Consumers Need Protection from Predatory Financial Products and Services

Strong Consumer Protections Support Financial Security

Households across the country were significantly harmed by the widespread marketing of predatory products that fueled the economic recession of 2008. It started with excessive sales of predatory subprime home mortgage loans. Families were unable to make payments on unaffordable, high-cost loan products, and a wave of foreclosures swept through neighborhoods. This soon infected the entire financial system, leading to substantial losses in household wealth even for those who did not fall back on their mortgage payments or own homes in the first place. And since communities of color were disproportionately targeted for these products, they bore the brunt of the fallout.¹

More than 10 years have passed since the meltdown and the vast majority of families have yet to recover. The top 10% of income earners are the only group with more wealth now than in 2007; the remaining 90% have less wealth than just before the crisis.² And any gains for households of color are outpaced by increases in wealth for White families, who started off with significantly more. Excluding the family car and other durable goods, the median wealth for Black households was $3400 in 2016, while the figure was $6300 for Hispanic families. Compare this to more than $140,000 for their White peers.³

The Consumer Financial Protection Bureau (CFPB) Has Been an Effective Advocate for Consumers

To prevent another crisis of such magnitude, Congress adopted major regulatory changes to make the financial system better able to manage risk and more accountable to consumers. This included the creation of the Consumer Financial Protection Bureau (CFPB). Unlike other bank regulators that are primarily concerned with the safety and soundness of financial institutions and the financial system at large, the main purpose of the CFPB is to protect consumers from predatory financial products and services.

The bureau achieves this by conducting research on the financial system's impact on consumers; issuing rules to prevent predatory practices and protect consumers; examining and supervising financial institutions for unfair, deceptive and abusive acts and practices; and enforcing its rules when financial institutions do not follow them.⁴ For the first five years of its existence, the CFPB returned nearly $12 billion to 29 million consumers (one-tenth of the country) harmed by unscrupulous financial practices.⁵

![Consumer Financial Protection Bureau: By the Numbers](source: Consumer Financial Protection Bureau, By the Numbers, December 2015)
Consumer Protections and the Bureau Are Under Attack

Weakening or eliminating consumer protections is the wrong course of action. Deregulation and a general hands-off approach is what led to the financial crisis in the first place. Yet under the new political leadership of the CFPB, these protections have taken a backseat. Since being appointed Interim Director of the CFPB in November of 2017, Mick Mulvaney has made several regulatory, budgetary, structural and enforcement-related changes that weaken the bureau. On top of that, other important regulations are being weakened or outright repealed by Congress and other agencies. These changes could financially harm families and deepen the racial wealth divide.

Existing CFPB regulations, such as the payday lending rule, are being weakened. In January, the CFPB announced it will reconsider a rule meant to address predatory payday lending and the cycles of long-term debt associated with these products. This provides an opportunity for the bureau to weaken or completely undo the rule. Payday lenders are also using the courts to try and delay implementation of the rule. The regulation was the result of five years of research, stakeholder outreach, public comment and drafting, and is supposed to take effect in August of 2019.

In addition, new regulations on prepaid cards, set to go into effect this year, were delayed until April 2019. Under language announced last year, the rule would have required cards to include clear disclosures of fees and would force companies to work with consumers if there are unauthorized charges on their cards.

Over the past two years, Congress has made numerous attempts to outright repeal a number of regulations—including the payday lending and prepaid card rules—by using the Congressional Review Act, which allows Congress to void and permanently prohibit the enactment of recently passed regulations issued by federal agencies. In fact, the same month that Trump appointed Mulvaney, Congress successfully used the Congressional Review Act to repeal the bureau’s Arbitration Agreements Rule, a landmark regulation that would have shielded consumers from being forced to address disputes through arbitration. Many companies include mandatory arbitration clauses in contracts for products or services, which prevent consumers harmed by wrongdoing from banding together to find redress through a class action law suit.

Supervision and enforcement activities are not adequately protecting consumers. The number of publicly announced enforcement actions has dropped off dramatically since Mulvaney became Interim Director, and the enforcements brought have provided much less compensation for victims than previous actions. In other words, bad financial actors are not being held to account for their actions and consumers are not receiving adequate restitution for negligent behavior. In addition, Mulvaney is planning on suspending the requirement that lenders be routinely evaluated to make sure they are complying with the Military Lending Act (MLA), which would leave military service members vulnerable.

The CFPB has also dropped several egregious cases, including some against payday lenders, which charge high fees and target vulnerable low-income consumers. The CFPB voluntarily dismissed a lawsuit against Golden Valley Lending, a tribal lender that charged annual interest rates as high as 950%, as well as significant service fees. It also ended a four-year investigation into World Acceptance Corp., which allegedly targeted sub-prime borrowers with loans carrying annual interest rates in the triple digits.
The CFPB’s consumer complaint database could be closed to the public. For the past seven years, the bureau has operated a groundbreaking new public online database that people use to file complaints against a company’s products and services. Once filed, companies have 15 days to respond—during which the agency can help mediate—before the complaint is publicly posted on the database. To date, the number of logged complaints tops a million, and the bureau handles more than 20,000 complaints each month.16

Stating the law does not require an open process, Mulvaney has expressed his desire to make the database private.17 However, the public nature of the platform has forced companies to be more accountable to consumers and increased transparency. Increased transparency fosters trust, which is particularly needed and important in the wake of the financial crisis. It also creates an incentive for companies to not engage in predatory behavior in the first place.

Other regulations that protect consumers are being repealed or are under threat. Along with concerns about the CFPB, other federal regulations impacting vulnerable consumers and communities also face an uncertain future. These include the Duty to Affirmatively Further Fair Housing (AFFH) and the Community Reinvestment Act (CRA). AFFH is part of the Fair Housing Act (FHA), and requires communities to examine and address housing segregation and barriers to fair lending in their neighborhoods, while the CRA increases access to banking services and lending for households that are locked out of the financial mainstream (often low-income families and communities of color). In January of 2018, the Department of Housing and Urban Development (HUD) delayed the submission of the AFFH assessments and plans by three years, which came after years of careful research on how to best to satisfy the duty and write the rules. Moreover, the Office of the Comptroller of the Currency (OCC) is moving forward with plans to reform the CRA that might weaken the law by placing the priorities of banks over those of underserved communities and denying input and collaboration with other CRA regulators.19

Weakening Consumer Protections Will Make the Racial Wealth Divide Worse

Much of the CFPB’s work impacts the racial wealth divide. For example, discriminatory practices in lending make it harder for households of color to build wealth through homeownership, and predatory payday lenders frequently target communities of color with high-cost loan products that strip away any gains in wealth. Rolling back consumer protections harms households of color, especially given that Black and Latino families are more likely to be lower-income than White families and lower-income families are some of the most financially vulnerable.

The CFPB has moved to weaken their fair lending work. In the spring of 2018, the CFPB announced a reorganization that moves the Office of Fair Lending and Equal Opportunity (OFLEO) into the Director’s office, making OFLEO more vulnerable to political influences and stripping it of its enforcement powers. Previously, OFLEO led high-profile cases that targeted racial discrimination, often on a massive scale, and was responsible for returning $450 million dollars to approximately a million consumers. The office now focuses on internal policy and advocacy within the CFPB.

Congress has also taken aim at CFPB regulations related to discriminatory practices. In April, the Senate voted to overturn a CFPB rule that prevented discrimination against consumers shopping for auto loans, despite evidence demonstrating that this is a serious problem in the auto loan industry. A 2018 matched pair study by the National Fair Housing Alliance found that non-White testers participating in the research were offered more costly auto loan pricing estimates than their White counterparts 62.5% of the time, amounting to more than $2500 in additional payments over the life of a loan. This was true even when the non-White tester was better qualified for the loan. Mulvaney has also taken this repeal as a potential opportunity to re-examine Equal Credit Opportunity Act (ECOA) regulations that could make it more difficult for consumers to prove financial institutions are engaging in discriminatory practices.23
How Congress and Federal Regulators Can Protect Consumers from Predatory Financial Practices

**The CFPB needs a leader who will put consumers first.** As is evident from Mulvaney’s actions, the person who heads the bureau has a significant influence on the agency’s priorities and its overall impact. The person chosen as the next permanent Director must honor the original mission of the bureau and put the needs of consumers first. The CFPB also needs a leader who has extensive experience in financial regulation, the financial services industry or working with consumers. The bureau cannot be effectively run by someone without the background and skills that relate to its important and complex work.

**Congress should protect the strength and independence of the CFPB and the current leadership structure.** To remain an effective and independent consumer watchdog, the CFPB must be independently funded with a single director leading the agency. Right now, the bureau is funded through the Federal Reserve according to a fixed formula and is headed by one director rather than a commission. Any efforts to allow funding levels to be set by Congress through the appropriations process, or to change the leadership structure so that it is led by a commission should be prevented. Independent funding lets the bureau pursue its mission regardless of political changes and influences and having only one person in charge improves accountability and avoids the gridlock that can come from multiple voices wanting to slow down or completely block the bureau from taking action when necessary.

Congress should also pass the Consumers First Act (H.R. 6972), a bill introduced by Representative Maxine Waters (D-CA-43) to protect the CFPB. The Act would restore the strength and authority of the bureau by undoing the actions taken by Interim Director Mulvaney to undermine the agency’s work and mission.

**Policymakers and regulators should preserve and protect other important regulations like the AFFH and the CRA.** Congress, the President, and relevant federal agencies and regulators need to protect consumers and communities by championing regulations that promote fair lending and broader racial and financial inclusion. This means HUD should no longer delay the full implementation of the AFFH. It also means the CRA should be modernized and improved to make it even more effective at reducing barriers to mainstream banking for underserved communities, not just deregulated to ease compliance burdens for financial institutions. This should be done with the full cooperation of all the regulators responsible for CRA implementation.

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