

Dēmos Fact Sheet: **CONSUMER FINANCIAL PROTECTION AGENCY**

Amendment Primer on the Consumer Financial Protection Agency in H.R. 4173

For nearly a decade, Dēmos has conducted research and analysis on the link between high-cost consumer credit, deregulation and widespread economic security among working American families. Dēmos has endorsed the creation of a strong, non-preemptive Consumer Financial Protection Agency (CFPA) as part of H.R. 4173, Wall Street Reform and Consumer Protection Act of 2009. The agency would restore balanced regulation and help prevent another financial crisis. The following is a brief primer on key amendments to the CFPA, being considered this week in the House. All amendment texts can be found at the U.S. House of Representatives Committee on Rules website: http://rules.house.gov/SpecialRules_details.aspx?NewsID=4527.

Amendments That Would Undermine the CFPA:

The **Minnick et al. amendment (#35)** and the **Bachus et al. amendment (#36)** would eliminate the new Consumer Financial Protection Agency from the bill. For good reason, 75 percent of Americans support the creation of a strong CFPA. The weaker proposed Consumer Financial Protection Council of existing regulators would leave enforcement of consumer protection and civil rights laws in the hands of the same existing regulatory bodies that have viewed their primary responsibility as the protection of bank profits, not consumers.

The **Minnick amendment (#33)** would bind the CFPA to narrow definitions of “unfair” and “deceptive” from the FTC’s 1980 and 1983 policy statements. These statements were issued during a period when it was under pressure to weaken its advocacy on behalf of consumers. The amendment also defines the term “abusive” narrowly and inaccurately, as practices that could lead to systemic risk.

The **Marshall amendment (#13)** would explicitly bar any private right of action under any future provisions of the CFPA. The underlying CFPA bill does not include a private right of action. However, given the unfortunate preemption of state consumer protection laws proposed by incorporating the Bean amendment into the Manager’s amendment, a private right of action is necessary to ensure that Americans can protect themselves and their families against illegal practices. The bill should be improved by adding a private right of action in the Senate. The Marshall Amendment could also undermine the important financial service employee whistleblower protections in H.R. 4173.

Amendments and Provisions that Would Strengthen the CFPA:

The **Watt amendment (#17)** would slightly narrow the problematic auto dealer loan loophole in the CFPA. The controversial CFPA loophole that shields loans if they are made by auto dealers—80 percent of an \$850 billion market—will create a race to the bottom in the already consumer-unfriendly auto lending market. While Rep. Watt’s amendment does not completely close the loophole (which could save car buyers \$20 billion annually in dealer loan markups alone), it does ensure that payday lenders and others will not take advantage of the loophole to partner with auto dealers and escape CFPA regulation of their, unrelated financial products. This clarification is unfortunately necessary, given the similarities between payday lenders and auto dealer lenders in predatory targeting of military families and minority communities.

The overall bill, as consolidated in **Rep. Frank’s Manager’s Amendment (#1)**. Beneficial provisions of the Manager’s Amendment include:

- » expanded affordable housing and improvements to HAMP mortgage and foreclosure assistance,
- » integration of the head of the CFPA into the Financial Services Oversight Council and a clarification that the FSOC may not supersede consumer protections,
- » clarification that the CFPA can charge higher assessments on institutions with records of consumer abuses,
- » ensuring that consumers have access to the information credit bureaus sell concerning them,
- » strengthened protections for private student loan borrowers, including closing the for-profit loan loophole and requiring private educational lenders to obtain institutional certification prior to making a loan to students. It

would also require the Consumer Financial Protection Agency and the Department of Education to conduct a study on private education loans and lenders and report to Congress on the compliance of institutions and private educational lenders with these provisions.

Analysis of the CFPA's Role in the Economic Crisis and Recovery

We cannot achieve meaningful financial reform or rebuild our economy without addressing the security of American consumers. In recent years, banks and non-bank lenders alike have derived more and more revenue from tricky financial products with hidden costs and fees. While these consumer abuses created high profits in the short term, the credit crisis has shown that ultimately, the banks' fates are linked to their customers'; unaffordable products for consumers are ultimately unsustainable for the industry as well. Federal bank regulators could have countered the industry's short-term incentives, but the system of regulatory arbitrage encouraged regulators to hew to the directives of their regulated entities. Not only did federal regulators fail to institute basic borrower protections, but in 2004 the OCC began shielding banks from states' consumer protection laws. The proliferation of high-cost loans contributed to the boom and bust of the housing market. As a result of this regulatory failure, millions of families have lost their homes, jobs, and college and retirement savings.

Congress must pass a strong Consumer Financial Protection Agency (CFPA) to ensure a more balanced approach to consumer protection that will help rebuild the foundation of the American economy. Millions more Americans will be able to save and invest in their futures with the money they are not sending to a handful of bank and finance companies each year. This year, American families stand to lose \$39 billion in overdraft fees alone. Credit card companies collected \$104.6 billion in fees and interest last year. Between \$164 billion and \$213 billion of wealth was stripped from communities of color over the past eight years by subprime lenders who targeted them with toxic financial products. Lenders have created and marketed each of these highly profitable financial products to exploit the current vacuum in consumer protection.

The current patchwork system of regulators overseeing consumer financial products—some 10 altogether—are ill-equipped, and even ill-designed to do the job of protecting consumers. The CFPA will streamline and simplify federal oversight and ensure that the same rules apply and are consistently enforced for all entities providing financial products to consumers.

Consumer borrowing and deposits are the cornerstones of the banking system. And consumer credit is the key to homeownership, higher education and entrepreneurship—the driving forces of our economy. Predatory financial practices do not just harm individuals and families; the current crisis shows that they destabilize the entire economy. Strong consumer protections are essential to the economic security of households, the financial soundness of banks and the health of our nation.

Endnotes

1. Center for Responsible Lending, "Auto Dealers' Lending Abuses Cost Billions," available at: <http://www.responsiblelending.org/other-consumer-loans/auto-financing/auto-dealers-lending-abuses-cost-billions.html>.
2. Financial Times, "Banks to collect \$38.5 billion from overdraft fees", Aug. 9, 2009, http://www.ft.com/cms/s/0/43d18c68-851d-11de-9a64-00144feabdc0.html?nclick_check=1.
3. National Consumer Law Center, 2009.
4. United for a Fair Economy, Foreclosed: State of the Dream 2008, available at: http://www.faireconomy.org/files/pdf/StateOfDream_01_16_08_Web.pdf.



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