

March 24, 2015

Richard Cordray
Director
Consumer Financial Protection Bureau
1275 First Street, NE
Washington, DC 20002

Re: Arbitration Study Report to Congress, pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act § 1028(a)

Dear Director Cordray:

The undersigned organizations commend the Consumer Financial Protection Bureau (“CFPB” or Bureau”) for issuing a comprehensive and evidence-based report on arbitration titled, “Arbitration Study: Report to Congress, pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act § 1028(a).” The CFPB’s empirical findings from its preliminary results and now its final arbitration report unequivocally demonstrate that not only do forced arbitration clauses impose conditions that restrict consumers’ rights and block their access to courts, but very few consumers actually go to individual arbitration to settle disputes.

Now that its overall examination is complete, we urge the CFPB to initiate rulemaking to prohibit forced arbitration clauses in contracts for consumer financial services and products under its jurisdiction.

Few practices are as abusive, unfair, and deceptive as the widespread use of forced arbitration clauses in most consumer contracts, including credit cards, student loans, debt settlement, credit repair, auto financing, and payday loans. Forced arbitration funnels consumers into a private system set up by corporations to protect and hide harmful and unlawful corporate behavior. Not only do these terms eliminate the right to a jury trial in a civil action, limit discovery and make meaningful appeal impossible; they also often prohibit consumers from banding together in a class action as an effective way to seek legal accountability.

The CFPB study verified the prevalence of forced arbitration clauses and class action bans in consumer finance contracts and found that the clauses impacted tens of millions of consumers. According to CFPB data, forced arbitration eradicates consumer claims. As the financial industry knows, most consumers cannot and do not use the arbitration forum on an individualized basis. The CFPB’s data revealed that only about 600 consumers filed a claim in arbitration each year, while millions more received remedies for harm in class actions. This data demonstrates that the prevalence of forced arbitration clauses undermines the rule of law.

The CFPB concluded arbitration clauses can be a barrier to consumers getting relief from class actions. Roughly 34 million consumers could have been eligible for at least \$1.1 billion in cash payments, based on its review of class action settlements during a five-year period.

Eliminating class actions prevents consumers from bringing financial services claims of fraud or other abusive or deceptive practices, because often such claims are too small for a consumer to be able to afford to bring alone. Class actions provide an opportunity for consumers who have suffered similar patterns of financial abuse from the same corporate wrongdoer to join together to hold the financial institution accountable. Class actions are critically important, not only for the victims of financial wrongdoing, but also for deterring more financial harm to others. Without class actions, industry can ignore the law far more easily, and operate with impunity.

Consumers seeking justice in court, particularly by banding together, benefits millions of Americans and also complements public enforcement efforts. In a recent letter to the CFPB, 16 state attorneys general confirmed that private consumer class actions promote and supplement public enforcement of consumer protection laws. Private actions supplement government enforcement under a wide range of consumer-protection statutes, such as the Servicemembers Civil Relief Act, the Fair Debt Collections Practices Act, the Fair Credit Reporting Act, the Sherman and Clayton Antitrust Acts, the Truth in Lending Act and the Equal Credit Opportunity Act.

It is also clear that with forced arbitration, consumers typically have no idea they are giving up their rights to the court system. As empirical research shows, most consumers are not aware of forced arbitration clauses, which are buried in the fine print of standard-form contracts. The Bureau's report determined that more than 75 percent of consumers surveyed did not know whether they were subject to an arbitration clause in their consumer financial contracts. The CFPB study further confirms that, even when consumers are aware of the clauses, they do not meaningfully understand them. Fewer than 7 percent of those surveyed that are covered by arbitration clauses realized that the clauses restricted their ability to sue in court.

Further, when consumers learn about what a forced arbitration clause actually does to their rights, they abhor it. Recently, 100,000 consumers alerted to forced arbitration clauses signed a petition against the five largest banks that use them, demanding an end to this abusive practice.¹

We ask the CFPB to follow recent federal government actions that curb forced arbitration clauses. The CFPB itself implemented a provision of the Dodd-Frank Act that prohibits forced arbitration of disputes related to most mortgage and home equity loans. Congress also banned forced arbitration in transactions with military servicemembers with respect to payday loans, vehicle title loans, and tax refund anticipation loans; auto dealers and automobile and truck manufacturers; livestock and poultry growers; and employees of government defense contractors with Title VII and sexual assault tort claims.

We believe that the final results of the CFPB arbitration study offer concrete evidence that the use of forced arbitration clauses is harmful to consumers, and therefore, it is in the public interest and in the interest of consumer protection to prohibit the practice. The CFPB must act

¹ Chris Morran, *Marching Band Delivers Petition To Citi Asking Banks To "Revoke License To Steal,"* CONSUMERIST, Jan. 28, 2015, <http://bit.ly/1wBs3mc>.

now to use its statutory authority to prohibit the use of forced arbitration clauses in contracts for consumer financial products and services, and restore consumers' right to choose how to resolve disputes with financial institutions.

If you need additional information regarding this letter, please contact Ellen Taverna, National Association of Consumer Advocates, ellen@consumeradvocates.org, (202) 452-1989 ext. 109 or Christine Hines, Public Citizen, chines@citizen.org, (202) 454-5135.

Thank you for considering our views.

National Signatories

AFL-CIO
AFSCME
Alliance for a Just Society
Alliance for Justice
American Civil Liberties Union
Americans for Financial Reform
Center for Economic Justice
Center for Justice & Democracy
Center for Responsible Lending
Citizen Works
Committee to Support the Antitrust Laws
Consumer Action
Consumer Federation of America
Consumer Watchdog
Consumers for Auto Reliability and Safety
Consumers Union
Economic Analysis and Research Network (EARN)
Homeowners Against Deficient Dwellings
The Leadership Conference on Civil and Human Rights
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Consumer Voice for Quality Long-Term Care
National Consumers League
National Council of La Raza
National Employment Lawyers Association
National Fair Housing Alliance
Other 98%
Public Citizen
SEIU
Southern Poverty Law Center
The Employee Rights Advocacy Institute for Law & Policy
The Institute for College Access & Success (TICAS)
U.S. PIRG

Workplace Fairness
Young Invincibles

State and Local Signatories

Arkansans Against Predatory Payday Lending, AR
Center for Economic Integrity, AZ
Arizona Community Action Association, AZ
Law Foundation of Silicon Valley, CA
CourageCampaign.org, CA
Housing Resource Center of Monterey County, CA
Greenlining Institute, CA
Center for Public Interest Law, CA
Children's Advocacy Institute, CA
Legal Assistance Resource Center of Connecticut, Inc., CT
CT Center for Patient Safety, CT
Community Capital Fund, CT
Florida Alliance for Consumer Protection, FL
Fair Housing Center of the Greater Palm Beaches, FL
Jacksonville Area Legal Aid, Inc., FL
Habitat for Humanity West Hawaii, GA
Georgia Watch, GA
Idaho Art and Graphics, ID
Center for Economic Progress, IL
Consumer Federation of the SE, LA
PREACH, LA
Solomon Temple MB Church, LA
Catholic Charities of North Louisiana, LA
Consumer World, MA
Mayor's Office of Consumer Information, MA
Consumer Assistance Council, Inc., MA
Maryland Consumer Rights Coalition, MD
Public Justice Center, MD
Veterans Education Success, MD
Michigan Disability Rights Coalition, MI
Global Green Initiative, MI
Ironworkers Local 25 -Detroit, MI
Michigan Forward, MI
Progress Michigan, MI
Missouri ProVote, MO
Communities Creating Opportunity, MO
North Carolina Justice Center, NC
Granite State Organizing Project, NH
Affordable Housing Alliance, NJ
New Jersey Citizen Action, NJ
Center for Economic Integrity - New Mexico Office, NM

Albany County Rural Housing Alliance, Inc., NY
Bankruptcy Law Center, NY
JASA Legal Services for the Elderly in Queens, NY
Central New York Citizens in Action, Inc., NY
JEM, Inc., NY
Pratt Area Community Council, NY
Brooklyn Housing and Family Services, Inc., NY
National Coalition for Asian Pacific American Community Development, NY
Keuka Housing Council, Inc., NY
Long Island Housing Services, Inc., NY
Empire Justice Center, NY
MFY Legal Services, Inc., NY
Hudson River Housing, NY
Miami Valley Fair Housing Center, Inc., OH
Neighborhood Housing Services of Greater Cleveland, OH
COHHIO, OH
Ohio Poverty Law Center, OH
Policy Matters Ohio, OH
Oregon Consumer League, OR
Integra Home Counseling, Inc., PA
Keystone Progress, PA
South Carolina Appleseed Legal Justice Center, SC
Tennessee Citizen Action, TN
New Level Community Development Corp, TN
Home Owners for Better Building, TX
Texas Watch, TX
Take Back Your Rights PAC, TX
Lynch Family Trust, WA
H & R Properties, WI
WV Citizen Action Group, WV