CFPB models softer face in Mulvaney makeover

An overhaul of the Consumer Financial Protection Bureau by its acting head has ruffled feathers and heralded a less aggressive enforcement regime.

> **"Mick Mulvaney has overseen sweeping reforms in the agency's structure and personnel as he delivers on his mandate to reduce the burden of regulation**

Since his appointment by President Trump in November 2017 as interim director of the Consumer Financial Protection Bureau (CFPB or Bureau), Mick Mulvaney has overseen sweeping reforms in the agency's structure and personnel as he delivers on his mandate to reduce the burden of regulation.

Mulvaney, who believes the CFPB—which was conceived to stamp out abusive consumer financial services practices after the financial crisis—is too powerful and has overstepped its statutory mandate, has instigated a dramatic overhaul during his brief tenure.

First, he introduced a layer of nine political appointees to serve in key positions, and recently disbanded three advisory boards: the Consumer Advisory Board, the Community Bank Advisory Council, and the Credit Union Advisory Council, in order to save on costs. The CFPB plans to reconvene the boards with fewer members in the fall.

Mulvaney has also announced plans to transfer the Office of Fair Lending and Equal Opportunity from the Division of Supervision, Enforcement & Fair Lending to the Office of the Director. As a result, the Office of Fair Lending and Equal Opportunity will no longer have fair lending supervisory authority, but rather will focus on advocacy, coordination and education. The Office of Students and Young Consumers, which has primarily investigated student loan abuses, will merge with the Office of Financial Education and instead focus on consumer education, including producing reports on the student loan industry and developing tools to assist students in navigating the process of paying college tuition. Lastly, Mulvaney has called on Congress to approve four reforms to the CFPB, namely:

1. to subject the CFPB to Congressional appropriations;
2. to give the President more oversight over the Bureau;
3. to create an independent inspector general for the CFPB; and
4. to subject all major, new CFPB rules to Congressional approval.

Mulvaney called on Congress to endorse the changes in order to increase the accountability of the CFPB and reduce bureaucracy: "[W]e need structural and legislative change to the way this place is being run."

Enforcement

At the same time, Mulvaney has signaled a shift in tone, stating that the CFPB will no longer "push the envelope" and will dial down its previously aggressive enforcement approach. Under Mulvaney's watch, the CFPB has dropped a lawsuit against four payday lenders and dismissed the Bureau's case against PHH Corporation, following a decision from the DC Circuit resolving, in part, the legal battle over the interpretation of the Real Estate Settlement Procedures Act and the constitutionality of the CFPB's single-director structure. By contrast, Attorneys General are expected to take the lead in enforcing consumer financial protection laws locally, while the CFPB will focus on the supervision and education of consumers regarding their financial protection rights. Relying primarily on consumer complaint data, the CFPB will focus its enforcement efforts to quantifiable and unavoidable harm to consumers. In addition, the Bureau is expected to dial back its use of the "unfair, deceptive or abusive acts or practices" provision (UDAAP) introduced under the Dodd-Frank Act as an enforcement tool.

The reassignment of the Office of Fair Lending and Equal Opportunity and Mulvaney's decision to tap the CFPB's reserves (instead of requesting funding) also appear to demonstrate a dialing down of the Bureau's enforcement efforts. The new CFPB leadership could use the Bureau's other initiatives, such as Project Catalyst and its No-Action Letter policy, to afford companies regulatory and enforcement relief—

Mick Mulvaney appointed interim director of the Consumer Financial Protection Bureau

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Mulvaney has already announced that the CFPB is developing a regulatory sandbox for fintech companies in close cooperation with the Commodity Futures Trading Commission.

Rulemaking

According to its new mission statement, the CFPB will now seek to reduce the regulatory burden for CFS-related activities, particularly rules introduced by the previous CFPB leadership under the Bureau’s discretionary authority. To that end, the Bureau intends to open new rulemakings to reconsider its payday, prepaid card and rules relating to the Home Mortgage Disclosure Act (HMDA). The new CFPB leadership may also seek to revisit the Bureau’s previous significant rules as part of its five-year “look-back” assessments mandated by the Dodd-Frank Act. The Bureau is nevertheless expected to release a long-anticipated debt collection rule, given the sheer volume of collections complaints and the new leadership’s focus on that metric.

Legislation

Changes to the CFPB’s structure and supervisory authority are also looming, as lawmakers have sought to revamp the Bureau through the legislative process as well as subject its funding to Congressional appropriation. In December 2017, the Government Accountability Office (GAO) nullified a previous CFPB bulletin targeting dealer mark-ups using the disparate impact theory, which was recently rolled back by Congress under the Congressional Review Act.

Other proposed bills, currently in the US House or Senate, would impact many of the CFPB’s core functions if passed, including its oversight of small-dollar loans, mortgage-related entities and consumer lending generally. Notably, the proposed Home Mortgage Disclosure Adjustment Act would exempt community banks, small credit unions and nonbank mortgage lenders from the expanded HMDA disclosure requirements. Lawmakers have also been actively trying to enable banks to issue high-interest payday loans (EQUAL Act), as well as to legislatively overturn the Second Circuit’s decision in *Madden v. Midland Funding* to allow lenders to circumvent state interest caps. Finally, the Accountability of Wall Street Executives Act, introduced by certain Democrats, if passed, would permit state Attorneys General to issue subpoenas to investigate national banks. Other pending proposals have sought to revamp the Bureau’s leadership structure by transforming it into a multi-member, bipartisan commission—an undercurrent present in recent, key federal cases.

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