

学校编码: 10384

分类号 \_\_\_\_\_ 密级 \_\_\_\_\_

学号: 13020091150289

UDC \_\_\_\_\_

廈門大學

硕士学位论文

论美国金融消费者保护  
机制的改革及对我国的启示

A Research on the Reform of the U.S. Financial Consumer  
Protection Mechanisms and Its Revelation to China

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论文提交日期: 2012年4月

论文答辩时间: 2012年 月

学位授予日期: 2012年 月

答辩委员会主席: \_\_\_\_\_

评阅人: \_\_\_\_\_

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2012 年 月

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## 摘要

尽管美国在金融消费者保护领域有着较为完备的法律体系，但在次贷危机中，不论是联邦立法的滞后或缺失，还是联邦监管体制的失效，都宣告了美国金融消费者保护陷入困局。全民消费信贷领域的狂欢颠覆了古典经济学的理论基石——“理性经济人”假设之后，行为经济学的立论依据“有限理性人”假设，成为新的金融立法的理论基础。美国最新的改革成果中最引人注目的便是依据《多德—弗兰克法案》设立的金融消费者保护局（Consumer Financial Protection Bureau，以下简称“CFPB”）。美国金融消费者保护机制的改革路径表明，信守金融消费者保护之基础价值，对于整个金融系统都具有重要的价值和意义，此外，CFPB的设立也使得金融消费者保护职能和宏观审慎监管职能的分离再次成为热门话题。

本文包括引言、正文、结束语等三部分，其中正文共分四章：

第一章回溯了美国证券业、保险业及银行业消费者保护制度的确立过程，还原了次贷危机爆发前美国金融消费者的保护力度和制度建构。尤其通过对美国联邦银行信用立法的谱系式梳理，昭示出银行业消费者保护立法的联邦化对于金融消费者保护乃至金融业的深远影响。

第二章围绕美国金融消费者保护制度在法律体系和监管体制方面存在的问题进行深入思考，从经济力量对美国政党政治和立法进程的作用力、道德风险与“理性经济人”假设、美国金融监管理念等三个方面反思了困境的成因。

第三章详细归纳了美国金融改革的最新成果《多德—弗兰克法案》中与金融消费者保护相关的内容，进而分析了《法案》针对美国金融消费者保护制度所呈现的困境的化解路径，最后对《法案》的影响加以评析。

第四章分析了我国金融消费者保护机制的现状和存在的问题，综合前文的论述，尤其是在《法案》的改革路径基础之上为我国金融消费者保护制度的完善提供有益的参考意见。

**关键词：**金融消费者保护；有限理性人；《多德—弗兰克法案》





## ABSTRACT

Despite having a relatively self-contained law system for the financial consumer protection area, yet the United States shows a number of problems in the recent subprime mortgage crisis in late 2007. The delayed federal legislation, as well as the invalidity of the federal supervisory system, both signify the crisis in the field of financial consumer protection in the U.S. The agitation in which all nation is involved in mortgages, has subverted the fundamental assumption of the classic economy: the “rational person” assumption. Its modification, the “limited rational person” assumption, has become the fundamental basis under which the field of behavioral economy is established. The newly created Dodd-Frank Act is partly based on this theory.

The reformation of the U.S. financial consumer protection mechanisms shows the significance of consumer protection; and the establishment of the Financial Consumer Protection Bureau (CFPB) makes the separation of the functions of financial consumer protection and macro prudential regulation/supervision once again a hot topic.

The full text includes three parts: the introduction, the main text and the conclusion, and the main text composed of four chapters:

The first chapter is a brief description of the U.S. financial consumer protection mechanisms. Through exploring the establishment of financial consumer protection mechanisms of the U.S. securities business, insurance and banking, and particularly through the studies of the establishment of U.S. federal banking credit law, it is discovered that the federalization of securities and banking consumer protection legislature has significantly affected the strength of U.S. financial consumer protection and regulations established prior to the outbreak of the subprime crisis.

The second chapter focuses on the problems in the U.S. financial consumer protection mechanisms on the level of legal system and regulatory regime. Furthermore, this thesis examines the causes of the problems from three aspects: the influence of economic power in American party politics and in legislative process, the moral hazard and the assumption of “rational economic person”,

and the U.S. financial regulatory philosophy.

The third chapter makes a detailed analysis on the consumer protection contents in the Dodd-Frank Act, a recent achievement in the U.S. financial reform. Then evaluation is made on the impact of the measures that were taken by the Act to resolve the problems in the U.S. financial consumer protection mechanisms.

The fourth chapter mainly includes two aspects: an introduction to China's financial consumer protection mechanisms and its problems, as well as some useful suggestions which are based on the reference of Dodd-Frank Act for the improvement on the financial consumer protection mechanisms of China.

**Key Words:** Financial Consumers Protection; Limited Person; Dodd- Frank Act

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