

[Banking and Finance Law Daily Wrap Up, TOP STORY—Credit Union sues to bar Mulvaney from directing CFPB, \(Dec. 7, 2017\)](#)

Banking and Finance Law Daily Wrap Up

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By [J. Preston Carter, J.D., LL.M.](#).

In response to President Trump's designation of Mick Mulvaney, Director of the Office of Management and Budget, as Acting Director of the Consumer Financial Protection Bureau, a credit union has filed a complaint seeking declaratory and injunctive relief barring this appointment and any other CFPB Acting Director appointment by the President absent Senate approval. The Lower East Side People's Federal Credit Union filed its suit in the federal district court for the Southern District of New York, alleging violations of the Dodd-Frank Act and the U.S. Constitution, naming the President and Mulvaney as defendants.

The [complaint](#) alleges that "President Trump has attempted an illegal hostile takeover of the CFPB, throwing the Credit Union and other credit unions and banks into a state of regulatory chaos. Even worse, defendant Trump has purported to appoint an Acting Director whose mission is to destroy a Bureau that protects thousands of the Credit Union's members."

The credit union contends that the Dodd-Frank Act calls for the Deputy Director of the CFPB to serve as Acting Director until the President appoints and the Senate confirms a new director, and this law, rather than the Federal Vacancies Reform Act (FVRA), under which Mulvaney was appointed, applies. Accordingly, the complaint states, Leandra English, who was named Deputy Director by former CFPB director Richard Cordray, became the Bureau's Acting Director when Cordray's resignation took effect.

Violation of Dodd-Frank. The complaint cites Dodd-Frank as providing that the Bureau's Deputy Director, who is "appointed by the Director," "shall serve as acting Director in the absence or unavailability of the Director" (12 U.S.C. § 5491(b)(5)). According to the credit union, this designation of the Deputy Director as the "acting Director" reflects Congress's deliberate choice to depart from the default procedure for naming an acting official under the FVRA. The credit union points out that an early version of Dodd-Frank that passed the House of Representatives in December 2009 did not provide for a Deputy Director, and instead explicitly stated that a temporary replacement for a Director would be chosen "in the manner provided by" the FVRA. But the Senate bill, introduced and passed months later, contained the present statutory language.

In addition, the complaint continues, the President's Vacancies Reform Act appointment powers "shall not apply" to any members of an independent multi-member board or commission (U.S.C. § 3349c(1)). The Acting Director of the CFPB is an automatic member of an independent multi-member board or commission—the Federal Deposit Insurance Corporation board (12 U.S.C. §§ 1812(a)(1)(B), 1812(d)(2)). Therefore, the credit union argues, the FVRA does not apply to the appointment of the Acting Director of the CFPB.

The credit union further argues that, even if President Trump could appoint someone as CFPB Acting Director, he cannot appoint a White House employee "who serves at his whim and pleasure to run this independent agency. A major purpose of the Dodd-Frank Act was to create a CFPB independent of the President and insulated from political pressure. The purported Mulvaney appointment destroys CFPB independence altogether."

Violation of Constitution. The complaint also alleges a violation of Article II, Section 2, of the Constitution, which provides that the President must appoint all "officers of the United States" with "the advice and consent of the Senate." By appointing Mulvaney in the absence of any Congressional statute so authorizing, the credit union contends, President Trump violated constitutional principles of Separation of Powers and the Appointments Clause.

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Companies: Lower East Side People's Federal Credit Union

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