

# ConsumersUnion®

POLICY & ACTION FROM CONSUMER REPORTS

## **Please Oppose S.J. Res. 47**

September 25, 2017

Dear Senator:

Consumers Union, the policy and mobilization arm of Consumer Reports, urges you to support the Consumer Financial Protection Bureau's rule to restore the rights of consumers to hold payday lenders, credit card companies, and other financial companies accountable under the law. These rights are essential to protect consumers when companies commit widespread wrongdoing, such as the fraud perpetrated by Wells Fargo on millions of its unsuspecting customers, or when companies fail to properly protect sensitive personal consumer information, as in the Equifax data breach that has potentially exposed the social security numbers and other personal information of up to 143 million Americans.

The CFPB's important, long-awaited rule stops companies from forcing consumers to take their claims individually to private arbitration when they would prefer to join together in a class action in court under established legal procedures.

Contrary to what many opponents of this rule are claiming, this rule is a measured and thoroughly considered response to the growing problem of forced arbitration, in which consumers sign away their legal rights just by signing up for a loan or financial service – often unknowingly agreeing to a paragraph hidden in the fine print, and always without having any choice in the matter.

The CFPB's rule targets one particularly harmful aspect of forced arbitration, when it shields financial companies from accountability for widespread harm their actions cause consumers. This is an area where the CFPB found the evidence most clear and compelling. As is explained in the CFPB's description and analysis accompanying the rule, the cumulative harm caused to consumers by careless, reckless, or fraudulent business conduct can be enormous, but the amount of money at stake for an individual victim is quite often too small to pay for the cost of arbitration. The only practical way for consumers to hold a company accountable under the law is by joining together in a class action. In fact, that is one of the key purposes for which the class action procedure was created in our legal system.

Another reason the class action procedure was created is to help companies facing legal action by numerous consumers for the same alleged wrongful conduct. Dealing with those claims all at once is far more efficient, and less costly to the company, than dealing with them individually. Unless, that is, the claims cannot be economically pursued individually. In that case, blocking the class action amounts to shielding the company from legal accountability. That is unfortunately what has resulted from the use of forced arbitration.

In issuing this rule, the CFPB is acting at the express statutory direction of Congress in the Dodd-Frank Act, the law creating the CFPB. The rule is based on a thorough three-year examination of the use of forced arbitration agreements in consumer financial services, in which the CFPB asked for and considered input from the full range of stakeholders who could potentially be affected. Based on that examination, the CFPB issued an extensive report, then asked for further input from all concerned. The proposed rule was published more than a year ago, after which there was yet another extended opportunity to give input.

Importantly, and also contrary to what many opponents of the rule are claiming, the rule in no way restricts the freedom of a lender and a consumer to *agree* to use arbitration as an alternative means for resolving a dispute – as long as they make that agreement *after* the dispute arises, when the consumer knows what is at stake and can decide whether the alternative being offered is fair and workable. Giving the consumer a genuine choice also means the lender has the incentive to make sure the alternative *is* fair and workable, so that informed consumers will have a reason to choose it.

In contrast, allowing companies to unilaterally *impose* arbitration on *all* consumers, at the time they sign up for the loan or credit card or other service, in the fine print of the paperwork or electronic terms of service, is no choice. Forced arbitration means that the company and its lawyers are free to construct an arbitration process that is unfairly slanted in favor of the company. The consumer is utterly at the mercy of the company.

Arbitration proceedings and their outcomes are generally required to be kept secret. Whoever designs the process also dictates what the rules are. Established law can be disregarded entirely. There is no right of appeal. It's one thing if the two sides both agree on using arbitration, after taking a close look and satisfying themselves that the process they are agreeing to is fair and workable. It's another thing entirely if the side with all the power forces it on the other side.

The 2015 CFPB report sets forth the basis for this rulemaking clearly and compellingly. And the description and analysis accompanying the final rule explain in great detail the CFPB's careful assessment of the input and concerns and alternatives presented during the multi-year rulemaking process, and how and why the CFPB arrived at the final rule.

We urge you to support this important rule, and to allow it to take effect so that consumers have the right and ability to protect themselves and hold financial companies accountable for conduct that causes widespread harm. We urge you to oppose S.J. Res. 47.

Respectfully,



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Consumers Union