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CONSUMER FEDERATION OF AMERICA

FCC Eases Rules on Phone Company Video Services

A divided Federal Communications Commission voted in December to ease the video franchise process for telephone companies, in a move Republican members argued was needed to bring down cable rates through competition.

Consumer groups immediately criticized the move, arguing that it is likely to lead to higher, not lower, rates for many poor and rural consumers.

The rule sets a time limit for local authorities to consider phone companies' video franchise agreements, and it asserts FCC authority to ensure that communities don't require "unreasonable" conditions as part of the agreements.

Among other things, the FCC appears intent on limiting both franchise fees that communities charge and the obligations they impose on companies to serve the entire community.

The latter provision "opens the door to redlining of low-income and rural areas," while the former provision threatens an important source of funding for such basic municipal services as police, fire, and trash collection, said CFA Research Director Mark Cooper.

Poor, Rural Consumers Will Suffer

Consumers Union Senior Policy Analyst Jeannine Kenney echoed Cooper's concerns.

"Consumers are ill-served by the commission's decision to let phone companies pick and choose which neighborhoods will get more choice for cable service and which will be left with only their monopoly cable provider," she said. Consumers in neighborhood phone companies choose to ignore face "both rate hikes and no hope for any alternative," she added.

The rule applies only to franchise procedures for phone companies, not cable companies. But Cooper predicted that, "The cable companies will soon be demanding concessions too, setting up a race to the bottom."

That prediction was quickly proved to be accurate. Cable industry officials greeted the vote with complaints that it created "an uneven playing field."

The FCC responded with a promise to study whether it should extend the new franchise rules to cable companies and has requested comment on that question.

Legal Challenge Expected

Arguing that the rule exceeded the commission's authority and that the commission had provided no evidence that local communities were acting unreasonably, the commission's two Democratic members, Michael Copps and Jonathan Adelstein, voted against the rule.

With a court challenge viewed as inevitable, "the end result will likely be litigation, confusion of the process, and a certain amount of chaos," Adelstein said.

Meanwhile, in-coming House Commerce Committee Chairman John Dingell (D-MI) also expressed both skepticism over the FCC's authority to enact the rules and concern that the agency was usurping congressional prerogative.

The 109th Congress considered legislation to reform the franchise process, but it died in the Senate when Republican sponsors would not agree to strong net neutrality provisions. (See related article, page 2.)

It is unclear what effect the FCC action will have on members' plans to deal with the issue in the new Congress, though it seems likely the phone companies will no longer be pressing for legislation.

With or without the broader franchise issue, however, net neutrality is expected to be back on the congressional agenda in 2007.

Fuel Efficiency Declines Despite Consumer Concern

Even as gas prices dropped from their summer highs, a new consumer survey released by CFA in November found that consumers continue to want better gas mileage in their favorite cars.

However, a separate analysis of the ten-year change in motor vehicle fuel economy found that most manufacturers have reduced their overall fuel efficiency.

"Even as consumers express less concern over gas prices, their concern over our dependency on foreign oil and the desire for fuel efficient cars remain high," said CFA Public Affairs Director Jack Gillis. "At the same time, our analysis shows that nine of the 13 major U.S. car sellers had lower fleet-wide mpg ratings in 2005 than they did ten years ago."

The survey also shows that consumers see U.S. automakers' financial distress as a direct result of their lack of fuel-efficient offerings.

"Improving motor vehicle fuel efficiency is a win-win-win solution," said CFA Research Director Mark Cooper. "It would not only lower consumer costs and help decrease our dependence on oil, but also improve the future prospects of U.S. car companies.

"It is essential that the new Congress move quickly to approve higher fuel efficiency standards in order for these benefits to be realized," he added.

Consumers Want Better Mileage

The survey asked consumers about their plans to purchase a new vehicle within the next five years.

Although most prospective purchasers indicated they wanted to stay within the same vehicle class when replacing their existing vehicle — replacing a mid-size car with another mid-size car, for example — most also said they wanted the new vehicle to get better gas mileage.

Using manufacturer reported Corporate Average Fuel Efficiency (CAFÉ) mpg averages, CFA compared the change in CAFÉ rating of each manufacturer from 1996 through 2005.

Only three manufacturers increased their CAFÉ ratings, one stayed the same, and nine had lower CAFÉ ratings. (See table.)

By far the greatest improvement was at Toyota, which had a CAFÉ mpg increase of 1.5 mpg in spite of significant increases in the sales of their SUVs and pick-up trucks. The greatest decline (4.8 mpg) was at Hyundai.

CAFÉ standards were put in place years ago to set minimum standards for fuel efficiency.

For 2005, each manufacturer was required to maintain a fleet average of 27.5 mpg for cars and 21.0 mpg for SUVs and pick-ups. As these are fleet averages, not all vehicles in a manufacturer's fleet are required to meet the standard.

CFA found wide variations in the percent of each manufacturer's vehicles that met the standard. Only about half of the vehicles produced by BMW (40 percent), Ford (49 percent), and GM (56 percent) met the standards, while nearly all the vehicles produced by Honda (94 percent) did so (See table).

"What is particularly startling is that five of the 13 companies actually had a lower percentage of vehicles meeting CAFÉ in 2005 than they did ten years earlier in 1996," Gillis said.

Gillis noted that, contrary to common mis-perceptions, adding SUVs to the vehicle mix does not have to result in overall poorer performance. Both Honda and Toyota greatly expanded their sales of SUVs over the ten years, but each significantly increased the percentage of their fleet that met CAFÉ standards.

Fuel Efficiency of Many Popular Models Worsens

Finally, CFA compared the fuel efficiency of the 40 most popular 1996 models to that of their 2005 versions and found that 16 of the 40 actually got worse fuel economy in 2005 than in 1996, one showed no improvement, and ten had minimal improvement (less than one mpg).

"The bottom line is that car companies have the ability to dramatically improve fuel efficiency of the vehicles, and consumers are clearly stating a desire for better performers," Gillis said. "It's now time for Congress to be a catalyst for change and mandate the improvements that the industry has been unwilling to make on its own.

"Consumers will be watching Congress to see if they continue to stand by while our dependence on foreign oil escalates, or respond to the clear and unambiguous message to require simple, straightforward improvements to fuel efficiency," he added.

Change in Manufacturer Miles Per Gallon—1996-2005

Manufacturer	1996 MPG	2005 MPG	Change in MPG
Honda	32.0	29.3	-2.8
Toyota	27.4	28.9	+1.5
Hyundai	33.0	29.2	-4.8
Volkswagen	28.6	28.0	-0.6
Subaru	27.7	27.7	0.0
Suzuki	29.8	27.2	-2.6
Mitsubishi	29.0	27.2	-1.8
Nissan	27.9	25.6	-2.4
BMW	27.4	25.3	-2.1
General Motors	25.1	24.6	-0.5
Kia	27.4	24.5	-2.9
Ford	23.4	24.1	+0.7
DaimlerChrysler	22.2	22.9	+0.7
TOTAL	24.9	25.4	+0.5

Based on NHTSA data reported October 2006 and manufacturer supplied mileage figures for CAFÉ compliance.

Best and Worst Manufacturers at Meeting CAFÉ Standards

Manufacturer	Percentage of Vehicles Meeting CAFÉ 2005	Percentage Point Decline or Increase Since 1996
Honda	94%	+ 8
Toyota	84%	+23
Mitsubishi	83%	+ 5
Suzuki	82%	-18
Subaru	82%	+15
Hyundai	80%	-18
Kia	79%	-21
Volkswagen	75%	+ 2
DaimlerChrysler	65%	+19
Nissan	65%	- 3
General Motors	56%	+ 4
Ford	49%	+ 4
BMW	40%	- 2

On the **Web**
www.consumerfed.org/pdfs/Gas_Mileage_Consumer_Attitudes_Manu_Performance_Press_Release111306.pdf

2006 Legislative Wrap-up

Consumer Credit

Military Predatory Lending — In a major victory for consumers, Congress included a provision in the 2007 Defense Authorization Bill (S. 2766, P.L. 109-364) to protect military families from predatory lenders. The measure — which was proposed by Sens. Jim Talent (R-MO) and Bill Nelson (D-FL) in the Senate and by Rep. Sam Graves (R-MO) in the House — was signed into law by the president in October. It caps annual interest rates on loans to military families and their dependents at 36 percent. In so doing, it defines interest to include all extra charges and fees as designated by the Department of Defense through regulations. It also prohibits: loans to service members based on the writing of checks without adequate funds in the bank to cover the check or secured by electronic account access or wage allotments that allow lenders priority access to bank accounts or military pay; loans secured by title to the service member's vehicle; and requiring service members to agree to mandatory arbitration in the event of a dispute or otherwise to waive their legal right to recourse in the courts. Legislation to extend predatory lending protections beyond the military population (S. 1878, S. 1347, H.R. 5350, H.R. 4866) was introduced during the 109th Congress but was not acted on.

Bankruptcy — In the final days of the session, Congress passed and the president signed legislation (H.R. 5585, P.L. 109-390) to increase Chapter 7 bankruptcy filing fees by $40. The legislation, which imposed the fourth such increase in less than a year, was opposed by CFA and other consumer organizations because of concerns that the repeated fee increases could prevent those who have experienced a serious financial calamity from affording a fresh start in bankruptcy.

Consumer Credit Protections — A variety of bills designed to provide consumers with added credit protections were introduced but not acted on. These included bills: to reform abusive credit card practices (S. 2655), restrict marketing of credit cards to minors (S. 2654), and apply credit card protections to debit cards (S. 3978); to prohibit lenders from making loans against the Earned Income Tax Credit (S. 324, H.R. 969); to clarify that bank overdraft loans are covered by the basic consumer protections of the Truth in Lending Act (H.R. 3449); and to shorten the length of time that a bank or financial institution can hold a deposited check (H.R. 799).

Investor Protection

Credit Rating Agency Regulation — Congress passed and the president signed legislation (S. 3850, P.L. 109-291) designed to introduce greater competition into the credit rating industry. The new law creates a simplified and more transparent process by which credit rating agencies can register as Nationally Recognized Statistical Rating Organization (NRSROs) whose ratings are eligible to be used for a variety of regulatory purposes. In an important victory for consumers, the law also includes provisions designed to ensure that only agencies producing generally accepted and reliable ratings receive the NRSRO rating. Added in the Senate, these provisions: give the Securities and Exchange Commission (SEC) authority to deny NRSRO status to rating agencies that lack the financial and managerial resources to produce ratings of integrity; require agencies seeking NRSRO status to provide certifications from ten Qualified Institutional Buyers that they have used the agency's ratings; and attaches the NRSRO status to particular types of ratings for which an agency is seeking NRSRO recognition. The House passed its weaker version of the legislation (H.R. 2990) in July, after which the Senate Banking Committee quickly took up the issue, adding strengthening amendments that were ultimately agreed to by the House.

Housing

GSE Oversight — Although both the full House and the Senate Banking Committee approved legislation (H.R. 1461, S. 190) in 2005 to overhaul regulatory oversight of the mortgage finance government sponsored enterprises (GSEs), no further action was taken on the measures in 2006.

Predatory Mortgage Lending — The stalemate that kept both pro- (H.R. 1182) and anti-consumer (H.R. 1295, H.R. 4471) predatory mortgage lending legislation from moving in 2005 persisted in 2006.

Insurance

Flood insurance — The Senate Banking Committee and the full House both passed measures (H.R. 4973, S. 3589) to overhaul the federal flood insurance program in 2006. In response to concerns that the program does not take in sufficient income from insurance premiums to cover anticipated losses, both bills would have phased out subsidized premiums for second homes, vacation homes, and commercial properties. Although the Senate bill was stronger than the House bill, CFA argued that even it did not contain adequate protections for taxpayers. For example, the Senate bill lacked enforcement provisions to discourage building in high-risk areas and provided no deadline for new, more accurate flood plain maps to be completed. CFA has called for a more comprehensive overhaul of the program. However, it was opposition from those who sought to weaken the Senate bill's protections that kept it off the Senate floor.

Disaster Insurance — Hearings were held and legislation (H.R. 5891, H.R. 5587, S. 3114) was introduced to explore creation of a federal catastrophe insurance program, but no further action was taken.

Insurance Regulation — Legislation (S. 2509, H.R. 6225) was introduced to create a federal insurance regulator. CFA and other consumer groups strongly opposed the bills on the grounds that: insurers would be allowed to choose whether to be regulated at the state or federal level, thus pitting regulators against each other to keep standards low; the new regulator would have little authority to regulate insurance rates and limited ability to regulate the form of insurance policies, and the bills would lower consumer standards for insurance policyholders below the already weak protections that exist in many states. No action was taken on the measures.

Insurance Disclosure Reform — Problems recent hurricane victims have experienced in receiving payments on claims prompted Sen. Mark Dayton (D-MN) and Sen. Trent Lott (R-MS) to introduce legislation (S. 3239) to require clearer disclosure of what is covered by insurance policies. CFA endorsed the bill, which was not acted on.

Other Financial Services

Abusive Sales to Military — In addition to protecting members of the military services and their families from predatory lending practices, Congress passed and the president signed legislation (S. 418, P.L. 109-290) to address the targeted sale of certain abusive investment and insurance products to members of the military. Like a companion measure (H.R. 461) adopted in the House last year, the new law: bans the sale of contract mutual funds, which charge up-front commissions of up to 50 percent; gives state insurance regulators clear authority to oversee insurance sales on military bases; and creates a registry of barred insurance agents and securities salespersons to be shared among federal and state regulators and military bases. Additional protections were added in the Senate and included in the final measure, including a requirement that products sold on military bases carry clear disclosures that the federal government neither sanctions, recommends, or encourages the sale of the product.

Regulatory Relief — Congress passed and the president signed regulatory relief legislation (S. 2856, P.L. 109-351) for banks and financial institutions. CFA opposed this legislation, because it would allow private "check diversion" companies to pursue abusive debt collection practices currently prohibited by the Fair Debt Collection Practices Act. The legislation did not, however, include many anti-consumer provisions contained in the House version of this bill (H.R. 3505), including provisions to: allow poorly regulated Industrial Loan Companies to branch into all 50 states; amend the Federal Deposit Insurance Act to remove usury limits currently applicable to Arkansas lenders; allow privately-insured credit unions meeting certain criteria the same access to the benefits of Federal Home Loan bank membership as taxpayer-insured credit unions; and exempt certain financial institutions from the annual privacy notice disclosure requirement under the Gramm-Leach-Bliley Act (GLBA).

Energy

Pro-consumer Energy Policy — A variety of measures to reduce the nation's energy consumption were introduced with bipartisan support during the 109th Congress, but no meaningful reforms were enacted. Greatest attention was given to efforts to increase Corporate Average Fuel Efficiency (CAFÉ) standards. Rep. Sherwood Boehlert (R-NY) and Rep. Edward Markey (D-MA) introduced a bill in 2005 (H.R. 3762) to increase CAFÉ standards for new vehicles from the current level of 24.6 miles per gallon to 33 miles per gallon by 2016. That bill won the strong support of CFA and other consumer groups. Instead, the House Energy and Commerce Committee approved legislation (H.R. 5359) in May that consumer groups opposed on the grounds that it failed to call for specific improvements for CAFÉ standards. Efforts to amend the bill to conform to the Boehlert-Markey approach were defeated in committee. In part because of concerns expressed by moderate Republicans, the measure was never brought to the floor for a vote. CFA and other consumer groups also endorsed legislation (S. 2025, H.R. 4409) to cut oil consumption and imports by as much as 10 million barrels per day (almost 40 percent) over the next quarter century. No action was taken on the bills.

Telecommunications

Telecommunications Overhaul/Net Neutrality — The House approved anti-consumer legislation (H.R. 5252) to overhaul telecommunications laws in June, but Democratic opposition kept a companion measure in the Senate from coming to the floor for a vote. CFA and other consumer groups opposed the House bill on the grounds that it would "slam the door on any meaningful video competition and open a wide window to anti-competitive discrimination over broadband networks." Specifically, the bill would have: eliminated local authority to require that telephone companies offer their video services to all consumers within a community as well as existing local requirements that incumbent cable providers continue to offer cable service to all consumers in a community; stripped state and local authority to establish and enforce strong consumer protections, providing sole standard-setting authority to the Federal Communications Commission (FCC); and eliminated requirements that cable companies offer all consumers within a community the same price for the same services. In one of the most contentious battles over the legislation, the House rejected a "network neutrality" amendment offered by Rep. Edward J. Markey (D-MA) on a 152-269 vote. That provision would have restored federal rules that prevent telephone and cable companies that own broadband networks from discriminating against content and service providers in favor of their own commercial offerings. Network neutrality also proved to be a critical issue in the Senate. During the Senate Commerce Committee's mark-up of the bill, Sen. Byron Dorgan (D-ND) and Olympia Snowe (R-ME) offered an amendment to strengthen the bill's net neutrality protections, but it was defeated on an 11-11 vote. The Committee's failure to deal with the net neutrality issue prompted Democratic opponents to threaten a filibuster. The bill's supporters were unable to muster the 60 votes needed to bring the bill to a vote.

Health & Safety

Bittering Agent in Antifreeze — The Senate Commerce Committee approved legis-

(Continued on Page 3)

Roll-back of Investor Protections Advocated

With the publication of a major report by the Committee on Capital Markets Regulation in November, the first shots were fired in what many expect will be a protracted campaign to weaken key investor protections adopted in the wake of Enron and other recent scandals.

The report argues that excessive regulation and litigation are hurting the global competitiveness of U.S. securities markets and advocates 32 steps Congress and federal regulators should take to turn that situation around.

Although it does not recommend a repeal of the internal controls requirements of the Sarbanes-Oxley Act, as many in the business community have sought, the report does provide the basic analysis others will likely use to support a roll-back.

Moreover, the report advocates steps to tie Securities and Exchange Commission regulatory efforts up in red tape, place new limits on state and federal enforcement efforts, and impose new restrictions on private shareholder lawsuits.

"If these recommendations were adopted, regulators, enforcers, and defrauded investors would all find it far more difficult to hold corporate criminals accountable for their crimes," said CFA Director of Investor Protection Barbara Roper.

Report Mis-diagnoses the Problem

The report's anti-regulation, anti-litigation argument is based on a superficial and often misleading analysis of recent IPO trends, Roper said.

While foreign companies listing in the United States have declined, that decline occurred before the passage of the Sarbanes-Oxley Act.

Since passage and implementation of the Sarbanes-Oxley Act, the U.S. share of the world IPO market, the number of foreign companies listing here, the amount of money they have raised here, and the valuation premium foreign companies get for listing here have all increased, Roper noted.

Similarly, while there has been a recent "explosion" in private lawsuit awards to shareholders, that explosion is the direct result of an explosion in fraud several years ago, Roper said. Since the Sarbanes-Oxley Act took effect, however, the number of lawsuits filed has dropped steadily and is well below the average for the past decade.

"The committee appears to be so intent on proving its pet theory that excessive litigation and regulation are harming our markets' competitiveness that they ignore or gloss over literally masses of evidence that contradicts their conclusions," she said.

Contradictory Evidence Ignored

Among other things, the committee ignores a variety of other factors unrelated to regulation or litigation that affect foreign companies' decisions about where to list, Roper said.

The primary factor behind recent trends is the growing strength of foreign markets, several of which can now handle even the biggest IPOs. Other important factors ignored by the committee include:

- investment banking fees that are roughly twice as high in the United States as they are in London or Europe;
- questions about the wisdom of having a dollar-denominated stock when sky-rocketing federal budget and trade deficits continue to raise concerns about the stability of the U.S. currency;
- the geographic isolation of the United States, far from emerging markets in Asia and the former Soviet Union; and
- the difficulties of doing business in New York in a post-9/11 world.

Because the committee's recommendations fail to address these issues, "we could adopt every one of the committee's recommendations tomorrow, and we would have done absolutely nothing meaningful to reverse recent IPO trends," Roper said.

Two other reports making similar claims and likely outlining even more anti-investor recommendations are still to come — one commissioned by the Chamber of Commerce and one commissioned by New York Mayor Michael Bloomberg.

However, neither in-coming Senate Banking Committee Chairman Christopher Dodd (D-CT) nor incoming Financial Services Committee Chairman Barney Frank (D-MA) has indicated the issue will be priorities on their agenda for the new Congress.

"Investors are fortunate that the key leaders on these issues in the new Congress appear to be maintaining a healthy skepticism about this anti-investor effort," Roper said.

On the **Web**
www.consumerfed.org/pdfs/CCMR_Reaction_Release_11-30-06.pdf

2006 Legislative Wrap-up

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lation (S. 1110) in March to reduce the incidence of poisonings of children and pets by requiring that a bittering agent be added to antifreeze. While supporting the goal of the bill, consumer groups, including CFA, opposed the legislation because it contained a broad liability waiver for industries involved in producing and selling antifreeze and coolants that contain the bittering agent denatonium benzoate. The liability waiver would have applied even if use of the agent caused groundwater contamination, personal injury, property damage, or death. The House Energy and Commerce Committee marked up a companion measure (H.R. 2567) in July, but did not report it out until the final days of the session in December. Although the Judiciary and Transportation committees then discharged the bill, it was never brought to the floor for a vote.

Underage Drinking — In December, Congress passed and the president signed the STOP Act (H.R. 864, S. 408, P.L. 109-422), which will begin to implement some of the suggestions made in the Institute of Medicine's September 2003 report to Congress on ways to reduce underage drinking.

Worker Safety — Legislation (H.R. 3509) was approved by the House Judiciary Committee in July that would have protected manufacturers from liability for production of defective workplace products that are over 12 years old. Workers injured by such equipment would have been unable to collect damages from the manufacturer, even where the manufacturer knew at the time of production that the product was defective. The legislation would have preempted laws in states that provide stronger protections. Strongly opposed by CFA and other consumer groups, it was reported out of the Judiciary Committee in December but was never brought to the House floor for a vote.

Child Safety — Legislation (H.R. 4986) was introduced but not acted on that would have required the Consumer Product Safety Commission to promulgate a safety standard for durable infant and toddler products, such as cribs and strollers. The bill, which was endorsed by CFA, would have required the CPSC to establish a product review panel to advise the agency on standards and would have removed the limitation on maximum civil penalties for violations of the act.

Food Safety and Nutrition

Mad Cow Disease — During House consideration of the fiscal year 2007 Agriculture Appropriations bill (H.R. 5384) Rep. Dennis Kucinich (D-OH) offered an amendment that would have maintained current testing levels for mad cow disease. Consumer advocates, including CFA, supported this amendment, which was never voted on.

Food Safety and Label Uniformity — In March, the House passed legislation (H.R. 4167) to eliminate important state and local government food safety and labeling laws in the name of uniformity. The bill was opposed by CFA as well as a broad coalition of other consumer and environmental groups. It would have required state food safety laws to be identical to the requirements of the U.S. Food and Drug Administration. Any state food safety laws that were not identical to current federal laws would have been preempted — even in areas where the FDA has not acted — and states would have had to undergo a cumbersome and expensive appeals process to keep the state law intact. Although a companion measure was introduced in the Senate (S. 3128) and hearings were held in the Senate Health, Education, Labor, and Pensions Committee, no further action was taken.

State Meat Inspection — Anti-consumer legislation (S. 3519, H.R. 6130) was introduced, but not acted on, that would have allowed meat and poultry from state inspected plants to be sold anywhere, including across state lines and to foreign countries. Federal law permits states to run their own inspection programs if they are "equal to" the standards applied to federally inspected plants. However, under current law, products from these plants are not allowed to be sold across state lines. A recent inspector general's study found serious deficiencies in the state inspection programs.

FSIS Funding — A coalition of organizations was formed to urge Congress to reinstate $37.3 million in funding cuts to the U.S. Department of Agriculture's Food Safety and Inspection Service that food safety groups, including CFA, believe threaten the agency's ability to carry out its critical food safety responsibilities. However, the agriculture appropriations bill was not finalized in 2006. Instead, USDA funding was included in a broad budget reconciliation bill that generally held funding to 2006 levels.

Dietary Supplements and Nonprescription Drugs — Congress passed and the president signed legislation (S. 3546, H.R. 6168, P.L. 109-324) to require manufacturers, packers, and distributors of dietary supplements and non-prescription drugs to notify the Department of Health and Human Services of any serious adverse events associated with one of their products. Strongly supported by CFA and other consumer advocates, the bill was reported out of the Senate Committee on Health, Education, Labor and Pensions in September. In the final days of the session, the Senate approved the bill on unanimous consent, and the House passed it under a suspension of the rules.

Privacy

Taxpayer Privacy — Responding to an IRS proposal to expand the ability of tax preparers to share client information for marketing purposes, a variety of bills were introduced in the House and Senate (S. 2484, S. 2498, H.R. 5063, H.R. 5075, H.R. 5084, H.R. 5138) to limit the ability of tax preparers to disclose taxpayer information to unaffiliated third parties. The Senate Finance Committee held hearings on this and related issues, and included protections in an omnibus bill voted out of committee, but no further action was taken.

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Predatory Lending To Top Congressional, FDIC Agenda


Rep. Barney Frank


Rep. Brad Miller


FDIC Chairman Sheila Bair


SEC Commissioner Roel Campos

Issues related to predatory lending were a primary focus of keynote speakers at CFA's financial services conference.

In-coming House Financial Services Committee Chairman Barney Frank (D-MA) divided consumer issues into two categories — those that "hit some people harder than others" and those that "affect everybody." Winning passage of a "good predatory lending bill" will be his top priority among issues in the first category, he said.

Predatory lending is "overwhelmingly a problem in which discrimination comes in," Rep. Frank said. "If you are a black or Hispanic in this country, you have less chance of getting a mortgage and more chance of paying more if you get it. That is just unacceptable for us."

The key, he said, will be to deal with predatory lending in a way that doesn't lead to red-lining. "If you can't get a loan, you don't have to worry if it is predatory," he said.

Rep. Frank said his top priority in the second category of issues will be to "deal with the problem being created by the preemption of virtually all state laws over banks."

"The federal regulators do not have the capacity, and in some cases the inclination, to replace" state consumer protections, he said. He therefore plans to try to "put in place a full set of substitutes" for the state laws that have been preempted, he said.

A third priority will be "data privacy," Rep. Frank said.

Noting that progress on that issue has in the past been hampered by jurisdictional disputes among various committees, he said he plans to ask the Speaker of the House to create a task force of several committees with jurisdiction to work together on the issue.

Progress on Predatory Lending Bill Predicted

Rep. Brad Miller (D-NC) also focused on the need for new protections against predatory lending in his keynote address.

Referring to the passage of legislation to protect the military from predatory practices, he said Congress had acted out of an awareness that predatory lending was "hurting military morale and readiness, was distracting to them, and it compromises them to be so financially in a hole.

"It is great that Congress is recognizing that predatory lending effect on our military," he added. "I hope that the new Congress will recognize that predatory lending has the same effect on every American, and we cannot allow our American workers, American families to be caught in that hopeless cycle of debt."

Rep. Miller predicted that Congress would start with predatory mortgage lending.

"We have spent much time in Congress fighting federal legislation that would be more loophole than law," he said. "We now have a chance ... to develop federal legislation that will provide ... effective protections for every consumer, every American."

At a minimum, such legislation must include "real limits on up-front fees and costs that strip consumers of the equity in their homes," must ensure that consumers are not steered into unsuitable or excessively costly loans, must prevent discrimination against minorities, must provide an effective way to deal with newly emerging abusive practices, and must "keep state attorneys general on the job."

"We have an opportunity we didn't have a month ago or in the last Congress or in the last 12 years," he said. "We cannot do it without a strong and wise consumer movement that does not allow the perfect to become the enemy of the good" and "recognizes when to make a deal that will actually improve the circumstances of American consumers."

Economic Inclusion to be FDIC Focus

The market for financial services seems to have "become divided between two groups," said Federal Deposit Insurance Corporation Chairman Sheila C. Bair, "those who successfully rely on banks for virtually cost-free basic financial services, and those who pay high amounts."

"While I am committed to market-based solutions, I am concerned that market mechanisms are not working as well as they should in the area of financial services for low- to moderate-income families," she said.

Problems include both the fact that "many people lack the financial skills needed to analyze and compare products and their prices" and "lack of disclosures that fairly and simply describe a product and its true cost," she said.

Bair also indicated that she plans to investigate whether the regulatory structure inadvertently contributes to the problem by, for example, deterring banks "from serving the needs of their communities" or creating "perverse incentives or regulatory gaps that favor high-cost products."

Chairman Bair described several FDIC initiatives designed to make "the mainstream financial system available to more consumers," including:

• working with military banks to develop an affordable, small denomination loan product, possibly including a savings component;

• drafting guidance to provide Community Reinvestment Act credit for reasonably priced small dollar loans; and

• establishment of an Advisory Committee on Economic Inclusion to provide the agency with recommendations on ways to "expand access to banking services to under-served populations and to bring more consumers into the financial mainstream."

In response to a question, Bair said she does not believe congressional action is needed to deal with the recently passed military predatory lending bill and that any implementation difficulties can be addressed through regulations.

Anti-SOX Arguments Challenged

Rounding out the conference's keynote speakers was Securities and Exchange Commissioner Roel Campos. Speaking one day after the Committee on Capital Markets Regulation released its report (See article page 3), Commissioner Campos devoted his speech to "knocking down some myths about the supposed decline in the competitiveness of United States' capital markets."

"I have no issue with those in this country who assert that U.S. regulators must be keenly aware of the effects of regulation on the American economy, particularly as it relates to our ability to remain competitive globally," he said.

However, he added, "assigning the blame to the U.S. regulatory system for the decline in IPOs on U.S. exchanges is not justified by the facts. At a minimum, it is a gross oversimplification of what is happening in the real world."

As the designated representative of the SEC to various international organizations, Commission Campos said he has "become convinced that the U.S. regulatory system is in fact a competitive advantage for our markets."

"Capital demands protection," he explained. "Nowhere in the world is capital better protected than in the United States ... It is a truism that, if capital is attracted to the U.S., listings and issuers will be close behind."

The analysis that blames regulation for the decline in foreign IPOs ignores "a number of alternative reasons for the change in the IPO environment," he said.

"Simply put," he added, "there are various reasons for foreign companies to list elsewhere than in the U.S. — reasons that did not exist just a few years ago ... This means that things are changing; it does not mean the bottom is falling out of the U.S. capital markets."

"Our overall system of regulation and protection of capital is the envy of the world and has helped create trillions of dollars of wealth for America," he concluded. "Let us not lightly tinker with what has worked so well for our country."

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