

NEWSLETTER

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How Waters will keep pressure on CFPB

By Kate Berry

Published December 05 2018, 9:00pm EST

There is already intense focus on how the Democratic-run House Financial Services Committee may shine a spotlight on Trump administration-appointed regulators. But that light might shine brightest on one agency in particular: the Consumer Financial Protection Bureau.

Rep. Maxine Waters, D-Calif., the likely chairwoman of the committee when the new Congress convenes in 2019, is expected to waste no time aggressively scrutinizing the agency now run by acting Director Mick Mulvaney.

Observers expect her to use the committee's subpoena powers to investigate how decisions were made by Mulvaney, including an 80% drop in enforcement actions in 2018, to just nine, from 47 a year earlier. Yet it appears Mulvaney may avoid answering any of those questions, with Kathy Kraninger now on the verge of being confirmed as permanent director.

Rep. Maxine Waters, D-Calif., the likely chairwoman of the House committee when the new Congress convenes, is expected to waste no time scrutinizing the CFPB. Outgoing Chairman Jeb Hensarling did the same when the bureau was under Democratic leadership. Bloomberg News

"As soon as she gets confirmed, Director Kraninger could have a real porcupine on her hands," said Todd Zywicki, a law professor at George Mason University.

If confirmed, Kraninger, now an official at the Office of Management and Budget, may be put in the tough position of having to defend policies developed under Mulvaney's watch.

"By the time Kraninger gets in, I suspect subpoenas will have started coming," said Allyson Baker, a partner at Venable and one of the first enforcement attorneys at the CFPB when it opened its doors 2011. "It's not so much an inquiry into Kraninger's work but about Mulvaney's time at the bureau, and what the bureau has or has not done."

Waters would replace current committee Chair Jeb Hensarling, R-Texas. Several of Hensarling's staffers were named to senior positions at the CFPB earlier this year.

In a letter to Democratic colleagues after the midterm elections, Waters touted her efforts to defend the CFPB as the committee's ranking member. "I am committed to putting consumers first by engaging in robust oversight of Mulvaney's actions at the CFPB and righting the many wrongs he has committed," she wrote.

How aggressive the House committee will be depends in part on how much influence the Democrats' progressive wing — which includes some of the CFPB's staunchest defenders — has on House leadership.

The panel could see the addition of new members such as Katie Porter, D-Calif., a University of California, Irvine law professor who ran a populist campaign in Orange County. Porter is an ally of Sen. Elizabeth Warren, D-Mass., the original architect of the consumer bureau. Alexandria Ocasio-Cortez, an incoming congresswoman from New York who pulled off a stunning primary upset of longtime Democratic Rep. Joseph Crowley, has expressed interest in a

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Trump Administration takes further steps to ensure the end of Operation Choke Point

Although officially ended by the Trump administration in 2017, Operation Choke Point has been in the news again recently.

This fall, newly-unsealed court documents revealed more information about the Obama administration's ideologically-driven policy. For example, new evidence shows that Federal Deposit Insurance Corp. (FDIC) Regional Director Anthony Lowe instructed his staff to use "all available means, including verbal recommendations, to strongly encourage [banks] to refrain from any activities that provide assistance to the business activities of [payday] lending."

In response to this and other new information, Rep. Blaine Luetkemeyer (R-Mo), who chairs a House subcommittee on financial institutions and also sponsored legislation to prevent Operation Choke Point

from occurring again, sent a letter to FDIC Chairman Jelena McWilliams and Comptroller of the Currency Joseph Otting. Rep. Luetkemeyer asked the FDIC and OCC to "investigate this matter and take immediate

and firm action against those who have so blatantly abused the power vested in them."

As a result of the letter, Chairman McWilliams said that

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Senate confirms Kraninger as next Director of BCFP

The U.S. Senate today confirmed Kathy Kraninger as the next Director of the Bureau of Consumer Financial Protection (BCFP) by a 50-49 party-line vote.

Kraninger was serving as an associate director in the Office of Management and Budget. Under the Dodd-Frank Act, she can serve for a five-year term. The Dodd-Frank Act specifies that the BCFP's director is only removable by the president "for cause," although this provision has been subject to various court challenges.

"The American Financial Services Association supports Kathy Kraninger as the next Director of the Bureau of Consumer Financial Protection (BCFP)," said Bill Himpler, President-elect of AFSA. "We believe that Ms. Kraninger is the right choice to lead the Bureau as someone with a sense of fairness and empathy toward the needs of consumers and credit providers. We hope that she'll continue to provide more accountability and transparency

to an agency that has operated in a cloak and dagger fashion in the past."

The Bureau's 2019 rulemaking priorities are the re-opening of the small-dollar rule, third-party debt collection, and the Home Mortgage Disclosure Act.

During her confirmation hearing, Ms. Kraninger outlined four priorities: (1) ensuring the BCFP is fair, transparent, and empowers consumers to make good choices while providing clear rules of the road; (2) working closely with other financial regulators and the states; (3) limiting the amount of data the BCFP collects and ensuring it is protected; and (4) holding the BCFP accountable for its actions and the expenditure of resources.

AFSA is looking forward to working with Kraninger to demonstrate the important role AFSA members play in the consumer credit industry. AFSA will keep its members updated on these discussions and other developments. ■

Operation Choke Point

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the FDIC has hired outside legal counsel and is calling for additional training for examiners. Comptroller Otting said that "the OCC had no policy or program that targeted any business operating within state and federal law," and reiterated that he is committed to ensuring that it does not have such a policy in the future.

AFSA joined other trades in a letter to Senate leadership supporting Rep. Luetkemeyer's bill, H.R. 2706, the Financial Institutions Consumer Protection Act of 2017. The bill overwhelmingly passed the House last year. The trade associations are encouraging the Senate to pass the legislation before the end of the year. ■

IMPORTANT UPDATE

LFA Members –

It was decided during the last Budget & Audit Committee Meeting that LFA will no longer produce a bi-monthly newsletter beginning January 2019. While cost was a small determining factor, the major issue was delivering stale information. We are able to put real-time data in our member's hands with email blasts and our recently updated website.

If you are not receiving emails from LFA please email Kimberly Hallaran at kimberly@lfaassociation.org to be placed on the list.

Also, please visit the website at www.louisianafinanceassociation.com for latest information on news and events.



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seat on the committee.

Waters is considering adding a subcommittee that will focus solely on consumer protection and financial inclusion issues. Rep. Gregory Meeks, D-N.Y., has expressed interest in being its chair.

"Democrats are going to be aggressive — though I don't think they have decided how they are going to do it yet," said Ed Mills, a public policy analyst at Raymond James.

Observers said Waters is likely to question CFPB officials over the agency's moves to end examinations for compliance with the Military Lending Act, strip the bureau's fair-lending office of its enforcement and supervisory authority, and gut the student lending office.

Other topics of potential investigation are Mulvaney's ties to the payday lending, his intention to rewrite the agency's payday rule, and a reduction in fines against financial firms targeted in enforcement actions.

A potential road map for how the Democrats plan to oversee the CFPB was offered by the minority staff on the Senate Banking Committee in a scathing report that focused on Mulvaney's actions and his refusal to respond to congressional requests for information.

Yet an obvious obstacle for Waters and other Democrats in trying to drive CFPB policy is that the GOP will still control the Senate and the White House.

"One question that Chairman Waters will have to ask herself is, what is her goal?" Zywicki said. "She may spend a good portion of the next two years staking

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out a wish list of what the Democrats might do if there's a unified government in two years."

Some political analysts have suggested Waters might follow in the footsteps of former Rep. Henry Gonzalez, D-Texas, who was feared at first by banks but ultimately steered the then-House Banking Committee, in the late '80s and early '90s, with an even hand after the savings and loan crisis, tackling flood insurance and stronger laws to prevent financial crimes like money laundering.

In one of his first appearances before Congress early this year, Mulvaney was defiant in the face of criticism from Democratic lawmakers. He insisted that he was only required by statute to appear but did not have to answer any questions from lawmakers.

Another question mark is whether Eric Blankenstein, the CFPB's policy director of supervision, enforcement and fair lending, will remain at the bureau under Kraninger or face scrutiny from Waters after a brouhaha over his incendiary writings 14 years ago.

"I don't believe" Waters has legal authority to remove Blankenstein, said Yana Miles, senior legislative counsel at the Center for Responsible Lending. But Waters "can call Kathy Kraninger and Blankenstein to appear before the House and explain what he is going to do."

Doug Ryan, a senior director of homeownership at Prosperity Now, a nonprofit consumer advocacy group, recalled the nearly 70 times that former CFPB Director Richard Cordray was called by Hensarling to testify. ■

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