This Week in Wall Street Reform | Oct 21 - 27, 2017

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FORCED ARBITRATION -- THE SENATE VOTES

Lawmakers Just Made It Nearly Impossible to Sue Companies Like Equifax and Wells Fargo I Money Magazine
Consumer groups spent months fighting the financial industry's attempts to kill the rule, putting together research supporting the rule and placing targeted ads in key states. In fact, two groups Public Citizen and **Americans for Financial Reform** sent the Monopoly Man to deliver bags of money to U.S. Sen. Tom Cotton's (R-Ark.), a co-sponsor of the Senate repeal legislation.

"This vote marks a truly shameful moment in Congress," [AFR's] Amanda Werner, who plays the Monopoly Man, said in a statement. "Just weeks after holding hearings on scandals of historic proportion, the Senate granted Equifax and Wells Fargo a Get Out of Jail Free card. Rather than pass meaningful legislation to help the 145 million Americans harmed by the data breach, a slim Republican majority chose to take away our only chance at holding financial giants accountable."

Flake and Corker join Trump to undo a major consumer protection I The Intercept
Consumer advocates had hoped that moderate Republicans Lisa Murkowski of Alaska and Susan Collins of Maine would block the GOP effort. They did not. Only GOP Sens. Lindsey Graham of South Carolina and John Kennedy of Louisiana bucked their party — but a no vote when the measure passes is not much of a bucking. In a sign of how far the Democratic Party has come in recent years, all 48 members of the Senate caucus voted to keep the arbitration rule.

The vote was split 50-50, which required Vice President Mike Pence to break the tie… Days before the vote, **Americans for Financial Reform** addressed this directly in a video featuring a woman with disabilities and a veteran, who were ripped off by Wells Fargo and then prevented from a day in court because of an arbitration clause.

Senate Kills Rule On Class-Action Suits Against Financial Companies I NPR

Congress Makes It Harder to Sue the Financial Industry I Wall St. Journal
The 51-50 vote handed the financial industry its most significant legislative victory since President Donald Trump took office and was a rebuke of Consumer Financial Protection Bureau Director Richard Cordray, who pressed ahead with his agenda in defiance of Republicans.

The move is one of the final steps in killing a CFPB rule barring fine-print requirements for arbitration in contracts between consumers and banks. The House voted 231-190 in July to overturn the rule. The resolution now goes to Mr. Trump, who is expected to sign it into law. The White House released a statement late Tuesday praising the Senate action and referring to a recent Treasury Department report that criticized the rule.

Senate vote overturning CFPB rule is a blow to consumer protections I USA Today (Morris Pearl and David Newville)
Late Tuesday, the U.S. Senate and Vice President Mike Pence cast a vote on a bill that is a victory for Wall Street and a disservice to the American people.

The vote, which overturned the Obama Administration’s consumer bureau rule banning companies from using mandatory arbitration to resolve disputes with customers, marks another step in the Trump Administration's march towards undermining consumer protections.

Rep. Rothfus is why it will be harder to take on big corporations I Pittsburgh City Paper
Rothfus received a lot of negative reactions on Facebook from constituents after he announced his bill cleared the U.S. Senate. The bill easily cleared the U.S. House mostly along party lines, but received a 50-50 tie in the U.S. Senate. Vice President Mike Pence cast the tie-breaking vote.

Earl Lynch, who is listed as a constituent on Facebook, commented on Rothfus’ page: “You could have given the consumer the freedom to choose between litigation and mediation when a conflict arose. But you decided to protect the big boys and screw me. You’re not a Republican. You’re a Corporationist.”

Another constituent, Amanda Surratt, wrote, “Thanks for making it impossible for regular folks to stand up to ultra rich & powerful corporations.”

Republicans' strategy of killing policy with arcane leg I Washington Post
The vote was the biggest victory yet for the banking industry during the Trump administration. After years of suffering under tough regulations imposed after the global financial crisis, bankers had been giddy at the prospect of a regulatory reprieve. But many of those efforts stalled in the Senate, which has not taken up some of the more complex regulatory changes the industry has favored.

Blocking the CFPB rule likely emboldens the agency’s critics, but it is not likely to speed other, more complicated, regulatory rollbacks, industry analysts say. “The country is still too populist and too distrustful of big banks,” Jaret Seiberg, a Cowen Washington Research Group financial services analyst, said in a report Wednesday.

By a single vote, Republicans trash years of consumer protection work I LA Times (David Lazarus)
It took the Consumer Financial Protection Bureau five years to adopt a rule on forced arbitration by banks and credit card companies — five years of research, meetings with industry officials, public comment and crafting regulatory language.

It took a single tie-breaking vote by Vice President Mike Pence for Republican lawmakers to overturn the rule this week, denying consumers the right to band together in class-action lawsuits over possibly unfair or illegal business practices.

“The repeal of the CFPB’s arbitration rule reeked of the banking industry’s heavy-handed influence over Washington’s politicians,” said Christine Hines, legislative director for the National Assn. of Consumer Advocates.

Republicans prop up scammers and cheaters I Washington Post (Catherine Rampell)
Republicans claim to believe no company is too big to fail. The almighty market must be allowed to work its magic, and firms with defective business models should face the consequences.

Yet over the course of this year, President Trump and Congress have worked to prop up lots of defective firms. By which I mean: Companies whose business models are contingent on scamming customers, shortchanging workers and suckling the government teat.

Just this week, the Senate limited consumers’ ability to fight back against financial firms that have cheated them. Which is of course an implicit subsidy to firms whose profits depend on cheating.

Why won't the GOP fight for the little guy? I St. Louis Post Dispatch (editorial)
The Senate on Wednesday yanked away one of the few remaining tools that consumers can use when banks and other financial corporations abuse their authority and unlawfully victimize customers. Despite a growing list of such abuses, the Senate voted 51-50 to prohibit consumers from joining in class-action lawsuits against those institutions.

Vice President Mike Pence cast the deciding vote, which now awaits President Donald Trump’s signature. Republican maverick-wannabes — Sens. John McCain and Jeff Flake of Arizona, and Bob Corker of Tennessee — disappointingly joined the pack on this one. Rep. Ann Wagner, R-Ballwin, previously led the fight for passage on the House side.

Treasury Department Mounts Attack on CFPB Ahead of Vote I Intercept (David Dayen)
With the window to gut a critical consumer protection regulation rapidly closing, the Treasury Department on Monday launched an unusual attack on the Consumer Financial Protection Bureau’s arbitration rule, relying heavily on a discredited industry theory that claims that trial lawyers routinely bully corporations into class-action settlements.

The Treasury released a 17-page report arguing that the rule, which would prohibit companies from sticking language into financial contracts that prevent consumers from pursuing class-action lawsuits, will “impose extraordinary costs” on businesses without providing benefits from an increase in industry compliance. Furthermore, the agency asserts that trial lawyers will enjoy a “large wealth transfer” if the rule is adopted.

Temporary Banking Regulator’s Job Status Raises Ethics Questions I Wall St. Journal
Mr. Noreika took temporary helm of the OCC, which has hundreds of supervisors watching big U.S. banks, on May 8. Since then, he has spearheaded the Trump administration’s deregulatory agenda.

The acting comptroller has pushed hard to scrap the CFPB’s arbitration rule by repeatedly criticizing the initiative by the Obama-era regulator still running that agency. Scrapping the rule benefits banks including Wells Fargo & Co., one of Mr. Noreika's top clients when he was a private-sector lawyer. The rule banned banks from requiring arbitration to resolve disputes, making it easier for consumers to file class-action lawsuits against banks.

Mr. Noreika also has unilaterally changed or reviewed policies in ways that analysts say could help banks such as Wells Fargo in areas including low-income lending and the Volcker rule, which bans banks from making speculative bets.

Fox Guarding the Henhouse: Noreika'a Fight For Forced Arbitration I Allied Progress
Keith Noreika, the Acting Comptroller of the Currency, has aggressively worked to undermine the Consumer Financial Protection Bureau's (CFPB) arbitration rule. As a temporary, special government employee, Noreika is not bound by an official ethics agreement, yet he signed a voluntary ethics letter which states he will recuse himself from specific matters involving the American Bankers Association, CitiGroup, JPMorgan Chase, and Goldman Sachs.

Each of these entities have publicly opposed the CFPB's arbitration rule with the exception of Goldman which has not stated a public position but would benefit from repeal. With that in mind, Noreika's previous actions and ongoing review of the rule as Acting Comptroller of the Currency appear to be in violation of his voluntary ethics agreement. Considering reports that a Senate vote to repeal the rule may happen as early as this evening, it's more important than ever to bring Noreika's conflicts of interest to light.

I Served to Protect Our Rights; Don't Let Equifax Take Them Away I Medium (Col. Lee F. Lange)
As a career Marine, I served to protect the rights of Americans as guaranteed by the Constitution and its amendments. Among them is the 7th Amendment right to trial by jury in civil cases, a right dismissed by companies like Equifax and now under siege in Congress.
Forced arbitration "ripoff clauses" buried in the fine-print of bank accounts, auto loans and other contracts strip service members and veterans of their day in court when big banks and other financial institutions violate the law. Instead, people must face companies alone, and cannot join together, in a rigged, secretive process where the banks and lenders often choose the arbitrator.

CUs benefit by respecting consumers, not by forced arbitration I Credit Union Journal
Abusive financial practices will only stop if consumers have an effective way to defend themselves. I say this as the CEO of a loan fund and of a 35-year-old credit union, which have a combined value of $2 billion. Credit unions pride themselves on treating their members fairly, which is why the vast majority of credit unions do not use forced arbitration.

Senate GOP kills rule allowing class actions against banks I Columbus Dispatch

Consumer Bureau Loses Fight to Allow More Class-Action Suits I NY Times
[T]he consumer agency was specifically mandated to study arbitration under the Dodd-Frank financial law in 2010. That effort culminated in a 728-page report, released in March 2015, that challenged longstanding assumptions about arbitration. The agency found that once blocked from suing, few people went to arbitration at all. And the results for those who did were dismal. During the two-year period studied, only 78 arbitration claims resulted in judgments in favor of consumers, who got $400,000 in total relief.

The vote late Tuesday left many Democrats dismayed. Senator Sherrod Brown, Democrat of Ohio, said the Republicans had betrayed ordinary Americans. “By voting to take rights away from customers,” he said, “the Senate voted tonight to side with Wells Fargo lobbyists over the people we serve.”

Local Wells Fargo cases featured in national campaign I Clarion- Ledger
Two cases from Mississippi are featured in a national campaign to do away with forced arbitration by companies. Archie and Angela Hudson of Waynesboro sued Wells Fargo Financial Bank and two window companies alleging they were tricked into signing a credit card agreement when they purchased windows for their home.

The couple said the window salesman allegedly completed the… application and presented it to them with other forms he had filled out and instructed them to hurry up and sign it.

“Wet Kiss” for Wall Street I Democracy Now
After nine months of struggling to deliver on their legislative priorities, Senate Republicans found unity Tuesday when they overturned a rule that makes it easier for Americans to sue banks and credit card companies. The rule was developed by the Consumer Financial Protection Bureau and would have allowed people to file class action lawsuits that could have cost the banks billions of dollars. We get an update from Amanda Werner, arbitration campaign manager for Public Citizen and **Americans for Financial Reform**. who recently dressed as Rich Uncle Pennybags, with a top hat and monocle, and sat directly behind former Equifax CEO Richard Smith when he testified about a security breach that left sensitive personal information for 143 million.

See statements by **AFR**, **Allied Progress**, **Center for Responsible Lending**, **Consumer Federation of America**, **Indiana Assets and Opportunity**, **National Consumer Law Center**, **US PIRG**, **Wisconsin PIRG**, and **Woodstock Institute**.

See **video** of Monopoly Man delivering bags of money to Sen. Tom Cotton’s office.

CFPB AND CONSUMER FINANCE

The Little Guys Win One on Payday Loans I NY Times (editorial)
Since the federal Consumer Financial Protection Bureau opened its doors in 2011, the agency’s investigations and enforcement actions have returned more than $12 billion to auto buyers, homeowners, credit-card holders and other borrowers who were victimized by deceptive or predatory practices. Consumers who have been trapped in debt by the notorious payday lending industry will now get extra help from the bureau with a rule imposed this month.

These lenders advertise as “easy” the short-term loans that come due in two weeks. The borrower typically writes a postdated check for the full balance — including fees — or allows the lender to electronically debit funds from his or her checking account. The borrowers often take out another loan to pay off the first, falling to a cycle of increasing debt.

See Center for Responsible Lending briefing paper, "**Initial Analysis of CFPB's Final Rule to Address Payday & Car Title Loans**"

Think Finance Bankruptcy Exposes Fallout from "Rent-a-Tribe" Scheme I Fox Business
The recent bankruptcy of Think Finance LLC, which says it is financial technology provider but is accused in multiple federal lawsuits of being a predatory lender, is setting up an open-court clash with a longtime backer, a Chicago hedge fund with ties to former Sen. Joseph Lieberman of Connecticut.

Think Finance said the hedge fund, Victory Park Capital Advisors, cut off its access to cash and forced the Monday bankruptcy filing. Both companies stand accused by Pennsylvania Attorney General Josh Shapiro of profiting from a "rent-a-tribe" scheme that runs investor funds through a web of shell companies to make it appear lawsuit-resistant Native American tribes are making short-term, high-interest loans to distressed consumers online.

CFPB releases principles to protect consumer financial data I HousingWire
The nine main principles are below and can be found in more detail here.

1. Data access
2. Data scope and usability
3. Control of the data and informed consent
4. Payment authorizations
5. Data security
6. Transparency on data access rights
7. Data accuracy
8. Accountability for access and use
9. Disputes and resolutions for unauthorized access.

FEDERAL RESERVE

It's time to reinvent the Federal Reserve I The Guardian
In the endless swirl of noise and controversy emanating from Washington these days, it is easy to overlook a more mundane but significant challenge facing the US government: its institutions are getting old. With the exception of the Department of Homeland Security, most substantial agencies are at least decades old and many date back much longer.

The Federal Reserve was created in 1913, and over the century, it has acquired massive powers over the nation's financial system. But like anything that has aged, the Fed has become brittle and weathered.

For the moment, the financial system is eerily calm; it likely won't stay that way forever. Now is an opportune moment to consider whether the Fed should remain the same or should evolve into a role more suited for the particular needs of the 21st century.

Pay Attention to Federal Reserve I Forbes

INVESTOR PROTECTION AND THE SEC

[Corporate penalties have plunged at SEC since Trump took office](#) I PoliticoPro
SEC Chairman Jay Clayton, who has questioned the fairness of enforcement penalties on corporations, is getting a chance to practice what he preaches...As the SEC begins fiscal 2018, the cases the agency brings will tell a lot about whether Sen. Elizabeth Warren (D-Mass.) and other enforcement advocates are right to be suspicious of Clayton's enforcement strategy...

Marcus Stanley, Policy Director of **Americans for Financial Reform…** said it's hard to judge Clayton's record because more time is needed. "This data bounces around a lot, but the direction certainly looks more lenient," he said.

SEC Approves Accounting Rule Despite Business-Group's Objection I Wall St. Journal
The Securities and Exchange Commission gave final approval Monday to a long-planned regulation that will require auditors to tell investors more about what they learn when they audit a company's books.

The SEC ratified a rule that the Public Company Accounting Oversight Board passed in June that will require auditors to inform investors about "critical audit matters"—any areas of a company's finances that the auditors found especially challenging or complex or which forced them to make tough judgment calls.

The Finger-Pointing at the Finance Firm TIAA I New York Times
[TIAA's] image as a benevolent provider of investment advice is in question. Several legal filings — including a lawsuit by TIAA employees with money under the company's management, and a whistle-blower complaint by a group of former workers — say it pushes customers into products that do not add value and may not be suitable but that generate higher fees. Such practices would violate the legal standard that applies to retirement accounts and securities laws governing investment advisers.

And while TIAA contends that its operations are untainted by conflicts because its 855 financial advisers and consultants do not receive sales commissions, former employees, in interviews and in the whistle-blower complaint, disagree. They say the company rewards its sales personnel with bonuses when they steer customers into more expensive in-house products and services.

MORTGAGES AND HOUSING

Uniform Application to Include Language Preference Question I Wall St. Journal
The Federal Housing Finance Agency announced today that it will include a language preference question on its updated Uniform Residential Loan Application. The question will allow borrowers to specify if they wish to communicate in a language other than English and identify their preferred language. The new URLA form — which FHFA plans to issue this later this year — will go into effect beginning in July 2019 and will be mandatory for loans made by Fannie Mae and Freddie Mac beginning in February 2020.

In response to numerous concerns raised by ABA and other industry groups about the legal risks that such a question would pose for lenders, FHFA included additional disclosure language intended to inform borrowers that their loan transaction is likely to be conducted in English, and that communications may not be available in their language of choice. The text also states that the language designation is for information collection purposes only, and is not intended to create an expectation that the lender will proceed with the transaction in the borrower's specified language.

Watt Defends URLA Language Preference Update I National Mortgage Professional

See **AFR statement**.

FHA Extends foreclosure storm relief I Sarasota Herald-Tribune

RETIREMENT INVESTMENT AND DOL FIDUCIARY RULE

Trump Says 'No Change' to 401(k) Plans Under Tax Proposal I Wall St. Journal
President Donald Trump pledged Monday to protect a popular retirement-savings program, promising to leave it untouched in the forthcoming GOP plan to overhaul taxes.

Mr. Trump, in a tweet, shot down an idea that had been circulating in Washington policy circles and worrying the retirement-savings industry: limiting pretax contributions to retirement accounts. "There will be NO change to your 401(k)," the president wrote on Twitter. "This has always been a great and popular middle class tax break that works, and it stays!"

Why Many Think a Uniform Fiduciary Rule Won't Work I Financial Advisor
Some legislators and regulators argue a uniform fiduciary standard is the best approach to investor protection because it would be the most easily understood solution. Others disagree because of the challenges of coming up with an all-encompassing, uniform fiduciary standard. Yet others object because they believe the compromises required to reach uniformity would result in a weak and ultimately ineffective fiduciary standard.

SEC Nominees Say Fiduciary Rule Isn't Top Priority I Think Advisor
Securities and Exchange Commission Chairman Jay Clayton signaled Tuesday that the agency's rule would not supplant the Labor Department's fiduciary rule, just as the two nominees to fill the open commissioner spots expressed support for the agency coordinating with Labor and the states in crafting a fiduciary rule.

Yet, in Tuesday testimony at their nomination hearing before the Senate Banking Committee, Mercatus Fellow Hester Peirce and Columbia Law School professor Robert Jackson did not include a fiduciary rule among their list of top priorities the commission should tackle — citing cybersecurity, oversight of the Financial Industry Regulatory Authority and executive compensation as more pressing issues.

DOL Rule Could Push Independent Advisors to Outsource Further I Insurance News
The Department of Labor's fiduciary rule could push independent broker/dealer (IBD) advisors to rely more on outsourced IBD home-office portfolios, a new report has found.

STUDENT LOANS AND FOR-PROFIT SCHOOLS

Student Loan Industry Clashes With 25 States Over Probes I Bloomberg
The U.S. student loan industry is trying to dodge state investigations into allegedly abusive practices by claiming they're preempted by federal law, a bipartisan group of attorneys general claimed.

At least two national industry groups asked the Department of Education this year to issue formal guidance barring probes by states, arguing they duplicate federal efforts and needlessly expand regulations, according to copies of the letters obtained by Bloomberg News.

SYSTEMIC RISK

Treasury Releases Third Report On The Administration's Core Principles For Financial Regulation I Value Walk
The U.S. Department of the Treasury today released a report that examines the current regulatory framework for the asset management and insurance industries and makes recommendations to ensure the regulatory framework is aligned with the Administration's Core Principles for financial regulation.

Treasury's evaluation focuses on four key areas: the proper evaluation of systemic risk, ensuring effective regulation and government processes, rationalizing international engagement, and promoting economic growth and informed choices.

GAO Opens Door for Congress to Review Leveraged Lending I NY Times
The investigative arm of Congress has decided that US bank guidelines on leveraged lending are subject to Congressional review, clearing the way for them to possibly be overturned. After months of consideration, the US Government Accountability Office said the guidelines amount to a formal rule that Congress can review.

In the wake of the last financial crisis, banking regulators recommended against banks making loans to companies with a debt-to-earnings ratio greater than six times or that are unable to pay down debt quickly. Critics charge those guidelines have hindered bank loans to business, and that they usurp the powers of the legislature to make law.