



SENATE BANKING COMMITTEE HEARING

OVERVIEW

For questions please contact [Kwon Park](#) at (202) 547-3035.

Today, the Senate Banking Committee met in executive session to consider the following nominations: Mr. Jay Neal Lerner to be Inspector General, FDIC; Mr. Amias Moore Gerety, to be an Assistant Secretary of the Treasury; Mr. Matthew Rhett Jeppson, to be Director of the U.S. Mint; Ms. Lisa Fairfax to be a Commissioner of the Securities and Exchange Commission (SEC); and Ms. Hester Peirce to be Commissioner of the SEC. The executive session was followed by an open session to conduct a hearing entitled "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." Director Richard Cordray from the Consumer Finance Protection Bureau (CFPB) was the sole witness.

Key Takeaways

- Voting (all five nominations) was postponed due to concerns raised by Democratic Senators Schumer, Menendez, Merkley, and Warren on the SEC nominees stance on the corporate political spending disclosure rule.
- Many Republican Senators asked Director Cordray to address policy reforms through the rulemaking process rather than through enforcement actions which is not transparent nor provides for notice and comment.
- Director Cordray said the CFPB is very interested in FinTECH, and has created a team to engage with this community. However, he indicated that it is not appropriate for these companies to gain an advantage in the marketplace by arbitraging the regulatory system.
- Cordray indicated that the CFPB will issue a proposed rulemaking on arbitration clauses this spring.

SUMMARY

Opening Statement and Testimony

[Chairman Richard Shelby \(R-AL\)](#)

- The only effective restraint on Dodd-Frank now resides in the courts, and fortunately, this week a Federal Court of Appeals has directed the CFPB to defend the Constitutionality of its structure.
- The case against the CFPB follows what is now becoming a string of court decisions criticizing or striking down this Administration's implementation of Dodd-Frank provisions, including the FSOC's SIFI designation of MetLIFE, the SEC's cost-benefit analysis, and the SEC's conflict minerals rule.
- Concerned about the striking lack of data and data-driven decision making that produced Dodd-Frank.
- There is growing concern that the CFPB's rules and regulations actually restrict access to credit, increases costs, and denies financial products to the consumers who need them.

[Ranking Member Sherrod Brown \(D-OH\)](#)

- The CFPB is subject to three separate audits, and Director Cordray has been available at any time that the Congress has asked him to testify.
- The industry continues to fight the CFPB's existence, and those in Congress advocating for the industry are joining them in the fight by including policy riders in funding legislation.
- In a dysfunctional Senate that has yet to confirm a single nominee from this Committee this Congress, the purpose of a Senate confirmed Commission at the CFPB is ideological roadkill.
- The CFPB has been the market watchdog since it was created five years ago, and more action is needed to protect consumers. I hope they will finish their payday lending rule.

Charles Schumer (D-NY), Robert Menendez (D-NJ), Jeff Merkley (D-OR), and Elizabeth Warren (D-MA)

- I will vote against all the nominees because of the two SEC nominees failing to address my concerns on the corporate political spending disclosure rule. This rulemaking should be a priority for the SEC.
- The corporate political spending disclosure rulemaking is a critical step toward fairness and transparency that will restore our Democracy.
- I am concerned about Hester Peirce's nomination because of her negative stance on Dodd-Frank (Warren D-MA).

Richard Cordray, Director, Consumer Finance Protection Bureau (CFPB)

- The CFPB is listening to and responding to consumers, as it is critical to fulfilling our mission.
- We will continue to expand our consumer complaint database related to consumer finance products and services.
- Reasonable regulation is essential to ensure fairness, transparency, and competitiveness.

Discussion

Enforcement and Auto Financing

Shelby: Assuming that the CFPB's disparate impact conclusion is valid, why did you choose to go after these lenders through enforcement actions as opposed to rulemaking? Is the CFPB using enforcement actions to get money rather than justice? *Cordray:* Auto lenders set up their programs with a systematic practice to give people higher rates based on race or national origin, which is illegal. We have taken actions jointly with the DOJ. The U.S. Supreme Court affirmed last year that discrimination based on disparate impact is enforceable. Some may not like enforcement actions, but if they violate the law they should redress those who are harmed.

Toomey (R-PA) and Cotton (R-AR): Why not pursue transparent rulemaking to address these issues? Is your model on identifying discrimination based on disparate impact flawed? *Cordray:* Roughly 90% of our enforcement cases involve one or more claims of deception. As to the pattern of orders, basic fairness in law enforcement is to signal to the marketplace unacceptable behavior. The 1994 joint guidance by banking regulators and the DOJ said disparate impact is the law of the land.

Rounds (R-SD): Philosophy on consent orders – If there is a court order or a settlement without admission of guilt, should the CFPB pursue rulemaking instead to lay out expectations for compliance officers clearly and definitively? *Cordray:* Congress provided the CFPB with tools to investigate facts and circumstances to enforce the law through enforcement actions. Compliance officers that do not review these enforcement orders carefully to check whether their firms are complying are committing a compliance violation.

Donnelly (D-IN): Will you work with auto dealers to hear their concerns as you take actions against auto lenders? Is lending more expensive in the manufacturing housing markets? *Cordray:* We will listen to everyone in the auto finance industry. We conducted a white paper and it showed there was already a decline in manufacturing housing markets.

Arbitration

Brown: The arbitration study – What were the findings and what is your plan to allow consumers to seek justice in court? *Cordray:* Congress spoke in Dodd-Frank about arbitration agreements and consumer finance contracts – arbitration in mortgage contracts were flat out banned. The CFPB was tasked with the job of studying the problem in other consumer finance markets to determine whether policy actions were warranted. Our study found that the amount of harm on individuals was small (while profits were large for institutions) and not enough for them to pursue arbitration or litigation. It often prevented them from bringing group claims. We are moving forward with a rulemaking that will be proposed sometime this spring.

Merkley (D-OR): According to studies, were there no rise in costs in products subject to arbitration versus not? *Cordray:* Yes, there were no cost implications.

Credit Availability and FinTECH

Brown: Status on the availability of credit? *Cordray:* Access to credit is expanding. Since Dodd-Frank, credit is beginning to expand again in the mortgage and credit card markets.

Corker (R-TN): What is the solution to increasing access to credit, is it FinTECH? *Cordray:* We could reform the payday lending industry and encourage more lending by credit unions and community banks. FinTECH opportunities exist, but it is tricky and we will monitor its development over time.

Warner (D-VA): FinTECH – how do you balance innovation while setting the right standards at the same time? *Cordray:* Innovation could be good or bad. We are very interested in FinTECH, and have created a team to engage with this community. However, it is not appropriate for these companies to gain an advantage in the marketplace by arbitraging the regulatory system.

Payday Lending

Brown: What is the importance of this rulemaking? *Cordray:* Very important. No research indicates that consumer welfare is harmed in states that prohibit payday lending.

Warren (D-MA): Describe the data gathering process and how you determine where to draw the line between access to credit versus harm on consumers? Will rulemaking delays harm consumers?

Cordray: We have analyzed millions of payday loans and found that it is hard for people to pay back these loans. Delays in rulemakings will be harmful to consumers.

Data Collection

Crapo (R-ID): Data collected accurate and handled carefully? Confirm how many data fields were collected? *Cordray:* The government accountability office (GAO) report made a number of recommendations and we have successfully implemented all suggestions. We have handled the data responsibly and carefully, and will look to the sampling of data where possible.

Toomey (R-PA): Is Section 1071 exclusively limited to data collection on small business lending?

Cordray: Yes.

Mortgage Reform

Menendez (D-NJ): Steps the CFPB is taking to address zombie foreclosures (where a property value drops so low that the bank withdraws a foreclosure)? How are you addressing language service issues in mortgages? *Cordray:* Zombie foreclosures are difficult to address, but a consumer should at least be afforded notice. We incorporated a preferred language provision so the mortgage company must provide the preferred language throughout the life of the mortgage.

Scott (R-SC): How do we reconcile mortgage markets for first time homebuyers? *Cordray:* The mortgage market for credit unions and community banks have risen since Dodd-Frank and this is a good sign. We are seeing more investor owned properties and prices are plummeting as they are holding inventory off the market.

Merkley (D-OR): Estimates on cost savings to consumers with mortgage reforms? *Cordray:* Aside from mortgage reforms, we have returned over \$11 billion dollars and saved over \$16 billion from credit card fees. Estimated cost savings are hard to measure but will get back to you.

Exemption Authority

Scott (R-SC): Credit unions and community banks being negatively impacted by regulations - possibility the CFPB needs to tailor its regulations more? *Cordray:* We have tailored our regulations from the beginning (i.e. definition or rural). We are careful in exercising our exemption authority, but where we have evidence it is warranted, we will use it.

Pre-paid Cards and Credit Cards

Menendez (D-NJ): Update on the status of CFPB actions on pre-paid cards? *Cordray:* This rulemaking is pending and is out for notice and comment.

Warner (D-VA): Protections offered on pre-paid cards, debit cards, and credit cards? *Cordray:* Protections should be offered no matter what type of card one holds. The provisions may vary between the type of card.

Service Members

Reed (D-RI): Creditors are threatening security clearance of military due to debt – comment on what how you are dealing with that? *Cordray:* Threatening any service member or any person is flatly against the law and we have and will continue to take strong enforcement actions against those creditors.

TILA-RESPA

Corker (R-TN): Are you considering rulemakings to clarify what is a clerical error versus a major error impacting the loan? *Cordray:* We are looking to streamline the forms through rulemaking.