

March 7, 2022

The Honorable Sherrod Brown
Chair
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Pat Toomey
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chair Brown and Ranking Member Toomey:

The undersigned organizations appreciate the opportunity to provide comments to the Committee on Banking, Housing, and Urban Affairs in advance of the March 8th hearing titled “Examining Mandatory Arbitration in Financial Service Products.” Arbitration is a fair, effective, and less expensive means of resolving disputes compared to going to court. It should be preserved for all consumers, including those utilizing financial services products.

Multiple empirical studies demonstrate that claimants in arbitration do just as well, or in many circumstances, considerably better, than in court. For example, recent studies have found that consumers prevailed more often, recovered more money, and resolved their claims more quickly in arbitration than in litigation.¹ Studies have also shown that class action settlements frequently provide only a pittance – or many times, nothing at all – to class members while millions of dollars are paid to their attorneys.²

Arbitration procedures are easier to navigate than court procedures, empowering consumers to pursue their claims without the costs of hiring an attorney. Arbitration also has numerous fairness and due process protections built into the system, and the courts provide another layer of oversight. If an arbitration agreement

¹ See Fairer, Faster, Better II: An Empirical Assessment of Consumer Arbitration (November 2020) available at <https://instituteforlegalreform.com/research/fairer-faster-better-ii-an-empirical-assessment-of-consumer-arbitration/>; and Claimant Win Rates in Consumer and Employment Arbitration (November 2021) at <https://instituteforlegalreform.com/claimant-win-rates-in-consumer-and-employment-arbitration-november-2021-update/>.

² See Consumer Financial Protection Bureau, Arbitration Study: Report to Congress (March 2015) available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

is unfair, courts can and do step in to declare those arbitration agreements unconscionable and unenforceable.

Arbitration also empowers consumers to obtain a remedy for cases that are not eligible to be resolved through a class action or involve amounts too low to attract an attorney to take an individual case. Arbitration is the only realistic avenue for obtaining relief for such claims.

Thank you for considering our views.

Sincerely,

American Bankers Association

American Financial Services Association

American Securities Association

Bank Policy Institute

Consumer Bankers Association

Consumer Data Industry Association

Credit Union National Association

Electronic Transactions Association

Independent Community Bankers of America

National Association of Federal Credit Unions

Securities Industry and Financial Markets Association

U.S. Chamber of Commerce

cc: Members of the Senate Committee on Banking, Housing, and Urban Affairs