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CONSUMER FEDERATION OF AMERICA

Congress Enacts Comprehensive Energy Bill

In a major victory for consumers and the environment, Congress enacted comprehensive energy legislation in the waning days of the 2007 congressional session that would provide the first increase in fuel efficiency standards in 30 years.

The president immediately signed the bill (H.R. 6) into law.

The centerpiece of the new law is a provision — worked out between House and Senate negotiators in early December — that requires an increase in vehicle fuel economy standards by 40 percent to 35 miles per gallon by 2020.

"After two decades of inaction, this vehicle fuel economy agreement is the single most important step Congress can take to reduce our energy costs and dependence on Mideast oil," said CFA Research Director Mark Cooper.

"The new vehicle fuel economy standards represent one of the most important Congressional victories for consumers in a decade," added CFA Legislative Director Travis Plunkett.

The sudden flurry of action came after months of seemingly stalled negotiations over key provisions of the bill. Although the Senate passed its version of energy legislation last summer, the House had been slow to follow suit.

Once the agreement was reached on fuel economy standards, however, the House quickly passed the measure on a 235-181 vote in early December.

House Passage Follows CAFE Agreement

In addition to the fuel economy mandate, and a provision to expand biofuels production that was similar to one included in the Senate bill, the House bill also contained provisions to roll back tax breaks for oil companies and require electric utilities to use renewable energy as the source of 15 percent of their electricity.

CFA had urged support for the renewable electricity mandate.

A CFA study released in October analyzed the likely total national savings under an energy policy that combined the Senate fuel economy, Senate biofuels, and House renewable electricity requirements and found estimated direct savings to consumers of more than $180 billion between now and 2020 from implementation of these three policies.

"The direct consumer pocketbook savings are the largest benefit, but national security and environmental benefits are substantial as well," Cooper said. "Taken together, the value of these policies would be around $400 billion by 2020."

A public opinion poll released at the same time found strong public support, with 84 percent of respondents expressing support for the three major conservation provisions in congressional legislation.

Faced with a presidential veto threat and insufficient support to overcome a threatened filibuster, however, the Senate removed both the tax provisions and the renewable electricity provision from the bill prior to passing it on an 86-8 vote in mid-December.

The House then quickly approved the Senate version and the president signed it into law.

Effectiveness Depends on Agency Implementation

While celebrating the victory and praising Congress for enacting legislation with the potential to lower consumer costs, reduce oil consumption and imports, and cut global warming greenhouse gas emissions, CFA and Consumers Union cautioned in a December study that these benefits will only come about if the new standards are aggressively implemented by executive branch agencies.

The report estimates that, properly implemented, the vehicle fuel economy, appliance and building efficiency, and biofuels provisions in the final bill could save consumers as much as $250 billion between now and 2020, cut gasoline consumption by 60 billion gallons, and reduce greenhouse gas emissions by as much as one billion metric tons.

Unfortunately, it depends for its implementation on two agencies with a weak record in this area.

"Over the past couple of years, the National Highway Traffic Safety Administration, which implements fuel economy standards, and the Department of Energy, which implements appliance efficiency standards, both have lost court cases based on the fact that they undervalued energy savings," Cooper noted.

"This law can be a win-win for the American people," he said, but he cautioned that, "How these agencies implement the new law will be critical to consumer savings."

On the **Web**
www.consumerfed.org/pdfs/Energy_Bill_Passed_Impact_Depends_on_Agencies12_18_2007.pdf
www.consumerfed.org/pdfs/Brighter_Energy_Future_12-18-07.pdf
www.consumerfed.org/pdfs/CAFE_Agreement_Fuel_Economy_Renewable_Fuel_Electricity_Standards_12%203%2007.pdf
www.consumerfed.org/pdfs/Press_Release_No_Time_To_Waste_10-30-07.pdf
www.consumerfed.org/pdfs/No_Time_To_Waste.pdf

Senate, House Advance Bills to Strengthen CPSC

Responding to a rising tide of product recalls over the past year, the Senate Commerce Committee and the House Commerce, Trade, and Consumer Protection Subcommittee both approved bills this fall to strengthen the Consumer Product Safety Commission.

The Senate Commerce Committee gave unanimous consent to its bill (S. 2045), introduced by Sen. Mark Pryor (D-AR), in October. The House subcommittee followed suit in November with passage of H.R. 4040, introduced by Rep. Bobby Rush (D-IL).

"Consumer groups have long been urging Congress to close the gaping holes in our country's safety net," said CFA Senior Counsel Rachel Weintraub. Both the House and Senate bills "move us in the right direction," she said, taking "great strides in providing more resources to the CPSC, strengthening its statutes, and closing gaping loopholes in current law."

"We look forward to passage in both the House and the Senate of comprehensive reform that strengthens CPSC's ability to protect consumers from unsafe products and results in a safer marketplace," Weintraub said.

CPSC began operating in 1974 with a staff of nearly 800 and a budget of $34.7 million — the equivalent of $125 million in today's dollars. Over the past 30 years, the agency's staff has fallen to around 400 employees, with a budget of $63.25 million.

A recent dramatic increase in recalls of unsafe consumer products, particularly products manufactured in China, has drawn renewed attention to the agency's serious lack of both resources and authority.

In response, the Senate bill would authorize an increase in funding to $140 million over six years, while the House bill would increase funding to $100 million over three years.

Bills Beef up Agency Authority

Both bills also would give the agency new authority in a number of areas. For example:

- both would require some children's products, including some toys, to be tested by independent labs and to be certified as meeting safety standards, though neither bill takes adequate steps to ensure the labs' independence;
- both would limit the level of lead in children's jewelry and toys and would decrease the current lead level for paint and coatings on children's products;
- both attempt, in different ways, to increase the CPSC's ability to disclose safety information to the public, with the Senate bill taking great strides in eliminating the biggest hurdle to the disclosure of key safety information – the ability of industry to sue the agency over information disclosure; and
- both would raise the cap on the agency's civil penalties, from $1.83 million to $100 million in the case of the Senate bill, but to just $10 million in the House bill.

The bills also include a provision giving state attorneys general the ability to enforce CPSC regulations, but the House bill includes fairly strict limitations on AG authority.

CFA Testifies in Support of Legislation

In early October, CFA Legislative Director Travis Plunkett testified in support of the Senate bill before the Senate Consumer Affairs Subcommittee.

He called S. 2045 a "far-reaching and comprehensive bill" that "will strengthen the U.S. Consumer Product Safety Commission and give it the tools it desperately needs to protect consumers from unsafe products."

A number of the strengthening amendments advocated by Plunkett in his testimony were adopted by the committee before passing the bill. The bill passed on unanimous consent despite opposition from CPSC Acting Chairwoman Nancy Nord and the White House.

In November, Weintraub testified before the House Commerce, Trade, and Consumer Protection Subcommittee, outlining strengths and potential weaknesses of the House bill.

In her testimony — delivered on behalf of a number of leading consumer and safety organizations — she said, "It is clear to all of us that something has gone wrong with our current safety system." H.R. 4040, she said, "correctly recognizes that the Consumer Product Safety Commission … is broken."

On the **Web**
www.consumerfed.org/pdfs/CPSC_Vote_in_Senate_10_30_07.pdf
www.consumerfed.org/pdfs/CPSC_Senate_Leg_Hearing_10_07_final%20_2_.pdf

Conference Focuses on Food Safety, Farm Bill

Food conference keynote speakers, from left to right: Acting Secretary of Agriculture Chuck Conner, Rep. Rosa DeLauro, Sen. Richard Durbin, Rep. Collin Peterson, and Sen. Tom Harkin.

Leading members of Congress and the administration spoke at CFA's National Food Policy Conference in September on topics ranging from agriculture policy to biofuels to the need to create a consolidated food safety agency.

Sen. Richard Durbin (D-IL) focused primarily on food safety challenges in his keynote address, noting that recent food safety crises had highlighted weaknesses in the system and had created an opportunity for reform.

"We should catch the political wave and think about creating a new food safety system," he said, where responsibility for food safety is consolidated within a single agency.

With the Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) fighting over authority, funding, and jurisdiction, however, it will take a multi-year effort to create such a system, he predicted.

One of the major challenges is that "we need a lot more funding" for food safety, he said. "We cannot tag the expense onto the deficit."

He offered user fees, which are generally opposed by consumer groups, as the best alternative, but said he is looking for suggestions on a revenue stream.

Administration's Safety Response Criticized

Rep. Rosa DeLauro (D-CT), who chairs the House Agriculture Appropriations Subcommittee, echoed those sentiments in speech highly critical of the administration in general and the FDA in particular for their ineffective response to the food safety challenge.

"Too often, in the face of global change, the FDA has been passive and reactive. Too often, it seems as if this administration is more focused on trade relations than consumer safety, more on public relations than public health," she said.

With the FDA finally acknowledging that it needs additional authority to carry out its mission, Rep. DeLauro said she hopes we "can take advantage of the momentum this acknowledgement creates and open a dialogue that results in real, significant reforms at the FDA."

She singled out for criticism a provision included in the House version of the farm bill that would allow interstate shipment of state-inspected meat and poultry products as posing a serious threat to public health. (See related article, this page.)

Pledging to continue fighting to have the provision stricken from the final farm bill, she said, "This is about ensuring any changes we make to our food safety system actually improve safety and resource allocation."

She also criticized USDA for moving forward on a Risk Based Inspection system without adequate data to use in ranking product risk or determining establishment risk.

Finally, Rep. DeLauro, who has co-authored legislation with Sen. Durbin to create a consolidated food safety agency, stressed the need for this kind of comprehensive reform.

"I am sure we can get this done," she said. "It is long overdue. Too much is at stake for all of us not to move forward together."

State-inspected Meat Provision Defended

Rep. Collin Peterson (D-MN), who as chair of the House Agriculture Committee shepherded the farm bill through the House, defended that bill's provision allowing the interstate sale of state-inspected meat.

He said the provision provides a "huge opportunity for organic meat."

"I'll be damned if we let foreign inspected meat without regulations" enter the country while we keep state-inspected meat from being shipped across state lines, he said.

He also called for strengthening import regulations, but said the cost needs to be paid by the producer, through user fees, not the taxpayer.

Finally, he touted the compromise reached on Country-of-Origin labeling in the House bill while arguing that it "is not an issue of food safety and will not improve food safety."

Competing Interests Complicate Farm Bill

Sen. Tom Harkin (D-IA), who chairs the Senate Agriculture Committee, discussed the difficulty of putting together a farm bill that addresses issues related to "food safety, conservation, and rural development," a task made more difficult by the absence of adequate funding.

Among the many challenges, he said, are: the need to "encourage farmers to be safe stewards of the land," an issue that is growing in importance as the booming biofuels industry makes land more valuable; the need for "a stronger nutritional title" that, among other things, reexamines programs in light of the childhood obesity problem and promotes consumption of fruits and vegetables; and the need for a targeted food safety bill.

One thing that limits consumption of fresh produce is concern about its safety, he said. He urged support for his recently introduced legislation to promote produce safety as a "common sense" response to that problem.

Meanwhile, Acting Secretary of Agriculture Chuck Conner spoke about the importance of biofuels in reducing dependence on foreign oil.

Just since March, the United States has added 1.2 billion gallons of ethanol production and has built 15 plants, with another 76 under construction, he said.

"This is good news for farmers," but it is impacting food prices, he said. He predicted, however, that food prices would stabilize, and he noted that gasoline prices also are impacting milk, meat, and other food prices.

The administration also supports other funding in the farm bill for research and development of renewable energy, he said.

State Inspection Compromise Included in Senate Farm Bill

Consumer, labor, and farm groups reached a compromise on the issue of state-inspected meat and poultry in October that would ensure that products sold in interstate commerce remain subject to the requirements of the federal meat and poultry inspection laws.

The compromise provision, which Sen. Tom Harkin (D-IA) agreed to include in the Chairman's mark of the Senate Farm Bill, would create a new inspection program.

The new federal program would allow 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 would enforce federal meat and poultry inspection laws in these plants.

Each state would have a USDA-employed "state coordinator" who would provide constant federal oversight of the operations in 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 standard.

The provision provides an incentive for states to increase food safety testing by having USDA reimburse states for 100 percent of the cost of testing that exceeds the testing frequency of the federal government.

"We are delighted that we've been able to work out a compromise with the National Farmers Union and the National Association of State Departments of Agriculture that assures the primacy of federal food safety law and protects consumers and workers," said Carol Tucker Foreman, Distinguished Fellow of CFA's Food Policy Institute.

"This law reinforces the principle that the first priority of meat and poultry inspection is protecting us and our families from adulterated food products. New marketing opportunities must remain a secondary consideration," she said.

The version of the farm bill that passed the House earlier would end the 40-year requirement that products shipped in interstate commerce must be federally inspected. It was strongly opposed by CFA and other food safety groups.

Responding to that criticism, House Agriculture Committee Chairman Collin Peterson (D-MN) encouraged the diverse groups to work together to assure food safety protection. He has pledged to support the new program during the House-Senate Farm Bill conference.

As of the end of November, the farm bill had not yet been sent to the Senate floor for a vote.

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As Crisis Mounts, House Passes Mortgage Reform Bill

With foreclosures rising and home sales dropping, the House took bipartisan action in adopting legislation in November to combat abusive practices in the mortgage lending market.

"The House-passed bill is far from perfect," said CFA Director of Housing and Credit Policy Allen Fishbein.

"On the positive side, it establishes a national standard to curb abusive lending practices that led to the current crisis," he explained. "Yet it does not provide consumers with meaningful remedies necessary to deter lenders and Wall Street from abusive practices.

"It is vital that the Senate correct this problem," he said.

Senate Banking Committee Chairman Christopher Dodd (D-CT), who commended the House for passage of its bill, said he would be introducing companion legislation later in the year but had not done so by the end of November.

The House bill (H.R. 3915) would for the first time establish a federal duty of care on all mortgage originators, requiring them to ensure that a consumer who receives a mortgage loan has a "reasonable ability to repay" the loan based on the borrower's documented income and, in the case of a refinancing, will receive a net tangible benefit from the loan.

Loan originators violating this standard would be held liable for up to three times brokers' fees plus costs. H.R. 3915 would also impose limited liability on those who purchase and repackage loans to monitor the quality of those loans.

The bill expands the scope of and strengthens consumer protections for "high-cost mortgages" under the existing Homeownership and Equity Protection Act. It also targets specific predatory subprime lending practices, including the use of pre-payment penalties that are now common on subprime loans and the steering of consumers into predatory and other loans that they are unlikely to repay, both of which are prohibited under the bill.

While H.R. 3915 would impose minimum national standards on all mortgage lenders, states would be free to enact stronger laws for mortgage originators. As passed, however, the House bill preempts the use of state law – often stronger than federal law – to sue Wall Street securitizers for common abusive practices.

Bill Wins Bipartisan Support

The bill was approved by the House Financial Services Committee in early November on a 45-19 vote, with nine panel Republicans including Ranking Member Spencer Bachus (R-AL) lending their support. It passed the House in mid-November on a 291-127 vote.

In response, the White House issued a statement objecting to certain provisions of the bill but stopping short of threatening a veto.

Despite that progress, the twin threats of a Republican-led filibuster in the Senate and presidential veto continued to delay action on a variety of other proposals aimed at aiding homeowners threatened with foreclosure and reforming abusive practices.

"Each week's delay in federal action puts thousands of additional families at risk of losing their homes," Fishbein said.

Report Documents Need for Action

Meanwhile, a report issued in October by the Joint Economic Committee found that hundreds of thousands of families are threatened with the loss of their home as the result of faulty mortgages that should never have been made.

And, as the report illustrates, the effects of the crisis extend beyond vulnerable home loan borrowers. Massive foreclosures also harm neighborhood property values, reduce local tax revenues, and strain municipal resources.

If it continues, this trend could even lead to a broader economic downturn, according to the report.

"Federal action could help stave off some of these broader effects," Fishbein said. He outlined three things Congress could do to "stop the bleeding:"

- fix the bankruptcy code to protect an estimated 600,000 families from foreclosure;
- increase federal funding of foreclosure avoidance counseling; and
- reform consumer protection laws to reduce the likelihood that these problems will recur.

Bills have been introduced that would do all of these things, including the reform bill that passed the House in November.

In addition to that measure, a House Judiciary Subcommittee in October reported out legislation (H.R. 3609), introduced by Reps. Brad Miller (D-NC) and Linda Sanchez (D-CA), that would allow bankruptcy judges to extend the payment period, write down the outstanding principle, or lower the interest rate on unaffordable mortgage loans for consumers facing bankruptcy.

This is comparable to the authority bankruptcy judges now have to modify the terms of other types of consumer debt.

Estimates are that as many as 600,000 homeowners could avoid foreclosure were this legislation to be adopted.

Veto Threat Clouds Prospects

The 5-4 vote in subcommittee, however, the threat of a presidential veto, and the lack of a Senate counterpart made it unlikely that the legislation would be adopted before year's end.

Also, the Senate included a provision in its version of the Transportation-HUD appropriations bill (H.R. 3074) to provide $200 million to nonprofit organizations that help homeowners in foreclosure.

Differences between the House and Senate versions of the bill were expected to be worked out in conference committee, but that legislation too was subject to a presidential veto threat over unrelated issues.

Opposing all the key bills that have been introduced in Congress, the administration has preferred to rely on moral suasion to encourage mortgage lenders to work with borrowers facing foreclosure to negotiate more favorable loan terms.

By the end of November, however, they appeared to be having limited success, and there were indications that the administration was re-thinking that position.

A study by Moody's Investors Service found that lenders had made accommodations on only about one percent of loans where interest rates adjusted in January, April, and July of this year.

"The industry has got to decide whether they are part of the problem or part of the solution," Fishbein said. "The focus should be on modifying faulty loans, not on industry bailouts."

On the **Web**
www.consumerfed.org/pdfs/Allen_Fishbein_statement_Oct%20_25_2007.pdf

Financial Services Update

Continued from Page 6

bank customers who inadvertently borrow money by overdrawing accounts with debit cards," Fox said.

The bill, H.R. 946, would require banks to get their customers' affirmative written consent to borrow money through over-drawing their accounts. Currently, banks permit customers to overdraw by debit card, by check, and by pre-authorized payments without warning, notice, or consent.

In addition, the Federal Reserve has exempted banks from providing cost to borrow information for overdraft loans required from all other lenders. To assist consumers to make well-informed decisions about the best buy for small loans, the legislation would require banks to provide Truth-in-Lending cost of credit disclosures for the overdraft loans.

Banks would be required to warn consumers when they are about to trigger an overdraft at an ATM or when paying by debit card at point-of-sale terminals. Banks would not be able to charge overdraft fees until consumers affirmatively consent to the fee.

"This notice and consent would empower consumers to choose whether to pay the fee, to terminate the transaction, or to choose another payment method," Fox said.

In order to deter banks from rigging the order in which they process deposits and withdrawals to maximize bounced check and overdraft fee revenue, the bill would require banks to process deposits before withdrawals and would prohibit them from processing the largest withdrawals first in order to extract more fees.

"Banks are raking in at least $17.5 billion per year in overdraft loan fees while Congress and the Federal Reserve fail to enact modest consumer protections and cost disclosures," Fox said.

States Urged To Adopt Clean Car Program

Citing a new study showing large consumer savings and important national security benefits in addition to its potential to reduce greenhouse gases, CFA has called on all 50 states to adopt the California Clean Car program.

"This program is a win-win for consumers and the nation," said CFA Research Director Mark Cooper.

"While the environmental benefits of reduced emissions of pollutants and carbon dioxide are the primary motivation for the Clean Cars program, we find it also puts money into consumers' pockets because gasoline consumption is lowered and it enhances national security because imports are reduced," he added.

The report applies a consumer pocketbook test, which compares the increase in the monthly auto loan payment for vehicles that comply with the emissions standards to the reduction in operating costs that result from reduced gasoline consumption. It also includes a societal cost-benefit analysis to take into account the environmental, national economy, and national security benefits of reduced gasoline consumption.

For all nine types of vehicles examined, including cars and trucks with advanced automotive technologies and both conventional and alternative fuels, the report found that the operating cost savings exceed the increased loan payment and the societal benefits far exceed the costs.

"The spread of the Clean Car program to over a dozen states is an example of U.S. federalism at its best," Cooper said.

"We have a pressing national – even global – problem, but the federal government has been slow to act," he added. "States are stepping up to do the job."

The program would work well with the two approaches to reducing greenhouse gas emissions most frequently talked about by federal policymakers, creating a cap and trade system or imposing a carbon tax.

"If Congress put a cap and trade system in place, automakers who comply with the state programs would earn credits that they could sell under such a program," he said. "If Congress goes for a carbon tax, automakers would find their compliant cars are less expensive for consumers."

Public opinion polls show that consumers are increasingly concerned about all three issues – energy costs, oil imports, and global warming, Cooper said.

"The California Clean Car program addresses all three concerns because the best way to reduce greenhouse gas emissions is to reduce gasoline consumption," he said.

On the **Web**
www.consumerfed.org/pdfs/CLEAN_CARS_press_release_11-26-07.pdf
www.consumerfed.org/pdfs/CFA_Clean_Cars_Report.pdf

Anti-Consumer Terror Insurance Bills Advance

Although concerns about taxpayer costs resulted in delays, anti-consumer bills to extend and expand the Terrorism Risk Insurance Act (TRIA) passed the House in late September and the Senate in November.

The two bills take different approaches, however, which will have to be worked out before final passage. Meanwhile, the White House has threatened a veto.

"There is no justification for increasing taxpayer risk when terrorism insurance is widely available at rates that are dropping and the financial capacity of the insurance industry to handle terror losses is unprecedented," said CFA Legislative Director Travis Plunkett.

"By expanding TRIA instead of further cutting it back, these bills would foolishly choke off the vigorous growth in the private terror insurance market and reduce the incentive of insurance buyers to take reasonable steps to reduce their terror losses," he said.

TRIA was originally passed by Congress at the end of 2002 as a "temporary" program that would last only three years. When Congress extended the program through the end of this year, it sharply cut back TRIA's coverage, requiring private insurers to pick up more costs in the event of future terrorism attacks.

Despite this reduction in federal assistance, a study by the Department of Treasury found that many more businesses and public facilities are buying terrorism coverage, because more coverage is available and rates are dropping.

House Bill Would Expand Program

Threatening this progress, the House bill (H.R. 2761) would provide a 15-year extension of the program and extend coverage to domestic terrorism, to nuclear, biologic, chemical, and radiological attacks, and to group life policies.

It would also lower the TRIA "trigger" at which free coverage begins from $100 million in losses to $50 million in losses, and it would retroactively grant TRIA coverage at much lower levels than under the rest of the program to large building owners and real estate developers near "ground zero" in New York City.

"With the exception of the nuclear, biologic, chemical, and radiation coverage, the insurance industry does not need any of this governmental largesse," said CFA Insurance Director J. Robert Hunter.

In early September, the Congressional Budget Office issued an estimate that H.R. 2761 would increase direct federal spending by $10.4 billion between 2008 and 2017 and by an additional $13.7 billion after 2017, with an estimated net loss to taxpayers of $8.4 billion between 2008 and 2017.

In response to the CBO report, CFA reiterated its call to Congress to sharply cut back TRIA to cover only those terrorism losses that the increasingly profitable insurance industry cannot handle on its own.

CFA Advocates Cutbacks

Specifically, CFA has proposed that insurers be required to cover all losses under $100 billion, including nuclear, biologic, chemical, and radiation losses. If this proposal were adopted by Congress, taxpayers would save $1 billion instead of paying $1.5 billion more per year under H.R. 2761, CFA estimates.

In addition, CFA has proposed that insurers pay an actuarially sound premium for any reinsurance coverage afforded to them under any TRIA extension.

"Had insurers paid premiums to the Department of the Treasury, as Americans do when they buy insurance coverage, the government would have this money in the bank ready to disperse if a terrorism event occurred," Plunkett said. "Instead, the cupboard is bare, while federal deficits continue to increase."

Meanwhile, a CFA analysis shows that the property/casualty insurance industry has earned its highest profits in history since TRIA was enacted, despite high losses from Hurricane Katrina and other weather disasters.

According to that analysis, property/casualty insurers have earned a total of $236.4 billion in profits from 2003 through 2007, including an estimated $60 billion in profits in 2007.

"Profits for property/casualty insurance companies since TRIA was enacted have amounted to $788 from every man, woman, and child in America," said Hunter. "For Congress to increase taxpayer risk in the face of these astonishing profits would be appalling."

He also noted that the proposed expansion of TRIA comes at a time when over 10,000 homeowners along the Gulf Coast have filed lawsuits or complaints alleging that insurance companies used improper claims settlement practices in the wake of Hurricane Katrina.

"Congress should not reward this industry with unnecessary TRIA handouts when many insurers are treating Gulf Coast consumers with disdain," he said.

The companion measure passed by the Senate in November (S. 2285) would extend the program for seven years instead of 15, would keep the current $100 million trigger level for coverage, and would not expand TRIA coverage to group life insurance.

The Senate bill also would not require coverage of nuclear, biological, chemical, and radiological attacks, requiring instead that the Government Accountability Office recommend ways to expand insurance coverage for such events.

The Senate took up the House-passed bill and substituted the text of its Senate companion (S. 2285). It passed on a voice vote.

CFA praised the Senate bill for being "more responsible" than the House bill. However, in a letter to Senate banking committee members, Plunkett and Hunter noted that even this more restrained approach "is not consistent with the goal of establishing a temporary program that requires insurers to pay for more losses as their financial capacity continues to rapidly expand."

On the **Web**
www.consumerfed.org/pdfs/CBO_Estimate_of_TRIA_Expansion_PR_9-7-07.pdf
www.consumerfed.org/pdfs/TRIA_House_Floor_Letter_9-18-07.pdf
www.consumerfed.org/pdfs/TRIA_Amendments_Opposition_Letter_SBC_Markup_10-16-07[1].pdf

Senate, House Differ on Flood Insurance Reform

The Senate Banking Committee gave unanimous approval in October to legislation to reauthorize and shore up the finances of the federal flood insurance program.

The bill (S.2284), which was supported by CFA, takes important steps to protect taxpayers, increase the market penetration of flood insurance, and eliminate unjustified subsidies in the flood program.

In particular, the bill would phase 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 would also require the National Flood Insurance Program (NFIP) to build reserves over time, add a 500-year floodplain to the flood maps, and require the evaluation of flood risk behind dams and levees.

In addition, it would take the important step of creating an ombudsman office to investigate problems in the NFIP, including waste and fraud.

"All of these steps would help bring the NFIP back toward solvency, ensuring that it will be available for homeowners who need it," said CFA Director of Insurance J. Robert Hunter.

CFA Urges Support for Senate Bill

Hunter and CFA Legislative Director Travis Plunkett wrote to Senate Banking Committee members before the vote urging them to support the bill and to oppose an amendment by Sens. Charles Schumer (D-NY) and Mel Martinez (D-FL) to expand the program to cover losses from wind damage.

"Requiring the Federal Emergency Management Agency (FEMA) — one of the most incompetent federal agencies in recent history — to supervise the adjustment of both flood and wind claims could be a recipe for disaster for many homeowners and taxpayers," they wrote.

The amendment would have required wind policies to be underwritten, but it placed no requirements on FEMA or localities to reduce possible wind damage on homes that the government would insure.

"It does no one — rich or poor — any favor to allow unwise construction in risky areas," Plunkett and Hunter wrote.

That amendment was ultimately withdrawn.

In contrast to the Senate's pro-consumer action, the House approved flood insurance legislation (H.R. 3121) in September that would dramatically expand the program without taking the steps needed to reform it.

The bill passed on the 263-146 vote.

Plunkett and Hunter wrote to members of the House prior to the vote urging their opposition.

CFA Opposes House Bill

"This legislation would significantly expand the National Flood Insurance Program — and increase costs to taxpayers — without taking adequate steps to correct the wholesale mismanagement of the program or to reduce unwise construction in floodplains that has occurred despite instructions from Congress to make the program actuarially sound," they wrote.

"Ultimately, this will harm home and business owners, who may — once again — be encouraged to build or buy in coastal areas prone to flooding," they added.

In addition to opposing measures in the bill that would expand coverage, CFA criticized it for allowing unjustified subsidies to persist, for failing to take steps to improve the penetration of flood insurance, and for failing to adopt a 500-year mitigation and purchase requirement.

CFA also opposed the bill's provision to expand the program to cover wind losses for the first time, although at non-subsidized rates. That provision was first proposed by Rep. Gene Taylor (D-MS) as a response to problems with insurance company claims payment practices regarding wind damage following Hurricane Katrina.

CFA did, however, support an amendment offered by Rep. Taylor to eliminate the conflict of interest that encourages insurers to refuse to pay legitimate wind claims and to shift the cost of these claims to the NFIP.

The amendment, which was adopted by the House on a voice vote, would prohibit private write-your-own insurers that offer flood insurance from using anti-concurrent causation clauses in wind coverage.

"If insurers were prohibited from using anti-concurrent causation clauses, they would have to fully adjust each wind loss to determine how much of the damage was caused by wind and pay for that damage themselves, and add any available flood insurance payment subject to audit by the federal government," Hunter explained.

Assuming the full Senate adopts its version of bill, differences between the two measures would have to be worked out before final passage.

On the **Web**
www.consumerfed.org/pdfs/Flood_Insurance_Support_Letter_SBC_Markup_10-16-07.pfd
www.consumerfed.org/pdfs/Hunter's_Senate_Testimony_Flood_Insurance_10-2-07.pdf
www.consumerfed.org/pdfs/Flood_Insurance_Bill_9-27-07.pdf

FCC Pushes Plan to Loosen Media Ownership Rules

After mulling various proposals for weeks, the Federal Communications Commission formally issued a proposal in November to loosen decades-old restrictions on media cross-ownership.

Ignoring bipartisan opposition in Congress, as well as opposition from the two Democratic members of the commission, FCC Chairman Kevin Martin indicated he plans to push through a vote on the proposal in December.

The proposal would allow newspapers in the nation's 20 largest media markets to buy one radio or television station in their city so long as the deal would leave at least eight other independently owned newspapers or television stations in the city. Newspapers would be prohibited from buying one of the four most-watched television stations.

While newspaper companies criticized the rule for not going far enough, consumer and media watchdog groups, including CFA, criticized the proposal for failing to protect the public interest and for failing to meet minimum legal fairness requirements for FCC rules.

CFA, Consumers Union, and Free Press filed comments in October blasting the agency for its "inconsistent, incompetent, and incoherent" attempts to skew official research in support of the media consolidation plan.

The comments use the FCC's own data to show how ownership limits protect the quantity and quality of local news and dismantle claims that removing the ban on newspaper/broadcast cross-ownership would increase local news.

In reality, the groups found, cross-ownership results in a net loss in the amount of local news produced across local broadcast markets. They also found that it reduces opportunities for minority ownership.

A previous attempt by the commission to relax the media ownership rules was thrown out by a U.S. Court of Appeals three years ago after the court determined that the agency had not done enough to justify the new rules.

Since then, the FCC has produced ten ownership studies, but with no public input, no peer review, and no transparency about the studies' authors or methodologies. It then gave the public just 60 days to respond.

"The commission wanted to eliminate the cross-ownership rule, so it put together a series of studies to support its pre-conceived notions," said CFA Director of Research Mark Cooper. "The outcome of this biased, tainted process is an ad-hoc collection of flawed research that trades objectivity for blind faith in deregulation."

Moreover, although the court explicitly told the FCC to study the lack of media diversity, the commission still has not even accurately counted the number of minority and female broadcast owners, the consumer groups found.

"This shameful neglect is exceeded only by the agency's inability and lack of effort to understand the impact of broader media ownership policy on female and minority ownership," they stated.

Meanwhile, a survey released in October by the Media and Democracy Coalition found strong public concern over media consolidation. Specifically, 70 percent of respondents described media consolidation as a problem, including 42 percent who describe it as a major problem.

Nearly six in ten respondents (57 percent) said they favor laws that make it illegal for a corporation to own both a newspaper and a television station in the same city or media market, while only 30 percent opposed such laws.

On the **Web**
www.hearusnow.org
www.stopbigmedia.com/filing/critique_summary.pdf
www.stopbigmedia.com/=coalition_analysis

FCC Seeks To Rein in Cable Monopolies

Even as the Federal Communications Commission Chairman advanced an anti-consumer plan to loosen media ownership limits in November, he also pushed a pro-consumer proposal to impose new growth limits on cable companies.

The proposal, which Chairman Kevin Martin said he expected to bring to a vote in December, would prohibit any one cable company from controlling more than 30 percent of the market. The proposal appeared to have the support of the agency's two Democratic commissioners.

CFA, Consumers Union, and Free Press issued a statement in November praising the move as an important step toward reining in cable monopolies and promoting more diversity and competition in the cable market.

"It is most encouraging that a bipartisan majority of commissioners has recognized the need to prevent the largest cable companies from growing large enough to dictate what programming American consumers have a right to watch and whether independent and particularly minority programmers have an opportunity to distribute programming on the largest cable systems," said CFA Research Director Mark Cooper.

The proposal was expected to face strong opposition from the cable industry, which has reportedly complained to the White House that the FCC's policies on cable are out of step with the administration's deregulatory agenda.

Pro-Consumer Regulatory Reform Urged

Financial regulation in the United States is in need of a broad overhaul, not to make our markets more competitive, but to make our consumer and investor protections more effective, CFA stated in comments filed with the U.S. Treasury Department in November.

The Treasury Department had sought comments on financial regulatory reform, including a proposal to consolidate financial services regulation within a single agency, as one of several initiatives focused on "maintaining the competitiveness of the United States capital markets."

In a letter co-authored by CFA's financial services team — Barbara Roper, Travis Plunkett, Allen Fishbein, J. Robert Hunter, and Jean Ann Fox — CFA argued that this focus was inappropriate at a time when the country, and indeed the world, finds itself mired in a mortgage crisis brought about "as the direct result of a regulatory failure of monumental proportions."

"Any analysis of our system of financial regulation undertaken in the current environment should be focused primarily on determining what went wrong, why regulation failed to prevent problems or contain the damage, and what can be done to make our regulatory system more effective," CFA said.

Principles-based Regulation Not the Answer

CFA also cast doubt on the argument that what is needed is a more "principles-based" approach to financial services regulation."

Under principles-based regulation, decisions regarding whether specific conduct violates regulatory principles are likely to be worked out either in closed-door discussions between the regulator and the regulated company or, where negotiations break down, in court, CFA noted.

For these reasons, "replacing our current system with a more principles-based approach would diminish transparency and clarity, would rob the public of an important opportunity to participate in the regulatory process, and would in all likelihood lead to weaker enforcement," CFA wrote.

CFA did not take a position on the issue of regulatory consolidation, noting that it offers both potential benefits and risks.

"Unless and until the underlying causes of ineffective regulation are identified and addressed, simply creating a consolidated regulator, or adopting a more principles-based approach to regulation, is highly unlikely to change the culture that has caused the various financial services regulatory agencies to ignore festering problems and to reject adequate consumer protection measures," CFA wrote.

CFA identified three main causes of ineffective regulation:

- regulators who are too close to the industries they regulate;
- an excessive focus on "prudential" regulation and the regulatory conflict between insuring institutional safety and soundness and protecting consumers; and
- regulatory balkanization that leads to downward pressure on consumer protections or results in cooperative action to raise standards that is extremely slow.

Only the latter of these is likely to be alleviated under a consolidated financial services regulator, and that is far from certain to occur, CFA noted.

Underlying Causes of Regulation Failure Must Be Addressed

"Regulatory reform efforts designed to provide much-needed improvements to the quality of financial services regulation must be based on pro-consumer, pro-investor principles," CFA wrote.

The first of these, according to CFA, is that regulators be independent of the industries they regulate. Steps needed to accomplish that include: closing the revolving door between industry and regulators, decreasing the proportion of agency funding provided by regulated companies, and eliminating the ability of financial services companies to choose the agency that regulates them.

CFA also advocated requiring regulators to regularly assess the effectiveness of their consumer and investor protections and suggest improvements.

Other pro-consumer, pro-investor principles that should be incorporated in financial services regulation include:

- requiring that financial products and services offered to consumers be designed to benefit those consumers;
- providing consumers with access to timely and meaningful information about the costs, terms, risks, and benefits of the financial products and services marketed to them;
- ensuring that consumers reap the benefits of technological change in the marketplace that decrease prices and promote efficiency, transparency, and convenience and are protected from technological changes that threaten their privacy and information security; and
- ensuring that consumers have access to meaningful redress mechanisms when they suffer losses from fraud, deceptive practices, or other violations.

"Financial services regulation can be made more effective, but only if regulators are willing to abandon old ways and adopt an approach to regulation that puts consumers and investors first," CFA wrote. "As the Department conducts its assessment of financial services regulation, we urge you to champion such an approach."

On the **Web**
www.consumerfed.org/pdfs/Financial_Services_Regulation_Treasury_Comments_11-07.pdf

Financial Services Update:

Military Credit Rules Take Effect

Regulations implementing the Military Lending Act took effect October 1. That law, passed by Congress last year, caps annual interest rates at 36 percent for credit, including payday, auto title, and refund anticipation loans made to military families.

"The 36 percent cap will slow the predatory lenders down, and the law says they can't hold onto the service member's personal check, have electronic access to their bank account, or hold car titles as collateral for this type of loan," said CFA Consumer Protection Director Jean Ann Fox.

The threat that the lender will deposit the borrower's check, which would often not clear the bank, has been a key method used by lenders to trap borrowers in loans that they end up paying back many times over in interest, she explained.

Unfortunately, the Department of Defense rules will not cover all high-cost products.

One reason is that, during the rulemaking process, the banking industry heavily lobbied the Pentagon for an exemption from the rules. In lieu of giving banks a blanket exemption, the Pentagon narrowly defined the categories of loans that are subject to the cap.

Final rules exclude credit cards, overdraft loans, and all forms of open-end credit, as well as military installment loans specifically mentioned as a problem in the Pentagon's Report to Congress.

As a result, predatory lenders may find it easy to sidestep the restrictions, as they have already done in states with weak protections, Fox said. In Illinois, for example, payday lenders restructured 350-percent-interest loans as 121-day installment loans to get around that state's definition of a payday loan as lasting 120 days or less.

Military families would not be protected from this product under the new rules, which apply only to closed end loans of 91 days or less.

"The unintended consequences of these changes will be to weaken a federal law enacted to protect military families from abusive financial practices," Fox said. "Still, as long as the payday lenders don't contort their products to try to end-run protections for military, this law will protect our soldiers and their families from the worst abuses."

* * *

New Fee-Based Brokerage Account Rule Takes Effect

As a result of an appeals court decision earlier this year overturning the Securities and Exchange Commission's fee-based brokerage account rule, brokerage firms had to decide by October 1 whether to continue operating those accounts as fee-based accounts under the provisions of the Investment Adviser Act or convert them to commission-based accounts.

The Securities and Exchange Commission issued interpretive rules in September governing the transition of these accounts.

"In general, the commission has done a reasonably good job of determining when the Investment Adviser Act should apply to brokerage activities," said CFA Director of Investor Protection Barbara Roper.

The commission takes the position that the advisers act would apply when a broker contracts separately for advisory services, charges a separate fee for advisory services, or exercises discretionary authority over the account.

"These are all cases in which the advice is more than solely incidental to brokerage services and where a reasonable investor would assume that the fiduciary duty of an adviser would apply," Roper said.

The SEC did not, however, reaffirm its earlier interpretation that financial planning services offered by a brokerage firm would be subject to advisers act regulation. The reason given by the SEC was that "many financial services firms found [it] difficult to apply."

"CFA believes that the commission's original interpretation was clearly the correct one and that the reason offered for failing to readopt it is inadequate," Roper said.

She added, however, that until the SEC adopts an appropriate definition of brokers' "solely incidental to" exemption from the advisers act, it will be impossible for the agency to develop an appropriate approach to regulating financial planning.

"While we believe these are issues of highest priority, we also believe they are best deferred until after completion of the RAND study," which is expected by the end of the year, she said.

The RAND study was commissioned by the SEC when it first adopted the fee-based brokerage account rule to help determine whether additional legislation or regulation is needed in this area.

"We seem to be moving slowly closer to a rational, pro-investor policy for regulating investment advisory services and financial professionals," Roper said. "However, we are not yet there yet."

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Overdraft Loan Bill Put on Hold

Legislation to protect bank customers from abusive overdraft loans was scheduled for consideration in the House financial services committee in September, but the markup was postponed indefinitely.

"Under pressure from bankers, the House has failed to enact modest protections for

(Continued on Page 3)

On the **Web**
www.consumerfed.org/pdfs/FINAL_MLA_take_effect_PR_9-27-07.pdf
www.consumerfed.org/pdfs/CFA_CRL_NCLC_Press_Release_9-4-07.pdf
www.funddemocracy.com/cmt%20ltr%20bd%20rule%2011.2.07.doc.pdf

Energy Costs Dampen Holiday Spending Plans

Rising costs of gasoline and home heating put pressure on consumers to cut back on their holiday spending plans this year, according to a survey released in November by CFA and the Credit Union National Association (CUNA).

At 35 percent, the percentage of respondents saying they intended to spend less this year than last year was the highest it has been in the eight years that CFA and CUNA have been conducting the survey. That number was up from 32 percent last year.

In citing influences over their holiday spending plans, 38 percent of those responding said the cost of gasoline and home heating would cause them to somewhat or greatly decrease their holiday spending, up from 32 percent last year.

Price of gifts also played a role in consumer attitudes toward spending, with 32 percent saying they would somewhat or greatly decrease their spending as a result. That number was up from 26 percent last year.

Cited less frequently, with fewer than 30 percent citing these factors, were current family finances and general household expenses.

"It is noteworthy how frequently consumers cited rising energy costs as a reason they plan to cut back their holiday spending, far more frequently than they cited general family finances," said CUNA Chief Economist Bill Hampel. "They are clearly quite concerned about the escalating price of gasoline and home heating oil."

Despite rising attention paid to the mortgage meltdown and general credit crisis, fewer consumers than last year said they were concerned about making monthly payments on mortgage and consumer loans. This year, 40 percent said they were concerned about making these payments, down from 43 percent last year.

Also, fewer consumers than last year said they were concerned about paying off credit card balances from holiday-related spending. Only 24 percent indicated this concern this year, compared with 33 percent last year.

"The good news is that a declining percentage of Americans express concern about paying off consumer and mortgage debt," said CFA Executive Director Stephen Brobeck. "The bad news is that these percentages remain relatively high, especially for moderate-income and minority Americans."

On the **Web**
www.consumerfed.org/pdfs/Holiday_Spending_Press_Release_11-19-07.pdf

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