



1700 G Street NW, Washington, D.C. 20552

December 23, 2024

National Association of Consumer Advocates  
American Association for Justice  
Public Justice  
National Consumer Law Center  
Consumer Federation of America  
UC Berkeley Center for Consumer Law & Economic Justice  
Americans for Financial Reform  
Better Markets, Inc.

RE: Petition for Rulemaking to Require Meaningful Consumer Consent Regarding the Use of Arbitration to Resolve Disputes Involving Consumer Financial Products and Services (Docket No. CFPB-2023-0047)

Dear Petitioners,

Thank you for filing a petition for rulemaking requesting that the Consumer Financial Protection Bureau (CFPB) initiate a rulemaking under section 1028(b) of the Consumer Financial Protection Act (CFPA)<sup>1</sup> to address the use of mandatory pre-dispute arbitration provisions in contracts for consumer financial products or services. On September 14, 2023, the CFPB posted your petition on Regulations.gov with a 60-day comment period. The comment period ended on November 14, 2023, during which 29 comments—24 in support of the petition, four opposed, and one unrelated—were received.<sup>2</sup>

The CFPB has considered your petition and the comments received. The petition identifies harms that consumers face as a result of the inclusion of mandatory pre-dispute arbitration

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<sup>1</sup> 12 U.S.C. § 5518(b).

<sup>2</sup> In addition to the 29 comments submitted during the comment period, the CFPB received two letters from members of the United States Congress regarding the petition, one in support and one opposed, which were added to the petition docket. Petition to Require Meaningful Consumer Consent Regarding the Use of Arbitration to Resolve Disputes Involving Consumer Financial Products and Services, <https://www.regulations.gov/docket/CFPB-2023-0047/document>.

provisions in contracts of adhesion used by providers of consumer financial products and services, and proposes that the CFPB address these harms by issuing a rule that would allow consumers “to make a meaningful choice on whether to use arbitration after a dispute arises.” Petition at 1. Among the harms the petition identifies as engendered by these provisions, which the petition contends are ubiquitous in agreements for consumer financial products and services, are that these clauses appear in contracts of adhesion, are typically not understood by consumers, prevent consumers from exercising their right to sue in court, frequently prohibit collective consumer action against providers, and are broad in scope. The petition also contends that providers have superior bargaining power in their relationships with consumers, which allows providers to set the rules for arbitration and to select arbitration firms that effectively act as a client of the provider, thereby incentivizing those firms to resolve disputes in the provider’s favor. The petition states that these and other features of mandatory pre-dispute arbitration provisions “preemptively allow[] financial services providers to sidestep the legal system, avoid accountability for misconduct, and continue practices that violate the law and harm consumers.” *Id.* at 4.

The petition further cites recent market developments as supporting the need for the requested rulemaking, including the growth of additional constraints in mandatory pre-dispute arbitration provisions, retroactive changing of terms to add such provisions after consumers have filed legal actions in court, and the use of credit monitoring contracts to expand limited opportunities for nationwide consumer reporting agencies to require arbitration for consumer claims arising under the Fair Credit Reporting Act. According to the petition, the requested rulemaking would complement the CFPB’s work in other areas, such as its efforts to combat corporate recidivism and the pervasiveness of junk fees, by increasing legal accountability for corporate bad actors.

As the petition recounts, the CFPB previously conducted a study of pre-dispute arbitration agreements in the market for consumer financial products and services, as required by section 1028(a) of the CFPA.<sup>3</sup> Following this study, the CFPB issued a rule in 2017 (1) to prohibit certain providers of certain consumer financial products and services from using pre-dispute arbitration agreements to bar consumers from filing or participating in class actions and (2) to require certain providers involved in arbitrations pursuant to pre-dispute arbitration agreements to submit arbitral and other records to the CFPB.<sup>4</sup> Later that year, pursuant to the Congressional Review Act of 1996, both houses of Congress voted to approve a joint resolution of disapproval

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<sup>3</sup> 12 U.S.C. § 5518(a).

<sup>4</sup> 82 Fed. Reg. 33,210 (July 19, 2017).

to overturn the rule, which the President signed. As a result, the rule did not go into effect. The petition posits that the CFPB is statutorily authorized to issue the rule the petitioners request because the requested rulemaking would not be in “substantially the same form” as the 2017 rule. Petition at 8 (quoting 5 U.S.C. § 801(b)(2)).

The CFPB believes your petition highlights an important and growing area of risk facing consumers in the market for consumer financial products and services. As the petition acknowledges, the CFPB has focused much attention in recent years on the risks posed by fine print in consumer agreements. This includes the proposed rulemaking to require certain supervised nonbanks to register with the CFPB information regarding their use of certain terms and conditions in form contracts with consumers,<sup>5</sup> in addition to guidance warning that the use of unlawful or unenforceable terms and conditions could violate the CFPA’s prohibition on unfair, deceptive, or abusive acts and practices.<sup>6</sup> While we appreciate the concerns you have raised, given the CFPB’s full rulemaking agenda and limited resources, we unfortunately will not initiate the specific rulemaking you are requesting at this time. This decision, of course, has no implications as to the veracity or merit of the petition’s underlying claims.

Thank you again for submitting this petition.

Sincerely,

*Seth Frotman*

Seth Frotman  
General Counsel

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<sup>5</sup> Registry of Supervised Nonbanks That Use Form Contracts To Impose Terms and Conditions That Seek To Waive or Limit Consumer Legal Protections, 88 Fed Reg. 6906 (proposed Feb. 1, 2023).

<sup>6</sup> Bulletin 2022-05: Unfair and Deceptive Acts or Practices That Impede Consumer Reviews (Mar. 22., 2022), <https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-05-unfair-deceptive-acts-or-practices-that-impede-consumer-reviews/>; Consumer Financial Protection Circular 2024-03: Unlawful and unenforceable contract terms and conditions (June 4, 2024), <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-03/>.