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NEWSLETTER

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CFPB writing rule to define 'abusive' standard: Mulvaney

By Hannah Lang October 15, 2018

WASHINGTON — The Consumer Financial Protection Bureau is planning a rulemaking to define what types of practices qualify as "abusive" to provide more clarity to the industry about the controversial standard, the agency's interim chief said Monday.

The remarks by acting CFPB Director Mick Mulvaney are yet another example of how the agency is trying to remake its enforcement processes in the Trump administration. Former CFPB Director Richard Cordray had opted for letting individual enforcement actions define what "abusive" meant, but Mulvaney said he prefers clearer rules of the road.

"Regulation by enforcement is done," Mulvaney said in a speech to the Mortgage Bankers Association annual conference.

"I think 'unfair' is fairly well-established in the law, 'deceptive' is very well-established in the law and to my knowledge, I don't think 'abusive' is nearly as established in the law," said acting CFPB Director Mick Mulvaney.

U.S. law has long banned "unfair or deceptive acts or practices." But the 2010 Dodd-Frank Act expanded the prohibition to "unfair, deceptive, or abusive acts or practices." The 2010 law also gave the CFPB primary rulemaking authority for UDAAP.

But much to the industry's consternation, the agency under Cordray started issuing enforcement actions without stating clearly how it was interpreting the new UDAAP standard.

Mulvaney said the bureau under his leadership is going in a different direction.

"I think 'unfair' is fairly well-established in the law, 'deceptive' is very well-established in the law and to my knowledge, I don't think 'abusive' is nearly as established in the law," Mulvaney said.

While Cordray made pursuing UDAAP violations a priority, the agency under Mulvaney has not appeared as interested in targeting firms for UDAAP violations.

"There's been some stuff I've seen at the bureau that I really don't like," he said.

The CFPB's previous five-year strategic planissued in 2013, under Cordray, had featured UDAAP prominently, citing the bureau's interest in making sure no company could "build a business model around unfair, deceptive, or abusive practices."

But the agency's vision statement unveiled as part of a new strategic plan earlier this year dropped any reference to so-called UDAAP claims. Previously, a memo Mulvaney sent to staff described how the bureau would pursue enforcement actions only as a last resort.

"On regulation, it seems that the people we regulate should have the right to know what the rules are before being charged

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Trade war will lead to substantial slowdown in the U.S. economy by 2019 say economists

"There would be no winners from a global trade war...all countries would ultimately be worse off," noted one economist. by Reuters / Oct. 22, 2018

U.S. President Donald Trump delivers his speech as he and China's President Xi Jinping meet business leaders at the Great Hall of the People in Beijing, China, Nov. 9, 2017. Damir Sagolj / Reuters file

The outlook for global growth in 2019 has dimmed for the first time, according to a poll of economists who said the U.S.-China trade war and tightening financial conditions would trigger the next downturn.

At the start of 2018, optimism about a robust global economic outlook was almost unanimous among respondents. But Reuters polls of more than 500 economists taken this month showed a downgrade to the outlook for 18 of 44 economies polled, with 23 unchanged. Only three were marginally upgraded.

While risks from trade protectionism have been consistently highlighted by Reuters polls since January last year, the latest indicated that growth in about 70 percent of 44 economies surveyed has already peaked.

"A simple dynamic is playing out in the global economy right now: The U.S. is booming, while most of the rest of the world slows or even stagnates. The stresses caused by this divergence are playing out uncomfortably in many emerging markets," noted Janet Henry, global chief economist at HSBC.

"A global trade war would inflict lasting damage to growth and cause a permanent loss of output."

"A U.S. Federal Reserve that is raising interest rates to prevent the U.S. economy from

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CFPB Cont. from page 1

with breaking them," he wrote in the memo. "This means more formal rulemaking on which financial institutions can rely, and less regulation by enforcement."

However, Mulvaney did acknowledge Monday that he lacks the authority to repeal the UDAAP provision of Dodd-Frank, and said the CFPB will continue to look at UDAAP cases.

"You have a right to know what the law is," he said. "That being said, UDAAP is the law."

He noted that he and his staff have agreed that some practices can be unfair and deceptive without being abusive, and vice versa, which he believes makes the provision confusing for consumers. ■

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BCFP's 'Wizard of Oz' Puts Trump Plans Into Practice

Wall Street Journal (10/21/18) Yuka Hayashi

Brian Johnson, the Bureau of Consumer Financial Protection's acting deputy director, is expected to retain his role and support Kathy Kraninger, the White House's nominee as the agency's permanent director, after Acting Director Mick Mulvaney leaves. Johnson now serves as the final check on enforcement actions and rule-making decisions before they are sent for Mulvaney's approval. He is closely involved in developing the bureau's communications strategy and new initiatives, and was the primary author of its five-year strategic plan. When Johnson served as a top aide to Rep. Jeb Hensarling (R-Texas), he helped draft legislation criticizing the bureau. ■

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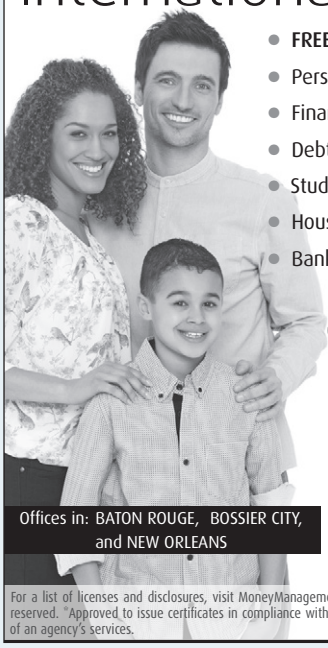

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Want a higher credit score? Soon your cash could help

By Ken MartinPublished October 21, 2018Personal FinanceFOXBusiness

Credit scores have been based mostly on borrowers' payment histories, but a new scoring system also taking into account how you manage your money, will be rolled out.

Fair Isaac Corp., which is the creator of the widely used FICO credit score, plans in early 2019 to factor in how consumers manage the cash in their checking, savings and money-market accounts., according to Dow Jones Newswires.

The UltraFICO Score, as it's called, isn't meant to weed out applicants. Rather, it is designed to boost the number of approvals for credit cards, personal loans and other debt by taking into account a borrower's history of cash transactions, which could indicate how likely they are to repay.

The new score could be the way for lenders to boost loan approvals. It is among the biggest shifts ever for credit-reporting and the FICO scoring system.

Borrowers currently have little control over what's in their credit reports, save for the ability to contest information they believe is inaccurate.

Lenders, collections firms and other parties feed payment-history data to the major credit-reporting firms, Experian, Equifax and TransUnion, and that information determines consumers' FICO scores. Lenders, in turn, use FICO scores to help make most of their lending decisions.

The new score can be consider an appeal of sorts.

If a consumer's traditional number falls short, a lender can offer to have the score recalculated to reflect banking activity. Would-be borrowers with at least several hundred dollars in their accounts, who have had them for a while and who transact frequently and don't overdraw are likely to see their scores rise, according to FICO.

A decade after the subprime mortgage binge nearly brought down the U.S. financial system,

A new way to calculate your FICO score could lead borrowers to having higher numbers.

consumer lenders remain wary of borrowers with low credit scores.

Of U.S. consumers with credit scores, a record 58.2 percent had a score of 700 or higher on a scale that tops out at 850. The average FICO score is at a record 704. Lenders may have different cutoffs, but Experian considers scores under 670

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Trade War *Cont. from page 3*

overheating is constraining the policy options of countries where financial conditions are tightening and trade tensions intensifying."

The latest shift in growth expectations comes on the heels of a deep sell-off in financial markets, especially emerging ones, largely driven by trade concerns.

A majority out of nearly 150 economists said the top two triggers for the next global downturn were a further escalation of U.S.-Sino trade tensions, and tightening in financial conditions driven by a deep sell-off in global equities or a rapid rise in government bond yields.

"First, there would be no winners from a global trade war. Even if the aggregate costs are modest and skewed toward more open economies, all countries would ultimately be worse off compared to the status quo," noted Neil Shearing, group chief economist at Capital Economics.

"(it)... would inflict lasting damage to growth and cause a permanent loss of output."

President Donald Trump's administration threatened duties on $267 billion of Chinese goods on top of tariffs already levied on $250

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FICO Score *Cont. from page 4*

subprime.

According to FICO, around seven million applicants who have low credit scores as a result of thin borrowing histories would likely see their scores improve under the new system.

There's a risk that the new scores could make some iffy borrowers look more creditworthy than they are. ■

Trade Wars *Cont. from page 5*

billion previously — amounting to almost all imports. Beijing retaliated.

A majority of economists covering the U.S. economy who were asked an additional question said U.S. economic policy toward China over the next few years would become more confrontational.

Along with faster-than-expected increases in interest rates compared to the previous poll that points to a substantial slowdown in the U.S. economy by late next year, even as it remains the current major driver of global growth.

But only a slim majority expect U.S. wage growth to pick up meaningfully before the next recession.

"The risk of a self-inflicted wound in the U.S. is rising. The dominant downside risk to the global outlook remains the Trump administration's attempt to rebalance trade with China through tariff policy," noted Jean-François Perrault, chief economist at Scotiabank.

"The consequences of escalating trade actions are undeniable: higher prices in China and the U.S., less purchasing power for consumers in these countries, higher input costs, heightened financial market volatility, and possibly higher interest rates. These effects would likely spill over from these countries."

While global growth this year will hold strong, unchanged at July's 3.8 percent prediction, the consensus for 2019 was 3.6 percent, a cut for the first time since polling began for that period in July 2017. That was also lower than the International Monetary Fund's recent 2019 projection of 3.7 percent. ■

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