

[Banking and Finance Law Daily Wrap Up, TOP STORY—Republicans introduce resolutions to nullify CFPB’s ban on arbitration clauses, \(Jul. 20, 2017\)](#)

Banking and Finance Law Daily Wrap Up

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By [Stephanie K. Mann, J.D.](#)

Republicans on the Senate Committee on Banking, Housing and Urban Affairs and House Financial Services Committee have introduced resolutions of disapproval to nullify the controversial rule published by the Consumer Financial Protection Bureau which bans mandatory predispute arbitration clauses in consumer financial product contracts if those clauses prevent class actions (see [Banking and Finance Law Daily](#), July 10, 2017).

Senate action. "Members of Congress previously expressed concerns with the proposed version of the rulemaking—concerns that were not addressed in the final rule," [said](#) Banking Committee Chairman Mike Crapo (R-Idaho). "The rule is based on a flawed study that leading scholars have criticized as biased and inadequate, noting that it could leave consumers worse off by removing access to an important dispute resolution tool. By ignoring requests from Congress to reexamine the rule and develop alternatives between the status quo and effectively eliminating arbitration, the CFPB has once again proven a lack of accountability. Given the problems with the study and the Bureau’s failure to address significant concerns, it is not only appropriate but incumbent on Congress to vote to overturn this rule."

Original co-sponsors of the measure include Sens. John Barrasso (R-Wyo), Roy Blunt (R-Mo), Shelley Moore Capito (R-WV), Thad Cochran (R-Miss), Bob Corker (R-Tenn), Tom Cotton (R-Ark), Ted Cruz (R-Texas), Mike Enzi (R-Wyo), Orrin Hatch (R-Utah), Dean Heller (R-Nev), Johnny Isakson (R-Ga), James Lankford (R-Okla), Jerry Moran (R-Kansas), David Perdue (R-Ga), Mike Rounds (R-SD), Marco Rubio (R-Fla), Ben Sasse (R-Neb), Tim Scott (R-SC), Richard Shelby (R-Ala), Luther Strange (R-Ala), Thom Tillis (R-NC), Patrick Toomey (R-Pa), and Roger Wicker (R-Miss).

Cotton, along with other legislators, had previously voiced his intent to overturn the CFPB’s ban on arbitration clauses (see [Banking and Finance Law Daily](#), July 12, 2017).

H.J. Res 111. Introduced by Rep. Keith Rothfus (R-Pa), H.J. Res 111 was cosponsored by all 34 Republican members of the Financial Services Committee. According to the Committee’s [press release](#), the bureau conducted a study which shows that consumers who use arbitration actually gain more favorable outcomes than those who hire trial lawyers for class action lawsuits. The average payout for consumers in a class action is \$32, while the average trial lawyer receives nearly \$1 million.

"The CFPB’s anti-arbitration rule hurts consumers and it’s another example of the problems caused by this rogue and unaccountable agency. We know that consumers get better results through arbitration than through class action lawsuits. Despite the fact that the agency acknowledged this fact in one of its own reports, the bureaucrats at the CFPB have decided they know better. The CFPB’s rule eliminates this effective process for consumers, and will punish consumers with decreased access to financial products, increased costs for such products, or both," said Rothfus.

Waters response. In response to the resolutions, Rep. Maxine Waters (D-Calif), Ranking Member of the Financial Services Committee, [blasted](#) Republicans for trying to take away consumers’ rights to be heard in a court of law. According to Waters, the "forced arbitration rule ensures that consumers are not required to sign away their legal rights in order to open a bank account, obtain a credit card, finance a car, or obtain a private student loan." In addition, Waters emphasized that the development of the rule was a methodical and well-thought-out process, done in consultation with other federal financial regulators.

Industry applause. The American Bankers Association has [applauded](#) the congressional resolutions for putting consumers first and taking the first steps to overturn the CFPB's "misguided" arbitration rule. "In reality, the vast majority of disputes get resolved quickly and amicably without the need for arbitration or legal action," said Rob Nichols, ABA president and CEO. "If arbitration disappears, the Bureau will force consumers to navigate an already overcrowded legal system where the only winners will be trial lawyers. We think our customers deserve better, and we urge lawmakers in both chambers of Congress to overturn this anti-consumer rule as soon as possible."

Companies: American Bankers Association

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