HUDSON COOK

Reports of the Bureau's Death Are Greatly Exaggerated

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We've all heard news like this before - an A-list celebrity is on his or her deathbed or just died. We later learn that the story was a hoax or was blown out of proportion. Reports of the celebrity's illness or death spread like wildfire in today's "post first and ask questions later" society.

After Richard Cordray resigned last November as director of the Consumer Financial Protection Bureau and Mick Mulvaney took the helm as acting director, I started hearing rumblings at conferences and reading on social media about how the Bureau was "dead" or had been "neutered" by President Trump. The frenzy about the Bureau's death started picking up steam after Mulvaney requested $0 in funding for the Bureau's 2nd quarter.

From all the chatter, you would've thought Mulvaney would be turning off the lights, handing over his keys, and shutting down the Bureau. While the first six months of Mulvaney's tenure saw minimal enforcement activity, I'm here to tell you (paraphrasing Mark Twain) that reports of the Bureau's death are greatly exaggerated.

The Bureau is doing much more than working on changing its commonly used name to the Bureau of Consumer Financial Protection. It is very much alive and kicking under its new management.

The Bureau still has the same authority, powers, and mandate - to protect consumers from unfair, deceptive, or abusive practices and take action against companies that break the law.

Mulvaney has publicly stated on several occasions that the Bureau will continue to go after bad actors that harm consumers. And, like any good manager, he took some time to review the Bureau's outstanding actions and investigations, scrap those he didn't feel were worth pursuing, and reauthorize some pending investigations.

He also appears to be increasingly more comfortable with the Bureau's internal workings, powers, and mandate. Accordingly, subpoenas and CIDs are being issued, investigations - both new and old - are ongoing, examinations have been scheduled, and new actions are forthcoming. The Bureau is still in business and enforcing its mandate.

Need more convincing? Let's look at the Bureau's recent actions. Since April, the Bureau has publicly announced at least six enforcement actions that cover the entire spectrum of the consumer financial services landscape, from federally chartered banks to traditional installment lenders. These public enforcement matters have relied primarily on the Bureau's most familiar enforcement tool: the Dodd-Frank Act's prohibition on unfair, deceptive, and abusive acts and practices. The majority of the recently announced enforcement actions have included a UDAAP element.

Also, in September, the Bureau sued an individual and several companies that offer consumers lump-sum payments in exchange for claims to the consumers' pension benefits or other future income streams. The suit marked the first time the Bureau has filed a contested complaint during Mulvaney's tenure. Still think he's shutting the place down?

Even if the Bureau were dead or somehow watered down by President Trump, it isn't the only game in town. State attorneys general across the country are getting more aggressive about prosecuting cases in which financial fraud or discrimination is suspected, and state regulators are beginning to look at passing Bureau-like legislation that will pick up where the federal laws may be lacking.

Remember those 16 AGs who sent a letter to President Trump last year expressing support for the Bureau's mission? They pointed out that they have express authority under the Dodd-Frank Act to enforce federal consumer protection laws as well as state consumer protection laws. They also stated that, regardless of what happens with the Bureau's leadership or agenda, they are going to continue to enforce those laws. Finally, they stated that if the Bureau leadership prevents its staff from aggressively pursuing consumer abuse or financial misconduct, then they are going to redouble their efforts to root out this misconduct and hold those violators responsible.

That letter wasn't just a veiled threat. AGs have ramped up their efforts to protect their citizens. We've assisted clients with AG investigations in at least 12 states this year alone. Several states, like Pennsylvania and New York, have created their own consumer financial protection units and staffed them with former Bureau enforcement attorneys. Other states are beginning to follow suit. Dealers and automotive creditors have already started to feel the effects as these "mini-Bureaus" begin to flex their muscles.

New management at the Bureau is starting to do mostly what the former management did: enforce federal consumer financial law and UDAAPs through investigations, examinations, and enforcement activity and take action against companies that break the law. Yes, indeed. The reported death or neutering of the Bureau under AD Mulvaney has been greatly exaggerated.

on a matter, one should seek the advice of counsel.

Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

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