Consumer Financial Protection Bureau

Taskforce on Federal Consumer Financial Law Listening Session

October 13, 2020
1:00 pm to 2:00 pm Eastern

Organization: Office of the Comptroller of the Currency

CFPB Participants: Todd Zywicki, Bill MacLeod, Jean Noonan, Cheryl Parker-Rose, Nat Weber, Jeff Magliato

OCC Participants: Senior Deputy Comptroller for Bank Supervision Policy Grovetta Gardineer

Purpose: On Tuesday October 13, 2020, Taskforce Members and staff met remotely via WebEx with the OCC Senior Deputy Comptroller for Bank Supervision Policy in furtherance of the Taskforce's commitment to engage with external stakeholders to gain insights regarding the financial service industry and financial consumer protection laws. The group discussed opportunities to improve, strengthen, and modernize consumer financial protection laws.

Discussion:

1) Introductions and Opening

Taskforce Chair and the Staff Director conducted opening remarks, Taskforce members and the OCC attendee introduced themselves. The OCC Senior Deputy Comptroller for Bank Supervision pointed out that her position oversees both safety and soundness and consumer compliance activity.

2) Legal Framework of Consumer Protection (*see discussion prompts*)

- Dodd-Frank could be called the "Treat Your Customer Fairly Act".
- Government's participation in the consumer protection field dates to the 1960's and 1970's. Consumer protection measures contained a strong civil rights basis and an emphasis on equity and leveling the playing field for consumers. Much of the original legal framework carried forward and stayed in place with Dodd-Frank being the next big jump in consumer protection focus.

- Dodd-Frank created a focus on consumer protection that was previously lacking. The main interest of financial regulators was safety and soundness.
- Update to consumer protection activity has traditionally been through implementation of regulation or other non-statutory means. The underlying laws have remained generally unchanged. For example, fair lending law has remained the same with change coming in the form of new theories such as disparate impact.
- Other updates arrive via guidance from regulators as well as rules created via a notice and comment process.
- Last substantive update to the Community Reinvestment Act (CRA) was 1995. Updates since have not addressed how banks loan and how customers conduct their financial business.
- OCC updates exam procedures and in conjunction with other agencies updates Q & As to keep up with the changes in bank practices and the rise of new forms of bad behavior while the governing law remains the same.
- Creation of CFPB via Dodd-Frank shook the system and fostered debate in a way tweaks to ECOA and CRA never have.
- Consumer protection involves a set of rules to protect the consumers from themselves.
- Consumer compliance involves a set of rules over the financial system to benefit everyone.
- Safety and soundness and consumer protection are different functions but are connected. Safety and soundness is achieved by putting a consumer in a product suitable for the consumer that the consumer can repay without a default.

3) Regulatory Modernization and Flexibility *(see discussion prompts)*

- CFPB has jurisdiction over 18 consumer protection laws. In banks over $10 billion of assets this jurisdiction is not shared with OCC. But in banks with less than $10 billion of assets, the OCC has jurisdiction over these 18 laws. This is important as CFPB does not supervise these under $10 billion asset banks. In the over $10 billion banks, the OCC regulates CRA, FHA, flood insurance even while CFPB regulates the 18 enumerated consumer protection laws. OCC considers safety and soundness, fair access and fair treatment. CFPB considers fairness.
- With Dodd-Frank's creation of CFPB, CFPB stepped vigorously into its consumer protection work which showed how other regulators had not been active in consumer protection. This renewed OCC's focus on its own consumer protection work.
- Dodd-Frank gave CFPB responsibility for ECOA and OCC responsibility for FHA. The two laws differ in the number of protected classes that are covered by each law. In housing related violations, OCC and CFPB will often overlap in their work since the two laws essentially do the same thing.
- OCC and CFPB have agreements in place on how to coordinate supervision work. The two agencies do not have well established division of work/cooperation in the enforcement arena. In the Wells Fargo case, CFPB and OCC took parallel enforcement actions. Lack of coordination can result in odd results, ex: numerous agencies individually determine an enforcement action warrants a $50 million dollar fine so each

agency levies this amount of fine. The result is that the institution pays $50 million to each agency and a $50 million dollar fine results in a much larger total penalty.

- Both CFPB and OCC conduct consumer compliance Compliance Management System (CMS) supervision examinations on the banks with greater than $10 billion of assets. These exams look at how a bank runs its consumer protection operation. These exams take a lot of time, many exam hours. Why are OCC and CFPB doing the same work at the same bank?
- When OCC conducts an exam on a small than $10 billion bank, it looks at compliance with all 18 of the enumerated consumer protection laws, CFPB limits its work to one of the laws when it conducts an exam.
- CFPB should not be granted sole consumer protection responsibility to the exclusion of other regulators because of the connection that exists between consumer protection and safety and soundness. CFPB lacks abilities in safety and soundness.
- CFPB has consumer protection jurisdiction over financial service entities such as FINTECH operators but lack the talent and skill set to handle issues where consumer protection and safety and soundness intersect. FINTECHs likely need to be a bank otherwise they will not receive thorough regulation. If CFPB is the sole regulator of a FINTECH, they will only address consumer protection while the other risks posed by a FINTECH will go unmonitored. FTC can conduct enforcement but its work could come too late to do any good. If an entity is subject to laws but goes unexamined through a supervision process there will be blind spots. An example, credit bureaus. These businesses lacked oversight until the CFPB came onto the field.
- More attention needs to be paid to FINTECHs, at the federal level or the state level.
- The dual regulatory system in place now is good because the more that regulators are looking the better. State and federal levels bring different but valuable perspectives to oversight.
- Over its lifespan thus far, the CFPB has focused on different mission as directors come and go. One director focused on enforcement, the current director has an education/outreach outlook.

4) Consumer Information and Education

- Best consumer is an educated consumer
- World is now one of instant gratification which makes it hard to protect consumers against themselves. People will pay for a product/service because they want it and just ignore any disclaimers/disclosures.
- Based on roundtables and interactions with consumers, the consumer does not calculate or pay attention to APR. They don't care. Consumer focus is on dollars paid and dollars paid per month.

5) Potential recommendations:

1. Develop a system to routinely review and refresh the consumer protection laws and regulations (item 2, bullet 4).
2. Provide regular updates to the regulated community but limit the use of guidance in issuing direction and use only the formal notice and comment process to provide updates (item 2, bullet 5).
3. Put disclosures in terms understood and important to consumers, ex: what is the dollar amount that must be paid each month (item 4, bullet 2 and 3).
4. Improve coordination and division of labor between the CFPB and OCC particularly in the area of enforcement (item 3, bullet 4)
5. Establish an enforcement coordination process whereby one regulator takes the lead and the others serve to support (item 3, bullet 4).
6. Consider the cost, efficiency, burden of redundant CMS exams conducted by OCC and CFPB at banks with greater than $10 billion dollar of assets (item 3, bullet 5).

6) Potential Action Items: None