



On May 16, 2024, the Supreme Court of the United States ruled in the *Consumer Financial Protection Bureau v. Community Financial Services Association of America* that the funding mechanism of the Consumer Financial Protection Bureau (CFPB) did not violate the Appropriations Clause of the US Constitution.<sup>1</sup> Unlike most federal agencies, the CFPB draws its funding from the Federal Reserve, rather than the annual congressional appropriations process. Several trade associations representing payday lenders and credit-access businesses challenged regulations issued by the CFPB on constitutional grounds, which were accepted by Fifth Circuit in 2022. The Court's 7-2 ruling reversed the Fifth Circuit's prior decision and will clear the way for several other pending cases against the CFPB to proceed.

## 5 insights you should know

**Supreme Court decision:** The Supreme Court ruling affirms that the funding mechanism of the CFPB is valid under the US Constitution's Appropriation Clause. The Dodd-Frank Act stipulates that Congress will provide the CFPB with annual funding from the earnings of the Federal Reserve System no greater than 12% of the Federal Reserve System's total operating expenses. The ruling determined that the requested funds for the CFPB's appropriation, regardless of the amount or timing, are constitutional.

**Enforcement action expectations:** Many of the CFPB's enforcement actions were put on pause while waiting for the Supreme Court decision, with only four public actions in 2024 to date. Following the ruling, the CFPB Director made it clear in public remarks that the agency will "forge ahead" with not only cases that have been delayed, but also continue the focus on repeat offenders including the executives at those organizations.<sup>2</sup>

**Expanded supervision anticipated:** While the CFPB has existing enforcement authority over nonbanks, the current proposal to supervise nonbank companies (latest larger participant CFPB Section 1090) that offer services like digital wallets and payment apps would lead to enhanced uniformity of federal oversight for banks and nonbanks. Following the April announcements of the procedural rule updates and the separation of the supervision and enforcement offices, the CFPB has streamlined the process for designating nonbanks for supervision.

**Active upcoming regulatory agenda:** It can be expected that CFPB's regulatory agenda efforts will move forward with several proposed rules becoming final ahead of the upcoming election cycle. We anticipate continued movement on the larger participant rule for (oversight on digital wallet and payment providers (CFPA Section 1090), the junk fee rules related to excessive fees on overdraft loans and prohibition of non-sufficient funds (CFPA Section 1031) fees on instantaneously declined transactions. The Personal Financial Data Rights rule (CFPA Section 1033) is also expected to be finalized this summer.

**Section 1071 extended compliance:** The CFPB quickly announced extended compliance deadlines for the small business lending rule, which was under court stay pending the CFPB v CFSB decision. An interim final rule will be issued extending the compliance dates providing an additional 290 days for Tier 1 institutions with data collection now July 18, 2025, and June 1, 2026, for filing. The compliance dates for Tier 2 and Tier 3 intuitions have also been extended.

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## 5 considerations to evaluate

**Mobilize resources for regulatory activity:** The Supreme Court ruling provides long-awaited clarity for institutions who were managing uncertain implementation timelines and for nonbanks awaiting oversight confirmation. Institutions should establish multi-disciplined program teams to prepare for managing the finalization of several key proposed rules (e.g., CFPB Sections 1031, 1033, 1071, and 1090) ahead of the upcoming election as well as a potential increase in enforcement actions resulting from issues found during supervision.

**Anticipate open banking accelerator:** With a very likely full regulatory agenda this summer, institutions should prepare for finalizing the much-anticipated Personal Financial Data Rights rule (CFPA Section 1033). Institutions should explore the development of the required developer and consumer interfaces (e.g., application programming interfaces or APIs) to shift away from "screen scraping" as well as prepare for managing the intake, fulfillment, and risk oversight of increased third-party data requests.

**Prepare for digital wallet & payment provider oversight expansion:** The CFPB has advanced a series of rulemakings in their attempts to level up the supervisory landscape for nonbanks. Nonbanks and digital wallet providers should thoroughly review how their payment/wallet application usage is impacted by the proposed requirements (CFPA Section 1090); final rule expected imminently) including transaction-level indicators. Nonbanks should conduct an in-depth assessment of their payment/wallet activities and prepare to direct more resources to ensure compliance with applicable federal consumer financial laws.

**Review impacts of "junk fee" initiatives:** If they have not already begun, institutions should rapidly evaluate readiness to the increased scrutiny of "junk fees." Institutions should evaluate their overall credit card programs to explore alternative strategies and product features to replace revenue losses from the fee limitations. A holistic evaluation of existing and potential fee structures will be essential to balance the multiple fee-related regulation updates.

**Evaluate Section 1071 compliance readiness:** While extended compliance is likely welcome news for many, Tier 1 institutions will now need to quickly evaluate existing implementation work and consider potential shifts needed for technology updates and revised timelines for both business and risk/compliance activities related to documentation, controls, and oversight activities. Now that the rule implementation path is clear, Tier 2 and Tier 3 institutions should begin to prepare for the regulatory change including a gap assessment and establishment of required program management routines.



## Endnotes

<sup>1</sup> *Consumer Financial Protection Bureau v. Community Financial Services Association of America*, 601 US \_\_\_\_ (2024).

<sup>2</sup> Consumer Financial Protection Bureau (CFPB), "[Prepared Remarks of CFPB Director Rohit Chopra Regarding the Supreme Court's Decision in CFPB v. CFSA](#)," May 17, 2024.

<sup>3</sup> CFPB, "[Small business lending rulemaking](#)," March 30, 2023.

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