

April 27, 2016

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

Dear Director Cordray:

The undersigned organizations commend the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) for moving forward on a rulemaking to address the widespread harm resulting from forced arbitration, which blocks consumers from joining together to seek justice and forces them into individual arbitration. Lenders and other financial services companies use forced arbitration to push consumers out of court and into a private arbitration system that they tilt to favor large financial interests. The CFPB’s empirical findings in its comprehensive and evidence-based report on the use of arbitration clauses unequivocally demonstrate that forced arbitration imposes conditions that restrict consumers’ rights and block their access to courts, giving lenders an effective license to steal.

Few practices are as fundamentally contrary to the public interest as the increasingly widespread use of ripoff clauses that impose forced arbitration in most consumer financial contracts, including credit cards, student loans, debt settlement, credit repair, auto financing, and payday loans. These clauses force consumers into a secretive, unfair system set up by corporations to protect and hide harmful and unlawful corporate behavior. Not only does forced arbitration eliminate the right to jury trial in a civil action, limit discovery, restrict or prohibit publicity, and make meaningful appeal impossible; ripoff clauses also often prohibit consumers from banding together in a class action to hold the company responsible.

The proposed prohibition of class action bans, currently under consideration by the CFPB, is a crucial step to protect consumers against abusive practices. While we urge the Bureau to go further by prohibiting forced arbitration in individual cases as well, we support the proposal to begin shining a light on individual arbitrations through reporting requirements. We also encourage the Bureau to finalize its rule on arbitration as quickly as possible and ensure that the final rule applies to all products and services within its authority.

The CFPB’s “Arbitration Study: Report to Congress, pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act § 1028(a)” verified the prevalence of ripoff clauses – including class action bans – in consumer financial contracts and found that forced arbitration impacts tens of millions of consumers. CFPB data leave no doubt that forcing consumers into arbitration effectively eradicates claims, shielding corporate wrongdoers from liability. This data further revealed that only about 600 consumers filed a claim in arbitration each year, while millions more received redress from class actions.

Class action bans in these ripoff clauses prevent consumers from bringing claims of fraud or other abusive or deceptive practices in financial services, as such claims are often too small for an individual consumer to afford to bring alone. Class actions provide a practical way for consumers who have suffered the same kind of abuse from the same corporate wrongdoer to join together in attempting to hold the financial institution accountable. This kind of action is critically important, not only for enabling those already victimized to obtain justice, but also for deterring bad behavior and preventing harm to other victims.

Consistent with the study's findings, consumers seeking justice in court, particularly by joining their claims together, benefits millions of Americans and also complements public enforcement efforts. Private legal actions by consumers 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. Government enforcers have limited resources, and without the prospect of class action, financial service companies can evade the law far more easily.

It is also clear that consumers typically have no idea they are signing away their right to sue in court when they use financial services. As empirical research shows, most consumers are not aware of these ripoff 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 forced arbitration 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 what forced arbitration actually does to their rights, they are outraged by this abusive practice. Last year, 100,000 consumers signed a petition against the five largest banks that use ripoff clauses, demanding that they stop.¹

The CFPB's rulemaking is in keeping with other recent federal government actions that curb the use of forced arbitration. 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. In the federal agency context the Centers for Medicare and Medicaid Services is currently considering a ban on forced arbitration in long-term care facility contracts. Most recently, in March, the Department of Education introduced proposals to deny Title IV funding to colleges using forced arbitration as part of its negotiated rulemaking process.

We believe the findings of the CFPB arbitration study offer concrete proof that forced arbitration is causing widespread harm to consumers, and therefore, that it is in the public

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

interest and in the interest of consumer protection to prohibit or strictly curtail the use of ripoff clauses in consumer financial contracts. We commend the CFPB for moving forward on a rulemaking to address the public harm caused by forced arbitration, and urge the Bureau to use its full statutory authority to restore consumers' right to choose how to resolve disputes with financial institutions under the law.

If you need additional information regarding this letter, please contact Amanda Werner, Arbitration Campaign Manager with Americans for Financial Reform and Public Citizen, at awerner@ourfinancialsecurity.org or (202) 973-8004.

Thank you for considering our views.

National Signatories

AFL-CIO
AFSCME
Alliance for a Just Society
Alliance for Justice
American Association for Justice
American Association of State Colleges and Universities
American Family Voices
Americans for Financial Reform
The Bazelon Center for Mental Health Law
Center for Economic Integrity
Center for Economic Justice
Center for Global Policy Solutions
Center for Justice & Democracy
Center for Popular Democracy
Center for Progressive Reform
Center for Responsible Lending
Citizen Works
Committee to Support the Antitrust Laws
Constitutional Accountability Center
Consumer Action
Consumer Federation of America
Consumer Watchdog
Consumers for Auto Reliability and Safety
Consumers Union
Demos
Economic Analysis and Research Network (EARN)
The Employee Rights Advocacy Institute for Law & Policy
Generation Progress
Higher Ed, Not Debt
Homeowners Against Deficient Dwellings

The Institute for College Access & Success (TICAS)
Institute for Science and Human Values, Inc.
Jobs with Justice
Justice in Aging
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Main Street Alliance
NAACP
National Association for College Admission Counseling
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Center for Lesbian Rights
National Center for Transgender Equality
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 Jewish Women
National Council of La Raza
National Employment Lawyers Association
National Employment Law Project
National Fair Housing Alliance
National LGBTQ Task Force
National Women's Law Center
Other 98%
Privacy Rights Clearinghouse
Public Citizen
Public Justice
Rootstrikers
SEIU
Southern Poverty Law Center
U.S. PIRG
United Policyholders
The Woodstock Institute
Workplace Fairness
Young Invincibles
9to5, National Association of Working Women

State and Local Signatories

Arkansans Against Predatory Payday Lending, AR
Arizona Community Action Association, AZ
Center for Economic Integrity, AZ
California Reinvestment Coalition, CA
California State Student Association, CA
Center for Public Interest Law, CA
Children's Advocacy Institute, CA

Consumer Attorneys of California, CA
Consumer Federation of California, CA
CourageCampaign.org, CA
Greenlining Institute, CA
Housing Resource Center of Monterey County, CA
Law Foundation of Silicon Valley, CA
The Utility Reform Network (TURN), CA
Community Capital Fund, CT
CT Center for Patient Safety, CT
Legal Assistance Resource Center of Connecticut, Inc., CT
The Legal Aid Society of the District of Columbia, DC
Fair Housing Center of the Greater Palm Beaches, FL
Florida Alliance for Consumer Protection, FL
Jacksonville Area Legal Aid, Inc., FL
Progress Florida, FL
Habitat for Humanity West Hawaii, GA
Georgia Watch, GA
Idaho Art and Graphics, ID
Center for Economic Progress, IL
Chicago Consumer Coalition, IL
Illinois Association for College Admission Counseling, IL
Catholic Charities of North Louisiana, LA
Consumer Federation of the SE, LA
PREACH, LA
Solomon Temple MB Church, LA
Consumer Assistance Council, Inc., MA
Consumer World, MA
Massachusetts Consumer Council, MA
Mayor's Office of Consumer Information, MA
Maryland Consumer Rights Coalition, MD
Public Justice Center, MD
Veterans Education Success, MD
Maine Women's Lobby, ME
Michigan Association for College Admission Counseling, MI
Michigan Disability Rights Coalition, MI
Global Green Initiative, MI
Ironworkers Local 25 -Detroit, MI
Michigan Forward, MI
Progress Michigan, MI
Minnesota Association for College Admission Counseling, MN
Communities Creating Opportunity, MO
Consumers Council of Missouri, MO
Missourians Organizing for Reform and Empowerment, MO
Missouri ProVote, MO
North Carolina Justice Center, NC
Reinvestment Partners, NC

North Dakota Economic Security and Prosperity Alliance, ND
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
Brooklyn Housing and Family Services, Inc., NY
Central New York Citizens in Action, Inc., NY
Empire Justice Center, NY
Hudson River Housing, NY
JASA Legal Services for the Elderly in Queens, NY
JEM, Inc., NY
Keuka Housing Council, Inc., NY
Long Island Housing Services, Inc., NY
MFY Legal Services, Inc., NY
National Coalition for Asian Pacific American Community Development, NY
New York Public Interest Research Group, NY
Pratt Area Community Council, NY
COHHIO, OH
Miami Valley Fair Housing Center, Inc., OH
Neighborhood Housing Services of Greater Cleveland, OH
Ohio Poverty Law Center, OH
Policy Matters Ohio, OH
Oregon Consumer League, OR
Integra Home Counseling, Inc., PA
Keystone Progress, PA
Columbia Consumer Education Council, SC
South Carolina Appleseed Legal Justice Center, SC
Tennessee Citizen Action, TN
New Level Community Development Corp, TN
Home Owners for Better Building, TX
Take Back Your Rights PAC, TX
Texas Consumer Association, TX
Texas Watch, TX
Virginia Organizing, VA
Columbia Legal Services, WA
Lynch Family Trust, WA
H & R Properties, WI
Mountain State Justice, WV
WV Citizen Action Group, WV
Potomac and Chesapeake Association for College Admission Counseling
Western Association for College Admission Counseling