Strengthening Consumer Protection

In failing to check widespread abuses in subprime mortgage lending, lax consumer protections contributed significantly to the current financial crisis. The financial crisis, in turn, revealed inadequacies in consumer and investor protection across a wide range of financial products and markets. Congress, the Administration, and the regulators have already taken action to crack down on subprime lending and abuses in the credit card industry. These steps are important – but they're not enough. Financial products are complex, and it is often difficult for even the most financially astute consumers to recognize the risks financial products can present. To help ensure that consumers have the protection and the representation they deserve, the Administration's plan will establish a Consumer Financial Protection Agency. The CFPA will be charged with protecting consumers in credit, savings, and payment markets, and will be guided in this mission by five fundamental principles: transparency, simplicity, fairness, accountability, and access.

A Strong, Independent Agency With Full Authority To Protect Consumers

Create a Consumer Financial Protection Agency: As part of the President's plan, the new agency will have broad authority to protect consumers of credit, savings, payment and other consumer financial products and services, and to regulate all providers of such products and services. The Agency will be responsible for:

- promoting concise and clear information for consumers; and protecting consumers from unfair and deceptive practices
- promoting fair, efficient, and innovative financial services markets for consumers
- improving access to financial services

Give Consumer Financial Protection Agency Full Authority to Enforce Proper Protections: The Agency will be structured to be independent and accountable; with an empirical approach to regulation and a stable source of funding. CFPA will have authority to:

- write rules across bank and nonbank firms for a level playing field and higher standards
- supervise and examine institutions for compliance
- enforce compliance through orders, fines, and penalties
- write rules that serve as a floor, not a ceiling with respect to state laws, and states will be empowered to enforce these strong rules

Key Principles For Action

Transparency:

- Mandate a new proactive approach to disclosure.
- Require that all disclosures and other communications with consumers be reasonable: balanced in their presentation of benefits, and clear and conspicuous in their identification of costs, penalties, and risks.
- Consumers should have clear disclosure regarding the consequences of their financial decisions

Simplicity:

- Define standards for "plain vanilla" products that are simple and have straightforward pricing.
- Require all providers and intermediaries to offer these products prominently, alongside whatever other lawful products they choose to offer.

- Alternative products will be subject to more scrutiny and violations with respect to alternative products will carry higher penalties.
- In some cases, CFPA would have authority to mandate consumers to "opt out" of standard products before they could be offered other alternatives

Fairness:

- Ban unfair terms and practices or place tailored restrictions on product terms and provider practices, if the benefits outweigh the costs.
- Impose heightened duties of care on financial intermediaries that reflect reasonable consumer expectations.
- Help ensure that compensation practices do not create conflicts of interest between intermediaries and consumers.

Accountability:

- Provide the Agency with accountability as the primary federal financial consumer protection supervisor.

Access:

- Enforce fair lending laws and the Community Reinvestment Act.
- Seek to ensure that underserved consumers and communities have access to prudent financial services, lending, and investment.

<u>For Example, The CFPA Would Have Authority To Reform Our Mortgage Laws</u>

Require Transparency:

- Ensure that consumers receive a single, simple, integrated federal mortgage disclosure.
- Require communications with consumers to adequately present risks and benefits of a mortgage product.
- Require timely collection and publication of data on how loans perform, so the agency can quickly learn what steps to take to protect consumers.

Promote Simple Products To Make Consumer Choices Easier:

- Require firms to offer a "plain vanilla" mortgage product with straightforward terms, while preserving consumer freedom of choice to opt-out for other products, subject to stringent protections.

Demand Fairness:

- Require mortgage brokers to owe a duty of best execution among available mortgage loans to avoid conflicts of interest between themselves and the homeowners, as well as a duty to determine the mortgages they sell are affordable to borrowers.
- Ban unfair practices such as "yield spread premiums" – side payments from lenders that encourage mortgage brokers to push consumers into higher priced loans than they qualify for – and require brokers to be paid over time based on continued loan performance rather than in a lump-sum at closing.
- Restrict or ban prepayment penalties, which can lock borrowers into bad loans.
- Require loan originators or sponsors of securitizations – where loans are bundled and sold to investors – to retain five percent of the credit risk in order to keep skin in the game.

Require Accountability:

- Ensure that banks, nonbanks, and independent mortgage brokers all play by the same rules, and no lender or broker falls between the cracks of supervision or enforcement.

Increase Access:

- Strongly enforce the Community Reinvestment Act and fair lending laws.
- Ensure that underserved consumers and communities have access to prudent financial services, lending and investment.