Consumer Finance Monitor (Season 8, Episode 4): Alan Kaplinsky's "Fireside Chat" with Kathy Kraninger, Former Director of the CFPB During Trump 1.0

Speakers: Alan Kaplinsky and Kathy Kraninger

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. This is a weekly show brought to you by the Consumer Financial Services group at the Ballard Spahr law firm. And I'm your host, Alan Kaplinsky, the former practice group leader for 25 years, and now senior counsel of the Consumer Financial Services group at Ballard Spahr, and I'll be moderating today's program. For those of you who want even more information, don't forget about our blog consumerfinancemonitor.com.

We've hosted our blog since 2011 when the CFPB became operational, so there is a lot of relevant industry content there. We also regularly host webinars on subjects of interest to those in the industry. So to subscribe to our blog or to get on the list for our webinars, please visit us at ballardspahr.com. And if you like our podcasts, let us know. Leave us a review on Apple Podcasts, YouTube, Spotify, or wherever you get your podcasts. Also, please let us know if you have any ideas for other topics that we should consider covering or speakers that we should consider as guests on our show.

After our high-level post-election webinar on November 12th, which we repurposed and released as a podcast show on November 27th, our clients expressed great interest in hearing us take a deeper dive into the anticipated changes that will happen at the CFPB and elsewhere once a new acting director or director appointed by President Trump takes over. To that end, we developed and planned a series of three webinars discussing what we will believe will be the large and widespread impact on the CFPB of the election.

On December 16, we presented the first webinar in our series. It focused on CFPB regulations promulgated and other guidance published by the CFPB under the leadership of Rohit Chopra, along with outstanding proposed regulations. Joining us for the first webinar in this series was David Silverman, who held several senior positions at the CFPB for almost 10 years under both Democratic and Republican administrations. David was at the CFPB during the transitions in director from Richard Cordray to acting director Mick Mulvaney and then director Kathy Kraninger. I had almost a 45-minute fireside chat with David. He provided an insider's view of what the transitions were like and what we might expect during the next transition from Director Chopra to whoever president Trump appoints his acting director, and then director during the second Trump presidency.

On January 2nd, my fireside chat with David was released as our podcast show. On January 9th, we released as our podcast show the second part of that December 16th webinar, which featured several lawyers in our Consumer Financial Services group who took a deep dive into the area of CFPB regulations and other guidance. On January 6th, we presented the second webinar in our series. It focused on CFPB supervision and enforcement under Rohit Chopra and the changes in those areas we expect to see during the term of the next acting or regular director appointed by President Trump.

During the first part of that webinar, I did a fireside chat with Kathy Kraninger who described how she became the director, how she managed the Bureau during her tenure, and what steps she expects a new acting director and director appointed by President Trump to take during Trump 2.0. And that is the webinar that we are repurposing today into our podcast show. Next week on January 30th, we will be repurposing the second part of that January 6th webinar featuring other colleagues in the Consumer Financial Services group who did a deep dive into their expectations for CFPB supervision and enforcement during Trump 2.0. This entire webinar is also available on our firm website.

Now my pleasure to introduce Kathy Kraninger. Kathy is president and CEO of the Florida Bankers Association or sometimes referred to as the FBA. The FBA is one of the oldest bank trade associations in the country, and today represents more than 150 banks operating in Florida and their more than 134,000 employees. Prior to joining the FBA, Kathy had a very distinguished public sector career appointed by no less than four presidents to various government posts and confirmed by the US Senate, Kathy has been a trusted counselor and advisor to presidents, cabinet members, members of Congress, members of both parties for decades. Kathy in 2018 was nominated to be a regular director of the CFPB and was confirmed by the Senate and sworn in December 2018, and she remained in that position until right before the inauguration of President Biden in January 2021.

Kathy certainly made her mark on all aspects of the Bureau's mission and operations, particularly in facilitating innovation and leadership through the economic uncertainty of the global pandemic. In that role, Kathy also served on the board of the FDIC, the Financial Stability Oversight Board, and as chair of the Federal Financial Institution's oversight board. Kathy's government Service in addition to the CFPB included senior roles at the Department of Transportation and Homeland Security in the Office of Management and Budget, and in the US Senate and the House of Representatives. And also this was something I was unaware of until I started digging into Kathy's biography. She served as a US Peace Corps volunteer in the Ukraine for about two years after graduating from college and actually before going to law school. Kathy, a very warm welcome to you. We're absolutely thrilled that you've joined us today.

Kathy Kraninger:

Thank you so much, Alan, for having me. Certainly thank you to Ballard's Bar. And thank you to everyone who's joined this webinar and is going to listen to it in the future. It's great to have this conversation and reflect on the time I served the CFPB.

Alan Kaplinsky:

Right. I will say at the beginning, at least, to those of who worked in the industry, you were a breath of fresh air when you took over leadership of the CFPB. Let's do a little history at the beginning, Kathy. Take us back to 2018 and tell us how you were chosen to be the new director. You weren't somebody that was on the radar at the time, at least we weren't thinking that you might be the person that then President Trump would nominate, but how did that come about?

Kathy Kraninger:

Thank you, Alan. It's fun to think back to that. As you noted in my bio, I had spent my career really in Washington in public service. I had seen a variety of government agencies from the inside and from other seats, how they operate and what is typical, I suppose, in that. Now, in fairness, I hadn't worked with an independent agency before, so in 2018, I was at the Office of Management and Budget. I was the pad for general government. For everyone who's a government follower, you know that the Office of Management and Budget has a pretty powerful and pivotal role in how government operates. We're seeing things writ large. So I was one of the five people that split every agency in the government in terms of their budget and their management.

And so in that role, I had Treasury, Justice, HUD Commerce, Homeland Security, SBA, all the financial independent agencies as well as part of that role. And so at the time we were looking at the implementation of the executive orders the president had put out on the future of financial services, the future of the postal service. I was involved in just a myriad of those types of things. And so also personnel is policy. We'll hear it along the lines of that. And so working with all of the appointee's across those agencies, working with the Presidential Personnel Office and the National Economic Council staff on ideas for who should be in different roles. So we were supporting all of that.

And of course you know at the time, my boss at OMB, Mick Mulvaney was the acting CFPB director. And so you had an interesting time. The decision in seal of law had not been made yet and so Director Cordray was enjoying his five-year term uninterrupted and with just a question, I suppose, hanging over it in terms of who the CFPB reports to. And that was the decision that the president made to not fight that in the moment and wait until the term was over and have the opportunity to appoint someone. So that process was playing out naturally and it was named in the summer of 2017 or later in 2017, I forget the exact date, to be acting while looking for a permanent director.

The other dynamic is just the politics of the CFPB creation, which we'll get deeply into, but for the most part, Republicans who were involved in financial services opposed to creation of the CFPB, felt like Director Cordray's brain and those at the agency and how the agency had operated, fair or not, they felt that all solidified their position that the agency shouldn't exist. And so President Trump never liking to accept the table that's been set before him, and we'll see a lot of that certainly in the years ahead, said, "What can we do to put someone in that agency that might surprise people? What's a surprise pick? How does this look? We've got a lot of people who don't think it should exist, how can you put that kind of person over to run it? We're not going to..." Other than we did put proposals forward to actually discontinue the activities of the CFPB, in the CFPB. Those proposals were there in President Trump's budgets. They'll be there again. But the reality of the situation is Congress was not going to abolish the agency. So how should you go forward?

And I'll admit, it was not something I went into the administration looking for, but I started looking in my direction internally. It was, "You know what? Kathy has a lot of management experience, knows how agencies operate, is a lawyer, have worked in law enforcement arenas, written regulations, written laws, worked in a bipartisan way from a conservative perspective." I was always a Republican. Even when I was in Peace Corps, I was in that vein. And so that was how the eyes started looking in my direction. And I'll say President Trump's direction to me was, "Go run the agency, go follow the law, do what needs to be done and should be done to protect consumers, but in that is consistent with the authorities given to that agency." For me, it is absolutely an exciting opportunity. But a lot could be said too about the independence of independent agencies as we're going into this discussion. It's definitely a different animal than the animal I was used to.

Alan Kaplinsky:

Right, right, right. And people who've been speculating on who the next CFPB director will be. A lot of names have been bandied about, but I think people haven't really been doing that, have not focused so much on that Vacancy Reform act} and the fact that once director Chopra either resigns or is removed by President Trump, there needs to be an acting director. And that acting director either has to come from a senior position within the agency or somebody who's already been confirmed by the Senate. And in this case, or in the case that happened back in 2017, you had somebody at the agency that wanted to be the new director and who I think Richard Cordray wanted to be the new director. And then you had the person, Mick Mulvaney, who the president wanted, and there was some litigation about that.

And it ended up with Mick Mulvaney because he had already been confirmed by OMB. He was able to assume that position. But you were nominated... I assume Mick Mulvaney didn't want to be running two agencies. That was a pretty big obligation for him. And President Trump needed somebody for the full directorship. So I think this is something similar to that, it's probably going to happen this time. Nobody knows who will be appointed, but I wouldn't be surprised if the acting director is somebody that has never... Is definitely not someone at the CFPB right now and might be a name of somebody who's worked at and confirmed by the Senate and is going to be working at some other agency. We'll see. Do you agree it could be a similar scenario?

Kathy Kraninger:

Oh, it definitely is going to be an interesting one to see who the acting director is. And yes, on January 20th, that's going to happen, as we said, regardless of whether it's voluntary. Mine was a resignation at the request of President Biden, and that's exactly what happened. The minute I think... I don't even know if his hand had gone down yet, but I got that email. But I was prepared for it, fully prepared for it and did what I thought was appropriate given the [inaudible 00:16:46].

Alan Kaplinsky:

It looks a lot better on the resume to say that you resigned rather than you got removed or the words. I'm sure if Director Chopra stays on board one minute after he is sworn in, Trump will use the word, "You're fired as CEO" So used to doing. So Nick Mulvaney is there, you know him from OMB. He's there for actually a longer period of time than I thought would be. But one of the things that reflects is there's a lot for the Senate to do beginning of January 20. A lot of people to confirm. And I'm not sure the CFPB is at the very top of their list. Hearings have to be conducted on all these people and it could take some period of time. Somebody might be there, I don't think longer than a year, but it's not going to happen overnight before somebody actually gets confirmed.

But you got nominated and I'm curious whether... You were still at OMB at that time when you were nominated?

Kathy Kraninger:

Yeah.

Alan Kaplinsky:

Did Mulvaney consult with you during that period on things that were coming up recognizing that it was likely you were going to end up being on board?

Kathy Kraninger:

As you noted too, I served in the Senate as a staffer for many years. I felt like by the time I got to the CFPB, I'd served just about any position you could. So I had helped prepared nominees, staff behind them, helped the committee process nominees, so had to be on the front end of supporting the senators in their advice and consent role. So by the time I was the nominee, I certainly knew the process from all sides. It's an appropriate one to be deferential to. You never know what's going to happen. And so the notion that you're going up before the Senate pre nomination, your hands have to be off that agency. It's why it's awkward for so many people who are acting.

But because I wasn't there, the answer to that question is no. I did not infer on his decisions. But he also took the role of acting seriously. And I think the way he approached it was definitely trying to put the next director in the best possible position to make change. And you'll see that even in the first things that I came in and did. But we did have a point of conversation too obviously, because I am not beholden to any of the decisions that he made, except for the fact that I am someone who believes that we should certainly consider that precedent. You have a status quo in front of you, and so you recognize that the amount of change you institute in any organization, there's only so much that people can stomach. How fast can you do it? How solid is the change that you make? Those are things that lay on me as someone who, I suppose, a bit of an institutionalist in the way that I approach my government service. So those things matter to me.

But he did make changes. I think some of those changes were pretty important in terms of one that he gets a lot of attention for, but the current director does not get much attention for bringing people in. Bringing in Schedule Cs. I was a Schedule C political appointee for much of my career, not all of it. And those advisors really do play an important role for the Senate confirmed people in an agency. Again, personnel are going to matter a lot, so who do you trust, who do you know? Who can support you as you get to know those who are in the civil service roles? So that's an important thing too.

In fairness, I'm going to an agency I had never worked in, but that's going to be the case for many directors of the CFPB for a while because you're going to have people who are coming from different perspectives, which is helpful too, but when you know the agency and already know the people, you have a different kind of advantage in terms of this. A big change in terms of how people internally made a lot of hay about it, but from my vantage point, it was an incredibly smart move and one any director should take advantage of.

Alan Kaplinsky:

Right, right, right. So when Mick Mulvaney started the CFPB, he made up a number of changes pretty quickly. First of all, the very first day brought everybody donuts. I don't know whether you followed in that path, but I know he got a lot of publicity for that. But putting that aside, he did things like he wanted to change the name instead of the CFPB to the Bureau of... What was it, consumer protection, or... I don't know, he turned it around and a lot of people got upset over that because they were so used to calling it the CFPB.

He had brought in a number of people, as you pointed out, actually some very good people that got involved with the CFPB at the time. Brian Johnson I recall joined the CFPB at that point, or maybe it was later after you came on board. He made organizational changes. I think the Office of Fair Lending appeared differently on the organizational chart and the head of that office would report directly to the director. Previously it had not been like that. When you came on board, did you change any of the things that Mick Mulvaney had done or any of the other things, organizational type of things, other than what you already mentioned?

Kathy Kraninger:

The biggest change was the name. And frankly, I think I found what should be a hallmark of my time at the CFPB and in my career really, it's practical decisions that make sense. So the name of the agency. In the statute, it is the Bureau of Consumer Financial Protection, and that is what Nick was trying to say, "Hey, we should hone to what the law actually provides for this agency rather than changing its name from what it was in statute." And so that was where he was coming from. I, of course, noted that people call me Kathy. My name given by my parents is actually Kathleen. So we can have a formal full legal name while also having a nickname or a logo or a way that we're known. And so that was a day one thing.

Again, it was absolutely intended to be emblematic, that I'm going to be making decisions that are practical and then I think make longterm impact and to me, the name was an easy opportunity to demonstrate that. But I absolutely agreed with Nick that the agency needs to stick very much to its legal authority and responsibility and do it to the best of its ability. And so that was really the signal that he was sending.

In terms of other things, I think we created that Office of Innovation. I continued it and thought it was pretty important. The fair lending change I thought was also an important one and a good one. That's very much... It's not just a supervision and enforcement issue. That's a core issue for the agency itself. It's important, it crosses over a lot of other lines, regulatory and certainly even in terms of education efforts. So how do we create a place for that issue in that office to be across at a broader sense? The other thing I did was adjust the external affairs organization. Some of that was undone I think unnecessarily, but it really did fit in the direction we wanted to go. But otherwise there was not a dramatic organizational change when I was there.

Alan Kaplinsky:

Right, right, right. So I assume, at least looking at it from my perspective, one of the first major things that Mick Mulvaney needed to get involved in and later you needed to get involved in was the payday lending regulation, which had been completed right before the end of Richard Cordray's term. And the industry, to put it mildly, was not real happy with that regulation. Containing two components, one dealing with ability to repay, which according the industry was going to put a lot of the industry players out of business. It was going to be very, very costly to implement that.

And then there is a second piece of it dealing with payments people would make on their payday loans. I think if a payment is presented more than, it was either two or three times, you had to get another signed consent. So you got involved in that, although I think Mulvaney probably it was one, if I'm not mistaken, who made the decision to I would say colloquially split the baby, to propose regulation, to get rid of ability to repay, but to keep the payments provision intact. Am I right there?

Kathy Kraninger:

I actually think it was my decision, but Brian's the one to keep us honest on that, and ultimately it was... That table was started to be set. But look, you take one step back and you say, "What's going to happen when the administration takes over on January 20th? What happens?" It very much will mirror what happened when they came in, and frankly, what I did too, and what [inaudible 00:26:53]. You have a new director coming in, you are going to put a pause on just about everything because you're literally trying to get your arms around it.

One of the great things that agencies do when they're preparing well for transition, and I very much was involved in this at the CFPB because I wanted to leave a legacy in this. You owe that new director, here are the next 30, 60, 90 days of decisions. Here are the deadlines that are coming up, whether it is in active litigation. Or here are the, again, implementation dates for all of the rulemakings that I've already been promulgating. Here are the regulations in terms of where they are on the agenda, where they are in internal processing in the agency.

And so you have all of that laid out for you, and it is... Essentially the table's been set. That's what's already publicly known. And then the internal stuff, here's what we've been working on. So your opportunity to really go through that and say, "Okay, now let me lay out my vision for the agency and understand how all of that aligns." And you've got really some appropriate process steps that need to be had to say, "Okay, if I'm going to undo some of that, it's going to be pretty challenging and difficult to do. It may still be well worth it, but understanding what it takes to make that happen and doing that.

So absolutely, Nick did that. I did that too. Of course, I had greater trust in him as someone who I knew well and in the team that he brought over. So that was something I did. But I'd also say that the career leadership at the CFPB, I think if you asked them, if you asked David, they had an open door to my office, any concern they had or issue they had or where they disagreed with anyone else, that is the type of culture that I wanted to bring to the CFPB that frankly it didn't have before. It's like, you didn't agree with enforcement, you were probably in trouble and you weren't going to get anywhere, so why bother bring it up?

So just understanding that there was a important role for everyone at the CFPB to bring forward their ideas, push forward the things that they thought that made sense, make the case for it. You have that opportunity. Once a decision is made that's got to be respected. There's not, again, a forum for you then to go tear down that decision or start acting to countermand it. But you are part of the process. So we had those kinds of reviews go on. That absolutely will happen again. I believe it's a dereliction of duty if the new director doesn't come in and say, "Let me understand where we are and let me really look at the full canopy of what's in front of us" and not just take each rule. We'll talk about some of it too, but taking each rule and saying, "Okay, what should I do on 1071 or what should I do on 1033?" Let me take a step back and tell you what the philosophy is.

And the other thing I would mention, my philosophy was very much using the tools that this agency has. In a narrow sunset, frankly, of financial services and of even consumer financial service products, it has a very robust capability when it's hitting. Its four tools, education, regulation, supervision, and enforcement. And so it's really what's best to bring to bear on any particular issue and how do we think holistically about it. So I very much encouraged the staff to think that way, to look that way at a problem, to think about the tools and levers that we have to pull. And I would hope that a new director does that as well, that they're really letting the staff and anybody you bring in look at all of those things.

Alan Kaplinsky:

Yeah. So Mick Mulvaney imposed a hiring freeze initially. Did you have to lift it or had he lifted it before you assumed the office?

Kathy Kraninger:

I left it in place for a little bit longer, but then I did lift it. Look, fundamentally, and this gets back to the budget background and the appropriations background I have, it's an important decision and process, and I've done it in every organization that I've been involved in. Let's take a step back. If someone decides to depart, which I wish them well and we had a number of people do that, it's an opportunity, an opportunity to step back and say, "Where do we really need resources?" That's essentially what a hiring freeze was. Nick made exceptions to it and so did I, but it forced people to make the case, forced them to demonstrate that they were actually thinking about what that resource could mean for what the highest priority issues are. And so it's just another way to engage with the staff, and it's another way to force a conversation about what priorities are and have to demonstrate that they're meeting priorities of new director.

Alan Kaplinsky:

Right. You mentioned how you had an open door for people, legacy employees of the Bureau leadership that come in and talk to you at a any time you were... I assume must have had a close relationship with David Silverman because I found out from having done the previous webinar with him that he's just a font of knowledge, institutional knowledge about the Bureau and very, very smart guy, so.

Kathy Kraninger:

Yeah, I'm not betraying any confidences to note that David would take advantage of that. And David and I definitely spoke regularly. I had regular meetings with all of the leadership as well.

Alan Kaplinsky:

Right.

Kathy Kraninger:

We walked the hallways.

Alan Kaplinsky:

The one thing where-

Kathy Kraninger:

[inaudible 00:32:53].

Alan Kaplinsky:

His recollection on, they're just getting back for a moment, the payday lending rule. He thought that Mick Mulvaney had made the decision to split it up rather than you, but what you're telling me is that actually that decision hadn't been made until you came into office.

Kathy Kraninger:

I do think that's the case, Alan. But as I said, I heard that exchange between you and David. I meant to actually check. So now I'm at the point where my memory... My memory post-COVID is a dangerous thing, I suppose.

Alan Kaplinsky:

It's unbelievable that that matter is still ongoing. It's not over yet. We've been up to the Supreme Court. The Supreme Court upheld the constitutionality of the way the CFPB was being funded off budget, and then it went back to the Fifth Circuit and it got litigated some more there. Still the industry isn't happy with the payments provision, and I wouldn't be surprised if that issue comes up again when a new acting director gets put into office.

So let's talk about seal of law for a minute. That is one of the cases that you have to deal with. The issue there, just to remind everybody, was whether or not the director could only... Probably should say the president. Could only remove the director of the CFPB for good cause, or whether the director... Which is essentially what it said in the Dodd-Frank Act, although I am paraphrasing the actual language of the statute, it doesn't say for good cause. Or whether the director could be removed for any reason at all. Supreme Court essentially redlined the statute to make it clear that the the director served at the will of the President. So did you know from that point on, did you have to run every major decision by the White House or it was the White House basically let you operate on your own? Did you have a liaison at the White House that you had to deal with, run things by?

Kathy Kraninger:

I'd say it is still an independent agency in the sense of that there are so many priorities at the White House that their ability and interest in getting involved in every little thing that happens in every single agency, you can imagine what that would mean. And so there was not a requirement to check in. At the same time, it gets you back to how much personnel is policy. I had worked in the Trump White House. So again, you get to the relationships and trust I had and friendships I had that were pre-existing. That was definitely the case.

I'd also say when it came to even my engagement with Congress, I didn't think it was my job to surprise anybody, frankly. My job as a financial regulator I took pretty seriously to say, "We're trying to get clarity in the marketplace for what are the rules and expectations that everyone should have, consumers, marketplace participants, certainly those that are advocating and overseeing and engaging." So communication was pretty important to me.

So absolutely the folks at the White House were part of that communication, so was treasury, so were my peer agencies working with the FDIC and the OCC. And so was Congress. I even had regular outreach to... Certainly to Senator Brown and Senator Warren, to Maxine Waters in health side. And that's the way I operated. I didn't have a dynamic where somebody was looking over my shoulder from the White House, definitely not. But it was I think a responsibility to have some coordination and communication as part of a regular way of operating.

Alan Kaplinsky:

Right. Let's talk about your priorities as director in terms of a regulatory agenda that you may have had and with respect to enforcement.

Kathy Kraninger:

So with respect to the regulatory agenda, what I think, and hopefully I've seen at least a few questions of people saying, "What do I expect ahead?" I do expect similar things. I expect that a new director would do something similar to what we did, particularly at the end. And if there had been a little more time, we would've spent more time on it. But there is an opportunity really recognizing that so much of consumer protection law was 1970s product. The opportunity to step back and say, "What makes sense today." There is a huge interest in the world of innovation and in recognizing too, and I suppose some of my current seat leads into this, I represent the banks that operate in the state of Florida.

But having the same regulatory requirements and recognizing the risks of different players that are engaged in the same activity, actually regulating the same activity the same way regardless of who's performing that activity. So non-banks and banks and credit unions and mortgage lenders. Who is involved in what role and how do we think about this, and how do we set clear expectations for consumers? Because we do have a lot of activity now and a lot of different players that are operating under different rules.

So that part is one that I... You already heard it with coordination and communication. I know you're doing the third segment with the attorney general of New Jersey. I spent a lot of time coordinating with bank commissioners across the states with state attorneys general and just setting a clear direction for what we were looking to do. And that was, again, applying the best tool possible. So engaging in education efforts, partnering where we can, not allowing there to be gaps and seams between what's happening across different agencies.

I will say there was one effort in particular that I would love to see being tackled. It's one of those things you already mentioned for fair lending. We actually initiated an effort to try to get people across, you've got DOJ, HUD, and the credential regulators, everyone looking at what exactly the standards are there, what analysis you're going to perform to understand under HMDA, under CRA? What are different geographic areas of service and where banks need to be performing? Where are disadvantaged individuals? What are they? How do we think about this and analyze it?

Because those who are watching that are in the leads on this know there are actually statistical analyses that get performed on this. And in fact, they're based on assessment of what surnames go along with what ethnicities. And so it's really bringing in census data. And so let's actually coordinate and talk about how are you doing that? Because the big banks actually try to replicate it, but they don't really know how DOJ looks at it versus how the FDIC looks at it versus how the CFPB looks at it. It's a whole cottage industry of consultants too out there.

So how do we actually make that more transparent and make that more uniform and set the expectations the right way for the marketplace and for the public on that and be transparent about it? It's a super interesting and important topic, but it does lead you to a lot of challenging issues. When I have fair lending cases, I told the staff, "Now, don't generate them. We're not going to manufacture cases. But to the extent that there is discrimination happening, no one wants to see that happen. So let's actually take a concerted effort to bring fair lending cases if we can." Or then to say, "We're trying and you know what, we're not seeing it. So what does that tell us about where we need to go to address some of these issues in society?"

That was a huge, probably more internal than people saw. I absolutely talked about it, but it was definitely an area of priority. And then as I said, the review, we did create a future of what is the future of consumer protection. The task force. And so we brought in Todd Zywicki and [inaudible 00:42:01], a whole number of other experts who have been involved in consumer protection law for a long time to actually look at this, examine what the current... They actually did a full history. We issued two volumes. Unfortunately right at the end. But just how did consumer financial law come up and then what are the big issues moving forward? And I do think there's a great opportunity for the next director to take that, to look holistically at the regulations and think about what needs to be modernized and not just accept we're going to take each of those regulations individually.

Alan Kaplinsky:

One of the other things I know you had to deal with was of real hot potato, namely the abusiveness prong of UDAP, which industry was very uncomfortable with, nobody really knew what it meant. When clients would ask me, "What does it mean?" I'd say, "I don't know. It's whatever Director Cordray doesn't like or Director Chopra doesn't like." But you try to bring some clarity to that. Why don't you describe what you did, Kathy?

Kathy Kraninger:

Yes, absolutely. And I give Andy Barr and others on the Hill a lot of credit for this too, because he tried to codify it. It was another one of the things that we really looked to do in working with Congress, was get some actions where you've got Republicans and Democrats working on finding common ground, and where can we make small adjustments to the law and things Congress should weigh in on? Because we've got a lot of them here, things Congress should weigh in on, where it demonstrates that Republicans recognize there are some things that the CFPB does that are important and where Democrats can actually weigh in and say, "Okay, not everything about the way the Dodd-Frank Act was written and everything that CFP does is perfect."

So having that middle ground of there's opportunity for change, we saw abusiveness. And as you noted, there is a history when it comes to the definition of fairness and deceptive facts and practices in really the FTC's jurisdiction, FDIC, OCC, and then we've got a lot of history on those two pieces. But abusiveness was just introduced in the Dodd-Frank Act as a CFPB authority in this kind of expanded UDAP. So what does it mean? So we did put forward an interpretive policy on that.

I think it is the beginning of a regulatory conversation. We asked for input, and we also... There's a role for the courts to weigh in on this over time, but I think that'll take a very long time to start getting a read from the courts on abusiveness. So what can the agency do or what could Congress do to better define that? And so that is what we sought to do. And to distinguish it. I think some of what had been happening with it was just saying, "Oh, this is egregious fairness or unfairness or it's egregious deception, so that means it's abusive, but how do we start distinguishing it?" Because Congress gave it another word, so it should be something different than fairness and deception. So how do we distinguish it and start [inaudible 00:45:25] again? That was definitely one area where we tried to do that and provide some clarity.

I know we're probably coming close to time. I did want to note though, the statutory mandated regulations the CFPB has to either work on, and... To the extent that you don't ask me about 1071, it's hard to get through a conversation about it without talking a little bit about the path that took. But it's definitely a rulemaking effort that was challenging, and we had to deal with being sued over having not issued [inaudible 00:46:02]. So we had [inaudible 00:46:03] process for producing that rulemaking until it was started on my watch. It continues to be challenging.

Alan Kaplinsky:

You also, in the area supervisions and examinations, you issued a policy statement, as I recall, dealing with communication of supervisory expectations, right?

Kathy Kraninger:

Yes.

Alan Kaplinsky:

What was that all about?

Kathy Kraninger:

It's the same thing. It really is an interest in transparency, in clarity to the marketplace, but also again, to the public. There is, and I'm a bit torn on this because I think there is a veil over supervision that is frankly productive and important. There is a lot of confidential information in that process. There has to be a lot of trust built between the agencies that supervise and examine in the institutions. And clarity around the... And particularly to the public the expectations is important. Congress has also waited a number of times saying, "What more can you share with the public or tell us or explain to us about how the supervision process works. You've got clear priorities from an agency and not just an individual examiner who can suddenly start creating expectations on their own. So how do we manage this? How do we put it in, again, clear rules?" And so that was definitely-

Alan Kaplinsky:

Yeah, and I take it you... As I recall, a good friend of mine who started with Cordray, I think remained in your administration. Peggy Twohig, she was director of supervision policy, I think. You were very lucky to have her experience, I would think.

Kathy Kraninger:

Oh, definitely. I remember that correctly too with Richard Edmonds.

Alan Kaplinsky:

Right. So enforcement priorities. One of the things I think surprises a lot of people that you brought during I think your first year as CFPB director, more enforcement actions than Mulvaney had done by quite a considerable amount. But I think even more than Richard Cordray had done in his final year. Am I right on that?

Kathy Kraninger:

I'll admit I should have put the numbers in front of me, Alan, but I will say I do think that's true. I will tell you though the natural cadence of investigation plays here. In fairness, you had a director who was the head of enforcement. He well knew what the docket looked like. And as he was getting to the end of his term, he was definitely taking some pretty extensive actions to wrap up things. If he thought they were important, he was pushing them out the door. If he thought they should be closed, he was closing them.

When they came into the agency, there was not a massive queue of things that were just sitting there waiting to be acted upon. That's the way this works. And then there was also a huge opportunity and need to review everything that was happening, to reset the priorities. Very different philosophies in terms of where things were going. And then a restart, which is what happened, Mulvaney started putting some people in place. And even the staff started trusting and understanding the types of things that he was going to be looking for in a review.

And they also had to learn that with me. So there was still just a natural pause in conversation, how I want them to bring the cases up to me and what do I expect? And I can tell you I expected a pretty rigorous process and recommendations and in particular around precedent. Because again, when you have a director who had been the head of enforcement for a few years, he already knows what happens down there. I didn't know that and neither did he. So actually you've got to get that jump started again.

But we had a few things that were really a no-brainer. Again, the opportunity to go after areas of significant consumer harm as a priority. That was what we said was the case. And again, where you've got pretty blatant disregard for what the legal standards are. Those are important things too. And I think there was an interest in, and it looks like we're seeing it too with the cases the current director has brought, but they were looking for big splashy names and who can we go after?

And maybe we're pushing the envelope a little bit on what the law may or may not require or something you don't want happening in the market that is legal, but we don't like it, we're going to start pushing this a little bit. These were not things that I was going to be engaging with. We were definitely looking to create clarity. And we were also... Again, look, when the institution itself, because you're talking about large institutions, they are the ones that actually uncover, discover the activity, the wrongdoing. When they take an action to redress it or mediate it, when they are fully transparent with their regulator and in the supervisory process and saying, "Look, this is what we found. This is what we're doing. This is how we're mitigating the harm. This is how we're providing recompense to the victims." That's something that should be rewarded and encouraged.

Because I think one thing that's missing in the enforcement process when you think about it is how long it really is appropriately. There's due process in the litigation process. You bring a public action, that means we weren't able to settle it. So you've got to think about how fast is that consumer who was harmed actually getting anything? You're talking years. And so rewarding institutions that are identifying rather than punishing them with a public litigation process, rewarding them for mediating, working with them on how they do that, and seeding the process for the consumers that were harmed. That has to be weighed in the process and should be, as well as avoiding the harm to begin with, which is why the education and clarity is a huge part of this process.

Alan Kaplinsky:

Right, right. So let's talk a little bit about the future as we wind up our fireside chat. Based on the experience that you've had at Bureau in the leadership role and since you've been at the FBA, you've been on the outside seeing what's been going on at the Bureau under different leadership, what's your view on what ought to be done with the CFPB? Do you agree with Elon Musk delete, as he said, one word answer, or would you support some organizational changes where it would be managed more like the FTC by a commission of five people, bipartisan commission? What's your view on that, Kathy?

Kathy Kraninger:

So I come at this again from having experience working in a lot of different agencies, and also being a lawyer I tend to be more for unitary executive. I really do. I don't think the structure of a lot of the independent agencies makes a lot of sense. There is that perspective on this. But needless to say, I won't tackle all of that in this conversation. It's a much longer conversation. But I think to the extent that the agency continues, and I certainly think it's going to, there are changes that logically members have reported many times over. A commission would make sense. There is a lot of power concentrated in this individual director there is. And when you look at FHFA and CFPB, they're anomalies in this process in its structure [inaudible 00:54:23]. So a commission is something that could make sense.

As an appropriations staffer. So I tend to think all of these mechanisms across government that don't subject an agency to appropriations is really something congress should not want to see happen. At the same time, you look at our appropriations process today and it's such an abomination that you can't get anything done on time, and you're certainly not influencing policy the way you otherwise could through that, through those purse strings. But I do think that makes sense, again, recognizing though that now you're subjecting this agency to all things the other agencies are having to put up with. In appropriations, it's problematic.

So it really takes you to Congress actually performing its function in lawmaking. Post-Chevron we are in a really interesting space, and I think one of the things that I would love to see is as an institutionalist here and someone who really believes Congress needs to play this role. They do have to figure out how to move forward and engage in subsequent lawmaking in a real way. There are a lot of different issues for them to deal with. And so that's really what I would say that I would hope because we do have a bunch of issues that the CFPB cannot solve itself and that it would be hugely beneficial for Congress to engage in.

Alan Kaplinsky:

Right, right. So what advice would you give the... I take it you don't know who the new acting director or director is at this point. If you do want and you want to share it, I'm sure our audience would be very interested, but whoever it may-

Kathy Kraninger:

[inaudible 00:56:11] that is definitely not [inaudible 00:56:15]. Look, I think it's an exciting time. There really is opportunity and excitement around... A lot of focus on deregulation, but frankly, it's smart regulation. It's recognizing all of the things that are holding back our ability as a nation to really spring forward the economy, to make it an inclusive economy and an opportunity economy for everyone. I'm feeling certainly what Vice President Harris was talking about, but really in its most poignant sense, that's what people are looking for, it's opportunity. It's not a handout, it's the ability to bring forward new ideas to the marketplace.

And so that is something that... I hope this excitement is able to be realized in a lot of exciting changes. And so it will matter a lot who the president puts in place and nominates. And to your point, it is taking longer. I worked in a Bush campaign in 2000, and I remember that the cabinet was basically in place on day one of the administration, but that was the way it worked, you had... Even you see votes on cabinet members and...

I was looking back at 2017 and how long it took, [inaudible 00:57:36] 2021 too for President Biden. And you've got even the cabinet members that were nominated earlier. It took a few weeks, a month. So it is taking longer and I think the Senate's got [inaudible 00:57:51]. But I think we'll have a new director certainly in the first year in place. I'll throw that out there. And so that person has hopefully three years to make a lasting legacy of clear direction for the agency.

And as I said, I hope, and my advice would be taking that step back, taking the ability to look at anything that is unnecessary, outdated, unduly burdensome in terms of the regulatory framework for consumer financial protection and saying to Congress, "Here are the things that we would like you to address. Here are the things that we can address ourselves." And really setting that tone and agenda for the law that makes sense going forward to the future.

Alan Kaplinsky:

Right, right. Okay. Kathy, we have come to the end of our fireside chat. Really appreciate your taking the time to share with our audience the experience that you had and also how that sheds some light on what we might expect during the leadership of the next acting director and director during the second Trump administration. I think it's been very helpful. So I want to thank you very much for participating.

Kathy Kraninger:

Yeah, thank you, Alan. Appreciate the opportunity and great to talk.

Alan Kaplinsky:

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