

Speeches from Heads of CFPB and OCC Highlight LendIt 2017

March 31, 2017 | Christopher J. Capurso

LendIt USA 2017, held March 6-7 in New York City, brought together leading companies, investors, and parties in marketplace lending for two days of networking, education, and product exhibition. The conference also featured keynote speeches from the heads of two federal agencies dominating headlines of late: Richard Cordray of the Consumer Financial Protection Bureau (CFPB) and Thomas Curry of the Office of the Comptroller of the Currency (OCC). In addressing the LendIt audience, both Director Cordray and Comptroller Curry spoke at length about what their agencies are doing to aid financial innovation and the marketplace lending industry as a whole.

Rather than comment on the proposals being bandied about in Congress to abolish the CFPB or the upcoming *en banc* proceeding in the *PHH* case as he's had to do often the past few months, Director Cordray spoke of how the CFPB looks to aid innovation, while still looking out first and foremost for the consumer. Cordray's remarks focused on three primary areas.

The first was the CFPB's "Project Catalyst" initiative, which allows companies to engage with the Bureau in a more collaborative manner regarding new product innovation and the challenges that companies face in bringing these products to consumers. Director Cordray encouraged those in the audience to take advantage of the program. Second, Cordray highlighted the Bureau's November 2016 inquiry into how consumers and third parties access and use consumer financial data. In particular, the CFPB is looking at what financial information third parties seek to collect, how they use that information, and whether any barriers exist that prevent consumers from gaining easy access to their personal financial data. Third, Cordray updated the audience on the CFPB's efforts to encourage the use of alternative data in credit decisions. The Bureau has found that 26 million Americans are "credit invisible" (i.e., have no credit history) and another 19 million Americans have credit histories that, under most models, are too limited to be considered for credit opportunities. Cordray expressed his hope that the use of alternative data may help to provide credit to these underserved populations.

While Director Cordray's speech focused on what the CFPB has been doing to aid innovation, Comptroller Curry's remarks looked more towards the future. The crux of Curry's speech concerned the OCC's plan to issue federal banking charters to financial technology ("fintech") companies engaged in the business of banking. This goal was first proposed in a December 2016 OCC White Paper, and was confirmed to the auditorium during Curry's keynote address.

Comptroller Curry expanded on the announcement by seeking to correct three misperceptions critics have about the proposed charter. First, Curry responded to the largest criticism the proposal has garnered and stated unequivocally that the OCC has the power to grant this charter. The OCC has the legal authority to grant national bank charters to companies engaged in the business of banking, which

generally includes three basic functions: receiving deposits, paying checks, and lending money. This authority, Curry argues, allows the OCC to grant charters to non-depository institutions who carry out other functions that would be considered the "business of banking," even though the institutions do not carry out all three functions. Second, there is a notion that a national bank charter might lead to "light-touch supervision." Comptroller Curry made it clear that the charter would do no such thing, citing stringent examination procedures and the applicability of non-preempted state law as proof. Third, some fear that the charter mixes banking and commerce, a combination that is prohibited under the OCC's chartering procedures. Comptroller Curry did confirm that a proposal for a charter that mixed banking and commerce would be rejected, but touted the separation of functions as an example of the "high standards and the rigorous, value-added supervision" that being a chartered fintech company could provide.

Fintech is a growing force, not just in marketplace lending, but in the consumer financial services industry as a whole. It seems like every day, some new app or platform is attempting to change the way that consumers conduct their financial affairs. Both Director Cordray and Comptroller Curry have announced their agencies' intention to help innovators in this process. Only time will tell whether that help is a welcome aid or a meddlesome burden. At the very least, however, these regulators are trying to keep up with the rapid change happening around them.

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