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RSC Policy Brief:
The Proposed Consumer Financial Protection Agency

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In light of proposals by Congressional Democrats and the President to create a Consumer Financial Protection Agency, the RSC has prepared the following policy brief analyzing the proposal.

Background: On June 30, 2009, President Obama proposed a Consumer Financial Protection Agency (CFPA) as one of five objectives in the President's White Paper on proposed reforms to the financial services sector. On July 8, 2009, Chairman Barney Frank (D-MA) introduced H.R. 3126, the Consumer Financial Protection Agency Act of 2009, which embodies the basic outline of the President's proposal.

The CFPA proposal is similar in some respects to the Consumer Protection Agency proposed by Ralph Nader and defeated by a Democrat Congress in the 1970s (see this link for more information). More recently, Elizabeth Warren, Chair of the Congressional Oversight Panel for the TARP legislation, has been a chief proponent of the concept.

Summary of Concept: The intent of the CFPA concept is to consolidate federal financial regulatory agencies into the proposed Consumer Financial Protection Agency (CFPA). Proponents of the legislation believe this will provide increased protection of consumers of financial products and services.

H.R. 3126 would create a five-member Consumer Protection Financial Agency Board to consist of four Presidential appointees (subject to Senate confirmation) and the National Bank Supervisor. The CFPA would derive enforcement authority from the following federal laws concerning financial services regulations:

- The Alternative Mortgage Transaction Parity Act
- The Community Reinvestment Act
- The Consumer Leasing Act
- The Electronic Funds Transfer Act
- The Equal Credit Opportunity Act
- The Fair Credit Billing Act
- The Fair Credit Reporting Act
- The Fair Debt Collection Practices Act
- The Federal Deposit Insurance Act
- The Gramm-Leach Bliley Act

- The Home Mortgage Disclosure Act
- The Home Ownership and Equity Protection Act
- The Real Estate Settlement Procedures Act (RESPA)
- The S.A.F.E. Mortgage Licensing Act
- The Truth in Lending Act (TILA)
- The Truth in Savings Act

Overly Broad Authority: The proposal would give the CFPA very broad authority in at least two respects. First, it would cover a broad range of financial service industries. According to CRS, these would include: deposit taking, mortgages, credit cards, investment advising (for entities not subject to regulation by the Securities and Exchange Commission or the Commodity Futures Trading Commission), loan servicing, check-guaranteeing, collection of consumer report data, debt collection, real estate settlement, money transmitting, and financial data processing.

Second, H.R. 3126 would define what entities are considered financial entities very broadly:

> "any person who engages directly **or indirectly** in a financial activity, in connection with the provision of a consumer financial product or service [used primarily for personal, family, or household purposes]; or any[one who] provides a material service to, or processes a transaction on behalf of, [such] a person."

Key terms in this section, such as "financial services" and "consumer financial product or service" are undefined. In addition, the legislation would also leave most future regulations to the discretion of the CFPA instead of prescribing specific regulations.

This bill also has the potential to lead to a future federal takeover of the American financial sector, since the CFPA requires institutions to offer government-mandated products and services without regard to market need.

Will Not Solve Intended Problem: Various federal agencies already have many of the powers that would be given to the CFPA. Skeptics of the proposed CFPA will note that regulators had the job of preventing the kind of financial crisis that occurred in 2008 *prior* to the crisis occurring.

In addition, the proposal would leave a great deal of regulatory authority outside of the CFPA. For example, the SEC and CFPA would still have consumer protection functions outside of the CFPA. In addition, the CFPA would *not* preempt state regulations—maintaining a vast, second layer of regulations that financial products would be subject to.

Cost to Consumers: Depending on the final shape of the bill, the CFPA might pay for its operations by imposing fees on industries that fall under its jurisdiction. These costs would then be passed on to consumers. Furthermore, giving the agency an independent source of money would reduce the agency's accountability to Congress.

Consumer Access to Credit and Innovation: Proponents of the CFPA intend for the agency to reduce financial innovation, and to eliminate consumer access to certain credit options. Supporters of the CFPA concept argue that many consumers (particularly those with poor credit) received mortgages and other loans with terms that were unaffordable. In addition, supporters of the CFPA argue that some relatively recent financial innovations helped cause the 2008 financial crisis.

One problem with reducing access to credit for those with lower credit ratings is that eliminating access to this credit does not also cause the demand for the credit itself to go away. Instead, consumers with poorer credit ratings may be forced to seek credit on even worse terms. As economic analyst Megan McArdle states:

> "If it goes farther, this will probably not result in a net improvement in welfare, because poor people who really need credit will have to hook their belongings or go to loan sharks who will ding up much more than your credit rating if you default."

Financial innovation has been demeaned recently because it has been blamed for the 2008 financial crisis. But limiting financial innovation also has costs. As economist Tyler Cowen puts it:

> "If the U.S. economy resumes growing at an average rate of about two percent a year, eventually our economy will look very, very different than it does today. It's hard for me to see running the economy of 2100 with the banking system of… what is the nostalgic year? 1992? 1957?"

Economist Robert Shiller, an economist who famously warned of the real estate bubble prior to the crash, notes: *"We need to invent our way out of these hazards, and, eventually, we will. That invention will proceed mostly in the private sector."*

Groups Opposed to the CFPA:

American Association of Advertising Agencies
American Financial Services Association
American Institute of Certified Public Accountants
American Land Title Association
American Resort Development Association
Association of National Advertisers
Building Owners and Managers Association International
Business Roundtable
Consumer Bankers Association
Consumer Data Industry Association
Consumer Electronics Association
Direct Marketing Association
Financial Services Institute
Financial Services Roundtable
Interactive Advertising Bureau
National Automobile Dealers Association
National Association of Home Builders

National Association of Mutual Insurance Companies
Property Casualty Insurers Association of America
Real Estate Roundtable
The National Business Coalition on E-Commerce and Privacy
U.S. Chamber of Commerce's Institute for Legal Reform
U.S. Chamber of Commerce

Note: This list may not be exhaustive.

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