

## Senate Banking Committee Hearing on CFPB Semi-Annual Report

### Overview

Today, the Senate Banking, Housing, and Urban Affairs Committee held a hearing on the 2018 Semi-Annual Report of the Bureau of the Consumer Financial Protection. This was the first time Acting Director Mick Mulvaney appeared before the Senate Banking Committee in his capacity as the leader of the CFPB. Members asked a broad range of questions on issues, including the CFPB's accountability; its structure, budget, and appropriations; enforcement actions and regulation through enforcement; data collection and security; payday lending; political appointees and staff salaries.

### Key Takeaways

- Director Mulvaney testified that the CFPB is an unaccountable agency and reiterated the best way to rein in the Bureau whether from the left or right is to put it under appropriations. He also fully endorsed changing the structure to a five-member commission.
- Many Republicans on the committee focused their line of questioning on the need and existence of the Bureau pointing to other agencies that previously regulated consumer protection, as well as concerns with the Bureau's bulk data collection and data security.
- Democrats focused their questioning on Mulvaney's lack of commitment to consumer protection, demonstrated by his failure to initiate new investigations or enforcement actions, as well as the Bureau's review of the payday lending rule.

### Opening Statements

In his opening statement, **Chairman Mike Crapo (R-ID)** welcomed Mick Mulvaney, stating consumer protection is vital for a thriving marketplace. Crapo stated he is very concerned about big data collected by companies and the government, especially in light of several high profile cyber-attacks, including Equifax and Facebook. Chairman Crapo concluded his statement saying, "The fundamental structure of the CFPB needs to be reconsidered to make it more transparent and more accountable. I continue to support a bipartisan commission instead of a single director, a congressional funding mechanism, and a safety and soundness check. Given the changes taking place at the agency now is an appropriate time to consider the future of the CFPB."

**Ranking Member Sherrod Brown (D-OH)** opened with remarks on the financial crisis, stating subprime mortgage refinance loans were designed to steal wealth from hardworking families and crashed the economy during a time where there was no CFPB or dedicated cop on the beat. He stated it is the CFPB's job to fight for families against unfair, deceptive, and abusive acts and practices and that protecting consumers is not "pushing the envelope" but doing its job. It is a mission at which Mr. Mulvaney is completely failing because he is not pursuing actions and has withdrawn four investigations against payday lenders since his leadership. He expressed concerns with Mulvaney's move to weaken the Office of Fair Lending and put in place his own political appointees with enormous salaries.

**Acting Director Mulvaney** focused his opening statement on improving the Bureau by making it more accountable and transparent. He again stated that the statute requires him only to appear before the committee, but it does not require him to testify and answer any of Congress's questions, despite his willingness to do so.

## Question and Answer Session

### Accountability

**Sen. Mike Rounds (R-SD)** asks whether Members of Congress should have a way to keep the CFPB accountable. Mulvaney states no one else has the kind of authority that he has as Director of the CFPB, and the best way to rein in the Bureau is by subjecting it to appropriations.

**Sen. Thom Tillis (R-NC)** said it is remarkable that there is not a single thing that any Member of Congress can do to hold Mulvaney accountable. Mulvaney said he is unelected and there is nothing anybody can do about it. He added Congress cannot rely on the person, but rather, it has to fix the structure.

### CFPB Structure

**Sen. Richard Shelby (R-AL)** used his line of questioning to discuss the CFPB's structure, stating legislative changes must be made to make the CFPB more accountable, "to make it a commission, not one person, not like a czar or a dictator with no accountability."

**Sen. Cotton (R-AR)** asked why the semi-annual report does not address the single director structure, pointing to the SEC and FTC as examples where a commission structure operates, adding "we wouldn't see this wild swing in the opinion that Congress had towards the Bureau and what consumers and businesses and other people can expect from the Bureau." Mulvaney responded he "absolutely" still supports a five-member commission, stating "Mr. Cordray and I are very different people, and we plan to run the agency very differently, and a five person commission might bring some stability."

### Appropriations

In response to questioning from **Sen. Shelby**, Mulvaney pleads for Congress to put the CFPB under appropriations to have some oversight over the Bureau's spending and its actions.

### Necessity of CFPB

**Sens. David Perdue (R-GA)** and **Thom Tillis (R-NC)** questioned the necessity of the CFPB. In response to their questioning, Mulvaney stated UDAAP authority and fair debt collection practices are the only charges the CFPB has in addition to what had been covered previously under the OCC, the Fed, and the FDIC prior to the creation of the CFPB.

### Inspector General

**Chairman Crapo** asked about the importance of the fourth recommendation in the CFPB's semi-annual report, the creation of an Inspector General at the CFPB, as opposed to sharing an IG with the Federal Reserve. Mulvaney testified it would save \$2 million a year for the CFPB to have its own inspector general and it would serve the CFPB well to have one dedicated IG with exclusive attention to the Bureau.

### CFPB Budget

**Sen. Jon Tester (D-MT)** asked about the CFPB's budget request last quarter, to which Mulvaney testified he requested \$98.5 million at the end of March, the same amount Director Cordray asked for in 2015, but less than he requested more recently. Mulvaney stated he plans to spend down the CFPB's reserves.

#### **Mulvaney Bias**

**Sen. Elizabeth Warren (D-MA)** focused her line of questioning on Mulvaney's previous voting record as a Member of Congress in eliminating the CFPB. She pointed to enforcement actions against Citi, Bridgepoint, and Top Notch Funding as examples where the CFPB returned funds to consumers, stating customers would have continued to be cheated if not for the creation of the CFPB. Mulvaney stated that the FTC or OCC have concurrent jurisdiction on these matters and could have stepped in to bring such actions.

#### **Enforcement Actions**

**Sens. Brown and Catherine Cortez Masto (D-NV)** asked about Mulvaney's lack of enforcement actions, questioning why he has not taken decisive actions against bad actors. Mulvaney said the CFPB has 100 ongoing investigations and 25 ongoing lawsuits – 10 of which are against payday lenders. He admitted the CFPB has not initiated a new action but said it continues to enforce the law.

#### **Regulation through Enforcement**

**Sen. Bob Menendez (D-NJ)** raised concerns that the Bureau is halting enforcement actions for unfair, deceptive, abusive acts and practices (UDAAP), to which Mulvaney stated he believes it is fair to know what the law is and that the CFPB will be ending regulation through enforcement. He emphasized, though, that this is not to be interpreted that the CFPB is ending enforcement actions altogether.

#### **Office of Fair Lending**

**Sen. Menendez (D-NJ)** questioned Mulvaney's move to reorganize the Office of Fair Lending and whether it sends the message to financial organizations that the CFPB is halting actions on discriminatory practices. Mulvaney explained that the office has not been eliminated but moved.

#### **Small Dollar Loans**

Several members had questions about the CFPB's recent move to delay the effective date of its payday rule and to revisit the rule. **Ranking Member Brown** cited a PEW study that found Ohio has the biggest payday lending problem in the country with the highest interest rates. He asked Mulvaney about his contact with payday lenders since becoming Acting Director and whether he has taken lavish trips, to which Mulvaney responded he has not.

**Sen. Mark Warner (D-VA)** asked how revisiting the payday lending rule would help consumers. Mulvaney stated the Bureau has not arrived at any preconceived notions of the rule and that revisiting the rule should not be viewed as an assumption the rule will be revoked. This rule was at the top of the list because it was the last thing the previous Director did and that it was rushed.

**Sen. Doug Jones (D-AL)** expressed concern with the number of payday lenders in Alabama and asked whether the CFPB will commit to strong federal rules to ensure they are not ripping off customers. Mulvaney replied he believes the best approach may be to legislate in this area, to which **Sen. Tillis** stated he believes the states are well-equipped to determine payday lending laws.

### **Data Collection and Security**

**Chairman Crapo** expressed strong concerns with the CFPB's big data collection process, stating it is not appropriately managed, and asked how it can be narrowed and enhanced. Mulvaney responded that the CFPB is looking at data collection and security, which is why he instituted a data collection freeze until he could fully understand and fix the problem. The CFPB will engage in some data collection efforts with other agencies like the Department of Justice to continue ongoing investigations. Further, the CFPB is working with the Department of Defense to test the security of their systems. Until then, the CFPB will be judicious in the data it collects.

In response to a question from **Sen. Chris Van Hollen (D-MD)**, Mulvaney agreed that a notification standard should exist when a company like Equifax is breached. **Sen. Warner** requested a hearing on data security following the Equifax breach, stating there is a need to collect the data on a macro level to determine trends.

**Sen. Perdue** asked how CFPB data is stored and whether there have been breaches of this data. Mulvaney testified that some data is stored by third-parties and that there have been 240 lapses of data, with potentially an additional 800 instances of inappropriate data sharing.

### **Home Mortgage Disclosure Act**

**Sen. Perdue** questioned the CFPB's data collection under the Home Mortgage Disclosure Act and how it helps reduce predatory lending, to which Mulvaney agreed, stating they are looking into that.

### **Political Hiring**

Several Democrats asked about the political hiring under Mulvaney and about staff salaries. **Sen. Brown** questioned why the CFPB requires more political staff than other federal regulators. Mulvaney said he netted three new positions with eight political appointees. The pay they are receiving is the exact pay system that his predecessor laid out and has complete authority under the statute to do so.

**Sen. Tester** asked why as a fiscal conservative, Mulvaney is paying his political appointees more than \$240,000 a year, stating it does not jive with his fiscal background and looks like he is showing political favoritism. Mulvaney testified that the average compensation at the Bureau is \$195,000 which is on par with salaries under Director Cordray. It was revealed Leandra English continues to earn \$212,000 from the CFPB and Mulvaney has never met her and is not sure what she does. Mulvaney said he would welcome bipartisan review of the CFPB's salary structure.

### **Inaccurate Credit Reporting Information**

In response to questioning from **Sen. John Kennedy (R-LA)**, Mulvaney commits to working with him on a bipartisan bill he introduced with **Sen. Brian Schatz (D-HI)** that would require credit reporting agencies to set up an online portal for consumers to request corrections to inaccurate consumer reporting information.

### **Complaint Portal**

**Sen. Cortez Masto** raised questions about the CFPB's consumer complaint portal and whether Mulvaney was using the RFI process to diminish the effectiveness of the database or to remove it from public view. Mulvaney responded the CFPB is required under statute to collect this

information, but it is not statutorily mandated for the CFPB to release this data publicly. Closing off the public viewing of the data would not shut off the collection of the data.