



August 8, 2017

Via Certified Mail and Email

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510
senator@mcconnell.senate.gov

Re: The Arbitration Agreements Rule and the Congressional Review Act

Dear Majority Leader McConnell:

As the chief legal officers for our States and our state agencies, we write to urge the Senate to act under the Congressional Review Act ("CRA") to disapprove the Consumer Financial Protection Bureau's rule on "Arbitration Agreements," 82 Fed. Reg. 33,210 (July 19, 2017) (the "Rule"). The Rule is an unlawful regulation that deprives Americans of a convenient, fast, and cost-efficient way to resolve disputes. The House has already moved under the CRA to undo this harmful and overreaching regulation. We hope the Senate will do the same.

The Rule exceeds the CFPB's statutory authority in several ways. As you know, the Rule restricts covered consumer services providers from requiring that consumer complaints be resolved through arbitration. But the Rule fails to meet at least two statutory mandates: it is not "consistent with" the statutorily-required arbitration study (the "Arbitration Study"), and it is not "in the public interest and for the protection of consumers." *See* Comments of the State of West Virginia et al., Docket No. CFPB-2016-0020 (Aug. 22, 2016) (attached).

First, CFPB's findings in the Rule are not consistent with the data in the Arbitration Study. Specifically, the data do not support the conclusion that arbitration clauses reduce consumer welfare and that class actions provide a more effective means of securing significant consumer relief. Nor are the data consistent with the Rule's conclusion that a blanket ban of pre-dispute arbitration best serves consumers. In fact, much of the data CFPB cites from the Arbitration Study are either inconclusive or actually support the opposite conclusion—that arbitration, and not litigation, benefits consumers.

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Second, the Rule does not advance the public interest and the protection of consumers. CFPB's analysis of the "public interest" is flawed, because it completely ignores the public's interest in liberty of contract, is likely to result in a de facto ban on an efficient and simple dispute resolution process for consumers, and fails to recognize that arbitration helps to prevent or reduce backlogs in state and federal court dockets. In addition, the CFPB's proposed understanding of the "protection of consumers" is incomplete, because it expressly excludes consideration of other benefits or costs or "more general or systemic concerns with respect to the functioning of the markets for consumer financial products or services or the broader economy." 82 Fed. Reg. at 33,251. This definition does not capture all the interests of consumers within the financial marketplace, including the interests of consumers in an unencumbered financial market with firms free to compete for their business.

Beyond these legal flaws, another reason to repeal the Rule is CFPB's failure to obtain review from the Office of Management and Budget (OMB) and its Office of Information and Regulatory Affairs (OIRA). As an independent agency, CFPB is not required to submit its rules to review by OIRA. But as Presidents have previously recognized, independent agencies nevertheless could benefit from doing so. *See* Executive Order 13,579 (July 11, 2011) (stating that independent agencies "should comply" with the "general requirements" applicable to executive agencies). In a recent letter, several state attorneys general urged OMB to request that CFPB submit the Rule to OIRA for review before it takes effect. *See* Letter from Attorneys General of the States of South Carolina et al., to Mick Mulvaney, Director, Office of Management and Budget (Aug. 1, 2017) (attached).

For all these reasons, we respectfully request that you and your colleagues in the Senate act to repeal the Rule under the procedures of the CRA.

Thank you for your attention to this matter.

Very respectfully yours,



Patrick Morrissey
West Virginia Attorney General



Alan Wilson
South Carolina Attorney General

Hon. Mitch McConnell

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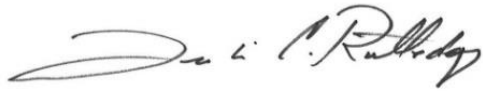
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Sean D. Reyes
Utah Attorney General

A handwritten signature in black ink, appearing to read "Brad D. Schimel". The signature is fluid and cursive, with the first name "Brad" and last name "Schimel" clearly distinguishable.

Brad D. Schimel
Wisconsin Attorney General

cc: Minority Leader Schumer