

CFPA Bill May Strengthen Authority of States to Regulate Banks

October 22, 2009 – Until 2004, national banks had to obey state consumer protection laws. Then the Office of the Comptroller of the Currency (OCC) got involved and wrote a new operating standard for national banks. That standard said that the states had no authority to enforce their consumer protection laws against banks that were federally chartered. The end result of this was that state attempts to protect consumers from predatory lending practices nearly evaporated, and the regulatory void that we created certainly contributed to the collapse of housing markets and the recession. But now there is a bill in Congress that has the potential to change things.

The Obama Administration and Congress have been making progress on a bill to create a Consumer Financial Protection Agency. The new agency would be responsible for handling consumer complaints and have broad regulatory authority over banking in the United States. While the bill has some significant issues, it took a great stride forward yesterday when the House Financial Services Committee approved an amendment to it that would require federally chartered banks to comply with state consumer protection laws.

The amendment is not perfect. It does contain a loophole that would allow federal regulatory authorities to exempt banks from state laws. But that loophole is narrowly written. Banks could only be exempted if compliance with state regulations would put federally chartered banks at a competitive disadvantage with state chartered banks operating within the same state. This standard could be difficult to meet since state chartered banks already comply with their state consumer laws.

The amendment to the bill was sponsored by Rep. Brad Miller (D-NC) and Rep. Dennis Moore (D-KS) and was passed on a voice vote. If it survives, it will essentially establish federal consumer protection laws as a minimum standard for banking; allowing the states to implement much more rigid standards. This is something that ACCESS has supported for years.

There were a number of calls for a standard that provided no loophole to the amendment. Unfortunately, Barney Frank – the Chairman of the committee – would not support this position and came down in favor of a weaker standard.

Survival of the amendment in a final bill is by no means assured. There are already calls to further weaken or eliminate the provision from a final bill. It is no surprise that these calls are coming from those in the financial services industry that would be most impacted by the bill

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