

Alert | Financial Regulatory & Compliance



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Supreme Court Holds That CFPB's Funding Is Constitutional, Clearing Way for Rulemaking Agenda

Go-To Guide:

- On May 16, 2024, the U.S. Supreme Court held 7-2 that the Consumer Financial Protection Bureau (CFPB)'s funding structure is constitutional.
- The Court's ruling ensures that the CFPB is here to stay and has immediate implications for challenges to CFPB rules and enforcement actions that were paused based on the uncertainty of whether the CFPB's funding is constitutional.

On May 16, 2024, the U.S. Supreme Court held 7-2 in *Consumer Financial Protection Bureau v. Community Financial Services Association of America* (CFSA) (Docket No. 22-448) that the CFPB's funding structure is constitutional. With the Court's decision, uncertainty over the CFPB's rulemaking authority tied to the constitutionality of the CFPB's funding has been removed, clearing the way for key rulemaking initiatives to proceed.

At issue in the case was the question of whether the CFPB's funding structure, by which it receives funding directly from the Federal Reserve, violates the U.S. Constitution's Appropriations Clause. In delivering the opinion of the Court, Justice Thomas wrote, "Under the Appropriations Clause, an appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes. The statute that provides the Bureau's funding meets these requirements. We therefore conclude that the Bureau's funding mechanism does not violate the Appropriations Clause."

The Court's ruling ensures that the CFPB is here to stay and has immediate implications for challenges to CFPB rules and enforcement actions that were paused based on the uncertainty surrounding whether the CFPB's funding was constitutional following the Fifth Circuit's now-overturned decision in *CFPB v. CFSA*.

For example, beyond the stay of the payday lending rule at issue in *CFPB v. CFSA*, while the case was pending before the Supreme Court, federal courts entered injunctions staying both the CFPB's **final rule** banning "excessive" consumer credit card late fees and the CFPB's **Section 1071 Small Business Lending Rule** on the basis that the Supreme Court was reviewing the Fifth Circuit's holding that the CFPB's funding was unconstitutional. Now that the Supreme Court has rejected the Fifth Circuit's holding, the basis for those injunctions is no more, clearing the way for those injunctions to be dissolved. Indeed, in response to the Court's ruling, the CFPB has **already announced** compliance date extensions for its Small Business Lending Rule.

Takeaways

With the Supreme Court's decision in *CFPB v. CFSA*, the CFPB has now weathered constitutional challenges to both its leadership structure and its funding structure. With this most recent challenge cleared and reports late last year that the CFPB was planning to substantially increase the size of its staff, the agency may push ahead with its rulemaking and enforcement agendas.

Regulated entities, particularly those that may be subject to rules stayed during the pendency of *CFPB v. CFSA*, should pay close attention to CFPB developments moving forward.

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