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## President Overturns CFPB Arbitration Rule

On November 1, 2017, President Trump signed legislation overturning the CFPB's arbitration rule that was published in July 2017. The Bureau's arbitration rule would have prohibited class action waivers in pre-dispute arbitration clauses contained in certain consumer financial services agreements. 82 FR 33210.

The President's action stems from action by both the House of Representatives and the Senate, which separately exercised power under the Congressional Review Act (CRA) to repeal the rule. The CRA is an oversight tool that allows the House and Senate acting together to overturn a rule issued by a federal agency. The repeal of a rule under the CRA blocks the rule from taking effect or continuing. It also prevents the regulatory agency, in this case the CFPB, from issuing a substantially similar rule in the future without congressional action.

California financial institutions are reminded that on October 4, 2017, California Governor Jerry Brown signed California Senate Bill (SB) 33 into law. SB 33, which becomes effective January 1, 2018, was enacted primarily to address the recent Wells Fargo fake-account scandal in which thousands of employees of Wells Fargo fraudulently opened millions of deposit accounts and credit cards without consumers' consent.

Recall that currently under California Code of Civil Procedure (CCP) Section 1281.2, an arbitration agreement is not enforceable in certain situations, such as if a court determines that the right to compel arbitration has been waived by the petitioner or grounds exist for the revocation of the agreement. SB 33 amends CCP Section 1281.2 to also provide that a petition made to a court to honor an arbitration agreement may not be granted in situations where a depository institution was involved in certain types of fraud.

The provisions of SB 33 are addressed in greater detail in BCG Handout #17-10A, "CFPB and California Legislature Impose New Limitations On Arbitration." Note that as indicated by the title, the Handout also discusses the CFPB's arbitration rule, which is now irrelevant since the rule has since been overturned by Congress and the President. However, the discussions in the Handout about matters other than the CFPB's arbitration rule are still relevant.

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