Consumer Financial Protection Bureau/Dodd-Frank Act Update:

On January 4, 2012, President Obama recess appointed Cordray to lead the CFPB.

<u>December 8: U.S. Senate Blocks the Confirmation of Richard Cordray For CFPB Director Spot</u>

In a partisan vote of 53 to 45, the U.S. Senate blocked the confirmation of Richard Cordray, President Obama's nominee to head the Consumer Financial Protection Bureau (CFPB). All 45 no votes were from Republican Senators who disagree with the underlying legislation of Dodd-Frank and how the CFPB is formulated. (This was a cloture vote to end debate on the nomination/prevent a filibuster, thus 60 votes were required to stop debate to allow the nomination vote to proceed.)

Republican Senator Scott Brown, who faces an election challenge from Elizabeth Warren, the Harvard Law Professor who was tasked with setting up the Bureau, and then bypassed to run it, voted for Cordray, and Republican Senator Olympia Snowe of Maine voted "present." Otherwise, it was a party line vote that leaves the fledgling new agency without a head, and unable to undertake large swaths of its mandate to protect consumers.

<u>October 10: Senate Banking Committee Approves Cordray For CFPB Director Spot</u>

On Thursday, October 6, the Senate Banking Committee approved Richard Cordray in a 12 to 10 <u>party-line</u> vote to be the first director of the Consumer Financial Protection Bureau (CFPB).

The next step is for the entire Senate to vote on Cordray's nomination. Cordray needs 60 votes in the Senate for confirmation to overcome a filibuster threat. Since May, however, <u>44 Republicans Senators</u> have vowed not to approve anyone for the CFPB director spot until major structural, and damaging, changes are made to the Bureau.

Created as part of the Dodd-Frank financial reform act, the Bureau <u>is tasked</u> with making financial products and services more understandable and favorable to consumers. But until it has a director in place, the Bureau, which officially launched on July 21, 2011, cannot exercise the full extent of its consumer protection powers, including writing new rules banning abusive financial practices and regulating non-banks such as mortgage servicers.

<u>October 2: Senate Banking Committee Expected to Hold Vote on Cordray's Nomination for CFPB Director on October 6</u>

On September 6, the Senate Banking Committee held a confirmation hearing on Richard Cordray, Obama's nominee to be the first director of the Consumer Financial Protection Bureau (CFPB). <u>Now it is expected</u> that the Committee will vote on Cordray's nomination this week on October 6. This date, however, is not yet finalized.

Senate Republicans have vowed to block Cordray's nomination until the Obama administration makes significant changes to the Bureau, including subjecting it to the congressional appropriations process, *replacing its unitary director with a five-member commission, and giving the Financial Stability Oversight Council more power than it already has to override any of the Bureau's proposed regulations.*

However, because Democrats hold the majority in the Senate Banking Committee, Cordray [will likely receive] enough votes to put his nomination on the Senate floor.

September 9: Senate Banking Committee Holds Hearing on CFPB Director Nominee, Richard Cordray

On Tuesday, September 6, the Senate Banking Committee held a hearing on Richard Cordray, Obama's nominee for the head of the new Consumer Financial Protection Bureau (CFPB).

In his opening statement before the Committee, Cordray, a former Ohio attorney general, described his personal and professional background, explained what attracted him to consumer financial issues and the steps he has taken to develop his managerial skills. Cordray explained that to accomplish one of the Bureau's central mandates, enforcing consumer protection laws, the CFPB planned to use litigation "judiciously." He also shared that the CFPB will work to "streamline regulations and disclosures," and highlighted the Bureau's present efforts to consolidate the current mortgage disclosure forms into a single, understandable two-page document through its "Know Before You Owe" project.

The rest of the hearing, however, was less about Cordray and his ability to run the CFPB and more on the structure of the new agency. Senator Richard Shelby (R-AL.) only mentioned Cordray's name once in his opening statement and focused mainly on the fact that no efforts had been made "to improve the accountability of the Bureau." As it is structured now, the Bureau's director has to testify before Congress twice a year and for these hearings, the Bureau must submit reports to Congress an explanation of its budget, a list of its implemented rules, and a list of enforcement actions it has initiated. Also, the Financial Stability Oversight Counsel can veto any of the Bureau's proposed regulations by a two-thirds vote and unlike other federal regulators, the CFPB has a capped budget.

Despite Cordray's assurances that the Bureau would act "judiciously," and regularly consult Congress and other banking agencies as required by the Dodd-Frank Act, the Committee's Senate Republicans remained steadfast to their earlier pledge to not confirm anyone to be the director of the CFPB until it has undergone significant structural changes. Subjecting the Bureau to the Congressional appropriations process and having a five-member commission opposed to a single director run the Bureau are among the changes demanded. If implemented, these changes would likely expose the Bureau to partisan politics and a slow and inefficient decision-making process.

Without a director, the CFPB cannot exercise several of its principal powers, including writing new rules or regulating non-bank entities such as mortgage servicers.

The date for the Committee's vote on Cordray's confirmation has not yet been set.

August 22: Agreement Entered With the FTC and Rules and Reports Issued in the CFPB's First Month

On July 28, the Consumer Financial Protection Bureau (CFPB) issued four interim final rules concerning adjudication proceedings, civil investigations, procedures for the public on acquiring information from *the CFPB under the Freedom of Information Act and the Privacy Act of 1974, and procedures for state officials on notifying the CFPB of actions and proceedings undertaken to enforce the Consumer Financial Protection Act. The CFPB will be accepting public comment on these interim rules until September 26, 2011.*

The CFPB has also entered into an agreement with the Federal Trade Commission (FTC) to permit the CFPB to access consumer complaints within the FTC's Consumer Sentinel database. As mandated by the Dodd-Frank Act, the CFPB will also share consumer complaint information it receives with the Sentinel database.

The FTC's Consumer Sentinel is a database of complaints collected from several government and non-government entities. According to the CFPB, many of the complaints concern financial matters, such as credit reports and debt collection. Several state Attorneys General offices and the U.S. Postal Inspection Service are among the government entities that already contribute to the database and the Better Business Bureau, Xerox Corporation, and Publishing Clearing House are among the non-government entities. Only law enforcement agencies can access the FTC's Consumer Sentinel complaint database.

Additionally, the FTC's newly issued rule regarding deceptive mortgage advertising goes into effect on August 19. The rule prohibits misleading information about consumer mortgages in advertisements and other commercial communication. The FTC rule lists 19 examples of prohibited material, including misrepresentations about "the existence, nature, or amount of fees or costs to the consumer associated with the mortgage," and "the terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage." This rule will apply to all entities within the FTC's jurisdiction that advertise mortgages, including mortgage lenders, brokers and servicers, real estate agents and brokers, advertising agencies, home builders, lead generators, and rate aggregators. The rule will not, however, apply to banks, thrifts, credit unions, or other entities outside the FTC's jurisdiction. The CFPB will be able to bring actions to enforce this rule and on July 21, the FTC transferred its rulemaking authority under this rule and the Fair Debt Collection Practices Act (FDCPA), the 2009 Omnibus Appropriations Act, and the Fair Credit Reporting Act (FCRA) to the CFPB. On July 20, the FTC released a staff report that gave a summary of its FCRA interpretations. In the report, the FTC staff said it "anticipates that this report…will be of aid to the CFPB as it takes over many of the interpretive functions under the FCRA."

Moreover, the CFPB has issued three reports that the Dodd-Frank Act requires the Bureau to submit to Congress. As discussed in an earlier post titled, "The Consumer Financial Protection Bureau is Up and Running," one report investigates the difference between the credit scores consumers purchase and the scores lenders use. The next report concerns remittance transfers. Remittance transfers are when people transfer money electronically to a recipient abroad. Foreign workers in the United States often use remittance transfers to send money to their family and friends still living in their home country. The report gives recommendations for increasing "transparency and disclosure of exchange rate information for consumers making remittance transfers," and discusses the possibility of using remittance transfer data in credit scoring. The last report details three plans the CFPB has for building, training, and retaining a qualified staff.

Continued...

Update continued

08/03/11

Director Confirmation Delayed, Yet the CFPB Is Still Helping Consumers

The confirmation hearing for Richard Cordray to become the director of the Consumer Financial Protection Bureau (CFPB) has been postponed until September. The hearing was originally scheduled for this Thursday, August 4 (see post below), but now the Senate Banking Committee's calendar lists September 6 at 2 p.m. EST as the new date and time for the hearing. Senators leaving early for their August recess was the reason for the delay.

Even though the CFPB is without a confirmed director, it has accomplished much since its launch. On its first official day, July 21, the CFPB began what it deems its "largest" mandate—supervision. Even though the Bureau cannot examine nonbanks without a director, it can oversee depository institutions with more than $10 billion in assets. To kick off this supervision, the CFPB sent letters explaining how it will conduct its "supervisory responsibilities" to the CEOs of over 170 depository institutions. On its blog, the Bureau explained that its main goal with its supervision program is to make sure that financial institutions are complying with federal consumer protection laws so as to create "fair, transparent, and competitive" consumer financial markets.

On July 21, the Bureau also issued on interim rule on alternative mortgages. Because of a regulatory gap created by the Dodd-Frank Act's amendments to the Alternative Mortgage Transaction Parity Act (AMPTA), this rule was needed to allow state lenders to continue relying on AMPTA to make alternative mortgages.

Additionally, consumers can now file credit card complaints through the CFPB's website. By clicking on a bright orange box reading, "submit a credit card complaint," on the site's home page, consumers are directed to a form where they are asked to provide a short explanation of "what happened," their "desired resolution," and some personal information. The CFPB then forwards the complaints to the respective credit card company and consumers can follow the status of their complaints by using a tracking number the CFPB provides them. Moreover, on July

26, the CFPB posted on its blog a two-page advice sheet for consumers on how to acquire and maintain a good credit score.

The CFPB also set-up a hotline for people who need help paying their mortgages. By calling 1(855) 411-CFPB (2372), consumers will be connected to a housing counselor who will assist them in understanding their mortgage options and communicating with their mortgage company to avoid foreclosure.

08/01/11

Senate Banking Committee to Hold Hearing on CFPB Director Nominee This Week

On August 4 at 2 p.m. EST, the Senate Banking Committee will hold a hearing on President Obama's nominee, Richard Cordray, to be the director of the Consumer Financial Protection Bureau (CFPB).

Cordray is a former Ohio attorney general who has been leading the Bureau's enforcement division. Senate Republicans have vowed to block Cordray's appointment until the Bureau has major structural changes. The Obama administration, however, has said that it will veto any legislation that changes the Bureau's structure.

Until a director is appointed, the Bureau's powers are constrained. For example, it cannot regulate any non-banks, such as payday lenders and mortgage brokers. The Bureau also cannot exercise any new power created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, including identifying and prohibiting products and acts that are "unfair, deceptive, or abusive."

The Bureau can, however, oversee banks with more than $10 billion in assets, a supervision program it launched on July 21. The Bureau has also assumed the power to enforce and create rules under 18 consumer financial laws. Before July 21, the implementation of these laws was spread among seven different federal regulators, which resulted in inconsistent if not seldom enforcement.

While Cordray awaits Senate appointment, Raj Date, a former banker who has been serving as the Bureau's Associate Director of Research, Markets, and Regulations, will assume Elizabeth Warren's role as Special Advisor to Treasury Secretary Timothy Geithner on the CFPB. Elizabeth Warren officially resigned from this position on August 1.

07/21/11

The Consumer Financial Protection Bureau is Up and Running

Today, July 21, the Consumer Financial Protection Bureau (CFPB) officially launches. The CFPB released a report earlier in the week to outline its progress since the passage of the Dodd-Frank Wall Street

Reform and Consumer Protection Act last year.

The report, "Building the CFPB," begins with a letter from Professor Elizabeth Warren, Special Advisor to the Secretary of the Treasury on the CFPB, describing the work this past year to build a "strong foundation" for the Bureau before it officially assumed its role as "a cop on the beat."

Professor Warren states that one of the Bureau's principal goals is to create "a level playing field where both parties to the transaction – the customer and the lender – can understand the terms of the deal, where the price and the risk of products are made clear, and where direct comparisons can be made from one product to another."

The report then proceeds to summarize the Bureau's statutory objectives, its progress thus far in increasing transparency in financial products such as mortgages and credit cards, and how it has already reached out to several sectors, including community banks, service members, and consumer advocates.

The report outlines the Bureau's structure and provides a short description of its six primary divisions and one-line biographies of its top officers. This section additionally details the Bureau's budget and funding, providing a break-down of how it has allocated funds requested from the Federal Reserve during its first eight months, as well as how it plans to spend its budget during the 2012 fiscal year. The report ends with the CFPB's commitment to being an accountable government agency.

The CFPB also recently released a report about credit reporting. This report details how the credit scores consumer rely on are often different from the scores that are provided to creditors and how this practice can work against consumers.

07/18/11

President Obama Will Nominate Richard Cordray, Not Elizabeth Warren, As CFPB Director

President Obama has chosen not to nominate Elizabeth Warren to be the first director of the Consumer Financial Protection Bureau and instead, the White House announced that on Monday, July 18, President Obama will nominate Richard Cordray to be the Bureau's director.

In a 2007 academic article, Elizabeth Warren, a Harvard law professor, introduced the idea of a federal agency whose main focus would be protecting consumers from complicated financial products and abusive practices relating to such products. President Obama later adopted the idea and it became a reality with the passing of the Dodd-Frank Wall Street Reform and Consumer Protection Act last year, which created the Consumer Financial Protection Bureau.

On September 17, 2010, Obama named Warren as Assistant to the President and Special Advisor to Treasury Secretary Timothy Geithner on the development of the CFPB. This past year, Warren has worked tirelessly to set up the Bureau. She has hired a top-rate staff, including Cordray, a former Ohio attorney general, who currently leads the CFPB's enforcement division. She has overseen the Bureau as it about to begin several of its mandates, including examining banks with more than $10 billion in assets. The Bureau has also developed a simple mortgage disclosure form to replace the two complicated forms mortgage applicants currently receive. Warren has vigorously fought for consumer protection and defended the CFPB to its critics, while contemporaneously winning over top executives at several large banks.

Over the past few months, many consumer advocacy organizations have urged President Obama to nominate Warren. After the announcement about Cordray, Republicans said they still intend to oppose any nominee for CFPB director spot. In a May 2 letter to Obama, 44 Republican senators stated they would not confirm anyone to be the CFPB director unless certain structural changes were made to the Bureau, including replacing the director with a five-member commission.

06/30/11

Federal Reserve Votes On Higher Debit Card Fee Cap Than Originally Proposed

On Wednesday, June 29, the Federal Reserve Board voted to cap the fees banks can charge merchants for debit card swipes to 21 cents per transaction. While this amount is less than half the current average of 44 cents, it is substantially more than the 7 to 12 cents per transaction that the Federal Reserve proposed in December.

Banks also have the option to add 0.05 percent of the transaction amount to the fee and an additional cent can be added if the bank issuing the debit card implements a fraud-prevention program.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, this new limit on debit card swipe fees was to go into effect on July 21 and the Senate recently voted against an amendment that would postpone the implementation of these new debit rules (see this earlier post). The Federal Reserve Board, however, also voted on June 29 to defer the start date for these new limits to Oct. 1.

While, overall, the debit card swipe fee limits are a victory for merchants, the Federal Reserve did the banks a favor by voting for this higher than anticipated cap.

06/23/11

House Appropriations Committee Approves Bill Limiting Funding for the CFPB

On June 16, the House Appropriations Committee's financial services subcommittee approved its 2012 appropriations bill, which would make deleterious changes to the Consumer Financial Protection Bureau's budget. It would bring the CFPB under the appropriations process starting in 2013, and until then the bill will cut the Bureau's funding to $200 million. On Thursday, June 23, the House Appropriations Committee voted to pass this measure cutting the CFPB's funding. The bill is set to be on the House floor during the week of July 11.

Under the Dodd-Frank Act, the CFPB's budget is capped at a percentage of 2009 Federal Reserve spending. Thus, similar to all other banking regulators, the CFPB is currently not subject to the congressional appropriations process. No other banking regulator has a capped budget.

Congress, in passing the Dodd-Frank Act, sought to protect the CFPB's funding source from Congressional interference by having the CFPB's funding come from the Federal Reserve. The CFPB is supposed to be independent of influence peddling and partisan politics.

For the fiscal year 2012, the CFPB's capped budget equals, at maximum, approximately $550 million. Professor Elizabeth Warren, Special Advisor to the Secretary of the Treasury, has indicated that the Bureau plans to use only $329 million of its available funds in 2012.

06/20/11

Limit on Debit Card Fee Delay Voted Down in the Senate June 8th

On Wednesday, June 8th, an amendment that would delay new debit rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act from going into effect failed to get the 60 votes necessary in the Senate.

The rules, which the Federal Reserve will implement on July 21st, will limit the debit card swipe fees that big banks and credit card companies can charge merchants. Currently, banks and card companies, such as Visa and MasterCard, charge merchants an average of 44 cents per transaction, which according to Senator Dick Durbin (D-Ill.), results in these financial institutions collecting over $1.3 billion a month. Despite lower processing costs following from advances in technology, these fees have increased by more than 300 percent since 2001. Giant retailers and small businesses alike have borne these excessive costs. It has resulted in higher charges for consumers. Under the new regulations, the Federal Reserve will cut debit card swipe fees to 7 to 12 cents per transaction.

The implementation of the debit card regulations effectively results in a transfer of profit from large banking institutions (those with more than $10 billion in assets) to America's retailers and their consumers and is a victory for the pro-consumer goals embodied in the Dodd-Frank Act.

Banks have indicated that they will pass alternative fees, such as higher ATM transaction costs, onto consumers to replace the reduced profits. The fact that 54 senators did vote for the delay of these new rules may encourage banks to continue their fight to weaken other provisions of the Dodd-Frank Act, including those provisions regarding the Consumer Financial Protection Bureau.

02/03/11

On February 3, 2011, the CFPB launched its website, to begin a conversation with consumers. Visit it here http://www.consumerfinance.gov/ to give input to the new bureau which is "open for suggestions."

09/21/10

On Friday, September 17, President Obama appointed Elizabeth Warren as a Special Advisor to oversee the establishment of the Consumer Financial Protection Bureau, and Warren enthusiastically accepted. Though this initial appointment – as assistant to the president and special advisor to Treasury Secretary Tim Geithner – does not require Senate confirmation, we urge the President not to back down in his support of Warren simply because of those who have vowed to fight against her appointment as director of the Bureau. The President said that part of Warren's mission will be to "play a pivotal role in helping me determine who the best choice is for director of the bureau." We continue to believe that Warren should be that choice, and hope that her advisory work will make this clear and will result in further endorsement of her for a more permanent role.

08/1/10

President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law on July 21, 2010. The law, as enacted, is a good but incomplete start toward leveling the playing field by empowering consumers in their dealings with banks and other powerful corporate interests.

The Consumer Financial Protection Bureau, though housed within the Federal Reserve, appears to have been granted significant powers, and support for the nomination of Professor Elizabeth Warren to head the Bureau is gaining steam. Treasury Secretary Timothy Geithner, who is running the Bureau until Warren or another candidate is nominated and confirmed, convened a meeting with top government regulators on July 29 to begin planning for its creation and staffing. The approximately $500 million budget is nearly twice that of the Federal Trade Commission, which has a much larger regulatory scope.

The law's enactment is, of course, not the end of the issue. Implementation of the restrictions mandated by Congress will be up to a host of federal agencies, from the newly-created CFPB and Financial Stability Oversight Council to the SEC and the FTC. As FDIC

Chairman Sheila Bair observed, that process of making and enforcing the rules and regulations will have a great impact on whether the law is successful in accomplishing its stated goals. It should come as no surprise that the banks and other corporate stakeholders have begun to draft scores of former government personnel for their lobbying and lawyering army.

We urge all concerned citizens not to lose interest in the reform effort now that the law has been enacted. There are still important regulatory battles to be fought, and the only way to ensure that the voices of consumers are not forgotten is to continue speaking out.

06/23/10

Unfortunately, consumers have already been victimized by political expediency. Rep. Barney Frank has agreed to house the Consumer Financial Protection Agency/Bureau within the Federal Reserve, as proposed in the Senate version of the bill. As noted in our last update, Citizen Works is strongly in favor of an independent agency, and believes that putting the body within the Fed might limit its ability to protect the interests of the public. However, we, like Prof. Elizabeth Warren, remain cautiously optimistic that the agency, wherever housed, will use its authority wisely and resist pressures from Wall Street and corporate America to keep the imbalance of power skewed in their favor.

A compromise was also reached on the issue of interchange fees, which, among other things, would exempt government-issued debit cards and reloadable prepaid debit cards from certain regulations, allow issuers to factor in fraud prevention costs when calculating fees, and clarifying that merchants cannot be prevented from offering discounts for a particular form of payment (e.g., cash).

It was widely reported on June 22 that legislators had agreed to exempt auto dealers from regulation, however, there appears to be some debate as to whether the "compromise" language would actually result in such an exemption. Citizen Works opposes any such exemption for auto dealers; as noted by Alain Sherter at bNet, auto loans are a prime source of consumer fraud, and dealers' claims that they merely facilitate loans by third parties ring hollow.

We urge lawmakers not to give any more ground to the financial lobby and other forces working to weaken the reform bill. In this, the home stretch, citizens should redouble their efforts to let their elected representatives know that this issue is an important one, and one that will remain on their minds come Election Day.

06/01/10

On May 20, 2010, the Senate passed, by a 59-39 vote, a version of the financial reform bill. The bill passed with two Democratic Senators voting against, and four Republicans voting for. And people on both sides of the issue remain unhappy.

There are significant differences between the Senate and house versions of the bill, explained in this chart and this article from the *New York Times*, and this more comprehensive chart from the House Committee on Financial Services. Key among the differences is the placement of the Consumer Financial Protection Bureau within the Federal Reserve, as opposed to the creation of a nominally independent CFPA. As noted in one of our prior updates, Senator Chuck Schumer (D-NY) had introduced an amendment to the Senate bill, which would have established a truly independent Financial Consumers Association. Unfortunately, this amendment failed to come to a vote. Ralph Nader, notes, this failure speaks volumes about the Senate's lack of dedication to its constituents and their interests.

Now begins the process of reconciling the House and Senate versions of the bill. Though lawmakers and the White House have indicated that they believe the process can be accomplished in time to have a final bill on the President's desk by July 4, some observers have noted the challenges that may be presented in reconciling the two bills.

Though the conference process will no doubt require compromise, we urge Congress not to allow the desire merely to get "some law" on the books to compel them to further weaken the protections embodied in the two bills. Rather, the goal should be to compile from the House and Senate versions the strongest, most protective law possible. Even assuming that Congress takes the strongest of the provisions from each of the bills, the resulting law will still be only a first step, albeit a significant one, in leveling the playing field between consumers and the financial industry. Citizen Works urges all consumers to demand that their elected representatives pass a strong financial reform bill.

05/07/10

The financial reform legislation that includes the Consumer Financial Protection Bureau has been generating vigorous debate, both within the Senate, and between Senate Republicans and the Obama administration.

Democrats have been using the SEC's recent allegations of fraud against Goldman Sachs as ammunition in further attempts to convince the Republican Senators that strong regulation is necessary. For their part, the Republicans – all 41 of them – signed a letter on April 16 expressing their opposition to the bill "as currently constructed," based in part on the contention that it "allows for endless taxpayer bailouts of Wall Street and establishes new and unlimited regulatory powers that will stifle small businesses and community banks."

The President has publicly chided Sen. Mitch McConnell (R-KY) for perpetuating the rumor of endless bailouts. Some commentators see cause for optimism, and believe that the Democrats and Republicans are much closer to agreement on a bill that could pass the Senate than the rhetoric would indicate.

Debate began in earnest in the Senate on April 29, after Republicans had blocked three prior votes to begin official consideration of the bill. According to Sen. Richard Shelby (R-TN), Sen. Chris Dodd (D-CT) assured Shelby that steps will be taken to address the alleged inclusion in the bill of provisions for future bailouts of financial firms.

Senator Schumer has introduced an amendment, Amendment #3772 to S. 3217, to provide for the establishment of an independent Financial Consumers Association. Citizen Works supports the creation of a Financial Consumers Association, as do multiple consumer advocacy groups, including Consumers Union, Public Citizen, Consumer Federation of America, the National Consumer Law Center, USPIRG, and the National Association of Consumer Advocates.

Show your support by calling your Senators today to urge the passage of this important addition to the Consumer Financial Protection Bureau. For more information, visit csrl.org or wallstreetwatch.org.

03/16/10

In the last month, Senators Dodd (D-CT) and Corker (R-TN) spent some quality time together to hash out a bill that might garner enough support in Congress to become law. With every negotiation session, however, the proposal veered further off course from Dodd's original strong support for meaningful reform, which included an independent Consumer Financial Protection Agency with real regulatory powers.

After talks collapsed, on March 15, 2010, Senator Dodd unveiled his version (PDF) of the Senate financial reform bill. Unfortunately, the bill provides for a Bureau of Consumer Financial Protection to be housed within the Federal Reserve, rather than the creation of a truly independent consumer financial agency.

While some commentators believe that the Bureau is not substantially different in terms of its independence than the CFPA that was incorporated into the House bill passed in December, others point out that housing it within the Fed, the agency whose failures have contributed to the financial crisis, is at minimum a symbolic defeat.

The proposed bill lays out the blueprints for the new body in Title X. The summary (PDF) put together by the banking committee refers to the Bureau as an "independent watchdog," and notes that the Bureau will be headed up by an individual appointed by the President and confirmed by the Senate. It stresses the Bureau's authority to promulgate and enforce regulations with regard to banks and non-bank financial entities with assets exceeding $10 billion, and the establishment of a consumer hotline, substantially as set forth in the House bill.

Dodd's Title X appears to be largely in line with Title IV of the House bill. The rulemaking and enforcement powers of the Bureau appear to be substantially similar to those that would have been entrusted to the CFPA under the House bill. Several of the deficiencies identified by some commentators, such as the inability to declare a practice unlawful unless it was likely to cause substantial injury to consumers, are present in the House bill as well.

Senator Dodd did not live up to his initial promise to fight for a truly independent and powerful agency to protect consumers. The draft bill should not be further weakened in an effort to attract Republican votes; should the Senate pass a version of the bill, the House/Senate conference process should result in the enactment of the strongest law possible.

02/16/10

In December 2009, the House passed the Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173), including the proposed Consumer Financial Protection Agency ("CFPA"). The "financial reform" legislation contains the blueprint for the establishment of a CFPA as Title IV, the Consumer Financial Protection Agency Act ("CFPA Act" or the "Act"). The Congressional Research Service summarized the CFPA Act here.

While not as comprehensive in its consumer protection functions as we might have hoped (and certainly not a replacement for the independent, citizen-managed Consumer Financial Association Citizen Works urges Congress to support), the Act is important.

The stated objectives of the CFPA include ensuring that, with respect to consumer financial products or services: consumers "have and can use the information they need to make responsible decisions"; that they are protected from abuse, deception, etc.; and that markets for these products and services are fair and efficient. It provides for the establishment of an advisory board (the Consumer Financial Protection Oversight Board) made up of the heads of certain other regulatory agencies, including the FDIC and FTC, and also a "Consumer Advisory Board" made up of "experts" in relevant disciplines. The CFPA itself is to be organized into divisions—Research, Community Affairs, Consumer Complaints, and Consumer Financial Education—and must establish a toll-free number for inquiries by consumers, including the ability to transfer calls to a different agency where appropriate.

The CFPA would be vested with authority to conduct examinations of entities subject to the Act to ensure compliance, and to take over supervision of certain entities where another supervisory agency is found not to have been exercising that authority appropriately. The agency would also have the authority to prohibit or limit the use of mandatory arbitration provisions in any covered transactions, a significant power that we support. However, it would not have the power to limit usurious rates, the elimination of which has been problematic for consumers and their mounting debt (credit cards, payday loans, mortgages, etc.) since 1978.

Prohibition of “unfair, deceptive, or abusive acts or practices” would be the CFPA’s main function. It would be empowered to mandate meaningful disclosures in connection with the sale or marketing of financial products and to otherwise regulate sales practices, including the imposition of particular duties on those dealing with consumers. The Act would also require that information about financial transactions be made electronically available to consumers. International money transfers are addressed in great detail, both in terms of required disclosures and consumer right to cancel transactions within a specified period of time after receiving the disclosures. The Act also calls for the establishment of independence requirements for residential mortgage loan appraisals. The CFPA would have broad investigatory and enforcement powers, including the ability to issues subpoenas and Civil Investigative Demands and conduct administrative proceedings in place of, or ancillary to, federal court litigation. Violations of the Act could result in civil penalties of up to $1 million per day.

The U.S. Chamber of Commerce has engaged in a fear-mongering campaign, well documented on its website, www.stopthecfpa.com, to oppose the establishment of the CFPA. Opposition has been gaining traction in the Senate. The main thrust of the campaign is that the CFPA is “big government,” and would duplicate the efforts of other regulators, rather than consolidating authority currently exercised by multiple agencies and refocusing this authority to have as its primary function the protection of consumers—including consumers of credit, such as small businesses.

The Chamber argues that passage of the Act would have a devastating impact on small businesses, by, among other things, cutting off their access to credit. This article by Gary Weiss calls out the Chamber for purporting to represent the interests of small businesses, and notes that certain small business organizations have been organizing a sort of counter-resistance. Senator Chris Dodd (D-CT), Chair of the Senate Banking Committee, who had initially been a strong proponent of the CFPA in its most robust, independent form, announced on February 11, 2010 that he will be “negotiating” with Senator Bob Corker (R-TN) to achieve a compromise solution. This agreement to go back to the drawing board may be the death knell for the CFPA.

This would be a mistake, as Harvard professor Elizabeth Warren spells out in her February 9, 2010 *Wall Street Journal* opinion piece:

"Banks and brokers have sold deceptive mortgages for more than a decade. Financial wizards made billions by packaging and repackaging those loans into securities. And federal regulators played the role of lookout at a bank robbery, holding back anyone who tried to stop the massive looting from middle-class families. When they weren't selling deceptive mortgages, Wall Street invented new credit card tricks and clever overdraft fees….***

Within the thousands of pages of print in the "Restoring American Financial Stability Act" now before the Senate, the consumer agency is the only proposal that would help families directly. Even those most concerned about the role of personal responsibility concede that it is hard for families to make smart decisions and to compare products when the paperwork on mortgages, credit cards and even checking accounts has morphed into reams of incomprehensible legalese."

Elizabeth Warren is right. Senator Dodd and his colleagues should resist pressure to scrap the proposal to create an agency that will be dedicated to meaningful protection for consumers. Indeed, Dodd should be championing this provision and consumers as he retires from the Senate, rather than bowing to nervous big business interests.
