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CONSUMER NEWS: THE CFPB'S NEW DIRECTION

*James Orescanin, News Editor**

Prefatory Note: This is an update to the Consumer News article published in *Loyola Consumer Law Review's* Volume 31, Issue One,¹ in light of this issue's focus on the Consumer Financial Protection Bureau.

In November of 2018, the Consumer Financial Protection Bureau's ("CFPB") future was unclear. The agency was headed by an interim director, Mick Mulvaney, and had begun focusing its efforts on reducing costs, curtailing enforcement actions, and implementing new policies.² Today, following the successful appointment of new CFPB Director Kathy Kraninger, the future direction of the CFPB is much clearer. Yet how this new direction affects consumers and the financial market remains to be seen.

Kathy Kraninger was appointed as Director of the CFPB in December 2018.³ Kraninger came to the CFPB from the Office of Management and Budget, where she oversaw the budgets for multiple executive branch agencies including the Departments of Commerce, Justice, Homeland Security, Housing and Urban Development, Transportation, and Treasury.⁴ In addition, Kraninger had previously worked in the U.S. Senate, where she was the Clerk for the Senate Appropriations Subcommittee on Homeland Security, which provides the Department of Homeland Security with its \$40 billion discretionary budget.⁵

Despite her experience in these crucial governmental roles,

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¹ See James Orescanin, *From CFPB to BCFP: A New Bureau of Consumer Financial Protection*, 31 *LOY. CONSUMER L. REV.* 148 (2018).

² *Id.* at 153.

³ *Kathy Kraninger, Director, Consumer Financial Protection Bureau*, *CONSUMER FIN. PROT. BUREAU*, <https://www.consumerfinance.gov/about-us/the-bureau/about-director/> (last accessed May 8, 2019).

⁴ *Id.*

⁵ *Id.*

Kraninger's appointment was met with significant criticism. In a largely partisan debate, many Democrats viewed Kraninger's appointment as another attempt to weaken the CFPB from within, and argued that she had no financial industry regulation experience and was thus not fit for the job.⁶ Some lawmakers also argued that Kraninger should not be appointed due to her alleged involvement in the Trump administration's policy of separating immigrant children from their families at the border.⁷ Further, in an August 22, 2018 letter to the Senate Committee on Banking, numerous consumer and civil rights organizations argued that Kraninger would "prioritize the interests of industry over consumers and the rule of law" and thus urged the Senate Committee on Banking to oppose her nomination.⁸

By contrast, Republican lawmakers argued that Kraninger's management experience with the Office of Management and Budget made her the "right leader to reform and refocus" the CFPB.⁹ Numerous Republican lawmakers, including Mike Crapo (R-Idaho), the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs, stated that Kraninger was well prepared to lead the bureau in enforcing federal consumer financial laws.¹⁰ Kraninger's own statements indicate that she is ready to lead the bureau in taking "aggressive action against bad actors who break the rules by engaging in fraud and other illegal activity."¹¹

Regardless of one's stance on Kraninger's nomination, she was appointed as Director of the CFPB in December 2018 and will likely remain there for a statutory term of five years.¹² Reportedly,

⁶ Emily Sullivan, *Senate Confirms Kathy Kraninger As CFPB Director*, NPR (Dec. 6, 2018), <https://www.npr.org/2018/12/06/673222706/senate-confirms-kathy-kraninger-as-cfpb-director>.

⁷ *Id.* Senator Elizabeth Warren (D-Mass.) specifically stated that Kraninger's involvement in this policy was a "moral stain that will follow [Kraninger] for the rest of [her] life."

⁸ Letter from Americans for Financial Reform to the Senate Committee on Banking, Housing, and Urban Affairs, (Aug. 22, 2018), <https://ourfinancialsecurity.org/wp-content/uploads/2018/08/Kraninger-civil-consumer-groups.pdf>. The organizations who signed the letter include Americans for Financial Reform, the AFL-CIO, the American Association of Justice, and the National Association of Consumer Advocates.

⁹ Sullivan, *supra* note 6.

¹⁰ *Id.*

¹¹ *Id.*

¹² See 12 U.S.C. § 5491(c) (2018). Pursuant to statute, the CFPB's Director can only be removed for cause upon a showing of inefficiency, neglect of duty,

Kraninger's conservative vision for the CFPB focuses more on educating Americans to protect themselves rather than by aggressively bringing enforcement actions against institutions.¹³ Citing a Federal Reserve study that found four out of ten Americans couldn't cover an emergency expense of \$400, Kraninger seeks to "empower[] consumers to help themselves protect their own interests and choose products and services that best fit their needs."¹⁴ This type of vision is in stark contrast to former CFPB Director Richard Cordray's leadership, which focused extensively on aggressively bringing enforcement actions against perceived financial wrongdoers.¹⁵ However, contrary to some critics' views, Kraninger has not dispelled the necessary role of the CFPB in financial regulation.¹⁶ According to Kraninger, enforcement actions will still be brought, as "supervision is the heart of the industry."¹⁷

In the first months of Kraninger's appointment, the CFPB has enacted numerous notable changes. First, the CFPB has proposed rule changes to clarify the Fair Debt Collection Practices Act ("FDCPA")¹⁸ which hasn't been updated since 1977.¹⁹ Because the FDCPA was established in 1977, it is reportedly unclear how the law applies to debt collectors' use of modern communications such as email and text message communications.²⁰ Thus,

or malfeasance in office.

¹³ Andrea Riquier, *Trump Appointee to Turn Wall Street Watchdog CFPB Into Financial Literacy Program*, MARKET WATCH (Apr. 18, 2019), <https://www.marketwatch.com/story/kraningers-cfpb-will-focus-more-on-consumer-education-2019-04-17>.

¹⁴ *Id.*

¹⁵ Sylvan Lane, *Cordray Announces He's Leaving Consumer Bureau, Promotes Aide to Deputy Director*, HILL (Nov. 24, 2017), <https://thehill.com/policy/finance/361742-cordray-announces-hell-leave-consumer-bureau-friday>. Cordray's enforcement actions reportedly won more than \$12 billion in restitution for more than 30 million defrauded consumers throughout his tenure. *Id.*

¹⁶ Riquier, *supra* note 13.

¹⁷ *Id.*

¹⁸ See 15 U.S.C. § 1692 (2018). This Act imposes rules and restrictions on debt collectors, including placing limits on communication, prohibiting harassing phone calls or other abusive behavior, and prohibiting false or misleading communications to debtors. 15 U.S.C. § 1692c – 1692e (2018).

¹⁹ David Lazarus, *Like it or Not, Debt Collectors May be Texting and Emailing You Under New Rules*, L.A. TIMES (Apr. 30, 2019), <https://www.latimes.com/business/lazarus/la-fi-lazarus-debt-collectors-cfpb-20190430-story.html>.

²⁰ *Id.*

Kraninger seeks to “propose clarifying rules to better enable the use of modern communications technology in collections activity.”²¹ On May 7, 2019, the CFPB issued a Notice of Proposed Rulemaking to implement the FDCPA, and is currently seeking written comments on the proposed rule.²²

The CFPB is also making changes to its Civil Investigative Demands (“CID”) policies.²³ The CID process is the process by which the CFPB issues investigational subpoenas, known as CIDS, for the purposes of uncovering information to determine if a financial law or rule has been violated.²⁴ Under the new changes, the CFPB seeks to ensure that more information is provided by the CFPB to the institution receiving the CID about the potentially wrongful conduct being investigated.²⁵ This includes providing information about the potentially applicable provisions of law that may have been violated and the specific conduct which is alleged to be at issue.²⁶ Although critics of this change argue that this means the CFPB will be “showing all of its cards to a target at the outset” of the investigation,²⁷ this change is less surprising when considered in the light of several judicial opinions which have criticized the CFPB’s CID process as not providing notice to the financial institutions under investigation.²⁸

Notably, however, is that not all changes to the CFPB are coming from within the CFPB itself. Currently, the Trump

²¹ *Id.*

²² Press Release, Consumer Fin. Prot. Bureau, Consumer Financial Protection Bureau Proposes Regulations to Implement the Fair Debt Collection Practices Act (May 7, 2019), <https://www.consumerfinance.gov/about-us/newsroom/bureau-proposes-regulations-implement-fair-debt-collection-practices-act/>.

²³ *Compliance: CFPB Announces Changes to CID Policy*, CREDIT UNION NATIONAL ASS’N (Apr. 29, 2019), <https://news.cuna.org/articles/115957-compliance-cfpb-announces-changes-to-cid-policy>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Ethan Wolff-Mann, *U.S. Consumer Protection Just Got Even Worse*, YAHOO FINANCE (Apr. 25, 2019), <https://finance.yahoo.com/news/cfpb-declawed-trump-administration-consumer-subpoena-165921531.html>.

²⁸ See *CFPB v. Accrediting Council for Independent Colleges and Schools*, 854 F.3d 683, 690 (D.C. Cir. 2017) (finding that the CFPB’s CID failed to adequately state the unlawful conduct under investigation, or the applicable law); *CFPB v. Source for Public Data, L.P.*, 903 F.3d 456, 458-459 (5th Cir. 2018) (finding that the CFPB’s CID failed to identify what conduct it believed constituted an alleged violation, and did not identify the applicable provisions of law).

Administration is attempting to subject the CFPB to the regular Congressional appropriations process, rather than the CFPB's insulated appropriations process.²⁹ Pursuant to statute, the Director of the CFPB is given the sole authority to determine the amount of budget reasonably necessary to carry out the CFPB's mission, and that amount is to be paid out by the Federal Reserve, subject to a statutory cap.³⁰ Under President Trump's budget, however, the CFPB would receive a \$23 million reduction in funding for the fiscal year 2020, and would cap the CFPB's budget at \$485 million, which was equivalent to its 2015 level.³¹ Further, under the appropriations bill signed by President Trump in February 2019, the CFPB Director is required to notify the Committees on Appropriations of both the House of Representatives and Senate of the request, thus evincing an attempt to bypass the statutory insulation that was specifically imposed to avoid congressional interference with the CFPB's mission.³²

Under Kraninger's leadership and the current political climate, the future of the CFPB is appearing clearer. The CFPB faces external political developments that threaten changes to the CFPB's budget and appropriations process—changes which may realize in the coming years. Further, there are internal shifts in the CFPB's ideological composition which signal a revamped direction and mission. What is clear at this point is that what was once an agency that regulated by aggressive enforcement is quickly becoming an agency that regulates by education and clarity. Yet, how this new direction impacts the future financial and economic landscape remains to be seen.

²⁹ Barbara S. Mishkin, *President Trump's FY 2020 Budget Continues Attempt to Subject CFPB to Appropriations Process*, NAT'L L. REVIEW (Apr. 4, 2019), <https://www.natlawreview.com/article/president-trump-s-fy-2020-budget-continues-attempt-to-subject-cfpb-to-0> (last accessed May 8, 2019).

³⁰ 15 U.S.C. § 5497(a).

³¹ Mishkin, *supra* note 29.

³² See Susan Block-Lieb, *Accountability and the Bureau of Consumer Financial Protection*, 7 BROOK. J. CORP. FIN. & COM. L. 25, 39 (2012).