Six Myths about the Consumer Financial Protection Agency

Myth #1: *Consumer protection cannot be placed in a separate agency from safety and soundness because the two agencies will come into conflict.*

Facts:

- Conflicts will be very rare because their jobs are different.

    - The CFPA's mission will be to promote transparency, protect against unfair practices, and ensure that consumers have the information they need to make informed choices. It will make sure that financial institutions comply with consumer protection laws. The prudential supervisor will be concerned with capital levels, liquidity, asset quality, management, earnings and market risk. There will be few – if any – instances in which such missions conflict.

- The agencies will coordinate closely to avoid conflict.

    - The CFPA will coordinate extensively with the prudential supervisors. The National Bank Supervisor will have a seat on CFPA's board. CFPA and the relevant prudential regulator will work together on scheduling exams. They will share draft exams. In addition, the Financial Services Oversight Council will provide a forum for coordination.

- If conflicts do arise, they will be resolved.

    - The legislation should incorporate reasonable dispute resolution mechanisms to force the CFPA and the prudential regulator to resolve any conflicts that they cannot work out on their own.

- Strong consumer protection *improves* the safety and soundness of financial institutions.

    - As we've seen in the mortgage and credit card markets, poor treatment of consumers actually undermines the safety and soundness of financial institutions. By examining business practices from the perspective of consumers, the CFPA may help to identify those practices that – even though they may be profitable in the short run – undermine safety and soundness in the long run.

Myth # 2: *Even if we give the CFPA the authority to write rules, it would be better for the bank regulators to retain the authority for enforcing them.*

Facts:

- Separating rule-writing from enforcement makes regulation less effective – and more costly.

    - Examining banks and other providers gives a rule writer critical insights into market practices and the costs and benefits of a regulation in the real world. Separating rule-writing from supervision and enforcement would deprive the

    CFPA of information it needs to recognize problems before they become widespread and to take targeted, effective, and balanced action.

    - For example, CFPA would write rules to implement the new credit card legislation. By supervising credit card issuers, the CFPA will get immediate feedback on the cost and effectiveness of its rules – allowing it to adjust the rules as appropriate.

    - "Supervisory guidance" should be an effective tool for protecting consumers. Today, however, guidance is not effective because it requires the coordination of numerous federal and state agencies, and multiple agencies must enforce it. For example, guidance on subprime mortgage disclosure was not finalized until May 2008 – long after the subprime mortgage market had collapsed. Consolidating supervisory authority in the CFPA will enable it to make much better use of the flexible tools of supervision – such as guidance, memoranda of understanding, and comments in examination reports – in place of potentially more costly new regulations, when appropriate.

- Dividing rule writing from enforcement and supervision will perpetuate finger pointing in place of action.

    - If rule writing and enforcement are divided, then, when a consumer protection concern arises, the rule writer can blame the enforcer for failing to enforce existing law, and the enforcer can blame the rule writer for failing to write new rules. That is exactly what happened in the case of credit cards – and it is why it took years to put a stop to unfair and misleading card practices.

- Divided enforcement authority will perpetuate the problem of regulatory arbitrage.

    - If the supervision of firms for compliance with consumer protection regulations remains divided among multiple regulators, the problem of regulatory arbitrage – that is, firms "shopping" for the regulator with the weakest standards – will drive down standards across the board, as regulators compete for market share.

- The prudential regulators have an uneven track record in consumer protection.

    - In recent years, the safety and soundness regulators could have used their existing authority to rein in subprime mortgage lending and unfair credit card lending practices. They did not, until it was far too late. Since their focus has always been on protecting institutions, not customers, these agencies are trained to ask, "is it good for the bank?" – not, "is it good for consumers?"

Myth # 3: *CFPA will dampen innovation and force everyone to receive the same cookie cutter product even when it doesn't serve their interests.*

Facts:

- The CFPA will have a statutory mandate to foster innovation and consumer choice.

  - The legislation makes promoting innovation a core objective of the CFPA. Innovation is most beneficial when it is driven by consumer preferences. By promoting transparency and disclosure, the CFPA will help ensure that consumers fully understand the choices available to them. Moreover, transparency and disclosure will increase consumer confidence in innovation.

- Consumers will be free to choose any product they want. They'll simply be better informed about their choices.

  - CFPA will not mandate any particular product and consumers will have the same ability they have today to choose any product on the market. The CFPA will simply help ensure that consumers understand the full range of products available to them. To use an analogy from outside the financial services sector: consumers should be free to buy the suped-up sports car with all the options and accessories, if they want to pay more; but they should understand that it's not their only choice, and that a simpler, less expensive alternative is available.

Myth # 4: *CFPA will impose a large regulatory burden on financial products and services providers – especially small community banks.*

Facts:

- By leveling the playing field, the CFPA will improve the competitiveness of small community banks.

  - Today, non-banks like mortgage brokers and mortgage bankers are beyond the scope of federal consumer protection supervision. As a result, banks and credit unions have been forced to compete with less-regulated non-bank competitors, who often drove bad practices across the market. The CFPA will create a level playing field, so that non-banks are subject to the same standards as banks. That's especially good for small community banks and credit unions, which have increasingly had to compete against these non-bank entities.

- CFPA will simplify the duplicative, fragmented system we have today.

  - Today, seven different agencies have responsibility for consumer protection rule-writing and supervision, leading to duplication and waste. For example, mortgage lenders must give consumers two separate, inconsistent, and uncoordinated federal mortgage disclosures. Why? Because HUD and the Federal Reserve each exercise authority under a different mortgage disclosure law. The CFPA will consolidate that authority and give consumers and lenders a simple, unified federal mortgage disclosure.

Myth # 5: *The proposed legislation will expose financial institutions to a multiplicity of state laws.*

Facts:

- For the vast majority of financial institutions, the legislation does not change current law.
    - States have traditionally had the authority to protect consumers within their boundaries and, under current law, federal consumer protection represents a floor, not a ceiling. That will not change under the proposed legislation.
    - In fact, by setting strong federal standards for consumer protection, the CFPA will serve only to increase regulatory uniformity, as states will have less reason to depart from the national standards.
- Elimination of the national banks' exemption from state law will level the playing field.
    - National banks will lose their exemption from complying with state consumer protection laws where state consumer protection laws are stronger than federal law. This will create a more level playing field – putting state and federally chartered institutions on the same footing and making most small banks more competitive.

Myth # 6: *CFPA would leave supervision of non-banks to the states.*

Facts:

- CFPA will have the mandate to supervise non-banks.
    - One of the central purposes of establishing the CFPA is to create a level playing field and to close the wide gap in the regulation of non-bank financial institutions. The CFPA will have a responsibility to supervise non-banks and banks alike for compliance with consumer protection requirements.
- In fact, CFPA will ensure a level playing field, with real supervision of nonbanks and banks alike, based on the relative risks posed to consumers
    - The CFPA will use a risk-based approach to supervision and enforcement. It will allocate oversight resources based on risks to consumers. Where non-bank providers pose more risk to consumers than bank and credit union providers, non-banks will receive proportionally more attention from the CFPA.