Expert Analysis - Opinion

CFPB's Payday Loan Protections Protect Big Business Too

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I'll bet most of you don't know how payday loans work. Yet payday lenders infest your city's landscape, operating more than 16,000 stores in 35 states and proliferating online.

Most of you probably don't even think about payday loans. That's because you've probably never needed one. Payday loans aren't the lifeline that the payday loan industry promotes. Rather, they are often an anchor, dragging unwary customers to the depths of a debt-brimmed sea from which they can never emerge. And the Consumer Financial Protection Bureau — the agency entrusted to guard consumers — is turning into one of the payday loan industry's biggest supporters.

What exactly are payday loans? They're certainly not honest relief for people who need a hand between paydays. Instead, they are short-term, high-interest loans, generally for $500 or less, that lenders design to bridge the gap between borrowers' paydays.

And they're easy to get. Borrowers can walk into a store or apply online. Borrowers provide some modest personal and financial information, make a dollar request that they secure by check or bank account debit authorization and pay a fee. They then walk out with cash or with a deposit to their bank accounts.

This process also requires borrowers to write checks for the full balance of their advances, which the payday lenders can deposit when borrowers' loans come due. But unlike traditional loans, payday loans' costs are outrageous. Fees can run from $15 for every $100 borrowed, and annual percentage rates can be as high as 400 percent.

Here's how it works. Let's say your car broke down and you need $500 for repairs. After all, you need to get to and from work. You'll find a payday lender and postdate a $500 check payable to the lender plus a $45 finance fee. The lender will advance you $500 for a set period, usually a couple of weeks. When the two weeks end, you must pay the lender $545. If you can't make repayment, which is often the case, interest kicks in along with additional fees.

According to Pew Charitable Trusts, over 12 million Americans use payday loans every year. These are often renters, people who earn less than $40,000 per year, people without college degrees, people who are separated or divorced and African Americans. This generates more than $7 billion in revenue per year for payday lenders.

And all this happens despite multiple less costly alternatives for obtaining credit, such as negotiating a payment plan with your creditor, charging the debt to your credit card, requesting an advance from your employer, using your bank's overdraft protections, obtaining a line of credit, asking a relative for a hand, asking your creditor for more time to pay or taking a cash advance on your credit card.

With all this profit and vulnerability baked into payday loans, it's no wonder they're so easy to get. Lenders were neither regulated by borrowers' ability to repay their loans nor were they restricted by the number of loans borrowers had taken. So when borrowers struggle to repay their loans in full and instead repeatedly renew them, which is what lenders bank on, debts spiral, costs skyrocket and lenders get rich — just as planned.

That's where the Consumer Financial Protection Bureau comes in . . . or was supposed to.

Under rules developed during the last year of Rich Cordray's run as CFPB director, payday lenders, before giving loans, would have had to determine whether borrowers could afford to repay their loans within 30 days in full and with interest. The rules would also have capped the number of loans borrowers could take.

But on the day these rules were to go into effect, acting CFPB director Mick Mulvaney — the same Mick Mulvaney who once called the CFPB a sick, sad joke — put on the brakes, saying that “the bureau intends to engage in a rulemaking process so that the bureau may reconsider the payday rule.”

Mulvaney’s basis for his decree? “Under the current rule,” he said, “many banks are forced to sit on the sidelines and [are] prevented from offering affordable and popular small-dollar credit options to help meet the needs of their customers.” After all, the CFPB is meant to serve the companies it regulates, Mulvaney surmised. In addition to working for consumers, the CFPB “works for those who provide credit,” “those who make [loans]” and “those who sell [cars].”

What’s ironic is that even Trump’s most fervent supporters don’t support gutting the CFPB and subjecting themselves to corporate victimization. For example, Trump crushed North Dakota on election night, winning 63 percent to 27 percent. That same night, North Dakotans voted by a 3-to-1 margin to regulate their state’s payday loan industry. But despite this loud and clear populist message, Trump’s hand-picked heir to the CFPB insists on going the other direction.

As designed, the CFPB jumped immediately on Mulvaney’s mandate. Two days after his pronouncement, the CFPB moved to dismiss its suit against lenders owned by a California tribe that had made abusive loans, though the bureau’s motion failed to offer a reason. According to the CFPB’s complaint, these loans carried a 950 percent APR. That translated to costing borrowers $3,300 for $800 loans.

The CFPB followed that up by wrapping its investigation into a South Carolina company’s predatory lending practices. By the way, before ascending to CFPB acting director, Mulvaney was a South Carolina congressman who, according to campaign finance data cited by Allied Progress and compiled by the nonprofit National Institute on Money in State Politics, received thousands of dollars in campaign contributions from this South Carolina company during the 2014 and 2016 election cycles. And never mind that a securities-fraud lawsuit against this company relating to its predatory lending practices recently resolved for $16 million.

Mulvaney's enforcement curtailment isn't limited to the payday-loan rules. He has committed to deliver the CFPB's mission with more "humility and prudence." To this end, he wants to hear from the companies that have been subject to his bureau's investigation.

Among the softballs he's lobbed to alleged cheaters are whether the CFPB could make it easier for them to understand what information the bureau is looking for ("yes, ask us for as little information as possible"), whether the CFPB could limit its requests so that these companies will have an easier time complying with them ("sure, don't request anything") and whether the process by which companies challenge information requests needs to change ("absolutely, make it easier for us to extinguish them"). Because when you ask the fox how best to guard the henhouse, everybody knows how that's going to turn out.

If this weren't enough, Mulvaney has even rejected the Federal Reserve Bank's quarterly offer to fund the CFPB's operations. The bureau's projected expenses for the second quarter of fiscal 2018 are $145 million. But Mulvaney has told the Fed no thanks. He'll instead spend down the CFPB's $177.1 million reserve — a reserve that Cordray had maintained to cover unexpected costs. I'm no politician, but in all my years I've never seen one turn down free money.

And to think, all this during Mulvaney's first few weeks on the job.

My question is whether a declawed CFPB is good for business. Of course, a weak CFPB isn't good for business. Good companies benefit and thrive from active enforcement — enforcement that reigns in cheaters and prevents them from stealing well-behaving companies' market shares, sales and profits. They also thrive from consumers spending money on their goods and services rather than on repaying ill-advised loans.

Though some companies thoughtlessly decry the CFPB as an unregulated and unhinged despot bent on ravaging free markets, a thoughtful assessment reveals the CFPB for what it is — a big-business partner that fights to keep the playing field level not just for consumers but also for good and smart companies. When (or whether) the CFPB's haters will figure this out beats me.

Lack of regulation leads to overreaching. And when substantial overreaching takes its toll — as it always does — changes that nobody expected invariably occur. And when the pendulum swings back — as it always does — it's not only the cheaters who had better get out of the way. Well-behaving companies who stood down and let the CFPB fall apart will regret not having done their part to save the CFPB and themselves.

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