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CFPB Nominee Sparks Debate Over Future of Agency

Written by **Robert "Woody" Angle** & **Ethan G. Ostroff** – 7/23/18

On July 19, the Trump Administration's nominee for director of the Consumer Financial Protection Bureau, Kathy Kraninger, faced harsh scrutiny from Democrats on the Senate Committee on Banking, Housing and Urban Affairs regarding her qualifications for the position, reflecting **the heated partisan divide since the Bureau's inception in 2010.**

Kraninger is currently an associate director with the Office of Management and Budget, where she oversees budget development and execution for several executive branch agencies and manages roughly \$250 billion in federal government programs, including the Department of Homeland Security. **The Committee questioned Kraninger's intentions to continue the governing approach taken by acting Director Mick Mulvaney, who is also Kraninger's current boss as Director of the OMB.**

Mulvaney's Influence on Kraninger

Mulvaney took over as acting Director of the CFPB in November 2017 following the exit of Richard Cordray, who is now running as the Democratic candidate for governor of Ohio. Mulvaney, who has called for increased transparency and accountability of the Bureau and even called for its abolition, immediately began implementing foundational reforms, including requesting a zero-dollar budget for the second quarter of 2018 and putting a 30-day freeze on new regulations.

When pressed, Kraninger would not clearly state whether she would **follow Mulvaney's approach toward governing the Bureau, including** whether she would re-institute a rule limiting payday lenders, which Mulvaney rolled back. However, it seems more than likely that Kraninger **will follow Mulvaney's attitude toward the CFPB** and the changes he feels are needed to **alter the agency's** course.

Kraninger explained that she would strive for transparency and fairness in **leading the agency, including limiting and reviewing the Bureau's prior "regulation by enforcement" approach.** "[I]t is critical to have clear rules so that the lenders and creditors and consumers themselves know what the rules are and that they are not somehow told after the fact that they **broke a rule that they weren't even aware of or that it had somehow changed,**" Kraninger said before the Senate.

Stressing that the Bureau should "empower consumers to make good choices and provide certainty for market participants," Kraninger seemed focused on making use of cost-benefit analysis **"to facilitate competition and provide clear rules of the road."** Kraninger maintained that while the **rules of the game should be clearer for lenders, "the Bureau will take aggressive action against bad actors who break the rules by engaging in fraud and other illegal activity."**

Political Divide

The Committee appears to be split down party lines in evaluating Kraninger. Many on the right believe the CFPB requires extreme overhaul (or complete elimination) due to its unusual structure led by a single, autonomous director who is difficult to remove, has no oversight from **Congress, and isn't held accountable to the companies** the CFPB fines or the public it is entrusted to protect. Conversely, those on the left side of

the aisle generally view the CFPB's **current structure as necessary to** protect consumers from predatory lending practices.

Sen. Thom Tillis (R-N.C.) has been among the most vocal critics of the CFPB, **calling it "the first agency of its kind that is not accountable to anybody."** Expressing similar concerns, Kraninger stated during her hearing that "... Congress, through [the] Dodd-Frank Act gave the Bureau incredible powers and incredible independence from both the **president and the Congress in its structure. I've noted that my focus is on running the agency as Congress established it but ... I am very open to changes in that structure that will make the agency more accountable and more transparent."**

Banking Committee Chairman Mike Crapo (R-Idaho) has also praised **Kraninger, stating that he has the "utmost confidence" that her** experience budgeting for various agencies at the OMB has given her the ability to run the CFPB. However, not all senators are as convinced.

Sen. Elizabeth Warren (D-Mass.), **who was a key player in the Bureau's** creation, accused Kraninger of dodging Democrats' **pointed questions that** her experience creating budgets was insufficient to lead the CFPB. **"The one thing you've done in your career that is related to the CFPB is to** come up with the budget number and the budget number simply does not add up. It does not reflect and acknowledge the CFPB or a commitment to **the CFPB's central mission of trying to protect consumers and level the playing field," Sen. Warren said.**

Sen. Sherrod Brown (D-Ohio) also criticized Kraninger based on the expectation that she will follow Mulvaney's **lead**, who many Democrats feel has made the agency too friendly to the financial industry.

Committee members from both parties recognize that the next director of the Bureau will usher in a new environment of consumer finance regulatory enforcement that will last for years to come. Accordingly, the debate over Kraninger and her qualifications is likely to continue.

Confirmation

Despite the partisan debate, it is likely that Kraninger will be confirmed and that drastic budgetary and regulatory cutbacks could be in store for the CFPB.

Prior to the Senate's vote, Mulvaney will continue as the CFPB's acting director, triggering a provision in the Federal Vacancies Reform Act. Mulvaney may stay at the CFPB for 210 days or until the Senate votes on **Kraninger's** confirmation. If Kraninger is rejected or she withdraws, Mulvaney would be able to serve for an additional 210-day term.

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