What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

Caren Enloe leads Smith Debnam' s consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: Consumer Financial Services Litigation and Compliance dedicated to consumer financial services and has

Mulvaney Reins in the CFPB

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On November 24, 2017, the White House appointed Mick Mulvaney as acting director of the CFPB, effective November 27, 2017. Since then, concerns have been raised that Mulvaney might 'gut" the agency. Here is a quick look at the actions of the agency since Mulvaney's appointment:

December 2017: The CFPB changed its mission statement in December. Previously, the mission statement read: "The Consumer Financial Protection Bureau is a 21st-century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives."

The mission statement now reads: "The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by *regularly identifying and addressing outdated, unnecessary, or unduly burdensome regulations* by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives." (emphasis supplied).

January 16, 2018: The CFPB announced its intentions to reconsider the final payday rule which took effect January 16, 2018.

January 17, 2018: Director Mulvaney informed the Fed that the CFPB would forego any funding for the Second Quarter of 2018, stating its intent to spend down the CFPB's reserve fund prior to requesting any additional funding. In his letter to Fed Chair Janet Yellen, Mulvaney stated:

> "I have determined that no additional funds are necessary to carry out the authorities of the Bureau for FY 2018, Q2. Simply put, I have been assured that the funds currently in the Bureau Fund are sufficient for the Bureau to carry out the statutory mandates for the next fiscal quarter while striving to be efficient, effective, and accountable."

January 17, 2018: The CFPB stated its intent to publish in the Federal Register a series of Requests for Information seeking comment on its enforcement, supervision, rulemaking, market monitoring and education activities. The Release quotes Mulvaney as stating:

been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

> “[i]n this New year, under new leadership, it is natural for the Bureau to critically examine its policies and practices to ensure they align with the Bureau’s statutory mandate.”

The first of those RFIs will review the Bureau’s Civil Investigative Demand processes and procedures.

January 24, 2018: Mulvaney indicated that the CFPB would no longer ‘push the envelope’ and instead of regulating through enforcement, would engage in more formal rulemaking. Significantly, Mulvaney also indicated that debt collection will be prioritized.

The actions of Mulvaney thus far indicate the Trump administration, at a minimum, will significantly rein in the CFPB. Based on the most recent developments, it appears more likely that a proposed debt collection rule may again be on the agenda.

CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center
4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000
Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
Fax: 843.714.2541