



SENATE BANKING COMMITTEE HEARING

OVERVIEW

For questions please contact [Kwon Park](#) at (202) 547-3035.

Yesterday, the Senate Banking Committee met in open session to conduct a hearing entitled “Assessing the Effects of Consumer Finance Regulations.”

Key Takeaways

- The majority of the witnesses said that the Consumer Finance Protection Bureau’s (CFPB or Bureau) use of enforcement actions to shape policy will create uncertainty, diminish financial innovation, and lead to inconsistencies in the marketplace.
- David Hirschmann urged the CFPB to study other systems and procedures that will offer redress to consumers before taking action on a final rulemaking that will eliminate arbitration clauses.
- Reverend Gable indicated that a good payday lending rule will ensure consumers have an ability to pay before a lender processes a loan, and advocated for a cap on the number of loans an individual can have.

SUMMARY

Opening Statement and Testimony

[Chairman Richard Shelby \(R-AL\)](#)

- The CFPB opened its door five years ago, but its structure and the means by which it is financed makes it one of the least accountable agencies in the Federal government.
- Certain rules will make it more difficult for a consumer to get a prepaid card or to take out a short-term, smaller-dollar loan – such regulations may restrict access to credit.
- So-called protections should not be implemented without regard to their costs or their effects on economic growth or the safety and soundness of any particular financial institution.
- The CFPB is using enforcement actions to reshape the auto finance industry, setting a dangerous precedent of regulating without transparency and accountability.
- The Bureau’s look at the use of arbitration clauses for financial products is based on a series of questionable assumptions and conclusions – a final rule on arbitration should not incorporate these dubious findings.

[Ranking Member Sherrod Brown \(D-OH\)](#)

- The financial crisis resulted in over 9 million homes lost to foreclosures and at least \$10 trillion lost in the American economy.
- The crisis revealed that Americans needed a Federal watchdog that would put their interests first, and the CFPB has been a success.

- The benefits of the CFPB are clear, its actions have resulted in \$11.2 billion being returned to over 25 million consumers, and has made consumer financial products safer and better for consumers – but its work is not done.
- It is critical for the agency to be vigilant against new threats to consumers. Those who say that credit is not available to consumers today are not paying attention – credit is available and it is growing month after month.
- I continue to be troubled by Republican efforts to undermine, and even eliminate the CFPB.

Leonard Chanin, Of Counsel, Morrison and Foerster LLP

- Regulations on consumer finance markets should be clear and flexible. Clear rules ensure institutions know what is required to manage risk, while detailed prescriptive rules inhibit innovation on financial products and services.
- It seems clear that the CFPB uses enforcement orders to create new policies and rules – this comes with many drawbacks:
 - First, enforcement orders lack specificity and creates inconsistencies in the marketplace.
 - Second, enforcement orders are not open for public comment and lacks transparency.
 - Third, enforcement orders contain broad statements about actions, which may result in financial institutions not offering products or innovating due to regulatory uncertainty (i.e. auto lending).
- The CFPB is less than five years old but questions still remain on how it will balance its Congressional mandate of increasing credit access to consumers while also ensuring fairness in the markets.

David Hirschmann, President and CEO, U.S. Chamber of Commerce Center for Capital Markets Competitiveness

- The Chamber has urged CFPB to fulfill its statutory mandates in order to implement and enforce Federal consumer finance laws “consistently,” to ensure that consumers have access to a range of financial services, and to ensure that the markets for financial products and services remain “fair, transparent, and competitive.”
- The Bureau should adopt a robust no-action letter and advisory opinion process and engage with stakeholders prior to announcing or enforcing any de facto regulatory requirements, best practices, or policy expectations.
- On the arbitration rule, the CFPB should recognize the impacts of reducing arbitration actions before taking action to propose a rule to eliminate or reduce arbitration.
- If the CFPB believe the auto lending industry needs regulating, it should pursue transparent rulemaking with notice and comment.

Reverend Willie Gable Jr., Doctor of Ministry and Chairman of the Board, National Baptist Convention USA – Housing and Economic Development Commission

- 12 million families lost their homes and 2.2 million lost property value as a result of the financial crisis - predatory lending practices caused the financial crisis and a lack of oversight allowed predatory lending.

- The CFPB implemented mortgage rules that make it safer for consumers, but other industry abuses continue – if abuses are not controlled, it will relegate some communities.
- Bank overdraft fees exploit a select few unlucky people, and the CFPB is pursuing rules in this area.
- Predatory auto lending practices have been around for years and the CFPB is rightly using enforcement actions to prevent these practices.
- Mandatory arbitration clauses are a front to our Constitutional rights and the CFPB is considering rules to limit arbitration.
- A strong and well-funded independent agency is necessary to protect vulnerable Americans from abusive lending practices.

[Todd Zywicki, Professor, George Mason University School of Law](#)

- Creating a super regulator that lacks the checks and balances of a traditional regulatory agency will harm American families and consumers.
- Rules and regulations have reduced access to credit and financial product innovation.
- The cost of regulations have fallen mostly on lower income and the most vulnerable Americans.
- Price controls have been disastrous as costs have been passed onto American consumers.
- Mortgage originations have fallen due to increased regulations and less credit available to consumers, leading to more payday-lending, autodraft protections, and auto lending. Community banks are not lending as much and have been deprived of their competitive advantage - their relationships with consumers - non-bank lenders have stepped in as traditional banks have been driven out of the market.

Discussion

Enforcement

Shelby: What is the downside of using enforcement actions in lieu of a formal rulemaking? *Chanin:* Enforcement actions are solely between the parties involved so they do not impact other institutions (narrow in scope) and can lead to inconsistencies in the marketplace. Also, there is no opportunity for public comment and it does not provide details about what the issues are; *Hirschmann:* Strong effective enforcement is important, but changing policy through enforcement actions change the rules of the road. Indirect auto lending standards by enforcement actions will only get you a small fraction of the marketplace and will not solve the problem more broadly. Writing a rule is more effective than one off enforcement actions.

Data Methodology

Shelby: Should the government agency publish unverified data (consumer complaints) to shape regulation and policies? *Zywicki:* The idea of dumping unverified consumer narratives will not lead to any coherent actions; *Hirschmann:* The methodology in gathering unfiltered data will confuse consumers. There is no way to verify the data.

Arbitration

Shelby: Agree with the CFPB study on arbitration clauses? *Hirschmann:* 87% of consumers receive absolutely nothing (redress) from class actions. We should look at what system will offer the best solution for consumers to receive redress before determining whether arbitration is replaced with something else.

Cotton (R-AR): Does the CFPB's forthcoming arbitration rule make need for pro-reform more or less urgent? Any other unique issues with respect to the application of this arbitration rule? *Hirschmann*: We expect the CFPB to issue an arbitration rule in upcoming months. Arbitration is a more effective way for consumers to get redress as if they are not classable in a class action lawsuit, redress is unlikely.

Payday Loans

Brown: Richmond Fed study – was a survey. Why is it important for the CFPB to write a strong payday lending rule? *Gable*: The rule should allow consumers to have an ability to pay, and issue some cap in terms of the number of loans customers may have. I am unaware of any consumer that has filled out an arbitration claim. Studies show that the most vulnerable from predatory payday lending practices are women and preachers.

Scott (R-SC): If Dodd-Frank stays the same, will it lead to more payday lending? Are there more or fewer small business as result of Dodd-Frank? *Zywicki*: The higher the fee, the lower the access to quality lending. There are fewer smaller businesses.

Exemptions

Heller (R-NV): Does the CFPB have authority to exempt small community lenders from regulations that are tailored to big banks? Should regulations be based on the size of the institution? *Chanin*: Yes, authority is available for the CFPB to exempt smaller institutions from some or all requirements – a test determines whether to make an exemption. Some exemptions have been part of rules, but I am unaware of a blanket exemption; *Hirschmann*: Rules should be tailored by size of institution. Our nation benefits from having institutions of every size. Regulations are forcing smaller institutions to merge just to meet the scale of compliance requirements; *Zywicki*: American consumers are better served with robust competition, and without making larger institutions bigger through consolidation.

Others

Warren (D-MA): Why should anyone take you seriously now with your failures as a regulator at the Fed? Do you want the CFPB to operate more like the Division of Consumer Affairs (which you lead) at the Fed before the crash? *Chanin*: No hard data was provided to the Fed on the mortgage crisis to allow the Fed to take action. Currently, the CFPB does not balance access to financial products versus the cost of regulations.

Brown: Before the CFPB was formed, did the Federal Reserve (Fed) do enough to enforce consumer protection laws? *Chanin*: The Fed has two authorities: broad rulemaking authority that applies to banks and non-banks; and supervisory authority, which is limited to certain banks. The Fed could have acted sooner in reacting the high cost mortgages and predatory lending, but hard data only showed there was a significant problem after the fact. The Fed did receive complaints on predatory lending practices, but only has supervisory authority over a small number and type of institutions.

Shelby: What is the importance of cost benefit analysis for regulators? *Zywicki*: Cost benefit is the most important step for regulators.