

[Banking and Finance Law Daily Wrap Up, TOP STORY—House votes to approve removal of CFPB's Arbitration Rule, \(Jul. 26, 2017\)](#)

Banking and Finance Law Daily Wrap Up

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By [Colleen M. Svelnis, J.D.](#)

The House of Representatives has approved a Congressional Review Act resolution (H.J. Res. 111) to overrule the Consumer Financial Protection Bureau's Arbitration Rule. The House [vote](#) in favor of H.J. Res. 111 was 231-190 with 12 not voting. The bill now goes to the Senate. The [Arbitration Rule](#), which was released on July 10, 2017, bans pre-dispute arbitration clauses that would interfere with consumers' rights to participate in class actions. Arbitration clauses that apply only to individual actions must disclose that class actions are not covered (see [Banking and Finance Law Daily](#), July 10, 2017).

H.J. Res 111. Introduced by Rep. Keith Rothfus (R-Pa), H.J. Res 111 is intended to nullify the controversial rule published by the CFPB which bans mandatory pre-dispute arbitration clauses in consumer financial product contracts if those clauses prevent class actions. H.J. Res 111 was cosponsored by all 34 Republican members of the Financial Services Committee.

Rule would benefit trial attorneys. Americans were promised a Consumer Financial Protection Bureau but instead they obviously got a Trial Lawyer Enrichment Bureau, [stated](#) House Financial Services Chairman Jeb Hensarling (R-Texas). Hensarling, speaking on the House floor, stated that the CFPB's regulation "will perpetuate a justice gap that takes away a quicker, less expensive legal option for low-income and middle-income Americans."

Several legislators who voted in support of the Resolution released statements. Representative Blaine Luetkemeyer (R-Mo) issued the following [statement](#) after the vote, "The CFPB's arbitration rule is proof of what we've said for years: the Bureau does not operate in the best interest of American consumers. The CFPB's own study shows that just 13 percent of class action lawsuits actually provided a benefit to consumers, with an average payout of just \$32. Arbitration, on the other hand, provides an average settlement of more than \$5,000 for aggrieved parties."

Speaker of the House Paul Ryan (R-Wis), [stated](#) that the anti-arbitration rule was not "consumer-friendly," but instead benefited trial lawyers. Ryan asserted that instead of the stated intent of consumers and companies resolving disputes without spending the time and money involved in litigation, the rule "makes that next to impossible by requiring financial services companies to absorb all the expenses of the arbitration process."

Rothfus [declared](#) that the bureau's rule "hurts the very people it is supposed to help." Representative Scott Tipton (R-Colo), who spoke on the House floor in support of the resolution, [stated](#) that the anti-arbitration rule "joins a growing list of CFPB actions that have hurt consumers." The anti-arbitration rule "especially hurts small, rural banks," [according](#) to Rep. Steve Pearce (R-NM).

Representative Patrick McHenry (R-NC) announced his vote was intended to undo "misguided, eleventh-hour rulemaking." McHenry [called](#) the CFPB's rule "a deeply flawed regulation that is little more than a handout to trial lawyers and special interests." Representative Roger Williams (R-Texas) [asserted](#) that the regulation "would cost our consumers more of their hard-earned dollars and time. It did not protect consumers and caused them to pay more for less with increasing limitations."

Wall Street over consumers. Financial Services Committee Ranking Member Maxine Waters (D-Calif) called the resolution "an affront to hardworking Americans." During debate, Waters [stated](#) that "many banks require consumers wanting to open a bank account, get a credit card or take out a private student loan to enter into forced arbitration agreements that take away their right to collectively sue the bank for any harm. Instead,

consumers must go through bank-friendly arbiters to resolve their grievances. These contracts are literally buried deep into the fine print and shrouded in legalese. Consumers don't know what they're giving up, but the banks do."

Senator Sherrod Brown (D-Ohio), Ranking Member of the Senate Banking Committee, [called](#) it "unconscionable that members of Congress would work to undermine the rights of consumers to have their day in court when they're cheated by banks and payday lenders." Representative Joe Crowley (D-NY) [stated](#) those who voted for the resolution "opted to protect Wall Street and special interests over hardworking American families."

Minority Leader Nancy Pelosi (D-Calif) also [spoke](#) on the floor during debate. Pelosi said H.J. Res. 111 "stacks the deck" against working families "by seeking to deny those families their fundamental right to attain justice in court." According to Pelosi, forcing consumers into arbitration "gives financial services providers a free pass to get away with abuse."

Additionally, Pelosi and Waters joined Sen. Elizabeth Warren (D-Mass) in a [press conference](#) intended to highlight the "devastating effects" of H.J. Res 111. Warren stated that what makes the CFPB strong "is that it doesn't play politics" but does it job to "make sure American consumers don't get cheated, don't get tricked, don't get trapped."

Industry associations split. The American Bankers Association [applauded](#) the House's action while the Consumer Bankers Association [referred](#) to the vote as a "resounding victory for consumers" to eliminate a "harmful rule resulting from an incomplete study by the CFPB." U.S. Chamber of Commerce [praised](#) the House for its actions and "strongly encouraged" the Senate to follow.

Independent Community Bankers of America also released a [statement](#) of support for the House actions, stating that arbitration "is a well-established and tested process that offers better results for consumers and helps avoid frivolous class-action suits, which serve the interest of trial lawyers at the expense of community banks and consumers." Financial Services Roundtable [stated](#) that the vote "put the interests of American consumers first" by "ensuring access to low-cost arbitration."

However, Public Citizen [called](#) the vote a "savage attack on American consumers" and accused the House of "siding with predatory banks, payday lenders, credit card companies and the financial industry against Main Street Americans." National Consumer Law Center also [opposed](#) the House's actions. Allied Progress [stated](#) the House "voted for denying Americans the right to take a bank to court if they have been defrauded."

Companies: Allied Progress; American Bankers Association; Consumer Bankers Association; Financial Services Roundtable; Independent Community Bankers of America; National Consumer Law Center; Public Citizen; U.S. Chamber of Commerce

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