

# Industry Coalition Challenges CFPB Arbitration Rule in Court

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On September 29, 2017, a coalition of bank and trade associations [filed](#) a federal court challenge to the Consumer Financial Protection Bureau's ("CFPB" or the "Bureau") [arbitration rule](#). The industry group plaintiffs allege that the arbitration rule is illegal on four grounds, including that the CFPB's actions are unconstitutional, and that the Bureau violated the Administrative Procedure Act ("APA") in conducting and interpreting the arbitration study it used to justify the rule.

The Bureau published its final arbitration rule in July. As we have [explained](#) previously, the regulation would generally prohibit financial services businesses from including arbitration clauses in consumer contracts unless those arbitration clauses expressly permit class actions to proceed in court. In reaching the conclusion that the arbitration rule was justified, the CFPB relied on a [study](#) it conducted on the effects of consumer arbitration clauses in the financial services industry.

The lawsuit argues that the district court should invalidate the arbitration rule on four grounds:

1. The structure of the Bureau, with its single director removable only for cause, is unconstitutional, and this unconstitutionality "fatally infected" the passage of the rule. This constitutional argument has been previously raised in

the *PHH* case, which we have previously [discussed](#).

2. The Bureau's study into the effects of mandatory arbitration does not properly support the rule under the APA, because it improperly limited public participation, used improper methodologies, misconstrued the data, and did not address additional essential considerations.
3. The Bureau's interpretation of this study also violated the APA because its conclusions ran counter to the factual record the Bureau developed, and thus was arbitrary and capricious.
4. Adoption of the arbitration rule violated the directive of the Dodd-Frank Act to implement a rule limiting the use of consumer arbitration clauses only if such a rule was in the public interest and advanced consumer welfare. Along similar lines, the Office of the Comptroller of the Currency recently [published](#) a report indicating that the arbitration rule would increase credit costs for consumers.

In addition to this lawsuit, the arbitration rule continues to be vulnerable to being overturned under the Congressional Review Act ("CRA"). The House has passed a [resolution](#) disapproving the rule, and a similar [resolution](#) has been introduced in the Senate, with a vote possible as early as [this week](#). Under the CRA, Congress [has the authority](#) to disapprove of a rule within 60 legislative days of it being finalized, and that disapproval vote is not subject to the Senate filibuster.

The industry group plaintiffs include the U.S. Chamber of Commerce and several local Texas Chambers of Commerce, the American Bankers Association, the American Financial Services Association, the Consumer Bankers Association, and the Financial Services Roundtable. The case is *U.S. Chamber of Commerce v. CFPB*, 17-cv-02670 (N.D. Tx).

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