

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

September 7, 2016

Dear Director Cordray,

We write to you today regarding the Bureau of Consumer Financial Protection's ("Bureau") proposed rule on pre-dispute arbitration agreements ("Proposal"). Specifically, we write to express concern that the Proposal may result in the decreased consumer access to alternative dispute forums, and may therefore perpetuate the justice gap for low income and underbanked Americans. In light of these concerns, we request that the Bureau consider providing a safe harbor in any final rule that will preserve the use of arbitration as a viable dispute resolution forum.

On May 5, 2016, the Bureau issued the Proposal on pre-dispute arbitration agreements.<sup>1</sup> The Bureau asserts authority to issue the Proposal under the authority granted to it by Section 1028 of the Wall Street Reform and Consumer Financial Protection Act ("Dodd-Frank"). Section 1028 of Dodd-Frank permits, but does not require, the Bureau to prohibit or condition by rule the use of pre-dispute arbitration agreements in consumer financial services contracts if, among other things, the rule is consistent with Bureau's study on arbitration mandated by the same section, and in the "public interest" and "for the protection of consumers". The Bureau's 2015 Arbitration Study and Report to Congress found that arbitration is generally faster, more convenient, and results in better outcomes for consumers than in-court litigation. Nevertheless, the Proposal seeks to expand the use of class actions by prohibiting financial companies from including class action waiver provisions in their arbitration agreements. Many observers have concluded that a prohibition on class action waivers will result in financial institutions dissolving their consumer-friendly arbitration programs as they are forced to bear significantly increased exposure associated with class action litigation. The same conclusion was presented by several of the witnesses at a recent Subcommittee hearing we convened to examine the Proposal.<sup>2</sup> Such an outcome would leave many American consumers seeking to remedy small dollar disputes without a viable forum for resolution.

As the Bureau moves forward with its rulemaking, we ask that it consider providing a safe harbor in the final rule that allows financial companies to retain class action waivers in their arbitration clauses. Such a safe harbor may include adoption of mandatory, pro-consumer features of arbitration programs. For example, the Bureau may look to the best practices required by the American Arbitration Association and examine which companies, even those in other sectors, have best-in-class arbitration programs. A safe harbor may require adoption of model arbitration

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<sup>1</sup> [http://files.consumerfinance.gov/f/documents/CFPB\\_Arbitration\\_Agreements\\_Notice\\_of\\_Proposed\\_Rulemaking.pdf](http://files.consumerfinance.gov/f/documents/CFPB_Arbitration_Agreements_Notice_of_Proposed_Rulemaking.pdf).

<sup>2</sup> "Examining the CFPB's Proposed Rulemaking on Arbitration: Is It in the Public Interest and for the Protection of Consumers?", Hearing of the Subcommittee on Financial Institutions and Consumer Credit, House Financial Services Committee (May 18, 2016).

The Hon. Richard Cordray  
September 7, 2016  
Page 2

agreements developed by the Bureau that are in plain English and are consumer-friendly. Providing a safe harbor would allow the Bureau to improve arbitration programs in a way that preserves consumer access to a fair, transparent, cost-effective, and timely resolution of their disputes.

We look forward to working with the Bureau as the rulemaking process proceeds. Thank you for consideration of our request. Should you have any questions, please contact our staff: Jared Sawyer (Neugebauer) at (202) 225-4005, or Richard Pecante (Clay) at (202) 225-2406.

Sincerely,

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Randy Neugebauer  
Chairman  
Subcommittee on Financial Institutions  
And Consumer Credit

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W. Lacy Clay  
Ranking Member  
Subcommittee on Financial Institutions  
And Consumer Credit