Financial Services Association, *Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements*, Office of Management and Budget (OMB), Control Number 3170-XXXX, Docket No: CFPB-2013-0016, at 3, August 6, 2013.