

June 16, 2015

The Honorable Hal Rogers
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nita Lowey
Ranking Member
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Ander Crenshaw
Chairman
Subcommittee on Financial Services and
General Government
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jose Serrano
Ranking Member
Subcommittee on Financial Services and
General Government
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen Rogers and Crenshaw and Ranking Members Lowey and Serrano,

The undersigned trade associations strongly support an amendment being offered by Representatives Steve Womack and Tom Graves to the Fiscal Year 2016 Financial Services and General Government Appropriations bill. This amendment would ensure that consumers are not deprived of fair, efficient, affordable dispute resolution options in the consumer financial services marketplace.

For 90 years federal law has protected the enforceability of arbitration agreements—recognizing that arbitration provides an essential alternative method of resolving disputes that is quicker and cheaper than the expensive, overburdened court system.

Hundreds of millions of contracts that have been formed in reliance on this longstanding principle contain arbitration provisions, including credit card and checking account agreements, cell phone and cable television agreements, website use agreements, and many others. More than 250 companies—including many of the nation's largest businesses—have registered consumer arbitration clauses with the American Arbitration Association.

Despite the clear, well-documented benefits that arbitration affords consumers, plaintiffs' lawyers and their allies have made eliminating arbitration a top priority, because arbitration empowers consumers by enabling them to handle their own claims and dramatically reducing transaction costs—the fees that lawyers reap through litigation—thereby lowering the prices of goods and services.

The Dodd Frank Act required the Consumer Financial Protection Bureau (CFPB) to study arbitration clauses in consumer financial contracts and authorized the Bureau to regulate these clauses to the extent regulation was justified by the study's findings.

While a number of stakeholders sought an open study process in which the Bureau identified the issues it planned to study, invited public comment on them, and tested preliminary conclusions through written comment and/or public discussions, the Bureau decided instead only to take public comment once in three years through a preliminary Request for Information. The predictable result is a deeply flawed piece of research that excludes critical information, misinterprets key data, and fails to address the most important question—how will consumers cheaply and speedily resolve individualized disputes if arbitration is banned and consumers are left to the mercy of plaintiffs’ lawyers and the increasingly overcrowded and complex judicial system?

The Womack/Graves amendment would require the CFPB to go back and undertake the kind of study it should have delivered in the first place: a transparent, peer-reviewed investigation of real-world arbitration clauses in consumer financial contracts, informed by meaningful public comment including information about the experience with arbitration in other parts of the economy, and focused on the real-world impact to consumers such as whether consumers are actually able to access the alternative to arbitration—the court system—and how they actually fare in court cases. Once the study is completed, the amendment would authorize the Bureau to regulate arbitration clauses as long as it demonstrates, based on empirical evidence, that the benefits to consumers will not be outweighed by the costs to consumers.

It is critical that Congress intervene to ensure the CFPB does not act hastily to eliminate an important and accessible means of consumer protection, and we look forward to working with you and the Bureau to improve upon the initial study and to ensure that consumers are not unjustifiably deprived of this important means of vindicating their rights.

We strongly urge members of the Committee to support the Womack/Graves amendment.

Sincerely,

American Bankers Association
American Financial Services Association
Consumer Bankers Association
Consumer Data Industry Association
Financial Services Roundtable
U.S. Chamber of Commerce
U.S. Chamber Institute for Legal Reform

cc: Members of the Committee on Appropriations