



## CFPB's Strategic Plan: A New Mission & Vision\*

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This month, CFPB released its Strategic Plan for Fiscal Years 2018-2022<sup>1</sup> (“Strategic Plan”) providing the most comprehensive plan for the CFPB under Acting Director Mick Mulvaney to date. This Strategic Plan provides a unique opportunity to make direct comparisons of the CFPB under new leadership and under former Director Richard Cordray, as the CFPB released a draft of this plan (“Draft Plan”)<sup>2</sup> last fall while Cordray was still in office. In this article, I provide a few observations of the Strategic Plan in relation to the Draft Plan as well as discuss some themes from the Plan that are likely to inform the agency’s work in the future.

### **It’s All About the Statute**

In introducing this Strategic Plan, Acting Director Mulvaney stated that they “have committed to fulfill the Bureau’s statutory responsibilities, but go no further.” This is in line with his previous commitments that the agency will no longer “push the envelope.”<sup>3</sup> As a way to show that commitment, the Strategic Plan heavily relies on the purpose and functions of the CFPB outlined in Title X of the Dodd-Frank Act. In fact, the mission statement comes directly from the statute—“to regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws and to educate and empower consumers to make informed financial decisions.”

The Strategic Plan has three goals and eight objectives to meet those goals; two of the goals and five of the objectives come directly from the statutory functions of the CFPB. The remaining goal and objectives focus on internal operations and processes. The two goals that focus on substantive,

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\*The information contained in this newsletter does not constitute legal advice. This newsletter is intended for educational and informational purposes only.

<sup>1</sup>*Bureau of Consumer Financial Protection Strategic Plan FY 2018–2022.*

<sup>2</sup>*DRAFT Consumer Financial Protection Bureau Strategic Plan FY 2018–2022.*

<sup>3</sup>*The CFPB Has Pushed Its Last Envelope.*

outward facing work are: (1) Ensure that all consumers have access to markets for consumer financial products and services; and (2) Implement and enforce the law consistently to ensure that markets for consumer financial products and services are fair, transparent, and competitive.

It is reasonable to expect that this statutory lens will be used in all of the agency's work. For example, if Acting Director Mulvaney engages in an assessment and evaluation of the CFPB's supervisory bulletins, we could expect that reevaluation to be based on statutory language, not enforcement actions or other best practices that are not part of the statute or regulations.

We also may see this statutory lens in evaluating other aspects of the CFPB. For instance, the CFPB's collecting and responding to consumer complaints is required under Dodd-Frank. The publishing of the complaints and the narratives in those complaints is not required. It is reasonably foreseeable that the agency under Acting Director Mulvaney will reevaluate those elements of the complaint function.

### **More Engagement with Industry**

One of the strategic objectives to achieving the goal of ensuring access to the markets is to “regularly identify and address outdated, unnecessary, or unduly burdensome regulations in order to reduce unwarranted regulatory burdens.” This is a statutory function of the CFPB, but not one the agency has yet to focus much attention, in large part because the agency had mandatory rulemakings to complete and as a relatively new agency, such evaluations would be premature in many instances. Notably though, this was not part of the Draft Plan, and therefore this seems to signal a shift in priorities of the agency. These evaluations, including the ongoing evaluations of significant rules as mandated under section 1022(d) of the Dodd-Frank Act, may provide some real opportunities for changes to make the rules less burdensome, more streamlined, more efficient, and more effective. These evaluations will involve meaningful, constructive dialogue with regulated entities and with consumers. We may see the agency engage in a process similar to the federal banking agencies' process under the Economic Growth and Regulatory Paperwork Reduction Act—periodic review to identify opportunities for clarification, modernization, and streamlining. These evaluations may begin with the CFPB's ongoing “calls for evidence” as soon the agency will be seeking comment on existing regulations.<sup>4</sup>

The Strategic Plan also discusses the need to equally protect the legal rights of all. It's reasonable to interpret that as the agency will provide fair notice and engage in more regulating through regulations and guidance, not enforcement actions. Perhaps the agency will provide guidance or additional insights on what is or is not an unfair, deceptive or abusive act or practice (“UDAAP”).

### **Refocusing of Research**

The Strategic Plan has a different vision for how the CFPB will use its education and research functions. The Plan clearly places an emphasis on free markets and transparency so consumers are free to choose the products and services that best fit their needs. In contrast, the Draft Plan

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<sup>4</sup>E.g., *Call for evidence*.

placed much more emphasis on CFPB's research and data gathering. One of the goals of the Draft Plan was to inform the public, policy makers, and policy-making with market intelligence and data-driven analysis of the markets and consumer behavior. The final Strategic Plan discusses financial education to the public, sharing research on education with financial educators, and researching the effectiveness of disclosures and regulations. There is less emphasis on research on consumer behavior.

### **A More Limited Use of UDAAP**

An objective under the second goal of enforcing the law consistently is to protect consumers from UDAAP and from discrimination.

The vision detailed in the Strategic Plan is: "Free, innovative, competitive, and transparent consumer finance markets where the rights of all parties are protected by the rule of law and where consumers are free to choose the products and services that best fit their individual needs." By comparison, the Draft Plan's vision discussed a marketplace "where consumers can see prices and risks up front and where they can easily make product comparisons; in which no one can build a business model around UDAAP; [and] that works for American consumers, responsible providers, and the economy as a whole."

The Plan seems to indicate that the CFPB won't readily use its UDAAP authority before first evaluating the conduct in question under other existing statutes and regulations. This is in line with the idea that the CFPB will provide more fair notice to regulated entities on what the agency considers to be prohibited acts and practices.

### **Emphasis on Internal Operations**

The Strategic Plan, much like the Draft Plan, emphasizes the need to maintain a talented, diverse, inclusive and engaged workforce. The Strategic Plan also emphasizes the need to safeguard the CFPB's information and systems, which was not a focus in the Draft Plan. Additionally, the Strategic Plan discusses the need to manage risk and promote accountability within the CFPB by aligning resources to the mission and promoting budget discipline. On the structure of the CFPB, we have already seen Acting Director Mulvaney make a few changes, including the hiring of political staff that directly report to him, and moving the Office of Fair Lending out of the Division of Supervision and Enforcement.

This Strategic Plan is required by statute. Mr. Mulvaney is the Acting Director, and under the terms of the Federal Vacancies Reform Act, he can be in that position until mid-June, or later if President Trump nominates a director. While the Strategic Plan outlines Acting Director Mulvaney's vision for the agency, it's reasonable to assume that this viewpoint largely will be shared by the person nominated by the president and confirmed by the Senate to be the next CFPB director.

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