



August 31, 2011

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Ms. Marta Trzcinska [marta.trzcinska@oecd.org](mailto:marta.trzcinska@oecd.org)  
Task Force on Financial Consumer Protection  
Organization for Economic Co-Operation and Development

Re: Comments on August 1, 2011 draft of G20 High-Level Principles on Financial Consumer Protection

Dear Mr. Chapman and Ms. Trzcinska:

I write as a United States law professor with expertise in consumer financial disclosures, education, and regulation. Thank you for providing an opportunity for public comment on your August 1, 2011 draft of the G20 High-Level Principles on Financial Consumer Protection. I have a number of concerns about the Draft Principles.

Foremost, the Draft Principles are so vague that the United States, and probably every other G20 country, can claim to already comply with them and to have done so prior to the financial crisis of 2008. Certainly the Principles must be at a high enough level such that countries with a diversity of legal and regulatory systems can use them. But your mandate from the G20 was to develop principles that would "enhance" consumer protection, not leave it where it started. More particularly:

The Draft Principles place far too much emphasis on consumer education. Financial literacy education has not demonstrably improved the financial welfare of consumers in the United States.<sup>1</sup> Nor can it reasonably be expected to do so in light of the plethora of complex and ever-changing financial products and services available in the marketplace.<sup>2</sup> While a vibrant marketplace that evolves to meet consumer needs should be encouraged, consumers must be armed with more than education as they navigate that market. Moreover, educating every consumer about financial products and services is not an efficient use of resources.<sup>3</sup> We do not ask every consumer to be his or her own doctor, and we should not require consumers to be their own financial advisors. The Final Principles should include language indicating that until and unless consumer testing and research demonstrates that consumer financial education is both effective and cost-effective, it should not be relied upon to protect consumers.

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<sup>1</sup>See Lauren E. Willis, *Evidence and Ideology in Assessing the Effectiveness of Financial Literacy Education*, 46 SAN DIEGO L. REV. 415 (2009); Shawn Cole & Gauri Kartini Shastry, "If You Are So Smart, Why Aren't You Rich? The Effects of Education, Financial Literacy and Cognitive Ability on Financial Market Participation," Paper presented at the 2009 Federal Reserve System Community Affairs Research Conference, Washington, D.C.

<sup>2</sup>See Lauren E. Willis, *Against Financial Literacy Education*, 94 IOWA L. REV. 197 (2008).

<sup>3</sup>See Lauren E. Willis, *The Financial Education Fallacy*, 101 AMERICAN ECON. REV. 429 (2011).

Reliance on disclosure must also be handled with care. For complex financial decisions, disclosure is often useless or worse.<sup>4</sup> Harm to consumers caused by conflicts of interest, such as those created by remuneration schemes, can actually increase when the conflict is disclosed.<sup>5</sup> The Final Principles should make clear that disclosure is insufficient to protect consumers from financial risk and conflicts of interest.

In part, disclosures fail because most arrive too late, after the consumer is psychologically, if not financially, committed to the transaction.<sup>6</sup> To ensure robust competition over financial product and services prices and terms, the Final Principles should require that disclosures be made not only in clear, easily comparable formats, but also at a time and place that facilitates consumer shopping among alternatives (for example, through a website accessed by or a document delivered to the consumer early in the shopping process).

The Draft Principles' limitation on their own applicability to financial service providers and their "authorized agents" defies the lessons we learned from the recent crisis. In the United States, now-failed mortgages were disproportionately sold by poorly capitalized independent mortgage lenders and brokers, leaving consumers with limited recourse to financial redress. If the large financial firms that facilitated the origination of these mortgages through sponsorship of securitization and other funding mechanisms knew they would be liable for foreseeable harm to consumers caused by these risky mortgages, they likely would have performed an oversight function that might have averted the crisis.<sup>7</sup> A few of these large firms have been held legally accountable by United States courts and regulators, albeit to a limited extent.<sup>8</sup> Restricting the Final Principles' applicability to "authorized agents" would set back rather than enhance consumer protection in this regard. Furthermore, as consumers are forced to make more complex financial decisions for themselves, they increasingly will need to rely on independent financial advisors for assistance. For these reasons, the language in the Final Principles should cover all agents (broadly defined), sponsors, and assignees of providers of financial products, services, or advice to consumers, in addition to the providers themselves.

Another lesson of the financial crisis in the United States has been that consumers are not well-situated to know what information firms should be using in making the decision to sell the consumer a product. United States law now requires mortgage lenders in most situations to verify consumer income and assets using reliable third-party documents when determining

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<sup>4</sup>See, e.g., Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647 (2011).

<sup>5</sup>See Daylian M. Cain et al., *When Sunlight Fails to Disinfect: Understanding the Perverse Effects of Disclosing Conflicts of Interest*, 37 J. CONSUMER RES. 836 (2011); Daylian M. Cain et al., *The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest*, 34 J. LEGAL STUD. 1 (2005).

<sup>6</sup>See, e.g., Lauren E. Willis, *Decisionmaking and the Limits of Disclosure: The Problem of Predatory Lending: Price*, 65 MD. L. REV. 707 (2006).

<sup>7</sup>See, e.g., Amiyatosh Purnanandam, *Originate-to-distribute Model and the Subprime Mortgage Crisis*, 24 REV. FINANCIAL STUD. 1881 (2011); Kathleen C. Engel & Patricia A. McCoy, *Turning a Blind Eye: Wall Street Finance of Predatory Lending*, 75 FORDHAM L. REV. 2039 (2007).

<sup>8</sup>See, e.g., *In Re First Alliance Mortgage Company*, 471 F.3d 977 (9<sup>th</sup> Cir. 2006).

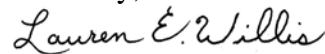
repayment ability.<sup>9</sup> The Final Principles should hold providers responsible for collecting and verifying sufficient information about a consumer to ensure that products and services sold to that consumer are in the consumer's best interests.

Finally, the Draft Principles could be interpreted to require consumers to pursue complaints through avenues created and controlled by financial service providers before seeking assistance and redress from regulators, administrative bodies, or the courts. This again would set back consumer protection rather than enhance it.<sup>10</sup> Although firms are free to provide their own mechanisms for the resolution of consumer complaints, the Final Principles should require that consumers be provided with independent avenues of redress through regulators, administrative bodies, or the courts.

Thank you again for providing the public with an opportunity to help you improve on the Draft Principles so that the Final Principles will enhance financial consumer protection. In the future, it would be helpful for national representatives on the Task Force on Financial Consumer Protection to make themselves available as contact persons. Commenters would then be able to speak directly with their national representatives, so that the representatives could make the views and concerns in their respective countries known to the Task Force.

Please let me know if I can be of further assistance. I can most readily be reached at [lauren.willis@lls.edu](mailto:lauren.willis@lls.edu).

Sincerely,



Lauren E. Willis  
Professor of Law

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<sup>9</sup>See Dodd-Frank Wall Street Reform & Consumer Protection Act, Title XIV, Subtitle B, § 1411 (amending Truth in Lending Act).

<sup>10</sup>See Jean R. Sternlight, *Creeping Mandatory Arbitration: Is It Just?*, 57 STANFORD L. REV. 1631 (2005) (describing the ways in which the consumer dispute resolution process commonly set up by United States firms – arbitration – is systematically biased against consumers).