Informational Hearing
Assembly Banking and Finance Committee

An Examination of the Consumer Financial Protection Bureau under the current Federal Administration and Options for California to Better Protect its Consumers

Wednesday, March 27, 2019
1:00 pm, Room 437

1. **Hearing Goal.** The goal of this hearing is to provide information to members of the Legislature about the state of federal consumer financial protection policies under the current administration. The hearing will also provide opportunities for witnesses to share their analysis and recommendations related to options for California to provide better protection of its consumers. Witnesses will provide testimony about specific areas of concern, including payday lending practices, the servicing of student loans, and enforcement of existing law.

2. **The Beginnings of the Consumer Financial Protection Bureau (CFPB).** The CFPB is a U.S. government agency that makes sure banks, lenders, and other financial services companies treat consumers fairly. Institutions subject to the CFPB's supervisory authority include banks, credit unions, mortgage originators and servicers, payday lenders, and private student loan lenders, as well as the larger participants in other consumer financial markets, such as: consumer reporting, debt collection, student loan servicing, international money transfer, and automobile financing. In most cases, the CFPB establishes a minimum standard of protections, and states can layer on additional protections as they see fit.

   The CFPB was created in response to the failure of existing regulatory agencies leading up to the financial crisis of 2007-08. The pre-crisis federal regulatory framework had two primary flaws related to consumers. First, regulatory responsibilities were dispersed over a patchwork of agencies, including the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision, the Office of the Comptroller of the Currency (OCC), the Federal Trade Commission (FTC), and others. These regulatory agencies did not coordinate well with one another and failed to stop risky lending practices that ultimately led to the subprime meltdown. Second, these regulatory agencies relied heavily on the perspective of their own staff who were embedded within the financial services companies that they regulated. This close tie between regulators and the regulated companies led to a significant degree of regulatory capture, where the regulators' perception of industry behavior was heavily influenced by the industry itself. No single regulatory agency was both focused on outcomes for consumers and empowered with sufficient enforcement authority to police the markets, which resulted in harm to millions of consumers due to the industry's reckless behavior.

   In 2010 Congress passed and President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act in response to the subprime mortgage meltdown and subsequent financial crisis. Within the Dodd-Frank Act, Congress authorized the creation of the Consumer Financial Protection Bureau. U.S. Senator Elizabeth Warren has been widely credited with proposing the CFPB during the subprime crisis, although similar consumer-focused financial regulatory bodies had been discussed previously. In September 2010, President Obama named Warren as Special Advisor to the Secretary of the Treasury and charged her with setting up the new agency. In January 2012, President Obama appointed Richard Cordray as Director of the CFPB.

3. **How the CFPB protects consumers.** Through legislation and subsequent rulemaking, the federal government consolidated existing authorities that had been scattered throughout other regulatory agencies and established new authorities, making the CFPB the single, consumer-focused regulating authority at the federal level. These laws gave the CFPB an array of tools to promote fair, transparent, and competitive markets. The CFPB's responsibilities can be organized into three general categories: education, enforcement, and research.

   Education: The CFPB develops and distributes financial education materials to consumers to help them make financial decisions that are in their best interest. In order for financial markets to be fair and transparent, consumers must have the tools to compare costs, benefits, and risks between products. Examples of the CFPB's successes in this area include the Know Before You Owe mortgage disclosure that can be used to compare loan estimates, a database that allows consumers to compare credit card agreements, and a series of guides for major financial decisions, including buying a house, getting an auto loan, paying for college, and planning for retirement.

   Enforcement: The CFPB is the cop on the beat when it relates to consumer financial protection laws. The Bureau is responsible for rule-making, supervision, and enforcement of federal consumer financial laws, as well as broad and flexible rulemaking authority to define and prohibit unfair, deceptive, or abusive acts or practices. Under Mr. Cordray's leadership, the CFPB put $12 billion back in the pockets of families through enforcement and supervision activities. Some of the largest enforcement cases include a $2 billion penalty against Ocwen for mortgage servicing violations, including fraudulent foreclosures; a $747 million penalty against Bank of America for illegal credit card practices; a $700 million penalty against Citibank for illegal credit card practices; and $480 million in debt relief for students related to predatory lending practices by Corinthian College.

   Research: The CFPB conducts extensive research on consumer behavior and monitors financial markets for new risks to consumers. The Bureau hosts a large complaint database to better understand the challenges consumers face and to identify and track illegal behavior by financial services companies. The Bureau's research informs how other divisions undertake their work: data and findings are used to make decisions about rule-making, research informs how the Bureau develops educational materials and disclosures to be most effective for consumers, and market monitoring and complaint tracking identify potential abusive activities that lead to enforcement actions.

4. **The CFPB under the current federal administration.** Congressional Republicans have almost uniformly opposed the existence of the CFPB from its inception. After the 2016 Presidential Election, the new administration was immediately antagonistic to Mr. Cordray's leadership. Mr. Cordray's term as Director was scheduled to end in the summer of 2018, but Mr. Cordray decided to leave the CFPB in November 2017.

   The President appointed Mick Mulvaney as Interim Director in November 2017. While in Congress, Mulvaney said, "I don't like the fact that CFPB exists," and as interim director, Mulvaney tried to undermine the independence of the CFPB by giving Congress and the President more power over the Bureau's actions and personnel. While Mulvaney and Congressional Republicans were not successful in making statutory changes to the CFPB, Mulvaney and his successor, Kathy Kraninger, have severely constrained the agency from within. Upon his appointment, Mulvaney hired a dozen political appointees to the lead the CFPB offices, and they have significantly damaged the Bureau's ability to protect consumers. The major rollbacks include:

- *Severe drop in enforcement cases* – Publicly announced enforcement actions dropped about 75 percent from the average in recent years, according to a Washington Post analysis of bureau data. This drop occurred despite consumer complaints rising to new highs.

- *The "Mulvaney discount"* – For enforcement cases that were permitted to go forward, Mulvaney approved penalties that were far below the recommendation of career regulators. In one case, an enforcement attorney recommended an $11 million fine for a lender that improperly pressured consumers to buy insurance and accosted borrowers at the home and jobs to collect on debts. A political appointee slashed the penalty by more than half. In another case, enforcement attorneys sought a settlement that would have returned $60 million to consumers after a debt collection company impersonated law enforcement officers while collecting debts. The Mulvaney appointee scrapped the recommendation to return money to consumers and levied a paltry $800,000 fine on the company instead.

- *Proposed gutting of the Payday Lending Rule* – In November 2017, the CFPB finalized the Payday Lending Rule which would have required payday lenders to establish a consumer's ability-to-repay before giving them a loan. This underwriting requirement was designed to ensure that consumers do not fall into a cycle of reborrowing that leaves them worse off than when they sought the initial loan. The CFPB conducted a five-year process of empirical research, meeting with stakeholders, and adjusting its initial proposal that was released in June 2016.

  The rule was scheduled to go into effect January 2018, but Mulvaney delayed the rule. In February 2019, the new Trump-appointee at the top of the Bureau, Kathy Kraninger, announced that the Bureau was proposing to remove the ability-to-repay requirement, essentially gutting the rule to the liking of the payday lending industry. The Bureau is currently accepting comments on the proposed rollback. If the Bureau moves forward with the proposal, it will likely be challenged in courts as an "arbitrary and capricious" action under the Administrative Procedure Act.

- *Eliminated enforcement authority for discrimination cases* – Mulvaney stripped the Office of Fair Lending and Equal Opportunity of its enforcement authority. This office was charged with identifying instances of discrimination by financial services companies. Prior to Mulvaney, the office brought some of the CFPB's most high-profile cases, including a settlement against a bank for racial discrimination against minority mortgage borrowers. It also brought a case against an automobile lender that systemically charged black, Hispanic, and Asian American customers more for auto loans than whites who were equally creditworthy.

- *Shut down the Office of Students and Young Consumers* – Mulvaney shut down a key watchdog division focused on protecting student loan borrowers from abuses by loan servicers, debt collectors, and predatory lenders. Subsequent to the office's closure, the Bureau has taken no meaningful action to protect student loan borrowers, and the former head of the office, Seth Frotman, resigned in August 2018, citing "the Bureau has abandoned the very consumers it is tasked by Congress with protecting."

- *Stopped examining lenders for compliance with Military Lending Act* – Internal documents obtained by The New York Times in August 2018 revealed that the CFPB under Mulvaney's direction ceased examinations of financial companies to ensure their compliance with the Military Lending Act (MLA). The MLA restricts lenders from charging more than 36% APR on consumer loans to active duty military members and their dependents. The MLA was passed with strong bi-partisan support in 2006 and signed into law by President George W. Bush. The Department of Defense and dozens of military and veterans groups opposed Mulvaney's decision, but the CFPB has yet to change its position.

5. **California regulates and enforces some consumer financial protections.** Two state agencies conduct a large majority of consumer financial protections in California: the Department of Business Oversight (DBO) and the Department of Justice (DOJ).

   DBO serves at the state's primary regulator of financial services companies. Industries under the DBO's regulation include state-chartered banks and credit unions, non-depository lenders, residential mortgage lenders, mortgage loan originators, payday lenders, check sellers, money transmitters, student loan servicers, PACE program administrators, broker-dealers and investment advisers, among several others. Consistent with authorities of other state bank supervisors, DBO has the authority to revoke the licenses of regulated actors for bad behavior. DBO also has a variety of enforcement tools to punish bad actors and, in some cases, can seek compensation on behalf of consumers for wrongdoing. In recent years, DBO has increased its enforcement efforts, particularly against small-dollar lenders. DBO identifies potential cases of unlawful activity through consumer complaints and through routine examinations of licensed entities.

   DOJ, under the leadership of the Attorney General, has broad enforcement authority to leverage state and federal laws against financial services providers that engage in unfair, deceptive, or unlawful business practices. In recent years, the DOJ has successfully brought cases for unlawful wire fraud scams, mortgage abuses by large Wall St. banks, abusive debt collection practices, and predatory and unlawful practices by for-profit colleges and student loan servicers.