CENTER FOR RESPONSIBLE LENDING

The Consumer Financial Protection Bureau (CFPB): Purpose & Function

Federal Reserve Bank of Boston

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Susanna Montezemolo

Center for Responsible Lending

susanna.montezemolo@responsiblelending.org

What caused the financial crisis?

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- Dangerous products and practices greatly inflated the housing bubble.
- Wall Street demand for the riskiest, highest-cost loans caused this dangerous lending.
- Federal regulators turned a blind eye to these abuses.
- Overly broad preemption prevented states from acting.

A failure of federal regulation

- Prudential regulators prioritized short-term profitability over consumer protection. In long term, consumer protection and safety and soundness are interdependent.
- OCC preemption doctrine took state regulation out of the picture for federally-regulated financial institutions.
- Enforcement actions were virtually non-existent.

The need for an independent consumer agency

- Federal regulatory failures directly led to enactment of the Consumer Financial Protection Bureau (CFPB) as part of the Dodd-Frank bill.
- Mission entirely consumer-oriented; no conflict with prudential regulation.
- Headed by a single presidentially-appointed director, rather than weaker commission structure.
- Funding independent of appropriations process will create less opportunity for regulated entities to weaken regulations.

Three Areas of Regulatory Work

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- Rulewriting
- Consumer Protection Supervision
- Enforcement

Rulewriting Authority

- Organic authority: Preventing "unfair, deceptive or abusive acts and practices" (UDAAP)
- Transferred statutes (TILA, FCRA, FDCPA, EFTA, RESPA, HMDA – but not CRA)
- Ability to regulate or ban forced arbitration
- Prohibition on setting usury cap
- Rulewriting covers almost every financial entity. Exceptions: Merchants partially exempted. Auto dealer rules mostly written by FTC (CFPB retains authority over auto dealers who keep loans in portfolio).

Rulewriting Process

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- Traditional notice and comment with one more requirement: must convene small business panels to comment before proposing a rule.
- This small business requirement could add 4-6 months for some rules and give some actors (e.g., payday lenders) greater influence over what is proposed.

Examination & Enforcement

- For consumer protection matters, CFPB will have exclusive supervisory authority and full enforcement authority over:
  – Depositories with more than $10B in assets.
  – Specified non-banks: Payday lenders, providers of mortgage-related companies (e.g., mortgage brokers and servicers), private student lenders, larger market participants (to be defined by rule).
  – Additional enforcement by state regulators and state AGs.

Impact on State Laws

- CFPB rules are generally not preemptive. If a state law directly conflicts with CFPB:
  - Weaker state laws are preempted by CFPB
  - Stronger state laws stay in place
- States can enforce CFPB rules toward national banks and thrifts.
- OCC can preempt on a case-by-case basis only if a state law significantly interferes with the business of banking. This case-by-case preemption subject to less deferential judicial review.

CFPB Implementation

- Transfer date: 21 July 2011. Substantive rulemaking authority begins on this date.
- Until then, Treasury has authorities that are immediately effective (e.g., organizational issues, scope issues)
- After transfer date, agency will need to get systems in place and implement approximately 25 rules mandated in Dodd-Frank with statutory timeline.
- As a result, it may be some time before the agency is able to focus on its UDAAP authority.

Impact on Consumers

- No "race to the bottom" in regulation, because everyone subject to same rules.
- Expectation that agency will use organic UDAAP authority to address abusive financial practices
- Greater research focus will lead way to evidence-based rulemaking, which will take place earlier (before all-out crisis)
- Better enforcement of federal rules, including by states
- States able to better protect their residents through new laws