

U.S. Senate Joins The House To Eliminate The CFPB's Final Rule Against Class Action Waivers in Arbitration Clauses; The President Is Expected To Sign

1 min read

Oct 25, 2017

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With Vice President Pence casting a dramatic tie-breaking vote just after 10 p.m. E.D.T. on October 24th, the U.S. Senate joined the U.S. House of Representatives to eliminate, based on their authority under the [Congressional Review Act](#) (CRA), the Consumer Finance Protection Bureau's (CFPB) controversial [Final Rule](#) on arbitration agreements, which was issued in [July](#). The CFPB's Final Rule would bar providers of consumer financial products and services from including mandatory class action waivers in the arbitration clauses of their agreements with consumers.

The final vote in the Senate was 51-50 in favor of eliminating the Final Rule. While the GOP holds fifty-two seats in the Senate, Senators Lindsey Graham (R-SC) and John Kennedy (R-LA) voted against elimination of the Final Rule, necessitating the Vice President's intervention. The House of Representatives had acted quickly in July against the Final Rule and, shortly thereafter, twenty-one state Attorneys General wrote a letter to leaders of the Senate urging that body not to repeal the Final Rule. If the President signs the bill into law, the CRA prohibits the CFPB from reissuing a substantially similar rule in the future. President Trump has indicated he will sign it.

Class action waivers of the sort the CFPB sought to eliminate have become quite common in consumer agreements, both financial and non-financial. In *AT&T Mobility LLC v. Concepcion*, the U.S. Supreme Court, in a 5-4 decision written by the late Justice Antonin Scalia, held that class action waivers contained in the arbitration clauses of consumer contracts are valid under the [U.S. Federal Arbitration Act](#) and should be enforced despite contrary state law. Given the likely elimination of the Final Rule, class action waivers will almost certainly appear with greater frequency in consumer contracts.

Topics

Arbitration, Mandatory Arbitration, Federal Arbitration Act, Trump, CFPB, Congressional Review Act