

# Court rules CFPB's funding structure is unconstitutional, potentially stripping it of its authority

Article

**The news:** New Orleans-based 5th U.S. Circuit Court of Appeals ruled the Consumer Financial Protection Bureau's (CFPB) funding structure unconstitutional, per Banking Dive.

**A divided response:** In most cases, federal agencies are funded by annual appropriations from Congress. This ruling hinges on the CFPB receiving its funding from the Federal Reserve, which isn't funded via appropriation. **The court's verdict has essentially stripped the CFPB of its enforcement authority.**

- In response to the ruling, a CFPB spokesperson pointed out that most financial agencies are financed outside of annual appropriations, such as the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC), and thus the CFPB's financing structure is not out of the ordinary.
- Democratic lawmakers say the ruling is reckless and puts American consumers at major risk because the ruling may prevent the CFPB from effectively enforcing.
- Republican senators welcomed the ruling, as they believe the CFPB has been enacting radical regulations across the financial sector, hurting consumers and stifling competition.

The CFPB hasn't said whether it will appeal the ruling.

**How'd we get here?** The CFPB has aggressively attempted to rein in the financial sector this year, tackling a full gamut of financial topics.

- Overdraft fees have been a major focus of the bureau, with CFPB Director Rohit Chopra saying banks with a higher share of frequent overdrafters or greater average fee burdens for overdrafts will be closely monitored.
- The CFPB has also buckled down on credit card companies and their data sharing practices, as well as nonbank and rent-a-bank lending.
- It's also extended its reach to fintech firms by planning to bring regulatory parity to banks and fintechs.

## Types of Information That US Digital Banking Users Do Not Want Their Bank to Use vs. Believe Their Bank Uses for Personalization Purposes, June 2022

% of respondents

	Information they do not want bank to use for personalization purposes	Information they believe their bank uses for personalization purposes
GPS location when not using mobile banking	48.8%	12.3%
GPS location when using mobile banking	35.8%	32.7%
IP address location when using online or mobile banking	31.6%	32.6%
Family size	23.6%	11.4%
Wealth (savings, investments, etc.)	22.0%	28.5%
Borrowing history	19.9%	32.9%
My bank(s) can use any of these types of personal data	19.9%	-
Payment data	19.6%	51.8%
Credit score	17.5%	43.8%
Bank chat logs	17.1%	17.6%
Call center interactions	15.5%	21.4%
Products used at the bank	11.9%	38.1%
Other	0.3%	0.5%
None	-	9.9%

Source: Insider Intelligence, "US Banking Digital Trust Benchmark 2022," Aug 2022

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But the mounting crackdowns have been wearing banks down, and last month a **group of industry trade groups united to [sue the CFPB](#)** for overextending its reach. In that lawsuit, the trade groups questioned the agency's funding structure.

**What's next?** The unconstitutional funding ruling could have broad implications, as it lets banks and other financial institutions push back on the regulatory agency.

- Without the CFPB's enforcement authority, consumers might feel that their protections are threatened and that they'll fall victim to predatory behaviors, like unreasonable overdraft fees.
- But banks can't afford to lose customer loyalty. The race to attract and maintain customers is tight, brand differentiation is difficult within the sector, and with the economy worsening, customers will seek out financial institutions that they feel have their best interests in mind.

## How High-Trust and Low-Trust US Digital Banking Users Perceive and Interact with Their Bank, June 2022

% of respondents

	High trust	Low trust
I am satisfied with this bank	78.8%	58.3%
I use mobile banking (via smartphone) at least once a week	58.3%	43.4%
I have direct deposit set up at the bank	52.1%	40.4%
The payment card (credit or debit) I use most often is issued by this bank	50.8%	41.7%
I have recommended this bank to family/friends	45.0%	24.4%
I have multiple accounts with the bank	36.5%	28.5%
I use online banking (via PC) at least once a week	35.9%	25.2%
I would open my next account or product with this bank	35.8%	21.8%
Other	1.4%	1.3%
None	1.5%	7.2%

Source: Insider Intelligence, "US Banking Digital Trust Benchmark 2022," Sep 2022

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