

The CFPB is not going anywhere—Except Maybe the U.S. Supreme Court—Following DC Circuit en banc Decision

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By: Vaishali S. Rao

We've [been following](#) PHH's longstanding challenge of the CFPB's imposition of a fine against it for alleged RESPA kickback violations, through which elemental questions regarding the Bureau's constitutionality were tested.

On Wednesday, January 31, the [DC Circuit Court of Appeals ruled](#) the CFPB's single director structure was constitutional, nearly 8 months after the en banc panel heard [oral arguments](#). The 7-3 full court vote reversed its prior 2-1 decision of unconstitutionality.

The Court appeared to carefully measure the fine line between Congressional intent to keep the Bureau insulated from political swings and the possibility of the Bureau's structure usurping presidential executive functions by not allowing a new President to remove the director at will. Ultimately, the DC Court decided that ruling in PHH's favor would have created rocky precedent for many single director agencies.

Importantly, the fine against PHH for RESPA violations to the tune of approximately \$109 million continued to be vacated, consistent with the DC Circuit's prior decision. The retroactive interpretation of RESPA to expand the time period for potential violations was ruled unlawful, and the court provided helpful language on the three year statute of limitations applying to both civil enforcement and administrative proceedings under RESPA.

Even though PHH received a partial victory, there will likely be pressure for it to petition the United States Supreme Court to take the case regarding the CFPB structure. There are sure to be more novel legal twists and turns involving issues like standing, mootness, and representation of the Bureau by someone other than the Solicitor General.

It will be interesting to watch the manner in which Acting CFPB Director Mick Mulvaney (or someone else ultimately confirmed by Congress) transitions the policies of the Bureau. If he maintains his overtures not to dismantle the Bureau, but rather, attempts to provide some balance to its functions, it will set the stage for long-

term preservation of the Bureau’s mission. This kind of an evaluation starts with following the details of how the Bureau is altering rule making agendas. Stay tuned, we’ll track them for you.

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Topics

D.C. Circuit Court Of Appeals, CFPB, RESPA