

**Roth Conversion** 

Advice and insights from industry experts on changes in

set to take effect in 2010

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comprioner or the Currency could preempt state consumer protection naws by simply issuing a letter or ruling.

## (See related story.)

Receiving far less attention is the ability of the Fed or a systemic-risk council to overturn consumer protection rules that are deemed to pose systemic risk. In part, that is because there is debate over whether a consumer issue can present a risk that threatens the broader economy.

"It can certainly result in the failure of an institution," said Gil Schwartz, a former Fed lawyer now working in private practice. "But it's hard to imagine a consumer regulation that rises to the level of a systemic risk."

Others disagree, and point to a 1989 California law that allowed homeowners to purchase a home and pay the same mortgage rate as the previous owners.

"They overrode contracts," Talbott said. "Banks had losses and they piled up until it was overturned."

Critics have also cited affordable housing criteria for the government-sponsored enterprises that required Fannie Mae and Freddie Mac to make loans to low- and moderate-income consumers. When the housing crisis hit, many of those loans added to losses at the enterprises, which eventually had to be seized by the government.

The provision underscores the friction that could result if the Fed has to work in close quarters with the CFPA. The Fed would likely have the weaker hand if it is unable to block CFPA moves that the central bank thinks could cause broader economic turmoil, observers said.

"What this says is the CFPA should ignore the Fed," said Mark Calabria, a former Republican Senate aide who is now the director of financial regulation studies at the Cato Institute. "If you have these systemic-risk issues, why would you be telling the regulator not to care?"

Other industry representatives also expressed concern that Frank's provision could embolden states to enact laws that would prevent banks from discriminating against unemployed borrowers or those with low credit scores. In those instances, however, Schwartz said the Fed might be able to use its power as a safety and soundness regulator to order a stop to such lending.

"What the banking agencies would do is tell the banks to just not make those loans," he said. "They can suggest to the institution that it would be improper to take that risk and make that loan."

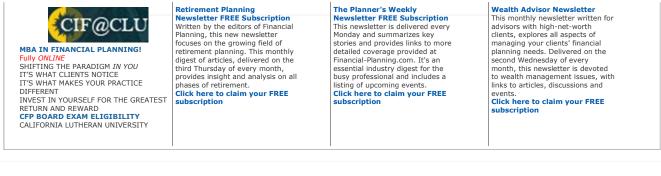
Berenbaum downplayed such a scenario, and said there should not be a conflict between consumer lending and a bank's safety and soundness.

"Central to all lending is that it be safe and sound and be done in a way that's sustainable," he said. "Strong consumer protection equals safe and sound lending."

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