

April 3, 2023

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

RE: Comments of 65 Consumer Organizations on Docket No. CFPB-2023-0002; RIN 3170-AB14;
Registry of Supervised Nonbanks That Use Form Contracts to Impose Terms and Conditions That
Seek to Waive or Limit Consumer Legal Protections

Dear Director Chopra:

We support and applaud the Consumer Financial Protection Bureau's (CFPB) proposed rulemaking to increase transparency in financial services, to the great benefit of American consumers. This rule would create a registry system for nonbank financial firms, requiring them to publicly report terms and conditions, such as forced arbitration, that have been commonly weaponized by businesses to limit consumer rights, this especially so for low income and BIPOC communities. Corporations are less likely to be held accountable in forced arbitration than they are in court as they are "repeat players," making them more familiar with arbitrators and putting those who are unable to pay the fees associated with arbitration and those who are more likely to be victims of implicit bias and subconscious discrimination at greater risk.

The increasing use of these pernicious terms and conditions often forces consumers into unknowingly giving up their fundamental Constitutional rights, such as accessing the courts, or limiting their ability to seek full and meaningful accountability when they've been cheated or defrauded by financial institutions. Obtaining credit reports, taking out private student loans, or taking out a car loan, should not suddenly strip individuals of local, state, and federal consumer protections, yet these contract provisions continue to destroy lives by allowing repeat offenders to contract away and avoid all legal accountability.

The terms and conditions flagged by the CFPB are often tucked away in the fine print of take-it-or-leave-it contracts and unilaterally imposed upon consumers when they use a product or service. This registry is a critical first step in gathering the information needed to empower the Bureau, federal and state regulators, and the American public to understand the prevalence and full impact of these provisions. The transparency offered will also help level the playing field for businesses that avoid these provisions, and do not depend upon a business model that capitalizes on a consumer unknowingly contracting away their rights.

Specifically, the registry highlights commonly used terms and conditions that:

- Limit what a consumer can recover when they are harmed or injured
- Make it harder and more burdensome for consumers to file claims for wrongdoing, by limiting where and when they can file claims
- Prohibit consumers from joining together to hold businesses accountable for breaking the law
- Force consumers to completely absolve businesses of wrongdoing
- Force consumers to waive their Constitutional right to court, and instead resolve claims through arbitration, a secret proceeding with unappealable outcomes that is often biased against consumers

The transparency offered by this registry is a win-win-win for the Bureau, businesses, and the general public, as collecting this data will enhance Bureau oversight of the unnecessary risk generated in the marketplace when businesses try to eliminate consumers' rights. While this is a much needed first step in generating the type of transparency needed for a strong and fair marketplace, we ask the Bureau to continue working toward not just flagging the problem provisions, but meaningfully curtailing the use of such provisions, especially in the area of forced arbitrations. This is perhaps the greatest and easiest way for businesses to skirt accountability, and we would ask that you continue to work towards ensuring that consumers are fully consenting, knowingly and voluntarily, to arbitration instead of unknowingly being duped into giving up their fundamental rights to access the courts simply by purchasing or using a financial service or product.

Thank you for your continued work in ensuring transparency and accountability for consumers, and for working towards a stronger and fairer marketplace.

Sincerely,

20/20 Vision

Accountable.US

Alaska PIRG

Alliance for Justice

American Association for Justice

Americans for Financial Reform Education Fund

Better Markets

Center for Economic Integrity

Center for Justice & Democracy

Center for LGBTQ Economic Advancement and Research (CLEAR)

Center for Responsible Lending

Columbia Consumer Education Council

Committee for Better Banks

Connecticut Legal Services, Inc.

Consumer Action

Consumer Attorneys of California
Consumer Federation of America
Consumer Federation of California
Consumer Reports
Consumer Watchdog
Consumer World
Consumers for Auto Reliability and Safety
Delaware Community Reinvestment Action Council, Inc.
Demand Progress Education Fund
Earthjustice
Economic Action Maryland (formerly Maryland Consumer Rights Coalition)
Florida Consumer Action Network
Georgia Watch
Greater Boston Legal Services, on behalf of its low-income clients
Hoosiers for Responsible Lending
Hope Policy Institute
Impact Fund
Indiana Community Action Poverty Institute
The Leadership Conference on Civil and Human Rights
Legal Aid Justice Center
National Association of Consumer Advocates
National Consumer Law Center
National Consumers League
National Employment Lawyers Association
National Housing Law Project
National Institute for Workers' Rights
New Jersey Citizen Action
NYPIRG
Oregon Consumer Justice
People's Parity Project
Protect All Children's Environment
Public Citizen
Public Justice
Public Justice Center
Revolving Door Project
South Carolina Appleseed Legal Justice Center
Student Borrower Protection Center
Texas Appleseed
Texas Watch
The Greenlining Institute
The Military/Veterans Coalition of Indiana
Tzedek DC
Towards Justice
Unite Indy

U.S. PIRG
Virginia Citizens Consumer Council
Virginia Organizing
Voices Organized in Civic Engagement (VOICE)
Woodstock Institute
YWCA Champaign County