

Should the Pawn Industry Still Worry About a CFPB Under New Leadership?

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Pawnshops and other financial services providers are cautiously optimistic about the direction in which the current acting director of the Consumer Financial Protection Bureau, Mick Mulvaney, is taking the CFPB. Mulvaney, in a publicly-available memorandum he sent to the CFPB staff in January 2018[i], highlighted his expectation that the CFPB would not be nearly as aggressive in "pushing the envelope" with enforcement cases, as was the case under the direction of former CFPB director Richard Cordray. Even more encouraging, Mulvaney also indicated that the CFPB's enforcement of federal law would focus on "quantifiable and unavoidable harm to the consumer." He went on to state that the "CFPB has a new 'mission': we will exercise, with humility and prudence, the almost unparalleled power given to us to faithfully enforce the law." Although the text of Mulvaney's memo was welcomed by the financial services industry, fans of the previous CFPB approach expressed shock and dismay about the potential declawing of the CFPB.

While it is still far too early to understand the changes at the CFPB, it would seem to be a dramatic overreach to state that Mulvaney's approach will potentially declaw the CFPB. The CFPB has a panoply of federal laws and financial institutions it oversees. Mulvaney has reiterated that the CFPB intends to enforce those laws against any companies that fail to comply with those laws. In fact, in his memo to the CFPB staff, Mulvaney indicated that he expects "there will absolutely be times when circumstances dictate that [the CFPB] take dramatic action to protect consumers. And at those appropriate times, I expect [the CFPB] to be vigorous in our enforcement of the law."

So, to be clear, financial institutions are not receiving a free pass from Mulvaney; however, it does appear the CFPB will extend a modicum of respect and reasonableness to a financial institution that is trying to do the right thing by its customers but may have made a misstep along the way. This measure of respect could be as simple as actually attempting to reach a reasonable resolution that benefits the impacted consumers without also trying to inflict irreparable harm to the reputation or financial viability of the financial institution or any of its employees. However, it should also be clear that Mulvaney will not be so business-friendly as to simply dismiss clear violations of the law without some form of remediation.

In this regard, pawnbrokers would be ill-advised to ignore the stipulated final judgments and orders the CFPB entered into with a handful of pawnbrokers in 2017[ii]. Although these lawsuits were filed and settled prior to Mulvaney becoming the acting director, all of the cases primarily related to the pawnbrokers' failure to disclose an accurate finance charge and annual percentage rate on pawn tickets as required under the Truth In Lending Act (TILA) and its implementing Regulation Z (Reg Z). While pawnbrokers have long held the position that the CFPB has no supervisory authority over the pawn industry, this does not mean that pawnbrokers are insulated from enforcement actions by the CFPB for violations of federal consumer financial laws. In addition, as a result of the enforcement lawsuits against these pawnbrokers, the CFPB will now clearly have supervisory authority over the pawnbrokers for a five-year period, as set out in the orders. Perhaps a Mulvaney-led CFPB and the pawnbrokers that were parties to these consent orders may have resolved the matters differently; but that does not mean that the underlying violations would have been ignored by a Mulvaney-led CFPB.

TILA and Reg Z represent just one of the federal consumer financial laws overseen and enforced by the CFPB. There are a number of other federal consumer financial laws that many pawnbrokers must navigate in their day-to-day activities. These include the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Electronic Funds Transfer Act, and the Military Lending Act. In addition, the CFPB has enforcement authority over fair lending issues and acts and practices that may be considered unfair, deceptive or abusive to a consumer borrower.

Bottom line: while the CFPB's approach may be less aggressive and more reasonable than under Cordray's leadership, the ability of the CFPB to enforce violations of federal consumer financial laws is still very much alive. Pawnbrokers must continue to be diligent in their compliance with applicable federal consumer financial laws. Pawnbrokers must continue to:

- ensure TILA disclosures are accurate and complete;
- confirm day-to-day practices match-up with the terms of pawn tickets and the claims made in marketing materials;
- verify no discrimination exists in lending practices;
- avoid unfair, deceptive or abusive acts and practices;
- comply with privacy policies and disclosures;
- maintain strict security over customer data;
- send privacy notices annually to customers who may extend a pawn loan term beyond a 12-month period; and
- be diligent in making sure pawn loans to covered borrowers comply with the Military Lending Act.

Additionally, pawnbrokers should document their day to day compliance policies and procedures and also train their employees to adhere to these compliance policies. These proactive compliance measures can help limit the likelihood of a visit by the CFPB and, with the CFPB under new management, these measures should mitigate the approach the CFPB takes in enforcement if it should find any violations.

[i] <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2018/01/Mulvaney-memo.pdf>

[ii] A. Stipulated Final Judgment & Order - Tempo Venture, Inc., d/b/a Culpeper Pawnbroker - October 27, 2017 - https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_culpepper_stipulated-final-judgment-and-order_102017.pdf

B. Stipulated Final Judgment & Order - A to Z Pawn, Inc. - July 18, 2017 - https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201707_cfpb_A-to-Z_stipulated-final-judgment-and-order.pdf

C. Stipulated Final Judgment & Order - Spotsylvania Gold & Pawn, Inc. - March 20, 2017 - https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Spotsylvania-Stipulated-Final-Judgment-and-Order.pdf

D. Stipulated Final Judgment & Order - Fredericksburg Gold & Pawn, Inc. - March 15, 2017 - https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Fredericksburg-Gold-Pawn_Stipulated-Final-Judgment-Order.pdf

E. Stipulated Final Judgment & Order - B&B Pawnbrokers, Inc. - March 1, 2017 - https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_BB-Stipulated-Final-Judgment-and-Order.pdf

F. Stipulated Final Judgment & Order - Pawn U.S.A., Inc. - February 22, 2017 - https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Pawn-U.S.A.-Stipulated-Final-Judgment-and-Order.pdf

G. Stipulated Final Judgment & Order - Woodbridge Coins and Jewelry Exchange, Inc. d/b/a Woodbridge Gold & Pawn - February 7, 2017 (brought by the CFPB and the Attorney General of the Commonwealth of Virginia) - https://files.consumerfinance.gov/f/documents/201702_cfpb_Woodbridge-Gold-Pawn-stipulated-final-judgment.pdf

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