NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

How the *Restoring Financial Stability Act of 2010* needs to be strengthened:

1) The Consumer Financial Protection Bureau (CFPB) does not have the independence and authority necessary to create and enforce strong rules to protect consumers. The bill instead gives the same regulators who failed to prevent the financial crisis influence in rule writing and enforcement.

   Recommendations:
   - **Create a standalone agency,** not subject to veto power of the Financial Stability Oversight Board or beholden to the bank regulatory agencies.
   - **Remove the Federal Reserve's control of the CFPB's budget.**
   - **Eliminate multiple requirements** that the CFPB work with or rely on other agencies to help write and enforce rules.

2) The bill does not give the CFPB enough scope and enforcement authority to adequately ensure that all consumers are treated fairly. The bill does not allow the CFPB to enforce the Community Reinvestment Act, and it only gives the CFPB enforcement powers over the biggest institutions, leaving primary enforcement for those with assets under $10 billion with the existing regulators. The bill requires the CFPB study and confer with the FTC on which categories and sizes of non-bank consumer lenders should be covered.

   Recommendations:
   - Give the CFPB the **power to enforce the Community Reinvestment Act,** as originally proposed by the President.
   - **Remove the banks' ability to appeal the actions of the CFPB** to an interagency panel that includes the existing bank regulators.
   - Allow no "carve outs" after the fact by **defining, or allowing the CFPB to determine, enforcement authority over non-bank consumer lenders** (i.e., payday lenders, auto dealers, etc).

3) While the bill allows for State Attorneys General to protect consumers by suing to enforce the federal rules issued by the CFPB, it undermines state consumer protections by allowing preemption of state law in cases where those laws "discriminate" against nationally chartered banks. The bill essentially perpetuates the federal preemption carried out by the Office of the Comptroller of the Currency, allowing that agency to rule on this matter on a case-by-case basis.

   Recommendations:
   - **Keep the ability of State AGs** to enforce federal law.
   - **Allow no federal preemption of state law.** States have been a laboratory of innovation and should be given the ability to protect their citizens against predatory lending, in those cases where federal agencies have moved too slowly to do so.

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NCRC Summary Analysis
Restoring Financial Stability Act of 2010
Introduced by Senator Dodd on March 15

This analysis looks at the portion of the bill that creates a Consumer Financial Protection Bureau ("the Bureau of Consumer Financial Protection," hereafter, the CFPB) and that addresses "Too Big to Fail."

1) **Consumer Financial Protection Bureau**

Structure

- Creates a Consumer Financial Protection Bureau (CFPB) at the Federal Reserve, not a standalone agency.
- Appoints a single Director of the CFPB, selected by the President, and confirmed by the Senate.
- Creates no formal oversight board, but the rules issued by the CFPB are subject to veto by the Financial Stability Oversight Council in some cases.
- Includes offices and functions of the Consumer Advisory Council, Community Affairs, Consumer Complaints, Office of Fair Lending and Equal Opportunity, and the Office of Financial Literacy at the CFPB. As applicable, enforcement, research and data reporting are included in these offices.

Authority

- Gives the CFPB authority over most consumer protection laws, but not the Community Reinvestment Act (CRA), which would remain with the existing bank regulatory agencies.
- Perpetuates a form of federal preemption of state law; allows the Office of the Comptroller of the Currency (OCC) to decide preemption on a case-by-case basis. The OCC has historically opted for broad scale preemption.
- Allows state Attorneys General to sue to enforce federal rules promulgated by the CFPB. State laws can be preempted if they "discriminate" against nationally-charted banks and significantly interfere with their ability to conduct business.
- Grants the CFPB authority to write consumer protection rules for bank and non-bank institutions, including payday lenders.
- Gives the Director of the CFPB the power to exempt classes of institutions from the rules and enforcement authority of the bureau.

Enforcement

- Gives the CFPB primary authority to enforce consumer protections against less than 125 banks. Banks under $10 billion in assets will be under the bank regulatory agencies that have repeatedly failed in their consumer protection responsibilities. This includes multi-billion dollar banks (up to $9.9 Billion), regional banks, intermediate–sized banks and small banks.

- Gives the CFPB examination and enforcement authority for non-bank mortgage lenders and institutions providing loan modifications and foreclosure relief.
- Suggests the CFPB would have examination and enforcement authority for large non-bank consumer lenders, such as payday lenders. However, the bill leaves to the CFPB to consult with the Federal Trade Commission and issue a rule determining what constitutes "large" and which non-bank lenders offering non-mortgage consumer loans (ie, auto dealers, etc) are finally covered by the CFPB.
- Gives the Director the power to exempt classes of institutions from the rules and enforcement authority of the CFPB.
- Allows the CFPB to assess fines and penalties for violations of rules; the legislation creates a Consumer Protection Fund to compensate consumers from these penalties and settlements that have been assessed.

Independence of the Bureau

- Gives the Financial Stability Oversight Council the power to veto the rules of the CFPB with a 2/3rds vote if it poses a safety and soundness or systemic risk concern.
- Requires the CFPB to confer with the prudential regulators (OCC, FDIC, Federal Reserve, NCUA) prior to issuing a rule. The CFPB must make public these concerns by publishing them in the Federal Register.
- Gives banks and credit unions an appeals process; if supervisory actions of the CFPB are believed to conflict with the directions of a prudential regulator, banks or credit unions may appeal the ruling to an interagency council, made up of the CFPB and two of the existing bank regulatory agencies.
- Mandates funding for the CFPB, drawing from the Federal Reserve Board (FRB). Technically, the Director of the CFPB must request this funding each year from the Federal Reserve Board. While the FRB is required to fund the CFPB, the ceiling for this level of funding is defined, but the level of adequate funding is not. This gives the FRB effective control over the budget.

New Requirements

- Requires the CFPB to conduct a study of mandatory arbitration in the marketplace and issue a rule on whether mandatory arbitration is to be allowed.
- Prohibits prepayment penalties for adjustable rate mortgages and prime mortgages.
- Incorporates elements of the *Community Reinvestment Modernization Act of 2009* (H.R. 1479). The bill increases transparency in lending by enhancing the Home Mortgage Disclosure Act to collect loan information on the creditworthiness and age of the borrower, total fees and points, presence of teaser rates or prepayment penalties and the use of a mortgage broker or other retail agent. Lenders will be required to report race and gender for small business loans. Lenders will also be required to report data on their efforts by neighborhood to provide basic banking services through bank branches. This data should be incorporated into the performance requirements of the Community Reinvestment Act, which is currently not required by the legislation

- **2) Oversight and Regulation of Risk**

The bill:

- Creates a Financial Stability Oversight Council to identify and address systemic risks before they threaten the economy's stability. It will be composed of eight federal financial regulators (including the Director of the CFPB) and one independent member appointed by the President.

- The bill creates a process for liquidating failed financial firms and imposes new capital and leverage requirements that make it undesirable to get too big. The bill would require regulators to adopt the Volcker Rule and prohibit proprietary trading.

- Eliminates regulatory loopholes for OTC derivatives, asset-backed securities, hedge funds. It will require central clearing and exchange trading for derivatives that can be cleared and will require margin for un-cleared trades.

- Provides shareholders with a "Say on Pay" nonbinding resolution on executive compensation and gives the SEC authority to grant shareholders proxy access to nominate directors.

- Creates new rules on credit-rating agencies. It will create an Office of Credit Ratings at the SEC and will require the SEC to examine NRSROs annually. In addition, investors could bring private rights of action against ratings agencies for a knowing or reckless failure to conduct a reasonable investigation of the facts or to obtain analysis from an independent source.

- Strengthens oversight and empowers regulators to pursue financial fraud aggressively. This includes requiring a study on whether broker dealers who give investment advice should be held to the same fiduciary standards as investment advisers. It will also provide self-funding for the SEC.