CFPB Public Field Hearing on Arbitration

Opening Remarks:
HECTOR BALDERAS, New Mexico Attorney General
RICHARD CORDRAY, Director, CFPB

Panelists:
TRAVIS NORTON, Executive Director, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce
KEVIN HAMMAR, Partner, Aldridge, Hammar, Wexler & Bradley, P.A.
ALAN KAPLINSKY, Partner, Ballard Spahr LLP
CHRISTINE HINES, Legislative Director, National Association of Consumer Advocates
PAUL BLAND, Executive Director, Public Justice
DEEPAK GUPTA, Founding Principal, Gupta Wessler PLLC

Panel Moderators:
DAVID SILBERMAN, CFPB Acting Deputy Director and Associate Director of Research, Markets, and Regulations
MARY McCLOUD, CFPB General Counsel
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Field Hearing Moderator:
ZIXTA Q. MARTINEZ, Associate Director for External Affairs Division

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ZIXTA MARTINEZ: Welcome to the Consumer Financial Protection Bureau's field hearing in Albuquerque, New Mexico, at the Albuquerque Convention Center. At today's field hearing, you will hear from Director Richard Cordray and a panel of distinguished experts who will discuss issues related to arbitration, or more specifically, to the use of pre-dispute arbitration agreements by providers of consumer financial products and services.

The Consumer Financial Protection Bureau, or the CFPB, is an independent federal agency whose mission is to help consumer finance markets work by making rules more effective by consistently and fairly enforcing those rules and by empowering consumers to take more control over their economic lives.

My name is Zixta Martinez. I am the Associate Director for the External Affairs Division at the CFPB. Our audience today includes consumer advocates, industry representatives, state and local officials, and, of course, consumers. I would also like to recognize and thank representatives from the Financial Institutions Division of the New Mexico Regulation and Licensing Department for joining us today, as well as staff of the office of U.S. Senator Heinrich. We are especially pleased to welcome The Honorable Hector Balderas, New Mexico's Attorney General. We're delighted that you're all here.

ZIXTA Q. MARTINEZ: Let me spend just a few minutes telling you about what you can expect at today's field hearing. First, Attorney General Hector Balderas will give opening remarks. Next you will hear from CFPB Director Cordray who will provide remarks about the Bureau's work on pre-dispute arbitration agreements by providers of consumer financial products and services.

the Director's remarks, David Silberman, the Acting Deputy Director for the Bureau and the Associate Director for the Bureau's Research, Markets, and Regulations Division, will frame a discussion with a panel of experts. After the discussion, there will be an opportunity to hear from members of the public.

Today's field hearing is being live-streamed at consumerfinance.gov, and you can follow CFPB on Facebook and Twitter.

So let's get started. It's a real honor for me to introduce Hector Balderas, New Mexico's 31st Attorney General, who took office in January of 2015. Previously, General Balderas served two terms as the New Mexico state auditor and the state representative for District 68, which included his hometown of Wagon Mound and the surrounding area. Throughout his career, General Balderas has earned recognition and accolades from a wide variety of organizations, among them the New Mexico State Bar Association's 2006 Outstanding Young Lawyer of New Mexico Award; the 2010 John F. Kennedy Foundation's New Frontier Award, recognizing his contributions to community service and advocacy; the *Hispanic Business Magazine*'s 2007 List of Most Influential Hispanics; the New Mexico Hispanic Bar Association's 2010 Liberty and Justice Award; and the Conservation Voters New Mexico Sunshine Award.

General Balderas and his family live in Albuquerque, New Mexico.

General Balderas, you have the floor.

[Applause.]

HECTOR BALDERAS: Thank you. What an honor it is to be here this morning and welcome everyone to this beautiful state. What an honor it is to be here and welcome and really tip off this important endeavor this morning.

I want to remind everyone a little bit about the northern New Mexican economy that I'm from, a rural, agrarian, wild frontier, a community of 300 people, on a good day, an economy that we really struggled but we had a lot of hope in terms of the American dream. But it was an economy that while my grandmother and I would drive 42 miles just to get groceries, or we would borrow a car to get there, that economy was based on trust, integrity, and transparency. And while I was raised in public housing, those values of that economy, while it wasn't always a prosperous one, were values that were never based on an understanding of fairness. They weren't based on complexity, because we didn't have those assumptions at the time that we would enter into some dispute where there would be powers of imbalance, that there would be disputes so wide-ranging that someone that would be impoverished would somehow be disadvantaged, that there would be such great disadvantages that the disputes would be unresolvable. It was a much different type of economy, and that's the type of economy that I would like to remind these members a little bit about.

I want to thank Director Cordray for being here, the CFPB for the important work that they're doing, and also this important process of rulemaking which is critical to protecting that economy that I'm reminding this community about.

As the top law enforcement official, we sometimes get lost in statistics and a large debate, and I want to remind this process about the consumers that are also impacted in an economy that I have seen first-hand and that I've been raised first-hand in. It's an economy that can truly be strengthened by the protections that you're debating here today.

We're here to address a specific topic on the use of mandatory arbitration clauses in contracts of adhesion, which are increasingly prevalent in everyday consumer transactions. But my presence here today is not about choosing trial lawyer profits over industry profits, or industry profits over trial lawyer profits. I'm here today to advocate for the strengthening of consumer fairness. Now more than ever, when a consumer wants to assert claims, in a court against a business for unlawful conduct against that business, especially a large, multinational business, sometimes that consumer doesn't even have an understanding of the location of that business, much less the intellectual structure of that business. It's a brand that they saw on that television screen. Do we truly understand the disconnect between the consumer that I represent and the brand or the company that we're talking about in terms of the disconnect?

And so when we debate arbitration clauses, there is actually a much larger disconnect that we're referencing. Blanket arbitration clauses hurt all consumers, but in particular low-income and distressed and minority consumers that I'm discussing, not the average American. I'm talking about the consumers that often live in the shadows, the wild frontier, the consumers that don't always register on thresholds of statistics. A lone consumer does not have equal bargaining power, but in the demographics of New Mexico, right now we have nearly two-thirds of New Mexicans who can't read at the grade level. That is the pipeline of consumers that we're dealing with in New Mexico. We have nearly three-quarters of my population without a college degree, and we have the per capita income of $23,000 a year in New Mexico, hardly a wage that can afford an expensive attorney or an advocacy group that can explain the gaps between corporation and consumer.

New Mexico courts have held that many times these clauses that we are about to discuss are so one-sided in favor of business that they are too unfair to be enforced. Further, we know that businesses require that arbitrations be conducted in secret and that there is no transparency or open record for these proceedings. But I am living proof this morning that it is actually a much farther and wide-reaching gap, that there is a wider cultural gap in that misunderstanding. There are a class of consumers that trust beyond that there is ever a comprehension, that those businesses would ever take them to a secret proceeding. That is the expectation of some of the consumer class that is represented here today.

Relatively small consumers, the consumers that I am talking about, the New Mexicans that I'm talking about, who would struggle to bring a $40 claim, could live 2 hours from a court jurisdiction. They could be raised in a community like Wagon Mound, a community that had never had an attorney until one was raised. I was the first attorney in my community, in the history of that community.

So arbitration agreements, which contain a ban on consumer class actions, therefore cause three serious problems. They deny consumers access to the courts, they prevent enforcement agencies like this, and the OAG, Office of Attorney General, from discovering patterns of unlawful conduct, and they prevent other consumers from finding out about the claims of consumers who have been harmed. And there's no question that this process must strike a balance in order to provide benefits to consumers.

In class actions, in their perfect form, do enable a large class of plaintiffs to pursue valid claims. But we must also be equally clear that the costs and benefits associated with these class actions should be subject to an honest, open debate as to ultimately not harm consumers through higher interest rates, higher fees, and diminished access to credit. We need to be careful as we strike a process and a balance as to create true, true reform and options for the consumers that I'm speaking about.

Thank you all for being here. Thank you all for striking that balance to improve consumer protection, and thank for this opportunity to speak to you briefly about this very important process. Welcome to New Mexico. Thank you very much for your time.

[Applause.]

ZIXTA MARTINEZ: I am now pleased to introduce Richard Cordray. Prior to his current role as the CFPB's first Director, he led the CFPB's Enforcement Office. Before that, he served on the front lines of consumer protection as Ohio's Attorney General. In this role, he recovered more than $2 billion for Ohio's retirees, investors, and business owners, and took major steps to help protect its consumers from fraudulent foreclosures and financial predators. Before serving as Attorney General, he also served as an Ohio State Representative, Ohio Treasurer, and Franklin County Treasurer. Director Cordray?

[Applause.]

RICHARD CORDRAY: Thank you, Zixta, and I want to thank Attorney General Balderas for his thoughtful, powerful words, and I want to thank Albuquerque for the warm welcome you have given us. This is our 34th field hearing since the Consumer Financial Protection Bureau first opened its doors and started traveling the country to listen to the everyday concerns of American consumers.

Each one of these field hearings has been valuable for us. They give us insight and substance to inform our work, and they humanize the challenges posed in the financial marketplace. So we thank you all for joining us today. Hearing people's stories, as told by them, sometimes in voices of steely determination, other times through tears as they recount their difficulties and frustrations, leaves an indelible mark as we turn back to analyze and address the issues they raise. Let there be no doubt that these sessions motivate us to keep moving forward in our efforts to help make consumer financial markets better and work better for consumers.

Today we are proposing a new regulation for public comment and further consideration. If finalized in its current form, the proposal would ban consumer financial companies from using mandatory pre-dispute arbitration clauses to deny their customers the right to band together to seek justice and meaningful relief from wrongdoing. This practice has evolved to the point where it effectively functions as a kind of legal lockout. Companies simply insert these clauses into their contracts for consumer financial products or services and literally "with the stroke of a pen" are able to block any group of consumers from filing joint lawsuits known as class actions. That is so even though class actions are widely recognized to be valid avenues to secure legal relief under federal and state laws.

We have investigated arbitration, and our research found that very few consumers know anything about these "gotcha" clauses. Even fewer consumers know how they actually work. Based on our research, we've found and we believe that any prospect of meaningful relief for groups of consumers is effectively extinguished by forcing them to fight their legal disputes as lone individuals. These battles – frequently over small amounts of money – would often have to be fought against some of the largest financial companies in the world. When faced with the daunting prospect of spending considerable time and effort to recoup a $35 fee or even a $100 overcharge, it is not hard to see why few people would even bother to try.

The fact is that certain corporate policies and practices can be lucrative to businesses but harm large numbers of individuals only on a minor basis. There was a long time in the history of this country where the legal system struggled for a solution to this problem. Courts and legislative bodies sought to develop a workable mechanism whereby people could band together and aggregate their claims into a single action that could provide accountability and justice within the legal system. Some of these efforts go back hundreds of years, but about a half-century ago, the concept of the modern class action came to fruition in the American civil justice system. As this procedure was refined to allow the courts to handle and process such cases efficiently and fairly, both Congress and the federal courts embraced and approved this approach. So did legislatures and courts in nearly every state. It has proved particularly meaningful in the arena of consumer finance, where companies that violate the law may do small amounts of harm to thousands or even millions of consumers.

It is important to recognize that the legislative and judicial branches of government not only have recognized and validated this mechanism for group lawsuits, but they also tightly control its use in particular cases. Congress and state legislatures have the authority to determine whether any violation of law can give rise to a private lawsuit in the first place, under what conditions, and for what types of relief. If a class action lawsuit is filed, the courts have specific processes for determining whether the claims can proceed in that format or not.

This is notable because for some provisions of the consumer financial laws, Congress has in fact authorized private lawsuits. Thus, over many years of enacting federal consumer financial laws, all of which post-date the adoption of the modern class action procedures in the federal courts, Congress has explicitly determined that such actions further the purposes of those particular statutes. And in so doing, Congress has permitted consumers to bring lawsuits, including class actions, to seek meaningful relief for the harm done them by such violations of law.

These provisions of the consumer financial laws thus provide a right to sue for relief, with one consumer representing the interests of a group who have all been harmed in the same way. If the lawsuit is successful, the company can be made to rectify the problem for all affected customers. It also can be required to clean up its practices moving forward. Yet a mandatory arbitration clause can negate all of this, leaving consumers with few practical avenues to secure adequate relief when they are harmed by violations of the law.

The justification for this approach is found in the Federal Arbitration Act, a statute that dates from 1925, and whose application has evolved over time. At the outset, its primary and virtually sole focus was on business-to-business disputes, in cases where the parties negotiated and agreed that it was in their mutual interest to have their disputes resolved by an arbitrator rather than by the courts. Over the years, arbitration came to be used in other types of disputes as well, such as those between unions and employers. It is generally recognized as one of several methods of "alternative dispute resolution."

More recently, many businesses have sought to use arbitration clauses not simply as an alternative means of resolving disputes, but effectively to insulate themselves from accountability by blocking group claims. For many years, courts wrestled with the question of whether to allow arbitration clauses to be used in this way. Several years ago the Supreme Court concluded that arbitration clauses could in fact block class actions even though the state courts in that case had deemed that result to be unconscionable under state law.

In the past decade, however, Congress has expressed growing concern about whether mandatory arbitration is appropriate in the realm of consumer finance. First in the Military Lending Act, passed in 2007, Congress barred arbitration clauses in connection with certain loans made to servicemembers. In 2010, in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress went further by barring arbitration clauses in mortgages, which make up the largest consumer finance market. In so doing, Congress expanded on a ban that Fannie Mae and Freddie Mac had imposed several years earlier on mortgage contracts they purchased.

Similarly, in the Dodd-Frank Act Congress authorized the SEC to regulate the use of arbitration clauses in contracts between investors and brokers and dealers. Here, Congress was building on work by the FINRA, a federal agency which has long required that arbitration clauses adopted by its broker-dealer members cannot be used to block class actions by customers. Each of these measures—each of them—reflects concern about how mandatory arbitration clauses may undermine the welfare of individual consumers, or, in the case of the SEC, investors, in the financial marketplace.

Congress also spoke to our subject today by directing the Consumer Bureau to conduct a study and provide a report to Congress on the use of mandatory arbitration clauses in other consumer financial contracts. Once this work was completed, Congress stated that—and I'm going to quote the statute here—Congress stated that "[t]he Bureau, by regulation, may prohibit or impose conditions or limitations on the use of such arbitration clauses in consumer financial contracts if the Bureau finds that such measure"—and again, this is the statute—"is in the public interest and for the protection of consumers," and such findings are, again from the statute "consistent with the study" we performed.

We finished that work a year ago and heard from stakeholders about our findings and analysis. We then put forward an initial framework, subject to further review through our small business review panel process and with others as well. All of this leads up to our proposal today for a potential new rule that would address this issue.

To explain what we are proposing, it is useful to recap the results of our extensive study and report to Congress, which spans 728 pages of findings and analysis. Perhaps the most striking finding from our study is that consumers rarely file individual disputes involving financial products or services in any forum. We believe in part this is because consumers often do not recognize when their rights have been violated. It can be difficult for consumers to know, for example, when they have received inadequate or even misleading information or when they have been subject to discrimination. Even when consumers do feel aggrieved by something their financial service provider has done—for example, by charging an unwanted back-end fee—consumers rarely know whether the company's conduct is lawful or unlawful. And for the overwhelming majority of consumers, we believe it simply does not make sense to try to find a lawyer to take issue with a small fee or other such practices.

Our study further found that when individual consumers choose to step forward and bring a class action on behalf of all similarly-situated consumers, such group lawsuits can be an effective way to provide relief when they are allowed to proceed. This includes those who may not realize that their rights have been violated or those who may have felt they simply had to resign themselves to the way they were treated. Indeed, by examining five years of data on several distinct markets, our study found that group lawsuits delivered, on average, about $220 million in payments to 6.8 million consumers per year in consumer financial services cases.

Customers were also able to obtain substantial prospective relief—going forward relief—by forcing companies to improve compliance and adopt more consumer-friendly practices. Of course, the class action lawsuit is by no means a perfect mechanism for addressing such issues. But class actions do happen to be the most practical solution that has been worked out to date. And the precise parameters of class action procedures have remained constantly subject to further critique, reform, and improvement over time, and no doubt will continue to do so.

The study showed that many companies use mandatory arbitration clauses to block consumers from ever securing any meaningful relief from violations of the law. Tens of millions of consumers use financial products or services that are subject to arbitration clauses. Those clauses deter class action lawsuits from being filed and often prevent those that are filed from moving forward. Yet without group lawsuits, those consumers who feel they may have been wronged are often left with very limited options. They can pursue their dispute with the company individually in arbitration, in small claims court, or sometimes in state or federal court, yet our study showed they rarely do so. They can simply accept the unlawful terms and absorb the harmful treatment, as is too often the case for many consumers. They can pursue some type of informal dispute resolution with the company through complaint lines, which will lead to relief in some instances as a matter of good customer service, but falls far short of any systematic resolution that eradicates unlawful practices. Or they can "vote with their feet" by moving on to another provider, though this is not always possible. Even when it is, there may be less incentive to do so if other companies have also inserted arbitration clauses in their own contracts.

So our study indicated that simply by inserting the magic words of an arbitration clause, financial companies can avoid being held directly accountable for their actions affecting their customers. Of course, the laws may empower certain government officials, such as those of us at the Consumer Bureau, to bring actions to enforce their terms. Yet public resources devoted to this purpose are limited, to the point where we cannot hope to cover the waterfront of consumer financial harm by such means. Indeed, the study found that class actions supplement government enforcement actions and seldom overlap with them. And several state attorneys general have told us they favor limitations on arbitration clauses because their enforcement resources are also limited.

Under the proposed regulation we are releasing today for public comment, companies could still include arbitration clauses in their contracts. For new contracts, however, these clauses would have to say explicitly that they cannot be used to stop consumers from grouping together in a class action. As noted previously, this is the same approach FINRA has taken in regulating similar provisions in certain investor contracts and it does not go as far as Congress did for mortgage contracts or certain credit contracts for servicemembers. In our study, we found that individual arbitrations are not commonly filed in consumer finance matters, and we do not believe we have enough data to justify restricting them further at this time.

If arbitration truly offers the benefits that its proponents claim, such as providing a less costly and more efficient means of dispute resolution, then it stands to reason that companies will continue to make it available. If they do, then companies which retain these more limited arbitration clauses would have to submit claims, awards, and other information to the Bureau, under our proposal. This would enable better monitoring of consumer finance arbitrations to ensure that the process is fair for individual consumers. It would also enable further review of the substantive allegations raised in these arbitration processes to see if they warrant action by the Bureau. Finally, we are considering publishing these materials on our website to promote transparency and enable the public to learn more about the arbitration process.

So the essence of the proposal issued today is that it would prevent mandatory arbitration clauses from imposing legal lockouts to deny groups of customers the right to pursue justice and secure meaningful relief from wrongdoing. From the results of our study, we believe that doing so would produce three general benefits, about which we seek further comment.

First, consumers would have a more efficient means to pursue meaningful relief after they have been hurt by violations of consumer financial laws. At the same time, it would stop the same prohibited practices from harming consumers in the future. Many of these laws confer the right to an effective remedy to redress harms consumers suffer from violations of the law. This reflects an important element of personal liberty, that people should have the ability to protect themselves by acting to pursue their rights. But as we have already noted, it may not be practical or worthwhile for consumers to undertake the burden and cost of bringing an individual case just to challenge small fees and charges. Without the opportunity to pursue group claims, they may be effectively cut off from having their grievances addressed.

Second, another important benefit that would potentially flow from our proposal is that it would deter wrongdoing on a broader scale. Although many consumer financial violations impose only small costs on each individual consumer, taken as a whole these unlawful practices can yield millions or even billions of dollars in aggregate harm. Mandatory arbitration clauses that bar group actions protect companies from being held accountable for their misdeeds. Thus, companies have less reason to ensure that their conduct complies with the law. We plainly recognize that this may cause financial companies to incur higher compliance costs and forgo some revenue from engaging in risky behaviors, but we believe that is exactly how accountability should change company behavior.

Put differently, it matters if companies are aware that group lawsuits can lead to relief to thousands or even millions of victims of unlawful practices. The likely result is to create a safer market for current and future customers of that company. That is because the potential for a substantial monetary award and injunctive relief often leads a company to rethink its practices by reassessing its bottom line, and the public spotlight on these cases can influence business practices at other companies as well, and it does all the time.

Third, by requiring companies to provide the Bureau with arbitration filings and written awards, which we might end up making public in some form, the proposal would enable the Bureau to monitor and assess the pros and cons of how arbitration clauses affect resolutions for individuals who do not pursue group claims. We believe this would improve our understanding and enable policymaking that is better informed. The Bureau would also collect correspondence from administrators about a company's non-payment of arbitration fees and its failure to adhere to the arbitration forum's fairness principles. The purpose here would be to provide insight into whether companies are abusing arbitration or whether the process itself is unfair.

In short, we believe our proposal would promote consumers' ability to pursue claims, bring greater accountability, and enhance the transparency and fairness of arbitration itself.

Our democracy allows, encourages, and indeed depends on citizens who band together to demand political or legislative change. Many consumer financial laws likewise presuppose that groups of customers can join together in our legal system to demand changes in unlawful practices that affect them all in common. But our study shows that an important avenue for reform can be cut off by mandatory arbitration clauses that affect millions of consumers. Our proposal would reopen that avenue by ensuring that consumers can take action together if they have been hurt together.

Under our proposed rule, companies would not be able to deny consumers their day in court. Companies would not be able to evade responsibility by blocking groups of consumers from the legal system and reaping the favorable consequences. Everyone benefits from a marketplace where companies are held accountable for treating their customers fairly and in accordance with the law.

Our proposal will be open for public comment for the next 3 months. We will carefully consider the comments we receive before issuing a final rule. We have found this process is always instructive and enables us to reach sounder conclusions in the end. We look forward to the public comments as well as the initial feedback we will hear today. Thank you.

[Applause.]

ZIXTA Q. MARTINEZ: Thank you, Director Cordray. At this time, I would like to invite the panelists to take the stage, and while they are doing so, I will briefly introduce them.

David Silberman serves as the Bureau's Acting Deputy Director and as the Associate Director for the Bureau's Division of Research, Markets, and Regulations. Mary McCloud serves as the Bureau's General Counsel. Keo Chea is the Deputy Assistant Director for the Bureau's Office of Community Affairs.

Our guest panelists are Travis Norton, Executive Director, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce; Kevin Hammar, Partner, Aldridge, Hammar, Wexler & Bradley, P.A.; Alan Kaplinsky, Partner, Ballard Spahr LLP; Christine Hines, Legislative Director, National Association of Consumer Advocates; Paul Bland, Executive Director, Public Justice; and Deepak Gupta, Founding Principle, Gupta Wessler PLLC.

David, you have the floor.

DAVID SILBERMAN: Thank you, Zixta. Still good morning. Good morning everyone. As Zixta indicated, I'm David Silberman. I'm the Acting Deputy Director of the Bureau and the Associate Director for Research, Markets, and Regulations, and it's a pleasure to be with you today to chair this portion of our field hearing. We're going to hear from a number of respected panelists whom Zixta has just introduced. My colleagues and I will then pose some questions to our panelists and engage in a discussion, and when that concludes we'll move to the public comment portion of this field hearing.

Before we begin our panel's discussion let me take a moment to frame the discussion, building on what Director Cordray has just said. Having completed a comprehensive study of consumer arbitration, the Bureau has today proposed rules that would, if finalized, permit consumers to group together in class actions to seek relief from providers of consumer financial products and services. As Director Cordray noted, this proposal follows our completion of a Congressionally mandated study of the use of pre-dispute arbitration agreements in contracts for consumer financial services and products. We completed that 3-year study last March.

And as the Director also observed, the Dodd-Frank Act, after requiring the Bureau to conduct this study, authorized the Bureau to engage in rulemaking if we concluded that doing so would be in the public interest and for the protection of consumers, and that the rule we issued would be consistent with the findings of our study.

We had a field hearing on arbitration last fall, at which we discussed how we have taken time to digest the results of the study, to determine if a rule-making made sense, and at that time we decided to convene a meeting of small businesses, consistent with the Small Business Regulatory Enforcement and Fairness Act, or SBREFA, to discuss with them an outline of proposals under consideration and the impact that would have on them.

After carefully considering their feedback, as well as feedback from other stakeholders, we have decided today to proceed with a formal rulemaking. The Director explained the basic premise of our proposal in his remarks. And to be clear, we are not proposing to ban pre-dispute arbitration agreements, but rather we are proposing a rule which would permit companies to keep those agreements with some conditions, most importantly the condition prohibiting their use to block class actions.

Our panelists today represent perspectives from consumer advocates and from industry, and at this time I'm going to invite them to present their opening remarks. I think it would be easiest if we just proceed from left to right, so, Paul, if you could kick us off.

PAUL BLAND: The rule will advance the public interest and it's totally consistent with the outcome and the conclusions of the study.

Here's the deal. Particularly in the last 5 year, banks, payday lenders, and others have just been able to completely break the law, with impunity, and their customers really couldn't do anything about it. Now, the industry has paid for lengthy press releases and issued them and called them studies, but the Bureau actually did a genuine empirical study. They looked at every single arbitration that an individual had brought against a lender in America over a period of years. They looked at many hundreds of class actions and focused on the results. So they looked at the number of people who actually got payments, looking at the statements and affidavits from the claims administrators. They looked at the amount of money that was refunded to cheated consumers. They focused on the changes to corporate behavior. They looked at the impact on people when their credit records were fixed. And the evidence was totally clear about what came out of this, the actual evidence from the empirical study.

So class actions have worked. They have recovered billions of dollars. They have stopped illegal practices. They have gotten inaccuracies off of credit reports. The attorneys' fees and costs in class actions have been less than 20 percent, on average, in the cases that have gone forward.

Meanwhile, almost no consumers have been willing or able to jump through the hoops to bring cases to individual arbitration. We've been hearing a lot from the industry about, "Wow, you know, arbitration is just so great, and if we can't ban class actions then we might abandon this wonderful thing of arbitration." It is a fairy tale. It is simply not true. Almost no consumers in America—it's a round error. It's a speck. It's hardly anybody is actually going to individual arbitration. It's just not happening. The market has spoke. They built it and no one came, okay. It's not an accident, though. You know, the point of these clauses—these clauses were not written to say, "Hey, let's make it easier for people to hold us liable when we break the law." The point of these clauses was the opposite, and they've worked.

So you've got a state of lawlessness here, where banks, payday lenders, predatory lenders have been able to break and just sort of opt out of the law. It's been disastrous. There's been a huge human cost to having this kind of system. You have a lot of people who are being pushed out of the middle class and right off the edge. You have people on a debt treadmill they can't escape. The number of car foreclosures has shot up. The number of people in financial distress is incredibly high.

Today, with this rule, everything changes. The Wild Wild West is over. The banks are going to have to follow the consumer protection laws or they're going to have to face their consumers in court, not a corporate-controlled secret tribunal where the consumers are divided and itemized and everyone is by themselves and alone. It's no longer the *Hunger Games* here, okay? Now you're going to be back in the court system. The court system was good enough for the people who framed the Constitution of this country, the founders, and should be good enough for the banks and their customers.

[Applause.]

DAVID SILBERMAN: Thank you, Paul. Christine?

CHRISTINE HINES: Thank you for having me. Good morning, everyone.

Consumer and civil rights advocates have been working 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 are 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 non-negotiable 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 also 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. I would read this entire letter if there was time. The state AGs refer 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 industries' request, the CFPB examined the connection between public and private enforcement actions. It found that there was very little overlap but when there was overlap that private consumers' efforts in court to stop a bad business practice came before the government's action 70 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.

[Applause.]

DEEPAK GUPTA: Thanks to the CFPB for inviting me here to talk about a proposal that I think is the single most important thing the Bureau can do to level the playing field for the American consumer. I also want to thank the city of Albuquerque for the red and green chiles that I had last night at Monroe's. They were delicious.

There are many problems with forced arbitration. You've heard about some of them today. It produces no precedent, and so it erodes the rule of law. It offers little or no right to take discovery or to appeal. It has a widely recognized repeat player effect. It favors those who draft the clauses. And if all of that wasn't bad enough, arbitration is totally secret, and I'm really pleased to see that the Bureau is taking steps to bring arbitration into the sunlight.

But let's pause for a second, and pause to think about what this means in a democracy, that we think that we have representatives in Congress who pass the laws to protect us, but, in fact, here we have private legislation being written into the fine print of contracts that we have no choice over, and that, in effect, nullifies the laws that we thought Congress had passed to protect us from banks and from predatory lenders. That's a really surprising thing, and all of this is happening in an environment in which consumers are not aware that it's happening. They're not aware of these clauses, and yet with you pool them, an overwhelming majority of consumers across party lines think that banks should not be able to stop people from banding together to hold them accountable in court. So something is deeply wrong there.

But by far the biggest practical problem of our forced arbitration, and it's the one that the Bureau has correctly focused on, is that arbitration simply does not do what its proponents say it does in the consumer finance context. That is, it does not move small-dollar consumer claims to a cheaper, faster alternative forum. Instead, arbitration kills claims. Millions of consumer claims that would otherwise be vindicated through group litigation in the courts, claims that would have resulted in compensation for consumers, industry-changing injunctions, and deterrence of future bad conduct, those claims simply disappear. And the Bureau's study, which, as you've heard, is the single most comprehensive, empirical look at arbitration, leaves no doubt on that score.

In the short amount of time I have I just want to flag two data points that I want you to think about, and I particularly want you to think about them as you're hearing from the folks on the other side of the stage today. The first, and I think the most revealing finding in the Bureau is the case study that it does of litigation over excessive overdraft fees. This was a practice that was engaged in by most of the banks, and you had multi-district litigation in which you had 23 banks facing class actions over this practice. What the banks were doing was reordering the way that they posted transactions to make sure that poorer consumers were hit with higher overdraft fees. It was an indefensible practice, and eventually it had to stop.

But let's look what happened in that litigation. In those 23 class actions, consumers recovered $1 billion—28 million consumers did—and the money went straight into their bank accounts so there was no issue with claims rates, as sometimes is with class actions. But there were five banks that had enforceable arbitration clauses—exact same practice, otherwise exactly the same litigation, but they were able to enforce those clauses. And what happened to the consumers? They got nothing—no compensation, no injunction, nothing. And imagine what would have happened if all of the banks had arbitration clauses with class action bands. That's a stark comparison, as you can imagine, and it's what scientists call a natural experiment.

Well, that was just one practice. What about consumer finance cases in general? Does arbitration benefit consumers? Well, the Bureau got the records, for the first time, from the leading arbitration provider, and they looked, and they wanted to see how much compensation did consumers get. And the answer is, in small-dollar claims, over the 2 years that the Bureau studied, the number of consumers that got affirmative relief on claims of less than $1,000 was four people—not 4 million, not 400,000, not even 4,000. Compare that to the tens of millions of people who got relief through group litigation.

So when you hear forced arbitration proponents tell you that arbitration is more effective at delivering relief to consumers, think about those numbers. The reality is this: for most consumers, arbitration clauses do nothing more than immunize companies from facing any legal accountability for their wrongdoing. Thank you.

[Applause.]

DAVID SILBERMAN: Thank you, Deepak. Paul gets the award so far for staying closest to on time. Perfectly on time, exactly.

[Laughter.]

DAVID SILBERMAN: Kevin, there may be another side to this. Let's go to you, Kevin.

KEVIN HAMMAR: Thanks. I'm a partner in a small law office here in Albuquerque. We represent a number of credit unions, as well as the Credit Union Association. So, in some ways, I don't feel that we need to be tarred with this brush about the predatory lending of big banks, the payday lending, and all the evils that the left side of the auditorium has been pointing out, because credit unions, notably, have been free of those practices. So our basic concern is the Procrustean nature of the regulation, one size fits all, and we simply don't believe that that's the truth.

In my experience in New Mexico, credit unions have neither used nor relied upon arbitration provisions in consumer credit type relationships. Where they have used those provisions is in vendor agreements, where you can work out extremely complicated details with an appropriate arbitrator. And I understand that the regulation would not affect those kinds of provisions, but that's where we've got our experience.

I understand that some credit unions, particularly on the West Coast, have started using the arbitration provisions, largely because of what appears to be specious class actions, based upon minor infractions of consumer credit regulations. And the problem with the consumer credit regulation is, as the CFPB has promulgated its regulations—most of which I agree with—they've become extremely difficult to ensure compliance with, and it's particularly onerous with respect to smaller credit unions. Smaller credit unions are serving the underserved, they're in remote locations, they simply lack the expertise and the funds to ensure complete compliance all the time.

I think everyone should know that credit unions in New Mexico are examined at least once a year, and every state credit union is examined both by federal and state regulators, and, in fact, when we had the whole financial meltdown, it wasn't the credit unions who were at fault. In fact, they were sucked into the morass as well. So I think the problem with putting the credit unions in the same boat with all of these other evil actors—if you're going to accept the appellation from the left—is simply an inappropriate category.

I've got a few observations I'd like to make. Right now the threat of class action litigation in New Mexico, as far as credit unions are concerned, is largely theoretical. So, in some ways, we can't speak to experience with that sort of threat. But many credit unions in New Mexico are justifiably leery of additional regulations, particular those which pose an increased risk of loss to members' funds. I think what everyone should remember is a credit union is a member-owned cooperative. The funds that the credit union lends out are member funds. The credit union has not gone out into the third market, they don't have shareholders, they don't engage in risky practices to raise funds. Those are the funds of the owner-members of the credit union, who, in turn, elect the board who are members.

I think I have to stop.

DAVID SILBERMAN: For the benefit of our audience I will point out that our left up here is your right, and your right is our left.

[Laughter.]

DAVID SILBERMAN: Travis?

TRAVIS NORTON: Thank you for the opportunity to testify today. This morning the Bureau released a proposed regulation to enrich class action trial lawyers at the expense of the consumers the Bureau is charged with protecting. That's because the regulation will have the practical effect of eliminating consumer arbitration and replacing it with class action litigation. Now, to be sure, the Bureau is not proposing to ban arbitration directly. After all, the Bureau's own 2015 study—the Bureau's study—demonstrates the real-world consumer benefits of arbitration, like its low cost, its speed, and its effectiveness in resolving complaints.

Instead, the Bureau's regulation is a back-door attack on arbitration, taking the forum of a prohibition on class action waivers. But let me be clear—the rule is no more in the public interest than a direct prohibition on arbitration. If companies that currently subsidize arbitration programs for their customers are also forced to reserve millions for class action defense, many are going to stop funding their arbitration programs. No rational company is going to pay more to provide customers less.

Today, after three hearings and a Bureau study on arbitration, I would think that an agency that acknowledges the demonstrable benefits of arbitration would at least care about how its rule will affect arbitration—if not, have an instinct to preserve it. Where is that research and analysis? Now, the Bureau says, "Oh, we aren't touching arbitration. We're just allowing class actions." That doesn't pass the smell test. A farmer who takes in a fox can't feign surprise when he wakes up one day to find his chicken coop is empty.

The reality is that arbitration will go away and the Bureau knows it. Now, I glanced at the rule this morning. It's thick. The Bureau seems to say, well, arbitration is effective but it's underused, so if it goes away, consumers won't miss it. Well, if that's the train of thought, there's a train wreck ahead for consumers. Why not educate consumers about arbitration, the same consumers that the attorney general talked about? The Bureau is killing the caterpillar because it doesn't look like a butterfly.

I would think that the Bureau would have considered the experience of the consumer in a world without arbitration. Did the ATM fail to credit your deposit? Was your interest calculated incorrectly this month? These are claims with unique facts. They are not classable. They can't proceed in class action litigation, so class action is off the table. And if not to arbitration, where does that consumer go?

These are serious, real-world problems with the Bureau's approach. It's one thing for the Bureau to have a vision for this rule, but it must first make all relevant information visible. Rather than rush this rule to completion, the Bureau should suspend this rulemaking while it addresses these and other issues and publishes more analysis. Businesses that use arbitration would welcome the opportunity to understand what problems the Bureau is trying to address, and to work with the Bureau on regulatory policy that benefits consumers. After all, consumers literally cannot afford for the Bureau to get this one wrong. Thank you.

DAVID SILBERMAN: Alan.

ALAN KAPLINSKY: Okay. My thanks to the Bureau for inviting me here today, and while I know that the Bureau invited me to testify as an industry representative, I just realized that it's Cinco de Mayo, and I hope that I don't become the industry piñata.

The Bureau has not outright prohibited the use of all arbitration. It continues to permit individual arbitration with certain restrictions, and some companies—I think very few—will actually continue to offer that. But realistically, by requiring companies to insert into their arbitration provisions language accepting class actions from arbitration, the Bureau, in reality, is proposing an outright ban. It's a de facto ban. Let's call it what it is.

If this proposed regulation becomes final, I believe that most companies will simply abandon arbitration altogether, and that's because the cost-benefit analysis of using arbitration will shift dramatically. What do I mean by cost-benefit analysis? Currently, companies almost fully subsidize the cost of an arbitration proceeding, and as opposed to being sued in court. When you get sued in court the company doesn't have to pay anything to the judge, or any filing fee.

And so that if this regulation goes through as planned, and companies lose the ability to preclude class action litigation, then the thousands of dollars—and it does cost about $3,000 a case, not counting counsel fees, in order to pay the arbitration fees and the fees of the arbitrator—the companies will simply conclude it isn't worth doing.

I was sincerely hoping this day would never come, because it really is a sad day for consumers. And I'll tell you, I'm not speaking out of self-interest. I pioneered the use of class action waivers about 15 years ago, but it will be much more lucrative for me and other members of the defense bar to defend class action lawsuits than to write arbitration agreements. So I got involved in this thing because I honestly felt this was something that was not only good for industry but I thought it was good for consumers.

Now let me address the issue that came up during Director Cordray's remarks, and Paul Bland, and Deepak said the same thing, that not many consumers bring arbitration proceedings, or even bring lawsuits in court. It claims the class actions provide better relief. But the Bureau's own study, the 562 cases that were examined, the Bureau found that 60 percent of the class actions provide no relief at all to consumers because the consumers settled them individually or the attorneys just dropped the cases. None of the class actions actually went to trial. Only 12.3 percent of them settled as of the time the study was completed.

So, you know, why is that the case—and only 4 percent of the people who were actually able to participate in a class action filed a claim, only 4 percent. Why? Because they realized there were no real benefits available to them.

According their own study—and I want to say this in the final remark I'm going to make, and that is the average putative class member received only $32.35, or a coupon that was worth absolutely nothing, and it had to wait 2 to 5 years to get that. And in an average arbitration, according to the statistics, the average recovery was about $5,400. That's 166 times what the consumer was able to recover in a class action. And the problem, also, is not only—you know, the Bureau has this enormous division devoted to consumer education. It hasn't spent one penny educating consumers about arbitration. Finally now is the second prong of this proposal. It's going to try to get information on arbitration. Well, that's putting the cart before the horse. That's what they ought to be proposing. They ought to get that information and then decide whether or not the first part of what they have done makes any sense at all.

It's no wonder, with such a negative attitude about arbitration, here in the Bureau, where they have prejudged the matter, and plaintiffs' attorneys like Paul and Deepak railing against arbitration, based only on anecdotes—it's no wonder that consumers have a negative view of arbitration. But the truth is the people who have gone through arbitration actually like it and they do better than they do in court. Thank you.

DAVID SILBERMAN: Thank you. I want to thank all the panelists for their thoughtful remarks, and now Mary and Keo and I will have a chance to ask some specific questions. I get the first one, and this time we will go back and forth across the aisle, if you will.

Paul, we'll start with you. Can you talk about whether both exposure to potential class action liability as well as actual class action litigation, what role, if any, you see it having in affecting bad practices in enhancing compliance efforts by financial service firms?

PAUL BLAND: There's no doubt at all the threat that a consumer would go to court and be able to join together with other consumers changes the way companies behave. I've represented consumers who have been cheated by lenders for more than 25 years. Repeatedly I've seen cases in which corporations have charged illegal fees, they've engaged in bait-and-switches, when consumers figured this out, and most consumers don't figure it out. But when consumers do figure it out and they call and complain, the company just keeps the money. They're not interested. It's very, very common for them to just keep doing it. A class action is filed and the company changes behavior, literally, within like a week. I mean, it's happened again and again. It's very hard to find a consumer lawyer who has any significant experience over a period of years who hasn't had this happen in this job.

I've repeatedly seen industries in which you'll see a whole bunch of companies that will change their behavior and adopt some new practice that breaks the law, and they all do it at pretty much the same time. And if a class action is filed against the first company, you see a bunch of other companies change their behavior and bring it into compliance with the law fairly quickly. It's like the first company is sued and everyone in the group is, you know, okay, we're caught; the jig is up. Okay, let's cut it out—and you actually see this change. It's almost like there's a conversation going back and forth between people who represent consumers and the people at banks, of like, "What can we get away with? How far can we push these laws and break them?" And the lawsuits change behavior. It just happens. It's the real world.

DAVID SILBERMAN: Thank you. Our new general counsel, Mary McCloud, has the next question. I should note Mary joins us from a career at the State Department. You can understand why we value her diplomatic skills.

MARY McCLOUD: This question is for you, Kevin. According to our Bureau study, and I think as you alluded to, most credit unions don't use arbitration clauses, and I wonder why you think that's so. It is something about the nature of credit unions as member-owned organizations, or something else?

KEVIN HAMMAR: I do. You know, credit unions, both federal and state, are creatures of statute, and the real to standing credit unions up was coming out of the Depression when funds were not available to working folk. So the nature of a credit union is that it's member-owned, the board is elected by the members on an annual basis, the board has to report to the members, it's the members' money that the administration is charge for managing. And so what you don't have is you don't have a profit motive. What you don't have is you don't have the board having loyalty to anybody except the members. And that's why you've got the credit union motto about members helping members. And you have to remember, the reason credit unions were first stood up was to encourage thrift and to provide for provident lending. In fact, you used to have to explain when you borrowed money from a credit union the providential purpose to which you would put your loan.

So credit unions have always sort of retained a couple of attributes. One is this member orientation, which also sort of facilitated the relationship between the members and the credit union. I've never seen a member raise an issue where that issue wasn't promptly taken to a credit union employee who had the authority, at that point, to sit down and at least try to work out a resolution. You're not dealing with third-party telephone operators, and it's very easy to get in front of the decision-maker.

And by their very nature, credit unions are local, so if one refers back to the attorney general's issues, where he talked about consumers not knowing location or structure, credit unions are absolutely transparent. They're in your neighborhood, you know what the structure is. And, in fact, in many places in New Mexico, where there are not financial services, those folks have to look to credit unions, and the credit unions retain their local flavor, they are limited as to who can be a member. So there's this common bond. So it's, I think, a more informal, nonprofit motivated sort of undertaking.

DAVID SILBERMAN: Keo?

KEO CHEA: This question is for Christine Hines with the National Association of Consumer Advocates. Will publicizing arbitration cases benefit the general public and advance the evolution of consumer protection laws?

CHRISTINE HINES: One of the worst aspects of forced arbitration is that it's secret. It is closed to public scrutiny, unlike in court where the complaints, the court decisions, the appeals, they are all public. So among other consequences of the secretiveness of arbitration is that it has halted the development of consumer protection laws, harming the public interest.

So the CFPB, in its rulemaking, has said that the evidence was inconclusive on consumer experience in individual arbitration cases, and we think that there is statistical anecdotal evidence, including the Bureau study, that shows that forced arbitration in individual cases is simply a rigged system when consumers don't have a choice. But it's clear that the Bureau has very rigorous standards on its data collection and its data analysis and its findings, so it always has these very rigorous standards on what steps it wants to take.

So we support the Bureau's proposal to collect arbitration claims and awards. We think that that would provide a lot of sunshine into this secret forced arbitration system. We definitely support that. We think it will help the public. We think consumer advocates, for sure, we will be able to use that information, and the Bureau itself will be able to use the data, in the future, to ban arbitration clauses outright.

KEO CHEA: Thank you, Christine.

DAVID SILBERMAN: Travis, to you. You talked in your remarks about your concerns that the proposal would limit the extent to which arbitration was available, but let me ask you to talk about how you see arbitration clauses, the ability to limit class actions, as affecting consumers.

TRAVIS NORTON: Well, what you're really asking is how does the class action waiver piece of an arbitration agreement affect a consumer, and the answer is that it's the engine that gives that arbitration program its ability to proceed in the best interest of the consumer and the company. These class action waivers make it possible for customers to access arbitration. They are really the necessary component to make arbitration programs make sense economically, and in so doing they reduce costs of products and services and they increase the availability of credit on competitive terms in the consumer financial marketplace.

They also, in doing all that, provide a real outlet for small, individualized claims, which again, cannot be classed. Consumers with those types of claims—these are the claims that consumers actually care about in the real world—they now have an outlet. They can go to arbitration. Consumers can access that program at the expense of the company. The company is saying "please, come and bring your complaint. I'll pay for you to bring your complaint against me."

Just a little thought experiment. It was the Bureau's study that showed that 87 percent of the class cases studied resulted in no class-wide benefit for the people, and only 13 percent of the cases studied had any benefit, settled on a class-wide basis. So if you just look around the room, I counted there are about 65 people. If you take 13 percent of you, that's about 8 people, so that's maybe a row plus a person. Congratulations. You are the beneficiaries of the class action system. But it gets better because only 4 percent of you are actually going to get any money. I can't even do it. It's less than a person in this room gets any money out of the class action system

So I'm not quite sure why it is that folks are saying the class action system is really the answer here. This is a solution in search of a problem, and I think we need to go back to the drawing board. If there are issues with arbitration that the Bureau would like to address, the Chamber of Commerce is happy to have that dialogue. But as it stands, this is a solution in search of a problem and so we hope that that day comes.

DAVID SILBERMAN: Mary.

MARY McCLOUD: For Deepak. In your experience, how have arbitration clauses affected attorneys' ability to assist consumers who have been harmed?

DEEPAK GUPTA: Over the past couple of decades they really radically reshaped the ability of consumer advocates at all levels, whether they're legal services lawyers or lawyers in an advocacy group, like the one I used to be with, or lawyers in private practice. It radically reshaped their ability to help consumers.

The first question lawyers should be asking the consumer is "What happened to you?" "How were you harmed?" and "What laws does it violate?" But often the most important question they have to ask is, "Is there an arbitration clause with a class action ban?" If somebody comes to me with a case against a payday lender, it wouldn't be worth either of us to spend a lot of time talking about that because across that industry arbitration clauses are prevalent.

And one thing I've noticed, also, is that there's a very high correlation between, often, the worst actors and the prevalence of the clauses. So the credit union industry, the vast majority of credit unions do not have forced arbitration clauses with class action bans, but the payday lending industry does. And so that shows you, I think, that these clauses are being used to insulate bad practices.

And then the question is, well, can you challenge the arbitration clause? In most cases you can't, and lawyers do not have the resources to play Don Quixote. We had a case recently in which—and I do appeals so I get calls from lawyers around the country who are trying to challenge these clauses. Normally I have to say no. We had a case recently that we won in the Fourth Circuit, involving a tribal payday lender on the Internet, where the clause actually said no state or federal law will apply in any way whatsoever to this transaction; only tribal law. And then there was a sort of fake tribal arbitration scheme that really didn't exist. That clause we could get invalidated under current law, but that's an outlier.

And so as much as lawyers would like to be able to help everyone, it's just not economically rational to pursue most of these small-dollar places on an individual basis.

Travis has twice mentioned what he called, you know, claims with unique facts, and the example he gave was what if your interest has been miscalculated that month on your bank account. But, first of all, interest calculation is something that banks should be doing across the board in similar ways, and so they should be classable kinds of claims. But let's imagine that there's some idiosyncratic problem there. A lawyer is not rationally going to be able to pursue that claim, and let's look at the data, again, in the CFPB's report. The CFPB found that in the American Arbitration Association, the leading arbitral provider, on an annual basis, there are only 25 consumers that are coming forward to bring those small-dollar claims. So it's just not happening.

So this better, more efficient system, consumers are just not availing themselves of it, and I think what that really shows is that, as I said earlier, what's really happening is that the claims are being killed. And it's particularly for the claims that have systemic practices, like unfair lending, which requires regression analysis and discovery. Those are the cases in which, particularly, nothing can be done because of these class bans.

DAVID SILBERMAN: Keo?

KEO CHEA: This question is for Alan. Are there consumer benefits provide by arbitration clauses today that the Bureau's proposal would limit?

ALAN KAPLINSKY: Yes.

DAVID SILBERMAN: You're kidding.

[Laughter.]

ALAN KAPLINSKY: Yeah. Surprise, surprise. If companies abandoned arbitration altogether, as I suggested that many of them will, due to the prohibition against class action waivers, consumers will be deprived of numerous significant benefits that arbitration provides, benefits that I just didn't make up out of whole cloth, that are supported by the CFPB's own study.

Number one, the ability to resolve disputes in a 2- to 5-month period, rather than 2 to 5 years. Number two, the ability to resolve disputes economically, since the AAA caps consumer costs at $200 and most companies offer to pay all the costs in any event. Third, arbitration saves consumers substantial money and time, and avoids aggravation, because they know the exact date of the arbitration hearing, how long it will last. Very often it can be done from their own home, telephonically. Sometimes it can be done over the Internet. Consumers can precisely schedule their time away from work and home, saving them lost pay or having to pay for unnecessary daycare.

Number four, the ability to have disputes resolved on the merits, sitting right at the table with the arbitrator and not being bound by strict rules of evidence. None—absolutely none of the 562 class actions studied by the Bureau went to trial. None of them. You heard the other data. Only about 13 percent ended up in a settlement, so most of the people got absolutely nothing. Of the 341 cases resolved by an arbitrator, according to the Bureau's study, in-person hearings were held in 34 percent of the cases, and the arbitrator reached the merits of the claims in 146 cases. Arbitration produces results, not foot-dragging.

And also, I talked earlier, but it bears reiterating. The average recovery that a consumer obtained, according to the CFPB's own data, in class actions, $32.35. Originally the Bureau did not do the long division in the study that it came out with last year, but in the document they released yesterday, they did do the long division and they acknowledge that industry commenters were correct—$32.35.

Because arbitration is far less combative than litigation, parties can better talk about settlement or agree on a mediator to help them settle their disputes. Arbitration saves consumers money because if companies have to defend more court litigation and class actions, there is no doubt it's Economics 101. Consumers will pay for the increased defense costs in the form of higher prices or reduced services.

And just one final thing, and I have to make this point because nobody has responded to it yet. The point made by Paul Bland that class actions deter wrongful behavior—nonsense, Paul. What deters wrongful behavior is what the CFPB is doing. The many investigations its conducted, the hundreds of consent orders entered into what is going on at the Department of Justice, states attorneys general, including the New Mexico attorney general—that's where there is a deterrent factor. I've been practicing consumer financial services law for over 40 years. I've never once had a client say to me, "Oh, my God, my competitor got sued in a class action. Boy, I better change my practice." No. But I'll tell you this. Since the CFPB has been operational, once a consent order gets entered into between the CFPB and a competitor of my client, they're on the phone right away, saying, "Boy, we better take a really close look at what we're doing."

Class actions have practically no deterrent value, and that's not surprising because most of them lack merit—87 percent of them lack merit, according to the CFPB's own data.

DAVID SILBERMAN: Thank you. One last question. We'll ask all the panelists, but try and keep your remarks brief. To one of the ultimate questions the Bureau will have to answer in this rulemaking, for which we're inviting comment, is whether a proposal to have the effect of banning class actions is for the protection of consumers. A second is whether it's in the public interest, which is to say how it affects the market as a whole.

So I'd ask you to offer any final comments you have on that, or those questions. I was going to start to the right, but since Alan just finished why don't we go again, same order as last time. Paul?

PAUL BLAND: Consumers didn't choose to be forced into individual arbitration. They don't know when they've been tricked. There are a lot of times that their rights have been violated and they aren't aware of it. The system doesn't work for them. It takes a lot of time and a lot of fight and a lot of hassle to go and fight with a large corporation. Most people aren't going to do it. If you don't have someone sticking up for you or you can join together with other people, it's not going to happen.

The paternalism that's going on, that's in this conversation about, well, you know, we, the banks and the payday lenders decided that the Constitutional system drafted by the founders of the country is a really crappy one and we're going to replace it with a secretive corporate arbitration system, and that that's good for you and that's what the consumers want, I mean, the obviously analogy, to me, is if anyone saw the movie *Caddy Shack*, where Ted Knight is the judge, and he says to the caddy, "You know, I sent boys younger than you to the electric chair. I didn't want to do it but I thought I owed it to them." Well, you know, consumers of America, the payday lenders think they owe you a system that instead of the court system that was given to you by the country, they've created their new, secret, corporate tribunals for you.

It's not a system people want. It's not a system that people works. Forcing it on people has been unbelievably unfair, it needs to stop, and it's a great thing that this Bureau is going to take action.

CHRISTINE HINES: First, I would like to say it's been wonderful hearing industry lawyers appreciating the Bureau's work, its enforcement, and I am just very pleased to hear that. I'm glad it's on the record that they're supportive of the CFPB enforcement orders. I just want to say that.

ATTENDEE: I didn't say I was supportive of it.

[Laughter.]

CHRISTINE HINES: So the whole point of us being here is to talk about what's happening in consumer financial services. The types of injuries in consumer financial services are mostly small-dollar claims, as my colleagues have said. They're for abusive interest rates, they're for the overdraft fees. These are types of complaints and claims that are small-dollar, that we cannot enforce on our own—in arbitration—we just cannot enforce it on our own. That's why we need to be able to band together our claims, we need to join our claims together and move forward in class actions. It's just the most practical way to move forward.

I do have dreams of completely eliminating the forced arbitration scheme. It's a scheme, it's predatory, and we hope that it happens one day. But eliminating the class action ban will restore remedies for millions of consumers.

DEEPAK GUPTA: In my view this is an easy question. It's unquestionably in the consumer interest to ban class action bans. If you just look at who are the relevant actors who are knowledgeable about this issue and what do they think, there are 164 groups—civil rights groups, consumer groups, labor unions, small business groups—that are all in favor of what the Bureau is doing, ranging from the NAACP to Main Street business groups.

And so the real question is not is this in the interest of consumers but I think the Bureau, to its credit, has kind of taken on the harder question. Instead of just reading the statutory authority as allowing them to just do what's in the best interest of consumers, they've sort of made their job harder, and instead have asked, you know, how does this affect the market and the system as a whole.

Obviously this is a very contentious issue, but I'm really surprised at how much the arguments we've heard on the other side have been about the supposed benefits of individual arbitration to consumers. And what's so surprising about that is, in this whole discussion you haven't heard a single response today to the point I feel like I'm beating a dead horse on, which is look at the number of claims that consumers actually bring in individual arbitration, and where they receive some benefits.

So if you're going to do a cost-benefit analysis you've got to compare the two sides of the scale. On the one hand, you have billions of dollars in relief that's delivered back to consumers. You take the overdraft example—straight to their bank accounts. That's unquestionably worth something and it's some relief. You can have a debate about the deterrent effect, which is hard to measure. But there's unquestionably something very, very large on that one end of the scale.

And then you've got to measure the thing on the other end of the scale, and the only thing they've pointed to is the benefits of individual arbitration. So I guess we can go out and ask those four people, who recovered small claims from the American Arbitration Association over the period studied, ask them how they felt about the process. That would be sort of pointless. If we could find them, maybe we should ask them. But I think the cost-benefit analysis is easy here.

DAVID SILBERMAN: Thank you. Kevin.

KEVIN HAMMAR: I don't know what to say about the very small-dollar claims, but I will say this. I think sense of universal disapproval of arbitration in some ways flies against what the legislatures have done and what the courts here have done. If you bring a case in the Second Judicial District Court, and it's a small case, you're compelled to go to arbitration. Now, if you don't like the results of that arbitration, you've got to de novo appeal to the District Court. But the New Mexico courts have been extremely favorable with respect to arbitration arrangements. I've done hundreds of those arbitrations, and in my way of thinking most of them have been pretty fair arrangements.

Which brings a second point to my mind. The reason the courts have started relying so much on arbitration is just because of their docket load. So if you start adding more cases, class action cases, I think then the consequence is what are you going to do about judicial resources, because that remains an open issue and a pressing question in our state.

I'd just like to come back to my original point is, I'm just a little appalled at the one-size-fits-all kind of regulation. I'd prefer if you're going to do something like this, allow a lender to disclose a contract that has a mandatory arbitration and one that doesn't, and let them price them competitively. If arbitration is going to save you money, then maybe you get a discounted interest rate of some kind, and if it's mandatory arbitration, you get a different set of arrangements. But I'm just sort of bothered by the continuing multiplicity of regulations which trigger compliance issues, which, once again, adds to, particularly, a small lender's overhead.

DAVID SILBERMAN: Travis?

TRAVIS NORTON: Well, you asked about the impact of the availability of class actions on the market as a whole. I guess that kind of depends on which market it is you're talking about. If you're talking about the market for class action plaintiffs' lawyer services, you ought to go long. That's about to boom. Reduce unemployment in that area of the economy. If it's the market for low-cost and effective and fast arbitration services, I would go short. That's about to disappear if this rule is finalized. And if it's the market for a diversity of consumer credit produces and services, like credit monitoring on competitive and affordable terms, you just ought to go home, because the prices are going to increase and the diversity of products is going to go contract.

To this question about why there are so few arbitrations that are reported, I think that's a great piece of data. But again, it's the Bureau's own study—the Bureau's study, not mine, not Alan's—the Bureau's study that shows that arbitration is effective, if not a more effective means of resolving disputes than class action litigation. That's probably why we're not sitting here talking about a direct ban on arbitration. The fact that there are so few arbitrations, could it be possible it's because businesses who actually like their customers, contrary to the picture that's being painted of them—could it be that businesses bend over backwards in their customer relations and customer services departments to avoid disputes ever getting to the question of where arbitration or litigation is an option?

Part of an arbitration system is investing very heavily in a customer services and customer relations department that tries to resolve claims before they ever get to the point where a business would have to take an adverse legal view to one of its customers. Businesses like customers. They depend on customers. This view that every customer is a hapless victim of a big, predatory business is just not consistent with a competitive marketplace for consumer financial services.

At the end of the day, look, we can sit up here and debate the relative merits and demerits of arbitration and class action. One this is clear, is that certain areas of study in this particular debate have not been touched by the Bureau. What happens to arbitration when you get rid of class action waivers? Let's just come out and research it and study it. If the Bureau believes that they remain because there are so few and the cost won't be high, come out with data, analysis, research, and say it. What happens to the individualized claim that can't be classed, when arbitration goes away? Where would the Bureau have that person go?

So, look. More study needs to be done. There needs to be more process on this before we continue on with the proposed rulemaking. We can have this debate about arbitration and class action all day. I think that the record is clear, that the Bureau's record is clear, that arbitration is a more effective way at resolving disputes than class action litigation. But if that record isn't clear, let's continue to populate the record. There are a lot of pieces that are still missing to this study, and we need to go back to the drawing board and look at those, and reach honest conclusions with transparency and thoroughness, because again, at the end of the day, at the heart of this discussion is the best interest of the customer, the protection of the consumer, and we need to make sure we get that right.

DAVID SILBERMAN: And Alan, you get the last word.

ALAN KAPLINSKY: Thank you, David. I'm pretty sure that Travis has responded now to the question, Deepak, that you had asked. You claim that we hadn't responded to the fact that there were such a few number of arbitrations that were actually filed, and Travis talked about very robust customer service departments that try to get everything resolved short of arbitration or litigation. Nobody—you know, it's a failure if a situation ends up not being resolved informally.

But, again, I want to reiterate, this has become a self-fulfilling prophecy. Deepak, Paul, other consumer advocates, plans' class-action lawyers, and unfortunately, the CFPB have been railing against arbitration and how anti-consumer it is for years. And the media, of course, has been very quick to pick up that drumbeat, and that's what you keep reading. Well, it's no wonder that a lot of consumers, when asked about arbitration, either they don't know what it is or they have a negative view about it, even though they haven't been through it.

So one of the missing pieces—and this is something we urged the Bureau to take a look at, and it never did, and that is the experience of people who actually had been through arbitration. There may not be many, Deepak, but it's more than two or three. It's the hundreds; it's in the thousands. And there have been other empirical studies that have been done of the people who have been through arbitration, and the results are very favorable. Consumers like arbitration.

So, again, who are the beneficiaries here? The real beneficiaries are the plaintiff's class-action bar because they are going to view this as open season to attack Corporate America with class actions, most of which will be lacking in merit, and they're filed only to exact a quick individual settlement. The CFPB's own data supports what I just said. I didn't make that up out of whole cloth.

Defense lawyers like me, better for us, as I said. We'll benefit because we have to defend all the class actions. So I guess it's good for all lawyers, but it's really not a good thing for the consumers that this Bureau is charged in looking out for. Thank you.

DAVID SILBERMAN: Thank you. This concludes the panel portion of our program, so please join me in thanking all of our panelists one more time for a thought-provoking discussion.

[Applause.]

DAVID SILBERMAN: I'll ask the panelists to take their seat and turn it back to Zixta Martinez, our Associate Director for External Affairs.

ZIXTA Q. MARTINEZ: Thank you, David. Please join me in giving another round of applause to the panelists for helping to highlight some of the critical issues about arbitration.

[Applause.]

ZIXTA Q. MARTINEZ: An important part of how the Bureau helps consumer finance markets work is to hear directly from consumers, from industry, from our state and local partners, and from community advocates across the U.S. One of the ways that the Bureau gathers public feedback is through events like these. We have held field hearings, town halls, and other events across the U.S., from Miami, Florida; to Itta Bena, Mississippi; to Seattle, Washington; and now, of course, Albuquerque, New Mexico.

At these events, we not only hear from experts in the field; we invite the public to participate. And before I open the floor up for comments, I want to remind folks that there are several other ways to communicate your observations, concerns, or complaints to the CFPB. You can submit a consumer complaint with the CFPB through our website at consumerfinance.gov. Our website will walk you through the process for submitting a consumer complaint about a financial product or service.

We also have a Spanish language website, CFPB en Español, which provides access to essential consumer resources, such as how to submit a consumer complaint and answer frequently asked questions. We take complaints about mortgages, car loans or leases, payday loans, student loans, other consumer loans. We take complaints about credit cards, prepaid cards, credit reporting, debt collection, money transfers, bank accounts and services, and other financial services. We also take complaints about issues with arbitration clauses in consumer financial contracts.

If you don't have a specific complaint but would like to share your story with us, we have a feature on our website called Tell Us Your Story where you can tell us your story, good or bad, about your experience with the a consumer financial product or service. Your story will help inform the work that we do to protect consumers and to create a fair marketplace.

We have another feature called Ask CFPB where you can find answers to over a thousand frequently asked questions about consumer financial issues, including educational information about mandatory arbitration clauses.

I encourage you to visit consumerfinance.gov to learn more about the resources and tools the Bureau has developed to help consumers make the best decisions for themselves and for their family.

So now it's time to hear from members of the public that are here today. A number of you signed up to share comments and observations about today's discussion. The public comment portion of the field hearing is also an important opportunity for the CFPB to hear about what's happening in consumer finance markets in your community. Each person who signed up to provide testimony will have 2 minutes to do so, and what we hear from you is invaluable. We want to hear from as many of you as possible, so I encourage you to please observe this 2-

minute limit so that everyone who signed up has the opportunity to share their observations and comments.

So, with that, I will call out our first commenter. Mr. Robert Greenbaum. Mr. Greenbaum, someone will bring you a microphone.

ROBERT GREENBAUM: Thank you. My name is Robert Greenbaum. I'm an attorney with New Mexico Legal Aid in Las Cruces and focus on consumer issues.

As has been noted, if financial service providers are concerned about helping consumers with disputes, they already have a private way to manage that through better customer service and resolving complaints internally, but if that doesn't work, then consumers should be able to go to court, including through class litigation. Even for those low-income people who qualify for legal services where inability to afford an attorney is not necessarily a deterrent to seeking individual redress, they still don't necessarily seek help with these kinds of small-dollar claims, especially against large companies, if they even know they've been wronged. And like government regulators, legal aid has limited resources to help all low-income consumers with individual claims.

Further, while Legal Services Corporation funded legal services programs, it cannot assist with class litigation. It is important that this tool still be available to consumers and consumer advocates. I think everyone should agree, even highly educated, sophisticated consumers can find financial services agreements daunting at best, and many consumers are not so well educated or sophisticated, as Attorney General Balderas indicated. The myth that individuals have a meaningful ability to choose to enter or understand agreements for financial services based on whether those agreements have arbitration provisions that prohibit class litigation and provide for nonpublic proceedings is just that, a myth, and I think the proposal set forth will help relegate that myth to the status of a defunct fairy tale.

ZIXTA Q. MARTINEZ: Thank you, Mr. Greenbaum.

ROBERT GREENBAUM: Thank you.

ZIXTA Q. MARTINEZ: Angelica Anaya-Allen?

ANGELICA ANAYA-ALLEN: Thank you, Director Cordray and members of the panel. I am a solo practitioner here in Albuquerque, New Mexico, currently devoting my practice to representing homeowners in foreclosure cases, and I would say that the elimination of arbitration clauses in mortgage cases was a wonderful achievement, bringing access to justice for many homeowners who otherwise would really be foreclosed.

The arbitration system is truly impenetrable. It is not a system that is usable for consumers, and it is particularly not usable for consumers who may be helped by class actions in which their individual damage is relatively small, but the collective damage that's been done by that company is relatively large. And it is critical for us to achieve correction in the marketplace, to have access to tools that will only work when you look at collective action as opposed to individual action. So we applaud the Bureau's efforts in eliminating the class-action ban from arbitration clauses. Thank you.

ZIXTA Q. MARTINEZ: Thank you, Ms. Allen. Craig Parr? Mr. Parr?

CRAIG PARR: I'm just speaking on behalf of someone who has got a check from a class-action lawsuit a few weeks back for $4.23 for a half an hour of my time on a computer. I don't think the class-action system is the answer. It never has been.

When I disagree with my children, I don't call in a lawyer and all my children to sue me or to resolve the situation. I bring in my wife, and she mediates, and she comes to the conclusion. And it is usually in my favor. So it's one of those things that you accept as it is.

I do agree that the arbitration system works. Does it need to be monitored? Yes, of course, just like any other thing needs to be monitored. It's a heck of a lot better than wasting a half an hour of my time to make $4. And like I said, I've been on both sides of the table. I've arbitrated with customers before, and it's come to the conclusion that customer service is the main thing.

The other thing that I heard constantly from our attorney general, from the panel, from everybody on the board was education. That seems to be where we really lack on everything. If I understand what I'm signing, then I'll sign it. If I don't understand it, I won't. Thank you.

ZIXTA Q. MARTINEZ: Thank you, Mr. Parr. Abby Sullivan Engen?

ABBY SULLIVAN ENGEN: [Speaking off mic.]

ZIXTA Q. MARTINEZ: Okay. Len Kenning [ph]?

LEN KENNING: Hi. Oh, thank you. Sorry . Excuse me. When the Federal Arbitration Act was passed in 1925, the assumption was that it would be used between businesses of equal sophistication and bargaining power. Arbitration, there is a place for it. It's been used since the Middle Ages and probably earlier, but it's the voluntary nature of arbitration that's important. And the fact that both sides actually have the same amount of ability to negotiate, the same amount of information, and are starting on a level playing field, it's important. So it's not to say that there's not a place for arbitration. It is. But it was never intended, I don't believe in 1925—I hope it wasn't by the business people who were pushing it in Congress that it would be used by corporations to deny the rights of consumers, and that's in fact what we do, obviously, see today.

And as I mentioned in our earlier meeting, I think it is really important to articulate what the idea of arbitration was, what it can appropriately be used for, and unfortunately, now what it has been and is being used for. And certainly, our panelists were very clear that individuals do not go to arbitration.

I'm also not saying that class actions are the be-all/end-all for everything, but to me, the deterrent aspect of class actions in terms of evildoer behavior is really a very important aspect. And I think that the use of arbitration, as the Supreme Court allowed the Federal Arbitration Act to be expanded, particularly the way it has over these last 30 years, some of them without I think even really understanding what they were doing, it is now at a place which even those who were part of the earlier expansion of the application of the Federal Arbitration Act now understand that it has gotten completely out of control, and that it is being used in ways it was never intended when it was passed.

So we really do appreciate you being here. We appreciate the proposed rule changes, and thank you very much for all of your work.

ZIXTA Q. MARTINEZ: Thank you, Ms. Kenning. Paul Stull?

PAUL STULL: Good afternoon. I'm Paul Stull. I'm the CEO of the Credit Union Association of New Mexico, represent 46 credit unions on New Mexico, serving approximately 803,000 members. Roughly, that is one in three New Mexicans that belong to a credit union

Credit unions have just started to adopt the practice of using arbitration clauses because they fear that class action suits brought against them would have dire consequences, hurting not only the credit union, but the members it serves. Members are owners of a credit union, so a class action would be very much like suing yourself. In the end, the suit would hurt the very people who bring it, possibly ending financial services to rural parts of New Mexico that General Balderas spoke of in his opening remarks.

Credit unions have a long and well-documented history of providing high-quality member service. Consumer Reports, December 4, 2015, states that credit unions are among the highest-rated services they've ever evaluated, with 93 percent of the customers being highly satisfied. Credit unions have no profit motive in not resolving disputes with their members. Credit union boards are unpaid volunteers who are also credit union members. There is no profit motive in trying to dupe credit union members.

ZIXTA Q. MARTINEZ: Thank you, Mr. Stull. Deborah DeMack.

DEBORAH DeMACK: I am a consumer law attorney here in Albuquerque and Santa Fe, and I have experience both on the government side in private practice, and I do represent consumers, mostly consumer financial transactions. In my personal experience here in this marketplace, I have found arbitration to be a no-go. It is overwhelmingly—the arbitrators are attorneys, such as our panel, who have ruled consistently against my consumers. Never has my—until this very week, I have never been in an arbitration where the other side paid to go to arbitration. It was always demanded that my consumer pay. My consumers don't have that kind of money. Many of my consumers, I represent on a contingency basis because they cannot afford an attorney. They certainly don't understand arbitration clauses, let alone anything else in their often unilateral contracts. I do find that forced arbitration is nothing but a blockade, a barrier to us just in the courts. Forced arbitration denies many consumers not just their day in court, but it also denies others because arbitration is not in the public eye. It is off in some conference room, out of sight, unreported, no public record.

And, yes, I have represented consumers in actions against credit unions here in New Mexico. I do find their customer service may be wonderful, but have a fight, my client, who's ultimately the credit union, admitted that they had in essence stolen $6,000 of her own money, put up a tremendous fight for two y ears.

ZIXTA Q. MARTINEZ: Thank you, Ms. DeMack.

DEBORAH DeMACK: Thank you.

ZIXTA Q. MARTINEZ: Cris Mulcahy?

CRIS MULCAHY: Good afternoon. It's Cris Mulcahy, and I am a lawyer here with Modrall Sperling law firm.

And I think one of the most pertinent comments that was only made in passing but actually has a very real effect on the ground is the proposed rules of fact on judicial resources. As a litigator who is regularly in the courts, in many instances, resolutions of this kind can take anywhere from 3, 4, to 5 years. If you're talking about class-action litigation, I don't need to discuss how long that can take, but in essence, I think this is going to have a very real effect on the court's resources. And I don't think that the study has properly addressed those issues.

ZIXTA Q. MARTINEZ: Thank you, Ms. Mulcahy. Liz Hemm [ph]?

[No audible response.]

ZIXTA Q. MARTINEZ: Tom Bunting?

TOM BUNTING: I'll waive my time for comment. Thank you, though.

ZIXTA Q. MARTINEZ: Laurie Weahkee?

LAURIE WEAHKEE: Hello. I'm Laurie Weahkee. I'm Diné, Cochiti and Zuni, and I serve as the Executive Director for the Native American Voters Alliance.

And what I wanted just to note is that Native Americans are, by and large, suffering from poverty, which we believe the payday lenders truly take advantage of our communities. We do want to stand in support of CFPB's effort to create a way for us to have access to class-action lawsuits. It's a way to protect ourselves, and it demonstrates that we are not suffering these issues alone. It allows us to organize ourselves and be together in something that is affecting our larger community .

I think the other thing I want to say is that with regard to—sorry. I feel like this idea—it feels threatening to me that the idea that arbitration will go away if class action is allowed to—if we're allowed to have access to class-action lawsuits. I find that offensive. I want to say that with regard to this idea that you're only going to get $2.35 if you engage in this sort of lawsuit, I think for us—for me, it's enough to note that the rules and regulations will be changed if and when that lawsuit does end. So that $2.35 does mean something to me beyond just the $2.35. But knowing that those rules and regulations are changed, it's a vindication knowing that the doubts, the fears, the fall towards poverty will be changed and will have a better effort. We'll know that things are getting better for our communities, for our children.

And just the last thing I want to say is I do think it's critically important to promote transparency and allow CFPB to obtain that data on these different awards and these different arbitration because I think that that's important for us to understand the larger structural issues that are facing us with regards to poverty and with regards to our community as Native people.

ZIXTA Q. MARTINEZ: Thank you, Ms. Weahkee. Reverend Holly Beaumont.

REV. HOLLY BEAUMONT: I'm the organizing director of Interfaith Worker Justice New Mexico, which is a network of people of faith and people of conscience that advocate for workers' rights and economic justice, and I wanted to take this opportunity to put this issue in perspective by reminding us that throughout most of human history, usury has been banned, outlawed, or at the very least, strictly regulated by empires, by monarchs, including Shalimar and Queen Elizabeth. That ins 1772 in the United States, the cap on interest was 6 percent, and that the secret writings of the Abrahamic traditions, Judaism, Christianity, and Islam are replete with references to usury. The Prophet Ezekiel lists it among the abominations, including rape, murder, and robbery. Dante in the Inferno places usury at the lowest ledge in the sixth circle of hell, lower than murderers.

So having put it in that perspective, as I sit here and listen to the debate between the industry and the advocacy groups—industry, advocacy groups; advocates, industry—I can tell you that my trust is clearly placed in the people who have nothing to gain in terms of profits by taking the position and defending consumers.

And I want to take this opportunity to thank you on behalf of all of us who are working on this issue and those who don't know that they need to be working on this issue. We are very grateful for your continuing work, and we are very grateful for the existence of the CFPB.

ZIXTA Q. MARTINEZ: Thank you, Reverend Beaumont. Thaddeus King?

[No audible response.]

ZIXTA Q. MARTINEZ: Chuck Bowman?

CHUCK BOWMAN: Director Cordray, wouldn't you agree with some of your panelists that this arbitration rule would increase class actions and pad the pockets of trial lawyers? And with that—

ZIXTA Q. MARTINEZ: Mr. Bowman, this is not a Q&A. This is to hear your observations, your thoughts on the issue, your comments about your community.

CHUCK BOWMAN: I would like to ask the Director if he would plan on renouncing trial lawyer support with any future attorney general races or governor races in Ohio.

ZIXTA Q. MARTINEZ: We are not going to take positions on races.

RICHARD CORDRAY: I don't think that's appropriate for this hearing.

ZIXTA Q. MARTINEZ: But we appreciate that you took time from your busy day to share your thoughts. Thank you, Mr. Bowman.

CHUCK BOWMAN: Can you tell us if you're going to not run for Ohio governor?

RICHARD CORDRAY: I don't think that's appropriate for this hearing.

ZIXTA Q. MARTINEZ: Matt Rugbull [ph]? Thank you, Mr. Bowman.

[No audible response.]

ZIXTA Q. MARTINEZ: Bob [*sic*] Treinen?

ROB TREINEN: I'm Rob Treinen, and I have a small law practice here in Albuquerque. I'd like to visit a little bit about a real consumer class action in New Mexico court here, and it's a case brought against an enterprise of payday lenders. They use hundreds of different names. They operate in the shadows. What they were doing here was getting people into loans at 500 to 700 percent interest. They were calling them, threatening them with arrest when people fell behind. They were getting access to their bank accounts and just stealing money from them.

Now, the industry would say, "What about arbitration for this scenario? Why didn't you look at that?" Well, let's look at that. Maybe before we even look at arbitration, let's take them up on their invitation to look at their customer relations department. Well, I don't think it would work. I mean, the whole operation was in shadows to be able to conduct this sort of conduct, but in arbitration, according to the industry, we would maybe get a telephone hearing. It would maybe be decided without any child care costs accrued, but let me tell you, this lawsuit has been going on for a while. The plaintiff's side has got three attorney firms involved. We've spent millions of dollars. The defense side has six attorney firms involved, and they operate in secret. And an arbitration protocol that also operates in secret is exactly what they want.

So I do think that if we look at the real facts on how these things would play out, then it's very clear that the CFPB position is absolutely right here. This stuff needs to be exposed. There needs to be a public record. There needs to be resources put to shining a light on these sorts of practices, and the only way it could effectively be done is through consumer class actions.

ZIXTA Q. MARTINEZ: Thank you, Mr. Treinen. Steven Fishman?

STEVEN FISHMAN: Thank you. I am the co-chair of the New Mexico Fair Lending Coalition, and I thought I'd just add a little perspective about how big an impact this regulation could potentially have just by quoting a few statistics about what goes on in New Mexico.

From our own government records, which by the way are self-reported by payday lenders, 400,000 loans a year, over 175 percent. Our state population is 2 million. Loans under 175 percent aren't reported. I deal with folks daily who have more interest payments on loans under 175 percent than they have income, and many of them, that income is public support. So our public support is going straight to these payday lenders.

These folks do not understand the terms of the loans they're getting involved in. I have nothing against arbitration, but I don't have anything against class actions either. And when we take away the ability to do class actions, we take away the ability of these folks to get any kind of redress.

As to the idea that class actions might drive up the costs of loans, our most recent report from the state showed loans of up to 3,200 percent interest. How much higher can the rates go?

You guys are doing the right thing. Thank you so much for your service.

ZIXTA Q. MARTINEZ: Thank you, Mr. Fishman. Ona Porter?

ONA PORTER: I'm the CEO of Prosperity Works, where we design and demonstrate high-impact out of poverty and ending poverty strategies, so it isn't a surprise why I might be here to comment on what's happening in the financial industry.

One of the things that I think we can all look at is both the rise and the wealth gap and also the increase in poverty and understand the incredible role that the financial systems have played in the development of both. Wealth is not the opposite of poverty. Social justice and opportunity is. Unfortunately, social justice is often only realized when we have redress in our courts. So having that opportunity and having this rule is critical to the work that we do. Thank you for being here.

ZIXTA Q. MARTINEZ: Thank you, Ms. Porter. Amber Carrillo?

AMBER CARRILLO: Thank you, Director Cordray. I'm sorry. Can you hear me? My name is Amber Carrillo, and I am from the Pueblo of Laguna here in New Mexico. I reside in Albuquerque. My day job is in the lending industry, but I work for an employer who has a positive social impact. And I think it is really important for our folks, especially Native Americans, to have access to capital. We have been stripped of so many resources, and so it's really important that we do have good ways to have access to capital.

But I do want to comment today. Because I work with Native American consumers, I have direct knowledge about their economic situations and their conditions and are typical borrowers, and that we have really extreme circumstances. We have people who have good credit, and they go to bankers, and so the terms and the rates and everything there is usable. It's workable. It's good. But then the majority of folks don't have good credit, and they have fewer resources. So they end up going to payday lenders and quickly, very quickly, rapidly, within a week or so get caught in a financial trap with no support for resolving the debt.

We are talking about a group of folks who are already financially disempowered, and arbitration is an imbalanced approach to an adversarial situation. I do have problems with arbitration because I've seen far too many of our folks, Native Americans, get locked in rooms and have their rights stripped. So I don't think that that situations holds any potential for a positive outcome for Native American people. There's so many barriers that we face.

Just last week, I was working with a borrower who was a Navajo speaker, primarily, and I did something that a bank or anybody else would never do. I spent a lot of time with her trying to explain to her what she was getting into, so that alone tells you what it takes to get folks to kind of understand what the situation is.

And, therefore, the options for folks to exert their power in a collective manner through the option of class action is absolutely critical for us. What is clear is that there are severely disempowered communities who need the power to collectively defend their rights as consumers, and I believe arbitration is another tactic to capitalize on this situation.

I completely agree that the lending institutions and in particular the payday lenders, they are superior with customer service. They send people birthday cards and "Congratulations for Your Graduation," and so—but really what's behind that scene is really the opportunity to capitalize, which means we'll work with you right now, but we'll change your payment to $143 today. You don't have to pay $260, but down the road in a couple of weeks, that whole amount is still waiting. So customer service is really—it's good. On the outside, it looks great. It makes sense, and it's working very well, but we need more transparency. And I completely support the work of the Consumer Financial Protection Bureau. Thank you for the time.

ZIXTA Q. MARTINEZ: Than you, Ms. Carrillo. Amanda Warner?

AMANDA WARNER: Hi. My name is Amanda Warner. I work with Americans for Financial Reform and Public Citizen, but I am also here today to represent the 164 consumer civil rights, labor, community groups that signed onto the letter sent to the CFPB last week asking for this rule.

And, you know, let me be clear here. We are not trial lawyers. In fact, we are mostly just policy wonks, researchers, people who have really dug into all of the material around forced arbitration, tried to figure out what it's doing for our constituency, which is consumers. And, you know, we support the rule. We think it's a great thing, but we found that arbitration does not help consumers. It only helps banks and lenders who want to take our hard-earned money. It's very strange to watch the panel today and see all of the industry folks basically arguing that they are representing consumers.

The Chamber of Commerce and industry representatives have never spoken for consumers. Money talks, but it does not speak for us.

And I think also the arguments that they are making, saying that arbitration is going to go away, they are going to stop apparently subsidizing it, which as people testified is not necessarily a common thing that actually happens, I think that really, if anything, just reveals their hand. It shows that they would actually prefer to take on individuals in court, and they would prefer to take them on in arbitration because arbitration is not in fact cheaper. It's not more cost effective. It's not more fair. What it is is it's skewed towards the industry. The CFPB study showed that 93 percent of banks and lenders with affirmative claims win in arbitration. Only 9 percent of consumers do. It's very clear why they're here defending it today, and I just want to be clear, consumers do not support this rule, and I hope that during the public comment period over the next 90 days, they will tell then CFPB exactly that. We want this rule.

ZIXTA Q. MARTINEZ: Thank you, Ms. Warner. I want to thank our panelists, and I want to particularly thank our public in Albuquerque, New Mexico. You all took the time to be here with us today. We deeply appreciate that you did so. Every commenter adds to our knowledge of consumer finance and community, and we are very grateful for that.

I want to also thank all those watching via live stream at consumerfinance.gov and just confirm that this concludes the CFPB's field hearing in Albuquerque, New Mexico. You all have a great afternoon. Thank you.

[Applause.]