

April 8, 2024

Senator Dick Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Lindsey Graham
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Graham:

On behalf of the American Financial Services Association (AFSA)¹, I am writing in advance of your hearing, “Small Print, Big Impact: Examining the Effects of Forced Arbitration” and respectfully request that this letter be included in the committee record. As the committee considers issues surrounding arbitration during this hearing, we ask the members not to impose restrictions or limits on permissible arbitration which reduces transaction costs and enables fair, speedy, and efficient dispute resolution.

Federal law has protected arbitration as a means of resolving disputes between businesses and consumers for nearly 100 years. Usage of pre-dispute arbitration clauses in contracts benefits both consumers and businesses. Furthermore, courts work to ensure that arbitration agreements of all types are fair and do not provide an untoward advantage to any party. Studies have long shown that consumers prevail more often, recover more money, and resolve their claims more quickly in arbitration than in litigation.²

The only clear beneficiaries of broadly eliminating cost-effective and fair arbitration as a viable way to resolve disputes are class action lawyers, who would directly benefit from increased class action litigation. The Consumer Financial Protection Bureau itself reported that class action settlements frequently provide, at best, a very low return to class members while class action attorneys take in millions of dollars.³ Their gain would come at the expense of consumers, many of whom are not even eligible to participate in class action litigation.

Arbitration is already governed by the Federal Arbitration Act and has been approved by the Supreme Court, which recognized arbitration as a fair and effective mode of settling dispute

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

² An Empirical Assessment of Consumer & Employment Cases in Arbitration & Litigation (March 2022) available at <https://institutelegalreform.com/research/update-an-empirical-assessment-of-consumer-employment-cases-in-arbitration-litigation/>.

³ Consumer Financial Protection Bureau, Arbitration Study: Report to Congress (March 2015) available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress2015.pdf. Finding that 87% of resolved class actions resulted in no benefit to absent class members, and in the rare cases they did, the average settlement payment was no better than \$32.35 per class member, but attorneys’ fees averaged \$1 million per case.

between borrowers and creditors. Please ensure that the Judiciary Committee will not pass any legislation that would curtail arbitration as a means of dispute resolution.

Thank you for the opportunity to comment, and please feel free to contact me at cwinslow@afsamail.org or 202-776-7300 with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Celia Winslow".

Celia Winslow
Senior Vice President
American Financial Services Association