

# The Practice of Financial Consumer Rights Protection Innovation in United States and Japan And Its Enlightenment to Our Country

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**Abstract:** The research on the protection theory of financial consumers' rights and interests can not only effectively relieve the pressure brought by the epidemic on economic development, stabilize the volatile financial market, promote the healthy development of the financial industry, but also accumulate the experience of dealing with the crisis of the epidemic and prepare for the unknown future. This paper starts with the comparative analysis of the policies of China, the United States and Japan in the field of financial consumer protection, and compares and analyzes the financial legislation, financial regulation, financial consumer literacy and other fields, and finally forms the meaningful suggestions and measures for China to establish a fair, reasonable and effective financial consumer protection system.

**Keywords:** Financial consumer rights and interests, Financial legislation, Financial regulation, Dispute mediation mechanism.

## 1. Introduction

After the outbreak of the global financial crisis in 2008, the concept of protecting the rights and interests of financial consumers has attracted wide attention from the global society. Major international economic organizations and financial regulatory authorities in some developed countries have introduced a series of legal systems and related policies and measures to effectively protect the vital interests of financial consumers. The protection of consumer financial rights and interests in China is still in its infancy. In practice, it has not formed a specialized and perfect financial legislation system, a relatively sound and effective consumer financial dispute resolution mechanism and legal supervision system, and has not built a systematic theory suitable for China's national conditions. Since the outbreak of the pandemic in 2020, it has had a huge impact on both the demand and supply of financial products, and has had a great impact on financial consumers around the world. In order to cope with the impact of external environment, various countries have taken various measures. Among them, the United States and Japan have developed economic and financial countries, and there are many innovative measures in the protection of financial consumer rights, which is worth learning from our country.

## 2. Current Situation of Financial Consumer Rights Protection in the United States

### 2.1. The current situation of financial consumer rights protection in the United States

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##### (1) Legislative protection

a. The legislation standardizes the information disclosure behavior of financial institutions, determines the informing obligation of banks, and guarantees consumers' right to know. Such as the Consumer Credit Protection Act of 1968. It was

adopted to regulate the information disclosure behavior of financial institutions and the informing obligation of banks, such as the lender should inform the borrower of the annual interest rate, financing charges, loan term and so on. In order to ensure that consumers' right to know can be guaranteed, the US Congress passed a series of laws and regulations in the year after the Consumer Credit Protection Act, such as the Electronic Funds Transfer Act and the Honest Savings Act.

b. To protect consumers' right to privacy and safety. Privacy is highly valued in the United States, so American financial institutions are cautious about it. In addition, there are many consumer privacy laws in the United States, such as the Privacy Act and ECPA, which regulate the scope of information that banks can collect from users and the scope of liability in case of disputes.

c. Safeguard consumers' right to fair trade. According to the U.S. Consumer Credit Protection Act, banks must not discriminate on the basis of age, sex or marriage when approving consumer loan applications.

##### (2) Dispute resolution mechanism

In the United States, the resolution mechanism is generally made up of banks, Federal Reserve Board, Monetary Administration, Federal Deposit Insurance Corporation and other regulatory agencies. The regulatory agencies are mainly responsible for the disputes that banks cannot solve by themselves and safeguard the rights and interests of financial consumers.

a. Federal Reserve Board. Its main responsibility is to supervise banking institutions and ensure the legal credit rights of consumers; To maintain the stable functioning of the central bank and its financial markets.

b. Monetary supervision Agency. It is mainly responsible for examining and verifying the applications of federal banks for opening branches or mergers, conducting inspections according to banking regulations, and having the power to issue suspension notices and revoke business licenses to banking institutions in violation of regulations.

c. Federal Deposit Insurance Corporation. Supervises non-member banks and FDIC-insured subsidiaries of foreign banks outside the Federal Reserve System, and fulfills bank

supervision and deposit insurance responsibilities.

These approaches usually resolve most of the disputes, but if there are still some disputes that cannot be resolved through the regulatory agency, financial consumers have the option of legal recourse to protect their rights and interests. Such as consumer small claims and class actions.

### **2.1.2. Problems in the protection of financial consumer rights and interests in the United States**

(1) Lack of regulation and uncoordinated regulatory objectives

The rapid development of the financial market and the rapid upgrading of financial products emerge in an endless stream. Regulators have not been able to keep up with the pace of the financial market, so that there are many financial institutions have not been able to regulate, the rights of consumers naturally difficult to protect.

(2) The legislation increases costs for financial institutions

The increase in cost inhibits the development and innovation of finance, and financial institutions may transfer the increase in cost to consumers in a disguised way, resulting in higher costs for consumers.

(3) Information asymmetry and imperfect rationality of consumers are difficult to solve effectively

Almost all consumers in real life are not completely rational, which does not match the model of many relevant theories. Moreover, the laws related to the protection of financial consumers' rights and interests are made by decision makers, whose decisions cannot perfectly replace those of consumers. Consumers have less information, and their decisions are mostly better than those of ordinary consumers. However, this problem is difficult to be effectively and thoroughly solved in real life.

## **2.2. The practice of financial consumer rights protection in the United States**

### **2.2.1. Mortgage**

(1) Fair lending laws, such as the Equal Credit Opportunity Act and the Fair Housing Act in the United States, do not allow banks to discriminate against loan applicants based on gender, age, marriage or other reasons.

(2) The CFPB requires financial institutions to comply with mortgage disclosure rules to ensure borrowers' right to know and prevent disputes arising from asymmetric information.

(3) In order to reduce the risk to borrowers, the United States has enacted some relevant laws to ensure that the goal is achieved, such as restricting lenders' rights to raise interest rates and fees on loans, and not allowing lenders to provide loans that are far beyond what consumers can afford.

### **2.2.2. Internet finance**

(1) Improve consumers' awareness of prevention, enhance the disclosure of common Internet fraud publicity, so that consumers can better identify financial fraud traps, reduce the cases of consumers cheated.

(2) To improve consumers' knowledge and encourage them to actively report to relevant financial regulators to safeguard their legal rights when they are defrauded has further stabilized and promoted the development of the Internet financial market.

### **2.2.3. Integrate financial literacy into the national education system**

(1) Make financial knowledge more interesting with the help of digital technology, for example, develop corresponding apps for students' education, creatively use

some existing games to integrate financial knowledge into them, so that students can absorb and master relevant knowledge more easily.

(2) Students of different ages are given corresponding education. Distinguish between low age and high age students, implement education suitable for them.

(3) Financial knowledge can be organically combined with other subjects and better integrated into quality education, so that students can contact and use it more often, which can help students memorize relevant financial knowledge.

## **2.3. The enlightenment of American financial consumer protection to our country**

### **2.3.1. Formulate special laws to protect the rights and interests of financial consumers**

At present, our country's financial consumer rights protection still has some unsolved problems, which mainly includes two aspects. First, there is a big gap between financial institutions and financial consumers in all aspects. Almost all financial institutions have overwhelming advantages in terms of status, resources and information they have mastered. Second, the current law on the Protection of the Financial market has not kept up with the rapid development of the financial market, the low use rate, unable to provide better protection for financial consumers, so appropriate improvements should be made:

(1) Clarify the concept of "financial consumer" in the law. To prevent disputes, it is difficult to define whether financial consumers are financial consumers, resulting in the rights and interests of financial consumers may not be well protected. The protection of the rights and interests of financial consumers should be expanded, but consumers who are in a vulnerable position and lack of financial knowledge should be protected.

(2) Clarify the rights and interests of financial consumers in the law. When formulating and revising relevant laws, it is necessary to clearly define the basic rights of financial consumers, such as the right to freedom of financial consumption and the right to fairness of financial consumption, so as to reduce the gray area in the law and make the law more effective in protecting the rights and interests of financial consumers.

### **2.3.2. Speed up the establishment of institutions related to the protection of the rights and interests of financial consumers**

Financial consumers are different from ordinary consumers, so the relevant institutions of the protection of the rights and interests of ordinary consumers may not be able to meet the needs of the protection of the rights and interests of financial consumers. Therefore, we should set up special institutions and special dispute resolution mechanism to ensure that the rights and interests of financial consumers are protected, and actively improve in order to prevent the regulatory gray area and give financial institutions an opportunity to use.

(1) An official organization jointly established by the industry and Commerce Department and the three committees

As an integral part of administrative law enforcement, the industry and Commerce Department, which is fully staffed and deeply embedded at the grassroots level, should be reformed together with the three Meetings and Commissions to become a more powerful institution that can focus on the rights and interests of financial consumers, so as to solve related disputes more efficiently and better protect the rights and interests of financial consumers.

(2) Non-governmental organizations for the protection of rights and interests organized by various forces

The establishment of this institution needs to combine with the consumer association, the banking association and other industry associations to form according to law, take the protection of the rights and interests of financial consumers as the first priority, and jointly formulate rules and regulations. Under the joint efforts of various parties, financial service institutions should be established, information disclosure should be strengthened, and the basic rights and interests of financial consumers should be effectively protected.

(3) Ensure that financial institutions fulfill their obligations

First, financial institutions should guarantee the basic rights of financial consumers such as the right to safety, the right to know, the right to fair trade, and timely disclosure of financial information. Second, a special dispute resolution mechanism should be set up to clarify the scope of dispute resolution, hotlines and departments for handling disputes, so that consumers can easily seek help.

### **2.3.3. Implement fair lending and eliminate discrimination**

The current status of Chinese loans in various links has more or less discrimination to the lender. China's current laws in this regard are only generally stipulated in Article 26 of the Measures for the Protection of the Rights and Interests of Financial Consumers of the People's Bank of China. So we set up a clear law to prevent discrimination.

### **2.3.4. Accelerate the popularization of financial knowledge and teach students according to their aptitude**

At present, the financial consumer generally has the problem of lack of financial professional knowledge, because of increasing the popularization of financial knowledge and integrating financial knowledge into quality education, reduce unnecessary disputes, the financial market develops more steadily.

## **3. Current Situation of Financial Consumer Rights Protection in Japan**

### **3.1. Current situation of financial consumer rights protection in Japan**

#### **3.1.1. Regulatory system**

(1) Strengthen the information transparency of financial institutions

In order to strengthen information disclosure and improve market transparency, the Financial Services Agency of Japan has formulated relevant regulations, such as reviewing the assets related to financial institutions and requiring them to strengthen risk management, so as to give investors stable expectations, protect the rights and interests of financial consumers and maintain market stability.

(2) Improve the financial supervision system

After Japan improved its financial supervision system in 2007, the administrative process of financial supervision has been simplified and great progress has been made in the institutional transformation. Compared with before, Japan's financial supervision is more open, market-oriented, institutional and transparent in information. The improvement of the regulatory system is more conducive to the regulation and restraint of various financial institutions, and plays a great role in promoting the protection of the rights and interests of

financial consumers.

#### **3.1.2. Legislation**

After the implementation of the Law on the Sale of Financial Commodities in 2001, Japan broke through the traditional legislative mode. Its starting point is financial consumers, which is completely different from the former financial institutions such as banks, insurance companies and securities institutions, and comprehensively broke through the boundaries of operating subjects and business of financial markets. From the perspective of financial consumers, it is easier to consider the problems of consumers, which is to pay attention to the protection of their rights and interests.

#### **3.1.3. ADR dispute mediation mechanism**

In 2009, the Japanese Parliament passed the Financial ADR Law, which created a new industrial dispute mediation mechanism, FOS mechanism. The purpose of this move is to form the basis for dispute mediation in various industries, which can eventually be linked into a complete complex FOS system. In terms of finance, after the creation of financial consumers, they will have closer, more diversified and more professional mechanisms to solve the problems they encounter more efficiently and in higher quality, thus promoting the protection of the rights and interests of financial consumers.

#### **3.1.4. Education**

(1) Legal provisions for financial education

In 2000, the Financial System Commission of Japan stressed the importance of financial education in its New Financial Construction for the 21st Century. The report pointed out that it is crucial to carry out financial education systematically and efficiently. Besides the Central Savings Information Commission and local savings Information Commission, the business community, consumer groups, local governments and relevant ministries and commissions are also required to participate in financial education.

(2) Financial education is led by the government and promoted by other sectors

Japan sets up a special agency responsible for financial education. In Japan, the Central Financial Services Information Commission, the Financial Services Agency, the Cabinet Office, the Ministry of Education, Culture, Sports, Science and Technology, industry associations, related organizations, and private organizations are working together to promote financial education.

(3) Integrate financial education into the school system curriculum

Japanese schools have been promoting savings since the 1950s. In the early 20th century, financial education was formally incorporated into the school curriculum.

## **3.2. Problems existing in the protection of financial consumer rights in Japan**

### **3.2.1. Excessive concentration of regulatory power**

At present, Japan implements a regulatory system with multiple macro-prudential regulators coexisting with the Financial Services Agency as the core. In this regulatory model, the regulatory power is excessively concentrated in the central government, which makes the central regulators unable to handle the illegal activities of many local financial institutions.

### **3.2.2. The law is at odds with reality**

Japanese law explicitly proposes to protect ordinary investors as consumers. However, the general consumer-

related law has the obligation to guarantee the quality of commodities, while the Financial Commodity Transaction Law does not have the obligation to guarantee the value of securities. It only provides investors with the information to make investment judgment, and takes the principle of customer's own responsibility as the premise of concluding contracts. The basic of realizing efficient allocation of resources in financial markets is that the competitive price is determined by market transactions. Therefore, it is contradictory to ensure the quality of financial commodities and the purpose of the Financial Commodities Transaction Law -- to form fair prices and realize the allocation of financial resources.

### **3.3. Enlightenment of Japanese financial consumer rights protection**

#### **3.3.1. Improve the transparency of regulators themselves**

The degree of disclosure of regulatory action information will affect the market and institutions' understanding of the country's relevant policy intention, and thus affect the subsequent regulatory feedback adjustment. The problem in our financial supervision is the lack of transparency of information, so many financial consumers have no way to obtain adequate and accurate information. In recent years, the financial supervision information has been disclosed gradually, but there is still a long way to the complete realization of supervision information transparency.

#### **3.3.2. Upgrade existing laws and regulations**

Our country can sort out the existing local or department rules of the protection of the rights and interests of financial consumers, so that some complete content of the law or administrative regulations, which is less than the establishment of new laws and regulations to save resources, better meet the demand of the market, promote the prosperity of the development.

#### **3.3.3. Establish FOS system**

FOS system, as a system conducive to the realization of social equity and efficiency, can better cope with financial innovation and financial disputes. Our country can make corresponding laws, administrative regulations or departmental regulations through legislative or administrative departments to set up the FOS system, for example the regulation law on financial consumption related in order to remedy the deficiency of the general mediation law.

## **4. Chinese Financial Consumer Rights Protection Situation**

### **4.1. Development history of financial consumer rights protection in our country**

The Law of the People's Republic of China on the Protection of the Rights and Interests of Consumers, promulgated and implemented in 1993, This law does not only protect the consumption behavior of ordinary consumers, very general. Because financial consumers and ordinary consumers have great differences in consumption objects, consumption methods, consumption psychology and other aspects, this law is not applicable to the protection of financial consumers. In 2015, The General Office of the State Council issued the Guiding Opinions on Strengthening the Protection of the Rights and Interests of Financial Consumers, which expounding the relevant contents of financial consumer protection at a large length and taking some targeted measures.

However, this document does not believe that financial consumers are in a vulnerable position in the process of consumption. It still insists on putting financial consumers on an equal footing with financial institutions that provide financial services. Since the Implementation Measures of the People's Bank of China on the Protection of the Rights and Interests of Financial Consumers was officially implemented on November 1, 2020, the protection of consumers' private information in the process of financial consumption has been strengthened, but there are still loopholes. At the same time, the regulations only restrict banks and some payment institutions. Although Article 65 stipulates that "financial subsidiaries of commercial banks, financial consumption companies and credit investigation agencies shall apply these Measures with reference" [excerpt from the Implementation Measures of the People's Bank of China on the Protection of the Rights and interests of Financial Consumers], there are still many institutions not included. Rules and regulations need to be further improved. On the morning of March 8, 2023, Yi Gang, governor of the People's Bank of China, put forward four requirements on strengthening the reform of financial supervision. Two of them are closely related to financial consumer protection: first, the establishment of the State Financial Supervision and Administration; Second, strengthen the unified and standardized management of financial institution personnel and formulate practical plans.

### **4.2. Various protection measures and corresponding problems exist in our country**

#### **4.2.1. Institutional establishment and regulatory system**

Before March 8, 2023, China's financial regulatory system consists of two committees: the People's Bank of China, the Banking and Insurance Regulatory Commission and the Securities Regulatory Commission. After March 8, 2023, China's financial regulatory system will change into one line, one game and one meeting. The State Financial Regulatory Administration will be established on the basis of the China Banking and Insurance Regulatory Commission. The main functions of the State Financial Regulatory Administration are to uniformly take charge of the supervision of the financial industry other than the securities industry and coordinate the protection of the rights and interests of financial consumers. China Securities Regulatory Commission is responsible for microprudential supervision of the securities industry. The point of this reform is that the rules will be consistent and that they will address the illegal arbitrage that has resulted from previous regulatory inconsistencies. Vertically, the reform also changed the layout of local financial supervision system, establishing a local financial supervision system dominated by the local agencies of the central financial management department, and the financial supervision institutions set up by local governments are only responsible for supervision. The reform of the local supervision system has realized the unification of the financial supervision, and achieved full coverage and consistent supervision.

#### **4.2.2. Laws and regulations**

At present, the relevant protection laws on the rights and interests of financial consumers in China mainly include the Protection Law on the Rights and Interests of Consumers, the Law on the People's Bank of China, the Insurance Law, the Securities Law, the Law on Commercial Banking, the Law on Banking Supervision and Management, and the regulations

formulated by the People's Bank of China, the Banking Regulatory Commission, the Securities Regulatory Commission and the Insurance Regulatory Commission. But these laws and regulations have obvious flaws. Take the Law on the Protection of the Rights and Interests of Consumers as an example. This law mainly regulates the transactions of ordinary commodities and services and protects ordinary consumers. For financial consumers, it is not very targeted. Secondly, the financial legislation of our country can not guarantee the transparent disclosure of information. Although financial consumers enjoy a certain right to know, there is still information inequality between financial consumers and financial institutions, and consumers' privacy cannot be fully protected and will always be harassed. Here we have to mention the financial legislation of the United States and Japan. The United States and Japan are centered on the rights and interests of consumers, such as the Privacy Law. However, for the time being, our country is centered on the financial institutions, such as the Insurance Law, Securities Law. At this point, we can learn a few lessons.

#### **4.2.3. The popularization of financial knowledge and awareness of rights protection**

The Current Situation and Prospect of Financial Consumer Education released in 2018 pointed out that Chinese financial consumers are not well-educated on the whole, and nearly 65% of consumers think their financial knowledge is not enough. That is to say, the vast majority of people will be in a weak position in the process of financial consumption due to the blind area of financial knowledge, and their self-protection awareness and rights protection ability are weak. In 2015, The State Council issued the Guidance on Strengthening the Protection of the rights and interests of financial Consumers, which pointed out that a long-term mechanism for the popularization of financial knowledge should be established. Financial regulatory departments, financial institutions and relevant social organizations should take the initiative to strengthen research and use various means to popularize financial common sense. And when it comes to safeguarding our rights, our country must improve the financial complaints and arbitration system further. When confronted with problems, the first thing people can think of is complaints. Our country should choose professional talents with high financial literacy to deal with these complaints and follow up the people's demands. Arbitration, as a convenient way to deal with the situation, does not require the high cost of legal proceedings, and should be strongly advocated. Financial institutions should popularize financial arbitration agreements with consumers when conducting business. The arbitration commission shall abide by the confidentiality system and try to simplify the procedures while avoiding the participation of third parties who have an interest in the financial institution.

## **5. Suggestions to Improve Financial Consumer Rights Protection of Our Country**

### **5.1. Improve financial regulation and promote financial reform**

#### **5.1.1. Establish a Financial Services Regulatory Council**

In a macroprudential context, a regulator dedicated to systemic risk could be of great use in advancing financial reform. Relying on existing models, in the process of daily

supervision, throughout the entire detection of systemic risks in this industry, reasonable use of macro-prudential supervision tools, devoted to improving and strengthening the macro-prudential awareness of our regulatory authorities in sectors such as banking, insurance, securities and other industries. In addition, a Financial Services Regulatory Council for financial stability, similar to the US Financial Services Regulatory Council, should be set up with the help of all parties to act as an overarching and coordinating body. The Commission is mainly responsible for identifying, monitoring and assessing systemic risks in China's financial sector, taking emergency measures to provide assistance to major problems involving systemic risks, promoting the realization of macro-prudential supervision objectives at the financial supervision level, and promoting the reform of the financial sector.

#### **5.1.2. Strengthen investor protection in financial markets**

It can be seen from the experience of the United States that the American financial reform has a unique idea and practice of protecting the interests of investors in the financial market, and has a quite perfect system design. By studying the financial reform of the United States, we realize that the establishment of the investor Advisory Committee is an extremely important project. The establishment of the committee can provide an umbrella for financial market investors, urge financial institutions to fulfill their obligations, try to eliminate the conflicts of interest between financial market investors and credit rating agencies, and strengthen the awareness of financial intermediaries for information disclosure. Improve their information transparency. In addition, it can guide financial market investors to pay close attention to the reliability, timeliness and ease of access to financial information. The regulatory authorities should do a good job in relevant work, improve their management ability and execution ability, let financial market investors gain relevant professional knowledge through professional training, master the means of safeguarding rights, and improve their self-protection awareness and self-protection ability.

#### **5.1.3. Improve the credit rating system**

In our country, the market capacity of credit rating is relatively weak. From the outbreak of the subprime crisis, we can see the importance of credit rating system. The result of credit rating can not be ignored on the investors' decision-making and the development of financial business, which directly threatens the security and stability of the financial system to some extent. So we need to strengthen disclosure, focus on supervision, focus on credit.

## **5.2. Strengthen financial consumer protection**

### **5.2.1. Actively publicize knowledge about financial consumer protection**

In order to fundamentally strengthen the protection of financial consumers, it is necessary to strengthen other parties' awareness of financial consumer protection and financial consumers' awareness of self-protection, actively carry out financial consumption knowledge education communities and knowledge education forums, and make every financial consumer have a sense of safeguarding their rights when their rights and interests are infringed. It is necessary to obtain assistance from legal provisions. There also needs to be an internal initiation of the financial consumer, which protects the financial consumer from two different levels and heights.

### 5.2.2. Improve the legal protection system for financial consumers

The concept of "financial consumer" cannot be verified in legal documents. Although there are such concepts as "depositor protection", "investor protection" and "policyholder protection" in current laws, the concept of "financial consumer" is broader than these concepts, which can include the protection of ordinary people as creditors and debtors. Therefore, it is necessary to provide legal basis for "financial consumer protection" when the new financial law is issued or the Law of Commercial Banks is amended.

In addition, when revising the law, it is necessary to clearly define the basic rights of financial consumers so as to provide legal protection for consumers to properly exercise their rights. Such as the right of financial knowledge, the right of financial consumption freedom, the right of financial consumers to ask for help, etc.

### 5.2.3. Establish a financial consumer rights and interests protection committee

As far as the protection of consumer rights, consumer complaints and dispute resolution is concerned, we cannot find a special agency to handle such problems at present. Although China Securities Regulatory Commission, China Banking Regulatory Commission and China Insurance Regulatory Commission all have relevant regulations on the protection of consumer rights and interests, they are not specific enough, and they do not put forward the specific rights of financial consumers, and how to complain and remedy when the rights and interests of consumers are infringed. Therefore, it is necessary to set up a special organization to explain and solve these problems systematically.

### 5.2.4. Strengthen financial consumption information disclosure

The financial market is intangible and complex, and consumers cannot timely understand financial news, but consumers need to realize the right to know about financial consumption. In order to ensure the realization of the legitimate rights and interests of financial consumers, financial institutions need to improve the transparency of financial news, so that financial consumers in need of timely and accurate access to information.

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