

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL ASSOCIATION)
 FOR LATINO COMMUNITY)
 ASSET BUILDERS,)
)
 Plaintiff,)
)
 v.)
)
 CONSUMER FINANCIAL)
 PROTECTION BUREAU,)
)
 Defendant,)
)
 and)
)
 COMMUNITY FINANCIAL SERVICES)
 ASSOCIATION OF AMERICA,)
)
 Intervenor-Defendant.)
 _____)

Case No. 20-cv-3122-APM

PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff National Association for Latino Community Asset Builders (NALCAB) submits this notice to apprise the Court of *Collins v. Yellen*, ___ U.S. ___, No. 19-422, 2021 WL 2557067 (June 23, 2021), which supports NALCAB’s standing in this case. The recent decision is strong authority that intervenor-defendant Community Financial Services Association of America (CFSA) is incorrect in arguing that the 2017 Ability-to-Repay Protections of the Consumer Financial Protection Bureau (Bureau) were void *ab initio* and that NALCAB therefore lacks standing to challenge the Bureau’s 2020 final rule (Repeal Rule) that rescinded those protections.

In its motion to dismiss, CFSA contended that the 2017 protections were void *ab initio* because they were adopted when the Bureau’s director was subject to a restriction on the President’s removal authority that the Supreme Court, in *Seila Law LLC v. Consumer Financial*

Protection Bureau, 140 S. Ct. 2183 (2020), later held unconstitutional. Thus, CFSA argued, the Ability-to-Repay Protections would not be reinstated by a decision in NALCAB's favor in this suit, which, CFSA continued, shows that NALCAB cannot establish redressability. *See* ECF No. 33 at 9-11; ECF No. 38 at 7-11. *Collins*, however, rejects CFSA's premise that actions adopted by officials subject to an unconstitutional removal restriction are void *ab initio*.

Collins addressed a challenge to actions of the Federal Housing Finance Agency (FHFA). Similarly to the situation considered by the Court with respect to the Bureau in *Seila Law*, the relevant statute restricted the President's ability to remove the FHFA director. *See* 2021 WL 2557067, at *5. Arguing that the restriction was unconstitutional, the plaintiffs sought relief including set aside of a certain FHFA action and the return of payments made pursuant to that action. *See id.* at *8, 19. The Supreme Court agreed that the removal restriction was unconstitutional, holding that the FHFA's structure reflected a constitutional violation akin to the defect identified in *Seila Law*. *See id.* at *15-18. In addressing remedy, however, the Court rejected the argument that actions taken by officials subject to the unconstitutional removal restriction are void *ab initio*. The Court explained: "Although the statute unconstitutionally limited the President's authority to *remove* the confirmed Directors, there was no constitutional defect in the statutorily prescribed method of appointment to that office. As a result, there is no reason to regard any of the [relevant] actions taken by the FHFA ... as void." *Id.* at *19; *see also id.* at *19 & n.25 (distinguishing *Collins* from other cases, including those that "involved a Government actor's exercise of power that the actor did not lawfully possess"). *Seila Law*, the Court emphasized, did not hold otherwise. In particular, and contrary to CFSA's argument, ECF No. 38 at 9, the Court explained that *Seila Law* does not mean that actions of a past Bureau director "would be void unless lawfully ratified." 2021 WL 2557067, at *19; *see also id.* at *19 n.24 (stating that *Seila*

Law's "holding on standing does not mean that actions taken" by officers subject to an unconstitutional removal restriction "are void *ab initio* and must be undone").

Collins thus supports NALCAB's position that the 2017 Ability-to-Repay Protections were not void *ab initio*. If NALCAB prevails and this Court sets aside the Repeal Rule, the Ability-to-Repay Protections will be reinstated, as they would have remained in effect if the Bureau had not adopted the Repeal Rule challenged in this case. *See* ECF No. 36 at 35-40.

As NALCAB earlier explained, *see* ECF No. 36 at 37, 40, a plaintiff might raise constitutional arguments in a later challenge to the Ability-to-Repay Protections, but that possibility does not alter NALCAB's standing here. *Collins* reinforces that, in such a suit, consideration of the appropriate relief (if any) would depend on arguments, facts, and circumstances in that case. *See* 2021 WL 2557067, at *20 & n.26 (remanding for consideration of whether plaintiffs had any entitlement to relief). In any event, the outcome of a potential future lawsuit is not relevant to NALCAB's standing.

Dated: June 24, 2021

Respectfully submitted,

Rebecca K. Borné (D.C. Bar No. 986679)
Center for Responsible Lending
910 17th Street NW, Suite 500
Washington, DC 20006
(202) 349-1850
rebecca.borne@responsiblelending.org

/s/ Rebecca Smullin
Rebecca Smullin (D.C. Bar No. 1017451)
Adina H. Rosenbaum (D.C. Bar No. 490928)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
rsmullin@citizen.org

Attorneys for Plaintiff