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Glaring Lack of Enforcement in Consumer Protection Proposals Could Make Matters Worse, Not Better

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Weak Agency Powers, Abandonment of Existing Enforcement Scheme, Leave Injured Consumers Without Remedies or Watchdog, Wrongdoers Unaccountable

The 2008 rules against unfair mortgage practices and the Credit CARD Act of 2009 were passed under a longstanding enforcement regime in the Truth in Lending Act that has three critical parts: ***enforcement by federal regulators, power by state attorneys general to address violations, and remedies for injured consumers.*** All three of these are now at risk.

The proposal to create a Consumer Financial Protection Act lacks the third – and most critical – of these enforcement mechanisms by putting new rules against unfair or deceptive practices under a new structure that does not permit victims to enforce them. Recent compromise proposals would make matters worse by relinquishing state enforcement and by gutting virtually any enforcement by the new consumer regulator. Primary enforcement would be by those whose shortcomings led to this crisis: the bank regulators and the Federal Trade Commission, who through conflicts of interest, diffuse missions, or lack of resources and powers failed consumers and crippled the economy.

New Rules Should be Just as Enforceable as Old Ones. Virtually every consumer protection statute that will be consolidated in the new consumer regulator has an enforcement regime. New rules should be enforceable under those regimes, not relinquished to a new statutory structure that has critical enforcement gaps. Foreclosures will affect 13 million consumers. Triple-digit payday loans trap 12 million Americans in a cycle of debt. Even a new federal agency with strong enforcement powers cannot come close to fixing every problem. It needs help from the states and consumers themselves.

The New Consumer Regulator Needs Strong, Comprehensive, Supervision and Enforcement Powers. A clear focus on consumer protection is essential not just to rule-writing but also to ensuring compliance with the rules. Strong enforcement of existing rules could have prevented much of this crisis, and we should not leave enforcement to those who failed us. Effective compliance also requires both enforcement *and* examination. Enforcement is backward-looking, time-consuming and confrontational, but it's the necessary stick. Supervision is more flexible, efficient, and cooperative. Both are needed. Regular examinations also will give the consumer regulator the information it needs about operational issues and emerging threats to write well-informed, effective, and timely rules.

Comptroller of the Currrency John Dugan on the importance of a comprehensive approach:

> "We believe that the OCC's comprehensive approach to consumer protection regulation – integrating guidance, supervision, enforcement, and complaint resolution – is effective in achieving the objectives established by Congress." (June 13, 2007)

Will victims' only recourse be to complain when, in violation of a rule:

- A senior on a fixed income is given an adjustable rate mortgage that will quickly adjust to most of her fixed income. It has a prepayment penalty.
- A payday lender evades rules protecting Social Security funds from garnishment.
- The auto dealer sells the trade-in, then says the application wasn't approved and demands the car back unless the buyer pays a higher interest rate.