

What's Next for PHH v. CFPB?

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Not surprisingly, the many media and political reactions to the *PHH Corp. v. CFPB* decision have reflected the competing stakeholder interests around every aspect of the CFPB. In this memorandum, we step back a bit and make some observations about the strategic choices facing the CFPB, the Obama Administration, the next President, and the next Congress in light of the decision. We begin with a short review of the tension between the two contradictory Supreme Court cases upon which the federal administrative state is built and explain how they informed the D.C. Circuit's invalidation of the CFPB's independent structure. We then discuss the D.C. Circuit's statutory interpretation, which we believe will have wide implications across a range of regulatory enforcement actions, both in the financial sector and beyond. We also discuss the extent to which the D.C. Circuit's ruling may raise questions as to the validity of past or pending CFPB rulemaking and enforcement actions. Finally, we end with an exploration of the considerations behind the possible next steps by the CFPB and other stakeholders.

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