

Senate Joins House in Resolution Overturning CFPB Arbitration Rule; President Trump is Likely to Sign

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After weeks of speculation, the U.S. Senate voted on Tuesday night to join the House of Representatives in passing a Congressional Review Act (“CRA”) resolution to nullify the Consumer Financial Protection Bureau’s (“CFPB”) recent arbitration agreements [rule](#). The Senate [vote](#) split 50-50, with two Republican senators—Senators Lindsey Graham (SC) and John Kennedy (LA)—voting against the resolution. The split vote set the stage for Vice President Mike Pence to cast the tie-breaking vote in favor of the resolution, which is now headed to President Trump’s desk for signature. In the hours after the vote, the President released a statement indicating his support for the resolution.

As noted in previous posts ([here](#) and [here](#)), the CFPB promulgated the arbitration agreement rule in July 2017, after a lengthy comment period for the proposed form of the rule. The CFPB sought to curb the use of class action waiver provisions in arbitration agreements that are a part of financial services or products contracts. But shortly after the CFPB promulgated the rule, the House invoked the CRA, setting up the Senate’s vote Tuesday night. The CRA allows Congress to overturn an administrative agency rule within the first 60 legislative days after it was promulgated. Once a CRA resolution is passed and signed into law, the promulgating agency may not initiate rulemaking on a similar rule unless Congress has expressly authorized the agency to do so in subsequent legislation. Given the impact of the CRA resolution, the CFPB’s effort to curb the use of class-action waiver provisions in pre-dispute arbitration agreements within the financial services industry is likely over (the Dodd-Frank Act’s legislative ban on the use of pre-dispute arbitration agreements in residential mortgage loan and home-equity line of credit agreements, 15 U.S.C. § 1639c(e), is not impacted by the CRA resolution and remains in effect).

Passage of the CRA resolution by the Senate—and its expected signing by the President—also likely brings to an end legal challenges to the CFPB arbitration agreements rule. For example, the U.S. Chamber of Commerce recently led several other financial services trade groups in launching a challenge to the CFPB rule in federal court. See Complaint for Declaratory and Injunctive Relief, *Chamber of Commerce of the United States of America, et al. v. Consumer Financial Protection Bureau, et al.*, No. 3:17-cv-02670-D (N.D. Tex. Sept. 29, 2017). Once President Trump signs the joint CRA resolution, that suit—and others like it—will likely be moot. Thus, interested eyes

now turn their attention from Capitol Hill to the White House for what will likely mark the end of the CFPB arbitration agreements rule.

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National Law Review, Volume VII, Number 300

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