House and Senate Committee Hearings Concerning the Proposed Consumer Financial Protection Agency

July 14, 2009 - July 17, 2009

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Senate Committee on Banking, Housing, & Urban Affairs

Creating a Consumer Financial Protection Agency: A Cornerstone of America's New Economic Foundation

Tuesday, July 13, 2009
9:00 AM

Witness List (Testimony not yet available):

Panel One

- Honorable Michael S. Barr, Assistant Secretary for Financial Institutions, U.S. Department of the Treasury

Panel Two

- Honorable Richard Blumenthal, Attorney General, State of Connecticut
- Mr. Edward Yingling, President and CEO, American Bankers Association
- Mr. Travis B. Plunkett, Legislative Director, Consumer Federation of America
- Mr. Peter Wallison, Arthur F. Burns Fellow, American Enterprise Institute
- Mr. Sendhil Mullainathan, Professor of Economics, Harvard University

This morning, the Senate Committee on Banking, Housing, and Urban Affairs held a hearing concerning the Obama Administration's proposed Consumer Financial Protection Agency (CFPA). Witnesses Yingling, Plunkett, and Barr had previously testified before the House Financial Services committee on this issue and extended similar testimony in this Senate hearing. They joined Attorney General Blumenthal, the AEI's Peter Wallison, and Harvard Economist Sendil Mullainathan in today's dynamic discussion on consumer protection.

Chairman Dodd began the hearing by creating common ground. He explained how old regulatory models led to the current financial crisis. Lawmakers are forced to modernize regulation because of the "spectacular failure of consumer protection" over the past two decades. As the chairman framed the debate for the hearing, he assured the room that "no one wants to create regulation that is unnecessary or overly burdensome," but rather, that the regulation offered by the administration's proposal will result in transparency, consumer protection, and systemic security.

Sen. Shelby contends that proper consumer protection will increase confidence in the economic system, thereby increasing market participation. To Sen. Shelby, this will curb the effect of the economic recession. He proposes that lawmakers examine what caused the financial crisis and offer regulatory policy accordingly. Shelby believes that this legislation identifies and responds to the underlying causes of the crisis. Finally, Sen. Shelby recommended that lawmakers consider the implications of government-bans of financial products, and hoped that consumers could be empowered with information and transparency to make decisions for themselves.

Michael Barr testified on behalf of the Treasury Department, which was the architect of the CFPA proposal. Unlike his testimony last week, Mr. Barr toned down his rhetoric about the wide-reaching authority of the proposed Agency, in addition to scaling back his accolades for the Agency's regulatory capabilities. For instance, last week Barr was excited to talk about the authority to prohibit dangerous products from reaching consumers, while this week he focused on other tools that could be used to restrict the use of sophisticated financial products. Much like previous testimony, however, Barr reiterated the point that the present system is "fundamentally broken." Current regulations, Barr explained, lack the expertise and market-wide jurisdiction that the CFPA will have at its disposal. The new agency will defragment the old system, consolidating jurisdiction, authority, and enforcement into one federal agency. Barr contends that this consolidation is the only way to provide for consumer protection.

Chairman Dodd admittedly played the devil's advocate when he proposed that Congress give more authority to current regulatory regimes to strengthen oversight. Michael Barr, however, held that the failures in the past warrant a serious departure from old regulatory methods. Senators Dodd, Tester, Menendez, Corker, Warner and Schumer all expressed concern that the new CFPA will stifle innovation and restrict consumers' access to a wide array of financial products.

Similarly, these Senators questioned the need to regulate community banks and credit unions, which are disproportionately going to carry the burden of the CFPA's regulatory policies. Barr contends, however, that product innovation will be enhanced by creating competition based on lower prices and better products, rather than increased sophistication. As for banks, he believes that a lesser focus on sophisticated products helps community banks because the market will not force them to solicit bad products.

Senators Shelby and Corker questioned the logic in letting the CFPA decide for consumers. They wanted to know why full, clear disclosure fails to properly prepare the consumers to make informed decisions. In his response, Barr seriously changed direction from last week's hearing. Rather than focusing on the need to ban sophisticated and risky financial products, Assistant Secretary Barr focused on requiring that "plain vanilla" products be offered in conjunction with complex products. By this measure, consumers will be able to compare traditional products with non-traditional ones. Corker and others were startled by the idea of *forcing* financial service providers to offer "plain vanilla" products to potentially unqualified consumers.

Sen. Bayh asked Mr. Barr to explain the different types of financial services that have a potential for abuse, and Barr responded first with mortgage brokers. Beyond that, however, Assistant Secretary Barr suggested many others: credit cards, overdraft fees, payday lending, auto loans, disclosure forms, credit products, payment products, and bank products. Sen. Corker accurately pointed out at the close of Mr. Barr's testimony that this list and the committee's discussion left out many services, people, and industries that fall under the regulatory scope of the proposed agency. Corker then cautioned everyone to critically think about the wide-reach of the proposed CFPA.

The second panel encompassed a greater diversity. Each of these witnesses brought a unique perspective to the hearing. First, Connecticut Attorney General Blumenthal believed that the proposed Agency would restore a state and federal alliance on consumer protection. Bank and non-bank institutions have created "inventive financial products" that simply skirt the regulatory purview, so Blumenthal believes that new regulatory policy is needed. In other words, failure to regulate in the past warrants the creation of this new agency.

The ABA's Ed Yingling stayed the course of previous testimony, holding that the proposed CFPA disproportionately burdens small banks and credit unions. Despite Mr. Blumenthal's confidence in state regulators, Mr. Yingling sees state regulation as unmotivated and underfunded. Like many of the Senators, the ABA is skeptical of a government agency that creates its own products and mandates that financial service providers solicit them to consumers. Like Barkow, Cox, and Calkins from last week's House Financial Services Committee hearing, Yingling worries that the vague language empowers the CFPA to over-regulate. Finally, Ed Yingling argues that divorcing systemic health from consumer protection contributes to conflicting and antithetical regulatory policies that will only generate more serious risks for consumers and financial service providers alike.

Travis Plunkett, from the Consumers' Federation, testified with Mr. Yingling three weeks ago in the House Committee. Mr. Plunkett believes that the CFPA effectively responds to the underlying problems that have forced many Americans to foreclose. He argues that current regulators like the SEC, CFTC, and FTC lack that authority and jurisdiction to regulate in the way that is necessary. Moreover, their core mission, systemic safety and soundness, disallows a consumer focus. Because of these inadequacies, Plunkett supports the proposed CFPA.

Next, the AEI's Peter Wallison joined others in the room questioning the government's authority to restrict access to products. Wallison dislikes the idea of focusing on product complexity rather than clear disclosure, transparency, and fraud prevention. He also worries that the authority may be overbearing for many financial service providers. Like Mr. Yingling, Wallison understands how far the hand of the proposed CFPA can reach.

Finally, Harvard Economist Sendhil Mullainathan explained the psychology behind human rational when it comes to financial decisions. Though his analysis was verbose, he explained that normal people choose poorly when products are displayed in technical terms. He suggests that the CFPA simplify the language in financial products to ensure better decisions at the micro-level, which will lead to systemic health at the macro-level.

Sen. Shelby still worries that the CFPA's authority will limit consumers' access to products and credit. Wallison explained that if financial service providers are required to offer "plain vanilla" products along with complex ones, companies will simply begin to restrict which consumers get offered products at all. The CFPA can make new rules that govern financial services providers, and states enforce those rules. The CFPA, as it is proposed, requires companies to ensure that consumers understand the products they are offered. Wallison explained that companies would rather restrict consumer access to products than risk litigation over product disclosure or consumer ignorance – both are costly. Mr. Yingling agreed, citing section 1037 of the proposed legislation as a direct example of the incredible authority the legislation gives to the CFPA.

The hearing exposed what the CFPA supporters lean on: They justify the creation of a new agency by pointing to the colossal failures that existing regulatory regimes had over the past six years. The industries that caused the current financial crisis are at the forefront of the debate; however, as Sen. Corker pointed out, far more people fall into the purview of the proposed CFPA than those being discussed in these hearings. One must wonder, if the crux of the argument is that poor regulation allowed these industries to bring on the current economic crisis, why should industries that did not contribute to the current crisis or that are already properly regulated be regulated by this new agency?

House Financial Services Committee Hearing

Banking Industry Perspectives on the Obama Administration's Financial Regulatory Reform Proposals

Wednesday, July 15, 2009
10:00 AM

Witness List (Click each name for their prepared testimony):

Panel One

- The Honorable Steve Bartlett, President and Chief Executive Officer, The Financial Services Roundtable
- Mr. John A. Courson, President and Chief Executive Officer, Mortgage Bankers Association
- Mr. Chris Stinebert, President and Chief Executive Officer, American Financial Services Association
- Mr. Steven I. Zeisel, Vice President and Senior Counsel, Consumer Bankers Association Professor
- Todd J. Zywicki, George Mason University Foundation Professor of Law and Senior Scholar, Mercatus Center at George Mason University
- Ms. Denise M. Leonard, Vice President, Government Affairs, National Association of Mortgage Brokers
- Mr. Edward L. Yingling, President and Chief Executive Officer, American Bankers Association
- Mr. R. Michael S. Menzies, Sr., President and Chief Executive Officer, Easton Bank and Trust Company on behalf of Independent Community Bankers of America

This morning the House Financial Services Committee held a hearing to continue the discussion on the Obama Administration's proposed regulatory changes. Witnesses represented mortgage bankers, brokers, and similar financial service providers. George Mason Law Professor, Todd Zywicki, spoke as the lone industry outsider, although he once worked in mortgage banking.

Chairman Frank began the hearing by outlining the upcoming legislative agenda relating to financial services regulation. He hopes to begin a markup on legislation that will establish systemic risk regulator by September, and will hold a hearing next Tuesday on industries that risk becoming "too big to fail." Tuesday's hearing is particularly relevant given the testimony offered by the witnesses and concerns expressed by the committee. The panel and committee were both seriously interested in preventing the systemic risk posed by companies that grow too big to fail, and the mortgage representatives pointed to those institutions as the root cause of the current financial crisis.

Concerns for systemic risk led Reps. Biggert and Hensarling to worry that stripping bank regulators of their oversight authority would establish a "Credit Rationing and Pricing Agency," rather than one aimed at consumer protection. Biggert also questioned which policy would take priority when safety and soundness regulation conflicted with the CFPA's regulation – a question many in the room were asking. These sorts of questions led Rep. Garrett and others to suggest that Congress slow down, review policy, and clarify language before rushing the vote on the Administration's proposal. Rep. Frank stressed that the final legislation will clarify issues such as regulatory priorities and inter-agency cooperation.

Banking Industry Perspectives on the Obama Administration's Financial Regulatory Reform Proposals

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10:00 AM

Former Congressman and CEO of the Financial Services Round Table, Steve Bartlett understood that new regulations must account for consumer protection goals, but he dislikes the Administration's CFPA because it divorces safety and soundness from other forms of regulation. Bartlett was joined by the other seven members of the panel who all thought that "consumer protection and safety & soundness are two sides of the same coin." Mr. Bartlett also believes that the CFPA does properly address consumer protection issues, and recommended creating a Federal Insurance Charter and embedding it within the current proposal. To do this, he suggested that the committee merge HR 1880[1] with HR 3126[2], which he believes will offer consumers better protection from a wider array of financial services.

MBA's John Courson worries that the CFPA will not increase consumer protection at all. Instead, Courson asserts that it will only further fragment authority by creating a "patchwork of laws." With lackluster analysis, he explained that consumer protection requires increased uniformity that the CFPA will not provide. Mr. Courson reccomends that Congress address the Mortgage Regulation Act, which provides national regulation for all mortgage brokers and fills the regulatory gaps for brokers and bankers alike.

Chris Stinebert from the AFSA believes that the goals set forth by the Administration's proposal can be achieved without creating a new agency. Like Mr. Yingling's testimony yesterday before the Senate Banking Committee, Mr. Stinebert believes that implementation of the legislation could take up to three years because of the bill's vague and far-reaching language. The AFSA is more threatened, however, by the taxes levied by the new agency. Stinebert, Yingling, and Zywicki believe that the taxes and fees that burden financial service providers will ultimately be passed on to consumers. Last week, Chris Stinebert testified before the Energy and Commerce Committee, where he explained the dangers of divorcing safety and soundness from consumer protection. This morning he gave weight to this argument, referencing to GSE's, Fanny, and Freddie as instances where government regulation divided the two regulatory roles – the failures go unsaid.

CBA's Steven Zeisel hopes to work with congress to fulfill the Administration's goals using the current regulatory structure. To do this, however, Zeisel argues that the Congress must empower a preexisting agency to regulate non-bank lenders. The state preemption clauses strike Mr. Zeisel as particularly troublesome because he, along with others on the panel, hope to create national standards for mortgage regulation. They see state preemption as a step away from uniform regulation. Finally, Zeisel believes that "plain vanilla" products offer consumers a baseline, but dislikes the idea of an agency that mandates that they be offered because it sends the wrong messages to consumers.

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[1] The National Insurance Consumer Protection Act (Proposed by Rep. Bean)
[2] The Consumer Financial Protection Agency Act of 2009

Professor Zywicki opposed the CFPA more seriously than the other witnesses. He outlined three unfixable problems with the Administration's proposal. First, he sees that language as creating an organization based on "misguided paternalism." The financial crisis was not birthed from consumer protection issues; instead, Zywicki argues that consumers were responding to incentives like credit lines they do not qualify for. Dr. Zywicki contends that crises that resulted from consumer protection issues are far more isolated, and unpaid loans point to a safety and soundness issue, not consumer protection. Second, Zywicki believes that the unintended consequences of the Administration's proposal inadvertently contribute to serious economic problems. Specifically, he provided impressive analysis that links abolishing pre-payment penalties to a decrease in consumer equity. Finally, Dr. Zywicki criticized the language in the bill. Like law professors Barkow, Calkins, and Cox from last week's hearing, Zywicki believes that the unclear language gives this agency limitless power to regulate financial products and service providers. Mr. Yingling, Mr. Stinebert, Mr. Menzies, and many Reps joined Zywicki in criticizing the far-reaching authority proposed for the CFPA.

NAMB's Denise Leonard supported the CFPA, but offered a few changes to the legislation that may improve its effectiveness. She proposes that the committee tone down the authority given to regulate and ban products, and hopes that the focus can be put on providing clear, comprehensive, and simple disclosures. This way, Leonard argues, products can be personalized while still curbing the use of abusive products.

Ed Yingling from the American Bankers Association appeard before a congressional committee for the third time this morning, and offered analysis similar to his previous testimony. However, he did add skepticism on the scope of the proposed CFPA. He commends the committee's commitment to regulating non-bank financial service providers like AIG, Lehman Brothers, and Bear Stearn. Yingling explained that regulating non-bank financial services providers is an massive undertaking that requires huge funding, but he worries that the CFPA will use its large budget to disproportionately regulate bank financial service providers. Yingling's testimony signals that the ABA has acknowledged the forces pushing the bill. Today's testimony was a departure from old language that advocated the disposal of the CFPA entirely, instead focusing on favorably shaping the new agency as it is created.

Michael Menzies represented small community banks across the country. He explained that community banks are crumbling under the financial crisis brought on by the "risky and irresponsible behavior of unregulated financial institutions." Like Mr. Yingling, Menzies is concerned that the CFPA's policy will disproportionately burden community banks, so he suggested that the CFPA's taxing authority be directly tied to the systemic risk posed by the financial service being regulated – an interesting proposal. By this measure, Menzies effectively discourages companies from becoming "too big to fail" and ties a level of safety and soundness regulation into the CFPA.

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Chairman Frank surveyed the panel on state preemption clauses. Bartlett, Courson, Stineber, Zeisel, Zywicki, and Yingling all support federal preemption for national financial service providers in order to create a uniform standard – the opposite of what the bill proposes. They contend that the bureaucratic nightmare created by state preemption is unnecessary and counterproductive to consumer protection. Ms. Leonard opposes federal preemption because mortgage brokers are effectively regulated at the state level through licensing and education programs. Mr. Menzies opposed the idea because national banks would have a advantage in states that regulate community banks more stringently than federal standards for national banks.

Rep. Neugebauer questioned the CFPA's authority to regulate products in the name of consumer protection. Mr. Bartlett and Mr. Zeisel argued that companies understand their consumers far better than the regulators; consumer relationships allow companies to mold products to consumers that fit them, and it is up to regulators to ensure that companies clearly disclose the product's details so that consumers can make informed decisions. Rep. Kanjorski is concerned that the CFPA does not do enough to prevent another careless financial crisis. Ms. Leonard advocated licensing as a way to ensure responsibility, while Mr. Yingling claimed that the new CFPA will still not provide a crisis watchdog that is actively looking for a potential crisis or systemic risk.

Rep. Lucas worries about the effects that the CFPA will have on Financial Institutions. The panel agreed that financial institutions will be less able to personalize products from the "cookie cutter" products created by the CFPA. Rep. Hensarling held a dialogue with Mr. Yingling that exposed the ambiguities within the legislation as it is proposed. Yingling referenced sections 1036 and 1037 as sections that offer extremely poor language and leave serious room for interpretation and arbitration. Subjective terms such as "unfair," "irresponsible," and "unsafe" will need clarification if the legislation is ever to take root.

In yesterday's hearing, Michael Barr pointed to mortgage brokers and bankers as the financial institutions that are the most likely to fuel abusive practices; clearly this panel did not share the same sentiment. Rather, mortgage bankers, brokers, and their representatives in this morning's hearing sought to divert regulation to the "too big to fail" institutions, which they claim pose the real risk to systemic security.

House Financial Services Subcommittee on Hearing

Community and Consumer Advocates' Perspectives on the Obama Administration's Financial Regulatory Reform Proposals

Thursday, July 16, 2009
10:00 AM

Witness List (Click each name for their prepared testimony):

Panel One

- Mr. Joseph Flatley, President and Chief Executive Officer, Massachusetts Housing Investment Corporation on behalf of NAAHL
- Mr. Oliver I. Ireland, Partner, Morrison & Foerster LLP
- Mr. Edmund Mierzwinski, Consumer Program Director, Public Interest Research Groups
- Ms. Janet Murguía, President and Chief Executive Officer, National Council of La Raza
- Mr. Travis B. Plunkett, Legislative Director, Consumer Federation of America
- Mr. John Taylor, President and Chief Executive Officer, National Community Reinvestment Coalition
- Ms. Nancy Zirkin, Executive Vice President, Leadership Conference on Civil Rights

This morning, the House Financial Services Committee held a hearing with Community and Consumer Advocacy groups to discuss the new regulatory proposals, including the Consumer Financial Protection Agency (CFPA). As is kosher, all parties agreed that enhanced consumer protection is essential for the financial security of both the macro economy and individual households. Mr. Ireland stood alone as the sole witness opposed to the creation of this new agency, while the other six celebrated its authority to protect consumer interests.

Chairman Frank began the hearing by summarizing previous hearings and outlining the witnesses that will come before the committee later this week and earlier next week. Through these hearings, Frank claimed, all of the industries regulated by of the proposed CFPA will have come before the Financial Services Committee to offer their input on the proposal. However, as Sen. Corker pointed out in a Banking Committee hearing on Tuesday, far more people and products fall under the purview of this agency than what has been discussed during hearings – something Mr. Ireland discussed during recess.

Rep. Royce extended the argument that safety and soundness should be regulated alongside consumer protection. He clarified the consequences of pitting regulators against one another, explaining that competing regulators incompletely regulate. Mr. Royce also continued to advocate that bank solvency is the most fundamental form of consumer protection. He was joined by Rep. Hensarling in arguing that the CFPA will lock regulatory efforts in a bureaucracy that will increase the cost of credit, stifle innovation, and restrict consumer choice. They are both curious how the CFPA supporters hope to protect consumers by restricting consumers' rights. Mr. Hensarling responded to other Reps' support for "plain vanilla" products by asserting that plain vanilla is not defined in the legislation and will be more difficult for the CFPA to define than supporters lead on. Ms. Biggert, like Mr. Hensarling and Royce, extended the testimony she offered at yesterday's hearing.

House Financial Services Subcommittee on Hearing

Community and Consumer Advocates' Perspectives on the Obama Administration's Financial Regulatory Reform Proposals

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The NAAHL's Joseph Flatleg centered his testimony on the Administration's proposed CFPA, which, he says, will end the duel mortgage market: banks and non-banks. Though both entities will still exists, Mr. Flatleg explains that the CFPA will have the authority to simultainously regulate both for the first time, ending irresponsible unregulated lending. Flatleg suggested that the committee revise the proposal to include the Community Reinvestment Act (CRA) into the CFPA, which will impose an "affirmative obligation on financial service providers to protect consumers."

Oliver Ireland believed that current regulatory mechanisms can be strengthened with the proper authority to end the duel mortgage market without limiting consumer access to much needed personalization. Like Rep. Biggert, Ireland believes that interagency conflict will stem from dividing consumer protection from safety and soundness, and that conflict will prevent proper regulation. Ireland strongly argued that the CFPA will not prevent another mortgage crisis because regulators made errors – "we need to prevent errors, not add rules."

Public Interests Director, Edmund Mierzwinki, supports this "game changing solution," but hopes that the final version will regulate credit rating agencies more forcibly. The panel and committee agreed that these agencies are poorly regulated and that the CFPA would be the right agency to regulate them. Mierzwinki argued that the system failed because of the conflict of interests that current regulators have, and he believes that the new agency will consolidate responsibility into a single agency whose mission will not conflict with consumer or systemic interests. That is to say, the errors that Mr. Ireland claims caused the crisis were a result of the regulators' conflict of interest. Finally, Mr. Mierzwinki agreed with testimony offered by Connecticut Attorney General Richard Blumenthal in that state enforcement clauses only strengthen the regulatory effects of the new CFPA.

National Council of La Raza's Janet Muguía joined Blumenthal and Mierzwinki in arguing for effective enforcement clauses. She argued that a new rulemaking authority ineffectively protects consumers unless there is a commitment to enforcing those rules. The National Council of La Raza advocates on the behalf of Latina consumers, and Ms. Marguía believes that the proposed CFPA will empower minorities by offering them products that are more conducive to creating wealth.

CFA's Travis Plunkett appeared before the committee again to support multiple provisions of the Administration's proposal. The CFA is in favor of the proposed derivatives market regulation, and also supported regulating credit rating agencies. As for the CFPA, Plunkett steered away from repeating previous testimony and responded to criticisms brought up in previous hearings. Safety and soundness, Mr. Plunkett explained, must be separated from consumer protection regulation because the former focuses on the profitability of the financial service providers, which may undercut consumer protection. Finally, Plunkett cited the regulatory failures and irresponsible financial service providers as the reason for this system-wide overhaul.

House Financial Services Subcommittee on Hearing

Community and Consumer Advocates' Perspectives on the Obama Administration's Financial Regulatory Reform Proposals

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10:00 AM

John Taylor from the National Community Reinvestment Coalition, began his testimony by arguing that without predatory lending, we would not have had a financial crisis. This bold statement departs from the consensus among the mortgage bankers on yesterday's panel who preferred to point to the "too big to fail" institutions. Like Mr. Flatleg, Taylor would like to the CRA be incorporated into the CFPA. Their joint support for this prompted Rep. Gutierrez to survey the entire panel, all of which supported the idea. Finally, Mr. Taylor worried that this agency may become influenced by the industries it attempts to regulate, so like many previous witnesses, he suggested that the board be comprised of non-industry consumers.

LCCR's Nancy Zirkin sees the CFPA as essential to protecting consumers' civil rights. She believes that the agency can protect their ability to achieve homeownership, thereby building wealth. However, this argument conflicts with testimony offered by Mr. Zywicki in yesterday's hearing, in which he argued that certain provisions in the proposal inadvertently decrease the ability of consumers to build equity in their homes. Ms. Zirkin shared Mr. Taylor's concern that industries may gain leverage on the CFPA. Accordingly, she advocated independent and stable funding that does not come from those being regulated. Finally, she believes that if safety and soundness and consumer protection are pitted against one another, a balance will come out that adequately addresses both.

Chairman Frank refuted the GSE analogy that suggests safety and soundness should merge with consumer protection regulation. The problem with GSEs, Frank contends, was not that the two regulators were separate, but rather that safety and soundness regulation was too weak. This argument was corroborated by Mr. Ireland who admitted that safety and soundness regulatory provisions existed in the GSE programs, but were given "insufficient attention."

Rep. Hensarling once again brought up the issue of overregulation, asking if firms would stop offering products for fear of litigation. Mr. Plunkett responded by saying that it simply would not play out like that. Plunkett's claim calls to question Michael Menzies' testimony in yesterday's hearing, which showed how community banks would be forced to restrict the use of personalized products. Whereas Royce, Menzies, and Hensarling fear the restriction of products, Rep. Waters hopes that the proposed CFPA will restrict the use of abusive and risky products like ALT-A, or liar loans. Interestingly, Plunkett explained that CFPA would be unable to ban products, which conflicts with the testimony offered by the Treasury's Michael Barr and Sen. Warner in a hearing on Tuesday.

Rep. Posey read the definition of "financial service" as defined by the CFPA Act of 2009. He, like others in the room, questions vague terms like "unfair," "acceptable," and "reasonable." Moreover, Mr. Posey read the section that explains the incredible reach of the proposal, but Mr. Plunkett tried to calm concerns, explaining that no new authority is being created in this legislation. This legislation, he says, consolidates preexisting authority that is fragmented into 17 agencies. Mr. Posey questioned that claim, citing underwriters, title insurance, and other industries that do not currently fall under another federal agency.

Today's hearing was the fourth hearing on the Consumer Financial Protection Agency that was held before the House Financial Services Committee. The debate still centers on safety and soundness vs. consumer protection, and questioning if the two are mutually exclusive. Everyone seems to agree that bank and non-bank financial service providers need to be regulated by the same statues, but congress is still overlooking many parties that fall into the purview of the Administration's proposal.

House Financial Services Subcommittee on Domestic Monetary Policy and Technology

Regulatory Restructuring: Safeguarding Consumer Protection and the Role of the Federal Reserve

Thursday, July 16, 2009
2:00 PM

Witness List (Click each name for their prepared testimony):

Panel One:

- The Honorable Elizabeth A. Duke, Governor, Board of Governors of the Federal Reserve System

Panel Two:

- Ms. Patricia McCoy, George J. & Helen M. England Professor of Law, University of Connecticut School of Law
- Ms. Lauren K. Saunders, Managing Attorney, National Consumer Law Center
- Mr. Jim Carr, Chief Operating Officer, National Community Reinvestment Coalition

The House Subcommittee on Domestic Monetary Policy and Technology held a hearing this morning to assess the future role of the Federal Reserve in consumer protection. The discussion focused on the proposed Consumer Financial Protection Agency (CFPA) and the transfer of selected authorities from the Fed to the new agency. Chairman Watt summarized the subcommittee's hope to create a more "focused authority" that can protect consumer interests. The Chairman believes that the CFPA will mend the gaps of the current fragmented system.

Reps. Paul and Sherman addressed the current structure of the Fed, explaining that its design prevents it from ever becoming a serious advocate of consumer protection. Mr. Paul claimed that the Fed's authority to regulate the dollar works against consumers by contributing to inflation and reducing the wealth of American families. Rep. Sherman hopes that Congress will apply more strict regulations on the Fed, including an audit and a restructuring of the board of the regional banks. Finally, Mr. Sherman, like others in the room, worries that the Fed's role as systemic risk regulator conflicts with any hope to provide consumer protection.

Rep. Bacchus supported stripping the Fed of its consumer protection role. He pointed to the Republican regulatory proposal, which also transfers that role to a different agency. Rep. Al Green, meanwhile, believes that the Fed can provide consumer protection, citing credit card and payment regulation. However, Mr. Green argued that the Fed only does so reactively. He would prefer to put consumer protection in the hands of an agency that proactively discovers consumer protection issues to prevent crises.

Governor Elizabeth Duke represented the Fed at the hearing. Like other witnesses, she admitted that the financial crisis revealed the need to cater to consumer interests; however, she see the Fed as an essential consumer protector because it has the resources, expertise, experience, and wherewithal to provide consumer protection in financial services. She claims that the expertise housed at the Fed cannot be replicated in a new agency and that while rules are easy to make, researching what rules to make is challenging – the Fed has the resources, others do not. Additionally, she worries that and independent consumer protection agency may jeopardize systemic security. She offered three options to improve regulation without creating a new agency. First, cauterize the Fed's role as a "consumer protector" so it becomes a more integral part of their policymaking. Second, she suggested that congress require the Chair of the Fed to report on the "state of consumer protection" and include actions planned or executed to protect consumers. Finally, Ms. Duke recommended that sufficiency reviews be conducted to discover consumer protection issues.

Chairman Watt questioned why consumer protection is not already and integral part of the Fed's policymaking. Governor Duke backtracked, explain that it is considered, but needs to be "official." Rep. Paul was interested in regulating more without taxing the consumer, and Ms. Duke was unsure if it was possible to increase regulation without increasing the costs to consumers. Then Mr. Paul suggested that the Fed become less independent and more regulated. Rep. Green quizzed Ms. Duke on the examples of proactive consumer protection by the Fed, and then switched focus to the prudential vs. consumer regulatory missions. Ms. Duke explained, like many others have, that consumer protection and safety and soundness are two sides of the same coin.

UCONN law professor, Patricia McCoy began the second panel. She, along with the rest of the second panel, supported the CFPA. Her written testimony offers incredible analysis on the history of regulation and consumer protection, but her oral testimony focused on two problems that are remedied through the CFPA. First, the new agency consolidates regulation into one agency that can watch multiple industries, piecing together consumer protection issues. Second she believes that consolidation will lead to a decreased competition between regulators, which will enhance consumer protection.

Ms. Lauren Saunders from a consumer law group agreed with Rep. Green – the CFPA will act proactively, whereas the Fed is historically reactive. She reasoned that prudential and consumer regulation should be separate because consumer protection regulators analyze household implications while systemic regulators concentrate on market implications. Moreover, she believes that having a prudential regulator as one member of the CFPA's board – a part of the current proposal – will harmonize regulation and prevent conflict. Others were not as confident.

NCRC's Jim Carr argued that products that do not promote the wellbeing of consumers are not viable for a banks solvency. So, if a CFPA promotes consumers' interest, it will dually provide for systemic security. Mr. Carr startled a few in the room when he claimed that "a good standard is the best innovation." As others argued (albeit with more sophistication), you do not get Baskin Robbins without deviating from "plain vanilla."

Reps. Paul and Meeks were both interested in designing an agency that helps consumers build wealth. Mr. Meeks is concerned that "plain vanilla" products will require a standard 20 percent down on 30 year fixed-rate mortgage. For low-income families, "plain vanilla" products would not help them become homeowners or build wealth because they cannot front 20 percent of a home purchase. Rep. Paul, on the other hand, worries that leaving consumer protection with the Fed will increase inflation.

House Financial Services Committee

Industry Perspectives on the Obama Administration's Financial Regulatory Reform Proposals

Friday, July 17, 2009
11:00 AM

Witness List (Click each name for their prepared testimony)

Panel One

- The Honorable Richard Baker, President, Managed Funds Association
- Mr. William J. Brodsky, Chairman and Chief Executive Officer, Chicago Board Options Exchange
- Mr. Randy Snook, Executive Vice President, SIFMA
- Mr. Paul Schott Stevens, President, Investment Company Institute
- Mr. Douglas Lowenstein, President, Private Equity Council
- Ms. Diahann W. Lassus, President, Lassus Wherley on behalf of the Financial Planning Coalition
- Mr. Rob Nichols, President and Chief Operating Officer, Financial Services Forum

Friday morning, the House Financial Services Committee held a full committee meeting to gather the investment industry's perspective on the Obama Administration's proposed financial regulatory reforms. The witnesses came from retirement investment firms including hedge and mutual fund representatives. While the members of the panel were focused on the proposed regulations on Over-the-Counter (OTC) derivatives and other complex financial products, the committee seemed more interested in their perspective on the proposed Consumer Financial Protection Agency (CFPA).

Chairman Kanjorski began the hearing by reiterating the committee's goal – closing regulatory gaps and loopholes that allowed financial service providers to run wild with the complex financial products that put the economic system in peril. He hopes that new regulations will protect the public from bearing the pain of the finance industry's "unscrupulous profits." Rep. Hensarling has been quite vocal with his skepticism of the proposed regulations. He fears that regulating investment firms like the ones on the panel may restrict consumers' access to credit. Mr. Hensarling expressed serious concern that derivatives market regulation will disproportionately raise costs to small businesses, which frequently use simple, safe, derivatives to hedge risk.

Rep. Sherman calmed some skepticism over the authority of the proposed CFPA. He explained that Chairman Frank had assured him that the new agency will not be empowered to legislate its own rules. Departing from previous hearings on the topic, Mr. Sherman claimed Congress is not "punting" its authority to regulate financial products to this new agency – congress is still in charge. Finally, Rep. Sherman supports future OTC regulation, but wants to ensure that government regulation does not again lead to billion-dollar-bailouts. Rep. Waters focused her concerns on Credit Default Swaps (CDS), which she claims should be banned outright. Ms. Waters has proposed legislation that would eliminate the use of CDS. To her, CDSs are nothing more than betting that a company is going to fail, which no one should want.

Rep. Royce argued against increasing the authority of the SEC. He hopes that Congress will divert this authority to another agency, which he claims will more effectively oversee derivatives market regulation. Rep. Mchenry agreed with Hensarling in that OTC regulation will restrict access to credit, while Rep. Green sees new plans for consumer protection as the backbone for economic recovery.

MFA's Richard Baker opened with his testimony in support of future regulatory reforms. However, he suggested that the regulation be weighted by how much of a systemic risk each industry poses. He explained that hedge funds pose little or no risk because they are leveraged three to one, whereas those companies that pose serious risks are leveraged 30 to 1 or more. Baker believes that registering hedge funds with the SEC will allow the Commission to better oversee the industry. He did, however, suggest that reporting requirements not be public, which departs from suggestions offered the Treasury Department's Michael Barr in a Senate Hearing on Tuesday. In response to Rep. Waters, Mr. Baker explained that CDS are less dangerous and more benevolent when they are tied to collateral that is liquid and protected.

William Brodsky from the Chicago Boards Option Exchange recommends that Congress begin regulatory proposals quickly because the CFTC and the FTC are in a jurisdiction crisis. New financial products are frequently on the border of the two agencies' jurisdiction, so regulation is muddled. To quickly resolve these sorts of conflicts, Brodsky suggests that there be a dispute settlement agency housed in the Treasury Department. He also hopes that future exchanges will be subject to centralized clearing. Finally, unlike Rep. Royce, Mr. Brodsky sees the SEC as the future leader of financial products regulation.

Like the mortgage brokers in Thursday's hearing, Randy Snook supports the establishment of a systemic risk regulator that would oversee "too big to fail" companies. He hopes that this new regulator will be able to proactively prevent a too big to fail crisis, and draw up an emergency plan in the event of a crisis. Snook joined Brodsky in supporting centralized clearing for standard OTCs, but says that the Administration's proposal makes it unclear what agency would be in charge of the new regulations. Finally, Mr. Snook opposes the proposed CFPA because of what many have voiced concern for – poor wording and overreaching authority.

ICI's Paul Stevens explained that the government already effectively regulates mutual funds through authority housed in the SEC, but he welcomes new regulation for the OTC market. Stevens questions how the committee plans to regulate systemic risk, which he views as the most serious issue in the regulatory proposal. He cautioned housing systemic risk at the Federal Reserve because system-wide regulation needs diverse input. Rather, Stevens suggested that congress create a "Systemic Risk Counsel" that considers all aspects of financial services.

PEC's Douglas Lowenstein explained why private equity firms should not be regulated by a systemic risk regulator. The Obama Administration's proposal outlined three factors that make a company a systemic risk: First, its impact on the economy; second, how the company is leveraged; and third, if it is a critical source of credit and liquidity. Private equity fills none of these requirements, so Lowenstein hopes that it will not be wrapped up into new regulatory schemes. He supports the creation of a recording depository but believes only firms that pose a risk should be required to report to the SEC.

FPC's Diahann Lassus supported the proposed CFPA, explaining that the proposed agency will create uniform standards for licensing and regulation that will contribute to economic security and consumer protection. She seemed to draw from the Treasury Department's playbook, using much of the same language to support the registration of financial advisors. Lassus believes that the new regulatory proposals will increase transparency, which will allow firms to better assess risk and manage their own financial stability.

FSF's Rob Nichols spoke mostly to the creation of a "big picture" regulator. Like Mr. Stevens, Nichols believes that a systemic risk regulator will be able weave different financial industries together to prevent financial meltdown. He agreed with Steve Bartlett, who testified in a committee hearing on Wednesday, in supporting the establishment of an Office of National Insurance, which would streamline insurance regulation and systemic risk regulation.

Chairman Kanjorski asked the panel where a systemic risk regulator would be housed, and the panel agreed that it should be a freestanding entity that receives reports from different financial regulators. The Chairman then asked the panel for their input on the proposed CFPA. Mr. Stevens believes that the proposed agency would be worse at enforcing regulatory policy than existing agencies have been, while Mr. Brodsky worries that the CFPA will hurt international markets by taking the U.S. out of the game. Rep. Royce brought up the conflict of safety and soundness regulation and consumer protection, and Brodsky explained that the committee needs to ensure effective regulation/enforcement, not create more rules or agencies.

Rep. Waters brought up the use of CDS and their use in Collateralized Debt Obligations. Richard Baker offered the most "plain vanilla" explanation of CDS. His testimony contrasted the dangers of CDS with the usefulness of them in a way educated the committee on how to properly regulate credit default swaps. Rep. Biggert wanted to know the industry's perspective on the CFPA specifically, asking how the planned regulation weaves the CFPA into derivatives market regulation. Again, Mr. Baker offered a response that the rest of the panel agreed with – no one knows how the CFPA relates to their industry. The poor language in the legislation leaves many unanswered questions about the actually scope of the CFPA, so no one on the panel was prepared to answer Ms. Biggert's question.

The hearing ended on the same note as the four others this week: how big is this new agency going to be, what the limits of its authority are, and how does it apply to different industries? In five hearings, witnesses are either unable to answer these questions, or offer conflicting answers. These confusions point to the long road that legislators have in shaping an effective

Consumer Financial Protection Agency that they hope will provide proper regulation of the industries that need it.