

Senate Banking Committee Probes Mulvaney's Leadership at the CFPB

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On April 12, 2018, Mick Mulvaney, the Acting Director of the Consumer Financial Protection Bureau (Bureau) testified before the Senate Committee on Banking, Housing, and Urban Affairs regarding the Bureau's Semi-Annual Report to Congress. The Senate Hearing comes the day after Democrats in the House Financial Services Committee [questioned Mulvaney about his leadership at the Bureau](#). A copy of his written testimony is [here](#).

At the hearing, Mulvaney stuck to the theme of Bureau accountability—an issue raised in his written remarks and [Semi-Annual Report](#)—and fielded questions on topics including the Bureau's role of protecting consumers, payday lending, data security, political favoritism, and constitutionality of the Agency:

- **Increased Congressional Oversight.** Throughout the hearing, Mulvaney stressed his recommendations for greater oversight to hold the Bureau accountable. "I don't think that any director of any bureaucracy has ever come to you and said please take my power away, but that is what I am doing, and to the extent you can do that, I think we will all be well served by it." To illustrate his point, Mulvaney quipped in his opening remarks that Dodd-Frank merely required him to "appear" before Congress, but not to answer any questions. Later, in exchanges with Republican senators, Mulvaney explained that Congress currently could do nothing to him as the Acting Director: "You could make me look bad and that's about it. You can't touch me statutorily. . . . Don't rely on the person. Fix the structure." According to Ranking Member Sherrod Brown (D-OH), however, Mulvaney "is hoping that if he does a bad enough job running the CFPB, Congress will take away CFPB's ability to protect consumers. Congress should not fall for it."
- **Consumer Protection.** Several Democratic senators confronted Mulvaney about the Bureau's goal of protecting consumers. Sen. Elizabeth Warren (D-MA) outlined past Bureau successes, as well as Mulvaney's attempts as a Congressman to get rid of the agency, and rebuked Mulvaney for "tak[ing] an obvious joy in talking about how the CFPB will help banks more than it will help consumers.... You're hurting real people to score cheap political points."
- **Payday Lending.** Other Democrats targeted Mulvaney's payday lending decisions, including his decision to dismiss a lawsuit filed by his predecessor against a payday lender and his decision to reconsider the Bureau's payday lending rules. Mulvaney refused to comment on the dismissal based on advice from legal staff and an ongoing investigation. He also

defended his decision to reconsider the payday lending rules. He repeatedly stated that he has no “preconceived notions” about revoking the payday lending rules, but rather believes the rules were “rushed” and should go through the notice and comment period.

Mulvaney noted, however, that he has the discretion to reach a different conclusion about the payday lending rules than his predecessor, Richard Cordray. During questioning by Sen. Doug Jones (D-AL), Mulvaney flaunted his view that payday lending concerns should be resolved by state legislatures, not consigned to the discretion of the Bureau’s director or Congress: “Who do you trust more, home town legislature or United States Congress. Personally, I have a great deal of faith in my state legislature.” Surprisingly, as was the case during his appearance before the House Committee, nobody asked him to comment on the [lawsuit filed last week](#) by the CFSA (the trade association of payday lenders) against the Bureau challenging the legality of the payday lending rule.

- **Data Security.** While data security was an issue that spanned both sides of the aisle, Republican senators focused on the Bureau’s handling of consumer data while their Democratic colleagues focused on Mulvaney’s position on the Equifax data breach.

As to the Bureau’s handling of data, Mulvaney explained that he has [instituted a data freeze](#) and commissioned a report about the Bureau’s data collection and protection. While the data freeze does not apply to enforcement actions, the Bureau plans “to limit data that we take possession of. . . . instead of having them send it to us electronically, we are going to look at it.” Mulvaney acknowledged that “everything that we keep is subject to being lost.” When Sen. David Perdue (R-GA) asked what data had been lost, Mulvaney declined to publicly comment.

Sen. Mark R. Warner (D-VA) explained that much of the data collected by the Bureau is anonymous and needed to show discriminatory patterns. He, along with Sen. Chris Van Hollen (D-MD) and Sen. Robert Menendez (D-NJ), questioned Mulvaney instead on the Bureau’s failure to take action against Equifax for its data breach. Mulvaney testified that his regulatory agenda includes rulemaking to protect consumers from credit reporting abuses and agreed that companies should have to inform the public about hacked data in a certain amount of time.

- **Political Favoritism.** Democrats also scrutinized Mulvaney’s decision to hire political “cronies” for Bureau positions and pay them large salaries. Mulvaney asserted that he used the same “pads-and-dads” system used at the OMB, where a career staffer and political designee work on a team, and that the appointees were paid using the scale set by his predecessor. While Mulvaney also claimed that he had “complete authority under the statute” to hire and pay such appointees, the Committee questioned how his hiring decisions were consistent with Mulvaney’s fiscally conservative views. Sen. Jon Tester (D-MT) noted that Mulvaney’s chief of staff is paid \$47,000 more per year than her predecessor and stated the hiring “smacks of political favoritism.... [Mulvaney] can’t be conservative just when it’s convenient.”

Sen. Tom Cotton (R-AR) struck back on the salary issue with questions about the salary of Leandra English, the Deputy Direct of the Bureau and the plaintiff in a pending lawsuit that seeks to have her named as Acting Director instead of Mulvaney. Mulvaney testified that he does not speak with English because of the litigation, nor does he know what she does at the Bureau. Sen. Cotton commented, and Mulvaney agreed, that “she’s earning \$212,000, claiming to be the director, running around and we have no idea what she does all day long.” Ranking Member Brown took a different view, however, noting earlier in the hearing that Mulvaney’s appointment ignores the law, which states that the deputy director, rather than a political appointee, should [take over the Acting Director role](#).

- **Constitutionality of the Bureau.** Mulvaney also walked a narrow line to answer questions about the constitutionality of the agency that he heads. “I’m not sure that I have the discretion to consider this agency to be unconstitutional. . . . I think the system starts to break down if people who work at places make their own conclusions about constitutionality. If the President tells me it is unconstitutional, I’ll pay attention. I am assuming it’s constitutional every single day when I go in. . . .”

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