

HFSC Subcommittee Hearing on BCFP Transparency and Accountability

Overview

Today, the House Financial Services Subcommittee on Financial Institutions and Consumer Credit held a hearing on improving transparency and accountability at the Bureau of Consumer Financial Protection. In the Bureau's Semi-Annual Report to the President and Congress in April, Acting Director Mulvaney requested that Congress enact four changes to establish greater accountability and transparency for the Bureau. These changes included:

1. Fund the Bureau through Congressional appropriations;
2. Require legislative approval of major Bureau rules;
3. Ensure that the Director answers to the President in the exercise of executive authority; and,
4. Create an independent Inspector General for the Bureau.

The hearing examined these recommendations, as well as other reforms for improving the Bureau.

Witnesses

- **Mr. Richard Hunt**, President and Chief Executive Officer, Consumer Bankers Association
- **Mr. Steven G. Day**, President, American Land Title Association
- **Ms. Kate (Larson) Prochaska**, Director, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce
- **Mr. Hilary O. Shelton**, Director, NAACP Washington Bureau, Senior Vice President, Advocacy and Policy, National Association for the Advancement of Colored People
- **Mr. Elmer K. Whitaker**, Chief Executive Officer, Whitaker Bank Corporation of Kentucky

Key Takeaways

- There was strong support from most of the witnesses as well as Members of the Committee on both sides of the aisle for changing the leadership structure at the Bureau from a sole director to a bipartisan commission.
- Members of the Committee, especially on the Democratic side of the aisle, focused on lending discrimination. Many of their questions specifically dealt with HMDA, CRA and other fair lending related matters.
- Republican Members of the Committee discussed regulatory burdens and asked witnesses if regulations were limiting banking activity, like loan originations.

Opening Statements

Chairman Blaine Luetkemeyer (R-Mo), in his opening remarks, applauded the committee's legislative work on implementing Acting BCFP Director Mick Mulvaney's proposals laid out in his strategic plan and commented that the American public deserves a BCFP which enforces the law instead of creating it

Rep. Lacy Clay (D-MO), in his opening remarks, complimented the BCFP for returning \$12 billion to 29 million consumers. He also argued that the Dodd-Frank Act and the BCFP were necessary

following the housing crisis and mentioned the Bureau's decision to use "mystery shoppers" against Bancorp South and its resulting findings as evidence of discrimination in bank lending.

American Land Title Association President Steven G. Day, in his opening remarks, noted that providing the companies the BCFP regulates with written reliable guidance is the best way to ensure accountability and transparency. He also urged Congressional passage of the GUIDE Act, which CBA also supports.

Consumer Bankers Association President and CEO Richard Hunt, in his opening remarks, noted that there are many changes that can be made to enhance the functioning of the BCFP and increase access to credit for consumers, but improving the governance structure, specifically a bipartisan commission, at the agency underpins them all. He also referenced several pieces of legislation to bring much needed reform to the Bureau.

Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, Director Kate (Larson) Prochaska, in her opening remarks, noted that she believes the BCFP has lost sight of its mandate, specifically competitive and transparent markets. She also outlined a three step mission to reform the agency: 1) Ensure consumers have access and choice in the marketplace; 2) Promote availability of information for consumers to make informed decisions; and 3) Provide protection against bad actors. Additionally, she noted a commission-based structure would bring more balance to the agency.

NAACP Director Hilary Shelton, in his opening remarks, noted his belief that racial and ethnic minorities are charged more on average for credit than Caucasians. Furthermore, he noted consumer financial services are an important tenant of the NAACP due to ongoing racial biases and a growing racial wealth gap.

Whitaker Bank Corporation of Kentucky CEO Elmer Whitaker, in his opening remarks, thanks Congress for passing a regulatory reform and voice support for a commission at the BCFP. He also noted that regulatory changes have a sizeable impact on the cost of providing services, which in turn affects consumers, and Congress should work to eliminate unnecessary regulations.

Question and Answer Session

Commission

The establishment of a commission at the Bureau became a major focal point of the hearing. Along with his support of a bipartisan commission, **Chairman Luetkemeyer** stressed the calamity it would cause if the FDIC or Federal Reserve were headed by a single individual with no one to hold them accountable.

Rep. David Scott (D-GA) noted the Bureau has become a "political firepit," and, as it is structured today, sways with the political winds of each administration. As the Bureau shifts from one Director to the next, there is no certainty for both industry and consumers. **Rep. Scott** and **Rep. Gregory Meeks (D-NY)** explained it was originally intended for the Bureau to have a commission to prevent from these drastic changes.

Rep. Dennis Ross (R-FL) expressed his concern with the continuity and stability in the decision-making process and rulemaking process at the Bureau. He has cosponsored a bill, H.R. 5266, to establish a commission at the agency to address these issues. He further noted a five-member

commission provides for more expertise in comparison to a single director and could bring more accountability to rulemaking and innovation for consumer protections.

Rep. Ross questioned Mr. Hunt on the effect of the Bureau's "pendulum swing" between directors and how it affects consumers and small business from a banking perspective. Hunt believes it has a tremendous effect on everything they do and, with so much power, the Bureau needs to have a commission to provide greater balance.

Rep. Keith Rothfus (R-PA) focused his line of questioning on the scope of the Bureau's authority and the ways in which the agency has impacted consumers. He also voiced support for placing the Bureau under congressional appropriations and establishing a commission to lead the agency.

Appropriations

Several Republican members questioned the witnesses on whether bringing the Bureau under Congressional Appropriations would hinder the Bureau's goal of protecting consumers. Ms. Prochaska made clear that the "rules are on the books" and appropriations does not mean the Bureau will no longer execute those rules. She added the added Congressional oversight of the agency would be beneficial overall. **Rep. Andy Barr (R-KY)** called attention to his bill to put the Bureau under appropriations.

Lending Discrimination

Members of the Committee, especially on the Democratic side of the aisle, focused on lending discrimination. **Rep. Lacy Clay (D-MO)** was concerned with some reports on modern day redlining despite the fact that banks are getting passing grades on CRA. He asked whether Congress would be helping combat discriminatory lending by passing reforms of the Bureau. Mr. Shelton believed it would weaken the efforts. Continuing on the topic of CRA, Mr. Shelton argued that recent discussions regarding the modernization of the law will only weaken the protections of consumers.

Rep. Clay asked if the disparity gaps have closed and if the Fair Housing Act and collecting of HMDA data is no longer needed. Mr. Hunt replied that banks believe discrimination is morally wrong and should not be allowed. He noted banks are in full compliance with the HMDA requirements and have been sharing the data with the Bureau. He stated banks want to make sure their customers are happy, creditworthy and can afford their mortgage.

Rep. Al Green (D-TX) polled the witnesses on whether lending discrimination exists within bank lending. Mr. Hunt believed it is not a "yes or no question," but rather more complicated. "We move heaven and earth to make sure there is no discrimination." He added banks work very closely with regulators to ensure borrowers are judged solely on their credit worthiness.

Guidance and Regulatory Certainty

Members questioned how the Bureau's approach to rulemaking and guidance could better be improved. Mr. Day and Ms. Prochaska both highlighted the need for more clear and informative guidance. Mr. Hunt continued further, stating the industry "needs to know the rules of the road," it cannot handle the uncertainty. The witnesses highlighted the implementation of TRID as an example of where the Bureau fell short in providing enough direction to companies.

Small-dollar Loans

In response to a question from **Rep. Rothfus** regarding consumer impacts following the Bureau's aggressive use of their broad authority, Mr. Hunt noted the small-dollar rule made it so banks did not want to provide small-dollar lending products, thus severely impacting consumers' access to short-term liquidity. He explained the Bureau played politics with the rule, exempting certain institutions.

Mr. Hunt indicated the Bureau needs to look back at the small dollar rule and allow for banks to offer short term credit products to customers, noting the deposit advance product was one of the most favorably rated products banks have had. Ms. Prochaska agreed, stating there is demand for these products and banks need to be able to provide them for consumers.

Complaints

Rep. David Kustoff (R-TN) expressed concern about consumer privacy due to the Bureau's complaint database being made publically available. Ms. Prochaska indicated the Bureau is not mandated to make the complaint database public. She agreed the database should be made private, considering the submitted complaints are not verified or normalized.

Regulatory Coordination

In response **Rep. Frank Lucas' (R-OK)** question on regulatory coordination, Mr. Hunt noted there are duplicative efforts from the regulatory agencies. A bank may have both the OCC and the Bureau in their offices at the same time asking for the same documents. He stressed there is no reason for this redundancy.

Section 1071

Rep. Robert Pittenger (R-NC) asked how the implementation of the Section 1071 Small Business Data Collection may impede business lending. Mr. Hunt responded that the Bureau has been developing the rule for over six years and is having difficulties. In comparison to consumer lending, Mr. Hunt noted business lending is completely different and he does not want the Bureau to force banks out of the market due to the complexity of complying with the rule.