

# CONSUMER FINANCIAL SERVICES LAW REPORT

FOCUSING ON SIGNIFICANT CASELAW AND  
EMERGING TRENDS

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## VIEW TO THE NEWS

### Q&A: ELIZABETH CORBETT

**Elizabeth Corbett**, formerly a top staffer with the **Consumer Financial Protection Bureau** and now an attorney with **Alston & Bird** in the firm's Research Triangle office in Durham, N.C., recently spoke with *Consumer Financial Services Law Report* about her experience in working at the CFPB and how she appraises the bureau's future.

**CFSLR:** *What did you do at the CFPB?*

**Corbett:** I started out as an enforcement attorney back in 2011, just after the bureau launched. During that time I was able to initiate and investigate a number of enforcement matters, including potential legal violations in mortgage origination and servicing (including fair lending issues), credit lending and reporting, debt modification and collection, as well as other market areas. After a year, I was promoted to serve as Counsel to the head of Supervision, Enforcement and Fair Lending.

In that role, I served as his primary legal advisor on enforcement matters, and provided a lot of coordination with the states and prudential regulators at the OCC, FDIC, FRB, HUD, and FHFA. In 2014, I became the Deputy Chief of Staff for the bureau, where I managed cross-bureau and cross-agency legal and policy coordination, specifically as it relates to supervision and enforcement work. Most recently, prior to joining Alston & Bird, I was serving as the Acting Chief of

Staff, where I handled the day-to-day management of the institution, and was a member of the executive team that handled all major organizational and policy decisions.

**CFSLR:** *How would you assess your legacy after serving at the CFPB?*

**Corbett:** I walk away from the CFPB with no regrets. I place tremendous value on the experience and knowledge I gained in every role I served in. I don't know if it qualifies as my "legacy" per se, but I do believe my former colleagues will remember me as someone that was fair and able to handle quite difficult situations, both internally and externally.

**CFSLR:** *How would you describe the culture at the bureau?*

**Corbett:** During my tenure, the culture was one of commitment. People had to work much harder than is typical in government to get the bureau up and running and to meet statutory deadlines. At times, that wore people down — but they were always committed to their work. Right now, I think there is a lot of uncertainty for the future of the bureau and that naturally takes a toll.

**CFSLR:** *Given your familiarity with the CFPB, do you expect the work of the bureau to change in the near term due to the new Administration?*



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**Corbett:** I do expect some change, which I think is normal when there is an administration transition. In the near term, however, it will be most interesting to see how the CFPB's regulatory agenda moves forward, given the Administration's executive orders around rulemaking coupled with the limitations set forth in the Congressional Review Act. Further, even if the Administration doesn't take action to remove the current director, his term expires in 2018, and I would certainly expect change under a new director nominated by the Administration.

**CFSLR:** *Does the Notice and Opportunity to Respond and Advise (NORA) process help or hurt a potential CFPB target, i.e., does it provide a real chance for a company to fend off litigation, or can it simply become more fodder for prosecution?*

**Corbett:** From my perspective, the NORA process is a very useful tool in allowing companies to make their perspective clear to the bureau. I absolutely think it helps, and I would encourage any client of mine to submit one, if given the opportunity.

**CFSLR:** *What effect might the PHH decision have upon the future of the CFPB?*

**Corbett:** There are a number of possibilities that may come from the appellate court's decision, but it is unclear to me how long that will matter. I fully expect Congress to take legislative action regarding the structure of the bureau in the near future, and it is possible that action could make the decision moot. I think it is too early to speculate about the Supreme Court, but it is certainly a possibility.

**CFSLR:** *Do you think the CFPB will evolve or explode?*

**Corbett:** I think the CFPB will survive and evolve, like all organizations do if they are to remain relevant. Based on the brief filed by the Justice Department in *PHH*, even the Administration doesn't intend to do away with the CFPB. My own read on this, not based on anything confidential learned in my previous role, I expect that someday the CFPB will have a commission structure.

Despite DOJ's arguments that any constitutional issue with the structure can be remedied by allowing the President to terminate the Director "at will," it is not clear to me that that approach is best for the public. If the financial industry is subject to polarizing regulation swings every 4 years, it might be worse for companies offering financial products and services and that will flow down to the consumers they serve.

**CFSLR:** *How do you see the CFPB's enforcement agenda proceeding?*

**Corbett:** The CFPB has strategically cast its enforcement net wide, covering a number of areas, but not concentrating its enforcement resources in any particular market. The cases brought show that

although there are specific "initiatives" at times (credit-card add-on work, or the fair-lending auto work), there continues to be enforcement matters in many different product markets.

The diversification isn't only in the product markets. You also see that the bureau continues to bring actions at both large and small financial services companies. I think a great focus of the CFPB right now is incentive-based compensation models, and concerns about the misaligned interests they can create. This is not specific to any particular industry. In fact, the bureau issued a bulletin on this topic in late 2016, noting that the practice is common among many sectors of the financial services industry. I would expect the bureau to be focused on these programs in the coming years, in both the examination and enforcement context.

**CFSLR:** *What about the progress of new rules in areas like arbitration and prepaid cards?*

**Corbett:** Well, I think the threat of a Congressional Review Act challenge is real and it will weigh heavily on the bureau. As you know, if a CRA challenge is successful on one of those rules — the bureau will be prevented from proposing a substantially similar regulation in the future. This will be an important factor for the CFPB and rule-writing agencies during this Administration, where limiting regulation is a stated priority.

I expect arbitration to be the most controversial rulemaking that is in the later stages of the process

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— but the small-dollar/payday rulemaking, if finalized, will also generate a lot of attention for the bureau.

**CFSLR:** *Are there any changes you believe are needed or potentially do-able in the Dodd-Frank Act?*

**Corbett:** Dodd-Frank is a large piece of legislation. In regard to the CFPB-related provisions, changes are certainly do-able, and I think they will happen a little at a time. Chairman Hensarling has recently proposed a new take on his previous bill, the

“Choice Act,” that includes substantial revisions to the CFPB’s authority and funding, but notably maintains the current single-director structure. Given the substantial overhaul proposed in the bill, I would expect only pieces of it to move forward. I believe some financial reform is likely by the end of the calendar year, but it’s unclear at this point which provisions of Dodd-Frank will be a priority for the Administration — which is something that I think really matters here.