

December 1, 2015

TO THE MEMBERS OF THE SENATE AND HOUSE COMMITTEES ON
APPROPRIATIONS:

The undersigned associations—representing businesses of all sizes and sectors of the economy—strongly support maintaining the Womack-Graves amendment to the Fiscal Year 2016 Financial Services and General Government Appropriations bill (section 632 of H.R. 2995 and its associated report language) in any final FY 2016 Financial Services Appropriations bill conference agreement. This amendment would require the Consumer Financial Protection Bureau (CFPB) to conduct a fair, comprehensive study before adopting a rule that would restrict arbitration and open the door widely to abusive class actions that benefit lawyers and harm consumers.

Arbitration provides an essential alternative method of resolving disputes that is quicker and cheaper than the expensive, overburdened court system. It also is easier for consumers to navigate on their own—freeing them from reliance on self-interested lawyers. More than 250 companies—including many of the nation’s largest businesses—have registered consumer arbitration clauses with the American Arbitration Association.

The Dodd-Frank Act required the CFPB to study arbitration clauses in consumer financial contracts prior to seeking to regulate these clauses to the extent regulation was justified by the study’s findings. As more than 80 members of Congress recognized in the attached letter to the Bureau, the study process was opaque, incomplete, and unfair. That study failed to address the most important question—how consumers would be able to resolve disputes cheaply and speedily if arbitration is limited and consumers are left to the mercy of the plaintiffs’ class action trial lawyers and the increasingly overcrowded and complex judicial system.

Notwithstanding the serious flaws in its study and the many questions the study left unanswered, the Bureau announced earlier this fall that it plans to propose a rule that would prohibit the application of arbitration agreements to class action lawsuits. The Bureau’s own study found that class actions provide little benefit to consumers (an average of \$32), but lawyers reap an average fee of \$1 million for each settled case. It is no wonder that plaintiffs’ lawyers and their allies have made regulating arbitration their top priority.

The Womack-Graves amendment would require the CFPB to go back, before enacting any rule, and undertake the kind of study it should have undertaken 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 on 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 would not be outweighed by the costs to consumers.

It is critical that Congress intervene to ensure the CFPB does not act hastily and unfairly to restrict an important and accessible means of consumer redress.

We strongly urge support for the Womack-Graves amendment.

Sincerely,

American Bankers Association
American Financial Services Association
Consumer Bankers Association
Consumer Data Industry Association
Consumer Mortgage Coalition
Credit Union National Association
CTIA – The Wireless Association
Electronic Transactions Association
Financial Services Roundtable
National Association of Federal Credit Unions
National Association of Independent Housing Professionals
Real Estate Services Providers Council, Inc.
Small Business & Entrepreneurship Council
U.S. Chamber Institute for Legal Reform
U.S. Chamber of Commerce

Attachment

cc: House and Senate Majority and Minority Leadership