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The State of the CFPB During a Fraught Transition Period: Part I

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It has been a little over two months since President Donald Trump returned to office, and since then, the Consumer Financial Protection Bureau (CFPB) has been in flux—to put it mildly. As of this writing, it is unclear whether the CFPB is a **functioning** agency.

In Part I of this Legal Update, we summarize the extraordinary series of recent events and focus primarily on the lawsuit filed by the CFPB employees' union to halt actions they allege were taken by new agency leadership to unwind the agency. In Part II, coming soon, we will discuss the agency's recent enforcement activity and policy developments, as well as related congressional action, and we'll attempt to forecast how the CFPB will emerge out of the transition and into the remainder of 2025.

A recap of notable events

On January 20, 2025, President Trump commenced his second term. CFPB Director Rohit Chopra, former President Biden's appointee, who ran roughshod over the industry during his tenure, was ousted on January 31 and replaced by Treasury Secretary Scott Bessent as Acting Director. Almost immediately, Bessent paused most agency activities, including issuing final rules and conducting investigative activities.

On February 7, the Department of Government Efficiency (DOGE) gained access to the CFPB's headquarters and data. That same day, Scott Bessent was succeeded by Acting Director Russell Vought, the Director of the Office of Management and Budget (OMB).

Under Vought, the CFPB has virtually ground to a halt. He quickly instructed employees to cease all supervision and investigation activities, stakeholder

engagement, and public communications, and then to stop all work completely unless specifically authorized by the chief legal officer. A “tip line” was set up, asking whether CFPB employees were violating this instruction. The agency closed the headquarters building, canceled over 150 contracts, and dismissed approximately 200 probationary and term employees. (As of this writing, some have been reinstated under a court order affecting several agencies.) Additionally, the CFPB reportedly planned to lay off an additional 1,200 employees on February 14, with hundreds more in a second wave.

The speed and scale of the disruption has been profound. Clients and observers have been asking, “Does the CFPB still exist?” The answer is, “kind of.” And the resolution of that question may boil down to the disposition of the lawsuit discussed below.

National Treasury Employees Union (NTEU) v. Vought

On February 9, NTEU, the CFPB employees’ union, along with several consumer advocacy organizations, filed a complaint for a temporary restraining order (TRO) in the federal district court in D.C. alleging a variety of legal claims, including that CFPB leadership had violated the separation of powers because only Congress can disband a federal agency created by statute. On February 14, Judge Amy Berman Jackson converted the TRO complaint to a preliminary injunction (PI) complaint. Pending her PI ruling, the parties agreed that the CFPB could not: (1) destroy records or data; (2) terminate any CFPB employees, except for cause; and (3) reduce the funds available to the CFPB. This order was set to expire on March 3, the initial hearing date.

Ahead of that hearing, Vought filed a declaration from Adam Martinez, the CFPB’s Chief Operating Officer and a Biden-era holdover. Martinez stated that the CFPB’s actions were “common practice at the beginning of a new administration and/or during the transition of a new head of agency.” Vought maintained that the CFPB remained operational, that it would continue to take all actions required by law, and that the new administration was merely aiming to run a “more streamlined and efficient bureau.” The plaintiffs then produced over 15 declarations contesting these facts.

In the March 3 hearing and a two-day hearing the following week, where Judge Jackson required Martinez to testify, Martinez conceded that it is atypical during agency transitions to halt all activities, terminate probationary and term employees en masse, and place the entire staff on administrative leave. Additionally, Alex Doe, an employee under Martinez and the RIF project lead, testified for the plaintiffs. Doe stated that the original plan was to eliminate 1,200 CFPB employees by February 14 and to dismiss the remainder within 90 days. Doe testified that, although the February 14 court order had thwarted that plan, Doe was unaware that CFPB leadership’s intent to initiate the mass RIF had changed, and Doe testified that an RIF planning meeting occurred as late as March 6.

On March 28, Judge Jackson released a 111-page opinion granting the preliminary injunction. Judge Jackson found that the plaintiffs were likely to establish that the administration violated separation of powers by engaging in an orchestrated plan to eliminate the agency quickly and non-statutorily and that, without the preliminary injunction, “the closure of the agency will be swift, complete, and irreversible.” Jackson walked through the evidence, including testimony and contemporaneous emails, that in her view supported the plaintiffs’ characterization of the facts.

Throughout the opinion, Judge Jackson strongly criticized the government by, among other things, describing emails from acting CFPB leadership the day before the March 3 hearing as a “charade for the court’s benefit;” terming the defendant’s contentions regarding Vought’s stop-work order as “so disingenuous that the court is left with little confidence that the defense can be trusted to tell the truth about anything;” and likening Martinez’s testimony, which contained many contradictions, to “an abused wife brought to court by her husband to drop the charges.”

Her eight-part order, among other things, required the CFPB to reinstate employees terminated after February 10, forgo any RIFs other than for cause, rescind any contract terminations made after February 11, fully restore the agency’s consumer complaint functions, and not impose any mandatory administrative leave and stop-work orders on staff.

Vought and the DOJ quickly appealed Judge Jackson’s opinion. In their March 29 opening brief, they argued that Jackson’s order was overbroad. They wrote that “[i]n effect, the district court has indefinitely frozen CFPB as it stood before President Trump’s inauguration” and that “absent congressional action, the bureau will remain open and continue to perform its statutory functions.” A panel on the D.C. Circuit has scheduled oral argument for April 9.

The appointment of Jonathan McKernan

On February 11, President Trump nominated Jonathan McKernan to serve as director of the CFPB. McKernan previously served on the Federal Deposit Insurance Corporation (FDIC) board as part of the Republican minority during the Biden administration. Based on his FDIC tenure, McKernan is considered by many to be a moderate, business-friendly regulator.

At his February 27 confirmation hearing before the Senate Banking Committee, McKernan pledged in his opening statement that, “[T]he CFPB will take all steps necessary to implement and enforce the federal consumer financial laws and perform each of its other statutorily assigned functions. But the CFPB will do this by centering its regulation on real risks to consumers and by focusing its enforcement on bad actors.” However, under questioning later in the hearing, he expressed policy interest in data privacy and praised Chopra for his focus on those issues.

The Senate calendar is unpredictable, but indications are that McKernan will be confirmed in April.

Flash webinar on the state of the CFPB

REGISTER NOW

Husch Blackwell's Ryan DiClemente, Mike G. Silver, Christopher Friedman, and Marci Kowski will present a webinar summarizing the unusual series of recent events, analyzing the current state of play, forecasting how the CFPB will emerge out of the transition, and discussing how this uncertainty affects compliance obligations. The one-hour webinar will take place Tuesday, April 8, 2025, at noon Central time.

The webinar will be beneficial to consumer finance industry participants and service providers, including legal, compliance, and business professionals; and anyone with an interest in consumer law, federal legal developments, and administrative law issues.

The program is pending approval for Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Carolina, South Carolina, Tennessee, Texas, and Wisconsin continuing legal education credit.

The webinar recording will be available after the event date. Simply register using this on-demand link to access the recorded program.

Contact us

If you have any questions about the CFPB or other consumer financial services issues, contact Chris Friedman, Marci Kowski, Mike G. Silver, Jakob Seidler, or your local Husch Blackwell attorney.