Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—D.D.C.: Court grants ex-Fed officials amici status after CFPB opposes NTEU clarification motion, (Dec. 10, 2025)

Banking and Finance Law Daily Wrap Up

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By Justin Marcus Smith, J.D.

The CFPB argued the NTEU plaintiffs could not establish that the CFPB Director has a "crystal-clear legal duty" to go beyond making a decision about necessary CFPB funding to actually request that funding from the Federal Reserve.

With the future of the Consumer Financial Protection Bureau in question, Acting CFPB Director Russell Vought and CFPB co-defendants filed their opposition to a recent National Treasury Employees Union (NTEU) motion for clarification of the preliminary injunction the court entered on Mar. 28, 2025. The CFPB contended the NTEU plaintiffs were effectively asking the court to amend the preliminary injunction, which stopped Vought from undertaking specific actions apparently aimed at dismantling the CFPB, while that injunction is stayed pending appeal. The CFPB also argued the NTEU plaintiffs and former Federal Reserve officials were wrong about CFPB legal grounds and duty to request funds from the Federal Reserve for continuing CFPB operations. Whatever the outcome on the arcane Federal Reserve accounting issues now in play, the CFPB maintained the court could not grant relief in the nature of mandamus to compel Vought to ask the Fed for funds beyond what he had already decided were necessary for the CFPB to carry out its duties. The CFPB defendants had also filed a response to a motion by former Fed officials for leave to file an *amicus* brief. However, the court reviewed and granted the motion by the former Fed officials for *amici* status based on their purported specialized knowledge of how the Fed is undoubtedly able to provide whatever "necessary expense" funds the CFPB may request for continuing CFPB operations (*National Treasury Employees Union, et al. v. Vought, et al.*, No. 1:25-cv-00381-ABJ (D.D.C. Dec. 10, 2025)).

Background. In the ongoing National Treasury Employees Union (NTEU) case challenging the actions of Consumer Financial Protection Bureau (CFPB) Acting Director Russell Vought, the CFPB defendants notified the court on Nov. 10, 2025 that they anticipated exhausting available operating funds in early 2026 (see *Banking and Finance Law Daily* , Nov. 12, 2025).

More importantly, the CFPB defendants said they were relying on a Nov. 7, 2025 Department of Justice Office of Legal Counsel (OLC) opinion for their refusal to make an active request for more funding from the Federal Reserve. The implication was that the CFPB would no longer operate without such funding, and consequently, it might no longer be in compliance with the court's preliminary injunction that stopped Vought from taking actions to wind-down the CFPB.

On Nov. 23, 2025, the NTEU plaintiffs (*i.e.*, National Treasury Employees' Union; National Consumer Law Center; National Association for the Advancement of Colored People; Virginia Poverty Law Center; Ted Steege; and the CFPB Employee Association) filed a motion for clarification of the CFPB defendants' obligations under the court's Mar. 28, 2025, preliminary injunction.

Then, on Dec. 5, 2025, former Federal Reserve officials filed a contemporaneous motion for leave, as *amici curiae*, to support the NTEU motion for clarification. Their brief argued that the OLC opinion wrongly applied private banking accounting principles to the Federal Reserve system. The former Fed officials asserted the Federal Reserve was both lawfully and practically able to provide whatever request the CFPB might have for operating funds (see *Banking and Finance Law Daily* , Dec. 8, 2025)).

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On Dec. 8, 2025, the CFPB defendants filed their opposition to the NTEU plaintiffs' motion for clarification of CFPB obligations under the preliminary injunction. On Dec. 9, 2025, the CFPB defendants filed a response to the former Fed officials' motion for leave to file an amicus brief. On December 10, the court entered a minute order granting *amici* status leave to the former Fed officials.

Opposition to clarification. In opposition to the NTEU plaintiffs' motion for clarification, the CFPB defendants mainly argued the NTEU plaintiffs were functionally seeking a new order to compel Vought to request funding from the federal reserve. They also contended the NTEU plaintiffs were incorrect that the "combined earnings" of the Federal Reserve system refers to Fed revenues rather than its profits.

The CFPB essentially maintained that a functional modification of the preliminary injunction was not possible for two reasons. First, the NTEU had merely requested a clarification of the existing preliminary injunction, which did not require the CFPB to request funding. However, the NTEU actually appeared to want just that, an order compelling the CFPB to request funding. A clarification of the existing injunction, alone, would have "no impact" on whether the CFPB must request funds to operate. That implied an amendment of the existing injunction would be necessary if the NTEU goal is to compel the CFPB to request funding. Second, CFPB contended the district court presently lacks jurisdiction to amend the existing preliminary injunction while it is on appeal.

In any event, the CFPB further contended that an order to compel the NTEU to request funding from the Fed was in the nature of mandamus relief, whereas Vought had already satisfied his 12 U.S.C. § 5497(a)(1) duty because he "already determined" the amount of funding reasonably necessary for the CFPB to carry out its authorities. Relief beyond that determination would fall outside the scope of mandamus.

Beyond that, the CFPB reiterated its contention that the Fed cannot transfer funding to the CFPB when the Fed is allegedly operating at a loss, a circumstance the former Fed officials said no longer pertained and was irrelevant to the funding question anyway.

The CFPB continued that the court can and should clarify whether CFPB obligations under the injunction would be affected by a lapse of funding resulting from OLC and CFPB interpretation of § 5497(a)(1), but even so, it cannot order the CFPB to do more than what the injunction already provides. The CFPB said the NTEU did not cite any authority for the notion that an injunction against an executive branch official should be read as implicitly ordering the government to continue tasks for which it lacks appropriated funds. However, even if the court ultimately agrees with the NTEU on the meaning of "combined earnings," the CFBP said the court should not impose a new obligation on the CFPB to request funding from the Fed or otherwise affecting how it will comply with the injunction.

Opposition to *amici*. In opposition to the former Fed officials' motion for leave to file as *amici*, the CFPB did not further address the substance of their arguments about Federal Reserve accounting principles. They focused on the timeliness of the motion instead. The CFPB contended the proposed *amici* did not file or even contact CFPB defendants' counsel within the required 7 days' time after the filing of a principle party brief.

***Amici* status granted.** On Dec. 10, 2025, the court entered a minute order granting the former Fed officials' motion for leave to file as *amici*. The court ruled the amici filed a timely response under L. Civ. R. 7(o)(2) pursuant to the date the court established. The court rejected the suggestion that the motion was untimely under internal Department of Justice policy because that does not govern the court. The court also rejected the CFPB assertion that courts typically apply Fed. R. App. P. 29 because a specific rule in the U.S. District Court for the District of Columbia governing *amicus* status does not impose a time limit. The court invoked discretion to grant leave to file the *amicus* brief. The court explained the former Fed officials bring specialized knowledge and experience to bear on the CFPB funding questions and had not caused any prejudicial delay.

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