

One Minute Memo®



Vice President Casts Deciding Vote to Overturn CFPB's Proposed Arbitration Rule

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Seyfarth Synopsis: *Financial institutions can maintain the status quo of their pre-dispute resolution clauses in consumer contracts because Senate voted against CFPB's proposed arbitration rule.*

In a [51 - 50 vote](#), on October 24, 2017, the Senate passed H.J.Res.111, which provided for congressional disapproval of the Consumer Financial Protection Bureau's ("CFPB") proposed rule relating to arbitration agreements. Under the CFPB's rule, companies would have been prohibited from including pre-dispute arbitration clauses in customer agreements that precluded a consumer from joining class actions. The CFPB justified the rule in part because of its [own study](#) that concluded that group lawsuits have greater success than individual actions, especially arbitration proceedings.

Other government agencies, however, questioned the CFPB's conclusions in its report. The Office of the Comptroller of the Currency ("OCC") sharply [criticized](#) the CFPB's report as flawed and stated that, properly interpreted, the underlying data showed that "[c]onsumers face significant risk of a substantial rise in the cost of credit" as a result of the proposed rule. Likewise, the U.S. Department of Treasury [concluded](#) that "[t]he Rule will impose extraordinary costs —based on the Bureau's own incomplete estimates," "will effect a large wealth transfer to plaintiffs' attorneys," and will "upend a century of federal policy favoring freedom of contract to provide for low-cost dispute resolution."

Congress used its authority under the Congressional Review Act to pass a joint resolution that concisely states that Congress disapproves of the rule submitted by the CFPB and it should have no force or effect. The House had already voted to rescind the rule, and, with the Senate joining that effort, there is only one step left to squash the CFPB's proposed rule—President Trump's signature. President Trump is expected to swiftly sign the resolution. White House press secretary Sarah Huckabee Sanders stated that President Trump supports overturning the rule because "the rule would harm our community banks and credit unions by opening the door to frivolous lawsuits by special interest trial lawyers." The Administration also issued a [statement](#) this summer expressing its disapproval with the "CFPB's harmful rule."

The passage of Congress' joint resolution has been coined one of Wall Street's and other financial institutions' biggest feats thus far under the Trump administration, and the resolution may also benefit consumers. OCC Acting Comptroller Keith Noreika praised the vote as "a victory for consumers and small banks across the country" by stopping a rule "that would have likely increased the cost of credit for hardworking Americans and made it more difficult for small community banks to resolve differences with their customers." Proponents of the resolution believe that the rule, while well-intentioned, missed the mark. As Rob Nichols, president of the American Banker Association stated, "Today's vote puts consumers first rather than class-action lawyers." And the Credit Union National Association agreed explaining that the CFPB's proposed rule "was just the latest example of the one-size-fits-all rulemaking coming from the CFPB and thankfully Congress acted to remedy the

situation.”

The joint resolution is also a sign of the current Congress’ growing rejection and questioning of the CFPB’s authority. As Sen. Mike Crapo (R-Idaho) noted, the Senate’s vote “was an important step in asserting Congressional oversight of an agency that has routinely demonstrated a lack of accountability.”

Reactions from the other side of the political spectrum included CFPB Director Richard Cordray calling the Senate’s vote “a giant setback for every consumer in this country” and Sen. Elizabeth Warren (D-Mass.) referring to the Senate vote as a “giant wet kiss to Wall Street” and lamenting that financial institutions have “hurt millions of consumers and tried to escape accountability using forced arbitration clauses.”

Based on the Senate’s action, financial institutions can put down their pens if they had begun excising mandatory arbitration provisions from agreements or pick up their pens if they had been refraining from adding such provisions in light of the proposed rule.

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