America's Consumer Financial Sheriff and The Horse It Rides Are under Fire

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Notwithstanding its name, the Financial Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs (CHOICE) Act of 2017 will be terrible for consumers. It will gut the Consumer Financial Protection Bureau and return us to the Wild West days of the early 2000s where predatory lenders could prey on the elderly and the uneducated, knowing that there was no sheriff in town to stop ‘em.

The subprime boom of the early 2000s has receded in memory these fifteen years, but a recent Supreme Court decision reminds us of what that kind of predatory behavior could look like. In Bank of America Corp. v. Miami, 581 U.S. ___ (2017), the Court ruled that a municipality could sue financial institutions for violations of the Fair Housing Act arising from predatory lending. Miami alleged that the banks’ predatory lending led to a disproportionate increase in foreclosures and vacancies which decreased property tax revenues and increased the demand for municipal services. Miami alleged that “[t]hose ‘predatory’ practices included, among others, excessively high interest rates, unjustified fees, teaser low-rate loans that overstated refinancing opportunities, large prepayment penalties, and—when default loomed—unjustified refusals to refinance or modify the loans.”

The Dodd-Frank Act was intended to address just those types of abusive practices. Dodd-Frank barred many of them from much of the mortgage market through its Qualified Mortgage and Ability-to-Repay rules. More importantly, Dodd-Frank created the Consumer Financial Protection Bureau. The CFPB was designed to be an independent regulator with broad authority to police financial institutions that engaged in all sorts of consumer credit transactions. The CFPB was the new sheriff in town. And like Wyatt Earp, it has been very effective at driving the bad guys out of Dodge.

The Financial CHOICE Act would bring the abusive practices of the subprime boom back to life. The act would gut the CFPB. Among other things, it would make the Director removable at will, unlike other financial institution regulators. It would take away the CFPB’s supervisory function of large banks, credit unions and other consumer finance institutions. It would take away the CFPB’s power to address unfair, deceptive and abusive acts and practices. It would restrict the CFPB from monitoring the mortgage market and thereby responding to rapidly developing abusive practices.

The impacts on consumers will be immediate and harmful. The bad guys will know that the sheriff has been undercut by its masters, its guns loaded with blanks. The bad guys will reenter the credit market with the sorts of products that brought about the subprime crisis – teaser rates that quickly morph into unaffordable payments; high costs and fees packed into credit products; all sorts of terms that will result in exorbitant and unsustainable credit.

Jeb Hensarling (R-TX), the Chair of the House Financial Services Committee, is the chief proponent of the Financial CHOICE Act. Hensarling claims that Dodd-Frank and the CFPB place massive burdens on consumer credit providers. That is not the case. Interest rates remain near all-time lows. Consumer credit markets have many providers. Credit availability has eased up significantly since the financial crisis.

One only needs to look at his top donors to see how the Financial CHOICE Act lines up with the interests of those consumer credit companies that are paying for his reelection campaign: these top donors include people affiliated to Wells Fargo; Bank of America; JPMorgan Chase; Capital One Financial; Discover Financial Services and the American Bankers Association, among many others.
Dodd-Frank implemented regulations that work very well in the consumer credit markets. It created a regulator, the CFPB, that has been very effective at keeping the bad guys out of those markets. The Financial CHOICE Act will seriously weaken the CFPB. When vulnerable consumers cry out for help, Hensarling would heave the CFPB over its saddle and let its horse slowly trot it out of town.

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