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2 more developments aim for major change at CFPB

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The Consumer Financial Protection Bureau was on the receiving end of two separate actions this week aimed at dramatically changing how the agency operates.

First, a collection of consumer advocate groups is suing the CFPB and director Kathleen Kraninger for unlawfully creating and operating the taskforce on federal consumer financial law in violation of the Federal Advisory Committee Act (FACA).

Then, Sen. Deb Fischer reintroduced legislation that would change the structure of the CFPB from a single director to a bipartisan commission of five individuals.

The Nebraska Republican said she has long been concerned about the structure of CFPB leadership, first introducing a version of this legislation in 2013. Fischer indicated that she is reintroducing this legislation after the Supreme Court heard arguments in March during the case involving Seila Law versus CFPB as to whether Congress violated the separation of powers when it put a single director in charge of enforcing consumer protection laws.

The CFPB previously announced it would no longer defend its structure after years of lawsuits and calls to reform from stakeholders. This month, the Supreme Court is expected to issue its ruling.

Fischer highlighted the Financial Product Safety Commission Act of 2020 would:

—Replace the Consumer Financial Protection Bureau with a bipartisan Financial Product Safety Commission of five individuals (all appointed by the President, confirmed by the Senate).

—Have commissioners each serve staggered five-year terms, and no more than three commissioners could be from the same political party.

—Create a chair of the commission position (to fulfill administrative and other duties), which shall initially be the individual serving as director of the CFPB on the day before the date of enactment of this legislation. This person would serve as chair until the president has appointed all five members of the commission and appoints one member to serve as the subsequent chair of the commission.

"I have long advocated for reforming the CFPB to increase its transparency and accountability. With the Supreme Court set to issue an opinion this month on the constitutionality of the CFPB's single director, my bill offers a common-sense solution for reforming the bureau," Fischer said in a news release.

A bipartisan, multi-member commission would help ensure good governance, prevent rash decision making, and result in more economic certainty for Americans starting businesses and providing for their families," she added.

Fischer's action brought an immediate reaction from Dan Berger, who is president and chief executive officer of the National Association of Federally-Insured Credit Unions (NAFCU).

"By establishing a bipartisan commission at the CFPB, consumers would benefit from more robust debate, diversity of thought, and a stable leadership structure at the agency," Berger said in a statement.

"We thank Senator Deb Fischer for introducing this important legislation, and we encourage Congress to swiftly pass this bill," Berger continued. "Until the CFPB's leadership structure is reformed by Congress, we look forward to continuing to work with Director Kathy Kraninger. Over the years, she has been responsive, transparent, and receptive to the needs of credit unions."

Organizations such as the Consumer Bankers Association also have Congress to swiftly pass legislation to ensure the CFPB's independence and constitutionality by replacing the single director structure with a five-person, bipartisan commission, as originally intended by the House when it first passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.

"Congress should create a bipartisan commission — as the House did originally in 2009 — at the CFPB in place of an unaccountable sole director to ensure the agency is balanced, stable and best prepared to uphold the bureau's consumer protection mandate for years and decades," Consumer Bankers Association president and CEO Richard Hunt said in a statement last May.

More details about taskforce lawsuit

A group of consumer advocates wants the bureau to uphold its mandate, too, but is coming at the issue from a completely different way.

Just days after the taskforce chair shared an updated on its progress, representing the National Association of Consumer Advocates (NACA), U.S. Public Interest Research Group (PIRG) and consumer law expert Kathleen Engel, Democracy Forward sued CFPB and Kraninger Tuesday for unlawfully creating and operating the taskforce on federal consumer financial law in violation of the Federal Advisory Committee Act (FACA).

The groups contend the Taskforce is stacked with "industry-aligned members, excludes consumer advocates, does not serve a public interest, and has conducted its work behind closed doors — all in violation of federal law."

This suit filed in the U.S. District Court for the District of Massachusetts seeks to put a halt to the taskforce's "unlawful operation" and stop the CFPB from relying on its work.

"A group of hand-picked industry lawyers and consultants that meets behind closed doors — with no consumer advocates or disparate points of view — is more appropriately called a Task Farce. But this Task Farce is no joke," U.S. PIRG senior director of federal consumer programs Ed Mierzwinski said in a news release. "Not only is CFPB breaking the law, their actions continue to be dangerous for consumer protection."

Democracy Forward executive director Anne Harkavy added, "The federal consumer financial law taskforce is the latest effort by a Trump appointee to outsource policymaking to private interests while excluding other voices. We've stopped them before, and we're asking the court to stop them here. In the midst of an economic downturn, the CFPB should not be excluding consumer advocates from key policymaking conversations about how to protect American families."

Along with chair Todd Zywicki— who also is professor of law at George Mason University Antonin Scalia Law School, senior fellow of the Cato Institute, and former executive director of the GMU Law and Economics Center — the taskforce members are:

— Howard Beales III, former professor of strategic management and public policy at George Washington University and former director of the bureau of consumer protection at the Federal Trade Commission

— Thomas Durkin, who retired as senior economist at the Federal Reserve Board

— Jean Noonan, current partner at Hudson Cook and former general counsel at the Farm Credit Administration and former associate director of the bureau of consumer protection's credit practice at the Federal Trade Commission

"The CFPB's unlawful creation of this Taskforce is just the latest cynical attempt by the agency's leadership to undermine our nation's necessary consumer protections," said Ira Rheingold, executive director for National Association of Consumer Advocates. "Coming at a critical moment in our country when consumers will need more protection, not less, this taskforce — filled with industry apologists — is the last group of people we should be looking to for consumer protection advice."

In selecting the taskforce membership, lawsuit organizers said the CFPB rejected the applications of many consumer protection experts and advocates, including Suffolk Law professor Kathleen Engel — a prominent scholar of consumer law and finance who has sat on the CFPB's Consumer Advisory Board — and University of Minnesota law professor Prentiss Cox, who was the first chair of the bureau's Consumer Advisory Board.

After interviewing for a position on the taskforce, Engel noted that "views on deregulation were a criterion" and decried the "inquisitorial" nature of the interview.

Ultimately, the lawsuit organizers said CFPB ended up naming only members with ties to the financial industry while excluding consumer advocates.

"It distresses me that political appointees at the CFPB are willing to defy the law in order to push their deregulatory agenda and undermine the agency's mission of protecting American families," Engel said.