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The Power of Weak Interests in Financial Reforms

Lisa Kastner

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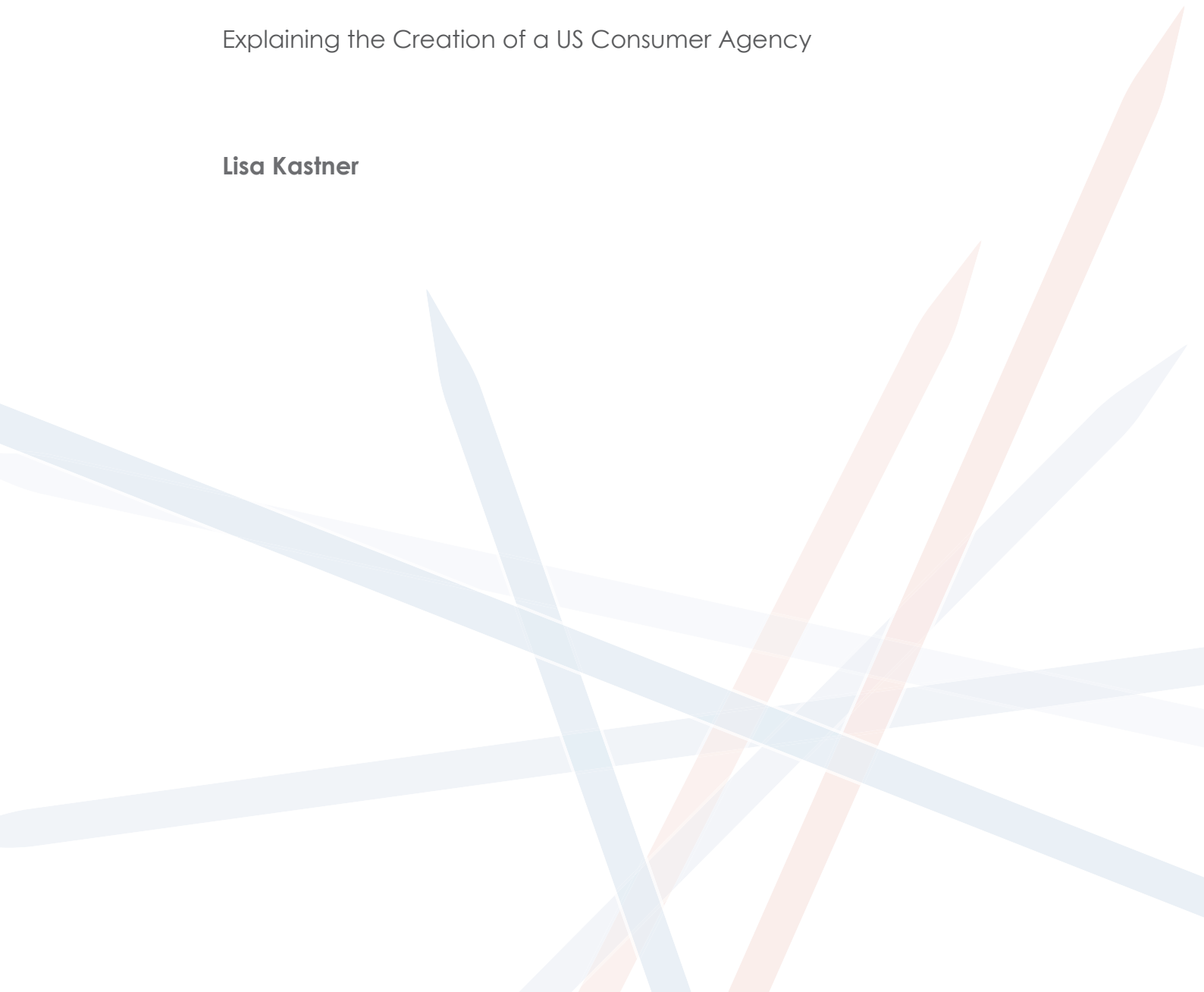
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The Power of Weak Interests in Financial Reforms

Explaining the Creation of a US Consumer Agency

Lisa Kastner



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Abstract

Dodd-Frank, the US financial reform law passed in response to the 2008 financial crisis, established the Consumer Financial Protection Bureau (CFPB), a new federal regulator with the sole responsibility of protecting consumers from unfair, deceptive, or abusive practices. This decision marked the end of a highly politicized reform debate in the US Congress, involving lobbying from business associations and civil society groups, in which proponents of the new bureau would normally have been considered to be much weaker than its opponents. Paradoxically, an emerging civil society coalition successfully lobbied decision-makers and countered industry attempts to prevent industry capture. What explains the fact that rather weak and peripheral actors prevailed over more resourceful and dominant actors? The goal of this study is to examine and challenge questions of regulatory capture by concentrated industry interests in the reform debates in response to the credit crisis which originated in the US in 2007. The analysis suggests that for weak actors to prevail in policy conflicts over established, resource-rich opponents, they must undertake broad coalition-building among themselves and with influential elite allies outside and inside of Congress who share the same policy goals.

Keywords: Financial crisis, financial regulation, consumer protection, interest groups, lobbying

Résumé

[La force des intérêts faibles dans la réforme financière américaine de l'après-crise: Explication de la création du Bureau de protection des consommateurs de produits financiers] La loi Dodd-Frank de réforme financière (2010), adoptée aux États-Unis en réponse à la crise de 2008, a créé le Bureau de protection des consommateurs de produits financiers (CFPB), agence fédérale ayant pour unique mission de protéger ces consommateurs des pratiques déloyales, mensongères ou abusives. Telle a été l'issue d'un débat parlementaire hautement politisé, qui a mobilisé les groupes d'intérêt du monde financier et de la société civile et où l'on se serait attendu à voir les seconds, partisans du nouvel organisme, succomber sous la puissance infiniment supérieure des premiers. Or, paradoxalement, une coalition de la société civile tout juste créée a réussi à convaincre les législateurs, à contrecarrer les efforts de la profession et à empêcher une capture de régulation par les intérêts financiers. Pourquoi des acteurs plutôt faibles et périphériques l'ont-ils emporté sur des acteurs riches et puissants ? Pour expliquer ce résultat inattendu d'un changement de réglementation favorable aux intérêts diffus, l'article propose un mécanisme causal des relations qui, dans le contexte de l'après-crise, se sont nouées entre groupes de la société civile et décideurs publics. Il montre que, dans un conflit de politique publique, des acteurs faibles confrontés à des adversaires mieux établis et plus riches doivent, pour l'emporter, construire une large coalition et trouver des alliés influents hors de l'État et en son sein.

Mots-clés: crise financière, régulation financière, groupes d'intérêts, lobbying, protection des consommateurs

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The Power of Weak Interests in Financial Reforms: Explaining the Creation of a US Consumer Agency

1 Introduction

On 21 July 2010, United States President Barack Obama signed the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) into law, including major consumer protection provisions which fundamentally changed the regulatory landscape for financial services. Dodd–Frank’s preamble declares one object to be “to protect consumers from abusive financial services practices.”¹ Under Title X, the reform law established the Consumer Financial Protection Bureau (CFPB), a new federal regulator with the sole responsibility of protecting consumers from unfair, deceptive, or abusive practices. There is wide agreement among regulators, activists and industry representatives that the consumer protection reforms introduced in response to the crisis go beyond mere “gesture politics.”

The political debate surrounding the creation of the agency was characterized by intense lobbying and mobilization by interest groups from two opposing camps. An emerging coalition of relatively resource-poor civil society actors, including consumer associations, trade unions, NGOs, grass-roots groups, and small business groups actively supported the new consumer regulator. They were opposed by a much more powerful financial lobby. Johnson and Kwak (2011: 198) write that the financial industry and its defenders “closed ranks” against the bureau. Arguably, the new consumer bureau attracted more hostility from industry groups than any other reform proposal after the crisis. Strong opposition came from the American Bankers’ Association (ABA), the US Chamber of Commerce, and the Mortgage Bankers Association (MBA). Against all odds, the civil society coalition, formed among actors usually classified as weak, managed to win a major victory when the President signed Dodd–Frank into law – including a powerful new regulator for consumer financial products. In his remarks at the signing ceremony of the Act, the President described the reforms in the bill as “the strongest consumer financial protections in history.”²

1 Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), Preamble (describing the purposes of Dodd–Frank).

2 President Barack H. Obama, Remarks on Signing the Dodd–Frank Wall Street Reform and Consumer Protection Act (21 July 2010), available at <www.whitehouse.gov/the-press-office/remarks-president-signing-Dodd-Frank-wall-street-reform-and-consumer-protection-act>.

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Despite the fact that massive industry lobbying had successfully slowed down the implementation process of US financial regulatory reform – with 60 percent of Dodd–Frank’s rules not yet in place by 1 July 2013³ – the creation of the CFPB was a unique achievement for consumer advocates. The outcome is puzzling, as we would normally expect more resourceful groups to have more political influence. In particular, the US banking industry is one of the most resourceful, powerful, and politically savvy actors in Washington, winning many of their political battles. The CFPB is therefore a case in point to study the power of weak interests in financial regulation. Why was the US banking industry not able to beat out consumer groups in the case at hand? What explains the fact that rather weak and peripheral actors prevailed over more resourceful and dominant actors?

Analyzing financial reforms in response to the crisis, international political economy (IPE) scholars so far have focused on explaining the incrementality of reform outcomes (Admati/Hellwig 2013; Buckley/Howarth 2010; Johnson/Kwak 2011; Moschella/Tsingou 2013), thereby neglecting the empirical universe of cases of regulatory reforms that brought about sea changes in spite of industry opposition. In this paper, I look beyond the impact of material resources in influencing policy decisions. In offering a close empirical analysis of a causal mechanism⁴ at work that allows relatively poorly-resourced, diffuse interest groups⁵ to leave their imprint on financial regulatory reforms, the account here will deal with a side that is less well known to researchers. The study responds to recent calls for greater attention to “the mobilization of nonfinancial industry groups in shaping financial regulatory policies and the impact that this has over the capacity of financial industry groups to shape regulatory policies” (Pagliari/Young 2013). It thereby adds a crucial dimension – namely, the role of citizen groups – to the burgeoning literature on financial regulation.

The paper offers one of the first scholarly analyses of the successful creation of a new financial regulator with the sole responsibility to protect consumers (for other studies, see Kirsch/Mayer 2012; Woolley/Ziegler 2012). Analyzing consumer credit market reforms is particularly interesting because abusive consumer lending practices – in particular in the mortgage market, but also in relation to credit cards and other subprime consumer credit products – allegedly contributed to the financial meltdown that started in 2007. The empirical analysis is based on about 40 interviews with representatives from civil society and industry as well as policy-makers and regulators in Washington between September 2013 and March 2014. For the legislative proposals investigated here, I conducted interviews with senior-level elites, ranging from Congressional staff-

3 Updated versions of Dodd–Frank Progress Reports by Davis Polk are available at <www.davispolk.com/Dodd-Frank-Rulemaking-Progress-Report>.

4 There is a myriad of different understandings of causal mechanisms. Here, I follow the suggestion by Beach and Pedersen that a causal mechanism is a system “that transmit[s] causal forces from X to Y ... , assuming that the context that allows them to operate is present” (2013: 34).

5 Diffuse interests are understood here as “collective interests held by large numbers of individuals,” such as consumer protection policies (Pollack 1997: 572).

ers (often senior advisors) and government officials to interest groups that had particular responsibilities for the proposed legislation as well as detailed knowledge of the negotiations. Theory-testing process tracing will allow us to trace social mechanisms linking diffuse interests to policy change in consumer credit markets in order to open the black box of preference attainment. The analysis suggests that in order for weak actors to prevail over established, resource-rich opponents in policy conflicts, they must undertake broad coalition-building among themselves and with influential elite allies outside and inside of Congress who share the same policy goals.

The case logic follows a crucial case study based on a “least-likely” design (Gerring 2007; Levy 2008). Although diffuse consumer interests have “systematically dominated national policy processes” (Trumbull 2012: 10) in various policy areas in the postwar period, the effect of civic non-state actors is expected to be low in a highly technical policy field such as financial regulation, which is dominated by savvy and resourceful financial industry groups. Hence, the aim here is to show the policy influence of weak interests under difficult conditions, “since if we are able to find the mechanism in a non-favorable setting, this significantly increases our confidence in the existence of the causal mechanism in a wider population of cases” (Beach/Pedersen 2013: 152).

The paper begins by briefly outlining the degree of policy change and the political struggles surrounding the creation of the new regulator. It will then present four testable propositions derived from the literature to explain policy change representing diffuse interests in financial regulation. In order to interpret the policy process, the next section will use process tracing to apply theoretically derived hypotheses to the empirical record of the case study. The conclusion will reflect on the implications for our understanding of regulatory capture.⁶ This paper joins recent efforts in political economy to explain how business power can be curbed (Bell/Hindmoor 2013; Culpepper 2011).

2 Policy change: A new regulator

The system of consumer finance protection on the eve of the crisis was marked by regulatory gaps, allowing for ruthless lending practices which contributed to increased defaults and eventually to the meltdown of the US housing market. In order to address the regulatory failure of the past, the Dodd–Frank Act centralized consumer protection regulations at one single agency, which operates independently, is well-funded, and is under the leadership of a single director. The Bureau was established in Title X of the reform law as an independent regulatory agency within the Federal Reserve System (“Fed”) with the sole responsibility of protecting consumers of financial products. The

6 The process whereby narrow industry interests come to be favored at the expense of the more diffuse public interest is commonly referred to as “regulatory capture” (Pagliari 2012).

CFPB's mission is to ensure "that all consumers have access to markets for consumer financial products and services [that] are fair, transparent, and competitive."⁷ In charging one single agency with consumer protection responsibilities, the reform succeeded in replacing a patchwork of seven different agencies, thereby consolidating and strengthening the regulation of consumer financial products. Not only does the CFPB consolidate the consumer protection functions of various agencies, it also consolidates consumer protection legislation previously found in a number of different statutes (such as the Truth in Lending Act and the CARD Act of 2009). The new bureau also hosts a national consumer complaint hotline as a single toll-free number for consumers to report problems, as well as a new Office of Financial Education to promote financial literacy. While the CFPB is administratively located within the Fed, the Board of Governors cannot interfere in its operations.

Table 1 summarizes the main features of the CFPB as signed into law in July 2010. The Dodd–Frank Act delegated three types of authority to the new bureau: the CFPB conducts rule-making, supervision and enforcement for federal consumer financial protection laws. The Bureau has the authority to oversee very large banks, thrifts, and credit unions with assets over \$ 10 billion, as well as non-bank businesses (companies that can offer consumer financial products or services without having a bank, thrift, or credit union charter). The CFPB was the first federal regulator that not only has the ability to write rules for non-banks, but it also has the ability to supervise and examine non-banks – “a power that has never accrued to any federal bureau before.”⁸ It is a first in the history of non-banks that they are subject to examination by federal regulators. This makes the CFPB a much more powerful regulator for consumer financial services than the Federal Trade Commission was, with its sole authority over non-bank entities (Pridgen 2013). More importantly, the agency has independent funding, specified as a percentage of the Fed's budget, and is not subject to the appropriations process. The fact that the CFPB receives its funding outside of the appropriations process was an important aspect for consumer advocates, since it “avoids the annual congressional appropriations process that can serve as a mechanism for imposing undesirable political pressure” (Cooley 2010: 79). Another important provision is that the Dodd–Frank Act curbs federal preemption, which had previously prevented effective pro-consumer state legislation. The law functions as a federal “floor” (not a ceiling) which allows states to raise the level of consumer protection, one of the key demands of consumer advocates. Title X expands state authority by allowing states to adopt stricter consumer protection laws on top of the federal regulations.

Taken together, the new bureau's powers should “serve as counterweight within the government to a set of regulatory agencies that have historically seen the world from the perspective of the banks they regulate rather than the customers served by those banks” (Johnson/Kwak 2011: 200). Some might object that the new regulator for consumer

7 Dodd–Frank, § 1021(a).

8 Interview 65a with representative of consumer association: Washington, DC, 5 August 2011.

Table 1 Main features of the CFPB under the Dodd–Frank Act as signed into law in 2010

Structure/Head	Agency established within the Fed; single Director appointed by the President for 5-year term.
Funding	Transfer of 10–12 percent of the Fed’s budget.
Coverage/Authority	Broad powers over any person, other than those explicitly carved out from the Bureau’s authority, engaged in the provision of a consumer financial product or service.
Notable carveouts	Carveout for auto dealers and small businesses.
“Plain vanilla” provision	No provision of “standard consumer financial products or services.”
Authority over consumer laws	Community Reinvestment Act (CRA) exempt from CFPB authority.
Mortgage provision	Prohibition of steering incentives for mortgage originators and requirement to verify ability to repay residential mortgage loans.
Examination and enforcement power over smaller financial institutions	Smaller financial institutions (with assets of \$10 billion or less) will continue to be subject to the examination and enforcement authority of their current regulators.
Relationship to state law (federal preemption)	Would only preempt state consumer financial protection laws to the extent of their inconsistency, where state laws providing greater consumer protection are not to be considered inconsistent with federal law.
Oversight by the Financial Stability Oversight Council	Financial Stability Oversight Council with ability to set aside CFPB regulations if the regulation “would put the safety and soundness of the banking system or the stability of the financial system at risk.”

Source: Assembled by the author.

products was “merely a fig leaf covering the raw influence of concentrated interests” (Trumbull 2012: 28) in the financial overhaul. A reason to think that this was not the case is the amount of resources the industry invested to defeat the new bureau. Industry groups had clearly preferred the status quo, and the regulation passed in spite of industry attempts to block it. Moreover, a broad range of experts, including consumer lawyers, industry groups and consumer associations, have widely acknowledged the CFPB as a powerful new regulator (Caggiano et al. 2011; Pridgen 2013).

3 The advocacy campaign for a new consumer regulator

To define the temporal context in this analysis, I have chosen the financial crisis that originated in 2007, since it is a clear starting point that sets the causal mechanism in motion. The case study analysis therefore starts here, with a brief chronology of the passage of the reform law starting in early 2009, when legislative debate about post-crisis regulatory reform started to unfold. In June 2009, the Treasury included the proposal of a new consumer agency in its 90-page White Paper entitled “A New Foundation: Rebuilding Financial Supervision and Regulation,” which served as a blueprint for financial reform. The White Paper proposed five objectives for financial reform, including a “Consumer Financial Protection Agency (CFPA), with the authority and accountability

to make sure that consumer protection regulations are written fairly and enforced vigorously” (Department of the Treasury 2009). In September, the legislative debate subsequently moved to the House of Representatives, which passed its bill in early December 2009. The main venue of discussion was the House Financial Services Committee, chaired by Representative Barney Frank. The Senate Banking Committee, chaired by Senator Christopher Dodd, discussed the bill in February and March 2010. The Conference Committee finalized its report on 29 June 2010. The bill subsequently moved separately to both the House and Senate floors, where it was voted on during the last week of June by the House and in mid-July by the Senate.⁹ On 21 July, President Obama signed the Dodd–Frank Wall Street Reform and Consumer Protection Act into law.

At several stages during the legislative process, passage of the CFPB was at the tipping point. In order to secure a bipartisan deal, Senator Dodd had set out to form a compromise that would have strengthened the consumer protection division of an existing federal agency instead of creating a stand-alone bureau (Palletta 2010). According to Senator Bob Corker, the CFPB’s creation was “the most contentious issue” and “the elephant in the room” during the Senate’s negotiations that prevented any bipartisan agreement on the bill (Rowley/Lerer 2010). On 5 May 2010, Senator Richard Shelby introduced an amendment on the Senate floor that would have weakened CFPB’s powers and removed its independence by placing the bureau under the FDIC’s control and barring it from examining or regulating depository institutions (Wilmarth 2012). However, the amendment was defeated by the Democratic majority in the Senate. Eventually, on 20 May 2010, the Senate – by a vote of 59 to 39 – also approved a comprehensive financial reform bill, including Title X, a Bureau of Consumer Financial Protection within the Fed, which would be provided similar authorities over consumer financial products and services to those proposed for the CFPB by the House bill (H.R. 4173). The Senate’s vote paved the way to convene the House–Senate conference committee to reconcile the two different bills and settle on a compromise.

The proposal of an independent consumer regulator pitted two coalitions against each other. From the beginning, business groups – mainly the ABA, the MBA and the American Chamber of Commerce – opposed the legislative proposal of a new consumer regulator. These groups are well organized and possess ample material resources. According to the Center for Responsive Politics, the financial industry mobilized and spent \$ 224.6 million on lobbying in 2009, more than any other sector except for the health sector, which spent \$ 263.6 million during the same time period (Renick Mayer 2009). The US Chamber set up a “stoptheCFPA.com” website¹⁰ and started an advertising campaign of at least \$ 2 million aimed at defeating the new bureau. When he testified before the Senate Committee on Banking, Edward Yingling (2009), president of the ABA, complained that the CFPB would undermine innovation, limit consumer choice, complicate exist-

9 The Administration’s CFPB Act; H.R. 4173, Title IV, as it passed the House, and S.3217, Title X, as it passed the Senate.

10 The website is no longer operational and redirects to <www.cfpbspotlight.com>.

ing regulatory structures, and disproportionately burden small banks and credit unions. The Bankers Association's public outcry against a consumer agency and the appearance of its president to testify in front of a Congressional Committee made clear that preventing the enactment of a consumer bureau was of high legislative priority to the industry.

The new consumer regulator was actively promoted by a new pro-reform coalition. About the same time that the administration brought forward its reform proposals, a new coalition of about 250 civil society organizations started to actively support the creation of a consumer regulator. The US Public Interest Research Group (PIRG), together with other NGOs and the largest labor groups, including the AFL-CIO and the SEIU, established a new and unprecedented coalition of labor, civil rights, small business and senior organizations, which formally went public in May 2009 as "Americans for Financial Reform" (AFR).

In terms of material resources, the pro-reform coalition was clearly outmatched by the opposing financial industry lobby. Funding for pro-reform groups became available from progressive foundations, with AFR raising about \$1.4 million in the first year, only a fraction of the financial industry's lobbying budget.¹¹ Nevertheless, consumer and labor groups, representing diffuse interests, saw their preferences translated into public policy, despite more resourceful and influential opponents. In the final bill, the pro-reform advocates had met their major policy aims: in accordance with activists' wishes, the new bureau had market-wide coverage and a single director; its funds were not subject to the congressional appropriations process; and it had significant authority on rules supervision and enforcement over banks and non-banks. As one consumer activist commented on the legislation: "Compared to a world where we could not make a single advance on consumer regulation for decades, this is a big change."¹² How did diffuse consumer interests come to be reflected in the reform outcome?

4 A plausible mechanism of post-crisis regulatory reform dynamics

To respond to this question, I will outline a plausible causal mechanism of reform trajectories after the crisis, following the research strategy proposed for theory-testing process tracing by Beach and Pedersen (2013). My main rival hypothesis in this article is an account based on capture theories, which claims that the outcome of financial reforms can only be explained with reference to industry preferences and their translation into policy. Regulatory capture, the most accepted account of regulatory change in

11 Interview 10 with consumer advocate: Washington, DC, 28 September 2013.

12 Interview 3a with consumer advocate: Washington, DC, 6 September 2013.

the aftermath of the financial crisis, is important but somewhat incomplete.¹³ It offers a compelling account, based on the power of financial industry lobbies, of why reforms enacted in response to the crisis were rather incremental in nature. However, it does not account for the empirical universe of cases of regulatory reforms that brought about sea changes in spite of industry opposition. Further, as several critiques of capture theories have pointed out, industry capture is often merely assumed, rather than empirically tested (Young 2013; Carpenter/Moss 2014). Gunnar Trumbull (2012) has just recently drawn our attention to processes through which Olson's logic of collective action can be inverted by consumer groups' ability to increase policy legitimacy in the public eye.

So far, only a few studies on Dodd–Frank have acknowledged that traditional capture dynamics surrounding financial regulatory policy-making were significantly altered by the shock of the credit crises (Clapp/Helleiner 2012; Pagliari/Young 2012; Woolley/Ziegler 2011; Young 2013). Although these studies hint at the importance of increased actor plurality, brought about in particular by newly mobilizing civil actors, the precise role of newly mobilized interest groups beyond the traditional financial groups remains largely implicit, or at best underdeveloped. More generally, the deficiency in these accounts is that the causal dynamics of how groups outside of finance become successful change agents as a countervailing force to financial industry interests remain largely black-boxed. Clearly, it would be useful to understand more about how diffuse interest groups were able to confront the powerful financial lobby to have their preferences met in post-crisis regulatory reforms in a more systematic manner. The present analysis fills this gap. Yet while this paper builds on prior work, it goes beyond it in carefully specifying the causal mechanism that can explain regulatory change representing diffuse interests. I suggest that research on social movements and regulatory politics provides tools to complement existing approaches to explaining post-crisis financial reforms by identifying additional mechanisms that help delineate unexpected reform trajectories. Because social mechanisms operate in specific contexts, we need to pay close attention to how the crisis altered the contextual conditions for regulatory reforms in order to understand the increased political receptivity to consumer demands and sudden (at least partial) redistribution of power away from concentrated industry interests to more diffuse consumer interests. The contextual conditions allowing the causal mechanism to operate are marked by a (temporary) de-legitimization of the financial industry after the financial crisis which somewhat neutralized the financial sector's organizational advantage and led to increasing frictions with policy-makers, thereby changing interest group dynamics. According to recent research in International Political Economy, the financial crisis at least temporarily neutralized the organizational advantage of financial sector groups. The post-crisis financial regulatory environment was generally marked by increased issue salience and negative publicity for the financial sector (Quaglia 2010). Heightened media attention certainly increased the perception of undue industry in-

13 While regulatory capture theory was initially designed to explain the behavior of regulatory agencies, not legislative decisions, the concept has since been applied more broadly to financial regulatory decision-making.

fluence. Applying his theory of quiet politics to post-crisis politics, Culpepper (2011: 197) predicts “a weakened bargaining position” for organized interests in a “radically changed political environment” which was “under intense public scrutiny.” Various scholars have argued that the financial crisis had thrown the existing neo-liberal order and financial community into a “legitimacy crisis” (Helleiner 2010; Morgan 2010). A series of theoretically derived propositions, all considered necessary elements of a larger causal chain, will be tested in the case study:

- 1 **Political opportunities – access and receptivity:** *Qualitative changes in the post-crisis institutional context in which financial regulatory policies were developed, combined with increased political receptivity, allowed for increased access on the part of diffuse interest groups* (Princen/Kerremans 2008; Culpepper 2011).
- 2 **Mobilization of diffuse interests:** *The crisis-induced organization as an advocacy coalition spurred by the perception of a window of opportunity allows diffuse interest groups to effectively promote reform goals (A) by serving as link between public opinion and policy-makers and (B) by exploiting the temporary weakness of the opposition* (Kollman 1998; Kingdon 2010; Dür/Mateo 2014).
- 3 **Policy entrepreneurs:** *Activism of a well-positioned entrepreneur as a source of innovation, expertise, institutional resources, and political connections can exploit perceived opportunities and leverage diffuse groups’ policy influence* (Mattli/Woods 2009; Kingdon 2010).
- 4 **Governmental allies:** *Intense pro-reform mobilization leads to a bandwagon effect that strengthens the reform side of the debate and encourages public officials to actively side with the pro-reform coalition as “governmental allies”* (Mahoney/Baumgartner 2015).

5 The post-crisis financial regulatory environment

Regulatory reform emerged in a post-crisis environment which saw the legitimacy of the financial industry and its practices being strongly contested in the public sphere. The heightened media attention raised by the crisis increased the perception of undue industry influence. Previous regulatory deficits became the subject of public outrage, pushing financial regulatory reform into the arena of “noisy politics,” to use Culpepper’s terminology. As mentioned above, heightened salience is an important dynamic, since it can be a strong motivator for elected officials to act against the narrow interests of an industry. Now, financial regulation became highly salient with the wider public, but – as Kastner (2014: 3) could show – the consumer bureau became highly salient

with the wider public as well. The bureau's increase in public salience is also visible in the increase in Internet searches in the US for the term "Consumer Financial Protection Agency," as illustrated in Figure 1.

Increased salience in the regulatory reform context was accompanied by qualitative shifts in policy-making that displayed increasing divisions among policy-makers and the private sector. In light of the devastating consequences of the financial crisis, policy-makers started to call industry groups' expertise into question, as Representative Brad Miller remarked in a statement in March 2009 about intended mortgage reform: "The political climate has changed. The foreclosure crisis has wreaked havoc on middle-class families and our economy as a whole. The industry's arguments ... are not at all convincing" (Harney 2009). The financial sector was the culprit of the crisis. In his Wall Street speech in April 2010, the President made clear that he regarded consumer protection as an essential element of the financial reform, thereby risking "increasingly fractious relations" with the financial industry (Cooper 2010). In April 2010, the *New York Times* highlighted the President's stance against the financial industry:

Addressing leaders of New York's financial giants, including Goldman Sachs, Mr. Obama described himself as a champion of change battling "battalions of financial industry lobbyists" and the "withering forces" of the economic elite. With his poll numbers sagging, the choreographed confrontation seemed aimed at tapping the nation's antiestablishment mood as well as muscling financial regulation legislation through Congress. (Baker/Herszenhorn 2010)

Several examples from my interviews illustrate that the regulatory dialogue among industry groups and government officials had suffered from considerable cracks since the crisis. One indicator of such a crack is that financial groups learned about legislative proposals and intended policy changes much later than in the past, largely excluding industry groups from the agenda-setting phase of the decision-making process. Interviews conducted with industry groups in Washington corroborate a story that their knowledge of the particular content of the proposed consumer agency prior to the Treasury's blueprint in June 2009 was either unknown or extremely fuzzy. Some industry representatives reported that they saw themselves "cut out of the process" during early legislative debates. About the Treasury's White Paper, one industry representative remembered talking to Treasury officials but having "very little impact on the administration's thinking on the consumer side of the law." He also described how the regulatory dialogue had noticeably changed after the crisis, saying that regarding the policy proposal to establish a new consumer watchdog, industry associations "had almost no contact with the administration," which he characterized as "extremely unusual." Finally, when the White Paper was issued in June 2009, including a detailed provision on the creation of a consumer agency, industry groups were "aghast about what was in it."¹⁴ Another interviewee from the industry side remembered lobbying on regulatory reform to have been "very frustrating" and "difficult." About the legislative process, he recalled: "We were able to have a little bit of consultation with Barney Frank, while the House was

14 Interview 113 with banking lobbyist: Washington, DC, 25 February 2014.

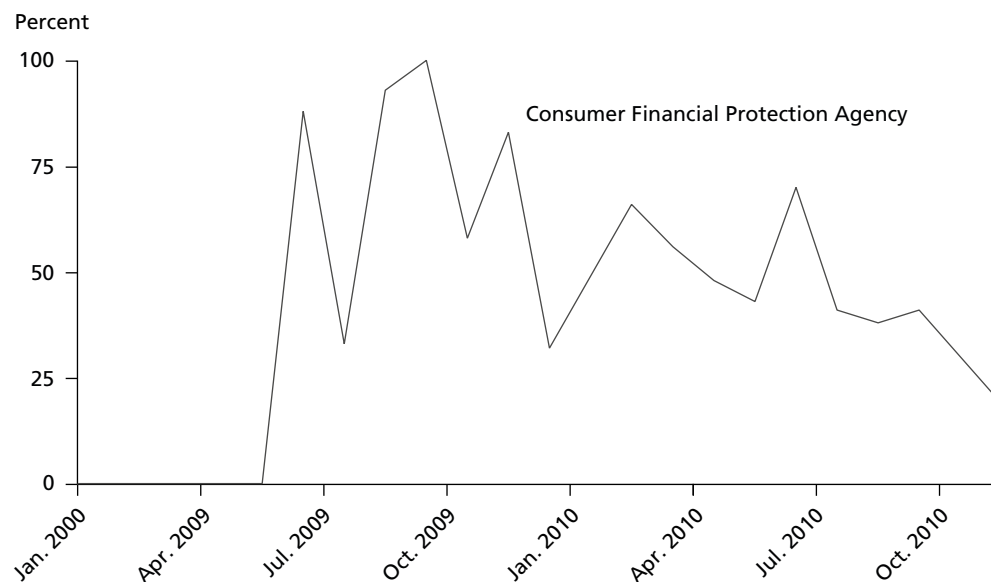
putting together its bill, but not a lot, and very little with Chris Dodd, I am not sure we had any.”¹⁵ Banking lobbyists’ policy influence was largely curtailed in the immediate aftermath of the crisis, as one industry representative put it: “when I was trying to get something done for the biggest banks, there was not a lot I could do.”¹⁶

These changes in interest group dynamics, as suggested here by anecdotal evidence from interviewees, are significant because they indicate that financial lobby groups had partly lost their political leverage. How did this crisis context, which derailed traditional mechanisms of capture, affect the political opportunity structure for diffuse interest groups?

6 Political opportunities: Access and receptivity

Under public pressure, policy-makers’ reluctance to engage with the financial industry in the aftermath of the crisis was accompanied by increased receptivity to pro-reform demands from diffuse interest groups. First and foremost, in a qualitative shift in the policy-making environment from previously relatively obscure technocratic bodies to

Figure 1 Internet searches for “Consumer Financial Protection Agency”



Sources: Google trends, <www.google.com/trends>, accessed April 29, 2015.

Note: The new agency went from being dubbed the “Consumer Financial Protection Agency” (and before that, the “Financial Product Safety Commission”) to the “Consumer Financial Protection Bureau.” “Agency” was, however, the predominant terminology throughout the legislative debate.

15 Interview 1 with banking lobbyist: Washington, DC, 20 September 2013.

16 Interview 113 with banking lobbyist: Washington, DC, 25 February 2014.

the top legislative agenda of the administration, Congress and its committees opened new access points for a broader range of interest groups. Starting in early 2009, individual consumer representatives were repeatedly invited to testify in front of Congressional committees. Increased access of nonfinancial groups to the decision-making process was also accompanied by increased receptiveness of policy-makers to demands coming from these newly mobilized actors.

Consumer advocates had very limited capacity to push their advocacy goals during the housing boom that pre-dated the crisis, precisely because policy-makers were not inclined to listen to their demands. The political environment changed dramatically in the fall of 2008, when public anger arose over the industry being bailed out at taxpayers' expense. As public pressure grew, demands by pro-reform groups attracted attention among policy-makers. US authorities quickly acknowledged the need for stronger consumer protection after the financial crisis. In March 2009, Sheila Bair, Chair of the US Federal Deposit Insurance Corporation, noted: "There can no longer be any doubt about the link between protecting consumers from abusive products and practices and the safety and soundness of the financial system."¹⁷ Consumer groups also found a sympathetic interlocutor in Congress. In light of the financial crisis, Democrats in Congress decided early on to endorse regulatory reform. In October 2008, Representative William Delahunt and Senator Richard Durbin picked up the idea and introduced a bill entitled the Consumer Credit Safety Commission Act of 2008, H.R. 7258 and S. 3629, into Congress. The bill created a Consumer Credit Safety Commission. Although the bill was never enacted into law, it signaled the increased political willingness to enact consumer-friendly legislation in Congress to consumer advocates.

Members of Congress increasingly responded to demands coming from consumer groups to restrict subprime lending and increase consumer protection. The changing political climate was clearly felt by consumer advocates, as one interviewee reported:

People had been trying for a long time to bring reforms about with more or less good bills, with no success because there was this political and ideological opposition to regulating the markets which after all were providing such fabulous results for American consumers Now in the aftermath of the boom there was less confidence that the markets produced fabulous results and there was a much more receptive environment that we have to act on the lessons we have learned through this crisis.¹⁸

A Congressional staffer confirmed this interpretation, saying that "consumer things had been raised [by consumer groups] for a decade or so ... but the government ignored them." But in the midst of the turmoil of the financial crisis, "it had gotten more difficult to ignore them" – even for members of Congress who had not necessarily been

17 Statement of Sheila C. Bair, Chair of the Federal Deposit Insurance Corporation, on Modernizing Bank Supervision and Regulation before the US Senate Committee on Banking, Housing, and Urban Affairs; 19 March 2009.

18 Interview 115 with consumer advocate: Washington, DC, 18 March 2014.

champions of consumer protection issues.¹⁹ Industry representatives also testified to the increasing receptivity of politicians and regulators to pro-consumer advocacy groups during the legislative process, as one banking lobbyist put it: “as we were at a position of weakness, they had a position of strength.”²⁰ Polling data released by the Consumer Federation of America in September 2009 gives us clues about why the topic was very popular with decision-makers in general, with 57 percent of those polled supporting the idea of creating a new federal agency to protect consumers (Limbach 2009). Public opinion likely had an impact on policy choices, as the *Wall Street Journal* put it in a comment on the US Financial Reform Act, “the CFPB [Consumer Financial Protection Agency] became a symbol of the legislation, and many Democrats saw it as a way to sell the financial regulatory overhaul to voters” (Palletta 2010).

To sum up, as predicted, the crisis had at least partly redistributed political leverage from financial interests to consumer advocates.

7 Mobilization of diffuse interests

Another development that bolstered the influence of diffuse interest groups was their ability to forge coalitions among themselves, overcoming internal impediments to collective action. The perception of opened-up political opportunities after the subprime mortgage crisis was an important trigger for collective action among diffuse interest groups. Indeed, the crisis turned out to be a major catalyst for the formation of a new alliance of civil society organizations among about 250 consumer associations, trade unions, NGOs, and grass-roots groups rallying around the notion of a consumer regulator (Kastner 2014: 16). Although civil society groups had well-established connections among themselves, in May 2009 relations were formalized under the umbrella of “Americans for Financial Reform,” and regular meetings of task force subgroups started to take place.

Table 2 gives an overview of the key groups forming the broad coalition under the umbrella of AFR, which enabled consumer advocates to present a united front. Early on, the coalition members decided to focus their reform campaign on the establishment of a consumer protection agency. The consumer agency became the rallying point that all groups, despite their different advocacy goals, could agree on as a top legislative priority. The new and broad coalition among civil society organizations was made possible by the advocates’ perception of a policy window. Advocates realized that in order to win real reforms they had to take advantage of the public anger about costly bank bailouts and the political opportunities that presented themselves for regulatory change. One

19 Interview 14 with Congress staffer: Washington, DC, 14 March 2014.

20 Interview 100 with financial industry lobbyist: Washington, DC, 16 September 2013.

coalition member reported: “Everybody understood the opportunity and that was a moment to be seized, there was a collective willingness to spend energy and resources.”²¹ Pro-reform groups were keenly aware of the fleeting nature of their opportunity to set up a new and powerful consumer agency. They knew that their best opportunity was in the first years of the administration, when the Democratic Party had a majority in Congress. After the midterm elections of 2010, the cushion in Congress would be smaller. The stars were aligned, so to speak, and reform advocates had to take advantage of this. In the words of one consumer representative, “the politics was right. We had a new presidency who had previously during the campaign expressed support for this; I knew Barney Frank and Chris Dodd, the chairs to the committees. That kind of alignment does not happen very often.”²² After the 2008 election, the Democratic Party enjoyed a comfortable margin in the House to pass reform legislation (with a majority of 51 percent required). The election also brought a filibuster-proof Democratic majority to the Senate (sixty Democratic votes). If all sixty Senators were to vote for a reform bill, pro-reform advocates could overcome the expected Republican filibuster. Indeed, during the final passage of the Dodd–Frank Act, the sixty votes in the Senate did enable the Democrats to pass the bill with all but three Republicans in opposition.

Newly mobilized groups were key actors in transmitting public opinion to decision-makers. One of the first steps of the coalition had been to provide support for local grass-roots groups and their activities in order to enable those groups to engage with their members of Congress.²³ By channeling public opinion, pro-reform advocates were able to influence decision-makers; as one staffer put it bluntly: “AFR was able to be influential ... they had special clout, because they were able to tap into public sentiment.”²⁴ The AFR pro-reform groups were very active in lobbying Congress and top governmental officials throughout the long process that led up to the passage of the Dodd–Frank bill. Giving testimony in congressional hearings became one of the main communication channels for consumer groups. Between March and June 2009, pro-reform advocates testified in several House and Senate committee and subcommittee hearings, providing a coherent “causal story” of policy failures in the run-up to the subprime crisis. During the passage of Dodd–Frank, at least twelve different members of the “Americans for Financial Reform” pro-reform coalition strongly supported the CFPB in testimony before the House and the Senate in several hearings between June and September 2009 (Kirsch/Mayer 2013). Since they had disseminated information about abusive lending practices in an effort to create momentum for reform, pro-reform groups now played an important role for the pro-reform advocates within the administration. Groups like the Consumers Union or the Center for Responsible Lending also collected testimonies by people wronged by abusive industry practices on their

21 Interview 23 with consumer advocate: Washington, DC, 12 September 2013.

22 Interview 79 with consumer advocate: Washington, DC, 13 September 2013

23 Interview 23 with consumer advocate: Washington, DC, 12 September 2013.

24 Interview 34 with Congress staffer: Washington, DC, 7 March 2014.

Table 2 Selected actors supporting the CFPB under the “Americans for Financial Reform” umbrella

Name	Founded	No. of members	Type of organization
AARP (American Association of Retired Persons)	1958	37 million	Non-profit membership organization for people age 50 or over
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)	1955	1.4 million members	Largest federation of unions in the US
Consumer Federation of America (CFA)	1968	300 non-profit organizations	Association of non-profit consumer organizations to advance the consumer interest
Center for Responsible Lending (CRL)	2002	–	Non-profit consumer group fighting predatory lending practices
Consumers Union (CU)	1936	8 million subscriptions to newsletters	Independent, non-profit organization
National Association of Consumer Advocates (NACA)	–	1,500 attorneys	Non-profit association of attorneys and consumer advocates
National Consumers League (NCL)	1899	–	Consumer organization
National Community Reinvestment Coalition (NCRC)	1990	600 member organizations	Association that promotes access to basic banking services
Public Citizen	1971	80,000 members	Consumer rights group, non-profit organization
Service Employees International Union (SEIU)	1921	1.9 million members	Labor union
US Public Interest Research Group (US PIRG)	1970	26 state PIRGS	Federation of state Public Interest Research Groups

Source: Assembled by the author.

websites, asking people to share their “horror lending stories.”²⁵ A comment by a senior-level official involved in drafting the legislation clearly testifies to the role of pro-reform groups as a link between public opinion and policy-makers. He reported that newly mobilized groups “helped in bringing attention to the issues and trying to get the public focused on the key questions. ... It definitely helped shape the debate and helped us to generate enthusiasm for what we were trying to do.”²⁶

The mobilization of non-financial groups had another important effect: namely, that it constrained the policy dominance of the financial industry lobby in the legislative process. Due to changed political dynamics, industry groups had to refrain from blocking the legislative proposal for a new consumer agency. Deprived of their veto capacity, and although nearly the entire financial industry was opposed to the general concept of a consumer protection bureau, the united front began crumbling during the passage of the House bill. Barney Frank, Chairman of the House Financial Services Committee, struck a deal with the Independent Community Bankers Association (ICBA), exempt-

25 The website is available at <www.responsiblelending.org/about-us/contact-us/share-story.html>.

26 Interview 34 with Congressional staffer: Washington, DC, 7 March 2014.

ing small banks from CFPB oversight. This neutralized the smaller community bankers, divided the industry, and considerably weakened the overall industry's attempt to block passage of the CFPB or promote alternative proposals. From the industry groups' point of view, the deal was a huge loss. Consumer advocates counted the semi-carveout for small banks under \$10 billion as a partial victory, since the CFPB still had rule-writing authority over small banks. Small banks were only exempted from CFPB supervision and enforcement, which was to be conducted by prudential regulators instead. At the final stage of passage, during the joint conference committee, industry opposition proved unexpectedly weak, and no further amendments were offered that would have weakened the CFPB.²⁷

To sum up: As predicted, the active involvement of pro-reform groups was spurred by the financial crisis and based on the perception of a "window of opportunity" for reform. Newly mobilized interest groups formed a broad-based pro-reform coalition as a countervailing force to financial industry interests, restraining the policy influence of the latter. As expected, diffuse interest groups acted as transmitters of public opinion, putting increasing pressure on policy-makers to actively pursue regulatory change, even counter to the interests of the more powerful financial lobby. Facing increased actor plurality and changed interest group dynamics, industry groups saw themselves forced to refrain from vetoing the policy process, which eventually led to a split of the opposition and a further weakening of financial sector groups.

8 Policy entrepreneurship

Another factor that boosted the influence of diffuse interest groups was the fact that a skilled policy entrepreneur invested time and resources into the reform cause. Pro-change advocates found a strong and well-positioned policy entrepreneur in Harvard law professor and consumer advocate Elizabeth Warren, who would later become part of the administration when she became Assistant to the President and Special Advisor to the Secretary of Treasury for the CFPB. She was therefore not only an expert on consumer finance and housing issues, but she was also politically well connected. In her position as Special Advisor to the Treasury at the CFPB, she defended the new consumer agency in Congressional hearings and various subcommittee meetings of the House of Representatives.²⁸ Warren had become a highly visible political figure in November 2008 as Chair of the Troubled Asset Relief Program Congressional Oversight Panel (COP), which was charged with reviewing the current state of financial markets and the regulatory system. The first COP "Special Report on Regulatory Reform," issued

27 Interview 65b with consumer advocate: Washington, DC, 13 February 2014.

28 Warren gave testimony about the CFPB to Congress in May 2011 and to the House Financial Services Committee in June 2009 and March 2011.

in January 2009, included Warren's proposal of a single federal regulator for consumer credit products.²⁹ Warren also repeatedly denounced industry lobbying on TV shows such as *The Daily Show with Jon Stewart* and *The Colbert Report*, saying that industry's aim was to "to stick a knife in the ribs" of the new bureau (Warren 2011). Throughout the reform debate, Warren served as a key expert. One Congress staffer remembered "a couple of instances where Warren was in Barney's office and we talked to her – her acceptance was important, her assessment was important."³⁰ Warren was also viewed as an influential policy entrepreneur by interviewees from the industry side. One lobbyist reported that Warren was "a very effective" and "articulate" spokesperson, which gave the AFR coalition "additional clout."³¹

The initial idea for a consumer protection agency had come from Warren, who had published articles in the summer of 2007 and in November 2008 arguing in favor of a Financial Product Safety Commission. At the time of publication, wider public attention to Warren's articles was only moderate. This situation changed with the financial crisis, and Warren's policy solution suddenly started to match politicians' needs to respond to public pressures. Warren had introduced the idea of a Consumer Finance Safety Commission in the 2007 journal article with a metaphor comparing safety regulations for toasters to those for consumer financial products:

It is impossible to buy a toaster that has a one-in-five chance of bursting into flames and burning down your house. But it is possible to refinance an existing home with a mortgage that has the same one in-five chance of putting the family out on the street. (Warren 2014: 1)

On 19 March 2009, President Obama employed the same metaphor when he appeared on *The Tonight Show with Jay Leno*, clearly indicating presidential support for consumer protection reforms. Warren's policy proposal of a Consumer Finance Safety Commission had slowly moved from the periphery to the center stage of politics.

Warren was instrumental in rallying initial support for a single regulator among consumer, labor, and other interest groups. Warren's proposal enjoyed widespread support among consumer advocates.³² First discussions among consumer advocates and Warren about the policy proposal of a consumer regulator started to take place in the summer of 2008, before Obama was elected President. When pro-reform advocates convened a first preliminary meeting in Washington to form a coalition for financial reform in February 2009, Warren introduced the idea of a consumer finance protection agency to the audience (2014). In March 2009, two years after Warren's first article was published, and in the midst of the turmoil caused by the financial crisis, advocates of a consumer agency undertook another attempt to enact legislation. According to Warren's account,

29 The full COP report is available at www.un.org/ga/president/63/commission/regulatoryreform.pdf.

30 Interview 66 with Congressional staffer: Washington, DC, 24 March 2014.

31 Interview 113 with banking lobbyist: Washington, DC, 25 February 2014.

32 Interview 65b with consumer advocate: Washington, DC, 13 February 2014.

she met with Senator Ted Kennedy (D-MA) in early 2009, urging him to push for the agency (2014: 138). The two had known each other since the fight for bankruptcy law reform in 2005. In March, Kennedy, Senator Dick Durbin (D-IL), and Senator Chuck Schumer (D-NY) introduced the Financial Product Safety Commission Act of 2009 into Congress (S. 566), proposing the creation of a regulator with sole responsibility to protect consumers according to Warren's blueprint. Consumer groups and labor unions supported the bill. Representatives Bill Delahunt (D-MA) and Brad Miller (D-NC) also championed the consumer agency and became co-sponsors of the bill. In April 2009, Senators Kennedy, Durbin and Schumer wrote a letter to Treasury Secretary Tim Geithner, urging him to include their proposed Financial Product Safety Commission in the Administration's plan for financial reforms (Durbin 2009). Also in April 2009, Warren, according to her own account, successfully convinced Barney Frank, the influential Chairman of the House Financial Services Committee, that the consumer agency was a politically viable idea (2014).

To sum up: credit expert Warren became an influential policy entrepreneur who promoted the proposal of a new regulator in tandem with the newly mobilized reform coalition. Warren's academic work served as an important source of innovation, putting forward the idea of a new agency to protect consumers. She also successfully built supportive coalitions for her idea, thereby exploiting opportunities opened up by the crisis and the excessive industry influence over regulation that it brought to the fore.

9 Governmental allies

The Obama administration played a lead role in promoting the regulatory reform favored by consumer advocates. The White House publicly entered the picture in June 2009 with a White Paper which proposed five objectives for financial reform including a "Consumer Financial Protection Agency (CFPA), with the authority and accountability to make sure that consumer protection regulations are written fairly and enforced vigorously" (Department of the Treasury 2009: 7). The White Paper had its roots in a brainstorming group which began work on an outline for financial reforms in early 2009. By January 2009, the President charged a small group, including experts on financial institutions, law professors, and economists, with the task of drafting a first regulatory bill. Reforms of the framework for consumer protection regulations were a central part of the group's discussions throughout the spring of 2009 and were debated with Secretary Geithner, National Economic Council Director Larry Summers, and eventually with the President all spring long. Based on their conclusions, the brainstorming group proposed an independent Consumer Financial Protection Bureau, and later that year, in June 2009, the Treasury included the proposal of a new agency in the White Paper.

During early discussions in the spring, consumer groups had become central interlocutors for the administration and the Treasury Department to draft the new financial reform bill. Before the White House issued its blueprint for financial reform in June 2009 which included the CFPB, consumer groups that would later become AFR had routinely met with Treasury officials to give advice and express support for a strong consumer regulator. Individual consumer groups (which at that point were not yet organized into a coalition) enjoyed access to informal consultations and had effective connections with Treasury staff – such as Eric Stein, who had become the top deputy of the Assistant Secretary of the Treasury Michael Barr after a career at one of the leading consumer organizations, the Center for Responsible Lending. Prior to his function at the Treasury, Barr himself had been involved in community development policies, where interactions with consumer, housing, and community groups had largely shaped his views. During the passage of financial reforms, he became responsible for consumer financial protection policy, including the enactment of the Credit CARD Act of 2009 and the CFPB. When, in June 2009, the White House published its White Paper, Barr and his top deputy Stein were in charge of drafting the legislation that was implemented from the blueprint. During that legislative process, meetings between the Assistant Secretary of the Treasury and the AFR coalition took place on a regular basis.³³ Within the administration, Barr and Stein became the “behind-the-scenes heroes” for the consumer advocates in drafting strong language and pushing for the consumer agency (Warren 2014: 162).

From the beginning, the issue of a consumer regulator had strong presidential support. Personally enthusiastic about reform, Obama highlighted the new consumer regulator in several speeches and as a guest on *The Daily Show with Jon Stewart* and *The Tonight Show with Jay Leno*, clearly indicating presidential support. In a speech given on 9 October 2009, Obama stated his continuing support for the Consumer Financial Protection Agency, actively siding with consumer activists:

[W]e need a Consumer Financial Protection Agency that will stand up not for big banks, not for financial firms, but for hardworking Americans ... we need regulatory reform that will reward innovation and competition instead of short-cuts and abuses ... we can't let special interests win this fight. (Obama 2009)

The President called claims made in a campaign ad sponsored by the Chamber of Commerce about the new agency being harmful to small businesses “completely false” (ibid.).

Extensive mobilization of pro-reform groups in combination with the support of elite allies, including the President and the Treasury, made elected officials into allies advocating for diffuse interests in financial reforms. Collective material resources mobilized by outside groups in favor of regulatory reform signaled to policy-makers that a strong pro-reform lobby was in place. One Congressional staffer testified to the relevance of

33 Interview 34 with Congressional staffer: Washington, DC, 7 March 2014; and interview 65b with consumer advocate: Washington, DC, 13 February 2014.

this outside mobilization, saying that the “united front ... was quite important. It gave the consumer and civil rights community ... the ability to expand the battlefield.”³⁴ Moreover, strong presidential support for reform had already signaled to the committee leadership that the chances of passage would be good. Another Congressional staffer summarized the motivation for elected officials to become active pro-reform advocates as follows: “the consumer groups rallying the public and the media being just ready for anything on this stuff, and again the president at the height of his authority saying ‘I want this.’”³⁵ Another respondent from the industry side confirmed this assessment: “The crisis gave [consumer groups] a great atmosphere politically, and then they had a White House and Treasury Department that was very sympathetic to them. That combination gave them a lot of clout.”³⁶

Most importantly, the Democratic leaders of the committees that handled financial reform – Representative Barney Frank, chairman of the House Financial Services Committee, and Senator Christopher Dodd, chairman of the Senate Banking Committee – both became active allies defending diffuse interests in the policy process. Both stood firm against nearly all weakening amendments and joined in support of strengthening ones. Several examples illustrate the close working relationships among the AFR coalition and Congressional staff in the key committees. When legislative action moved to the House Financial Services Committee in the fall of 2009, consumer groups under the AFR umbrella started to cooperate with Barney Frank and his staff. Barney Frank became an influential advocate for the consumer cause who expressed his support for the idea of a consumer agency in one of the first meetings with the AFR coalition. The following passages stem from interviews with outside organizations and staff members in Congress. One reform advocate gave an explanation of the degree of cooperation and planning among the administration and consumer groups which testifies to the advocates’ exceptional access to the policy process:

We had been talking to the Treasury people, then the President came out with his blueprint, and it included the CFPB. So that summer [2009] we had all these meetings and negotiations with Treasury and then with Barney Frank. We worked with them and advised them on the blueprint and then we worked with them on a strategy to draft the legislation that was implemented from the blueprint.³⁷

Remarking on the cooperation with Senator Dodd’s staff, another AFR organizer described the interest groups’ close relation with governmental allies in Congress this way:

We had a big meeting with Dodd and his whole staff, asked ... what the relationship would be, who we should work with, how we should work with them. We had three meetings with him and his whole staff in the course of the campaign, once at the start, once before the end, and once in the middle. We met with the staff ... all the time.³⁸

34 Interview 66 with Congressional staffer: Washington, DC, 24 March 2014.

35 Interview 34 with Congressional staffer: Washington, DC, 7 March 2014.

36 Interview 113 with banking lobbyist: Washington, DC, 25 February 2014.

37 Interview 65b with consumer advocate: Washington, DC, 13 February 2014.

38 Interview 10 with consumer advocate: Washington, DC, 28 September 2013.

From inside Congress, the advocacy process looked similar. Congressional staffers interviewed for this study on the House and Senate side reported that they relied on consumer groups' expertise for drafting legislation. On mortgage reform, Barney Frank's staff reported that they relied on expertise from the Center for Responsible Lending, saying that they "got language when [they] needed it."³⁹ On the issue of preemption, staffers cooperated closely with the Consumer Federation of America. Within the broad coalition that AFR had brought together, one could find "experts on any given issue ... with invaluable [knowledge] in technical areas," as a Congressional staffer reported.⁴⁰ Each of the groups brought a specific area of expertise on consumer financial issues to the table, so that Congressional staffers knew who to reach out to on the consumer side. As one Senate staffer recalled:

There was somebody who knew about credit cards and debt collection and there was somebody who knew about housing. One or two experts in a couple different organizations would be the folks that we would call up and say, "Hey we're working on this bill, what do you think needs to be in it, can you take a look, what lawyers, what professors can we talk to?"⁴¹

One Congressional staffer saw AFR as "a collection of interest groups, many of which lend incredible know-how to drafting [legislation]."⁴²

To sum up, pro-reform advocates on the outside had well-established working relationships with sympathetic government allies on the inside – namely, the two key Committee chairs Barney Frank and Chris Dodd, who pushed the legislation through Congress. The most accurate depiction of working relationships among advocates and friendly officials is that of members of a team, with advocacy groups serving as an important source of expertise in the drafting phase of the legislation. Finally, presidential support for a new consumer regulator was instrumental in making the idea more attractive to committee leaders.

39 Interview 66 with Congressional staffer: Washington, DC, 24 March 2014.

40 Interview 114 with Congressional staffer: Washington, DC, 17 March 2014. Cross-verification of evidence confirms this fact, which may be considered "cheap talk." Information from various members of the Congressional staff, consumer advocates, and industry lobbyists who saw themselves "shut out" testifies to the correctness of the assessment.

41 Interview 34 with Congressional staffer: Washington, DC, 7 March 2014.

42 Interview 114 with Congressional staffer: Washington, DC, 17 March 2014.

10 Conclusions

What can this episode tell us about the politics of financial reform after the crisis? This case study has shown that diffuse interests can be politically influential, even in a policy field that has been characterized as exclusively dominated by organized industry interests such as financial regulation. While consumer groups gained more access to the national policy-making process, industry groups saw their policy access curtailed. Through careful process tracing, I demonstrate that financial reforms are best explained through a theoretical framework which takes into account the role of diffuse interest groups. The results of applying the theoretically derived hypotheses to the empirical record of the case at hand are summarized in Table 3. This article tried to demonstrate that the story of post-crisis regulatory reform in the US was one of diffuse interest coalitions, policy entrepreneurship and governmental allies, as much as – if not more than – a story of concentrated industry capture. The importance of coalitions is particularly apparent in the formation of the broad-based civil society coalition under the “Americans for Financial Reform” umbrella that came together to advocate for a new consumer regulator. The engagement of this unprecedented coalition of nonfinancial groups in the reform debate increased actor plurality and reduced industry dominance throughout the legislative process. The cooperation with a well-positioned and savvy policy entrepreneur was another key factor in determining reform outcomes. Harvard law professor and consumer finance expert Elizabeth Warren became an entrepreneur defending the consumer regulator before Congress. Other important drivers of regulator change representing diffuse interests were governmental allies, including the President and committee chairmen, who pushed the proposal for a new consumer watchdog through Congress. Notably, the committee chairmen responsible for financial reform became active proponents of the consumer cause and cooperated closely in team-like structures with the newly mobilized consumer advocacy coalition. The legislative outcome was a winner-take-all result, with consumer groups winning the day and only minor carveouts for small community banks.

Regulatory capture theories are the dominant theoretical lens used to explain US financial reforms after the 2008 crisis. Their theoretical insights clearly helped identify the causes for the incrementality of the overall reform law in spite of the major shock the crisis had caused. My goal, however, has been to show that this is only half of the story, and that diffuse interests did not go unrepresented in the American financial regulatory overhaul. The findings presented here correspond to Trumbull’s argument that diffuse interests are commonly represented in public policy, even in the field of financial regulation (Trumbull 2012). Ultimately, the story of the struggle between consumer advocacy groups and financial industry groups in the case of the CFPB suggests that coalition-building among diffuse interest groups and with important elite allies on the outside and the inside of government considerably affects that group’s ability to shape regulatory policy, allowing groups to bear on policy decisions independently of an in-

Table 3 Summary of findings

Propositions	Findings
1. Favorable opportunity structures: politicians under public salience and electoral constraints become more receptive and grant new access points to diffuse interest groups.	Yes. Congress and its committees opened new access points for a broader range of interest groups. Due to substantial public pressure, demands by pro-reform groups attracted political attention.
2. Diffuse interest coalitions: new coalitions mobilize, enhancing collective action capacity of diffuse interests to serve as a link between public opinion and policy-makers.	Yes. Formation of "Americans for Financial Reforms" (AFR) as a countervailing force to the financial industry, based on the perception of a "window of opportunity" and a lack of unity among industry groups.
3. Policy entrepreneurs: presence of entrepreneurs who can provide expertise, institutional resources, etc., thereby leveraging advocacy groups' influence.	Yes. Elizabeth Warren, a politically savvy consumer credit expert, joins pro-reform groups and becomes an important entrepreneur.
4. Governmental allies: Joining the bandwagon, public officials actively side with mobilized diffuse interests to promote same policy solution in team-like structures.	Yes. Well-established working relations among advocates and key government allies, Committee chairs Barney Frank and Chris Dodd, with advocates serving as source of expertise.

dividual group's material resources. Accordingly, the case study of the CFPB confirms Trumbull's proposition that researchers seeking to understand the outcome of interest group conflicts must look beyond the simple variable of material resourcefulness.

Finally, finance is a technical and highly complex issue area where diffuse interests generally appear relatively ineffective against concentrated industry interests. Financial regulation therefore constitutes a hard case for demonstrating the role of diffuse interests groups in public policy. In doing so, this research joins a number of studies that show that business power can be curbed by public salience (Culpepper 2011; Pagliari 2013), institutions (Hacker/Pierson 2002) and ideas (Bell/Hindmoor 2014). The argument here focused on relations between interest groups and government officials to explain how increased mobilization of diffuse interests can affect the ability of organized concentrated interests to affect policy.

References

- Admati, A./M. Hellwig, 2013: *The Bankers' New Clothes: What's Wrong with Banking and What to Do about It*. Princeton: Princeton University Press.
- Baker, P./D.M. Herszenhorn, 2010: Obama to Wall St.: "Join Us, Instead of Fighting Us." In: *New York Times*, 22 April 2010, A1. <www.nytimes.com/2010/04/23/business/economy/23obama.html>
- Beach, D./R.B. Pedersen, 2013: *Process-tracing Methods: Foundations and Guidelines*. Ann Arbor: University of Michigan Press.
- Buckley, J./D. Howarth, 2010: Internal Market: Gesture Politics? Explaining the EU's Response to the Financial Crisis. In: *Journal of Common Market Studies* 48, 119–141.
- Caggiano, J.R., et al., 2011: Mortgage Lending Developments: A New Federal Regulator and Mortgage Reform under the Dodd–Frank Act. In: *Business Lawyer* 66, 457–472.
- Carpenter, D.P./D.A. Moss (eds.), 2014: *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*. New York: Cambridge University Press.
- Clapp, J./E. Helleiner, 2012: Troubled Futures? The Global Food Crisis and the Politics of Agricultural Derivatives Regulation. In: *Review of International Political Economy* 19, 181–207.
- Culpepper, P.D., 2011: *Quiet Politics and Business Power: Corporate Control in Europe and Japan*. Cambridge: Cambridge University Press.
- Department of the Treasury, 2009: *Financial Regulatory Reform: A New Foundation – Rebuilding Financial Supervision and Regulation*. <www.treasury.gov/initiatives/documents/finalreport_web.pdf>
- Dür, A./G. Mateo, 2014: Public Opinion and Interest Group Influence: How Citizen Groups Derailed the Anti-Counterfeiting Trade Agreement. In: *Journal of European Public Policy* 21, 1199–1217.
- Durbin, D., 2009: *Durbin, Schumer, Kennedy Ask Treasury to Support Creation of a Financial Product Safety Commission*. Press release, 24 April 2009. Washington: Dick Durbin, United States Senator, Illinois. <www.durbin.senate.gov/newsroom/press-releases/durbin-schumer-kennedy-ask-treasury-to-support-creation-of-a-financial-product-safety-commission>
- Gerring, J., 2007: *Case Study Research: Principles and Practices*. New York: Cambridge University Press.
- Harney, K., 2009: Congress Takes a Serious Look at Reforming the Mortgage Market. In: *The Washington Post*, 4 April 2009. <www.washingtonpost.com/wp-dyn/content/article/2009/04/03/AR2009040301580.html>
- Helleiner, E., 2010: A Bretton Woods Moment? The 2007–2008 Crisis and the Future of Global Finance. In: *International Affairs* 86, 619–636.
- Johnson, S./J. Kwak, 2011: *13 Bankers: The Wall Street Takeover and the Next Financial Meltdown*. New York: Vintage Books.
- Kastner, L., 2014: "Much Ado about Nothing:" Transnational Civil Society, Consumer Protection and Financial Regulatory Reform. In: *Review of International Political Economy* 21, 1313–1345.
- Kirsch, L./R.N. Mayer, 2013: *Financial Justice: The People's Campaign to Stop Lender Abuse*. Santa Barbara: Praeger.
- Kollman, K., 1998: *Outside Lobbying: Public Opinion and Interest Group Strategies*. Princeton: Princeton University Press.
- Levy, J., 2008: Case Studies: Types, Designs, and Logics of Inference. In: *Conflict Management and Peace Science* 25, 1–18.
- Morgan, G., 2010: Legitimacy in Financial Markets: Credit Default Swaps in the Current Crisis. In: *Socio-Economic Review* 8, 17–45.
- Moschella, M./E. Tsingou, 2013: *Great Expectations, Slow Transformation: Incremental Change in Post-crisis Regulation*. Colchester: ECPR Press.
- Obama, B., 2009: *Remarks by the President on Consumer Financial Protection*. Washington, DC: The White House. <www.whitehouse.gov/node/5187> (accessed 13 April 2015)

- Pagliari, S., 2012: How Can We Mitigate Capture in Financial Regulation? In: S. Pagliari (ed.), *Making Good Financial Regulation: Towards a Policy Response to Regulatory Capture*. Guildford: Grosvenor House Publishing, 1–50.
- Pagliari, S./K.L. Young, 2013: The Wall Street–Main Street Nexus in Financial Regulation: Business Coalitions inside and outside the Financial Sector in the Regulation of OTC Derivatives. In: M. Moschella/E. Tsingou (eds.), *Great Expectations, Slow Transformations: Incremental Change in Financial Governance*. Colchester: ECPR Press, 125–148.
- , 2012: Who Mobilizes? An Analysis of Stakeholder Responses to Financial Regulatory Policy Consultations. In: S. Pagliari (ed.), *The Making of Good Financial Regulation*. London: International Center for Financial Regulation, 48–56.
- Palletta, D., 2010: Consumer Protection Agency in Doubt: Dodd Weighs Dropping Idea of Creating Independent Body in Bid to Get Financial Regulatory Revamp Passed This Year. In: *The Wall Street Journal*, 15 January 2010.
<www.wsj.com/articles/SB10001424052748704363504575003360632239020>
- Pollack, M.A., 1997: Representing Diffuse Interests in EC Policy-making. In: *Journal of European Public Policy* 4, 572–590.
- Pridgen, D., 2013: Sea Changes in Consumer Financial Protection: Stronger Agency and Stronger Laws. In: *Wyoming Law Review* 13, 1–36.
- Quaglia, L., 2010: *Governing Financial Services in the European Union: Banking, Securities and Post-trading*. London: Routledge.
- Renick Mayer, L., 2009: *House Financial Services Committee Considers Regulating Industries that Heavily Fund Members' Campaigns*. Center for Responsive Politics, Open Secrets Blog, 14 October 2009. <www.opensecrets.org/news/2009/10/house-financial-services-commi/>
- Rowley, J./L. Lerer, 2010: *Consumer Agency Still "Elephant" in Room in Debate*. Bloomberg, 3 May 2010. <www.bloomberg.com/news/2010-05-03/consumer-protection-still-elephant-in-room-for-financial-overhaul-debate.html>
- Trumbull, G., 2012: *Strength in Numbers: The Political Power of Weak Interests*. Cambridge, MA: Harvard University Press.
- Warren, E., 2011: *Elizabeth Warren Wants to Give Middle-class Families a Chance to Survive Economically with the Consumer Financial Protection Bureau*. Interview. The Daily Show with Jon Stewart, 26 April 2011.
<www.cc.com/video-clips/8330b4/the-daily-show-with-jon-stewart-elizabeth-warren>
- , 2014: *A Fighting Chance*. New York: Metropolitan Books.
- Wilmarth, A.E., 2012: *The Financial Services Industry's Misguided Quest to Undermine the Consumer Financial Protection Bureau*. GW Law Faculty Publications and Other Works. Washington, DC: The George Washington University Law School. <http://scholarship.law.gwu.edu/cgi/view-content.cgi?article=2171&context=faculty_publications>
- Woolley, J.T./J.N. Ziegler, 2011: *The Two-tiered Politics of Financial Reform in the United States*. IRLE Working Paper 111-11. Berkeley: Institute for Research on Labor and Employment, University of California. <<http://irle.berkeley.edu/workingpapers/111-11.pdf>>
- Yingling, E., 2009: *Testimony of Edward L. Yingling on Behalf of the American Bankers Association before the Committee on Banking, Housing and Urban Affairs*. United States Senate, 14 July 2009. Washington, DC: American Bankers Association. <www.aba.com/archive/Testimony_Archive/Testimony%20Document%20Archive/July14EdYinglingSenateBankingCommitteeConsume.pdf>
- Young, K.L., 2013: Financial Industry Groups' Adaptation to the Post-crisis Regulatory Environment: Changing Approaches to the Policy Cycle. In: *Regulation and Governance* 7, 460–480.

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