



CFA news

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Consumers Lose Big In Elections

Although most of the candidates endorsed by CFA were reelected, the overwhelming Republican victory in the '94 congressional elections was a major setback for consumers.

Traditionally, Democrats, as a group, have a far better consumer voting record than Republicans.

In 1993, for example, Senate Democrats had a 66 percent CFA voting record, and House Democrats had an 86 percent record. In contrast, Senate Republicans voted for consumers only 27 percent of the time, while House Republicans supported consumers only 22 percent of the time.

"With Republicans controlling both the House and the Senate, the prospects for advancing strong pro-consumer legislation have all but vanished," said CFA Legislative Counsel Bradley Stillman, who oversees CFA's endorsements.

"On the other hand, several anti-consumer measures, such as product liability and securities litigation reform, are expected to be on the fast track in the next session," he added.

Even the administration's pro-consumer regulatory activity may be reigned in by some antagonistic Republican committee chairs.

Most Pro-consumer Incumbents Survive

Although more incumbents than usual were defeated, including 14 endorsed by CFA, seven of the eight Senate incumbents endorsed by CFA were reelected, while 110 of the 123 CFA-endorsed House incumbents were reelected. Another four House races involving CFA-endorsed incumbents were still too close to call as this issue went to press.

(For a complete list of successful CFA endorsees, see the chart accompanying this article.)

"The American people are fortunate to have a sizeable contingent of strong consumer advocates remaining in Congress to represent their interests," Stillman said.

"These members have a proven history of fighting to protect the health and safety of their constituents and of representing average citizens on key pocketbook issues," he added. "Their advocacy will be even more important in the tougher climate of the new Congress."

The one CFA-endorsed Senate incumbent who was defeated is Sen. Harris Wofford (D-PA). He lost a close race to Republican Rep. Rick Santorum, whose lifetime CFA voting record in the House is just 27 percent, compared to Wofford's 80 percent rating.

The 14 House incumbents endorsed by

CFA who were not reelected were: Karen English (D-AZ), Dan Hamburg (D-CA), Lynn Schenk (D-CA), Frank McCloskey (D-IN), Herbert C. Klein (D-NJ), George Hochbrueckner (D-NY), Ted Strickland (D-OH), Marjorie Margolies-Mezvinsky (D-PA), Karen Shepherd (D-UT), Leslie Byrne (D-VA), Jolene Unsoeld (D-WA), Mike Kreidler (D-WA), Peter Barca (D-WI), and Mike Synar (D-OK), who lost his primary.

None of the 12 CFA-endorsed challengers to anti-consumer members were

reelected, although both of the endorsed House candidates for open seats were elected.

Pro-consumer Senate Open Seat Candidates Defeated

Furthermore, consumers lost some of their strongest advocates in the Senate to retirement, and none was replaced by a pro-consumer candidate.

Rep. Sam Coppersmith, in the race to

fill the seat of Sen. Dennis DeConcini (D-AZ), Rep. Tom Andrews, in the race to fill the seat of Sen. George Mitchell (D-ME), Rep. Alan Wheat, in the race to fill the seat of Sen. John Danforth (R-MO), and Joel Hyatt, in the race to fill the seat of Sen. Howard Metzenbaum (D-OH), all went down to defeat.

"It is a major disappointment to have lost such stalwart allies as Howard Metzenbaum and George Mitchell and to have no one new to step into their shoes," Stillman said.

Successful CFA-Endorsed Candidates

Senate

CA: Sen. Dianne Feinstein (D)
CT: Sen. Joseph Lieberman (D)
HI: Sen. Daniel Akaka (D)

MD: Sen. Paul Sarbanes (D)
MA: Sen. Edward Kennedy (D)

NV: Sen. Richard Bryan (D)
NJ: Sen. Frank Lautenberg (D)

House of Representatives

AZ: Rep. Ed Pastor (D-02)
CA: Rep. Robert T. Matsui (D-05)
Rep. Lynn Woolsey (D-06)
Rep. George Miller (D-07)
Rep. Nancy Pelosi (D-08)
Rep. Ronald V. Dellums (D-09)
Rep. Tom Lantos (D-12)
Rep. Fortney "Pete" Stark (D-13)
Rep. Anna G. Eshoo (D-14)
Rep. Sam Farr (D-17)
Rep. Anthony C. Beilenson (D-24)
Rep. Howard L. Berman (D-26)
Rep. Henry A. Waxman (D-29)
Rep. Xavier Becerra (D-30)
Rep. Lucille Roybal-Allard (D-33)
Rep. Esteban Edward Torres (D-34)
Rep. Maxine Waters (D-35)
* Rep. Jane Harman (D-36)
Rep. Bob Filner (D-50)
CO: Rep. Patricia Schroeder (D-01)
CT: Rep. Barbara B. Kennelly (D-01)
* Rep. Sam Gejdenson (D-02)
Rep. Rosa L. DeLauro (D-03)
Rep. Christopher Shays (R-04)
FL: Rep. Corrine Brown (D-03)
Rep. Karen L. Thurman (D-05)
Rep. Carrie Meek (D-17)
Rep. Peter Deutsch (D-20)
Rep. Alcee L. Hastings (D-23)
GA: Rep. Sanford Bishop (D-02)
Rep. John Lewis (D-05)
Rep. Cynthia McKinney (D-11)
HI: Rep. Neil Abercrombie (D-01)
Rep. Patsy T. Mink (D-02)
IL: Rep. Bobby L. Rush (D-01)
Rep. Luis V. Gutierrez (D-04)
Rep. Cardiss Collins (D-07)

Rep. Sidney R. Yates (D-09)
Rep. Lane Evans (D-17)
Rep. Richard J. Durbin (D-20)
IN: Rep. Peter J. Visclosky (D-01)
LA: Rep. William J. Jefferson (D-02)
Rep. Cleo Fields (D-04)
MD: Rep. Benjamin L. Cardin (D-03)
Rep. Albert R. Wynn (D-04)
Rep. Steny H. Hoyer (D-05)
Rep. Kweisi Mfume (D-07)
Rep. Constance A. Morella (R-08)
MA: Rep. John W. Olver (D-01)
Rep. Richard E. Neal (D-02)
Rep. Barney Frank (D-04)
Rep. Martin T. Meehan (D-05)
Rep. Edward J. Markey (D-07)
Rep. Joseph P. Kennedy (D-08)
Rep. Joe Moakley (D-09)
Rep. Gerry E. Studds (D-10)
MI: Rep. Bart Stupak (D-01)
Rep. Dale E. Kildee (D-09)
Rep. David E. Bonior (D-10)
Rep. Sander M. Levin (D-12)
Rep. John Conyers (D-14)
Rep. Barbara-Rose Collins (D-15)
MN: Rep. Bruce F. Vento (D-04)
Rep. Martin Olav Sabo (D-05)
Rep. James L. Oberstar (D-08)
NJ: Rep. Frank Pallone (D-06)
Rep. Robert G. Torricelli (D-09)
Rep. Donald M. Payne (D-10)
Rep. Robert Menendez (D-13)
NM: Rep. Bill Richardson (D-03)
NY: Rep. Gary L. Ackerman (D-05)
Rep. Jerrold Nadler (D-08)
Rep. Charles E. Schumer (D-09)
Rep. Edolphus Towns (D-10)

Rep. Major R. Owens (D-11)
Rep. Nydia M. Velazquez (D-12)
Rep. Carolyn B. Maloney (D-14)
Rep. Charles B. Rangel (D-15)
Rep. Jose E. Serrano (D-16)
Rep. Eliot L. Engel (D-17)
Rep. Nita M. Lowey (D-18)
Rep. Michael R. McNulty (D-21)
* Rep. Maurice D. Hinchey (D-26)
Rep. Louise M. Slaughter (D-28)
NC: Rep. Eva Clayton (D-01)
Rep. Melvin Watt (D-12)
OH: Rep. Marcy Kaptur (D-09)
Rep. Louis Stokes (D-11)
Rep. Sherrrod Brown (D-13)
Rep. Thomas C. Sawyer (D-14)
Rep. James A. Traficant (D-17)
OR: *Rep. Elizabeth Furse (D-01)
Rep. Ron Wyden (D-03)
Rep. Peter A. DeFazio (D-04)
PA: Rep. Thomas M. Foglietta (D-01)
Rep. William J. Coyne (D-14)
Rep. Paul McHale (D-15)
RI: Patrick Kennedy (D-01)
Rep. John F. Reed (D-02)
SC: Rep. James E. Clyburn (D-06)
TX: Rep. John Bryant (D-05)
Lloyd Doggett (D-10)
Rep. Henry B. Gonzalez (D-20)
Rep. Frank Tejeda (D-28)
Rep. Gene Green (D-29)
Rep. Eddie Bernice Johnson (D-30)
VT: Rep. Bernard Sanders (I-AL)
VA: Rep. Robert C. Scott (D-03)
WA: Rep. Jim McDermott (D-07)
WI: Rep. Gerald D. Kleczka (D-04)
Rep. Thomas M. Barrett (D-05)
Rep. David R. Obey (D-07)

* Too close to call at press time.

Housing Rules Will Save Consumers Billions

The Department of Housing and Urban Development (HUD) has recently released rules on mortgage escrow accounts and on real estate settlement kickbacks which will save housing consumers billions of dollars.

Under a HUD proposal on mortgage escrow accounts released in late October:

- consumers will receive billions of dollars in escrow refunds over the next three years;
- inflationary single-item and pre-accrual accounting practices will be banned;
- aggregate accounting will be standard practice for future escrow accounts;
- mortgage contracts that provide for zero cushions, or less than the allowable ceiling of a two-month cushion under the Real Estate Settlement Procedures Act (RESPA), will be respected; and
- initial and annual escrow account statements, based on an actual account audit, will be provided to borrowers.

Unfair Overcharges Will Be Banned

"For years, the lending industry has been able to quietly extract funds from unsuspecting consumers for escrow disbursements — money well in excess of that needed to pay taxes and property insurance," said then CFA Director of Banking and Housing Policy Chris Lewis.

HUD's new standards will put an end to such practices, he said.

"Secretary Henry Cisneros has taken the hand of lenders out of the pockets of homeowners who for years have been forced to pay unwarranted, unfair and unconscionable overcharges to maintain escrow accounts in connection with their home mortgages," Lewis said.

Lewis also praised the rule's disclosures, which are required up front when servicing contracts are established, and its requirement that every account be audited annually, with consumers receiving repayment of any surpluses discovered in the audit.

"This rule is clearly in the best interests of consumers," he said. "Secretary Cisneros is to be commended for his continued leadership in restoring fairness to our nation's housing markets."

HUD Proposes To Withdraw Anti-Consumer Kickback Rule

In September, CFA and Consumers Union (CU) filed comments on a HUD proposal to withdraw an anti-consumer rule approved during the last days of the Bush administration.

The 1992 rule allowed payments of kickbacks for referral of real estate appraisal business to employees of affiliated companies. Consumer advocates criticized the rule at the time for encouraging price-inflating steering practices that RESPA was enacted to prevent.

Under the new proposal, no employee of a diversified company upon whom the home buyer would rely for disinterested advice about the purchase of services would be allowed to receive compensation tied to referral volume.

In their comments, CFA and CU praised the plan as a "dramatic improvement over the existing regulation" which will "promote fairer market conduct and greater protection for consumers seeking to purchase homes."

The groups expressed concern, however, that the proposal contains a loophole for management employees, and recommended that the final rule "prohibit any and all compensation schemes which depend, in whole or in part, on the level of employee referrals to affiliated companies.

"We are particularly concerned about management retaliation against employees who fail to deliver an expected volume of referrals to an affiliated entity," the comments state.

Standards For Electronic Brokerage Services Proposed

The HUD proposal also would establish minimum standards for electronic information and brokerage services.

CFA and CU recommended that this proposal be amended to reflect the following principles:

- universal and equal access to ensure that loan funders are given equal opportunity to compete in developing electronic

origination markets;

- up-front consumer payment to promote market competition based on quality of service;

- uniform coverage of all such systems to ensure that the rule does not steer the market to substandard and unfair conduct; and

- full and complete disclosure to aid consumers in making informed decisions.

The principal problem with the proposal, the groups noted, is that it allows the development of a two-track electronic brokerage and mortgage delivery system, one that meets minimum standards and one that does not.

"HUD should only permit . . . systems to operate that meet minimum standards of performance and levels of protection to the consumer," the comments state.

HUD must ensure that the development of these modern delivery systems "progresses in a manner that guards against consumer abuse and aids . . . consumers in making informed decisions as they shop the mortgage finance and settlement service marketplace," the comments conclude.

CFA Supports Bike Helmet Rules

In October, CFA submitted comments to the Consumer Product Safety Commission (CPSC) in general support of the agency's proposed rules to implement the bicycle helmet provisions of the Child Safety Protection Act.

"CFA strongly supported the passage of the Child Safety Protection Act, including provisions requiring publication of this rule," said CFA Product Safety Director Mary Ellen Fise. "The use of bicycle helmets can significantly reduce the risk of head and brain injury," she said.

While supportive of the rule, CFA suggested a number of ways in which it should be improved.

For example, although it enumerates the information which must be communicated to consumers, the rule does not require specific wording, and it does not explicitly require that the warning label be prominent and conspicuous.

"While we appreciate that some flexibility must be allowed so that a manufacturer can insert appropriate information (such as recommended cleaning agents or substances that will cause damage), we believe the CPSC should be more specific about the label language," the comments state.

"CFA is concerned that the label fails to inform consumers that failure to follow the warnings may result in serious injury or death (because the helmet could not perform in the manner intended)," the comments continue.

CFA urged the commission to reconsider the labeling provisions and require an ANSI warning format as well as prescribed language wherever possible.

Impact Warnings Are Ambiguous

CFA also expressed concern over "ambiguity" in the wording of warnings related to the effect of impacts on the helmet, which fails to distinguish between such routine impacts as those that occur when a child drops a helmet on the floor and more substantial impacts that may occur in a crash.

The agency should evaluate this ambiguity, supply more direct information on the warning label, and require that instructions be expanded to "explain more fully the potential vulnerability of a helmet that has been hit, dropped, or otherwise had an impact," the comments state.

As part of the certification provisions, the label on all helmets must include the name and address of the manufacturer and a warning that alerts consumers to return the helmet to the manufacturer in the event of an impact.

In its comments, CFA urged the commission to require that the manufacturer's telephone number also be listed.

"If the goal is to reduce usage of impacted helmets, providing a telephone number will enhance achievement of that goal" by making it easier for consumers to determine where to send the helmet, what information to include, and how to package the helmet, the comments state.

Multi-Use Helmet Initiative Praised

CFA praised the agency for its interest in the possible development of requirements for helmets intended to be used for several activities, such as bicycling, roller skating, and skateboarding.

"It is highly desirable from a consumer perspective to be able to purchase just

one helmet to protect the head when participating in a variety of wheel-related activities," the comments state, particularly when health and safety professionals recommend the use of helmets for all of these activities.

Currently, however, some multi-activity helmets being marketed meet no additional requirements beyond those required in the voluntary standard for bike helmets, the comments note.

CFA encouraged the agency to continue to examine this issue, with particular attention to the different impact characteristics of these other activities.

In addition, "regardless of whether the agency continues to pursue examination of requirements for multi-activity helmets, CFA believes that CPSC must address the issue of multiple small impacts associated with bicycle helmet use in finalizing its impact attenuation requirements," the comments state.

Finally, CFA also encouraged the agency to require the addition of reflective material to helmets to help drivers better identify the location of nighttime bicycle riders.

"As more and more jurisdictions move toward mandatory bicycle helmet usage laws, it is critical that the helmets consumers are required to wear be capable of meeting the usage law's intended objective, protecting the head from injury," Fise said.

Childwise Catalog Wins Award

The *Childwise Catalog*, a book by CFA Public Affairs Director Jack Gillis and Product Safety Director Mary Ellen Fise, has been recognized in the 1994 National Health Information Awards program.

The book, which provides information on the best and safest children's products, received the Bronze Award in the book category of the Health Promotion/Disease and Injury Prevention Information class.

Sponsored by Blue Cross Blue Shield Association, the National Wellness Institute, and American Custom Publishing, the annual awards honor the nation's best consumer health information programs and materials.

This is the third edition of this very successful book, which was first published in 1986. Published by HarperCollins, *The Childwise Catalog* is available in book stores.



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FCC Issues Anti-Consumer Video Dialtone Ruling

The Federal Communications Commission voted in October to continue to allow monopoly telephone companies to make hundreds of billions of dollars worth of network investments necessary to enter the video business without first determining who will pay for those investments.

Denying a petition filed in April 1993 by CFA and the National Cable Television Association, the FCC voted to delay decisions about how costs for new service will be allocated between captive ratepayers and competitive services until the tariffing process, after the investment has already been authorized.

"Waiting to decide issues of cost allocation until the network upgrades are authorized or completed puts captive

ratepayers at unreasonable risk," said CFA Legislative Counsel Bradley Stillman.

Consumers Shut Out of Rate-Setting Process

"Consumers are ill equipped to participate in the tariffing process for every application filed by the telephone companies," he explained. "Without a national policy in place prior to authorization of video dialtone systems, captive customers will largely be frozen out of the process."

The result is likely to be an additional \$16 per month on the phone bill of every American household for the next 20 years, Stillman said, "and this at a time when the costs of providing local telephone serv-

ice are declining dramatically."

The CFA-NCTA petition urged the commission to establish a national policy and to create a federal-state joint board to deal with cost allocation issues before allowing the telephone companies to make the \$400 to \$700 billion in investments in the network necessary to send video over the telephone network.

"Adequate rules are not in place to prevent captive telephone ratepayers from subsidizing telephone company network investment," Stillman said. The decision is also anti-competitive, he said, since "the lack of competitive safeguards designed for video dialtone gives an unfair competitive advantage to local monopoly telephone companies."

FCC Fails to Set Rules of the Road

"Video dialtone represents the most significant consumer pocketbook issue that the FCC is likely to deal with over the next few years," Stillman said. "It is an ominous sign that, once again, the FCC has failed to establish rules for the road to protect consumers from paying an unfair share of the massive investments needed to build the information superhighway while granting the telephone companies authority to build it."

"We hope the FCC will reconsider this anti-consumer, anti-competitive decision," he concluded.

Cable Rules Are A Mixed Bag For Consumers

The Federal Communications Commission (FCC) issued cable regulations in November to address the addition of new programming by cable operators.

These rules were a mixed bag for consumers, said CFA Legislative Counsel Bradley Stillman. While they improve regulations for "a la carte" programming, they allow unwarranted rate increases for the addition of new programming to the regulated tier of services, he said.

"On the one hand, the decision regarding a la carte programming should protect captive cable consumers from abusive practices that undermine rate regulation," he said. "On the other hand, the decision on adding programming to the regulated tier will allow cable operators to jack up their rates for programming consumers do not necessarily want."

The FCC also authorized the creation of a new, unregulated tier of programming. This allows operators to package together any new programming they want and charge whatever price they want, while leaving the decision of whether to purchase the new services up to consumers.

"With this decision, the agency has attempted to chart a course between encouraging the addition of new programming and protecting consumers from paying for services they don't want," Stillman said. "It is unclear, however, whether they have the authority to do so under the act."

Basic Rates Will Rise

In a bad move for consumers, the agency also decided to allow cable operators to raise rates as much as 25 cents a month for each new channel added to the regulated tier, up to a total of \$1.50 a month over two years.

Since the passage of the cable reregulation legislation, many cable operators have refused to expand their programming, arguing that they lacked sufficient incentives to do so. They have encouraged programmers to join them in lobbying the FCC to offer those incentives.

"The problems being faced by cable programmers in gaining access to cable systems result primarily from the cable operators' attempts to gain unwarranted and unnecessary relief from the rate

regulation benchmark adopted by the Commission," Stillman wrote in an October letter to FCC Chairman Reed Hundt.

"We don't believe the cable operators should be rewarded for holding the programmers hostage," Stillman said.

"The current rate regulations allow a reasonable profit for all cable operators that should be incentive enough for the addition of new programming," he added. "If they faced competition, cable operators would be forced to add new channels or risk losing customers."

The FCC decision is anti-consumer, because it forces consumers to pay for the new programming, whether they want it or not, and at a premium price, Stillman said.

"In fact, the FCC decision may actually encourage cable operators to add less popular programming to the regulated tier, where they can force consumers to pay for it, while reserving more popular programming for the new unregulated tier of services in order to attract customers for that higher priced tier," he said.

A La Carte Rules Benefit Consumers

At its November meeting, the agency reversed its original decision and ruled that a la carte channels could only be offered individually.

In its original cable rules, the agency had permitted cable operators under cer-

tain circumstances to offer individual channels, known as "a la carte" services, as a package, with a price discount over purchasing all the services individually.

CFA argued at the time that: a package of a la carte programming was an oxymoron, that the rules governing such packages were too complicated for the agency to oversee, and that it was necessary to "draw a bright line" between packaged and a la carte programming.

"We are extremely pleased that the agency has recognized the need to clearly distinguish between packaged services and a la carte programming and thus prevent abuses in this area that undermine the regulated tiers of service," Stillman said.

CFA/NACAA Identify Worst Consumer Ripoffs

Consumers filed several million complaints with government consumer protection agencies in 1993, according to the third annual report on the worst consumer ripoffs released by CFA and the National Association of Consumer Agency Administrators (NACAA) in October.

The groups also released a free pamphlet, "How to Resolve Your Consumer Complaint."

"Abusive sellers defraud consumers of billions of dollars a year," said CFA Executive Director Stephen Brobeck. "What is reported to consumer agencies represents only the tip of the iceberg."

Based on a survey of one Canadian and 43 U.S. consumer protection agencies, the report found that the overall number of complaints has remained fairly consistent over the three years in which surveys have been conducted, but complaints against home repair companies and telemarketers hawking sweepstakes and other contests are on the rise.

According to the report, new and used car sales, home improvement, car repairs, mail order, and telemarketing continue to be the subject of the most frequent complaints.

While the agencies surveyed received complaints on a wide variety of products

and services, the study found that most of the worst scams involve services sold by fly-by-night companies, often by phone or mail. These included: repairs (auto, appliance, home); business opportunities; finances (tax refunds, mortgage brokers, "reloaders"); and personal services (travel, modeling, dating, vocational education).

Three-Pronged Strategy Outlined

CFA and NACAA urged the adoption of a three-pronged strategy to prevent ripoffs and scams:

- First, new federal and state laws or regulations are needed to protect consumers, including used car warranties, auto leasing disclosures, travel agency deposit protections, rent-to-own restrictions, and additional telemarketing protections.

- Second, many federal, state, and local consumer protection agencies need additional resources to enforce consumer laws. Instead, during the past several years, many agencies have seen their budgets cut. "It does little good to establish new consumer protections if consumer agencies are unable to enforce them," Brobeck noted.

- Third, individual consumers must take preventive measures, by being wary of businesses they've never heard of offering deals that seem too good to be true.

"Consumer protection agencies cannot adequately deal with these scam artists without vigilant consumers," said NACAA Executive Director Susan Grant. "Individuals must learn to recognize fraudulent practices and report them to appropriate agencies."

Pamphlet Guides Consumers Through Complaint Process

For those consumers who become victims of scams, or who purchase poor or faulty merchandise, the new pamphlet, "How to Resolve Your Consumer Complaint," offers simple, straightforward, and practical steps that consumers can take to resolve their complaints.

In addition, it includes a description of various government agencies and other organizations that may be able to assist consumers in resolving complaints.

The free publication, which was developed with assistance from Sprint, is available by sending a self-addressed, stamped envelope to: CFA Complaint Resolution, P.O. Box 12099, Washington, D.C. 20005-0999.

Real Estate Revolution Allows Consumer Savings

A revolution is underway in the real estate agency system, conferring both significant risks and substantial potential benefits on consumers, according to a CFA report released in October.

The report, "Changes in Real Estate Agent Representation: Implications for Consumers," notes that alternatives to the old subagency system are increasing, with subagency virtually disappearing in several states.

"The revolution in agency offers sellers the opportunity to save billions of dollars on commissions," explained CFA Executive Director Stephen Brobeck, author of the report.

"Those working with facilitators or dual agents should insist on a sharp reduction from the prevailing six to seven percent commission rate," he added. "Just reducing the average commission by one percentage point would save consumers nationwide about \$4 billion a year."

For buyers, the changes underway offer an opportunity to save billions of dollars in lower home prices, Brobeck added.

"Buyers working with buyer agents usually pay lower home prices," he said. "And if buyers choose to negotiate directly with the seller's broker, they know that this broker has the option of lowering the commission considerably, thus allowing the seller to lower the home price."

The Agency Revolution

The changes in the agency system are the result of a combination of litigation,

challenges from exclusive buyer brokers, criticism from consumer groups, and the related press coverage, according to the report.

This has caused traditional brokers to experiment with alternatives to subagency that allow them to minimize the problems with subagency while still capturing the entire commission, the report states.

The principal alternatives to the subagency system that have developed are:

- facilitatorship, also called transactional brokerage, in which the broker assists in the sale, but does not represent either party;
- dual agency, in which the broker claims to represent both the buyer and seller in the transaction; and
- non-exclusive buyer brokerage, in which a broker in a traditional firm represents the buyer exclusively during the transaction.

Facilitatorship is attractive to brokers, because they "retain the possibility of being the only broker, thus receiving the entire commission, while limiting their liability," Brobeck said.

However, consumers may want to work with someone who represents their interests and can be held accountable. Furthermore, "limiting the role of brokers also ought to limit their compensation," he said. "If compensation is reduced, facilitatorship can be one attractive option," he said.

Dual agency, on the other hand, offers none of the benefits of facilitatorship. "Fundamentally, it does not make any

sense," Brobeck said. "A broker cannot represent the conflicting interest of both the seller and the buyer in a home sale."

"The result is that dual agents are forced to act more like facilitators than agents. Yet this is deceptive. If brokers only facilitate, then they should acknowledge that and not try to mislead consumers. They should also be paid less," Brobeck said.

Buyer Brokerage Offers Most Promise For Consumers

Nonexclusive buyer brokerage is the "most promising alternative to subagency that is being tried by traditional brokers," the report concludes. One important advantage is that, if the broker does not adequately represent the buyer's interests, "there is liability that can serve as the basis for a lawsuit."

Nonetheless, "this type of buyer brokerage still faces a dual agency dilemma," Brobeck noted.

The most serious conflict arises when the individual buyer broker also has listed properties and owes allegiance both to the owners of the properties he has listed and the buyer he represents. Conflicts also arise when the firm lists properties, even if the individual buyer broker does not.

"These dual agency problems are why it is desirable to separate completely listing and buyer brokerage," the report states. "Listing brokers should work only for and receive compensation only from sellers, and buyer brokers should represent buyers exclusively and be compensated by them."

In addition to limiting conflicts, such a system should benefit consumers by enabling them to negotiate compensation and thus reduce total commissions paid, Brobeck said.

Since there is currently too much institutional resistance to, and insufficient political support for, requiring such a separation, firms should, at a minimum, designate certain agents as exclusive buyer brokers. Furthermore, these buyer brokers should be required to disclose any listings of the firm that they show and acknowledge the firm's financial interest in these listings, he said.

Role of State Regulators

"In this agency revolution, state real estate regulators have a critically important role to play," Brobeck added.

First, regulators should inform buyers and sellers about their state's agency system and its implications for consumers, by requiring effective agency disclosures at the first substantive contact, widely disseminating information themselves, and urging the press to cover agency issues.

Second, regulators should insist on truth in labeling, by proscribing the use of self-contradictory terms such as "dual agency" and by standardizing the terms for facilitatorship and non-exclusive and exclusive buyer brokerage.

Finally, regulators should encourage the industry to employ pro-consumer practices, Brobeck concluded. "They must show leadership in working out solutions to problems with agency."

OSHA Indoor Air Quality Proposal Endorsed

Both workers and employers will reap tremendous benefits from a proposal by the Occupational Safety and Health Administration (OSHA) to establish procedures to address workplace indoor air quality, according to CFA comments on the proposal filed with the agency in August.

Under the proposal, employers must develop indoor air quality compliance plans, including steps to address employee complaints regarding "building related illnesses." The rule would also prohibit smoking in the workplace except in designated smoking areas exhausted directly outside.

"This rule will be a significant step forward in protecting workers from indoor air pollution," said CFA Product Safety Director Mary Ellen Fise. "While the aim of this rule is to protect workers' health, consumers who use or visit 'non-industrial work environments,' such as schools, libraries, movie theaters, hospitals, and other places, will also benefit."

In comments on the Notice of Proposed Rulemaking, CFA suggested several changes to improve the OSHA proposal. For example, under the rule, an employee complaint regarding a building related illness is a key trigger requiring employer action, including maintaining a written record of the complaint and evaluating the need to perform alterations to the building system to remove the cause of the complaint. However, since not all symptoms associated with poor indoor air quality can be documented by laboratory findings, the OSHA rule should also recognize sick building syndrome as a trigger for employer action, the comments state.

Furthermore, although the rule requires that the person responsible for implementation of the indoor air quality plan be knowledgeable about both the standard and the building systems affected, it should also require that this individual receive training about factors that affect indoor air quality and about preventing and resolving indoor air quality problems, the comments state.

While praising OSHA for including a system for employees to register complaints about building air quality, the comments note that the proposed rule is "somewhat vague in giving guidance on what is proper resolution of a complaint." Also, the complaint process "does not include enough direction for the amount of time allowed for complying with various sections."

CFA urged OSHA to move forward as quickly as possible on the proposal. "Preventing indoor air pollution and addressing indoor air complaints promptly are key measures to improving worker and occupant health," the comments conclude. "This rule will help assure that American workplaces practice these principles and protect employees."

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