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To Protect or Not to Protect? The Answer Depends on How You Ask the Question

I will be the first to admit that debates on banking reform don't always leave people on the edge of their seats. But if you have been following the Obama administration's push for regulatory overhaul, you know that the idea of creating a new federal agency dedicated solely to defending financial consumers is a nail biter. Yesterday, I joined several panelists at the Cato Institute's convening, "Did a Lack of Consumer Protection Cause the Financial Crisis?" I want to thank Cato for inviting me to a frank discussion on the merits of consumer protection as a centerpiece of financial reform. I would also like to politely disagree with the framing of the question—as I did at yesterday's event. The obvious answer is that a lack of consumer protection is not the sole reason for the financial collapse we witnessed in 2008 and whose effects we have been living with since. By leading us to this answer, the next step is to question why the Consumer Financial Protection Agency (CFPA) is necessary if the lack of adequate protections didn't push us over the global financial edge. But this is the wrong question to ask. And in this town, asking the right question can make all the difference.

The question we should be asking is "Could improved consumer protections have prevented the crisis?" The answer is yes for two reasons. First, at its core, our financial crisis is driven by the inability of individual families to pay their mortgages and other debts. Had better controls been in place, millions of families would never have received toxic mortgages that were designed to fail. Second, regulators missed the warning signs of the development of a housing bubble, therefore dismissing concerns over mortgage loans built on the idea that housing prices can only go up. Strong rules of the road would have sounded the alarm much earlier and made the case for reform and adjustments throughout the system.

Though I'm not sure that I made any new converts, I hope the participants walked away with an understanding of why the National Council of La Raza (NCLR) firmly believes that we need an agency dedicated to looking out for the little guy. Here is the case I made:

• NCLR has long supported expanding homeownership for qualified Latino families in a manner that will help them build wealth that they can pass to their children. However, while we were funding housing counseling and coaching low-income families on how to build emergency reserves, subprime mortgage brokers and lenders swooped in with a clear message: "Why wait when you can buy now?" The entire housing market was built on incentives to maximize short-term profit at the expense of long-term sustainability of families and the U.S. economy alike. Thanks to Alan Greenspan's advice to the friendly neighborhood broker, most families believed home prices could only go up and that home equity could be built easily. Say what you will about whether consumers should have been smarter than their brokers; it is hard to make the case that they should have been smarter than Alan Greenspan.

• There is overwhelming evidence that communities of color, women, the elderly, and low-income families were routinely targeted as easy prey by predatory lenders. The data show that these groups were more likely to obtain subprime loans, even when they had good credit, down payments, and co-borrowers. Further evidence of targeting and discrimination is bubbling to the surface as former bank employees blow the whistle on their employers. I can't lay all the blame on the predators, however. Most of them would never have had a shot had prime retail banks made a serious play for the business of low- and moderate-income families. Yet many of these banks decided it wasn't worth the work, leaving entire communities dependent on subprime outlets for credit.

• Those who had the power to prevent or minimize the crisis failed miserably. By now it is an old story that the Federal Reserve had authority under the Home Ownership and Equity Protection Act, but it delayed in issuing regulations to rid the market of the worst practices until 2008, at which point it was too late. By then, millions of families were on the path to foreclosure. But the Fed is not the only agency that let us down. The FBI, Department of Justice, and federal bank regulators also had a job to do and came up short. Many well-meaning state regulators and attorneys general tried to get on top of the problem but were underfunded, outgunned, and, at times, blocked by federal regulators. It seemed that it was everybody's and nobody's responsibility to enforce consumer protections. When the web of regulatory agencies lacked focus, big banks made a killing and families lost the only major asset most of them will ever own.

During the bubble years, the financial system lacked accountability. This is why NCLR supports comprehensive reform that modernizes our financial regulatory system. There is a strong case for establishing an independent agency dedicated to enforcing consumer protections. But an agency that protects in name only will not do so. To be effective, the agency must have the tools necessary to clear deception and scams from the field and make way for true innovation and competition. Financial consumers should no longer be bogged down by unnecessary account fees that drain savings or remain dependent on expensive and risky credit because affordable lenders don't serve their neighborhood.

On Monday, Senator Dodd (D-CT) released a bill that includes the creation of a CFPA that is intended to protect Americans from deceptive lenders. While NCLR applauds Senator Dodd for taking a significant first step, the CFPA has a long way to go before it truly offers the protection families are demanding. As members of the Banking Committee gear up for the bill's markup next week, proponents will try to strengthen the agency's enforcement power and opponents will move to extract whatever teeth it has left.

This leaves us asking: When it seems like so many are moving to protect the interests of big banks, who will ensure that the same protection is afforded to hardworking families?

To stay up to date on NCLR's efforts to strengthen our banking foundation, please visit www.nclr.org/bankingreform.