

**Statement of**  
**Steven I. Zeisel**  
*On Behalf of the*  
*Consumer Bankers Association*  
*Before the*  
**House of Representatives**  
**Committee on Financial Services**  
*regarding*

**“Banking Industry Perspectives on the Obama Administration’s  
Financial Regulatory Reform Proposals”**

**July 15, 2009**



Chairman Frank, Ranking Member Bachus, and Members of the Committee, my name is Steve Zeisel, and I am the Vice President and Senior Counsel at the Consumer Bankers Association (“CBA”). CBA is the recognized voice on retail banking issues in the nation’s capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery. CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include the nation’s largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry’s total assets. It is my pleasure to appear before you today to discuss our perspectives on the proposed creation of the Consumer Financial Protection Agency (“CFPA”) and the Consumer Financial Protection Agency Act (“Act”).

## **Summary**

We commend the Committee for gathering information to determine whether the financial services regulatory framework in the United States needs revision. It is entirely appropriate to undertake this review in light of the recent significant problems for consumers, retail banks, and the economy generally. Only after Congress understands where there are weaknesses inherent in the system can any remedial action be taken.

Retail banks support several of the goals outlined in the CFPA Act, including the need to provide consumers with clear and understandable information to make informed financial decisions, and the need for retail banks to provide products to meet consumers’ banking needs. In short, CBA agrees with the goals of transparency, simplicity, fairness, accountability, and access for consumers. However, we believe these objectives can best be achieved by addressing these issues within the existing regulatory framework. We believe the creation of a new federal agency is not necessary.

It is increasingly clear traditional safety and soundness issues, such as inadequate underwriting, played a significant role in the financial crisis that ensued; just as it is clear failures of consumer protection were a factor in the mortgage meltdown. The two are intimately connected and cannot be separated. Therefore, we believe the best approach to improving consumer protection should be done in the context of the existing regulatory system. We also believe there needs to be enhanced supervision of non-bank lenders, so they receive a consistent and comparable level of oversight and enforcement as experienced by banks.

Numerous questions arise. For example, how will consumers be affected by the “plain vanilla” product requirements? And how will consumers be affected once retail banks have to develop product offerings compliant with the laws of up to 50 different jurisdictions? What will happen when consumer protection is separated from safety and soundness? CBA’s members continue to ask these and many other questions and are concerned about their consequences. .

Retail banks have served consumers’ needs for hundreds of years, providing a safe repository for their funds, and developing credit products and services that have helped to stimulate economic growth in a country that remains the envy of the world. We do not wish to

see changes made which, despite best intentions, may stifle innovation, raise costs to consumers and result in more confusion rather than less.

CBA will continue to work with this Committee and other interested parties to achieve the objectives of transparency, simplicity, fairness, accountability, and access.

### **Achieving the Objectives of Consumer Protection**

CBA shares the Committee's desire to ensure retail banking products are transparent, appropriately simple, and fair. We also believe banks should be accountable and provide consumers with ample access to banks' products. CBA believes there are significant questions, however, as to whether the Act would further these objectives, or be counterproductive to them. In this regard, there are many questions that need to be answered before this Committee approves a complete restructuring of our consumer protection model.

#### *State Law*

The Act would subject retail banks to the consumer laws of the fifty states. We ask the Committee to consider the practical impact of such a policy. As drafted, for example, the Act would allow the states to regulate the terms of credit. A state could set minimum payment floors or maximum limits, impose price controls on at least some fees, impose limits on a bank's ability to obtain or use consumer report information, or limit a bank's activities in virtually any other manner in the name of consumer protection. This will significantly affect the products that are offered to consumers.

If the Act were adopted, it is reasonable to assume many states will rush to enact laws pertaining to banks' activities.<sup>1</sup> This could result in dozens of differing requirements pertaining to minimum payments, fee limits, underwriting prescriptions and the like. It is not easy to develop a nationwide lending program if there are up to 50 state law variables for every term in the agreement. Not only will this stifle product innovation, but some banks may have to make the unwelcome decision not do business in states they otherwise would, due to the complexity and cost associated with the compliance burdens. That could mean fewer and more expensive choices for consumers as a result of the decrease in competition. CBA strongly believes the more appropriate approach is to establish a uniform national standard as it relates to retail banking, an inherently interstate activity deserving of a federal standard.

#### *Longer, Not Better, Disclosures*

CBA has long supported efforts to simplify and improve disclosures provided to consumers. Nobody benefits when consumers are provided a mountain of information. Consumers do not need more disclosures; they need better disclosures. Ironically, however, the Act could actually increase the disclosure burden on consumers and retail banks, since it does not

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<sup>1</sup> States have generally shown some restraint in this area as a result of the well-known preemptions in effect today.

eliminate a single disclosure requirement under any federal law.<sup>2</sup> It is not clear how more disclosures—not better, more concise disclosures—will benefit consumers.

Furthermore, due to the elimination of uniform consumer laws for federally chartered institutions, even a simple, uniform disclosure would have to be supplemented by the state disclosure requirements in every state in which the bank does business. The best intentions of the bank or the CFPB to provide simple disclosures would be frustrated, as a uniform loan agreement would become a voluminous document, cluttered with state-specific information. Thus, the stated goal of “simplicity” would be undermined by eliminating uniformity.

### *Plain Vanilla: Government as Product Developer*

The Act would allow the CFPB to require retail banks to offer certain products designed entirely by the federal government. It is important for the Committee to consider the likely repercussions of the CFPB designing and mandating vanilla products for all retail banks. For example, assuming the CFPB uses its authority, the base product offered by every retail bank in the country—including its features, terms, and conditions—will be set by the federal government. The apparent justification for this mandated uniformity is both that consumers have become confused by the choices in the marketplace today and that non-vanilla products entail excessive risk to the consumer. It is true that some financial products can be complex and often hard to understand. But consumers have benefited from these choices, and have “plain vanilla” options today. A consumer can walk into a local bank branch and get a basic checking account. It may not have bells and whistles, but it is available and well subscribed. The same is true with debit cards, savings accounts, credit cards, and mortgages. There is no shortage of basic banking products available to consumers, and no shortage of consumers who use them. And as for risk, while some risk may be a necessary component of any vibrant financial services sector, many products once considered innovative when they were first rolled out have developed into relatively low-risk staples in a dynamic market place. These include ATMs, debit cards, and on-line banking.

The “plain vanilla” requirement will remove product development from banks and transfer it to the new agency. Banks will offer vanilla products, but it is less clear whether banks will be able to offer the variety of products they offer today—or may develop tomorrow. For example, a retail bank with limited resources may not be able to support a different product that some consumers find valuable. Furthermore, the Act strongly discourages the offering of innovative products consumers find useful by creating regulatory uncertainty regarding how the non-vanilla product must be described, how it can be advertised, and the disclosures that must accompany it. For example, it is not clear to CBA what it means to describe the risks of a product, or how such a description might need to change if a feature on the product changes, or how to present the product so the consumer understands the long-term risks of a product. These uncertainties may lead to requests for the CFPB to preapprove new product features, marketing campaigns, and product promotions, as suggested in the Obama Administration’s white paper describing the CFPB. However, this would be practically impossible, since there are thousands of financial institutions (not just banks) in the U.S., each with a slightly different product mix

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<sup>2</sup> It does mandate simplification of certain mortgage disclosures by coordinating RESPA and TILA. This is a disclosure reform that CBA has long advocated—but it could be done today without the CFPB.

and marketing plan. As a result, many financial institutions, especially smaller ones, may determine that they are comfortable offering *only* the government-designed plain vanilla product and products sufficiently similar to it to avoid liability under federal and state law. Fewer products being offered and banks offering them in the marketplace mean fewer choices for consumers and increased cost due to reduced competition. We do not believe this will increase consumer access to financial services.

The plain vanilla product requirement raises other questions as well. For example, it is unclear whether an institution would be required to make available the same plain vanilla product features to everyone, regardless of whether they qualify. Depending on the terms, a bank may not be able to safely approve the CFPB's plain vanilla product for anyone but the most creditworthy, if at all. The Act does not prevent the CFPB from imposing requirements that make the offering of the vanilla product an unsafe, unsound or unprofitable activity, such as by placing restrictions on pricing that do not allow for the bank to manage credit risk properly. At the same time, it is hard to see the value of marketing the plain vanilla product to all consumers in every solicitation—as would be mandated by the Act—when only a small percentage of consumers receiving the solicitation may have a legitimate chance of being approved. This is one more example of why consumer protection should not be separated from safety and soundness regulation.

In short, we believe retail banks are in a better position than government to know which products best serve their clients' needs.

## **Conclusion**

CBA strongly supports improving consumer protection. However, we have significant questions regarding these protections under the Act. As we describe in only a few examples of those significant questions, we believe the Act will actually reduce access to financial products, reduce their transparency, and reduce bank accountability.

Thank you again for the opportunity to appear before you today. I would be happy to answer any questions you may have.