



September 26, 2017

Dear Senator:

The National Association of Consumer Advocates (NACA), a national nonprofit association actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means, **strongly urges you to oppose S.J.Res.47 and H.J.Res.111**, a resolution under the Congressional Review Act (CRA) that would repeal the arbitration rule issued by the Consumer Financial Protection Bureau (bureau). The Resolution would give the financial sector a pass to once again take away Americans' legal rights that the bureau has rightfully restored.

The arbitration rule is a reasonable outcome resulting from the bureau's wide-ranging, methodical three-year study on the use of predispute binding mandatory (forced) arbitration clauses in financial services contracts. The study showed that consumers' legal complaints against financial institutions were being wiped away due to the one-sided contract terms, particularly terms that prohibited class actions and required arbitration on an individual basis.

The rule does not eliminate forced arbitration outright as consumer advocates had urged, but the bureau reached a reasonable policy outcome based on the collected data and analysis by eliminating forced arbitration clauses in consumer finance contracts that ban class actions, and allowing consumers to once again band together in court. It restores American consumers' right to choose how to resolve disputes with bad actors by ensuring that those harmed by widespread or systemic misconduct can join together to seek remedies.

Wells Fargo Bank and Equifax's recent conduct demonstrate the marketplace's need for the rule. Wells Fargo's employees opened more than 3 million bank accounts and credit cards over many years without customers' consent. The fraud could have been stopped much earlier if customers were not blocked from banding together in court. But Wells Fargo used its arbitration clause to keep its conduct secret until it grew into a public scandal.

Likewise, Equifax's data breach impacting 143 million people and the huge outcry after the public learned that the credit agency had used its fine-print contracts to eliminate consumers' right to sue shows us that ordinary people understand that their legal rights are critical for seeking remedies when cheated or ripped off by bad actors in the marketplace.

Class actions have helped consumers recover from severe misconduct in the finance markets such as when banks illegally pulled consumers' credit reports thereby damaging their credit, when banks illegally froze bank account funds, when lenders charged fraudulent fees, when entities used abusive practices to collect debt, and card issuers illegally cut access to prepaid cards.

Opponents of the rule often argue that consumers recover more money in private arbitration, but their contention is simply false. Despite the obstacles, data showed that consumers recovered about \$366 million more in class action lawsuits than arbitration per year, and 34 million more consumers get relief. The CFPB study found that only 400 consumers per year pursue claims in arbitration, with only 16 receiving any cash relief – a total of \$86,216. Only individuals with large individual claims are likely to have the resources to go to arbitration, whereas class actions are an efficient method to resolve multiple smaller claims, such as claims for illegal fees and charges.

The marketplace only benefits when consumers are able to exercise their legal right to seek remedies in court for harm. In fact, the mere existence of this right also *deters* corporate wrongdoing. And it helps level the playing field for financial institutions that comply with the law and don't force their customers into private arbitration to resolve disputes.

A CRA resolution to repeal the rule would be an especially reckless move. If it is repealed, Americans' legal rights would be denied indefinitely because under this law the bureau would be prohibited from issuing a "substantially similar" rule.

The arbitration rule is important for the protection of consumers and the overall health of the U.S. economy. Congress must ensure that the rule will go into effect without interference or obstruction. We urge you to **vote NO on any Resolution to repeal the arbitration rule.**

Sincerely,

Christine Hines
Legislative Director