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CONSUMER FEDERATION OF AMERICA

Congress, SEC Respond To Mutual Fund Scandals

The Securities and Exchange Commission has responded to widening mutual fund scandals by issuing an unprecedented array of rule proposals over the winter months.

In Congress, meanwhile, the House passed a mutual fund reform bill at the end of last year, several bills have been introduced in the Senate, and the Senate Banking Committee has launched a series of hearings on the issue.

"Investors should be encouraged both by the quick attention that these important issues have received in Congress and at the SEC and by the broad scope of reforms currently under consideration," said CFA Director of Investor Protection Barbara Roper.

"Only time will tell whether the SEC and Congress will together produce the comprehensive reforms that the situation demands, but progress is definitely being made," she said.

Among the most significant reforms coming out of the SEC are proposals to:

- improve the governance of mutual funds;
- improve disclosures to investors regarding broker-dealer costs and conflicts of interest;
- explore ways to improve disclosure of mutual fund portfolio transaction costs;
- eliminate certain sales practices that create unacceptable conflicts of interest; and
- reform what is currently the primary method of compensating brokers for selling funds.

(The commission had voted to issue the latter two proposals, but they had not yet been released when this issue of the newsletter went to press.)

Legislation Needed To Fill Regulatory Gaps

"The SEC has put forward positive proposals on a number of important issues," Roper said. "Despite this important progress, there are significant gaps in the SEC's regulatory response," she added. "Legislation is needed to fill those gaps."

For example, the SEC does not have the authority to strengthen the definition of independent director. So, even if it adopts its proposed governance requirements, a number of individuals with close ties to fund management companies would still be eligible to serve as independent directors.

In addition, although the SEC has taken steps to make directors more accountable when they approve advisory contracts, legislation is needed to strengthen and clarify both this specific obligation and the broader responsibility of directors to act in shareholders' best interests, Roper said.

A similar problem exists with regard to "soft dollar" arrangements, which involve an agreement by a fund company to direct its portfolio trading to a particular broker and pay higher trading commissions than might otherwise be available in return for research and other services provided through the broker.

"This widespread practice creates unacceptable conflicts of interest and drives up trading costs, which are borne by shareholders and serve as a drag on performance," Roper said. "Unfortunately, the SEC lacks authority, and perhaps the will, to eliminate the soft dollar safe harbor."

Stronger Reforms Needed To Bring Down Costs

In some areas, the reforms so far proposed by the SEC stop far short of what is needed. This is particularly true in the area of mutual fund costs.

Despite insisting that it wants market competition to discipline costs, the SEC has so far been unwilling to require the pre-sale cost disclosure that is essential to effective cost competition.

While it has proposed to provide pre-sale disclosure, the proposal addresses only broker-related costs and conflicts, not the operating cost of the fund itself.

Instead, the SEC has adopted a rule requiring cost disclosure — in dollar amounts for a hypothetical $1,000 account — in annual and semi-annual reports. Because these documents are rarely consulted by shareholders in advance of a mutual fund purchase, this rule is highly unlikely to promote cost competition, Roper said.

It is possible that the House will take up additional mutual fund issues this year, but the main congressional action is expected to be in the Senate.

By far the strongest reforms so far proposed are contained in a bill, S. 2059, which was introduced in February by Senators Peter Fitzgerald (R-IL), Susan Collins (R-ME) and Carl Levin (D-MI) and endorsed by CFA, Fund Democracy, Consumers Union, Consumer Action, and U.S. Public Interest Research Group.

Fitzgerald Bill Offers Comprehensive Reforms

"More than any other legislation that has yet to be introduced since the mutual fund scandals erupted last year, this bill recognizes the need to fundamentally transform the way in which mutual funds are governed, operated, and sold to ensure that they live up to their statutory obligation to operate in their shareholders' best interests," the groups wrote.

Among its many pro-investor provisions, the bill contains a particularly strong definition of independent director and both clarifies and broadens the scope of directors' fiduciary duty.

The bill would also require disclosure of portfolio transaction costs. Although these costs vary greatly from fund to fund and can be the single most significant cost for an actively managed stock fund, they are not currently included in funds' annual expense ratio or disclosed separately to investors.

"The bill would bring these costs out in the open where they belong," the consumer groups wrote. "Once this information is brought out into the open, these costs are more likely to be subject to competitive pressures, helping to drive down expenses for shareholders."

The bill also would prohibit a variety of practices that create unacceptable conflicts of interest, including 12b-1 fees, directed brokerage, revenue sharing payments, and soft dollar arrangements.

CFA Legislative Director Travis Plunkett focused on these issues, and argued in support of a ban, in January testimony before the Senate Governmental Affairs Subcommittee on Financial Management, the Budget, and International Security, which Sen. Fitzgerald chairs.

(Continued on Page 3)

On the **Web**
http://www.consumerfed.org/mf_fee_testimony.pdf
http://www.consumerfed.org/MutualFundReformBlueprint.pdf
http://www.consumerfed.org/112503_mutualfund.html

High Cable Prices Continue To Rise

Cable rates continue to rise at three times the rate of inflation, cable companies are using "bundling" of products and services to further gouge consumers, and the lack of real competition is costing the public at least $4.5 billion a year, according to a report released in February by CFA and Consumers Union.

The CFA-CU report was released in response to the Federal Communication Commission's tenth annual report on competition in the video market. It criticizes the FCC report for simply "regurgitating" industry claims.

"The FCC has steadfastly refused to address the serious questions of market abuse by cable operators since the industry was deregulated in 1996," said CFA Research Director Mark Cooper. "The commission's latest report about the industry sinks to new lows in glossing over just how badly consumers are being harmed."

Cooper took that same message to Congress in February testimony before the Senate Judiciary Committee's Antitrust Subcommittee.

"Eight years after the passage of the Telecommunications Act of 1996, and twenty years after cable was first deregulated, cable operators still possess the power in the market to overcharge consumers, to hinder the entry of competitors, and to discriminate against programmers," he told the subcommittee.

Cable operators possess this market power because satellite has never been able to discipline cable pricing, head-to-head competition between cable operators is extremely rare, and cable companies have been allowed to merge into huge national entities and create regional clusters that dominate local markets.

They use their market power to increase prices much faster than the rate of inflation, to restrict consumer choice to a small number of ever larger, ever more expensive channel bundles, and to discriminate against unaffiliated content and service providers, Cooper said.

Cable operators attempt to obscure the existence and abuse of market power by arguing first that programming costs explain the massive increase in the price of basic and expanded basic service and second that consumers are getting much greater value for their dollar so that quality adjusted prices have declined.

"Neither claim stands up to close scrutiny," Cooper said.

Prices increases far exceed the increase in programming costs, the report shows. In addition, "consumers are being forced to pay for channels that they would reject, if they were given a choice."

"After two decades of abuse, it is clear that policymakers made a mistake in deregulating cable," Cooper said in testimony before the Senate subcommittee. "It is time for policymakers to take steps to promote real competition and protect consumers from further abuse."

On the **Web**
http://www.consumerfed.org/mpcableindustry.pdf
http://www.consumerfed.org/multichannelvideo.pdf
http://www.consumerfed.org/021304_cablereportrelease.html

Research Wrap-up

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Hidden Auto Finance Charges Impose Huge Costs

American car buyers who finance their cars at automobile dealerships are being charged as much as a billion dollars annually in undisclosed "finance mark-up charges," according to a report released in January by CFA.

The mark-up occurs when automobile dealers subjectively hike the car loan rates of buyers who arrange financing through those dealers. It is a practice encouraged by all of the auto industry's leading captive finance companies and top auto lending banks.

"Consumers are led to believe they are receiving a rate based on their creditworthiness, but often pay marked up finance rates determined arbitrarily by the dealer and encouraged by the lender," said CFA Executive Director Stephen Brobeck.

Most of these undisclosed mark-up charges are kicked back to the dealer by the lender, with the lender retaining the remainder.

The hidden finance kickbacks typically add at least $1,000 to the cost of an auto loan and are charged to about one-in-four buyers of new and used cars who finance their purchase through the dealerships.

Moreover, the subjective nature of this dealer mark-up has led to discrimination against African-Americans and Hispanics. According to the report, these minority car buyers are more likely to be victims of mark-ups, and, when they are, are charged hundreds of dollars more on average than other Americans, even when they possess similar credit histories.

Recent steps taken by the auto lending industry, such as capping the mark-up at three percentage points, are not adequate, according to the report.

A complete solution must include: disclosure of the mark-up percentage and dollar costs; a prohibition against charging fees that fluctuate or are based on either the loan amount or the term of the loan; remedy programs for those already harmed by the hidden charges; and consumer education programs designed both to give consumers a clear understanding of the auto finance process and to promote consumer awareness of remedy programs.

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Tax Refund Loans Drain Billions From Workers

Quick tax refund loans continue to skim over a billion dollars a year from the pockets of American workers, according to a report released in January by CFA and the National Consumer Law Center.

These refund anticipation loans (RALs), which are secured by the taxpayer's expected tax refund, cost Americans $1.14 billion in loan fees in 2002, plus an additional $406 million in other fees, according to the report.

About one in ten American taxpayers took out the loans in 2002. Although Earned Income Tax Credit recipients make up only 15 percent of taxpayers, 55 percent of those who got RALs in 2002 were EITC recipients.

As a result, the report estimates that seven million working poor families spent $1.75 billion on RAL fees, commercial tax preparation, and in some cases check cashing fees, just to get their tax refund money less than two weeks sooner than they would have from the IRS.

The loans, which typically last about ten days, cost from $30 to $105 in loan fees and $28 to $59 in administrative fees, according to the report. Some consumers also pay an extra $15 to $30 for "instant" products that give them a loan on the same day they file their return.

The report estimates that an RAL for an average refund of approximately $2,100 will cost a total of $132 this year (on top of the tax preparation fee) and bear an effective interest rate (APR) of about 180 percent, or 240 percent if administrative fees are included.

Some tax preparation chains and RAL lenders have been reporting lower APRs by "unbundling" charges from the loan fees, but these lower APRs give a less accurate picture of the true "cost of credit" for RALs, according to the report.

"By breaking the cost of the loan into a finance charge, a bank account fee, and administrative fees and then calculating the APR based on only one of these fees, banks and preparers make it difficult to understand what these loans really cost," said CFA Consumer Protection Director Jean Ann Fox.

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Women On Their Own Face Financial Challenges

Households headed by women have about one-half the income and less than one-third the wealth of other American households, according to an analysis of Federal Reserve Board data released by CFA and Visa USA in January.

"Because of their lower incomes and wealth, women on their own are much more likely to face severe financial challenges than are other American households," said CFA Executive Director Stephen Brobeck. "Fortunately, there are free resources available to help them respond to these challenges."

The growing America Saves program managed by CFA (AmericaSaves.org), Money Clubs organized by the non-profit Women's Institute for Financial Education (WIFE.org), and Visa's PracticalMoneySkills.com website are three mutually supportive resources that are available for free to all women.

Women who head households (defined as women who are not married or living with a partner) account for 16 percent of all American households, according to the Fed data, which was analyzed for CFA and Visa by Ohio State University economist Catherine Montalto.

The median income for women on their own was $20,000 in 2001, compared with $39,000 for all American households. 41 percent of all female-headed households had incomes in the lowest quintile in 2001, compared with 19 percent of all American households.

The wealth gap between women on their own and other households is even larger than the income gap. The typical female-headed household had net wealth of only $27,850 in 2001, compared with net wealth of $86,100 for all American households.

As a result, women who head households live more on the edge financially than do other household heads. Their financial planning horizon for saving and spending is shorter, they are more likely to spend all or more than their income, and they are less likely to save.

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Credit Counseling Ignorance Subjects Consumers To Abuse

As more Americans have sought assistance for serious debt problems in recent years, some of the nation's largest credit counseling agencies have come under scrutiny by federal and state officials for deceptive practices, improper advice, excessive fees, and abuse of non-profit status.

Unfortunately, most Americans do not know much about credit counseling, according to a survey released in December by CFA and InCharge Institute of America, which makes them more vulnerable to abuses.

Low- and moderate-income Americans — those who tend to pay the highest price for credit and are the most vulnerable to counseling abuses — are the least knowledgeable about credit counseling, according to the report.

"Despite the fact that consumer demand for counseling and other forms of debt assistance appears to be growing, a strikingly high percentage of Americans say that they know very little or nothing about credit counseling agencies," said CFA Executive Director Stephen Brobeck. "Given the recent problems that we've seen with some players in the industry, this lack of awareness leaves many consumers vulnerable to abuse."

The survey was conducted in November by the Opinion Research Corporation International.

The report also found consumers strongly prefer the agencies to be non-profit and want plans to include education and counseling, not just fixed payment plans.

Large majorities said they favor limits on the fees agencies can charge and clear disclosure of the fees and believe that lenders should not charge additional interest on the debts of consumers who enter credit counseling.

The report includes policy recommendations to address abuse of non-profit status, excessive costs, and deceptive and misleading practices.

"Consumer organizations, legitimate credit counseling agencies, and creditors are going to have to work together to insure that consumers are helped, not hurt, by credit counseling," said CFA Legislative Director Travis Plunkett.

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Auto Sales Top Annual Complaint List

New and used auto sales topped the list of consumer complaints filed with state and local consumer protection agencies in 2002, according to the twelfth annual complaint survey released in November by CFA and the National Association of Consumer Agency Administrators.

Complaints about home improvement companies ranked second and were the fastest growing type of complaint, followed by auto repairs, credit and credit repair, and advertising/telemarketing. Rounding out the top ten most frequent causes of complaint were debt collections, big-ticket household goods, telecommunications, and real estate/landlord tenant complaints.

"Consumer problems with cell phone plans, online auctions, and purchases made over the Internet are catching up with perennial complaints about big ticket purchases," said CFA Consumer Protection Director Jean Ann Fox.

The 43 consumer agencies sampled in the survey handled over 300,000 individual complaints in 2002, and were able to return $130 million to consumers. Growth in the number of complaints continues to outstrip increases in budget or staff.

On the **Web**

http://www.consumerfed.org/autofi-report.pdf
http://www.consumerfed.org/RefundAnticipationLoanReport.pdf
http://www.consumerfed.org/womenfinance.pdf
http://www.consumerfed.org/ccounselingrelease.pdf
http://www.consumerfed.org/2003complaintsurvey.pdf

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Mad Cow Case Prompts Legislative Response

The discovery of "mad cow" disease in December in a dairy cow that had been slaughtered for use in human food has increased pressure on Congress to adopt new food safety protections.

Bills have been introduced, for example, to create a uniform animal identification and trace-back system, to require all cattle to be tested for mad cow disease, and to make permanent the recent ban on use of meat from downer cattle in human food and to extend the ban to sheep, pigs, and other livestock.

Some members of Congress are also pressing to implement the country-of-origin labeling program this year, as originally scheduled, rather than delay it for two years as the recently adopted omnibus spending bill requires.

One proof of the need for legislation can be found in the fact that, a month after USDA announced that it had found mad cow disease in a cow slaughtered in the United States, the government had managed to locate only 23 of the 81 cows that had entered the country in the same herd, said Carol Tucker Foreman, Director of CFA's Food Policy Institute.

ID System Could Have Prevented Mad Cow Disruptions

"If a mandatory, nationwide, uniform animal identification and trace-back system had been in place, both the public and meat producers and processors could have been spared days of distress and uncertainty," she said.

"Twenty-four of our major trading partners, including Japan, would not have closed their ports to U.S. meat, and hundreds of millions of dollars of lost sales would have been avoided," she added.

In addition to helping prevent the spread of animal disease, an identification system capable of tracking all animals from the slaughterhouse back to the farm of origin could help reduce illness and death from food poisoning, Tucker Foreman said.

Although Agriculture Secretary Ann Veneman announced in December that the U.S. Department of Agriculture would soon institute a "verifiable" animal identification system, USDA has not offered a specific plan for the structure, enforcement, or even timing of such a program.

Tucker Foreman called on Congress to step in and adopt a mandatory system. She also urged passage of legislation to extend and make permanent the ban on use of downer animals in human food.

Downer Animal Ban Would Reduce Foodborne Illnesses

"Downer animals are a threat to food safety," Tucker Foreman said.

Numerous studies have shown downer animals are more likely to be carrying mad cow disease, E. coli, and other pathogens, she said. "It is crucial that we stop putting meat from sick animals into the nation's food supply," she said.

Recent events also highlight the need for an effective country-of-origin labeling program, she said.

"The recent mad cow scare and Hepatitis A outbreak related to scallions only reinforce the fact that consumers need to be able to determine where their food comes from," Tucker Foreman said. "Country-of-origin labeling has been delayed far too long. Congress should act now to prevent further delay," she said.

On the Web

http://www.consumerfed.org/012304animalid.html
http://www.consumerfed.org/012204downedanimal.html
http://www.consumerfed.org/012104cfa_daschle_statement.htlm
http://www.consumerfed.org/012004COOL_senator_letter.html

House Attempts To Jump Start Bankruptcy Bill

In an effort to jump start Senate consideration of anti-consumer bankruptcy legislation, the House substituted its bankruptcy bill (H.R. 975) for a Senate-passed bill to renew recently expired bankruptcy protections for family farmers and passed the bill on a 265-99 vote.

CFA, Consumers Union, and U.S. Public Interest Research Group condemned the move, which came just a few days after Congress reconvened for the year.

"This maneuver not only prevents farmers in need from taking advantage of the important bankruptcy protections in Chapter 12, but is a blatant attempt to do an end-run around Senate opposition to H.R. 975," said CFA Legislative Director Travis Plunkett.

The groups also criticized the bill on the grounds that it would harm moderate-income families that have been hit by a financial emergency and benefit the credit card industry, whose aggressive lending practices contribute to bankruptcy.

"Now is a particularly bad time to pass one-sided bankruptcy legislation," Plunkett said. "Many Americans are coping with the after-effects of an economic recession and are financially vulnerable."

In addition, at a time when many Americans are still concerned about corporate abuses, the bill would:

- weaken corporate accountability and benefit some lenders that have admitted to wrong-doing; and
- weaken conflict-of-interest restrictions on Wall Street firms, some of which were significant players in recent corporate scandals.

The bill that passed the House does not contain the key provision that has stood in the way of final passage in the past — a Senate measure that would prevent abortion protestors from using bankruptcy to escape civil fines and judgments.

To date, the Senate has refused to pass the bill without the abortion provision, and the House has refused to pass the bill with it.

By attaching the consumer bankruptcy bill to the farm bankruptcy renewal, House leaders appear to be trying to make it difficult for farm state senators to oppose the House-passed version of the bill.

As of mid-February, it appeared that the maneuver had not had its intended effect.

Sen. Patrick Leahy (D-VT), ranking member of the Senate Judiciary Committee, said that, in objection to the House attempt to skirt Senate procedures, Democrats would block the appointment of senators to negotiate a final bill in conference.

"The House leadership's maneuver was the legislative equivalent of a desperate, last minute 'Hail Mary' football pass," Plunkett said. "And like most Hail Mary passes, it looks like this one will fail.

"Even some Republican senators have expressed concern about the House leadership's attempt to railroad the Senate into accepting their bankruptcy bill," he said.

At the Agencies

(Continued from page 4)

groups wrote.

Better alternatives exist, they argued, including removing excessive infiltration and inflow, providing storage for sewage during rainstorms until it can be treated, and increasing the maximum treatment capacity available in the treatment plant during rainstorms.

"We support providing additional federal resources to assist state and local governments to make those improvements, instead of discharging largely untreated sewage because we have failed to invest in repair and rehabilitation of our sewer systems," they wrote.

Consumer Product Safety Commission

The Consumer Product Safety Commission (CPSC) voted 2-1 in November to drop its demand that Daisy Manufacturing Company recall 7.5 million **BB guns**.

As part of its consent agreement with the agency, Daisy agreed instead to include more and bigger safety warnings on its products and to implement a $1.5 million, five-year educational campaign that it already had in place.

The action came in response to a lawsuit filed by CPSC two years ago, in which the agency alleged that some high-powered Daisy air guns were defective because BBs could become lodged in the magazine, even though the rifle appeared to be empty.

The commission said it knew of at least 15 deaths and 171 serious injuries from the alleged defect, about 80 percent of them involving children under the age of 16.

"The significant problem with this settlement is its failure to remove these potentially unsafe products from the marketplace," said CFA Assistant General Counsel Rachel Weintraub. "Tragically, it is likely that more consumers will continue to be hurt and injured by the products because no corrective action has been instituted."

An estimated 21,187 non-powder gun injuries were treated in U.S. emergency departments in 2001. Just over three-quarters of the patients were children or teenagers.

According to the 2001 Gun Digest, 80 percent of the 3.2 million non-powder guns sold in the United States each year have muzzle velocities of over 350 ft/second, at which speed a pellet can break through skin and penetrate some bones, and 50 percent have muzzle velocities of between 500 and 930 ft/second, comparable to many traditional powder handguns.

There are no national standards for the sale, ownership, or use of non-powder guns, and only 15 states regulate their sale or possession.

"The only way the air gun industry will ever change its potentially dangerous manufacturing and marketing practices is if it is forced by federal regulation to do so," said CFA Firearms Project Director Sue Peschin.

Mutual Fund Scandals

(Continued from page 3)

By focusing on mutual funds' "excessive costs and the convoluted and sometimes hidden incentives used to promote their sale," Plunkett said, "you have opened a window into a mutual fund scandal that does far more harm to its victims than the recently revealed trading abuses — and that is the scandal of how mutual funds are sold to unsuspecting investors and the high costs that result."

Additional Reforms Advocated

In his testimony, Plunkett suggested additional areas where Congress should consider legislation, including:

- subjecting brokers who market themselves as advisers to the fiduciary duty to put their clients' interests ahead of their own that is appropriate to an advisory role;
- clarifying that this fiduciary duty includes a responsibility to take costs into account when making recommendations;
- requiring that all distribution costs be paid directly by investors and eliminating the role of mutual funds in setting those distribution charges; and
- supplementing SEC regulation and enforcement by establishing an independent board, modeled after the Public Company Accounting Oversight Board, to set standards, conduct inspections, and bring enforcement actions.

"Mutual funds have long offered the best way for investors who have only modest amounts of money to invest to obtain broad diversification and professional management," Plunkett said. "The trading scandals have sullied the fund industry's reputation, but they have also opened up an opportunity to reexamine some industry practices that had too long gone unchallenged.

"We look forward to working with the SEC and Congress to create a more equitable mutual fund marketplace," he said.

At the Agencies

Office of the Comptroller of the Currency

Ignoring numerous letters of opposition from state attorneys general, consumer and community advocates, and others, the Office of the Comptroller of the Currency issued new rules in January that block **state enforcement against nationally chartered banks of most state consumer protection laws**.

The agency adopted one rule giving itself sole authority to draft rules that govern lending and deposit taking by national banks, including both their local offices and their operating subsidiaries, and another giving itself sole authority to enforce those rules.

The OCC has justified its action by claiming that consolidating its authority will promote uniformity for banks the agency supervises.

"But this uniformity will come at the expense of consumer protection," said CFA Director of Housing and Credit Policy Allen Fishbein. "Consumers residing in states with stronger protections than those provided under federal law — and there are many — will likely find themselves at greater risk of exposure to predatory lending and other abusive credit practices should they choose to borrow from OCC-supervised institutions."

"CFA, along with hundreds of other consumer and community groups, members of Congress, and state public officials have written the OCC opposing the adoption of these rules," he added. "Unfortunately, the OCC has chosen to turn a deaf ear to these views."

A House subcommittee held a hearing on the issue in January. A Senate Banking Committee hearing was scheduled, but cancelled because of the Ricin scare that temporarily closed Senate office buildings.

Despite that activity, legislation to roll back the rule is considered unlikely this year. "It seems that nothing short of litigation by the state attorneys general or by consumer organizations is likely to overturn the OCC rule," Fishbein said.

Federal Banking Regulators

The OCC, Federal Deposit Insurance Agency, Federal Reserve Board, and Office of Thrift Supervision have issued proposed rules to **amend the Community Reinvestment Act**.

Enacted in 1977, CRA prohibits redlining and obligates banks and savings institutions to help meet community credit needs. Under CRA, federal bank examiners are required to examine and rate larger banks based on how many loans, investments, and services they offer to low- and moderate-income consumers and communities.

Fishbein called the proposed rules "a major disappointment."

Among the problems, they would exempt an estimated 1,300 additional mostly smaller and rural banks from complying with a more rigorous CRA compliance examination.

Also, while the proposal purports to provide examiners with the leeway to downgrade banks that engage in predatory mortgage lending practices, the circumstances under which this may happen are quite limited and do not encompass some of the most egregious practices found in the home finance market.

Similarly, the proposal does nothing to clarify whether examiners can use CRA to dissuade banks from partnering with payday lenders as a means to circumvent state usury ceilings, as CFA and other advocates have repeatedly sought.

Public comments on the rule are due April 6.

Environmental Protection Agency

CFA and 20 state and local consumer groups wrote to the Environmental Protection Agency (EPA) in January urging the agency to improve the timeliness and clarity of disclosures to the public under its **proposed rule regarding disinfectants and disinfection byproducts in drinking water**.

In addition to requiring public notices to consumers when a maximum contaminant level is breached, the rule should require that the annual Right-to-Know reports include an explanation of the health risks and the sub-populations, if any, that may be affected, the groups argued.

For example, they urged that the proposed language on health effects of disinfection byproducts provide clearer explanation of the potential reproductive effects.

The groups strongly opposed the EPA proposal to establish a maximum contaminant level goal for chloroform of 70 parts per billion.

"It is not yet clear that there is any level of chloroform below which it is no longer carcinogenic," the groups wrote. "Moreover, there is no data as yet about any level at which it no longer poses a risk of effects on human infants, children and fetuses, including reproductive effects."

They urged the EPA to set a maximum contaminant level goal of zero for all trihalomethanes, as it has for coliforms.

Meanwhile, CFA joined with 16 other organizations in writing to the EPA in January to urge it to withdraw a proposed policy that would authorize routine **discharge of inadequately treated sewage by sewage treatment plants during rainstorms**.

For years, EPA has prohibited sewage treatment bypasses except under specific, limited circumstances. In contrast, the EPA proposal would expand the opportunity to use the treatment bypasses whenever the sewage treatment plant's biological treatment unit or storage capacity is exceeded as a result of increased wet weather flows.

Furthermore, EPA's proposed guidance would attempt to legalize this practice even when feasible alternatives, such as constructing additional capacity or storing sewage until it could be fully treated, exist.

"The proposal would increase risks to public health because it would allow the routine discharge of inadequately treated sewage into recreational waters and drinking water sources, which would increase the loadings of pathogens that cause waterborne disease and the contamination of the water with carcinogenic disinfection byproducts," the

(Continued on Page 3)

Do-Not-Call Registry Upheld in Court

In a major victory for consumer privacy, a federal appeals court ruled in February that the federal government's do-not-call registry is a valid restraint of commercial speech and may continue operations.

"Telemarketing calls intrude on families and expose some consumers to unfair and deceptive sales pitches," said CFA Consumer Protection Director Jean Ann Fox. "The FTC and Chairman Muris deserve enormous credit for creating and fighting to preserve this great example of consumer-controlled privacy protection."

Telemarketers filed the lawsuit challenging the registry last fall, arguing that the program violates the free speech rights of telemarketers, because it exempts charitable organizations.

The court based its ruling in part on the fact that the program "targets speech that invades the privacy of the home, a personal sanctuary that enjoys a unique status in our constitutional jurisprudence." In addition, the ruling noted, "the challenged regulations do not hinder any business's ability to contact consumers by other means, such as through direct mailings or other forms of advertising."

The court upheld the Federal Trade Commission's exemption for political and charitable organizations on the grounds that, because these organizations are seeking support for a cause and not just a donation, they are less likely to engage in deceptive and abusive practices.

This is the second legal challenge the registry has survived since it was launched last summer. In September, a federal judge ruled that the FTC did not have authority to begin enforcing its do-not-call registry. Congress responded by clearing a bill in just two days to protect the program.

The February decision may not end the court battles. The telemarketing industry has indicated that it is considering appealing the decision to the Supreme Court.

Meanwhile, the registry enjoys great popularity with the public. More than 57 million telephone numbers have been posted to the do-not-call registry since it was launched last summer, and new numbers are reportedly being added at a rate of 200,000 to 300,000 each week.

"The telemarketing industry should give up its fight against privacy protections that consumers clearly want," Fox said.

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