

To: Democratic Members, Committee on Financial Services
From: Barney Frank, Chairman
Subject: Discussion Draft of Consumer Financial Protection Agency Bill
Date: September 22, 2009

I will soon be releasing an initial revised discussion draft of the Consumer Financial Protection Agency (CFPA) bill, intended to be responsive to the primary concerns Members have expressed to date. ***I invite all Members to contact me about any concerns regarding the execution of these changes or other concerns with the CFPA provisions. Any Members who would like to sponsor any of the changes identified below should contact me or Jim Segel on my staff (x6-4330).***

The discussion draft will make several key changes to the Obama Administration's draft legislation to make clear that CFPA will not disrupt merchants, retailers and other nonfinancial businesses or subject banks and other depository institutions to needless additional regulatory burdens and costs. At the same time, CFPA will have a mandate to set strong rules that all financial institutions—both banks and nonbanks—will have to follow when providing financial products and services to consumers to create a level playing field and remove the current competitive disadvantage that adversely impacts traditional banks and thrifts.

We will make the following key changes:

- **Nonfinancial Businesses Exempt.** Merchants, retailers and other nonfinancial businesses will be **excluded** from the regulation and oversight of CFPA. That means that merchants and retailers can continue to give their customers tabs and layaway plans without becoming subject to a new layer of regulation. Also, doctors and other businesses that bill their customers after a service is provided, including telephone, cable, and internet providers, will be excluded.
 - Credit and other financial activities of nonfinancial business will continue to be subject to the Truth in Lending Act and other consumer statutes as they are today.
 - The Federal Trade Commission will continue its longstanding role of providing oversight for these activities.
- **Other Exemptions.** In addition to providing clear exclusions for securities, commodities, investment and general insurance products (other than financial planners), the following other businesses will **not** be subject to CFPA regulation for acting in their traditional capacities:
 - Accountants and other businesses that perform tax preparation services,
 - Real estate brokers and agents;
 - Lawyers;
 - Auto dealers;
 - Telecom, cable and other communications providers;
 - Consumer reporting agencies;
 - Providers of IRAs, 401(k) plans, 529 plans and pension plans; and
 - Service providers that provide strictly ministerial and support services to financial institutions.

- **No “Plain Vanilla” Requirement.** Financial institutions will **not** be required to offer plain vanilla products and services and CFPA will not have authority to approve or change business plans.
- **No “Reasonableness” Standard.** CFPA will **not** be able to mandate “reasonableness” standards that would place financial institutions in the untenable position of having to assess whether consumers comprehend the products and services they are being offered. Instead, CFPA will be mandated to improve the current disclosure regime with an emphasis on clarity, simplicity, conciseness, and reduction of regulatory burden.
- **Simultaneous and Coordinated Exams.** Depository institutions will have simultaneous federal safety and soundness and consumer compliance examinations (unless they request exams at different times). Whatever they choose, the banking agencies and CFPA will have to coordinate and consult one another on the timing, scope and results of exams to ensure a minimum regulatory burden.
- **Dispute Mechanism.** Depository institutions that receive contradictory or conflicting supervisory determinations or directives from CFPA and their prudential supervisors will be able to appeal the decisions to a disinterested governing panel and receive a quick and definitive answer.
- **Registration and Supervision of Nonbanks.**
 - All nonbank financial institutions that provide consumer financial products and services will be required to register with CFPA; and
 - Nonbanks will be subject to a level of supervision and scrutiny that is no less burdensome or comprehensive than that governing traditional banks and thrifts and that will fully reflect the risks posed by these previously unregulated entities.
- **Assessments on Nonbanks.** Nonbanks will be subject to assessments and the legislation will make explicit that neither small nor large banks will pay for the examination and supervision of nonbanks.
- **Federal Reserve Payments.** To ensure adequate funding of CFPA without placing additional burden on financial institutions, the Federal Reserve will fund CFPA at a level that reflects amounts the banking agencies currently pay for consumer compliance.
- **Agency Structure.** CFPA will be run by a single Director, who will be advised by a Consumer Financial Protection Oversight Board, which is made up of the Federal banking agencies, NCUA, FTC and HUD and the Chairman of the State Liaison Committee of the FFIEC. In addition, CFPA will have an Office of Fair Lending and Equal Opportunity to ensure that the agency has adequate resources to address fair lending and civil rights laws under its jurisdiction. We also will clarify that financial literacy will be an important part of the new agency’s mission.