Insights: Alerts

Congress Votes to Overturn the Consumer Financial Protection Bureau's Arbitration Agreements Final Rule

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As previously reported, the Consumer Financial Protection Bureau (CFPB or Bureau) recently issued a final rule governing agreements that provide for the arbitration of any future disputes between consumers and providers of certain consumer financial products and services. At that time, the rule faced an uncertain political and legal future.

Congress directed the Bureau to study these pre-dispute arbitration agreements in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and in 2015, the Bureau published and delivered an arbitration study to Congress. In the Dodd-Frank Act, Congress also authorized the Bureau, after completing the study, to issue regulations restricting or prohibiting the use of arbitration agreements if the Bureau found that such rules would be in the public interest and for the protection of consumers. Congress also required that the findings in any such rule be consistent with the Bureau's study.

On October 24, the U.S. Senate joined the U.S. House of Representatives in voting to overturn the CFPB's arbitration rule. The Congressional Review Act (CRA) allows both houses of Congress to vote on resolutions of disapproval for regulations within 60 legislative days of their publication in the *Federal Register*. This development follows the recent issuance of separate reports by both the Office of the Comptroller of the Currency (OCC) and the U.S. Department of the Treasury, which challenged the rule and its underlying data and assumptions.

Since Congress has enacted a joint resolution of disapproval, and it is expected that President Trump will not veto such resolution, the rule will not take effect. The CFPB will also be prohibited from reissuing the regulation in "substantially the same form," unless the reissued or new rule is specifically authorized by a law enacted by Congress after the date of the joint resolution of disapproval.

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