American Bankers Association

# Memo

July 6, 2016

To: Members of the House of Representatives

From: James Ballentine, Executive Vice President, Congressional Relations & Political Affairs

Re: Oppose Ellison/Johnson Amendment to H.R. 5485 - Financial Services and General Government Appropriations Act

On behalf of the members of the American Bankers Association we write to express our strong opposition to an amendment being offered this week by Congressmen Ellison and Johnson (GA) to the Financial Services and General Government Appropriations Act. This amendment, designated #55, would strike a provision in the underlying bill requiring the Consumer Financial Protection Bureau (CFPB) to study the costs and benefits to consumers of eliminating arbitration clauses in consumer financial contracts, a critical issue that has been overlooked to date by the CFPB.

The CFPB has proposed a regulation that would, in effect, ban pre-dispute arbitration, but the research conducted by the CFPB in support of this effort is incomplete and even contradictory. Before the rulemaking proceeds any further, the CFPB should take more time to study the proposal's real-world effects on consumers' ability to resolve disputes with their financial service providers.

The Bureau's initial study confirmed the basic conclusion of decades of prior research: consumers fare as well, and often better in arbitration than they do in court. This is hardly ample justification for regulating arbitration out of existence as has been proposed. Arbitration is 12 times faster, far less expensive, more convenient and accessible through online and telephonic channels than the over-burdened court system, and is geared entirely toward reaching a fair resolution that maintains the customer relationship[1]

However, the Bureau's preferred dispute resolution tool – class actions – are notorious for generating huge fees and benefits for the lawyers who manufacture them, and next to nothing for the consumers who were allegedly harmed. According to the CFPB's own class action sample, lawyers made about $1 million each, while the average consumer walked away with about $32. But that average consumer recovery assumes that there is any consumer recovery. In fact only 15% of the putative class actions the CFPB studied reached a class settlement, and only 4% of those class members received a check[2].

Based on the CFPB's research to date, it is impossible to justify denying consumers access to efficient, user-friendly arbitration in favor of diverting them into class actions where they have

[1] http://www.aba.com/Advocacy/commentletters/Documents/cl-jointArbitration2015.pdf
[2] Ibid.

no control and little chance of success. Clearly the Bureau has more work to do before they can move forward.

The provision in the underlying bill does not repeal the CFPB's authority to regulate arbitration, nor does it permanently block the CFPB from finalizing its proposed arbitration regulation, it simply requires the CFPB to finish the research it started five years ago by pushing past the theoretical by assessing and documenting the costs and benefits to consumers.

We urge the House to reject the Ellison/Johnson (#55) amendment so this issue can be further studied.