



H.J. Res. 111 – Providing for congressional disapproval under chapter 8 title 5, of the United States Code, of the rule submitted by the Bureau of Consumer Financial Protection relating to “Arbitration Agreements” (Rep. Rothfus, R-PA)

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FLOOR SCHEDULE:

Expected to be considered on July 25, 2017, under a closed [rule](#).

TOPLINE SUMMARY:

[H.J. Res. 111](#) would use the [Congressional Review Act](#) to provide for the disapproval of the Consumer Financial Protection Bureau (CFPB) [arbitration rule](#) that would prohibit the use of mandatory arbitration clauses in financial contracts with consumers.

COST:

A Congressional Budget Office (CBO) estimate is not yet available.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

This legislation would provide for the congressional disapproval of the CFPB’s arbitration rule. In May 2016, the CFPB proposed its arbitration rule to prohibit the usage of mandatory arbitration agreements in financial contracts, such as those for checking and savings accounts, payday loans, and the provision of credit score reports. The proposed rule also provides [exemptions](#) for CFTC and SEC regulated entities and state and tribal governments with sovereign immunity pertaining to private lawsuits.

Many conservatives believe that in limiting the usage of arbitration agreements, consumers and financial providers are forced to enter into a greater number of class action lawsuits, resulting in lengthy, expensive court processes that generally serve to primarily benefit class action lawyers. Further, free market groups such as the [Competitive Enterprise Institute](#), are concerned that while a new class of Americans was eager to become involved in the financial sector through activities like peer-to-peer lending, these individuals will now be afraid to do so as they become exposed to incredibly costly legal battles.

While the rule was proposed because some were concerned that arbitration clauses would [result](#) in the denial of the consumer's ability to seek recourse through the courts, [studies](#) have shown that consumers are in fact more likely to obtain relief through the arbitration process than through a protracted legal battle. [According to R Street](#), a [CFPB study](#) also concluded that "87% of class action lawsuits resulted in zero benefits to the plaintiffs."

The [Congressional Review Act](#) provides an expedited legislative process for Congress to disapprove of administrative rules through joint disapproval resolutions. Regulations issued by executive branch departments and agencies, as well as issued by independent agencies and commissions, are all subject to CRA disapproval resolutions. In [order](#) for a regulation to take effect, the issuing agency must produce a report to Congress. Generally, Congress then has 60 days to pass a resolution of disapproval under the CRA. However, this timeline is shifted in circumstances when rules are submitted to Congress within 60 legislative days of adjournment. In this case, the clock for the 60-day consideration timeline will restart 15 days into the 115th Congress, giving Congress the full window for consideration. While the parliamentarian will determine the exact cut off day after which rules may be subject to the CRA, Congress will be able to consider rules going back to roughly mid-May. Regulations that are successfully disapproved of will then either not go into effect or will be looked at as if they have not gone into effect. The CRA also prevents any new regulation that is substantially similar to a disapproved regulation from being promulgated in the future, absent action from Congress. Rules must be disapproved of on a rule-by-rule basis, and must be disapproved of in their entirety.

Under the CRA process, if a joint resolution is introduced in the Senate within the permitted time period and the resolution is not reported from committee on a timely basis, 30 Senators may petition to bring the resolution to the floor. This resolution would not be subject to the filibuster. When debate commences, the Senate must fully consider the resolution before moving on to any other business, with only 10 hours of debate. Finally, enactment of a joint resolution under the CRA would require a majority vote in each chamber and a presidential signature. Though the CRA has only been used once, in 2000 against Clinton-era ergonomic regulations, conditions today are largely the same as they were that year – with Republicans securing control of the House, Senate, and presidency.

OUTSIDE GROUPS IN SUPPORT:

[Heritage Action \(Key Vote\)](#)

[Americans for Tax Reform](#)

[FreedomWorks \(Key Vote\)](#)

[U.S. Chamber \(Key Vote\)](#)

[Competitive Enterprise Institute](#)

[Center for Freedom and Prosperity](#)

[Taxpayers Protection Alliance](#)

[Americans for Prosperity](#)

[American Commitment](#)

[R Street Institute](#)

[National Taxpayers Union](#)

[American Conservative Union](#)

[Frontiers for Freedom](#)

[Log Cabin Republicans](#)

[American Consumer Institute](#)

[Less Government](#)

[60 Plus Association](#)

[Center for Individual Freedom](#)

[Americans for Limited Government](#)

[Council for Citizens Against Government Waste](#)

[Market Institute](#)

[Small Business and Entrepreneurship Council](#)
[Campaign for Liberty](#)
[Institute for Liberty](#)
[Digital Liberty](#)
[National Black Chamber of Commerce](#)
[Hispanic Leadership Fund](#)
[Consumer Action for a Strong Economy](#)
[Institute for Policy Innovation](#)

COMMITTEE ACTION:

H.J. Res. 111 was introduced on July 20 2017, and was referred to the House Committee on Financial Services.

ADMINISTRATION POSITION:

A Statement of Administration Policy can be found [here](#).

CONSTITUTIONAL AUTHORITY:

Congress has the authority to enact this legislation pursuant to the following: Article I, Section 1 of the Constitution of the United States, "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives;" and Article I, Section 8, Clause 3, "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;" and Article I, Section 8, Clause 18, "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof."

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