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Veto of Anti-Investor Bill Overriden

In December, President Clinton vetoed legislation that will make it easier to commit securities fraud and all but impossible for the victims of that fraud to recover their losses. Within days, however, both the House and Senate voted to override the president's veto, the House on a 319-100 vote and the Senate on a 68-30 vote.

"This is a shameful day for the U.S. Congress," said CFA Chairman Howard Metzenbaum following the Senate vote. "In overriding the president's veto, Congress sold out the small investor in order to satisfy a handful of powerful interest groups."

"The presidential veto gave Congress the opportunity to revise the bill in order to eliminate special corporate and accounting firm protections, preserve the full legal rights of defrauded investors, and still remedy issues of frivolous lawsuits," Sen. Metzenbaum said. "Unfortunately, Congress rejected the president's courageous leadership on this matter of justice for the middle class."

The bill was opposed by consumer advocates, state securities regulators, state and local government finance officers, and a host of other organizations on the grounds that it went far beyond its purported goal of reducing frivolous and abusive litigation.

"The proponents of this legislation argue it is needed to fight frivolous and abusive litigation, but the legislation goes much further," said CFA Director of Investor Protection Barbara Roper, noting that the victims of Charles Keating would have recovered a mere $16 million if they had had to bring their case under this new law, compared to the $262 million they were actually able to recover.

"Everyone agrees that we should attempt to eliminate frivolous and abusive litigation," Roper said, "but do the victims of securities fraud need to pay such a heavy price to accomplish that goal? I don't think so."

The following are among the most anti-investor provisions of the new law.

- **Corporate Insiders Granted License To Lie**

Deliberately misleading earnings projections and other "forward-looking" statements by corporate officers will be protected from liability, as long as they are accompanied by cautionary language indicating important factors — though not necessarily the most important factors — that could cause results to differ.

When the knowingly false projections are made orally, the cautions can be contained in documents filed with the Securities and Exchange Commission, far from the eyes of most investors.

Forward-looking statements made with a reckless disregard for their truth receive a blanket exemption from liability under the bill.

"This provision removes an important incentive for corporations to provide accurate information about their future prospects," Roper said. "There is no excuse for allowing those who deliberately mislead investors to be shielded from liability."

- **Pleading Standards Create Insurmountable Barrier**

The bill's pleading standards require plaintiffs, at the very outset of their case, to provide highly detailed facts showing the defendant acted with an intent to defraud. Because the bill also provides for a mandatory stay of discovery when a motion to dismiss is filed, however, plaintiffs can be denied access to the documents they need to plead their case successfully.

"Victims of securities fraud who attempt to take their case to court will be faced with a Catch 22 — they must provide details only available in documents to which they are denied access," Roper said.

- **Loser Pays Sanctions Will Discourage Meritorious Cases**

The bill requires that a finding be made on the merits of the case at the end of every trial, with the presumed penalty for non-meritorious actions being payment of the other side's legal fees. In addition, the bill allows judges to require plaintiffs to put up a bond to cover defendants' legal bills just to get their case into court.

"Fraud victims are being asked to put themselves at substantial financial risk just to have their day in court," Roper

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Members Praised for Defense of Investors

CFA is grateful to all those who voted to sustain the president's veto, but we owe a particular vote of thanks to the following members who were especially outspoken and active in their opposition.

Leading the fight were:

Sen. Richard Bryan (D-NV)
Sen. Barbara Boxer (D-CA)
Sen. Paul Sarbanes (D-MD)
Sen. Arlen Specter (R-PA)
Rep. John Dingell (D-MI)
Rep. Edward Markey (D-MA)

Investors also received especially strong support from:

Sen. Joseph Biden (D-DE)
Sen. William Cohen (R-ME)
Sen. Russ Feingold (D-WI)
Sen. Bob Graham (D-FL)
Sen. Howell Heflin (D-AL)
Sen. Ernest F. Hollings (D-SC)
Sen. Robert Kerrey (D-MA)
Sen. Richard Shelby (R-AL)
Sen. Paul Simon (D-IL)
Sen. Paul Wellstone (D-MN)
Rep. Howard Berman (D-CA)
Rep. John Bryant (D-TX)
Rep. Cardiss Collins (D-IL)
Rep. John Conyers (D-MI)
Rep. Peter DeFazio (D-OR)
Rep. Lloyd Doggett (D-TX)
Rep. Ron Klink (D-PA)
Rep. Robert Torricelli (D-NJ)

Tentative Agreement Reached on Telecom Bill

Just before leaving for a brief Christmas recess, the lead House and Senate negotiators on telecommunications legislation announced that they had reached an agreement on compromise legislation which was promptly endorsed by the administration.

House Republicans, however, who had complained earlier of being shut out of negotiations, objected to a number of changes made in the bill largely to avoid a Senate filibuster and a presidential veto.

Consumer groups, including CFA, also continued to raise questions about the legislation on the grounds that the legislation still does not do enough to protect consumers and promote competition.

"Although significant improvements have been made, this bill still suffers from the same fundamental structural problem it has had all along," said CFA Director of Telecommunications Policy Bradley Stillman.

"It deregulates telecommunications and cable companies before competition exists, increasing the likelihood that entrenched monopolies will abuse their market power and thwart the development of competition," he said. "The result for consumers would be inflated rates for local telephone and cable service."

Conditions Set For Entry Into Long Distance Market

On the hotly contested issue of setting the terms for local telephone company entry into the long distance market, the proposed conference report combines elements from both the House and Senate bills.

Based on language from the Senate bill, local phone companies would be required to take a number of specific steps to open their network to competition before they could begin offering long distance service.

In addition, they would have to comply with a provision from the House bill requiring that they demonstrate that they have a viable competitor in their local market. The term "viable competition," however, is undefined.

The Federal Communications Commission would have to review whether they had met these requirements and whether their entry into the long-distance market was in the public interest. In making that determination, they would have to give "substantial weight" to the views of the Department of Justice, but the Justice Department would have no authority under the Communications Act to stop Bell entry into long distance.

The proposed conference report also requires the FCC to convene a panel of federal and state regulators to determine what should be included in a definition of "universal service" that must be offered at just and affordable rates.

Despite the fact that both House and Senate bills included such a provision, the conference report also would drop language requiring states to replace rate-of-return regulation with price cap regulation.

"We are pleased that the conferees decided to keep the decisions about what form of telephone rate regulation is appropriate where it belongs — at the state level," Stillman said.

Cable Would Be Deregulated

Basic rates for cable systems with fewer than 50,000 subscribers would be deregulated immediately, while larger systems would have to wait until March 1999 before deregulating their rates.

However, if a telephone company began offering video programming to a comparable number of households, the cable company's rates would be deregulated immediately, regardless of whether anyone actually subscribed to the alternative service.

The proposed conference report also would allow buyouts between telephone companies and rural cable companies in the same service area serving no more than 50,000 homes. For larger systems, the companies would be allowed to own up to 10 percent of each other.

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CONSUMER FEDERATION OF AMERICA

Conference Convened on Product Liability

In a push to reach a compromise by year's end, House and Senate negotiators on product liability legislation officially opened the conference committee December 15 to work out differences between House and Senate versions of the legislation.

By the following week, however, conference chairman Rep. Henry Hyde (R-IL) had announced that there was little chance that action on the bill would be completed in 1995.

"At this time, any delay is good news for consumers," said CFA General Counsel Mary Ellen Fise. "Both the House and Senate bills are strongly anti-consumer. Both would make it far more difficult for consumers injured by dangerous products to be compensated for their injuries."

Although the House and Senate bills have much in common, the House bill goes further than the Senate bill in a number of areas, including:

- capping punitive damages in all civil lawsuits, not just product liability suits;
- placing a similar cap on pain and suffering awards in medical malpractice cases;
- barring punitive damages in cases involving a medical device or drug previously approved by the Food and Drug Administration; and
- imposing loser pays rules for frivolous cases.

House Negotiators Reportedly Willing To Narrow Bill's Scope

The conference was convened amid reports that House negotiators had acknowledged that the final bill must resemble the narrower Senate bill.

Before passing its narrower bill, the Senate failed three times to gain a majority — let alone the two-thirds needed to end a filibuster — for legislation similar to the House bill.

According to Rep. Hyde, House negotiators were willing, for example, to drop the medical malpractice provisions from the bill but needed some provisions broadening the bill's scope beyond the Senate bill.

(Supporters of the medical malpractice liability limits attempted to get these provisions included in the budget reconciliation bill, but the effort failed when threatened with a "Byrd Rule" challenge. Under this rule, provisions that do not have a budget impact must garner 60 votes to avoid being deleted from the bill on the Senate floor.)

House negotiators also reportedly agreed to accept the Senate approach to capping punitive damages.

The House bill would cap punitive damages in all cases at $250,000 or three times economic losses, whichever is greater. The Senate, on the other hand, would limit punitive damages in product liability cases to the greater of $250,000 or two times compensatory damages.

In product liability actions against businesses or organizations with fewer than 25 full-time employees, however, the Senate bill would cap punitive damages at twice the amount of compensatory damages or $250,000, whichever is less.

To identify how this so-called small business cap on punitive damages might affect consumer safety cases, Fise reviewed a limited number of press releases issued by the Consumer Product Safety Commission concerning civil penalty cases and actions where companies had to recall their products because of a failure to conform to a federal mandatory safety standard or because the product was alleged to contain a defect.

Fise's review quickly turned up ten cases that could have been affected by the Senate small business cap. They involved a variety of products — such as children's toys, cribs, pacifiers, and bunk beds — with the potential for significant injury and deaths to consumers.

"Because these cases involved violation of federal law, repeat offenses, and/or defects that could result in death or serious injury, they arguably could be the type where punitive damages would be sought," Fise wrote.

Small Business Cap Unfair, Poor Deterrent

"The Senate small business cap is not only unfair to consumers who have been injured or whose relatives have died from unsafe products," she said, "but the cap is a meager amount to punish wrongdoers and deter production of other unsafe products," she said.

Proponents of the legislation had pushed to move the bill in 1995, apparently fearing that election-year politics and a tight legislative calendar could make it more difficult to pass a bill and avoid a veto in 1996.

"Ultimately, the current stalemate is in the best interests of consumers," Fise said.

Telecom

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"While the cable-telco buyout provisions have been narrowed, they would still subject more than one-third of consumers across the country to an unregulated cable-telephone mega-monopoly," he said. "This is no way to encourage competition."

One of the last issues on which agreement was reached was in the area of broadcast concentration. The proposed conference report would allow networks to own stations reaching a total of 35 percent of the nation's households, up from the current 25 percent limit.

The cap on radio station ownership would also be lifted, although some limits on the number of stations a company could own in a single market would remain.

Open, Diverse Broadcast System Threatened

The public's access to an open and diverse broadcasting and media system is put in serious jeopardy under these provisions of the telecommunications legislation, according to a report released by CFA and the Center for Media Education in December.

"The television industry is balanced precariously on the precipice of economic and political concentration," said CFA Research Director Mark Cooper, author of the report, "Economic Concentration and Diversity in the Broadcast Media: Public Policy and Empirical Evidence."

"A change in the rules governing ownership would result in significant increases in market power of a handful of firms that will have negative impacts on the public interest roles and functions of broadcast television," he said.

Analyzing the market share of broadcast companies using the merger guidelines of the Department of Justice and the Herfindahl-Hirshman Index, the study finds that:

- the broadcast industry is a tight oligopoly;
- fully four-fifths of local viewing markets are highly concentrated, with the equivalent of less than a handful of equal sized competitors;
- three-fifths of local advertising markets are also highly concentrated; and
- all but the three or four largest companies could expand their coverage under current rules.

"Increasing the national viewing market reach to 35 percent, as the legislation proposes, only serves to make the few largest companies more powerful," Stillman said. "Concentration in the industry means a small group of advertisers and programmers control what the American people get to view."

Telco Entry Would Exacerbate Problems

CFA and CME also noted that telephone company entry into media markets will take a bad situation and make it dramatically worse.

"Effective competition will not develop because of the bill's buyout provisions. Telephone companies will be allowed to buy a national television network at the same time they are buying up local cable companies and radio stations. And in some communities, this mega-monopoly would be allowed to own the local newspaper," Stillman said.

"Congress should not undermine potential competition by proposing policies which virtually guarantee we will see unprecedented concentration and monopoly in broadcasting and across all lanes of the information superhighway," he added.

With House Republicans refusing, at least temporarily, to accept the proposed conference report, the fate of the legislation was up in the air when Congress left at the end of the session.

"While we certainly appreciate the efforts of Sen. Hollings and the administration to improve this legislation, much still needs to be done before this bill can be considered consumer- and competition-friendly," Stillman said.

Securities Litigation

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said. "Those who cannot meet the bond requirement can be denied justice simply because they lack financial resources. That is a gross violation of the American principle of equal access to justice for all."

- **Victims' Rights To Recovery Reduced**

Previously, when the primary wrongdoer in a fraud was insolvent or had fled the country, those whose reckless misconduct made the fraud possible could be required to fully compensate the victims. Now, they will only be liable for up to 150 percent of their proportionate share of the victims' losses.

"The bill places the rights of those who contribute to the fraud ahead of the rights of the fraud victims," Roper said. "As a result, even those victims who are able to get their case into court are far less likely to fully recover their losses."

- **Bill Lacks Balance**

"What the bill doesn't do is as important as what it does," Roper added. "In particular, it fails to undo two recent Supreme Court decisions that have drastically reduced defrauded investors' ability to recover in securities fraud lawsuits."

In the first case, the Supreme Court set a statute of limitations for such cases that allows the perpetrators of securities fraud to escape liability merely by preventing detection of the fraud for three years. In addition, the Supreme Court ruled that there is no aiding and abetting liability under the securities laws.

"Congress's failure to restore these essential investor protections is a clear indication of the degree to which the powerful special interests controlled the content of this legislation," Roper said.

"The ultimate effect of this legislation will be to make our markets less honest, financial professionals less accountable, and the victims of securities fraud less able to recover their losses," she said.

House Votes to Cut Off Indoor Air Research Funds

Funding for federal indoor air quality research would be eliminated under a bill approved by the House in October.

"This short-sighted, ill-conceived legislation would eliminate authorization for indoor air quality research and would leave the government without the information it needs to determine the causes of and effective remedies for poor air quality," said CFA General Counsel Mary Ellen Fise. "Furthermore, federal indoor air quality research supports prevention programs that can eliminate the need for regulation."

The House approved the Omnibus Civilian Science Authorization Act of 1995, H.R. 2405, on a 248-161 vote. Sponsored by Rep. Robert Walker (R-PA), the bill combines all government research from seven federal agencies, including the Environmental Protection Agency, in one piece of legislation setting the authorization levels for fiscal year 1996.

Rep. Joseph P. Kennedy II (D-MA) was unsuccessful in his attempts to amend the legislation to prohibit cutting indoor air quality research at EPA.

Although the EPA appropriation is caught up in the budget impasse between the Administration and Congress, both the House and Senate passed bills leaving funding for indoor air quality research intact, despite deep cuts proposed for the agency overall.

So far, the Senate has not taken any action on the research authorization legislation.

National Disaster Insurance Plan Needed

The nation needs a national disaster insurance plan, but not the plan contained in H.R. 1856 and S. 1943, CFA Director of Insurance J. Robert Hunter said in October congressional testimony.

"While the bill . . . is vastly improved from the earlier versions put forth by the insurance industry, it is still a 'wish list' of the industry," he said. The issue "requires considerable consideration and input by all interested parties, and considerable additional research and study before serious consideration by Congress."

The companion bills — which were introduced with extensive bipartisan support — would establish a private, nationally based all-hazard disaster insurance program for residential and commercial property.

A Natural Disaster Insurance Corporation created under the legislation would provide reinsurance to participating insurers. The corporation would have broad powers, including the authority to borrow money from the federal treasury in cases of excess claims.

Homeowners in disaster-prone areas whose mortgages are backed by the federal government would be required to purchase the insurance.

The bill also would provide funds to communities to use in developing and enforcing strong building codes, preparing emergency plans, and reinforcing critical structures.

In his testimony, Hunter criticized the legislation for putting too much power in an industry controlled corporation. Through this new corporation, "the private industry would control rates, coverage, and claims," as well as withdrawal rights for carriers, with no state or federal oversight, he said.

"There are other potentially anti-competitive effects," he added. "The corporation could set, or at least significantly influence, prices and otherwise exercise control of the market."

State Authority Preempted

A particularly troubling aspect of the bill is its preemption of state authority in the oversight of claims settlement practices as well in the review of forms, prices, market conduct, and other consumer protections, Hunter said. He was particularly critical of the bill's preemption of rate control.

"While it is commendable to try to address the politicizing of pricing in some way, giving carte-blanche control to the insurance companies is frightening, particularly when the bill sets up a sort of legal cartel for selling the insurance, and consumers are required to buy the coverage to keep their homes," he said.

"True price competition is disallowed, true regulation of the cartel price is disallowed. This is surely a prescription for disaster for consumers," he added.

Hunter also criticized the legislation for failing to guarantee insurance availability; failing to cap the amount that industry can tap into the treasury; and providing too much protection to insurers and too little protection to homeowners and taxpayers.

Tapping into the federal treasury "should be limited only to mega-catastrophes" in which "private reinsurance really cannot handle it," he said.

A better approach would be to require each state to set up disaster pools, with the federal government reinsuring only these pools and only in truly exceptional disasters, he added.

Further Study Needed

"The nation needs a thoughtful approach to the handling of natural disasters," Hunter said.

In order to develop such an approach, he called on Congress to empower "the appropriate impartial, scientific agency" to convene a panel representing all the groups with a stake in the problem to prepare "an integrated proposal for handling natural disasters over the next 50 years."

Such a proposal should address the issues of insurance, reinsurance, loan-making, mitigation, construction, and other requirements. It should spell out the public roles at all levels of government, the private roles, and a plan to maximize the private sector participation over time, he said.

"The panel should be charged with the task of determining a way to remove the taxpayer from the burden of disaster relief and, in due course, shift the cost of inhabiting high risk zones to those who choose to live there," he concluded.

Auto Leasing Rule Needs Revision

Changes are needed in federal auto leasing rules to address rapidly changing conditions in the auto leasing market, CFA Senior Projects Director Mary Ponder stated in comments on rule changes proposed by the Board of Governors of the Federal Reserve System.

"The current Regulation M rule does not adequately protect consumers," Ponder wrote. The comments note specifically that "lease contracts are not required to provide clear and conspicuous disclosure of all the information necessary for consumers to make informed decisions" and that "leasing advertising requirements are inadequate and incomplete."

The goal of the rule revisions should be to enable consumers to compare lease terms both with other leases and with credit transactions, Ponder noted.

"In the real world, consumers are offered the choice of leasing or purchasing. Standards to ensure clear, meaningful information allowing a comparison of these choices must continue to be the goal of Regulation M," she wrote.

While generally supportive of the proposed rule changes, CFA argued that they do not go far enough. To adequately protect consumers, CFA advocated three major additional revisions to the rule:

- mandating use of a uniformly calculated lease rate;
- providing a three-day cooling off period before the leased vehicle is delivered during which consumers can review the terms of the lease; and
- eliminating the $25,000 cap in the lease definition so that leases with a value greater than $25,000 are also subject to the rule's disclosure requirements and lessee liability.

"The proposed revisions to Regulation M will only provide consumers with some of the numbers (adjusted gross cost, number of monthly payments, and residual value) that are necessary to compute the cost of the lease," Ponder wrote.

Use of a uniformly calculated rate including both interest and other charges "would allow consumers to choose between leases involving different gross costs or leases of different durations. Additionally, it would offer consumers the opportunity to compare a lease contract with a credit contract," she added.

In addition, the comments:

- generally support the Board's proposal to segregate the leasing disclosures from other information in the lease agreement;
- advocate more stringent requirements to ensure clear and conspicuous disclosures of the terms and conditions of the lease, including requiring that disclosures be available in the language of the transaction;
- support the Board's proposal to require a "gross cost" on the contract;
- recommend that the gross cost be broken down on the contract to include a listing of and a dollar amount for all charges included in the term, including the negotiated vehicle purchase price;
- support prominent disclosure of the terms and conditions for early termination charges; and
- support stronger regulations for media advertising of leases to ensure that disclosures are in large enough type and are of long enough duration to allow average consumers to read them.

Senate Passes Safe Drinking Water Overhaul

The Senate gave unanimous approval in November to a consensus bill to overhaul the Safe Drinking Water Act.

"We are pleased that this bill — which Sen. John Chafee (R-RI) negotiated with both Democrats and Republicans — resisted some of the more extreme anti-regulatory proposals that had been circulated," said CFA Public Policy Associate Diana Neidle.

Bipartisan agreement on the need to upgrade water systems' aging pipes and other infrastructure is generally credited with making the consensus possible, she noted.

The Environmental Protection Agency has estimated that it would cost localities and states $8.6 billion to meet standards under the 1974 Safe Drinking Water Act.

S. 1316 provides a $1 billion a year authorization through 2003 to establish a state revolving loan fund for state and local drinking water improvement projects.

In a major victory for consumer advocates, the bill would require EPA to take into account the effects of contaminants on vulnerable populations — such as the elderly, children, and people with immune system deficiencies — in setting drinking water standards.

Also for the first time, bottled water would have to meet the same contaminant standards as tap water.

Deregulatory Provisions Included

However, the bill also includes a number of provisions to reduce regulation of public drinking water suppliers. For example, it would replace the current requirement that water suppliers use the best available technology to remove contaminants with a requirement that EPA certify that the costs of new water contaminant standards do not exceed their health benefits.

It also revokes the requirement that EPA set standards for an additional 25 contaminants every three years, and it gives states more freedom in monitoring contaminants, provided the water supplies meet federal health standards.

A consumer "right to know" amendment by Sen. Barbara Boxer (D-CA) was defeated on a 59-40 vote.

The amendment would have required treatment plants to give ratepayers an annual report listing levels and frequency of contaminants they are required to test for by EPA. New York and California already require such reports.

"Such information would allow vulnerable individuals and their caretakers to know if they should avoid or boil their tap water," Neidle said. "This is important for contaminants, such as cryptosporidium, for which no federal safety standard has yet been set and therefore no public notification is required."

Loan Fund Bill Introduced in House

In early December, the House introduced legislation, H.R. 2747, authorizing $2.3 billion over three years for a state revolving loan fund similar to that in the Senate bill. The regulatory overhaul language, however, is not included in the House bill.

Despite apparent widespread agreement on the need for a revolving loan fund, Congress appropriated only $500 million, half the amount authorized in the Senate bill, for 1996. That appropriation, which is part of the EPA budget, was still tied up in the budget impasse at the end of the 1995 session.

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Expansion of Bank Powers Advocated

Consumers will benefit from increased competition if Congress succeeds in removing the barriers between the various financial services industries, House Banking Committee Chairman Jim Leach said in a keynote address at CFA's financial services conference.

"The landscape of American finance has shifted rather dramatically" since the Glass-Steagall Act was adopted preventing the financial services industries from entering each other's businesses, said Rep. Leach (R-IA).

As Banking Chairman, Rep. Leach has shepherded legislation through the committee that would repeal Glass-Steagall and provide "regulatory relief" to banks. The bill is stalled because of a conflict over provisions that would continue to prevent national banks from selling insurance.

Explaining the need for the legislation, Rep. Leach said commercial banks simply aren't as important to the economy as they once were.

"Consumers prefer products outside the historical banking system. We need to break down barriers to make banks more relevant," he said.

Consumers Benefit From Reduced Regulation

Rep. Leach also made the case that consumers and bankers have a shared interest in reducing regulatory burdens.

Rep. Leach addressed CFA's Financial Services Conference.

"If you don't want high costs, it makes sense to have a banking infrastructure that is not too costly," he said.

He defended the bill's revisions to the Community Reinvestment Act, for example, on the grounds that it would preserve "the fundamental precepts of CRA."

"Banks ought to be required to invest in entire communities," he said. CRA, however, is neighborhood-based, which doesn't work well for small banks that serve rural communities where "there is no wrong side of the track," he said.

"One of the great questions is, what relevance is it to small banks? What kind of cost burdens do you put on banks for minimal effects?" he asked.

Reducing costly regulations should also benefit consumers by reducing interest rates, which would make more homes available to more people and spur job creation, Rep. Leach said.

Rep. Leach acknowledged that "one can make a case that it has gone too far. I tried very hard to make sure we didn't go too far," he said. "I think Americans are of a mind set to experiment with a little bit less regulation, rather than a little bit more."

Bill Protects Competitors, Not Competition

The administration is sympathetic to Rep. Leach's "relatively modest goal of eliminating restrictions that prevent banks and securities firms from engaging in one another's business," said John D. Hawke, Jr., Under Secretary for Domestic Finance with the U.S. Department of Treasury.

Unfortunately, the bill as it has evolved, with its prohibition on national banks' entering the insurance market, "doesn't really promote competitiveness," he said.

Like much financial legislation proposed over the years, the bill is designed "not to protect competition, and certainly not to protect consumers, but to protect competitors — in this case, independent insurance agents," Hawke said.

Some new approach is needed to break the current logjam, he said. "We've got to find a way to modulate the transition to a truly competitive market that looks to the future, not to the past."

Electronic Money Has Implications For Future

Hawke also discussed the important issues raised by the development of an "electronic money" system, in which payments are made over computer networks.

Such a system raises questions about the adequacy of disclosures, explicit or implicit government backing to systems of private money, and dispute resolution, he said.

"We need a balanced approach that doesn't retard progress, but takes into account the protection of consumer interests," he said.

"As we move toward the brave new world of electronic money and a paperless system of payments, it makes it important, if not essential, to have some sort of relation to a financial institution," he said. "It is going to be essential for government to play some role in assuring that all citizens have access.

"We can't be looking toward an evolving system of financial life that does away with the ability of individuals at the lower end of income levels to participate effectively," Hawke said.

While electronic benefits transfer, for example, "holds out tremendous hope for the future, it also has significant implications for the need to have access to the banking system. That is the great challenge for the future," he said.

FDA Finalizes Weak Seafood Safety Rule

Nearly two years after the Food and Drug Administration first proposed national improvements in seafood safety, the agency finalized a rule in December mandating adoption of Hazard Analysis Critical Control Points systems in all seafood processing facilities.

While generally supportive of the HACCP approach, consumer groups questioned the effectiveness of the FDA plan in solving the seafood safety problem. "The program is inadequately funded and relies too heavily on the seafood industry to properly design the program and maintain accurate records," said CFA Public Policy Associate Diana Neidle.

The HACCP rule identifies points in the food processing operation where contamination can occur and establishes strict guidelines for these particular plant operations. Companies must keep records documenting their compliance with those guidelines.

"This is a system based on blind faith," said Caroline Smith DeWaal, Director of Food Safety for the Center for Science in the Public Interest. "It requires seafood processors to use in-plant controls to prevent contamination, but these controls aren't checked using laboratory tests. It requires seafood processors to keep records, but most of these records will never be government-inspected."

The Safe Food Coalition, of which CFA and CSPI are members, identified a number of problems with the plan during the comment period that went largely unaddressed in the final FDA rule. For example:

- inspection frequency, already low, will decline under the rule;
- laboratory sampling for harmful bacteria, natural toxins, and chemical contaminants — which is essential to show that HACCP plans actually control these hazards — is optional;
- fishing boats, trucks, and retail stores are specifically excluded from the rule;
- FDA will not have access to consumer complaints sent to companies;
- the public will not have access to HACCP records; and
- the plant workers responsible for record-keeping will not be protected from retaliatory discharge if they disclose HACCP plan violations.

"Because of inadequate funding and the flaws in the system, there is no guarantee that the seafood reaching consumers will be any safer as a result of this new rule," Neidle said. CSPI's DeWaal concurred. "Unless FDA gets more funding for inspectors, we are getting less frequent government inspection in exchange for an industry honor system," she said.

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