



## Alerts

### United States Seeks 'At Will' Removal of CFPB Director

March 21, 2017

*Consumer Financial Services Alert*

#### Trump's Preferred Method of Scaling Back Consumer Financial Regulation is Appointment of New CFPB Director

As expected, the United States on Friday filed an amicus brief in *PHH Corp. et al. v. Consumer Financial Protection Bureau* supporting PHH rather than the CFPB, an independent federal agency.

The 33-page brief takes a slightly different tact than PHH did in its opening brief, but ultimately supports the reduction of power by the CFPB. Rather than seeking complete dissolution of the CFPB, as PHH argued, the United States argues that the President should have unfettered discretion to fire the CFPB director. Until the D.C. Circuit court's ruling of the CFPB's unconstitutional structure, now vacated pending the en banc review, the director served a five-year term and could only be terminated by the President for "inefficiency, neglect of duty, or malfeasance in office."

The brief focuses entirely on the separation of powers, constitutional issue, and does not address RESPA. As was the case in PHH's position last fall, the United States emphasizes the import of Congress creating an independent agency with a panel or commission structure, as ratified by a 1935 U.S. Supreme Court decision, *Humphrey's Executor v. United States*, distinct from an independent agency with a single director as is the CFPB.

Notably, the United States summarizes its position, "The panel correctly concluded that the proper remedy for the constitutional violation is to sever the provision limiting the President's authority to remove the CFPB's Director, not to declare the entire agency and its operations unconstitutional."

For months, stakeholders invested in the future of the CFPB have been surmising on President Trump's preferred method of scaling back on consumer financial regulations given this pending litigation. The United States brief is a nudge towards his preferred approach being appointment of a new director, rather than abolishment of the agency entirely; although, the latter is not out of the question given PHH's position in its opening en banc brief.

Next up in the PHH saga: CFPB's response due on March 31, and likely, a number of supporting amici briefs.

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You can read the United States' [full brief here](#)

You can find a recap of the en banc filings to date [here](#)

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