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Policy-makers Tackle Payday Lending

With payday lenders stepping up their efforts to weaken state usury laws, advocates and policy-makers at both the state and federal level have fought back with new proposals to rein in these predatory lending practices.

"Payday lending has grown into a multi-billion dollar industry by gouging desperate, cash-strapped consumers," said CFA Director of Consumer Protection Jean Ann Fox. "It's time for state and federal officials to put a stop to this legal loan sharking."

Much of the action to date has occurred at the state level, since states have traditionally had responsibility for regulating small loan rates and prohibiting usury.

Bills to tighten restrictions on payday lenders were introduced in Alabama, California, Illinois, Kentucky, and Wisconsin during the 2000 legislative session.

By early March, however, the California and Illinois bills had already died, and the Wisconsin bill was stalled in committee. Alabama's pro-consumer bill had been reported to the Senate floor, where it stalled, while a bill sponsored by the industry had passed the Senate.

In Kentucky, the consumer protections were stripped from the bill on the House floor. Worse, an amendment was added to deprive Kentucky consumers of victories they have won in court seeking to recover illegal rates charged before payday loans were legalized in the state in 1998.

Meanwhile, payday lenders succeeded in getting anti-consumer bills introduced in Arizona, Colorado, Florida, Georgia, Indiana, Illinois, Maryland, Michigan, and Virginia.

Bad Bills Defeated

In a series of important victories, state level consumer advocates had stopped those bills or gotten them put on hold in Georgia, Indiana, Illinois, Maryland, Michigan, and Virginia.

State regulators have also begun to act.

In Indiana, for example, the Attorney General issued an opinion that payday loans that charge more than 36 percent APR violate the Indiana small loan law, and loans that cost more than 72 percent violate the state's criminal loan-sharking law. The industry has sued to overturn the opinion.

Maryland's credit administrator and Attorney General have announced actions to enforce Maryland's small loan law, which an Attorney General's opinion held was written to prevent just this type of predatory lending.

In Texas, on the other hand, the Finance Commission has issued proposed regulations to permit payday loans under provisions of state small loan laws, with legal rates of 570 percent APR for seven-day loans.

With state action at something of a stalemate, members of Congress have also begun to enter the fray.

In 1999, Rep. Bobby Rush (D-IL) introduced H.R. 1684 to set minimum standards for state payday loan laws and to require banks to comply with the payday loan laws of the state in which the consumer receives the proceeds of the loan.

In March, Rep. John LaFalce (D-NY) introduced legislation that goes a step further, by prohibiting federally insured banks from making payday loans either directly or indirectly and by prohibiting uninsured lenders from using a personal check or electronic authorization on an account with an insured institution in connection with a payday loan.

The bill would also reinforce court decisions holding that the Truth in Lending Act covers payday loans.

And in December, Sen. Joseph Lieberman (D-CT) held a forum on payday lending at which CFA's Fox testified.

Congressional Action Needed

"Only Congress can close the bank loophole for payday loan evasion of state usury laws," Fox said. "Only Congress can prevent checks drawn on federally insured depository institutions from being used for high-risk payday loans.

"It is time for Congress to act," she said, "especially since the Office of the Comptroller of the Currency has failed to rein in national banks, such as Eagle National Bank."

CFA and other consumer groups have complained to OCC about Eagle's "satisfactory" CRA rating despite its heavy involvement in usurious lending.

The Federal Reserve Board, meanwhile, has issued a proposal to amend the official staff commentary to Regulation Z as it applies to payday loans.

CFA and U.S. PIRG submitted comments in support of the proposal in January, noting that courts have consistently found that payday loans are credit transactions subject to truth in lending.

Because the industry uses a number of strategies, such as "sales-leaseback" transactions, to disguise their loans in states with usury caps, they urged that the proposal be strengthened by broadening the definition of payday loans to include all transactions in which a consumer exchanges a personal check for a cash advance.

In addition, CFA and U.S. PIRG urged the Fed to state explicitly that the proposal represents a clarification of existing law, not a change in law.

Courts Review Mandatory Arbitration Clauses

CFA has also joined with AARP and the National Consumer Law Center to file amicus briefs in two court cases involving payday lenders.

Both cases – one in the Arkansas Supreme Court and one in the Alabama Supreme Court–involve payday lenders who used mandatory arbitration clauses in their contracts to prevent consumers from going to court.

The contracts also restricted the rights of consumers to participate in class action lawsuits while retaining lenders' right to use the courts to collect on "bad" checks.

In both cases, lower courts have struck down the arbitration clauses on the grounds that the underlying loans were illegal.

The industry, meanwhile, has attempted to fend off regulation through release of voluntary "best practices" that CFA and U.S. PIRG have criticized for falling far short of offering real protections.

"Even if payday lenders complied with all those proposals, loans would still cost more than 300 percent interest, trap borrowers in debt, and lead to coercive collections," Fox said. "Consumers need real protection against usury, not unenforceable public relations ploys."

Survey Results: Payday Lenders Gouge Consumers

Charging consumers interest rates of 390 percent or more, payday lenders continue to expand their operations, according to a report released in February by CFA and U.S. Public Interest Research Group (U.S. PIRG).

Furthermore, where state law prohibits or limits payday lending, the industry is increasingly forming alliances with national banks in an attempt to avoid regulation, the report finds.

"Consumers who turn to payday loan operations for quick cash wind up paying interest rates that would make a loan shark blush," said U.S. PIRG Consumer Program Director Ed Mierzwinski.

In a typical payday loan, a consumer writes a personal check for $115 to borrow $100 for two weeks (until payday). This equates to an Annual Percentage Rate (APR) of 390 percent for the loan.

At the end of the two-week period, the consumer often "rolls the loan over," paying an additional $15 to carry it for two more weeks and increasing the finance charge on the loan to $30.

"No matter how desperate the consumer, no lender should be able to gouge the public with such high-cost loans," said CFA Consumer Protection Director Jean Ann Fox.

"Payday loans trap consumers on a debt treadmill and expose borrowers who can't pay to coercive collection practices," she added.

The new report, Show Me the Money, is based on surveys of 230 payday lenders in 19 states and the District of Columbia. The surveys were conducted by CFA member groups and PIRGs as part of the high cost credit coordinated campaign.

They found:

- Twenty-three states plus the District of Columbia have legalized payday lending by enacting industry-sponsored legislation that exempts the firms from usury and other credit laws, another eight states allow payday lending because they lack usury limits and other small loan rules, and the remaining 19 states prohibit payday lending through a combination of interest rate ceilings and/or usury laws.
- Nationally, the average APR calculated by PIRG and CFA researchers was 474 percent for a two-week loan.
- Most payday lenders questioned either failed to quote an APR, denied that an APR applied to the loan, or wrongly quoted the lower two-week rate rather than the correct annual rate.
- Although they often claim their loans are preferable to bouncing checks, payday lenders typically charge consumers bounced check fees averaging over $22, and as high as $40 per check, if a payday loan check is returned for insufficient funds.

"These are not just 'mom and pop' corner store operations," Fox noted.

Although payday loans are being made through pawn shops, at gas stations, over the Internet, and via faxed applications, many payday lenders are part of national chains, she said. The industry forecasts more than $2 billion in revenues this year.

The report also found that, increasingly, payday lenders are partnering with banks and thrifts to make loans, particularly in states like Texas and Virginia that prohibit payday lending.

"This abusive practice is made possible, because national banks, such as Eagle National Bank and Banco Popular, claim that they can 'export' deregulated interest rates from the bank's home state, regardless of the protections where the consumer lives," Fox noted.

Other banks and thrifts found by researchers to be making payday loans were County Bank (DE), Web Bank (a Utah industrial loan company), and Goleta National Bank (a partner with Ace Cash Express).

For a copy of the report, send $20 prepaid to "Show Me the Money," CFA, 1424 16th St., N.W., Suite 604, Washington, D.C. 20036. Or, it can be obtained for free through CFA's website at www.consumerfed.org. Look for it under press releases.

Insurance Regulators Must Adapt to New World

The post-industrial revolution that is transforming the economy also poses enormous challenges for insurance regulation, CFA Director of Insurance J. Robert Hunter said in a February speech to the National Association of Insurance Commissioners (NAIC).

Hunter posed two key questions for state regulators:

- "how will state regulation deal with the trend to global business entities involving financial services other than insurance in the corporate structure?" and
- how will insurance regulation deal with regulation of transactions moving at electronic speed in the consumer's home?"

The increasingly global nature of the industry makes some federal role in insurance regulation inevitable, Hunter said, if only to negotiate "international arrangements required to control global insurance operations."

He called on the NAIC "to swallow the turf issue in order to deal with the federal government as a potential partner rather than...as a competitor...Insurance is too important to the nation's well-being to keep the status quo," he said.

He urged NAIC to develop a proposal for a federal role in insurance regulation that would leave the states as "the locus of regulatory authority," with "NAIC overseeing more cooperative efforts, and the federal government both empowering joint state action and providing technical assistance."

As a first step, NAIC should initiate a discussion among state regulators, federal government representatives, insurance companies, banks, Internet sales sites, consumers, and other interested parties on the appropriate federal role in insurance regulation, he said.

Technological Advances Pose Challenges

Insurance regulation must also meet the challenge posed by technological advances, and particularly the sale of insurance over the Internet, Hunter said.

"Consumers are concerned about at least two things as the Internet expands," privacy and inappropriate dealing by vendors, he said.

Consumers "understand the need for information for, say, insurance underwriting," Hunter said. "But we want firewalls around that information, unless we agree to certain releases of data."

Those firewalls should be "within the corporate structure, as well as without," and the penalties for violations should be severe, he said.

NAIC also has a central role to play in directing consumers to "excellent, unbiased information," particularly through its website, he said.

He proposed that NAIC use its website to steer consumers to comparative price, service, and solvency information.

"If NAIC would set itself up as the arbiter of safe, trustworthy Internet sites, it would perform a great service for consumers," he said.

Better Online Sales Protections Needed

Finally, NAIC needs to figure out how to provide "real-time responses to real-time sales problems," he said. "This requires that NAIC develop a web review mechanism to monitor insurance transactions on the web.

"How to...get the states and the NAIC up to speed for the Internet revolution is a vital component of readying insurance regulation to be able to deal with the future," Hunter said.

"Some transferring of authority to a central place—be it NAIC or a federal agency—seems necessary. International cooperation is necessary. But so too is your willingness to work one-on-one with consumers to help them cope with these changes," he said.

"I see a great opportunity for state regulation in this revolution," he concluded. "You can become stronger, gain new partners, and interact with each of your constituents electronically. But it won't be easy."

Passage of Senate Electronic Signatures Bill Urged

As the conference committee prepared to get underway to produce a final version of electronic signatures legislation, consumer advocates, state officials, and others were urging adoption of the Senate bill.

"Federal legislation can help consumers by facilitating electronic commerce and ensuring that consumers have the same rights online as they have offline," said CFA Legislative Director Travis Plunkett. "The Senate bill achieves this goal."

"In contrast, because it affects purchases offline as well as online and preempts a vast array of state laws, the House bill would have a devastating impact on consumers, particularly low-income and elderly consumers who do not have access to the Internet," Plunkett said.

The House bill is also opposed by a variety of state-level policy makers and enforcement officials, including the National Association of Attorneys General and the National Association of State Legislators; dozens of state and national organizations representing consumers and low-income people, including all the major national consumer groups; the UAW; and at least 27 law professors.

Among the most serious problems with the House bill is its potential to harm consumers who do not conduct business online.

House Bill Undermines Protections for Offline Transactions

Under the bill, consumers conducting "person-to-person" transactions could, as a result of simply signing a piece of paper, find that all contracts, notices, disclosures, and records relating to the transaction are posted on a website in their name, even if the consumer does not own a computer.

Furthermore, the House bill does not require sellers to ensure that consumers can actually receive and access important records, such as warranties or recall notices, at the time of the transaction or after the sale.

Nor does it require that records, such as purchase agreements or contracts, be in a tamper-proof format, leaving consumers with no reliable means to prove the terms of transactions.

The bill threatens state law enforcement efforts by preempting state record retention requirements for paper documents, requiring only the retention of an electronic record that "accurately reflects" the information in the document.

"This would make prosecutions for forgery and disputes involving documents—such as disputes over right ownership of life insurance policies—virtually impossible to resolve, as the document with the original, physical signature would no longer be in existence," Plunkett said.

State Laws Preempted

The bill also preempts state laws regarding required notices, disclosures, and records that have nothing to do with electronic commerce unless a state enacts legislation validating electronic signatures and records that is completely consistent with the House bill.

The result would be preemption of a vast number of state insurance, banking, real estate, labor, and environmental laws regarding the delivery and posting of notices and disclosures to consumers and workers, Plunkett said.

While the House appointed its conferees early in the session, appointment of Senate conferees was delayed because of a dispute about whether conferees from beyond the Senate Commerce Committee should be appointed.

The administration has threatened to veto the House bill, if it is adopted by the conference committee, and is said to be working behind the scenes to strengthen the bill's protections.

On the other hand, the high tech and financial services industries are lobbying hard for enactment of the anti-consumer House bill.

"In promoting the House bill, industry lobbyists are pulling a classic 'bait and switch' maneuver," Plunkett said. "The bill goes far beyond the legitimate goal of specifying clear rules for online business agreements to roll back important federal and state consumer protection laws."

Insurers Fail To Pass On Savings

Insurers enjoyed substantial cost savings in 1999 on auto and homeowners lines, but passed on only a small portion of those savings to consumers, according to a CFA study released in February.

Auto insurance claims frequency and costs dropped 11 percent in 1999, but auto insurance rates only dropped by an estimated one to four percent, according to the study.

Home insurance claims frequency and costs dropped by about seven percent in 1999, but insurers actually raised home insurance rates by an estimated three percent, the study found.

"In other words, insurers only lowered auto rates by about one-third of the cost savings they enjoyed last year, and they increased homeowners' rates even as their underlying costs declined," said CFA Director of Insurance J. Robert Hunter, author of the report.

Hunter called on the insurance companies to bring rates more into line with costs, and he called on state insurance regulators to look into the apparent disparity between cost changes and price changes.

The study analyzes A.M Best and Company data on insurance premiums for auto and homeowners insurance and Insurance Services Office data on the costs of settling claims for these lines of insurance.

Hunter, an actuary, then adjusted the data for factors, such as population growth and purchases of more expensive cars and houses, that would be expected to cause premiums to rise.

Thus, while A.M. Best has estimated that personal auto insurance premiums rose by 2.6 percent in 1999, Hunter concluded that rates had actually declined by about one percent when population growth and consumers' purchase of new, more expensive cars are factored in.

Similarly, A.M. Best estimates that home premiums rose by 8.4 percent in 1999. Once population growth and purchase of new, more expensive homes are factored in, Hunter estimated that the cost of homeowners insurance went up by about three percent.

Based on his analysis, Hunter concluded that auto insurance rates should have dropped by about 10 percent, while homeowners insurance rates should have dropped by about five percent.

"Consumers understand that a dollar of cost savings might not result in a dollar of price cuts, but there should be a fair allocation of savings to consumers," Hunter said. "They should not be given to shareholders in a disproportionate way."

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Most Drinking Water Reports Measure Up

Most of the water quality reports issued by water utilities meet or exceed federal requirements, according to a report released in March by the Campaign for Safe and Affordable Drinking Water, of which CFA is a member.

The "right to know" reports are required under the 1996 reauthorization of the Safe Drinking Water Act.

While 56 percent of the reports reviewed met or exceeded federal requirements and provided consumers with straightforward information about their drinking water, 44 percent received grades of "D" or "F."

"These reports provide citizens with an essential new tool to make informed, health-based decisions about their drinking water," said CFA Public Policy Associate Diana Neidle. "They also represent an essential first step to increasing drinking water source protection efforts nationally."

"We are encouraged that the reports are being widely distributed to people for the first time, but we are concerned that some of these reports leave consumers with misleading or inadequate information," she added.

The survey, *Measuring Up: Grading the First Round of Drinking Water Right to Know Reports*, examined 430 reports from water utilities in 20 states and the District of Columbia serving more than 40 million people.

The survey grades the reports on whether they contained health warnings for vulnerable populations, clearly listed the contaminants detected, detailed sources of contaminants, and described the drinking water source.

Utilities lost credit if the reports included sweeping, unqualified statements about the safety of drinking water or were not adequately distributed to consumers. The actual quality of drinking water or drinking water sources was not evaluated.

On the positive side:

- 93 percent of reports evaluated clearly listed detected contaminants;
- 92 percent of reports listed general sources of detected contaminants; and
- 90 percent of utilities surveyed made an adequate effort to distribute the reports to consumers by mailing them to individual households, distributing reports to community groups, or posting reports on the Internet.

On the other hand:

- while virtually all the reports evaluated contained warnings for vulnerable populations, only 26 percent gave the warnings adequate prominence; and
- 45 percent of reports evaluated made unqualified statements of safety, such as "Is your water safe? Yes."

"While such reassurances may be true for some people, they may not be true for those who are more vulnerable to drinking water contaminants, such as infants, the frail elderly, people undergoing chemotherapy, or people with HIV/AIDS," Neidle said.

"Moreover, such statements do not take into account that some federal drinking water standards, such as the current arsenic standard, are woefully out of date and are not protective of even healthy adults," she said.

The Campaign for Safe and Affordable Drinking Water strongly urged that such statements be eliminated from future reports.

The Campaign also recommended that utilities, states, and EPA work together to address why many reports missed one or more key regulatory requirement.

For a copy of the full survey, send $10 prepaid to Drinking Water Survey care of CFA, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

Two free fact sheets—*Making Sense of Right to Know Reports* and *Are You More Vulnerable to Drinking Water Contaminants?*—are also available from CFA. To receive a copy, send a self-addressed stamped envelope to Drinking Water Fact Sheets at the above address.

EPA Urged To Strengthen Radon in Water Rule

In February, CFA submitted comments to the Environmental Protection Agency urging that its proposed rule on radon in drinking water be strengthened.

CFA strongly urged that the proposed notice to the public concerning radon be strengthened because it:

- does not clearly differentiate between types of radon exposure;
- does not give consumers enough information to enable them to put relative risks in perspective; and
- is not likely to motivate them to take action to test for radon and to mitigate if high levels are found.

While one aspect of the rule requires states to establish public awareness programs, including programs to promote testing of homes, CFA expressed concern over the lack of public awareness messages concerning mitigation.

"Many consumers test their homes but fail to mitigate, and as a result never achieve risk reduction," said CFA General Counsel Mary Ellen Fise.

CFA also urged that more immediate and active public notification be required when states fail to make adequate progress toward their mitigation goals. This would provide an added incentive for state compliance, Fise noted.

FDA's Henney To Speak At Food Conference

Food and Drug Administration Commissioner Jane E. Henney heads the list of confirmed speakers for the twenty-third annual National Food Policy Conference set for April 17 and 18 in Washington, D.C.

With the merger last year of Public Voice for Food and Health Policy into CFA, CFA is now coordinator of this national gathering for those interested in food and agriculture policy.

A special focus of this year's conference is the science and safety of genetically engineered foods.

The conference will open with a debate on this topic moderated by Washington Post reporter John Schwartz. Henney, whose agency oversees approval of genetically engineered foods, will speak Tuesday. And Gordon Conway, President of the Rockefeller Foundation, will also address the topic during Monday's luncheon speech.

Other topics to be covered at the conference include corporate concentration in food and agriculture, media coverage of food safety, the future of small family farms, fad diets, obesity, declining food stamp enrollment, and challenges to the government's new meat and poultry inspection system.

The Golden Carrot Awards Reception will take place the first evening of the conference. For more than a decade, the Golden Carrot Awards have honored those who advance the consumer interest in food and agriculture policy.

For the latest information on the conference, or to register online, check the CFA website at www.consumerfed.org or call CFA at 202-387-6121.

Health Care Antitrust Exemption Opposed

Legislation to grant a broad antitrust exemption to self-employed physicians, pharmacists, and other health care professionals poses a threat to health care consumers, CFA warned in a February letter to House Judiciary Committee members.

"CFA vigorously supports the enactment of significant reforms that would improve the quality of care offered by managed health care plans and allow health care providers to better advocate on behalf of their patients. However, this bill would likely do more harm than good for consumers," CFA Chairman Sen. Howard Metzenbaum (Ret.) and CFA Legislative Director Travis Plunkett wrote in a letter to House Judiciary Committee Chairman Henry Hyde (R-IL) and Ranking Minority Member John Conyers (D-MI).

"H.R. 1304 would authorize the creation of health care cartels, not unions," they explained.

Instead of amending labor laws to permit self-employed health care professional to form a bona fide labor union or establishing oversight of the collective bargaining process under the auspices of the National Labor Relations Board, the bill amends the federal antitrust laws to grant providers a blanket exemption in negotiating with health plans.

That exemption covers not only health care quality issues, but also price.

"This could lead to increased health care costs without a corresponding improvement in health care quality or access, further increasing the 43 million Americans who have no health insurance," Plunkett said.

Non-physician Providers Threatened

According to the Department of Justice and the FTC, physicians and other providers are already free to work in concert to raise quality-of-care issues with insurance plans.

The bill would go further, allowing physicians to collude on price, divide up markets, and work in concert to drive competing non-physician providers, such as nurse midwives and chiropractors, out of business, Plunkett said.

"As a result, the bill is opposed by virtually every organization representing non-physician providers, including the American Nurses Association," he said.

Instead of passing H.R. 1304, Sen. Metzenbaum has proposed that Congress convene a committee or working group, representing all major interests including health care consumers, to examine more closely the implications of an antitrust exemption for providers and to offer workable solutions to the concerns raised by proponents of the legislation.

CFA also called on the FTC and DOJ to step up their efforts to detect and prosecute anti-competitive business practices by managed care organizations and health care providers and to examine plan mergers more closely, particularly with respect to their impact on consumers.

FTC and DOJ should also ensure that their guidelines allow providers to work together easily to raise valid quality-of-care concerns with managed care providers, CFA urged.

Metzenbaum Applauds Tougher FTC Antitrust Stance

FTC Chairman Robert Pitofsky announced in January that the agency would be getting tougher in its oversight of the growing number of large corporate mergers.

That announcement was applauded by Sen. Metzenbaum, who has long advocated stronger antitrust regulation.

"From telecommunications to banking to health care, corporations are increasingly getting the 'urge to merge,' the former chairman of the Senate Antitrust Subcommittee said. "Mergers often mean higher prices and fewer choices to consumers."

Pitofsky said the FTC will increasingly deny approval for mergers that are not in the public interest.

Furthermore, where mergers are not rejected outright, he pledged a change in the agency's policy of simply requiring merging companies to sell off affiliates or assets to any interested buyer to avoid the dominance of the new merged company in a particular regional market.

Instead, he said, the FTC will insist that divestiture result in vigorous competition.

"I commend the FTC for responding to new market conditions by showing a greater willingness to put the brakes on these mega-mergers or to require meaningful divestiture before they are allowed to proceed," Sen. Metzenbaum said.

"It is particularly good news that Chairman Pitofsky has said that the FTC will have to 'just say no' to the increasing number of mergers that are a threat to consumers," he added. "Too often in the past, government agencies have been willing to rubber stamp mergers that resulted in reduced competition, higher prices, and fewer choices for Americans."

TACD Urges Halt to AOL-Time Warner Merger

Leading consumer organizations from both sides of the Atlantic called on government agencies to halt the Time Warner-America Online merger until grave concerns about consumer privacy are addressed.

That warning came at the third meeting of the Transatlantic Consumer Dialogue (TACD), which was held in Washington, D.C. in February.

The TACD was formed in September 1998 to provide input into the E.U. and U.S. trade dialogue and to counterbalance the Transatlantic Business Dialogue.

More than 60 consumer leaders from 16 countries and government officials from both the United States and the European Union attended the February meeting.

"This was a highly productive meeting," said Jean Ann Fox, CFA's representative on the TACD steering committee. "Resolutions were adopted on a number of important issues, including electronic commerce, food safety and standards, and trade."

"Since we have begun working together to raise consumer concerns, we have seen real government progress in such areas as access to essential medicines in developing countries, eco-labeling, fair trade labeling, and regulatory cooperation," she said.

But privacy concerns were among the meeting's top priorities and were behind the group's opposition to the proposed merger between AOL and Time Warner.

Privacy Concerns Discussed

Consumer advocates fear the proposed merger would give the company more far-reaching and more sophisticated ability to collect information about consumer shopping and browsing habits that will be used in new ways to sell them products.

"The new world of the Internet has great potential for benefits for both consumers and businesses, but governments must think carefully before allowing mega-mergers that pose very real threats to consumer privacy," said U.S. Public Interest Group's Ed Mierzwinski, a member of the TACD steering committee.

The TACD also reiterated its strong opposition to the so-called "Safe Harbor," backed by the U.S. government, that would let American firms evade strong privacy laws that give European citizens control over the use of their personal information by businesses.

In December, TACD member groups issued a statement to the governments detailing the numerous ways in which the safe harbor's provisions allowing firms to self-certify their privacy practices fail to meet European standards for protecting consumers.

Despite those concerns, U.S. officials recently announced their intention to complete approval of the safe harbor by the end of March.

"We want an agreement that will respect the privacy rights of European consumers when their personal data is transferred to the United States, not a pirate's cove disguised as a safe harbor," said Jim Murray, who is the TACD chair for the European Union and director of BEUC, the European consumers union.

Food Resolutions Adopted

In other action, TACD recommended that the E.U. and U.S. governments:

- improve regulation of food labeling to ensure that misleading claims stopped in one region of the world cannot be made by the same company, or a subsidiary, in another region of the world;
- require that all genetically modified foods be carefully assessed before their commercial introduction and release into the environment and monitored and assessed after their release;
- require that genetically modified food be labeled; and
- adopt the precautionary principle—that it is better to be safe than sorry—in the areas of food and trade and incorporate that principle in the international standards setting process.

"The E.U. and U.S. consumer organizations found substantial agreement on a number of important food safety issues and will continue to urge our respective governments to take specific actions to protect public health," said Carol Tucker Foreman, Director of CFA's Food Policy Institute and a representative to TACD.

These issues were also addressed in speeches by U.S. Secretary of Agriculture Dan Glickman and European Commissioner for Health and Consumer Protection David Byrne.

Byrne, Glickman Discuss Food Safety

Byrne noted that the "confidence of consumers in Europe has been badly shaken over the past months and years by a succession of crises," and that, as a result, the European Union has been forced to "rethink our whole approach to food safety."

The guiding principles behind that process will be a commitment: to giving consumers the "whole truth" about their food; to making food safety the primary objective of food policy and not allowing producers' interests or trade concerns to jeopardize that objective; and to base decisions on science.

Glickman expressed confidence that the U.S. food safety system already meets those standards, but he added that all parties must work to ensure that they continue to be met with regard to new challenges, such as biotechnology.

"All of us have to understand ethical, safety, and environmental implications of biotechnology," he said. "Our testing has to be rigorous ... and we have to make sure that those involved in determining the safety of genetically-engineered products are independent from the people who stand to profit from them."

"The regulatory procedures we have in place are not only meeting the challenges of biotechnology, but we are adapting them to grow and develop with this new technology," Glickman assured the meeting.

The meeting also heard from U.S. Federal Trade Commissioner Mozelle Thompson, Rep. David Bonior (D-MI), Deputy U.S. Trade Representative Sue Esserman, the Ambassador of Portugal to the United States Joao Rocha Paris, and U.S. Undersecretary of State Alan Larson as well as from various American and European consumer leaders.

FERC Urged To Strengthen Transmission Rules

A Federal Energy Regulatory Commission rule to promote an open, reliable electricity transmission system through voluntary formation of Regional Transmission Organizations (RTOs) does not do enough to induce industry cooperation, according to comments filed by CFA.

The purpose of the RTOs, according to the rule, is "to promote efficiency in wholesale electricity markets and to ensure that consumers pay the lowest possible prices for reliable service." The RTOs must be independent of market participants and have adequate authority over technical and market functions to operate the transmission grid within a geographic area.

While praising the agency for "recognizing the importance of having the transmission system operated in a non-discriminatory manner that enhances reliability," CFA Research Director Mark Cooper also warned that "there is simply not enough muscle in the rule to induce the incumbent utilities to part with their market power voluntarily." CFA urged the FERC to declare that future mergers and market-based rates will not be allowed for vertically integrated utilities that are not members of approved RTOs.

"The problems in the interstate market are severe and require a quick response," Cooper said. If the process that FERC has initiated is to achieve its goal, the agency must provide "a much stronger incentive to collaborate in a constructive manner," he said.

Cooper compared the situation to that in the telecommunications industry, where "the slow and rancorous process to open the local market has come in spite of very clear requirements and powerful incentives in the Telecommunications Act of 1996. "As the FERC has structured its rule, there is much less to compel the vertically integrated incumbents in the electric utility industry to cooperate in market opening than in the telecommunications industry," he said.

Mergers and market-based rates offer such an incentive, Cooper said. Since a decision either to approve a merger or to allow market-based rates would only be in the public interest if it is contingent upon the lack of market power, "it makes perfectly good policy sense to require participation in an RTO as a necessary, but not sufficient, condition for granting these requests," he said. "Further, the failure of vertically integrated utilities to join RTOs should call into question the existing market-based rates and subject them to renewed FERC scrutiny," he said.

The text of CFA's filing with FERC is available on CFA's website at www.consumerfed.org/rtorecon.pdf.

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