



CONSUMER FEDERATION OF AMERICA

## Protecting Consumers and the Economy by Making Credit Safe

■ BY TRAVIS PLUNKETT AND JEAN ANN FOX

**F**aced with the most destructive worldwide recession in 75 years, Congress and the administration have promised a major overhaul of financial services regulation.

While disagreements remain over the best approach, broad consensus has emerged in favor of strengthening regulation to reduce systemic risks, closing gaps in regulatory coverage, and consolidating at least some of the federal regulatory agencies.

Because of the central role abusive mortgage lending played as a root cause of the financial crisis – and because many lenders are still offering loans on abusive terms – improved consumer credit protections are also very much in the forefront of the debate.

As Congress and the administration launch this massive effort, three broad goals should guide their actions:

1) lenders, especially those who are benefiting from government “bailout” funds, must offer borrowers who cannot afford their existing loans relief from abusive and unsustainable terms;

2) Congress must re-regulate the credit markets to ensure that consumer and mortgage loans in the future are fair and sustainable; and

3) Congress should ensure that any restructuring of the federal regulatory system makes protecting consumers its central focus and shuts down the unregulated “shadow” banking network that has caused so much harm to our economy.

### Regulatory Restructuring

Although flaws and gaps in the federal regulatory system did not trigger the current crisis, they did make it harder for agencies to protect consumers and played a huge role in making the housing crisis worse and allowing it to spread to other sectors of the economy.

In revamping the federal regulatory architecture, Congress must take steps to make certain that consumer protection is no longer overlooked or ignored. They can do that either by creating an independent agency that has full authority to ensure the safety of credit products or through some other comparable process.

A key advantage of such an approach is that it eliminates the ability that financial institutions currently have to choose the government agency that regulates them. “Charter shopping” has created a regulatory climate where agencies compete to keep consumer protection standards low, in order to attract companies that choose to be regulated by that agency.

At the same time, Congress and the administration must seek to develop a regulatory structure that ensures not only that all those entities that pose a systemic risk are subject to

appropriate risk standards and effective risk oversight, but also that comparable products, services, and companies are subject to comparable regulation.

For example, it is not enough that the credit derivatives that threatened to bring down AIG and spread the risks throughout the global financial system be traded on an exchange. To the degree that credit default swaps and other derivatives are used as a form of insurance, they should be regulated accordingly, with appropriate reserve requirements and other protections to ensure that swap providers can meet their commitments.

### Judicial Modification of Home Loans

Broad regulatory reforms must be accompanied by concrete strategies to stem the tide of home foreclosures. A top priority is giving bankruptcy judges the ability to modify mortgage loans for borrowers in bankruptcy.

Attempts to pass the measure last year as part of both the housing and bailout bills met with stiff industry resistance and congressional capitulation.

Similar opposition is expected this year. Among mortgage lenders receiving federal “bailout” funds, only Citigroup has supported legislation in both houses of Congress that would allow homeowners to modify their home loans in bankruptcy based on the actual worth of the home, rather than the loan amount.

However, recognition that the economic crisis cannot be solved until we stem the tide of foreclosures should help build support for the measure, which could not only help save many homeowners from foreclosure but also many communities from economic collapse.

Other consumer credit protections are also on the regulatory and legislative agenda for the year ahead.

### Credit Card Practices

The Federal Reserve Board recently finalized rules to protect consumers from some abusive lending practices used by many credit card companies, such as suddenly and sharply increasing interest rates on existing balances for no reason or because of a supposed problem in the cardholder’s credit history. However, the new rules won’t take effect until July of 2010.

Congressional action is needed both to help cardholders who need relief from abusive lending practices now and to curb practices not addressed by the Federal Reserve rules. For example, the rules do nothing to rein in high and growing credit card fees that are often assessed for minor problems or to ensure that card companies do not offer unaffordable loans to college students and other young consumers.

In addition, the Treasury Department should ensure that any credit card company

that receives help in securitizing its loans through a new taxpayer-financed program offers loans that are in compliance right now with the Federal Reserve rule.

### Reining in High-Cost Loans

Meanwhile, a backlog of unfinished business to protect family finances is pending in Congress and at the regulatory agencies.

While Washington has ignored the crisis growing in the predatory small loan market, consumers are facing higher risks of bankruptcy; a drain on federal funds they receive, such as Social Security, that lenders are not supposed to be able to touch and on federally funded anti-poverty tax credits; and the loss of bank accounts and family vehicles.

Legislation is needed to extend to all consumers the protections against unfair loan products and practices conferred by Congress on Service members and their families in the military payday lending bill adopted in 2006. This includes prohibiting payday lenders from requiring borrowers to write unfunded checks that lenders then hold until the high-cost short-term loans that they offer are paid back.

In addition, legislation should forbid lenders from requiring that borrowers electronically debit their bank accounts in order to repay cash advances and from holding title to family vehicles when they make loans.

In other areas, the administration already has the authority it needs to act.

The Treasury Department should prohibit payday lenders from loaning money to recipients of exempt federal funds that are direct deposited into accounts at depository institutions.

The Social Security Administration should stop depositing Social Security and SSI funds into accounts controlled by third party providers, including loan companies.

And the IRS should prohibit tax preparers from sharing tax return information with banks in order to slow the extension of high-cost refund anticipation loans that disproportionately affect the working poor.

Action is also needed at both the Federal Reserve and on Capital Hill to protect consumers from unauthorized, very expensive “overdraft” loans made by banks that cover insufficient funds transactions.

Consumers pay more in the aggregate to borrow from their banks through overdraft loans than they receive in credit.

The Federal Reserve should adopt the stronger of the two proposals it recently issued, requiring banks to get consumers’ affirmative consent before permitting overdraft loans involving point-of-sale debits and ATM cash withdrawals.

In addition, however, legislation is needed to require banks to comply with the Truth in Lending Act when they extend credit through overdraft loans, to require them to get con-

sumers’ affirmative consent to use overdraft loans, and to prohibit banks from manipulating the order in which they process withdrawals in order to maximize fee revenue.

Congress is also expected to seriously consider a federal usury cap in order to help families better safeguard their finances. A uniform federal usury cap that applies to all consumer credit products issued by all types of creditors would provide a federal safety net against abusive lending, while permitting states to enact more stringent protections.

### EDITOR’S NOTE

President Obama won the presidency campaigning on a message of hope and change. After years of fighting against an often hostile administration and an indifferent Congress, consumer advocates have enthusiastically taken up the challenge to offer a detailed legislative and regulatory agenda for change.

For this special issue of *CFAnews*, we asked CFA staff members to identify key priorities in their issue area for Congress and the new administration.

While optimism is the prevailing mood, major challenges remain in the way of a pro-consumer agenda, not least the financial crisis that has engulfed the global economy in a severe and worsening recession. Responding to that crisis will consume not only much of the attention of Congress and the administration over the coming year, but also important political capital.

Moreover, the resulting strain on a budget already steeped in deficits threatens any pro-consumer policy that relies on increased funding for its effectiveness.

And while President Obama promised a new approach to politics, special interest groups, including those whose reckless misconduct led to the current crisis, have proven remarkably resilient in resisting regulation.

Still – by showcasing the disastrous results of a regulatory philosophy that has guided federal policymaking since Ronald Reagan famously declared, “Government is not the solution to our problems; government is the problem” – the current crisis also offers an opportunity to refocus regulation in a variety of areas on public interest obligation and oversight.

This newsletter does not pretend to provide a comprehensive listing of consumer priorities. To begin with, only the top priorities in those issue areas where CFA acts as a leading advocate are included.

The resulting articles dramatically illustrate the myriad opportunities and challenges that consumer advocates will face in this new political environment.

Barbara Roper, Editor, *CFAnews*

## ENERGY COMMODITIES AND UTILITIES:

## Public Interest Obligations Must Be Restored

■ BY MARK COOPER

On October 23, 2008, the era of irrational exuberance for deregulation was ended symbolically by Alan Greenspan, one of the leading architects of market fundamentalism, when he admitted that there was a flaw in his theory.

"Those of us who looked to the self-interest of lending institutions to protect shareholders' equity, myself included, are in a state of shocked disbelief," he said. He went on to admit that he "made a mistake in presuming that the self-interests of organizations ... were such that they were best capable of protecting their own shareholders and their equity in the firms."

Public interest advocates have always believed that the pursuit of private profits is not synonymous with the public good. Greenspan admits that the pursuit of private profit is not even synonymous with the private good. The age of market fundamentalism – with its ideological belief that markets are always right, wealth should trickle down, and the less government the better – is over.

Public policy in markets that provide the basic necessities of daily life – energy commodities and utilities like telecommunications and electricity – must start from this new premise.

These three sectors are a perfect place for the Obama administration to deliver on its promise of change, because they are so important to household budgets, the damage inflicted on these sectors by deregulation was severe, and they are in the crosshairs of the campaign's focus on reducing dependence on

foreign oil and rebuilding the foundation of the economy with broadband communications and high technology.

Toward that end, public interest obligation and oversight of commodities and utilities must be restored. The main themes for public interest obligations include:

- Reaffirm the commitment to universal service (e.g. just and reasonable rates in electricity, adequate facilities at reasonable charges in telecommunications).

- Dampen boom and bust cycles through oversight over capital flows (e.g. capital and margin requirements in commodity markets, integrated resource plans in electricity, build out requirements in communications).

The main themes for public interest oversight include:

- Products need to be regulated by agencies with clear authority and adequate resources to exercise oversight over behavior, prevent conflicts of interest, and ensure transparency and accountability (e.g. over-the-counter, grey markets in energy commodities should be regulated).

- Regulation should apply to what people do, not who they are (e.g. telecommunications services sold by cable operators should be regulated as telecommunications services).

- Behavioral regulation cannot adequately control conflicts of interest in complex markets; they should be banned (e.g. commodity traders and Bell companies paid billions in fines, but that did not prevent repeated abuses).

- Failure to comply should result in mandatory jail terms. Fines are not enough to dissuade abuse in these markets, because there is just too much money to be made (e.g. commodity traders and Regional Bell Operating Companies paid billions in fines, but that did not prevent repeated abuse of market power and manipulation).

### • Federal Housing Administration

The Federal Housing Administration's (FHA) mortgage insurance program will come under close scrutiny by Congress as it has rebounded from a single digit share of the single family mortgage market to more than 20 percent in the last year. This growth, combined with growing losses in its existing book and concerns about former subprime brokers flocking to FHA as an alternative, will fuel the oversight.

Congress also will examine the FHA Hope for Homeowners program to help delinquent subprime borrowers to identify necessary legislative fixes to get the heretofore unsuccessful program working.

### • GSE Reform

The government's takeover of Fannie Mae and Freddie Mac in 2008 virtually guarantees that the companies' charters will be the subject of intense scrutiny and possible congressional action in 2009.

Both House Financial Services Chairman Barney Frank (D-MA) and Senate Banking Committee Chairman Christopher Dodd (D-CT) have publicly expressed doubts that the current GSE structure – a private shareholder owned company with a special government charter and privileges – can survive. Some new charter, with a rebalancing of public and private interests, is likely to emerge in 2009 or 2010.

## SECURITIES:

## Financial Crisis, Restoring Agency Top Priorities

■ BY BARBARA ROPER

The new chair of the Securities and Exchange Commission takes over a discredited and demoralized agency in the midst of the worst financial crisis since the Great Depression. As a result, these twin issues – responding to the financial crisis while restoring the SEC's effectiveness – are certain to dominate the early investor protection agenda for Congress and the new administration.

In dealing with the financial crisis, Congress must do more than simply restructure the regulatory apparatus. It must address the specific regulatory failures that led to the crisis. Top investor protection priorities include:

- eliminating gaps in regulatory coverage, in particular by regulating credit derivatives to improve transparency and reduce the potential for systemic risk;

- enhancing risk management practices for all financial institutions, including investment banks, whose failure could pose a threat to the overall economy; and

- strengthening credit rating agency oversight and accountability.

In addition, the American public has a right to expect that those financial executives whose reckless misconduct has left our financial system in tatters and our economy in recession will be held accountable. Quickly launching an aggressive investigation, backed by the threat of tough enforcement, into questionable conduct associated with the crisis would be a first step toward restoring the agency's credibility.

The sight of financial institutions taking taxpayer bailouts with one hand and offering multi-million-dollar bonuses with the other has reignited support for corporate governance reforms designed to rein in excessive executive compensation and make corporate boards more responsive to shareholders. Tackling these issues quickly would also help to improve the agency's image.

Meanwhile, pressing deadlines are looming on a number of issues unrelated to the financial crisis, including proposals to adopt international accounting standards and approve mutual recognition agreements with foreign regulators. The good news here is that the SEC can best serve investors simply by calling a halt to these initiatives.

Before it can deal effectively with these policy challenges, however, the SEC must get its own house in order.

A tough-minded top-to-bottom overhaul is needed, with a particular focus on those areas where problems appear to be most acute – enforcement, trading and markets, and oversight and inspections.

Appointing reform-minded individuals with a record of advocating on behalf of investors to key positions within the agency would further convey that industry's grip on this agency had finally been weakened and that its commitment to investor protection had been restored.

## INSURANCE:

## Advocates Move from Defense to Offense

■ BY J. ROBERT HUNTER

With rare exceptions, consumers have been on the defensive in matters related to insurance in Washington since the Nixon Administration.

While it is unclear exactly what the confluence of the economic situation and the new administration will mean for federal insurance matters, it is now possible to contemplate actually achieving victories for insurance consumers in Washington.

Among the most important matters for early action are:

### • Regulation of Insurance

For about a decade, some in the industry have been pushing to create an optional federal charter system of insurance regulation under which insurers could choose whether to be regulated by the states or by Washington.

Such an approach would allow industry to pit federal regulators against state regulators in order to undermine state laws that provide stronger consumer protections, such as protection from unjustified rate increases.

Given the massive recent failures of federal banking regulators intent on deregulation of the credit markets, such blatant deregulation of the insurance marketplace should be difficult politically. Instead, Congress should consider promoting greater uniformity of insurance regulation by setting high minimum standards for insurance regulation.

Congress could use the best practices of the states that have successfully protected consumers to enact laws that are uniformly strong, but allow states to go further in protecting consumers if local conditions warrant this action. States opting not to enforce the high standards would be replaced by a federal regulator who would enforce them.

Another important step to improve insurance regulation is repeal of the McCarran-Ferguson Act's antitrust exemptions for insurance companies. This antiquated law allows insurers to collude in setting prices and pursuing other anticompetitive practices. FTC should be authorized to once again study developments in the insurance marketplace to improve insurance regulation.

### • Natural Catastrophes

The other immediate issue requiring congressional action is the revival of the National Flood Insurance Program, which is set to expire in March unless Congress acts to renew it.

Because President Obama has expressed an interest in developing a national catastrophe insurance program, the flood insurance debate is likely to include discussions about the proper role of the federal government in helping states to insure against devastating natural catastrophes.

The twin goals should be to ensure adoption of provisions to fix the deeply flawed flood program as a prerequisite to creating a new catastrophe insurance program and to focus catastrophe insurance discussions on creation of a new, all-risk insurance policy available to all Americans.

## HOUSING

## Crisis Moves Housing Issues to Front Burner

■ BY BARRY ZIGAS

As the mortgage and housing crisis enters its third year, housing and mortgage policy is likely to move back to Congress' front burner after many years of neglect.

More than two million homeowners are estimated to have lost their homes since the housing downturn began in earnest, and Credit Suisse recently estimated that an additional eight million could do so in the next four years unless significant and effective actions are taken.

The congressional agenda is full of both near- and long-term issues to address this crisis.

### • Economic Recovery Package

The economic recovery package taken up immediately in the new Congress includes nearly \$16 billion in new funding for a series of existing housing programs to renovate and upgrade subsidized homes and to provide new funding for communities to deal with foreclosed properties. The package also includes a collection of tax law changes in response to the collapse of the investor market for Low Income Housing Tax Credits caused by the financial meltdown.

## PRODUCT SAFETY:

## Securing Last Year's Success

■ BY RACHEL WEINTRAUB

The public interest community enjoyed the most significant victory in product safety reform in decades last year, with the passage and signing into law of the Consumer Product Safety Improvement Act (CPSIA), but much work still must be done to ensure that the law is properly implemented and adequately funded.

The bipartisan Consumer Product Safety Improvement Act of 2008 was passed by the Senate by a vote of 89 to 3 and was approved by the U.S. House of Representatives by an overwhelming vote of 424-1.

The new law will make consumer products safer by requiring that toys and infant products be tested before they are sold and by banning lead and phthalates in toys.

The law also creates the first comprehensive publicly accessible consumer complaint database, authorizes the CPSC the resources it needs to protect the public, increases civil penalties that CPSC can assess against violators of CPSC laws, and protects whistleblowers who report product safety defects. State Attorneys General are also given the necessary authority to enforce product safety laws.

For the law to achieve its promised benefits, however, it must be implemented effectively and funded adequately.

Ensuring that the CPSIA is being implemented consistent with congressional intent will therefore be a top priority in the coming year. Both formal and informal congressional oversight of the commission's implementation efforts is needed.

Securing additional funding for the CPSC will be another priority, especially since current CPSC leadership is arguing that implementation of the CPSIA is limited by the existing budget. Given the nation's many ongoing financial problems, increasing CPSC's budget will be a challenge, but we will

work to secure as much funding as we can.

While funding and oversight are the responsibility of Congress, crucial decisions about implementation are being made by the CPSC. Rulemakings implementing the law's many new requirements will ultimately determine its effectiveness in achieving its promised safety benefits.

Getting new leadership at CPSC appointed immediately is crucial, as leadership plays a critical role in the direction of the agency generally and the implementation of the CPSIA specifically.

## FOOD POLICY:

## Food Safety Laws in Urgent Need of Reform

■ BY CHRIS WALDROP AND CAROL TUCKER FOREMAN

The recent rash of nationwide illness outbreaks and recalls linked to peanut butter, spinach, tomatoes, peppers, ground beef, and other foods demonstrates the urgent need for Congress to address food safety reform.

This includes not only increased funding for food safety, but more importantly, updating the underlying food safety laws to address current problems.

- **FDA Reform**

A top priority is passage of FDA reform legislation that provides adequate consumer protection.

Several FDA reform bills were expected to be introduced early in 2009, with the most prominent likely to come from Rep. Rosa DeLauro (D-CT) and Rep. John Dingell (D-MI) in the House and Sen. Richard Durbin (D-IL) in the Senate.

To be effective, FDA reform legislation must:

- require food processors to establish process controls adequate to prevent contamination;
- require FDA to establish performance standards to protect public health;
- allocate resources according to risk, yet still require FDA to perform onsite inspection of all plants;
- provide for strong on-farm food safety standards and include a requirement for FDA to inspect on the farm;
- provide adequate enforcement powers, including mandatory recall authority and traceback authority;
- limit the role of private third party certification to verification that company process control systems meet U.S. standards and reject certification as a substitute for inspection; and
- establish a system for determining equivalency of foreign food safety systems and foreign food plants before allowing food from those countries or plants into the United States.

- **New Food Safety Agency**

FDA's food safety responsibilities have long been neglected by both the agency itself and the parent Department of Health and Human Services.

Last fall, Rep. DeLauro introduced a bill to remove food safety functions from FDA and create a new Food Safety Agency within HHS. Under the bill, drug and device responsibili-

ties would be carried out by a newly named Federal Drug Administration.

Passage of legislation creating this new agency is also a priority for the new Congress.

- **Increased Funding**

While inadequate funding is not the only problem, it is an issue. Recent increases in FDA funding have been important to begin to restore the agency, but are only a down-payment on the ultimate resources needed to assure a strong FDA. Securing additional funds for FDA in an FY 2009 omnibus bill and the FY 2010 budget will be legislative priorities.

- **Meat and Poultry Inspection**

For the Obama Administration, an early priority should be developing a plan to modernize meat and poultry inspection laws.

Needed changes include:

- giving FSIS the authority to establish mandatory performance standards for meat, poultry and egg products;
- collecting data on the risk presented by various foods and then allocating inspection resources based on risk;
- maintaining continuous inspection in slaughter; and
- providing authority for FSIS to enforce performance standards, require companies to recall adulterated products, and establish and execute a system to trace all products back to their origin.

- **Child Nutrition Programs**

While many of the issues facing Congress and the administration relate to safety, reauthorization of child nutrition programs, WIC and Supplemental Nutrition Assistance programs is also a priority.

As part of that reauthorization, Congress should: require USDA to update standards for foods of minimal nutritional value (junk food) and limit their availability in schools; revise school feeding program nutrition requirements to be consistent with the new Dietary Guidelines expected to be issued soon; and provide adequate funds to match increased food prices and to serve the growing number of people whose family income has dropped to a level that makes their children eligible for free or reduced price meals.

## CIVIL JUSTICE REFORM:

## Limits Sought on Mandatory Arbitration

■ BY RACHEL WEINTRAUB

Embedded in practically every contract for goods and services that a consumer is a party to is a mandatory pre-dispute binding arbitration clause.

As a result, if a person wants to obtain a credit card, enter a nursing home, purchase a car or receive cell phone services, that individual often must give away their right to go to court as a condition of obtaining that product or service.

When a dispute arises about the product or service subject to the contract, a consumer is forced to enter a private, secretive, expensive, often one-sided resolution system. But most consumers are unaware

## AUTO SAFETY AND EFFICIENCY:

## Variety of Issues Need Attention

■ BY JACK GILLIS

Congress and the administration have a number of opportunities to improve vehicle safety and fuel economy. Priorities focusing on improving safety include:

- Creation of a dynamic rollover standard

To improve rollover crash avoidance and crashworthiness protections, the National Highway Traffic Safety Administration needs to set a standard based on a test that duplicates real-world crash forces.

- Revamping of crash test information

Updating the 5-star rating system is also needed in order to better show the differences in the safety of new vehicles.

- Requiring improved tire labeling and identification

Placing clear and understandable information on tire sidewalls is needed to enable consumers to respond adequately to tire recalls.

Priorities focusing on fuel efficiency and energy independence include:

- Beefing up fuel economy standards

Analytical flaws in fuel economy standards proposed by the Bush administration resulted in unreasonably low standards that do not respond to the requirements of the Energy Independence and Security Act. Implementing the proposed standard for 2011 is imperative; however, substantial improvements need to be, and can be, made to the 2012-15 standards.

- Requiring used vehicle fuel economy labels

Seventy-five percent of those who buy used cars are in the dark when it comes to fuel economy. Requiring a sticker disclosing the original fuel economy of these vehicles would enable consumers to make a vehicle choice based on fuel efficiency.

- Requiring dashboard fuel economy monitors

Requiring uniform dashboard fuel economy monitoring in all new motor vehicles is needed to enable consumers to change their driving habits and reduce the household cost of gas.

either that these clauses are in the contracts that they sign or of the consequences of these clauses.

Legislation was considered in the last Congress to prohibit pre-dispute, binding arbitration agreements if the agreement requires arbitration of: 1) an employment, consumer, or franchise dispute or 2) a dispute arising under any statute intended to protect civil rights or to regulate contracts or transactions between parties of unequal bargaining power.

Bills were also introduced to ban use of arbitration clauses in specific agreements, such as in nursing home contracts and automobile sales contracts.

Despite success in raising awareness of the issues, the certainty of a presidential veto stymied progress. With a new administration and increased Democratic majorities in both houses of Congress offering new opportunities for passage, these issues are likely to receive renewed attention.

# CFAnews

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## STATE ISSUES:

## States Have Role to Play in Protecting Consumers

■ BY BARBARA ROPER

While the financial crisis and dramatic political changes have all eyes focused on Washington, the states continue to have an important role to play in protecting consumers on a number of fronts.

Four state-level issues that will dominate CFA's agenda in the coming year are reining in predatory small loans, ensuring adequate state-level protections for insurance consumers, promoting expanded adoption of California's Clean Car program, and ensuring that state consumer protection agencies are adequately funded.

### Reining in Predatory Lending

The tide has turned at the state level on legalizing triple-digit interest rate loans secured by valuable family assets such as bank accounts or car titles.

**Payday Loans.** Following last November's thrashing at the polls in Ohio and Arizona, payday lenders are waging a defensive battle to hang onto their right to charge triple-digit interest rates for short-term loans while enticing consumers to write unfunded checks or sign over direct access to bank accounts.

Abusive payday lending is now prohibited in 15 states that account for a third of the population in the United States.

Seeking to capitalize on past successes, consumer advocates are going on the offensive, working to win rate caps to curtail payday lending across the country. High-profile contests are expected in South Carolina, Virginia, Iowa, Colorado, and Kentucky among others.

**Car Title Loans.** State legislatures in several states are also expected to consider bills to stop car title lenders from charging triple-digit interest rates for short-term loans secured by the title to the family vehicle owned free and clear.

These loans are legal in about 18 states now, with New Hampshire having recently capped rates at 36 percent and Iowa having closed loopholes exploited by title lenders.

Bills to close the open-end credit loophole in Kansas and Virginia will be debated in 2009, and no new states are expected to authorize title loans.

**Refund Anticipation Loans.** Although court decisions have deprived states of the authority to curb the high cost of refund anticipation loans made by banks through tax preparers, several states are considering bills to better regulate tax preparers who make loans.

The National Consumer Law Center has developed a model state law that improves protections and disclosures for the loans while prohibiting tax preparers from adding additional fees. Winning adoption of that model law will be a priority.

### Fighting Weakened Insurance Protections

Although insurance companies have not escaped the current financial crisis unscathed, most have avoided the worse fate suffered by investment banks and some large commercial banks that loaded up their books with risky assets.

Despite the clear evidence that stricter financial standards, such as reserve requirements, have served them well, the life and annuities insurers have launched a recent campaign to loosen those standards.

Having failed at least temporarily to win approval from the National Association of Insurance Commissioners, some insurance companies have begun taking their case to individual states to try to get the requirements relaxed.

Fighting back against such efforts, and against efforts to deregulate home and auto insurance, will be among top priorities for maintaining essential insurance consumer protections at the state level.

At the same time, the financial crisis has brought new urgency to efforts to help low income consumers who face big price hikes as their credit scores worsen in the bad economy.

In particular, states are being encouraged to look at the proliferating rate classes that disadvantage the poor and minorities, including basing prices on such factors as education and occupation, homeownership, and prior limit purchased, as well as credit scores. When such factors are combined, a poor person can easily pay triple the price paid by a

rich person with an identical driving record.

A final priority is helping homeowners with insurance problems in earthquake-, flood-, and hurricane-prone areas, which continue to struggle to get access to insurance at affordable rates.

### Expanding the Clean Car Program

The change in administrations in Washington opens the opportunity for progress on another state-level priority – adoption of the California Clean Car program in all 50 states.

Adopted in California in 2004, the program set a 2009 deadline for automakers to begin cutting emissions of global warming pollutants. The goal is to reduce such emissions by 30 percent by 2016 when the program is fully phased in.

Although the program has spread to over a dozen states and has survived several automaker lawsuits, in December 2007, the Environmental Protection Agency denied a request for a waiver by California and 18 other states to allow implementation of the law.

Less than a week after his inauguration, President Obama instructed the EPA to reconsider its denial of the waiver request, and that process has since been set in motion by the agency.

Once hurdles to the program's implementation are removed, other states will be encouraged to adopt the program as a complement to federal efforts to improve energy efficiency and reduce dependence on foreign oil.

### Protecting Consumer Protection Agencies

Always strapped for funding, state and local consumer protection agencies are facing shrinking budgets and rising workloads in the coming year.

A number of agencies have recently been forced either to lay off workers or not to fill vacant positions. Others have been forced to cut back on staff training budgets.

The result will be felt by consumers. It will take longer to resolve complaints, and agencies will have to be more selective about the cases they bring.

Fewer resources will also make it harder for these agencies to produce educational materials and conduct consumer education programs.

At the same time, the recession will likely generate more demand from consumers for help with foreclosure rescue scams, bogus offers of loans and credit cards, work-at-home scams, investment fraud, store closings, and other issues.

CFA will continue its efforts to highlight the important work these agencies do and the need to provide adequate funding to support their consumer protection mission.

*Financial Services Director Jean Ann Fox, Consumer Protection Director Susan Grant, Director of Insurance J. Robert Hunter, and Research Director Mark Cooper contributed to this article.*

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## PRIVACY:

## Advocates See Optimistic Outlook for Reform

■ BY SUSAN GRANT

Consumer and privacy advocates are optimistic that the new administration and Congress will act this year on privacy protection. There are many privacy issues that must be addressed, including:

- the privacy of medical records as the health services industry moves toward electronic patient records;
- online behavioral tracking and targeting;
- disclosure of tax return information to third parties by tax preparers;

- notice to consumers when the security of their personal information stored by federal agencies and companies is breached; and

- ensuring that information about individuals is not abused in the fight against terrorism.

In December, a broad coalition of groups wrote to President-elect Obama congratulating him on pro-privacy statements he made during the campaign and expressing the hope that he and members of his administration will work with coalition members on privacy protection. Privacy advocates also met with members of the Federal Trade Commission transition team to urge that the FTC take stronger action to curb privacy abuses.

As new technology and new business models rapidly emerge, it is more important than ever to address these privacy challenges.

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