

# Recent CFPB Legislative Changes

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**Weltman** 

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# Changes Within the CFPB

- November 24, 2017 – Richard Cordray resigns as Director of CFPB to run for Governor of Ohio
- November 24, 2017 – “Mick” Mulvaney appointed as acting Director. Deputy Director Leandra English files suit in the U.S. Court of Appeals for the D.C. Circuit, but resigns in July 2018 after President Trump nominates Kathy Kraninger to become the permanent Director
- December 6, 2018 – Kraninger confirmed in Senate 50-49

# What's in a Name Anyway?

- March 2018 – Acting Director Mulvaney begins effort to change the name from Consumer Financial Protection Bureau (CFPB) to Bureau of Consumer Financial Protection (BCFP), citing to the language in Dodd-Frank creating the agency
- The effort included new signage outside of the agencies Washington, D.C. office and a new seal

# What's in a Name Anyway?

- Mulvaney believed that the name change would cost nothing
- Some estimated a cost of as much as:
  - \$300 million to the industry to update databases, change regulatory filings, and revise disclosure forms
  - \$9-\$19 million for the agency to update internal materials and website
- December 2018 - Newly confirmed Director Kraninger halts rebrand plan

# Is This Even Legal?

- Several court cases challenging the constitutionality of the single director structure of the CFPB are pending, or recently concluded

# State National Bank of Big Spring v. Mnuchin

## Issues:

1. Whether Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act violates the Constitution's separation of powers by creating the Bureau of Consumer Financial Protection as an independent agency that exercises expansive executive authority over private citizens but is led by a single director that the president cannot remove from office for policy reasons, is exempted from Congress' power of the purse and accompanying congressional oversight, and has no internal checks or balances (such as those afforded by a deliberate multi-member commission structure) to mitigate this lack of accountability and restraint
2. Whether [Humphrey's Executor v. United States](#) should be overturned
3. Whether the appropriations clause, in conjunction with the Constitution's separation of powers, permits Congress to create perpetual, on-demand funding streams for executive agencies that are unreviewably drawn from the coffers of other independent agencies.

# State National Bank of Big Spring v. Mnuchin

- Certiorari denied January 14, 2019
- Important take away:
  - The Department of Justice (DOJ) filed a brief agreeing with the petitioners that the structure is unconstitutional but argued that the petition should be denied because Justice Kavanaugh previously participated in the Circuit Court matter and, other pending cases address the same issue, from other courts, are pending and would allow the full court to decide

# CFPB v. All American Check Cashing

- Interlocutory appeal of denial of motion for judgment on the pleadings challenging the single director, removable for cause only structure of the CFPB
- CFPB argues that structure is constitutional and that judgment on the pleadings would not be appropriate even if the for cause provision was removed under the theory of ratification
- Oral arguments were heard March 12, 2019



# CFPB v. RD Legal Funding

- 2018 decision holding single director, removable only for cause structure of CFPB unconstitutional and striking all of Title X of Dodd Frank
- Important take away:
  - CFPB is arguing that CFPB structure is constitutional
    - This position is contrary to DOJ position in the All American Check Cashing case
  - Even if the structure is unconstitutional, the remedy is to remove the provision as opposed to striking all of Title X

# CFPB v. Seila Law, LLC

- Appeal of refusal to set aside Civil Investigative Demand (CID) on grounds that CFPB Director structure is unconstitutional
- CFPB relied on same ratification argument used in the All American Check Cashing case
- Oral arguments were heard January 9, 2019

# Do Your Job! (H.R. 1500)

- The CFPB has been both praised and criticized for its independent nature, oversight (or lack thereof) and funding mechanism
- The “pendulum” has swung from one side to the other as a result of both the 2016 and 2018 elections
- The autonomy of the CFPB has become an even more hotly contested issue
- On March 5, 2019, Maxine Waters (Majority Chair of the House of Representatives Committee on Financial and Banking Services) introduced H.R. 1500 (Consumers First Act) “[t]o require the Consumer Financial Protection Bureau to meet its statutory purpose.”

# Highlights

- Codify that the name shall be “Consumer Financial Protection Bureau”
- Duty to provide adequate staffing
- Limitation on political appointees
- Public availability of complaint information
- Duties of the Office of Fair Lending and Equal Opportunity AND Office of Students and Young Consumers
- Consumer Advisory Board

# Enforcement Actions

- In its fall 2018 semi-annual report, the CFPB listed 34 matters in which the bureau was a party between October 1, 2017 and September 30, 2018
- The matters fall into several categories:
  - Banks
  - Other financial service providers
  - Debt collectors

# Banks

- Citibank
  - Consent order – TILA violation
  - \$335 million in restitution
- Wells Fargo
  - Consent order – UDAAP
  - \$1 billion penalty
- Citibank
  - Consent order – UDAAP
  - \$3.75 million in redress, \$2.75 million in penalty
- TCF National Bank
  - UDAAP
  - \$25 million in restitution, \$5 million in penalty

# Other Financial Service Providers

- Federal Debt Assistance Association
  - False representation – \$4.9 million in redress, \$16 million in penalty
- Freedom Debt Relief
  - Deceptive practices – *pending*
- Navient
  - UDAAP, misrepresentation – *pending*
- Ocwen
  - UDAAP, misrepresentation – *pending*

# Other Financial Service Providers

- Williamson Law Firm
  - UDAAP, misrepresentation for debt relief services – *pending*
- Access Funding
  - UDAAP, misrepresentation in settlement funding agreements – *pending*
- Pension Funding
  - UDAAP, misrepresentation in pension advance loans - *pending*



# Debt Collectors

- Think finance
  - Zombie debt collection, bankruptcy filed
  - Status: *pending*
- National Collegiate Master Student Loan Trust
  - SOL, false affidavits
  - Status: *pending consent entry*
- Weltman, Weinberg & Reis Co., LPA
  - UDAAP, demand letters
  - Status: *defense verdict after trial on the merits*

# But...



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Federal district court case

## Weltman, Weinberg & Reis Co., L.P.A.

The Consumer Financial Protection Bureau (CFPB) filed a lawsuit in a federal district court against the debt collection law firm Weltman, Weinberg & Reis for falsely representing in millions of collection letters sent to consumers that attorneys were involved in collecting the debt. The law firm made statements on collection calls and sent collection letters creating the false impression that attorneys had meaningfully reviewed the consumer's file, when no such review has occurred. The CFPB is seeking to stop the unlawful practices and recoup compensation for consumers who have been harmed.

### RELATED DOCUMENTS

[Complaint](#)

### PRESS RELEASE

[CFPB Files Suit Against Law Firm for Misrepresenting Attorney Involvement in Collection of Millions of Debts](#)

### ACTION DETAILS

#### Category

Federal district court case

#### Court

United States District Court Northern District of Ohio Eastern Division

#### Institution type

Nonbank

#### Status

Active

#### File number

1:17-cv-00817

#### Topics

- DEBT COLLECTION
- ENFORCEMENT

#### Date filed

APR 17, 2017

# Questions?

# Weltman

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