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Senate Adopts Bankruptcy "Reform" Bill

The Senate gave overwhelming approval in September to legislation that would make it more difficult for financially strapped consumers to make a fresh start in bankruptcy.

Before adopting the bill, the Senate did include some pro-consumer provisions aimed at abusive credit practices.

"Despite these improvements, the bill contains serious flaws that would hurt women, children, working families, the elderly, and victims of drunk drivers," said CFA Legislative Director Mary Rouleau.

"While we continue to have strong reservations about this legislation," she added, "we are encouraged that the Senate bill does at least begin to recognize the shared responsibility of the large credit card companies and banks for the rising number of bankruptcies."

The bill, S. 1305, was approved on a 97-1 vote, with only Sen. Paul Wellstone (D-MN) objecting. The House adopted its bill, H.R. 3150, in May on a 306-118 vote.

Although both bills are designed to place new limits on access to Chapter 7 bankruptcy – in which debtors are able to discharge their debts and make a fresh start – substantial differences remain between the two versions. Those differences will have to be resolved if a final bill is to be enacted.

"We will be watching the conference committee process closely to try to ensure that any final bill does at least contain the Senate version of the means test and the pro-consumer measures that were added in the Senate," Rouleau said.

Pro-Consumer Amendments Adopted

The most significant of these is a requirement that, beginning in the year 2001, credit card statements disclose how long it would it take, and what the total cost would be, to pay off the bill making only the minimum payments.

"This is a fair and long-overdue reform," Rouleau said.

"It can take decades for consumers to pay off their debt if they make only minimum payments, and the total they end up paying is many times the amount originally borrowed," she added. "Consumers deserve that basic information."

The bill also requires that credit card solicitations include a worksheet to aid consumers in determining if they can afford to take on more debt.

During floor consideration, the Senate also approved: an amendment by Sen. Jack Reed (D-RI) to prohibit credit card companies from penalizing customers who pay their bills in full each month; and an amendment by Sen. Orrin Hatch (R-UT) to provide special protections for retirement savings in bankruptcy.

"Despite these improvements, the bill is still strongly tilted in favor of creditors at the expense of hard-pressed consumers," Rouleau said.

She noted, for example, that it still does not penalize creditors who extend further credit to consumers who are already over-burdened with debt.

Consumer groups had sought a provision that would have disallowed claims by creditors who knew, or should have known, that the credit extension would push the debtor's aggregate credit card debt over 40 percent of his or her income.

Study Documents Abusive Credit Marketing Practices

After racing through the House, the bill had slowed in the Senate over the summer as a result of questions raised by the White House and key senators regarding the role of the credit card industry in contributing to the rise in bankruptcies and the failure of the legislation to address that issue.

In July, CFA released a report showing that big banks dramatically expanded their card marketing and credit extension at the same time that they were financing their lobbying campaign to restrict consumer access to bankruptcy.

"Banks are hypocritical to seek bankruptcy restrictions when their irresponsible marketing and extension of credit card debt has been an important cause of rising personal bankruptcies," said CFA Executive Director Stephen Brobeck, author of the report.

Without adequate restrictions on irresponsible lending practices, passage of bankruptcy legislation will likely lead to further increases in bank card marketing and credit extension, Rouleau predicted.

"If consumers find it more difficult to declare bankruptcy, banks are likely to market debt more aggressively," she said.

The study – "Recent Trends in Bank Credit Card Marketing and Indebtedness" – found that, from January 1, 1997 through March of 1998, all revolving credit (from banks, non-banks, and retailers) increased just 7.6 percent, while bank card debt rose 23.5 percent. Unused bank card lines of credit grew by 50.3 percent during that same period.

Meanwhile, bank card mailings increased from 2.4 billion in 1996 to 3.0 billion in 1997, then to an annual rate of 3.2 billion in the first quarter of 1998. This represents a total increase of 33 percent.

"This aggressive marketing and credit extension, especially to low and moderate income households, is the principal reason for rising bank card debt losses," Brobeck said.

Bank card debt losses rose from 3.0 percent of outstanding debt in 1994 to an annual rate of 5.6 percent in the first quarter of 1998, an increase of 87 percent, the report found.

The report also found that the credit card marketplace is increasingly dominated by banks, and, in particular, by a few large banks.

From 1994 to the first quarter of 1998, the proportion of all revolving credit representing bank card debt grew from 60.5 percent to 79.1 percent. With credit card debt representing approximately 95 percent of all revolving credit, more than four-fifths of credit card debt today is bank card debt.

Big Banks Dominate Credit Market

Furthermore, over half of this bank card debt is held by only five big banks, once announced mergers are taken into account: Citicorp; MBNA; Chase Manhattan; Banc One/First Chicago; and BankAmerica/Nationsbank/Barnett.

The total credit extended on bank cards now exceeds $2 trillion, for an average of more than $20,000 per household. The amount of unused bank card credit lines dwarfs the amount of bank card debts, accounting for $1,778 billion of the $2,203 billion total of all bank card credit extended, compared to $425 billion in bank card debts.

While bank card charge-offs have risen recently, some banks have been far more responsible in their lending practices than others, leaving them with dramatically lower charge-off rates.

In 1997, the net charge-off rates of the 26 credit card banks with card debts exceeding $1 billion ranged from a low of

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House Pulls Plug on Electric Bill

Consumers scored an important victory in July, when House Commerce Committee Chairman Thomas J. Bliley, Jr. (R-VA) announced that his committee would not vote on electric deregulation legislation this year.

That decision, which effectively killed the issue for this legislative session, is good news for consumers, according to CFA Research Director Mark Cooper.

"Contrary to the claims of deregulation's proponents, electricity restructuring is a high-risk gamble for residential ratepayers, whose bills could end up higher, not lower, if the approach being advocated in Congress and by the administration is adopted," he said.

Cooper is author of a new study, "The Residential Ratepayer Economics of Electric Utility Restructuring," which uncovers the fundamental flaws in proponents' predictions that consumers will reap billions in savings from electric deregulation.

Released in July by CFA and Consumers Union, the report outlines four factors that are likely to push consumers' electric bills beyond competitive levels:

Potential Impact of Restructuring on Residential Electricity Bills

	Estimated Change
Price Decrease through Efficiency Gains	– 5–15%
Price Increase from Transaction Cost Increase and Loss of Economic Integration	+12–22%
Price Increase from Price Discrimination	+10–20%
Price Increase from Market Power Abuses	+ 9–23%
Price Increase through Stranded Cost Recovery	+ 7–10%

- new operating costs;
- price discrimination;
- monopolistic practices resulting from market power; and
- recovery of "stranded costs" from ratepayers.

Potential Risks Equal or Exceed Potential Benefits

"While there is no reason to assume the worst – that all of these factors will work against ordinary consumers – there is also no reason to assume the best – that none of them will," Cooper said.

"Since any one of these factors could wipe out residential ratepayer gains, it is quite clear that residential ratepayers will only benefit from restructuring if vigorous policies to protect their economic interests are implemented," he said.

"For consumers, many of the initial claims of price cuts and improved service

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Bankruptcy (Continued from Page 1)

2.2 percent at MBNA to a high of 13.5 percent at Mellon Bank.

Other banks with especially high charge-off rates were Corestates (13.1 percent), First Union (8.2 percent), Mercantile Bancorp (7.6 percent), Wells Fargo (7.5 percent), and First National (Nebraska) (7.5 percent).

"While charge-off rates can be inflated by debt sell-offs and deflated by rapid debt increases, they remain the best indicator of whether a bank is marketing credit card debt to many consumers who cannot afford to repay it," Brobeck explained.

Banks Lobby with Money, Misinformation

In an effort to reduce their losses and deflect attention from their risky lending, creditors launched a major lobbying campaign to win passage of the bankruptcy legislation, Rouleau said.

For example, the 25 largest credit card banks made $3.6 million in PAC, soft money, and individual campaign contributions during the 1997-98 cycle, according to the Center for Responsive Politics. The five banks listed above as dominating the bank card business contributed more than $2.5 million of this amount.

"Clearly, an important purpose of these investments is to reduce debt losses by several billion dollars through bankruptcy 'reforms,'" Rouleau said.

Creditors have also tried to raise support for their position by arguing that the average family pays $400 a year in bankruptcy-related debt losses.

The report exposes this as a "big lie." Since credit card rates have not changed appreciably in five years, even those consumers who carry balances have not been required to pay rising debt losses, the report notes.

In fact, the only cardholders who pay these losses are those charged rising late payment and over-the-credit-limit fees (now $25 at most big banks), and the penalty interest rates (usually well over 20 percent) resulting from late or missed payments.

Although they place a substantial financial burden on high-risk borrowers, and increase the likelihood of their insolvency and bankruptcy, these fees amount to only several billion dollars of the roughly $20 billion in credit card debts that banks wrote off last year.

Bank investors have actually paid for most of these losses in lower yields, the report found.

The report is based on data from Veribank, Inc., the Federal Reserve Board, and BAI Global Inc. It is available for $10 prepaid by writing to Credit Card Report, Consumer Federation of America, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

Electricity Deregulation (Continued from Page 1)

have been grossly misleading," added CU Legislative Counsel Adrienne Mitchem. "These early claims were based on optimistic scenarios that have little chance of coming to pass."

One area in which deregulation's proponents have been overly optimistic is in their predictions of efficiency gains in the industry that would result from competition.

"While estimates of efficiency gains run as high as 40 percent, these are based on assumptions about market behaviors that are unsustainable," Cooper said. "Actual experience suggests a more realistic projection would be in the 5 to 15 percent range."

Also left out of proponents' calculations is the fact that restructuring actually raises some costs.

The efficiencies associated with integration will be lost, for example, while the introduction of competition will result in new costs in such areas as system management, new facilities, and marketing.

The report estimates that these increases in transaction costs could increase the total bill paid by consumers by 10 to 20 percent.

Furthermore, the report notes, when competition is introduced into former monopoly industries, costs are shifted between customer classes. "Residential ratepayers, who have little bargaining power, are likely to be forced to bear a larger share of costs," Cooper said.

The report estimates that increases in the total bill paid by consumers as a result of cost shifting could be in the range of 10 to 20 percent.

Proponents' rosy scenarios are also based on the assumption that electricity markets will automatically work well. But this is a questionable assumption, Cooper said.

"Electricity markets are highly concentrated and are likely to be plagued by the abuse of market power – a small number of companies who can raise prices by collusion, price leadership, or parallel actions," he said.

Pricing abuse resulting from market control could raise total prices paid by consumers by 10 to 20 percent, the report estimates.

Finally, a factor unique to the electric industry is the incumbent utilities' attempts to recover so-called "stranded assets" from ratepayers.

Stranded assets are those current costs – such as nuclear power plants, fuel contracts, or purchased power agreements – that could not be recovered under competitive market prices.

These costs could reach the hundreds of billions of dollars nationwide, depending on how they are calculated, and they have been heavily allocated to residential ratepayers.

Recovered over a 5- to 15-year period, they could added 5 to 10 percent to consumers' total costs, the report estimates.

Legislative Proposals Fail To Address Problems

Neither the proposals being advanced by the Clinton administration nor the major bills being considered in Congress adequately addresses these potential problems, CFA and CU have concluded.

The report includes twenty "critical policy recommendations" to minimize transaction costs, reduce price discrimination, prevent abuse of market power, and limit the recovery of uneconomic costs.

When Congress and the administration return to this issue next session, as they are sure to do, they should incorporate these policies into any legislation they adopt, CFA and CU urged.

Otherwise, consumers are likely to see little actual competition and higher prices, as they have in the telecommunications and cable television industries since deregulation, Cooper said.

"Restructuring that cannot ensure competition can unleash market power which is disciplined by neither regulation nor competition," Cooper said.

"The fact that potential problems are at least as large as potential benefits only underscores the importance of requiring public policy to specifically address these problems and prevent them from afflicting residential ratepayers," he said.

Consumer Bills (Continued from Page 4)

Identity theft is the theft of Social Security numbers and other personal information for the purpose of opening banking accounts and establishing lines of credit.

"Theft of identity is a growing abuse of consumers," said CFA Consumer Protection Director Jean Ann Fox. "This legislation takes the important first step of making identity theft itself a crime.

"We are particularly pleased that the legislation recognizes that the consumer whose credit rating has been ruined is as much a victim of identity theft as the credit issuer or financial institution," she added.

In addition to criminalizing identity theft, the bill provides for victim restitution. It would also create a central complaint office at the Federal Trade Commission with responsibility both for referring cases to authorities for investigation and for providing consumer information.

Financial identity theft is one of the fastest growing white collar crimes. A recent report by the General Accounting Office cited several indicators that this problem is increasing:

- the Financial Crimes Division of the U.S. Secret Service investigated 9,455 identity theft cases in 1997, with losses totalling $745 million;
- the Secret Service Administration investigated 1,153 cases of Social Security Number fraud in 1997, up from 305 cases in 1993; and
- of the more than 500,000 consumer inquiries received by TransUnion credit bureau in 1997, two-thirds related to identity theft, up from 35,000 in 1992.

Similar legislation, H.R. 4151, has been introduced in the House but had not been acted on by mid-September.

Bank Regulatory Relief Bills Advance

Legislation to provide banks with long-sought "relief" from certain regulatory requirements made substantial progress toward enactment over the summer.

The Senate Banking Committee gave voice vote approval in July to S. 1405. In August, the House Banking and Financial Services Subcommittee followed suit, approving H.R. 4364 on a 15-7 vote.

Both bills contain a package of provisions to "streamline" banking regulation. And both would, among other things, allow the Federal Reserve to pay interest on reserves that banks are required to keep at the Federal Reserve banks.

Neither bill, however, includes any provisions to benefit consumers. As National Consumer Law Center Managing Attorney Margot Saunders noted in March testimony on S. 1405 on behalf of NCLC and CFA: "Although there are many updates and improvements to federal consumer protection laws that are needed, not one has been included in this bill."

The same holds true for the House bill.

Instead, S. 1405, as introduced, would have seriously undermined existing protections by:

- repealing anti-tying protections that prohibit banks from making consumers buy products or services they don't need to get the products or services they want;
- lifting prohibitions on kickbacks to mortgage brokers who steer consumers to certain lenders;
- rolling back requirements that lenders provide specific information to consumers about the cost of loans; and
- removing protections against abusive debt collection practices.

Advocates succeeded in getting these provisions either removed from the bill or improved during committee mark-up, but they did not succeed in getting any pro-consumer amendments added.

"The best we can say is that, while consumers will be no better off if this bill passes, they will not be as bad off as they might otherwise have been," said CFA Consumer Protection Director Jean Ann Fox.

The House bill did not contain the anti-consumer provisions in the Senate bill. During its consideration of H.R. 4364, however, the subcommittee adopted an amendment by Rep. Bill McCollum (R-FL) to exempt banks with less than $250 million in assets from the Community Reinvestment Act.

That amendment, which was adopted on a party-line vote, is generally considered to be a bill killer, since the president previously threatened to veto the credit union bill if the CRA exemption was included.

"If Congress does move forward with this legislation, we will continue to work to get pro-consumer provisions added," Fox said.

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Advocates Combat Unfair Demutualizations

Conversion of mutual insurance companies to stockholder-owned companies has become a nationwide, even worldwide, trend in recent years, with decidedly mixed results for policyholders.

"In all too many cases, these conversions have essentially raided policyholders of the company's value," said CFA Insurance Director J. Robert Hunter.

Mutual insurance companies are owned by their policyholders. When companies seek to "demutualize," the key question is how those policyholders will be compensated.

As demutualization became more popular, the mutual insurance industry began to seek ways to "streamline" the demutualization process, and thus limit their compensation to policyholders.

In 1995, they succeeded in winning passage in Iowa of the first state mutual holding company law. Since then, 15 states have adopted such laws, and they have been proposed in a number of others.

"These laws essentially allow management to rob control of the company from policyholders without providing them with fair compensation," Hunter said.

Under the laws, the mutual insurance company can reorganize as a stockholder-owned insurer that is a subsidiary of the new mutual holding company. The subsidiary can go public, but with the holding company retaining control of a majority of the stock.

State Laws Let Companies Avoid Policyholder Payouts

The problem, Hunter said, is that this essentially allows the company to convert without providing policyholders with any payout. In traditional demutualizations, policyholders receive a combination of cash and stock to compensate them for their ownership interest.

Some of the deals that have occurred under these state laws have been "pretty egregious," Hunter said, with as much as 25 percent of the company's assets going to management instead of policyholders.

When advocates began to turn the tide – by stopping passage of a mutual holding company law in New York, for example – the industry turned its attention to Congress.

This year, the industry succeeded in getting language included in H.R. 10, the financial services restructuring bill, that would allow companies to switch states in order to take advantage of the mutual holding company laws that the industry has succeeded in getting passed.

The provision was stripped from the Senate bill during Senate Banking Committee mark-up. It is not clear, however, whether a final bill will be passed before the end of the legislative session and, if so, whether it will include the demutualization provision.

Policyholders Need Voice In Decisions

Even if the provision is killed this year, a more permanent solution is needed, Hunter said, that gives policyholders a voice in the decision.

"Policyholders really don't have any control. They don't have a fair process so they can say, 'no,'" he said.

Hunter and other advocates have been pushing a process that would require that policyholders receive an independent evaluation of the deal and an opportunity to vote it up or down.

Meanwhile, Hunter and other advocates have been seeking innovative ways to ensure that the conversions currently going forward provide fair value to policyholders.

Recently, Hunter and CFA Life Insurance Actuary Jim Hunt were part of a group of independent insurance experts that sought to intervene in a proposed deal between Allied Mutual and Nationwide Mutual Insurance Company.

The brainchild of David Schiff, editor of *Schiff's Insurance Observer*, the plan was to have the existing board of Allied Mutual turn over control to the group of independent experts, who would then "sell it, give the money to policyholders, and get out," Hunter said.

The point was to draw attention to the unfairness of the offer being made to policyholders in the proposed deal with Nationwide, Hunter explained.

In that deal, policyholders are being promised a dividend of just $110 million. However, the company is worth at least $400 million, and could bring in $1 billion or more in a fair sale, he said.

Although Hunter was not optimistic that the Allied board would take them up on their offer, something needs to be done, he said, to stop this "national raid on policyholder assets."

Banks Charge Excessive Bounced Check Fees

Banks are making billion dollar profits off of bounced check fees, according to a CFA report released in June.

"Exorbitant fees boost the cost of banking for consumers who struggle to make ends meet," said CFA Director of Consumer Protection Jean Ann Fox. "Banks profit by charging both the over-drawn consumer who writes the check and the innocent consumer who deposits it," she added.

The report, "Bounced Checks: Billion Dollar Profits," reveals that the banking industry collects $5.6 billion from consumers in bounced check charges and another $1.1 billion for returning deposited checks that bounce.

According to the report, banks generated over $5.2 billion in annual profits on fees for bounced checks and $918 million in profits on returned deposits.

Even when check fraud losses of approximately $600 million annually are deducted, net income for bounced checks and returned deposits exceeds $5.5 billion per year.

The report, which is a follow-up to a 1993 CFA study, also found that:

- banks charge 11 to 32 times what it actually costs them to process bounced checks and 9 to 11 times what it costs to handle deposits that bounce;
- large banks charge the highest average bounced check fees, $20.29 on average compared to $15.05 for small banks, according to the Federal Reserve Board's 1997 report to Congress; and
- manipulative bank practices make it harder for consumers to avoid over-drawing accounts.

Manipulative Bank Practices Criticized

"Banks set traps to rack up bounced check fees," said report author Janice Shields. Shields, who is Director of the Institute for Business Research, noted that some banks program their computers to process a customer's largest check first on any given day.

"This makes it more likely that several smaller checks will bounce, with the bank charging a fee for each," she explained.

A national opinion poll commissioned by CFA and conducted in May by Opinion Research Corporation International found that consumers think fees are too high.

Nearly two-thirds of respondents (64 percent) believe that a $17 bounced check fee is too high, while only five percent believe it is too low.

The poll also showed that 64 percent want banks to clear checks in the order the bank receives them, while another 16 percent want banks to pay the smallest checks first to minimize the number of checks that bounce.

Reforms Advocated

The report contains several recommendations to policymakers, including:

- requiring banks to process all deposits for the day before paying checks from the account and to clear checks in the order in which the bank receives them;
- capping bounced check and returned deposit fees at amounts equal to cost plus a reasonable profit; and
- requiring that accounts designed for recipients of federal payments and basic, "no frills" accounts minimize bounced check and returned deposit fees to make these accounts more affordable to the millions of low income consumers who currently do not have checking accounts.

"Banks compare bounced check fees to easily avoided tickets for parking next to a fire hydrant and claim they are designed to discourage customers from overdrawing their accounts," Fox said.

However, this argument overstates both the deterrent effect of the fees and the simplicity of avoiding them, she said. One study found, for example, that 95 percent of bankers report no drop in the number of bounced checks after fees are increased, Fox noted.

Also, in the age of electronic money, avoiding overdrafts has become more complicated, she said. With funds deducted for ATM cash withdrawals, debit card purchases, and automatic bill payments and confusion about when direct deposits occur or when other deposits become available, "consumers have to work awfully hard to maintain an accurate record of their checking accounts," Fox explained.

"Furthermore, when banks rig the system to cause checks to bounce, they are, in effect, moving the fire hydrant after your car is parked," she said.

The report is available for $10 prepaid by writing to CFA Bounced Check Report, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

Courthouse Renamed To Honor Metzenbaum

The old federal courthouse in Cleveland, Ohio, where he once practiced as a young lawyer in the 1940s, has been renamed in honor of CFA Chairman Sen. Howard M. Metzenbaum (Ret.).

The turn-of-the-century building completed just seven years before he was born is now the Howard M. Metzenbaum U.S. Courthouse on Public Square.

Among those who delivered tributes to Sen. Metzenbaum during the May ceremony to dedicate the building was Attorney General Janet Reno. As reported in the *Cleveland Plain Dealer*, she challenged those in attendance to honor Sen. Metzenbaum "by rededicating themselves to his causes: the struggle for civil rights, safeguards for workers, and equal educational opportunities for all."

Others who participated in the program included gun control advocate Sarah Brady, who credited Sen. Metzenbaum with passage of the Brady Bill, and members of the Ohio congressional delegation, Sen. Mike DeWine, Rep. Dennis Kucinich, and Rep. Louis Stokes.

Calling the senator a "fighter," speakers also noted his honesty, integrity, persistence, and commitment to justice. All agreed that the senator had made huge contributions, not only to Ohio, but also to the entire country.

For his part, the senator took the opportunity to thank the many people, in particular his wife Shirley, who had made possible his career of public service.

And he spoke about the ability of one person to make a difference, "if he or she is willing to stand up and speak out."

That opportunity to make a difference is "not related to wealth, or where you were born, or the color of your skin, or the neighborhood where you were brought up," he said. "The opportunity is there. To me, that is still the greatness of this country."

CFA Executive Director Stephen Brobeck, who attended the ceremony, called it an "uplifting" occasion that inspired those in attendance "to do even better doing good."

Other CFA Staffers Also Honored

Two other CFA staffers have also recently received special recognition of their achievements as consumer advocates.

CFA Consumer Protection Director Jean Ann Fox is this year's winner of the prestigious NACAA Advocates Award, presented by the National Association of Consumer Agency Administrators at its annual conference.

According to NACAA, the award is given to the person "who exemplifies the best in enhancing and promoting consumer interests and fairness in the marketplace."

Fox was cited as "a determined and devoted advocate who has given much time, energy, wit, and wisdom in fighting for consumers."

CFA Insurance Director J. Robert Hunter was included in a recent *Business Insurance* magazine list of 30 "movers and shakers" in the insurance industry.

Compiled as part of the magazine's 30th anniversary issue, the list included representatives from industry and the regulatory community, as well as Hunter.

Hunter was interviewed for the issue about current problems in the insurance industry.

Congress Addresses Consumer Issues

Congress turned its attention to several consumer issues over the summer and early September, with mixed results for consumers.

The following is a summary of some of the bills – both pro- and anti-consumer – that have been working their way through the legislative process in recent months.

Weak Mortgage Insurance Bill Signed Into Law

Congress passed and the president signed flawed legislation intended to shield homeowners from unnecessary and costly private mortgage insurance payments.

"Congress set out to do something truly significant to address abuses in the private mortgage insurance market. Unfortunately, the final bill contained gaping loopholes that could leave many households unprotected," said CFA Consumer Protection Director Jean Ann Fox.

Lenders generally require borrowers who make a down payment of less than 20 percent to obtain private mortgage insurance to protect the lender from default.

Problems arise, however, when borrowers are forced to continue paying the insurance premiums even after they have paid off a substantial portion of their mortgage.

The new law, P.L. 105-216, establishes rules for disclosure and automatic cancellation of private mortgage insurance once home buyers build up significant equity.

As approved by Congress, however, the legislation creates an exception to the bill's automatic cancellation of coverage provisions for "high-risk" borrowers.

Instead of defining which borrowers would fall into this high-risk category, and thus lose the act's protections, Congress chose to grant a form of rule-making authority to Fannie Mae and Freddie Mac, two non-governmental entities. In addition, the legislation fails to create a mechanism for consumers whose circumstances change to cure their high-risk status.

Exacerbating the problem is the fact that the new law preempts the states from taking further action. While a few states would be granted a two-year window in which to "perfect" existing laws, others could not enact new, stronger laws.

"As a result, if new information suggests, for example, that the exception authority is being abused, states would be prevented from taking action," Fox said.

"While we strongly supported attempts to reign in abuses in the private mortgage insurance market, we are disappointed that Congress squandered this opportunity to enact effective protections," she said.

Furniture Flammability Rule Threatened

The House included language in the Consumer Product Safety Commission's fiscal year 1999 appropriations bill that would significantly delay work on the upholstered furniture fire rulemaking.

"This rulemaking is one of the most important consumer safety initiatives currently pending before the CPSC," said CFA General Counsel Mary Ellen Fise.

Fortunately, the CPSC appropriations bill approved by the Senate at the end of July does not contain the provision delaying the rulemaking. "It is essential that we keep this anti-consumer language out of the final bill," Fise said.

Home fires kill approximately 3,700 people in the United States each year, approximately 1,000 of whom are children under the age of 14. More fire deaths result from upholstered furniture than from any other product within the commission's jurisdiction.

As a result, the CPSC estimates that a rule on upholstery furniture flammability could save hundreds of lives and millions of dollars in societal costs each year.

The upholstered furniture industry sought to add the delaying language under the guise of concern over the potential toxicity of fire retardant chemicals, Fise said.

However, CPSC is already working closely with the Environmental Protection Agency to evaluate the potential risks to people and the environment from the use of fire retardant chemicals.

The language added to the House appropriations bill "would add at least three to five years to a rulemaking that is already four years old," Fise said. "Stopping the rulemaking and delaying for years significant new protections for the public is uncalled for."

"The United States has one of the highest fire death rates in the industrialized world," Fise added. "We need to continue to advance measures to reduce this tragic toll, not stymie legitimate, worthwhile public policy efforts."

Anti-Slamming Bills Advance

Legislation to crack down on "slamming" – the unauthorized switching of a telephone customer's long-distance service – has passed the full Senate and won approval from a House subcommittee.

The Senate gave unanimous approval to S. 1618 in May. In August, the House Telecommunications Subcommittee followed suit, adopting its version of the legislation, H.R. 3888, on a voice vote.

"It is important that Congress is acting to correct this problem, which persists despite industry's efforts to police itself," said CFA Legislative Director Mary Rouleau. "There will always be companies pushing the envelope."

Both bills would require companies to get customers' consent before switching their long-distance provider and to notify them of the change in writing.

Both bills would also require those who send unsolicited e-mail to provide recipients with an easy means of stopping future messages.

The Federal Communications Commission received more than 20,000 slamming complaints in 1997 and another 11,000 complaints in the first seven months of 1998.

Senate Approves "Identity Theft" Bill

The Senate approved legislation in July to make "identity theft" a federal crime.

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EPA To Appeal ETS Ruling

The Environmental Protection Agency announced in September that it will appeal a recent district court ruling that set aside parts of EPA's risk assessment classifying environmental tobacco smoke as a Group A carcinogen responsible for an estimated 3,000 cancer deaths each year.

"We are pleased that EPA plans to challenge what we believe is clearly an erroneous ruling," said CFA General Counsel Mary Ellen Fise. "In the meantime, families and communities should continue to protect themselves and their children from exposure to second-hand smoke."

Responding to a tobacco industry challenge filed four years ago, a North Carolina U.S. District Court judge ruled in July that the EPA used faulty methods to categorize environmental tobacco smoke as a Group A carcinogen, a designation meaning there is sufficient evidence to conclude that ETS causes cancer. Specifically, the court held that EPA's use of the Science Advisory Board's Air Quality Committee did not satisfy the Radon Gas and Indoor Air Quality Research Act's requirement that EPA establish and consult an advisory group.

Based on that determination, the judge then assessed whether EPA would have reached a different conclusion about the risk classification if it had used a different advisory group. His review of the risk assessment found that "EPA did not demonstrate a statistically significant association between ETS and lung cancer."

The ruling focused exclusively on the relation between ETS and lung cancer. It does not affect the risk assessment's conclusion that children are among the groups most affected by second-hand smoke, with children under 18 months at twice the risk of such infections as bronchitis and pneumonia if their parents smoke.

Announcing the agency's intention to appeal the ruling, EPA Administrator Carol M. Browner said: "It is widely accepted scientific fact that second-hand tobacco smoke poses significant risks to public health." In the appeal, EPA will defend its scientific review process, she said, noting that the 1993 risk study was reviewed and approved by 18 independent, leading scientists in the field.

Meanwhile, a May article in the *Journal of the American Medical Association* reported that more than 100 major studies have examined the risks of second-hand smoke, and 64 percent found evidence of harm. Of the studies that were inconclusive or found no effects from ETS, nearly three-quarters were written by scientists funded by the tobacco industry.

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