



SENATE QUASHES CFPB ARBITRATION RULE; CONTRACTUAL DISPUTE RESOLUTION PROCEDURES MAY STILL BE VALUABLE AND COST SAVING

Last night the U.S. Senate voted to overturn the CFPB Arbitration Rule (the "Rule") prohibiting pre-dispute arbitration clauses that waive participation in a class action. The legislation was passed via the Congressional Review Act, which allows legislators to override regulations released by branch agencies with a majority vote supporting a "resolution of disapproval." The Senate's resolution of disapproval of the Rule passed by a 51-50 majority vote. The U.S. House of Representatives passed its resolution of disapproval in July 2017. The President is expected to sign the resolution.

Congress' resolution of disapproval prevents the Rule from taking effect and prevents the Rule from being reissued in the same form. The only way a similar rule can be implemented is if, after the resolution of disapproval has been enacted, Congress passes a law specifically authorizing the rule.

Companies can keep their arbitration provisions in their contracts and continue to do business as normal. HOWEVER, there are dispute resolution procedures that can be invoked by contract that would precede arbitration and significantly reduce the likelihood of arbitration in many cases. If these contractual procedures are not followed by a borrower, they can be used as counterclaims in arbitration or in litigation. Such procedures could significantly lower costs and attorneys' fees that are incurred even in arbitration proceedings. Please feel free to contact us if you would like to consider incorporating these types of contractual provisions in your documents. □

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