

# Client Alert

March 2018

## The New CFPB – A Review of Actions Taken by Acting Director Mulvaney During the First Three Months of his Tenure

This is the seventh in a series of articles from Hunton & Williams LLP discussing reform efforts related to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). This article provides a brief update of the actions taken in the first three months of Mick Mulvaney's term as the acting director of the Consumer Financial Protection Bureau (CFPB).

From the outset it was clear that Mr. Mulvaney's tenure as acting director of the CFPB would be a political flashpoint. His contentious appointment set the stage for a potential sea change in the agency's enforcement and rulemaking agenda. Many anticipated that the former South Carolina congressman and current director of the Office of Management and Budget would completely overhaul the CFPB. After only three months on the job, Acting Director Mulvaney has already made several moves indicative of his intent to temper the aggressive stances taken by his predecessor, Richard Cordray, including halting the implementation and enforcement of certain rules against payday lenders, issuing a revamped strategic plan for the agency and seeking public input through broad requests for comment and information.

### Payday Lender Regulations and Enforcement

The change in direction at the CFPB is most obvious in the context of small-dollar loans. Prior to Mr. Cordray's resigning as director, the CFPB published the Payday, Vehicle Title, and Certain High-Cost Installment Loans rule (Payday Lender Rule).<sup>1</sup> The Payday Lender Rule determined that certain actions relating to small-dollar loans would violate Dodd-Frank's prohibition of "unfair and abusive acts" including:

- The issuance of certain loans if the lender failed to reasonably determine that the consumer could repay the loan;
- Any attempt to withdraw funds in connection with certain loans from a consumer's account after two consecutive failed payment attempts; and
- Failure to provide certain notices to consumers before attempting to withdraw funds from their accounts.

In his first three months at the helm, Acting Director Mulvaney has changed the CFPB's tact with regard to the rules targeted against payday lenders in two substantial respects. On January 17, 2018, the CFPB announced its intentions to reconsider the Payday Lender Rule through the rulemaking process. This reconsideration marks a stark departure from the prior administration's aggressive enforcement against payday lenders.

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<sup>1</sup> Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472 (proposed November 17, 2017) (to be codified at 12 CFR 1041).

Evidence of change in the CFPB was further illuminated when the CFPB voluntarily dismissed its case against Golden Valley Lending, Inc., and three other tribal payday lenders in the United States District Court for the District of Kansas.<sup>2</sup> The CFPB's dismissal followed its motion to amend a briefing schedule, in which the CFPB requested additional time to respond to the defendants' motion to dismiss.<sup>3</sup> The CFPB requested additional time in order to confer with the new leadership of the agency, i.e., Acting Director Mulvaney.<sup>4</sup> This is evidence that Acting Director Mulvaney meant it when he said that the CFPB will cease "pushing the envelope" in its efforts to prosecute actions against consumer finance companies.<sup>5</sup>

### **New Strategic Plan**

Acting Director Mulvaney's efforts to reform the CFPB can also be seen in the agency's newly promulgated strategic plan (2018 Strategic Plan) and revamping of the agency's mission statement. Emphasis in the mission statement has shifted from a focus on "consistently and fairly enforcing consumer finance rules"<sup>6</sup> to a more benign "regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws and educate and empower consumers to make better informed financial decisions."<sup>7</sup> Under Mr. Cordray's regime, the CFPB targeted a set of performance-based goals<sup>8</sup> whereas the 2018 Strategic Plan contains no similar performance-based goals.

For additional information concerning the 2018 Strategic Plan, please see the Hunton & Williams client alert issued in February 2018.<sup>9</sup>

### **Requests for Comment and Requests for Information**

One way in which the CFPB proposed to effectuate the 2018 Strategic Plan is to seek "the counsel of others and [make] decisions after carefully considering the evidence."<sup>10</sup> Acting Director Mulvaney has wasted little time in soliciting that counsel by publishing several requests for comments or information. The requests are broad in scope and are aimed at clarifying the agency's role in the regulatory framework.

In February, the CFPB published two requests for information seeking comment assessing:

1. The CFPB's efficiency and effectiveness with respect to its supervision program; and
2. Public and nonpublic external engagements.

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<sup>2</sup> Notice of Voluntary Dismissal, No. 17-02521 (D. Kan. 2018) (ECF No. 101).

<sup>3</sup> Third Mot. For Extension of Time, No. 17-02521 (D. Kan. 2018) (ECF No. 98).

<sup>4</sup> *Id.*

<sup>5</sup> See e.g., Mick Mulvaney, "The CFPB Has Pushed its Last Envelope" *The Wall Street Journal* (Jan. 23, 2018).

<sup>6</sup> Consumer Financial Protection Bureau (CFPB), Strategic Plan FY 2013-FY 2017, (2013), <http://www.consumerfinance.gov/strategic-plan/>.

<sup>7</sup> CFPB, Strategic Plan FY 2018-2022 (Feb. 2018).

<sup>8</sup> See CFPB, Strategic Plan FY 2013-FY 2017, (2013) <http://www.consumerfinance.gov/strategic-plan/>.

<sup>9</sup> Reform From Within: CFPB Announces New Strategic Plan, February 2018, <https://www.hunton.com/images/content/3/5/v2/35797/reform-from-within-cfpb-announces-new-strategic-plan.pdf>.

<sup>10</sup> CFPB, Strategic Plan FY 2018-2022 (Feb. 2018).

On March 1 the CFPB published a request for information to assess potential changes in its public reporting practices of consumer complaint information. The CFPB also issued a call for evidence in which it identified six upcoming requests for information related to:

- (1) The rulemaking process;
- (2) Bureau-adopted rules;
- (3) Inherited rules;
- (4) Guidance and implementation support;
- (5) Consumer education; and
- (6) Consumer inquiries.

It remains unclear what shape the CFPB will ultimately take. But based on his actions in the first three months of his tenure, Acting Director Mulvaney intends to effectuate substantial change.

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