

Supreme Court Hears Challenge to Agency Tasked With Helping Students Make Informed Decisions About Paying for College

October 25, 2023



The Consumer Financial Protection Bureau (CFPB), a government agency that protects consumers in the financial sector, is potentially at risk following oral argument on October 3, 2023, before the Supreme Court of the United States.



The CFPB provides information and resources to help students make informed decisions about student loans and repayment options and is funded through the Federal Reserve instead of the U.S. Congress. The case before the Supreme Court, *Consumer Financial Protection Bureau v. Community Financial Services Association of America*, challenges the bureau's funding mechanism. It was filed by lenders that oppose a 2017 CFPB rule restricting their activity.

Quick Hits

- The CFPB provides guidance to students on comparing costs and financial aid offers, how to pay for college, how to apply for student loans, repayment forbearance and decreased interest based on military service, and loan forgiveness available to employees working in public service, including public hospitals and nonprofit organizations.
- It was created by the Dodd–Frank Wall Street Reform and Consumer Protection Act, 2010 legislation that rewrote many finance rules.
- It also addresses complaints from borrowers having difficulties with private student loans and assists borrowers who are experiencing difficulty taking out private student loans, repaying private student loans, or managing student loans that have gone into default and may have been referred to debt collectors.
- The CFPB funding structure was specifically selected by members of Congress to shield the bureau from political pressures that could blunt its oversight of the financial sector.

For years, student loan servicers had been accused of misleading borrowers and steering them toward expensive repayment plans. During the Obama administration, the bureau took legal action to curtail certain practices by loan servicers. Under the current administration, the bureau was expected to exercise greater enforcement of rules that regulate student loan servicing due to student debt being a CFPB priority.

The Supreme Court previously ruled, 5–4, in [Seila Law LLC v. Consumer Financial Protection Bureau](#) that the agency’s structure, which consisted of a single director who could only be fired for cause rather than at will by the president, violated the U.S. Constitution’s separation-of-powers design.

In October 2022, a three-judge panel of the Fifth Circuit Court of Appeals ruled that the CFPB’s funding system violated the Constitution’s separation-of-powers doctrine because the agency’s self-determined budget was drawn from an agency that is not funded by appropriations. The court therefore rejected the CFPB’s 2017 rule on the grounds that the bureau was unconstitutionally funded when it adopted the regulation.

Programs like Medicare and Social Security are also funded outside of the annual appropriations process, meaning the case could impact anyone benefitting from these programs, as well as anyone with a mortgage, other loan, or credit card.

Key Takeaways

Colleges and universities, student advocacy groups, graduates paying on student loans, and others involved in federal financial aid, including student loans, should keep a careful eye on this decision. An erosion of consumer protections, particularly those related to financing education, has the potential to negatively impact the higher education enterprise and related affiliates. Currently, between 85 percent and 95 percent of many schools’ enrolled students are dependent on financial aid. Protecting borrowers and other aid recipients can lower default rates. Maintaining aid levels helps to maintain institutional enrollment, which in turn drives headcount, full-time equivalency (FTE), and funding, while promoting student success.

Ogletree Deakins’ [Higher Education Practice Group](#) will continue to monitor developments and provide updates on the [Higher Education](#) blog as additional information becomes available.

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