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INSIGHT

Financial Services and General Government (FSGG) FY2024 Appropriations Bill: CFPB's Funding and Structure Provisions

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On July 17, 2023, the House Committee on Appropriations reported its FY2024 Financial Services and General Government (FSGG) appropriations bill (H.R. 4664). The reported bill would change the Consumer Financial Protection Bureau (CFPB)'s funding and structure, bringing the agency under the traditional appropriations process and replacing the CFPB Director with a five-person commission, appointed by the President with advice and consent of the Senate, with no more than three commission members of any one political party. Other bills introduced during this Congress include similar provisions, including H.R. 2798, which the House Financial Services Committee ordered to be reported on April 26, 2023.

Since the CFPB's creation over a decade ago, policymakers have continuously debated the degree of independence the CFPB should have from Congress and the President. Some argue that the agency can operate more effectively when insulated from political pressures, while others counter that such insulation decreases accountability and raises constitutional concerns. This Insight discusses the CFPB's current structure and funding, how H.R. 4664 would change it, and the legal challenges related to these issues.

Current CFPB Structure, Funding, and Budget

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; P.L. 111-203) established the CFPB as an independent bureau within the Federal Reserve System (Fed). The CFPB is headed by a single director, appointed by the President with the advice and consent of the Senate for a five-year term. The Fed's Board of Governors generally does not have legal authority to influence the CFPB's operations. This single director structure is similar to other independent agencies, such as the Office of the Comptroller of the Currency (OCC), though others, such as the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), and the Securities and Exchange Commission (SEC), are headed by boards or commissions.

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The CFPB is funded outside the traditional congressional appropriations process. The CFPB funds its operations through monetary transfers from the Fed's combined earnings. The Fed must transfer amounts requested by the CFPB director based on the director's determination of need, subject to a cap set by a statutory formula. Some other agencies, such as bank regulators (OCC, FDIC, and Federal Reserve), are also funded outside of the congressional appropriations process. However, in contrast to the CFPB's funding scheme, those agencies generally cover all or part of their costs with funds collected as fees or assessments from regulated entities or derived from other investments.

For FY2023, the CFPB received a total of $721.2 million in transfers from the Fed, which was below its $750.9 million statutory cap. The CFPB's budget estimate for its operations in FY2023 is $653.2 million and in FY2024 is $684.9 million.

CFPB Provisions in Reported Bill

H.R. 4664, in its regular appropriations language, would provide the CFPB $635 million for FY2024, which is about $50 million less than the CFPB estimated for its FY2024 budget. In addition, the bill contains provisions amending the CFPB's authorizing language in Dodd-Frank and limiting the implementation of a new CFPB regulation. Specifically:

- Section 501 would delete the provisions governing the Fed's funding of the CFPB, thus bringing the CFPB under the appropriations process for FY2024 and following years. It would authorize $650 million for the CFPB for FY2024 but includes no specific amount for following fiscal years.
- Section 502 would replace the CFPB Director with a five-person commission where no more than three members may be from the same political party and two members must have private-sector experience in consumer finance. Commissioners would be appointed by the President, subject to the advice and consent of the Senate, to serve five-year staggered terms. The President would only be able to remove a commissioner for "inefficiency, neglect of duty, or malfeasance in office."
- Section 503 would prohibit funds from being used to implement a small business lending data collection regulation that the CFPB recently finalized as mandated by Section 1071 of Dodd-Frank.

Constitutional Challenges to the CFPB's Funding and Structure

The CFPB's funding source is currently the subject of a legal challenge pending before the U.S. Supreme Court. The U.S. Court of Appeals for the Fifth Circuit, in *Community Financial Services Association of America v. CFPB*, ruled that the CFPB's funding mechanism is unconstitutional in violation of the Constitution's Appropriations Clause and separation of powers. The Department of Justice, on behalf of the CFPB, petitioned the Supreme Court for a writ of certiorari to review and reverse the Fifth Circuit's decision. In February 2023, the Supreme Court agreed to review the decision. For more information, see CRS Legal Sidebar LSB10891, *Fifth Circuit: CFPB's Funding Authority is Unconstitutional*, by Sean M. Stiff and David H. Carpenter.

The CFPB's structure was also subject to legal challenges that were ultimately settled by the Supreme Court. Dodd-Frank protected the CFPB director from presidential removal except for cause; however, the Supreme Court in *Seila Law v. CFPB* held that this statutory removal protection violated the separation of powers. As a result, the CFPB director now serves at the pleasure of, and may be removed at-will by, the

President. For more information, see CRS Legal Sidebar LSB10507, *Supreme Court Rules CFPB Structure Unconstitutional: Implications for Congress*, by Jacob D. Shelly.

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