

## Insights

### CFPB Asserts it Cannot Lawfully Draw Funds from the Federal Reserve

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Since its creation, the Consumer Financial Protection Bureau's ("CFPB" or the "Bureau") funding mechanism has been under attack. To date, these attacks have been unsuccessful, but the latest challenge by the Bureau itself may finally succeed, or at the very least temporarily support the Bureau's suspension of operations in early 2026.

Earlier this week, the CFPB notified the court in *National Treasury Employees Union v. Vought*, No. 1:25-cv-00381-ABJ (D.D.C.), it could no longer draw funds from the Federal Reserve System (the "Federal Reserve") to support its operations after determining the Federal Reserve lacked the "combined earnings" from which the Bureau may draw funding as mandated by the Dodd Frank Act. The Bureau's position was based on a legal opinion (the "Opinion") from the U.S. Department of Justice's Office of Legal Counsel (the "OLC"). The Dodd Frank Act directs the Board of Governors of the Federal Reserve to "transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount to be determined by the [CFPB] Director to be reasonably necessary to carry out authorities of the Bureau." 12 U.S.C. § 5497(a)(1).

In the Opinion, the OLC concludes "the combined earnings of the Federal Reserve System refers to the Federal Reserve's profits, calculated by subtracting its interest expenses from its revenues. If the Federal Reserve has no profits, it cannot transfer money to the CFPB. Because the only lawful source of funding from the Federal Reserve has dried up, the proper method for obtaining additional funds is to request them from Congress pursuant to the Appropriations Clause, not to draw funds from the Federal Reserve without a congressional appropriation." Notably, since the Bureau's inception in 2010, the Federal Reserve has been profitable every year, with the exception of 2023 and 2024. Based on current figures it appears likely the Federal Reserve will again be "unprofitable" in 2025.

#### What Does This Mean For Financial Institutions?

In the short term, the oversight vacuum for financial institutions subject to direct CFPB examination experienced since the change in administration will continue absent congressional action, or a successful legal challenge to the Bureau's position. For financial institutions generally, the threat of CFPB investigation that had already been essentially frozen since January 2025, will remain so for the foreseeable future, as will the potential for any further interpretative guidance or rulemaking. Perhaps most significant to some financial institutions, the Consumer Complaint Portal is expected to be closed.



While the suspension of Bureau activities (whether short or long term) is a positive for the industry, the regulations they oversee remain in force. Further, questions remain as to whether funding could resume in the coming years in the event the Federal Reserve returns to profitability. In the absence of Bureau oversight, state attorneys general are likely to continue efforts to fill the void created by the CFPB's absence. In summary, while the CFPB may not be aggressively pursuing financial institutions in the near future, threats remain to the industry at the state level, and from the plaintiff's bar. Further, if the political winds shift to the left in 2028, financial institutions can be assured any regulatory missteps that may occur during the remainder of the Trump administration, will be criticized later.

Krieg DeVault's Financial Institutions attorneys are closely monitoring further developments impacting the future of the CFPB and able to provide counsel to financial institutions on the impact of these changes to their operations.

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