

Another Update on the CFPB

May 29, 2025



By Mercedes Kelley Tunstall
Partner | Financial Regulation

Since our [last report on what is happening with the Consumer Financial Protection Bureau \(“CFPB”\)](#) during this administration, we have seen the Trump nominee for Director of the CFPB retracted from consideration in front of the Senate and an effective deadlock on the case brought by the National Treasury Employee Union (“NTEU”) seeking to prevent CFPB Acting Director Russell Vought from firing up to 90% of CFPB staff.

Specifically, Jonathan McKernan, who had been chosen to be the Director of the CFPB, saw his nomination get out of the Senate Banking Committee quickly, and then it languished, mostly due to difficulty in getting floor time in front of the full Senate. In the meantime, word around Washington is that Secretary of the Treasury Scott Bessent really likes McKernan and has decided that he would like him to stay in Treasury, working as the Undersecretary of Domestic Finance. Treasury’s website describes the Office of Domestic Finance as working, “to support equitable and sustainable economic growth and financial stability through policies to increase the resilience of financial institutions and markets, and to increase access to credit for small businesses and low-to-moderate income communities. It develops policies and guidance for Treasury Department activities in the areas of financial institutions, federal and municipal debt finance, financial regulation, and capital markets.” In other words, McKernan will be heading up a much more policy-driven part of our financial regulation system that addresses everything from the Financial Stability Oversight Council, to Cybersecurity and Critical Infrastructure protection, to debt management and the forecasting of Treasury’s “current and future cash and debt positions.” For context, this role was held previously during the first Obama administration by Biden’s head of the Securities & Exchange Commission, Gary Gensler. While this change may be something more in line with McKernan’s future political ambitions, it leaves Russell Vought in place as Acting Director, who has exhibited no interest in maintaining a CFPB that is in a position to do anything to protect consumers.

Meanwhile, CFPB employees are still mostly not working at all. Instead, they are awaiting their fate via resolution of the NTEU’s case. Also, the individuals who ARE working at the CFPB have commenced dismantling many of the CFPB’s previous efforts. Not only have they withdrawn their stipulated consent order in the case against NCSLT, [as we reported previously](#), but they have also indicated that they are turning away from all of the following, some of which are welcomed by the marketplace:

- [Enforcement actions focused upon Buy Now, Pay Later companies](#);
- [Small business lending reporting under Section 1071](#) of the Consumer Financial Protection Act (CFPA);
- [Registry requirements for nonbanks](#) that are subject to certain public agency and court orders;
- [Enforcement of the rule](#) requiring payday lenders to ensure consumers have the ability to repay the loan, before making the loan;

Instead, each such announcement is accompanied by a variation of this statement of the CFPB’s enforcement priorities – “The Bureau will instead keep its enforcement and supervision resources focused on pressing threats to consumers, particularly servicemen and veterans. The Bureau takes this step in the interest of focusing resources on supporting hard-working American taxpayers, servicemen, veterans, and small businesses.”

Finally, the CFPB [has also withdrawn a wide swath of guidance materials](#), including one bulletin that was put into place during the first Trump administration regarding supervisory and enforcement priorities related to the Real Estate Settlement Procedures Act and the Truth in Lending Act. These materials include: eight policy statements, including the policy statement on abusive acts and practices under the CFPA; seven interpretive rules, including one helping surviving family members better understand mortgage-lending rules; 13 advisory opinions, including the incredibly useful opinion regarding name-only matching procedures under the Fair Credit Reporting Act (seriously -- if you know, you know); and 39 other pieces of guidance, including the bulletin guiding the marketing of credit card add-on products

from 2012 and guiding the marketing of credit card promotional APR offers from 2014, as well as the CFPB's circular addressing deceptive representations involving the FDIC's name or logo or deposit insurance.

As always, let me tell you what I think this means for the industry. It means – yes, there is a little more room to breathe during this administration. Yes, it is possible to move forward with new or updated products and services and marketing campaigns that are different and innovative without worrying overly much about a dreaded call, letter or exam finding from the CFPB. And, yes, it is unlikely that there will be much the CFPB does in terms of enforcement that will impact serious providers of consumer financial services and products. But, please take note when I say “during this administration.” Should Congress not succeed in doing away with the CFPB entirely, then the next time there is a Democratic administration, they will likely press forward with the CFPB as before, as much as they are able. Accordingly, IF any of the activities your organization wants to engage in would be contrary to the repealed guidance in particular, it is important to consider whether the activities are worthwhile enough to risk the CFPB investigating you under a future administration. In other words, just because the guidance was repealed, there is no guarantee that future reasonable minds will decide that such guidance should remain repealed. The repealed guidance has already shown us ways in which the CFPA and other consumer financial services laws have been interpreted and focused on activities that are deemed harmful to consumers.

In sum, during this administration at least, it is appropriate to be less concerned about the CFPB and more concerned about actions being brought by state attorneys general and state departments of banking and financial institutions, and, of course, consumer class action attorneys.