Congress of the United States
Washington, DC 20515

June 17, 2015

The Honorable Richard Cordray
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Dear Director Cordray:

We write to express our concerns with the *Arbitration Study*[1] that was recently released by the Consumer Financial Protection Bureau.

Under the Dodd-Frank Act, Congress delegated to the Bureau the authority to issue a rule regulating the use of arbitration agreements in consumer financial agreements, but required the Bureau to conduct an arbitration study as a prerequisite to regulation such that the "findings in [any] such rule shall be consistent with the study."[2] Thus, the decision as to whether the Bureau should prohibit consumer arbitration agreements is based on the findings and veracity of the study.

Unfortunately, the process that led to the Bureau's *Arbitration Study* has not been fair, transparent, or comprehensive. The Bureau ignored requests from senior Members of Congress for basic information about the study preparation process. The Bureau also ignored requests to disclose the topics that would be covered by the study, and failed to provide the general public with any meaningful opportunities to provide input on the topics. Because the materials were kept behind closed doors, the final *Arbitration Study* included entire sections that were not included in the preliminary report that was provided to the public.[3]

As a result, the flawed process produced a fatally-flawed study. Rather than focusing on the critical question – whether regulating or prohibiting arbitration will benefit consumers – and devising a plan to address the issues relevant to resolving that question, the Bureau failed to provide even the most basic of comparisons needed to evaluate the use of arbitration agreements.

For example, the Bureau failed to estimate the transaction costs associated with a consumer pursuing a claim in federal court as compared to arbitration. The Bureau also failed to estimate the ability of a consumer to successfully pursue a claim in federal court without a lawyer, despite the fact that consumers often are self-represented successfully in arbitration proceedings. The

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[1] Consumer Financial Protection Bureau, *Arbitration Study Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)* (2015) [hereinafter *Arbitration Study*], *available at* http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.
[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5518(b) (2015).
[3] *See Arbitration Study* at 9.

absence of comparison to even these basic data points throws suspicion on where other useful information has been sidestepped, if not willfully ignored.

For ninety years, since the enactment of the Federal Arbitration Act in 1925, there has been – as the Supreme Court explained in a recent unanimous opinion – "an 'emphatic federal policy in favor of arbitral dispute resolution.'"[4] When the consumers' path to justice is impeded by a court system that is slow and costly, it is clearer than ever that Americans need alternative dispute resolution procedures that are fair, more accessible, less costly, and more efficient.

We therefore call upon the Bureau to reopen the study process, seek public comment, and provide the necessary cost-benefit analysis for understanding how a similarly situated consumer would fare in arbitration versus a lawsuit. Any rulemaking proceeding in the absence of such minimally fair procedures would be premature, biased, and fail to comply with Congress's intent in conferring this authority on the Bureau.

Sincerely,

PATRICK MCHENRY
Member of Congress

Member of Congress

Member of Congress

Member of Congress

Member of Congress

Member of Congress

TIM SCOTT
United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

[4] *KPMG LLP v. Cocchi,* 132 S.Ct. 23, 25, (2011) (per curiam) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 631 (1985)).

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