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The Consumer Financial Protection Agency – Throw Out The Bathwater, Not The Baby!

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On July 8, Barney Frank introduced H.R. 3126, the “Consumer Financial Protection Agency Act of 2009.” Pertinently, the bill would:

- Create an agency to regulate disclosures and substantive terms of consumer financial products and services
- Give the agency enforcement authority
- Provide a Consumer Advisory Board to advise the agency
- Require annual fees or assessments to cover the agency’s costs
- Require the Agency to seek to promote transparency, simplicity, fairness, accountability, and access in the market for consumer financial products or services.

- Address enforcement authorities of states
- Define “standard consumer financial product or services” and require they be offered no later than the offer of an alternative consumer financial product or service.

In his testimony to Congress on June 24, ABA Chairman Ed Yingling made two key points suggesting that the new agency should not be formed:

- Improving existing regulatory structures will be more effective than creating a new regulator
- For regulated institutions such as banks, regulation of the product should not be separated from regulation of the institution

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The ABA's points are important, but where community banks are concerned, they do not take into account a potentially more significant concern: the complexity and redundancy of consumer regulation is a major expense for community banks, to the point that they have had to exit many consumer lines of business. Leaving consumer regulation with multiple agencies is guaranteed to preserve complexity and prevent reduction in community banks' consumer compliance costs.

Dan Immergluck, an associate professor at the Georgia Institute of Technology made this point cogently in a September 2 viewpoint article in the American Banker. He emphasized that,

For community banks the fundamental ability to compete in all sorts of lending and financial services markets is at stake.... [A] uniform, consistent federal regulator will be able to rationalize regulation and make the regulatory process less bureaucratic and more predictable.... [I]t is precisely because community banks have borne a disproportionate share of the costs of regulatory failure ... that they should support a new, uniform federal regulator.... A sound regulatory system and a level playing field applied to all sorts of financial firms is necessary for community banks to compete effectively....

To apply the old saying, restoring community banks' ability to provide a broad array of consumer products and services is the "baby" – regulatory complexity is the "bathwater." So how can we most effectively eliminate regulatory


complexity and restore community bank participation in these markets?

A single regulatory agency for consumer products and services is the only effective way to simplify consumer regulations and eliminate redundancy and complexity. If banking agencies and bank regulators are given a stronger role in forming the new agency's policy, striking a balance with safety and soundness can be effectively addressed. Banking agency and industry representatives could be added to the Consumer Advisory Board or incorporated into a formal decision-making mechanism within the agency so that concurrence by a panel including these groups is required before new regulations can be imposed.

On state enforcement powers, the ABA and banking agencies have argued that states should not be allowed to impose potentially inconsistent compliance requirements. However, the proposed agency should not be sacrificed for this reason. One alternative is to give the agency pre-emptive powers similar to the powers granted banking regulators by Gramm-Leach-Bliley, and to reaffirm the banking agencies' power to pre-empt any state consumer protection laws that adversely impact safety and soundness. For most community banks, who do not have extensive interstate activities, and who generally have political influence at their state level anyway, this mechanism would minimize any problems arising from state enforcement authority.

On the final question of "standard consumer financial products and services," promotion of standardized products is likely to benefit community banks, who are normally favored by consumers as a

source of products and services and whose culture already is consistent with an emphasis on "plain vanilla." A marketplace that encourages "transparency, simplicity, fairness, accountability, and access" will play to community bank strengths and promote the community bank franchise.

So, looking at the proposed legislation from the specific point of view of community banks, it would appear that the bill presents a significant opportunity that should not be wasted. There will be few chances in the coming decade to negotiate a regulatory structure that incorporates a commitment to reduce regulatory costs. The community bankers are in a position to see a regulatory cost reduction feature built into this proposal. Don't confuse the bathwater with the baby. You won't find another baby like this for years. 

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