



CFPB Ruling Is Good News For Congress, Collection Industry, and More

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Today's news that the [Consumer Financial Protection Bureau](#) has [overstepped its boundaries, constitutionally and legally](#), may not mean much to most in the collections and debt-buying industries, but to Congress, and to those who are in the process of being examined or investigated by the agency, it's Christmas in October.

Industry lawyers expect the agency to appeal the ruling to the Supreme Court, should an En Banc hearing be unsuccessful. In the meantime, the stinging rebuke of the CFPB by the Court of Appeals for the District of Columbia hopefully shines a spotlight on a regulatory agency that appeared to be bigger than the laws it was supposed to hold companies accountable to.

"I think this gives Congress a boost to seek reform of the structure of the CFPB," said **Joann Needleman**, a partner in the law firm of [Clark Hill](#) and leader of the firm's consumer financial services regulatory and compliance practice. "Congress now has good ammunition to say there has to be a commission, there has to be a budget, and someone has to answer to someone."

It did not take long for Rep. **Jeb Hensarling** [R-Texas], chairman of the [House Financial Services Committee](#), to issue a statement commending the ruling and blasting the CFPB. Rep. Hensarling has been a vocal critic of the CFPB and has introduced legislation that would overhaul the agency, including changing the leadership structure to a multi-member commission.

The leadership structure of the CFPB, which is run by a single executive director, **Richard Cordray**, is unconstitutional, the Appeals court ruled. Most federal agencies are either run by multi-member committees, such as the [Federal Trade Commission](#) or the [Federal Communications Commission](#), and most other agencies that are run by a single individual do so at the pleasure of the president, meaning the president can fire those individuals at any time, for any reason. Until today, the director of the CFPB was only able to be fired for cause, according to the Dodd-Frank law that created the agency. The appeals court ruling has struck down that provision, giving the president the power to fire the director for any reason. Nobody expects President Obama to fire Cordray, but prior to this ruling, Cordray was considered by some in the industry to be the most powerful individual in the federal government, aside from the president.

For most in the industry, the Appeals Court ruling will have little impact. Many will focus on the headline that the CFPB's leadership structure has been deemed to be unconstitutional. But buried

in the court's 94-page ruling are candid remarks about how the CFPB abused the concept of due process.

"If due process means anything, it's about being fair," said **Thomas Good**, the managing partner at [Barron & Newburger](#). "This is something that is very important to this industry and to financial services."

In this specific case, the CFPB was ruled to have violated due process and the statute of limitations by holding a mortgage lender, PHH, liable for violations that were made while the company was following interpretations of the law made by another federal agency, and were committed seven years before the CFPB amended the interpretation.

The companies that are impacted the most by this ruling are those that have received investigative inquiries or subpoenas from the CFPB. The ruling is not as good as a "Get Out Of Jail" free card, but it's fairly close.

"To have an infinite period of statute of limitations and retroactivity, they can't do that anymore," said **Scott Wortman**, a partner in the law firm of [Warshaw Burstein](#). "This ruling uses the term 'absurdity' to describe the CFPB's interpretation of Dodd-Frank and infinite statute of limitations.

"If you are an agency that has received investigative material or a subpoena from the CFPB, this is huge news. I would interpret this to mean the FDCPA's one-year statute of limitations is applicable even though [the CFPB] have argued in the past and in consent orders that have gone well beyond one year. As for retroactivity, [this ruling] allows collection agencies to rely on the existing interpretation of law without fear of an independent agency developing new rules that are applicable when, in fact, the collection agency was following rules from other agency or prior interpretation."