America's Credit Unions

Jim Nussle
President & CEO
202-508-6745
jnussle@americascreditunions.org

99 M Street SE
Suite 300
Washington, DC 20003

April 9, 2024

The Honorable Dick Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Today's Hearing: Small Print, Big Impact: Examining the Effects of Forced Arbitration

Dear Chair Durbin and Ranking Member Graham:

On behalf of America's Credit Unions, I am writing regarding the Committee's hearing entitled, "Small Print, Big Impact: Examining the Effects of Forced Arbitration." America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide.

As member-owned cooperatives, credit unions have an established history of protecting their members' interests and providing high-quality service. An essential element of any modern financial institution is access to systems for quickly and amicably resolving disputes in the limited instances where they arise.

Arbitration can be an efficient means to resolve legal disputes between parties and the choice to include arbitration agreements in contracts is highly dependent on the credit union's policies, priorities, and resources. As arbitration is merely one dispute resolution tool amongst many, we would be concerned with any legislation attempting to arbitrarily restrict access to the arbitration system. The best empirical evidence shows that consumer claimants in arbitration fare better than or at least as well as consumer claimants in court.[1] In addition, most claims asserted by consumers are small and individualized; for those consumers, arbitration provides the best mechanism for redressing their claims. A recent study evaluating data from the Consumer Financial Protection Bureau (CFPB) shows that there is no connection between the use of arbitration and increased violations of law. The use of arbitration is not correlated with

[1] See Nam D. Pham & Mary Donovan, supra note 7; see also, e.g., Christopher R. Drahozal & Samantha Zyontz, Creditor Claims in Arbitration and in Court, 7 Hastings Bus. L.J. 77, 80 (2011); Christopher R. Drahozal & Samantha Zyontz, An Empirical Study of AAA Consumer Arbitrations, 25 Ohio St. J. on Disp. Resol. 843, 896-904 (2010); Ernst & Young, Outcomes of Arbitration: An Empirical Study of Consumer Lending Cases (2005); Theodore Eisenberg et al., Litigation Outcomes in State and Federal Courts: A Statistical Portrait, 19 Seattle U. L. Rev. 433, 437 (1996).

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either increased consumer complaints or heightened enforcement activity by the CFPB.[2] Although arbitration may not be an appropriate forum in every dispute, it certainly can be the appropriate forum to resolve some disputes.

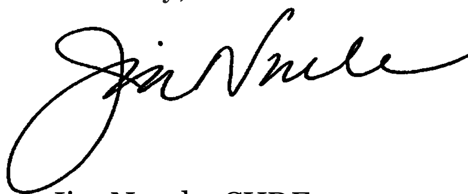
The threat of frivolous class action suits has grown rapidly over the past several years. In response, more credit unions are adopting arbitration agreements to minimize litigation risk and avoid the substantial financial impact of litigation on their membership. Despite the claims of the plaintiff's bar, class action litigation is time-intensive, inefficient, and costly. This is especially true for credit unions as class action lawsuits essentially put member-owners in a position of having to sue themselves and deplete the resources of the membership as a whole. Furthermore, in the rare situation that a group of credit union members feels a credit union is in the wrong, the group, as member-owners, already have direct recourse through their voting power as member-owners of the institution.

Credit unions regularly work with their members to provide refunds, work out payment plans, and find other solutions to resolve a legitimate dispute. Litigation, on the other hand, is a gamble for all parties, and often leads to minimal consumer relief at the highest legal cost. It is important, when considering laws that would ultimately limit options to resolve disputes, for Congress to recognize the substantial harm that expensive, protracted litigation levy on credit unions and their members.

Consumers' ability to access the high-quality, safe, and affordable products of credit unions would be put in jeopardy if credit unions are forced to reallocate considerable resources to defend against high-cost litigation due to the absence of a fair and efficient arbitration system.

On behalf of America's Credit Unions and the 140 million credit union members, thank you for holding this important hearing and considering our views on the subject.

Sincerely,



Jim Nussle, CUDE
President & CEO

cc: Members of the Committee on the Judiciary

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[2] See Nam D. Pham & Mary Donovan, A Critique of the CFPB Proposed Rule: Companies That Use Arbitration Agreements Do Not Pose Any Greater Risks To Consumers Than Those That Do Not (Mar. 2023), https://instituteforlegalreform.com/wp-content/uploads/2023/03/CFPB-Report-Final-March-29-2023.pdf.

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