

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Informational Hearing, The Consumer Financial Protection Bureau: An Examination of the CFPB under the current Federal Administration and Options for California to Better Protect its Consumers

Wednesday, March 27, 2019
1:00 PM

Written Testimony of Sharon Velasquez
Senior Economic Equity Program Manager
The Greenlining Institute

Thank you, Chair Limon, and members of the Committee for allowing me to speak today. My name is Sharon Velasquez and I serve as Senior Program Manager at The Greenlining Institute. Greenlining is a policy think tank advancing economic opportunity for people of color. We work to create wealth in communities of color to address the entrenched legacy of redlining: the racial wealth gap, which is the difference in wealth holdings across racial groups. Greenlining is a longtime supporter of the Consumer Financial Protection Bureau, and of its primary and statutorily vested purpose as a consumer protection agency.

As mentioned earlier, it is worthwhile to remember that the CFPB was originally created to protect consumers from fraudulent and abusive financial actors as a response to the 2008 financial crisis. Yet today under the Trump Administration, an agency founded as the people's bureau has in many ways become a bureau for the industry. One of the most concerning changes in the Bureau is a rollback in fair lending, which is a corruption of the CFPB's purpose.

The CFPB's traditional vigilance was critical for consumers of color because the agency was not race-blind in its oversight. It remained cognizant of the unfortunate 21st century reality that skin color still determines access to safe and sound financial products. Ample research shows that people of color continue facing racism in mortgage, auto, small business, and credit card lending markets. This can mean that people of color receive smaller amounts than requested, unfavorable terms, and higher rates of denials compared to their white counterparts.

Despite these realities, the CFPB's new leadership has taken the following actions, which threaten people of color's right to access fair and transparent financial products:

1. Questioned the theory of disparate impact and limited the use of disparate impact assessments. Disparate impact is a statistical analysis that looks for differences in how lending practices affect various communities when cases are brought under the Equal Credit Opportunity Act. It is a powerful enforcement tool that has been used in the vast majority of the CFPB's fair lending cases. Moreover, there has been an overall drop in enforcement actions, from 31 in Q3 2017 to 6 in Q3 2018.

2. Stripped its Office of Fair Lending and Equal Opportunity of enforcement powers and restructured it as a unit of internal advocacy. Under Dodd-Frank, the Office was tasked with “oversight and enforcement of federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the bureau.”
3. Seeking to expand fintech sandboxes – a testing ground for online financial products - that provide blanket immunity from state and federal consumer protection laws
 - Given the roll back of fair lending enforcement, this blanket immunity is all the more concerning because the FinTech industry services the underbanked, a majority of whom are people of color.
4. Suspending implementation of Section 1071 of Dodd-Frank. Section 1071 of requires the CFPB to implement small business data collection, and to make that data public. Notably, it requires the collection of race and gender of the small business owner to be collected. Currently, there is no comprehensive small business data collection at the state or federal level. The implementation of this rule is critical because it is well-known that small, women-owned, and minority-owned businesses struggle to access safe and sustainable credit

In conclusion, these actions will only exacerbate the racial wealth gap and bar people of color from fully and fairly participating in our economy. Clearly, consumer protection matters have been left to states.

It is heartening to see Chair Limon’s leadership in exploring how the state can protect its consumers, and to see Governor Newsom prioritize high cost lending. With this leadership, California is poised to be a national leader in consumer protections.

Some solutions the state could explore, and that Chair Limon is already looking into:

- In terms of the DBO, envisioning what the next iteration of the agency can look like. The current DBO was created in 2013 with the merger of the Department of Corporations and the Department of Financial Institutions.
 - Better resourcing the DBO as our single in-state financial regulator with more enforcement attorneys to handle fair lending investigation. AB 1048 will address this.
 - Clarifying the DBO’s mission as a consumer protector in the California Financial Code to make its consumer protection responsibility explicit

- Expanding in-state small business data collection. Although we will not be able to collect state level race data due to ECOA, we can explore collecting other information such as zip code to determine lending in majority minority tracts and the quality of lending. In short, a conversation on this topic is timely.
- The Silicon Valley is in our back yard and we need to be more proactive and less reactive to the changing face of finance:
 - FinTech algorithms and underwriting are opaque. We should provide adequate technology for DBO to audit algorithms to ensure they no longer raise fair lending and privacy concerns.
 - Explore what a regulatory framework for the FinTech industry could look like given the lack of comprehensive federal regulation
- Aside from the DBO, taking a page from Maryland by creating a Financial Consumer Protection Commission, established to determine priorities and next steps as it responds to the CFPB's rollbacks. Membership on this commission could include legislators, the Attorney General, the DBO, Governor's Office, and advocates, among others.
- Passing legislation requiring a racial impact analysis when considering banking related matters. For instance, under statute, Illinois is required to conduct this analysis if it considers raising check cashing fees in the future. There is interest in expanding this analysis to other policy areas.
- Finally, California can pass a resolution in support of the Community Reinvestment Act, also known as the CRA. The CRA is under attack by the Trump Administration. The CRA is a civil rights law requiring banks to serve low- and moderate-income communities, and those traditionally excluded from our financial system, and to reinvest in those communities. These private dollars help finance affordable housing, small business loans, mortgages, broadband, and more. In doing so, California would be the first state in the nation to pass such a resolution supporting equitable access to banking for all Californians, regardless of race and income, and to underscore how CRA must be strengthened and not weakened.

There are a lot of opportunities to do good by Californians. Thank you, Chair Limon, for seizing the moment.