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CFPB Seeks Supreme Court Appeal of Funding Ruling



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On November 14, the Consumer Financial Protection Bureau (“CFPB”) filed a Petition for a Writ of Certiorari with the Supreme Court for *Community Financial Protection Bureau et al. v. Community Financial Services Association of America, Ltd. et al.* The Petition asks the Supreme Court to promptly hear the CFPB’s appeal of the Fifth Circuit Court of Appeals’ decision in *Community Financial Services Association of America, Ltd. v. CFPB* (“CFSAA”) that the CFPB’s funding structure violates the Constitution’s Appropriations Clause and, as a result, that the CFPB’s “Payday Lending Rule” is invalid. Citing the case’s “enormous legal and practical consequences,” the Petition requests a hearing during the Court’s April 2023 sitting.

The Petition challenges both parts of the Fifth Circuit’s CFSAA decision. It contends that Congress “appropriated” funds to the CFPB as the Appropriations Clause requires when it authorized the CFPB to receive a capped amount of funds each year from the Federal Reserve Bank. The Petition also argues that the Fifth Circuit’s remedy — invalidating the Payday Lending Rule — was an error. The CFPB contends that the Fifth Circuit failed to ask whether the funding provision could be severed from the Consumer Financial Protection Act and misapplied precedent when assessing the causal connection between the CFPB’s purported constitutional defect and the Payday Lending Rule.

To spur the Court to action, the CFPB emphasizes that CFSAA has created significant uncertainty for CFPB enforcement and regulated entity compliance, particularly in the mortgage industry. The CFPB claims that defendants in the Fifth Circuit and beyond are asking to have CFPB rules invalidated and to have their cases dismissed. With the legitimacy of CFPB rules in question, mortgage industry participants face “disruptive uncertainty around millions of past home mortgage transactions,” and “the mortgage markets would very likely all but grind to a halt.”

The Petition constitutes the CFPB's most robust treatment of these issues to date as both parties treated them as ancillary in their prior briefing.
