

# **CFPB Update: Policy and Leadership Changes Further Belief the Consumer Protection Agency Has Lost (Most of) Its Bite**

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Changes regarding the future of the Consumer Financial Protection Bureau (CFPB), including both the agency's leadership and its policy priorities, have been rapidly announced by the Trump administration.<sup>1</sup> While the consumer finance industry had not predicted the leadership issue, the policy announcement reflects a consistent approach to "downsizing" the agency to focus on a limited range of policy objectives.

## **McKernan Is Out as the President's Nominee to Lead the CFPB**

Jonathan McKernan previously served as a director on the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) as a Republican participant nominated in 2023 by President Biden. Since his resignation from the FDIC Board on February 10, McKernan had been biding his time as the President's pick to lead the CFPB. On Friday, May 9, however, US Treasury Secretary Scott Bessent announced that McKernan would shortly be nominated as President Trump's nominee for undersecretary of domestic finance at the US Treasury. The announcement surprised the consumer finance industry, as confirmation hearings had been held in late February 2025 before the Senate Banking Committee, and Sen. Tim Scott (R-SC) had said as recently as April 8 that McKernan could be confirmed "sometime probably in May."<sup>2</sup>

As of the date of this advisory's publication, the Trump administration has not announced an official reason for the change in McKernan's proposed administration position. Banking trade groups have reacted very positively to McKernan's appointment to the US Treasury position.<sup>3</sup> It appears likely that Acting Director Russell Vought, who concurrently serves as Trump's Director of the Office of Management and Budget and acting director of the CFPB, will continue in his consumer protection agency role on an acting basis. Notably, having a "dual-hatted" employee who is responsible for

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ensuring compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act's provisions related to consumer protection has a basis in the Trump 1.0 administration. Specifically, Mick Mulvaney served as Trump's Director of the Office of Management and Budget while also serving as acting director of the CFPB from November 2017 to December 2018.

## CFPB Policy Priorities

In addition to the personnel announcement noted above, the CFPB announced on Friday via publication in the *Federal Register*<sup>4</sup> that certain previously issued guidance, interpretive rules, policy statements, and advisory opinions would no longer be "enforced or otherwise relied upon" in connection with the agency's supervisory and enforcement powers while the agency continues a review mandated by Vought to determine "whether [such guidance or interpretive material] should ultimately be retained."<sup>5</sup> As the May Announcement describes, the agency's "current policy [is] to avoid guidance except where necessary and where compliance burdens would be reduced rather than increased."<sup>6</sup> Moreover, the rescission of such materials is claimed to support "President Trump's directives to deregulate and streamline bureaucracy."<sup>7</sup>

With over 60 prior policies or guidance documents rescinded, the breadth of the rescissions touches every aspect of consumer finance. Included in the May Announcement are policy statements related to consumer complaint data (including narrative data), interpretive rules related to the authority of states to enforce consumer financial protections, advisory opinions on the collection of time-barred debt, and guidance related to whistleblower protections under the Consumer Financial Protection Act.

Finally, we note that the CFPB previously announced its de-prioritization of guidance related to Buy Now Pay Later products on May 6 although it was also included in the May Announcement.<sup>8</sup>

## What This Means

Clearly, the compliance burdens imposed upon providers of consumer financial products and services have been mitigated, if not nearly wholly abandoned, *at the federal level*. While the May Announcement makes clear that the CFPB's review of the rescinded materials is ongoing, the reinstatement of any of the rescinded agency materials seems highly doubtful. While the CFPB may no longer have "teeth" in connection with compliance obligations previously applicable to these consumer finance practice areas, it is widely expected that private plaintiffs as well as "blue state" attorneys general and banking regulators will largely seek to fill any perceived void. To that end, banks and consumer finance companies should be vigilant in their efforts to mitigate compliance and litigation risks as violations of federal law premised in unfair and deceptive practices, fraud and/or statutory requirements often provide a basis for private and regulatory action.<sup>9</sup>

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1 See Katten's prior advisory on the CFPB's priorities at <https://katten.com/cfpb-suggests-shift-in-supervision-and-enforcement-priorities>.

2 *American Banker*, "Senate eyes May for CFPB nomination vote, Scott says," April 8, 2025, available at <https://www.americanbanker.com/news/senate-eyes-may-for-cfpb-nomination-vote-scott-says>.

3 See, for example, a statement by the American Bankers Association President and CEO Rob Nichols: <https://bankingjournal.aba.com/2025/05/trump-nominates-mckernan-for-treasury-department-role/>.

4 90 Fed. Reg. 20,084 (May 12, 2025) (FR Doc. 2025-08286), *available*  
at <https://public-inspection.federalregister.gov/2025-08286.pdf> (May Announcement).

5 *Id.*

6 *Id.*

7 *Id.*

8 CFPB Announcement Regarding Enforcement Actions Related to Buy Now, Pay Later Loans,  
CFPB (May 6, 2025), *available*  
at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announcement-regarding-enforcement-actions-related-to-buy-now-pay-later-loans/>.

9 See, *for example*, the Truth in Lending Act's private right of action set forth at 15 U.S.C. § 1640.

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