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Statement of the Shadow Financial Regulatory Committee on
A New Consumer Financial Protection Agency

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As part of its comprehensive financial reform package, the Obama Administration has proposed that Congress create a new Consumer Financial Protection Agency (CFPA) to oversee consumer protection for all financial services. At this writing, The House Financial Services Committee is scheduled to mark up this proposal shortly.

The CFPA would have authority to write rules and enforce existing consumer protection laws that apply to financial services, as well as to enforce bank lending practices under the Community Reinvestment Act (CRA). The CFPA's jurisdiction would extend to all individuals and institutions engaged in selling, servicing, advising, or processing financial services or transactions.

The Shadow Committee is sympathetic to the concept of consolidating consumer financial protection functions now carried out by multiple federal bank regulators and the Federal Trade Commission in a new agency. Banking supervisors have generally done an inadequate job protecting consumers, for example, from subprime mortgage lenders (especially those regulated at the state level). Furthermore, bank regulators understandably give, and will always give, more attention to what they perceive as their primary functions—supervising the financial soundness of financial institutions, and in the case of the Federal Reserve, carrying out monetary policy and ensuring the integrity of the payments system—than to protecting consumers from unfair practices and deceptive behavior.

The primary function of the CFPA should be to ensure that consumers receive sufficient information about financial products to make informed decisions rather than providing safe harbors for lenders and providers of financial services. Toward this end, the Committee believes that one of the highest priorities of any new agency should be to simplify and make more informative current disclosure requirements for many financial products. For example, the proposed one-page mortgage form designed by Alex Pollock should be considered for adoption. Homeowners should not have to wade through mountains of paper and legalese before signing mortgage documents (or indeed documents for any other financial product), none of which can be modified unless the customer is willing to walk away from the proposed transaction.

Nonetheless, the Committee has several concerns with the initial CFPA proposal that it hopes can be rectified as the legislation works its way through the Congress:

- The proposal that would require providers of financial products always to make available a “plain vanilla” (simple and easy to understand) financial product alongside anything more complex. Only if the market doesn’t provide such a product should the CFPA require that it be provided.
- The initial proposal would require the CFPA to prescribe rules or take enforcement actions with respect to “unfair, deceptive and abusive” acts or practices. The language relating to “unfair and deceptive” practices is borrowed from the Act that created the FTC and is well understood under current law. The term “abusive” is not defined and is given no bounds. There is no need to add it to the list of offensive practices.
- The Committee sees no logic in vesting authority with the CFPA to enforce the CRA. Whether and how an institution is meeting the credit needs of the communities it serves is not actually a consumer product. Moreover, the CRA is enforced by giving bank regulators authority to deny a merger involving a bank not in compliance with the CRA. This authority should not fall within the purview of a consumer regulator.
- Finally, the Committee believes that the CFPA’s rule writing authority (but not enforcement activities) should preempt those of state regulators. Otherwise, there is a risk of having 51 different state consumer protection rules alongside the federal regime. This could significantly impair the ability of financial institutions to develop and market financial products on a national basis.