

BCFP Director - A Job Description

August 31, 2018 | [Michael A. Benoit](#)

The Senate recently held a hearing for Kathleen Kraninger, the White House's nominee to be the new director of the Bureau of Consumer Financial Protection. For someone as unknown as she is in the financial services community, the consensus seems to be that she held her own in the hearing and looks to be headed towards confirmation.

Other than her lack of financial services policy experience (which is, arguably, not a requirement for the job), objections from those opposed to her nomination tended to focus on unrelated policy concerns about her tenure with the Office of Management and Budget. That's a bit like focusing an interview of a candidate to be a ship's captain on whether he or she had ever been involved in the whaling industry - possibly illegal and probably distasteful to many, but in neither case relevant to his or her ability to operate the vessel competently.

As reported by the Consumer Bankers Association, Kraninger's opening statement at the hearing described four principles to which her leadership would aspire to adhere:

1. Fairness and transparency for consumers and the market, as well as the use of cost-benefit analysis for proposed regulations and rules;
2. Work closely with other financial regulators;
3. Protect the sensitive information the Bureau possesses, and limit data collection to just that required by law; and
4. Accountability to the American people.

In my view, these principles are wholly unobjectionable. However, they got me thinking about the focus I would like to see a BCFP director place on the mission, both as industry counsel and as a consumer (and yes, I am fully capable of wearing both hats with integrity).

Balance

The financial services industry is one of the most highly regulated in our country, and for good reason. Regulation seeks to protect the financial health and well-being of our financial institutions and the assets consumers and businesses entrust to their care, as well as to ensure the products and services offered to the public meet the needs of their users while mitigating the risks of default.

If the past 25 years have taught me anything, it is that perfect regulatory compliance is both

aspirational and impossible and that compliance lapses range from unintentional and immaterial to willful and egregious. My experience has been that most financial services providers want to operate within the law, if for no other reason than it is good business. Providers need customers, and customers need providers; a provider that doesn't do right by its customers won't see the repeat business that drives success.

The sheer volume of regulation all but ensures that compliance lapses will occur. However, not all are nefarious. Many unintentional lapses don't require a sanction for effective repair; some merely require a nudge, while others require a sledge hammer. The BCFP director should have the wisdom to see the difference.

Actual Harm

Many institutions have complained that BCFP enforcement seems to be a fishing expedition looking for something to catch, as opposed to targeting compliance breakdowns for which there is sufficient evidence to undertake an investigation. The cost of an investigation is significant for financial services providers, and their customers ultimately pay for it. Therefore, investigations should be commenced based on evidence that a violation has occurred that was unavoidable by consumers, is significant in scope, and has resulted in quantifiable and compensable consumer harm.

As consumers, we often make rational decisions to incur some costs (i.e., harm) that we can avoid because the benefit of the outcome exceeds the cost. For example, I may choose to pay a premium for a plane ticket in order to be present at an unexpected important meeting or family event. I may choose to pay an extra five cents per gallon for gas at the station I drive past rather than the one that is a mile out of my way. I may choose to buy all my groceries at a more expensive store because it has the one item I need, and I have limited time.

Am I "harmed" by these choices? Arguably yes because I'm spending more money than I "need" to spend. Is the "harm" compensable? Yes, if one were to look at it through a lens focused solely on cost. But the reality is that I paid exactly what these things were worth to me, so how am I really harmed? The BCFP should focus its efforts on unavoidable, consequential, and compensable harm.

Apolitical

In today's political world, facts seem to be flexible. The regulatory world, however, should suffer no such illusions, and no government agency should articulate factual data with a political spin. The BCFP's press office has a history of hyperbole and generalization more appropriate of the Politburo than the United States government, which is both unfair to industry and misleading to consumers. Ironic from an agency charged with preventing deception and misrepresentation, no? As a consumer, I want to know the truth as it is - just the facts, ma'am - not as the agency might like it to be, i.e., a little more PBS NewsHour, a little less Fox News and MSNBC.

The BCFP is a creature of politics, to be sure. But its mission to protect consumers is not a Republican or Democrat exercise. The law is the law, the facts are the facts, and, if we stick to that, both industry and consumers will be better served.

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

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