

Written Testimony of Richard Cordray
Director, Consumer Financial Protection Bureau
Before the House Committee on Small Business

August 1, 2012

Chairman Graves, Ranking Member Velazquez, and Members of the Subcommittee: thank you for inviting me here today to talk about the CFPB's compliance with the Regulatory Flexibility Act (RFA) and its implementation of section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). My name is Richard Cordray, and I am the Director of the Consumer Financial Protection Bureau. I am honored to represent the Bureau here this afternoon.

Small businesses are a critical growth engine for our economy and an essential source of financial services for many consumers. For this reason, the CFPB believes that it is very important to understand the impacts of its actions on small businesses. Since our inception, the CFPB has actively and consciously designed a number of mechanisms to seek the input of small businesses to support its rulemaking, supervision, enforcement, consumer education, research, and reporting functions. In order to create good public policy, we consider it a priority to integrate direct input and advice from small businesses into the CFPB's decision-making process.

Section 1100G of the Dodd-Frank Act, which requires the Bureau to convene panels to seek direct input from small businesses prior to proposing certain rules, is a critical piece of that larger effort. We have now convened three such panels in conjunction with the Chief Counsel for Advocacy of the Small Business Administration (SBA), and the Office of Management and Budget's Office of Information and Regulatory Affairs (OMB). While we are still learning and refining our panel processes, we are pleased with the results to date. We have found the opportunity to have intense, in-depth discussions with small financial services providers to be invaluable as we evaluate potential rulemaking options. And our interaction with SBA and OMB has been cordial and extremely productive.

We welcome this opportunity today to report on our implementation process. I want to describe both the panel process and how the panels fit into the Bureau's larger efforts to engage in evidence-based rulemaking and to sensitize itself to the issues and concerns of small businesses.

Before turning to the implementation of section 1100G, I believe it may be helpful to explain briefly the nature of the Bureau's jurisdiction over and early efforts to engage with small businesses.

Congress established the Bureau to focus specifically on the regulation of *consumer* financial products and services that are provided primarily for personal, family, or household use. There are also a few limited areas in which the Bureau has authority with respect to financial products and services for small businesses. First, the Equal Credit Opportunity Act (ECOA) prohibits

lenders from discriminating in the provision of business (as well as consumer) credit on the basis of race, national origin, sex, or other protected bases. The Bureau implements ECOA by regulation and supervises compliance with ECOA for certain lenders. In addition, Congress has applied two credit card protections of the Truth in Lending Act (TILA) to business cards – limiting the liability of cardholders for unauthorized use of the card and restricting unsolicited issuance of new cards.

The Bureau's jurisdiction over small businesses that provide consumer financial products and services has been carefully crafted by Congress, and reflects the intent of Congress to consolidate in the Bureau rulemaking authority that had previously been spread across several different Federal agencies. This consolidation helps ensure that the entire consumer financial market is subject to consistent regulations and standards that apply equally to all businesses, including small businesses.

Small business review panels are a valuable component of our rulemaking process. The panels provide a mechanism for us to seek intensive input from small businesses about the impacts and potential alternatives for rulemaking initiatives. However, this is just one of several outreach initiatives. For example, the CFPB has created an Office of Small Business, Community Banks, and Credit Unions, within its Office of External Affairs, to specifically engage with small depositories and businesses in carrying out the Bureau's functions. In addition, the CFPB is currently working to convene various advisory councils that focus specifically on community banks and credit unions.

With this background in mind, I would like to talk about how the CFPB is implementing the RFA and section 1100G of the Dodd-Frank Act.

The RFA, as amended by Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, generally requires Federal agencies to consider the potential economic impact of regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.¹ RFA requirements apply to rules that are subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.² Accordingly, the RFA and small business panel requirements do not apply to rules for which notice and comment is not required, such as the procedural rules issued by the Bureau to set up its own internal operations, but they do apply to notice and comment rules including many of those that we issue to implement laws governing the provision of consumer financial products and services.

Like other Federal agencies, the RFA requires the Bureau to make a threshold assessment of whether regulations covered by the statute could have a significant economic impact on a substantial number of small entities. Where the Bureau certifies that it does not expect such impacts, the RFA requires that it provide a factual basis for this conclusion. For example, the Bureau recently certified that it does not expect a proposal to implement amendments to the

¹ 5 U.S.C. 601 *et seq.*

² 5 U.S.C. 603, 604.

Home Ownership and Equity Protection Act of 1994 (HOEPA) to have a significant economic impact on a substantial number of small entities.³ HOEPA regulates the provision only of “high-cost mortgages,” which due to various factors are extremely rare in the housing market. For example, of the 5.3 million originations potentially covered by HOEPA in 2010, only about 3,400 loans were actually covered by HOEPA. Although the Dodd-Frank Act expands the scope of the law in several ways, the Bureau concluded after extensive quantitative analysis that the proposed rule was not likely to have a significant economic impact on a substantial number of entities.

Where the Bureau does not make such a certification, the RFA and Dodd-Frank Act section 1100G require it to take several additional steps. First, the Bureau is one of three Federal agencies that are required to convene a small business review panel to gather input directly from small entities prior to issuing the proposed rule. Second, like all other Federal agencies, the Bureau is required to conduct a written analysis of the potential impacts and alternatives at both the proposal and final rule stage. Third, the Bureau is required to separately assess and gather input on the potential effects of the proposed and final rules on the cost of credit for small businesses, and to evaluate alternatives to minimize any cost increases while achieving the objectives of applicable statutes.

I’d like to spend most of our time today discussing how the Bureau is implementing the first requirement. As I mentioned at the outset, the CFPB has conducted three small business review panels to date with the SBA and OMB:

- In February 2012, the Bureau convened its first small business review panel, regarding the Bureau’s proposal to combine the disclosure requirements of TILA and the Real Estate Settlement Procedures Act (TILA-RESPA rulemaking). This panel gathered information from representatives of small banks and credit unions, mortgage finance companies, mortgage brokers, settlement agents, and nonprofit organizations. The panel report was released at the same time as the Bureau’s proposed rule, on July 9, 2012.⁴
- In April 2012, the Bureau convened a small business review panel regarding the Bureau’s upcoming proposal regarding mortgage servicing. This panel gathered information from representatives of small banks and credit unions, mortgage finance companies, mortgage servicers, nonprofit housing organizations, and other small businesses engaged in the servicing of mortgages. The final panel report will be released within the next few weeks at the same time as the proposed rule.
- In May 2012, the Bureau convened a small business review panel to discuss the Bureau’s upcoming proposal regarding residential mortgage loan origination standards. This panel gathered information from representatives of small banks and credit unions, mortgage finance companies, mortgage brokers, and nonprofit housing organizations. The final panel report will be released within the next few weeks at the same time as the proposed rule.

³ See <http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0029-0001> (HOEPA proposed rule).

⁴ See <http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0028-0001> (TILA-RESPA proposed rule).

For each panel, we have consulted with the small entity representatives concerning the potential impacts of the proposals under consideration by the Bureau on small financial services providers and on the cost of credit for small businesses. I'd like to talk first about the processes we are using to organize and run the panels, and then about the feedback that we have received.

Convening a small business review panel under the processes laid out in the RFA involves a substantial commitment of time and resources from all three participating agencies, as well as the individual small entity representatives. We are finding that the panel process requires a minimum of three to four months of intensive work to complete, including preparation time. We have provided a description of the processes that we are using to implement the small business review panels in a "Fact Sheet," which is accessible through the Bureau's website.⁵

Where the Bureau determines that a panel is warranted under section 1100G, it reaches out to SBA and OMB to begin preparations. The first steps are (1) to draft a detailed description of the proposals under consideration by the Bureau and an analysis of their potential impacts on small businesses and (2) to identify and recruit representative small entities to consult with the panel. Both the SBA and OMB provide feedback to the Bureau about the background materials, and as directed by the statute, the CFPB consults with the SBA on selection of the small entity representatives. By law, the representatives must be selected from businesses that are likely to be directly subject to the requirements of the rule. In part because of this requirement, the Bureau has been convening a number of other roundtables at roughly the same time that it convenes the small business review panels in order to obtain feedback from a broader range of stakeholders. The SBA typically suggests candidates for the small business review panels in addition to ones that the Bureau has identified through a variety of means, including its own previous outreach efforts and discussions with State and national trade associations.

For each of the panels to date, we have identified approximately 15 to 20 small entity representatives to meet with the panel. We find that this size allows significant diversity among the businesses represented, while also permitting extensive and frank dialogue. For each panel, the Bureau has attempted to recruit a wide range of small entities, including businesses from different parts of the country, rural and urban markets, and different segments of the market (such as servicers that may concentrate in particular types of loans). Final representatives are designated after consultation with the SBA. Representatives may participate in the panel outreach meeting in person or by teleconference, though to date we have been extremely pleased that most have been able and willing to travel to participate in the meeting in person.

Prior to a scheduled panel outreach meeting, the CFPB distributes background materials to each small entity representative. Although not required by the statute, the Bureau also posts the materials on its website and provides a general email address for other stakeholders to provide feedback.⁶ The outreach materials typically contain:

⁵ See http://files.consumerfinance.gov/f/201205_CFPB_public_factsheet-small-business-review-panel-process.pdf.

⁶ See <http://www.consumerfinance.gov/blog/sbrefa-small-providers-and-mortgage-disclosure/> (TILA-RESPA rulemaking panel materials); http://files.consumerfinance.gov/f/201204_cfpb_small-business-review-outline_mortgage-servicing-rulemaking.pdf (mortgage servicing rulemaking panel materials);

- Information on the background of the proposed rule under development;
- An overview of the proposed rule or regulatory options under consideration;
- Other information that will enable small entity representatives to provide meaningful comments on the likely economic impacts of the proposed rule and advice on potential alternatives; and
- A detailed list of questions and issues on which the CFPB will seek small business input at the panel outreach meeting.

The outreach meetings between the panel members from the three agencies and the small entity representatives have each lasted a full day, and in some cases we have held follow up calls to answer additional questions or to request additional information about specific topics. During the panel outreach meetings, the CFPB walks through each set of proposals and options or alternatives under consideration with the small entity representatives, as well as the questions and issues that have been identified in advance. The small entity representatives provide extensive comments on the substance of the proposals and their potential impacts. The panel may ask the representatives to help identify other Federal regulations that may overlap or conflict with the CFPB's proposed rule. In addition, the panel solicits advice regarding potential alternatives that would minimize any significant economic impacts of the proposed rule on small businesses while accomplishing the objectives of applicable statutes.

In addition to providing oral comments on these issues during the outreach meeting, the small entity representatives are provided an opportunity to submit supplemental written comments, typically within about a week of the in-person meeting. The panel members from the three agencies then review the materials received along with materials provided by the Bureau, and draft a report that summarizes both the feedback received from the small entity representatives and the panel's findings and recommendations. The statute requires the report to be completed 60 days after the panel is convened.

The CFPB then carefully considers the panel's report and the comments and advice provided by small businesses as it finishes preparing the proposed rule and the initial written impact analysis that is required under the RFA for publication. Once the proposed rule and analysis are issued, the panel's final report is placed in the public rulemaking record. Any small business or organization, including those that participated in the panel outreach meeting, may submit formal written comments during the public comment period that occurs after the rule is proposed. We email the small entity representatives to alert them to the issuance and specifically ask for further feedback. After issuing the proposed rule, the CFPB will carefully evaluate the public comments and will prepare and issue final rules, which will include the additional regulatory impact analysis of the final rule as required by the RFA.

http://files.consumerfinance.gov/f/201205_cfpb_MLO_SBREFA_Outline_of_Proposals.pdf (residential mortgage loan origination standards rulemaking panel materials).

Finally, I want to talk about how valuable we find the feedback we receive through the 1100G process and how we are incorporating it into our further deliberations. Because we have not yet released the proposals on servicing and mortgage loan origination, I want to focus primarily today on how the 1100G process affected the TILA-RESPA proposal, which was released on July 9.

As discussed in both the proposal and panel report, it was helpful to be able to spend a full day discussing the disclosure integration project with a variety of small financial services providers who deal with the existing forms and regulations on a daily basis and many of whom have close interaction with consumers. In this rulemaking, the information provided through the small business panel process helped us to draft a better IRFA analysis, which by law must describe the impact of the proposed rule on small entities, and include any significant alternatives to the proposed rule which accomplish the statutory objectives and minimize significant impact of the proposed rule on small entities.

We responded to every panel recommendation and every major concern raised by the small business participants, whether by adopting the recommendation, changing the proposal, seeking comment on a particular issue, or other action. To take just a few examples,

- During the panel outreach meeting, small entity representatives expressed the concern that current rules implementing TILA and RESPA disclosure requirements create significant uncertainty about how to comply. For example, a joint letter from four settlement agents stated that small settlement agents currently lose at least 30 minutes per closing due to regulatory uncertainty and compliance burdens associated with the current rules. Consistent with the panel's recommendation, the proposal contains extensive commentary that provides detailed guidance on how to complete the integrated forms including, as appropriate, samples of completed forms for a variety of loan transactions.
- The small entity representatives also expressed concern about the Bureau's proposal to harmonize different timing requirements under TILA and RESPA by requiring disclosures to be completed three days prior to closing. While the Bureau had expected to make limited accommodations for last-minute changes, the small entity representatives identified that there may be other potential complications. Following the panel's recommendation, the proposed rule permits certain specific changes after provision of the disclosure and also solicits comment on whether additional exceptions are appropriate.
- The small entity representatives expressed concern that certain statutory disclosures would be difficult to calculate and would likely not be helpful to consumers. The panel recommended that the CFPB consider revisions to the disclosures that would minimize the burden on small entities while ensuring that consumers receive important information about mortgage transactions. Consistent with the panel recommendation, the proposal solicits comment on whether the CFPB should use its authorities to remove the disclosures from the integrated forms.

These are just a few examples of the valuable contributions the review panel and small business representatives made to the TILA-RESPA rulemaking, which are discussed in detail in the proposed rule that was published on the Bureau's website on July 9. While I cannot go into the

details of the servicing and mortgage loan origination proposals today, I can say that the feedback we received in those panels has helped us to think significantly about the basic premises of proposals under consideration and about alternatives and accommodations for small businesses. In short, this is not a "check the box" kind of exercise but rather a vitally important source of information as we carry out the mandates that Congress has imposed.

In closing, I want to note that implementation of section 1100G has been a learning process. We have convened our first panels at a time when the Bureau is both standing itself up and working under tight statutory deadlines to implement extensive new protections that Congress enacted to fundamentally reform the mortgage market. As you know, that market is critical to the nation's broader economy, and we must issue regulations to provide certainty to both financial services providers and protections to consumers.

In light of these time pressures, we have worked very hard to develop an inclusive process that will allow us to consider fully the effects of proposed regulations on small businesses, as well as meet the statutory deadlines. We have consulted extensively with the SBA and OMB in this effort, as well as with the Environmental Protection Agency and the Occupational Health and Safety Administration, which are the other two agencies that are required to hold small business review panels. We have also consulted with trade associations and other stakeholders, particularly to recruit small entity representatives.

Our procedures have already evolved over the course of the first three panels, and will continue to evolve, based on lessons learned from each rulemaking.

Mr. Chairman, thank you for the opportunity to testify on this important topic. I look forward to continuing to work with you and the Committee, and I will be happy to take your questions.

About Rich Cordray

Richard Cordray serves as the first Director of the Consumer Financial Protection Bureau. He previously led the Bureau's Enforcement Division.

Prior to joining the Bureau, Mr. Cordray served on the front lines of consumer protection as Ohio's Attorney General. Mr. Cordray recovered more than \$2 billion for Ohio's retirees, investors, and business owners and took major steps to help protect its consumers from fraudulent foreclosures and financial predators. In 2010, his office responded to a record number of consumer complaints, but Mr. Cordray went further and opened that process for the first time to small businesses and non-profit organizations to ensure protections for even more Ohioans. To recognize his work on behalf of consumers as Attorney General, the Better Business Bureau presented Mr. Cordray with an award for promoting an ethical marketplace.

Mr. Cordray also served as Ohio Treasurer and Franklin County Treasurer, two elected positions in which he led state and county banking, investment, debt, and financing activities. As Ohio Treasurer, he resurrected a defunct economic development program that provides low-interest loan assistance to small businesses to create jobs, re-launched the original concept as GrowNOW, and pumped hundreds of millions of dollars into access for credit to small businesses. Mr. Cordray simultaneously created a Bankers Advisory Council to share ideas about the program with community bankers across Ohio.

Earlier in his career, Mr. Cordray was an adjunct professor at the Ohio State University College of Law, served as a State Representative for the 33rd Ohio House District, was the first Solicitor General in Ohio's history, and was a sole practitioner and Of Counsel to Kirkland & Ellis. Mr. Cordray has argued seven cases before the United States Supreme Court, including by special appointment of both the Clinton and Bush Justice Departments. He is a graduate of Michigan State University, Oxford University, and the University of Chicago Law School. Mr. Cordray was Editor-in-Chief of the University of Chicago Law Review and later clerked for U.S. Supreme Court Justices Byron White and Anthony Kennedy.

Mr. Cordray lives in Grove City, Ohio with his wife Peggy – a Professor at Capital University Law School in Columbus – and twin children Danny and Holly.