

CFPB Structure Ruled Unconstitutional

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Today, the U.S. Court of Appeals for the District of Columbia Circuit ruled in *PHH Corporation v. Consumer Financial Protection Bureau* that the CFPB's structure is unconstitutional. In reaching this conclusion, the appellate court found that the Director of the CFPB "enjoys more unilateral authority than any other officer in any of the three branches of the U.S. Government, other than the President." The appellate court ruled that the CFPB can continue to operate, but "will do so as an executive agency akin to other executive agencies headed by a single person, such as the Department of Justice and the Department of the Treasury" and will be removable by the President.

The appellate court also rejected the \$109 million penalty levied by the CFPB against PHH for violations of the Real Estate Settlement Procedures Act. In January 2014, the CFPB challenged PHH's captive reinsurance arrangement, whereby PHH referred customers to mortgage insurers that in turn purchased reinsurance from a PHH affiliate. The CFPB deemed the reinsurance payments improper kickbacks under RESPA and imposed a \$109 million penalty. The D.C. Circuit agreed with PHH that Section 8 of RESPA allows captive reinsurance arrangements, provided that the amount paid by the mortgage insurer for the reinsurance does not exceed the reasonable market value of the reinsurance. The D.C. Circuit also found that the CFPB violated due process by retroactively applying a new interpretation of RESPA against PHH. Lastly, the appellate court disagreed with the CFPB's contention that, under the Dodd-Frank Act, there is no statute of limitations for any CFPB administrative action to enforce any consumer protection law, and found that there is a three year statute of limitations applicable to a CFPB enforcement action to enforce Section 8 of RESPA.

Opinion

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