

August 3, 2020

The Honorable Mitch McConnell  
Senate Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Charles Schumer  
Senate Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Nancy Pelosi  
Speaker of the House  
H-232  
United States Capitol  
Washington, DC 20515

The Honorable Kevin McCarthy  
Republican Leader  
H-204  
United States Capitol  
Washington, DC 20510

Dear Leader McConnell, Leader Schumer, Speaker Pelosi, and Leader McCarthy:

As you negotiate the next coronavirus disease (COVID-19) pandemic relief package, we urge you to prohibit forced arbitration clauses in any form of Economic Impact Payments (EIPs). As you know, in May 2020, the Internal Revenue Service (IRS) sent out nearly four million EIPs in the form of a prepaid debit card.<sup>1</sup> While we appreciate the ability of the IRS to quickly send payments to Americans in desperate need of relief, we do not think it appropriate to attach forced arbitration agreements to those payments.

The EIPs issued via debit cards in May 2020 managed by Money Network Financial, LLC and issued by Treasury's financial agent, Meta Bank, N.A. contained a "legally binding" arbitration clause.<sup>2</sup> The clauses provided an opt-out feature requiring the cardholder to send "a signed notice within 60 calendar days" after receipt of the card. The notice must be sent in writing to the "Notice Address." We believe that such an opt-out clause is inadequate as many individuals may not even be aware that this arbitration clause is tucked in the fine print, let alone that they need to take steps to opt out.

Myriad research demonstrates that arbitration clauses are a bad deal for consumers. According to one study from the Economic Policy Institute, consumers obtain relief regarding their claims in 9 percent of disputes, while arbitrators grant companies relief in 93 percent of claims.<sup>3</sup> A 2015 report from the Consumer Financial Protection Bureau found that three out of four consumers surveyed did not know if they were subject to an arbitration clause.<sup>4</sup> It's no surprise then that only a small percentage of consumers file for arbitration.<sup>5</sup> Moreover, because consumers are

---

<sup>1</sup> <https://www.forbes.com/sites/kellyphillipserb/2020/05/19/nearly-4-million-stimulus-checks-will-go-out-by-prepaid-debit-card-starting-this-week/#7c38628d3d66>

<sup>2</sup> <https://www.eipcard.com/cardholder-agreement/>

<sup>3</sup> <https://www.epi.org/publication/forced-arbitration-is-bad-for-consumers/>

<sup>4</sup> <https://www.consumerfinance.gov/about-us/blog/we-took-a-look-at-arbitration-agreements-and-heres-what-we-found/>

<sup>5</sup> <https://www.judiciary.senate.gov/imo/media/doc/Gilles%20Testimony.pdf>

unable to join with others harmed there is no way to distribute the costs and risks of an action.<sup>6</sup> Arbitration clauses perpetuate a regime wholly unaccountable to consumers and the law.

Given that many consumers are not even aware that arbitration clauses are included in EIP debit cards, combined with the unprecedented nature of this pandemic and the need for financial aid, we believe it is improper for the federal government to allow its contractors to include such anti-consumer clauses. Americans should not be forced into signing away their rights simply to access a benefit to which they are entitled. For this reason, we ask that you prohibit any forced arbitration clauses from inclusion in future EIPs. Thank you for your consideration.

Sincerely,

/s/ Robert Menendez

United States Senator

/s/ Catherine Cortez Masto

United States Senator

/s/ Elizabeth Warren

United States Senator

/s/ Sherrod Brown

United States Senator

/s/ Jack Reed

United States Senator

/s/ Ron Wyden

United States Senator

/s/ Chris Van Hollen

United States Senator

/s/ Sheldon Whitehouse

United States Senator

---

<sup>6</sup> *Id.*