



CONSUMER FEDERATION OF AMERICA

Consumer Financial Protection Agency Clears Hurdle

Landmark legislation to create a new Consumer Financial Protection Agency (CFPA) cleared its first major legislative hurdle in October, when it was approved on a 39-29 vote by the House Financial Services Committee.

The legislation, H.R. 3216, would for the first time centralize responsibility for regulating credit products and practices within a single agency devoted exclusively to that task. Currently, oversight is fragmented among seven different agencies, none of which has consumer protection as its primary mission.

"When consumers are tripped up by deceptive or abusive financial products and services, the result is often an inexorable cycle of debt, deteriorating creditworthiness, and foreclosure," said CFA Legislative Director Travis Plunkett. "That's why Americans need the Consumer Financial Protection Agency."

"Passage out of committee is an important milestone for consumers who for years have been at the mercy of both abusive lenders and inattentive regulators," he added.

The challenge as the bill moves through Congress is to ensure that the agency's authority to oversee important financial products and services is neither stripped from the bill nor weakened, he said.

Priorities for Improvement Identified

With that goal in mind, CFA has identified three important areas where improvements are needed:

- the agency should oversee auto dealers who receive lucrative compensation in financing auto loans;
- the agency should have authority to examine the books of all financial institutions, regardless of size, without facing cumbersome barriers; and
- the agency should have full authority to stop the sale of virtually worthless credit-related insurance policies.

All are areas where weakening amendments were adopted by the Committee before the bill was approved.

For example, the Committee voted to exempt banks with less than \$10 billion in assets and credit unions with less than \$1.5 billion in assets from direct supervision by the new agency.

These institutions remain subject to the agency's rule-making authority, however. And the CFPA could take enforcement action for violations where the primary regulator failed to act.

Broader exemptions were granted both to credit, mortgage and title insurers and to auto dealers who finance car loans. CFA opposed both.

The sale of credit insurance is typically inseparable from the sale or servicing of a credit product. In addition, the claims paid by insurers as compared to the premiums col-

lected for these products are "abysmal, demonstrating the unjustified profit made from these products," according to CFA Director of Insurance J. Robert Hunter.

CFA estimates that Americans have been overcharged by at least \$17.5 billion since 2004 for credit insurance alone.

"Products like credit insurance, title insurance, and mortgage guaranty insurance are precisely the type of products for which the CFPA is needed to protect consumers," Plunkett said.

Similarly, denying CFPA regulatory oversight of all financing-related activities of car dealers would continue to leave consumers exposed to the "shady or illegal practices" commonly engaged in by new and used car dealers, Plunkett said.

These include "bait-and-switch" financing, falsification of credit applications, deceptive sales of overpriced add-on items to auto loans, charging excessive interest rates or "dealer markups," and taking vehicles in trade and failing to pay off the outstanding liens as promised.

"Many of the scams closely parallel the abuses and predatory practices that led to the mortgage meltdown," Plunkett said.

Compromise Reached to Preserve State Authority

During committee mark-up, a compromise was reached on the hotly contested issue of state preemption. As a result, national banks would be required to comply with state laws, except where the state law has a discriminatory effect against national banks or where the Office of Comptroller of the Currency found that state laws "significantly" interfered with federal laws.

Although imperfect, the compromise nonetheless allows states "to take steps to stop abusive financial products and practices before these problems mushroom into a national crisis," said CFA's Financial Reform Campaign Director Susan Weinstock.

Despite the weakening amendments, committee passage was considered a major accomplishment, particularly in view of the all-out campaign to defeat the measure launched by banks and the Chamber of Commerce.

"Financial industry lobbyists, representing the same people who brought our economy to the brink of collapse, are working against the very people who bailed them out – American taxpayers," Weinstock said.

"CFA applauds the House Financial Services Committee for not bowing to their lobbying efforts and urges swift passage of a strong Consumer Financial Protection Agency by the House of Representatives," she added.

The exact timetable for passage remains uncertain, with the various regulatory reform bills tentatively scheduled to come to the

House floor in a package in mid-December.

Meanwhile, draft regulatory reform legislation was introduced in the Senate in November, including a very strong set of provisions to create the CFPA. In the Senate, the regulatory reforms bills were introduced in a single package.

Although opening statements were made in the Senate Banking Committee's mark-up of the legislation in mid-November, further action appeared to have been delayed for a few weeks in light of strong opposition from Republican members of the committee and an insistence from some panel Democrats that they move a bipartisan bill.

Chairman Dodd has indicated, however, that if efforts to garner bipartisan support fail, he will proceed with the committee's mark up by the end of the year.

"The clock is ticking on financial reform," Plunkett said. "Both houses of Congress are going to need to move reform legislation within the next few months to ensure that it is enacted before the political season begins next year."

Survey: Americans Support CFPA

A CFA survey released in September shows strong support for creation of a new federal agency to protect consumers who purchase banking and other financial products and services and even stronger support for actions to address specific abusive credit practices.

Despite a \$2 million industry-funded advertising campaign opposing the measure, fully 57 percent of those polled support the creation of a new Consumer Financial Protection Agency.

Not surprisingly, support was strongest among those most adversely affected by unfair and deceptive financial practices – adults under age 35 (70 percent), African-Americans (79 percent), Hispanic-Americans (70 percent), and low-income persons (69 percent).

When asked about specific reforms that such an agency might adopt, such as limits on abusive overdraft practices, the support was even stronger.

Senate Committee Approves Food Safety Bill

The Senate Health, Education, Labor and Pensions Committee gave unanimous approval in November to legislation (S. 510) to overhaul the nation's food safety system.

"This is a big step towards providing FDA with the authorities it needs to better protect the public from unsafe food," said Christopher Waldrop, Director of CFA's Food Policy Institute.

The victory followed an intense lobbying effort by food safety advocates that included bringing victims of foodborne illness to Washington in October to meet with members of Congress and the administration.

Their message was simple. As Maine resident Carol Kintner, who lost a family member to foodborne illness explained: "We cannot afford to wait for another outbreak. Nobody in America should have to worry about whether the food they eat and feed

their family will cause severe illness or death."

Similar to legislation that passed the House in July, S. 510 seeks to provide the Food and Drug Administration (FDA) with the authority and resources necessary to assure the safety of the food supply.

It would do so by:

- requiring food processors to identify where contamination could occur in the food production process and take steps to prevent the contamination;

- increasing FDA inspection of food-processing plants, with inspection frequency based on the product risk;

- requiring imported foods to meet the same safety standards as food produced in the United States;

- establishing science-based minimum standards for safe agricultural production of fresh produce and directing FDA to consult

with the U.S. Department of Agriculture (USDA) and state agriculture departments on regulations to prevent the contamination of fresh produce;

- improving coordination across federal, state and local governments and providing grants to build state and local capacity for foodborne illness detection, surveillance, laboratories, and response; and
- providing FDA with mandatory recall authority.

As the bill continues to advance, food safety advocates are seeking strengthening amendments in several critical areas.

Although the bill includes a much needed increase in inspection frequency, it falls short of the House bill (H.R. 2749) in this regard. Advocates are seeking to amend the Senate bill to bring it into line

(Continued on Page 2)

Overdraft Fees in Congressional Cross-hairs

The prospect for congressional action to limit bank overdraft fees improved considerably this fall, as Senate Banking Committee Chairman Christopher Dodd (D-CT) introduced legislation to restrict the fees and House Financial Services Committee Chairman Barney Frank (D-MA) joined the chorus of critics.

Overdraft fees are the charges banks impose when they extend credit to consumers to allow them to make purchases when they do not have sufficient funds in the account to cover the transaction. Typically, consumers receive no advance warning that the transaction – including ATM withdrawals or debit card purchases – would trigger an overdraft, and no opportunity to choose whether to continue or cancel the transaction.

Fees at large banks average \$35 per overdraft, according to an updated CFA survey released in October, and most large banks charge a sustained overdraft fee if the customer cannot repay within a couple of days.

Computed as an interest rate on a short-term loan, the fee paid by a consumer for a

\$100 overdraft that is repaid in a week equates to a 1,820% APR. Consumers paid \$24 billion in overdraft fees in 2008.

Congressional Action Urged

“Overdraft loans are not a ‘convenience,’” CFA Financial Services Director Jean Ann Fox said in November testimony before the Senate Banking Committee. “They are dangerous high-cost loans that must be reined in, even for people who agree to use them.”

The Federal Reserve Board issued rules in November that will require banks to get both new and existing customers’ consent before enrolling them in an overdraft program for debit card purchases and ATM withdrawals and will require banks to provide more information on overdraft options.

While applauding the Fed rules, Fox said “consumers need more.” She called on the Senate to pass Sen. Dodd’s legislation (S. 1799). Earlier, Fox had called on the House to pass companion legislation (H.R. 3904) introduced by Rep. Carolyn Maloney (D-NY).

Both bills would:

- cap the number of overdraft fees per customer at one per month and six per year;
- require the Federal Reserve to set “reasonable and proportional” fees based on the costs to the banks to cover these loans;
- prohibit banks from manipulating the processing order of debits to maximize overdraft fees; and
- define overdraft fees as a finance charge covered by the Truth in Lending Act, thus requiring cost-to-borrow disclosures.

Consumers Support Reform

“Consumers want these protections and changes to overdraft loan programs,” Fox said. “In addition to wanting to opt in for overdraft coverage, consumers want to be warned when ATM withdrawals will trigger

an overdraft,” she added.

The House bill would require such warnings, with an opportunity for the consumer to terminate the withdrawal to avoid the fee.

“CFA’s support for these bills is part of our campaign to strengthen regulation of financial products that trip up consumers,” said Susan Weinstock, Director of CFA’s Financial Reform Campaign.

“We look forward to the day that the Consumer Financial Protection Agency will be in place to ensure that consumers get a fair deal from lenders on a range of financial products and services, including overdrafts, credit cards, mortgages and the like,” she added.

FCC Proposes Net Neutrality Rules

The Federal Communications Commission (FCC) voted unanimously in October to launch a rulemaking to expand and codify existing policies designed to preserve the openness of the Internet, winning praise from a broad coalition of consumer and public interest groups, including CFA.

The rulemaking has the potential to “finally make the rules of the road clear on the Internet,” said CFA Research Director Mark Cooper. “Without a non-discrimination rule, Internet Service providers will continue to decide what consumers can and can’t do online.”

Food Safety Bill

Continued from Page 1

with the House bill’s requirement that high-risk facilities be inspected every 6 to 12 months and lower-risk facilities be inspected at least once every 18 months to 3 years.

In addition, food safety advocates are seeking to add a provision requiring all food processors to test for and report contamination in order to help FDA quickly identify food safety problems before people get sick.

Finally, advocates are seeking to strengthen provisions regarding import safety, first by giving FDA power to accredit foreign governments or independent certifiers who can verify that foods being exported here meet U.S. standards for safety and second by establishing a dedicated corps of foreign inspectors who could be dispatched to any country, rather than relying on static foreign offices in a handful of countries.

“The Senate should approve this legislation before the end of the year,” Waldrop said. “Consumers should not have to wait any longer for Congress to repair our broken food safety system.”

Currently, policy is dictated by a set of four Internet “principles,” which articulate the value of network neutrality but may lack the full weight and enforceability of law.

As proposed, the rule would codify those four principles and add two more. Importantly, it would apply to wireless broadband, as well as to DSL and cable.

Subject to specific limitations, broadband providers of Internet access would be prohibited from: preventing users from sending or receiving lawful content, using lawful services, or connecting to and using lawful devices that do not harm the network and from denying users the benefits of competition among network, application, service, and content providers.

In addition, they would be required to treat lawful content, applications and services in a nondiscriminatory manner and to disclose information concerning network management necessary to ensure compliance.

In each case, the requirement or prohibition could be overridden based on “reasonable network management” considerations, to assist law enforcement, or to protect homeland security.

The proposal has prompted intense industry opposition, particularly from wireless providers, and could be subject to legal challenge once adopted.

“These are vital and urgent issues that will shape the future of communications in America,” CFA and CU concluded in a joint statement on the rule proposal. “By moving early and swiftly, the FCC ensures that these important policy issues will be fully vetted at the agency and the courts, with adequate time for Congress to act should that be necessary.”

Protections Proposed for Debt-Strapped Consumers

A Federal Trade Commission (FTC) proposal to amend its Telemarketing Sales Rule to address the sale of debt relief services has elicited strong support from consumer groups, including CFA.

“These amendments are crucial to protect consumers who are in financial distress from deception and ensure that they don’t pay for false promises rather than real results,” said CFA Director of Consumer Protection Susan Grant.

CFA filed comments with Consumer Action, Consumers Union, the National Consumer Law Center, and more than a dozen other groups arguing that industry regulation is sorely needed and that the rules should be even stronger than what the FTC proposed.

Under the proposal, for-profit debt counseling, debt settlement, and debt negotiation services would be covered under the definition of debt relief service. “While these businesses may operate differently in some respects, the concerns about their practices are the same,” Grant said.

One of the biggest concerns, she said, is that consumers are often asked to pay most or all of the fees early on in the program, before their debts are settled, reduced, or altered as promised. Investigations by the FTC and state attorneys general have shown that many consumers never get the results they were led to expect.

To protect vulnerable consumers, the FTC is proposing to ban taking or requesting any fees before the services have actually been provided. In order to obtain payment, companies would be required to provide customers with documentation that the results have been achieved.

In comments to the FTC, the groups suggested that the documentation should be in writing and should come from and be binding on the creditor.

The proposal would also cover inbound calls.

Currently, the Telemarketing Sales Rule generally does not apply to situations where consumers call companies in response to advertising in the general media. However,

there are exceptions, and the FTC proposes to add an exception for debt relief services, a move strongly supported by consumer advocates.

New disclosures would be required, and misrepresentations regarding such issues as the amount of money or percentage of debt customers may save would be prohibited.

The consumer groups recommended that debt relief companies also be prohibited from making any representations about the percentage or dollar amount by which debts or interest rates may be reduced, since there is no way to guarantee that every customer will achieve the same results.

Finally, in addition to the ban on advance fees, CFA and the other groups advocated prohibiting other common abuses in the industry and suggested a 90-day cancellation right.

CFAnews

Consumer Federation of America

1620 I Street, N.W., Suite 200, Washington, D.C. 20006

(202) 387-6121 • www.consumerfed.org

President: Janet Domenitz
Executive Director: Stephen Brobeck
Research Director: Mark Cooper
Public Affairs Director: Jack Gillis
Director of Financial Services: Jean Ann Fox
Legislative Director: Travis Plunkett
Associate Director: Nancy Register
Director of International Issues: Mark Silbergeld
Director of Financial Education: George Barany
Administrative Director: Miguel Carpio
Senior Counsel: Rachel Weintraub
Director of Consumer Protection: Susan Grant
Campaign Director: Susan Weinstock
Project Director: Mel Hall-Crawford
Project Director: Sara Cooper
Project Director: Charles Lowery
Associate Project Director: Julie Kyrasis
Communications Manager: Christine Lamitina
Meeting and Event Manager: Sally Karwowski
Database Manager: Milena Carpio
Legislative Assistant: Darby Hull
Legislative Assistant: Catherine Bourque

CFA's Center for Insurance Policy
Director of Insurance: J. Robert Hunter
Life Insurance Actuary: James H. Hunt

CFA's Food Policy Institute
Distinguished Fellow: Carol Tucker Foreman
Director: Chris Waldrop

CFA's Center for Housing/Credit Policy
Director: Barry Zigas

CFAnews Editor: Barbara Roper

CFAnews is published eight times a year. Annual subscription rate is \$25 per year.
© Copyright 2009 by Consumer Federation of America. CFA should be credited for all material. All Rights Reserved. Design & Typeset by: Middour & Nolan Design

Agency Heads Push Prevention to Promote Health and Food Safety

Health and Human Services Secretary Kathleen Sebelius discussed principles that will guide the administration's public health policy and Commissioner of Food and Drugs Margaret Hamburg described actions the Food and Drug Administration is taking to implement those principles in keynote speeches at CFA's National Food Policy Conference in September.

Both Secretary Sebelius and Commissioner Hamburg made news during the speeches:



HHS Secretary Kathleen Sebelius

- Sebelius by announcing the launch of a new website, www.foodsafety.gov, which will provide food safety information, including breaking news on the latest food illness outbreaks; and

- Hamburg by announcing the launch of a new Reportable Food Registry, where food manufacturers, processors, packers and warehouses will be required to submit reports on suspected food hazards, investigate the cause, and consult with FDA about follow-up measures.

Congress Urged To Strengthen Online Privacy Protections

A coalition of consumer and privacy groups has called on Congress to act to protect consumers' online privacy by applying the principles of Fair Information Practices to new business models.

The groups cited as a particular concern behavioral advertising, in which a computer user's online activity is tracked so that ads can be served based on the user's behavior.

"Respect for human dignity is at the core of our concerns, but we are also worried that online behavioral tracking can be used to target vulnerable consumers for high-price loans, bogus health cures, and other potentially harmful products and services," said CFA Director of Consumer Protection Susan Grant.

Other issues include access by government and other third parties to computer users' online behavioral profiles for purposes unrelated to advertising, she said.

The groups outlined their concerns,

Both efforts reflect the administration's new approach to public health based on three principles, Sebelius said, "being proactive, focusing on prevention, and building partnerships."

Sebelius focused in particular on prevention. While it is not "as exciting as a life-saving surgery after a heart attack ... the potential benefits are huge," she said.

"Chronic disease causes 70 percent of deaths in this country. It accounts for 75 percent of health care costs," she explained. "If you can give a kid a healthy diet for a few thousand dollars that lowers their chance of needing \$500,000 of care for heart disease fifty years later, that's a great investment."

"Prevention is also at the heart of our food safety strategy," she added, citing in particular new rules to prevent Salmonella contamination in eggs, new guidance on leafy greens, tomatoes, and melons, and new standards for inspecting meat that goes into ground beef for E. coli.

"These regulations won't be free, but in economic terms they're a very good deal," she said. The new rules on eggs, for example, will cost less than one cent per dozen but will produce an estimated \$1.4 billion in public health benefits a year – "more than 17 times the cost," she said.

"The highest mission of any government is keeping its citizens safe," she concluded. "In this administration, we see public health as an essential part of that mission."

Echoing many of the same themes, Commissioner Hamburg said the time has come "to overhaul our current inadequate food safety system."

As part of that effort, FDA is "pressing forward with a new agenda: to shift the agency's emphasis away from mitigating public health harm by removing unsafe products from the marketplace, to a new overriding objective" focused on preventing harm "by keeping unsafe food from entering

along with principles for legislation to address those concerns, in letters to the House Energy and Commerce Committee and two of its subcommittees. They also released a legislative primer and a fact sheet about behavioral tracking and targeting.

Among the main points that the coalition said should be included in consumer privacy legislation are: a prohibition on the collection or use of sensitive information for behavioral tracking or targeting; a prohibition on the collection or use of behavioral data from anyone under age 18 to the extent that age can be inferred; a requirement that web sites and ad networks get the individual's affirmative consent to use behavioral data beyond the first 24 hours from the time of collection; and a prohibition on using behavioral data to unfairly discriminate against people or otherwise affect their access to credit, education, employment, insurance, or government benefits.



FDA Commissioner Margaret Hamburg

commerce in the first place."

She warned, however, that "the FDA can only do so much with its existing authorities. To do a better job, we will require new powers, some of which are included in the bills pending in Congress." (See related article, page 1.)

Among other things, she said, the agency needs additional authority "to ensure proper implementation of modern preventive controls in all food facilities," enhanced ability to

establish and enforce performance standards, authority and resources to conduct more frequent, risk-based inspections of food facilities, better tools to foster compliance, and new powers to ensure that food imports meet U.S. standards.

"But none of these authorities and innovative measures will provide the desired protections unless they are supported by new and adequate resources," Hamburg added. "We need to build up FDA's foods program resource base over a period of years to the necessary level and then sustain it for the long term."

She praised the House bill for providing "a fee-based revenue stream," but emphasized that it will continue to be necessary to work with Congress and the administration to ensure adequate budgets.

Hamburg also discussed her goal of strengthening the FDA's nutrition programs. "To contribute to good health and well-being, our food supply must not only be safe, it must also be comprised, as much as possible, of nutritious and healthy foods and food products that people can choose to build healthy diets," she said.

"We need to be considering nutritional efforts to reduce the risk of such illnesses as heart disease, diabetes, and stroke," she added.

CPSC Begins Implementation of Product Safety Database

Effective implementation of the Consumer Product Safety Improvement Act requirement to create a product safety incident database has the potential to improve both the operations of the Consumer Product Safety Commission (CPSC) and the safety of consumers, CFA Senior Counsel Rachel Weintraub said in November testimony before the agency.

Testifying on behalf of a half-dozen consumer and safety organizations, Weintraub said, "The public database will go a long way towards increasing transparency at CPSC and ensuring that consumers will have prompt access to important information on known product hazards."

"Implementation of an effective database also will help dispel a culture of secrecy that for too long has harmed the larger work of the agency, discouraging the free exchange of information among CPSC scientists and technical staff and the release of CPSC research to the public," she added.

Weintraub outlined a number of suggestions to help ensure effective implementation, including:

- making the entry form or phone script for those reporting to the database clear and easy to follow;
- not allowing lack of specific information, such as a model number, to stop the

process or prevent a report from being included in the database;

- following a strict timeline for posting information to the database;
- organizing the information to allow for searches based upon specific products, all of the various product names (including common misspellings), types of injury, and product uses; and
- linking to other relevant information within the database, including staff research and information on recalls.

She advised the Commission to consider the needs of a wide range of users in designing the system, how to integrate pre-database incident data into the new system, and how to prevent industry from limiting what information may be made public based on "trade secret" claims.

Finally, she urged the agency to "analyze this valuable data and mine it for trends and emerging problems."

"Public access to information is vital to safety," she said. "Simply allowing consumers access to the safety record of products will increase safety and encourage the speedy removal or redesign of unsafe products."

"Allowing consumers to report problems they encounter with products will also help the Commission to do its job of protecting the public from unsafe products."

Regulatory Reform Advances in House

Maintaining a blistering schedule set by Chairman Barney Frank (D-MA), the House Financial Services Committee approved a sweeping package of financial regulatory reform bills in October.

Among the measures approved by the Committee were bills to regulate the over-the-counter derivatives market (H.R. 3795), reform credit rating agencies (H.R. 3890), and strengthen the Securities Exchange Commission and its protections for retail investors (H.R. 3817).

The derivatives legislation was also approved in the House Agriculture Committee, which shares jurisdiction, setting the stage for the entire package of regulatory reform bills to be brought to the House floor in December.

"Chairman Frank deserves considerable credit for managing to shepherd through such an ambitious package of bills," said CFA Director of Investor Protection Barbara Roper. "Unfortunately, changes made to win the support of more 'business-friendly' members of the committee seriously undermined protections in a number of key areas."

The OTC derivatives bill took a particularly damaging hit.

"The major dealers have tens of billions of dollars a year in profits dependent on keeping the system as opaque and loosely regulated as possible, and they have pulled out all the stops in their efforts to minimize any reforms," she added. "So far, they've proven remarkably successful."

When the administration first rolled out its regulatory reform plan, it promised to regulate the entire market.

When it sent its draft bill to the Hill, however, the Treasury Department had opened up several loopholes, including one that

would exempt the huge market in foreign exchange swaps from regulation and one that would exempt transactions where one counterparty is not a member of a clearing facility.

Instead of closing those loopholes, as CFTC Chairman Gary Gensler and public interest groups strenuously advocated, the Committee expanded them to cover any transaction in which one of the parties is hedging a legitimate business risk.

Although Agriculture Committee Chairman Collin Peterson (D-MN) had circulated a tougher bill, he pulled it just before mark-up claiming not to have the votes for passage. The committee instead approved a version that closely tracked the Financial Services Committee bill.

Since the bills were approved, however, Chairman Frank and Chairman Peterson have worked together to narrow the loopholes. They announced in November that the bill brought to the floor would not include an exemption for foreign exchange swaps.

Meanwhile, the draft legislation introduced in the Senate in November by Banking Committee Chairman Christopher Dodd (D-CT) included no such exemptions, though the big banks were reportedly lobbying hard to get that change adopted.

"With Wall Street pulling out all the stops to gut the legislation, Congress needs to remember the promise it made when it called on American taxpayers to bail out these same big banks – that in return it would adopt the comprehensive reform that is needed to prevent a recurrence," Roper said. "Unless Congress adopts a strong derivatives bill, it will have reneged on that promise."

Investor Protections Weakened

The Investor Protection Act suffered similar

damage during the committee mark-up, though on a smaller scale.

One provision of the bill would require the SEC to adopt rules holding brokers to a fiduciary standard when they provide investment advice to retail customers, a goal long sought by CFA and other investor advocates.

What looked like a major victory for investors was undermined, however, when an amendment was adopted allowing the SEC to delegate primary responsibility for implementing the standards to the Financial Industry Regulatory Association, the broker-dealer self-regulatory organization that has long opposed holding brokers to a fiduciary standard when they give advice.

Once again, Chairman Frank has indicated that he is working to remove the provision from the legislation. "Unless this is fixed, any meaningful progress in developing strong, universal standards for investment advice could be stymied," Roper said.

Fortunately, the Senate bill includes a particularly strong provision on fiduciary duty, though it too is under attack by members of the securities and insurance industries.

In a stunning development, the committee also voted to roll back reforms adopted in the wake of the major accounting scandals at Enron and other public companies.

As a result, the bill would permanently exempt roughly half of all public companies – those with under \$75 million in market capitalization – from the requirement that their

annual audit include an evaluation of controls to prevent accounting fraud and errors.

"This amendment weakens protections adopted in the wake of the last major financial crisis as part of a regulatory reform package designed to prevent a recurrence of the current financial crisis," Roper said. "It is a scandal that it was even offered in this context, let alone passed with bipartisan and administration support."

Strong Credit Rating Reforms Adopted

The one bill to emerge from House Financial Services Committee stronger than it went in is the legislation to regulate credit rating agencies.

The bill combines extensive new authority for SEC oversight of the rating agencies, greater transparency, strengthened governance practices, and enhanced liability for reckless misconduct in developing ratings. It also seeks to decrease the financial system's vulnerability to faulty ratings by eliminating references to and reliance on ratings in our laws and regulations.

"While we support a more gradual approach to reducing reliance on ratings to ensure that other, better measures of creditworthiness are available, this is a strong bill that should go a long way toward ending the reckless and shoddy practices that contributed so greatly to the current financial crisis," Roper said.

Insurers Could Lose Antitrust Exemption

Included in the health care bill that passed the House in November was a provision long sought by consumer advocates removing, at least in part, the insurance industry's antitrust exemption.

The provision relates only to health insurance and medical malpractice insurance, however. And, although Senate Majority Leader Harry Reid (D-NV) has signaled his support for the measure, Senate negotiators did not include it in the version of the legislation they sent to the floor.

The repeal is viewed as necessary to promote competition both in the health insurance exchange established under the legislation and in regional insurance markets. According to the American Medical Association, 94 percent of regional markets are highly concentrated.

"It would be foolish to adopt a national approach to health insurance and allow continued collusion on such matters as pricing, claims, and market allocation," said CFA Director of Insurance J. Robert Hunter.

Meanwhile, consumer advocates wrote in September in opposition to a proposal in the Senate Finance Committee version of the health care legislation that would give the National Association of Insurance Commissioners (NAIC) rule-making authority in drafting health insurance standards.

The letter, signed by 14 current and former consumer representatives to NAIC, urged that rule-making authority be retained in government agencies that operate under standards requiring transparency, independence, and open meetings.

While expressing appreciation for the valuable advisory role NAIC has played this year during health care deliberations, the groups noted in their letter that a revolving door between insurance commissions and the industry "gives the impression that leadership positions at the NAIC are stepping-stones to careers in the insurance industry."

Furthermore, they noted, there has been an increase in the number of closed meetings held by NAIC in recent years, with even the NAIC's own consumer advocates excluded. And, when meetings are open to the public, there is often no opportunity for public input. "Without transparency, Americans cannot be assured that new health insurance regulations truly represent the input of the public and address consumers' concerns," Hunter said.

The provision was not included in the version of the bill for floor consideration.

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

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

