



Consumer Financial Services Outlook 2018

Thursday, January 11, 2018, 2:00 pm – 3:00 pm ET

Speakers

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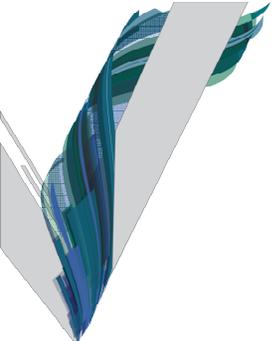
Allyson B. Baker,
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Today's Speakers



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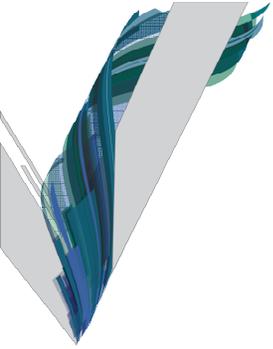


Alexandra Megaris,
Counsel, Consumer
Financial Services Practice,
Venable LLP



Today's Topics

- CFPB Under New Management and the Political Landscape
- CFPB Rulemaking Agenda
- Consumer Financial Services Enforcement
- Advertising Financial Products
- Consumer Lending
- Fintech
- Debt Collection



CFPB Under New Management and the Political Landscape

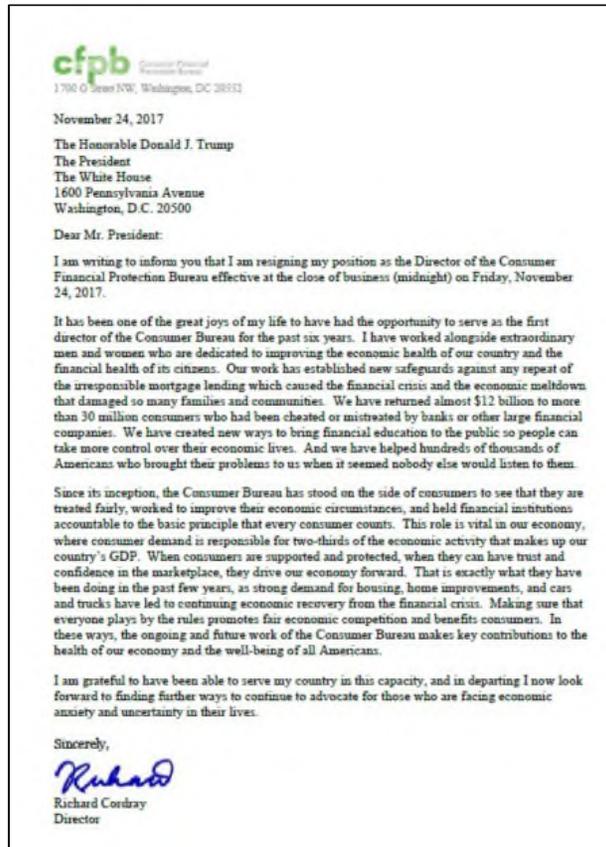


CFPB Director Cordray Resigns

\$11.9 billion in relief to consumers from CFPB enforcement actions

29 million+ consumers will receive relief because of CFPB actions

1.2 million+ complaints handled from consumers



- New Regulatory Rules
- Supervisory Exams and Enforcement
- Consumer Education and Financial Literacy
- 1,500+ employees
- \$575.6 million incurred in FY2016

Mulvaney Takes Reins, Triggering Court Battle



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About 18,800 results (0.36 seconds)

-  **Battle Over Bank Watchdog Whiffs on the Law**
Bloomberg - Dec 15, 2017
Even if federal law turns out to favor Trump's claim that the president has the authority to pick a temporary director of the bank-regulation agency, the **Consumer Financial Protection Bureau**, it doesn't let him pick just anybody. It's Trump's particular choice of Mick **Mulvaney**, the White House budget director, ...
-  **Can CFPB's Mulvaney bring politics to independent agency ...**
American Banker - Dec 15, 2017
When Mick **Mulvaney** announced plans to hire political appointees to work at the **Consumer Financial Protection Bureau**, many viewed that as antithetical to the workings of an independent regulator. Political appointees don't work at the banking agencies, they said. And that is true. The regulators are ...
-  **An Open Letter To CFPB Acting Director Mick Mulvaney**
Forbes - Dec 12, 2017
I join my fintech colleagues and working Americans in supporting the **Consumer Financial Protection Bureau's** mission. Regulation done right is a positive thing for consumers and businesses alike. Those of us who are committed to delivering high-quality financial services welcome **CFPB** guidance that ...
Lawsuit: Trump appointee Mick **Mulvaney** has 'no more right' to lead ...
Washington Examiner - Dec 12, 2017
[View all](#)
-  **The Fight to Control the CFPB Isn't Over Yet**
The Intercept - Dec 13, 2017
A federal court ruling last month, which denied **CFPB** Deputy Director Leandra English's request to block **Mulvaney** from assuming the directorship, was widely seen in the media as legitimizing Trump's appointment of **Mulvaney** and ending English's challenge. But that decision pertained to a temporary ...
CUNA Supports **Mulvaney** as Acting **CFPB** Director
The National Law Review - Dec 13, 2017
[View all](#)



Leandra English v. Donald J. Trump, et al.

Case 1:17-cv-02534 Document 1 Filed 11/26/17 Page 1 of 9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEANDRA ENGLISH,
Deputy Director and Acting Director,
Consumer Financial Protection Bureau,
1700 G Street, NW,
Washington, DC 20532,
Plaintiff,

Case No. _____

v.

DONALD JOHN TRUMP,
in his official capacity as President of
the United States of America,
1600 Pennsylvania Avenue, NW,
Washington, DC 20500,

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

EMERGENCY TEMPORARY
RESTRAINING ORDER SOUGHT

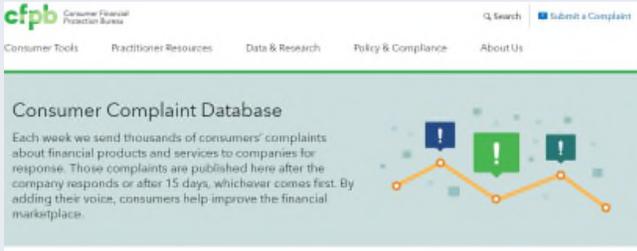
JOHN MICHAEL MULVANEY,
in his capacity as the person claiming to
be acting director of the Consumer
Financial Protection Bureau,
725 17th Street, NW,
Washington, DC 20503,
Defendants.

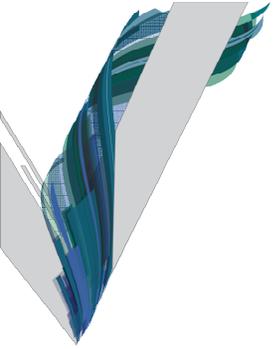
INTRODUCTION

The Dodd-Frank Act of 2010 created the Consumer Financial Protection Bureau as an independent federal agency, to be led by a single director. Effective at midnight on November 24, 2017, the Bureau's first Director, Richard Cordray, resigned his post. At that point, plaintiff Leandra English, the Bureau's Deputy Director, became the agency's Acting Director by operation of law. The Dodd-Frank Act is clear on this point: It mandates that the Deputy Director "shall . . . serve as the acting Director in the absence or unavailability of the Director." 12 U.S.C. § 5491(b)(5)(B). By statute, she serves in that capacity until such time as the President appoints and the Senate confirms a new Director. See 12 U.S.C. § 5491(b)(2).

- The plaintiff, Leandra English, alleged that the defendants, Donald Trump and Mick Mulvaney, violated 12 U.S.C. § 5491(b)(5)(B), a component of the Dodd–Frank Act of 2010, when President Trump appointed Mulvaney to be Acting Director of the Consumer Financial Protection Bureau.
- On January 10, 2018, Judge Kelly denied request for injunction sought by English, concluding that President Trump had authority to install Acting Director under Federal Vacancies Reform Act.

Cordray Era vs. Modern Era

	Cordray Era	Modern Era
Mission Statement	<p>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. For more information, visit consumerfinance.gov</p>	<p>The Bureau of Consumer Financial Protection 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 enforcing federal consumer financial law, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov</p>
Frequent Reference Sources	 	 
Oversight focus	<p>Consumer Complaint Database</p> 	 



CFPB Rulemaking Agenda

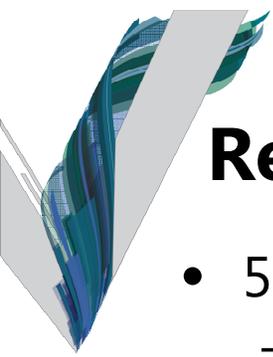


CFPB Rulemaking Outlook 2018

Agency Rule List - Fall 2017

Consumer Financial Protection Bureau

Agency	Agenda Stage of Rulemaking	Title	RIN
CFPB	Prerule Stage	Business Lending Data (Regulation B)	3170-AA09
CFPB	Prerule Stage	Overdraft Services	3170-AA42
CFPB	Prerule Stage	Submission of Credit Card Agreements Under the Truth in Lending Act (Regulation Z)	3170-AA70
CFPB	Prerule Stage	Review of Inherited Regulations	3170-AA73
CFPB	Proposed Rule Stage	Supervision of Larger Participants in Markets for Personal Loans	3170-AA07
CFPB	Proposed Rule Stage	The Expedited Funds Availability Act (Regulation CC)	3170-AA31
CFPB	Proposed Rule Stage	Debt Collection Rule	3170-AA41
CFPB	Proposed Rule Stage	Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)	3170-AA75
CFPB	Final Rule Stage	Gramm-Leach-Bliley Act (GLBA) (Regulation P)	3170-AA60
CFPB	Final Rule Stage	Amendments Relating to Disclosure of Records and Information	3170-AA63
CFPB	Final Rule Stage	Amendment to the Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z)	3170-AA71
CFPB	Final Rule Stage	Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)	3170-AA72
CFPB	Final Rule Stage	Home Mortgage Disclosure (Regulation C) Increase in Institutional and Transactional Coverage Thresholds for Open-End Lines of Credit	3170-AA76



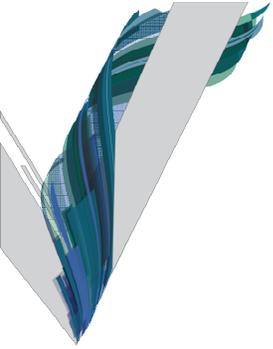
Re-Focus on Mortgage Rules

- 5-Year Lookbacks (Title XIV Mortgage Rules)
 - CFPB published lookback plans and requests for comment in 2017
 - Assessment reports by January 2019
 - Findings considered for future rulemakings
 - Focus on “access to credit”
 - GSE “patch” and other issues
 - More market-friendly environment at CFPB
- TRID, Servicing and HMDA “fixes”
 - TRID cures, “black hole,” other issues
 - HMDA implementation support



Non-Mortgage Rules

- Payday/Small Dollar
 - Potential CRA challenge
 - Implementation
 - Larger participant rule
- Debt Collection
 - Proposal
- Prepaid Card Rule
 - April 2018 effective date
- Other Rules
 - Small Business Data Collection
 - Overdraft



Consumer Financial Services Enforcement

Acting Director Reviewing Enforcement Matters



The screenshot shows a news article from The Washington Times. The headline is "Mulvaney scrutinizing 125 CFPB cases opened by predecessor". Below the headline is a photo of Mick Mulvaney. A quote box contains the text: "I've got a notebook in front of me with 28 enforcement matters in litigation right now that I'm reviewing," Mr. Mulvaney told The Times. "There are 14 open enforcement matters that are in settle-to-sue authority that Mr. Cordray gave, that I'm reviewing. Then there are 90 enforcement investigations which are ongoing. That's what I'm combing through."

Consumer Financial Protection Bureau acting Director Mick Mulvaney says he is sorting through files on a case-by-case basis to "make sure that we are not going beyond the mandate that we are not abusing our position, and that we are not getting in the way of the proper functioning of the financial services and capital markets."

By Dave Boyer - The Washington Times - Thursday, November 30, 2017

"I've got a notebook in front of me with 28 enforcement matters in litigation right now that I'm reviewing," Mr. Mulvaney told The Times. "There are 14 open enforcement matters that are in settle-to-sue authority that Mr. Cordray gave, that I'm reviewing. Then there are 90 enforcement investigations which are ongoing. That's what I'm combing through."



Consumer Financial Services Enforcement

- Consumer Financial Protection Bureau
 - Still active in litigation
 - Still actively pursuing investigations and enforcing civil investigative demands
 - Still issuing Notice and Oppportunity to Respond and Advice calls (NORA Calls)



Consumer Financial Services Enforcement

- Federal Trade Commission
 - Still issuing civil investigative demands, but more conscientious about the burden on businesses
 - Still actively litigating
 - Targeted market areas



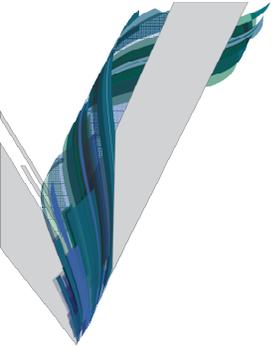
Consumer Financial Services Enforcement

- Prudential Banking Regulators: Scaled back, but have they really
 - Office of the Comptroller of the Currency
 - Federal Deposit Insurance Corporation
 - Federal Reserve Board



Consumer Financial Services Enforcement

- State Attorneys General Offices
 - Some have publicly stated that they will pick up any lull in federal enforcement
 - Mini UDAP laws and other regulations
 - Key States: NY, CA, PA, IL, and others
 - Anticipate use of their authority pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
 - UDAAP
 - 19 enumerated regulations from Regulation E to Z and the Military Lending Act

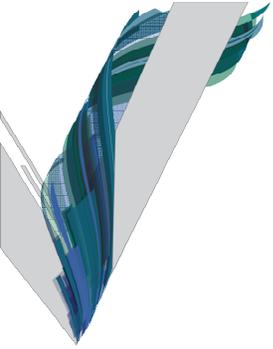


Advertising



Advertising Consumer Finance Products

- FTC and CFPB have invested significant resources in understanding and pursuing lead generation industry, particularly in the small dollar and education sectors. Most controversial is CFPB's pursuit of lead generators for selling leads to lenders that, per the CFPB, fail to comply with state lending laws.
- Application of state lending license laws to lead generators still gray; some states passing specific laws to address lead generation.
- Use of native advertising and social media influencers—two very hot marketing techniques—continue to be FTC enforcement priority. FTC has published guidance and its expectations.



Consumer Lending



Non-Mortgage Lending

- Fintech trends
 - OCC FinTech Charter
 - Will anyone get one?
 - Fair lending and underwriting
 - CFPB No Action Letter: Will there be more?
 - “True lender” issues/state regulatory
- CFPB Installment Loan rule
 - Effect on installment loan and payday industries
 - Payday alternative loans
- Auto lending
 - CFPB, FTC, and state supervision
 - Fair lending/enforcement/examinations



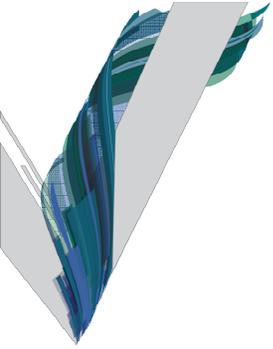
Mortgage (Origination)

- Continued evolution of non-QM
- HMDA
 - New data collection protocols
 - “Good faith efforts at compliance” for examinations
 - Reporting
- Disclosures/cures
- State activity



Mortgage (Servicing)

- Effective date for rule changes
 - Successor in interest
 - New periodic statement rules
 - Bankruptcy servicing
- Limited English Proficiency (LEP)
 - Fair lending/servicing
 - How (and when) to provide LEP services



Fintech



Fintech Introduction

- Fintech – General term used to describe the provision of financial services using technology.
 - Online lenders (small business/consumer/mortgage)
 - Digital wallets/mobile payments/money transfers
 - Savings, financial management, and investment apps
 - Crowdfunding
 - Data analytics and lead generators
 - Cryptocurrencies



Fintech Introduction

- Federal and state regulatory developments will continue to impact fintech industry in 2018
 - Federal scrutiny for an industry perceived (mistakenly) by many to be “unregulated”
 - Competition between federal and state regulators
 - State regulatory challenges
 - Disruption continues – is 2018 the year cryptocurrencies and blockchain technologies break out?



Continued Federal Scrutiny

- Topics likely to attract significant attention at the federal level
 - Data breach and Cybersecurity
 - Is it time for national standards?
 - Data Sharing/Third party access to consumer financial data
 - CFPB Outline of Principles for Consumer Authorized Data Sharing
 - Use of alternative data in lending
 - CFPB RFI in 2017
 - No action letter to Upstart Network, Inc.
 - Continued scrutiny of payments industry by CFPB and FTC (consumer fraud)
 - Notwithstanding “end” of Operation Chokepoint, regulators continue to bring enforcement actions against payment processors
 - Anti-money laundering
 - Implementation of new beneficial ownership rule



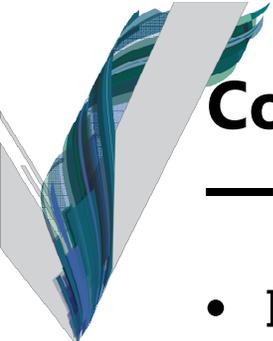
Competition between Federal and State Regulators — OCC Charter Update

- In 2016, Office of the Comptroller of the Currency (OCC) limited purpose national bank charter for fintechs.
- In 2017, applications filed, but no charters issued yet. Key considerations from OCC perspective:
 - No inappropriate comingling of banking and commerce
 - No predatory, unfair, or deceptive products or services
 - Rigorous supervision
 - Emphasis on financial inclusion
- Will a charter ever be approved?
 - Several in Congress have raised questions about the OCC's plans.
 - Separate lawsuits filed by Conference of State Bank Supervisors and New York Department of Financial Services challenging the OCC's plans.
 - NYDFS lawsuit was dismissed in December 2017



Competition between Federal and State Regulators — CSBS Vision 2020

- In 2017, the CSBS announced its Vision 2020 plan to modernize state regulation of non-banks, including fintechs.
 - Redesign the Nationwide Multistate Licensing System (NMLS).
 - Harmonize multi-state supervision.
 - Form an industry advisory panel.
 - Assist state banking departments.
 - Make it easier for banks to provide services to non-banks.
 - Make supervision more efficient for third parties.
- Still a long way to go to harmonize patchwork of state licensing requirements and applications.



Competition between Federal and State Regulators — NYDFS (and maybe other states?)

- In 2016 and 2017, the NYDFS issued several rules that created legal requirements that overlap with existing federal requirements:
 - In 2017, NYDFS issued cybersecurity requirement for covered entities.
 - In 2016, NYDFS issued AML requirements for covered entities.
- Will other states follow this lead in 2018 by establishing their own cybersecurity, AML, or other regulations?
 - How will these state laws mesh with existing federal laws?



State Regulatory Challenges

- “Patchwork regulation” has become a popular phrase in describing the differing approaches states have taken in supervising fintech companies and other non-bank financial services providers.
- There are two main fintech lending models:
 - Bank partnership model
 - Non-bank direct lending model
- Each model presents its own challenges



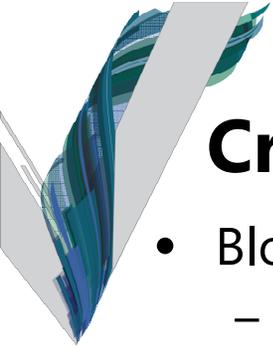
State Regulatory Challenges

- Bank Partnership Model Challenges
 - “True Lender” issues
 - Madden v. Midland (valid-when-made doctrine)
 - Madden v. Midland (choice of law)
 - Potential licensing issues for brokering, servicing, and debt collection
 - Bank oversight and supervision



State Regulatory Challenges

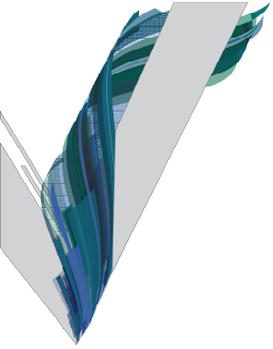
- Direct Lender Model Challenges
 - Funding challenges
 - Obtaining state lending licenses
 - Associated burden of administrative and regulatory compliance
 - Additional regulatory compliance requirements
 - Examinations/Regulatory supervision



Cryptocurrencies

- Blockchain Applications on the Horizon
 - Financial services
 - Non-financial services (real estate, healthcare, energy, government)
- Regulatory Developments

Federal	State
<ul style="list-style-type: none">• Hearings in Congress 2013-2017, but no legislative developments as of yet	<ul style="list-style-type: none">• Illinois and Delaware blockchain initiatives
<ul style="list-style-type: none">• SEC – Investigative report on DAO initial coin offering	<ul style="list-style-type: none">• Arizona HB 2417 – governing the enforceability of blockchain powered smart contracts
<ul style="list-style-type: none">• SEC – Endorsements warning	<ul style="list-style-type: none">• Vermont S. 135 – studying blockchain opportunities
<ul style="list-style-type: none">• CFTC Primer on Virtual Currencies	<ul style="list-style-type: none">• Nevada S. 398 – use of blockchain for electronic records and signatures
<ul style="list-style-type: none">• FinCEN – Money Transmission Guidance	<ul style="list-style-type: none">• Uniform Law Commission publishes model law for regulation of cryptocurrencies

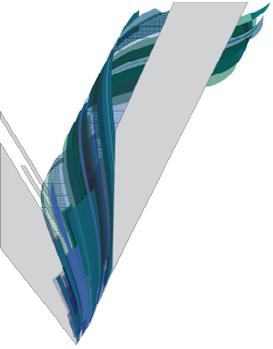


Debt Collection



Debt Collection

- CFPB rulemaking in limbo
- CFPB examinations proceeding on schedule
- Increased scrutiny over collections litigation practices by state licensing and enforcement agencies
- Student loan debt continues to be top issue for regulators



Questions?

Thank You!