

**U.S. PIRG STATEMENT FOR THE HEARING RECORD
SEMI-ANNUAL REPORT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION**

11 April 2018

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
4340 Thomas P. O'Neill, Jr. FOB
Washington, D.C. 20151

Dear Chairman Hensarling and Ranking Member Waters:

Thank you for the opportunity to submit the following statement for the hearing record regarding the Bureau of Consumer Financial Protection's Semi-Annual Report to Congress for April 1, 2017 through September 30, 2017. U.S. PIRG is an independent non-profit, non-partisan consumer advocacy organization.

These comments include a recap of the CFPB's significant accomplishments for consumers during the reporting period, an alert to consumer harms posed by certain recent agency actions, and our recommendations to the CFPB and Congress to ensure the Bureau fulfills its mission of protecting consumers.

The CFPB's Accomplishments for Consumers

First, we want to commend the Consumer Financial Protection Bureau for its accomplishments, including its enforcement actions, supervisory actions, and processing of consumer complaints that have helped keep the financial marketplace fair and competitive.

Enforcement Actions

By tallying up the over 50 enforcement actions from October 1, 2016, through September 30, 2017 listed in the Semi-Annual report, we calculated **approximately \$538 million from pending orders or final judgements, including over \$396 million for consumer redress, restitution, or disgorgement, and over \$141 million in civil penalties.**¹ In total, since inception in 2011, the CFPB has taken over

¹ CFPB, *Semi-annual report of the Bureau of Consumer Financial Protection*, April 2018 accessed at https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report_spring-2018.pdf

180 enforcement actions and provided \$12 billion in relief to over 29 million consumers.² Consistent and robust enforcement of rules not only provides justice for consumers when they are wronged but also prevents many unfair practices in the first place.

We commend the bureau's career employees for following through on these recent actions. We are concerned, however, that many of these enforcement actions began before the acting director took over. All signs suggest enforcement activity is declining. According to the Associated Press: "In the 135 days since the Trump administration took control of the nation's consumer watchdog agency, it has not recorded a single enforcement action against banks, credit card companies, debt collectors or any finance companies whatsoever."³

Supervisory Activities

According to the CFPB's Summer 2017 *Supervisory Highlights* report, the agency's supervisory actions generally completed between January 2017 and June 2017 resulted in total restitution payments of approximately \$14 million to more than 104,000 consumers. In addition, these activities from this time period led to or supported two enforcement actions, resulting in about \$1.15 million in consumer remediation and an additional \$1.75 million in civil money penalties.⁴

According to the semi-annual report, the Consumer Bureau's Fair Lending Supervision program took 11 supervisory events to ensure compliance with fair housing laws between April 1, 2017, through September 30, 2017⁵. Supervisory activity is an important tool that has allowed the CFPB to nip bad practices in the bud before they spread across the market. Along with strong enforcement activity, supervisory activity across the entire spectrum of the CFPB's supervisory authority should be continued. Further, public *Supervisory Highlights* reports are an important and highly-praised CFPB regulatory innovation that helps make the financial marketplace more transparent and makes it work better. These helpful quarterly reports must also continue.

² CFPB, *Consumer Financial Protection Bureau: By the numbers*, accessed at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201707_cfpb_by-the-numbers.pdf, 10 April 2018.

³ Ken Sweet, Associated Press, "Enforcement Actions Halt at Watchdog Agency Under Trump," 10 April 2018, accessed at <https://www.apnews.com/c80a20db4a5942e7af9632b0cbf75700/Enforcement-actions-at-watchdog-agency-halt-under-Trump>, 10 April 2018

⁴ CFPB, *Supervisory Highlights Issue 16, Summer 2017*, September 2017 accessed at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201709_cfpb_Supervisory-Highlights_Issue-16.pdf 10 April 2018.

⁵ CFPB, *Semi-annual report of the Bureau of Consumer Financial Protection*, April 2018 accessed at https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report_spring-2018.pdf .

Consumer Complaints and A Harmful Enforcement Shift Proposed By the Acting Director

As noted in the semi-annual report, the Consumer Bureau has **processed approximately 317,200 consumer complaints** during the period Oct. 1, 2016 to Sept. 30, 2017.⁶ The report notes that the leading complaint category is debt collection. Tracking these data, the acting director has indicated an intention to shift enforcement toward debt collection and away from, for example, payday lending. The acting director has stated that this is simply using data. But the approach fails to recognize that debt collection problems occur only at the end of a financial product life cycle. The situations that lead to eventual debt collection complaints may have been triggered by much earlier unfair practices, including in marketing or lending. As the Bureau stated in its press release accompanying the now-stalled Navient enforcement action:⁷

“Today the Consumer Financial Protection Bureau (CFPB) is suing the nation’s largest servicer of both federal and private student loans for systematically and illegally failing borrowers at every stage of repayment. For years, Navient, formerly part of Sallie Mae, created obstacles to repayment by providing bad information, processing payments incorrectly, and failing to act when borrowers complained. Through shortcuts and deception, the company also illegally cheated many struggling borrowers out of their rights to lower repayments, which caused them to pay much more than they had to for their loans. The Bureau seeks to recover significant relief for the borrowers harmed by these illegal servicing failures.”

Navient failed “at every stage of repayment” starting with marketing and leading, eventually, to debt collection. Failing to properly surveil the entire marketplace for problems, based on the fallacy that debt collection has the most database complaints so it must be the worst problem, will only cause more problems to be missed and more consumers to be harmed.

By searching the public database for complaints during this time period, we can see that 12,221 of those complaints resulted in monetary relief by the complained-about company and an additional 24,329 resulted in non-monetary relief, such as corrections of mistakes on credit reports or resolution to debt collection harassment.⁸ In total, since 2011, the Bureau has processed over 1.2 million complaints. Prior to the CFPB’s database, consumers with unresolved problems were at the mercy of the very customer service practices that might have been part of the problem in the first place. The public nature of the database helps keep companies accountable to their customers.

⁶ The semi-annual report lists the total number of complaints **received** by the CFPB. However, the online public database only publishes the complaints with enough information to be sent to companies for responses. There are 232,878 complaints published in the database for this reporting period.

See CFPB, *Consumer Complaint Database*,

accessed at <https://www.consumerfinance.gov/data-research/consumer-complaints/> 10 April 2018.

⁷ News release, CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment, 18 January 2017, accessed at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/> .

⁸ Ibid.

Harms Posed to Consumers By Conflicts, Proposals and Actions of the Acting Director

There are several harms posed to consumers by Acting Director Mick Mulvaney's conflicts of interest, certain agency actions during his tenure so far, and his requests to Congress in the semi-annual report. These harms are detailed below.

Conflicts of Interest

The appointment of Mick Mulvaney as acting director after former director Richard Cordray resigned put the agency's independence and mission at risk. The CFPB was set up to be independent from political influence, but Mr. Mulvaney is a current Presidential cabinet member and a former member of Congress who previously co-sponsored a bill to get rid of the CFPB.⁹

Knowing that vacancies were bound to occur, Congress included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010—the law that created the CFPB—a specific provision clearly stating that the deputy director “shall serve . . . as acting Director in the absence or unavailability of the Director.”¹⁰

Using a more general provision of the Federal Vacancies Reform Act of 1998, President Trump named Mick Mulvaney—the current director of the White House's Office of Management and Budget—also as the acting director of the CFPB. The problem, however, is that the specific provision of Dodd-Frank governs over the general provision of the FVRA.¹¹ In addition, having a current member of the President's cabinet serve as the acting director violates the intent of Dodd-Frank, which envisioned the CFPB as an independent financial regulator free from political influence.

Agency Actions that Put Consumers at Risk

From the outset, the potential for Mr. Mulvaney using his platform as acting director to promote his and the administration's own agenda over the mission of the agency was great. We've quickly seen evidence of those conflicts of interest. During his tenure, the Consumer Bureau has taken actions that put consumers at risk of unfair practices, including:

- Announcing its intention to open a rulemaking to reconsider and delay the CFPB's payday lending rule that requires payday lenders to make sure borrowers can repay their loans.¹² This rule was crafted over several years of research, public input, and compromise.

⁹ Rep. John Ratcliffe, *H.R.3118 - To eliminate the Bureau of Consumer Financial Protection by repealing title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the Consumer Financial Protection Act of 2010*, accessed at <https://www.congress.gov/bill/114th-congress/house-bill/3118/cosponsors> 10 April 2018.

¹⁰ Michael Landis, "Why the Legal Dispute over the Leadership of the CFPB Matters," *U.S. PIRG*, 6 February 2018 accessed at <https://uspirg.org/blogs/blog/usp/why-legal-dispute-over-leadership-cfpb-matters>

¹¹ Ibid.

¹² Julia Horowitz, "CFPB Says It Will Reconsider Its Rule on Payday Lending," *CNN Money*, 16 January 2018.

- Dropping its lawsuit against four online lenders that it had accused of deceiving consumers by collecting debts not legally owed, for loans with interest rates as high as 950 percent.¹³
- Pulling back from a full-scale investigation into the massive Equifax data breach, according to news reports.¹⁴ Since these reports came out, Acting Director Mulvaney indicated that the Consumer Bureau is continuing its investigation by claiming the agency’s “position” on Equifax hasn’t changed.¹⁵ But it’s unclear whether or not it is backing up its position by using all of its available tools to complete a robust investigation into the breach.
- Planning a Call for Evidence, entailing 12 Requests for Information (RFI), seeking public comments about CFPB practices without planning any RFIs about marketplace practices. In contrast, during the preceding year, the CFPB issued 3 RFIs for assessments of significant rules and 4 RFIs about marketplace practices.¹⁶

Recommendations to Congress in Semi-Annual Report

Mr. Mulvaney’s four recommendations to Congress in the semi-annual report for statutory changes to the CFPB would take away the agency’s independence and make it harder for it to do its job. The problems with each recommendation are explained below:

1. **Fund the Bureau through Congressional appropriations:** This move would make the CFPB the only banking regulator in the U.S. without independent funding. Since the 1860s, all banking regulators have had independent funding to minimize undue political influence. Due to constant political gridlock over the budget, funding through Congressional appropriations likely would mean the Bureau would receive far less than what would be needed to do its job. Also, its activities would certainly be unduly influenced by attempts to secure more funding from Congress. You need only look to the problems that the two appropriated non-bank financial regulators, the Securities and Exchange Commission and Commodity Futures Trading Commission, face, both in levels of funding and restrictions placed on their ability to use those funds.
2. **Require legislative approval of major Bureau rules:** This change would make it the only agency of any sort that has to get its major rules approved by Congress. Congress already has the enormous ability through use of the Congressional Review Act to repeal new rules with a simple majority vote of both houses. Further, the Bureau is already the only regulator (financial, environmental, consumer, etc.) whose rules can be overturned by other regulators. This recommendation should not be accepted; it would make it virtually impossible for new protections to ever see the light of day.

¹³ Zeke Faux, “CFPB Signals Shift by Dropping Payday Lender Lawsuit,” *Bloomberg*, 18 January 2018.

¹⁴ Patrick Rucker, “Exclusive: U.S. consumer protection official puts Equifax probe on ice - sources,” *Reuters*, 5 February 2018.

¹⁵ Yuka Hayashi, “No letup to CFPB investigation into Equifax, Mulvaney says,” *MarketWatch/The Wall Street Journal*, 13 February 2018.

¹⁶ CFPB, *Semi-annual report of the Bureau of Consumer Financial Protection*, April 2018 accessed at https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report_spring-2018.pdf

3. **Ensure that the Director answers to the President in the exercise of executive authority:**
The President already has the ability to fire the director “for cause,” such as for corruption or incompetence. This recommendation appears to give the President the ability to fire the director arbitrarily, or at will. This completely runs counter to ensuring an independent agency free from political influence. Several other agencies are also run by single directors who can only be fired “for cause.”
4. **Create an independent Inspector General for the Bureau:** There is already an inspector general for the CFPB at the Federal Reserve Board. Likely, the point of this recommendation is to replace the current inspector general for the CFPB with one that is appointed by the President, which would undermine the independence of the agency.

It’s one thing to have an acting director against the agency’s mission who requests zero dollars for the next quarter, drops lawsuits against payday lenders, and delays a protection against debt traps, as Mr. Mulvaney has done.¹⁷ But these recommendations, if implemented, would make it hard for the agency to get funding or issue and enforce any protections at all, long after Mr. Mulvaney’s tenure at the agency is over.

U.S. PIRG’s Recommendations to the CFPB and to Congress

To fulfill its mission of protecting consumers, the CFPB should:

- Reinstatement of all delayed or terminated rulemakings, investigations and enforcement actions. Continue robust surveillance of the entire financial marketplace for threats to consumers and respond as appropriate in the circumstance, with supervisory, enforcement, rulemaking or other actions.
- Complete a strong debt collection rule improving protections for consumers. Continue other rulemakings on its Regulatory Agenda.
- Maintain public access to a vibrant, transparent and complete consumer complaint database that encourages consumers, competitors, academics, other researchers and the complained-about companies themselves to study ways to make the marketplace work better.
- Reinstatement of regular outreach to the public. The CFPB’s monthly field hearings around the nation provided opportunities to hear from consumers about financial issues. Of course, banks and other regulated entities also can take advantage of these events, even though they already have significant ability to communicate with the Bureau directly.
- Release updated statistics about its accomplishments, such as the dollar amount of relief provided to consumers, the number of consumers who have been provided relief, and the number of consumer complaints processed in the database. Typically, these numbers are updated quarterly, but they haven’t been updated since July 20, 2017.¹⁸

¹⁷ Jim Puzanghera, "[Mulvaney requests zero funding for the Consumer Financial Protection Bureau](http://www.latimes.com/business/la-fi-cfpb-mulvaney-funding-20180118-story.html)", *LA Times*, 18 January 2018 accessed at <http://www.latimes.com/business/la-fi-cfpb-mulvaney-funding-20180118-story.html>

¹⁸ CFPB, *We're the CFPB*, accessed at <https://www.consumerfinance.gov/>, 10 April 2018.

- Release the Monthly Complaint Report every month and with detailed company and state data again. Beginning in 2015, the CFPB published a Monthly Complaint Report to provide a “high-level snapshot of trends in consumer complaints.”¹⁹ Through April 2017, these reports included data on companies that received the most complaints, and states where consumers filed the most complaints. From April 2017 through October 2017, reports were no longer published on a consistent monthly basis, and no longer included company or state data.²⁰ After October 2017, publication of monthly reports was halted altogether.

To ensure American consumers are protected in the financial marketplace, Congress should:

- Oppose Acting Director Mick Mulvaney’s recommendations in the Semi-Annual Report. Oppose any legislation to defund and defang the CFPB.
- Urge President Trump to swiftly nominate a consumer champion to the director position of the CFPB for the Senate to confirm. As we have argued in a friend-of-the-court brief in the continuing legal dispute over the CFPB’s temporary leadership, the law and public interest are best served by having the CFPB’s deputy director serve as acting director until the Senate confirms a new director nominated by the President.²¹ Any nominee for permanent director should only be confirmed if he or she supports the mission of the CFPB: protecting consumers.

Sincerely yours,

Edmund Mierzwinski
Senior Director, Consumer Programs
edm@pirg.org

Mike Litt
Consumer Campaign Director
mlitt@pirg.org

¹⁹ Consumer Financial Protection Bureau, *Monthly Complaint Report, Vol. 19*, available at <https://www.consumerfinance.gov/data-research/research-reports/monthly-complaint-report-vol-19/>, 8 February 2017.

²⁰ Consumer Financial Protection Bureau, *Research & Reports*, accessed at <https://www.consumerfinance.gov/data-research/research-reports/> on 4 April 2018.

²¹ Michael Landis, "[Why the Legal Dispute over the Leadership of the CFPB Matters](https://uspig.org/blogs/blog/usp/why-legal-dispute-over-leadership-cfpb-matters)," *U.S. PIRG*, 6 February 2018 accessed at <https://uspig.org/blogs/blog/usp/why-legal-dispute-over-leadership-cfpb-matters> .