Expert Analysis - Opinion

# Why Contempt For The CFPB Is A Big Business Mistake

By **Daniel Karon**
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Thoughtlessness has prevailed again in Washington. But this time it's big business that's going to be sorry.

Following years of constant assault from big business and its Republican legislative backers, U.S. Consumer Financial Protection Bureau Director Richard Cordray has stepped down, likely to run for Ohio governor. From the CFPB's get-go, big business was intent on running Cordray out of town, though I've never quite understood why.

I know big business perceived him as dangerous to its bottom line, and I know that perception drove its desire to replace him. I understand that conclusion. What I don't understand is big business's predicate — that Cordray was dangerous in the first place. Instead, I think he helped big business.

**A Bureau Under Fire**

The CFPB was Senator Elizabeth Warren's creation in response to the 2008 financial crisis. As the CFPB's first director, Cordray built a powerful regulator from scratch. But immediately, big business and its Republican legislative backers criticized the CFPB for not sufficiently listening to industry concerns, despite, for instance, the bureau's repeated interaction with the business community when crafting the bureau's now-obliterated anti-arbitration rule.

Big business insisted that the bureau's rules left consumers with fewer choices and higher prices. House Financial Services Committee Chair Jeb Hensarling, R-Texas (now concerned about consumers), blasted Cordray on his way out the door, proclaiming that the CFPB's actions had harmed the consumers that

Cordray intended to help, "trampl[ing their] fundamental economic rights [by] taking away their choices and opportunities."

Of course, Hensarling never articulated the basis for his accusation, much less how getting victimized by a payday lender for an unaffordable loan or by Wells Fargo for a fake bank account is a "fundamental economic right." Hensarling instead simply added that "[t]he bureau has an important economic mission [to] ensur[e] access to competitive markets that are vigorously policed for fraud," again never explaining how policing abusive payday lenders and sinister banks fails that goal.

I'm looking for an explanation for how ensuring that servicemembers aren't defrauded while serving overseas, seniors aren't financially abused while languishing in nursing homes and women who are sexually harassed at work aren't subject to secret arbitration clauses — all CFPB initiatives — tramples on consumers' fundamental economic rights and takes away their choices. Could Hensarling's message be that these victims want to be defrauded, financially abused and sexually victimized?

I'm also trying to figure out what's so terrible — so partisan — about reigning in abusive high-interest, small-dollar payday lenders or policing abusive banking practices. What's so awful about allowing victims their day in court? And what's so dreadful about returning $11.9 billion to 29 million swindled consumers?

There's a reason why over 370 organizations — including the AFL-CIO, NAACP and AARP —supported the CFPB's anti-arbitration rule. But uncannily, cheaters (by which I do not mean big business) and their legislators who supported the anti-arbitration rule refused to listen, as if bank presidents aren't consumers and financial-fraud victims don't vote. I've not heard the Community Financial Services Association of America, the American Bankers Association, Breitbart, the Koch Family Foundation or the U.S. Chamber of Commerce sensibly weigh in.

Instead, alleged pro-business groups encouraged the Senate's vote to dismantle the bureau's anti-arbitration rule, under the Congressional Review Act, repealing the rule by a one-vote margin and joining an earlier vote by the House of Representatives. And though Senate Banking Committee Chair Mike Crapo, R-Idaho, remarked that Cordray was guilty of issuing "stupid regulation[s] that would hurt consumers," I've not heard precisely how this was true. I've only heard that it was true. I'm eager to understand why Congress and the president, who signed the joint resolution, believe Wells Fargo & Co. and Equifax Inc. deserve more protection than their victims.

**With Cordray Out, What Comes Next?**

On his way out, Cordray, citing the Dodd-Frank Act that created the CFPB, appointed the bureau's chief of staff, Leandra English, as deputy director. But President Trump is seeking to install Office of Management and Budget Director Mick Mulvaney as the bureau's acting director.

English has sued Trump and Mulvaney to enjoin Mulvaney's appointment. She alleges that Trump wrongly relied on the Federal Vacancies Reform Act to appoint Mulvaney as the acting CFPB director, explaining that Dodd-Frank establishes a clear line of succession that permits the bureau's deputy director to serve as the acting director when a vacancy exists.

Whether you like Mulvaney or not, there's no denying that he is a self-confessed "right-wing nut job" who once called the CFPB "a sick, sad joke." While still in Congress, he even confessed that "I don't like the fact that the CFPB exists." So how Mulvaney's installment will help the bureau, I'm not sure. And how his appointment will help big business, I'm even less certain, which brings me to the point of this essay.

**A Weak CFPB Cripples Big Business**

Here's something you won't hear from a plaintiffs lawyer lauding the CFPB: I like big business. You bet I do. I love my Samsung smartphone. I'm thrilled with the Dell laptop that I'm using to compose this essay. And I'm elated with my new Jeep. Big companies make the food we eat, and they manufacture the household brands that make our lives comfortable and enjoyable. Big business is to thank for making our country the most prosperous and the most admired in the world.

What I don't like are cheaters.

Cheaters come in all sizes. We know this and so does the CFPB. That's why the bureau doesn't discriminate when filing enforcement actions, having filed against companies as prominent as JPMorgan Chase & Co. to as little-known as Golden Valley Lending Inc.

If you don't like cheaters either (and I don't know who would, except for cheaters), how can you object to the results that the CFPB has achieved? To be sure, the bureau doesn't pick on well-behaving companies — companies that make good products and do things right, as most companies do. These companies should have no beef with the CFPB, no different from how people minding their business while walking past cops should be grateful for the protective presence.

The CFPB picks on bad guys — not good guys. But in all the partisan rancor, that fundamental truth wasn't so much lost as it never stood a chance to be thoughtfully (or even marginally) appreciated.

The CFPB keeps the marketplace safe and fair for well-behaved companies whose customers trust them to conduct business ethically and profitably (since, of course, there's certainly no shame in making money the right way). But cheaters destroy that trust. They take away sales, profits and market share from companies that follow the rules.

Why well-behaved companies would revile the very protective force that ensures their prosperity defies me. Because curbing the CFPB's power only tears open opportunities for cheaters at the expense of big business.

Crippling the CFPB lets cheaters win and makes big business lose. A faltering CFPB will allow cheaters to ramp up their mischief to take advantage of an unpoliced wasteland, one that's largely devoid of public enforcement. Cheaters must be giddy with excitement at all this CFPB-infused tumult. If I were a cheater, I certainly would be.

**But It Gets Worse**

If letting cheaters prosper weren't bad enough, a decimated CFPB portends still worse things for big business. Put as a question, in addition to assisting cheaters, who else does cutting back the CFPB help? Who else benefits from creating an unaccountable Mad Maxesque empty space devoid of meaningful enforcement?

Opportunistic plaintiffs lawyers, of course. But notice, I said "opportunistic" plaintiffs lawyers. I'm precisely not talking about the thoughtful and right-minded plaintiffs lawyers who solve real problems and who put their clients' problems and causes ahead of profits. Rather, I'm talking about the scurrilous plaintiffs lawyers who lie in wait, looking for worthless opportunities to exploit with no intention of helping to anyone but themselves.

An unregulated consumer space will spawn activity from these shakedown lawyers who will anoint themselves as the new consumer saviors. Unlike federal regulators, these emboldened bottom-feeders are driven purely by profit. And with no one clogging their lane, they will seize false opportunities that they are ill-suited to pursue and are insufficiently skilled to tap.

They will pour into a CFPB-free vacuum and infect it with even more of their worthless cases, which will even further compromise companies who are doing things right. How can't the CFPB's detractors see this consequence to ravaging the CFPB? Maybe it's because they never consulted a plaintiffs attorney.

**Will Reason, Fairness and Consensus Ever Prevail?**

Cheaters don't discriminate by political party. Wells Fargo was just as happy screwing the owners of payday lenders as it was devastating third-grade teachers. So why is big business so eager to cut its throat?

All this causes me to observe how predictable Law360 op-eds can be. Plaintiffs lawyers decry what's left of the falling sky. Defense lawyers shamelessly pander to wannabe clients while at the same time putting themselves out of business. When will we learn that shouting one's position more loudly has never achieved consensus?

The CFPB was put here to protect us. And by us, I mean everybody except cheaters. That some people disagree with the CFPB's direction does not support the CFPB's destruction. Because if big business insists on that, in the ominous and sickening words of wartime theologian Martin Niemöller, before long there will be no one left to speak for it.

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