The New York Times

October 26, 2010

Adviser to Consumer Agency Had Role in Lending

By EDWARD WYATT

WASHINGTON — A senior adviser to Elizabeth Warren, hired to help start the Consumer Financial Protection Bureau, is an investor in and, until recently, served as a director of a company that helps to arrange low-documentation loans for consumers with often-spotty credit histories.

Rajeev V. Date, a former banker who was hired this month as a senior adviser to Ms. Warren, was an active participant in the debate over the Dodd-Frank Act, the financial regulation bill that created the consumer bureau. During that time, he also served as a director of Prosper Marketplace Inc., a so-called peer-to-peer lender that operates an online market to match consumers seeking loans with lenders. In its first four years of operation, more than 25 percent of the loans it helped arrange went into default, according to the company's financial statements.

Although news reports about the Dodd-Frank debate widely quoted Mr. Date as the leader of a nonpartisan policy institute and a former banking executive, it was rarely reported that Mr. Date (pronounced Dah-Tay) was, at the same time, also being compensated by Prosper Marketplace, which sought to influence the outcome of some parts of the financial regulation law.

The company had hired a prominent lobbyist in Washington during the Dodd-Frank debate, after being penalized by the Securities and Exchange Commission and multiple state securities regulators.

There is no evidence that Mr. Date has violated any ethics or disclosure rules; a Treasury Department official said Mr. Date resigned from the Prosper Marketplace board before joining the bureau and, because he is still a shareholder of Prosper Marketplace, he will recuse himself from working on any issues related to peer-to-peer lending.

But his background illustrates the potential conflicts of interest that can arise as the Consumer Financial Protection Bureau, a centerpiece of the Dodd-Frank law, assembles its top staff members — some with industry expertise — and grows from an idea to a $500 million agency expected to employ more than 1,000 people.

Mr. Date is not the only official at the new agency whose background in the financial industry has attracted attention. Ms. Warren, an assistant to the president and a special adviser to the Treasury secretary, Timothy F. Geithner, disclosed in government filings that she earned more than $100,000 over the last two years for consulting work on bankruptcy law and for providing expert-witness research in a class-action lawsuit involving the credit card businesses of major United States banks. The disclosure was first reported by Bloomberg News.

Officials at the consumer bureau said it was unrealistic to expect that people hired to set up and run the agency would be free of links to the companies it regulates.

“The C.F.P.B. will be stronger and more effective if people who have industry and consumer advocacy experience help shape it, and it’s hard to imagine cutting off that expertise,” Peter Jackson, an agency spokesman, said in a statement. “Treasury has strong ethics rules to prevent conflicts of interest and to ensure that officials’ personal finances are publicly disclosed.”

But the bureau, whose mission is to protect consumers against exploitation by the sellers of financial products, including mortgages, credit cards, consumer banking, payday loans and related services, will have to closely police — and publicly air — those relationships as it rapidly grows, said Mark A. Calabria, director of financial regulation studies at the Cato Institute.

“The only people who they are going to have running this thing are from the banking industry or from the consumer advocacy world,” Mr. Calabria said in an interview. “It would be very difficult to find anybody on either side of the aisle on this issue who doesn’t have a financial interest. What’s important is that those conflicts get aired.”

Mr. Date most recently served as chairman and executive director of the Cambridge Winter Center for Financial Institutions Policy, a Washington nonprofit research group that was active in the Dodd-Frank debate. He previously worked as a managing director at Deutsche Bank and as a senior vice president at Capital One, the credit card company.

He became a Prosper Marketplace director in January 2009, and that year received stock-option awards valued at $114,322, according to company filings. On April 15, 2010, Mr. Date was one of six investors in a $14.7 million private placement of Prosper stock.

Prosper Marketplace, based in San Francisco, matches borrowers and lenders and charges both parties fees related to the loans. The S.E.C. imposed a cease-and-desist order on the company in November 2008, before Mr. Date joined the board, but the company has continued to settle cases with state regulators over the last two years.

While Mr. Date was on the board of the company, Prosper took an interest in the Dodd-Frank debate. It hired the well-connected Washington lobbyist Tony Podesta to try to shape the legislation so that peer-to-peer lenders like Prosper would be regulated as banks, and no longer under the purview of the S.E.C., which has maintained that the company's packaging and sales of loans to investors constituted a securities offering.

The effort was unsuccessful; the S.E.C. still regulates the business though parts of it will also most likely fall under the new consumer bureau.

While the new agency already has at least 54 employees, neither it nor the Treasury Department has revealed many of the names of the staff. Among the prominent hires is Patricia A. McCoy, a law professor and director of the Insurance Law Center at the University of Connecticut, who was also active in the debate over the Dodd-Frank Act. An agency official said Ms. McCoy will work part time until joining full-time after the first of the year. Ms. McCoy had testified before Congress about consumer finance issues.

Most members of the fledgling agency's current staff have come from other agencies. They include Dan Geldon, a senior adviser to Ms. Warren, who worked for her at the Congressional Oversight Panel, which examined the government's Troubled Asset Relief Program that bailed out banks, insurance and auto makers; Nani Coloretti, a deputy assistant secretary at Treasury;

Timothy R. Burniston, a senior associate director for the Federal Reserve's consumer affairs division; Peggy L. Twohig, director of the office of consumer protection at Treasury; and Alice Hrdy and Lucy Morris from the Federal Trade Commission's consumer protection division.