

# Consumer Finance Monitor (Season 4, Episode 15): Key Current Issues of Interest to Banks, With Special Guest Richard Hunt, President and CEO of Consumer Bankers Association

Speakers: Alan Kaplinsky, Richard Hunt

Alan Kaplinsky:

Welcome to the Consumer Finance Monitor podcast, where we explore important new development in the consumer financial industry. For those of you that are not familiar with other educational resources that we make available to our clients and friends, I would commend to you that you read our blog, which also goes under the name Consumer Finance Monitor. If you're not on our list, let us know about it and we will put you on the list. We do a lot of webinars and webcasts. We added a video component last year, so you can match the voices with the faces. We certainly invite you to attend our webcasts.

Alan Kaplinsky:

Today, I am extremely pleased to welcome a good friend. Somebody I've known for, I guess... I don't know, about 10 years or so. I'm on, and have been for many years, the lawyer's committee of the Consumer Bankers Association. My guest today is the President and Chief Executive Officer of the Consumer Bankers Association. We will call it the CBA.

Alan Kaplinsky:

Let me just say a few things about Richard, and then I've got a lot of questions that I want to raise with Richard. Most of them pertaining to the changes that are coming about by virtue of the change in precedents, which are leading to a whole bunch of other changes at the federal level. We're going to dig into some of that.

Alan Kaplinsky:

So, Richard got appointed in 2009 to become president and CEO of the CBA, and he has led the CBA and its members through an unprecedented regulatory environment in an era of technological transformation for the industry. He's also shaped CBA into anything but a typical trade association. One focused on the new era of retail banking. He overhauled the CBAs mission and focus, increased membership substantially, and he realigned the committee structure to tackle the industry's most important issue. He also spearheaded the creation of an event called CBA Live, which is the premier annual event for retail banking executives that is held in person, except last year. It was like every other meeting that any of us attended. It was held virtually.

Alan Kaplinsky:

Richard has won a lot of awards. He was ranked among the top trade association executives by CEO Update. He was called one of the top lobbyists by the Hill newspaper. He's a U.S. Chamber of commerce. He's a member of the Committee of 100, which is comprised of the top leaders of various industry trade associations.

Alan Kaplinsky:

With that introduction, Richard, a very warm welcome to you.

Richard Hunt:

Alan, hey. Thank you very much. Looking forward to talking about our favorite topic today.

Alan Kaplinsky:

Yeah. We have a lot to talk about. Let's start with Rohit Chopra, someone who I'm sure you've known from his prior tenure at the CFPB, and somebody I'm sure you've known from his most recent position as the commissioner at the Federal Trade Commission. For those listeners that have been living in a cave or under a rock for the last couple of months, all of you certainly know that he is the nominee of President Biden to become the new director of the CFPB. All the needs to be done now is for there to be senate confirmation, which I think is going to happen.

Alan Kaplinsky:

Let me ask you, generally. And then, I want the hone in on one thing in particular about Rohit. But, what is your view of Rohit as a somebody who's going to be in charge of this agency, which has a huge impact on your members?

Richard Hunt:

Alan, it may surprise your listeners that I am a big fan of CFPB. I'm a huge fan of Elizabeth Warren, Senator Warren of Massachusetts, and former director of the CFPB, Richard Cordray. They did more to increase the CBA membership and mission than anything I could have ever done at CBA. Obviously, the CFPB was created in 2010 during Dodd-Frank. We did oppose the creation of the Bureau. We did, because we thought the other agencies had more experience. The last thing you wanted to do was create a brand new government agency. But, when Dodd-Frank did pass, we made the decision right then and there with our board of directors that we were going to be the number one conduit for our membership to navigate through the new CFPB.

Richard Hunt:

There are times I have disagreed with Richard Cordray, and Kathy Kraninger, and Mick Mulvaney. Or, maybe even [Adra Inish 00:07:04], while she was in there for a very short period of time. There's nothing wrong with that. You agree with the agency at times, and then you disagree with them at times. As long as you get a fair shake. I think that's the problem sometimes we have had with the Bureau not being transparent, not being clear. And Alan, more than anything else, not understanding what is transpiring outside the beltway in Washington D.C., and not understanding what it is really transpiring in the United States of America.

Richard Hunt:

So Rohit Chopra, yes, we worked with him quite a bit when he was the Student Lending Ombudsman and head of student lending. He had actually two positions at the same time at the Bureau, which I never could understand, before he moved over to the FPC. One of the things that Mr. Chopra has an opportunity to do is create an environment where it's not banks versus consumers. That is just dead out wrong. Those consumers are bank's customers. We're going to do everything we can to offer products that are clear and transparent. Where we differ sometimes with the Bureau is that they don't think we should offer products that's just overdraft or small dollar liquidity.

Richard Hunt:

I wish, Alan, we didn't have to have those products. I wish every single American had enough money in their account to cover all their bills. But, we don't. That is not the society we live in. I am hoping that it will allow us to continue offering products within a heavily regulated industry, not payday, not off shore, on and off. So look, Mr. Chopra has an opportunity to bring this agency together, where we can all work together as one.

Alan Kaplinsky:

Yeah. The one thing I would say about Rohit: like you, I've actually known him for a long period of time. One of the, then, young lawyers in my consumer financial services group at Ballard Spahr actually worked for Rohit as an intern when she was at Georgetown Law School, and she became very friendly with him. He was anxious to meet me and some of the people in our group.

Alan Kaplinsky:

And, when he was in Philadelphia, he stopped over and I found him to be a very affable guy. Very friendly, very approachable. He's got certain views on consumer protection that, very often, I disagree with, but at least I had the feeling that he is somebody whose door will always be open and he'll give you an ear.

Alan Kaplinsky:

Is that a fair thing to say about him? I wonder if you've had the same experience.

Richard Hunt:

We certainly have had interaction with him. We're very cordial with each other. While he was there, the Bureau was in its infancy with Richard Cordray, and many times the Bureau was more show horse than work horse. We're hoping Commissioner Chopra will be more workhorse than headline grabbing. We are hoping, when he comes over from the FTC, that he is not going to say a bank is guilty before a transparent examination. That's all we can ask for.

Richard Hunt:

But, if they go back to the old days of midnight embargoes, and regulation through an enforcement, and not going through the rule writing process, then that's going to be problematic. I hope that's not going to be the case.

Alan Kaplinsky:

Yeah. Well, I guess, the one thing I think is pretty certain, I don't think he'll be running for political office. At least, I don't think that he aspires to that, but maybe I'm wrong. I don't know. Let me get to the one thing that I'm concerned about, more concerned today than I think I've ever been about the CFPB, and that is the worry that they're going to stifle innovation, particularly technological advances.

Alan Kaplinsky:

There are a lot of very interesting things going on in our world, in the consumer finance world. In the banking part of it and the non-banking part of it. It would be, I think, a serious blunder if whoever it takes over the CFPB were to put it past the chilling effect on that part of their mission, which is something that they're mandated by Dodd-Frank to foster. So, I'm wondering, do you have a sense of where you think Rohit might come out on that?

Richard Hunt:

When we think about innovation, many people think about Silicon Valley, and they think about Steve jobs and everything else, but the people who are driving innovation and technology are consumers. The consumers demand that change tremendously, even over the past year. Do not think that an 80 to 85 year old person now doesn't text or FaceTime with her grandkids today. In order to communicate with their grandkids over the past year, you had no choice. And, as you ought to know, Alan, kids don't like to talk over the phone. That is how they communicate now.

Richard Hunt:

So, the consumers are driving them. The government has to keep up with this. And, one of the things they have to do at the CFPB is come up with a technology innovation office — a full fun office, which they have not done yet — unlike what the FTI, CJIS did by hiring a chief technology and innovation officer. So, they're driving it. And, if you don't adapt to what is transpiring today within the banking industry, then people will go to the non-bank industry, which are much less regulated. Much less regulated than we are.

Richard Hunt:

So, they have to understand where the puck is going, the proverbial hockey analogy, not where the puck is. And, they'd better do that in a very speedy time, to do that, otherwise it's going hurt the banking.

Alan Kaplinsky:

Yeah. Yeah. So, let's talk. You referred a little bit earlier to a couple of things. I'd like to get your views on both of them, Richard. You referred to small dollar lending. If I can be really blunt about that whole rulemaking at the CFPB, the whole thing is a mess. I guess it goes back to the fact that a very, very draconian rule was created by Richard Cordray right before he left the Bureau to run for governor of Ohio. Then, it ended up in litigation, and then challenging the rule. And then, the Kathy Kraninger, the previous director of the CFPB, she then went through a new rulemaking and repealed the ability to repay provisions. Then, left in some other provisions dealing with ACH payments.

Alan Kaplinsky:

And then, the consumer advocates sued to block that rule from going into effect. Now, the acting director, David Uejio, just came out today. I don't know if you saw it, but he put up a blog post where he made it very clear that he doesn't like the elimination of ability to rebate. And, if they don't get a rule done, it's going to be reflected in their enforcement supervision.

Alan Kaplinsky:

Does CPA have a dog in that hunt? You're from Louisiana?

Richard Hunt:

Yes.

Alan Kaplinsky:

Is that the right expression?

Richard Hunt:

We do. We have many dogs in that hunt. I can't think of many other issues that are more important to CBA than making sure low to moderate income people, people who need credit, have the ability to get it from banks. But actually, Alan, it started back in 2013, when the OCC and the FDIC, on the same day, providing guidance... Basically, forcing banks no longer to offer credit through deposit advance product. U.S. Bank had a very great product. Wells Fargo was very popular.

Richard Hunt:

When we talk about this ability to repay, we're not talking about the ability to repay a \$500,000 mortgage. We're talking about a \$500 loan. Basically, we're trying to provide customers to make ends meet until they get paid again. It's absurd for the CFPB to think you should underwrite a \$500 loan as if it was a \$500,000 mortgage. That's where they lose sense of reality, I believe. They should be creating more options, not more obstacles to get credit out to people who need the money the most.

Richard Hunt:

This is another problem with the Bureau we have. The 180 degree of regulation. The whipsaw effect that is now going to happen every four years by having, basically, a dictatorship leadership structure at the Bureau. We've been advocating, at CPA, for years a five-person bipartisan commission, like virtually every other agency has in town. You know what, Alan? This is not an original thought. Where do you think we at CBA got this idea? Well, she wasn't a senator then.

Alan Kaplinsky:

With Warren?

Richard Hunt:

Absolutely. When she started creating, or had, this idea back in 2007 to have a commission type to do this. You cannot have this group [inaudible 00:18:04] of regulation. That, Alan, will stifle innovation more than anything else.

Richard Hunt:

But, why would I bank today invest in man hours and production and innovation to create a new product if they know two years from now you're going to have a new director at the Bureau? Since they have all of the power to promulgate a rule and undo rules, although it could take some time, why invest the type of money into doing it?

Alan Kaplinsky:

Well, you make a good point. And, I know CBA has consistently advocated that the governance of the Bureau ought to be a five member commission, something akin to the FDC. We have advocated that consistently on our blog, but unfortunately, it's fallen on deaf ears. I'd love to hear what you think, but I don't think it's got any chance of gaining traction in the next couple of years. I think there's little doubt, right?

Richard Hunt:

Negative 0% chance it's going to happen, because both parties have been hypocrites. The Democrats always thought Hillary Clinton was going to win in 16, so let's not change it. And then, Donald Trump wins and Jeb Hensarling, the Republican Chairman from Texas, had an opportunity. Although he had supported the leadership structure change to commission for years, all of a sudden he goes, "No, no, no, no. I got my guy in the White House. I got my guy at the Bureau. All of a sudden I love the dictatorship." So, Jeb Hensarling was as much of a hypocrite as Elizabeth Warren in trying to change the structure. But no, there's no chance.

Alan Kaplinsky:

Yeah, no chance. I know. I know. But, yeah. I mean, it's a good idea.

Alan Kaplinsky:

The other topic that I know you're going to have something important to say about is, when Cordray left the office, he was very focused on overdraft. Overdraft programs and overdraft fees being too high, or that the method of reordering debit transactions would result in consumers paying more fees than they otherwise would pay if they were debited in some chronological fashion or some other fashion. That got put on the back burner, thankfully, during the four years of Kraninger's tenure at the CFPB, and Mulvaney, but I fear now that's going to be another priority issue at bat.

Alan Kaplinsky:

One of the consumer groups came out with a report. I don't remember the name of the group. It wasn't one I was familiar with, but it pointed out how there are national banks in the country, mostly smaller banks, that are completely dependent upon overdraft fee revenue in order to make a profit. They named names. We wouldn't, of course, name them on this program, and I don't even remember which banks they identified, but I see a lot of pressure being applied on the Bureau, again, to deal with overdraft fees. I'm wondering if you see it like I do. How do you see that progressing?

Richard Hunt:

Well, you ready for this, Alan?

Alan Kaplinsky:

Yeah.

Richard Hunt:

I was wrong. I thought Richard Cordray would have dealt with the overdraft issue as his top issue when he took over back in 2012 and 13.

Alan Kaplinsky:

Right.

Richard Hunt:

We had many discussions with Director Cordray about that. He did nothing on overdraft issues [crosstalk 00:22:28].

Alan Kaplinsky:

Yeah.

Richard Hunt:

And, the reason he didn't do anything is because he found out how hard it was going to be, because one of the things we advocated at CBA — and the other organizations just joined us — you can't have different rules because a bank is a certain stock. I have no doubt he was trying to bifurcate between small banks and large banks. Alan, can you imagine a small drug store and a CVS having different rules for the safety of aspirin?

Alan Kaplinsky:

Right.

Richard Hunt:

Absurd.

Alan Kaplinsky:

Yeah.

Richard Hunt:

So, once we beat him, if you will, on that, he says, "Okay. This is going to be too difficult. I can't have two different rules depending on the size of the bank. It should be the same." I'm not the biggest fan for [inaudible 00:23:11] the rules. Either you're a bank, or you're not a bank.

Alan Kaplinsky:

Right.

Richard Hunt:

But yes, to answer your question. To fast forward a little bit, I think there's going to be an enforcement action against a bank — I don't know which one, I don't know who — to get the headlines that Mr. Chopra wants. And, instead of sitting down and writing rules that'll take a year and a half or two years, I think he'll go that direction. I'm very proud of the way our banks have reposted [inaudible 00:23:40] order. You could've argued it either way, that you want the most expensive bill to be paid first versus the lower amount. Just tell us what you want, and we'll adjust to that.

Richard Hunt:

As far as some banks making more than others, you shouldn't put all your eggs in one basket. We've all known that since the third grade I think. Even in Louisiana, third grade still matters. So, yeah. I told all of our banks, "I believe that'll be 1A, 1B, and 1C under a Chopra tenure at the CFPB. Get ready for some type of overdraft reform."

Alan Kaplinsky:

Yeah, yeah, yeah. You're right. I mean, I'm not sure it'll be a regulation, because that takes a long time. It takes more effort and you have to consult with a lot more people to do a regulation, as opposed to initiating an enforcement action where you don't have to consult with anybody. You just do it.

Alan Kaplinsky:

Yeah. I'm very concerned that that will be... The same way, Richard, when Cordray went into office. I'm sure you'll recall, the big focus was on credit card add on fees. That was the big issue, and he went after every large bank in the country that was issuing credit cards. That, I think, largely occupied the Bureau for the first couple of years. I'm worried they're going to focus on, again, the large banks, and they're going to focus on an issue that going to get a lot of print that's important to them, for sure.

Richard Hunt:

Yeah. He carried that on from when he was Ohio Attorney General, and he made a comment to me that he thought the credit card practices grew leaps and bounds with their transparency since the time that he's been in Ohio. So, they actually praised many of the credit card companies with what they did and how they turned it around.

Alan Kaplinsky:

Yeah. Yeah. Another area, and we're getting into the area where there is tension between the banking industry and non-banks. What I'm referring to is the industry that's developed over the last several years. It's not new, but it's the so-called "screen scrapers" and the "data aggregators". Interestingly enough, Cordray — when he was in office, and again, during the Kraninger administration — they seemed to be very supportive of the idea of consumers ought to share access to their accounts with these non-banks that can compile all this data and figure out for the consumer what they ought to be doing with their money.

Alan Kaplinsky:

I know the banking industry is often looked at with a jaundice thigh, and I'm wondering has anything changed in that regard? Are the data aggregators and the screen scrapers still consider the enemy of the banks? Now, I know, in a few instances, there are joint ventures and collaboration's going on.

Richard Hunt:

Look, our banks are very, very protective of consumers data. They want to make sure that when we enter in an agreement with a third party, we have to treat the third party as if it was a arm of the bank. So, we can't enter an agreement with a third party if they don't have the resource cyber security protections to protect the data. I'll give you an example. This past year, the Paycheck Protection Program, which was a great success in many ways — the SBA's success, the bank's success, the borrower's success — but 76% of the fraud came from non-banking. And, I love the [Fintech 00:28:20]. I love these people you're talking about. We learned so much from them over the past five to six years about how to treat the customer's appetite, but we've never seen the Fintechs operate in a downturn.

Richard Hunt:

This is the first time we really watched them in a downturn, and some warts were exposed on the FinTechs. I've always said that I've always thought 98% of the Fintechs won't make it. Ryan McInerney at Visa totally disagreed with me and said, "99%

won't make it, but the 1% that make it, have the potential of changing banking as we know it today. We just don't know who that 1% is just yet."

Richard Hunt:

But, history tells us, when we have the new wave come in... They've been in existence for 10 years already. Not some dying on the spot person, new kid on the block. [inaudible 00:29:17] has been in existence for a while. Look, we're getting there. I do believe the data protection securities of these screen scrapers are getting better, but that's our information that the customer has [inaudible 00:29:33] to protect and trust us to protect. If somebody else wants to share that information, that's fine, but we got to make sure they've got the protection necessary to protect our customers.

Richard Hunt:

Because Alan, I assure you, at the end of the day, if something leaks, they're going to come at the banks.

Alan Kaplinsky:

Right. They always do.

Richard Hunt:

Yeah.

Alan Kaplinsky:

Yeah, yeah. Let's turn to another agency right now that you deal with a lot, namely the comptroller of the currency. There was an acting comptroller right now and it looked for a while like Michael Barr was going to be the next comptroller. And then, at least much to my surprise — I don't know if you were surprised by it, Richard — the consumer advocates were up in arms. Michael Barr, he's an industry person. He's on the board of some Fintech company. My recollection of Michael Barr, when he was involved in the Obama administration, is that he was not an industry person at all.

Alan Kaplinsky:

I mean, I would lump him together with Elizabeth Warren. A good guy, smart guy, but certainly not some industry zealot by any means. President Biden, apparently, backed away from Michael Barr. There's now rumor that, and I'm drawing a blank on her name, a woman could be the next comptroller, but he's not decided.

Alan Kaplinsky:

What's your sense of that whole thing?

Richard Hunt:

I think you described Michael Barr quite accurately. Yes. Smart, intelligent. To the left, that's okay. I never thought I'd be in Washington D.C. when they said Michael Barr is not far enough to the left, but I've also learned from some Democrats that Barack Obama wasn't left enough as well. I'm just shocked that the Biden Administration has not named somebody to the OCC, either their person as an acting OCC controller or a nominee.

Richard Hunt:

And, here we are already, almost the end of the third month of the presidency. But, we've known this since November 3rd, that they needed to nominate somebody. The agency needs somebody.

Alan Kaplinsky:

Right.



Richard Hunt:

They need somebody pretty quickly. There's a lot of items that need to be taken care of, including the Community Reinvestment Act.

Alan Kaplinsky:

Yes.

Richard Hunt:

It is a mostly supervisory agency, it is not an activist agency. And, I've heard of three new names that have come across today, which I think would server the OCC quite well. Again, I may not agree with them. But, are they competent? Do they have the experience for an agency? Yes, and yes.

Alan Kaplinsky:

Yeah. Yeah, yeah, yeah. No, I agree. I mean, most of what they do is not rulemaking. That's very infrequent.

Richard Hunt:

Right.

Alan Kaplinsky:

It's supervision of the national banks.

Richard Hunt:

Pretty simple. Pretty simple charter.

Alan Kaplinsky:

Yeah, it actually is. And, you refer to the CRA, and I guess that's another area that's a mishmash right now, right? With the comptroller having their regulation and the FDIC going in a different direction. Do you view it as I do? And that is, the problem got created by a lack of leadership at the fed? That the fed has always, I think, taken the lead on CRA. They should have been able to get the other agencies together and to develop a uniform reform of CRA?

Richard Hunt:

Yeah. This is one that really befuddles me. I'm not a banker. But, when I sat down with our former General Counsel, [Steve Saysell 00:34:13], for probably a three hour lunch to go over the A to Z on CRA, realized that the CRA has not been really reformed since 1977. You don't even know what activities count for CRA. You're guessing. And, depending who the examiner is that year may or may not count to your rating. All of this makes no sense to me. How your activity is counted, how much are you supposed to spend? None of it.

Richard Hunt:

It's like an old boys' game. We set the rules. It's our informal rules. We all know each other. We've been around for 30 years. This is just how it works. [inaudible 00:34:54]. It should be transparent for everybody to see. Everybody should know how much money they have to spend. Everybody should know what activities would count. And yes, do I think the fed was somewhat political? But, here's the untold story in Washington, D.C., Alan. [Joseph Adi 00:35:13] gave in to the Fed and the FDIC, so he could get a rule pass by the OCC. It is amazing how much he gave away in his last 30 day-

Alan Kaplinsky:

Right.

Richard Hunt:

... at the OCC just to get a deal done.

Alan Kaplinsky:

Wow.

Richard Hunt:

So, when we talk about the Fed and the FDIC writing a new rule, they basically have already done it. There may be some changes they all want to make, but I don't think it's going to be a major change from the final OCC rule, since Adi, who came here and said, "I'm going to do four things. Four things only, and I'm out of town." He did it already. It'll be interesting to see what type of rule [inaudible 00:35:53] comes up with and Jelena McWilliams in her final two years, if anything.

Alan Kaplinsky:

Right. Right, right, right. Let's wind up our show today, Richard. We've been talking about two agencies mostly, although we've actually referred to all of the major ones. And that is, legislatively. Do you see the CBA and the other banking trade associations, essentially, playing defense for the next two years? What's going to happen before Maxine Waters' committee? She wrote a letter a few months ago that went on and on and on, a wishlist. It was a little daunting, I thought.

Richard Hunt:

Yeah. We're going to be playing defense, like the 1986 Chicago Bears. That's basically all we're going to be doing. The amount of things they did pass in the House of Representatives that never saw the light of day in the United States Senate... And, because it's 50/50 and they still have the filibuster rule, I don't think they're going to get much legislative victories, except tons of oversight.

Richard Hunt:

They're going to go back on [inaudible 00:37:13] PPP. We'll be glad to defend that. They're going to look at a diversity, quality, and inclusion as well. We think we've got a good story here. Can still do much better when it comes to diversity, no doubt about it, but it's much better than most other industries that are out there. But yes, Alan. No doubt about it. It is defense. Obviously, we're going to be involved with cap gains, dividends. Taxation as well, because that goes to the bank. Stocks as well to make it more attractive for people to invest in banks.

Richard Hunt:

But yes, we certainly have our work cut out for the next two years.

Alan Kaplinsky:

Yeah. Do you think arbitration is in jeopardy?

Richard Hunt:

I do not, because it had to be substantially and significantly different than the rule Cordray wrote. [crosstalk 00:38:03].

Alan Kaplinsky:

Yeah. But, do you think congress... That might be something that-

Richard Hunt:

I don't think so.

Alan Kaplinsky:

... they're able to get through the senate?

Richard Hunt:

Through the Senate? No. Through the house? Probably. But, not through the Senate.

Alan Kaplinsky:

Yeah. Yeah. Okay. Well, Richard. We've come to the end of our show. I want to thank you very much for taking the time today. It was a pleasure talking to you. Don't be a stranger. If events occur affecting the banking industry and you're looking for a place to express your views, you're always welcome on our show.

Richard Hunt:

Alan, you know I love to talk to, so that'd be welcome. Thank you so much.

Alan Kaplinsky:

Okay. Thank you. Okay. Got you out on time.

Richard Hunt:

Yes, sir. You did.