The State of the CFPB Amid Reduction in Force Litigation

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The Consumer Financial Protection Bureau (CFPB) has been at the center of significant legal and operational turmoil in recent months. Ongoing litigation surrounding the CFPB's reduction in force (RIF) will likely reshape the agency's future and the banking industry at large. Understanding the background behind these court challenges will be helpful as bankers navigate the uncertainty surrounding the CFPB.

Background and Court Proceedings

Acting CFPB Director Russell Vought issued a "do no work" order, canceled contracts, and terminated CFPB employees. In response, the National Treasury Employees Union (NTEU) filed a lawsuit challenging these actions, leading to a temporary restraining order from the U.S. District Court for the District of Columbia. The court later granted a preliminary injunction requiring the CFPB to reinstate its employees and resume operations.

The CFPB appealed the injunction, and the U.S. Court of Appeals for the District of Columbia Circuit issued a partial stay, allowing the CFPB to terminate employees if a "particularized assessment" deemed them unnecessary for statutory duties. However, the D.C. Circuit recently enjoined the CFPB from conducting any RIF pending appeal, lifting its partial stay and emphasizing the need to maintain the status quo.

Key Issues and Implications

1. Particularized Assessment Requirement

The court's requirement for a particularized assessment means that the CFPB must conduct a detailed and individualized review to determine whether each employee is necessary for fulfilling the agency's statutory duties.

2. Impact on Regulatory Oversight

If the RIF proceeds, it could drastically reduce the CFPB's workforce, impacting its ability to enforce federal financial services laws. This reduction in staff could lead to fewer examinations and enforcement actions, particularly in areas such as mortgage servicing, debt collection, and consumer lending. For banks, this may result in less regulatory scrutiny and potentially more regulatory gaps. However, it could also result in less guidance as banks seek to comply with federal statutes and regulations.

In addition to lacking resources to enforce its rules, the CFPB may lack the resources to eliminate them through the proper administrative channels. The agency has made clear its change in position as to the validity of multiple final rules. However, dismantling its own rules may take time and resources unavailable to the agency, should the RIF proceed.

Final rules can be rescinded or amended via an agency rulemaking, through challenges in court, or by Congress, via the Congressional Review Act (CRA). For those rules not revoked under the CRA, it is left to the CFPB to find a way to make regulatory changes—a path that will become even more difficult in the event the RIF proceeds. To date, the CFPB has relied on a combination of reversing course in court by failing to oppose, or joining, motions to stay compliance; requesting a final judgment to vacate; and issuing press releases announcing, informally, the de-prioritization of enforcement for certain rules. This has been the path for several recently enacted final rules:

- **Small Business Lending Rule:** The CFPB's Small Business Lending final rule under the Equal Credit Opportunity Act (ECOA) has been the subject of multiple lawsuits, and on February 7, in *Texas Bankers Association v. CFPB*, the Fifth Circuit granted a motion to stay compliance deadlines for plaintiffs and intervenors. On April 3, in *Revenue Based Finance Coalition v. CFPB*—another case challenging the legality of the Small Business Lending final rule—the CFPB announced that it "anticipates issuing a Notice of Proposed Rulemaking as expeditiously as reasonably possible" which "may moot or otherwise resolve [the] litigation." Because the litigation did not stay the rule for all covered financial institutions, to temporarily address this, on April 30, 2025, the CFPB announced in a press release that it will "not prioritize enforcement or supervision actions" under the rule regarding entities that are currently outside the stay imposed under *Texas Bankers Association*.

- **Medical Debt Reporting Rule:** In a similar vein, on May 5, 2025, in *Cornerstone Credit Union League et al. v. CFPB*, a lawsuit challenging the legality of the CFPB's final rule prohibiting inclusion of medical debt in credit reporting under the Fair Credit Reporting Act (FCRA), the CFPB requested in a joint motion that the rule be vacated. The CFPB previously requested a 90-day stay on the litigation in February.
- **Buy-Now-Pay-Later Interpretive Rule:** While not a final rule, the CFPB's Buy-Now-Pay-Later interpretive rule has followed a similar trajectory. The rule, issued last May, finds that certain buy-now-pay-later (BNPL) lenders not otherwise subject to the Truth in Lending Act (TILA) disclosure requirements are "card issuers" and therefore subject to TILA disclosures. This rule was challenged in a lawsuit filed by the Financial Technology Association (FTA) in the fall of 2024. In March, the CFPB requested, in a joint motion, that the interpretive rule be stayed pending rescission, with the CFPB to begin updating the court on its progress every 30 days starting June 2. Then, in efforts to solidify this promise, on May 6, 2025, the CFPB issued a press release announcing that it will "not prioritize" enforcement actions taken pursuant to the interpretive rule.

So far, the CFPB has taken the path of least resistance, ceding plaintiffs' challenges in court cases, or, to the extent litigation does not completely strike down or stay the rule, it has issued press releases. However, press releases do not amend or rescind rules, and even with full agency staffing, it could take several years for the CFPB to do so. With the RIF in place, these press releases may be the only source of guidance from an agency lacking the resources to engage in the rulemaking process. If the RIF proceeds, banks and financial institutions regulated by the CFPB may need to become comfortable with living in uncertainty as to their compliance obligations for the foreseeable future.

3. Legislative Developments

The U.S. House Financial Services Committee is reviewing draft legislation that proposes significant reductions in CFPB funding and requires excess funds to be returned to the U.S. Treasury. This legislation could further limit the CFPB's capacity to regulate the banking industry, creating operational uncertainty and affecting consumer confidence. However, whether this draft legislation goes anywhere is uncertain. What is certain, we think, is that the CFPB will see fewer employees—but whether that happens quickly or slowly will be up to the court to decide later this month.

Recommendations for Banks

Given the ongoing litigation and potential legislative changes, banks should take proactive steps to ensure compliance with CFPB regulations:

- **Stay informed**: Regularly monitor updates from the CFPB and reliable sources to stay fully aware of regulatory changes.
- **Conduct internal audits**: Perform regular internal audits to ensure compliance with existing regulations and identify areas of potential risk.
- **Enhance training**: Ensure employees are up to date on the latest regulatory requirements and best practices.
- **Engage with counsel**: Work closely with legal counsel to understand the implications of the litigation and its potential impact upon CFPB regulations.

Key Takeaways

The CFPB is likely to look vastly different in the near future. These changes will impact how you interface with the agency and what you need to do in response to regulatory requirements, consumer complaints, and investigations. It will *not* allow you to avoid regulatory compliance—but the changes are certainly likely to impact how you approach your compliance efforts and reporting vis-à-vis the CFPB. By staying informed and taking proactive measures, banks can navigate these complexities and continue to operate effectively while complying with pertinent regulations.

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