



HOUSE COMMITTEE ON ENERGY AND COMMERCE

Subcommittee on Commerce, Trade, and Consumer Protection

Hearing on:

The Proposed Consumer Financial Protection Agency: Implications For Consumers And
The FTC

Wednesday, July 8, 2009

WRITTEN TESTIMONY OF CHRIS STINEBERT

PRESIDENT AND CHIEF EXECUTIVE OFFICER

THE AMERICAN FINANCIAL SERVICES ASSOCIATION

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Thank you Mr. Chairman for the opportunity to speak here today.

Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members are important sources of credit to the American consumer, providing approximately 30 percent of all consumer credit. AFSA member companies offer or are assigned many types of credit products, including credit cards, retail credit, automobile retail installment contracts, personal installment loans and mortgage loans.

Consumer Protection is an Important Public Goal

AFSA supports consumer protection regulation in the financial services markets. AFSA believes that consistent applicability and enforcement of existing consumer protection laws by government regulators could have lessened some of the harmful effects on consumers in the current economic crisis.

Many AFSA members are regulated primarily at the state level and subject to a patchwork of varying and sometimes inconsistent requirements. This ad-hoc approach to

regulation is costly and inefficient, and AFSA supports strong national consumer protection standards that will allow its members to meet their consumer protection obligations in an efficient and cost-effective manner. These standards must limit the ability of the states to impose additional requirements or apply inconsistent enforcement standards. To do otherwise will merely limit access to, and increase the cost of, consumer credit for millions of Americans.

In addition, strong national consumer protection standards will provide a benefit to citizens and our economy only to the extent they are consistent with sound prudential regulation. Consumer protections that threaten the safety and soundness of financial services providers offer no protections at all – such requirements will serve only to limit choice and access and promote conflicts between prudential regulators and the CFPB. The administration’s proposed legislation provides no guidance with respect to resolving agency conflicts arising from the certain tension between appropriate consumer protection and institutional safety and continuity.

AFSA supports, and believes consumers will be better served by, a regulatory structure where prudential and consumer protection regulation are vested within a single regulator. Congress tried to separate these two intertwined functions with the GSEs. It quickly became apparent that the situation was unworkable, and Congress brought the two regulatory functions back together in a single regulator. Today, there is no evidence that a separation of prudential and consumer protection regulation will offer better results in the financial services arena – indeed, indications are to the contrary -- and we urge Congress to support a regulatory structure that does not separate financial products and services from the viability of the companies that offer them.

Scope of the Proposed CFPA is too Broad

The authority proposed to be vested in a CFPA is breathtaking in its scope and effect. It would cover many entities and persons that had little or no involvement in activities leading to the current economic crisis, including Starbuck's and other retailers that offer prepaid cards, as well as small real estate investors and jewelry appraisers. Without any demonstrated need, these and many other unsuspecting persons will be swept into a web of scrutiny and reporting requirements that will yield little in the way of consumer protection and much in the way of increased costs for consumers. Attorneys, accountants, consumer reporting agencies, auto dealers, title companies, and independent financial literacy educators will find themselves subject to review, potential liability and their corresponding costs – with no evidence that they are behaving unfairly.

Indeed, given that the agency would be required only to “consult” with prudential regulators, it is all too likely that the agency would embark on a mission to severely restrict or outlaw sound business and financial practices it perceives as not “consumer-friendly.” Financial services providers will find it increasingly difficult to plan for risk, as virtually any practice or product -- other than agency-prescribed “standard, plain vanilla products” -- could be subject to attack as “unfair” to consumers.

AFSA does not oppose consumer protections – it embraces them. AFSA supports rational and considered consumer protection that is regulated and enforced in a manner that allows financial services providers to plan and price for risk, to operate their businesses efficiently and safely, and promote access to a full range of credit products for Americans.

The Cost of the CFPA is Burdensome and Excessive

Given the vast scope of the proposed CFPA's authority, its funding needs will be staggering. The administration's proposal does not suggest moving existing funds from other agencies commensurate with the proposed personnel transfers. The existing agencies will still need funding to step into the CFPA's role at times.

Instead, the proposal seeks to fund the CFPA by assessing fees on the persons and entities it regulates, which, as I indicated earlier, include many that would not expect to be covered. There is no doubt that any assessment on financial services providers will be passed on to consumers. In essence, the Administration is asking Congress to impose a new tax on consumers at a time when they are struggling to stay afloat financially and least able to absorb the additional levy. The result will be an increase in the cost and availability of credit; a cost that could be avoided by making better use of the existing consumer protection framework.

The Federal Agencies Can Provide Adequate Consumer Protection

Most AFSA members are subject to the regulatory jurisdiction of the FTC. The FTC has a proven record of enhancing consumer protection under its current authority. It has addressed the economic crisis in two ways: first, by using its enforcement authority under Section 5 of the FTC Act to pursue bad actors in the financial services industry, and second, by setting federal policy through guidance and public comment. I'll start by providing some examples that fall into the first category.

The FTC successfully negotiated a \$40 million settlement with Select Portfolio Services in November 2003 for engaging in unfair and deceptive practices in servicing subprime mortgage loans. The settlement was modified in August 2007 to provide additional protections to borrowers, including mandatory monthly mortgage statements, a

five-year prohibition on marketing optional products such as home warranties, and refunds for foreclosure attorney fees for services that were not actually performed. The FTC also entered into a \$65 million settlement with First Alliance Mortgage Company for making deceptive subprime mortgage loans. The FTC distributed the \$65 million to nearly 20,000 affected borrowers.

The FTC has successfully pursued other subprime mortgage lenders engaged in what the Commission deemed to be inappropriate conduct, including Capital City Mortgage Corporation and Quicken Loans, Inc. In September 2008, the FTC settled charges that EMC Mortgage Corporation and its parent, The Bear Stearns Companies, LLC, violated Section 5 of the FTC Act, the Fair Debt Collection Practices Act (FDCPA), and the FCRA in servicing consumers' mortgage loans, including debts that were in default when EMC obtained them.

In addition to pursuing bad actors in the subprime mortgage industry, the FTC has helped to improve lending practices by issuing guidance and submitting public comments to the federal banking agencies. In June 2007, the FTC released a Staff Report on Improving Consumer Mortgage Disclosures. The FTC has also conducted a study on the effectiveness of mortgage loan disclosures and found that current disclosures do not adequately explain mortgage loan terms and costs to consumers. The FTC provided comments to the federal banking agencies that consumers would benefit from a single disclosure that consolidates the disclosure of important features and costs of a mortgage loan and encouraged them to conduct consumer research to ensure that the proposed disclosures would be effective.

In the area of credit advertising and marketing, the FTC has brought numerous

enforcement actions against lenders, brokers and others in violation of the FTC Act or the Truth in Lending Act. In mortgage advertising, for example, the Commission has brought actions against mortgage lenders or brokers for the deceptive marketing of loan costs or other key loan terms, such as the existence of a prepayment penalty or a large balloon payment due at the end of the loan. The Commission settled with three mortgage lenders charged with using ads that touted low interest rates and low monthly payments, but did not adequately disclose that the low rates and payment amounts would increase substantially after a limited period of time.

Moreover, the FTC has used all the tools at its disposal to increase its protection of consumers in the later stages of the credit life-cycle. The FTC has brought enforcement actions against those who engage in unfair or deceptive acts and practices in violation of Section 5 of the FTC Act, as well as against those who violate specific credit statutes, such as the FDCPA and the Credit Repair Organizations Act (“CROA”). The agency has created and distributed extensive consumer education materials about debt collection, debt relief services, credit repair, foreclosure rescue scams, and other financial services topics to assist consumers in financial distress in taking steps to protect themselves. The FTC has conducted cutting-edge empirical research on how to improve mortgage disclosures and engaged in comprehensive policy development activities related to debt collection and debt settlement.

AFSA’s View

AFSA believes the FTC has done an excellent job of enforcing consumer protection laws, and is best suited to continue that role going forward. We believe that the country does not need a vast new bureaucracy – the administration’s goals can be

achieved with adjustments to the current regulatory structure, and the result will be more efficient, less costly and more successful.

To that end, we make the following suggestions to better utilize the existing expertise of the FTC and the federal banking agencies:

1. Make current and future consumer protection rules applicable to all financial services providers.

Congress should ensure that all federal consumer protection laws and regulations apply with equal force to all providers of financial services with respect to similar classes of products and services. These law should include strong national standards that preempt state laws and permit all Americans to enjoy a consistent level of service and access with respect to financial products and services, regardless of their location.

2. Vest all consumer protection rulemaking authority in the Federal Reserve Board to ensure that regulation is consistent with sound prudential policy.

The Federal Reserve Board has forty years' successful experience as the preeminent drafter of consumer financial protection regulation and interpretation,. The Board's expertise and understanding of the prudential concerns of financial services providers enable it to balance appropriate consumer protections with the financial viability of the companies offering consumer financial products and services. Current regulations, for example, Regulations B (Equal Credit Opportunity Act) , E (Electronic Funds Transfer Act) and Z (Truth in Lending Act), have been very successful in providing

significant consumer protections without endangering financial services providers.

3. Leave enforcement of rules with existing regulators; give backup enforcement authority to the FTC; and vest primary enforcement authority for currently non-regulated entities in the FTC.

AFSA supports maintaining the current regulatory structure whereby consumer protection regulatory authority is vested with the prudential regulator. This structure will ensure that consumer protection regulation is enforced in a manner consistent with sound prudential management and that it properly balances consumer protection with safety and soundness concerns.

The structure will also assure that national consumer protection standards will enhance the efficiency and quality of enforcement and supervisory activities.

The FTC should be granted authority to step in if the prudential regulator fails, or is unable, to address consumer protection concerns in a timely manner. In addition, AFSA supports designating the FTC as the primary consumer protection regulator for entities not otherwise subject to the jurisdiction of one of the federal banking agencies.

AFSA believes this approach will make a better use of existing resources and promote greater efficiency and consistency in consumer protection regulation, as well as improve the quality and effectiveness of consumer protection for all Americans. We look forward to working with this Subcommittee in this regard.

Again, Mr. Chairman I appreciate the opportunity to testify here today and am happy to answer any questions Members may have.