Press Release

Washington Legal Foundation
Advocate for Freedom and Justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302 wlf.org

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Media Contact: Mark Chenoweth | mchenoweth@wlf.org | 202-588-0302

WLF Calls on CFPB to Withdraw Its Proposal to Ban Mandatory Arbitration Agreements

(In re: CFPB Rule on Arbitration Agreements)

"CFPB should withdraw the Proposed Rule because its own study does not support the rule. … Yet CFPB has chosen to ignore the findings from its study and serve the interests of the class-action plaintiffs' bar instead."
—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today asked the Consumer Financial Protection Bureau (CFPB) to withdraw a proposal to prohibit arbitration agreements that bar consumers of financial products from resolving future disputes via federal or state-court class-action lawsuit. WLF's filed comments argue that the CFPB's study does not support the agency's proposed rule and suggest that the rule would do far more to benefit the plaintiffs' class-action bar than to aid consumers.

WLF contends that CFPB's proposed rule is premised on a misinterpretation of what constitutes "the public interest." As the Supreme Court has repeatedly held, the Federal Arbitration Act (FAA) encourages arbitration as a speedier and less expensive alternative to litigation that serves the public interest. In the Dodd-Frank Act, Congress asked CFPB to study the use of consumer arbitration clauses, and authorized CFPB to prohibit or impose conditions or limitations on the use of such clauses if doing so was "in the public interest and for the protection of consumers." But, as WLF's comments note, Congress did not repeal the FAA. Thus, CFPB's rule needs to be consistent with both Dodd-Frank *and* the Federal Arbitration Act.

CFPB's own study did not identify any unique problems with arbitrations over consumer financial products and services. The agency supports the rule based on general attacks on arbitration, but Congress has already spoken and declared a public interest in encouraging arbitration. CFPB's own study showed that consumers recover more than 160 times as much from the average arbitration as they do from the average class-action lawsuit. Encouraging wider use of consumer class-action suits in the face of such data makes no sense. WLF asked the CFPB to withdraw its proposed rule and not propose a new one unless a study shows that a ban on mandatory arbitration agreements "is in the public interest and for the protection of consumers."

After filing its comments, WLF issued the following statement by Chief Counsel Richard Samp: "CFPB should withdraw the Proposed Rule because its own study does not support the rule. CFPB's study reported data indicating that an individual consumer who feels aggrieved and seeks to resolve a dispute with a company will receive less than 1% as much from class-action litigation as he would receive from arbitration. Yet CFPB has chosen to ignore the findings from its study and serve the interests of the class-action plaintiffs' bar instead."

WLF is a national, public-interest law firm and policy center that advocates for economic liberty—including the right for parties to freely contract—and for reining in excessive litigation.

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