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## Supreme Court Finds that CFPB's Funding Structure Passes Constitutional Muster\*

On May 16, 2024, the Supreme Court issued a long-awaited ruling in the challenge to the CFPB's funding structure. The Court found that the funding mechanism of the CFPB does not violate the Appropriations Clause of the United States Constitution. *CFPB v. Cmty. Fin. Servs. Ass'n of Am. Ltd, et al.*, No. 22-448 (U.S. May 16, 2024).

The Appropriations Clause has been interpreted by the Supreme Court to mean that “no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.” In other words, the Appropriations Clause requires congressional appropriations to the executive branch. Thus, most executive branch agencies rely on annual appropriations from Congress. The CFPB does not. The CFPB's funding structure requires the Federal Reserve Board of Governors to transfer up to twelve percent of the total operating expenses to the CFPB upon the request of the Director.

After the CFPB issued its Payday Lending Rule, a group of trade associations that represent payday lenders challenged the rule on various grounds, including by arguing that the CFPB's funding mechanism was unconstitutional because it allowed the agency to take federal money without an appropriation act. In 2022, the Fifth Circuit Court of Appeals agreed, ruling that the CFPB's funding mechanism violated the Appropriations Clause and was unconstitutional.

In a 7-2 decision, the Supreme Court resolved this dispute by reversing the Fifth Circuit's decision. The Court held that “[u]nder 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.” The Court therefore concluded that the Bureau's funding mechanism does not violate the Appropriations Clause.

The resolution of this issue will have an impact beyond the confines of this lawsuit. Following the Fifth Circuit's ruling, a number of CFPB regulations and enforcement actions have been challenged in the courts on similar grounds. Many of these cases have been procedurally impacted as they awaited a ruling from the Supreme Court, leading to stays pending a decision from the Court. This includes challenges to the CFPB's Section 1071 small business data collection rule, the recent credit card late fee rule, and the update to the UDAAP manual, among others. These cases will now proceed on the merits of the litigation. BCG will continue to monitor and provide updates on these cases. For any inquiries, please contact Harry Khalsa at [HKhalsa@ABLAWYERS.COM](mailto:HKhalsa@ABLAWYERS.COM) or Andrew Litchy at [ALitchy@ABLAWYERS.COM](mailto:ALitchy@ABLAWYERS.COM).

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