Mike Mulvaney has ignited a firestorm to rein in the CFPB

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The Hill

February 15, 2018

Mick Mulvaney, President Trump's appointed acting director of the Consumer Financial Protection Bureau (CFPB), is a paladin, reining in the lawless and politicized agency. He's provoked the fury of the left from Sen. Elizabeth Warren (D-Mass.) and House Financial Services Committee Ranking Member Maxine Waters (D-Calif.).

In a recent column in the American Banker, Warren accused Mulvaney of working to "hamstring" the CFPB and shilling for dastardly "Wall Street banks and various scam artists." Warren and Waters also wrote a letter to Mulvaney, decrying his putting the CFPB payday lending rule on hold, dropping a CFPB suit against four subprime installment lenders, and ending a four-year investigation of another subprime lender. Warren later fired another salvo, tweeting that the CFPB under Mulvaney was giving the "middle finger" to consumers by backing off the bureau's investigation into Equifax.

Under former CFPB director Richard Cordray, the bureau suppressed credit availability for the underserved, stymied financial services innovation, politicized regulation, and flouted the law. Bureau mandarins viewed the industry as rapacious and untrustworthy and, paternalistically, treated consumers as not competent to choose financial products even with full disclosure of their material features.

Mulvaney has set a new tone. He decreed in a column in the Wall Street Journal that the CFPB will no longer "push the envelope" of the law in the name of the "mission." He's curbed an absolutist bureau that has used civil investigative demands for fishing expeditions and bullied organizations including some not under its jurisdiction, such as the Accrediting Council for

Independent Colleges and Schools, and has done rulemaking by enforcement, which is inherently unjust.

Mulvaney is inviting help to “ensure the bureau is fulfilling its proper and appropriate functions to best protect consumers.” This month, the CFPB issued a request for information soliciting comments to help assess the “overall efficiency and effectiveness” of its enforcement process. In January, it issued requests for information on civil-investigative demands and administrative adjudications.

Reacting to the U.S. Court of Appeals for the District of Columbia’s split decision last month that the CFPB’s single director with for-cause tenure protection is constitutional, House Financial Services Committee Chairman Jeb Hensarling (R-Texas) noted that at least “Mulvaney can use his unchecked unilateral powers to continue the agency’s transformation.”

Mulvaney bridling the CFPB, however, is not institutional. That remains a job for the courts or, in the best case, for Congress. The bureau is an affront to America’s Madisonian tripartite constitutional system under which the people’s body of Congress makes law and has power of the purse. But the CFPB made, enforced and judged law under Cordray.

By design, the bureau writes its own budget and draws funds from the Federal Reserve, thereby shielding it from congressional oversight. The legislature should control its funding. The single director for-cause tenure protection defies the president’s constitutional authority as head of the executive branch. Ideally, the CFPB would be overseen by a bipartisan board including the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency.

While administrative agency staff skews Democrat, under Cordray, the hiring process at the bureau systematically screened out Republicans. In a column in the National Review, former CFPB enforcement attorney Ronald Rubin described hiring committees using cues like “I don’t think he believes in the mission” as code for “he might not be a Democrat.”

Politics belongs in Congress, not in agencies charged with impartially enforcing the law. Rubin also recalled the bureau prioritized targeting large firms it could shake bigger fines out of over more egregious wrongdoers. Its civil penalty fund has served as a slush fund to reward friends. It has forced financial institutions it prosecuted to donate to third-party community organizers. Fines collected and not disbursed to wronged consumers should be remitted to the Treasury.

Neither Mulvaney, who under the Federal Vacancies Reform Act can only stay through June, nor President Trump's eventual five-year director appointee, is a permanent fix. Congress should institutionally rein in the Consumer Financial Protection Bureau.

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