

## House Financial Services Committee Hearing on CFPB Semi-Annual Report

### Overview

Today, the House Financial Services Committee held a hearing on the 2018 Semi-Annual Report of the Consumer Financial Protection Bureau (CFPB). This was the first time Acting Director Mick Mulvaney appeared before Congress in his capacity as the leader of the CFPB. The last time the CFPB Director appeared before Congress was in April 2017 with the testimony of then-Director Richard Cordray. Overall, Republicans on the committee used the hearing as an opportunity to demonstrate the unaccountable nature of the Bureau, while Democrat members of the committee focused their efforts on proving that Mulvaney was not adequately pursuing the mission of the agency.

### Key Takeaways

- Director Mulvaney supports a bipartisan commission and putting the Bureau under appropriations as ways to bring greater accountability to the agency.
- Several Democrats on the Committee are concerned about the lack of new enforcement actions under Mulvaney's leadership. Mulvaney defended that he is still fulfilling the mission of the Bureau. He believes the agency is enforcing the law, just differently and with more restraint than his predecessor.
- Mulvaney committed to ending the practice of "regulation through enforcement."

### Opening Statements

In his opening statement, **Chairman Jeb Hensarling (R-TX)** welcomed Mick Mulvaney, a former member of the committee, but continued his criticism of the agency regardless of its new leadership. "The CFPB is unaccountable to, well, the CFPB, because there's really not even a 'them,' in this case there just happens to be a 'him.' No commission, no board, no effective oversight," Hensarling stated.

**Ranking Member Maxine Waters (D-CA)** made clear that she does not believe Mulvaney is the legitimate Acting Director of the CFPB, having been in her view illegally appointed by President Trump. She noted the recent actions by Mulvaney have weakened the agency's ability to protect consumers and will only benefit predatory actors. Additionally, she expressed concern about the recent reorganization of the Office of Fair Lending under the Director's office.

**Rep. Blaine Luetkemeyer (R-MO)** cited the chilling effect the CFPB has had on financial institutions under Director Cordray and lauded Mulvaney's leadership of the CFPB.

**Acting Director Mulvaney** focused his opening statement on the unaccountable nature of the agency, stating the Bureau is "not structured to be accountable" to anyone other than itself. Even the statute creating the CFPB only requires the Director to appear before Congress but not answer any questions, despite his own willingness to do so.

## Question and Answer Session

### Accountability

Numerous Republican members of the committee used their question time to point to the unaccountability of the agency. **Chairman Hensarling** highlighted the Bureau's ability to use its exemption authority to carve out groups from rules. **Rep. Sean Duffy (R-WI)** called attention to the angst coming from the Democratic members of the committee during the hearing, citing the one-sided construction of the agency as the cause. In response to a question from **Rep. Roger Williams (R-TX)** on what recommendations would make the Bureau more accountable, Mulvaney answered that he provided four specific suggestions in his report which were necessary "otherwise [the agency] will go back and forth, back and forth."

### Appropriations

**Chairman Hensarling** asked Mulvaney to describe how the Bureau is funded, to which he responded that he requests an amount from the Federal Reserve which is provided without question up to the current cap of about \$700 million. **Rep. Andy Barr (R-KY)** asked Mulvaney about his bill to put the Bureau under appropriations and Mulvaney stated that he doesn't understand why Congress wouldn't put the Bureau under appropriations. In response to comments from **Rep. Keith Rothfus (R-PA)** on the need for Congressional appropriations, Mulvaney noted that 370 CFPB employees make more than Members of Congress. Mulvaney later stated in response to a question from **Rep. Bruce Poliquin (R-ME)** that the one accountability measure Congress should take up should be putting the Bureau under appropriations.

### CFPB Commission

Members on both sides of the aisle raised the benefits of a bipartisan commission. **Rep. David Scott (D-GA)** decried that Mulvaney is clearly out to destroy the CFPB and therefore the CFPB should be a commission.

*"You [Mulvaney] are the prime example of why, when we passed Dodd-Frank, we made it a commission. For this very purpose. The fact that you are in there, with the mission from your president, to dismantle and destroy the CFPB. Now, I'm not jumping on you for doing what your boss wants to do, all I'm simply saying is that's why we made it a commission, and we have to come to Jesus on that moment and understand going forward why it is important, why we do not need to have the management and the protection of the financial transactions of the American people changing every four years at the whim of the wind of changing administrations."*

**Rep. Brad Sherman (D-CA)** expressed concern about President Trump's potential selection of a successor to Mulvaney and called attention to the Chairman's change of position on establishing a commission at the CFPB.

*In the past democrats have been opposed to a commission and wanted a sole director. It's my understanding that the chairman has changed his mind and is now for a sole director too because he anticipates that the sole director successor of yours will be the most efficient structure to rapidly repeal all the good work done by your predecessor. I'd just say that what consumers and business want is not a lurch to the left or a lurch to the right then another lurch to the left, but steady and ascertainable regulations."*

**Rep. Randy Hultgren (R-IL)** inquired about Mulvaney's position on creating a bipartisan commission at the CFPB, "As I know you remember, Randy Neugebauer had a bill calling for this and Dennis Ross recently introduced a bipartisan bill. Is it still your belief a commission structure for the CFPB provides greater certainty to market participants and consumers and would it make the agency more technical and less partisan in nature?" Mulvaney responded, "It does. I still believe that, and I think I was a cosponsor of that bill when I was here."

He expanded on his recommendations to make the Bureau more accountable to include the establishment of a five-person commission in response to a question from **Rep. Claudia Tenney (R-NY)**. "There's a lot of things that we could do. We talked about the five-person commission to sort of smooth things out so you don't get these wild swings between me and Mr. Cordray and whomever comes next," he stated.

#### **Legitimacy of Mulvaney as Acting Director**

Several Democratic members, including **Ranking Member Waters**, made clear that they do not view Mulvaney as the legitimate leader of the Bureau. Further, **Rep. Nadia Velazquez (D-NY)** asked various questions around the separation of Mulvaney's roles at the CFPB and the Office of Management and Budget, concluding that he should not be permitted to hold both positions.

#### **Length of Mulvaney Tenure**

**Rep. Emanuel Cleaver (D-MO)** inquired how long Mulvaney intended to be acting director of the Bureau. Mulvaney responded that he could stay at the CFPB until June 22<sup>nd</sup> under the Vacancies Act, and potentially longer if the President made a nomination to the Director post.

#### **Regulation through Enforcement**

**Rep. Luetkemeyer** asked Mulvaney about his view on "regulation by enforcement." He responded, "regulation by enforcement is done" and financial institutions need to "know what the law is before breaking it." **Rep. Sherman** asked what the Bureau is doing to provide more direction via policy. Mulvaney answered that they are focusing on the formal rulemaking process, stating "it's hard to do rules, but it's the right way to regulate."

#### **Enforcement Actions**

**Reps. Carolyn Maloney (D-NY), Gregory Meeks (D-NY) and Stephen Lynch (D-MA)** expressed concern about the lack of new enforcement actions under Mulvaney's leadership. Mulvaney cited that the Bureau has 100 ongoing investigations and is actively litigating 25 cases. **Rep. Bill Huizenga (R-MI)** defended Mulvaney's tenure and pointed to a similar enforcement track record in the early months of former Director Cordray's tenure.

#### **Abusive Standard**

**Rep. Rothfus** asked Mulvaney about his approach on the Unfair, Deceptive and Abusive Acts and Practices (UDAAP) standard. In response, Mulvaney asked for legislative guidance from Congress on how to define abusive.

#### **Overdraft**

In response to a question from **Rep. Poliquin**, Mulvaney indicated that the issue of overdraft would not be on the next CFPB's Spring rulemaking agenda.

### Remittances

**Rep. Andy Barr (R-KY)** expressed concern about the Bureau's rule on remittances and Mulvaney responded that that the Bureau will revisit the rule and look to make improvements.

### Complaints

**Rep. Rothfus** expressed concern about consumer privacy due to the CFPB's complaint database being made publically available. Mulvaney replied that he is taking a long hard look at the database and is also concerned about privacy and the unverified nature of the complaints.

### Office of Fair Lending

Several Democrat Members, including **Ranking Member Waters** and **Rep. Lacy Clay (R-MO)**, asked about the reorganization of the Office of Fair Lending. Mulvaney explained that the office has a supervision and enforcement function and an education function. Previously, these both were under the Supervision Enforcement and Fair Lending Division (SEFL). His changes split the office by function, elevating the education portion of the Office of Fair Lending to under the Office of the Director and keeping the fair lending supervision and enforcement with SEFL.

### Student Lending

**Rep. Hultgren** inquired whether the Director was concerned about the CFPB Student Loan Ombudsman holding a dual position in the CFPB Office of Students, suggesting a lack of impartiality. Mulvaney responded that he too was concerned and was working on a solution.

### Small Dollar Loans

**Rep. Mia Love (R-UT)** asked about the Bureau's direction on small dollar loans. Mulvaney responded that the Bureau is revisiting the small dollar rule as it wants to increase the availability of such loans. In an exchange with **Rep. Luetkemeyer** on cost-benefit analysis, Mulvaney also shared that his focus is on quantitative analysis, specifically citing the small dollar loan rule.

### Discriminatory Practices

**Rep. Al Green (D-TX)** focused on the Bureau's role in preventing discriminatory practices and advocated for testing in which people of different races are sent into a bank to see if they are treated the same. Mulvaney noted that it was a tool the Bureau has used in the past and he sees no reason to eliminate it.

### TILA-RESPA Integrated Disclosure

**Rep. French Hill (R-AR)** expressed concern about TRID, calling for a safe harbor. Mulvaney said the Bureau had an RFI on TRID and hopes to bring clarity to the law.

### Data Collection and Security

**Reps. Hill, Tom Emmer (R-MN), and Barry Loudermilk (R-GA)** called attention to the sensitive nature of the Bureau's data and the importance of its data collection and security practices. The Bureau has taken steps to limit intake of enforcement data and is currently working on testing the security of its systems via a third party. Further, Mulvaney expressed his support for the Luetkemeyer data security and breach notification bill.

### Home Mortgage Disclosure Act

**Rep. Emmer** raised the implementation of the Home Mortgage Disclosure Act (HMDA) and the Bureaus' intention to reopen the rule, to which Mulvaney responded that they will reopen the rule and look at the data sets and size and scope of institutions affected.