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BRIEFING BOOK

Will Congress Remove Consumer Credit “Seat Belts”?

The CFPB has faced criticism not because it is out of control, but because it is effective.

BY CHRISTOPHER L. PETERSON FROM MARCH 7, 2017, 10:00 AM - 6 MIN READ

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President Barack Obama announces the nomination of Richard Cordray as the director of the CFPB, 2011.

In her seminal *Democracy Journal* piece “**Unsafe at Any Rate**” then-Professor, now Senator, Elizabeth Warren called for the creation of a new federal agency dedicated to protecting consumers from dangerously designed financial products. Professor Warren’s title riffed off of Ralph Nader’s famous 1965 book, *Unsafe at any Speed*, which awoke Americans to dangerous design defects in cars. Following Congressional reform spurred by Nader’s work, tens of thousands of lives were saved every year thanks to simple design changes—like seat belts—implemented through government auto safety regulation. Today, seat belt use is nearly universal and Americans look back with horror on a more naïve time when families flirted with death by fender-bender every time they drove to the grocery store.

Professor Warren wrote her homage to Nader’s book in the aftermath of the mortgage foreclosure crisis, when it became irrefutably clear that exotic and subprime home mortgages had designed-in defects akin to those of the early automobile industry. She understood that “deregulation of interest rates, coupled with innovations in credit charges” such as “teaser rates, negative amortization, increased use of fees, cross-default clauses, penalty interest rates, and two-cycle billing” led consumers to sign risky contracts with only the vaguest idea of what they would face. Like cars without seat belts, too many American consumer loans were a family disaster waiting to happen.

A decade after the mortgage market crash, Professor Warren’s brainchild, the Consumer Financial Protection Bureau (or the “CFPB”) has been hard at work trying to make consumer finance safer, more transparent, and generally better for everyone. But this mission is now in jeopardy as Congress considers bills to weaken or even eliminate the agency. By now it is well known, among those who are following this debate, that the CFPB has returned over \$12 billion in consumer restitution to the American public. The CFPB’s critics respond to this figure by calling it a “**rogue agency,**” a “**schoolyard bully,**” and even an “**economic Frankenstein monster.**”

But a careful empirical examination of the CFPB's enforcement track record reveals a much more reassuring and positive picture than the naysayers suggest. I recently [published a study](#) of every CFPB case through the 2015 calendar year coding each matter based on variables such as the money recovered for consumers, the legal theories asserted, and the type of financial services involved. The upcoming debate over the Bureau's future could be better informed by recognizing at least three key findings.

First, rather than bringing cases to enforce technical violations or pointless bureaucratic minutia, the CFPB overwhelmingly focused on deception by financial institutions. In its first five years, about nine out of every ten dollars—around \$10.5 billion—in consumer refunds and forgiven debts was awarded in cases where the CFPB uncovered evidence that the company illegally deceived its customers. Everyone agrees that banks and other financial companies are not allowed to lie. In fact, ever since 1938 it has been illegal for business to make misleading or deceptive material statements when marketing goods or services to the public. The CFPB has made a difference in this respect not because the laws changed, but because there is now a watchdog with the will and resources to make real progress in enforcing traditional laws. True conservatives, it should be noted, have always encouraged the government to err on the side of enforcing existing rules, rather than making new ones. By scaling back funding of the CFPB or hobbling it with unwieldy leadership, Congress would prevent the agency from tracking down financial businesses that are simply not being honest with their customers.

Second, the data suggest that far from being a rogue agency, the CFPB, under director Richard Cordray, worked hard to bridge ideological and jurisdictional divisions in enforcing the law. For generations, true conservatives have complained that the federal government ignores local perspectives and arrogantly refuses to cooperate with state governments. Not the CFPB. During its first five years, about 95 percent of consumer refunds and forgiven debts were awarded in cases where the CFPB cooperated with other state or federal agencies. In cases with the highest stakes—those producing awards of over \$100 million—the CFPB collaborated with another law enforcement partner nine out of 11 times. The CFPB has brought cases in

collaboration with the states of California, Massachusetts, and New York. But it has also enforced the law alongside Mississippi, North Carolina, Utah, Virginia, and many more. The agency even brought a joint law enforcement case with the Navajo Nation—the largest Indian tribe in the country. While the CFPB’s critics want to paint an image of an insular and unaccountable bureaucracy, the new agency’s actual law enforcement track record demonstrates responsiveness, intergovernmental collaboration, and consensus building.

Finally, if the CFPB really were a **“runaway agency,”** we should expect to see banks *running* from it. In every law enforcement case, the defendant is entitled to due process of law. Banks get to have to their day in court. So, how often have banks raced to the judicial branch to protect them from this Frankenstein monster? Dozens of times? A handful of cases? The answer is *not even once*. In order to be subject to CFPB enforcement, by statute, banks must have over \$10 billion in capital. Although this kind of money buys access to the finest lawyers, in every CFPB enforcement case, banks signed a settlement agreement. This is not to say banks were always happy with the outcome. But neither are people that get speeding tickets. When money is on the line, the facts show that our most sophisticated and well-capitalized financial institutions did not want a judge or a jury—or the media attention that go along with them—to look at their case.

The truth is that the CFPB has faced criticism not because it is out of control, but because it is effective. If the CFPB were bringing crazy cases, hundreds of federal judges appointed by Republican and Democratic presidents would simply dismiss the agency’s complaints. And some of those judges would enjoy doing so. Too many of America’s financiers are betting it will be easier to strangle the watchdog than actually follow the rules or pay up when they make a mistake. And worse, too many politicians, pundits, and astroturf-think-tanks-for-the-wealthy want to score political points by taking down what may be the best recent example of a government actually doing really great work for the public. If cooler heads prevail, then we can hope in the coming years the CFPB’s no-nonsense approach to consumer protection will be as universally accepted as seat belts are today.

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