

One Minute Memo[®]



Another One Bites the Dust - the President Kills the CFPB Arbitration Rule

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Seyfarth Synopsis: Pursuant to the the Congressional Review Act, President Trump officially repealed the CFPB Arbitration Rule.

As expected, President Trump [signed the resolution](#) to repeal the arbitration rule proposed by the Consumer Financial Protection Bureau (CFPB). The resolution effectively nullified the CFPB's rule restricting the rights of financial institutions to include arbitration clauses in their contracts. Under the [proposed rule](#), financial institutions would have had to re-draft their consumer agreements to carve out an exception in pre-dispute resolution clauses and to permit consumers to join class actions. The rule also required financial institutions to regularly supply information about customer disputes to the CFPB. For now, companies can table such redrafting and return to business as usual.

The CFPB, however, did not go down without a fight. After the Senate [narrowly voted](#) to repeal the rule, CFPB Director Richard Cordray made a final plea to save the arbitration rule in a [letter](#) to President Trump. The letter was a "personal appeal" to President Trump to uphold the arbitration rule. Director Cordray claimed that his message was not about "charts or graphs or studies," but rather about "protecting people who simply want to be able to take action together" to pursue their rights. He asserted that most Americans "cannot afford" to go to court and implied that, without the rule, "American families, including veterans and service members, [would] get cheated out of their hard earned money." In an attempt to appeal to the President's vanity, Director Cordray stated that the President "alone now ha[s] the power to safeguard people's ability to take action together." The plea, which rang hollow, fell on deaf ears as President Trump signed the congressional resolution, consistent with his [previous position](#).

This action marks the 15th resolution passed by Congress and approved by the President since January 2017 to repeal regulations via the Congressional Review Act. Proponents of the resolution interpret President Trump's approval as a message that the CFPB should not interfere in the free market in an effort to override consumer choices the agency dislikes by denying consumers and financial institutions the freedom to contract. Other critics argued that the rule was a product of Director Cordray's supporters--trial attorneys--and not actual consumer interests. These critics noted that trial attorneys typically walk away with millions in class actions, leaving little or nothing for consumers. In the end, it appears that consumers and the financial industry have come out ahead of the lawyers.

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