ICYMI: How We'll Stop a Rogue Federal Agency

Posted by on February 09, 2017

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Wall Street Journal

February 9, 2017

The Obama presidency placed no greater burden on America's growth potential than the avalanche of regulations that smother the U.S. economic system. The most destructive and dangerous of the new regulatory bureaucracies created by the Democrat-dominated 111th Congress is the Consumer Financial Protection Bureau.

The CFPB stands with ObamaCare as a crowning "achievement" of Mr. Obama's transformation of America. With unprecedented automatic funding provided directly by the Federal Reserve, the agency is unanswerable to anyone. Democrats chose to insulate it from Congress, the president, voters and the democratic process. The U.S. Circuit Court of Appeals for the District of Columbia noted as much in its recent PHH v. CFPB decision, which ruled the bureau's governing structure unconstitutional. The court said the unelected CFPB director "enjoys more unilateral authority than any other officer in any of the three branches of government of the U.S. Government, other than the President."

The CFPB is arguably the most powerful, least accountable agency in U.S. history. CFPB zealots have the power to determine the "fairness" of virtually every financial transaction in America. The agency defines its own powers and can launch investigations without cause, imposing virtually any fine or remedy, devoid of due process. It requires lenders essentially to read their clients' minds, know and weigh their clients' comprehension levels, and forecast future risk. It can compel the production of reams of data and employ methodologies that "infer" harm without finding any specific instance of harm or knowing violation.

The regulatory web spun by the CFPB can make every provider of financial services guilty until proven innocent, inviting selective enforcement and financial shakedowns. The CFPB is the embodiment of James Madison's warning in Federalist No. 47 that "the accumulation of all powers, legislative, executive and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny."

This tyranny has harmed the very consumers it purports to help. Since the CFPB's advent, the number of banks offering free checking has drastically declined, while many bank fees have increased. Mortgage originations and auto loans have become more expensive for many Americans.

No corner of American finance is beyond the CFPB's grasp, even auto dealers—which are specifically excluded from its jurisdiction by the Dodd-Frank Act. To dodge this legal constraint, the CFPB regulates auto dealers through enforcement "bulletins" on auto lenders, employing statistical analysis rather than specific acts to charge lenders with discriminatory lending. The race of borrowers is inferred based on the borrowers' names and home addresses. Through this ruse they smear and shake down lenders.

The House in 2015 voted 332-96—with 88 Democrats in support—to force the CFPB to rescind its auto-lending guidance. Sen. Elizabeth Warren, the intellectual mother of the CFPB, led Senate Democrats' opposition to the bipartisan bill. This is a sign the 52-member Senate Republican majority probably will be unable to overcome Democrat filibusters on legislation limiting the CFPB's powers.

President Trump should immediately fire CFPB Director Richard Cordray, citing the president's constitutional responsibility to take care that the laws are faithfully executed. A new director could first undo all harmful actions taken by the CFPB during the Obama era. He could then implement policies that actually benefit consumers, such as limits on class-action lawsuits wherein plaintiff law firms get fortunes but injured financial consumers get pennies.

The CFPB could also protect Americans from government abuses. A new director could penalize government bond issuers that fail to disclose unfunded pension liabilities. It could also put an end to government accounting and solvency standards that, if adopted by private companies, would result in fines or a firm's closure.

Yet even with good policy, the CFPB would still be unconstitutional. For those who reject Sen. Warren's view that the ends justify the means, the agency must be functionally terminated. Consumer protection can instead come through an accountable and constitutional process.

The Senate can achieve this with a simple majority vote. Dodd-Frank requires the Fed to fund all CFPB budget requests automatically—creating an estimated $6.6 billion funding stream over the next 10 years. Under a budget process known as reconciliation, the House Financial Services Committee, which I chair, and the Senate Banking Committee could be mandated to save $6.6 billion over 10 years of the budget. In the ensuing reconciliation bill the two committees could then direct the Fed to terminate CFPB funding. Senate Democrats could not filibuster the bill.

Congress could then transfer the CFPB's consumer protection role to the Federal Trade Commission or back to traditional banking regulators, where it resided before the CFPB's creation. A Senate point of order requiring 60 votes could be brought against these provisions, on the ground that they don't belong in a reconciliation bill. The advantage of putting the restructuring language in the reconciliation bill is that if Democrats use the point of order to strike the language, they—not Republicans—would have elected to end all CFPB funding, leaving the new system of consumer financial protection to be decided in future legislation.

When Democrats sought to take consumer protection outside the democratic process, consumers were harmed by a reduction in competition. With fewer lenders serving fewer borrowers, fewer businesses employed fewer workers. A healthy economy is the first casualty of any war on credit, and a loan denied becomes a job lost. The CFPB has eroded freedom, trampled due process and killed jobs. It must go.

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