BROOKINGS

Report

As leadership shifts, what to watch for at the CFPB

Makada Henry-Nickie and Aaron Klein Monday, December 18, 2017

Editor's Note:

This post is the first in a series analyzing potential shifts in policy at the Consumer Financial Protection Bureau (CFPB) in the months ahead. Read the second piece on the CFPB's retreat from mortgage data collection here.

Winter is here and change has arrived at the Consumer Financial Protection Bureau (CFPB). The maelstrom began with the resignation of the Bureau's Director Richard Cordray and his designation of Leandra English as Deputy Director, which installed her as the Bureau's Acting Director. Within hours of Cordray's announcement, President Trump tapped Mick Mulvaney, who already serves as director of the White House's Office of Management and Budget, as his pick to lead the Bureau. The question as to who is the legitimate interim Director continues in court. While the litigation plays out, Mr. Mulvaney has effective control of the Bureau.

Mulvaney has been a vociferous critic of the CFPB, once remarking, "I don't like the fact that the CFPB exists." His views coupled with his unprecedented dual-role as Acting Director of an independent financial regulator and senior White House official raise broad questions about the future of the CFPB and the Trump Administration's respect for regulatory independence.

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Furthermore, Mulvaney's appointment coupled with President Trump's delay in naming a new, permanent head are sources of confusion and uncertainty for financial institutions. The length of Mulvaney's interim tenure and uncertainty on the regulatory philosophy of a new permanent director are open questions with substantial implications for the financial services industry and consumers. Uncertainty surrounding the Agency's future regulatory work (rule creation or rule dismantling) will likely create confusion in compliance implementation for financial institutions. Costs around regulatory uncertainty were frequently cited by industry as a significant problem during the Bureau's rulemaking cycles. Now that those rules are in place, that uncertainty had been removed. Mulvaney's appointment brings it back.

Financial regulators have experienced leadership changes for their entire existence. For decades presidential elections have established transition precedents for independent financial regulators. In this regard, CFPB's leadership transition is not unique, but its regulatory mandate is. Therefore, it will be important to track unfolding changes at the Bureau and assess their potential impact on consumers and financial markets. This post and subsequent in the series will highlight major changes taking place at the Bureau in order to understand the broad implications for consumer financial protections.

Because the CFPB is undergoing its first ideological swing in leadership, it is tempting to characterize every change in policy as unprecedented or problematic—this would be a slippery trajectory. Actually, CFPB's new leadership should be expected to take the Bureau in a different direction. It could be reasonably argued that Mulvaney's changes may offer new policy tools that prove effective at improving consumer choice and enhancing competition, while combating abusive and predatory banking practices.

Either way, most changes at the Bureau will likely be bucketed into two broad categories: those that are within expectations and scope for normal policy shifts, and those are aberrations from precedents. Identifying actions and processes that break precedent, are potentially beyond the law, and have clear negative implications counter to the Bureau's mission is an important goal of the series. Calling out new actions, that have precedent and are legal, should not be mistaken as support for the policy or decision itself, but rather an acknowledgment of change that is within the bounds of traditional changes in leadership, even if contrary to sound policy.

Two examples of changes at the Bureau that deserve discussion are changes to Bureau staffing and regulatory fines. The new Acting Director is certainly entitled to bring on a small group of political appointees, such as a chief of staff. These are powerful positions and public scrutiny of their selection is warranted. Changes in key personnel are legitimate consequences of elections, however, balanced critiques are still required. On the one hand, disparaging Mulvaney's personnel selections for his front-office as intentional weakening of the Bureau's operations is unfair. On the other, the potential of appointment of a series of political 'shadow directors' to monitor the Bureau's major divisions is unprecedented and raises concern about their ability to function and is a systemic threat to agency independence.

Another example involves fines. Given his well-publicized position on CFPB's regulatory work, Mr. Mulvaney is expected to aggressively reduce the Agency's enforcement and supervision activities. Under Director Cordray CFPB returned more than $12 billion to over 29 million harmed consumers. It is easy to prognosticate that consumers are likely to receive less in future settlements. In fact, one of the first actions the Bureau has taken under Mr. Mulvaney was to rescind a request to collect $8 million already awarded by a court in damages for consumers. Reports surfaced that Mr. Mulvaney was preparing to reduce fines for Wells Fargo as it relates to the bank's recent scandal regarding the opening of 1.5 million unauthorized deposit accounts and other improper activity. Perhaps sensing the political backlash, the President weighed in, publicly tweeting about fining Wells Fargo even more.

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Failing to collect existing fines and reducing penalties on Wells Fargo would be bad policy, but within the bounds of the authority of the Director. It would be consistent with the broad philosophy of a CFPB that enforces fewer penalties. However, the President's action seriously undermines the CFPB's independence and more broadly that of all financial regulators. Enforcement actions, such as the size of a fine, are meant to be free from political interference.

Changes in CFPB's policy, priorities, and processes will not always be straightforward. This series will focus on identifying the policy areas we anticipate will be most affected by the transition, and provide two levels of analysis. First, we will identify a policy change and provide an impartial analysis of its impact. Second, we will describe and analyze the process behind the change. We expect the next several pieces of this series will focus on: new staffing at the Bureau, changes in enforcement, and the status of the Bureau's small-dollar lending rule (aka payday loan regulation). Unexpected events may come up, so stay tuned for the next as changes at the CFPB continue.

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Report Produced by **Center on Regulation and Markets**