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STATEMENT ON THE IMPLEMENTATION OF PRESIDENT OBAMA’S EXECUTIVE ORDER ON FAIR PAY AND SAFE WORKPLACES

Washington, DC – The following is a statement from the National Association of Consumer Advocates (NACA) and the National Consumer Law Center (NCLC) in response to the announcement of the Federal Acquisition Regulatory Council (FAR) rule and Department of Labor (DOL) guidance implementing President Obama’s Fair Pay and Safe Workplaces Executive Order, which prohibits corporations with federal contracts of \$1 million or more from subjecting their employees to forced arbitration for accusations of employment discrimination or civil suits related to sexual assault or harassment.

“We applaud the administration for moving closer to improving the lives of millions of workers and strengthening the enforcement of our civil rights laws with the implementation of the Fair Pay and Safe Workplaces Executive Order. This proposed guidance is a major step forward that will allow workers who may have been sexually assaulted or had their civil rights violated to take back their rights and get their day in court. Emboldened by recent U.S. Supreme Court decisions, corporations have been using forced arbitration clauses in the fine print of non-negotiable contracts to strip workers and consumers of the right to hold corporations accountable in a court, even when corporations violate state anti-discrimination, workers’ rights, and consumer protection laws,” said Ellen Taverna, legislative director of the National Association of Consumer Advocates.

Corporations grant themselves a license to steal and evade the law by forcing consumers and workers into private arbitration proceedings without the protections of our civil justice system like discovery or meaningful appeal. Forced arbitration has also weakened the force of federal and state laws by removing the ability to enforce those laws. The proposed rule to implement the executive order by the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) recognizes that “[t]he primary net economic benefit to the public that will derive from the E.O.’s mandatory arbitration prohibition is reduced discrimination as a result of an increased incentive for employers to avoid it.

Increased risk of public exposure, class-action suits and higher damages awards provides an incentive for employers to comply with anti-discrimination laws that arbitration cannot match.”

“These federal agencies recognize that an individual’s ability to enforce her rights is not only an important civil right, but that it’s also good policy that makes our entire marketplace more efficient,” said David Seligman, attorney at the National Consumer Law Center. “In other words, forced arbitration doesn’t only hurt workers and consumers; it harms our economy.”

The Consumer Financial Protection Bureau (CFPB) released an arbitration study in March 2015 that confirmed forced arbitration clauses eviscerate consumers’ rights and block their access to courts. The CFPB’s study found that despite the high prevalence of arbitration clauses in consumer financial products, few consumers go to arbitration, especially for small-dollar claims. The findings also illustrate that forced arbitration clauses often prevent consumers from joining together in class actions, even though there is unequivocal evidence that collective action more effectively compensates individuals and deters abusive corporate practices than individual arbitration.

We call on members of Congress, the CFPB and other federal agencies to join the White House in their efforts to curb abusive forced arbitration terms. The recently introduced Arbitration Fairness Act of 2015 (AFA) [[S. 1133/H.R. 2087](#)], would prevent the enforcement of forced arbitration clauses in all civil rights, employment, antitrust, and consumer disputes. The legislation would only prohibit forced arbitration not voluntary arbitration that occurs after a dispute arises. Under the Dodd-Frank Act, the CFPB also has the authority to ban forced arbitration agreements covering consumer financial products now that its arbitration study is finalized. [NACA, NCLC and over 100 national, state and local organizations](#) and [58 members of Congress](#) have called on the CFPB to prohibit the use of forced arbitration clauses in contracts for consumer financial products and services, and restore consumers’ right to choose how to resolve disputes with financial institutions.”

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The National Association of Consumer Advocates (NACA) is a nonprofit association of more than 1,500 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. www.consumeradvocates.org