

March 4, 2019

## Memorandum

**To:** Members, Committee on Financial Services

**From:** FSC Majority Staff

**Subject:** March 7, 2019, Full Committee Hearing, “Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau”

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The Committee on Financial Services will hold a hearing entitled, “Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau,” at 10:00 a.m. on Thursday, March 7, 2019, in room 2128 of the Rayburn House Office Building. This will be a two-panel hearing with the following witnesses:<sup>1</sup>

### Panel 1

- **The Honorable Kathy Kraninger**, Director, Consumer Financial Protection Bureau

### Panel 2

- **Mr. Hilary Shelton**, Director & Senior Vice President for Advocacy and Policy, National Association for the Advancement of Colored People
- **Ms. Linda Jun**, Senior Policy Counsel, Americans for Financial Reform
- **Ms. Jennifer Davis**, Government Relations Deputy Director, National Military Family Association
- **Mr. Seth Frotman**, Executive Director, Student Borrower Protection Center
- **Mr. Scott Weltman**, Managing Shareholder, Weltman, Weinberg & Reis Co., L.P.A.

## Overview

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the Director of the Consumer Financial Protection Bureau (Consumer Bureau) is required to testify before the Committee at semi-annual hearings regarding a report the Consumer Bureau is required to submit to the Committee.<sup>2</sup>

Kathy Kraninger was confirmed by the Senate and sworn in to serve as Director of the Consumer Bureau in December 2018. During her predecessor’s 13-month tenure running the Consumer Bureau from November 2017 to December 2018, Mick Mulvaney appeared only once before the Committee on April 11, 2018, despite a statutory mandate

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<sup>1</sup> Mr. Mick Mulvaney, Acting Chief of Staff, White House, and Director, Office of Management and Budget, was invited to testify, but he has failed to respond to the Committee’s requests and is not expected to appear.

<sup>2</sup> Dodd-Frank Act § 1016.

that he testify before the Committee semiannually. The Committee has invited Director Kraninger and Mr. Mulvaney to testify before the Committee, in this instance regarding the Consumer Bureau's Spring 2018 Semi-Annual Report to the Congress.<sup>3</sup>

Furthermore, Chairwoman Waters has a discussion draft, entitled the "Consumers First Act," that is cosponsored by 28 Members of the Committee and will be discussed at the hearing. The proposal attempts to address concerns that the Consumer Bureau recently has not recently fulfilled both the spirit and plain letter of the law.<sup>4</sup>

## Background

In response to the financial crisis from 2007 to 2009 caused in part by period of unchecked and rampant predatory lending, Congress determined it was necessary to create a strong and independent federal agency with the ability to protect consumers from unfair, deceptive, or abusive acts or practices in the financial marketplace.<sup>5</sup>

Title X of the Dodd-Frank Act created the Consumer Bureau as an independent agency within the Federal Reserve System, led by a single director.<sup>6</sup> In establishing the Consumer Bureau, Congress explicitly laid out in statute various mandates and outlined the agency's purpose, objectives, and functions. For example, the Dodd-Frank Act states that the Consumer Bureau, "shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."<sup>7</sup>

Since opening its doors in 2011, the Consumer Bureau has investigated and uncovered egregious and illegal conduct in the financial marketplace, including discriminatory and predatory products and services offered to consumers. The Consumer Bureau has returned \$12.4 billion to over 31 million consumers that were harmed by bad actors. The Consumer Bureau also has issued various rulemakings that provide strong consumer protections, including those that ensure borrowers are empowered to make the

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<sup>3</sup> See footnote 1. In addition, the Spring 2018 Semi-Annual report, which was signed by Mr. Mulvaney, focuses on the Consumer Bureau's activities from October 1, 2017 through March 31, 2018, and is available at:

[https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp\\_semi-annual-report-to-congress\\_spring-2018.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_semi-annual-report-to-congress_spring-2018.pdf).

Director Kraninger and Mr. Mulvaney were invited to testify on the report and to provide any relevant updates regarding the Consumer Bureau's activities since March 31, 2018. After the two were invited, the Consumer Bureau issued the Fall 2018 Semi-Annual Report on February 12, 2019, which covers the Consumer Bureau's activities from April 1, 2018 through September 30, 2018, available at:

[https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb\\_semi-annual-report-to-congress\\_fall-2018.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_fall-2018.pdf).

While this memo will summarize both reports, under Section 1016 of the Dodd-Frank Act, the Committee reserves the right to hold a future hearing on the Fall 2018 Semi-Annual Report to Congress.

<sup>4</sup> The legislative proposal is similar to H.R. 6972, the Consumers First Act, sponsored by Chairwoman Waters in the 115<sup>th</sup> Congress. See <https://www.congress.gov/bill/115th-congress/house-bill/6972> and <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=401639>.

<sup>5</sup> "The Consumer Financial Protection Bureau In Perspective," House Financial Services Committee Democratic Staff Report, July 21, 2017, [https://financialservices.house.gov/uploadedfiles/cfpb\\_staff\\_report.pdf](https://financialservices.house.gov/uploadedfiles/cfpb_staff_report.pdf).

<sup>6</sup> For more information on the Consumer Bureau, see <http://www.crs.gov/Reports/IF10031> and [https://www.theconstitution.org/wp-content/uploads/2017/12/20161020\\_White\\_Paper\\_CFPB.pdf](https://www.theconstitution.org/wp-content/uploads/2017/12/20161020_White_Paper_CFPB.pdf).

<sup>7</sup> Dodd-Frank Act § 1021(a). Also see Dodd-Frank Act § 1021(b) and § 1022(c) for objectives and functions, among other statutory provisions.

best financial decisions for themselves through clear disclosures and strong borrower safeguards.

The agency has received over 1.5 million consumer complaints with a 97 percent response rate by financial firms to the consumer complaints.<sup>8</sup> The Consumer Bureau's Office of Servicemember Affairs have visited at least 176 military installations or units to dialogue with servicemembers about consumer financial protections.<sup>9</sup> The Consumer Bureau has performed extensive research on various consumer financial products and services, and it has provided free resources to the public to better understand these financial products and services, as well as their rights and protections afforded them under the law.

As discussed above, the Dodd-Frank Act mandates the Consumer Bureau submit a semiannual report to Congress, and specifies nine items that must be included in the report: (1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services; (2) a justification of the budget request of the previous year; (3) a list of the significant rules and orders adopted by the Consumer Bureau, as well as other significant initiatives conducted by the agency, during the preceding year and the plan of the agency for rules, orders, or other initiatives to be undertaken during the upcoming period; (4) an analysis of complaints about consumer financial products or services that the Consumer Bureau has received and collected in its central database on complaints during the preceding year; (5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the agency was a party during the preceding year; (6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions; (7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law; (8) an analysis of the efforts of the Consumer Bureau to fulfill the fair lending mission of the agency; and, (9) an analysis of the efforts of the Consumer Bureau to increase workforce and contracting diversity consistent with the procedures established by its Office of Minority and Women Inclusion.<sup>10</sup>

### Summary of Spring 2018 and Fall 2018 Semi-Annual Reports<sup>11</sup>

- **Rule Proposals and Regulations:** The Consumer Bureau published a list of its final rules, including the Payday, Vehicle Title, and Certain High-Cost Installment Loans that was originally proposed under former Director Richard Cordray;<sup>12</sup> and other

<sup>8</sup> See <https://www.consumerfinance.gov/>.

<sup>9</sup> "The CFPB's Office of Servicemember Affairs ensures that military personnel and their families have a voice," Consumer Bureau, October 2017, available at: [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb\\_osa-by-the-numbers\\_102017.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_osa-by-the-numbers_102017.pdf).

<sup>10</sup> Dodd-Frank Act § 1016(c)

<sup>11</sup> See footnote 3. For reports, see [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp\\_semi-annual-report-to-congress\\_spring-2018.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_semi-annual-report-to-congress_spring-2018.pdf) and [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb\\_semi-annual-report-to-congress\\_fall-2018.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_fall-2018.pdf).

<sup>12</sup> The Fall 2018 report notes the Consumer Bureau would be reconsidering the final rule, which it proposed to do on February 6, 2019, available at: <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-releases-notice-proposed-rulemaking-payday-lending/>. The Final Rule on Arbitration Agreements will not go into effect because the previous Congress invalidated the rule using the Congressional Review Act.

rules and initiatives,<sup>13</sup> including issuing 20 guidance documents.<sup>14</sup> The Fall 2018 report notes the Consumer Bureau issued a proposed policy guidance to encourage trial disclosure programs, and that the agency is planning to propose rules relating to Fair Debt Collection Practices Act (FDCPA) disclosure requirements and the Home Mortgage Disclosure Act (HMDA) data collection requirements.

- **Consumer Complaints:** In the Spring 2018 report, the Consumer Bureau stated that it received approximately 362,200 consumer complaints through its website, the telephone, mail, email, fax and referrals from other state and federal agencies. In the Fall 2018 report, the agency received approximately 329,000 consumer complaints. The Consumer Bureau estimated that about 93% to 94% of the complaints it sent to companies received a response, according to both reports. Additionally, in the Fall 2018 report, the Consumer Bureau highlighted that the most complained about consumer financial products and services were credit or consumer reporting (37% of all complaints), debt collection (25%), and mortgages (10%).
- **Supervision and Enforcement:** The reports provide specifics about various enforcement actions the Consumer Bureau has previously taken. The numbers indicate there has been a significant drop in public enforcement actions. In 2018, the Consumer Bureau took 11 public enforcement actions. This compares with 54 enforcement actions taken by the agency in 2015, 42 enforcement actions in 2016 and 36 enforcement actions in 2017.<sup>15</sup> Furthermore, the Consumer Bureau reported that it published one issue of its Supervisory Highlights publications between October 1, 2017 – September 30, 2018.<sup>16</sup>
- **Fair Lending Enforcement:** The Consumer Bureau has not reported a fair lending public enforcement action since former Director Cordray resigned in November 2017. The Spring 2018 report included only one instance of a public enforcement action regarding fair lending, which involved credit card discrimination by American Express and was brought during Director Cordray’s tenure.<sup>17</sup> The Fall 2018 Semi-Annual Report reported no public fair lending enforcement actions during the covered April-September 2018 period, despite issuing a higher number of supervisory actions

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<sup>13</sup> The Consumer Bureau published several requests for information on specific rules including: Requests for Information Regarding Ability-to-Repay/Qualified Mortgage Rule Assessment; and Requests for Information Regarding Consumers’ Experience with Free Access to Credit Scores. These publications are available at:

<https://www.federalregister.gov/documents/2017/06/01/2017-11218/request-for-information-regarding-ability-to-repayqualified-mortgage-rule-assessment> and <https://www.federalregister.gov/documents/2017/11/13/2017-24555/request-for-information-regarding-consumers-experience-with-free-access-to-credit-scores>.

<sup>14</sup> Documents relating to compliance and guidance are available at: <https://www.consumerfinance.gov/policy-compliance/guidance/>.

<sup>15</sup> Available at: <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/>

<sup>16</sup> The Consumer Bureau’s Supervisory Highlights share key examination findings to help industries limit risks to consumers and comply with federal consumer financial law; and communicate operational changes to its supervision program. These publications are available at: <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-highlights/>.

<sup>17</sup> “CFPB and American Express Reach Resolution to Address Discriminatory Card Terms in Puerto Rico and U.S. Territories,” Consumer Bureau, August 23, 2017 available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-american-express-reach-resolution-address-discriminatory-card-terms-puerto-rico-and-us-territories/>

against institutions. The Fall 2018 report notes for that reporting period, the Consumer Bureau initiated 13 fair lending supervisory events, which are non-public actions and include matters requiring attention (MRAs) or memoranda of understanding (MOUs).

- **Staff Diversity:** As of September 30, 2018, the Consumer Bureau's workforce was 49 percent female, which remained the same as the previous period. Minorities represented 40% of the Consumer Bureau's employees, which represents a one percent increase from 2017. Through the end of the fourth quarter of fiscal year 2018, the Consumer Bureau awarded nearly \$46 million to Minority-owned and Women-owned businesses, representing 32.6% of the \$139 million in total contracts awarded.
- **Spending and Staffing:** The Consumer Bureau reported that, by the end of the fourth quarter of fiscal year 2018, it spent approximately \$553 million, compared to \$594 million for fiscal year 2017, which is a \$41 million or 7 percent reduction.<sup>18</sup> The Consumer Bureau's workforce totaled 1,510 employees, compared to 1,689 employees at the end of the second quarter of 2017, which is a reduction of 179 employees 10.5 percent.
- **Reports:** The Consumer Bureau verified that it published the Consumer Credit Card Market Report in December 2017.<sup>19</sup> This is a report on the state of the consumer credit card market that is published twice a year. The report focused on consumers with low or thin credit profiles and covers how consumers use cards, they pay for using them, the availability of credit cards, the practices used by credit card companies and the innovation of the market. The Consumer Bureau reported that almost all the growth in secured card originations is comprised of consumers with no credit score or deep subprime credit scores.

## The Consumers First Act

The Chairwoman's discussion draft, the Consumers First Act, would direct the new Consumer Bureau leadership to reverse all anti-consumer actions taken under Mr. Mulvaney's leadership, including by resuming the previously authorized supervision of financial firms for Military Lending Act compliance; restoring the supervisory and enforcement powers of the Office of Fair Lending and Equal Opportunity; reestablishing a dedicated student loan office; requiring adequate agency staffing, including for supervision and enforcement; limiting the number of political appointees the Consumer Bureau may hire to address allegations that they suppressed the work of dedicated, professional staff; mandating the consumer complaint database to remain transparent and publicly accessible; reinstating the Consumer Advisory Board that was effectively terminated by Mr. Mulvaney with protections to ensure consumer voices are well represented, and that diversity and inclusion is promoted on the agency's advisory boards; and, encouraging greater cooperation with other government agencies, like the U.S. Departments of Education and Defense.

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<sup>18</sup> More budget insights are available in the Bureau's Strategic Plan, Budget, and Performance Plan and Report, available at: <https://www.consumerfinance.gov/about-us/budget-strategy/budget-and-performance/>.

<sup>19</sup> Available at: <https://www.consumerfinance.gov/data-research/research-reports/the-consumer-credit-card-market-2017/>.