Americans for Financial Reform

This Week in Wall Street Reform | July 21 – 27

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KAVANAUGH NOMINATION

The Threat to Individual Liberty in Judge Kavanaugh's CFPB Opinion | CPR Blog (Karen Sokol)
"This is a case about executive power and individual liberty." That is how Judge Brett Kavanaugh started the opinion he wrote for a three-judge panel of the D.C. Circuit Court of Appeals holding that the structure of the Consumer Financial Protection Bureau (CFPB) was unconstitutional…

Kavanaugh is certainly correct that giving the CFPB – or any other agency – the power to enforce rules presents a risk to the liberty of those, such as PHH, whose conduct is governed by those rules, if that power is abused. Such is ever the case with any agency with regulatory powers. He is also right that one of the principal ways the Constitution protects against such abuses is by separating the powers of the three co-equal branches of the federal government. But Kavanaugh utterly fails to account for, or even acknowledge, the threat to the individual liberty of millions of Americans that Congress sought to mitigate by creating the CFPB. That failure severely weakens his conclusion that the structure of the agency violated the "separation of powers" doctrine of the Constitution. More importantly, it portends that he would bring an incredibly cramped view of individual liberty to the Supreme Court if confirmed as a Justice, a view contrary to reason, reality, and justice.

Kavanaugh's Threat to Government Transparency and Accountability | Center for Progressive Reform (Daniel Farber)
Kavanaugh's approach could transform the process of rulemaking across the executive branch. Adopting his approach could undermine public participation in decisions affecting the health, safety, and environment of millions of Americans. It would allow agencies to cherry-pick the evidence that supports their actions while ignoring the rest and would free them from subjecting their analysis to serious public scrutiny.

THE TRUMP ADMINISTRATION, CONGRESS & WALL STREET

Dodd-Frank is a success story, say progressives and former regulators | American Banker
"The moral of this story is simple: Without basic government regulation, financial markets just don't work," said Sen. Elizabeth Warren, D-Mass., at an event hosted by **Americans for Financial Reform**. Warren said the Dodd-Frank Act, the 2010 law that dramatically toughened financial regulation in response to the crisis, "was not perfect, but it moved us in a big step in the right direction."

Washington Has 'Amnesia' on Bank Reg Rollbacks: Brown | Law360
The top Democrat on the Senate Banking Committee said Tuesday that Wall Street is getting its way with recent efforts to relax the post-crisis financial regulatory framework and warned that Washington is in the throes of a "collective amnesia."

Speaking at an **Americans for Financial Reform**-organized conference marking the 10th anniversary of the 2008 financial crisis, Sen. Sherrod Brown, D-Ohio, said lawmakers and regulators are repeating the cycle of financial industry deregulation that preceded the financial crisis and prompted the passage of the 2010 Dodd-Frank Act.

[In the great tech race, Wall Street firms are lapping the regulators] | The Hill (Kristen Wegner)
Congress now has a problem to solve: Wall Street's primary regulators do not possess the resources and tools required to oversee an increasingly digital-first financial sector that is constantly evolving due to artificial intelligence, machine learning and high-speed computing. Much like during the lead-up the Great Recession, when regulatory agencies lacked the manpower to identify the mortgage bubble, Wall Street's top cops presently lack the ability to track all the challenges and opportunities presented by emerging technology. Put simply, financial institutions are speeding into the future as regulators remain delayed in the past. There is still a window for the current Congress to pass a bill that helps ensure the SEC and CFTC receive the funding they need to keep up with today's technology-infused financial sector.

[Interview with ICBA President Rebeca Romero Rainey] | PoliticoPro
Q: You've had a little time to settle into the new position. For this year and going into next year, what are the top things you're focused on?

A: What can we do to create a level playing field where the regulation is proportionate to the risk that the community banks represent? So, I think S. 2155 is a great step in that direction. Is it everything we wanted? No. But is it momentum that shows the bipartisan support for community banks and what we do? Definitely…

It seems like every day there's something else that crops up in terms of a discussion there. The last couple weeks or couple months, it's been a conversation around postal banking, or fintech charters, or [industrial loan company] charters, or credit unions, and all that's come to light in terms of that growing industry and the expanding powers that they continue to have. ... Competition's great. We welcome it, just on a level playing field.

[The hard part of reg relief is just getting started] | American Banker
The banking agencies are considering issuing roughly a dozen different rulemakings in response to the bill spearheaded by Senate Banking Committee Chairman Mike Crapo, according to interviews with various regulatory officials. They cover topics ranging from the Volcker Rule to the exam cycle to liquidity requirements.

[Banks need to brace for Trump's tariffs] | American Banker

[How a Small Bank Became a Go-To Lender to the Trump Family] | NY Times
When Michael D. Cohen needed $17 million to buy a Manhattan apartment building in 2015, he went to Signature Bank. Signature had existed for less than two decades, and compared with some of its New York rivals, it was a small player occupying unglamorous niches.

Yet it was a natural place to go for Mr. Cohen, who was Donald J. Trump's personal lawyer. Years earlier, he had helped initiate a relationship between Signature and Mr. Trump, and the bank became an unlikely go-to lender for the future president and his extended family.

The bank helped finance Mr. Trump's Florida golf course. It lent money to Jared Kushner, Mr. Trump's son-in-law, and to Mr. Kushner's father, Charles. It provided Mr. Trump and his business with checking accounts. And Ivanka Trump sat on Signature's board of directors while the bank was lending to her father and her husband, Mr. Kushner.

Manafort's Bankers, Bookkeepers Could Testify at His Trial | Bloomberg

CONSUMER FINANCE AND THE CFPB

'What do we think about Mick?': Trump narrows down chief search | Politico
Long rumored to be on his way out, Kelly has no clear plans to resign — but Mulvaney has been discreetly lobbying for the job, asking Republicans outside the White House to put in a good word on his behalf with the president…

Mulvaney also has received accolades for his slow dismantling of the former CFPB, a brainchild of Elizabeth Warren's that was created by Democrats in the wake of the 2008 financial crisis and has long been a favorite target for Republicans.

"His mission was to blow that up, which he has. He is very well-suited to the chaos," said a close White House adviser.

Nonprofits Call For Probe of Mulvaney's Payday Lender Ties | Law360
The Consumer Financial Protection Bureau's acting Director Mick Mulvaney has shown favoritism to the payday lending industry through his leadership of the agency and may have violated ethics rules in the process, two public interest groups said Tuesday.

Americans for Financial Reform and Change to Win said they've asked for the CFPB's inspector general to open an investigation into whether Mulvaney has broken federal rules barring public officials from giving special treatment to private parties, arguing that his words and actions as the agency's interim chief have reflected a pro-payday lender bias that goes back to his days as a Republican congressman.

See complaint filed by AFR and Change to Win.

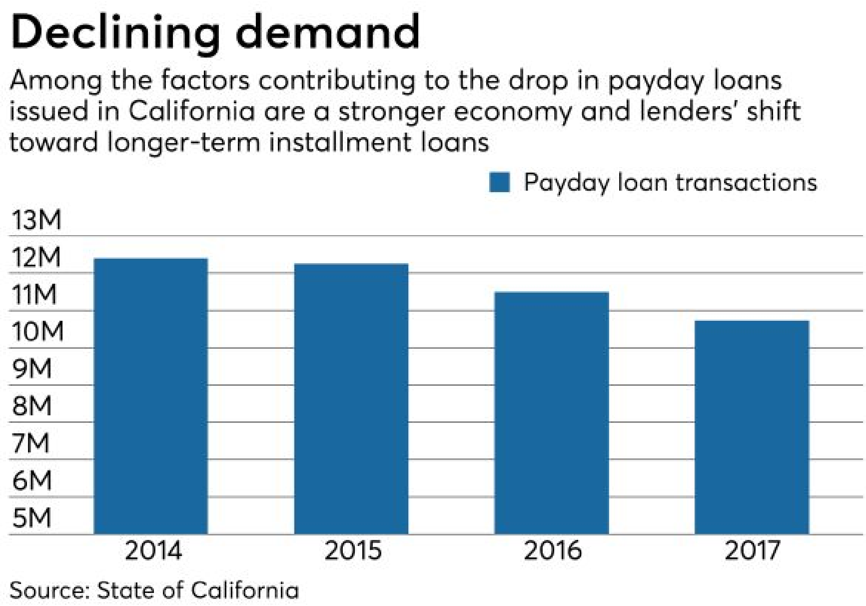
Consumer Bureau Nominee Appears to Survive Senators' Grilling | Government Executive
A Montana Democrat told President Trump's nominee to be director of the Consumer Financial Protection Bureau last week that she "probably has the votes to be confirmed..."

But Linda Jun, senior policy counsel at the progressive-leaning **Americans for Financial Reform**, said, "Kraninger was completely unfamiliar with all of the statutes the CFPB oversees and the CFPB's work in enforcing them, but despite this lack of knowledge endorsed Mick Mulvaney's leadership at CFPB, which has opened consumers to more harm. She refused to say whether the common-sense rule on predatory payday loans should go forward. She will not commit to removing political appointees who Mulvaney installed to shadow the career professionals. Kraninger promised she would take 'aggressive action against bad actors' but offered no evidence that she would take any concrete steps to actually protect consumers."

[Advocacy group sues for CFPB nominee's work records](#) | **Washington Post**
A progressive group filed suit against the Trump administration on Wednesday seeking to obtain the employment records, emails and calendar of Kathy Kraninger, a White House official nominated to be director of the Consumer Financial Protection Bureau.

Allied Progress, a nonprofit advocacy group, is seeking to enforce Freedom of Information Act requests it filed last month for records about Kraninger's work at the Office of Management and Budget, according to the lawsuit filed in D.C. federal court.

[Dramatic changes to CFPB proposed by House, not under consideration by Senate](#) | **Consumer Finance Monitor (Alan Kaplinsky)**
While the House bill would make the CFPB subject to the regular appropriations process, the Senate bill would not change Section 1017 of Dodd-Frank which provides that the CFPB is funded through transfers from the Federal Reserve. However, it contains a provision (Section 747) that would require the CFPB, during fiscal year 2019, to notify the House and Senate Appropriations Committees, the House Financial Services Committee, and the Senate Banking Committee when it makes a request for a transfer of funds from the Federal Reserve pursuant to Section 1017 and to post the notification on the CFPB's website.



[States still call the shots on subprime lending](#) | **American Banker**
Back in 2008 — when the Consumer Financial Protection Bureau was still a gleam in Elizabeth Warren's eye — Ohio voters approved a referendum that was supposed to cap interest rates on small-dollar consumer loans at 28%.

The effort quickly went awry, as lenders found a loophole that allowed them to charge annual interest rates of 591%. Now, 10 years later, the state is on the verge of enacting major reform.

On Tuesday, the Ohio House of Representatives passed by a margin of 60 to 24 a bill that would cap payments on 90-day loans at around 7% of the borrower's net income. The bill has already been passed the state Senate, and consumer advocates are hopeful that Republican Gov. John Kasich will sign it into law.

A great deal of attention has been paid to the fight in Washington over the fate of the Consumer Financial Protection Bureau's payday loan rule, as acting Director Mick Mulvaney stymies the actions of the agency's previous leadership. But away from the spotlight, battles that may prove to be more consequential are unfolding in state legislatures around the country.

Unsolicited checks can be a lifeline and an albatross | Hartford Courant
The check arrived out of the blue, issued in his name for $1,200, a mailing from a consumer finance company. Stephen Huggins eyed it carefully.

A loan, it said. Smaller type said the interest rate would be 33 percent.

Way too high, Huggins thought. He put it aside.

A week later, though, his 2005 Chevy pickup was in the shop, and he didn't have enough to pay for the repairs. He needed the truck to get to work, to get the kids to school. So Huggins, a 56-year-old heavy equipment operator in Nashville, fished the check out that day in April 2017 and cashed it.

In a twist, Mulvaney now defending CFPB enforcement powers | American Banker
During the first seven months of Mulvaney's tenure, the CFPB had issued just one enforcement action, handing out the largest bank fine ever against Wells Fargo for failures in its auto lending and mortgage businesses.

But since mid-June, the bureau has averaged about one public enforcement action a week, totaling five in that span. The most recent was last week, when the CFPB announced a $30 million settlement with TCF Financial related to overdraft charges.

Banks and financial firms had hoped Mulvaney would drop most of the roughly 50 lawsuits and probes — of which about half are in active litigation — that he inherited upon taking the reins in November. But the court docket shows the CFPB has largely kept cases open or tried to resolve them.

CFPB Enforcement Is Back—With a Softer Touch | Wall St. Journal
Mick Mulvaney, the CFPB's acting director who has introduced pro-business changes at the bureau, said in an interview the bureau's enforcement strategy now emphasizes negotiating with target companies to settle disputes, rather than moving as quickly as Obama administration officials did to file civil lawsuits.

TCF Bank to Pay $30 Million for Handling of Overdraft Programs | Wall St. Journal
The settlement with the Consumer Financial Protection Bureau and Office of the Comptroller of the Currency includes the return of $25 million to affected customers and a $5 million fine. The regulators alleged the bank designed its account application process to obscure overdraft fees and make the service appear to be mandatory. Federal rules require banks to get customer consent before enrolling them into such programs…

This is the third settlement the CFPB has announced in July, and follows a $1 billion settlement with Wells Fargo & Co., announced jointly with the OCC in April.

Wells Fargo freed from sanctions over treatment of service members | American Banker
Wells Fargo is no longer facing regulatory sanctions over allegations that it failed to honor certain legal protections that are afforded to members of the U.S. military.

The Office of the Comptroller of the Currency terminated its 22-month-old consent order with the bank last week, but did not publicize the action. Wells Fargo CEO Tim Sloan said in a press release Tuesday that the OCC's decision to terminate the order validates the bank's efforts to do a better job of complying with the Servicemembers Civil Relief Act.

Judge Slams Fitbit, MoFo Attys For Arbitration Runaround | Law360
A California federal judge sanctioned Fitbit Inc. and its Morrison & Foerster LLP attorneys on Wednesday for acting in bad faith, saying they owe attorneys' fees after getting a proposed consumer class action removed to arbitration only to reveal they had no intention of arbitrating the claims.

DERIVATIVES, COMMODITIES & THE CFTC

Decade After Crisis, a $600 Trillion Market Remains Murky to Regulators | NY Times
In the maze of subsidiaries that make up Goldman Sachs Group, two in London have nearly identical names: Goldman Sachs International and Goldman Sachs International Bank.

Both trade financial instruments known as derivatives with hedge funds, insurers, governments and other clients.

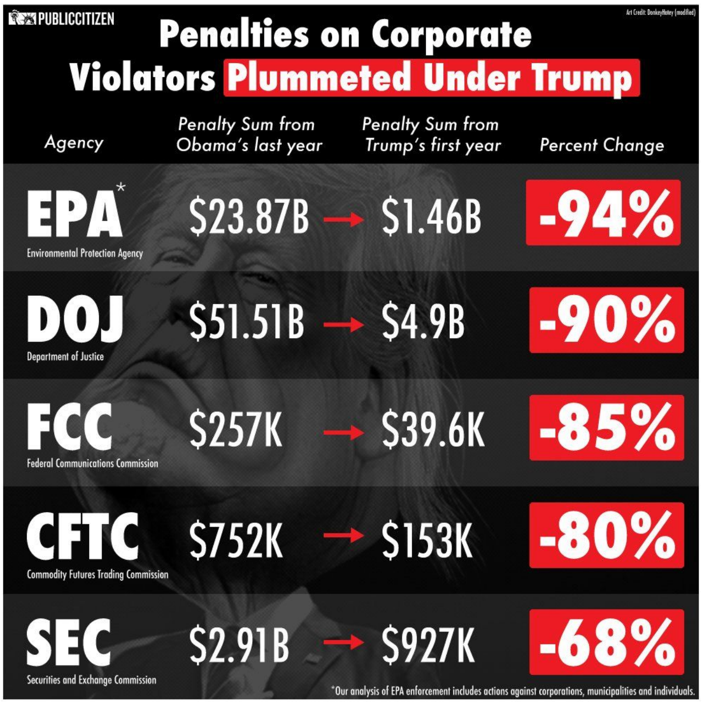
United States regulators, however, get detailed information only about the derivatives traded by Goldman Sachs International. Thanks to a loophole in laws enacted in response to the financial crisis, trades by Goldman Sachs International Bank don't have to be reported.

See working paper by Michael Greenberger" "At Will" Nullification of Dodd-Frank's Regulation of the MultiTrillion Dollar Financial Swaps Market

CFTC Nears Full Strength as Democrat Coasts Through Nomination Hearing | Wall St. Journal
The Commodity Futures Trading Commission moved a step closer to having a full commission for the first time in four years, with a Democratic nominee getting almost no pushback at a Senate confirmation hearing. Dan Berkovitz, a partner at law firm WilmerHale and former CFTC general counsel during the Obama administration, said he would work to complete and safeguard postcrisis derivatives rules in a hearing before the Senate Agriculture Committee on Tuesday…

Mr. Berkovitz will likely be confirmed soon alongside Republican nominee Dawn Stump, under traditional Senate procedure, though no vote has been scheduled. Their confirmation will allow the CFTC to work on some complex rules that had been temporarily shelved by CFTC Chairman J. Christopher Giancarlo, who has said he wants a full commission to address the issues. Those rules include position limits in derivatives trading, meant to limit speculation in commodities such as oil and gold.

ENFORCEMENT



[Report: 'Law and order' Trump soft on corporate offenders](#) | Associated Press
While Donald Trump has positioned himself as a tough, "law and order" president, he has mostly excluded one group of offenders from his sights: those of the corporate class, according to a report released Wednesday by Washington-based watchdog Public Citizen.

The report found that in 11 of the 12 federal agencies led by a Trump-appointed official during the president's first year, penalties imposed on corporate violators dropped, in the majority of cases by more than 50 percent.

See Public Citizen report, "Corporate Impunity: "Tough on Crime" Trump Is Weak on Corporate Crime and Wrongdoing"

INVESTOR PROTECTION, THE SEC, AND RETIREMENT SAVINGS

What's Behind a Pitch for the Little-Guy Investor? Big Money Interests | NY Times
The group calls itself the Main Street Investors Coalition. It is a Washington organization that purports to represent the little guy — the retail investor that it says has no voice in corporate America. The group has been not-so-quietly circulating a white paper and various studies in hopes of influencing an examination by the Securities and Exchange Commission of regulations that affect investors. The group has been quoted in the news media and had op-eds published in The Hill, The Washington Examiner and elsewhere.

And yet the Main Street Investors Coalition has nothing to do with mom-and-pop investors. The group is actually funded by big business interests that want to diminish the ability of pension funds and large 401(k) plans — where most little guys keep their money — to influence certain corporate governance issues.

SEC rejects Winklevoss's Bitcoin ETF bid | The Hill
The Securities and Exchange Commission (SEC) announced Thursday that it would not approve what would have been the first-ever exchange-traded fund (ETF) to track Bitcoin.

SEC votes to propose changes on disclosures for some debt offerings | Reuters

MORTGAGES AND HOUSING

10 years after crisis, Fannie, Freddie trigger new alarms about growing role | Politico
Republican lawmakers are raising alarms that Fannie Mae and Freddie Mac, the government-run companies at the center of the U.S. mortgage market, are quietly expanding their activities to fortify themselves against any efforts to rein them in.

In one courtroom, free counselors and attorneys have saved 11,000 Philly homes from foreclosure | Philadelphia Inquirer
Courtroom 676 appears to be an ordinary courtroom inside the winding hallways of City Hall. Gold columns tower behind the court's bench, while oil paintings of judges decorate the walls. A jury box sits in the corner. Flags rest in place.

Every Thursday, however, the courtroom transforms. Court is in session, yet no judge presides. Defendants like DaCosta appear, but no jury decides their fate.

The city has operated its Residential Mortgage Foreclosure Diversion Program every week since April 2008 with one mission: keeping residents in their homes. Spearheaded by Judge Annette M. Rizzo to combat the foreclosure epidemic that sprouted from the Great Recession, the program — considered the first in the nation — still has thousands of participants today.

FICO, VantageScore stand against FHFA's delay of new credit score model | Housing Wire

Afraid of "Political Repercussions," HUD Delayed Action on Crumbling Public Housing | ProPublica
As residents in Cairo, Illinois, dealt with mice, toxic mold and lead paint, HUD officials waited to step in, according to a report from the agency's inspector general. HUD "could and should have done more to oversee it," a new report says.

REGULATION IN GENERAL

A Simple Overview Of What A Federal Regulation Is And How It Affects You | Forbes

FTC Says Fines Force Companies to Rethink Consumer Data | Law 360
The Federal Trade Commission told lawmakers on Wednesday that if the public wants to see companies handle their sensitive information diligently, then the agency needs the ability to slap violators with fines and have more freedom to pass rules.

Dept. of Justice needs to do more than just promise to solve the guidance problem | The Hill (Caleb Kruckenberg)

So Much Losing: Trump Deregulatory Efforts Flounder in Court | Bloomberg Government
In their haste to gut regulations, agencies got sloppy and tried to cut corners administratively, resulting in an unusually lopsided tally of court rulings against the agencies, two Georgetown University specialists in administrative law say.

“I think what you’re seeing here is agencies that are more focused on immediate, short-term political credit-claiming than they are about long-term, enduring victories,” William Buzbee, a law professor at Georgetown University Law Center who specializes in regulatory policy, told Bloomberg Government.

STUDENT LOANS AND FOR-PROFIT SCHOOLS

Trump Administration Proposes Tightening Rules for Forgiving Student Loans | Wall St. Journal
The Trump administration is proposing to tighten the criteria that dictate when former college students who accuse their schools of fraudulent behavior can have their student loans forgiven. The Education Department said the plan is designed to help genuine victims of fraud, while limiting frivolous claims by former students. The plan is expected to face stiff opposition from congressional Democrats and consumer advocates, who have warned that any effort to limit debt forgiveness would limit the legal options of students with debts they can’t afford to repay. Under the plan, the Education Department has proposed two alternative standards, and has said it would welcome comments before it publishes final rules on Nov. 1.

DeVos Proposes to Curtail Debt Relief for Defrauded Students | NY Times
The DeVos proposal, set to go in force a year from now, would replace Obama-era policies that sought to ease access to loan forgiveness for students who were left saddled with debt after two for-profit college chains, Corinthian Colleges and ITT Technical Institute, imploded in 2015 and 2016. The schools were found to have misled their students with false advertisements and misleading claims for years.

Afterward, the Obama administration forgave hundreds of millions of dollars in student loans and began rewriting regulations to crack down on predatory institutions and bolster borrowers’ ability to seek debt relief from the federal government. But higher education institutions, including historically black colleges and universities and for-profit educators, maintained the new rules were far too broad and subjected them to frivolous claims that carried significant financial risks.

In June 2017, just one month before the Obama rules were to take effect, Ms. DeVos announced that she would block and rewrite them.

See statements by Americans for Financial Reform, Center for Responsible Lending, and TICAS.

His two year degree cost him $90,000. Now he’s in a battle with the Education Department | CNBC

16 States Blast DeVos Over Third Delay of For-Profit College Rules | ThinkAdvisor

DeVos proposal would slash student loan forgiveness | CNBC

Betsy DeVos' New Proposal Aligns Her With For-Profit Colleges Over Debt-Saddled Students | Rolling Stone (Andy Kroll)

Administration would make it harder for wronged students to erase debt | Washington Post

DeVos to Eliminate Rules Aimed at Abuses by For-Profit Colleges | NY Times (Erica Green)

Emails From Trump Education Official Reveal Ties to For-Profit Colleges | The Atlantic

Vets could be hurt by proposed $13 billion cut to student loan relief | Military Times

DeVos Proposes to Curtail Debt Relief for Defrauded Students | NY Times

Proposal would cut student loan relief by an estimated $13 billion | Los Angeles Times

TAXATION

OMB completes first expedited review of GOP tax law regulation | The Hill
A top Office of Management and Budget (OMB) official said Thursday that the agency has completed its first review of a proposed rule to implement the GOP tax law under a process agreed to with the Treasury Department in April.

OTHER TOPICS

Interview with Sen. Elizabeth Warren | Washington Post
"In order to reap the benefits of competitive markets it is critical to crack down on cheating. That was the idea behind the Consumer Financial Protection Bureau. Before the financial crisis, the market for financial products was broken. To take just one of many examples, lenders could sell teaser-rate mortgages deliberately designed to obscure both the risks and the costs for borrowers. The CFPB created new rules for mortgages that forced companies to compete more visibly on products and service, instead of competing on which company could mislead customers most effectively. Consumers could make more informed choices and the market began to work better, which benefited both the customers and the businesses that were willing to compete straight up."