The United States Supreme Court ruled yesterday in Collins v. Yellin that a restriction on the President’s power to remove the director of the Federal Housing Finance Agency at will is unconstitutional as a violation of the separation of powers doctrine. This decision did not come as a surprise, as the Court had ruled in Seila Law LLC v. Consumer Financial Protection Bureau that a similar restriction on the President’s power to remove the director of the CFPB at will was unconstitutional. The Court rejected a number of arguments that the Collins case was distinguishable from the Seila case, stating that:

- Congress did not have greater leeway to restrict the President’s removal power with respect to the director of the FHFA than it did to restrict the President’s removal power with respect to the director of the CFPB;

- The authority that the Director of the FHFA has to step into the shoes of regulated entities (i.e., Fannie Mae and Freddie Mac) and act as a private party does not result in Congress having greater authority to limit the President’s removal power;

- The fact that the Director of the FHFA regulates government sponsored entities (again, Fannie Mae and Freddie Mac) does not result in Congress having greater authority to limit the President’s removal power;
The argument that the Director of the FHFA is offered only “modest” tenure protection is untenable, as even “modest” protection violates the separation of powers doctrine.

The plaintiffs had also challenged the formula for payment of dividends by Fannie Mae and Freddie Mac that had been statutorily enacted on grounds that the FHFA had exceeded its authority as a conservator by agreeing to the formula. The Court ruled that this statutory claim must be dismissed. The plaintiffs had also requested that any dividends paid under the new formula be returned to Fannie Mae and Freddie Mac. This claim was remanded to the lower court for further consideration based upon the Court’s ruling on the constitutional issue.

Following the announcement of the Court’s decision, President Biden fired Mark Calabria as director of the FHFA, and appointed Sandra Thompson as acting director. Ms. Thompson has served as deputy director of the agency’s Division of Housing Mission and Goals since 2013.

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