



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

October 14, 2009

The Honorable Melissa L. Bean  
U.S. Representative, 8<sup>th</sup> District  
432 Cannon House Office Building  
Washington, DC 20515-1308

Dear Congresswoman Bean:

I appreciate you taking the time recently to discuss the Consumer Financial Protection Agency Act of 2009 with me. In follow-up to our conversation, I wish to reiterate my strong support for the proposed legislation. As proposed, the Act would create a single financial regulator tasked with establishing and enforcing consumer protection rules applicable to *all* lenders and *all* consumer loan products. This enforcement authority would be shared with the states.

We, as elected officials, are charged with protecting the consumers of Illinois. The Illinois taxpayers have recently bailed out the national banking industry to the tune of billions of dollars. This bailout was necessary because big banks originated, funded, and securitized many loans that never should have been made. National lenders originated or funded millions of extremely risky pay option ARM loans that are due to reset in the near future. These toxic loans called out for firm federal oversight, and yet federal regulators did nothing to curb their explosive growth.

We are all paying for the banks' conduct: increased budget deficits, tight credit, depressed housing values, blighted neighborhoods, and depleted retirement and college funds. But most painful of all is the massive loss of jobs.

Now these same banks are fighting vigorously to defeat the consumer protection reforms that President Obama has proposed to make consumer protection a priority and protect us from a repeat of the current economic crisis.

**Support for joint federal-state enforcement of new consumer protection rules.**

I believe that the interests of Illinois consumers are best served by a vigorous state-and-federal enforcement regime. For that reason, I am especially supportive of provisions in the proposed Act that would restore and preserve the full authority of the states to safeguard our citizens from abusive and predatory lending practices by all lenders.

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As the chief legal officer of the State of Illinois, I am charged with enforcing consumer protection laws for the benefit of the citizens of our state. But my ability to protect Illinois consumers goes only as far as the law allows. For the past quarter century, the banking industry has waged a successful lobbying campaign to increasingly preempt the authority of state attorneys general to protect our citizens from unfair and deceptive lending practices. As it turns out, these disastrous lending practices led to the greatest financial catastrophe of our lifetime.

**Lax enforcement: Who was to blame?**

Federal regulators have maintained that national banks did not play a significant role in precipitating the crisis. This claim does not comport with the facts. The Center for Public Integrity found that 21 of the 25 largest subprime issuers during the lead-up to the crisis were financed by large banks. In 2006, at the height of the subprime lending spree, national banks, federal thrifts, and their subsidiaries originated and purchased close to a quarter of all subprime loans and about 45 percent of all alt-A loans sold. Also, federally-chartered depositories, their subsidiaries, and their affiliates—which were regulated by federal regulators—originated more than half of all higher cost loans (as defined by the Home Mortgage Disclosure Act) sold that year. Moreover, federal banks, thrifts, and their subsidiaries originated over one third of all the toxic pay-option ARM loans sold in 2006. Where were the federal regulators? What enforcement actions did they take?

In contrast, in the run-up to the current global financial crisis, many state attorneys general (including my Office) aggressively prosecuted the bad actors in the industry *within our reach*. Since the late 1990s, the states have taken action against the largest and most abusive mortgage lenders over which we have authority—including First Alliance Mortgage Company, Household Finance, and Ameriquest. More recently, my Office spearheaded a multi-state lawsuit against Countrywide Home Loans, the largest mortgage lender in the nation at the time, resulting in a landmark \$8.7 billion settlement. Also, in July of this year, I sued Wells Fargo for discriminatory lending, becoming the first state Attorney General to sue a national lender for its role in this crisis.

**Preservation of state consumer protections.**

In addition to the ability to enforce laws against *all* players in the industry, it is vitally important that states be allowed to enact tougher laws where necessary to protect our citizens. The CFPA Act, as proposed, protects the states' ability to do so. The expansion of federal preemption in recent years has made it extremely difficult for states to rein in the abusive practices of even those lenders under our jurisdiction. We know this all too well from our efforts to enact tougher lending laws in Illinois.

Federal laws have frequently stymied state reform efforts. These laws preempted states from regulating certain risky loan terms and features, such as prepayment penalties and negative amortization, regardless of whether a state-licensed or federally-chartered entity makes the loan. It was precisely these types of features that led to widespread abuses in the mortgage lending market. State attorneys general saw the abuses of prepayment penalties, which often locked

borrowers into unaffordable subprime mortgages. Yet federal preemption barred the states from enacting tougher laws to address these abuses, even as applied to those entities that we regulate.

National banks and thrifts claim that allowing states to enact tougher laws where necessary—as the CFPB Act would—will result in too great a burden on the system. This argument is disingenuous. Many of these lenders are multi-national companies that currently have to comply with a vast array of varying rules both inside and outside our nation's borders. In fact, as demonstrated by the swollen dockets of our state's foreclosure courts, national banks seem to have no problem complying with the varying state and local laws governing the foreclosure process.

**Ensuring consumer protection through checks and balances in the regulatory system.**

History has shown that states do not take on the task of drafting and passing laws unless such actions are truly necessary to protect their citizens. States will act to fill in gaps where federal laws and regulations have failed to address a significant consumer problem. In this way, state consumer protection laws have often served as a check and balance on the federal regulatory scheme, stepping in to protect consumers when necessary. There are several longstanding federal laws—RESPA, TILA, and the privacy provisions of Gramm-Leach-Bliley—that permit states to pass stronger laws when necessary. But where federal laws have been adequate, the states have not taken action.

State laws also often function as examples of what works to protect consumers, which may then be utilized as a blueprint for federal legislation. In the area of mortgage rescue fraud, for example, states were the first to recognize the problem and to react with laws. Illinois had one of the first such laws in the nation. Our law is now among those being looked to by the FTC as a model as the agency prepares to enact nation-wide rules to combat this growing problem.

**States as first responders.**

Ultimately, we know from extensive experience that consumers are more likely to take their complaints to *state* law enforcers and their state elected officials. We serve as first responders to our citizens and, as a result, are in a much better position than federal regulators to identify emerging problems and to react quickly to stem abuses. The CFPB Act, as proposed by President Obama, respects the vital role of states in safeguarding our consumers and markets from abusive lending practices. The people of Illinois deserve a final bill that retains that respect and, thus, offers the strongest possible protection for consumers.

Very truly yours,



Lisa Madigan  
ATTORNEY GENERAL