Consumer Finance Monitor (Season 5, Episode 6): The CFPB's Approach to Regulating Payday Lending: A Discussion with Todd J. Zywicki, Professor of Law at George Mason University Antonin Scalia Law School, and Thomas Miller, Professor of Finance at Mississippi State University

Speakers: Alan Kaplinsky, Todd Zywicki, and Tom Miller

Alan Kaplinsky:

Welcome to the Consumer Finance Monitor podcast where we explore important new developments in the world of consumer financial services, and what they mean to you or your business. I'm Alan Kaplinsky, senior council of Ballard Spahr. Formally, the chair of our consumer financial services group at Ballard Spahr.

Alan Kaplinsky:

I'm very pleased to be moderating our podcast today. Before I go any further, I want to introduce our speakers. You'll certainly recognize the first person I'm going to introduce. He's been on our program on several occasions, because he is always seems to in the eye of the storm or on top of whatever is happening in the consumer financial services world.

Alan Kaplinsky:

My other guest is appearing for the first time, but certainly his name should be known to many you that are listening to our program today. First of all, I'm going to introduce Todd Zywicki. Todd is the George Mason University Foundation Professor of Law at the Antonin Scalia School of Law at George Mason University.

Alan Kaplinsky:

He is the senior fellow at the Cato Institute Center for Monetary and Financial Alternatives. From 2015 to 2017, he was executive director of the George Mason Law and Economic Center. From 2020 to 2021, he served as chair of the Consumer Financial Protection Bureau task force on federal consumer financial law.

Alan Kaplinsky:

From 2003 to 2004, he served as the director of the Office of Policy Planning at the Federal Trade Commission. He is the author of more than 130 articles and leading tax reviews and peer reviewed economics journals. He's testified multiple times before Congress on issues of consumer credit, consumer bankruptcy.

Alan Kaplinsky:

He is a frequent commentator on legal issues in the print and broadcast media, including the Wall Street Journal, New York Times, Washington Post. I could go on and on and on. He's been a guest on several television talk shows, including CNN, CNBC, Bloomberg News, PBC, et cetera. First of all, a very warm welcome to you, Todd.

Alan Kaplinsky:

I'd like to also introduce, I could use the expression first time caller longtime listener. I hope a longtime listener. Tom Miller Jr. is a professor of finance and an inaugural holder of the Jack R. Lee Chair of Financial Institutions and Consumer Finance at Mississippi State University. He's also a senior research fellow at consumers research in Washington, DC.

Alan Kaplinsky:

His current research includes projects on various aspects of consumer credit, and specifically, small dollar installment loans. Professor Miller also maintains an interest in derivative securities. He's the author of How Do Small Dollar Non-bank Loans Work and a co-author of Fundamentals of Investments: Valuation and Management.

Alan Kaplinsky:

Professor Miller's interests include American saddlebred horses and playing jazz and blues on his tenor saxophone. A very warm welcome to you, Tom. I want to say it's a shame you didn't bring your saxophone along with you today because I wouldn't mind you playing a little tribute to my favorite jazz saxophone and musician Sonny Rollins. Welcome, Tom.

Tom Miller:

Thank you so much, Alan. Sonny's a good choice.

Alan Kaplinsky:

He sure is. The only thing I feel sad about is he's no longer playing his horn. What we're going to talk about today is that Todd and Tom very recently, they haven't published this yet, it's going to be published a little bit later. It's called The Effects on Consumers from Two State Level Regulations of the Payday Loan Market.

Alan Kaplinsky:

The article, there was an oped that they published in the wall street journal about the study, it caught the eye already of some consumer advocates, including professor Adam Levitin at Georgetown University Law School. Also, been on our program before and a good friend of mine.

Alan Kaplinsky:

We'll get to what Professor Levitin had to say in a minute, but let's start our show today by Todd having you describe what motivated you and Tom to write the paper. The type of data that you put together to support the paper that you wrote. What was the initial motivation?

Todd Zywicki:

Well, thanks Alan. As always, it's great to be with you and I always enjoy hashing through these things. Last time I was on here, we talked about my cancel culture comes to consumer financial services. After speaking with you, I ended up publishing a long Op-ed on that on newsweek.com.

Todd Zywicki:

It's always fun and helpful to hash through these issues with you. I figure, one more time on here, and I think I get a free sandwich because I will have my punch card full. This goes back a few years when we started working on this. This goes back really to the original, we started working on this during the Obama administration.

Todd Zywicki:

When at the end of the Obama administration, as many people will recall, they put out this payday loan rule. The focus of the payday rule was on the volume of loans. Oversimplified, basically what it said is you couldn't take more than six payday loans in a 12-month period.

Todd Zywicki:

There was a lot of economic research going back on the use of small dollar loans, how consumers use small dollar loans. In particular, that's understood as a relatively what an economist would call any elastic demand for payday loans. We started looking at this back at that time to see what the effect would be of this rule.

Todd Zywicki:

In particular, these two particular rules that we can talk about that might impact, that might cloud this idea, because the CFPB's idea was that using too many payday loans was both a good proxy for financial distress, but also a cause of financial distress.

Todd Zywicki:

The whole idea turns on the idea that more than six payday loans is harmful and less than six payday loans is fine, which is arbitrary in itself obviously, but there was more to it. We put this aside a little bit when president Trump was elected and director Kraninger is repealed, rescinded the Obama administration payday loan, these provisions of it.

Todd Zywicki:

Now that the new director has been named and it's clear that small dollar loans as well as overdraft protection and various other things are back in the crosshairs can be anticipated that they might float this again, basically resuscitate the rule.

Todd Zywicki:

It appears the reason why they push this is, your listeners may be familiar, under Dodd-Frank, the one thing the CFPB is not allowed to do is issue USI regulations. What this really seems like is a backdoor way of dramatically reducing access and effectively knocking out all small dollar loans through the way this rule operates.

Todd Zywicki:

We figured this is the most likely way in which they're going to get at it. What we're trying to figure out here is whether or not that's a useful proxy, whether or not that really tells us much about consumers, their financial distress, and why they use payday loans.

Todd Zywicki:

Whether this rule that required a focus on ability to repay would actually accomplish something useful that would not be too harmful to consumers.

Alan Kaplinsky:

I'm wondering, Tom, I know that you are the data maven behind this study. I'm wondering if you could describe to us the type of data you have. We'll then get to some question I have about what you found out. Let's talk in general about the type of data that you assembled.

Tom Miller:

Alan, thank you. A pleasure to be on the podcast. Basically, I was at a conference once time at an industry conference and somebody presented some data on payday loans. I thought, "Gee, that really looks like terrific data." To academics data is everything. I've been trying to get data from various outlets without success.

Tom Miller:

This turned turns out to Clarity Services, which is a subprime credit business, had the source of this data and some paid lenders had made the data available to Clarity. I signed a nondisclosure agreement and when Todd and I were both Mercatus at the time, I accessed the rod data through a computer portal or protocol that was set up by Clarity Services.

Tom Miller:

It has about 95 million loans over a five-year period or four and a half year period. We focused on the last year in the sample 2013 because we wanted a cross section cross states of usage of payday loans. In 2013, we have 15.6 million observations or loans and made to about 1.8 million unique borrowers.

Tom Miller:

We could identify there was a field that identified, gave the each unique borrower a 20-digit unique identifier so we could sort by that, but we had no idea who in any of these individual borrowers were. They gave us loan amount, the amount repaid, date it was repaid, the due date, the reported monthly income from the borrower, the zip code.

Tom Miller:

If we could ever update this data, I think it would really be great to see how the industry has changed in the last few years. I will point out, A, limitation is that we only have about 20% roughly of the volume of payday loans that were made nationwide. We have nothing to say about the other 80%.

Tom Miller:

Like all studies, we can only talk about what we find in our sample. That's why I always call for a mosaic of research so that we can lay lots of results end to end and see if we can say anything. If anybody used, if any of our customers in this database used one of the firm other than one of the five that reported in the database, we can say nothing about that either.

Tom Miller:

As I said, it is old now. Anything before COVID is ancient history. It is eight years old at the time. Still, I think it gives us some insight into what was going on at the time with CFPB's emphasis on loan usage.

Alan Kaplinsky:

Before we get into the study, one of the things that I started thinking about right away as I read your paper is at least what I'm witnessing in the payday loan industry itself. What I've seen happen over a period of about really eight or nine years, and that is the traditional payday lenders seem to have left the industry.

Alan Kaplinsky:

There are I should say the kinds of loans that they're making these companies haven't by and large disappeared. It's morphed into what I would describe as a relatively short-term consumer installment lending. I think they did it because they were feeling the pressure from the CFPB, and at the states and figured that they shouldn't wait for the apocalypse.

Alan Kaplinsky:

If they want to stay in business, adjust what they're doing. I'm wondering either Todd or you to react generally, is basically is the work of the CFPB dump. They got most of the only payday lending or that's left are the tribal payday lenders and the offshore payday lenders. There isn't a hell of a lot that the regulators can do to stop that.

Tom Miller:

Well, in response to that, I think you're correct and that I've understood also that the industry has morphed itself into payday installment loans, if you will, to separate them from traditional small dollar installment loans, which are completely different product, and go through different underwriting and et cetera.

Tom Miller:

It seems to me though that the CFPB will still be active in this space. CFPB has partnered with various consumer groups to put pressures on interest rate caps around the states, even though they're prohibited from doing it themselves directly, but they'll go with the Military Lending Act for all, et cetera.

Tom Miller:

I still think that if in fact the payday industry has responded to the CFPB by changing the product, it's not clear to me that the CFPB won't then change the rules again and come back and make another move and say, "We see this market. We think this is bad for consumers too." Write a whole another rule. We just don't know. I would anticipate that.

Todd Zywicki:

The lesson is, I think that there is a generalizable lesson here, which is about how consumers use small dollar loan products and how these regulations can interact with them. Whether they're lump sum, single payment payday loans like this or in installment loan.

Todd Zywicki:

If they're going to focus on usage, which they will inevitably end up focusing on for installment loans, because they can't apply, Congress could apply use recently the CFPB. If they decide that people are rolling over extending installment loans or whatever, you can expect to see a similar regulatory structure.

Todd Zywicki:

I think the lessons here are generalizable, at least for things to look out for in terms of unintended consequences. Whether or not that would even pass APA muster, which is, I think one of the questions that comes up with our research.

Alan Kaplinsky:

Well, let's dive right into that, Todd. That is what are the general findings of your paper?

Todd Zywicki:

The main focus of the paper as the title indicates is on payday loan usage. As Tom said, we got this big database millions of loans. We all understand those of us who have worked in this world, we all understand the way in which consumers use small dollar loan products, which is what an economist calls are basically an elastic demand.

Todd Zywicki:

Which is that people who use small dollar loan products are people who have limited or what we call rationed access to mainstream credit, like credit cards and things like that. They still have at the end of the month unmet needs. They have

emergencies, they don't have enough money to get through the end of the month, so they end up using these small dollar loan products.

Todd Zywicki:

They can't get enough access through credit cards and that sort of thing. They turn to these products to avoid bouncing checks, getting utilities terminated, getting evicted, things like that. When economists would think is that to some extent, they need a certain amount of credit. What we look at here is these two types of state laws.

Todd Zywicki:

The primary one, the one that turns out to be very interesting is a number of states have laws that limit the amount that you can borrow with any single payday loan. A very common cap is $500. You can't borrow more than $500 at a time. What we test in the paper is does that actually reduce usage of payday loan loans?

Todd Zywicki:

What we find out is first, what's fascinating is and we divide the states in the two groups, less than $500 or less you can borrow at the time or $500 or more. The first thing we find that's very fascinating is consumers in those two states end up in one year borrowing the same amount of money, which is that they both borrow around say $3,000.

Todd Zywicki:

There's no statistically significant difference between them. What's going on? We also find is that people in low cap states take out 50% more loans than people on high cap states. We find the average contingent on using a payday loan. The average consumer in a state with a $500 or below cap takes out nine payday loans.

Todd Zywicki:

Those who can borrow more to time take out six payday loans. This has two very big, significant differences, the things, which is first consumers are borrowing the same amounts. They're just having to take more loans in order to do it, which is more inconvenient and perhaps even more expensive.

Todd Zywicki:

Second, this makes the whole idea of using volume or usage as a proxy completely arbitrary. That a consumer in state A with a low cap would be affected by the CFPB's six loan cap. Consumer in state B who borrows exact same amount over the year, but can just borrow more at a time, wouldn't be affected by the law.

Todd Zywicki:

Everything else could be completely the same, but it's a completely arbitrary impact on consumers that makes no sense. I think that's the most exciting part of this. We could talk about fee caps as well, but this idea of you need a certain amount of credit and you borrow what you need.

Todd Zywicki:

You just take more loans if you can't get it. Then we could talk about some of the other layers of laws that go on top of this.

Tom Miller:

I would just like to add just one thing, because anybody who's listening who knows about outliers would say, "Well, the average is affected because there's one state with a whole bunch of loans that people are taking out." We employ a statistical technique to take out the effect of outliers.

Tom Miller:

We still see the same effect that basically, consumers in low dollar amount cap states take out more loans than users in high dollar cap amount states.

Alan Kaplinsky:

Let me turn and let's turn for a minute to what professor Adam Levitin had to say. He very recently, it was late last week published in the Consumer Law & Policy blog, a critique of your paper, where he disagreed with the conclusion that you drew in the first part of your paper.

Alan Kaplinsky:

Arguing that there is a coding error in how you establish is the maximum permissible fees that can be charged on a payday loan. Therefore, the percentage of loans that are made below the statutory fee cap. I'm wondering what you have to say about that, is he correct?

Alan Kaplinsky:

If he's correct, what impact does that have on the essential conclusions that you reached?

Todd Zywicki:

We found out about this after he posted it. He didn't ask us for our data or to talk about it or anything like that. We discovered it when everybody else had, and we are trying to figure out what to do with that information. Tom and I are working through the data and figuring out exactly what he's doing.

Todd Zywicki:

It's very complicated, but let me just say one thing, which is this was an issue, this arose as we started writing the paper. As Tom said, the primary focus of the paper was to test this hypothesis, to think about idea that we would expect that consumers have a certain need for small dollar credit and that drives what their demand is. That's what we found.

Todd Zywicki:

The other thing we found interestingly enough is that states that have fee caps also have higher loan volumes, which we speculate might be that basically when you reduce the cost of using a payday loan, people will use more of them. It increases demand ironically.

Todd Zywicki:

Both of these laws, both that limit the amount you can borrow at once as much as well as the fees you can pay both end up actually increasing it appears on the amount of payday loans you take. As we were looking at the research and the data, we noticed a very interesting point that we also ended up writing up in the paper.

Todd Zywicki:

Which was that it turns out there's this idea or this hypothesis been around that payday loans and this animated to CFPB, payday loan markets don't work right. That fees automatically rise as high as they possibly can, they rise to the maximum.

Todd Zywicki:

We noticed as we were doing this in states first with no fee cap, there was a wide dispersion in the fees that were charged, but that they all settled around the same amount in the 19% to 21% I think was the number. We also noticed in some of the states with fee caps, that there seemed to be loans that were made beneath the statutory ceiling, a lot of them.

Todd Zywicki:

What the issues come up now with Professor Levitin is as you said, it's a coding question, which is how do we end up calculating what the relevant fee cap is? This turns out to be quite complicated issue as you know because you could have the fee, but you could also have a database fee. You could have a one-time loan approval fee.

Todd Zywicki:

You could have sliding scales on what fees as the amounts change and that sort of thing. We basically looked at the data and saw, "Well, whatever's going on that flat fee doesn't seem to explain the pricing we're seeing." Otherwise, it looks like there's millions of loans that are being made that are illegal.

Todd Zywicki:

Some way or another, we were trying to come up with a way of taking account of these other fees to actually find out what the effective fee cap is. He raised some issues with that. He raised some issues with the question of how we're coding some of the states where you have fee rates that change.

Todd Zywicki:

15% for the first 100, 14% for the second 100. We're working through that. We're trying to figure out whether or not with our data, we can actually drill down into that nuance to address these concerns. As Tom said, because of consumer privacy issues and everything else, we have limited, we can't get access to every single detail about these loans that we would like.

Todd Zywicki:

The question is whether our data and what we know about state laws enables us to really confirm or reject that hypothesis about competition. Tom, did you have anything to add to that?

Tom Miller:

I just wanted to buttress the fact that his critique has nothing to say about a major finding of the paper, and that is in states without fee caps, which means we don't have to worry about how we measure that loan rates don't rise much higher than where they are in the collection of states with fee cap.

Tom Miller:

As Todd said, the preponderance of the loans will be from the 17% to 23% area in states without fee caps. That is evidence to me at least that there is competition among providers and consumers, or will look to as go cheap as possible, and they're trying to pay for a loan.

Tom Miller:

We found that in states without loan amount caps, that the amount of the loan didn't rise to an astronomical level either. For example, in Utah, with no fee cap and no loan amount cap, there were, gosh, how many loans were Utah?80,000, 100,000, but only 10 of them were for more than $1,000. None of them were for more than $1,200.

Tom Miller:

The market regulates itself because the folks that are taking out these loans, aren't stellar credit histories. The lenders are lending their own money. This isn't money that they get from depositors or from Uncle Sam to lend out, this is their own money, so they have an incentive to loan money to people that will pay them back.

Tom Miller:

Todd has often said that the big question in this payday loan area is why don't people just walk away from payday loans? How can there be a credit trap when really it costs more money to go collect on a payday loan than you're owed. We'd see that people keep that option alive for credit. I think that's something.

Alan Kaplinsky:

There's no reporting to the major credit bureaus?

Tom Miller:

They're not allowed to. Payday lenders are not allowed to hence that's why we had credit reporting services like Clarity Services that are in the subprime market. This Veritech database, which basically is a monitor.

Tom Miller:

If you come into Todd's payday loan operation, you want to get a payday loan, he can check to see if you have other payday loans outstanding. That's a very handy monitoring device. We find this very effective actually in reducing loan volume.

Todd Zywicki:

The paper is available on ssrn.com by the way, Alan, for you guys to read it. I would figure one, we do a scatter plot of the point that Tom was describing and we highlight Utah, which he said is the pure Adam Smith world of neither fee cap nor loan caps. It's virtually inditing for every other place.

Todd Zywicki:

Which is what this seems consistent with is an idea that it's been around a lease since the National Commission of Consumer Finance, which is the small dollar loans do seem to the market, there is a supply and demand that there is underwriting that you lend what consumers can pay. Consumers tend to shop around a lot.

Todd Zywicki:

We know that consumers shop for payday loans and that is one big takeaway from the paper is that there's not a big difference with respect to these points. That point is, what I'm saying is not unaffected by Professor Levitin's critique.

Alan Kaplinsky:

Let's now tie your findings and conclusions into what went on at the CFPB, but more importantly, what director Chopra have in mind, if he decides to resuscitate the old rule that was originally developed by Cordray.

Alan Kaplinsky:

Given what you have found in your survey about the impact of loan volume caps and rate caps, what's the teaching here for director Chopra and the CFPB as they try to decide what do they do now?

Todd Zywicki:

Well, it's one of the things that's always been odd to me Alan as I've looked at this is that payday loan markets look like the ultimate competitive market. It's simple, transparent pricing, one price. You could pair a payday loan to a credit card or bank account or something. They got one price and a short duration barriers to entry are low.

Todd Zywicki:

We know that there's a, a huge amount of entry and compete. There's no evidence that payday lenders make what economists would call economic rents or sustainable economic profits. It's a tough business with high default rates and expensive. It's an odd thing to think about how they structure this.

Todd Zywicki:

They've kind of searched around and they've come up with this idea of the debt trap that Tom referred to that somehow consumers are trapped into rolling over these loans because they can't repay them. They've got behavioral economics that they claim justify that, which doesn't really make sense.

Todd Zywicki:

They're just talking about, it's an odd thing, which is it's not clear or why consumers roll over their debts. Other than that, they want to keep access to that credit because you said they don't get reported to credit bureaus. They rarely get sued except for in a handful of places.

Todd Zywicki:

It's not clear what efforts are made to collect the debt because these are people who don't have money. That's why they have payday loans, going after a dry hole. It's the great white whale for these guys. It's this obsession with payday loans. As we said, this seemed to be a workaround around the fact that the CFPB is barred by Dodd-Frank from actually imposing a national user ceiling, like a military lending for all type ceiling.

Todd Zywicki:

They decided this loan volume would be the way to do it. What we see is the CFPB itself admitted this, would've had a disastrous effect on the industry wiping out -

Alan Kaplinsky:

Wipe out the majority of the industry.

Todd Zywicki:

That's right or wiped out the majority of the industry. At least they even had some, we'll say dubious economic analysis to suggest that they tended to underestimate the impact on the industry. As we talk about earlier, once this industry is gone, it can be expected, they'll turn their sites to the installment lending industry.

Todd Zywicki:

That's squeezing the balloon. We've already seen, one of the things Tom mentioned that these Veritech databases can in fact re reduce loan volume, right? The consumers can't take fewer loans because they can't stack these loans and that sort of thing. A problem is what happens then? Where do they go?

Todd Zywicki:

Are they using overdraft protection? We know that when they don't use payday loans, they seem to use overdraft protection pawn shops. A lot of other type and perhaps less savory type things that they might end up turning to.

Todd Zywicki:

Even if we can reduce payday loan volume without understanding where consumers are going to make ends meet, as we see here, if they can, they'll take more loans to meet their needs. Where they can't take more loans, where are they turning for to make ends meet?

Alan Kaplinsky:

Where do you think CFPB is actually headed? Chopra has expressed, he's not happy for sure with what Kraninger did. For him to resuscitate the old rule, it seems to me that he'd almost have to start all over again. The market today is as we pointed out, significantly different than what it was when the CFPB was doing its initial work several years ago under the Cordray directorship.

Alan Kaplinsky:

He also, it seems hell-bent to look at what he would consider to be payday loan alternatives. Bank overdrafts, he's very, very focused on. As you point out, I think he is definitely going to examine installment lending. In fact, I think there will probably be a larger participant rule on installment lending where they definitely want to sweep under their supervision non-bank installment lending.

Alan Kaplinsky:

Given what I think will be a relatively short period of time in which he's in the office, particularly if the election in three years put someone else at the top of the new president, what is he going to do? What's he left with?

Todd Zywicki:

Well, this is always the challenge, Alan, which is this is always since the dawn of time regulating small loan products is a challenge. We often, as economists say, it's like squeezing a balloon or pushing on a carpet. The lumps pop up somewhere else, which is you can get rid of the supply of legal credit, but you can't get rid of the demand.

Todd Zywicki:

What ends up happening is we saw tax lump sum single payment payday loans. It tends to morph into installment loans. You get rid of that, people will end up using bank overdraft protection or look at online payday loans. Of course, the worst case scenario is the loan sharks come back.

Todd Zywicki:

We know that's not just fiction and that's not just Hollywood. We talked about this on your program in the 1970s, for example, loan sharking racket was a $10 billion year industry in the United States was about $69 billion in today's dollars. To give you a sense, the entire payday loan market in America is about $34 billion.

Todd Zywicki:

The size of the illegal loan shark racket adjusted for inflation was double in the 1970s than what it is now, and what the payday loan market is today. What you have to do in order to try to regulate this, you do have to move on all fronts. You've got to go after payday loans, installment loans, auto title loans, overdraft protection, bank advance products, buy now pay later.

Todd Zywicki:

All these sorts of things, but it ends up it's chasing your tail. We've seen how this movie ends before and it doesn't end well. It ends up basically by the ingenuity of the market. Consumer is looking for these loan products, usually end up distorting the market in a way that makes it impossible to believe that you've made consumers better off.

Todd Zywicki:

I'm not quite sure and it appears that director Chopra is moving very aggressively on all those fronts. I would expect also movement on credit card, which oddly enough was something that director Cordray left alone. Director Cordray left alone over draft protection, I think largely because as you probably know, and I know Tom does, but most people don't.

Todd Zywicki:

Small banks are very dependent on overdraft protection because they have fewer sources of revenue than large banks. The question is, can Chopra come up with a way of going after overdraft protection without destroying small banks? That is a challenge in itself.

Todd Zywicki:

If he's going to try to go after all these things at once, it's going to really be a challenge. I'm not sure how that plays out. Tom, did you have anything you wanted to add?

Tom Miller:

Well, I'm just wondering whether the traditional rulemaking process will be set aside in favor of enforcement actions and various things going supervision. The recent lawsuits against pawn loans for violating MLA. When a pawn loan is not a loan, because there's no legal recourse to collect the money.

Tom Miller:

Anyway, I just don't know if he has time actually to go through the rulemaking process.

Alan Kaplinsky:

Do you agree with me that he'd have to largely begin the process all over again? In other words, he couldn't rely, he couldn't just take the research that Cordray had done and just say, "Well, I disagree with what Kraninger did. I'll go back to what Cordray had done."

Tom Miller:

I do agree with you. It seems like that's a logical explanation that you'd have to start over. Then again, maybe there's a way to piece together some rule that draws from different areas. I don't know, he's acting very firmly and swiftly on many fronts.

Todd Zywicki:

At one point you've suggested, Alan, which especially if they look at enforcement or we look at supervision, but also with respect to rulemaking. I think our paper fundamentally it's obviously correct. I think it obviously shows that under the APA that this rule makes no sense.

Todd Zywicki:

It's completely arbitrary unless you control for these state laws to treat consumers totally different, one's impacted by the law and the other isn't. Now, what do you do with that information? Well, what we've seen in some instances is you issue the rule anyway, because the industry will follow it.

Todd Zywicki:

In the meantime, before it gets struck down as illegal. You use supervision to do it. There's a variety of ways if you are, let's say flexible, on your commitment to the rule of law and using regularized processes, you can get companies to do things without having full legal authority behind it.

Todd Zywicki:

I think that would be my concern is he just reissues the rule and then basically says challenge it. Then, somebody brings a lawsuit a couple months later, and then a few years, a few months later, right down the road. In the meantime, he might have accomplished his goals, even if the rule ends up being vacated.

Todd Zywicki:

If the rule ends up being struck down, which is exactly what happened last time. Cordray managed to reshape the industry before Kraninger got the rule rescinded. They basically got what they wanted.

Alan Kaplinsky:

We're getting toward the end of our program. I'm wondering before we do sign off, if either of you Todd or Tom have any final observations about getting your paper.

Todd Zywicki:

I think really what this shows is you have to take account of intended and unintended consequences, when you think about a market and you think about consumer behavior, which is that consumers need access to credit. Those who use small dollar credits are people who already have the smallest number of choices.

Todd Zywicki:

When you start taking away choices from people already have limited choices, you need to be really careful about what you're doing. That's the case here, which is consumer behavior here makes perfect sense. Once you understand that people need a certain amount of money, they'll take more loans if they need to, if they need it.

Todd Zywicki:

If we understand the consumers shop around that they prefer not to borrow more than they need. They prefer not to pay more than they want to pay. I think starting with the assumption that the consumers are not idiots, that even people who use small dollar loans are not idiots.

Todd Zywicki:

They're trying to do their best under their circumstances puts you in a very different place in a better place in terms of regulatory approach than it is to assume that consumers are just out there just sheep to be shown by the world. We can help consumers, but taking away choices, doesn't usually make them better off.

Alan Kaplinsky:

In a different context, of course, but I think it's illuminating that a lot of the monies that were paid out through the PPP program during the pandemic were used to pay down debt. Where people, I think thought that money would be spent. There was a lot of worry that that was going to defaults on consumer loans were going to soar because people wouldn't be paying attention to repaying their debt.

Alan Kaplinsky:

They actually did. Different context completely, but I think it supports the idea, Todd, that consumers are not as stupid as some of the behavioral economists would say that they are. That they don't think through what they're doing and they don't have control over it. Anyway, Tom, any last minute thoughts from you?

Tom Miller:

Well, I think Todd's really good at summarizing these type of things. I'd only add one thing is that we hope that all researchers will post their data so other researchers can look at it. This is an interest thing area. I think that just in an area where I live in Mississippi, and we're the poorest state in the union.

Tom Miller:

Just because we don't have money doesn't mean we can't make good decisions for ourselves. We know our own situations better than anybody. It's rough when you don't have enough money at the end of the month. Well, there's too much month at the end of the money.

Tom Miller:

I've really enjoyed having this discussion and listening to your opinions and Todd. That's all for me.

Alan Kaplinsky:

Tell me just either one of you what the ultimate goal is. Is this going to be published in the law review or an Economic Journal? What's-

Todd Zywicki:

We're aiming for a law and Economic Journal, the journal of law in economics or journal legal studies or something. It's a peer reviewed economics journal focus on law and policy. We're also fashioning a version of it for Regulation Magazine that will boil it down to the takeaways for policy.

Todd Zywicki:

You've already seen the Op-ed, so this is one of those projects that has multiple lives, very technical economics journal article, but also the very accessible Wall Street Journal editorial that we did it. As Tom said we've got copious number of tables and everything in this paper, so that people can look at what we've done.

Todd Zywicki:

One of our frustrations that Tom and I have both spoken to is that often the CFP for example, is very opaque about where their data comes from, how they're using it and that sort of thing. We've tried to do what we could consistent with the limits of confidentiality that Tom talked about because of the proprietary nature of the database, to put as much data out there as we could to show what we're doing in this paper.

Alan Kaplinsky:

Well, thank you very much, Todd and Tom, for joining me today. I thought this was an excellent discussion and you've really done very good work here, despite what the issue that Adam Levitin raised, which I'm sure will get worked out before your paper is finally published, but thanks again for being our guests.

Alan Kaplinsky:

I want to thank all of our listeners today who downloaded our show. Just remind everybody that our show is weekly. We release a new show every Thursday throughout the year. If you are looking for additional information on this subject or anything in the consumer financial services world, please subscribe to our blog, which also goes by the name of Consumer Finance Monitor.

Alan Kaplinsky:

There's a lot of content on our blog. We launched it contemporaneously with the launch, the standing up of the CFPB in July of 2011. It's been going strong ever since. With that, I'm wishing everybody a good rest of the day.