

[Banking and Finance Law Daily Wrap Up, LOANS—Payday loan organization files lawsuit over CFPB’s payday lending rule, \(Apr. 10, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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By Nicole D. Prysby, J.D.

On April 9, 2018, the Community Financial Services Association of America announced that it has filed a lawsuit against the Consumer Financial Protection Bureau in the federal court in Austin, Texas, seeking to invalidate the Bureau’s [final rule](#) on Payday, Vehicle Title, and Certain High-Cost Installment Loans. The CFSA [alleges](#) that the payday lending rule exceeds the CFPB’s authority and is arbitrary and capricious. It also alleges that the Bureau’s structure is unconstitutional because the agency’s powers are concentrated in a single director who is improperly insulated from both presidential supervision and congressional appropriation.

The payday lending rule established restrictions on short-term loans, including a test to ensure that consumers can afford payments, a limit on the number of loans that may be made in close succession, and a limit on the ability of lenders to continue debiting consumer accounts for payments after two consecutive failures (see [Banking and Finance Law Daily](#), Oct. 5, 2017).

The CFSA’s [complaint](#) alleges that millions of Americans rely on payday loans and that without such loans, they would be forced into more costly options such as debt defaults and use of unregulated sources of credit. It also alleges that the centerpiece of the rule, the ability-to-repay requirement, contains limitations that are fundamentally inconsistent with the characteristics of the borrowers, who use payday loans precisely because their net income in a particular month may not be sufficient to satisfy their financial obligations. Short-term, small-dollar loans, the CFSA alleges, result in improved financial conditions for consumers and eliminating them will harm the very consumers the CFPB is supposed to protect.

Unconstitutionality. The CFSA also alleges that the Bureau’s power is unconstitutionally concentrated in its director, who may not be replaced or supervised by the President and that because the CFPB takes federal government money without congressional appropriation, it is not subject to control by any elected official. As a result, the CFPB and its rules violate the constitutional requirement for separation of powers. But, CFSA alleges, even without this constitutional violation, the payday lending rule should be vacated because the CFPB is not authorized by Congress to set ability-to-pay requirements and because the regulatory agency lacked evidence to demonstrate that short-term, small-dollar loans are harmful to consumers. The CFPB also failed to perform a cost-benefit analysis for the rule and failed to adequately respond to the comments opposing the rule, said the complaint.

Opposition to suit. Consumer group Allied Progress released a [statement](#) in opposition to the lawsuit, arguing that the CFSA and other predatory lenders submitted hundreds of thousands of identical comments in opposition to the rule. The group cited a 2017 survey that found that 40 percent of the comments opposing the payday lending rule were not submitted by their supposed authors. Allied Progress also cited news stories which discussed the payday lenders’ efforts to scare borrowers into commenting on the proposed rule. The CFSA intended to bombard the CFPB with comments to bog it down and delay the rule. Allied Progress also cited a study finding that more than half of all payday borrowers believe that payday loans take advantage of borrowers and that 72 percent of payday borrowers favor more regulation of the industry.

Companies: Allied Progress; Community Financial Services Association of America

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