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FTC Mismanagement Costs Consumers Millions

The failure of the Federal Trade Commission to competently manage its consumer redress and civil penalty collection programs is costing consumers tens of millions of dollars, according to a CFA report released in November.

"Consumers are losing out on tens of millions of dollars in redress money because the Federal Trade Commission is not collecting and distributing all of the consumer refund judgment money from fraudulent companies," said Mary Ponder, an advocate with CFA and author of the report.

Consumer redress funds are the amounts assessed from businesses that have been found to have committed unfair or deceptive trade practices. The FTC is responsible for seeing that those funds are collected and distributed to eligible consumers.

FTC combined fiscal year reports indicate that the total value of consumer redress judgments from 1989 to March 1994 was $305,720,426. According to the FTC's own records, however, consumer refunds occurred in only 28 percent of the cases.

Specific Problems With Program Outlined

The CFA report identified the following specific problems in the consumer redress program:

- the FTC failed to maintain accurate, comprehensive records on all judgments, collections, and distributions;
- the FTC did not audit the subcontractors and other parties administering consumer redress programs; and
- the FTC does not have a central office, with oversight authority, to collect and distribute consumer redress funds.

For example, the report found that agency management has failed to provide staff with standardized procedures for consumer redress case settlement terms, collection procedures, and distribution plans. Furthermore, because the agency does not maintain a centralized, comprehensive record on all judgments, collections, and distributions, it is not able to identify successful strategies to maximize enforcement efforts.

Penalty Program Also Plagued By Mismanagement

The report also found problems in the FTC's program for collection of civil penalties, which are assessed against businesses found to have violated orders or trade rules and deposited in the U.S. Treasury.

In the last five years, according to FTC records released to CFA, the agency has turned over nearly $21.5 million in civil penalty fines to the U.S. Treasury.

> *"FTC management has failed to take charge of these programs. The records are in disarray."*

According to the CFA report, however, the FTC has failed to maintain accurate records on individual cases. Also, the agency has not monitored and audited the civil penalty program.

"FTC management has failed to take charge of these programs. The records are in disarray," Ponder said.

FTC Ignored Inspector General's Recommendations

The CFA report describes FTC management's failure to institute reforms recommended by the agency's own Inspector General as well as the Inspector General's failure to exercise his oversight authority.

"In 1989 and 1990, the Inspector General audited the consumer redress process and recommended written staff procedures and a central system to monitor the program," Ponder said. "FTC management ignored many of the recommendations, and the Inspector General has looked the other way."

Although the agency did adopt some improvements recommended by the Inspector General following a 1990 audit of the civil penalty program, the agency did not adopt the recommendation to assign oversight responsibility for the process to a single independent unit.

GAO Study Urged

CFA has asked Congress to request a General Accounting Office audit of all the records of consumer redress and civil penalty cases, including recommendations to improve the accountability of these programs.

In addition, CFA has recommended that the FTC institute new administrative procedures and policies to strengthen the internal controls in central offices for these programs.

The report, "The Federal Trade Commission Penalty Collection and Distribution Programs: An Assessment," is available for $10 prepaid from CFA, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036, (202) 387-6121.

NICO Joins Federation As CFA's Insurance Group

Consumer insurance advocates J. Robert Hunter, James H. Hunt, and Kathleen F. O'Reilly have joined the Consumer Federation of America, CFA announced in January. The National Insurance Consumer Organization, the organization that Hunter founded and that Hunt and O'Reilly have been associated with, has been incorporated in CFA as CFA's Insurance Group.

"For many years, Bob has been the nation's leading consumer insurance reformer, Jim the most effective advocate on life insurance issues, and Kathleen a consumer leader at the national and state levels," said CFA Executive Director Stephen Brobeck. "With access to CFA resources, they can make even more significant contributions to the welfare of insurance consumers."

Priorities Outlined

Hunter joins CFA as director of insurance, Hunt as life insurance actuary, and O'Reilly as insurance counsel. They outlined four important priorities they plan to address:

- Enhancing competition in the industry through improved information for consumers, repeal of state anti-rebate and anti-group sales laws, and repeal of the industry's anti-trust exemption. "Let's see if the new Congress really believes in competitive forces or continues to ignore anti-competitive practices within the insurance industry," Hunter said.
- Educating life insurance buyers to the considerable risks they unknowingly take on when they buy cash value life insurance policies. These policies are often sold deceptively and offer poor value unless held for at least 15 years. "In the near future, we will show how consumers waste billions of dollars on these policies," Hunt said.
- Strengthening state insurance departments and ensuring that they are efficiently run for the benefit of consumers. "As insurance commissioner, I learned close up where money can be saved and the way some insurers push for misdirection of state efforts," Hunter said.
- Promoting effective consumer representation before these departments. "Consumers deserve an independent consumer advocate with the resources necessary to adequately represent their point of view before the state's insurance commissioner — much the way utility consumers are represented before most state utility commissions," O'Reilly said.

New Members Bring Wealth of Experience

During the past year, Hunter served as Texas Insurance Commissioner. From 1980 to 1993, he founded then served as president of NICO.

In the 1970s, Hunter served as the Federal Insurance Administration's chief actuary, then as the agency's administrator. Before that, Hunter held executive positions in the insurance industry as an underwriter and as an actuary. He is a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries.

Since 1980, Hunt has served as a director of NICO and as its life insurance expert. In the 1970s, he worked for the New Hampshire and Massachusetts insurance departments. From 1965 to 1969, he served as Commissioner of Banking and Insurance for Vermont.

Hunt is an actuary who is a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries.

For nearly a decade, O'Reilly has worked with NICO in several capacities, most recently as president.

From 1983 to 1989, she served as executive director of the Wisconsin Citizens Utility Board. From 1981 to 1983, she was a consumer/legal correspondent for NBC's *The Today Show*. From 1974 to 1980, she served as legislative director, then as executive director of CFA.

1994 Legislative Update

Financial Services

Community Development Banking Initiative — Congress passed and President Clinton signed a scaled back version of the community development bank legislation proposed by the president in 1993 (P.L. 103-325). The act establishes a new government corporation, the Community Development Financial Institutions Fund, to provide matching grants and technical assistance to alternative lenders that have community development lending as their primary focus and that operate principally in communities under-served by traditional lenders. The final version of the legislation contains a provision from the House bill strongly opposed by CFA and other consumer advocates to funnel one-third of any money appropriated for the fund into rebates on deposit insurance premiums for commercial banks and thrifts that offer services in inner cities and other underserved areas, essentially rewarding them for compliance with the Community Reinvestment Act.

Home Equity Reform — Legislation to clean up some of the worst abuses associated with high-cost home equity loans was included in the community development bank bill passed by Congress and signed into law. (See above.) The act imposes additional disclosure requirements, including a warning that defaulting could cause the homeowner to lose the home, on the highest-cost loans. Other practices, such as negative amortization loans, most balloon payments, and abusive prepayment penalties, are prohibited altogether. Finally, the act prohibits lenders from making loans without regard to consumers' repayment ability and from making payments directly to home improvement contractors.

Interstate Branching — Congress passed and the president signed legislation removing the few remaining barriers to interstate banking and allowing bank holding companies that own multistate networks of separately capitalized banks to consolidate these banks into branches (P.L. 103-328). The legislation grants banks this new power to consolidate while doing little to ensure their accountability to consumers.

Fair Credit Reporting Reform — Both the House and Senate passed bills in 1994 to make it easier for consumers to correct errors in their credit reports. Informal staff negotiations produced a compromise late in the session that would have given consumers the right to obtain one copy of their credit report a year for $3 and would have required credit bureaus to reinvestigate information disputed by the consumer and remove the information if they were unable to confirm it. The House passed the conference report twice late in the session, the second time with the addition of several non-germane items sought by various members of the Senate. Sen. Phil Gramm (R-TX) refused to remove his hold, however, and the conference report was never brought to a vote in the Senate.

Basic Banking and Check Cashing — Bills to require banks to offer consumers a lifeline account and to cash government checks for non-customers (H.R. 2350, S. 83) were never brought to a vote in the 103rd Congress, and attempts to include some form of basic banking requirement as part of the interstate branching bill also failed. Legislation to regulate check cashing operations and to require federally insured depository institutions to cash government checks when presented with proper identification (H.R. 1448) also died.

Regulatory Consolidation — Congress discussed but did not act on any of the three proposals, including an administration proposal, to consolidate the nation's fragmented and duplicative system of regulating banks and thrifts.

Mortgage Escrow Reform — Congress also did not act on legislation (H.R. 27) to clean up mortgage escrow abuses. In October, however, the Department of Housing and Urban Development adopted a number of reforms, including a requirement that aggregate accounting of escrow balances be used for future escrow accounts.

Insurance Redlining — Both the House Banking Committee (H.R. 1257) and the Energy and Commerce Committee (H.R. 1188) passed bills to address the problem of insurance redlining. Both bills would have required insurance companies to disclose annually to the federal government and the public information on where they market and sell policies. The Energy and Commerce Committee bill would have required far less extensive reporting, however, and was deemed too ineffective to win consumer group support. After the Energy and Commerce Committee won a protracted jurisdictional dispute, the House passed the weaker Energy and Commerce Committee bill in July. Sen. Russell Feingold (D-WI) introduced S. 1917 in March, and Banking Committee Chairman Donald Riegle (D-MI) introduced S. 2402 in August, but no action was taken on either measure.

McCarran-Ferguson Repeal — The House Judiciary Committee voted 20-15 in July to phase in a partial repeal of the McCarran-Ferguson Act, which has exempted the insurance industry from federal antitrust laws for nearly 50 years. The committee included the measure (H.R. 9) in health care legislation it passed in August, but it was never brought to the floor for a vote. The bill, which was endorsed by consumer as well as some insurance industry organizations, would have phased in limits over three years on the industry's practice of sharing "trending" information, while allowing some other forms of industry information sharing to continue. The Senate did not act on this issue.

Insurance Fraud — A provision was included in the crime bill which passed Congress and was signed by the president (P.L. 103-322) making it a federal crime to defraud, loot, or plunder an insurance company. The provision sets stiff prison terms and fines for individuals who set up sham insurance operations, capitalize with fake assets, or loot insurers from within.

Investment Adviser Regulation — Although both the House and Senate passed bills in 1993 to improve oversight of investment advisers, Senate sponsors' refusal to negotiate until late in the 1994 session prevented a final bill from passing. Both bills (S. 423, H.R. 578) would have increased registration fees for investment advisers in order to fund more frequent inspections by the Securities and Exchange Commission. The House bill, which was endorsed by the administration, also included provisions to improve the SEC's oversight program and to require more detailed compensation disclosure by investment advisers to clarify the existence and magnitude of conflicts of interest that exist when advisers sell products to implement their recommendations. Senate sponsor Christopher Dodd (D-CT) stalled the legislation by refusing to consider any of the stronger provisions from the House bill until the final weeks of the session. Informal staff negotiations then produced a compromise bill which, in addition to the fee increase, would have required the SEC to study conflicts of interest related to compensation practices and issue rules to improve disclosure if needed. The House passed the compromise bill in the final week of the session, but Sen. Gramm was able in the short time remaining to prevent the bill from being brought to the Senate floor for a vote.

Securities Litigation "Reform" — Hearings were held but no action was taken on House and Senate bills to restrict the rights of defrauded investors to redress. Both H.R. 417 and S. 1976 would have made it more difficult for defrauded investors to bring lawsuits, prove fraud, and fully recover their losses. The bills obtained a large number of co-sponsors from both parties, however, setting the stage for further action early in the 104th Congress.

Telecommunications

Infrastructure and Business Restrictions — The effort to promote competition in the telecommunications and information industries came to a sudden halt in late September, when Senate sponsors withdrew their bill (S. 1822) rather than further erode its consumer and competitive protections. In June, the House gave overwhelming approval to two bills: H.R. 3626, which would have set conditions for allowing the Bell companies into previously restricted areas of long distance service, equipment manufacturing, and information services; and H.R. 3636, which would have opened the way to competition between key sectors of the communications industry, primarily cable operators and local telephone companies. The House then folded H.R. 3636 into H.R. 3626. Although they contained some important pro-consumer provisions, the House bills were generally weaker than the Senate legislation in a number of key areas, which put Senate sponsors under enormous pressure to dilute their bill. When Sen. Robert Dole (R-KS) insisted on an amendment that would have removed much of the regulation on local telephone companies, the sponsors withdrew the bill.

Privacy — The telecommunications legislation approved by the House included provisions from a bill to protect consumer privacy introduced by Rep. Edward J. Markey (D-MA) shortly before the end of the 1993 session (H.R. 3432). The legislation died, along with the overall telecommunications bill, when Senate sponsors withdrew their legislation rather than pass anti-consumer, anti-competition telecommunications legislation. (See above.)

Telemarketing Fraud — Congress passed and the president signed long-stalled legislation to crack down on abusive and deceptive telemarketing practices (P.L. 103-297). The act requires the Federal Trade Commission to enact rules within a year to prohibit deceptive telemarketing practices, with the Securities and Exchange Commission to follow suit within six months after the FTC action. In a provision strongly endorsed by consumer advocates, the bill permits state attorneys general and private citizens to file lawsuits based on the commission's rules. The legislation also regulates some abusive telemarketing practices, including restricting calling hours when unsolicited calls can be made, restricting excessive calling, and requiring telemarketers to promptly and clearly disclose that the purpose of the call is to sell goods or services.

Indoor Air Quality

Indoor Air Quality Research and Response — Comprehensive indoor air quality legislation came closer to passing than ever before. Both houses of Congress passed bills (S. 656, H.R. 2919) that would have required the Environmental Protection Agency to study indoor air quality, develop voluntary guidelines to reduce associated health hazards, and develop a certification program for indoor air inspectors. The Senate had passed its bill in the fall of 1993, but the House only acted in the last days of the 1994 session. With no time to work out differences between the two bills, the House amended the Senate bill by substituting the House language and sent it over to the Senate for passage. Several Senate Republicans placed holds on the bill, however, and it was never voted on. This was the first time the House had passed such legislation, though similar bills have now passed the Senate in three consecutive congresses.

Radon — The House passed legislation (H.R. 2448) in July to reauthorize key components of the EPA's radon program, require radon disclosure during real estate transactions, require EPA to develop a plan to reduce radon levels in high radon areas and buildings, and mandate performance and proficiency standards for radon testing and mitigation programs and services. Blocked by a hold placed on the bill by Sen. Bennett Johnston (D-LA), however, the Senate

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never voted on its companion bill (S. 657), which was reported out by the Committee on Environment and Public Works in 1993.

Environmental Tobacco Smoke — Congress acted on a number of bills to restrict nonsmoker exposure to environmental tobacco smoke. Congress passed legislation as part of an education bill to ban smoking in schools that receive federal funding and in federally funded programs for children, such as Headstart, most community health programs, and day care facilities that receive federal funds. Part of the Goals 2000: Educate America Act (P.L. 103-227), which was signed by the president in March, the ban went into effect at the end of 1994. The House Health and Environment Subcommittee approved legislation (H.R. 3434) to restrict smoking in non-residential public buildings to separately ventilated areas that nonsmokers do not routinely enter. Bars, private clubs, and prisons would have been exempt under the bill, which was never brought to a floor vote. The Senate Clean Air and Nuclear Regulation Subcommittee held a hearing on companion legislation (S. 1680) and on legislation to restrict smoking in federal buildings (S. 262) but took no further action. Just before the end of the session, the House passed legislation (H.R. 4495) to ban smoking on international commercial flights in and out of U.S. airports and on domestic flights to and from Alaska and Hawaii. The measure died, however, when the Senate adjourned without taking action.

Health and Safety

Toys and Bike Helmets — Congress passed and the president signed legislation creating important new safety protections related to toys and bike helmets. The Child Safety Protection Act (P.L. 103-267) directs the Consumer Product Safety Commission to promulgate a toy labeling rule and develop a mandatory standard for bicycle helmets. Under this bill: toys intended for children ages three to six would have to warn of choking hazards associated with small parts; packages of marbles, small balls, and balloons would also have to bear choking hazard warning labels; and balls intended for children under age three would have to be at least 1.75 inches in diameter so as not to pose a choking hazard. The bicycle helmet provisions direct the CPSC to develop helmet standards that, among other things, address the risk of the helmets' rolling off during a fall and the need for special protection of children's heads. The act also authorizes a state grants program, to be administered by the National Highway Traffic Safety Administration, to promote helmet use by children.

Bucket Drownings — Legislation addressing the risk of young children's drowning in five-gallon buckets (S. 799) was approved by the Senate as part of the Child Safety Protection Act but was removed in conference committee. The bill would have required such buckets to bear a label warning of the drowning risk they pose to young children. It also would have required the CPSC to establish standards to reduce the hazard. Despite the failure of Congress to act, the CPSC voted unanimously in May to issue an Advance Notice of Proposed Rulemaking to address this hazard.

CPSC Funding — Although Congress increased the CPSC budget in fiscal year 1995 to $42.5 million, up $223,000 from 1994, it cut the agency's staffing level by 15 persons. With just 487 employees, the agency now has 299 fewer staffers than in its very first full year of operation.

Product Liability — Legislation limiting the ability of individuals who are injured by dangerous products to recover damages was narrowly defeated in the Senate, when supporters of the measure (S. 687) twice failed to get enough votes to end debate and bring the legislation to a vote. The House Commerce, Consumer Protection and Competitiveness Subcommittee held hearings on a companion measure (H.R. 1910), but it was never brought to a vote. Both bills would have limited the award of punitive damages, reduced liability for product sellers, abolished joint liability for non-economic losses, and established time limitations for liability.

Assault Weapons Ban — The crime bill (P.L. 103-322) included a ban on the manufacture, importation, and transfer of 19 types of semiautomatic assault weapons, copycat models, semiautomatic weapons with more than one assault-style feature, and gun clips holding more than ten bullets. Possession of the weapons also is banned, except for weapons under lawful ownership at the time the law was passed.

Dietary Supplements — Congress passed and the president signed legislation weakening the Food and Drug Administration's proposed labeling standards for dietary supplements. The FDA had called for the labels on dietary supplements to provide the same basic information that is found on food labels, subjecting the labels to the same standards for providing disease-related health claims as those mandated for foods. Instead, the new law allows vitamins, minerals, herbs, and other supplements to make certain structure and function claims on labels, such as "boosts immune system," but requires a disclaimer that the claim has not been evaluated by the FDA and that the product is not intended to diagnose, treat, or prevent disease. The Dietary Supplement Health and Education Act also establishes a commission on dietary supplement labels to assess health claims and make further recommendations to Congress in two years about regulating product labeling. The law also makes it more difficult for the FDA to take supplements it considers hazardous off the market.

Child Nutrition — As part of its reauthorization of federal child nutrition and school lunch programs and the Special Supplement Food Program for Women, Infants, and Children, Congress required that school lunches meet federal nutrition guidelines that, among other things, restrict fat intake to 30 percent of calories and encourage consumption of high fiber foods.

Meat and Poultry Inspection — In September, the Clinton administration proposed legislation to fundamentally change the nature of meat and poultry inspection. The Pathogen Reduction Act, which was not acted on in the 103rd Congress, would have required the U.S. Department of Agriculture to set limits on disease-causing bacteria in raw meat and poultry, taking into account the needs of vulnerable groups when setting those limits. It would also have required the USDA to test for and report amounts of bacteria in raw meat and poultry and establish a system to trace contaminated meat and poultry back from table to farm. Congress did pass, and the president signed, USDA reorganization legislation. By creating an Undersecretary for Food Safety and separating this public health program from the agency's marketing functions, the legislation reduces, but does not eliminate, the department's conflict between marketing and food inspection activities.

Alcohol Advertising — Legislation to require health and safety messages in all alcohol advertising was never brought to a vote in 1994. In May, Senate sponsor Strom Thurmond (R-SC) withdrew his request for a Commerce Committee mark-up of the bill (S. 674) when he determined that he didn't have the votes to get it passed. The House took no action on companion legislation.

Tobacco Regulation — The House Subcommittee on Health and the Environment held a series of highly publicized hearings on the issue of tobacco regulation in general and the Fairness in Tobacco and Nicotine Regulation Act in particular. No action was taken on the legislation, which would have required FDA to regulate the sale, distribution, manufacture, labeling, advertising, and promotion of tobacco products in much the same way it regulates other similar products under its jurisdiction.

Transportation

Driver Privacy — Legislation was included in the crime bill (P.L. 103-322) to prevent Departments of Motor Vehicles from disclosing personal information about a licensee to the general public without authorization. Information has been used by stalkers and others to get access to addresses and phone numbers of women, police officers, celebrities, and others.

Safety Belt and Motorcycle Helmet Incentives — Despite a concerted effort to get it repealed or weakened, a program encouraging states to enact mandatory use laws for safety belts and motorcycle helmets survived unchanged in the 103rd Congress. The toughest challenge to the law came in the House, where a subcommittee voted to repeal the program. In May, however, the full House Public Works Committee voted 40-24 to restore the program and also defeated a weakening amendment. Opponents of the program decided against offering similar amendments on the floor.

Safe Driving — Legislation to establish a grants program to encourage passage of a series of tough state laws against unsafe driving (S. 739, H.R. 1719) came close to passage but died in the final days of the 103rd Congress. To be eligible to receive the grants, states would have had to pass a series of laws over a period of years, including, for example, requiring minors to drive for a year on a provisional license without receiving a ticket in order to obtain a full-fledged driver's license. The Senate Commerce Committee and House Public Works Committee worked out an agreement on the bill and attached it to a pipeline safety bill (H.R. 5248), but that bill died in the Senate. Legislation to sanction states that fail to lower the legal blood alcohol content for drivers from .10 percent to .08 percent (S. 605) was never brought up for committee consideration.

5 MPH Bumper Standard — The Senate Commerce Committee approved legislation (S. 1848) to restore the 5 mph bumper standard and to require bumper strength labels on passenger vehicles. No further action was taken on the legislation before the end of the session, however.

Auto Title Fraud — Legislation to address fraud involving automobile titles died when the House failed to act. At the end of the 1993 session, the Senate gave voice vote approval to a bill (S. 431) to require automobiles' titles to indicate whether the car had been rebuilt after being extensively damaged. The Senate bill also would have required that any automobile deemed a "lemon" under the state's lemon law have that fact noted on the title. The House Commerce, Consumer Protection and Competitiveness Subcommittee held a hearing on the issue near the end of the 1994 session, but no action was taken.

Antitrust

Baseball Antitrust — The House Judiciary Committee gave voice vote approval to legislation to partially lift Major League Baseball's antitrust exemption, but the measure never made it to the House floor. The bill would have allowed players to go to court to challenge any imposition by owners of such unilateral conditions as a salary cap. Sen. Howard Metzenbaum (D-OH) and Sen. Orrin Hatch (R-UT) attempted to get a similar measure passed in the waning days of the session, but they were never able to bring it up for a vote.

Clinton Appoints Fise to NIBS Board

President Clinton has named CFA Product Safety Director Mary Ellen Fise to serve on the Board of Directors of the National Institute for Building Sciences.

NIBS is an independent, non-profit organization authorized by the Housing and Community Development Act of 1974 to increase the quality and safety of the nation's homes and buildings.

The mission of the institute is "to bring together all participants in the building process to improve the building regulatory environment, facilitate the introduction of new and existing products and technology into the building process, and disseminate nationally recognized technical and regulatory information."

By serving as a bridge between the private and public sector, NIBS provides a forum for open discussion in which representatives of regulatory agencies, legislators, and representatives of the private sector can seek consensus solutions to problems of mutual concern.

"I am pleased to have received this presidential appointment to represent consumers' interests as this organization considers important building safety and health issues," Fise said.

Conference Told Banks Need Expanded Powers

If commercial banks continue to lose market share, a smaller percentage of consumers' financial transactions will be covered by the consumer protections in our banking laws, warned Richard Carnell in a keynote address at CFA's December financial services conference.

The Assistant Secretary for Financial Institutions at the U.S. Department of Treasury said consumers should for that reason favor allowing banks new retail powers. Banks need the income from retail services, such as selling mutual funds, to stay competitive in a dramatically changing financial services industry, he said.

A series of court decisions, regulatory decisions, and technological changes has blurred the distinctions between the financial services sectors. Furthermore, consumers today are looking for "low cost, convenient services, and they don't care where they get it," he said.

Consumer Options Expand As Industries Converge

"Consumers have vastly expanded options as the functions of the financial services industries converge. As consumers pursue investment options outside banks, a smaller percentage of transactions will be conducted in banks, and more will be conducted outside the protections of the banking laws," Carnell said.

"If banks are unduly fenced in . . . then those protections stand to wither or stagnate with the industry," he said.

"We need to think long and hard about how our financial system is evolving and what the system is likely to look like 10 years, 20 years from now," he added.

Carnell issued a warning, however, to those who would take advantage of the new climate on the Hill to try to "gut important protections for consumers and communities." Such "scorched earth exercises" would be unproductive and would polarize the process, he said.

"We need reform that is constructive and that gives proper weight to protections we have in place," he said.

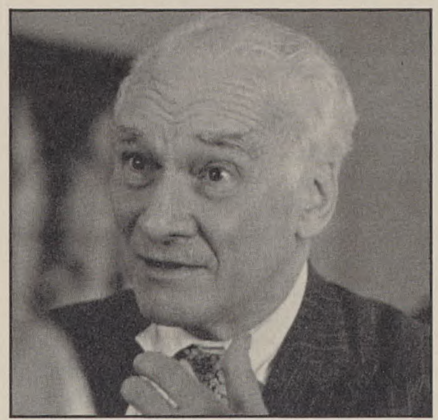
Electronic Payment System Key to Banks' Survival

Banks could lose control of the nation's payment system if they don't find ways to operate it more cheaply and more efficiently, said Martin Mayer, author and guest scholar at the Brookings Institution, in a luncheon address.

Check cashing is technologically outmoded and represents the "greatest possible distortion of value versus pricing in our time," he said. The only "sensible, cost-efficient" answer is an electronic payment system which replaces paper checks with a direct deposit and payment system.

If government benefits programs move to direct deposit, "the question is, where are you going to have the account? How can welfare recipients have an account?" he said. For such a system to work, everyone must have access to a basic bank account, he said.

This need not be an insurmountable hurdle, however, since "it's going to be good for banks if everyone has bank accounts, as long as it isn't going to cost them a lot of money," Mayer said. "The only way it is not going to cost a lot of money" is if you move to electronic deposit and payment, he said.



Author and Brookings Institution Guest Scholar Martin Mayer

"It makes no sense to demand both low fees and human tellers in convenient branches," Mayer added. Instead, to encourage the move to an electronic system, "major discounts on bank charges should be given to people who accept direct deposit and payment."

Playing the Float

One obstacle to such a system, he said, is the country's addiction to the "float" — the lapse between the payment by check and the actual removal of the money from the account, during which time the money can still be invested.

"It's a game. It's a zero sum game in the end, but the country is sort of hooked on the float," he said.

The paper check system is a debit transfer system in which the last thing that happens is the removal of money from the account, and that generates the float, Mayer explained. In an electronic credit transfer system, however, the merchant would be able to call at the time of the transaction and deduct the money from the account. In such a system, you don't have a float, and you also don't have bounced checks, which are "ludicrously profitable" for banks, he noted.

Despite the obstacles, banks need to begin now to make the necessary changes, he said. "If banks don't get going on the payment system, they will lose it" even though "the Fed will try to preserve it for them," Mayer said.

Mark Your Calendars

Consumer Assembly '95

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Real Estate Agencies Lack Resources, Independence

The state agencies that regulate residential real estate brokerage services need increased resources and greater independence from the real estate industry to better serve home buyers and sellers, according to a report released in November by the American Association of Retired Persons and CFA.

"State real estate agencies must become more independent from the industry that they regulate," said CFA Executive Director Stephen Brobeck. "How can regulators oversee a large and influential industry when most or all of the members of their commissions are real estate agents?"

"At a time when the real estate industry is in transition, consumers need more information and assistance from state agencies. Consumer education and complaint resolution must become higher priorities," added Katrinka Smith Sloan, AARP's Consumer Affairs Manager.

Based on responses from 40 states to a survey conducted in 1994 by CFA and AARP, the report found that:

- Current levels of agency funding are modest. Excluding California, the annual budgets of the 33 states that provided budget information averaged $1.5 million, or about $1 per household.
- Consumers are not the first priority of most state agencies. Most agency resources are devoted to agent licensing and to licensee education and complaint resolution. Relatively few resources are allocated to consumer education and consumer complaint resolution.
- The agencies are not sufficiently independent of the industry. In most states, the agencies are overseen by commissions that are dominated by the industry. In many states, the agency administrators are chosen by the commissions and report to and serve at the pleasure of the commissions. Also, the commissions are the initial adjudicators of consumer complaints in many states, with complainants having no means of appeal in some of these states.

In light of the report's findings, AARP and CFA are calling on states to make the following changes: increase agency funding by allowing agencies to retain a higher proportion of real estate fees that are collected; allocate most of this increased funding to consumer education and complaint resolution; and reduce the industry's representation on commissions to less than half the members, with public members making up more than half of the membership of each commission.

CFA and AARP have sent the report to each state agency and are encouraging the states to implement the recommended changes.

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