Thank you for having me. Good morning, everyone.

Consumer and civil rights advocates have been working for and envisioning a day like this for years. We are now a step closer to leveling the playing field in the ongoing struggle between the massive accumulation of corporate power and ordinary individuals’ basic rights. The basic right at stake here is our freedom to resolve disputes in court.

The CFPB’s proposed rule on arbitration represents that step today, to give us back the ability to band together and seek remedies when we’re harmed by corporate misconduct in the financial services sector. It’s also one that makes sense and is long overdue for us as individuals and for the marketplace.

As the rule explains, forced arbitration clauses are buried in the fine print of nonnegotiable applications and written terms of numerous types of consumer finance products. Even debt collectors and debt buyers have been able to force consumers into secret arbitration, and they typically don’t even have direct relationships with borrowers. Ordinary people also are deprived of the right to be heard when they are systematically cheated or ripped off because of terms that prohibit them from joining their claims together in one proceeding.

So I want to thank the CFPB for all its work over the years since it began its study on arbitration back in 2012. Public interest groups, journalists, legal scholars, and individual consumers and their advocates have been ringing the alarm for many years. But we agree that the CFPB study is the most comprehensive, data-rich examination of forced arbitration ever.

And what’s remarkable is the tremendous amount of feedback and information that you collected and considered from stakeholders - from consumers, their advocates, and from the many financial industry associations and business groups.
The study demonstrated an incomprehensible loss of rights and loss of remedies for injured people. We can say officially that the perils of forced arbitration and class action bans have been thoroughly exposed by your study.

A self-described conservative commentator wrote that, “...Forced arbitration deprives consumers of free choice in the market.”

This principle has practical application. We need that freedom to choose to go to court because government agencies and the Bureau in particular, just don’t have the resources to police the activities of the entire financial industry by themselves.

State attorneys general, including New Mexico’s, sent a letter to the Bureau requesting a rule to limit arbitration and to address provisions that prohibit class actions, in particular. The state AGs referred to their respective consumer protection laws that give us private rights and remedies against abusive debt collection practices, discriminatory and predatory lending, and other unfair and deceptive business conduct.

At the financial industry’s request, the CFPB examined the connection between public and private enforcement actions. It found that there was little overlap, but when there was overlap between the two, private consumers’ efforts in court to stop a bad business practice came before the government’s action 71 percent of the time.

Both activities together deter risky business practices.

So the question is do we want financial institutions to reap and keep profits from predatory, risky or illegal practices, or do we want companies to have some incentive to comply with laws?

Most of us would choose the latter. The proposed rule on forced arbitration will help get us there.

Christine Hines
Legislative Director
National Association of Consumer Advocates