Center for Justice & Democracy's
Public Policy Clinic
New York Law School
185 West Broadway
New York, NY 10013

April 2, 2021

The Honorable Dave Uejio
Acting Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Dear Acting Director Uejio:

Re: New Arbitration Rule

My name is Joseph Bias and I am a student intern with the Center for Justice & Democracy. I am writing to encourage the Consumer Financial Protection Bureau ("CFPB" or "Bureau") to consider issuing a new rule banning the use of forced arbitration clauses in consumer financial contracts under the bureau's jurisdiction.

As you may know, during the Obama administration, the CFPB issued a rule banning class action waivers in pre-dispute arbitration agreements.[1] The agency issued this rule after an extensive notice and comment period, and a 700-page agency empirical study, issued in 2015 pursuant to Congress' direction under Section 1028(a) of the Dodd-Frank Act [hereinafter "Study"].[2] This rule was finalized July 19, 2017.[3] However, on July 25, 2017, Congress used the authority of the Congressional Review Act (CRA) to repeal the rule. The repeal was signed into law on November 1, 2017 and was deemed effective on November 22, 2017.[4]

We recognize the CRA's prohibition on promulgating a rule substantially similar to one that has been repealed. However, the earlier rule dealt with class actions. We propose a broader rule that does not ban class action waivers, but rather bans the use of forced arbitration clauses altogether. Data found throughout the CFPB's 2015 Study provides ample support for this new rule.

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[1] Arbitration Agreements, 81 FR 32830 (May 24, 2016).
[2] Bureau of Consumer Fin. Prot., "Arbitration Study: Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)," (2015).
[3] Arbitration Agreements, 82 FR 33210 (July 19, 2017).
[4] Arbitration Agreements, 82 FR 55500 (November 22, 2017).

The 2015 Study confirmed the widespread use of arbitrations clauses in consumer contracts. The Bureau studied markets in their jurisdiction that used pre-dispute arbitration agreements most frequently and found:

- "For storefront payday loan agreements, 83.7 percent of lenders covering 98.5 percent of storefronts…used arbitration clauses in their agreements from 2013 and 2014;"[5]

- "Six of the seven private student loan contracts (85.7 percent) from 2014 included arbitration clauses;"[6]

- "Seven of the eight largest mobile wireless providers (87.5 percent), covering 99.9 percent of subscribers, used arbitration clauses in their 2014 customer agreements."[7]

In addition to the widespread use of arbitration clauses in consumer contracts, the lack of awareness and understanding of these clauses creates further concern. The Study revealed:

- Of the credit card consumers surveyed, those "who both had agreements including arbitration clauses and also recognized arbitration as a way of resolving disputes, over three fourths stated that they did not know whether their card issuers used pre-dispute arbitration clauses (78.8 percent)."[8]

- Only 6.8 percent of those credit card consumers surveyed who were aware of the arbitration clauses in their contracts understood that the clauses restricted their ability to sue for wrongdoing in court.[9]

Additionally, consumers are strongly disadvantaged in comparison to companies and institutions by the use of arbitration clauses. The Bureau found:

- "Companies prevailed more frequently on their claims than their consumers and that companies were almost always represented by attorneys (90 percent of the claims analyzed) while consumers were represented significantly less (60 percent);"[10]

- "Arbitration clauses studied commonly specified a firm to administer the arbitration;"[11]

- Time limits are also commonly found in the arbitration clauses of consumer contracts. These time limits specify a fixed date in which claims must be brought by the consumer if they feel that they have been harmed;[12]

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[5] Study, section 2 at 7 and tbl. 1.
[6] *Id*.
[7] *Id*.
[8] Study, section 3 at 22 and tbl. 2.
[9] Study, section 3 at 19 and tbl. 1.
[10] Arbitration Agreements, 82 FR 33210 at 146-147 (July 19, 2017).
[11] Study, section 2 at 34.
[12] Study, section 2 at 50 and tbl. 9.

- Typically, consumers may only appeal arbitrational decision in very limited circumstance in accordance with arbitration statutes.[13]

Therefore, we urge the Bureau to use its full statutory authority to restore the consumers' right to choose how to resolve their claims against institutions and companies who have harmed them by issuing this important new rule.

Thank you for your time and consideration. If you should need any additional information, please feel free to contact us at any time.

Very truly yours,

Joseph W. Bias

[13] Study section 2 at 75.