



January 3, 2019

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker of the U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader, U.S. House of Representatives
Washington, D.C. 20515

Dear Senators McConnell, Schumer, and Representatives Pelosi and McCarthy:

As the 116th session begins, the National Association of Consumer Advocates (NACA) writes to share our views on pressing consumer protection matters that impact the lives of millions of ordinary Americans. 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, is deeply concerned about existing and evolving illegal, unfair, and abusive business practices. We urge new and returning members of the House and Senate at the first opportunity to seek solutions to restore and enhance consumers' rights and protections.

As a general matter, the marketplace lacks meaningful accountability for corporate bad actors engaging in practices that harm consumers and workers. Recent, massive, and well-publicized corporate scandals have become object lessons about the financially devastating consequences of under-regulated firms. This is especially true when such entities have little incentive to act responsibly and in good faith in their interactions with ordinary consumers. Despite the clear lessons from these scandals, little has been done to prevent future abuses.

For example, Wells Fargo Bank was exposed for opening millions of fraudulent customer accounts, and for profiting off of resulting illicit fees and charges. More instances of Wells Fargo's continued systemic mistreatment of its customers, including illegal auto loan add-ons and foreclosure abuses, continue to be uncovered to this day.¹ Limited government action has been insufficient for reining in the big bank's abuses. Similarly, the credit reporting agency Equifax has faced little consequence for its irresponsible cybersecurity practices that led to its 2017 data breach, which put the private information of tens of millions of consumers at risk.²

Indeed, until misbehaving corporations suffer significant consequences for predatory and risky practices, consumer trust in our marketplace will continue to diminish and wary customers will be left to worry about the next corporate scandal, and how they and their families will be damaged. Consumers need policies that will ensure that bad actors are not only held fully accountable for the damage they cause but that also will deter them from engaging in pernicious practices in the first instance.

¹ See, *Wells Fargo: Corporate Rap Sheet*, <https://www.corp-research.org/wells-fargo> and Patrick Rucker, *Wells Fargo reform plans fail to satisfy Fed after scandals: sources*, REUTERS, Dec. 6, 2018, <https://www.reuters.com/article/us-wells-fargo-fed-balance/wells-fargo-reform-plans-fail-to-satisfy-fed-after-scandals-sources-idUSKBN105130>.

² Jim Puzzanghera, *Former Equifax CEO apologizes for data breach and details ways the company messed up*, LOS ANGELES TIMES, Oct. 2, 2017.

First, Americans need access to justice and the right to seek remedies in court. The court system is a critical tool for leveling the playing field for ordinary consumers, workers, and small businesses. Yet overwhelmingly, individuals cheated or ripped off by big businesses are shut out of the justice system due to the corporate use of take-it-or-leave-it contract terms that bar customers and workers from going to court, forcing them to resolve disputes in private arbitration proceedings that are not made public.

Forced arbitration clauses, including those that ban class actions, are a get-out-of-jail-free card for corporations. Forced arbitration hides widespread, systemic misconduct from the public and it denies the cheated and injured the right to seek remedies in court. The restrictive terms remove a major incentive for corporations to comply with consumer- and workplace laws and to simply treat people fairly. Moreover, by keeping consumer and worker cases out of the courts, wrongdoers prevent the development of critical laws, a process that is central to all areas of dispute in our legal system. Notably, Wells Fargo and Equifax received widespread condemnation for their use of forced arbitration after their scandals came to light.

A new Congress should rely on the massive amount of empirical and anecdotal data on forced arbitration and the harm it causes consumers, and then immediately pass legislation that would meaningfully restore Americans' right to go to court. Such a law would give individuals the ability to choose how to resolve disputes with more powerful entities *after* the disputes arise.

More funding for legal aid is needed to improve access to justice. Legal Services Corporation, the independent nonprofit corporation established by Congress to provide financial support for civil legal aid for low-income people, deserves additional funding. The needs of the 58 million Americans eligible for legal services far surpass the current availability. Congress can do much more to close the gap.

Second, Congress must provide adequate oversight of federal consumer protection agencies, including the Consumer Financial Protection Bureau (CFPB). In its first six years, the CFPB returned \$12 billion in relief to 29 million consumers harmed by bad industry practices. Under the new leadership in the last year, the agency's productivity has dwindled. According to a Washington Post analysis, CFPB enforcement actions "dropped about 75 percent from average in recent years, while consumer complaints have risen to new highs."³ Most alarming is the CFPB's recent willingness to exempt financial entities from compliance with consumer protection laws.⁴ Vigorous Congressional oversight is critical to ensure that the Bureau is performing its statutory functions at full capacity: overseeing the financial markets, fully enforcing laws under its jurisdiction, and developing commonsense safeguards to protect consumers' financial interests.

The CFPB is also expected to release a proposed rule in 2019 on debt collection practices. Over 70 million U.S. adults have debt in collections, and debt collection abuses lead consumer complaints at the CFPB. Congress should support a debt collection rule if it (1) prevents excessive harassing communications that violate consumers' privacy; (2) stops the collection of old, time-barred debt; (3) ensures that debt collections notices to consumers are clear and accurate; and (4) does not weaken already existing protections under case law. Debt collection abuse is wide-ranging, but these changes would begin to alleviate unnecessary burdens on consumers in debt.

Third, Congress should stop unfair tax penalties on consumers who beat corporate wrongdoers in court. Consumers should be able to stand up for themselves against predatory lenders, abusive debt collectors, and other big businesses by going to court to enforce laws against corporations that prey upon

³ Robert O'Harrow Jr., et al, *How Trump appointees curbed a consumer protection agency loathed by the GOP*, THE WASHINGTON POST, Dec. 4, 2018, <https://wapo.st/2Pjf4X7>.

⁴ 83 Fed. Reg. 64036 (Dec. 13, 2018).

them. Unfortunately, the U.S. tax system is penalizing consumers who bring winning cases, by taxing them for the fees awarded to their attorneys. The taxation defeats the purpose of Congressionally-enacted statutes that promote private enforcement. Additionally, the Tax Cut and Jobs Act of 2017 (TCJA) has taken away a crucial but imperfect deduction from consumers, leaving them in an even worse position.

To ensure consumers can continue to bring meritorious legal actions, Congress should amend the tax code so consumers are not taxed on the legal fees awarded to them. The tax code has been changed before to ensure that people can bring civil rights and employment claims without being unfairly taxed when they win. It should be changed again to allow consumers to bring cases against bad actors who deceive them in the marketplace without fear of being financially penalized.

Fourth, consumers need updated protections against intrusions on their privacy and safeguards from collection, use, and dissemination of their personal data. The proliferation of big data is not new. Credit reporting agencies and background check companies have been exploiting and profiting from consumer data for decades. More recently, however, new online companies are using big data to digitally provide financial products and services to consumers. These new businesses typically form partnerships with relatively unknown third-parties, such as data aggregators, to collect and analyze consumers' personal information.

Consumers are growing more aware and troubled by the lack of control they have over their personal information. Massive data breaches are a common occurrence, and the growing security risks of big data, including identity theft, fraudulent transactions, discriminatory algorithms, and exposure of personally identifiable information, highlight the urgent need for enhanced privacy and data protections.

Congress should pass federal legislation to protect consumer privacy, afford consumers full control of their data, and provide meaningful redress for violations of consumers' rights. Any federal law should set a floor over which states can provide additional protections for their residents.

The scourge of robocalls on consumers across the country is a well-known intrusion on privacy. The federal Telephone Consumer Protection Act (TCPA), which restricts unsolicited prerecorded robocalls and text messages, allows consumers to recover for the nuisance and intrusion into their privacy from unwanted automated calls and texts. The Federal Communications Commission (FCC) has issued rules implementing the TCPA, but the industry is pushing to weaken the rules to allow incessant calls without consumers' consent. Congress should encourage the FCC to maintain the consumer protections in the TCPA, or else pass legislation that strengthens protections (and remedies) for consumers against illegal robocalls.

We urge the new Congress to protect consumers by supporting effective policies that restore and preserve consumers' legal rights and afford them meaningful remedies when they are wronged; provide sufficient safeguards and protections to ensure fair business practices in the marketplace; protect consumers' personal information and privacy; and ensure that the tax system works in favor of ordinary people who act as private attorneys general to hold bad actors accountable.

We appreciate your consideration of our views. Please contact us with any questions.

Sincerely,

Christine Hines
Legislative Director

cc: All Members of Congress