



CRC Policy Brief: Restoring American Financial Stability Act

On November 10, 2009, Senator Christopher Dodd (D-CT) released the Senate's treatment of financial regulatory reform, the Restoring American Financial Stability Act of 2009 (RAFSA). Unlike the House of Representatives, the Senate opted to put all of the regulatory reforms in one comprehensive bill. RAFSA provides substantive reform of several aspects of the current financial regulatory system, such as: ending too big to fail, protecting against systemic risk, creating a single federal bank regulator, regulating executive compensation and corporate governance, closing loopholes in regulation, protecting investors, enforcing regulations on the books, and the creation of the Consumer Financial Protection Agency (CFPA).

Although the failure of all of these parts of current financial regulation have had a significantly negative impact on Californians, there are two components of regulatory reform that are especially important to the recovery and stability of low to moderate income communities and communities of color, the CFPA and the end of "Too Big to Fail." For several reasons, RAFSA's proposals for financial regulatory reform are superior to the bill in the House of Representatives, H.R. 3126. The California Reinvestment Coalition supports the Dodd bill, which we believe is in the best interests of California and the nation's economic recovery.

The Consumer Financial Protection Agency

The CFPA is designed to be an independent watchdog to ensure American consumers get the clear, accurate information they need to shop for mortgages, credit cards, and other financial products, while prohibiting hidden fees, abusive terms, and deceptive practices. Unlike H.R. 3126, the draft of RAFSA under consideration provides greater protection for consumers.

Key Aspects of the Senate Version of the CFPA:

Community Reinvestment Act (CRA) Enforcement: The CFPA would be charged with the enforcement of the CRA. As a result, small businesses and low to moderate income communities are ensured a better opportunity to have access to the credit they need, as well as adequate protection from predatory lenders and irresponsible lenders who have devastated California communities. Although CRA still is in need of modernization, the shift of enforcement to a single regulator, the CFPA, is a significant start in the right direction for the future of CRA.

Simplicity: The CFPA is the consolidation of consumer protection responsibilities currently handled by the alphabet soup of federal bank regulators.

Independence: The CFPA is solely responsible for protecting consumers. All of the other agencies that currently hold consumer protection activities give that authority to the CFPA. The CFPA would be run by a five-member board, which would be confirmed by the U.S. Senate, which would eliminate the potential for politics to interfere with the interests of consumers.

Broad Authority: The CFPA is responsible for the supervision and examination of all entities that create consumer financial products, with very limited exemptions. Banks and credit unions, regardless of the amount of assets, would be subject to the same level of rigorous examination and supervision. The sweeping authority of the CFPA, along with the single federal bank regulator, would eliminate the “regulator shopping” that has been prevalent.

No preemption of strict state consumer protection laws: The CFPA would provide the floor for consumer financial protection, not the ceiling. As a result, states would be able to create rigorous consumer protection laws that are best suited to the states’ needs. National banks would no longer be able to escape the enforcement of strict consumer protection laws due to their status as a national bank.

Systemic Risk and Ending Too Big to Fail

RAFSA also deals with the larger failures of current regulations that were exposed in the fall of 2008. With the bailout of AIG, the auto industry and the financial services industry, we discovered that there are some institutions that the federal government thought were “too big to fail.” As a result, American taxpayers learned that the current regulations allowed some large corporations to create a “systemic risk” to the well-being of the entire U.S. economy. While millions lost their homes and/or businesses, several corporations have received billions of dollars in bailout funds, without conditions as to how the bailout funds would be applied. RAFSA changes current regulations in a way that should prevent a reoccurrence of the current financial crisis.

The key component of this regulatory change is the Agency for Financial Stability. RAFSA creates a new agency responsible for identifying, monitoring, and addressing systemic risks posed by large, complex companies, as well as products and activities that can spread risk throughout the economy. This agency will provide a disincentive for companies getting too large by creating burdens on them as they grow and giving regulators the authority to break up large, complex companies if they pose a threat to the financial stability of the country.

Key Differences Between the H.R. 3126 and RAFSA:

Exemptions: H.R. 3126 gives an exemption to banks and credit unions with assets under \$10 billion, which is 98% of deposit-taking institutions in the country. RAFSA does not provide this exemption.

Preemption: H.R. 3126 allows for preemption on a case by case basis, to be determined by the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS). RAFSA eliminates preemption, which means that nationally chartered banks and its subsidiaries are subject to state consumer laws.

CRA: H.R. 3126 does not provide for CRA enforcement. RAFSA brings CRA enforcement to the CFPA, which provides greater opportunity to protect consumers against predatory products and services, while also bringing more credit and capital to low income communities and communities of color

Covered Persons: H.R. 3126 exempts numerous types of consumer product providers from supervision by the CFPA. These carve-outs exist despite the fact that several of the exempted providers have proven not to act in the interests of consumers. RAFSA does not have such sweeping exceptions from CFPA supervision.