

September 13, 2022

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Critical Need for Action to Limit Forced Arbitration

Dear Director Chopra:

The undersigned organizations representing millions of consumers call upon the Consumer Financial Protection Bureau (CFPB) to continue its work and exercise its explicit authority to limit the use of forced arbitration requirements utilized by banks and financial institutions to strip Americans of their right to seek justice after being victimized by banking abuses or fraud. The Bureau's own data confirmed that forced arbitration hurts consumers and deprives the vast majority of banking customers of the right to seek meaningful accountability; that widespread, systemic banking fraud and abuse cannot be effectively addressed in forced arbitration; and that these restrictive clauses are regularly blocking millions of consumers from seeking justice. State and federal laws exist to empower and protect consumers when banks and financial institutions violate the law, but without a regulation to limit forced arbitration, the promise of these laws will never be realized by most consumers. Forced arbitration deprives Americans of their rights in cases of banks' clear and widespread abuse. The CFPB should act to restore those rights.

As you know, Congress directed the Bureau to study the use of forced arbitration clauses in the consumer finance market and authorized it to write a rule to limit or restrict the practice in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Bureau's wide-ranging 2015 study, where it examined the use of forced arbitration in six different consumer financial services markets, verified the extreme power imbalance we have long observed between consumers hurt by banks and financial institutions that break the law.

The study found that tens of millions of consumers were subject to forced arbitration clauses and class action bans in their credit card, deposit account, prepaid account, student loan, payday loan, and wireless carrier contracts.¹ Additionally, the data suggested that only a small minority of consumers ever actually filed for forced arbitration and that forced arbitration produced vastly more favorable results for corporations rather than consumers. Only about 600 consumers filed for forced arbitration in each year studied, and most of the forced arbitrations filed were for claims over \$1000.² Out of 1,060 claims filed over a two-year period, consumers only obtained relief in 78 cases, recovering a total of less than \$400,000.³ In fact, arbitrators are more likely to order

¹ See Consumer Financial Protection Bureau, Arbitration Study: Report to Congress, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act 1028(a) (March 2015), available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

² Id. at 11-12.

³ Id. at 12.

consumers to pay corporations than the other way around.⁴ Conversely, the study determined that approximately 32 million consumers were eligible for remedies from financial services class actions each year and they collectively recovered at least \$220 million each year.⁵

The Bureau's eventual rule in 2017, which prohibited regulated entities from using forced arbitration clauses that bar consumers from enforcing their rights by participating in class or collective actions, would have restored rights and leveled the playing field for millions of consumers. We were exceedingly disappointed that Congress voted by the narrowest of margins to disapprove the rule before it could go into effect. However, the Bureau's statutory authority to address this widespread problem on behalf of consumers and the public interest remains and the abusive use of forced arbitration by the banking industry has only grown worse in the intervening years. The Bureau can and must exercise its authority in any number of ways that would not be substantially the same as the regulation Congress acted to nullify.

Given how deeply embedded basic financial services are in consumers' everyday lives and the scale of harm that occurs in the financial services marketplace on a daily basis, it is essential that consumers have the ability to vindicate their rights in court, whether as individuals or as part of a group. We commend the CFPB for its newly strengthened stance on enforcement while acknowledging that in this large market and with the constraints on regulators' enforcement resources, it is extremely difficult for the Bureau to identify and remedy most or all instances of systemic consumer harm without also ensuring that consumers are empowered to act as a group and on their own in the courts.

Further, recent developments concerning forced arbitration generally, such as the recent bipartisan enactment of the "Ending Forced Arbitration for Sexual Assault and Harassment Act," which allows assault and harassment survivors to choose to file a case in court rather than be forced into arbitration, have further underscored how unfair and insidious forced arbitration is and how unpopular it is with the vast majority of the American public.

Because American consumers who've been defrauded or ripped off by their bank, lender, or credit card company must be allowed the chance to seek justice and accountability, especially for systemic and recurring abuse, we urge the Bureau to act now to rein in forced arbitration in financial services. It must seize this opportunity and revisit this unfair practice and its ongoing, damaging impact on this market.

Thank you for considering our views.

20/20 Vision DC
Affordable Housing Alliance
Alaska PIRG
Alliance for Justice
American Association for Justice
American Family Voices

⁴ Heidi Shierholz, *Correcting the Record*, Economic Policy Institute (Aug. 1, 2017), available at <https://www.epi.org/files/pdf/132669.pdf>.

⁵ Consumer Financial Protection Bureau *supra* note 1, at 16-17.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Americans for Financial Reform Education Fund
Arkansans Against Abusive Payday Lending
Asian Pacific American Labor Alliance, AFL-CIO
Better Markets
Campaign for America's Future
CASH Campaign of Maryland
Center for Economic Integrity
Center for Economic Justice
Center for Justice & Democracy
Center for LGBTQ Economic Advancement & Research (CLEAR)
Center for Responsible Lending
Charlotte Center for Legal Advocacy
Chinese Community Center of Houston
Coalition on Human Needs
Colorado Center on Law and Policy
Columbia Consumer Education Council
Committee to Support the Antitrust Laws
Community Service Society of New York
Congregation of Sisters of St. Agnes
Connecticut Citizen Action Group (CCAG)
Connecticut Legal Services, Inc.
Consumer Action
Consumer Assistance Council, Inc.
Consumer Attorneys of CA
Consumer Federation of America
Consumer Reports
Consumer Watchdog
Consumer World
Consumers for Auto Reliability and Safety
CoPIRG (Colorado Public Interest Research Group)
Center for Progressive Reform
Delaware Community Reinvestment Action Council, Inc.
Disability Rights Education & Defense Fund
Empire Justice Center
Faith Action for All
Georgia Watch
Gila County Community Services
Googlers for Ending Forced Arbitration
HomesteadCS
Housing and Family Services of Greater New York
Impact Fund
Interfaith Housing and Community Services, Inc.

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)
Jacksonville Area Legal Aid, Inc.
Jobs With Justice
Kentucky Equal Justice Center
Keuka Housing Council, Inc.
L & C Ministries
Legal Aid Justice Center
Long Island Housing Services, Inc.
Main Street Alliance
Manufactured Home Owners Association of Illinois
Miami Valley Fair Housing Center, Inc.
Mid-Minnesota Legal Aid
Mobilization for Justice
MoveOn
NAACP Legal Defense and Educational Fund, Inc. (LDF)
National Association of Consumer Advocates
National Center for Lesbian Rights
National Consumer Law Center (on behalf of its low-income clients)
National Consumer Voice for Quality Long-Term Care
National Consumers League
National Employment Law Project
National Employment Lawyers Association
National Latino Farmers & Ranchers Trade Association
National Military Family Association
National Organization for Women
National Women's Law Center
NC Justice Center
New Jersey Citizen Action
New Mexico Legal Aid
New York Legal Assistance Group (NYLAG)
North American Climate, Conservation and Environment (NACCE)
Oregon Consumer Justice
Pennsylvania Council of Churches
People's Parity Project
Privacy Rights Clearinghouse
Protect All Children's Environment
Public Advocacy for Kids (PAK)
Public Citizen
Public Good Law Center
Public Justice
Public Justice Center
Public Knowledge
Public Law Center
Service Employees International Union (SEIU)
South Carolina Appleseed Legal Justice Center

Student Borrower Protection Center
Take Back Your Rights GPAC
Texas Appleseed
Texas Consumer Association
Texas Watch
TURN The Utility Reform Network
U.S. PIRG
VetsFirst/United Spinal Association
Virginia Citizens Consumer Council
Virginia Organizing
Wildfire: Igniting Community Action to End Poverty in Arizona
Woodstock Institute
Workplace Fairness
YWCA of the University of Illinois
The Value Alliance
The Leadership Conference on Civil and Human Rights