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August 10, 2017

Dear 

Last month, the Consumer Financial Protection Bureau (“CFPB”) issued a rule limiting the use of forced arbitration clauses in certain financial contracts. A number of lobbying organizations that represent financial firms have criticized the new CFPB rule, but neither you nor your bank has publicly taken a position on it. I write today to ask whether you oppose the CFPB rule, and to gather relevant information on your bank’s use of forced arbitration clauses and the arbitration process.

This information is particularly important and time-sensitive because Republicans in Congress have introduced a resolution to reverse the CFPB rule using the fast-track Congressional Review Act process. The House of Representatives has already passed the resolution on a party-line vote.¹ This rushed process leaves little time for public hearings and other traditional congressional fact-gathering. I am seeking this information so that the public, my colleagues, and I can better analyze the impact of reversing this CFPB rule.

As you know, the CFPB’s rule is the result of a congressional requirement in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. Congress directed the CFPB to study “the use of agreements providing for arbitration of any future dispute,” and to “prohibit or impose conditions or limitations” on forced arbitration clauses if the CFPB found it to be “in the public interest and for the protection of consumers.”²

The CFPB spent three years analyzing data and conducting the most comprehensive empirical study ever done on arbitration clauses in financial contracts. The CFPB found:

- Forced arbitration clauses exist in nearly 99% of the studied payday lenders’ contracts and 92% of prepaid card contracts, and nearly 86% of private student lenders use them as

¹ Vote on H. Res. 468 (July 25, 2017), at <http://clerk.house.gov/evs/2017/roll411.xml>.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, § 1028(a).

well. A significant percentage of checking and credit card contracts also include forced arbitration clauses, which means tens of millions of Americans are subject to them.³

- Because forced arbitration clauses prohibit consumers from joining a class action in court, most consumers simply give up rather than enter the arbitration process when they have a claim of \$1,000 or less against a financial firm.⁴
- Even when consumers do enter arbitration, companies win on 93% of the claims they file, while consumers recover an average of only 12 cents of every dollar claimed, gaining some relief on barely 20% of their claims.⁵
- Less than 7% of Americans understand the rights they are giving up through the forced arbitration clauses in their contracts.⁶

The arbitration process produces much less relief for consumers than class actions. Class actions resulted in \$2.2 billion in relief to 34 million consumers from 2008-2012 – far more than what consumers recovered through arbitration.⁷

Having found that forced arbitration clauses hurt consumers, the CFPB issued a final rule on July 10, 2017 that prohibits the use of class action bans in certain financial contracts. The rule does not prevent a customer and a bank from agreeing to enter arbitration after a dispute arises; instead, it only prohibits financial firms from forcing customers to give up their right to a class action preemptively.⁸ The rule also “makes the individual arbitration process more transparent” by requiring companies to report data on claims and outcomes.⁹

A number of lobbying groups representing big banks and financial firms have condemned the rule, asserting that it will harm consumers. The U.S. Chamber of Commerce,¹⁰ the American Bankers Association,¹¹ and the Financial Services Roundtable¹² have criticized the rule and lobbied Congress to overturn it.

³ “Arbitration Study: Report to Congress,” *CFPB* Sec. 2, p. 8 (Mar. 2015) (online at http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf).

⁴ *Id.* at Sec. 5, p. 10.

⁵ *Id.* at Sec. 5, p. 13-14.

⁶ *Id.* at Sec. 3, p. 4.

⁷ *Id.* at Sec. 8, p. 24.

⁸ “CFPB Issues Rule to Ban Companies From Using Arbitration Clauses to Deny Groups of People Their Day in Court,” *CFPB* (Jul. 10, 2017) (online at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rule-ban-companies-using-arbitration-clauses-deny-groups-people-their-day-court/>).

⁹ *Id.*

¹⁰ U.S. Chamber: CFPB Arbitration Rule is Prime Example of Agency Gone Rogue (July 10, 2017), at <https://www.uschamber.com/press-release/us-chamber-cfpb-arbitration-rule-prime-example-agency-gone-rogue>.

¹¹ ABA Statement on CFPB’s Final Arbitration Rule (July 10, 2017), at <http://www.aba.com/Press/Pages/071017CFPBArbitrationRule.aspx>.

These organizations represent your bank and your industry, but you – and other CEOs of large banks – have remained silent on the rule. If your lobbyists are taking such strong positions against the rule, is there a reason both you and your bank have been unwilling to take a public position?

To better understand your position and to analyze the assertions of financial industry lobbyists, I ask that you answer the following questions:

1. Do you oppose the CFPB's new rule? Do you believe it should be reversed?
2. Does your bank use forced arbitration clauses in any of the kinds of contracts covered by the CFPB rule? If so, please provide me with a list of the relevant contracts types and a copy of the latest version of each of those contracts. How many of your customers are covered by each contract type?
3. By prohibiting class actions bans in forced arbitration clauses, the CFPB is making sure that your customers have access to more legal options to hold your bank accountable for misconduct. Is there any reason that having more legal options to hold your bank accountable is not in your customers' best interest?
4. If you force your customers into arbitration, please provide anonymized data on how your customers fare in arbitration against your bank. For the last five years, please provide:
 - a. The total number of cases your bank initiated under arbitration for each contract type;
 - b. The total number of cases your customers initiated under arbitration for each contract type;
 - c. The total number of cases for each contract type in which your customers prevailed; and
 - d. The total amount for each contract type that your bank has paid out in arbitration awards.
5. Please provide copies of any internal or public analyses or memoranda conducted by or for your company that show the impact of the CFPB forced arbitration rule on your customers or your company profits.

¹² Joint letter to Congress on the CFPB Arbitration Rule (signed by Financial Services Roundtable) (July 10, 2017), at <http://www.fsroundtable.org/wp-content/uploads/2017/07/Trade-Letter-on-Arbitration-CRA-.pdf>.

Because the Republican-led effort to reverse the CFPB rule is moving quickly, I ask that you respond to this letter by September 1, 2017.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Warren". The signature is fluid and cursive, with a long horizontal stroke at the end.

Senator Elizabeth Warren
Ranking Member
Subcommittee on Financial Institutions
and Consumer Protection