

STROOCK SPECIAL BULLETIN

Senate Votes to Reject CFPB Arbitration Rule

October 24, 2017

In a move long-awaited by the financial services industry, the Senate exercised its powers under the Congressional Review Act, approving a joint resolution rejecting the Consumer Financial Protection Bureau's arbitration rule. The House of Representatives previously voted on July 25, 2017, to reject the rule. If the President signs the joint resolution, the rule will be rejected and the CFPB will be prohibited from promulgating any similar rule. The vote was surprisingly close, with Vice President Michael Pence exercising his power under the Constitution to break a 50-50 tie and pass the measure.

The CFPB rule prohibits covered providers, essentially any consumer financial services company, from including or enforcing arbitration provisions in consumer financial services agreements that prevent filing or participating in class-action lawsuits. Although the rule is already technically in effect, the compliance deadline does not occur until March 19, 2018.

Tonight's vote was a significant rebuke to the agency, whose director Richard Cordray has been under fire for his aggressive approach to regulating the financial services industry. As argued by Senator Michael Crapo (R-Idaho), the CFPB rule threatened to increase the cost of credit by channeling many disputes into expensive class

action litigation. Lenders would be required to increase interest rates to address a massive increase in defense and settlement expenses. The CFPB's arbitration rule also resulted in a rare public inter-agency dispute. Both the Treasury Department and the Office of the Comptroller of the Currency recently released reports attacking, among other things, the evidentiary basis for the rule, and arguing that, if not reversed, the rule would significantly increase costs on consumers and businesses. Senator Crapo relied on these materials in his Senate arguments.

Democratic senators uniformly opposed the Republican rollback of the rule. For example, Senator Elizabeth Warren (D-Massachusetts) argued that without class action litigation, banks can "nickel and dime" consumers "forever" with unfair charges. And because arbitration results are usually confidential, she argued, banks can "swipe your wallet in secret."

On September 29, 2017, the U.S. Chamber of Commerce, American Bankers Association, the Consumer Bankers Association, Financial Services Roundtable, American Financial Services Association, Texas Association of Business, Texas Bankers Association, and nine chambers of commerce located in Texas sued in the U.S. District Court for the Northern District of Texas to

set aside the rule on the grounds that the rule is unconstitutional and unlawful. Tonight's action by the Senate likely will moot that litigation, because the President's signature on the joint resolution is expected.

The attorneys of Stroock's Financial Services Litigation, Regulation and Enforcement Group are well-positioned to answer any questions you may have about consumer finance rulemaking, supervision and enforcement activities as well as related matters.

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