

THE
NATIONAL LAW REVIEW

CFPB's New Arbitration Rule, A Boon to Plaintiff's Attorneys at Consumers' Expense, May Unite Congress in Its Efforts to Overturn the Rule

Tuesday, August 1, 2017

In July 2017, the Consumer Financial Protection Bureau (CFPB) published a rule aimed at strictly regulating arbitration clauses in consumer contracts. Among other things, the rule will prohibit covered providers from “relying in any way on a predispute arbitration agreement.” After the effective date, the rule will also require the following language to be included in all agreements: “We agree that neither we nor anyone else will use this agreement to stop you from being part of a class action case in court. You may file a class action in court or you may be a member of a class action even if you do not file it.” The effect of this rule will be a dramatic increase in class action lawsuits. The acting comptroller of the Office of the Comptroller of the Currency expressed concerns that this new rule will harm the safety and soundness of the federal banking system, and the CFPB drew criticism from industry commentators, saying that the CFPB put class action plaintiffs’ attorneys ahead of consumers.

This conclusion is certainly warranted. Despite evidence to the contrary, the CFPB argues that the proposed rule and its threat of increased class action lawsuits will serve as a powerful deterrent of bad behavior by banks and large firms and will provide greater benefits to consumers. This argument overlooks the CFPB’s own study that found arbitration is not only faster than class action suits, but results in more substantial monetary awards for those who decide to arbitrate their claims.

Congress is aware of the CFPB’s proposed rule and, at a time otherwise characterized by gridlock and indecisiveness in Washington, has vowed to repeal the rule before its September 19, 2017 effective date. Both the U.S. House of Representatives and the U.S. Senate have introduced legislation to repeal the rule under the authority of the Congressional Review Act. The House bill passed on July 25, 2017, and is expected to receive a vote on the floor of the Senate by early September. The bill will require a simple majority vote in the Senate in order to be sent to the president’s desk. The White House announced that the president strongly supports the rule’s repeal and has said that he will sign the bill should the legislation remain in its current form.

We expect to have an update in early September, once the Senate takes up the matter after the August recess.

© 2019 MICHAEL BEST & FRIEDRICH LLP

Source URL: <https://www.natlawreview.com/article/cfpb-s-new-arbitration-rule-boon-to-plaintiff-s-attorneys-consumers-expense-may>



Article By

[Michael C. Barnhill](#)

[Michael Best & Friedrich LLP Client Alert](#)

[Financial Institutions & Banking](#)

[All Federal](#)