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Smaller U.S. Banks Seeking Exemption From CFPB Mortgage Rules

By Carter Dougherty on August 02, 2012

Community banks are lobbying the Consumer Financial Protection Bureau to be exempted from two forthcoming regulations on mortgages.

In meetings with Richard Cordray, the agency's director, the Independent Community Bankers of America has called on the agency to limit the reach of a rule on mortgage disclosures and a second one on underwriting standards for home loans.

The demands reflect a rising conviction among community banks that the bureau won't deliver on its promise to write regulations that serve consumers while also reducing the burden on smaller banks, according to Camden Fine, president of the community bankers trade association.

"The concepts have to be reduced to actual rules with details, and the details are getting in the way of the concepts," Fine said in an interview.

Since Harvard professor Elizabeth Warren started setting up the new agency in September 2010, forging an alliance with community banks has been a centerpiece of its strategy.

Warren, who is now a Democratic candidate for the U.S. Senate from Massachusetts, argued that rules could be written in a manner that help them grab market share from major institutions such as Bank of America Corp. ([BAC](#)) or Wells Fargo & Co. (WFC) ([WFC](#))

After President Barack Obama installed him as the agency's first director on Jan. 4, Cordray explicitly promised community bankers that, in order to limit their costs, he would consider exemptions to some rules. Such a move has drawn opposition from larger banks who object to the unequal treatment, and from consumer groups who argue it would repeat a pre-financial crisis mistake.

Abuses Migrate

“Historically, two-tiered regulation has resulted in the migration of abuses to the lesser-regulated portions of the market,” Alys Cohen, a staff attorney for the National Consumer Law Center, said in an e-mail. “We cannot repeat that.”

The community bankers are seeking an exemption for banks that do very few mortgages from the CFPB’s marquee project, a simplification of federally mandated disclosures that consumers get when shopping and signing for a mortgage, Fine said.

The group also raised with Cordray the possibility of limiting the application of its so-called qualified mortgage rule, Fine said. The rule, known as “QM,” would provide a degree of legal protection for banks who follow certain underwriting rules in case a loan goes bad.

David Silberman, the CFPB’s associate director of research, markets and regulations, said in an e-mail that the agency is still considering whether “adjustments to particular rules for smaller entities are warranted in particular circumstances.” He also argued that compliance costs can decline if rules are clearer.

Time and Money

“A lot of time and money gets spent just trying to figure out what the rules mean and how to comply,” Silberman said.

The agency, which was created by the Dodd-Frank law of 2010, released its 1,099-page proposal with simplified forms on July 9. Fine said the sight of it made him “physically ill.” Some Republicans strongly criticized the proposal at a July 24 hearing with Cordray.

In a memo prepared for an Aug. 1 hearing with Cordray, the House Small Business Committee staff described the proposal as “as long as War and Peace but it is probably not as interesting to read, and it is about as indecipherable as if you were an English speaker trying to read the novel in Russian.”

Cordray defended the proposal at both hearings.

“Only a small portion of that is the actual rule,” Cordray said on July 24. “Much of it is the kind of explanation, procedure, detail, analysis that Congress has told us they want to require before we write a rule.”

209 Pages

In a July 31 post on its blog, the CFPB said that 209 pages of the proposal are actual regulations that lenders will have to follow. An additional 205 pages are explanatory “guidance” that help companies avoid misunderstandings.

Another 684 pages include results of the agency’s consumer testing of the forms, a cost–benefit analysis, and specific questions for public comments on the proposal.

Mark Calabria, director of financial regulation studies at the Cato Institute, a research group that promotes free markets, described the CFPB’s effort at transparency as good even if releasing a 1,099–page proposal on simplified mortgages was a public relations misstep.

“It’s legitimate enough to say, ‘Hey, a lot of this is to make the process more transparent’,” Calabria said in an interview. “In truth, you’re probably damned if you do, and damned if you don’t.”

The agency’s proposal received a positive review from a group of small businesses that were asked for feedback, according to an April 23 report posted on the CFPB website.

Prototypes Preferred

The companies “strongly preferred” the prototypes created by the agency under a mandate included in the Dodd–Frank law, according to the report.

“These costs would be less burdensome if the CFPB provided a substantial compliance period to upgrade systems and to train staff,” according to the report.

Despite the positive language about the actual proposal, Fine and other community bank representatives said that only a tiered regulatory system will definitively ease regulatory compliance costs.

“I still think their intentions are legitimate in trying to go easy on community banks,” Larry Winum, president of the Glenwood State Bank in Glenwood, Iowa. “But I don’t think we’ve gotten close to that yet.”

In the proposal, the CFPB said the one-time compliance costs would run to about \$100.1 million. Cordray argued in the Aug. 1 hearing that the rule would ultimately save the industry money by simplifying the process.

Community banks tend to have balance sheets dominated by assets such as commercial and industrial loans and liabilities such as consumer deposits. Larger banks might have more securities as assets.

Concessions Won

As the price for remaining neutral on Dodd-Frank before its passage in 2010, banks with less than \$10 billion in assets won concessions that included an exemption from direct supervision by the CFPB, but not an exemption from CFPB regulations. Dodd-Frank gives the CFPB the authority to create regulatory carve-outs for smaller banks in some circumstances, but doesn’t require them.

Proposals that ease rules on community banks are expected to draw opposition from larger companies and consumer groups. Richard Hunt, head of the Consumer Bankers Association, a group comprised of the retail divisions of large banks, said exemptions would hinder “a level playing field.”

Disclosure rules that apply to only part of the industry defeat the purpose of allowing customers to seek out the best deal, Cohen, the consumer attorney, said.

“The goal of disclosure is to help consumers shop and compare apples to apples,” Cohen said.

To contact the reporter on this story: Carter Dougherty in Washington at cdougherty6@bloomberg.net

To contact the editor responsible for this story: Maura Reynolds at mreynolds34@bloomberg.net

