

# Consumer Attys Fear Mulvaney's CFPB Could Leave Void

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Law360 (February 8, 2018, 12:02 AM EST) -- Attorneys representing consumers fear that they are losing a key ally as the [Consumer Financial Protection Bureau](#) changes gears to be more industry friendly under the leadership of Mick Mulvaney.

Mulvaney, the [Office of Management and Budget](#) director whose appointment as acting CFPB director is being challenged in court, has been open about wanting to alter the bureau's stance as one that "pushes the envelope" in taking on aggressive enforcement actions and rulemakings to one that more completely takes into account the views of the businesses that it regulates.

But the attorneys who represent consumers say that having the CFPB ease off on its enforcement efforts and other measures aimed at reining in banks, mortgage servicers, debt collectors, consumer credit reporting bureaus and other companies would leave a void that could leave their clients vulnerable.

"It is critical for consumers for [the CFPB] to keep doing the work it has been doing," said Sarah White, a staff attorney at the Connecticut Fair Housing Center.

Created in the wake of the financial crisis, the CFPB was intended to police consumer financial markets to make sure that lending practices that contributed to the foreclosure crisis accompanying the 2008 subprime mortgage meltdown did not return.

The bureau was also meant to be a bulwark against abusive debt collection practices, incorrect information at consumer credit reporting bureaus and other areas that put consumers at a disadvantage.

Under the leadership of its former director, Richard Cordray, the CFPB staked out enforcement and regulatory positions that the industries it regulated called overly aggressive but which its supporters called groundbreaking.

The bureau was also known as a friend to consumer advocates.

A survey released Thursday by the [National Association of Consumer Advocates](#), or NACA, found that 96 percent of consumer advocates and attorneys who represent largely low-income consumers have been helped by rulemakings and guidance produced by the CFPB.

The survey also found that 72 percent of respondents used information they got from CFPB enforcement actions and consent orders in separate cases brought on behalf of individual clients.

In addition, 69 percent of respondents said that they used the CFPB's consumer complaint database to search for information to use on behalf of their clients. The database is a public record of complaints submitted by consumers to which companies must provide a quick response.

“The bureau’s work over the past six years — protecting homeowners, student loan borrowers, payday loan victims, older adults, servicemembers and other American consumers from harmful financial practices — was deeply felt in communities across the country,” said Christine Hines, NACA’s legislative director.

And interviews with several consumer attorneys found that they had come to rely on the CFPB as an ally when representing their clients.

Roger Phillips, an attorney in Concord, New Hampshire, said that one client discovered a problem with a mortgage servicer that arose as he was in the process of selling his home.

When calls to the servicer did not result in fixes that the client needed to continue with the purchase of a new home, Phillips and his client filed a complaint with the CFPB's database.

Rather than taking 30 days, as would normally be the case in trying to resolve a dispute, the client had his problem fixed in five, allowing him to move forward with his home purchase, Phillips said.

"It was one of those things that had to be done immediately, and thank God for the Consumer Financial Protection Bureau," Phillips said in an interview with Law360.

There is a fear that Mulvaney, who took over temporary leadership of the CFPB in late November, could move to eliminate such opportunities, either by taking the consumer database down from the bureau's public website or altering the information and mandated company response times.

Mulvaney has already [begun rethinking](#) the way that the CFPB conducts administrative proceedings and enforcement actions, sending out requests for information that specifically seek industry input.

The bureau has also [delayed the effective date](#) for a rule governing prepaid cards and has dropped several enforcement actions and investigations since Mulvaney's disputed tenure began.

The OMB director, an opponent of the CFPB during his time in Congress, last month sent a memo to the bureau's staff indicating that the bureau under his watch would no longer ["push the envelope"](#) on enforcement and other matters.

“We are government employees, and we work for the people,” Mulvaney wrote. “That means everyone: those who use credit cards and those who provide the credit; those who take out loans and those who make them; those who buy cars and those who sell them. All of those people are part of what makes this country great, and all of them deserve to be treated fairly by their government.”

Defenders of Mulvaney’s moves say that the changes at the CFPB would set up a healthier balance than existed under Cordray.

“It was certainly tilted too far in the consumer direction. There was little if any balance given to the financial industry. I can’t read the tea leaves yet to say whether or not it’s a retreat or it’s a pause to rebalance things,” said David Anthony, a partner with [Troutman Sanders LLP](#).

But the pullback on enforcement is something that has consumer advocates worried. While state attorneys general and regulators have said they plan to fill the breach should the CFPB pull back on its enforcement efforts, having a national regulator looking out for consumers is important, they say.

“I believe there’s going to be a void, not having that agency doing nationwide enforcement actions and just enforcing and developing the necessary regulations so that consumers are not taken advantage of,” said Tracey Whitley of [Texas RioGrande Legal Aid Inc.](#) in Austin, Texas.

Attorneys representing industry have targeted the database in particular in their complaints.

“It unfairly stigmatizes companies. The CFPB could still process complaints and require companies to respond to the complaints,” said Alan Kaplinsky, a [Ballard Spahr LLP](#) partner.

Kaplinsky said that he was not aware of any bureau efforts to change the database at this point, and a representative for the CFPB could not immediately be reached for comment.

But Mulvaney has restricted CFPB data collection efforts since he took over, giving consumer advocates fears that the database could be the next target.

“When you indicate that you’re willing to stop collecting data, I think that’s a cause of concern for the database and other parts of the bureau’s functions,” Hines said.

White of the Connecticut Fair Housing Center said that she had managed to help a client escape \$1,300 in erroneous mortgage servicing fees after submitting a complaint to the database in December — while Mulvaney was on the job.

She said that it was vital for the bureau to continue its work on behalf of consumers.

“What we really want to see is for them to just continue doing what they’ve been doing,” she said.

--Editing by Pamela Wilkinson and Jill Coffey.