May 10, 2016

The Honorable Thad Cochran
Chair
U.S. Senate Committee on Appropriations
Washington, DC 20510

The Honorable Harold Rogers
Chair
U.S. House Committee on Appropriations
Washington, DC 20515

The Honorable Barbara Mikulski
Ranking Member
U.S. Senate Committee on Appropriations
Washington, DC 20510

The Honorable Nita M. Lowey
Ranking Member
U.S. House Committee on Appropriations
Washington, DC 20515

Re: **Reject Proposals That Interfere with CPFB's Authority on Mandatory Arbitration**

Dear Chairman Cochran, Ranking Member Mikulski, Chairman Rogers, Ranking Member Lowey, and Committee Members:

The undersigned organizations strongly urge the Appropriations Committees to reject all proposals to weaken the powers, structure, or funding of the Consumer Financial Protection Bureau (CFPB or Bureau). And we are writing today to specifically urge the Committees to oppose any proposals that would limit, delay or remove the authority of the CFPB to take action on the use of pre-dispute binding mandatory arbitration – i.e., forced arbitration – in consumer financial contracts under its jurisdiction. The CFPB recently has initiated formal rulemaking on this matter, and its efforts should not be obstructed. Such interference would be harmful to the public interest. Furthermore, it would be particularly troubling to use the appropriations process to attempt to force through such propositions, avoiding open debate and a stand-alone vote.

After the well-documented abuses that led up to the 2008 financial crisis, Congress included in the Dodd-Frank Act a provision that specifically authorized the Bureau to restore consumers' legal rights by regulating, curbing, or outright prohibiting forced arbitration, 12 U.S.C. § 5518. It would be a huge step backwards for the public interest, and a tremendous gift to the worst actors on Wall Street and in the financial sector, if Congress suddenly confiscated or hampered the Bureau's ability to act in this area. This is especially true now that careful study demonstrates the serious harm that forced arbitration causes to consumers and the marketplace.

Forced arbitration results from terms in the fine print of financial services contracts that strip consumers of their right to file claims in court when companies cheat or rip them off. Arbitration clauses, most of which also restrict consumers' right to participate in joint or class actions, result in the funneling of consumer complaints into a secret and biased system controlled by big banks and other lenders – as chronicled in an extensive New York Times investigation. Because forced arbitration is in take-it-or-leave-it standard form contracts, individuals have little or no choice unless they are willing to forego the financial products altogether – not realistic when applying for student loans, credit cards, auto financing, and other basic financial services.

Simply put, forced arbitration pushes consumers into a system that is rigged against them. It allows financial services companies that break the law to avoid the consequences of their conduct. Lenders can shield themselves from responding to claims, such as those involving illegal charges and fees on financial accounts, short-term loans with exploding interest rates that violate consumer protection laws, and other unfair and deceptive lending practices.

The Bureau has been in a position to use its authority to initiate rulemaking on forced arbitration since it completed a three-year examination of the issue. After several years of thorough examination and analysis, the Bureau this month published a Notice of Proposed Rule and Request for Public Comment. This proposal would eliminate the worst aspect of arbitration clauses: language that bars consumers from joining together against systemic abuses. The rulemaking does not propose to ban all forced arbitration clauses, although many of us strongly believe doing so would be the best result. The empirical data from the Bureau's congressionally-mandated study make clear that agency action to limit forced arbitration in this way is not only appropriate, but a necessary and measured step to protect consumers in the financial marketplace.

The study data revealed that forced arbitration is prevalent in consumer financial services and that consumers subject to the practice are almost always prohibited from participating in class actions. The study also showed that few consumers can practically afford to go to arbitration on an individual basis. Only 25 consumers a year filed claims in arbitration worth under $1,000, providing powerful evidence that as a result of arbitration clauses, consumer actions against companies are effectively shut down. On the other hand, the Bureau found that class actions examined over a five-year period resulted in settlements totaling $2 billion in cash for 160 million class members who had been wronged and were legally eligible for relief.

The Bureau also confirmed that – despite industry claims to the contrary – financial institutions' use of forced arbitration clauses does *not* lead to lower prices for consumers, or increase consumers' access to credit. A Bureau survey also underlined that consumers generally are unaware of, and don't understand the consequences of, forced arbitration. Fewer than 7 percent realize that these contract terms eliminate their access to court.

This and other data in the study adds to a mountain of evidence demonstrating that forced arbitration removes a crucial tool, the civil courts, for consumers to hold corporations accountable if they break the law and cause harm, and to deter illegal conduct. State attorneys general have asked the Bureau for a rule to reinstate consumer access to the court system.[1] After the CFPB study, 164 national, state and local organizations urged the Bureau to protect consumers from forced arbitration.[2] Advocates of fair lending in housing, who have observed how the elimination of forced arbitration in residential mortgage terms has improved legal protections for homeowners, also requested that the Bureau apply the same policy to all lending products and related services.[3]

Any appropriations proposal that would interfere with the Bureau's rulemaking process on forced arbitration would be extremely damaging to the public interest. Therefore, we strongly urge you to reject any legislation or riders that would inhibit the Bureau's work.

[1] State Attorneys' General Letter to the Consumer Financial Protection Bureau, Nov. 19, 2014, http://1.usa.gov/1xGl6WS.
[2] Letter to the CFPB from 164 Organizations, April 27, 2016, http://bit.ly/1qYymoE.
[3] Letter to the CFPB from Housing Advocates, April 2, 2015, http://bit.ly/1AAfmeK.

If you have any questions or would like further information, please contact Amanda Werner, Americans for Financial Reform and Public Citizen, (202) 973-8004, awerner@ourfinancialsecurity.org and Christine Hines, National Association of Consumer Advocates, (202) 452-1989, christine@consumeradvocates.org.

SINCERELY,

National Organizations
Alliance for Justice
American Association for Justice
American Association of State Colleges and Universities
Americans for Financial Reform
Center for Global Policy Solutions
Center for Justice & Democracy
Center for Popular Democracy Action
Committee to Support the Antitrust Laws
Communications Workers of America
Consumer Action
Consumer Federal of America
Consumers for Auto Reliability and Safety
Consumers Union
Consumer Voice
Homeowners Against Deficient Dwellings
Jobs With Justice
League of United Latin American Citizens
Main Street Alliance
NAACP
National Association for College Admission Counseling
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Fair Housing Alliance
Public Citizen
Public Justice Center
Veterans Education Success
Women's Production Network, Inc.
Woodstock Institute
Workplace Fairness
United Activism Media LLC
United Policyholders
U.S. PIRG
Young Invincibles
9to5, National Association of Working Women

<u>State and Local Organizations</u>
Arkansans Against Abusive Payday Lending, AR
Southwest Center for Economic Integrity, AZ
California State Student Association, CA
The Center for Public Interest Law (at the University of San Diego School of Law), CA
The Children's Advocacy Institute (at the University of San Diego School Of Law), CA
Consumer Attorneys of California, CA
D.C. Consumer Rights Coalition, DC
Florida Alliance for Consumer Protection, FL
Greater Orlando National Organization for Women, FL
Miami Valley Fair Housing Center, Inc., FL
Pasco County National Organization for Women, FL
Progress Florida, FL
West Pinellas National Organization for Women, FL
Illinois Association for College Admission Counseling, IL
Law Office of David S. Morris, IL
PREACH, LA
Massachusetts Consumers Council, MA
Minnesota Association for College Admission Counseling, MN
North Carolina Justice Center, NC
New Jersey Citizen Action, NJ
Central New York Citizens in Action, Inc., NY
Keuka Housing Council, Inc., NY
Central Ohio Fair Housing Association, OH
Neighborhood Housing Services of Greater Cleveland, OH
Oregon Chapter of the National Association of Consumer Advocates, OR
Integra Home Counseling, Inc., PA
Keystone Progress, PA
South Carolina Appleseed Legal Justice Center, SC
New Level Community Development Corp., TN
West Virginia Association for Justice, WV
WV Citizen Action Group, WV
The Great Plains Association for College Admission Counseling
New England Association for College Admission Counseling
Potomac and Chesapeake Association for College Admission Counseling
Rocky Mountain Association for College Admission Counseling
Southern Association for College Admission Counseling