

Pending Supreme Court Decision on the Constitutionality of the Consumer Financial Protection Bureau's Funding Structure Results in Stay of Civil Investigative Demand

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The United States Supreme Court's pending decision in [*Consumer Financial Protection Bureau v. Community Financial Services Association of America Ltd., et al.*](#) ("*Community Financial Services Association of America Ltd.*") in which the high court was asked to determine the constitutionality of the Consumer Financial Protection Bureau's ("CFPB") independent funding structure, continues to impact pending civil investigative demands brought by the CFPB.

On March 29, 2024, in *Consumer Financial Protection Bureau v. Financial Asset Management, Inc.*, the United States District Court for the District of Utah stayed the CFPB's petition to enforce a civil investigative demand on short-term, small-dollar, and installment loan lender Financial Asset Management Inc. ("FAMI") pending the Supreme Court's decision in *Community Financial Services Association of America Ltd.*

As we previously discussed, in *Community Financial Services Association of America Ltd.*, the Supreme Court is reviewing the U.S. Court of Appeals for the Fifth Circuit's unanimous decision that the CFPB's "unique" funding structure was unconstitutional and vacatur of the CFPB's 2017 Payday Lending Rule "as a product of the [CFPB's] unconstitutional funding scheme." On October 3, 2023, the Supreme Court heard oral argument but has yet to issue a decision.

In the Utah federal action, FAMI is asserting the same constitutional defenses that are currently pending before the Supreme Court in *Community Financial Services Association of America Ltd.* The Utah federal court reasoned that granting the stay would promote judicial economy and avoid inconsistent results because "without a stay, the parties, this court, and possibly the Tenth Circuit would be forced to expend resources litigating the exact issue before the Supreme Court." The Court further stated that "if the court waits for the Supreme Court's decision in [*Community Financial Services Association of America Ltd.*], neither the parties nor the court will be forced to go through what could be a pointless exercise."

The District Court of Utah rejected the CFPB's argument that a stay would result in undue prejudice and "hamper its ability" to investigate potential wrongdoing. The Court found that the CFPB's "generalized assertion of harm is insufficient" to show undue prejudice, especially where the CFPB did "not point to any customer complaints against FAMI or specific violations of law CFPB believes

FAMI has committed.”

This is at least the second civil investigative demand brought by the CFPB that has been stayed pending the high court’s decision in *Community Financial Services Association of America Ltd.* In June of 2023, the U.S. Court of Appeals for the Second Circuit agreed in *Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C.* to stay a mandate regarding the enforcement of an investigative demand from the CFPB directed to the Law Offices of Crystal Moroney, P.C. until after the Supreme Court issues its decision.

Though it has been widely reported that most of the Supreme Court justices expressed skepticism over the arguments made that the CFPB’s funding structure violates the U.S. Constitution’s appropriations clause, *Community Financial Services Association of America Ltd.* is considered one of the top cases to watch this term because a finding that the CFPB’s funding structure is unconstitutional could throw into doubt the validity of more than a decade of federal rule making by the CFPB.

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