

Testimony of Mick Mulvaney
Acting Director, Bureau of Consumer Financial Protection
Before the Senate Committee on Banking, Housing and Urban Affairs
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Chairman Crapo, Ranking Member Brown, and Members of the Committee, I am pleased to present the Bureau of Consumer Financial Protection (Bureau) semi-annual report to Congress for the period beginning April 1, 2017 to September 30, 2017 as well as to provide you an update on the activities of the Bureau during my tenure.

Shortly after President Trump appointed me as Acting Director of the Bureau, I announced that the Bureau would continue to execute the law but would no longer go beyond its statutory mandate. In enacting section 1016(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress enumerated nine elements for inclusion in the Bureau's semi-annual reports to Congress:

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 Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau 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 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 Bureau 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 Bureau to fulfill the fair lending mission of the Bureau; and
9. An analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion.

This semi-annual report meets this mandate.

Moreover, section 1012(c)(4) of the Dodd-Frank Act contemplates that the Director will submit independent legislative recommendations to Congress. It is appropriate to include legislative recommendations in this semi-annual report, because doing so will afford Members of Congress a timely opportunity to discuss my recommendations in the hearing.

Undoubtedly, many Members of Congress disagree with my actions as the Acting Director of the Bureau, just as many Members disagreed with the actions of my predecessor. Such continued frustration with the Bureau's lack of accountability to any representative branch of government should be a warning sign that a lapse in democratic structure and republican principles has occurred. This cycle will repeat *ad infinitum* unless Congress acts to make the Bureau accountable to the American people.

Accordingly, I request that Congress make four legislative changes to the law in order to establish meaningful accountability for the Bureau¹:

1. Fund the Bureau through Congressional appropriations;
2. Require affirmative legislative approval of major Bureau rules;
3. Ensure that the Director answers to the President in the exercise of executive authority; and
4. Create an independent Inspector General for the Bureau.

You also requested that I discuss the activities of the Bureau during my tenure, and I am prepared to explain the Bureau's new strategic priorities and new approach.

Semi-annual report requirements

The first section of the Bureau's semi-annual report to Congress is a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services. In this section of the report, the Bureau discusses "credit invisibles," consumers who lack a credit record at one of the nationwide credit reporting companies. In June 2017, the Bureau released the Data Point: Becoming Credit Invisible,² which explores the means by which consumers transitioned out of credit invisibility. The semi-annual report also discusses the Bureau's mandate to provide consumers with financial education and the Bureau's 2017 financial literacy annual report.³

¹ Other than the Bureau's Acting Director, no other officer or agency of the United States approved these legislative recommendations prior to submission to Congress. The views contained herein are those of the Acting Director and do not necessarily reflect the views of the Board of Governors of the Federal Reserve System or the President of the United States.

² https://www.consumerfinance.gov/documents/4822/BecomingCreditVisible_Data_Point_Final.pdf.

³ https://www.consumerfinance.gov/documents/5810/cfpb_financial-literacy-annual-report-2017.pdf.

The second section of the semi-annual report is a justification of the Bureau's budget request of the previous year. The Bureau's FY 2017 Strategic Plan, Budget, and Performance Plan and Report includes estimates of the resources needed for the Bureau to carry out its mission. The justification of the FY 2017 budget request is on the Bureau's website at <https://www.consumerfinance.gov/about-us/budget-strategy/budget-and-performance/>.

The third section of the semi-annual report lists the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period. The Bureau's significant final rules during the term of this report are the final rule on arbitration agreements (which will not go into effect because Congress adopted a joint resolution of disapproval, which the President signed pursuant to the Congressional Review Act) and the final rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans. The Bureau's significant initiatives include requests for information on assessments of significant rules under section 1022(d) of the Dodd-Frank Act, which include 2013 Real Estate Settlement Procedures Act Servicing Rule Assessment; Remittance Rule Assessment; and Ability-to-Repay/Qualified Mortgage Rule Assessment. On September 14, 2017, Bureau staff also issued its first no-action letter to Upstart Network. Additionally, the Bureau's plan for upcoming initiatives lays out a series of Calls for Evidence about various aspects of the Bureau's work. This section of the semi-annual report also lists out the Bureau's plans for upcoming proposed rules: Payday, Vehicle Title, and Certain High-Cost Installment Loans rule; the Expedited Funds Availability Act rule; the Debt Collection rule; and Home Mortgage Disclosure Act rule, as well as upcoming final rules: Gramm-Leach-Bliley Act Privacy Notice rule; Amendments Relating to Disclosure of Records and Information rule; and the Amendment to the Federal Mortgage Disclosure Requirements under the Truth in Lending Act rule. The semi-annual report contains additional details on these and other Bureau initiatives.

The fourth section of the semi-annual report provides an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year. During the period October 1, 2016 through September 30, 2017, the Bureau handled approximately 317,200 consumer complaints. Most of those complaints were submitted through the Bureau's website. The Bureau does not verify all the facts alleged in complaints, but it takes steps to confirm a commercial relationship between the consumer and the company. Approximately 235,400 (or 74%) of all complaints handled were sent by the Bureau to companies for review and response. Companies have responded to approximately 93% of complaints sent to them for response during the period. Consumers did not receive a timely response from the company in only 3% of complaints. The top four complaints by the product category designated by the consumer when submitting the complaint are debt collection (27%), credit or consumer reporting (27%), mortgages (13%), and credit cards (9%).

As required by the Dodd-Frank Act, the fifth section of the semi-annual report discusses the public supervisory and enforcement actions to which the Bureau was a party during the preceding year. The Bureau's supervisory activities with respect to individual institutions are non-public. The Bureau has, however, issued numerous supervisory guidance documents and

bulletins during the preceding year. These documents are listed under section 3.3 of this report as “issued guidance documents undertaken within the preceding year.” With regard to enforcement actions, the Bureau was a party in 53 public enforcement actions from October 1, 2016 through September 30, 2017. The detailed list of those actions, with a brief statement of the issues, is set out in section 5.2 of the semi-annual report. Section 5.2 also identifies those actions involving Office of Administrative Adjudication Orders with respect to covered persons that are not credit unions or depository institutions.

The sixth section of the semi-annual report addresses actions taken regarding rules, orders, and supervisory actions with respect to covered persons that are not credit unions or depository institutions. The Bureau’s *Supervisory Highlights* publications provide general information about the Bureau’s supervisory activities at banks and nonbanks without identifying specific companies. The Bureau published four issues of *Supervisory Highlights* between October 1, 2016 and September 30, 2017. As noted in the previous paragraph, all public enforcement actions are list in section 5.2 of the semi-annual report. The brief statement of issues identifies those actions taken with respect to covered persons that are not credit unions or deposit institutions.

The seventh section of the semi-annual report requires an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law. For purposes of the section 1016(c)(7) reporting requirement, the Bureau determines that any actions asserting claims pursuant to section 1042 of the Dodd-Frank Act are “significant.” The Bureau is aware of two State Attorney General actions that were initiated during the reporting period and that asserted Dodd-Frank Act claims. The actions are listed in the semi-annual report.

The eighth section of the semi-annual report provides an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau. This update is focused on highlights from the Bureau’s fair lending enforcement⁴ and rulemaking⁵ activities from October 1, 2016 through September 30, 2017, and continued efforts to fulfill the fair lending mission of the Bureau, through supervision, interagency coordination, and outreach from April 1, 2017 through September 30, 2017.⁶ The Bureau’s Fair Lending Supervision program assesses compliance with Federal fair lending consumer financial laws and regulations at banks and nonbanks over which the Bureau has supervisory authority. As a result of the Bureau’s efforts to fulfill its fair lending mission in this reporting period, the Bureau’s Fair Lending Supervision program initiated 11 supervisory events at financial services institutions under the Bureau’s jurisdiction to determine compliance with Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities, including the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act (HMDA). Over the past year, the Bureau announced two fair lending public enforcement actions involving HMDA reporting and credit cards. First, as described in section 5 of this report, on March 15,

⁴ Dodd-Frank Act section 1016(c)(5).

⁵ Dodd-Frank Act section 1016(c)(3).

⁶ Dodd-Frank Act section 1016(c)(8).

2017, the Bureau resolved an enforcement action against a national mortgage originator for violating HMDA by consistently failing to report accurate data about mortgage transactions for 2012 through 2014. Second, as described in section 5 of this report, on August 23, 2017, the Bureau took action against a credit card company, for violating ECOA by discriminating against consumers in Puerto Rico, the U.S. Virgin Islands, and other U.S. territories by providing them with credit and charge card terms that were inferior to those available in the 50 United States.

The ninth, and final, section of the semi-annual report provides an analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion (OMWI). The Bureau has developed an agency-wide strategic plan—Diversity Strategic Plan—to guide the Bureau in its efforts to manage its diversity and inclusion goals and objectives.⁷ The Bureau also publishes an Annual OMWI report in the spring of each year. The 2017 OMWI Annual report was published on March 29, 2018.⁸ Additionally, during FY 2017,⁹ the Bureau awarded 30% of contract dollars to small businesses enterprises (SBEs), some of which are also minority-owned or woman-owned businesses (MWOBs). The Bureau’s contracting rate to small businesses exceeds the Small Business Administration’s recommended goal for each Federal agency of 23%. Of the 30% of SBE contracts awarded at the Bureau in FY 2017, 10% went to small disadvantaged businesses (minority-owned). The total contract dollars awarded to woman-owned small businesses during this period was 11.9%. In accordance with the mandates in section 342(c)(2) of the Dodd-Frank Act, goal six of the Bureau’s Diversity and Inclusion Strategic Plan describes the efforts the Bureau takes to determine that a contractor will ensure, to the maximum extent possible, the fair inclusion of women and minorities in the contractor workforce, and, as applicable, subcontractors workforce. This concludes the overview of the Bureau’s Fall 2017 semi-annual report to Congress.

New strategic priorities

As noted above, you have also requested that I discuss the activities of the Bureau during my tenure. I will begin by outlining the Bureau’s new strategic priorities, and then I will provide an overview of the new approach I have taken in leading the Bureau.

The Bureau’s new strategic priorities are to recognize free markets and consumer choice and to take a prudent, consistent, and humble approach to enforcing the law. This reflects my

⁷ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201611_cfpb_diversity-and-inclusion-strategic-plan-2016-2020.pdf.

⁸ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_OMWI-2017-annual-report.pdf.

⁹ Data source is from the Federal Procurement Data System (FPDS) for FY 2017 from October 1, 2016 through September 30, 2017. The data are current as of October 4, 2017. FPDS data is subject to an OMB annual validation each January for the previous fiscal year.

understanding that consumers and creditors alike gain from mutual exchange, provided that promises are kept, terms are clearly disclosed, and property rights are protected.

As an officer in the executive branch, I am sworn to execute the law, and that is what I am doing. That is all I should be doing. My job is to make sure the Bureau is acting consistently with our statutory responsibilities, to improve our daily operations and our interactions with consumers and industry, and to ensure we are accountable to the American people.

Our recently published Strategic Plan outlines how I intend to fulfill the Bureau's statutory duties. Specifically, the Bureau's mission statement is "to regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws and to educate and empower consumers to make better informed financial decisions." That is what Congress created us to do.

And that is what we will do. We will adhere to the Bureau's statutory responsibilities. Our job is to enforce Federal consumer financial laws, and our focus will be on carrying out only those activities Congress explicitly wrote into law.

New approach

The Bureau is going about its work in several new ways. First, to execute the new mission, the Bureau will continue to seek the counsel of others and make decisions only after weighing relevant available evidence and a full range of perspectives. Second, the Bureau will protect the legal rights of all, equally. And third, we will do what is right with confidence, acting with humility and moderation.

That is why we launched the Call for Evidence—an initiative aimed at gathering public feedback on the wide range of work done by this agency. It is important to learn more about what is working and what needs to improve in the work done by the Bureau. An agency that is confident in its mission should care about getting it right. An agency should welcome constructive feedback and then learn from it.

We are actively seeking this feedback. To date, the Bureau had issued 11 requests for information—RFIs. We are seeking public comment on the Bureau's Civil Investigative Demands, administrative adjudications, enforcement processes, supervision processes, complaint reporting, external engagement strategies, our rulemaking process, rules issued by the Bureau, and rules the Bureau inherited. Most recently, we issued RFIs on guidance and implementation support and consumer education. Later this week, we will issue an RFI on consumer complaints and inquiries. We have extended all of the comment periods to 90 days to give everyone more time to provide us with feedback. I encourage any interested parties to submit comments. Your comments will help the Bureau evaluate what we do and how we do it and determine whether changes are warranted.

Another area where we are doing things differently is executing the Bureau's regulatory agenda. First, regulatory agencies like the Bureau are not legislatures. The Bureau has very broad

rulemaking authority to regulate consumer financial products and services. We must be very judicious in the use of this power.

Second, we are committed to making sure the Bureau's regulations work not only for those who use consumer financial products and services but also for those who provide them. This means clear rules that, where appropriate, can be tailored to the business models of the companies subject to these rules. For instance, the Bureau is here to help protect people who use credit, but we're also here to establish clear guidelines for those who provide that credit because it is an important service for consumers and central to our capitalist system.

Additionally, under my leadership the Bureau will implement a more robust quantitative analysis of potential costs and benefits to consumers and those we regulate.

We are also opening up the rulemaking process to reconsider elements that may create unnecessary burden or restrict consumer choice. Specifically, the Bureau recently issued statements about revisiting the regulation issued under the Home Mortgage Disclosure Act and the "Payday, Vehicle Title, and Certain High-Cost Installment Loans" rule.

Regarding HMDA, the Bureau intends to open a rulemaking to reconsider various aspects of the 2015 HMDA rule, such as reporting thresholds and transactional coverage and reconsider data points not mandated by the Dodd-Frank Act. Furthermore, we have announced, with our partners at the Office of Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, that our supervisory examinations of 2018 HMDA data will be diagnostic. Our goal is to help companies identify any weaknesses, and we will credit good-faith efforts to comply. Financial institutions that submit HMDA data are doing so through the Bureau's new online platform, which allows an institution to upload loan application registers, review edits, certify data, and submit data for the filing year without the manual processes required previously. Over 5,800 institutions have submitted their 2017 data using the new platform.

We are not pre-judging the outcome of any rulemaking; instead, I share our recent efforts with you to demonstrate that under new leadership the Bureau is willing to revisit existing rules to find ways to ease undue burdens and protect consumer choice. This we will do efficiently, effectively, and transparently. We will structure ourselves and conduct Bureau operations in a way that reduces redundancy and makes the best use of resources.

Above all, the Bureau must be efficient. That means I will organize the agency and conduct its operations in ways that reduce redundancy and make the most of our resources. For example, the Office of Fair Lending and Equal Opportunity is being moved to the Director's Office, to become part of the Office of Equal Opportunity and Fairness. The Office of Fair Lending will continue to focus on advocacy, coordination, and education.

The Bureau will continue to enforce fair lending laws. The current fair lending supervision and enforcement functions will remain in the soon-to-be-renamed Division of Supervision, Enforcement, and Fair Lending. Accordingly, the Bureau will have one office, not two, that handles enforcement matters. It will have one office, not two, that handle supervision policy,

and one office, not two, that handle supervision examinations. This will make enforcement and supervision more efficient, effective, and accountable.

In another change, the Bureau practice of “regulation by enforcement” has ceased. The Bureau will continue to enforce the law. That is our job, and we take it seriously. However, people will know what the rules are before the Bureau accuses them of breaking those rules.

Through the changes I have discussed and others, I am making sure the Bureau is operating within its statutory mandate, is accountable for its actions, and is doing the American people’s business in ways that are efficient and effective.

The best that any Bureau Director can do on his own is to fulfill his responsibilities with humility and prudence and to temper his decisions with the knowledge that the power he wields could all too easily be used to harm consumers, destroy businesses, or arbitrarily remake American financial markets. But all human beings are imperfect, and history shows that the temptation of power is strong. Our laws should be written to restrain that human weakness, not empower it.

Thank you again for the opportunity to present the Bureau of Consumer Financial Protection’s semi-annual report to Congress for the period beginning April 1, 2017 to September 30, 2017, as well as to provide you an update on the activities of the Bureau during my tenure. I would be happy to answer any of your questions about the Bureau’s work.