THE STATE OF FINANCIAL SERVICES IN WASHINGTON
OVERVIEW

- **Our Financial Regulatory System**
  - Overview of Leadership and Appointments at Key Agencies

- **Rulemaking at Federal Agencies**
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- **Congressional Action**
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  - Border Wall Funding Act

- **Other Noteworthy Items**
  - Update on Wells Fargo investigation
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Commission (SEC)

Five Commissioners appointed for staggered five-year terms. No more than three Commissioners may belong to the same political party.

Jay Clayton
Chairman since 2017
Term ends 2021

Michael S. Piwowar
Commissioner since 2011
Term ends 2018

Kara M. Stein
Nominated May 2013
Term ends 2017

Hester Peirce
Nominated

Robert Jackson
Nominated
CONSUMER FINANCIAL PROTECTION BUREAU

Director:
Richard Cordray
Confirmed by Senate on July 16, 2013 for a five-year term until July 2018

Deputy Director:
David Silberman (Acting)
Appointed Acting Deputy Director on January 7, 2016.
FEDERAL DEPOSIT INSURANCE CORPORATION

Federal Deposit Insurance Corporation (FDIC)

Composed of five Board members: Comptroller of the Currency, Director of the CFPB, and three presidential appointees who serve six-year terms. No more than three directors can be members of the same political party.

Chairman: Martin Gruenberg
Confirmed on November 15, 2012. Term expires Dec 2018; Chairmanship expires Nov 2017

VC: Thomas Hoenig
Sworn in on April 16, 2012. Term expires April 2018

Acting Comptroller of the Currency: Keith Noreika

Director of CFPB: Richard Cordray

Director Vacancy with no nominations
Federal Reserve System ("The Fed")

Seven Governors nominated by POTUS. A full term is fourteen years. One term begins every two years, on February 1 of even-numbered years. The Chairman and the Vice Chairman of the Board serve a term of four years.

Chair: Janet L. Yellen
Term ends January 2024
Chairmanship expires February 3, 2018

Vice-Chair: Stanley Fischer
Term ends January 2020
Resignation submitted; effective October 13

Jerome H. Powell
Term ends January 2028

Lael Brainard
Term ends January 2026

Randal Quarles
Nominated

Two Governor Vacancies
with no nomination
COMMODITY FUTURES TRADING COMMISSION

Acting Chairman: J. Christopher Giancarlo
Sworn in June 16, 2014
Term ends April 2019
*Nominated by President Trump
to be permanent Chairman

Commissioner Sharon Y. Bowen
Sworn in June 9, 2014
Resignation announced

Commissioner Brian D. Quintenz
Sworn in August 15, 2017

Commissioner Rostin Benham
Confirmed

Commissioner Dawn Stump
Nominated
Financial Stability
Oversight Council (FSOC)

The Council is made up of ten voting members and five nonvoting members. The voting members are shown here.
Three Board members appointed by President. No more than two Board members may be from the same political party. Board members serve staggered six-year terms.

Acting Chairman: J. Mark McWatters

Rick Metsger
Sworn in August 23, 2013

One Board Member
with no nomination
Office Of Financial Research (OFR)

Director: Richard Berner
Chief of Staff: Kathleen Victorino
Deputy Director and Chief Data Officer: Cornelius Crowley
Chief Counsel: Matthew P. Reed
Director Michael McRaith resigned as of January 20
Financial Crimes Enforcement Network (FinCEN)

Acting Director: Jamal El-Hindi
Since June 2016
RULEMAKING AT FEDERAL AGENCIES
CFPB ORGANIZATION AND STRUCTURE

- Consumer Financial Protection Bureau was originally authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which became law in 2010.
- Part of a response to the financial crisis of 2007-08 and the subsequent recession.
- Established with the aim of “mak[ing] consumer financial markets work for consumers, responsible providers, and the economy as a whole.”
- Purpose is to “protect consumers from unfair, deceptive, or abusive practices and take action against companies that break the law.”
- Agency is funded by putting in formal request for funds to the Federal Reserve, which then transfers requested funds to CFPB.
- Established as an independent agency with sole director.
  - Power of the president to dismiss agency head is limited: removable only for cause.
EFFORTS TO RESTRUCTURE CFPB

- Republicans have been trying to restructure the CFPB to make it a five-member commission. They do not like the autonomy of a sole director that can only be removed for cause.
  - Restructuring of CFPB provisions included in Financial CHOICE Act and regulatory recommendations from the Treasury Department.
  - Democrats have also recently supported restructuring the CFPB, as they are concerned that a single director appointed by a Republican president would dismantle the agency.
- Republicans also want to strip the CFPB’s financial independence and have the CFPB budget be subject to Congressional approval through the appropriations process.
- CFPB structure also being challenged in court. In October 2016, the United States Court of Appeals for the District of Columbia Circuit ruled that it was unconstitutional for the CFPB Director to be removable by the President of the United States only for cause.
  - Oral arguments in rehearing were held in May 2017.
UPDATE ON CFPB RULEMAKING

**Arbitration Rule**


- Prohibits mandatory arbitration clauses in certain financial product contracts. Issued to protect the right for consumers to sue banks in class-action lawsuits.

- Very controversial. Democrats hailed the rule as being pro-consumer and Republicans initially strongly opposed the rule, saying that it would line the pockets of trial attorneys.

- U.S. Chamber of Commerce and other business groups led campaigns to overturn the rule.
  - Critics said it was an abuse of the agency’s powers. They also said the rule would make it more difficult for consumers to collect from bad actors.

- House acted swiftly on July 25 to repeal the Rule using the Congressional Review Act.
  - Under the Congressional Review Act, Congress can claw back an agency regulation for sixty days after the rule is finalized.

- Senate was expected to follow suit, however Republican support for a repeal waned after a poll showed many Republican voters view the rule favorably.
UPDATE ON CFPB RULEMAKING

**Debt Collection**

- CFPB receiving encouragement from industry to engage in rulemaking that would clarify standards and address issues of concern under the Fair Debt Collection Practices Act (FDCPA).

- CFPB released outline of proposals in July 2016 regarding “debt collectors” under FDCPA.
  - Covered many aspects of debt collection lifecycle, including: compliance obligations related to the integrity of information, the acquisition and transfer of collections accounts, transferring information obtained during the collection process when debt is returned to a creditor or debt buyer or sent to another collection agency, and proposals relating to the validation notice and a consumer Statement of Rights.

- Published survey results in January 2017 regarding consumer experiences with debt collection.
  - Over a quarter of consumers contacted by debt collectors felt “threatened.”
  - Over 40 percent requested to not be contacted again, and 75 percent of those people reported that the debt collectors did not cease contact.

- CFPB planning to issue a proposed rule later in 2017 concerning debt collectors’ communications practices and consumer disclosures.
UPDATE ON CFPB RULEMAKING

**Payday Lending**

- CFPB issued a Notice of Proposed Rulemaking in June 2016 related to payday loans, auto title loans.
  - Rule would include a “full payment” test that requires lenders to take steps upfront to ensure that consumers have the ability to repay their loans without reborrowing.
    - Consumers could borrow short-term loan under $500 without the full-payment test.
  - Includes “principal payoff option” for certain short-term loans and two less risky long-term lending options for borrowers who do not meet “full payment” test.
  - Lenders would need to give consumers written notice before attempting to debit the consumer’s account to collect payment.

- Agency received over one million comments in response to proposed rule and is evaluating how to best address concerns in light of Dodd-Frank requirements.
  - Payday lenders allege that rule will decimate the industry.
UPDATE ON CFPB RULEMAKING

- **Prepaid Financial Products**
  - Final rule announced in Fall 2016
    - *Modifies Regulation E requirements to create provisions governing disclosures, limited liability and error resolution, and periodic statements. Also adds new requirements regarding the posting of account agreements.*
    - *Regulates overdraft credit features that may be offered in conjunction with prepaid accounts. Such credit features will be covered under Regulation Z, which implements the Truth in Lending Act.*
  - On April 20, 2017, the CFPB announced that it was extending the rule’s effective date of October 1, 2017 to April 1, 2018 (six month extension)
  - On June 15, 2017, the CFPB issued a proposal requesting comment on potential modifications to some aspects of the prepaid account rule.
    - Aim is to address matters that prepaid providers have highlighted as having particular complexities for implementation.
TREASURY REPORT ON REGULATORY REFORMS

- On June 12, the Treasury Department released a report outlining reform proposals for financial industry regulations.
- Calls for a bigger FSOC role in supervision and coordination.
  - Gives FSOC “the authority to appoint a lead regulator on any issue on which multiple agencies may have conflicting and overlapping regulatory jurisdiction.”
- Asks that Congress reduce redundancy in regulatory regime, including consolidation.
- Recommends exempting community banks with less than $10B in assets from:
  - The Volcker Rule,
  - Basel III requirements, and
  - Possibly the Collins Amendment of Dodd-Frank (established a minimum capital floor for all institutions).
- Significant Reforms to mortgage rules, including qualified mortgage rule
- Changes to Living Will requirements
  - Changing threshold for compliance from $50B to matched revised threshold for application enhanced prudential standards
  - Formalize a change of living will process to two-year cycle
  - Remove FDIC from the process and make it an objective process
- Recommends raising the stress testing requirements for federally insured credit unions to $50B in assets (currently at $10B).
- Calls for regulatory “off-ramp” from all capital and liquidity requirements, and the Volcker rule, for institutions that agree to hold a “sufficiently high” level of capital.
- Recommends CFPB Director be removable at will by President or agency restructured to independent commission and subject to appropriations.
- Next report due in October 2017
STATE INDUSTRIAL LOAN COMPANIES

- ILCs are a type of state-chartered bank authorized in certain states, primarily Utah, Nevada California—each state can impose limitations.
- ILCs can offer loans and certain deposit products, but not demand deposits; instead offer Negotiable Orders of Withdrawal Accounts (NOW) to individuals, nonprofits and certain organizations.
- ILCs are regulated like banks—subject to capital, consumer compliance, transactions with affiliates, insider lending, and privacy rules like banks.
- However, ILCs are not “banks” under the Bank Holding Company Act (BHCA).
  - Corporate shareholders of ILCs are not subject to the BHCA, meaning:
    - Shareholders are not subject to non-bank activities limitations like Bank Holding Companies
    - Shareholders and affiliates are not subject to Federal Reserve Examination
  - Federal regulators recommended eliminating ILC exemption from BHCA; Congress has not acted.
- ILCs must obtain deposit insurance from the Federal Deposit Insurance Corporation (FDIC), which allows ILCs to export interest rates like other state-chartered banks.
  - The FDIC has not approved deposit insurance applications for ILCs since the 1990’s
- Current regulatory focus is on how the FDIC will treat pending ILC deposit insurance applications.
OCC’S PROPOSED FINTECH CHARTER

- In December 2016, the OCC announced that it would accept applications from fintech firms for charters as special purpose national banks (“SPNBs”).

- In March 2017, the agency issued a draft licensing manual supplement for evaluating charter applications from fintech companies.

  - Goal is to foster innovations and allow fintech companies and banks to compete with each other on a level playing field.

- Proposal has received significant pushback, and both the Conference of State Bank Supervisors and the New York Department of Financial Services have filed suit over the plan, contending that the OCC has exceeded its statutory authority.

  - “These newly forged institutions will seek to provide financial services in connection with an unidentified and sweeping array of commercial ventures never before authorized or regulated by the SEC.” – NYDFS complaint

  - “The OCC’s action is an unprecedented, unlawful expansion of the chartering authority given to it by Congress for national banks” – John Ryan, president and CEO of Conference of State Bank Supervisors.

- OCC filed in August 2017 motions to dismiss in both cases, alleging lack of subject matter jurisdiction and failure to state a claim.
CONGRESSIONAL ACTION: FINANCIAL CHOICE ACT

- Approved by House on June 8th by vote of 233-186
- **Key Provisions:**
  - Retroactively repeals the authority of FSOC to designate firms as “systemically important financial institutions.”
  - Changes the CFPB structure from one single director to a bipartisan five-member commission.
    - Changes the CFPB name to “Consumer Financial Opportunity Commission (CFOC) and task it with dual mission of consumer protection and competitive markets.
    - Repeals authority to ban bank products or services deemed “abusive.”
  - Repeals Volcker Rule and Labor Department’s fiduciary duty rule.
  - Repeals Dodd-Frank’s Orderly Liquidation Authority.
  - Includes package of bills aimed to encourage crowdfunding and make it easier for entrepreneurs to raise capital.
  - Provides “off ramp” for well-capitalized banks and credit unions from certain Dodd-Frank regulations.
- **Unlikely to move in Senate**
  - Worth watching because it sets precedents for agencies.
    - The Administration will watch where Congress is going and may set their agenda accordingly (ex: Treasury report released June 12 has some parts of Financial CHOICE Act).
President Trump is weighing a tax on monetary transfers between immigrants in the U.S. and relatives in Mexico in order to pay for his proposed border wall.

Rep. Mike Rogers introduced the *Border Wall Funding Act* (H.R. 1813) earlier this year that would impose a 2 percent tax on cash transfer from “anybody who remits to South America.”

- Mexico alone received more than $24 billion* in remittances from the United States in 2015—under H.R. 1813, this would raise $480 million for a border wall.

- Other Latin American countries that would be covered under H.R. 1813 include: Guatemala ($5.98 billion* in remittances), El Salvador ($3.26 billion*), Dominican Republic ($3.83 billion*), Honduras ($3.26 billion*), and Jamaica ($1.67 billion*).

- The proposed border wall could cost as much as $21.6 billion.**

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* Source: The World Bank and Pew Research Center
** According to U.S. Department of Homeland Security internal report
OTHER NOTEWORTHY ITEMS
WELLS FARGO INVESTIGATION UPDATE

- Wells Fargo has been under public scrutiny for over a year for opening millions of accounts without the permission of customers.

- CFPB fined Wells $100 million last year, the largest penalty issued by the CFPB. Fines overall totaled $185 million.
  - Based on findings that Wells opened roughly 1.5 million bank accounts and applied for 565,000 credit cards that may not have been authorized by customers.

- In late July, news broke that Wells charged 800,000 car loan borrowers for insurance without their knowledge or consent.

- Democrats sent letters in August to both House Financial Services Chairman Jeb Hensarling (R-TX) and Senate Banking Committee Chairman Mike Crapo (R-ID), urging the chairmen to hold public hearings regarding the “ongoing violations of consumer rights” by Wells Fargo.

- Senate Banking Committee will hold a hearing on October 3 entitled “Wells Fargo: One Year Later.” Timothy Sloan, President and CEO of Wells Fargo, will testify.
Chris Daniel is one of the country's leading attorneys in payment systems law, including electronic payments, mobile payments, prepaid cards, virtual and digital currencies, and money transmission.

In the United States, Chris has a particular focus in state money transmitter statutes, state unclaimed property statutes, state gift card statutes, the federal Gift Card Act, the federal Bank Secrecy Act, Regulation E, Regulation Z and other state and federal statutes bearing on the provisions of payments.

Mr. Daniel also has significant international experience advising clients on issues related to investments into payment systems companies and banks in the U.S., Europe, and Asia (including China), creation of settlement networks, transactional matters involving payment systems companies, the regulatory issues related to prepaid cards, the EU’s Payment Services and E-Money Directives, China’s Administrative Measures for the Payment Services Provided by Non-financial Institutions, global money transmission, and anti-money laundering and terrorist financing issues associated with payments.
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ACROSS THE AMERICAS, ASIA, AND EUROPE

1 Legal Team
TO INTEGRATE WITH THE STRATEGIC GOALS OF YOUR BUSINESS
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