Americans for Financial Reform
Accountability, Fairness, Security

Consumer Protection

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A strong federal commitment to robust consumer protection is central to restoring and maintaining a sound economy. The nation's financial crisis grew out of the proliferation of inappropriate and unsustainable lending practices that could have and should have been prevented. That failure harmed millions of American families, undermined the safety and soundness of the lending institutions themselves, and imperiled the economy as a whole. In Congress, a climate of deregulation and undue deference to industry blocked essential reforms. In the agencies, the regulators' failure to act, despite abundant evidence of the need, highlights the inadequacies of the current regulatory regime, in which none of the many financial regulators regard consumer protection as a priority. The following reforms would fix the system's most glaring flaws, and create a sounder foundation for the nation's consumers and the economy.

1. **Re-regulate mortgages, consumer credit, and other consumer financial products to protect consumers against the excesses of an unrestrained market.**

We must return to ensuring that financial products and transactions are fair and safe instead of merely requiring information disclosures about them. We also must restore sound underwriting and realign the incentives of borrowers and lenders so that both have a common interest in fair, affordable, sustainable and understandable credit. We must reform the mortgage market, address overdraft and other abuses, and adopt a federal cap on high cost credit (a usury cap) that protects every consumer from predatory loan products such as payday loans and permits states to set lower caps. Decades-old consumer protection statutes must be updated to account for inflation and technological changes.

2. **Make a strong federal commitment to consumer protection, including: an agency dedicated to consumer protection, covering all consumer financial products, a Consumer Affairs Office in the White House, and an independent government-chartered consumer organization.**

The consumer financial products agency should have jurisdiction over all bank and payment products and services (including deposit products, electronic funds and payment systems), debt-related services, debt collection, and credit reporting. The agency should have a strong mandate to move away from disclosure-based "consumer protection" to the prohibition of harmful, unfair, deceptive or abusive products and practices. Its rules must be a floor, not a ceiling, on consumer protection standards. The agency should promote standard terms to enable meaningful comparison shopping (for example no-fee, binding price quotes and standard quote features to facilitate meaningful comparisons). Unlike the role that existing banking agencies have played, the consumer financial products agency should have a forward-looking mission, to prevent abusive practices before they become widespread. The agency also should be empowered to ensure fair lending compliance as a major priority, to ensure fair and equitable transactions and access to adequate, sustainable and useful credit for all, including underserved communities. The agency must have authority to obtain information and documents from regulated entities to facilitate monitoring of regulated entities' consumer protection compliance. It also must have a robust enforcement capability, and its rules should ensure industry accountability to individual consumers.

Agency funding should be structured in a manner that provides stable, adequate resources that are not subject to political manipulation by industry, whether funding is provided through Congressional appropriations, industry assessments, filing fees, other sources, or a blend of these approaches. Its board and governance must be structured to ensure strong and effective consumer input, and a Consumer Advocate should be appointed to report semi-annually to Congress on agency effectiveness.

The consumer financial product safety agency, and each regulator's Office of the Consumer Advocate, should have a well-resourced and easy-to-use consumer redress process, accessible online and by phone, that will respond to consumer complaints on a timely basis, stating whether the complaint appears to have merit and whether the agency will investigate and address the problem and whether it should be pursued privately.

An Office of Consumer Affairs in the White House would give consumers a voice in the Administration and provide some balance to the influence enjoyed by Wall Street. This office should have a clear mandate to weigh in on legislation, intervene as a full party in adjudicatory proceedings, and have provide in policy meetings. Its director, someone with firmly established credentials in consumer advocacy, should have direct access to the President.

A government-chartered consumer organization should be created by Congress to represent consumers' financial services interests before regulatory, legislative, and judicial bodies. This organization could be financed through voluntary user fees such as a consumer check-off included in the monthly statements financial firms send to their customers. It would be charged with giving consumers, depositors, small investors and taxpayers their own financial reform organization to counter the power of the financial sector, and to participate fully in rulemakings, adjudications, and lobbying and other activities now dominated by the financial lobby.

3. The states must retain the ability to protect their citizens.

States have proved more nimble and effective than the federal government in reacting to emerging abuses and tailoring responses to local needs. Courts often can remedy new abuses more quickly and efficiently than legislators or regulators by applying flexible, longstanding common law principles against unreasonable, unfair, or deceptive practices. Additionally, state authorities and consumers pursuing remedies privately can add much-needed strength to federal law enforcement. Specific state laws addressing new threats also provide useful data points for federal lawmakers seeking effective models for federal legislation.

It is essential that federal consumer protection law maintains these important state roles. Federal law should set a floor not a ceiling on consumer protection, and federal enforcement efforts should complement state efforts but not displace them. Laws that promote a race to the bottom should be revised so that financial services providers do not have the ability to shop for the weakest state protections and spread those to the rest of the country. No federal agency should have authority to preempt state consumer protection law (whether statutory or common law) or prevent state enforcement of federal or state law, and federal legislators and regulatory agencies should conduct an orderly review and repeal of existing federal regulations that preempt state consumer protection law.

4. Require accountability and appropriately aligned incentives for loan originators, for Wall Street firms that package the loans, and for the investors who fund them.

Compensation terms that incent lenders and brokers to steer borrowers into higher cost or less sustainable loans than those for which they qualify should be prohibited, as should investment or other arrangements that tie the hands of loan servicers and hinder appropriate responses to problems that arise. All participants in the loan supply chain, from originator to assignee, should be held accountable for the loans they make or fund.

5. Consumers who have been damaged by abusive financial practices must have meaningful redress, which requires prohibiting practices like forced arbitration and class action bans.

Laws should be enforceable by those they are designed to protect, with meaningful remedies, against loan originators, the Wall Street firms that package the loans, and the loans' current owners, with attorneys' fees recoverable by prevailing claimants. Widespread abuses are frequently most efficiently addressed by groups of consumers acting together for class relief. Forced arbitration should be prohibited because it deprives consumers of access to the courts, confining them instead in unaccountable, non-reviewable, secretive forums that are often heavily biased in industry's favor.

6. **Eliminate "charter competition" among federal financial regulators, and require transparency in consumer protection regulation and enforcement so effectiveness can be evaluated.**

Both the Office of the Comptroller of the Currency and the Office of Thrift Supervision failed utterly to protect consumers or the safety and soundness of regulated entities. Instead, they competed with each other to minimize consumer protection standards as a way of attracting institutions to their charters, tying their own hands and failing to fulfill their missions. Charter shopping must be eliminated so that regulators can focus on their missions without conflicts of interest. All regulators should be required to focus more on transparent, public rulemaking and enforcement actions than on non-public supervisory actions, and each should have an Office of the Consumer Advocate to report to Congress annually on the agency's effectiveness in protecting consumers.

7. **Address new risks to consumers from financial marketing practices.**

Ensure that regulators address not only traditional marketing practices, but also the growing role of the Internet and online media in the provision of consumer financial services. Digital marketing practices little understood by the public—including so-called behavioral targeting—profile and track individual consumers across the Internet in order to generate financial transactions, including mortgage loans. This system is non-transparent to consumers, including how they are evaluated and what data has been collected about them. Consumer protection for financial services must reflect the realities of the contemporary marketplace, where credit applications will soon be submitted via a mobile phone, for example, and consumer dependence on the Internet for conducting financial transactions is expected to grow dramatically. Online and traditional marketing of consumer financial services should be thoroughly analyzed, and newly emergent risks—including the loss of privacy and lack of adequate privacy protection under existing banking and financial laws—must be addressed.