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Execs fighting transaction tax

Doug Halonen

Pensions & Investments

November 2, 2009

They say proposal would hurt returns, force investors overseas

Pension and financial industry executives are fighting a legislative proposal that could force all investors — including pension funds — to start paying taxes on trades of stocks, commodities and other financial products.

Proponents contend the new tax is critically needed to help slash the nation's soaring budget deficit — and to put a damper on the same sort of frenzied speculative trading by hedge funds and others that many analysts believe contributed to the nation's financial meltdown.

But pension and financial industry executives charge that the proposed tax would unfairly hammer investment returns and would drive U.S. investors overseas to exchanges where they could avoid the tax.

“A stock transaction tax would increase costs for American investors, increase the cost of capital for American companies, and drive activity offshore from America's transparent, well-regulated exchanges,” said Ray Pellecchia, a spokesman for NYSE Euronext, New York.

“You discourage what you tax,” added Judy Schub, managing director of the Committee on the Investment of Employee Benefit Assets, Bethesda, Md. “Do we really want to discourage investment activity?”

Still, proponents of the tax insist that pension industry concerns about the proposal are misplaced.

“This (the proposed tax) is going to hit the short-term speculators,” said Dan Pedrotty, director of the office of investment, AFL-CIO, Washington, which supports the proposed tax. “Pension funds should be in this (investment) for the long term,” Mr. Pedrotty added.

Among the key public policy groups in Washington that have endorsed the proposal is the left-leaning Economic Policy Institute.

In testimony Oct. 8 before the House Ways and Means Subcommittee on Income Security and Family Support, Lawrence Mishel, EPI president, asked lawmakers to adopt a permanent tax that would apply to all financial transactions, including stocks, bonds and derivatives.

Mr. Mishel said a tax levied at the rate of anywhere from 10 basis points to 25 basis points per financial transaction could raise \$150 billion a year for the U.S. Treasury.

“The finance sector not only caused the recession and the need to generate jobs, but it has also helped to drive up the deficit because of the costs of the financial bailout, some of which will not be repaid,” Mr. Mishel testified.

“A financial transaction tax seems an entirely sensible vehicle to provide the revenues we need to support federal spending and for offsetting the costs of a current jobs package,” Mr. Mishel added.

Another endorsement

Also endorsing the concept of the tax — at least as a short-term measure to recoup from the financial industry the full cost of the federal government's bailout — is Rep. Peter DeFazio, D-Ore., who introduced legislation on the subject Feb. 13.

Mr. DeFazio's bill, the “Let Wall Street Pay for Wall Street's Bailout Act of 2009,” would levy a tax of up to 25 basis points on financial transactions, with the tax phased out once the bailout's full costs are recovered. Mr. DeFazio's bill has been referred to the House Ways and Means Committee but has yet to receive a hearing.

In addition, the liberal Center for Economic and Policy Research and Progressive Policy Institute, both based in Washington, are promoting the proposed tax on financial transactions.

“It's a way to raise modest revenues and discourage (speculative trading) churn,” said Will Marshall, Progressive Policy Institute president.

In addition, as proponents of the transaction tax point out, Lawrence Summers, director of the White House's National Economic Council, supported a transaction tax in a 1989 article he co-wrote for the Journal of Financial Services Research.

The article, "When Financial Markets Work Too Well: A Cautious Case for a Securities Transaction Tax," expresses concern about the "spectacular increases" in the volume of trades in securities of all kinds at the time. "The efficiency benefits from curbing speculation are likely to exceed any costs of reduced liquidity or increased costs of capital that come from taxing transactions more heavily," the article says.

Matthew Vogel, a White House spokesman, in response to the question of whether Mr. Summers continues to support the tax, said, "Given the transformations that have happened in the past two decades, arguments made in 1989 about financial markets transactions, whatever their validity at the time, do not likely apply today."

Whatever Mr. Summers' position is now, pension and financial industry executives say that lawmakers should pull the plug on the proposed tax.

"It (the proposed tax) is a bad idea," said David John, a senior research fellow at the Heritage Foundation, a conservative think tank in Washington.

"What you would end up doing is reducing the yields of mutual funds and hurting the retirement savings of the middle class," Mr. John added.

'On and off'

"Transaction taxes have been suggested on and off at the state and federal levels for as long as there have been both stock trades and governments looking for revenue," said Travis Larson, a spokesman for the Securities Industry and Financial Markets Association, Washington, in a statement. "As an industry, we have an equally long history of opposing such proposals," Mr. Larson added.

According to Mr. DeFazio's bill, the U.S. taxed stock transactions from 1914 to 1966. The levy, originally set at 20 basis points, was "more than doubled" by Congress in 1932 to help "overcome the budgetary challenges during the Great Depression," the legislation says.

To become law, the newly proposed tax would first have to be approved by the House Ways and Means Committee, which had taken no action on the proposal at press time, according to Matthew Beck, a committee spokesman.

"The issue is not currently under consideration," Mr. Beck said.

In an e-mail response to questions, Scott Talbott, senior vice president of government affairs for the Financial Services Roundtable, Washington, said

the proposal faces an uphill battle, “given its drain on the economy and its negative impact on Americans.”

Dean Baker, co-director of the Center for Economic and Policy Research, however, said he believes the prospects for the tax are good.

“It's being taken very seriously these days,” Mr. Baker said. “There's a general belief in policy circles that we need to raise a lot of money, and it's hard to think of a way to raise revenue that would hurt fewer middle-class people.”

Even some of the proposal's biggest critics said pension and financial industry executives would be well advised to stay on guard.

“There's a real danger that the House Ways and Means Committee might take it seriously as a way to pay for health-care costs or to reduce the deficit,” said the Heritage Foundation's Mr. John.

How Often Did Wall Street Go to the White House? New York Times October 31, 2009

By now, “Wall Street has come to Washington” has become something of a hoary trope. But visitor logs released by the White House on Friday show it is indeed true.

The most burning question, of course, is who came and how often did they do so? To perhaps no one's surprise, the executive to log the most time at the White House is...

... Jamie Dimon of JPMorgan Chase, who has logged six visits. Given his early and consistent courting of President Obama — who once quipped as Citigroup chairman Richard D. Parsons was explaining banking matters, ‘All right, I'll talk to Jamie’ — that's probably not too surprising. (Mr. Parsons, by the way, didn't show up on the list at all.)

Then there's John G. Stumpf of Wells Fargo, who each arrived just once. That's less than the pro tennis player Serena Williams (three times) and as often as a Jeremiah Wright, who CBS News says isn't the preacher whose fiery sermon caused Mr. Obama trouble during the presidential campaign.

Of course, the visits are as much about lobbying as they are about personal calls. Edward L. Yingling, the president of the American Bankers Association and a

staunch opponent of many efforts to regulate the financial industry, logged in five times.

Per our Times colleague Jeff Zeleny, we're adding Scott Talbott of the Financial Services Roundtable to the list as well. He visited three times. We'd add Timothy Ryan of the Securities Industry and Financial Markets Association, but there are multiple entries with that name.

A reader also helpfully tells us that Kenneth D. Lewis of Bank of America apparently visited twice. (One of his appearances comes under the name "Kennethdoyle Lewis," a mashing of his first and middle names.) The story and the list have been updated.

Here's a list of finance figures who showed up. Find any more in the White House list? Tell us in the comments.

- Jamie Dimon, JPMorgan Chase: six visits
- Edward L. Yingling, American Bankers Association: five visits
- George Soros, Soros Fund Management: four visits
- Lloyd C. Blankfein, Goldman Sachs: three visits
- Vikram S. Pandit, Citigroup: three visits
- Maurice R. Greenberg, ex-A.I.G.: three visits
- **Scott E. Talbott, Financial Services Roundtable: three visits**
- John J. Mack, Morgan Stanley: two visits
- Gary Cohn, Goldman Sachs: two visits
- Kenneth D. Lewis, Bank of America: two visits
- John G. Stumpf, Wells Fargo: one visit
- Richard D. Parsons, Citigroup: no visits

White House Visitors Logs Show Boldface Names, Clout-Wielding D.C.

Players

Jake Tapper

ABC News

October 31, 2009

The White House visitors' logs released Friday afternoon represent just those names about whom inquiries had been made at Whitehouse.gov.

Within the narrow construct of those 481 names released, one can catch glimpses of the world of celebrity -- George Clooney! Oprah! Denzel! Brad Pitt! Serena Williams! -- and also weigh the clout of various movers and shakers in D.C.

The big winner in the latter group: labor leader Andy Stern of the Service Employees International Union, who visited the White House 19 times. Five of those visits were with President Obama.

AFL-CIO President Richard Trumka visited seven times. Power-lobbyists Tony and Heather Podesta visited four times and three times, respectively, according to the records. Center for American Progress president John Podesta, who headed the Obama transition, visited at least 12 times. Other frequent visitors included former National Organization for Women President Kim Gandy and former Senate Majority Leader Tom Daschle, D-S.D.

Other names on the list: the Rev. Al Sharpton, the Rev. Jesse Jackson, and former Democratic National Committee Chairman Howard Dean.

Wall Street players have had a lot of interest in Mr. Obama's doings, and visitors have included JPMorgan Chase's Jamie Dimon, Goldman Sachs' Lloyd Blankfein, Goldman Sachs' Gary Cohn, Citigroup's Vikram Pandit, and the former chief executive of AIG, Maurice Greenberg. Edward Yingling of the American Bankers Association, **Scott Talbott of the Financial Services Roundtable**, and Timothy Ryan of the Securities Industry and Financial Markets Association also visited. So have George Soros, Bill Gates, Alan Greenspan, the late Sen. Ted Kennedy, D-Mass., Exxon Mobil's Rex Tillerson, Chevron's David O'Reilly, and General Electric's Jeffrey Immelt, who sits on the president's Economic Recovery Advisory Board.

Former Vice President Al Gore has visited four times, though the logs do not indicate that he visited with President Obama.

After credit card outrage, Ohio couple gets relief

Jessica Yellin

CNN International

October 29, 2009

Chuck and Jeanne Lane got some good news earlier this week: After more than doubling the Lanes' monthly minimum payment, their credit card company is now slashing their payment.

The Ohio couple was featured in a CNN story about credit card companies jacking up rates in advance of a law going into effect that would prevent them from doing that. Because of the story, the couple says their bank agreed to give them relief:

Chuck Lane told CNN that he'll now be able to afford surgery for his wife and college for his son. But he worries about others: "I really don't want to gain because CNN's come and done a story on me when there's millions of others. I want it to be right for all of us."

Chase, their credit card company, wouldn't comment on the Lanes' case, citing privacy issues.

The Lanes are one of millions of families who saw their credit card bills skyrocket after Congress passed a new law that would rein in credit card fees and rate changes. The law doesn't fully take effect until February 2010.

Joe Ridout, an advocate with Consumer Action, says that in the meantime, "It's really touched off a chase to the bottom" among credit card companies.

Some members of Congress are making a modest effort to change credit card practices immediately. After CNN's story aired, Rep. Betty Sutton, the Lanes' congresswoman, prodded the bank to make the Lanes a new offer.

Now she's trying to extend the help to others, introducing a bill Thursday that would ban fees on people who don't carry debt -- those who don't use their card or those who pay off their balance every month.

"Our work is not done," Sutton told CNN, "It's clear with the credit card companies ... it's always some excuse out there for hammering the American consumer, and it has to stop, so our work in Congress continues."

Rep. Betsy Markey, who said she was "outraged" after seeing the story on the Lanes, has introduced a Credit Card Rate Freeze Act that would halt any increases in credit card interest rates before new regulations go into effect.

"Credit card companies are just blatantly increasing rates solely because they know once the law takes effect, they won't be able to do this anymore," she said.

Sen. Mark Udall has introduced a similar bill in the Senate. And there's yet another bill that would move up the date when new the credit card law takes effect.

But none of these three bills is close to becoming law. And in the meantime, cardholders are being squeezed.

According to a new study by the nonprofit Pew Charitable Trusts, 12 of the nation's largest banks are adding fees and rate changes that will be illegal when the new law goes into effect. All of the banks in Pew's survey have raised interest rates, and 90 percent have jacked up late fees or made other changes that, in the

words of the study's authors, are "likely to cause substantial monetary injury to consumers."

Nick Bourke of the Pew Credit Card Project offers this advice for consumers who see their card payments increase:

First, call the card company; then call your member of Congress because, Bourke says, "Congress could act right now" to stop those practices. And finally, he said, "You should also ask your congressman to ask what the Federal Reserve is doing because they have a lot of responsibility under this bill to protect people, and they should use that responsibility. "

The credit card banks think the criticism is unwarranted.

Scott Talbot of the Financial Services Roundtable, the lobby that represents the credit card companies, said the companies are operating in a tough environment because "credit card lending is the riskiest type of lending." He insisted that rising interest rates are directly connected to the state of the economy.

Companies are working to balance competing needs, Talbot said, "to ensure that customers have the credit they need and the companies have a viable business model going forward."

But Sutton doesn't think the banks are striking that balance.

"This is not the way it should be after the American people came to the rescue of the banks," she said.

Is Wall Street Really So Sorry?

Victoria McGrane

Politico

November 2, 2009

Wall Street keeps saying it's sorry. It's sorry for those bad bets on subprime mortgages. Sorry about the stock market crash. Sorry for needing those bailouts. JPMorgan Chase CEO Jamie Dimon has admitted his industry "made its share of mistakes."

But nobody in Washington is buying its contrition.

“The industry, I think, has a long way to go to demonstrate that they get it in terms of the harm they caused not just to world financial markets but individual families,” Sen. Bob Casey (D-Pa.) told POLITICO.

“It would be really helpful if they showed it by their actions,” said Sen. Jon Tester (D-Mont.).

The PR campaign hasn’t been enough, lawmakers argue. They want the financial industry to stop fighting regulation and accept proposals like the consumer financial protection agency.

“I can tell you that the people that I represent aren’t sitting around, waiting for some sort of speech or statement of contrition,” said Sen. Ron Wyden (D-Ore.). “People are looking for bottom-line changes, and one of them would be the consumer protection agency,” said Wyden, who added that his constituents have been asking if financial lobbyists are going to fight that proposal.

“I said, ‘It remains to be seen. I know that I’m going to fight for you the consumer, and I’m going to insist that there be a consumer protection agency,’” Wyden recalled.

And House Financial Services Committee Chairman Barney Frank (D-Mass.) — who wields incredible influence over the regulatory reform process — has made no secret that the big banks’ persistent image problems are hurting them in the financial reform lobbying wars.

“All the money in the world doesn’t make them effective lobbyists right now,” Frank said in a recent CNN interview. “It can’t erase the record of irresponsibility, poor judgment and abuse of consumers that too many of the big banks have run up.”

But Wall Street leaders argue that this is all a huge disconnect.

Top CEOs publicly, and regularly, claim responsibility for their missteps and are revamping internal procedures in response, they say. But the most explicit example of their atonement, industry officials said, is their embrace of the need for substantial regulatory reform — not the usual stance of any industry.

“Here’s an industry who’s saying, ‘Regulate us, please regulate us!’” said John Courson, president and CEO of the Mortgage Bankers Association, as he detailed how his member lenders have acknowledged their culpability and embraced rules they once fiercely resisted.

Courson, who took the helm of the MBA in January, said he deliberately spent his first public speeches and press events acknowledging “that lenders ... ended up with borrowers getting into products that were not well-designed for them.”

“We have not run away from the fact that there certainly is culpability in our industry,” Courson said

And the mortgage industry has started to back new rules and is undertaking some self-policing. Courson said his group has reversed its long-standing opposition to licensing individual loan originators. It’s also calling for Congress to place nonbank mortgage lenders — seen by many as particularly guilty of poor and even abusive lending practices — under federal supervision for the first time.

Financial industry supporters also cite dramatically reduced leverage levels, the reduction or elimination of off-balance-sheet vehicles and revamped compensation schemes at most large financial institutions that, despite the negative headlines, focus on long-term performance incentives like stock options, deferred compensation and claw-back options.

“Mistakes were made. And the ghosts of those companies that have failed have prompted the companies to focus on themselves and make reforms,” said Scott Talbott, senior vice president of government affairs for The Financial Services Roundtable, a trade group representing about 90 large financial firms.

But for many Democrats, union leaders and consumer advocates, that’s not nearly enough. They see the financial industry’s nearly united opposition to the consumer financial protection agency as evidence that they are not chastened from last year’s bailout.

“They have done nothing,” declared Anna Burger, secretary-treasurer of the Service Employees International Union, speaking to POLITICO from a protest last week at the American Bankers Association annual meeting in Chicago. “They took trillions of dollars in bailouts, [and] they didn’t stop home foreclosures, they didn’t lower interest rates, they didn’t stop all those excessive fees, they didn’t give consumers a break. Now they’re giving themselves bigger bonuses than ever.”

Industry officials protest that the high-profile fight over creating the consumer financial protection agency has been unfairly interpreted as full-scale opposition to all financial reform.

“We are in heated agreement with the administration on the need for modernization,” said Rob Nichols, president and COO of The Financial Services Forum, a policy group made up of CEOs of the world’s 18 biggest financial services firms, including Goldman Sachs, Citigroup and JPMorgan Chase. “There are some differences on the best policy approaches to achieve this goal, [but] we do support perhaps the two most critical elements proposed by the administration — the need to establish a systemic supervisor to help minimize the chance of a crisis and the need for resolution authority to address a crisis, heaven forbid we have one.”

Industry insiders also point to both the scores of public apologies made by financial leaders and the specific changes that show Wall Street has learned its lessons.

“Leaders in the financial industry have widely acknowledged in countless speeches, op-eds and testimony that changes need to occur; and, in fact, firms have already adopted new policies and internal structures to address these issues,” said Nichols.

Rep. Mike McMahon (D-N.Y.), a rare Democratic defender of Wall Street, thinks some of his colleagues need to back off a bit.

“We have to be very careful that we don’t destroy the industry” with overzealous action, warned McMahon, whose Staten Island district relies heavily on Wall Street. “We want those who did wrong to be held to account. But everyone in this country wants the economy to start growing. Without the financial services industry, without Wall Street, there’s not going to be any growth in this country, there’s not going to be any credit.”

K Street Files: Coalition on the Charge
Anna Palmer and Bennett Roth
Roll Call
November 2, 2009

An unusual array of small-business trade associations are joining together to fight for additional support to help unfreeze credit markets for small companies. Nearly 30 groups, including the American Apparel & Footwear Association, Associated General Contractors of America, International Franchise Association, and Marine Retailers Association of America have formed the Small Business Access to Credit Coalition.

The coalition sent a letter last week to Members of Congress asking them to extend the Small Business Administration loan guaranty provisions and increase the maximum loan size.

“A lot of people on the letter are not traditionally involved in SBA lending,” said David French, a lobbyist with the International Franchise Association. “The demand for loans is not being met. ... We wanted to demonstrate broad-based support from a very broad range of affected sectors.”

The American International Automobile Dealers Association, Associated Builders & Contractors Inc., International Council of Shopping Centers, National Restaurant Association and National Association of Manufacturers are also part of the coalition.

French said he is more optimistic of legislation passing given the White House’s recent announcement that it also supports increasing the limit of many of the SBA loans from \$2 million to \$5 million.

The coalition is in its early stages, with some of the groups lobbying in tandem but for the most part still working the Hill on an individual basis. French said that could change depending on the response the coalition gets from Congress.

Daniels Jumps Ship. The Financial Services Roundtable is losing its banking lobbyist, Irving Daniels. Daniels, vice president of banking and securities at the trade group, is leaving for the Marwood Group after seven years at FSR. The Marwood Group is a health care advisory and financial services firm headquartered in New York City.

Daniels was one of the few remaining Democrats at the trade association. He previously served as legislative counsel to former Rep. Floyd Flake (D-N.Y.) and as an aide to House Ways and Means Chairman Charlie Rangel (D-N.Y.).

But FSR won’t be missing Daniels’ blue pedigree for long.

FSR’s Scott Talbott said the group will make an announcement on Daniels’ replacement in the near future.

“We look at substance first, but Irving’s replacement is a D,” Talbott said.

Weight Watchers Bulks Up. A diet company known around the country for helping people slim down is making a name for itself inside the Beltway by hiring Wexler & Walker Public Policy Associates. Weight Watchers International Inc. is

focusing its efforts on obesity prevention provisions in the health care bills, according to Timothy Hannegan, the lead lobbyist on the account.

“They want to become part of the discussion around obesity prevention,” said Hannegan, president of the firm.

Marla Viorst, Jack Howard, Jody Hoffman and Daniella Landau are also registered to lobby for the client.

But don’t expect the company to throw its weight behind different versions of health care reform, though it backs certain aspects in the Senate Health, Education, Labor and Pensions Committee measure.

“There are sections in the Senate HELP bill on obesity prevention, and to the extent there is a bill, Weight Watchers is very supportive of those efforts,” Hannegan said.

Ups and Downs. While overall lobbying expenditures have been rising steadily this year, there are big differences between industries as to whether companies ratcheted up their spending to influence legislation and federal agency action. Lobbying clients spent \$857 million in the third quarter of this year, according to an analysis of the latest disclosure filings with the Senate. That compares with \$849 million in the second quarter and \$837 million in the first three months of 2009. The third-quarter numbers should rise even more because a number of companies have yet to file even though the deadline was Oct. 20.

The biggest boost in spending came in the business and retail sector, which shelled out \$89 million in the third quarter, a 38.8 percent increase from the previous three months. Much of that increase was driven by a record \$34.5 million lobbying bill racked up by the U.S. Chamber of Commerce.

Lobbying by manufacturing companies was up 10.7 percent in the third quarter, and organized labor was up 1.4 percent.

However, lobbying expenditures dipped in many other areas, including energy, real estate, finance, defense, communications, and state and local governments. Most surprising, the health care sector was down 3.4 percent from the previous quarter. However, in total lobbying dollars, health care interests still led other sectors by a wide margin, doling out more than \$153 million over the three-month period.

K Street Moves. Anthony Coley has jumped to the Brunswick Group. Coley most recently served as communications director to the late Sen. Edward Kennedy (D-Mass.) and the Senate Health, Education, Labor and Pensions Committee.

Fed Pushes Bankers on Pay Overhauls
Damian Paletta and Aaron Lucchetti
Wall Street Journal
November 3, 2009

Federal Reserve officials told top bankers Monday they should start overhauling their employees' pay packages as soon as possible, even before the Fed finalizes its proposed compensation rules.

During meetings and conference calls across the U.S., Fed officials told executives from top financial institutions they needed to immediately determine whether their compensation structures were consistent with an October proposal from the central bank aimed at curbing some bonuses.

Fed officials told the bankers, who represent the country's 28 top foreign and domestic firms, that the companies must turn over by Feb. 1 a list of the changes they planned to make to align their pay structures with the Fed's plan. The Fed is urging banks to consider the proposal as they weigh 2009 bonuses.

The Fed's proposed rules, which won't be finalized until year's end, aim to prohibit banks from awarding incentives that drive traders, loan officers and others to take excessive risks that could threaten the bank's health.

"Incentive compensation arrangements should not create 'heads I win, tails the firm loses' expectations," Fed governor Daniel Tarullo said Monday in a Washington speech.

The discussions, which were held in private, involved some of the top officials in finance, people familiar with the matter said. J.P. Morgan Chase & Co. Chief Executive James Dimon, Goldman Sachs Group Inc. CEO Lloyd Blankfein, Citigroup Inc. CEO Vikram Pandit and Morgan Stanley CEO John Mack attended a 30-minute meeting with Federal Reserve Bank of New York President William Dudley, these people said.

"We want to make sure you have the right processes" in place to match the principles the Fed recently published, Mr. Dudley told the group, according to someone briefed on the meeting.

Mr. Mack told Mr. Dudley it would be helpful if there were coordination with regulators around the world. Some argue that different regulators are taking different approaches on how to monitor compensation and risk-taking. Mr. Dudley said it was a fair point and he would see what could be done, this person said.

Fed banks in Richmond, Va., San Francisco and Atlanta were among the others holding talks.

Departing Bank of America Corp. CEO Kenneth Lewis wasn't on the call with the Richmond Fed, but other bank officials were. "We will certainly work with them and provide whatever information they require," said a Bank of America spokesman.

White House and Fed officials argue that poorly designed pay packages were one cause of the financial crisis, because they misaligned incentives for bankers and encouraged employees to take too many risks.

People familiar with the meetings didn't describe them as confrontational or combative. Many of the banks aren't expected to push back aggressively against the proposal, in part because it stops short of direct caps on pay.

"It is balanced, and it is comprehensive," said Scott Talbott, senior vice president of the Financial Services Roundtable, a trade group representing large financial companies. "What [regulators] don't do is set specific pay caps, and that would be overregulating."

Still, the meetings were notable because of how they were coordinated across the U.S. Part of the Fed's goal of supervising pay plans is to line up the largest financial companies nationwide and compare them with each other.

Mr. Tarullo, a key architect of the proposal, said in his speech that the meetings were meant to deliver "our plans and expectations to these firms, with particular attention to beginning this information gathering."

The Fed's proposal encourages banks to adjust bonuses to reflect the riskiness of certain activities, defer payments of certain awards and base bonuses over longer-term performance, among other things. The proposal is separate from the curbs called for by Treasury official Kenneth Feinberg.

In fight over credit rules, she wields a plan

Michael Kranish

Boston Globe

November 3, 2009

Her critics portray her as an ivory tower elitist intent on disrupting the American Dream. But to her legions of fans in the Democratic Party, Harvard law professor Elizabeth Warren is the nation's leading economic David, fighting to protect middle-class families from corporate Goliaths.

Her critique of the lending practices of big banks and mortgage companies is drawing plenty of attention, airing on everything from CNN to "The Daily Show" and Dr. Phil, even winning a cameo in Michael Moore's latest movie, "Capitalism: A Love Story."

And she is chief architect of a new government agency to protect consumers from predatory lenders, a central element of President Obama's efforts to avoid another economic meltdown. That makes her a big target.

"I have dubbed it the 'Restrict the American Dream and Job Destruction Act,' " Representative Tom Price of Georgia, chairman of the Republican Study Committee, a group of 110 GOP House members, said in an interview about Warren's proposed Consumer Financial Protection Agency. "I have no doubt that as a Northeast elite academic it is difficult for Ms. Warren to appreciate that, but that's exactly what it will do."

Another critic, George Mason University law professor Todd Zywicki, said, "Bluntly put, she hates banks."

Warren, whose beliefs stem in part from her upbringing in a financially pressed Oklahoma family, counters: "That is just wrong. What I hate are banks that cheat people."

Warren, 60, has researched the issue of risky credit practices and bankruptcy for years, as she worked her way to Harvard Law School through a handful of university teaching jobs. Deceptive lending practices, she said, were at the root of the 2008 financial meltdown and have devastated the middle class.

While business groups are opposed to the consumer agency, they are even more worried about the possibility that, if it is created, Warren will be put in charge.

"We believe the most effective director would be one with real-world experience," said Scott Talbott, senior vice president of the **Financial Services Roundtable, which represents many large banks.** Warren said it is premature to discuss whether she wants to head an agency that doesn't yet exist.

Warren's proposal still faces major hurdles. Having passed through the House Financial Services Committee, led by US Representative Barney Frank of Massachusetts, a Warren friend, it must now pass the full House and then the Senate, where Republicans have threatened to filibuster against it.

The US Chamber of Commerce has launched an intensive campaign to kill the idea, using the theme: "Stop the Consumer Financial Protection Agency."

Warren's route to the center of the nation's debate over financial regulation has taken a more complicated path than many of her backers and critics may realize.

She was once a registered Republican who believed that most families who filed for bankruptcy or had their homes foreclosed were irresponsible. It was only after years of study, she said, that she determined that many families were not primarily at fault.

The youngest of four children, Warren grew up at the edge of a wheat field in what she called a "cheap little crackerbox on the end of town" in Norman, Okla. Her father had a series of financial reversals and became an apartment maintenance worker; her mother took telephone orders for Sears to bring in much-needed funds.

Living with three older brothers, she developed an assertive manner that led her to join her high school's debate team, which in turn led to her winning the Oklahoma debating championship and a college scholarship. Married at 19, she had a young daughter by the time she entered law school and was pregnant with a second child when she earned her degree. A stint as a work-from-home lawyer was followed by teaching positions at Rutgers School of Law, University of Texas School of Law, University of Houston Law Center, University of Michigan, and University of Pennsylvania School of Law, leading in 1992 to her initial arrival at Harvard.

But Warren left Harvard after a year, due in part to what she called a "hostile environment" for women. Three years later, convinced that the environment had improved and desiring a bigger platform for her ideas, she returned to Harvard and has been there since.

She became a student favorite, relying on a rapid-fire version of Socratic teaching and a flair for the dramatic. In one recent class, she used some biting humor to chide a student who failed to respond correctly to her query. Casting herself as Vanna White, she pretended her blackboard was the Wheel of Fortune, twirled her arm in the air, and asked: "Do you want to buy a vowel?" Her students appreciate the tough-love approach; one class gave her a poster that shows a comic book

version of a Wonder Woman-type character who says, “If I want your opinion, I’ll beat it out of you.”

Warren says she never envisioned herself as someone who would become a nemesis of corporate America. But after working on several bankruptcy studies, she concluded that most people who declare bankruptcy are undone by a combination of questionable banking practices and outsize medical expenses. She coauthored a book with her daughter, Amelia, called “The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke,” which countered the belief that many families were squandering their money on unnecessary luxuries. She argued that many such families were going bankrupt and losing their homes to foreclosure because the cost of necessities had skyrocketed to unsustainable levels even when both parents worked.

But it wasn’t just statistics that shaped her view. For years, she pondered why her parents had gone from a seemingly secure middle-class existence to more difficult circumstances.

“It is a story like my own family’s story, of people who had the aspirations of the middle class, who often had ‘made it,’ had gotten a decent education, married, had kids, gotten good jobs, but something had gone wrong, and they were now on the economic down slope,” Warren said. As she described her parent’s financial difficulties, she said, “This comes from my heart.”

By the time Warren returned to Harvard in 1995, she had switched her political affiliation to the Democratic Party because she was convinced that “the Republican Party had left me” and left behind the middle class. At the same time, she became an academic adviser to a congressional panel that was studying bankruptcy law. To her dismay, Congress in 1997 voted for a law that made it harder for families to declare bankruptcy. Determined to stop the measure, she met then-first lady Hillary Rodham Clinton. Using charts and forceful language, Warren won over Clinton, who got her husband to veto the bill.

But in 2005, Congress once again approved the measure, with support from many moderate Democrats, and President Bush signed the law. In Warren’s view, the imposition of tougher bankruptcy laws made it more difficult for many people to forestall foreclosure on their home loans and played a role in the subsequent financial meltdown.

Warren met Obama at a fund-raiser for the future president’s campaign for US Senate in Illinois. Obama had heard about Warren and approached her, greeting her with the phrase: “Predatory lending.”

Obama then spoke at length about why he wanted to go to Washington to stop financial institutions from cheating consumers. Warren sought to reassure the future president that he didn't need to convince her.

"You had me at 'predatory lending,' " she said.

Wall Street Cries 'Feed Me' or World Will End

Susan Antilla

Bloomberg

November 3, 2009

In the musical comedy "Little Shop of Horrors," a dangerous and gluttonous plant dubbed "Audrey II" signals its insatiable appetite for human blood with a baritone demand, "feed me."

In the real-life Shop of Horrors, the evil plant is gone. In its place is our voracious financial industry, which has been partaking in menacing feedings while stirring up fear of the havoc to come if it doesn't keep getting what it wants.

A year after the world's banking system almost collapsed, you might think financial bosses would be agonizing over how they would be depicted in history books, and anyone with a job would be offering to stick around and clean up the mess for a pittance.

You'd be both silly and wrong, as we all know by now. Finance's version of Audrey II is thrashing about with threats that, crisis or not, they'd better get their extravagant pay and light-touch regulation. Anything less and -- real horrors -- financial innovation will decline and the world as we know it will end.

We'll get to that financial innovation silliness in a minute.

A poll of Bloomberg customers released last week revealed that 21 percent of traders, analysts and fund managers polled in the U.S. expect their 2009 bonuses to be bigger than last year. Another 24 percent expect their bonuses to be about the same, which is pretty good when you consider the employment woes of the rest of the nation. Frustrated taxpayers wonder how they got into a mess where \$700 billion of their money went to bailing out people who today are poised to pocket record amounts in some cases (9 percent in the Bloomberg survey).

Argument Trumped

In the financial industry, though, the attitude of entitlement trumps any argument that there would be no job, no employer and no paycheck without the bailouts.

In fact, those Bloomberg customers said any limits on pay will boomerang. Asked “Do you think limits on executive compensation in the financial industry will do more to control excessive risk-taking or more to discourage useful innovation?” 65 percent of the ones working in the U.S. said limits on pay would choke innovation.

Knowing what we do about innovation in finance, we wouldn’t want that to happen.

Are there actually credible people worried that capitalism will be brought to its knees if restrictions on pay, and related reforms in regulation, are imposed on Wall Street?

Easing the Rules

NYSE Euronext Chief Executive Officer Duncan Niederauer, who is either tone deaf to the public’s disgust or secure in the belief that the public’s anger doesn’t matter, told the Wall Street Journal last week that he’s worried that regulatory changes in the works in Washington will determine whether New York City can compete in the world. I’m having a déjà vu moment. Didn’t we try, and fail, at the idea of ratcheting down our rules to the levels of competing countries?

The high standards of the Sarbanes-Oxley Act give “the perception of heavy regulation” on the NYSE, he said, and a proposed tax on securities transactions (intended in one bill to be used to refill the coffers Wall Street depleted) could have “disastrous consequences” for entrepreneurs trying to tap into the U.S. equity markets.

I’m glad Niederauer brought that up, because the notion of a smart person having a great idea and building a business to the point where it goes public is just what I think of when I hear the word “innovation.”

Talk of Innovation

I’m perplexed, though, when I ponder what Wall Street means when talking about innovation. That’s not for any lack of examples, but for an understanding of what Wall Street adds to the goal of smart allocation of capital when it does its innovating.

I get it when the tech geek huddles in a garage for three years with a couple of pals and comes up with a blockbuster idea that brings pleasure to consumers or profits to companies, and then takes the company public. But why am I supposed to be losing sleep that new rules might impede the creation of the new, new thing in tax

evasion? Or high-frequency trading? Maybe a new flavor of collateralized-debt obligation bearing a delusional AAA rating?

If you sift through position papers of financial trade groups, there's a lot of noise about the need for regulation. But read far enough and you hit that paragraph that explains why the writer's constituents don't need to be overseen with serious diligence.

And then, inevitably, you will meet with that foreboding warning that regulation will threaten innovation. **In a "Dear Senator" letter published by the Financial Services Roundtable on July 8, politicians were warned that a proposed agency to protect consumers would "jeopardize the safety and soundness of many firms and stifle innovation by requiring firms to offer 'plain vanilla' products."**

I, for one, am willing to take my chances. Bring it on with your threats to force plain-vanilla investments on consumers. Wall Street, if you really want to frighten us, you need to do better than that.

Banks Discover Consumer Protection Too Big to Fail
Yalman Onoran
Bloomberg
November 3, 2009

During one of his first meetings about overhauling U.S. financial regulations in February, President Barack Obama had a question for his economic advisers, who included Treasury Secretary Timothy Geithner and National Economic Council Director Lawrence Summers.

"What about the families?" Obama asked, according to people familiar with the discussions. He then asked them whether they'd read the work of Elizabeth Warren, a Harvard Law School professor and longtime advocate of a national consumer financial protection agency. Michael Barr, a University of Michigan professor who was a Summers aide at the time, jumped in to say he knew Warren's work.

"Well, what do you think about it?" asked the president, according to the accounts of the conversation.

"I think it's a great idea," Barr, 44, replied. The two debated the merits of such an agency during several meetings over the following three days. Then Obama

offered Barr, whose own work included research on the borrowing patterns of low-income households, the job of assistant Treasury secretary for financial institutions. He was confirmed by the Senate in May.

Thus an idea that the U.S. banking industry has learned to hate moved a giant step closer to reality. The creation of a consumer protection agency is part of the Obama administration's plans to enact the most wide-ranging financial regulations since the Great Depression.

Following the 1999 decision to overturn the Glass-Steagall Act that separated commercial banks from securities firms, bank lobbyists have been able to shoot down virtually any proposed rule they perceived as unfavorable to their industry, lobbyists and politicians say.

Campaign Contributions

Banks and securities firms spent \$193 million to fund political campaigns for the 2008 elections and raise even more money through events that their trade groups organize. They have successfully fought the administration's efforts to limit executive pay and are battling against draft legislation governing the \$592 trillion market for derivatives.

When it comes to consumer banking, the industry's lobbyists are no longer all-powerful. Banks lost their bid to squelch new credit card rules that Obama signed into law in May. They lobbied for months before a bill that would have forced them to renegotiate mortgages failed in the Senate.

Now the banks and their trade associations are lobbying furiously to kill Obama's plan to create the new financial protection agency, which was approved by the House Financial Services Committee in late October and is likely to face a full House vote by the end of 2009.

Influence Lost

The different trade groups that represent the industry are also divided over how they want the bill rewritten. They will now shift their struggle to the Senate, which has yet to unveil its version of proposals overhauling financial regulations.

"Banks have lost their influence on consumer issues," says Brian Gardner, an analyst monitoring Washington's impact on financial services for the brokerage firm Keefe Bruyette & Woods Inc. Gardner says banks will retain their clout when it comes to more complex financial issues such as derivatives. "Folks on Capitol

Hill still need to talk to the banks for the expertise on highly technical areas,” Gardner says.

Members of Congress who have traditionally been supportive of the banks’ positions are breaking ranks as popular opinion shifts strongly against the institutions. Some 80 percent of the public blames banks and other financial firms for the economic crisis, according to an ABC News-Washington Post poll in March.

“Many members of Congress who have been pro-banking and who have done the banks’ bidding are walking more cautiously since the financial meltdown,” says Representative Maxine Waters, a California Democrat.

Frank’s Priority

Representative Barney Frank, chairman of the Financial Services Committee, says he’s making it his priority to create the new agency to protect consumers.

“The existing structure for consumer protection in the financial area, particularly in the area of bank products, has failed miserably,” the Massachusetts Democrat told a news conference in July.

Frank has gotten \$2.1 million in campaign contributions from financial firms over the past three elections, according to the Center for Responsive Politics, a Washington-based research group.

The biggest U.S. banks have a lot at stake. They rely on the relatively stable revenue from consumer lending to balance out the volatility of their investment banking operations. Bank of America Corp., the largest U.S. bank in terms of assets, and No. 3 Citigroup Inc. got almost half of their revenue from consumer lending, including credit cards, in the first nine months of 2009.

Dimon in Washington

Harvard’s Warren says the consumer agency she proposes will affect the larger banks disproportionately: “It may cost the community banks some nickels, but the real impact will be on the big banks’ profit model.”

JPMorgan Chase & Co., the second-biggest U.S. bank, got 48 percent of its revenue from consumer lending in the first nine months of 2009. The bank, which was one of the least scathed by the crisis, has stepped up its lobbying. Chief Executive Officer Jamie Dimon now visits the capital twice a month, meeting with administration officials and congressional leaders, up from twice a year in 2006.

JPMorgan also added two lobbyists to its Washington staff, which includes former Commerce Secretary William Daley. Jill Blickstein, who was previously chief of staff at the Office of Management and Budget in the Obama administration, was one of the new hires.

'Weakened Position'

Citigroup and Bank of America are both partially owned by the government following the bailouts of 2008, and have cut their lobbying budgets as a result. The two banks spent a combined \$6.6 million to lobby in the first nine months of 2009, down 12 percent from a year earlier, according to congressional disclosures they have filed.

"No question that the banks and the rest of the industry are in a weakened position," says Bruce Thompson, who lobbied Capitol Hill for 22 years on Merrill Lynch & Co.'s behalf. "They used to be able to say, 'This will hurt us,' and Congress wouldn't do it. Now, they laugh at you."

Waters says she has introduced or sponsored dozens of legislative proposals to rein in banking practices. For example, she proposed a 2003 bill that aimed to prevent predatory lending by increasing the amount of information that banks would have to disclose when offering mortgages. All were blocked by bank lobbying, she says.

"They manage protecting their interests quite well," she says.

'Losing Some Battles'

Consumer advocates agree. "We couldn't get a vote on bills banks opposed," says Ed Mierzwinski, the consumer program director at the U.S. PIRG, a federation of state public-advocacy groups that lobby for consumer rights. "Now, they're losing some battles, winning others."

One fight the banks lost in 2009 was against the creation of a credit card consumer's bill of rights. The failure came even though financial industry lobbyists, led by the American Bankers Association and the largest individual banks, outnumbered consumer lobbyists by 10 to 1, according to congressional staffers involved in the talks.

Credit Card Bill

The credit card bill, which was first introduced in 2008 by Representative Carolyn Maloney, a Democrat from New York, passed the House and then died in the

Senate amid opposition by banks and credit card companies. Christopher Dodd, the Democrat from Connecticut who is chairman of the Senate banking committee, wasn't forceful enough, some congressional aides say. Dodd has received more than \$8.4 million in election contributions from financial firms since 2005, according to the Center for Responsive Politics.

Dodd had introduced several proposals to curb credit card practices in past years and fought the banks' lobbyists each time, says his spokeswoman, Kirstin Brost. "It took the economic crisis and the 2008 elections for there to be enough support for the bill to be passed this year," she says.

The financial crisis, and Obama's election, improved the bill's prospects. Maloney reintroduced the measure in January, revising it to incorporate elements from Obama's campaign platform, such as restricting how and when credit card issuers can increase interest rates and late-payment penalties.

Banks Fought Bill

The ABA, along with Bank of America, Citigroup and JPMorgan, argued that the bill would hurt the availability of credit and jack up interest rates on cards. This time around, Dodd followed with a similar proposal cracking down on credit cards himself.

The banking committee chairman was humiliated in March when it was disclosed that a bill he sponsored curtailing pay for executives of firms bailed out by the government made an exception for insurance company American International Group Inc. The company's derivatives arm is based in Connecticut, Dodd's home state, and the senator is the largest recipient of campaign contributions from AIG. Dodd said the exemption had slipped in during negotiations without his knowledge.

In the spring of 2009, Maloney's bill sailed through Congress, getting 357 votes in the House and 90 in the Senate.

Cram-Down Fight

Banks also had to fight hard before they succeeded in blocking the so-called cram-down provision proposed by six senators led by Dick Durbin of Illinois and Chuck Schumer of New York this past spring. The proposal, which would have given judges the right to restructure mortgages during a personal bankruptcy trial, was being considered by some of its sponsors as early as 2007.

After the government bailed out several of the largest U.S. financial institutions in the fall of 2008, interest in the measure grew. Citigroup, which got the biggest U.S. bailout -- \$346 billion -- decided to back the cram-down provision, reversing its previous stance. In January 2009, Durbin and Schumer held a news conference together with Dodd to announce the bank's support for the provision.

It was the new political circumstances with Obama in power that made the bank change course, former and current Citigroup lobbyists say. Citigroup's consumer-friendly position gave the bank some positive publicity, too, these people say.

Lobbying Block

The House passed a version of the cram-down bill in March. In the Senate, Durbin and Schumer needed at least a handful of Republicans to muster 60 votes to avoid a filibuster. Without the banks' support, that majority wouldn't materialize. So the two senators started negotiating with the ABA, JPMorgan and two trade groups that represent credit unions. The Independent Community Bankers of America, which represents small banks, later joined the talks along with Wells Fargo & Co. and Bank of America.

After a few meetings, the ABA pulled out and lobbied quietly against the cram-down bill, while the ICBA publicly opposed it. **The Financial Services Roundtable, which consists of the CEOs of the top 100 U.S. financial firms, coordinated the different groups' efforts and meetings with members of Congress from both parties, says Scott Talbott, the Roundtable's chief lobbyist.** The provision died in the Senate in April.

The lobbyists' success may be short-lived: In September, Durbin and his allies introduced a new version of the cram-down bill.

Next Battle

The next big test for the banks is whether they can influence plans to create the new regulatory agency to protect consumer rights.

"The administration's proposal would hurt banks that never made a subprime loan, and yet you're going to pile a whole new set of regulations and a new regulator on them," says ABA President Edward Yingling.

The ABA has organized its members to write 140,000 letters to congressmen, provided Op-Ed templates for community bank executives who want to write editorials in local newspapers and set up hundreds of meetings between its members and their congresspeople.

In September, some 80 bankers from 28 states mingled at an ABA reception at the Madison hotel in downtown Washington, gearing up for meetings with congressmen representing their districts. Floyd Stoner, the ABA's chief lobbyist, circulated among the crowd, stopping to chat with bankers and dispensing lobbying tips.

The pressure from the community banks has had some impact: In October, Frank's committee revised the original proposal so that small banks can stick with their existing regulators, which will enforce the consumer agency's rules.

Consumer Groups Unite

The banks face opposition from consumer groups, which have banded together in a 200-strong coalition to push for the agency. Obama, who himself started in politics as a community organizer, has been sympathetic to their concerns.

"In a financial system that has never been more complicated, it has never been more important to have a watchdog function like the one we have proposed," Obama said in October.

The Treasury's Barr has even appointed a former consumer advocate at the Center for Responsible Lending, Eric Stein, as his deputy in charge of consumer protection.

While Barr asked the banks for their opinion of the consumer agency during meetings in March and April, their objections weren't heeded, according to people familiar with the discussions. He also asked consumer groups and community organizations to weigh in, an unprecedented move when the government considers financial regulation, according to lobbyists.

Leveling the Playing Field

"The status quo has fundamentally failed consumers and helped to bring us to the brink of financial disaster," Barr says. "We need to level the playing field."

While banks' lobbying efforts may have been weakened, their deep pockets still give them willing listeners on Capitol Hill and in the White House, says Joseph Stiglitz, winner of the 2001 Nobel Memorial Prize in Economics.

"It comes down to the influence of money on our political process," the Columbia University economics professor says.

Even if Barr levels the playing field and the new agency is created, banks bearing cash still may win the game.

Flu (Out)Break
American Banker
November 2, 2009

The regulatory reform debate crossed paths with the swine flu last week when one of the witnesses at a key hearing sat out due to the illness. Steve Bartlett, the president of the Financial Services Roundtable, did not appear at the House Financial Services Committee's hearing Thursday on systemic risk legislation while he recuperated from the flu.

He sent Scott Talbott, the Roundtable's vice president for government affairs, in his place. After Talbott apologized for his boss' absence, the committee's chairman, Rep. Barney Frank, said, "No one need ever apologize for not coming here."

The Today Show
MSNBC
Wednesday, November 4, 2009

Scott Talbott appeared on the Today Show to discuss credit card interest rates and the new credit card law that is supposed to go into effect this December. To view the clip, please click [here](#).

Lobbyists Urge Frank to Delay
Anna Palmer
Roll Call
Wednesday, November 4, 2009

As the House Financial Services Committee begins its final push today in drafting legislation that will overhaul the banking system, lobbyists are scrambling to get Members of Congress to address specific provisions that would harm their clients' bottom lines.

The intense lobbying push comes after weeks of hearings and meetings with committee staffers to try to slow the process down and narrow the scope of the Obama administration's proposal, which would give the government significantly

more power over financial institutions and would shift the cost of rescuing struggling banks from taxpayers to other large companies.

Republicans have been pushing the committee's chairman, Barney Frank (D-Mass.), to delay the hearing, citing the need to take more time to review the draft bill that was released late last week. Ranking member Spencer Bachus (R-Ala.) sent a letter Friday on behalf of House Republicans urging Frank for more time.

Industry lobbyists have also been pushing Frank to reschedule.

“We’d like to wait a week,” said Scott Talbott of the Financial Services Roundtable. He noted that the second draft of the bill, which is hundreds of pages long, was released late last week.

Still, financial services lobbyists say it's unlikely Frank will slow down the hearing schedule given the pressure the White House and Treasury Department are putting on him to move as quickly as possible.

Frank has almost always kept to the schedule he presented earlier this fall to tackle the multipronged legislative effort.

The deadline for amendments on a systemic risk proposal was set for Monday evening. Even so, lobbyists are continuing to press lawmakers to vote for changes that they argue will not shut certain financial institutions out of the marketplace.

In particular, companies that have industrial lending arms and credit card banks have been campaigning for changes to the systemic risk legislation, which is directed at troubled institutions that might pose risk to the entire financial system.

This is just the latest dust-up over regulating financial institutions that are owned by companies such as retailers and manufacturers.

Over the years, lobbyists and law firms have created an entire infrastructure to push the interests of the banks. And while the issue is a very small piece in the larger picture of financial reform, industry insiders say they expect companies to expend serious resources on the fight.

The Alliance for Consumer Credit, a coalition of companies that have these lending capabilities, is one such group active in the battle.

The group formed after the Obama administration released its white paper in June on financial regulatory reform. Eris Group has been hired to lobby on behalf of the coalition.

Companies argue that the new rules would require lending units to come under the Bank Holding Company Act, which would significantly restrict the amount of credit they can lend to customers.

Frank's bill, which was written in coordination with the Treasury Department, has softened some of the initial language on industrial lending arms. The administration had wanted to abolish holding companies that were company-owned. The draft bill released last week now requires industrial loan corporations to be governed under new rules and also includes a provision that would bring the parent company under the purview of the Federal Reserve.

This legislation would not allow for any companies to own banks in the future.

Companies such as General Electric, Caterpillar, Toyota, John Deere, Nordstrom and others would be affected by the legislation because they own lending units.

While credit card banks have been pushing for a carve-out from the entire bill, industrial loan corporations and unitary thrifts have been seeking modifications through Democratic members of the Financial Services panel, including Rep. Jim Himes (Conn.).

The cross-marketing restrictions and change of control provisions have received the most attention from industry, lobbyists say.

The way the bill is currently written, a company such as Harley-Davidson would not be able to tell costumers in its showrooms that it can provide financing, according to Daniel Crowley, a financial services lawyer at K&L Gates.

Harley-Davidson hired Peck, Madigan, Jones & Stewart in September to lobby Congress on the issue, according to Senate lobbying disclosure records.

So far, Frank hasn't publicly acknowledged what, if any, compromise he may be willing to accept.

"The real question is how do you do it in a way to make sure you address the concern and make sure they are still workable commercial companies," said one financial services lobbyist working the issue.

Bankers, Chamber At Odds on Oversight
Bill Swindell
Congress Daily
Wednesday, November 4, 2009

The banking lobby is splitting with the U.S. Chamber of Commerce over a key battle to revamp the nation's financial regulatory structure, with the two sides differing over whether a council to monitor systemic risk throughout the financial markets should also oversee accounting rules.

The American Bankers Association and **the Financial Services Roundtable** are lobbying in support of legislation by Reps. Ed Perlmutter, D-Colo., and Frank Lucas, R-Okla., to create a Financial Accounting Oversight Board within the council of regulators, overriding powers the SEC has over the Financial Accounting Standards Board.

A version of the bill could be offered as an amendment to legislation to be marked up today by the House Financial Services Committee that would create an oversight council of regulators and allow it to seize and unwind at-risk firms on the verge of collapse. The markup is slated to go into next week.

Bankers argue that such a change is needed in the aftermath of an accounting rule that exacerbated the housing crisis, where, under mark-to-market rules, banks were forced to value mortgage assets at their then-low values, taking billions of dollars in losses, even though in the long term these assets are likely to recover.

"We need to reform FASB," said Scott Talbott, senior vice president for government affairs for the Financial Services Roundtable. "Because accounting rules can have systemic risk impact, it's a logical place to house jurisdiction for FASB." But the Chamber, along with the Council of Institutional Investors and the Center for Audit Quality, oppose such a move and are arguing that the SEC should retain its jurisdiction and not be given over to a body that will have a primary focus regulating big banks.

"The process by which accounting standards are developed must be free -- both in fact and appearance -- of *outside influences* that inappropriately benefit any particular participant or group of participants in the financial reporting system to the detriment of investors, businesses and capital markets," the groups on Monday wrote to Financial Services Chairman Barney Frank and ranking member Spencer Bachus.

Tom Quaadman, executive director for the Chamber's Center for Capital Markets Competitiveness, said placing accounting oversight within the council would tilt its decision-making toward the 20 to 25 large firms that would be deemed systemically important, rather than the other approximately 15,000 public companies.

"They [the council] don't have the expertise, nor are they going to have the appetite, to worry about the other 14,980 companies. You have SEC that has the experience dealing with the very largest to the very smallest public companies. We think that it is important that oversight function remains there," Quaadman said.

Perlmutter said he will likely revise his language but added that there needs to be a mechanism for accounting rules when markets don't function -- as was the case in the home mortgage market during the end of last year and through the spring.

"This is about avoiding exaggerations in a dysfunctional market, and having a big group looking at the whole market, and not just accounting procedures," Perlmutter said.

Lawmakers have shown a willingness to weigh in on the issue on the side of banks. In March, the Financial Services Capital Markets Subcommittee grilled SEC and FASB officials on providing some flexibility to the rule in regard to the housing crisis, especially for assets that banks will hold as a long-term investment and provide some cash flow from monthly mortgage payments. FASB issued new guidance a month later, allowing banks to change how they can take write-downs on distressed assets, making it easier to limit losses.

"The actions by the committee earlier this year make clear that people understand there are ramifications, for example, just as going to mark-to-market across the board. There are ramifications to the economy that need to be considered," said Floyd Stoner, of the American Bankers Association.

Banking's Future: 'It's All About Trust'

BAI Roundtable: CEOs Stress Need for Banking Basics, Customer Service Tom Field

Bank Information Security

Wednesday, November 4, 2009

There will be fewer banks, more regulation and a greater focus on back-to-basics banking and customer service.

This is the vision of banking's immediate future, as expressed by a pair of industry leaders at the BAI Retail Delivery Conference & Expo in Boston.

Appearing at a general session in a CEO Roundtable discussion, Richard Davis, CEO of U.S. Bancorp, and Bharat Masrani, CEO of TD Bank, agreed that the industry has taken an historic hit over the past year. But they also believe that banking has the opportunity to lead the way to recovery.

"Now, perhaps more than ever, we have the chance to make a difference," Davis said.

The session was moderated by Steve Bartlett, CEO of the Financial Services Roundtable. He set the stage by discussing the need for banking institutions to rebuild trust, not just with customers, but also with shareholders and legislators. "It's all about trust," Bartlett said.

Looking ahead, Bartlett said he foresees landmark regulatory legislation ("Think 1933," he said), and he called for a new focus on improving the public's financial literacy. "We want financial education taught in all schools from K-12," he said.

Davis said banks have to adopt some right-brain thinking to emerge stronger from the economic crisis. The key is to focus on basic banking, prepare for increased regulations and accept that there will continue to be bank failures as the industry adjusts.

"We need to focus on the things that work," Davis said. "Banks will be the catalyst for recovery."

Masrani stressed the need for banking leaders to focus on customer service. "It's critical for bankers to be out in their communities," he said.

He also emphasized the need for institutions to invest in mobile banking and other new services that customers demand. "Customers will vote with their feet - and deposits," he added. "They expect and demand products and services anywhere they want them."

Responding to a question from the audience about how the industry will look in 10 years, Davis said "A lot like it looks today," adding "The lessons learned in the last year will last well beyond 10 years."

"Banks are going to go back to being boring," said Masrani. "Whenever we've tried to tinker [with basic banking], that's when the troubles starts."

Asked about the immediate risks facing the industry, both men cited their concerns about regulatory reform. "We're making regulatory decisions we'll have to live with for a generation," Davis said.

On improving customer service, Masrani stressed the need to provide customers with "unparalleled convenience."

There is no secret to customer service, he said. "Banking is all about being local and looking after your customers one at a time."

Damage Control

Anna Palmer

Roll Call

Wednesday, November 4, 2009

As Rep. Ed Markey (D-Mass.) continues his investigation into forged letters opposing the House climate change bill, few people have risen to defend Jack Bonner, founder of the grass-roots consulting firm where the falsified letters originated. But now Bonner has found an unusual ally, "American University.

The university Center for Congressional and Presidential Studies is placing an advertisement today in Roll Call defending Bonner, a part-time instructor at AU.

Thank you Jack Bonner for over 15 years of teaching excellence, the ad reads. Students of the Public Affairs and Advocacy Institute are grateful for the knowledge, insight, and years of experience you bring to the university, as well as the dozens of guest lecturers you have brought to the classroom.

Featuring a photo of Bonner alongside a chalkboard where he has written, All Politics Is Local, the ad also lists a number of guest lecturers who have taken part in Bonner, grass-roots lobbying workshop, including **Steve Bartlett of the Financial Services Roundtable**, Greg Casey of BIPAC,

Dan Danner of the National Federation of Independent Business and Frank Fahrenkopf of the American Gaming Association. The ad also lists Sen. Arlen Specter (D-Pa.) and former Rep. Tom McMillen (D-Md.) as guest lecturers.

AU spokeswoman Maralee Csellar said the decision to run the ad was made by the Center for Congressional and Presidential Studies.

The [center] and Director James Thurber wanted to honor Bonner as a professor who has been affiliated with the center and who has been a mentor to numerous

students and alumni through the years, Csellar said.

In order to repair Bonner, eputation, the grass-roots company announced at a Congressional hearing into the forged letters that it had hired Thurber as its ethics adviser.

Up for a Challenge. Throwing fundraisers in Washington, D.C., against an incumbent isn't something a lot of K Streeters are prone to do, especially when the lawmaker sits on a powerful committee. So a recent invitation for a breakfast at the Financial Services Roundtable to help the coffers of Republican challenger Steve Stivers raised many eyebrows.

Stivers, a former banking industry lobbyist, is running against Rep. Mary Jo Kilroy (D-Ohio), a vulnerable Member who sits on the Financial Services Committee.

Democratic lobbyists quickly jumped on the offensive, calling this another example of how Washington hasn't changed despite Democrats being in charge of both chambers of Congress and the administration.

The race, which is a priority for Minority Leader John Boehner (R-Ohio), is expected to be a tight one, similar to the first time that Stivers and Kilroy faced each other in the 2008 election. Boehner is listed as a special guest for the Nov. 18 breakfast, which calls for attendees to contribute \$2,000 at the host level, \$1,000 per political action committee and \$500 per individual, according to the invitation.

The group is sticking by its decision to support Stivers.

The roundtable has supported Steve Stivers for a long time, FSR, Scott Talbott said. The event reflects that position.

Frank helps put a halt to 'abusive' credit hikes

Jim Hand

Sun Chronicle

Thursday, November 5, 2009

Protection from "abusive" credit card interest rate increases will go into effect Dec. 1, earlier than originally planned, under a bill passed by the House Wednesday at the urging of U.S. Rep. Barney Frank.

Frank, a Newton Democrat whose district includes Norton, Norfolk, Foxboro and

Mansfield, said the earlier start-up date was needed because credit card companies are racing to impose what he called "abusive" retroactive increases on good customers to beat the original Feb. 22 effective date of a cardholder Bill of Rights.

A study by the Pew Charitable Trust found companies were increasing rates an average of 20 percent.

Several members of Congress spoke on the issue Wednesday, saying they have been contacted by constituents who say they were given exorbitant increases.

The original bill prevents companies from raising rates retroactively on existing balances if the consumer has been making payments on time. It also mandates a 45-day notice on regular rate increases. Frank called the retroactive rate increases on good customers outrageous.

"It's the single unfairest financial transaction I can think of that doesn't involve a pistol," he said during floor debate.

Frank mocked claims by credit card companies that their computers could not be ready for the bill by Dec. 1.

He said the companies apparently have "great" computer software for raising interest rates, but the software goes "berserk" when it comes to holding rates steady.

The congressman said many Republicans have joined Democrats in supporting the bill, but the GOP leadership has sided with the credit card companies instead of consumers.

Rep. Jeb Hensarling, R-Texas, opposed the bill, saying it will make credit more expensive and less available.

He also said senior citizens will have trouble getting credit just as they need it most to pay for the "trillion dollar government takeover of health care."

Banks and other credit card companies fought the bill.

Scott Talbott, a vice president with the Financial Services Roundtable, told the Associated Press the companies he represents are "struggling in a tough economy and trying to provide credit for consumers."

The reasons rates are going up or credit lines are decreasing are based on two factors: a change in behavior, including a missed or late payment or exceeding

credit limits, and the economic times. "We're in a recession, so the general risk of nonpayment has increased across the board, so credit card companies are adjusting to that risk by increasing interest rates or decreasing credit lines, even if the customer has a perfect history," Talbott said. "A very small percentage may see an increase in their interest rate or a decrease in their line of credit."

The bill passed 331-92. U.S. Rep. James McGovern, D-Worcester, voted with the majority.

Congress Considers Speeding up Tougher Credit Card Laws

Taren Reed

FirstCoastNews

Wednesday, November 4, 2009

WASHINGTON -- President Obama signed into law a measure last spring that would prevent credit card companies from raising interest rates on existing balances.

The banks received a nine month grace period, but then moved quickly to raise rates and tack on extra fees ahead of the bill's enactment.

"It is the single unfairest economic transaction I can think of that doesn't include a pistol," proclaimed Rep. Barney Frank (D-Massachusetts).

As a result, the House of Representatives overwhelmingly voted to speed up the new rules to begin next month, instead of February.

Ed Myska is among those looking for relief, shocked when he learned bailed-out Citibank is doubling his credit card rate to 30 percent.

"It does anger me because here I am a citizen and I helped bail them out."

The law signed in May would prevent credit card companies from doing exactly what was done to Myska.

Under the new law, for example, if a customer has a balance of \$1000, and the company changes the rate, it would apply to new purchases only, and not old debt.

A spokesman for the banks says moving up the start date is problematic.

"The new credit card law is massive changes to the credit card industry and it would be very difficult for the industry to be in compliance by December first," says industry spokesman Scott Talbott.

The Senate now takes up the measure to accelerate the move-up date. That's projected to be a tougher fight.

With strings attached, banks can return taxpayer money

Kevin G. Hall

Fort Worth Star

Thursday, November 5, 2009

WASHINGTON — Federal regulators are preparing to release new rules governing how banks can return billions in taxpayer bailout money, but the guidelines may actually make it harder for financial institutions to shed the government as their business partner.

Several large banks, such as Wells Fargo, J.P. Morgan Chase and Goldman Sachs, have said recently that they hope to swiftly return their taxpayer bailout money. Regulators worry, however, that the global banking system remains fragile. They prefer that the banks hold on to bailout money for longer, at least until recovery is more certain.

The new rules, coming as early as Wednesday, allow for the return of the bailout funds under conditions that most banks aren't likely to accept. A senior government official, speaking on the condition of anonymity because the program wasn't yet public, said banks would have to give up a special loan guarantee program in the process.

In an effort to restore stability to the banking sector, the Federal Deposit Insurance Corp. has been providing a guarantee to bonds and other debt issued by the banks. This guarantee has allowed banks to issue, as of May 4, more than \$332 billion in new debt since last fall, when the global financial system was on the verge of collapse.

Few banks are thought to be strong enough to both give up the money they received from the Troubled Asset Relief Program, and walk away from the loan guarantees. The guarantees give investors a much greater degree of comfort in buying bonds issued by the still-troubled banks.

The conditions for returning bank bailout money mean those with the highest degree of government intervention to date — Bank of America and Citigroup — are unlikely to be able to return their taxpayer funds anytime soon, because investors want the loan guarantees as a seal of approval.

The new conditions, which began to emerge late Tuesday, are unpopular.

"Banks were forced to take TARP money and now they move the goal post, making it hard to get out," said Scott Talbott, senior vice president of government affairs for the Financial Services Roundtable, a trade group for large financial institutions.

For months, banks have been the focus of public anger for taking billions of dollars in TARP money. To get the TARP money, the government required the banks to agree to tough executive compensation rules and to swear off bonuses, travel on company jets and other perks reserved for top officials.

The Treasury Department and Federal Reserve are poised to release results Thursday of stress tests conducted on the 19 largest U.S. banks — those with assets above \$100 billion.

The stress tests gauge how well a bank's loans and investments might fare under a steeper economic decline than the one happening now. Several banks, including Bank of America and Citigroup, are expected to receive government orders to raise more capital to build a larger protective buffer.

The stress tests are already causing investors to differentiate between banks, with the perceived weaker ones seeing their share prices decline. That's another reason why regulators hope to discourage a return of TARP money right now. The more taxpayer bailout money banks carry on their balance sheets, the harder it is for investors to differentiate between the strong and the weak.

Regulators hope that over time, as the economy rebounds, that gap between strong and weak banks will narrow, and a stronger banking sector will result.

The Next 100 Years: Finance Lobbyists on the Front Line
Kyle Stock
Wednesday, November 4, 2009

While legislators on Capitol Hill overhaul the nation's rusty regulatory infrastructure, a small army of industry lobbyists is scrambling to try to ensure that lawmakers strike a healthy balance between smart, safe and stifling. These journeymen and women have inherited much of the power once held by the innovation wizards of Wall Street, at least for the time being.

"Washington is making changes that will affect the industry for the next 100 years, so we're seeing a lot more interest from the C-suite," said Scott Talbott, the top

lobbyist for Financial Services Roundtable, a nonprofit group that represents the interests of 100 of the biggest firms in finance. "And our role is now more important than ever, because we're in uncharted territory."

As finance lobbyists gird for one of their biggest battles, their ranks are growing thin. Slightly fewer than 2,600 people are now making the case for U.S. banks, insurers and investment shops -- 300 fewer than last year.

So what does the job entail? Despite what Hollywood might have you believe, there is very little time spent in swanky steakhouses and cigar bars. Whispered deals and backroom horse-trading are rare as well.

Basically, it's all Blackberry, all the time.

On a typical day, Talbott's thumbs start tapping away at four in the morning, as he rides his stationary bike and catches up on the news.

He is in the office at 8 a.m. and out again to meet a reporter for breakfast at the Old Ebbitt Grill a few minutes later. Throughout the day Talbott takes calls from the press and the group's members, meets with his own staff of 10 lobbyists and spokesmen, drafts position papers for three separate bills and prepares testimony for a House of Representatives hearing scheduled for later in the week.

In the mid-afternoon, Talbott heads to the Hill for a handshake and that precious commodity in Washington: face-time.

"We always say: there's no replacement for gumshoe lobbying," he said. "I've submitted plenty of receipts for new shoe-soles over the years."

Talbott hits a company-sponsored happy hour at 6:30 p.m. and gets home around 8. He finally puts the Blackberry down at 10:30, though it keeps buzzing until almost midnight.

The daily tally: more than 1,000 incoming emails.

"I would say the worst part of the job is the hours, but I don't really mind," Talbott said. "It's never a day. It's never over."

In the past 10 years, the so-called FIRE lobby -- finance, insurance and real estate -- has upped its lobbying spend by 8.3% a year on average and added 1,100 jobs. It has spent \$3.81 billion to influence policy over that 10-year period, more than any other business sector. In comparison, agribusinesses, which are often maligned for using political pressure to gain favorable trade regulations, spent \$1.19 billion in the same period.

For Talbott, and others like him, the past year has been a blur. He says the volume of policy issues being debated is 10 times greater than in 2002 when the massive Sarbanes-Oxley bill was pushed through in the wake of the Enron and WorldCom debacles.

But the number of people making the case for finance in Washington is at its lowest point in five years. Through October, FIRE companies are on track to spend about 10% less on lobbying this year, in part because of the stagnant economy and in part because some of the biggest players in the business have disappeared.

Still, 2009 will likely be the third most expensive year in history for finance lobbying with a projected \$414 million spent and, like the rest of Wall Street, there are pockets of growth.

Hedge funds have been particularly aggressive in Washington this year, as a bevy of bills were filed that aim to change the way that they operate. The Hedge Fund Association, which represents thousands of firms of all sizes, has traditionally used only letter campaigns to make its case in Washington.

But Mitch Ackles, the group's spokesman, has recently taken on an additional title: chief lobbyist. Ackles, the group's president and two board members started flying to Washington regularly to meet with legislators to prove that hedge funds "are not evil" and that onerous regulation of smaller funds will suffocate growth, innovation and job creation. Most of their time in D.C., however, has been spent explaining the basics.

"This staffer turned to me and said 'Mitch...would you mind spending a few minutes and explaining what a fund of hedge funds is?'" Ackles recalled. "That shocked me. If you are going to regulate an industry, you should certainly understand what it is."

The best lobbyists are either friendly and patient facilitators or bullies -- think Jimmy Stewart in "It's a Wonderful Life" vs. Rahm Emanuel in the White House.

"I won't call them type-A; I'll call them type-AAA," Talbott said. They are "either revered or feared."

Most have more experience in the halls of government than on trading floors or in road shows. Though, many big finance firms rotate workers from different segments of their business into their DC lobbying arms.

"We always say that you need to either know the substance [of finance] or the procedure of government," Talbott said. "It's very hard to teach both."

Leigh Ann Pusey, CEO and head lobbyist of the American Insurance Association, an insurance industry trade association, said the most effective lobbying professionals have a mix of government know-how and industry needs.

"There's an awful lot of folks in this town that you can hire for access," Pusey said. "But I think access is sometimes overrated. I put a lot of emphasis on people who can think and handle themselves strategically."

Pusey has been adding to her stable of eight federal lobbyists in the past year in order to better deal with the crisis and the new administration. Lobbyists generally make between \$60,000 and \$500,000 a year, depending on their experience and access. The median annual paycheck for D.C. lobbyists is \$97,000, according to Salary.com.

One downside to the job: there is no such thing as "trading hours" in Washington. Talbott, who has competed in an Ironman triathlon and runs a few marathons a year, has come to understand well the pace that the 24-hour news-cycle sets for his business. Bills on compensation, systemic risk and hedge-fund registration are being hotly debated around the clock. Though, Talbott seldom goes into the office on Saturday and Sunday anymore, as he did virtually every weekend last fall.

"Let's just say my wife got a very, very nice Christmas present in 2008," he said. "Tiffany's goes a long way."

A Day in the Life*

3:30 -- 7:30 a.m.: Work out, start emailing and read the newspapers.

8 a.m. -- 12 p.m.: Staff strategy meetings.

12 -- 3 p.m.: lunch at desk, emails and phone calls with congressmen, congressional staffers, internal staff, members and media. Edit testimony for an upcoming hearing and draft the group's position on three bills.

3 -- 4 p.m.: Meeting on Capitol Hill.

4 -- 6:15 p.m.: More emails and phone calls. Coordination of a new hire.

6:30 -- 8 p.m.: Company happy hour.

10:30 p.m.: Last email of the day sent.

11:34 p.m.: Last e-mail of the day received.

Credit-Card Company or Loan Shark?

Nancy Cook

Newsweek

Thursday, November 5, 2009

Like a lot of credit-card-carrying Americans, Paul Antico has had his wallet hit hard in recent months. His Bank of America credit card went from a fixed interest rate to a variable one that changes from one billing cycle to the next. Citibank has raised his other card's interest rate from 5.99 percent to 14.99 percent since late May, even though Antico pays on time, and his reward points have become harder and harder to redeem. "These are back-stabbing things," says the 37-year-old Massachusetts resident and technology analyst. "Customers are paying to keep the banks afloat, and the thanks we get is 'Go screw yourself. Here's a higher rate.' "

How high? A recent report done by the Safe Credit Cards Project at the Pew Charitable Trusts found that over the past four months, credit-card companies have routinely tacked on new fees, altered account terms, and jacked up interest rates, sometimes to as high as 30 percent. The industry says such hikes are necessary because it is assuming greater risk by extending credit in bad times. That may be the case, but President Obama's new credit-card legislation, which passed in May and takes effect in February 2010, is supposed to stop credit-card companies from unfairly increasing rates or fees, targeting consumers under the age of 21, and hiding behind contracts filled with hard-to-understand legal language.

While the law may accomplish all this, the eight-month lag time between its passage and its enactment has given credit-card companies more time to look for loopholes, say consumer advocates—so much so that Congress may take action again. Chairman of the Senate banking committee Christopher Dodd has proposed freezing the interest rates and fees on existing accounts until February. On Nov. 4, the House of Representatives passed on a bill that would make the credit-card legislation go into effect immediately unless credit-card companies agree to freeze interest rates and fees.

In response, the credit-card companies and their lobbyists say they need more time to comply with the law, and that they too are suffering in this poor economy. **"The interest rates are rising because of customers' rising risk profiles and the generalized risk in the economy," says Scott Talbot, a lobbyist for the Financial Services Roundtable. "There's a direct correlation between the strength of the economy and the credit-card interest rates."** Another industry spokesman argues that experimentation with fees and rates, in the end, is a helpful

thing. "Lots of the innovation is good," says Nessa Feddis, senior counsel and vice president of the American Bankers Association. "The competition is driven by how consumers respond."

And consumers are definitely responding. Antico says he now uses his credit cards less frequently and pays off the full amount each month. Twenty-nine-year-old Tim Mikulski of Washington, D.C., recently transferred the balance of his old credit card to a new one with a zero percent interest rate and, for those who have good credit, there's always the option of switching cards or negotiating rates. A recent report by the Pew Research Center showed that credit unions are now offering interest rates that are 20 percent lower than those of bank-issued cards. "Credit unions have not been under the same pressure to grow," says Nick Bourke, manager of the Pew Safe Credit Cards Project. "Growing big and quickly is what has left banks [free] to charge such high penalties."

If consumers feel unfairly targeted by their credit-card companies, consumer advocates say they should act rather than simply mope. First, people should watch their statements closely and contact their banks if they see interest rates rising or additional fees tacked onto their monthly statements. In other words, there's room to haggle. "If you have a strong credit score, some institutions are willing to say, 'You're an exceptional cardholder for us,'" says Adam Levin, founder of Credit.com and a former director of the New Jersey Division of Consumer Affairs.

If your credit is less stellar, Levin advises consumers to cut their spending and switch up which credit cards they use from month to month rather than canceling cards outright. "You don't want the companies to think the person isn't using their credit lines," Levin says. "And if you close a longstanding account, it impacts ... your credit history."

Pursuing the issue politically is another route, says the Pew Center's Bourke. He urges consumers to call their congressional representative or senator if they feel as though their credit-card company is engaging in unfair practices, especially since Congress is currently considering moving up the date of the legislation.

Finally, if a new interest rate or fee really rankles consumers, credit-card industry officials say consumers are welcome to opt out and stop using that particular card. It's a tough sell—breaking up with one's plastic—but sometimes breaking up is the only thing to do.

NMN.com Independents See 28% Origination Profit Increase
National Mortgage News

November 9, 2009

Independent mortgage banking firms saw their origination profits increase 28% to \$1,358 per loan in the second quarter thanks to rising loan volumes, in particular a swell in refinancings.

According to a new study by the Mortgage Bankers Association, 96% of the 292 lenders surveyed posted a pretax profit in the second quarter compared to 85% in the first quarter and just 53% in the fourth quarter.

The profit study focused on what the trade group calls "independent" mortgage bankers, a universe that includes both nondepositories and subsidiaries of banks. None of the nation's "mega" banks - Bank of America, Wells Fargo JPMorgan Chase and Citigroup - are included in the MBA's survey, said a spokeswoman.

According to figures compiled by National Mortgage News and the Quarterly Data Report, all lenders funded \$583 billion in residential loans in the second quarter compared to \$480 billion in the first quarter, a 21% increase in volume.

Commenting on the results, Marina Walsh, MBA's associate vice president of industry analysis, said, "The big increase in production volume allowed lenders to spread their fixed costs over a larger number of loans, thus increasing net profits. At the same time, purchases picked up as homebuyers with good credit took advantage of low interest rates."

FL FRAUD CRACKDOWN SEEN

A nine-month investigation done as part of a Florida fraud crackdown has resulted in charges against more than 100 defendants with allegations concerning over \$400 million in loans and more than 700 properties.

According to A. Brian Albritton, U.S. attorney for the Middle District of Florida, there are currently mortgage fraud-related charges pending against approximately 500 defendants in federal mortgage fraud cases around the nation. The cases concern both mortgage schemes designed to defraud mortgage lenders and "foreclosure rescue schemes" which prey on distressed homeowners.

Florida's Mortgage Fraud Surge crackdown was launched in January 2009 in response to the epidemic of mortgage fraud throughout the state, which began during Florida's real estate boom earlier this decade.

COUNTRYWIDE CAPTIVE SUIT REINSTATED

A lawsuit alleging Countrywide Financial Corp. violated the Real Estate Settlement Procedures Act through a mortgage insurance captive reinsurance kickback scheme has been reinstated by a Federal Appeals Court.

The suit, *Alston v. Countrywide*, was originally filed in December 2006. In 2008, a trial court judge dismissed the suit, ruling there was a lack of jurisdiction.

But in the ruling, Judge Maryanne Trump Barry of the U.S. Court of the Appeals for the Third Circuit, said, "What is before us for decision turns on a question of statutory interpretation - does or does not the plain language of RESPA Section 8 indicate that Congress created a private right of action without requiring an overcharge allegation? We conclude that it does."

The decision also states that the "filed rate doctrine" does not apply because those suing are challenging Countrywide's alleged wrong conduct and not the "reasonableness or propriety of the rate that triggered the conduct." According to the attorneys for the plaintiffs, who are seeking class-action status, Countrywide allegedly assigned each loan which lacked a 20% down payment to one of seven private mortgage insurance companies on a rotating referral fee basis. The MI companies allegedly then were required to reinsure the policy with a Countrywide subsidiary, Balboa Reinsurance Co.

The plaintiffs claim that between 2000 and 2006, Balboa collected \$892 million in reinsurance premiums and paid \$0 in claims. Edward W. Ciolko, a partner with Barroway Topaz Kessler Meltzer & Check, the law firm that brought the suit, said, "Consumers faced with inherently opaque real estate settlements have the right under RESPA to be compensated if they are subjected to practices such as kickbacks or unearned closing fees. These abusive practices eliminate competition and increase prices over time, and they are what RESPA is specifically intended to address."

Barroway Topaz said it has brought similar lawsuits against Washington Mutual, GMAC and Wells Fargo that were on hold pending this ruling. A representative of Bank of America, the current owners of Countrywide, said, "At this point we are evaluating the ruling and will respond in court at the appropriate time."

FLAGSTAR PERSEVERES

Flagstar Bancorp, the largest thrift player in mortgages, posted a \$299 million loss in the third quarter, but vowed to continue investing in what it called its "position as one of the leading residential mortgage originators in the country."

Its new CEO Joseph Campanelli added, "We anticipate a significant level of

industry consolidation and want to be active in that process. But in the near term, we will have to bring expenses into better alignment and make prudent operating decisions as we seek to broaden our earnings streams beyond our traditional mortgage activity."

Its third-quarter loss was almost triple the loss it suffered in the same period a year ago. The company stressed that its thrift unit remained "well capitalized" for regulatory purposes, with capital ratios of 6.39% for Tier 1 capital.

According to its earnings statement, Michigan-based Flagstar funded \$6.6 billion in residential loans during the quarter, a slight drop from the same period last year, but a 29% decline from the second quarter. Despite the loss, there was some good news in the numbers: its gain-on-sale of loans grew to 137 basis points compared to just 33 bps a year ago.

At the end of September Flagstar serviced \$53.2 billion in loans, which paid a weighted average service fee of 32.6 basis points. Nonperforming residential real estate loans grew to \$606 million at the end of the third quarter, up from \$588 million at the end of the second quarter. A year ago it held \$305 million of delinquent loans. Its nonperforming commercial real estate loans climbed to \$420 million.

According to the Quarterly Data Report, Flagstar is the nation's 11th largest residential funder and ranks 18th among servicers.

10% RISK RETENTION FOR MBS?

A few months ago, industry groups seemed resigned that Congress might impose a 5% risk retention requirement on mortgage securitizations, but now legislation is headed for a committee markup that pushes the "skin in the game" bar to 10% which has many concerned.

"The 10% requirement is unstudied and could have a significant negative impact on mortgage finance," said Scott Talbott, a lobbyist for the Financial Services Roundtable. Mr. Talbott warned House Finance Financial Services members in his testimony that requiring lenders to retain that much credit risk would "significantly limit" their capacity to extend mortgage credit.

In May the House passed a subprime lending bill that requires lenders that sell and securitize subprime mortgages to retain 5% of the credit risk. Industry groups thought they had achieved a workable compromise.

The subprime bill (H.R. 1728) specifically exempts government-guaranteed

mortgages and loans purchased or securitized by Fannie Mae and Freddie Mac from the credit risk retention requirement. The Senate has not taken any action on H.R. 1728.

Financial Services Committee chairman Barney Frank, D-Mass., the primary author of H.R. 1728, did not include the exemptions in his regulatory reform bill to address systemic risk issues and "too big to fail" institutions. Regulators can reduce the 10% retention requirement to 5% on certain mortgages under the new bill, but no lower than 5%.

"We are baffled as to why this has come back up again, since we thought it was settled in the subprime lending bill," said Glen Corso, managing director of the Community Mortgage Banking Project. Mr. Corso pointed out that the Frank bill, which has the support of the Obama administration, also imposes a credit risk retention requirement on securitizers that can be in lieu of or in addition to the lenders requirement.

MIS SEE WORST MONTH IN YEAR

September was the worst month of the year so far in terms of dollar volume of primary new insurance written for the private mortgage insurance companies.

According to data gathered by the Mortgage Insurance Cos. of America, there was just \$4.8 billion of primary new insurance written, compared with a revised total of \$5.8 billion in August. A statement from MICA said this includes HARP originations, but the group did not break out how many.

Last September MICA members wrote \$8.1 billion, but this does not include figures from Radian Guaranty Inc., whose data was not included in the group's statistics until December 2008. Since that month, the industry's primary insurance-in-force has declined from \$952.2 billion down to \$892.7 billion. New pool risk written was \$4.7 billion for September, while pool risk in force at the end of the third quarter was \$7.9 billion, up from \$7 billion for the same period one year prior.

There was an improvement in the cure/default ratio, from 57.6% in August to 64.7% for September with 59,750 cures and 92,292 defaults during the month.

COFI INDEX HITS NEW LOW

It is a new low point for the Eleventh Federal Home Loan Bank District Cost of Funds Index, which for September 2009 fell 14 basis points to 1.272%.

The previous low was recorded in April at 1.38%. The decline in COFI has moderated in the past five months.

In the period between November 2008 and April 2009, it fell 177.5 basis points. Between May and September, the index fell just 56 basis points.

COFI is computed from the actual interest expense reported for a given month by the Arizona, California and Nevada savings institutions members of the Federal Home Loan Bank of San Francisco. That includes the cost of deposits.

Deposit interest rates might be at record lows. The average secondary market rate for one-month certificates of deposits is at an all-time low for September at 0.21%, the sixth month in a row of declines. Last October, a run-up in this rate peaked at 4.04%. The secondary market rate for the three-month is 0.25% and for the six-month CD is 0.36%.

CMG BUYS BROKERAGE

CMG Mortgage of California has purchased Northwest Financial Services, Seattle, a loan brokerage firm with 30 retail loan officers. No purchase price was disclosed.

CMG president Chris George said his company has already converted NFS into a mortgage banker. It will remain a retail lender and supplement CMG's presence in the state. Mr. George said prior to the purchase NFS was originating between \$15 million and \$25 million a month in residential loans. It has one office. According to figures compiled by National Mortgage News and the Quarterly Data Report, CMG - a nondepository retail/wholesale funder - ranks 58th nationwide in terms of loan originations.

TREE TAKES LOSS, ADDS LINE

Tree Inc., which operates the LendingTree.com website, saw its third-quarter revenue fall 17% sequentially but was able to add a \$75 million warehouse line of credit.

The publicly traded mortgage bank/lead generator lost \$7.4 million in the third quarter, compared to a slight profit in the second quarter. In the year-ago quarter it lost \$22.6 million.

According to its earnings statement, the company was hurt by what it called "unanticipated items" including \$4.2 million in loan loss settlement requests and additional legal costs associated with a lawsuit. Even though the company lost

money in the period, revenue at its lending operation - its largest segment by that measure - increased 21% from a year earlier, but fell 34% from the previous quarter to \$24.1 million.

The company said the decrease was primarily driven by higher interest rates, which led to a 31% drop in loan production, to \$620 million. Its new warehouse lender is JPMorgan Chase & Co.

EMEA CMBS WOES CONTINUE

Employment and business woes in Europe, the Middle East and Africa are continuing to erode the performance of commercial mortgage-backed securities and multifamily transactions in the region even though property values appear to have bottomed out and shown slight improvement, according to a report from Moody's Investors Service's London office.

Christian Aufsatz, a Moody's senior vice president and co-author of the report, said the rating agency remains skeptical of a recovery and forecasts declines in value "until 2010 in all EMEA CMBS markets."

Viola Karoly, a Moody's analyst and co-author of the report, said overall performance deterioration that started in 2008 has so far "continued unabated."

Insurance groups object to health care proposals

Business Insurance

Mark A. Hofmann

November 9, 2009

WASHINGTON—Ten insurance trade groups have written a letter to House members that expresses concern about provisions in the Affordable Health Care for America Act that would affect property/casualty and health insurers.

In their Friday letter, the groups said they strongly oppose two provisions in particular. One "would permit the Federal Trade Commission...to prepare studies and reports on the entire insurance industry," while the other would repeal the limited antitrust exemption in the McCarran-Ferguson Act for health and medical malpractice insurance.

"As the bill's title implies, its goal should be to address issues of health care coverage and affordability," the groups wrote. "This purpose is not served by allowing the FTC to investigate all lines of insurance (which is the job of state insurance regulators). It is also not served by limiting the protections the

McCarran-Ferguson Act provides for pro-competitive insurance activities that are subject to scrutiny by state insurance regulators, especially those that facilitate greater market access by medical malpractice insurers.”

“As the full Senate begins its consideration of health care reforms, the P/C industry hopes that senators will remain focused on the goals of the legislation: lowering the costs of and increasing access to health care,” the groups said in a Monday statement accompanying the public release of their letter.

The letter was signed by the American Insurance Assn., the Council of Insurance Agents & Brokers, **the Financial Services Roundtable**, the Independent Insurance Agents & Brokers of America, the National Assn. of Insurance and Financial Advisors, the National Assn. of Mutual Insurance Cos., the National Assn. of Professional Insurance Agents, the Physician Insurers Assn. of America, the Property Casualty Insurers Assn. of America and the Reinsurance Assn. of America.

Dodd, Big Banks at Odds over Regulation
NPR
Monday, November 9, 2009

Steve Henn: Senate Banking Committee Chairman Chris Dodd thinks the Fed should get out of the business of banking regulation. But big banks don't like that idea at all.

Scott Talbott is at the Financial Services Roundtable.

Scott Talbott: We like the Fed as a regulator. We think they tend to be very rational and very thoughtful and that is something... those are qualities that you look for in regulators.

But critics say banks and the Fed were too cozy. The Fed failed to police the mortgage market for years and didn't see this crisis coming in time to stop it. Talbott argues the Fed's changed.

Talbott: They've already proposed new credit card rules. They've already proposed new overdraft rules and they have already proposed new executive comp rules. And that is just in the last couple of months.

But Sen. Chris Dodd and others argue the Fed has enough on its plate just managing monetary policy. And they says it needs to remain independent from politics to do that job well.

In Washington, I'm Steve Henn for Marketplace.

To listen to the remainder of the clip, please click [here](#).

K Street Files: Unions Thank Vulnerable Democrats for Health Vote
Matthew Murray
Roll Call
November 10, 2009

Major union groups are spending \$1 million this week to thank endangered Democratic Members whose ye health care votes over the weekend may complicate their 2010 re-election chances.

The labor-backed Health Care for America Now and the American Federation of State, County and Municipal Employees on Monday announced a \$650,000 television ad buy to thank 20 Members who voted for the Affordable Health Care for America Act.

“It takes courage to stand up to the lies and scare tactics,” HCAN’s Richard Kirsch said in a statement. “It’s imperative voters understand the important role these Members of Congress have played in taking an historic step.”

The ads will air in the districts of Democratic Reps. Jim Himes (Conn.), Michael Arcuri (N.Y.) Dina Titus (Nev.), Carol Shea-Porter (N.H.), Mark Schauer (Mich.), Mary Jo Kilroy (Ohio), Debbie Halvorson (Ill.), Bill Owens (N.Y.), Gary Peters (Mich.), Ann Kirkpatrick (Ariz.), Bill Foster (Ill.), Kurt Schrader (Ore.), Harry Mitchell (Ariz.), Martin Heinrich (N.M.), Jerry McNerney (Calif.), Steve Kagen (Wis.), John Hall (N.Y.), Dan Maffei (N.Y.), Tim Bishop (N.Y.) and Leonard Boswell (Iowa).

Another left-leaning group, Americans United for Change, is expected to spend \$350,000 this week to thank potentially vulnerable Democratic Members for their Saturday votes.

Closing Time. Automaker Chrysler officially shuttered its political action committee last week, according to papers filed with the Federal Election Commission. The former Big Three powerhouse, now known as Chrysler Group, emerged from bankruptcy earlier this year and is now owned by the United States and Canadian governments, union retirees and Italian manufacturer Fiat S.p.A.

K Street Moves. Former Rep. Larry LaRocco (D-Idaho), who last year made a failed run for Senate, is joining Brownstein Hyatt Farber Schreck. He will be a policy director at the firm and will focus on financial services and natural resources issues.

• **The Financial Services Roundtable has added Democrat Brian Tate, formerly with the Credit Union National Association, as vice president of banking and securities. Tate replaces Irving Daniels, who left recently for the Marwood Group.**

• TechAmerica, which has been downsizing this year, brought on Kim Allman, a one-time aide to Rep. Louise Slaughter (D-N.Y.), as senior vice president for state government affairs.

Insurance groups object to health care proposals

Mark A. Hoffman

Business Insurance

November 9, 2009

Ten insurance trade groups have written a letter to House members that expresses concern about provisions in the Affordable Health Care for America Act that would affect property/casualty and health insurers.

In their Friday letter, the groups said they strongly oppose two provisions in particular. One “would permit the Federal Trade Commission...to prepare studies and reports on the entire insurance industry,” while the other would repeal the limited antitrust exemption in the McCarran-Ferguson Act for health and medical malpractice insurance.

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“As the bill’s title implies, its goal should be to address issues of health care coverage and affordability,” the groups wrote. “This purpose is not served by allowing the FTC to investigate all lines of insurance (which is the job of state insurance regulators). It is also not served by limiting the protections the McCarran-Ferguson Act provides for pro-competitive insurance activities that are subject to scrutiny by state insurance regulators, especially those that facilitate greater market access by medical malpractice insurers.”

“As the full Senate begins its consideration of health care reforms, the P/C industry hopes that senators will remain focused on the goals of the legislation: lowering the costs of and increasing access to health care,” the groups said in a Monday statement accompanying the public release of their letter.

The letter was signed by the American Insurance Assn., the Council of Insurance Agents & Brokers, the Financial Services Roundtable, the Independent Insurance Agents & Brokers of America, the National Assn. of Insurance and Financial Advisors, the National Assn. of Mutual Insurance Cos., the National Assn. of Professional Insurance Agents, the Physician Insurers Assn. of America, the Property Casualty Insurers Assn. of America and the Reinsurance Assn. of America.

White House Tactics Rearrange Lobbying World

Jeanne Cummings

Politico

Tuesday, November 10, 2009

The traditional pecking order of Washington's top trade and business groups has been thrown into disarray by the Obama administration's far-reaching domestic agenda and its tough tactics against opponents.

The U.S. Chamber of Commerce, engaged in a name-calling contest with the White House that has ended, for now, with an appearance by White House chief of staff Rahm Emanuel before its board, is down. The Business Roundtable, which made a conscious decision last November to find areas of common interest with the new administration, is up.

It's the Independent Community Bankers of America and the Consumer Federation of America that are seeing their ideas prevail in the current debate over rewriting the regulatory framework for the financial industry, not the once-invincible, big New York investment banks.

The reshuffling of power among traditional business associations is important because it undermines a time-held manner in which corporate America intersects with Capitol Hill. Through their associations and trades, companies could share lobbying costs and shun exposure when opposing White House policy proposals.

President Barack Obama's approach, however, is to call out chief executives of individual firms both in favor of and opposed to his ideas. The unorthodox approach challenges corporate loyalties by marginalizing the business associations and those who sit in the lucrative top positions that run them.

The shifting fortunes of the city's dozens of trade and business groups began in the earliest days of the administration, as industries fought over shares of the huge economic stimulus package.

During that debate, the power players in the energy sector were virtually upended. Renewable sources of energy, solar and wind power and a host of other green projects captured about \$20 billion in stimulus money — a major victory for the American Wind Energy Association and a host of other nascent energy associations and a blow for old energy powers from Bush administration days such as the National Petrochemical & Refiners Association.

And the movement has continued as the Obama administration has begun to implement its agenda at the departmental and agency level.

AT&T, a longtime dominant voice in Washington, now finds itself playing defense at the Federal Communications Commission, which is considering new rules that would prevent it and other broadband providers from charging major users — such as White House favorite Google — additional fees.

“It’s not a level playing field now for us,” said one broadband provider insider. Administration officials “call us and invite our input. But there is no real movement. It’s as if the conclusions have already been made.”

Some groups, sensing their clout ebbing, have made midcourse corrections in both strategy and personnel.

The American Petroleum Institute, which spent the final days of the Bush administration trying to hustle new drilling contracts out of the Interior Department, wasn’t at the table when the House doled out lucrative pollution credits in its version of climate change legislation. Now, the API has hired a Democrat, Martin Durbin, as its top lobbyist and is reaching out to the Senate and the White House to improve its position.

The Edison Electric Institute, likewise, has brought on Brian Wolff, former executive director of the Democratic Congressional Campaign Committee, who worked closely with Emanuel when Democrats retook the House in 2006.

When the House debated its climate change bill last year, many observers were surprised to see the Republican-leaning institute encouraging the process. Some even concluded that the institute had endorsed the measure — a step it hadn’t taken but one that Wolff, aware of the House leadership’s determination to move the legislation, didn’t bother to dispute.

“We knew there would be a lot of manipulation and changes and transformations to come,” said Wolff. “We decided to keep our powder a little bit dry.”

The tactic is paying off: The CEOs of Edison's member companies are among those who've been invited to small, private dinners with administration officials.

But for other industries less familiar with the contours of the Democratic-controlled Congress, the new environment has been unnerving.

"There is a whole lot of wheeling and dealing going on, and it's created a wild, wild West, every-man-for-himself mentality that applies to climate change, health care and financial regulations," said a Republican adviser with corporate clients who did not want to be identified.

The White House seems emboldened by the impact of its tactics.

"Washington is changing," said Obama spokeswoman Jennifer Psaki, acknowledging that her boss and his style of leadership are leaving a wake in the staid world of business trade groups.

"The role of a large business group is probably different than it was 10 or 20 years ago," she said. "The business trade groups, including the Chamber, continue to have a prominent seat at the table, just not the only seat at the table."

Securing one of those seats — at both the start and the finish of legislative negotiations — is a major lure for business groups, and it's prompting some to calibrate their responses when the process seems to go against them at points along the way.

PhRMA, the trade group for prescription drug makers, cut a deal with the Obama administration on health care, only to see the House punch holes in it. But PhRMA, for now, has remained largely silent on the turn of events.

"This is a three-act play. If I don't like Act 1, I'm not going to tear up my tickets and walk out," said Ken Johnson, the group's top lobbyist.

That's a markedly different response from that of America's Health Insurance Plans, which attacked the health reform legislation moving through Congress after the Senate tinkered with its agreement with the White House. AHIP, for now, risks being left out of the final negotiations on the legislation.

Perhaps no group has raised its profile more than the Business Roundtable, composed solely of CEOs from the nation's largest corporations, whose voices and experiences are sought after by Obama. In some ways, the Roundtable's elevated status comes at the expense of the Chamber, which has been more inclined to confront the White House.

“We stay at the table contributing as long as we can, and I guess that’s the difference,” said John Castellani, the Roundtable’s president.

The Roundtable also has worked, with scant success, to persuade its Republican allies on Capitol Hill to try to help the White House.

“Many of our members have spent a lot of effort in explaining to our Republican friends why the correct kind of health care reform is really an economic imperative for those of us in business,” said Castellani.

The Financial Services Forum, whose members are also CEOs, noticed the Roundtable’s success and is now trying to adopt a similar mode of operation by acting as a largely neutral resource and sounding board for the White House and Capitol Hill.

As a consequence, the member companies of the Forum and the Roundtable have scored multiple coveted opportunities to meet with administration officials in small groups to air their thoughts and concerns.

By contrast, the **Financial Services Roundtable**, which is openly fighting key provisions in the financial reform bill, has diminished influence. The group’s tactics, according to one senior Senate aide, have “marginalized them and, by extension, their member firms from playing any meaningful role in shaping the reform that will get passed.”

But the Financial Services Roundtable’s Scott Talbott is unrepentant. He said the group continues “to represent our members as we strive toward the common goals of strengthening and modernizing our regulatory structure.”

The Chamber’s experience in being publicly targeted by the White House has left plenty of anger in its wake.

Richard Rahn, a business lobbying expert at the libertarian Cato Institute and former Chamber economist, warned that the White House’s hardball tactics are shortsighted and could backfire.

“The smart administration doesn’t make the organization the issue; they make the set of policies the issue,” said Rahn. In Washington, organizations “can be allies at one moment, opponents at another and sometimes both at the same time, depending on the issue.”

But Psaki denies that the White House, through its exclusive gatherings and targeted attacks, is trying to silence critics or mute opposition to its agenda.

“We continue to have an open door and want to work with business trade groups,” she said. “Any perception that a partnership with those groups is not productive from all sides is certainly not the message we are trying to send.”

Business groups do give the administration high marks for its outreach, but they question how much influence they are really having on the policy decisions made afterward.

“We appreciate the administration’s willingness to listen to manufacturers and have shared our thoughts and ideas with a number of senior administration officials,” said Jay Timmons, executive vice president of the National Association of Manufacturers. “However, what’s more important is an agenda that stresses job creation, economic recovery and growth.”

NAM, once one of the city’s most powerful groups, has seen its clout diminished as American manufacturing has declined. And while Timmons does his best to sound optimistic that the trade groups can reassert their status, not everyone is able to be so upbeat.

“The entire business industry, when it comes to politics and policy,” said the Republican adviser, who didn’t want to be named, “is on a completely new course, disrupted and splintered.”

New Vendor Risk Assessment Tools Address Cloud Computing

Marcia Savage

SearchFinancialSecurity.com

Tuesday, November 10, 2009

The Shared Assessments program on Tuesday launched updated versions of its vendor risk assessment tools, which includes additions that can help companies assess the security of cloud computing services providers.

Shared Assessments is a program of **BITS, a division of the Financial Services Roundtable**, that aims to give organizations a way to streamline the process of evaluating service provider security and privacy controls. The program updates its free tools, the Standardized Information Gathering questionnaire (SIG) and Agreed-Upon Procedures (AUP), every year.

Version 5.0 of the vendor risk assessment tool set includes an enhanced AUP with additional procedures that address application security relative to cloud computing and Software as a Service (SaaS) environments, said Robert Jones, senior consultant at the Santa Fe Group, a consulting firm based in Santa Fe, N.M. that

manages the program. Questions relevant to cloud computing and SaaS also have been added to the SIG.

In addition, version 5.0 includes a new tool called Target Data Tracker, which is designed to be used before an audit or assessment to help a company understand where a service provider keeps data. Jones said the tool can help address cloud computing security issues.

"Essentially, the idea of cloud computing is the ability to share systems and capabilities. One of the issues is where that capability is physically [located]," Jones said. "How does a client get assurance that its data and its customers' data is being treated with the care that it needs to be treated with?"

The concern over cloud computing security has grown as enterprises' primary service providers are using more downstream service providers and third parties, he said. "As that chain gets longer, the accountability can become more tenuous."

Jim Reavis, executive director and co-founder of the Cloud Security Alliance, a nonprofit that promotes best practices for security assurance within cloud computing, said Target Data Tracker appears to be a promising step, but he added that data location can be complicated in the cloud.

"Many of the data location issues that are fundamental to risk management and compliance can be learned by asking the right questions, so from that perspective the data tracking tool seems to be a step in the right direction. Oftentimes cloud providers lack the transparency in their business and operations needed to answer data location questions, but at the very least we need to agree that transparency is needed," he said. "In some cases, the cloud architectures are so complex that the cloud provider could not tell you where your data is, even if they wanted to."

Reavis stressed that data tracking isn't merely identifying if the cloud provider has a data center in the appropriate geography to serve an organization's needs, but rather the starting point to understanding the provider's information lifecycle management processes.

"For example, does the provider leverage other data center locations, which may be taboo from a compliance perspective, in order to accomplish archiving, disaster recovery and business continuity objectives?" he asked. "We need to be data detectives who 'follow the trail' left by the information as it is managed by the cloud provider."

In addition to the cloud computing security enhancements, version 5.0 updated the Shared Assessment tools to correspond with the National Institute of Standards

and Technology (NIST) SP 800-53 standards, PCI Data Security Standard version 1.2, and the latest FFIEC guidelines. The NIST mapping was important to address increased interest from companies that do business with the federal government, said Michele Edson, senior vice president at the Santa Fe Group. Other additions address a host of privacy regulations, including HIPAA and GLBA.

Actual adoption of the tools is difficult to quantify because they are freely available online, Edson said. The program is aware of 300 organizations that are willing to leverage the tools, including outsourcers that use them with their vendors and vendors that provide completed SIGs and AUPs to their clients, she said.

Version 5.0 features a modular approach that is designed to make the SIG easier to use and overcome resistance to its size, Jones said. For example, there are separate, stand-alone modules that address privacy and business continuity, which a company can use on an individual basis instead of the full SIG. Last year, Shared Assessments launched "SIG Lite," a 54-question tool that is now called Level 1.

Matthew Todd, CSO and vice president of risk and technical operations at Financial Engines Inc., a Palo Alto, Calif.-based independent investment advisor, said Shared Assessments "shows significant promise as a means to provide appropriate and sufficient information to clients about a vendor's policies, procedures and controls."

But while the program provides clear value to both vendors and clients -- for example, by providing a consistent methodology for describing control functions - - it may not fulfill vendors' obligations under all regulatory scenarios, he added." For example, the fact that a vendor has had an independent assessment firm use the AUP to perform an evaluation does not mean that it is necessarily meeting all of its regulatory obligations," he said.

"Additionally, those who rely on the results of an independent evaluation would also be well advised to ensure that the controls under review (the scope of the engagement) include all applicable systems, processes or business units that are relevant to the client, similar to the case of a SAS 70, where the recipient should review the control objectives to ensure that they are appropriate and comprehensive," Todd said.

Expect a reckoning in executive pay, experts say
Mike Verespej

Plastics News
November 11, 2009

Regulators and legislators plan to implement shareholder reforms next year that could alter the landscape of executive compensation and give shareholders greater powers to nominate directors, place issues on proxy ballots and voice their view on the appropriateness of compensation through mandated say-on-pay votes.

“Last year’s financial meltdown has created a push to make directors more accountable for the performance of corporations,” said Barbara Hackman Franklin, chair of the National Association of Corporate Directors, at the group’s annual conference

“Executive compensation is a source of anger among Congress and the public,” she said at the Oct. 18-20 event in Washington.

Damon Silvers, associate general counsel of the AFL-CIO, agreed.

“Executive pay is widely acknowledged as a contributor to the financial free fall,” said Silvers, citing data showing that executive pay is now 300-500 times the average pay of workers, compared with roughly 80 times more 20 years ago.

“Because of that, people question whether we have the wrong incentives for executive pay,” said Silvers. “That is where the debate has ended up.”

The ire over executive pay and its impact on investors, financial markets and the economy is reflected in the say-on-pay and proxy-access proposals that would require majority voting and allow shareholders to place director nominees on the ballot, said Franklin, former Department of Commerce secretary and one of the original board members of the first Consumer Product Safety Commission.

“This could change the dynamics in the boardroom among directors, managers and shareholders. ... It is time for us as directors to step up on vigilance and restore the public trust in American business. It is a call to action and it is urgent,” Franklin said.

“We need to let the White House and Congress know that we are stepping up to make a difference. The lack of trust in American business today is alarming. We can’t allow this lack of trust to exist or it will irreparably harm our economy. We have to show that corporate governance really works and that our entrepreneurial system of capitalism really is the best.”

Ira Millstein, senior partner with Weil, Gotshal & Manages LLP and senior associate dean for corporate governance at the School of Management at Yale University, agreed.

“It’s high time for corporate boards to adopt voluntarily at least some of the reforms being called for,” said Millstein. “It is time for us to do something before the government and the Securities and Exchange Commission legislate and regulate us into a cookie-cutter mold. “If we don’t do something on say-on-pay, majority voting and board nominating practices, it will be legislated by Congress or mandated by the SEC.”

The SEC already has barred brokers from voting for corporate directors unless they are instructed by their clients to do so, and next spring Congress is expected to pass a say-on-pay proposal already approved by House that gives shareholders a nonbinding advisory vote on executive pay packages.

In addition, SEC commissioner Mary Shapiro said she is committed to adopting rules that would allow shareholders who own as little as 1 percent of a company’s shares to nominate directors and place issues on proxy ballots.

“I am committed to bringing final rules to the full commission for consideration in 2010,” she said Nov. 4 in a speech before the Practising Law Institute in New York. “We recognize that this timing means that any new rules will not be in effect for the 2010 proxy season, but we think it is far more important that we adopt the right rules.”

Shapiro also said the SEC is committed to reforms that would give shareholders more information about the qualifications of nominated directors, the risk associated with executive compensation practices, board governance structures, and fees paid to compensation consultants and those consultants’ potential conflicts of interest.

But Millstein and others at the NACD meeting suggested boards should implement such policies on their own and not wait until mandates are in place.

“We need voluntary action because we didn’t do well on assessing risks, compensation practices and oversight of management in the recent crisis,” Millstein said. “There is no reason companies can’t come forward and talk about compensation practices, adopt majority voting and some type of say-on-pay plan and discuss the qualifications needed in a director.”

He also said corporations should act now to create a better way to give shareholders more input into who can get elected to boards. “Access is a hot issue and will remain a hot issue. You have to find a way to do it.”

“Access to proxies is coming,” agreed Mark Anson, president and executive director of investment services at Nuveen Investments of Chicago. “Sooner or later there will be a rule making, so we need to get a jump start on this.”

But not everyone is convinced that giving shareholders more access to proxies makes sense.

“Are the majority of shareholders’ interests really aligned with the best interests of companies?” asked Phil Laskawy, nonexecutive chairman of Fannie Mae and retired chairman and CEO of accounting firm Ernst & Young LLP. “Many investors are merely in for the short-haul. Majority voting and say-on-pay make sense, but I am not a big fan of proxy access.”

Steve Bartlett, president and CEO of the Washington-based Financial Services Roundtable, agreed.

“Some organizations have things that they are trying to achieve that are not in the best interest of companies,” he said. “That is one of the fears we have about expanded proxy access.”

Bartlett is also concerned that the limits on compensation that have been placed on financial firms that received federal bailout funds could be extended into the general corporate environment.

“The size of pay is a slippery slope,” argued Bartlett. “You can put the economy into a crisis pretty fast if you layer the size of pay into a formula of how much absolute pay is too much. We need to communicate internally and externally why the pay structure is what it is, and measure the risk of any compensation package at any pay level and ask whether it creates an appropriate or inappropriate risk for the corporation.”

But Silvers of the AFL-CIO suggests that both say-on-pay and limits on executive compensation are coming, and that it is only a question of when.

“Say-on-pay is likely to be enacted in the near future,” he said. “Some people think it will make [the situation] worse, but we are going to get it because of the long-term failure of voluntary structures to get executive pay right.”

Silvers added that unless problems with the financial system are fixed, executive pay limits also are coming. “Eventually we will end up with absolute limits on pay if we continue to go through these financial crises and cycles,” he said.

But whether what emerges will help or fix the problems is uncertain.

“You can’t go through the systemic failures we did without people questioning the appropriateness of the regulatory approach,” said Kalpana Raina, managing partner of 252 Solutions LLC, a company specializing in corporate strategic development. “So we will get regulation. But the question is whether we will get reform.”

Banks face uphill battle vs. possible fee limits

Ian Swanson

The Hill

November 12, 2009

Banks may suffer their second major defeat since the financial crisis began as lawmakers move legislation that drastically curbs fees charged to consumers who overdraw their account balance.

Bills in the House and Senate would overhaul a service that earned \$38.5 billion for banks in the last year, according to industry sources who are pessimistic they can stop it. This comes after Congress passed new credit card reforms earlier this year.

“I think we’ve got an uphill climb on this issue because of the publicity,” said Steve Verdier, senior vice president of the Independent Community Bankers of America.

“It’s going to be hard to stop,” said another industry representative, who asked to speak on background to talk more candidly about the issue.

Hitting banks on overdraft fees is a perfect election-year issue in that it allows Congress to stand up for consumers while hitting the big banks many see as responsible for the financial crisis that sparked the worst recession in decades, industry sources said.

In addition, they believe Senate Banking Committee Chairman Chris Dodd’s (D-Conn.) tough reelection fight bolsters the hopes of legislation. Dodd’s electoral problems follow controversies hinging on his ties to the financial industry, and he’s looking for issues that show off his bona fides for consumers and working people.

All of those factors expedited Congress’s work on restricting credit card fees and interest rates earlier this year.

Overdraft fee legislation will likely move on its own and will not need another vehicle. One industry source joked about how lawmakers will tout it to the rooftops and hold a parade.

The bills drafted by Dodd and House Financial Services Committee Chairman Barney Frank (D-Mass.) would require banks to get the consent of their customers before enrolling them in overdraft protection programs.

The programs allow consumers to spend more than what is in their accounts. The catch is that each bad check or debit card swipe will generally bring a \$35 fee, and banks are accused of manipulating the order in which they post transactions to rack up additional fees.

The service has drawn complaints from consumer groups and lawmakers who say customers don't realize they're going to get hit with the fees for using the protection. Some consumers don't realize they have the protection at all.

The banking industry warned of unwanted consequences from the credit card bill, and is making a similar argument on overdraft fees.

After President Barack Obama signed legislation clamping down on the ability of issuers to raise interest rates and fees on existing credit card balances, several banks began raising rates on new cards.

Industry officials predict the legislation on overdraft fees will kill the service and that banks will look for other ways to make up for the lost profits. One possibility would be ending free checking accounts.

“The bill will kill overdraft protections for those who need it the most,” said Scott Talbott of the Financial Services Roundtable. He said consumers and merchants who benefit from the service will both feel the pain.

Senate bill to overhaul financial regulation would strip Fed, FDIC of some powers

Kevin G. Hall

McClatchy Newspapers

November 10, 2009

A key Senate committee chairman unveiled a sweeping 1,136-page bill Tuesday that, if enacted, would mandate the most comprehensive overhaul of financial regulation since the Great Depression.

The legislation would affect both average Americans and the well-heeled on Wall Street. It would bring unregulated entities such as hedge funds under closer supervision, give the government the power to shut down large financial firms, and merge numerous federal banking regulators under a single roof.

The bill proposed by Senate Banking Committee Chairman Christopher Dodd, D-Conn., would give ordinary folks tough protections against predatory lending and abuses by credit card companies, and would create a government agency to oversee mortgages, credit cards and other consumer-credit products.

Dodd's legislation includes much of what already is in legislation that's expected to pass the House of Representatives in early December, including what's called a Council of Regulators in the House bill and in Dodd's bill would be an Agency for Financial Stability. It would determine when and how to break up big financial firms whose failure could poison the broader financial system.

However, the Senate bill differs in one significant and controversial way: It would strip the Federal Reserve and the Federal Deposit Insurance Corp. of their bank supervisory powers and merge federal bank regulation into a single entity, a new Financial Institutions Regulatory Administration.

The reason, Dodd said in a news conference Tuesday, is that in the run-up to the global financial crisis, banks and other financial firms were able to shop for the regulator of least supervision. Additionally, many regulators had oversight over some of a financial firm's operations but not necessarily over its full range of activities.

To address this, the House legislation would fold the Office of Thrift Supervision, which regulates savings and loan institutions, into the Office of the Comptroller of the Currency, which regulates federally chartered national banks.

Dodd's bill would go further. It would fold the National Credit Union Administration into the new single supervisor, and get the Fed and the FDIC out of the supervision business. The Securities and Exchange Commission and the Federal Trade Commission also would surrender some banking oversight powers. Under this plan, all banks large and small would answer to one regulator.

"The current system takes into account different shapes and sizes and business models," said Scott Talbott, the chief lobbyist for the Financial Services Roundtable, which represents big financial firms. He complained that Dodd is offering a dangerous "one-size-fits-all approach."

Dodd faces a tough re-election battle next year, made tougher by allegations that he got a sweetheart mortgage deal from disgraced lender Countrywide Financial, a major player in the housing crisis, which became a full-blown global financial crisis. He denied Tuesday that he was trying to score political points by punishing the Fed for its failure to prevent the crisis.

"There is nothing punitive in this bill. I really want the Federal Reserve to get back to its core enterprises," mainly setting monetary policy, Dodd said.

Under the House legislation, the Federal Reserve would watch over the entire financial system with an eye out for potential threats to the economy as a "systemic risk" regulator. Dodd would confine the Fed to its main missions of promoting full employment while keeping a lid on inflation by conducting monetary policy, mainly through setting short-term interest rates.

A Fed official, speaking only on the condition of anonymity because the complex Dodd bill hadn't been fully reviewed, said it was too early to gauge what changes the legislation might bring for the independent central bank.

"We will consider and evaluate the draft language in light of our responsibilities for promoting economic growth, price stability, employment and financial stability," the official said.

While the House bill was crafted with close input from the Treasury Department, Dodd's was drafted with help from the FDIC, whose chairman, Sheila Bair, has clashed repeatedly with Treasury Secretary Timothy Geithner.

Dodd said the times demanded a bold plan.

"This is not the time for timidity," he said.

"Look, I could have tried to draft something that was already a compromise of ideas, but I think it would be a huge mistake," he added later. "You are given very few moments in history to make this kind of a difference."

Senate Republican leaders frowned on Dodd's bill.

"This is just another thousand-page bill not important to the general public. ... I don't think the public is clamoring for another thousand-page bill. I don't yet see bipartisan support for that bill," said Senate Minority Leader Mitch McConnell, R-Ky.

Although Dodd hopes that his committee will pass the measure by Christmas, it's likely to languish in the full Senate until health care legislation is finished, which Dodd conceded could be well into next year. Then his measure would have to be reconciled with the competing House bill.

Success for Dodd will depend on moderates, both Democrats and Republicans. There's been scant bipartisanship during the House debate on financial regulation, but moderate Senate Republicans sounded conciliatory Tuesday.

"Let's face it, financial regulation is pretty arcane. It's not something people wake up every day and think about," said Sen. Bob Corker, R-Tenn. "I think we have a great opportunity to do something that is bipartisan and will stand the test of time."

Sen. Susan Collins, R-Maine, supported Dodd's call to have an independent appointee head the Agency for Financial Stability. The House bill would have the treasury secretary head this body, which could dismantle large failing institutions.

However, many Republicans fiercely oppose Dodd's proposal to create a Consumer Financial Protection Agency, which is also in the House legislation. The panel would consolidate powers that now are scattered across several agencies.

"I think it's a very serious mistake. It would undermine the availability of credit, especially to people in small business," said Sen. Judd Gregg, R-N.H., charging that it would be run by "some academics that don't have any knowledge of the marketplace."

"The consumer panel is too big," added Sen. Tom Coburn, R-Okla.

Moderate Democrats such as Virginia Sen. Mark Warner also have concerns. Appearing with Dodd at a news conference Tuesday, Warner gave only qualified support.

"I think there are some real differences around the consumer agency, but on a lot of other issues I think there is a great deal of agreement," Warner said. "There is much more work to be done."

Dodd Unveils Sweeping Financial Overhaul Plan

John Ydstie

NPR

November 10, 2009

MICHELE NORRIS, host:

Today, we are seeing another road map for financial reform. This one is a proposal from Senator Christopher Dodd, chairman of the Senate Banking Committee. Its a more ambitious plan than the package proposed by the Obama administration and the bill in the House. And in this latest legislation, the big loser would be the Federal Reserve.

NPRs John Ydstie explains.

JOHN YDSTIE: Chairman Dodd was the last to present a reform proposal, but his is also the most sweeping effort to address the regulatory failings that contributed to the financial crisis. Most importantly, he would consolidate the power of all four of the current federal bank regulators into one super regulator, the Financial Institutions Regulatory Administration.

Senator CHRISTOPHER DODD (Chairman, Senate Banking Committee): Our proposal will replace the myriad government agencies that failed - in my view - to rein in the risky schemes, with a single, accountable federal banking regulator.

YDSTIE: In doing this, Dodd would strip the Federal Reserve and the FDIC of their power to regulate banks and completely eliminate other bank regulators: the Controller of the Currency and the Office of Thrift Supervision that regulates savings and loans. That goes much further than the Obama administrations proposal and the bill developed by the House Banking Committee. They only eliminate the Office of Thrift Supervision.

Dodd's bill, which has the support of Democratic members of the Senate Banking Committee, would also go beyond the administration and the House by creating another brand new institution. It would monitor and identify risks to the whole financial system posed by large institutions and complex financial products. The new agency for financial stability would also take power that the administration and House plans give to the Federal Reserve. Dodd maintains he isn't punishing the Fed.

Sen. DODD: Well, I don't see it that way. There's nothing punitive in this bill. I know that people think that. I really want the Federal Reserve to get back to its core enterprises.

YDSTIE: Like conducting monetary policy and being lender of last resort. **Scott Talbot, head lobbyist for the Financial Services Roundtable, says the big financial institutions that he represents support the new systemic risk regulator that Dodd proposes. He says the industry is agnostic on the question of a single bank regulator or multiple regulators.**

There are pluses and minuses to both, he says. But the industry continues to oppose another feature of Dodd's package: a new consumer financial protection agency that would be a watch dog over financial products, from credit cards to mortgages.

Mr. SCOTT TALBOT (Head Lobbyist, Financial Services Roundtable):
Were against creating a separate agency to protect consumers. We think you can protect consumers a more effective way by strengthening the existing regulators, rather than creating a separate agency.

YDSTIE: Asked about the political hurdles he faces in passing such an ambitious bill, Dodd said this is not a time for timidity. While the Dodd proposal differs in significant ways from its plan, the Obama administration reacted positively to the chairman's package. Deputy Treasury Secretary Michael Barr said Dodd has proposed a tough bill.

Mr. MICHAEL BARR (Deputy Secretary, Department of Treasury): I think that were in a strong position substantively and politically to get financial reform done.

YDSTIE: But its not clear that any of the current reform bills can get the Republican support needed to clear the Senate.

Federal Reserve
Diane Rehm Show
WAMU
Thursday, November 12, 2009

Steve Bartlett, President and CEO at the Financial Services Roundtable, appeared on the Diane Rehm show to discuss the Dodd bill. To listen to the clip, please click [here](#).

Fed cracks down on overdraft fees
Jennifer Liberto
CNNMoney.com
Thursday, November 12, 2009

WASHINGTON (CNNMoney.com) -- The Federal Reserve on Thursday released a new rule to prohibit banks from automatically enrolling customers in overdraft protection programs, which charge fees when consumers spend more than they have.

Starting on July 1, 2010, all banks will have to ask their customers to opt in to overdraft protection plans for ATM and debit card transactions.

Some banks charge as much as \$39 when customers overdraw their bank account by even a few dollars.

"The final overdraft rules represent an important step forward in consumer protection," Fed Chairman Ben Bernanke said in a statement. "Both new and existing account holders will be able to make informed decisions about whether to sign up for an overdraft service."

Currently, more than 75% of banks automatically sign customers up for overdraft programs, according to a study by the Federal Deposit Insurance Corp.

The new rule only affects overdraft fee services on ATM and one-time debit transactions. Banks will still be allowed to automatically enroll customers in overdraft services for personal checks and automatic transactions like monthly bill payments.

5 evil things credit card firms can do to you

Congress is also weighing action to clamp down on overdraft fees. On the legislative agenda are proposals to force banks to ask customers before they automatically enroll them in overdraft programs.

The congressional bills are tougher than the Fed's rules.

The Senate would empower banking regulators to set overdraft fees in a way that is "reasonable and proportional" and disclose to consumers details about how an overdraft charge was incurred and what can be done to fix an account balance on the same day the overdraft fee is charged.

The House would cap the number of times banks can charge overdraft fees at three a year. It also would force banks to tell customers when an account is on the verge of being overdrawn, so they can decide whether a purchase is worth an overdraft fee.

Yet, the current congressional proposals wouldn't go into effect until one year after passage, though they would prohibit banks from increasing overdraft fees in the wait time.

Banks make a killing on fees

The Fed has been under fire for not paying enough attention to consumer protection. Separate from the overdraft legislation, Congress is proposing to strip the Fed of its consumer protection duties and create a separate consumer agency.

Lately the Fed has picked up the pace of its consumer protection activity. Last year, it approved a rule to rein in credit cards fees, but Congress enacted credit card rules that will take effect in February before the Fed rules go into effect.

For banks, overdraft fees are a big revenue generator because so many people rely on debit cards.

Some 75 out of 100 financial transactions are electronic, according to Moebs Services Inc., an economic research firm. The financial services industry is on track to make \$38.5 billion this year on overdraft and non-sufficient fund fees, up 38% from \$27.9 billion five years ago, Moebs estimates.

The banking industry was not pleased by the Fed's move.

"It radically changes and alters the overdraft services for consumers," said Scott Talbott, chief lobbyist for the Financial Services Roundtable. "The result will be confusion and embarrassment and frustration."

Fed will require bank customers to OK overdrafts

By Kathy Chu

USA TODAY

Thursday, November 12, 2009

The Federal Reserve released a long-awaited rule Thursday requiring banks and credit unions to get consumers' permission before charging steep fees to pay debit-card and ATM overdrafts.

The final rule, which comes amid intense Congressional scrutiny of bank overdraft practices, will take effect by July 1, 2010, for new customers and Aug. 15, 2010, for existing customers. The agency released a preliminary rule on debit-card and ATM overdrafts late last year, but didn't say then whether it would require banks to get consumers' consent before automatically signing them up for these programs.

The new regulation "represent(s) an important step forward in consumer protection," said Federal Reserve Chairman Ben Bernanke in a written statement.

READ: [The Fed's press release](#)

Scott Talbott., chief lobbyist for the Financial Services Roundtable, which represents the nation's largest banks, says the restrictions will "result in confusion and frustration" for millions of Americans whose debit card and ATM overdrafts are rejected.

Consumer advocates also criticized the Fed rule, saying it doesn't go far enough to curb overdraft fees that are pushing some consumers into the poor house. The regulation, for instance, doesn't restrict fees charged by banks for overdrawn checks and recurring debit-card transactions such as monthly bill payments. Legislation introduced by Rep. Carolyn Maloney, D-NY, and separately by Sen. Chris Dodd, D-Conn., would restrict both check and debit-card overdrafts.

"The Fed is acting 10 years late to partially solve a problem that Congress is going to have to completely solve," says Ed Mierzwinski, consumer program director for the U.S. Public Interest Research Group. "They're trying to do the least that they can get away with."

Overdraft fees have long been a profit center for banks, but USA TODAY research has found that they are now the industry's single-largest driver of consumer fee income. In 2009, banks are expected to reap a record \$38.5 billion from overdraft and insufficient-funds fees, nearly twice the \$20.5 billion they stand to collect from credit card penalties.

Mierzwinski says Congress should force institutions to disclose APRs when extending overdraft credit and limit the number of fees consumers can get charged.

Some bank experts warn that as regulators restrict certain practices, the industry will just find new ways to make money off vulnerable consumers.

"Banks are highly acclimated to exploiting the next great legislative loophole," says Jake Drew, a former vice president in MBNA and Bank of America's "revenue-optimization" group. "The best banking reform efforts of the Federal Reserve and Congress, so far, are merely symptomatic and reactive."

Overdraft Rule from Fed Called Underdone

Steven Sloan

American Banker

Friday, November 13, 2009

WASHINGTON — The Federal Reserve Board released an overdraft rule Thursday that would force banks to get customers' permission before enrolling them in such programs — but it did little to satisfy lawmakers who want to go even further.

While top leaders of the House and Senate banking committees have pushed bills that would require customers to opt in to overdraft protection, they are also seeking other restrictions, including monthly and yearly limits.

"We need to do far more to protect customers from abusive bank products," said Senate Banking Committee Chairman Chris Dodd, who has scheduled a hearing Tuesday on the issue. "We still need to stop the excessive fees, repeated charges, lax notification and processing manipulation that have become standard in these so-called overdraft 'protection' programs."

The sentiment reflected the deep unpopularity of the Fed in Congress, even as it goes further to protect consumers than it has in decades.

The overdraft rule goes into effect on July 1 and covers transactions conducted at automated teller machines as well as one-time debit card transactions. Banks would be prohibited from offering different terms or conditions on accounts for customers who decide to forgo the program. Additionally, customers who decide to take advantage of overdraft protection services can still decide to reject the coverage at any point.

Bankers, arguing that overdraft protection is actually a service for its customers, had pressed the Fed to embrace a rule that would let them instead give customers a chance to opt out of such coverage, betting that would have resulted in fewer accounts without protection. Industry representatives acknowledged their disappointment Thursday with the Fed rule, but seemed ready to move on.

"In the end, we could live with it," said Scott Talbott, a senior vice president with the Financial Services Roundtable.

That is likely because bills circulating on Capitol Hill could be far worse for the industry.

Proposals in the House and Senate would require that fees be proportional to the cost a bank incurs during an overdraft. They would also bar banks from imposing an overdraft more than once a month and six times a year.

Under the proposals, customers would see a prompt on the screen of their ATM alerting them that their transaction could result in an overdraft, and banks could not manipulate the order of clearing checks in a way that can rack up fees. (The Fed issued Thursday's rule under Regulation E, which governs electronic fund transfers and does not have the scope to address check-clearing manipulation.)

The proposals have powerful sponsors, including House Financial Services Committee Chairman Barney Frank of Massachusetts, Rep. Carolyn Maloney, D-N.Y., Dodd and Sen. Charles Schumer, D-N.Y.

"The Hill doesn't give people a choice," said Nessa Feddis, a senior federal counsel for the American Bankers Association. "The bills don't seem to reflect the very well-documented consumer preference for having overdrafts paid for particularly important things like mortgages and bills. That would mean they would be less consumer-friendly."

Overdraft fees have become the subject of heated debate during the financial crisis. The Fed received more than 20,000 comment letters on an overdraft proposal it released in January. Banks say they offer the protection to save customers from embarrassment at the cash register. Consumer advocates counter that the fees are often unreasonable, especially when the overdraft was caused by a relatively small purchase.

In this fight, the Fed appeared to side with consumers. "The final overdraft rules represent an important step forward in consumer protection," Chairman Ben Bernanke said in a press release.

The Fed's move amounted to the latest attack on fees levied by banks. The House passed legislation this month that would immediately enact credit card reforms to go into effect in February. The card reform President Obama signed in May would, among other things, restrict fees and interest rate increases.

"Consumers are willing to pay reasonable fees for appropriate services," said David Berenbaum, the executive vice president of the National Community Reinvestment Coalition. "But there needs to be a rationality to the fee structure." Overdraft fees do not disappear under the Fed's rule. Penalties can still be charged on a range of transactions, including checks and recurring debit card purchases. Fed officials speaking to reporters on Thursday said they did not extend the opt-in provision to these transactions because customers generally use these methods to pay for important, big-ticket items like rent or mortgages, along with utility bills. Even though that means banks can still earn some income from fees, industry representatives are worried about the practical implications the Fed's

differentiation could cause. At the moment, most banks' computer systems cannot distinguish between a \$3 transaction at Starbucks and a \$100 monthly fee for a health club membership.

"Some institutions can't make that differentiation at this time," said Steve Zeisel, the vice president and senior counsel at the Consumer Bankers Association. "Even differentiating between debit and checks is difficult. I think smaller institutions in particular may be impacted by that."

Though the rule is likely to cut into bank profits in this area — Fed officials estimated the industry makes \$25 billion to \$38 billion off of overdraft fees — industry representatives said they will find ways to protect themselves from habitual overdrafters and continue to make money.

Feddis of the ABA raised the possibility that banks may reverse the trend of offering free checking accounts and instead require customers to maintain a minimum balance to avoid fees.

"At the end of the day, income has to exceed expenses for any business model to succeed," Feddis said. "There may be less income, so there's going to be pressure." Lawmakers, meanwhile, are poised to press ahead. Maloney said that the Fed rule does not "eliminate the need for congressional action."

"The Fed still allows institutions to charge an unlimited quantity of overdraft fees, would do nothing to make fees proportional to the amount of the overdraft, and would not address the manipulation of posting order of charges to accounts," she said in a statement.

Schumer attempted to put some onus back on the central bank.

"I urge the Fed to add even more muscle to these rules by limiting the amount of overdraft fees that can be charged in a single month, and by preventing banks from reordering charges to maximize profits," he said. "We will continue to do everything we can in the Senate to pass legislation to make this happen, whether the Fed acts or not."

Fed Announces Rules for Reining in Bank Fees
NBC Nightly News
NBC
Thursday, November 12, 2009

Scott Talbott, Senior Vice President of Government Affairs at the Roundtable appeared on NBC's Nightly News to discuss overdraft fees. To view the clip, please click [here](#).