



August 21, 2014

Attention: Will Wade-Gery
Acting Assistant Director, Card and Payments Markets
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Re: Data on How Auto Finance Companies Continue to Force Consumers into Arbitration

Dear Mr. Wade-Gery,

The National Association of Consumer Advocates (NACA)¹ and the National Consumer Law Center (NCLC)² are writing to you regarding new information relevant to the arbitration study currently being conducted by the Consumer Financial Protection Bureau (CFPB) on “the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.” 12 U.S.C. § 5518.

In April 2014, NACA and NCLC fielded an informal survey to advocates who represent auto-finance consumers. The survey was designed to examine the use of forced arbitration clauses in auto-finance contracts. Approximately 35 consumer advocates from 20 states³ responded to the survey. The survey questions addressed the prevalence and use of forced arbitration clauses in auto-finance contracts and the arbitral process available to auto-finance consumers. Although the results do not lend themselves to definitive conclusions about any of these issues, they do support various preliminary observations about forced arbitration in the auto-finance context. Below are some of the takeaways from our informal survey.

¹The National Association of Consumer Advocates (NACA) is a non-profit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means. For questions about these comments, please contact NACA's Legislative Director, Ellen Taverna at ellen@naca.net or (202) 452-1989.

² The National Consumer Law Center (NCLC) is a non-profit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. These comments are submitted on behalf of NCLC's low-income clients.

³ AL, AZ, CA, DC, FL, GA, HI, IL, IN, MD, MI, NJ, NM, NY, OH, OK, OR, PA, TX, VA.

- **Forced arbitration clauses are extraordinarily prevalent in auto-finance disputes.** Over 90% of respondents indicated that over 65% of the auto-finance contracts they encounter in their practices contain forced arbitration clauses, and over 25% of respondents indicated that over 95% of the contracts they see contain forced arbitration clauses.
- **Over 70% of respondents answered that they had decided not to represent auto-finance consumers with viable claims because of arbitration clauses.** The primary concerns for many of these attorneys were arbitration fees and costs and limited discovery. Approximately 75% of respondents answered that these two issues were the “most likely to cause them concerns” in deciding whether or not to take on a case that contains an arbitration clause. A smaller percentage (40% of respondents) who had turned down cases because of arbitration clauses cited class action bans as an “aspect[] of the arbitration clause” that is most likely to cause concern.
- **Many respondents who did pursue cases in arbitration reported finding that arbitrators are much less likely to rule in favor of consumers than juries.** In particular, some respondents observed that arbitrators are less likely to find that a dealer or financier committed fraud and less likely to award punitive damages.
- **Many respondents stated that they have encountered arbitration clauses which do not designate well-known providers such as the AAA, but instead identify unfamiliar, often local arbitration administrators.** In determining its course of action, the CFPB should take the existence of smaller-scale local arbitration providers into account—particularly their fee schedules, which may exceed those of the national providers and shift more of the costs of arbitration to consumers.

The NACA/NCLC informal survey of auto-finance consumers is not meant to provide statistically significant results, but rather to provide further data to support the results of the CFPB’s initial arbitration study released last December. The CFPB’s preliminary findings similarly confirmed a high prevalence of arbitration clauses in the terms of credit cards, checking accounts and prepaid cards. Like our survey results, the CFPB’s findings also similarly demonstrate that when an individual arbitration is the only path available for consumers, many valid claims will likely not be brought in court or arbitration.

In light of the responses from consumer advocates and the evidence produced in CFPB’s initial findings, after the CFPB completes its study, NACA and NCLC urge the CFPB to issue a strong rule to eliminate forced arbitration clauses from auto financing contracts and all consumer financial service contracts under its jurisdiction.

Sincerely,

/s/ Ellen Taverna
 Legislative Director
 National Association of Consumer Advocates
 1730 Rhode Island Avenue, NW, Ste. 710
 Washington, DC 20036

(202) 452-1989 ext. 109

ellen@naca.net

www.naca.net

/s/ David Seligman

Of Counsel

National Consumer Law Center®

1001 Connecticut Avenue, NW, Suite 510

Washington, DC 20036

(202) 452-6252

dseligman@nclc.org

www.nclc.org