

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Fifteenth Congress

May 4, 2017

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to urge the Committee not to waive its jurisdiction over H.R. 10, the "Financial Choice Act of 2017."

H.R. 10 is a sprawling piece of legislation that would destroy key financial regulations and consumer protections put in place by the Dodd-Frank Wall Street Reform and Consumer Protection Act. It is particularly critical that our Committee examine and vote on this legislation given numerous provisions squarely within our Rule X jurisdiction that will prevent government agencies from protecting the rights of consumers and holding the financial marketplace more accountable.

For example, title I, subtitle B of H.R. 10 is largely comprised of H.R. 1667, the "Financial Institution Bankruptcy Act of 2017," a bipartisan bill ordered favorably reported by our Committee by voice vote on March 29, 2017 and subsequently passed by the House by voice vote under suspension of the rules on April 5, 2017. This legislation would amend bankruptcy law so that it can expeditiously restore trust in the financial marketplace after the collapse of a systemically significant financial institution.

H.R. 10 contains other provisions that impact our committee's jurisdiction that would impair the effectiveness of H.R. 1667. For example, subtitle A of title I of H.R. 10 would repeal title II of the Dodd-Frank Act, which establishes a mandatory resolution process to wind down large financial institutions and serves as an essential enforcement tool for bank regulators to ensure compliance with the Act's heightened regulatory requirements. As a result, H.R. 10 would thereby only allow a systemically significant financial institution to be resolved in a bankruptcy context. Given this dramatic change to current law, as proposed by H.R. 10, our Committee should have the opportunity to consider the ramifications of such repeal.

Another troubling aspect of H.R. 10 is that it fails to provide any role for the government to be a lender of last resort in a bankruptcy case filed by a failing financial institution. This failure conflicts with the testimony of expert witnesses who testified before our Committee on

H.R. 1667 and its predecessors in prior Congresses.¹ They recognized that it was essential to have the government be a lender of last resort in order to ensure the viability of the bankruptcy process, particularly in a highly volatile and unstable financial marketplace. Again, while I have consistently supported H.R. 1667, the consequences of not having the availability of such funding and its potential to undermine the viability of a financial institution bankruptcy filing as proposed by H.R. 10 would need to be considered by our Committee.

Section 738 of the bill, which would eliminate the rulemaking authority of the Consumer Financial Protection Bureau (CFPB) over pre-dispute, mandatory (“forced”) arbitration clauses in consumer financial contracts and services. Often buried deep within the fine print of financial products and service contracts, forced arbitration clauses harm hardworking Americans by depriving them of their day in court even when companies have violated the law.² These clauses force individuals into private binding arbitration as a condition of buying a product or service, and are designed to stack the deck against consumers and ensure that the final outcome of forced arbitration is unreviewable by courts.³

In 2015, the CFPB completed an exhaustive study of forced arbitration in financial service products and service contracts.⁴ In total, it found consumers unknowingly sign away their rights through forced arbitration agreements, which do not reduce consumer costs for financial services.⁵ Moreover, forced arbitration shields corporations from liability for abusive, anti-consumer practices, encouraging even more unscrupulous business conduct at the expense of individuals and law abiding businesses.⁶ Notwithstanding these findings, H.R. 10 would prevent the CFPB from enacting rules to prevent such abusive practices.

¹ See, e.g., *Financial Institution Bankruptcy Act of 2017: Hearing on H.R. 1667 Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 115th Cong. 54 (2017) (prepared statement of Prof. Bruce Grohsgal, Widener University Delaware Law School), at 15, 18-19); *Financial Institution Bankruptcy Act of 2015: Hearing on H.R. 2947 Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 114th Cong. 54 (2015) (testimony of Donald Bernstein; *id.* at 95, 119-20, 134 (testimony of Richard Levin on behalf of the National Bankruptcy Conference); Unofficial Tr. of Hearing on Exploring Chapter 11 Reform: Corporate and Financial Institution Insolvencies, Treatment of Derivatives before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary, 113th Cong. 38, 64 (testimony of Jane Vris on behalf of the National Bankruptcy Conference).

² See generally Joshua M. Frank, *Stacked Deck: A Statistical Analysis of Forced Arbitration*, CENTER FOR RESPONSIBLE LENDING 1-2 (May 31, 2009) (“Companies that have more cases before arbitrators get consistently better results from these same arbitrators,” while arbitrators “who favor firms over consumers receive more cases in the future.”), http://www.responsiblelending.org/credit-cards/research-analysis/stacked_deck.pdf.

³ See generally *id.*

⁴ CONSUMER FIN. PROTECTION BUREAU, ARBITRATION STUDY REP. TO CONG., PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) (2015), http://files.cons.umerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

⁵ See *id.* at 3.

⁶ See *id.*

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I would urge that our Committee be allowed to consider and vote on legislation that will have such wide ranging effects on our constituents and economy. For these reasons, I urge the Committee to refuse any request to waive its jurisdiction on H.R. 10.

Sincerely,

A handwritten signature in black ink, reading "John Conyers, Jr.", written over a horizontal line.

John Conyers, Jr.

Ranking Member

House Committee on the Judiciary

cc: The Honorable Paul Ryan, Speaker of the House