CFAnews

OCTOBER – DECEMBER 2008, VOLUME 34, NO. 5, ISSN #0732-8281

CONSUMER FEDERATION OF AMERICA

Banking Regulators Finalize Credit Card Rules

Federal banking regulators finalized rules in December to curb some of the most abusive credit card lending practices.

"Federal regulators have taken an important first step to stop credit card companies from using hidden traps and tricks to drive up the amount of debt consumers owe," said CFA Legislative Director Travis Plunkett.

The new rules prohibit the widespread practice of charging higher interest rates on balances incurred before a rate increase goes into effect, except where the cardholder is more than 30 days late in paying his or her bill.

Although the proposal does not prohibit card issuers from raising rates because of a supposed problem with another creditor or a drop in a cardholder's credit score – a reform long sought by consumer advocates – forbidding issuers from applying higher rates to existing charges should discourage credit card companies from unjustifiably increasing cardholders' interest rates in many cases, Plunkett said.

The new rules also require credit card issuers to more fairly apply the payments that cardholders make to balances with different interest rates.

When consumers transfer balances with low, short-term "teaser" rates, or take out high-rate cash advances, issuers would be required to apply payments either to the higher rate debt or to both the higher and lower rate debt proportionately. Currently, credit card issuers typically apply payments only to the lower rate debt.

The new rules also forbid "double cycle billing," which results in cardholders' paying interest on debts paid off the previous month during the grace period.

Finally, the new rules forbid credit card companies that target consumers with poor credit histories from requiring consumers to pay fees that amount to more than half of the credit being offered, if those fees are charged to the card that is being issued. If the fees charged to the card amount to more than one-quarter of the credit line, cardholders will be allowed to pay these fees off over a six-month period.

Congressional Action Needed

Plunkett applauded the federal banking regulators for finalizing the rules but expressed concern that the requirements will not take effect for more than 18 months.

"It is not helpful to consumers struggling to pay off hefty debts in the middle of a recession to give credit card companies the green light to continue to mislead and overcharge them for another year and a half," he said.

"We urge Congress to provide consumers with immediate relief from abusive credit card practices, including unfair tactics not addressed in these rules," he added.

A number of reforms have been proposed in Congress to address practices not targeted by the new rules. These include: restrictions on aggressive lending to young consumers; limits on excessive penalty fees and penalty interest rate increases; allowing over-limit fees to be charged only once unless additional charges increase balances above the account limit; prohibiting fees for payments by telephone, Internet, or mail; and prohibiting unilateral changes in terms of the credit card agreement.

"There is a very good chance that Congress will act on credit card legislation in the coming months," Plunkett said. "The House passed credit card legislation in September and Senate Banking Committee Chairman Dodd has said that one of his top priorities in the coming year will be to rein in credit card abuses."

Jury Out on Overdraft Loan Reforms

Within days of finalizing credit card rules, federal banking regulators withdrew proposed overdraft loan rules that consumer advocates had criticized as far too weak and the Federal Reserve issued a new proposal containing two alternative approaches.

CFA, Center for Responsible Lending, Consumers Union, U.S. PIRG, and the National Consumer Law Center applauded the fact that the previous weak rule was not finalized as originally proposed.

Among other short-comings, that proposed rule failed to require banks to obtain consumers' affirmative "opt-in" before enrolling account holders in their overdraft programs.

"What impact the new proposal will have on abusive fees depends primarily on which approach the Fed ultimately chooses," said CFA Director of Financial Services Jean Ann Fox. However, neither goes far enough to protect consumers from these "astronomically high-cost, unsolicited overdraft loans," she added.

Consumers pay $17.5 billion per year in overdraft fees that banks charge after routinely allowing consumers to overdraw their accounts by checks, automated payments, ATM withdrawals, and debit card purchases. The charges for these unsolicited overdraft loans exceed the $15.8 billion extended in overdraft loans.

In its new proposal, the Fed focuses only on ATM and certain debit transactions, acknowledging that overdraft fees on these transactions are especially abusive because consumers don't expect to be able to overdraw their accounts at an ATM or debit terminal.

One approach on which the Fed is seeking comment would maintain the status quo, requiring only that banks permit consumers to opt out of the overdraft loan program. The second approach would require banks to get consumers' permission before covering their ATM and most debit transactions for a fee.

The consumer groups urged the Fed to adopt the second approach, but added that more needs to be done, including: requiring that consumers be provided with federal truth-in-lending disclosures about the APR of overdraft loans; applying the rules to check holds, when banks intentionally delay the availability of deposits; and restricting banks' ability to manipulate the order in which transactions are cleared in order to maximize overdrafts.

A recent FDIC study confirmed previous research on abusive overdraft practices. It found, for example, that:

- banks automatically enroll consumers in the most expensive overdraft option;
- debit card transactions are the most common trigger of overdraft fees;
- lower-income account holders are more likely to pay overdraft fees, stripping what little money they have from their accounts and driving them further into the red; and
- consumers pay the most overdraft fees when their banks allow overdrafts for ATM and debit transactions and clear transactions in order from highest to lowest to maximize fees.

"The FDIC report exposes unfair banking practices, exorbitant rates for automated overdraft loans, and bank practices that maximize fee revenue from overdrawn consumers who are often struggling to make ends meet," Fox said.

She called on Congress to closely examine the FDIC study and enact legislation to protect consumers from unauthorized high-cost loans.

Legislation introduced by Rep. Carolyn Maloney (D-NY) languished in the 110th Congress and should be a priority next session, she added.

On the **Web**
www.consumerfed.org/pdfs/credit_cards_FRB_UDAP_rule_release.pdf
www.consumerfed.org/pdfs/Coalition_Overdraft_Release_12-22-08.pdf
www.consumerfed.org/pdfs/CFA_Statement_on_FDIC_Overdraft_Study_12-3-08.pdf

Two States Vote for Payday Loan Rate Cap

Voters in two states dealt a resounding blow to the payday loan industry in November, defeating anti-consumer ballot initiatives in Ohio and Arizona that would have lifted restrictions on payday lending in those states.

"The payday loan industry was counting on ballot wins to turn the negative wave of public policy changes," said CFA Director of Financial Services Jean Ann Fox.

Fox noted that the ballot victories came on the heels of numerous legislative victories in recent years.

Ohio is among the states that had adopted a pro-consumer payday loan law. It caps annual interest rates at 28 percent, limits loans to $500, and mandates a 30-day repayment period. The Ohio ballot initiative would have repealed the 28 percent rate cap.

The Arizona measure, which was worded to suggest it would impose new restrictions on payday lenders, was in fact designed to prevent that state's anti-consumer payday loan law from sun-setting in 2010 as scheduled.

Despite being vastly outspent by the payday loan industry, a coalition of national and local consumer groups and activists managed to prevail in what the industry itself had characterized as the first opportunity voters and consumers have had to express their desire for payday loans.

"Our next challenge will be to parlay this clear expression of voter sentiment into support for real reform in other states and in Congress," Fox said.

In August, CFA, Consumers Union, and the National Consumer Law Center released a 50-state scorecard assessing how states protect consumers against abusive interest rates for small dollar loan products, including payday loans, auto-title loans, and six-month and one-year unsecured installment loans.

In their review, the groups found that eight states plus the District of Columbia protect consumers against abusive lending practices for all four types of loans included in the scorecard, while 14 states fail to protect consumers against abusive lending for all four products. The remaining states protect consumers to varying degrees.

Meanwhile, the election also gave new hope to those hoping to deliver on federal reform. President-elect Barack Obama's financial platform calls for a federal 36 percent usury cap to extend to all consumers the protections adopted in the military payday lending bill.

On the **Web**
www.consumerfed.org/pdfs/small_loan_scorecard_08.pdf

2008 Legislative Wrap-up

Product Safety

CPSC – Prompted by record levels of product recalls in 2007, Congress was finally spurred to act on long-needed legislation to overhaul of the Consumer Product Safety Commission (CPSC) and strengthen product safety standards (H.R. 4040, S. 2045, P.L. 110-314). Congress cleared the bill 424-1 in the House and 89-3 in the Senate just before the August recess, and the president signed it shortly thereafter. The new law authorizes a significant funding increase for the agency up to $136 million at the end of five years. In addition, it: sets a new permissible lead level for toys and other children's products that almost eliminates lead from these products; creates a publicly accessible database where consumers can report and learn about hazards posed by unsafe products; requires toys and other children's products to be tested for safety before they are sold; and bans toxic phthalates from children's products. Limits on CPSC civil penalties for violations of safety regulations received a significant boost in the legislation, state attorneys general gained new authority to enforce product safety laws, and whistleblowers won important protections.

Food Safety and Labeling

State-inspected Meat – Congress overcame a presidential veto and passed the Farm Bill in June, including a compromise supported by CFA on state-inspected meat and poultry. The compromise provision creates a new inspection program enabling companies with up to 25 employees, that were previously state-inspected, and that can meet all federal inspection requirements to qualify to sell their products across state lines. Under the program, state inspectors will enforce federal meat and poultry inspection laws in these plants. Each state will have a USDA-employed "state coordinator" to provide constant federal oversight of the operations of these plants, report to the Secretary of Agriculture if any plant in the program fails to meet federal standards, and stop production and remove from the program any plant that fails to meet the standards.

Country-of-Origin Labeling – The 2008 Farm Bill also included a provision assuring the implementation of the long-delayed country-of-origin labeling requirement for meat, poultry, fruits and vegetables, some nuts, and ginseng. CFA and other allies worked with the food industry to craft a compromise on the labeling law, which went into effect at the end of September. The law requires specified commodities to be labeled with their country of origin; however, USDA regulations for the program created loopholes that exempt certain products based on an overly broad definition of "processing."

Food Safety Regulation – Once again, a variety of bills to improve food safety were introduced but not acted on. These included bills to consolidate food safety responsibilities within a new Food Safety Administration (S. 654, H.R. 1148), to improve recall procedures and enforcement (H.R. 3484, S. 3267), and to create a traceability system for food products (H.R. 3485, S. 1292).

Housing

Housing Rescue – As the financial crisis worsened this summer, Congress first passed and the president signed legislation (H.R. 3221) aimed at stemming the tide of mortgage foreclosures. When that proved insufficient to contain the crisis, they followed up at the end of the session with the Emergency Economic Stabilization Act of 2008 (H.R. 1424), which was primarily designed to strengthen commercial and investment banks but also included modest foreclosure prevention measures. H.R. 3221 attempted to encourage more lenders to refinance mortgages by creating a temporary new insurance fund administered by the Federal Housing Administration (FHA) to back mortgages to some homeowners at risk of losing their homes to foreclosure. It also raised the FHA loan limit from $362,790 to the lesser of 115 percent of the local area median home price or $625,500 and increased the cap on loans Fannie Mae and Freddie Mac can purchase to the same levels. It included a number of tax provisions, including one creating a $7,500 refundable tax credit for first-time homebuyers to be repaid interest-free over 15 years. And it provided $3.9 billion in grants to state and local governments to purchase abandoned and foreclosed homes and residential property. It did not, however, include the provision viewed by housing advocates as critical to reducing foreclosures – reform of bankruptcy laws. (See below.)

Stalled for months by administration opposition, the housing bill gained new momentum in July when it became the vehicle for an administration rescue plan for financially troubled mortgage companies, Fannie Mae and Freddie Mac. In addition to strengthening regulatory oversight of these two agencies, the bill granted the U.S. Treasury Department emergency authority both to increase the line of credit that Fannie Mae and Freddie Mac had access to as Government Sponsored Entities (GSEs) and to purchase stock in the two companies. This stand-by support, which was intended to reassure the market about the GSEs' financial stability, ultimately proved inadequate, and the administration was forced to take the two companies into conservatorship and provide additional direct backing for their debt securities.

Passed in haste at the end of the session as the financial crisis continued to worsen, the Emergency Economic Stabilization Act was intended primarily to prevent a financial meltdown and unfreeze the credit markets, but it also included additional housing-related provisions. For example, it gave Treasury authority in administering the new bailout program to work with loan servicers to promote loan modifications for borrowers unable to meet their current mortgage obligations. It also included a $1,000 property tax relief deduction for non-itemizing couples through the end of 2009; an increase in FDIC deposit insurance to $250,000; an extension on a waiver of tax liability on mortgage foreclosures; aid to small banks in the form of permission to deduct losses from investments in Fannie Mae and Freddie Mac preferred stocks, whose value was decreased dramatically by the Treasury's intervention in the two companies; and a host of tax cuts.

Mortgage Bankruptcy Reform – Despite sky-rocketing foreclosure rates and a deepening financial crisis, Congress failed to pass the single most important measure to keep struggling homeowners in their homes – legislation allowing bankruptcy judges to modify the terms of mortgages for consumers in bankruptcy. A number of attempts were made to pass the measure, which was strongly opposed by the mortgage lending industry and the administration. The House Judiciary Committee reported out a version of the bill (H.R. 3609) in December of 2007 that applied only to subprime and non-traditional mortgages made between January 2000 and the date of enactment. Sen. Richard Durbin (D-IL), who had introduced a more comprehensive version, sought to get a provision similar to the House bill included in the Senate housing rescue bill (H.R. 3221). Ultimately, however, it was stripped from the bill and offered as a separate amendment, falling on a 58-36 tabling vote. The mortgage lending industry also lobbied heavily, and successfully, to keep the measure out of the Emergency Economic Stabilization Act (H.R. 1424) adopted at the end of the term in response to the worsening financial crisis.

Predatory Mortgage Lending – Faced with a Republican filibuster threat in the Senate and administration opposition, Congress took no further action in 2008 on legislation advanced the previous year (H.R. 3915, S. 2452) to combat abusive practices in the mortgage lending market, even as evidence mounted that these practices were the root causes of the worsening financial crisis.

Consumer Credit

Credit Cards – In a major victory for consumers, the House of Representatives passed legislation (H.R. 5244) in September to protect consumers from abusive lending practices by credit card companies. The bill, which passed on a 312-112 vote with strong bipartisan support, would have: required credit card lenders to provide 45-day advance notice of any rate increase; prohibited banks from retroactively increasing interest rates on an existing credit card balance unless the cardholder is more than 30 days late; prohibited credit card issuers from raising a cardholder's interest rate because of unrelated problems with other lenders when the cardholder's account is in good standing; and given cardholders more time to pay, by requiring credit card companies to mail bills 25 days before the due date, rather than the 14 days that is now common. Although Senate Banking Committee Chairman Christopher Dodd (D-CT) introduced strong, comprehensive credit card reform legislation earlier in the year, it was not acted on in the Senate. Despite Congress's failure to pass a final bill, the attention the issue received in Congress helped to spur federal banking regulators to propose a package of regulatory reforms similar to that included in the House bill.

High-cost Credit – Though pro-consumer bills were introduced to provide Truth-in-Lending Act protections to overdraft loans offered by banks (H.R. 946), to restrict payday lending (H.R. 2871), and to cap the interest rates that creditors can charge at 36 percent (S. 3287), no action was taken on these measures.

Credit Monitoring – No further action was taken in 2008 on anti-consumer legislation (H.R. 2885) introduced in the House in 2007 to exempt some products offered by credit bureaus, such as credit monitoring, from the consumer protections included in the Credit Repair Organization Act.

Consumer Credit Safety Commission – At the end of the 2008 legislative session, Sen. Richard Durbin introduced legislation (S. 3629) to create a new administrative agency to oversee the safety of credit products. Although the measure was not acted on, the issue is expected to get more attention in 2009 as Congress considers financial regulatory reform in response to the worsening financial crisis.

Insurance

Flood Insurance – Although both the House and Senate passed legislation (H.R. 3121) to reauthorize and reform the National Flood Insurance Program, a conference committee appointed to work out differences in the two measures failed to reach an agreement before the end of the legislative session. CFA supported the Senate version, which included a number of reforms absent from the House bill. For example, it would have phased out subsidies for vacation and second homes, properties built before the availability of Flood Insurance Rate Maps, and structures that have experienced severe repetitive losses. It also would have required NFIP to build reserves over time, added a 500-year floodplain to the flood maps, required the evaluation of flood risk behind dams and levees, and created a flood insurance advocate's office to assist those with flood coverage in resolving problems with NFIP. Unlike the House bill, the Senate bill did not include a provision, opposed by CFA, to add wind coverage to the flood insurance program. With negotiations at an impasse, Congress passed a temporary extension of the program until March.

(Continued on Page 3)

Economic Woes Hit Consumer Spending Plans

With economic fall-out from the credit crisis worsening, consumers expressed plans for sharply reduced holiday spending on the ninth annual holiday spending survey released in November by CFA and the Credit Union National Association (CUNA).

Each year from 2003 to 2007, between 30 and 35 percent of consumers reported that they were planning to cut back their holiday spending. This year, 55 percent said they were planning to reduce this spending at least "somewhat," with 27 percent indicating they planned to spend "much less than last year."

This represents the highest percentage planning to cut back on holiday spending in the nine years of the survey.

"The financial crisis and sustained economic downturn the nation has been experiencing are taking their toll on consumers," said CUNA Chief Economist Bill Hempel. "People are worried about their finances, job loss, and what the future will hold. Amid such uncertainty, they are reacting by reining in their spending plans."

While record numbers of all age and income groups said they are planning to reduce holiday expenditures, women and families with children were much more likely than men and households without children to indicate they were planning cutbacks.

Sixty-two percent of women, but only 48 percent of men, surveyed said they planned to cut back. Similarly, 61 percent of households with children, but only 51 percent of households without them, indicated they were planning to reduce spending.

The vast majority of those who said they planned to cut back indicated either constrained finances or financial anxiety about the future was the most important reason behind their decision. The most frequent responses to the open-ended questions were: the economy and related economic uncertainty (36 percent), less money (22 percent), a desire to save or reduce debt (12.5 percent), higher prices (10.5 percent), and less income (9 percent).

Debt Contributes to Anxiety

One important factor contributing to financial anxiety is concern about meeting monthly debt payments. A record 48 percent said they were concerned about meeting their monthly debt payments, up from 40 percent in 2007, with 23 percent indicating they were "very concerned."

"The explosive growth in consumer and mortgage debt has fueled financial anxiety," said CFA Executive Director Stephen Brobeck. "That anxiety is most widespread among the young and those with modest incomes."

A separate analysis of Federal Reserve data released by CFA in early December found that the 26 percent of all households headed only by a woman earn, save, and have accumulated far less wealth than have other American households.

"Clearly women on their own face far greater financial challenges than do other Americans," said Ohio State University Professor Catherine Montalto, who co-authored the analysis with CFA's Brobeck.

"Useful financial advice and assistance should be made available to women who support themselves, especially those who are single, separated, or divorced," Brobeck said.

Women Have Lower Incomes, Less Wealth

The financial differences between the 31 million women who head households themselves and all U.S. households are substantial, according to Survey of Consumer Finances data collected in 2004 and released in 2007.

The typical (median) household income of the women was $22,592, while that of all households was $43,130.

The wealth gap is even greater than the income gap. Women on their own had a median net worth of $32,850 compared with $93,001 for all households.

Never married, divorced, and separated women are particularly vulnerable financially, with only about half reporting that they have a savings account and with those who did indicating that they have significantly less in savings than they expect to need to cover emergencies in the coming year.

"This emergency savings gap makes one vulnerable not just to unexpected expenses, but especially to loss of income during an economic downturn," Brobeck said.

On the **Web**
www.consumerfed.org/pdfs/Holiday_Spending_11-24-08.pdf
www.consumerfed.org/pdfs/Women_America_Saves_Tele_PR_12-2-08.pdf

2008 Legislative Wrap-up

Continued from Page 2

Insurance Competition – No further action was taken in 2008 on pro-consumer bills (S. 618, H.R. 1081) to repeal the federal prohibition on regulating anti-competitive activities by the insurance industry and give the Federal Trade Commission authority to regulate insurance activities for unfair trade practices. On the other hand, anti-consumer efforts to push an optional federal charter for insurance were also stalled.

Investor Protection

Internal Controls Reporting – No further action was taken in 2008 on measures considered in the House and Senate in 2007 to weaken a key provision of the Sarbanes-Oxley corporate reform law that requires companies to have adequate systems in place to prevent fraud and ensure accurate financial reporting. However, responding in part to pressure from Congress, the Securities and Exchange Commission continued to delay implementation of the requirement for small companies and initiated a cost-benefit analysis to determine whether an exemption for small companies was warranted.

Executive Compensation – No further action was taken in 2008 on legislation (H.R. 1257), passed by the House in 2007, to give shareholders the right to conduct non-binding votes on executive compensation. The Senate also failed to act on legislation (S. 2116), endorsed by CFA, to require public companies to report the same number for stock option expenses on financial statements as they do on federal tax returns.

Other Financial Services

Industrial Loan Companies – No further action was taken in 2008 on pro-consumer bills (H.R. 698, S. 1395) to prohibit large retail companies from owning Industrial Loan Companies, which are similar to banks but operate outside the bank regulatory system. The House passed its bill in 2007, but it was not acted on in the Senate.

Financial Regulation – No further action was taken in 2008 on pro-consumer legislation (H.R. 3526), passed by the House in 2007, to expand the ability of federal banking agencies to regulate unfair and deceptive practices.

Taxpayer Protection – No action was taken on legislation, endorsed by CFA, to direct the Treasury Department to allow free tax-filing through the agency website without use of an intermediary (S. 1074) and to provide protections against high-cost Refund Anticipation Loans for recipients of Earned Income Tax Credits (S. 1133).

Telecommunications

Media Consolidation – The Senate Commerce Committee passed a resolution of disapproval in April to overturn the Federal Communications Commission rule, adopted in December 2007, eliminating the ban on newspaper-television cross-ownership. However, no further action was taken on the measure.

Civil Justice

Arbitration Reform – Companion bills were introduced in the House and the Senate (H.R. 3010, S. 1782) prohibiting enforcement of pre-dispute binding arbitration clauses in employment, consumer, and franchise disputes and specifying that the validity and enforceability of arbitration clauses be determined by a court under federal law, not by an arbitrator. The House Judiciary Subcommittee on Commercial and Administrative Law gave voice vote approval to its bill in July. Although the Senate Judiciary Subcommittee on the Constitution held hearings on the issue, no further action was taken. Separately, the House and Senate Judiciary committees each reported out legislation (H.R. 6126, S. 2838) to making pre-dispute binding arbitration agreements between a long-term care facility and a resident, or anyone acting on the resident's behalf, unenforceable. The House panel voted its measure out in September, with the Senate panel following suit in October.

Privacy

Do-Not-Call List – Congress passed and in February the president signed into law legislation (H.R. 3541, P.S. 110-187) to eliminate the requirement for consumers who want to avoid unwanted telemarketing calls to re-register their phone numbers every five years. The measure also includes provisions to improve the accuracy of the list.

Identity Theft – No further action was taken in 2008 on pro-consumer legislation (S. 495), reported out of the Senate Judiciary Committee in 2007, to combat identity theft by requiring notification of security breaches and by increasing criminal penalties for such breaches.

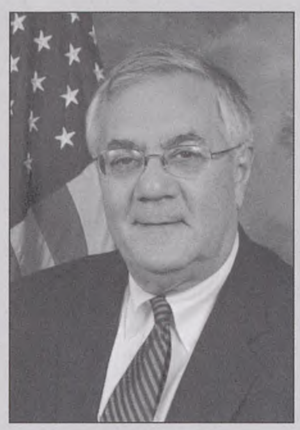
CFAnews
Consumer Federation of America
1620 I Street, N.W., Suite 200, Washington, D.C. 20006
(202) 387-6121 • www.consumerfed.org

CFAnews Editor: Barbara Roper

CFAnews is published eight times a year. Annual subscription rate is $25 per year.

 Design & Typeset by: Middour & Nolan Design

Conference Keynotes See Opportunity for Reform



Rep. Barney Frank (D-MA)

FDIC Chair Sheila Bair

Professor Elizabeth Warren

Despite a worsening economy, keynote speakers at CFA's financial services conference offered a common message of hope – that the current financial crisis can spur long-needed regulatory reforms.

House Financial Services Chairman Barney Frank (D-MA) laid out an ambitious legislative agenda that he believes is achievable in the coming Congress.

FDIC Chairman Sheila Bair discussed the need to improve banking regulation to prevent a recurrence of the kinds of abuses that led to the current crisis as well as initiatives to reduce the number of foreclosures in order to aid both homeowners and the economy.

Harvard Law Professor Elizabeth Warren made the case that we should use the "regulatory moment" we find ourselves in to create a new agency to set and enforce basic safety standards for financial products, such as mortgages and credit cards.

"Next year will be, I believe, the best year for public policy since the New Deal," Chairman Frank said.

The reigning philosophy for some time, he said, has been to "leave capital alone. Don't tax it. Don't regulate it. Don't interfere with its free, unrestricted movement internationally. And it will reward you all."

With the financial crisis has come an acknowledgment that the government has an important role to play. "That's the change," he said, "from deregulation to now acknowledging that we have got to regulate."

Frank Pledges New Focus on Consumer, Investor Protection

Frank put the current crisis in a historical context, suggesting securitization is the latest in a series of major private sector innovations that have brought benefits but also harm.

Securitization offers benefits, primarily in the form of greater liquidity and the ability to lend to a broader segment of the population, but also "has abusive elements," he said. These include lost constraints on risky behavior by lenders, he said.

"The challenge next year will be to create a set of government rules that constrain the abuses of this activity but continue to allow it to do good," he said.

In looking at how it can restore appropriate constraints on risky behavior, Congress will need to address the role of the credit rating agencies, faulty risk models, and credit derivatives, he said.

In the area of regulatory structure reforms, Chairman Frank said he is convinced that systemic risk protections and consumer and investor protections must be separated, and that regulations must be based on activities not institutions.

Among the specific legislative proposals needed, he said, are measures: to ensure that those who securitize loans can't lay off all the risks; to prevent bad sub-prime loans from being made; to change the role of loan servicer to address the dispersal of responsibility in the current system; and to add transparency, reserve requirements and other protections to the credit default swap market.

"I think that the policy climate is there to do these things," he said, adding that he also believes it is possible to pass a stronger credit card bill.

He closed by promising strong oversight of the newly created TARP program, including accountability for how banks spend the bailout money they receive and increased focus on reducing foreclosures.

Bair Calls for Proactive Regulation

"As regulators, we need to use our authority and clout to get the country out of the foreclosure crisis," Bair said. "This has got to be the top priority."

"Foreclosures keep rising as mortgages reset to higher rates, home prices keep sinking, and millions of families continue to struggle with unaffordable mortgages," she said.

Although progress is being made on the loan modification front, "we're still behind the curve. We need fast-track, broader-based efforts," she said.

She offered the program FDIC had launched at IndyMac as a model for a national "Loan Mod in a Box" program. Using such an approach, she predicted "we could help 1.5 million families avoid foreclosure using $24 billion in government financing."

"This would help get at the root cause of the credit crunch and the economic recession," she said.

Bair, who opened her speech with a strong defense of CRA against charges that it contributed to the current mortgage crisis, ended it by making the cases for continued federal banking regulator responsibility for consumer protection.

"Consumer protection by bank regulators is not an oxymoron," she said. She acknowledged, however, that "we need to change how we do it. "The rules need reworking to match a changing industry and changing consumer needs."

In particular, she said, regulators "need to keep pace with the times, making the way we operate flexible and nimble enough to respond quickly to changing, and often unpredictable, market demands."

Creation of Financial Product Safety Agency Urged

Warren took the opposite point of view, arguing that the time had come to move responsibility for consumer protection out of the banking agencies and into a separate financial consumer protection agency.

"We've used the wrong paradigm for too long," Warren said. "We've treated credit products as if they were contracts. They're not; they're products." And they can be designed in ways that make it easier for consumers to make meaningful comparisons, she said.

While regulating financial products for safety won't prevent consumers from making mistakes in how they use those products, it should ensure that the product itself is not "the source of danger," she said.

The goal of the agency would be to identify and ban the "tricks and traps" that the industry has imbedded in financial products, such as credit cards, in order to profit off of consumers' mistakes.

This is preferable to trying to ban specific practices through legislation, an approach that she called "too hard," "too narrow," and "too immutable." If that approach is adopted, the abuses will simply change to evade the restrictions that are put in place, she predicted.

With an agency you can gather data, identify the practices that are most damaging to consumers, and "respond nimbly," she said.

"We're in an economic crisis. That's what opened this window," she said.

There are different narratives being developed to explain how the crisis came about, she said. "Depending on what becomes our national narrative, we will set a regulatory reform in place."

It is essential, she said, that people understand "that it is fraudulent business practices that brought us here and that we actually have a solution that will work."

PRSRT STD
U.S. POSTAGE
PAID
WASHINGTON, D.C.
PERMIT NO. 8772

CFAnews
CONSUMER FEDERATION OF AMERICA
1620 I Street, N.W., Suite 200 • Washington, D.C. 20006
(202) 387-6121 • www.consumerfed.org

Mark Your Calendar
Consumer Assembly '09
March 12-13, 2009
Washington, D.C.