

May 17, 2016

The Honorable Randy Neugebauer
Chairman
Financial Institutions and Consumer Credit
Subcommittee
Committee on Financial Services
House of Representatives
Washington, DC 20515

The Honorable William Lacy Clay
Ranking Member
Financial Institutions and Consumer Credit
Subcommittee
Committee on Financial Services
House of Representatives
Washington, DC 20515

Dear Chairman Neugebauer and Ranking Member Clay:

On behalf of America's credit unions, I am writing regarding tomorrow's hearing entitled, "Examining the CFPB's Proposed Rulemaking on Arbitration: Is it in the Public Interest and for the Protection of Consumers?" The Credit Union National Association (CUNA) represents America's credit unions and their more than 100 million members.

CUNA shares the Subcommittee's concerns about whether this rule is in the best interest of consumers. As the only consumer-owned cooperatives in the financial marketplace, credit unions have a tradition of protecting their members' interests, and in most instances are able to amicably resolve any disputes that arise. Nevertheless, arbitration can be a helpful alternative for credit unions and their members to resolve differences in a fair, efficient, timely, and cost-effective manner.

Credit Unions Dispute Resolution Process is Different than Other Financial Institutions

The Consumer Financial Protection Bureau's (CFPB) arbitration proposal, while not an explicit ban, is a *de facto* ban on the effectiveness of the arbitration process. By removing a tool from the dispute resolution toolbox, it tells credit union members to bypass an efficient and cost-effective resolution process and head straight to the courthouse.

This is troublesome for credit unions, in particular, for at least two reasons. First, it is hard to imagine a case in which class action litigation against a credit union would be a reasonable course of action for credit union members since it would put them in a position of essentially having to sue themselves, as they are member-owners of the credit union. Second, 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 to remove the credit union's Board of Directors and management using their one-member, one-vote membership powers.

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Straining Credit Union Resources Does Not Benefit Consumers

The arbitration proposal comes in the wake of several recent regulatory changes by the CFPB and other regulators that have made financial institutions more vulnerable to frivolous class-action lawsuits. Eliminating an option while providing no alternative solutions other than to rely on the attorney fee-driven plaintiffs' bar is no solution at all. As an example, onerous regulations concerning the Telephone Consumer Protection Act from the Federal Communications Commission have increased chances that credit unions could be sued for a minor technical violation when trying to communicate with their members using an autodialer. This particular law has no cap on statutory damages. Accordingly, a small credit union facing a lawsuit for a technical violation of the TCPA could essentially be driven out of business for an action such as sending a text message to a group of consumers.

Does it make sense to threaten the existence of one of the safest and most affordable options for consumers to turn to, to right the very minimally offensive wrong of something like receiving a text message? We do not believe it does, and believe that a more reasonable agreement could be reached in arbitration, or another process. Credit unions have a long history of consumer protection, which includes seeking to eliminate regulatory burdens that threaten to make the products and services they offer more expensive or less available. We believe the CFPB's arbitration proposed rule threatens to do this.

A CFPB Arbitration Website Would Primarily Benefit Lawyers Not Consumers

CUNA is also concerned about the CFPB's proposed requirement that companies that use arbitration clauses must submit claims, awards, and other related materials to the CFPB for monitoring and publication on its website. While such requirements would undoubtedly be helpful for trial attorneys seeking to put frivolous class action lawsuits together for the benefit of reaping exorbitant fees, we do not believe there is a significant value for credit union members. To the contrary, we believe it could subject members to privacy and data security violations. Furthermore, we believe this requirement would be duplicative of the CFPB's massive complaint database, which already has several unresolved issues including complaint verification and validation. Truly, the CFPB should spend its time and resources fixing the ongoing issues related to the public facing complaint database.

CUNA Could Support Reforming Abuses in the Arbitration Process, but the Solution is Not a *De facto* Ban on Arbitration

The Dodd-Frank Wall Street Reform and Consumer Protection Act directed the CFPB to study arbitration agreements, with the potential to modify their use. After releasing a study on arbitration it appears that the CFPB's conclusion, rather than making any reforms, to the arbitration process is simply to eliminate all clauses that can stop consumers from joining class

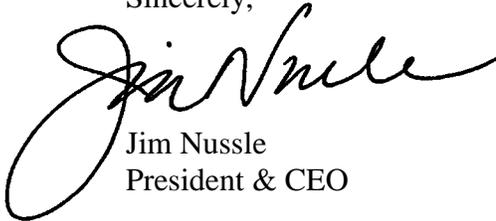
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actions. This seems like yet another missed opportunity to really target any problematic behavior, and instead takes an overly broad approach that completely eliminates an option which, indisputably, can be a much better option than class action litigation for consumers and the economy.

Credit unions strongly support treating consumers fairly as evidenced by the extremely high satisfaction level of our members. However, stacking the cards against credit unions by creating arbitrary regulations, coupled with making it easier for plaintiffs attorneys to target them with frivolous class action litigation, is not helpful for consumers or those working to serve them.

On behalf of America's credit unions, thank you for conducting a hearing on this important issue. We look forward to continuing to work with you on this and other matters of importance to credit unions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle". The signature is fluid and cursive, with a large initial "J" and "N".

Jim Nussle
President & CEO