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Reform Effort Loses Sight of a Big Problem: Banks' Interconnections
The American Banker
April 8, 2010
By Heather Landy

If it were simpler to explain, address or even pronounce, interconnectedness might have been the primary target of financial system reformers.

After all, it was concern about exposures to counterparties, and to counterparties' counterparties, that accounted for most of the panic in the markets 18 months ago.

Interconnectedness "characterize[s] the operation of the modern financial system," said Randall Kroszner, a University of Chicago economics professor and former Federal Reserve Board governor. "We need to acknowledge that and make sure our regulatory system is effective in dealing with an interconnected system rather than a system that looks like it did 50 years ago."

But the ensuing policy debate has been bogged down instead in rancor over whether to limit the size of banks, where to house consumer protection enforcement and how to define proprietary trading. These are valid questions, perhaps, but they may not do much to get at what many in the industry see as the central problem exposed by the crisis.

"The political messaging has overtaken the substance," said Scott Talbott, senior vice president for government affairs at the Financial Services Roundtable, which represents executives of the largest financial institutions.

And if that is a predictable response from a group at odds with the recent political messaging — namely the momentum-gathering mantra that big banks are bad — consider the distinction between size issues and interconnectivity issues drawn by Dana Chasin, legislative and policy liaison at Americans for Financial Reform, an umbrella organization for more than 250 consumer, labor and community advocacy groups: "These are not just apples and oranges, the questions of size and interconnectedness. They're apples and elephants."

Chasin, whose coalition includes the AFL-CIO, AARP and the Consumer Federation of America, said he's been encouraged by recent efforts in Congress to at least raise the issue of interconnectedness. The regulatory reform bill proposed

by Senate Banking Committee Chairman Chris Dodd calls for the creation of an Office of Financial Research, which would work under the Treasury Department to collect data and conduct analysis to monitor systemic issues and identify emerging risks, while legislation passed by the House lists interconnectedness among the primary factors that regulators should consider in determining whether a financial company is too big to fail.

The issue of interconnectedness "is playing a more important [policy] role than it was six to eight months ago," Chasin said.

But as a popular rallying cry it still gets trumped by size, because size is so much easier to measure and define.

And yet in the fall of 2008, the biggest disruptions to the regular functioning of the financial system were caused by the things that people could not measure, or could not define: Would the government explicitly support Fannie Mae and Freddie Mac to prevent more dominoes from falling in the housing market? Would fire sales for all kinds of exotic securities lead to writedowns that might render big banks insolvent? Would everyone on the hook for credit default swap settlements be able to make good on the contracts?

Peter Wallison, an American Enterprise Institute fellow, argues that aside from the commercial banking system — where interconnectedness is inherent in the payments system and deposits and the like — the issue is little more than a bogeyman. Even when the government decided to rescue American International Group, there was no proof that the insurance company was too interconnected for the rest of the system to be able to handle a failure, he said.

"I think what happened in the AIG case was that the Fed really panicked," he said. "It's very unlikely that a large financial institution would rely so much on any other single financial institution that the failure of one of them would cause the failure of the [other]. They're all very widely diversified."

But Mark Williams, a finance instructor at Boston University and a former bank examiner at the Fed, said the perils of having increased levels of interconnectivity without a commensurate regulatory response were on full display that fall, particularly when Lehman Brothers failed.

The problem "wasn't that we let this company get so interconnected," said Williams, author of "Uncontrolled Risk," a new book about the lessons of Lehman. "It was that the warning signs of interconnectedness and risky behavior were percolating for years, yet there wasn't the infrastructure to mandate higher

capital standards, and leverage ratios were able to be increased. We allowed greater risk-taking with lower controls. That's where we failed."

Williams also said we've yet to fully confront other interconnectivity issues underscored by the crisis, including credit derivatives.

"Derivatives could be the best thing since the iPod, or they could be financial dynamite in the wrong hands," he said. Either way, "there should be more restrictions on the speculative nature of them."

FDIC to Tie Large-Bank Premium to Future Risk
American Banker
April 14, 2010
By: Joe Adler

Four years after the Federal Deposit Insurance Corp. launched an elaborate deposit insurance pricing system, the agency has gone back to the drawing board.

Citing the origins of the financial crisis, the agency Tuesday proposed a new system for setting large-bank assessments that relies less on current financial performance and more on the potential for future problems.

"We've learned a lot from the crisis," FDIC Chairman Sheila Bair said at a meeting of the agency's board, which unanimously issued the proposal for a 60-day comment period. "We know that things like higher-risk concentrations, excessive short-term funding, poor quality of capital, poor quality of earnings, are indicators of risk and can portend a future deterioration in an institution."

The plan came as the agency also moved to extend its voluntary coverage of certain transaction accounts by six months, to Dec. 31, with the option to extend it again to the end of 2011. (See story on page 18.)

The new assessments plan would largely leave the pricing system unchanged for small banks.

For the 107 institutions with assets of more than \$10 billion, however, the FDIC said it would consider more "forward-looking measures" to determine premium payments.

For a large bank, the agency would combine its Camels rating — a key factor in the current system — with new factors meant to gauge a bank's ability to respond to stress. These include measures related to asset stress, such as Tier 1 capital, a bank's level of high-risk concentrations and underperforming assets; and those related to funding stress, such as its ratio of core deposits to total liabilities.

Also added to the mix would be a calculation of the potential losses a bank would impose on the Deposit Insurance Fund if it were to fail.

Nine "highly complex" institutions, including those that have assets of more than \$50 billion and are owned by a firm with more than \$500 billion of assets, would be judged more closely. They would be subject to additional market factors, such as the parent's tangible common equity and the market spreads of senior debt.

These changes would lead to customized premiums for each large institution.

The agency said that after passage of a final rule, further changes to the assessment system may be needed, and asked for comment on additional pricing measures, such as counterparty risk.

While the plan would retain aspects of the current system — which was authorized by the 2006 deposit insurance reform law — that measure a bank's financial performance, officials expressed hope the new system would be an improvement.

They said the crisis proved that assessments should be based more on long-term risk, and the system's current use of rating agencies to gauge banks' debt risk is inadequate. (The proposal would eliminate the use of rating agencies.)

"Rather than simply focusing on an institution's current performance," the intent of the proposed system is that it "differentiates risk over the entire credit cycle," Bair said.

The overall amount of money collected by the FDIC would not change. The agency proposed expanding the basic range of assessments charged to 10 to 50 cents per \$100 of domestic deposits, from 12 to 45 cents under the current system.

Comptroller of the Currency John Dugan said that, while he supported the goal, he questioned whether the new measures would be too subjective and complex.

"I support a countercyclical approach, and I feel we need to further examine whether the proposed changes actually act in a countercyclical manner rather than charging banks more when they can least afford it," Dugan said.

Representatives from the bank trade associations had similar concerns.

"It has the opportunity for introducing a lot of subjective factors. ... We're going to have to look at it very closely to see if there are ways to get some objectivity put back into it," said Richard Whiting, the executive director of the Financial Services Roundtable.

**Historic Church Building Financial Resource Center
Associated Press
April 7, 2010
By Errin Haines**

In the segregated South, the Rev. Martin Luther King Sr. knew that the path to equality in America was through economic empowerment, and as pastor of Ebenezer Baptist Church in Atlanta, he encouraged his congregation to have savings accounts and own homes.

His son, the Rev. Martin Luther King Jr., was also focused on the wealth gap as a barrier to full access to the American Dream. At the end of his life, the younger King was committed to ending poverty and opening opportunities for all citizens.

On Wednesday, two of King's children helped break ground on a center for financial literacy and economic empowerment at Ebenezer, where the elder minister and his son co-pastored from 1960 until King was assassinated in 1968. The Martin Luther King Sr. Resource Facility will be the flagship for Operation HOPE, a Los Angeles-based non-profit organization that educates underserved and low-income Americans about personal financial responsibility.

Operation HOPE founder John Hope Bryant said the center, to be one of 11 nationwide, will also be an extension of the Rev. Martin Luther King Jr.'s dream of economic equality.

"Today, financial literacy is a civil rights issue," Bryant told a crowd gathered at a ceremony for the \$5 million, 30,000-square foot facility scheduled to open early next year. "If you don't understand financial literacy, you're an economic slave."

The center will offer hands-on financial case management, wealth building through homeownership and small business ownership and mainstream banking services. The Rev. Raphael G. Warnock, senior pastor of Ebenezer, said that locating the center at the historic church is appropriate, given its mission of social justice.

"We believe that access to capital ... is a critical component in the next phase of the freedom movement," Warnock said. "A community cannot rebuild its walls without access. We need this kind of hope. Today is one day, but it's part of a mighty movement."

Sheila Bair, chairman of the FDIC, and Steve Bartlett, chief executive officer of the Financial Services Roundtable, also attended the groundbreaking. Bair, a former civil rights attorney, urged greater oversight of predatory lending institutions and the need for financial education, especially for minorities.

Bair pointed to a recent FDIC study that revealed that one in four Americans, or 60 million adults don't have bank accounts or use higher-priced providers for basic

services like payroll check cashing. In Atlanta, that number is one in two for black and Hispanic households.

"We need to change that," Bair said at a forum on financial literacy at the Federal Reserve Bank of Atlanta after the groundbreaking ceremony. "We've got to turn those numbers around."

Ambassador Andrew Young, who worked alongside King during the civil rights movement, has dedicated much of his life since then to ending global poverty. He reminded the audience that King's 1963 "I Have A Dream" speech opened with the idea that America had presented the Negro with "a bad check."

"Dr. King refused to believe that our nation was bankrupt when it came to cashing the checks of the poor," said Young, who is the global spokesman for Operation HOPE.

Martin Luther King III — president and chief executive officer of The King Center, also on Auburn Avenue — and his sister, the Rev. Bernice King, who is set to take the helm of the Southern Christian Leadership Conference, which her father co-founded in 1957, were on hand during the ceremony.

"This truly continues, in a real sense, the legacy of our family," King III said. "While he didn't live to see it come to fruiting, my father was talking about economic empowerment.

Fighting Mortgage Fraud- Leigh Williams, BITS President
Bank Info Security
April 1, 2010

Leigh Williams, President of BITS, conducted a podcast interview with Bank Info Security, discussing mortgage fraud trends of top concern, risks to banking institutions and consumers, and steps to take to reduce mortgage fraud.

Click [here](#) to listen to the podcast.

Mortgage Fraud: Education Key to Prevention
Bank Info Security
April 9, 2010
By: Linda McGlasson

Mortgage fraud is a giant problem in certain parts of the country. Whether your institution is located in the worst states for it or not, you have to realize that this type of fraud is everywhere. And the best way to stop it is by preventing your customers from falling for the unscrupulous scammers looking to cash in on other people's misfortune.

Recent fraud cases show that federal and state law enforcement are cracking down on these mortgage fraudsters, and are stepping up the number of investigations, nearly doubling their caseloads in the last year, according to the latest FBI task force report on Mortgage Fraud. Two cases announced in early April, one in Colorado and the other in New York City illustrate clearly what's at stake -- people's homes and millions in cash.

The scenario is a familiar one: Desperate homeowners who are falling behind on mortgage payments want to find help. They find a scammer instead.

The scenario is a familiar one: Desperate homeowners who are falling behind on mortgage payments want to find help. They find a scammer instead. The scammer tells them not to worry, sign over the house and make payments to them if possible. The homeowners think they've found a hero to champion their cause. Instead of keeping the promise, the scammer steals the title to the house, gets a shyster appraiser to inflate the value of the home, and then turns around and sells it to unsuspecting buyers.

The number of these types of mortgage fraud continues to rise, along with the number of foreclosures. In 2009, foreclosure filings were reported on more than 2.9 million properties -- a 21 percent increase in totals from 2008, and a 120 percent increase over 2007's numbers.

One resource institutions can point their customers and consumers to is the new booklet *Be Your Own Best Advocate: Mortgage Fraud Prevention by BITS*, the technology division of the Financial Services Roundtable. The booklet educates consumers about mortgage fraud and gives simple solutions they can use to protect themselves. As Leigh Williams, President of BITS notes in a recent interview, "Preventing fraud in products such as mortgage lending is an issue for many institutions. Anything that hurts a homeowner is bad for the homeowner and the institutions."

Examples of common mortgage fraud schemes are outlined in the booklet, such as signing incomplete documents or making payments for foreclosure rescue services that are otherwise free through government programs, such as the Homeownership Preservation Foundation and their HOPE Hotline.

Common mortgage fraud scams include property flipping, real estate investment schemes and reverse mortgage scams. The booklet also includes examples of foreclosure rescue scams that prey upon individuals who are in danger of losing their homes, and recommends that consumers contact their lender or non-profit organizations, which can assist the consumer before they fall victim to this fraud.

**MasterCard Names Ajay Banga President and Chief Executive Officer Succeeding Robert W. Selander
The Wall Street Journal Business Wire
April 12, 2010**

MasterCard Incorporated today announced that Ajay Banga, currently MasterCard's president and chief operating officer, has been named by the Board of Directors to serve as the company's president and chief executive officer, effective July 1, 2010. The company also announced that Banga has become a member of MasterCard's Board of Directors, effective immediately.

Banga, 50, will succeed Robert W. Selander, who has been MasterCard's chief executive officer since March 1997. Following the transition, Selander, 59, will serve as the company's executive vice chairman and continue to serve as a member of the company's Board of Directors through the date of his retirement on December 31, 2010.

Under Selander's leadership, MasterCard evolved from a 40-year-old membership association to a NYSE-listed public company on May 25, 2006. In 2009, Barron's cited Selander's management as a critical reason behind its decision to rank MasterCard first in the Barron's 500 -- a ranking which assesses operating performance among the 500 largest public companies in the U.S. and Canada. The company was also ranked number 10 in BusinessWeek's Top 50 Companies in 2009.

"Bob is a true visionary -- responsible for the transformation of MasterCard into one of the world's leading companies, and instrumental in shaping today's payments industry," said Richard Haythornthwaite, chairman, MasterCard Board of Directors. "We are extremely thankful for his 13 years of leadership as CEO, and look forward to his continued guidance as executive vice chairman.

"We are fortunate to announce the transition to a leader with Ajay's expertise and experience. His industry knowledge, as well as his deep background in financial services encompassing many geographies, makes him the ideal CEO to successfully drive MasterCard's future growth," concluded Haythornthwaite.

"Bob is a tremendous professional and I consider myself fortunate to have worked closely with him over the past several months," said Banga, who joined MasterCard on August 31, 2009. "I am excited to lead MasterCard at a time when the global opportunity for electronic payments has never been stronger."

"Since joining MasterCard in late August 2009, Ajay has demonstrated extraordinary leadership and insight, and I know he is the ideal candidate to lead MasterCard moving forward," said Selander. "As a company doing business in 210 countries and territories, MasterCard and its customers will benefit from Ajay's unique global perspective."

Prior to joining MasterCard, Banga spent 13 years at Citigroup from 1996, and held a variety of senior management roles in the United States and Europe, Middle East, Africa regions before becoming chairman and chief executive officer of Citi's international global consumer group in 2005. He was also responsible for Citi's brand and marketing work across the entire company. Most recently, he was chief executive officer of Citi Asia Pacific, responsible for all of the company's business lines in the region, including institutional banking, alternative investments, wealth management, consumer banking and credit cards. He was also a member of Citi's senior leadership and executive committees.

Beginning his business career with Nestle in 1981, Banga spent the next 13 years in a variety of assignments spanning sales, marketing, and general management. He later joined Pepsico and was instrumental in the launch of its international fast food franchises in India as the economy liberalized.

Banga serves on the board of Kraft Foods Inc. In addition, he is on the board of trustees of the Asia Society, is a member of the Council on Foreign Relations, The Financial Services Roundtable and The Economic Club of New York, and is a fellow of the Foreign Policy Association.

Banga was vice chairman of the board of trustees of the New York Hall of Science and a board member of the National Urban League. He was formerly a business sponsor of Citi's African heritage network -- NYC. Banga has a keen interest in social development issues, and over the period from 2005 to mid-2009, he spearheaded Citi's strategy in the microfinance sector across the world.

Banga graduated with a B.A. in Economics Honors from Delhi University and is an alumnus of the Indian Institute of Management, Ahmedabad.

Selander joined MasterCard in 1994, as executive vice president of the company's Europe, Middle East/Africa and Canada regions. Before joining MasterCard,

Selander spent 20 years with Citicorp/Citibank, N.A. where he was responsible for several consumer businesses operating in North America and Europe.

Operation HOPE and Gallup to Measure Financial Literacy for Youth
BusinessWire
April 15, 2010

On April 7th, under the backdrop of the Federal Reserve Bank of Atlanta, Operation HOPE (HOPE) Founder, Chairman and CEO John Hope Bryant along with Gallup Chairman and CEO Jim Clifton announced the creation of the Gallup-HOPE Financial Literacy Index. This first of its kind index will measure youth's relationship to financial literacy, how they envision their future and provide them with targeted, impactful training so that they ultimately achieve their aspired financial goals.

“Helping America’s youth understand the financial system is an empowerment tool that bleeds over into every aspect of their lives”

“Helping America’s youth understand the financial system is an empowerment tool that bleeds over into every aspect of their lives,” said Bryant. “And helping us get our hands around the perspective they have on this subject will help us help them.”

HOPE and Gallup understand that America’s youth are the future workforce and business builders of this country and that youth achieving their financial goals goes hand in hand with America realizing its economic potential and remaining competitive globally.

The Gallup-HOPE Financial Literacy Index will assess youth on their financial responsibilities and opportunities, evaluate their financial literacy and analyze how that relationship factors into their hope and wellbeing. The index will provide policy makers and community-based organizations with a tangible way to measure youth financial literacy and its impact on their communities and local economies. Gallup research has already proven that “hope” is a more powerful indicator of academic success and graduation than GPA and ACT scores. The new Gallup-HOPE Financial Literacy Index builds on this foundation, and recognizes that young people who do not understand the “language of money,” and who do not see opportunity in their lives, simply will not be successful over the long-term.

“Our children are in the playoff games of their lives with rising global economic powers,” notes Jim Clifton. “For us to compete successfully, we need to ensure that our nation is focused on new strategies and solutions that ensure all kids are ready for college, work, and life in the 21st century. That's why our partnership with Operation HOPE is so important, like the work both of our organizations do

with the America's Promise Alliance; our goal is to give schools and communities a new metric for school and community competitiveness.”

In making this announcement, Bryant revealed that Operation HOPE will also create the HOPE Office of Research and Assessment. This new department will focus not only on tracking the Gallup-HOPE Financial Literacy Index statistics but also on collecting, assessing and analyzing data as it pertains to HOPE services and their measurable direct impact on youth, adults and the community at large.

This historic agreement between HOPE and Gallup builds on the larger framework established by HOPE and the Financial Services Roundtable (FSR) in June 2009, during the HOPE Global Financial Literacy Summit. That agreement solidified FSR’s commitment to work with HOPE in providing financial literacy education and support for the next five years. FSR is an organization that represents the largest financial services institutions in the United States, and whose CEO serves on its governing board of directors.

Gallup and HOPE’s commitment to this groundbreaking initiative will span the next five years and focus primarily on low-income areas where HOPE has a physical presence and deep commitment to equipping this generation with the full financial knowledge and expertise to thrive.

About Operation HOPE, Inc.

Operation HOPE is America's leading nonprofit social investment banking and financial literacy empowerment organization. With more than 400 private sector partners, 3,500 nonprofit organizations and schools, and 100 government partners in 69 major U.S. cities and seven provinces South Africa, HOPE has raised more than \$500 million in its pursuit of educating, assisting and inspiring the next generation of global stakeholders in financial literacy, economic empowerment and silver rights. Through international initiatives and its principal programs, Banking on Our Future (teaching school children about money), HOPE Coalition America (Mortgage HOPE Crisis Hotline, 1-888-388-HOPE, financial emergency preparedness and disaster relief), Walk-in HOPE Centers (loans, computer literacy, understanding banking principles), and our 10,000 strong volunteer HOPE Corps, Operation HOPE has delivered services to more than one million low-wealth individuals and assumed the responsibility of piloting the Silver Rights Movement towards making free enterprise and capitalism relevant to all underserved communities. Ambassador Andrew Young, senior aide to Dr. King during the civil rights movement, serves as global spokesman for Operation HOPE and, along with music icon Quincy Jones, serves as co-chair of FIVE MILLION KIDS (5MK), an initiative aimed at breaking the high-school dropout epidemic in

America. To learn more about HOPE, visit www.operationhope.org and www.5MK.org, or read our blog at www.operationhope.org/blog.

About Gallup

Gallup has studied human nature and behavior for more than 70 years. Gallup's reputation for delivering relevant, timely, and visionary research on what people around the world think and feel is the cornerstone of the organization. Gallup employs many of the world's leading scientists in management, economics, psychology, and sociology, and our consultants assist leaders in identifying and monitoring behavioral economic indicators worldwide. Gallup consultants also help organizations boost organic growth by increasing customer engagement and maximizing employee productivity through measurement tools, coursework, and strategic advisory services. Gallup's 2,000 professionals deliver services at client organizations, through the Web, at Gallup University's campuses, and in 40 offices around the world. For more information please visit www.gallup.com.

Getting a loan will be pricier

Jennifer Liberto

CNN Money

April 12, 2010

WASHINGTON (CNNA Money.com) -- As the economy begins to mend, the cost of borrowing money for a big purchase could start to increase.

Mortgages, in particular, have flirted with record lows during the recession. Credit card rates have been bouncing upward and, while auto loan rates are expected to stay low for a little while longer, they can't stay low forever.

The Federal Reserve has played a key role in keeping the cost of borrowing so low, through the so-called fed funds rate, a benchmark that determines the interest paid by consumers and businesses on a wide variety of loans. That has been near 0% since December 2008, as the central bank worked to spur greater lending and economic activity.

But as the economy heals, that rate is sure to come up, as will the cost of a lot of loans - although economists assure that borrowing costs won't rise until the economy is ready for it.

"The important thing to remember the Federal Reserve has a mandate to maximize employment and keep inflation low, so interest rates may be going up, but it will

be in the context of better job growth," said Zach Pandl, an economist at Nomura Securities.

Mortgages: Apart from what the Fed does on interest rates, economists and Fed officials have been predicting higher mortgage rates for several months, as the Fed winds down credit programs that artificially spurred cheaper loans.

The Fed had been buying up a lot of mortgage-backed securities, but they recently stopped, which has already started to impact mortgage rates.

The 30-year fixed-rate mortgage reached an 8-month high last week, averaging 5.21%, according to Freddie Mac's weekly survey of conforming mortgage rates. Several times in 2009, mortgage rates dipped below 5%, considered to be record lows, thanks to the Federal Reserve's help.

"Throughout most of the last year we were right below or right above 5%, which really is an extremely low rate, historically," said Michael Fratantoni, Mortgage Bankers' Association vice president of research and economics.

MBA has been predicting mortgage rates would rise, maybe even reaching around 5.8% by the end of this year, Fratantoni said. And experts predict the rates will range around 6% in 2011.

Mortgage rates can really impact consumers by limiting what they can pay for a home.

Take the \$165,000 median home price of existing homes sold in February. A buyer with a 20% down payment would pay just over \$725 a month in mortgage payments for a 30-year fixed loan at today's rate.

Raise that rate by a half point, and the same buyer would only be able to afford a home worth \$156,000 to keep payments near the \$725 a month level.

Credit cards: Credit card interest rates have been on an upward march for nearly a year because of the overall increased risk that people can't make their payments in a recession.

The average credit card rate rose to 14.7% last week from 12.55% from six months ago, according to a survey of 95 of the most popular cards by Creditcards.com, a comparison site for card offers.

"It's going to keep edging upward a bit, because credit losses aren't going to improve for the banks until unemployment heads down," said Ben Woolsey, an analyst at Creditcards.com.

While new credit card laws passed by Congress in the past year make it more difficult for banks to raise interest rates in several ways, they won't touch hikes in rates based solely on a financial index. One common index used, the prime rate, is at a 3.25% low and is expected to increase.

The flip side is that if the financial index rises and then later falls, the interest rate on the variable credit card rises and falls, said Scott Talbott, senior lobbyist for the Financial Services Roundtable.

"By tying the interest rate to an index, it largely takes the decision (on changing rates) out of the credit card company's hands," Talbott said.

Auto loans: One borrowing bright spot could be auto loans, which have been at record lows, thanks in large part to a lot of 0% financing deals aimed at wooing customers.

In March, auto loans averaged 4.4%, much lower than the 7.3% average back in March 2007, according to Edmunds.com, an automotive Web site that tracks such information.

In the case of auto loans, experts predict the financing deals will last a while longer. For one thing, there's more money available for auto loans than the demand for the loans, according to Nomura's Pandl.

"It can't go on forever, but incentives have always been a part of the auto industry," said Edmunds.com senior analyst Jessica Caldwell, who predicts the low rates will last for some time to come. "I don't ever see them turning that off."

Patent Litigation Weekly: With Trial Win, DataTreasury Licensing Campaign Gets Boost
Corporate Counsel
April 05, 2010
By Joe Mullin

On March 26, an East Texas jury ordered U.S. Bancorp to pay \$27 million for infringing check-imaging patents held by DataTreasury. That sum—which could be tripled since the infringement was found to have been willful—will be added

to the more than \$350 million that DataTreasury has already collected from some 30 other banks and check-processing companies that have agreed to license the small company's patents. (Verdict Form, PDF).

The verdict is a first for DataTreasury, which has two additional trials scheduled against a total of eight banks. In those cases, the holding company is demanding a combined \$1.39 billion in damages—more than half of it from Bank of America for processing 64 billion checks in a manner that DataTreasury says infringes its patents. (See p. 5 of Scheduling Order, PDF).

While DataTreasury is now a patent-holding company based in Plano, Texas, at its peak in 2002 it had about 100 employees, \$25 million in investor cash, and a high-tech data processing facility in Long Island. Able to land only one small client, though, the company collapsed in 2003. The only assets that remained, according to trial testimony by inventor and company chairman Claudio Ballard, were the two patents, Nos. 5,910,988 and 6,032,137, it has used in its ongoing licensing campaign. Today, DataTreasury has over 1,000 shareholders; Ballard only owns a small percentage of the company, said Wetzel.

The trial victory is an important step forward in that campaign, which by any measure has already been hugely successful. Some of the company's biggest licensing deals—previously confidential—were divulged during trial. Those settlements include a \$50 million payment from Citibank, \$23.5 million from Union Bank of California, and \$38 million from First Data Corp., which provides check-processing services to banks.

The trial win is also significant because it comes at a time when business-method patents such as those held by DataTreasury are more controversial than ever. And the Supreme Court's highly anticipated decision in the *Bilski* case—which could come later this month—may change completely the landscape for patents related to the financial services industry. During the *Bilski* oral argument, several of the justices expressed skepticism about the value of the patent at issue in that case, which purports to cover a method of hedging commodity risk.

As might be expected, the DataTreasury's spokesman was elated with the outcome of the trial.

“This is an important victory for DataTreasury,” DataTreasury spokesman Eric Wetzel tells *The Prior Art*. “Not everybody believed that check imaging was the way of the future in 1994. But Claudio Ballard believed that, and he was ahead of the curve.”

US Bank declined an interview request but provided a statement on the verdict: "We are disappointed with the jury's verdict, but remain confident that U.S. Bank did not infringe the patents at issue and that the patents will ultimately be held invalid. U.S. Bank intends to pursue all avenues to protect its rights in further proceedings before Judge Folsom and on appeal if necessary.

Steve Bartlett, CEO of the bank lobbying group Financial Services Roundtable, says DataTreasury's suit against U.S. Bancorp is a prime example of why business method patents need to be reined in. The patents don't amount to an invention, Bartlett says, just a description of a common business practice—processing checks—that has changed over time, as have answering the phone and opening mail. To Bartlett, that such a patent can be used to extract large sums from banks shows how far the patent system has spun out of control.

"This particular case involves check processing, which every bank in the nation has been doing for 200 years," says Bartlett. "And yet [DataTreasury] somehow got a patent on it."

But Ballard and other plaintiff witnesses told the East Texas jury that DataTreasury's system for processing checks represented a true breakthrough in the field—one that other banks benefitted from, these witnesses said, after a series of meetings with Chase Manhattan bank officials in 1998. Eventually, DataTreasury lawyers from Nix, Patterson & Roach told jurors, Ballard's ideas about a digital check-processing system were put into practice by two non-profits, Viewpointe Archive Services LLC and The Clearing House Payments Company LLC, which service much of the banking industry. (Viewpointe and The Clearing House were co-defendants in this lawsuit.)

The jury ultimately found that story convincing.

So how did DataTreasury win? While it's impossible to know what transpired during juror deliberations, trial transcripts do show the key points hit in closing arguments used by both legal teams.

First, DataTreasury attorneys emphasized that the Ballard patents had not only issued but had survived an ex parte reexam at the U.S. Patent and Trademark Office.

Beyond that, DataTreasury attorney Nelson Roach told the jury, the prior art presented trial—which included a 1995 request for proposals issued by the Federal Reserve, and submissions from IBM and Unisys in response to that RFP—did not invalidate Ballard's patents. The Federal Reserve proposal, for instance, relied on

magnetic tapes, not, as Ballard's invention did, on electronic transmissions, Roach said.

"They were not for what Mr. Ballard invented," Roach said.

While defense lawyers emphasized during the trial that DataTreasury's experts were paid—including a computer scientist who acknowledged that serving as a DataTreasury expert was his full-time job—Roach reminded the jury that "not everybody" who found value in Ballard's patents was on the company's payroll.

"Four qualified, experienced, unbiased experts have decided whether or not the Ballard patent is new and novel," Roach said during his summation. "They are the patent examiners....They are paid by the United States of America. They are paid by the United States of America to help protect and make America strong by protecting American inventors and protecting American invention."

"Remember what Dr. [Jerry] Hausman, the defendants' expert, told you would happen if we disregarded intellectual property rights?" Roach continued. "That we'd end up like India and Egypt where people don't invent things. Instead, they go around talking about ways they hate America and ways they want to fly airplanes into our buildings."

"Trust the Patent Office, folks."

Another plaintiffs' lawyer, Anthony Bruster, described US Bank's action as a "shortcut across a piece of property, a valuable piece of property owned by DataTreasury Corporation. And they took that shortcut, because they didn't want to get left behind. They wanted to be a megabank."

For their part, defense lawyers used their closing argument to fire a final shot at Ballard's invention. Joe Redden of Houston law firm Beck, Redden & Seacrest, representing U.S. Bank, tried to give jurors the short version of how Ballard what the bank claimed was an undeserved patent.

Redden told jurors that at first examiners rejected Ballard's patent application, both on initial examination and at reexam, citing check-scanning technology dating back as far as 1981.

"So Mr. Ballard amended his application to add the idea of encryption, and he got his patent," Redden said. Ballard's patent survived the reexam, Redden added, because it had one additional feature—encrypting a two-digit ID number on the back of a check.

"So the patent office let Mr. Ballard keep his patent, even though what he had invented was very small and frankly worth very little," said Redden. "It should be clear to you that what Mr. Ballard thought was an invention actually had been known, practiced, and offered for sale in this country at least as early as 1993." (Ballard's patent applications were filed in 1997 and 1998 and, the patents-in-suit were issued in 1999 and 2000.)

U.S. Bank was also represented by John Gutkoski of Foley & Lardner. Viewpointe was represented by Haynes & Boone and Skadden, Arps, Slate, Meagher & Flom. The Clearing House was represented by Sullivan & Cromwell and Fitzpatrick, Cella, Harper & Scinto, and locally by a Tyler firm, Flowers Davis.

The one part of U.S. Bancorp's defense that did prove successful was Redden's argument that any damages award be limited. "If you disagree with me and you think there's infringement, I would simply ask you to please weigh the evidence carefully," Redden said. "DataTreasury is entitled only to reasonable compensation based upon the credible evidence, not some pie-in-the-sky number....The idea of encrypting an ID number so you can tell which machine scanned in the check, what's that really worth?"

Twenty-seven million dollars, according to the jury—more than four times what one defense expert suggested, but less than 15 percent of the \$201 million the plaintiff hoped to walk away with.

Leading identity theft prevention company pairs with identity theft assistance center

CreditLoan.com

April 12, 2010

Intersections, Inc. has just announced its new partnership with the **Identity Theft Assistance Center (ITAC)**, which will provide recovery services to consumers who have fallen victim to identity theft.

Intersections, a leading provider of extensive identity theft services to both consumers and corporations, will update its current Identity Guard program to incorporate ITAC Victim Assistance, a broad range of identity theft recovery services. Among the many new features of this partnership, ITAC Victim Assistance will electronically notify members and banks of suspected fraud activities.

"Identity theft isn't going away anytime soon. Javelin Strategy & Research's 2010 Identity Fraud Survey Report saw a 12 percent increase in the number of identity

theft victims in the U.S. just last year," executive vice president of Intersections, Steve Schwartz said.

In addition to prevention, the ITAC Victim Assistance program will also provide victims with advice on how to regain their reputation among creditors while repairing their credit.

The identity theft recovery process can be long and costly. Victims of identity theft, especially those who have had new credit card accounts opened in their name, will be forced to undergo a lengthy credit repair process that can take years to improve.

Industry Urges Government Role, Even in Post-GSE World
Housing Wire
April 14, 2010
By Diana Golobay

Despite whatever changes face the US mortgage finance market and the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac (FRE [2]: 1.53 0.00%), the government has an important role to play in backing mortgage origination and securitization, according to expert testimony provided to the House Financial Services Committee today.

The GSEs played an essential part in supporting affordable housing in the absence of a private mortgage market, US Department of Housing and Urban Development (HUD) secretary Shaun Donovan told the Committee. He noted the GSEs did so in a sustainable fashion — contrary to criticism that affordable housing goals forced an expansion [3] into high-risk loans, exposing the GSEs to financial weakness.

Additionally, Donovan said the GSEs have emerged as major providers of multifamily financing. This element of housing finance should not be overlooked, he said, echoing earlier comments from Committee chairman Barney Frank (D-MA) [4] that there should be a focus going forward on preserving affordable rental housing.

“A well-functioning rental market will be particularly important in the immediate future, as rental markets will absorb a larger-than-usual number of families who owned homes during the bubble but will be renting in the near future,” Donovan said in prepared remarks.

Other committee members stressed that a future mortgage finance system should be based on private investment, which largely evaporated with the economic

downturn. Donovan said that, although investors may be hesitant to buy new securities, securitization markets are beginning to heal.

“We are hopeful with our efforts to try to bring the private market back,” he told the Committee. “We do see early signs of that beginning to happen.”

The market saw its first commercial mortgage-backed deal since the credit freeze, and Donovan said he expects Redwood Trust to issue the first batch of residential mortgage-backed securities (RMBS) as early as next week. A spokesperson for Redwood declined to comment.

To support the future of securitization, Anthony Reed, executive vice president of capital markets at SunTrust Mortgage, testifying to the Committee on behalf of The Financial Services Roundtable, urged the formation of a federally chartered but privately-owned Mortgage Securities Insurance Companies (MSICs) to provide credit enhancement.

He also proposed a single Mortgage Backed Security (MBS) Issuance Facility to create and administer MBS guaranteed by the MSICs. Additionally, he said MSICs should contribute a stream of revenue to be distributed to state and local housing finance agencies.

Sheila Crowley, president and CEO of the National Low Income Housing Coalition, recommended that Congress provide an initial \$1.06bn of capital to implement the National Housing Trust Fund, which can be afterward funded in part by fees levied on mortgage securitization by capital markets participants.

Crowley also recommended reforming the mortgage interest deduction, and enacting a federal rent credit to provide low-income renters with a housing subsidy similar to those given to homeowners.

“Consider how much worse our economy would be if we had not had Fannie and Freddie over the past 18 months,” she said. “Federal backing in some form or fashion will be required to sustain such a secondary mortgage market.”

Alex Pollock, resident fellow at the American Enterprise Institute, proposed structuring “a transition to a world of no GSEs.” This post-GSE market would be protected by some form of credit risk retention by originators, he said.

“You can be a private company, with market discipline; or you can be part of the government, with government discipline. But you can’t be both,” Pollock said. “Trying to be both, in other words, a GSE, means you avoid both disciplines.

Fannie and Freddie, or parts of Fannie and Freddie, should become one or the other.”

Groups join forces to urge Congress to act fast on NFIP extension

IFA Webnews

April 13, 2010

By Keith L. Martin

With Congress reconvened, eight national organizations, including representatives from the insurance industry, are asking lawmakers to aid millions by reauthorizing the National Flood Insurance Program (NFIP).

The federal program expired March 28 without an agreement between the Senate and House of Representatives on either a short- or long-term extension of the initiative that provides flood insurance coverage to more than 5 million property owners in the U.S.

On April 12, the Senate agreed to begin debate on a comprehensive unemployment benefits package that includes an extension of the program. Republicans have continued to threaten to block a final vote on the matter, as they did prior to the Senate’s Easter recess, citing concerns on how to pay for the benefits outlined in the bill.

In a letter to congressional leaders, the eight organizations, including the American Insurance Association, Property Casualty Insurers Association of America and the Independent Insurance Agents and Brokers of America, urge expeditious action by lawmakers.

Since the program expired March 28, no new policies to protect homeowners have been written, stalling closing on homes and leaving many in limbo regarding coverage.

“Without quick retroactive reauthorization of the NFIP, residential and commercial real estate transactions in flood zones across the country will be further adversely impacted, as federally-backed mortgage loans cannot be secured without this critical protection,” the groups wrote.

Furthermore, the organizations point out that if the NFIP is not reauthorized, Congress will still be paying for post-disaster relief for flood victims, but without the ability to collect premiums for renewing flood insurance policies to the tune of nearly \$3 billion each year.

The groups also urge federal lawmakers to enact a long-term extension of the program, ending the practice of approving several short-term extensions, the last two of which have expired. The expirations force Congress to make their action retroactive to the expiration date.

“This is the second time in recent months in which Americans have not been able to count on the NFIP because the program’s authorization has been allowed to lapse,” the letter states. “The NFIP is critically important to Americans and the U.S. economy. We urge Congressional action now to reauthorize this program and avoid the costly consequences that would result from a failure to do so.”

Also represented as authors on the letter are the National Association of Mutual Insurance Companies, The Financial Services Roundtable, the Mortgage Bankers of America, the National Association of Realtors and the National Association of Home Builders.

Loan mods impact credit scores

KPNX-12

April 12, 2010

By Melissa Blasius

Homeowners who get a loan modification may find an unintended side effect, a drastically lower credit score. While some credit impact is allowed under the federal Making Home Affordable program, 12 News found banks sometimes ignore the rules. That can cause lasting financial problems for families.

Tim Suchecki says his score dropped 200 points while he was in a temporary Making Home Affordable modification. During that time, Citibank reported that he was up to 90 days delinquent on his mortgage. Suchecki said that wasn't fair because he was current on his mortgage when he started the loan modification and he always paid as agreed.

Once Suchecki received his permanent loan modification, he asked Citibank to remove the old delinquency report. When the bank

refused, he called 12 News for help. We found credit reporting rules on the official Making Home Affordable website.

Here's what it says:

"Each month, servicers must describe to the credit reporting agencies the exact status of each mortgage. If you are current with your mortgage payments prior to the trial period and you make each trial period payment on time, your servicer must report you as current and also identify the loan as "modified under federal government plan." If you are delinquent (at least 30 days past the due date) prior to the trial period and the reduced payments do not bring the account

current, your servicer must report the level of delinquency and also identify the loan as 'modified under federal government plan.'"

12 News called Citibank asking why its credit reporting on Suchecki seemed to contradict federal rules. Within hours, a spokesman responded with an apology. Suchecki says the bank now promises to remove all the delinquencies from his credit report.

Homeowners who believe their lender misreported delinquencies to credit bureaus can appeal in several ways. They can call the HOPE Now Alliance hotline at 1-888-995-HOPE. They can also file a complaint with the federal Comptroller of the Currency, which regulates national banks.

**Free foreclosure help
KTNV Las Vegas
April 7, 2010**

A two-day home ownership preservation workshop, sponsored by the Obama Administration's Making Home Affordable Program, HOPE NOW Alliance and NeighborWorks® America, will be held in Las Vegas for all homeowners who may be at risk of foreclosure. The workshop is free, open to the public, and provides a chance for homeowners to meet face-to-face with their mortgage company and a HUD-approved counseling agency to work on a solution to help them stay in their home.

WHO: Las Vegas homeowners who are in default on their mortgage or may be at risk of foreclosure

WHAT: Free Home ownership Preservation Workshop

WHEN: Thursday, April 8, 2010

1:00pm -7:30pm

Friday, April 9, 2010

1:00pm - 7:30pm

WHERE: Gold Coast Hotel & Casino

4000 W. Flamingo Rd.

Las Vegas, NV 89103

Free parking available on-site

The Obama Administration's Making Home Affordable Program was created to help millions of homeowners refinance or modify their mortgage payments to a level that is more affordable.

HOPE NOW is the industry-created alliance of mortgage services, investors, counselors, and other mortgage market participants, brought together by the Financial Services Roundtable, Housing Policy Council and Mortgage Bankers Association, that has developed and is implementing a coordinated plan to help as many homeowners as possible prevent foreclosure and stay in their homes. For more information call the free Homeowner's HOPE™ Hotline at (888) 995-HOPE.

NeighborWorks® America creates opportunities for people to improve their lives and strengthen their communities by providing access to home ownership and to

safe and affordable rental housing. NeighborWorks® America is the nation's leading trainer of community development and affordable housing professionals.

HOPE NOW Servicers Assist More Than 1,300 Families in Portland and Seattle at Homeownership Preservation Events

Loansafe.org

March 31, 2010

By Moe Bedard

More than a dozen HOPE NOW servicers, including Bank of America, Chase, Citi, GMAC, Suntrust, Wells Fargo and others, assisted more than 1,300 homeowners from across the Pacific Northwest, during three homeownership preservation events held there last week.

On Tuesday, March 23rd, 532 at-risk families were in attendance at the Doubletree Hotel in Portland, Oregon to meet with mortgage servicers and HUD-approved housing counselors. A two-day event in Bellevue, WA (Seattle area) on Thursday and Friday, March 25th and 26th saw an additional 796 homeowners. The second day of the Bellevue event was specifically held for the purpose of collecting missing documents needed for Home Affordable Modification Program (HAMP) applications.

“HOPE NOW has now held 69 total events since 2008, assisting over 59,000 families in a safe, confidential and free environment. In 2010 alone, we have already hosted ten events across the country. The industry has reached out aggressively and collaborated with the government and the non-profit communities to make these events successful. We are pleased that at-risk homeowners in the Portland and Seattle areas made the effort to come out and work towards solutions to their mortgage issues. Our servicers are committed to face to face outreach as one of their many tools for keeping as many borrowers as possible in their homes,” said Faith Schwartz, Executive Director of HOPE NOW.

At the Bellevue, WA event, Tim and Rae Engebretson from Tacoma, WA were among several homeowners who received results on-site.

“When I first got the letter from GMAC, I was sure it was a scam, but my husband convinced me to come to the event. We are facing an unemployment situation and are determined to keep our home. Showing up today was well worth the effort as our lender was able to reduce our monthly payments by almost half for the next six months. This will help us greatly as we try to get ourselves back into the workforce,” said Mrs. Engebretson.

“GMAC supports the goal of preserving homeownership, and was pleased to work with HOPE NOW and its partners at these events in order to help at-risk homeowners find solutions. We made our skilled loss mitigators available so that we could reach a decision on-site wherever possible. In all cases, we will continue to work with the borrower to reach a resolution,” said Dana Dillard, senior vice president of mortgage initiatives at GMAC.

These homeownership preservation events will continue throughout 2010, with events already lined up for Reno, NV (April 6th) and Las Vegas, NV (April 8th and 9th). Events in Richmond, VA and the New York City area are also tentatively scheduled for April. The workshops are co-sponsored by the Obama Administration’s Making Home Affordable Program and NeighborWorks® America.

For more information about upcoming events, visit www.HOPENOW.com. HOPE NOW is the industry-created alliance of mortgage servicers, investors, counselors, and other mortgage market participants, brought together by the Financial Services Roundtable, Housing Policy Council and Mortgage Bankers Association, that has developed and is implementing a coordinated plan to help as many homeowners as possible prevent foreclosure and stay in their homes. For more information, go to www.HopeNow.com or call the free Homeowner’s HOPE™ Hotline at (888) 995-HOPE. The following companies are members of HOPE NOW: American Home Mortgage Servicing, Inc.

Senate showdown nears on overhauling financial rules

McClatchy Newspapers

April 6, 2010

By Kevin G. Hall

Consumer advocates and financial industry lobbyists are locked in battle for the hearts and minds of senators as the time nears for them to put up or shut up on the most sweeping revamp of financial regulation in generations.

A reworked Restoring American Financial Stability Act of 2010 passed the Senate Banking Committee on a party-line vote without amendment on March 22, leaving the fight over details to come on the Senate floor soon after lawmakers return next week from their spring recess.

The two political parties disagree on plenty, despite the obvious need to fix what led to a near-collapse of the global financial system in September 2008. However, banks are spending a lot of last year's record profits to influence the debate.

Larry Summers, the president's chief economic adviser, said recently on ABC News that "you got a million dollars being spent, per congressman, in lobbying expenses on this issue; industry has four lobbyists per member of the House and Senate working on this."

Fighting back, consumer groups allied under the banner Americans for Financial Reform are taking the issue to the streets, planning protests in front of banks and the offices of lawmakers who voted against the legislation in committees.

Lawmakers disagree on how to address two principal causes of the financial crisis: policing the extension of credit to consumers, and whether to require lenders to retain portions of the risks they take on.

The lack of any real policing of mortgage lenders and brokers allowed for an explosion of credit to borrowers who took on unsuitable loans. Because lenders didn't retain the loans on their books, but instead sold them to financiers who packed them into pools of mortgage-backed bonds, they had no skin in the game. Lending standards weakened considerably. A joke at the height of the housing boom bragged that "a rolling loan gathers no loss."

Eight million lost American jobs and a tidal wave of foreclosures later, that joke proved to be wrong. Now lawmakers must try to make things right.

One area that's slated to change is securitization, the process of selling mortgages, car loans and other forms of consumer credit into a secondary market, where they're pooled and sold to investors as bonds that pay monthly income streams. "Securitizers" didn't retain any risk, instead bundling bad loans for sale to investors and blaming poor underwriting for later problems.

The Senate bill would force "securitizers" to retain 5 percent of whatever they issue for sale into the secondary market. That's only half of what Europe requires, but the U.S. industry sees it as too much.

"We don't think this is going to help better align incentives," said Tom Deutsch, the executive director of the American Securitization Forum in New York.

His group is lobbying instead to require buyback provisions so that when loans go bad, banks must buy them back. Something like this was in place during the housing boom, but when boom turned to bust the provisions proved to be largely unenforceable.

"I should have to buy that whole product back, not just 5 percent. The industry's view is that's a better form of risk retention than 5 percent," Deutsch said.

Consumer groups are wary, pointing to a lack of regulatory enforcement in the run-up to the crisis.

"Every special interest is making its own argument," said Heather Booth, who heads Americans for Financial Reform. "If they listen to the American public, it should be very easy to reach an agreement. They want not just a watchdog, but a watchdog with teeth for American consumers."

That's why the biggest battle ahead will be over an independent Consumer Finance Protection Agency. Senate Banking Committee Chairman Christopher Dodd, D-Conn., wants this new agency to establish and enforce rules for consumer credit products, such as mortgages, credit cards and payday loans. The agency's leader would be appointed by the president and confirmed by the Senate.

The financial sector and the U.S. Chamber of Commerce are spending buckets of money on ads and lobbying, however, hoping to ensure that at worst, the agency won't be able to enforce the rules it writes and will rely instead on existing bank regulators for that.

"If you have safety and soundness (of banks) separate from consumer protection ... you create additional jockeying for turf between regulators," said Tom Quaadman, the executive director of the U.S. Chamber of Commerce's Center for Capital Markets. "We have called for increased consumer protection, a council of existing regulators who have existing authority, who engage in the novel practice of sharing information and coordinated action."

That approach has been discredited, warned Simon Johnson, a former chief economist of the International Monetary Fund and the author of the new book "13 Bankers: The Wall Street Takeover and the Next Financial Meltdown."

"That's a complete non sequitur," Johnson said in a speech Thursday, scoffing at the notion that current regulators are up to the task. "That is not what the history has been over the past 30 years."

Existing regulators would get new powers and mandates under the industry's preferred approach, countered Scott Talbott, the chief lobbyist for the Financial Services Roundtable, a trade group for big financial firms.

"What we're doing is modernizing the regulatory framework, elevating consumer protection to a core mission for the banking regulators," he said. "Up to now, consumer protection has not been a core mission."

Financial Reform: Five Fights to Watch

Mother Jones

April 14, 2010

By Andy Kroll

Back in action after its two-week recess, Congress will soon take up its latest daunting legislative battle: rewriting the rules of the American financial system. In their nearly year-long debate, lawmakers have clashed over everything from the creation of a new consumer protection agency to protecting the economy from too-big-to-fail mega-banks.

This month, as the Senate resumes work on its draft, numerous showdowns loom—between Wall Street and Congress, Democrats and Republicans—on dozens of aspects of the 1,300-page bill. Some of the controversial provisions you know; but others have so far slipped mostly under the radar. Here are five looming battles sure to pit lobbyists against lawmakers and lawmakers against their colleagues. The outcome of these skirmishes could ultimately determine whether the bill fixes the flaws in our financial system or merely pays lip service to reform.

1) Shining a Light on Shadow Banking

The shadow banking system is the murky terrain of non-commercial banks, hedge funds, and other institutions that operate outside the scrutiny of federal regulators and parallel to the traditional banking system. Before the economic crisis, this financial netherworld included non-banking behemoths like Lehman Brothers, Goldman Sachs, and Morgan Stanley, and reached \$10 trillion in size in 2007—rivaling the traditional banking sector. Many of its big players created and traded heavily in complex financial products like credit default swaps and collateralized default obligations—which their proponents claimed helped to circulate credit throughout the global financial system, among other uses.

When the shadow market started to collapse in 2007, that source of credit began to dry up. At the same time, the Lehmans and Goldmans of the shadow banking system were highly leveraged—they'd borrowed huge sums to magnify their bets. When the economy tanked, their losses were staggering. Lehman's debts were so out of proportion to its assets that when the crash came, the firm crumbled with it. (As Lehman's autopsy report revealed, the firm went so far as to hide its staggering leverage levels in order to make it look healthier.)

How can lawmakers make sure risky shenanigans in the shadow banking system won't again wreak havoc on the entire economy? The Senate bill calls for new rules on capital requirements—which in plain English means mandating that an institution keep a certain amount of cash on hand to cover losses if its bets go bad.

Forcing shadow banks to boost their reserves would go a long way toward preventing dangerous collapses a la Merrill Lynch or Bear Stearns. Of course, saying we need capital requirements and deciding what those should be are two very different actions. Right now, there's little, if any, consensus on what those capital requirements should be, and Treasury Secretary Timothy Geithner has shown little appetite for pushing this issue.

When it comes to leverage, there's some cause for optimism: The House's version of financial reform sets a 15 to 1 leverage limit, meaning future Lehmans can't hold more than \$15 in debt for every \$1 in assets. (The big investment banks had leverage levels of 30 to 1 or higher just before the crash.) The big question is whether the Senate will follow suit, as GOPers have reportedly objected to new capital requirement rules.

2) The Ratings Agencies' Conflict of Interest Problem

The toxic mortgage bonds and other products that helped demolish the economy were stamped with blue-chip ratings from the big three ratings agencies—Moody's, Standard and Poor's, and Fitch. Why did they affix their seal of approval to junk investments? The answer is complex, but largely centers on the fundamental conflict of interest with the rating agencies: they get paid by the same firms that are seeking ratings for their products. This arrangement allowed banks to shop around for the highest score regardless of whether the product deserved it or not.

It's not clear whether the Senate bill will fix this problem. Senate banking committee chair Chris Dodd (D-Conn.) has proposed creating a new watchdog within the Securities and Exchange Commission to keep an eye on the agencies. The bill would also give investors the right to sue them for "a knowing or reckless failure" to thoroughly investigate a product before issuing a rating. But will that SEC watchdog address the conflict of interest in how rating agencies get paid? Will it revisit the pseudo-governmental role played by the Big Three agencies, whom the SEC has used as official arbiters of safety in the markets? These questions, raised by academics, experts, journalists, and others, have yet to be fully addressed by the Senate.

3) CEOs vs. Shareholders

In the aftermath of the financial crisis, the stratospheric pay packages of top executives sparked widespread outrage. The Dodd bill would tackle this by giving shareholders a "say on pay" via a non-binding vote on executive compensation deals. The bill would also allow the SEC to give shareholders proxy access—that

is, the ability to vote without actually attending a shareholder's meeting—to nominate directors at financial institutions. The goal of this provision would be to "help shift management's focus from short-term profits to long-term growth and sustainability." (The House financial bill includes a similar provision.)

These provisions have already come under heavy fire from Wall Street—and expect the assault to become fiercer as the debate over financial reform heats up. In February, ten heavyweight industry groups—including the Business Roundtable, Financial Services Roundtable, the National Association of Manufacturers, and the US Chamber of Commerce—penned a letter decrying shareholder reforms to the Senate banking committee, which was then still crafting its bill. Those provisions, the letter said, will "lead to serious unforeseen (and unforeseeable) consequences that will inhibit job creation, endanger the ongoing economic recovery, and prevent the American economy from reaching its full potential." Republican senators on the committee also submitted multiple amendments last month that would weaken the bill's provisions to empower shareholders.

The provision could garner support from no less than President Obama himself, who as a senator publicly pledged his support for a "say on provision" for shareholders.

4) The Broker Loophole

One antiquated and longstanding rule of the financial system is that investment advisers, who offer guidance to the average investor, are required by law to find the best possible investment for their client while disclosing how much they might make from the deal. Brokers, who also provide investing advice, in addition to buying and selling securities for others, aren't held to that standard—leaving them free to hawk complicated products to clients that will net them hefty fees. Sometimes the products in question are even made by the same firm employing the broker. (In 2006, there were about 10,000 investment advisers and 5,000 brokers in the financial services industry.) A November draft of the Dodd bill sought to address this discrepancy by making brokers subject to what's known as a "fiduciary standard"—meaning that they would have to put their clients' interests above how much commission they stand to make on a deal.

But the brokers fought back. Brokerage firm Edward Jones said the provision could "lead to a change that would not be to the benefit of the individual investor." Supporters of the proposed change say these sorts of claims are misinformation at best. However, instead of applying new rules to brokers, Dodd's draft legislation now only commissions a study on the effects of implementing a fiduciary standard for them. The North American Securities Administrators Association, which

represents state securities regulators, said in a letter to the banking committee that it was "profoundly disappointed" with this change. "The study language is the culmination of a massive lobbying effort by some in the financial services industry," wrote NASAA's president Denise Voigt Crawford. Pushing for the standard would go a long way toward protecting Main Street investors, who have suffered massive losses in recent years.

5) Skin in the Game

Flying mostly under the radar is a provision in the Dodd bill that would require certain mortgage companies to retain a financial stake in the loans they issue. The proposal, known as "risk retention," would signal a major change from the subprime heyday of the early- to mid-2000s, when mortgage companies like Countrywide and Long Beach Mortgage Company bundled billions of mortgages into bonds backed by pools of those loans. Those bonds were then purchased by Wall Street or Fannie Mae and Freddie Mac, the two government-sponsored housing corporations. This process allowed the Countrywides and Long Beaches to sign up borrowers for sketchy loans and then shift all the risk—say, if a homeowner defaults—onto the investors who bought the bonds. The shoddy quality of the loans underlying the bonds was someone else's problem.

When Dodd released an earlier reform proposal last year, it suggested requiring companies that package and sell mortgage-backed securities to retain at least 10 percent of the risk, meaning they'd be partially on the hook if the loan defaulted. (Bonds made up of loans meeting certain standards would be exempt from the rule.)

But the rule has already been watered down, as a memo from the Mortgage Bankers Association shows. Now, the Senate bill only requires securitizers to retain 5 percent of the risk.

How this issue will play out remains unclear. The MBA's memo suggests that the organization will press Senate lawmakers for the provision to be undermined even further. One key GOP player on the banking committee, Sen. Bob Corker (R-Tenn.), may not be a fan: he has said he fears that forcing securitizers to retain a portion of the risk of the loans could eat up the money on their books. But some liberal senators have supported the provision. This will be a fight to watch.

Ipema Joins Financial Services Roundtable
National Journal
April 14, 2010
By Randy Barrett

Brad Ipema has joined the Financial Services Roundtable as senior counsel for legal and regulatory affairs.

Ipema joins the organization having served as senior consultant for the Regulatory Fundamentals Group in New York City and after building his own law practice specializing in financial services and technology. Ipema earlier served as a deputy general counsel and senior vice president for USAA in San Antonio, TX, and as senior vice president and assistant general counsel for Wachovia in Charlotte, NC.

Coalition Urges Government to Hasten Return of CRE Lending
National Mortgage News
April 9, 2010

A new coalition of commercial real estate interests is urging the government and Congress to act quickly to revive CRE lending and help speed up the economic recovery.

In a "Roadmap to Recovery," the Commercial Real Estate Coalition outlines 51 recommendations to revive the CRE sector and refinance \$1.3 trillion in CRE mortgages that mature by the end of 2013.

Right now, "the capital necessary to refinance those loans remains largely unavailable," said Steve Bartlett, president and chief executive of the Financial Services Roundtable. The coalition is calling for special tax breaks to boost investment in CRE mortgage and easing accounting, capital and appraisal standards to facilitate refinancing.

One of the major goals of the coalition is to restart the commercial mortgage-backed securities market. The roadmap points out that Financial Accounting Standards 166/167 combined with risk retention proposals and recent risk-based capital changes "can virtually halt the securitization credit markets and restrict overall credit availability."

The coalition also points out that banks hold \$1.5 billion in CRE loans and property values have dropped by as much as 40% in some areas. Meanwhile, CRE lending and securitizations have plummeted to extremely low levels. "The liquidity crisis will be exacerbated by those small and community banks that will be hard hit by CRE losses," the roadmap says.

HOPE NOW brings mortgage counseling and HAMP assistance to Nevada homeowners
National Mortgage Professional Magazine
April 13, 2010

Representatives from more than a dozen mortgage servicers, plus several local U.S. Department of Housing & Urban Development (HUD)-approved housing counselors, were on hand recently in Reno and Las Vegas to assist struggling homeowners with their mortgages. In Reno, 728 families had the opportunity to sit down one-on-one with their mortgage company and a HUD-approved housing counselor. Three more events were held in Las Vegas. The total attendance for the three days in Las Vegas was 1,625. The third day was a document collection event, specifically held for the purpose of collecting missing documents needed for Home Affordable Modification Program (HAMP) applications.

“The industry has engaged in unprecedented borrower outreach efforts across the country, completing almost 2.7 million loan modifications since 2007,” said Faith Schwartz, executive director of the HOPE NOW Alliance. “These events are a big part of the effort and HOPE NOW will continue to collaborate with the government and the non-profit community to keep as many families as possible in their homes.”

“Over one million homeowners across the country have been offered help from the Making Home Affordable Program,” said Phyllis Caldwell, Chief of the U.S. Department of the Treasury's Homeownership Preservation Office. “These events provide more homeowners the opportunity to meet one-on-one with their mortgage company and a HUD-approved housing counselor to discuss their options--for free.”

Michael and Tanya, homeowners from Henderson, Nev., attended one of the Las Vegas events and were able to get a trial modification on-site.

“I lost my job recently and we were three months behind on our mortgage. Our bank actually contacted us to find out why we were late since we had never missed a payment before,” said Michael. “When I told them the situation, they recommended the Making Home Affordable program. Fortunately, we were able to get approval for a trial modification that reduces our payments by 52 percent. This will help a lot as I look for work and my wife launches her new business. We will do anything to keep our house.”

Congress Seen Acting Quickly On Flood Program After Recess
National Underwriter
April 6, 2010
By: Arthur Postal

Insurance industry officials said they expect when Congress resumes it will act quickly to renew the expired National Flood Insurance Program.

They also said they believe lawmakers will deal with other catastrophe issues on returning from their holiday recess.

Meanwhile, the Kansas Insurance Department said in a consumer alert today that the National Flood Insurance Program funding halt could cause short-term problems for consumers waiting to close on the sale of a property within a designated Special Flood Hazard Area.

“The National Flood Insurance Program’s federal authorization expired on March 28,” Kansas Insurance Commissioner Sandy Praeger said in a statement. “NFIP ceased issuing new policies or renewing policies then. However, consumers with current policies are still covered.”

On April 21 a subcommittee of the House Financial Services Committee is scheduled to hold a hearing on controversial legislation that would add wind damage coverage to the flood program.

According to insurance industry representatives, that will be followed the next day by the start of the markup of legislation calling for a long-term reauthorization and reform of the NFIP.

In a letter sent late Monday to the Senate leadership, the Financial Services Roundtable urged that chamber to pass legislation providing for “an immediate, retroactive extension” of the NFIP.

The letter said the “expiration of the program on March 28 has left thousands of homeowners and small businesses in limbo.” The letter was signed by Steve Bartlett, president and CEO of the FSR.

It added, “Until Congress acts to reauthorize the program, insurance companies cannot issue new policies, increase coverage on existing policies, or issue renewal policies.”

The program expired because Republicans in the Senate declined to pass legislation that had earlier passed the House extending the program until May 31 while talks continued on legislation extending the program until Dec. 31.

The bill in question also contained provisions extending unemployment insurance and postponing a 21 percent cut in pay provided doctors under the Medicare program.

The hearing involving flood insurance will be before the Housing Subcommittee of the FSC. It will discuss H.R. 1264, the Multiple Peril Insurance Act, legislation introduced last year by Rep. Gene Taylor, D-Miss.

Rep. Taylor has been pushing for several years to add wind to the NFIP. This legislation would do that as well as make other reforms to the NFIP program.

These reforms would include providing incentives for states to establish stronger rules regarding construction of homes and businesses in flood-prone areas, as well as closing loopholes in state law that allow insurers to escape any responsibility for claims from damage caused by both flood and water.

According to officials of the National Association of Mutual Insurance Companies, the full committee will turn its attention the next day to legislation that would provide a long-term extension of the NFIP.

“These two bills provide a clear choice for members of Congress,” said Jimi Grande, senior vice president of federal and political affairs for the National Association of Mutual Insurance Companies.

“One bill will reform the National Flood Insurance Program and give it the solid financial footing to continue providing protection to homeowners and businesses,” Mr. Grande said.

“The other would add a massive new exposure to windstorm damage, asking more Americans to subsidize coverage for beach houses and high-risk coastal properties, while at the same time undermining the private market,” he added.

Flood Insurance Passage Urged, Perils Mounting, Trade Groups Say National Underwriter

April 9, 2010

By: Daniel Hays

Congress' failure to reauthorize the National Flood Insurance Program is hurting real estate markets and consumers and may cost taxpayers billions, trade groups have warned federal lawmakers.

Their warning came in a letter urging action sent to both parties' leadership. It was sent as an omnibus measure to extend unemployment benefits that includes renewal of the flood insurance program that faced tough Republican opposition in the Senate.

The Senate vote, with an uncertain outcome, is expected Monday; meanwhile, the NFIP has been lapsed since March 28 when Congress left for a holiday recess without taking action.

“Without flood insurance, residential and commercial real estate transactions in flood zones across the country have been adversely impacted, as federally backed mortgage loans cannot be secured without this critical protection, the letter from seven groups said.

“Failure to reauthorize the NFIP expeditiously when Congress returns will severely harm real estate markets, putting consumers at risk of uninsured losses and potentially putting additional tax money at risk to cover relief efforts,” they warned.

Addressed to Senate Majority Leader Harry Reid, D-Nev.; House Speaker Nancy Pelosi, D-Calif.; Senate Minority Leader Mitch McConnell, R-Ky.; and House Minority Leader John Boehner, R-Ohio, the letter was sent by the American Insurance Association, National Association of Mutual Insurance Companies, Property Casualty Insurers Association of America, **The Financial Services Roundtable**, Independent Insurance Agents and Brokers of America, Mortgage Bankers of America, and National Association of Realtors.

“Five and a half million taxpayers depend on the NFIP as their main source of protection against flooding, the most common natural disaster in the United States,” the letter said.

The organizations added, “If Congress fails to reauthorize the NFIP, it will still be paying for post-disaster relief for flood victims, yet it will be unable to collect premiums for renewing current flood insurance policies, which amounts to \$2.85 billion annually. Devastating storms in the northeast underscore the need for Congressional action to reauthorize the NFIP immediately.”

The NFIP was described in the letter as “critically important to Americans and the U.S. economy,” and the groups urged “Congressional action now to reauthorize this program and avoid the costly consequences that would result from a failure to do so.”

Republicans have based their opposition to the omnibus bill on funds not being available to pay for it.

Whether Democrats would have the votes for a cloture shutting off debate Monday to pass the bill was reportedly in doubt.

Sen. Reid's office has said that other methods would be sought to extend the programs in the legislation if cloture fails.

Fed to control student loans

Pepperdine-Graphic.com

April 1, 2010

By: Stan Parker

President Obama signed a bill into law Tuesday that will effectively cut all private lending institutions out of the student loan process, making the federal government the only provider of student loans.

Obama touted the legislation as a win for education in the battle between the financial sector and the students.

“What’s gotten overlooked amid all the hoopla, all the drama of last week, is what happened in education,” Obama said, “when a great battle pitting the interests of the banks and financial institutions against the interests of students finally came to an end.”

The bank-based lending program began in 1965. Since then, the government has commissioned financial institutions like Sallie Mae and Nelnet to provide federally subsidized loans to students with the federal government assuming most of the risk.

Alongside this is the Federal Direct Student Loan program, which provides student loans directly from the federal government.

Obama and other Democrats have criticized the bank-based lending programs for increasing the profit margins of banks at the expense of tax-payers and students.

“For almost two decades, we’ve been trying to fix a sweetheart deal in federal law that essentially gave billions of dollars to banks to act as unnecessary middlemen in administering student loans,” Obama said. “So those are billions of dollars that could have been spent helping more of our students attend and complete college,” Obama continued.

Obama said the new legislation, which comes as the final installment in the health care reform process, will save America’s students \$68 billion in the coming years, going straight to the direct loan programs.

The legislation also plans to spend \$36 billion of that over the next 10 years in Pell Grants— need-based scholarships with no repayment requirement.

The law also lowers the maximum annual payment rates from 15 percent to 10 percent of a graduate's discretionary income. And if payments are kept up for 20 years, the balance will be forgiven.

School of Public Policy Professor Michael Shires said the legislation will have little practical impact on students.

“Most of the discussion is just [a matter of] the government taking over another segment of the economy,” Shires said. “In practice, it's going to have almost no impact on students— mostly because the loans were already underwritten and heavily regulated by the federal government to begin with.”

Shires, whose areas of expertise include domestic education and California fiscal policy, said the bill raises some concerns.

“The one thing I would be worried about is the kinds of things we saw in the real estate market, where they start to attach strings,” Shires said. “Although we've seen no indication of this happening, it's certainly within their power to do it.”

Opposition

Private financial institutions engaged lobbying efforts to halt the bill's progress. Brian Tate, a lobbyist with the Financial Services Roundtable, said the measure would cost an estimated 35,000 jobs and have crippling effects on the current private loan infrastructure.

“We think this is a broad expansion into the private sector,” Tate said. “You're seeing the federal government step in and take away choices from students who may not necessarily want their loans originating from the government.”

Jason Parham, a sophomore who receives federally backed loans through Bank of America, is one of those students.

“It makes me very uneasy that the government is eliminating the private sector out of the business,” he said. “The government has enough on their plate already without adding on managing my tuition and my loans, something a private industry is already doing, and doing it very well in my opinion.”

Parham added: “Plus, I'm a member of Bank of America, and all of my loans are going through Bank of America, so all of my stuff is rolled in. I get special rates, and I can manage it all from one Web site.”

Groups present road map for CRE recovery
SNL Financial
April 6, 2010
By: Moira Dickinson

A new report out this week from the Financial Services Roundtable and the Commercial Real Estate Coalition aims to address the "pressing issues" currently confronting the commercial real estate sector.

Scott Talbott, senior vice president of government affairs for the Roundtable, told SNL that the Commercial Real Estate Coalition comprises about 90% of the commercial real estate market, from owners to lenders to industry groups and so on. While not all involved have signed off on all of the points contained in the report, they are all pulling in the same direction and focused on the goal of helping the commercial real estate market, he said.

According to the report, the "guiding principles" of the coalition are to restore confidence in the sector to support refinancing options; to maintain responsible regulatory compliance while balancing the need for new lending, reduced leverage and more conservative underwriting standards; and to restart the CMBS market for long-term financing.

In order to address the problems facing the commercial real estate space — which they describe as limited liquidity, significant loan maturities, and an equity gap between loan amounts and the equity needed to extend or refinance loans — the groups present in the report a road map for policymakers and regulators. "We hope regulators and the industry alike will collaborate and cautiously examine the current and future issues faced by the CRE sector," the groups said.

The road map contains a number of points — too many to mention here — under the three guiding principles set forth by the group, but a few we found interesting. Regarding tax policy, the group recommends removing and revising barriers to foreign equity capital within the Foreign Investment in Real Property Tax Act as well as rejecting any new anti-real estate investment taxes, such as the carried interest proposal that it says will discourage investment in real estate.

It also points out that appraising commercial real estate has become increasingly difficult because appraisers have limited recent transaction data to use when estimating current values. Appraisal valuations today, the group states, are under extreme stress. With less supporting information, valuations

are leading banks to make rushed decisions based on loan-to-value ratios rather than the cash flow of a given project. The group has agreed to form a task force to develop more specific recommendations on interim approaches to appraisal problems and longer term solutions to establishing more realistic valuations in an illiquid market.

The groups also support the extension of credit and/or refinancing of performing commercial real estate loans under appropriate circumstances as this may reduce default rates and loan losses as asset values recover over time and loan amortization rates are accelerated. It also recommends creating more favorable risk-weighting treatment for certain classes of commercial real estate assets.

And with regard to REITs, the group said, by "addressing a few key issues, this investment class can be accelerated to help minimize the impact of pending loan renewals and the subsequent modifications and foreclosures of commercial properties." Among the group's recommendations are issuing IRS guidance regarding the treatment of modified mortgage loans and newly acquired distressed mortgage loans for the purposes of gross income and real asset tests applicable to REITs and applying the qualified real property business indebtedness exception to the cancellation of indebtedness rules to REITs to enable them to work out distressed debt situations more effectively.

Concluding the report, the groups state that, while they are encouraged by the steps being taken at various levels, more action is required. "Although there is no easy solution to stabilize the sector, taking immediate action to support this sector of real estate will minimize the long-term drag on the recovering economy," the report said. Commercial real estate is a lagging indicator, it added, and "actions must be taken before it becomes the leading indicator for prolonging the economic recovery."

We think the proactive nature of the report and the engagement with government by this and other groups is positive for the industry. For anything to get done, someone has to ask for it. And yet, we remain somewhat skeptical that, given the complexity of the issue, meaningful changes will be made.

What do you think of the group's proposals? If just a few manage to get put in motion, will that make a difference in reviving the commercial real estate market?

The Envy List
The National Journal

April 3, 2010
By Bara Vaida

This is our 10th biennial salary survey of the leaders at Washington's biggest trade associations, professional societies, think tanks, and interests groups. When we told prominent K Street insiders the compensation numbers we found in reporting this story, they responded: "Breathtaking!" "Astonishing!" "Every boy and girl hopes the person in high school that rejected them gets a hold of this National Journal salary list!" The most over the top: "That idiot is making what?!"

The compensation of 89 top executives exceeded the \$1 million mark, according to 514 tax forms recording pay between 2007 and 2009 that National Journal and our partner CEO Update analyzed for this report. That's a 30 percent increase from our 2008 survey (covering 737 organizations between 2005 and 2007). Although nowhere near the sort of paydays common on Wall Street -- we found some eye-popping numbers for the nation's capital.

"In Washington terms, those [salaries] are very, very generous," said Larry O'Brien, head of lobbying firm OB-C Group, who has been a Democratic operative for decades and has earned his share of big bucks.

Among the top earners in our review are John Castellani, president of the Business Roundtable, who received a total compensation package of \$5.57 million in 2008; Billy Tauzin, the departing CEO of the Pharmaceutical Research and Manufacturers of America, who made \$4.48 million; and Scott Serota, CEO of the Blue Cross and Blue Shield Association, who took home \$3.99 million. The highest compensation went to Marc Lackritz, the now-retired head of the Securities Industry and Financial Markets Association. He received an exit pay package that boosted his total compensation to \$6.76 million in 2008.

"It's hard for the rational mind to justify, given the economy," says Pamela Kaul, president of executive search firm Association Strategies. "But it's the mystique of Washington. These are the power brokers that have the access to networks and relationships."

Steve Anderson, CEO of the National Association of Chain Drug Stores (\$1.83 million), contends that it's not all mystique. "These jobs have become so complicated now," he says, "that I don't think you can look at them in the vacuum of just a salary."

It's not just CEOs who are raking in the dollars; the lobbyists are doing quite well, too. New IRS rules require organizations to report the salaries of all their key staff members, so lobbyists' pay is now public, much to their chagrin. The numbers

show just why so many people want to work on K Street. Bruce Josten, the executive vice president for government affairs at the U.S. Chamber of Commerce, reported \$1.13 million in compensation; Richard Pollack, executive vice president of advocacy and public policy at the American Hospital Association, was paid \$1.15 million; and Alexander Flint, the senior vice president of governmental affairs at the Nuclear Energy Institute, was compensated \$788,042.

So, why such fat paychecks? Mainly because Washington is now playing a key role in the economy. "If you look at the size and the scope of some of the public policies being talked about in Washington, they can have a huge impact on an entire industry, and corporate CEOs have come to understand it really matters who is in charge of your trade association," Doug Pinkham (\$355,352), president of the Public Affairs Council, said. Corporate executives want their trade association leaders to help their industry navigate legislative and regulatory processes, and to secure a seat at the negotiating tables where key decisions are made.

The complexities of running a trade association also put a premium on individuals with the business acumen to manage an association when the going gets tough. As the economy slumped in 2009, those skills were more in demand than ever. "It's easier to manage [a trade association] when the economy is chugging along and you have more money than God," said Ivan Adler, a principal at the McCormick Group, an executive search firm. "It's more complicated in challenging times."

Headhunters say that pay levels at industry groups reflect trends in the corporate world. The CEOs and other industry representatives who sit on the boards that determine the salaries of trade association executives are high earners, and they expect to pay their Washington leader a handsome sum as well, even when economic times are as hard as they were in 2009.

"Despite the downturn, all of these industries were even more closely regulated or had increased oversight in Washington," said Denise Grant, head of the government-affairs and trade association practices at search firm Russell Reynolds Associates. "And their members needed them more than ever because Washington, D.C., became more important than ever."

Proving Their Mettle

Last year, trade association leaders were called upon to justify their high salaries as perhaps never before. The chiefs faced a double whammy of the economic downturn and the uncertain political environment. For the first time since 1995, Democrats were in charge of Congress and the White House, depriving business

groups of the natural allies they had grown accustomed to during the eight-year presidency of Republican George W. Bush.

"It's fair to say the pecking order in Washington changed a bit because of the politics of the day and the president's agenda," said Joe Householder, a Democratic consultant for Purple Strategies, which has worked for the U.S. chamber and other Washington trade associations. "Certain kinds of organizations rose while others fell back. To succeed, he said, trade group leaders had to be practical. Lorraine Lavet, head of the national association specialty practice at Korn/Ferry International, added, "You need someone who can work both sides of the political aisle."

The Business Roundtable's Castellani embodies the pragmatic approach to business and politics. President Obama has repeatedly reached out to the business community through the roundtable, which represents 160 of the country's largest corporations. The president addressed several of the group's CEO meetings over the past year and personally lobbied Castellani to support health care reform during a White House holiday party. The group has used its downtown headquarters as a site for meetings of business leaders and Obama administration aides.

"The Business Roundtable is a pool of folks who are inclined to be temperate and less confrontational," O'Brien said. "That has been a boon in terms of developing working relationships with this administration, because it makes it easier to maintain a productive business dialogue."

After working with the Obama administration to help pass the stimulus package in February last year, the U.S. chamber, led by Thomas Donohue (\$3.78 million), took an increasingly strident role in opposing the rest of Obama's agenda -- health care, energy, and financial services -- generating criticism from Democrats and causing internal strife. Several of the chamber's biggest members, including Pacific Gas & Electric and Apple, left last year. In the financial reform debate, administration officials criticized the chamber for running a "misleading" ad campaign against the proposed Consumer Financial Protection agency.

The business lobby group has nevertheless remained a force to be reckoned with. White House Chief of Staff Rahm Emanuel spoke to the chamber's board in 2009, and its leaders say that its high-profile opposition to Obama's policies has fueled fundraising and ensured that it will remain a powerhouse.

"Though the chamber isn't the darling of the Obama administration, they are playing an important role in being a counterbalance," Penny Lee, a principal at

Venn Strategies, said. "They are a voice of business in America. They are just doing it from an antagonistic stance."

Few executives faced a tougher test than those in the health care, energy, and financial services sectors. "This year marked a put-up or shut-up time" for three giant financial service trade group leaders, said Kurt Pfothenhauer (\$584,835), CEO of the American Land Title Association. "They earned their pay by effectively pushing back hard against a regulatory regime that in some instances would have subjected their members to a smothering amount of new federal regulation."

The Securities Industry and Financial Markets Association, the Financial Services Roundtable, and the American Bankers Association were able to mount effective lobbying campaigns even though several of their big members were the targets of public anger and of heated rhetoric from the White House and Congress.

"It has been an extremely difficult public-relations and political environment," acknowledged Edward Yingling, the president and CEO of the bankers association, who made \$2.29 million in 2008. "We're used to major storms, but this is a level 4 hurricane." The group has managed to fend off some financial services reforms that it dislikes. "I think we've had some success in modifying" congressional reform efforts, he said, "and some success in keeping out some of the wilder ideas."

Yingling attributes the group's success to the grassroots clout of its big and diverse membership, which represents 95 percent of the assets in American banks. The ABA's "community bankers generated more than 300,000 grassroots letters on regulatory reform" that went to Capitol Hill last year, he said.

But even gold-plated bankers couldn't ignore the recession. The ABA imposed hiring and salary freezes, cut back on travel, and canceled its annual summer bash usually held at such posh resorts as West Virginia's Greenbrier. The economic climate also tabled further bonuses for the group's executives.

At the Financial Services Roundtable, president and CEO Steve Bartlett felt the public backlash as well. "I believe I enjoy a great reputation and have credibility," said the former Republican lawmaker from Texas, who made \$1.63 million in 2008. "But it's a tough time. It's harder to communicate our message if a congressman hears complaints about us at a town hall meeting." So Bartlett set a goal for the 100-member organization to "rebuild trust in everything we do." He recently assessed membership fees as high as \$75,000 to retain a public-relations firm to work on messaging.

Timothy Ryan, CEO of the Securities Industry and Financial Markets Association, who made \$2.02 million in 2008, agreed that the times are challenging: "We're [being] held responsible for some of the devastation of the last few years." Ryan took SIFMA's helm in April 2008 after spending 15 years at JPMorgan Chase, where he was a vice chairman just before the market's collapse. Since then, the trade association's budget shrank from about \$100 million in 2008 to just over \$80 million this year as some of its member firms merged or went under during the financial crisis. SIFMA had to let 57 people go in 2008 and 2009, he said. Given the financial pressures that many members were facing from the recession, the group cut dues "across the board," Ryan added. "We took in excess of 20 percent out of the organization."

Frank Fahrenkopf, CEO of the American Gaming Association, dealt with the economic collapse by eliminating member dues in 2009. Dues this year are half the 2008 assessment. Fahrenkopf, who took home \$2.08 million in 2008, said his organization was fortunate in that it had built up hefty reserves to weather a storm such as the one that hit last year. "We've always been very careful of our costs," he said.

The energy sector, in addition to facing tough financial times, had to adjust to a president who had campaigned on reducing the influence of "Big Oil" in Washington. Jack Gerard, who took over as CEO at the American Petroleum Institute on September 1, 2008, after longtime chief Red Cavaney retired (with \$2.69 million), has already undertaken a major shake-up, following his pattern as head of the National Mining Association and the American Chemistry Council.

Last fall, Gerard, who received compensation of \$1.64 million for his four months at the institute (most of it in the form of deferred compensation), laid off 14 percent of the staff, some 40 people. The personnel cuts had nothing to do with the group's finances and everything to do with his leadership philosophy, Gerard said. "I believe [that trade associations] should be run like a business. Bring great clarity to the mission statement, get consensus on what members expect, and then organize personnel and activities around that." He added, "We go in and say, how do we deliver value in the public policy arena?"

That is no small challenge. Democrats have built political momentum for overhauling energy policies to dramatically reduce greenhouse gases and lessen dependence on foreign oil. How and when those policy changes come about will have enormous implications for the industry.

In response to the political winds, Gerard, a Republican, hired Democratic lobbyist Martin Durbin, the nephew of Senate Majority Whip Richard Durbin, D-Ill., away from the American Chemistry Council. He also hedged his bets by launching an

aggressive lobbying strategy. In February, Gerard lured grassroots organizer Deryck Spooner -- whom the CEO calls the "best in class" -- away from the Nature Conservancy to do similar work at the API. "The greatest [strategic] value to the oil and natural-gas industry is that we employ 9.2 million people and account for 7.5 percent of U.S. gross domestic product," Gerard said. "It's all about the voters, jobs, and constituents."

The health care reform debate was the Super Bowl moment for the industry's trade associations, and many of their top-paid executives had strategically positioned themselves with White House and Senate leaders who negotiated the issues over the past year. The key CEOs included PhRMA's Billy Tauzin; the Blue Cross and Blue Shield Association's Scott Serota; Chip Kahn, president of the Federation of American Hospitals (\$2.33 million); Richard Umbdenstock, president of the American Hospital Association (\$2.06 million); and Karen Ignagni, president of America's Health Insurance Plans (\$2.08 million).

Hospitals were among the winners in the legislation that was finally enacted in late March; it is expected to reduce the number of uninsured people turning up in emergency rooms in the coming years. "We have been engaged in health reform from the beginning and joined with other hospital associations to come to an agreement with the White House and the Senate, so I think health reform is probably a good metric to assess my job by," Kahn said. As chief lobbyist at the Health Insurance Association of America 15 years ago, he masterminded the iconic "Harry and Louise" ads that helped to kill President Clinton's health care reform effort.

Legislative success doesn't always guarantee a CEO longevity at the top, however. In early February, PhRMA's board of directors announced that Tauzin, who positioned the organization as an ally to Obama on health care, would leave the helm in June. The group spent more than \$100 million on pro-reform advertising and agreed to reduce senior citizens' prescription drug costs by about \$80 billion. In return, PhRMA received concessions that included a promise the reform bill would not permit the reimportation of drugs from Canada.

Although the deal stuck, the strategy caused strife within the association. When it appeared that health care reform was dead at the end of January following the surprise Senate win by Republican Scott Brown in Massachusetts, some say that the board pushed Tauzin out for having bet wrong and allying PhRMA so closely with the Democrats. PhRMA denied that he was forced out.

"These are high-risk, difficult jobs," Leslie Hortum, head of executive search firm Spencer Stuart's D.C. office, said. "These CEOs have to influence the legislative

process in a challenging, partisan environment while also balancing their own members' competing interests and agendas."

World Economy Turns on U.S. Consumer Behavior

The Express

April 1, 2010

By Katherine Lewis

Goods and services purchased by Americans make up one-fifth of the global economy, but the third quarter of 2008 saw the largest drop in consumer spending since 1980.

As the financial-market turbulence prompts U.S. households to cut back spending, economies around the globe feel repercussions.

“The U.S. consumer is a voracious consumer of goods and services,” said Scott Talbot, a senior vice president at the Financial Services Roundtable, which represents large financial institutions. “We [are] at the heart of the recession. That’s why we’re going to have to be at the heart of the recovery.”

Historically, Americans have spent a greater share of gross domestic product (GDP) — a measure of a nation’s economic size — than citizens of other countries have. Those expenditures translate into jobs and economic growth around the world.

Over the last 15 years, U.S. household spending climbed dramatically and savings declined, raising concern among policy makers and economists that the situation was unsustainable — even as the world was becoming more dependent on U.S. pocketbooks.

U.S. consumer spending grew to \$9.7 trillion in 2007, a whopping 70 percent of U.S. GDP, according to the Organization for Economic Co-operation and Development (OECD). That amounts to 18 percent of the gross world product, which was \$54.6 trillion in 2007 according to the CIA’s World Fact Book.

The problem with the recent dramatic growth in consumer spending is that people borrowed against their houses, which were climbing in value by 14 percent each year earlier this decade. The real estate collapse ended that run of easy money.

“Two-thirds of that borrowing, at least, came out of homes,” financial analyst

Charles Morris told America.gov. “It was the number one supporter of consumer spending. That’s just over now.”

American consumption should probably ratchet back to 63 percent of U.S. GDP, in order for household savings to build to a healthy level, according to Morris, who authored *The Trillion Dollar Meltdown: Easy Money, High Rollers, and the Great Credit Crash*.

The U.S. economy has been in recession since December 2007, according to the National Bureau of Economic Research.

In Virginia, shoppers look at cameras in a Circuit City store on the first shopping day after Thanksgiving, November 28. “This will probably be the worst recession in the post-World War II period,” said Gus Faucher, director of macroeconomics at Moody’s Economy.com in West Chester, Pennsylvania.

“Recessions result from imbalances in the economy, and then we correct those imbalances and we come back out. . . . We are going to see the savings rate increase as consumers more closely balance their income and spending.”

At 0.4 percent for 2007, the U.S. savings rate is the lowest in the world. It compares to 2.9 percent in the United Kingdom, 3.1 percent in Japan, 6.8 percent in Italy, 10.9 percent in Germany, 12.7 percent in France, 24 percent in China and 28 percent in India, according to a Financial Services Roundtable analysis of OECD data.

Americans consume more than citizens of other countries for a number of reasons. “It’s partly cultural, but it’s also a reflection of tax policy,” said David Cross, president of business consultant Market Outlook. “You have much higher marginal tax rates in Germany, which discourages spending. There are issues of how much you can consume given the size of your home.”

The U.S. government gives a tax deduction for interest payments on home mortgages, which encourages people to buy larger houses and fill them with more possessions. The lower cost of gasoline in the United States boosts car sales, especially large cars, trucks and sport utility vehicles.

Americans also spend more on medical services than in Europe, where health care is heavily subsidized, Cross told America.gov.

Moreover, the U.S. market simply contains more products and services. For instance, the Chinese don’t have access to insurance products, so they tend to self-insure — one reason the savings rate is so high.

“Consumer attitudes toward spending and saving are very difficult to change,” Cross said.

Indeed, U.S. policy makers don’t want consumer spending to drop too quickly. They want to avoid the kind of economic stagnation Japan experienced during the 1990s, when people were overly reluctant to spend.

“This is uncharted territory,” the roundtable’s Talbot said. “If consumers don’t spend at all, then we go into a worse recession. ... We have to start saving a little more but continue to spend.” To that end, the U.S. government in November committed as much as \$800 billion to revitalize the banking system and encourage loans for education, cars and real estate.

President-elect Barack Obama has set a goal of creating or preserving 2.5 million jobs over three years, and Democratic lawmakers are pushing an economic recovery package that could exceed \$500 billion.

At the recent financial summit in Washington, leaders of the G20 nations agreed to take steps to stimulate consumer spending in their home countries. The world’s largest economies plan to work together to stave off a global recession and to reform the world financial system.

Business Groups, Obama Administration Spar Over Corporate Governance Wall Street Journal Blog

April 13, 2010

By Kara Scannell

A dozen business groups are urging lawmakers to vote down corporate governance changes included in the Senate financial regulation bill, one day after an Obama administration official threw his weight behind the measure.

The U.S. Chamber of Commerce, National Association of Manufacturers, and Financial Services Roundtable were among the 12 organizations that sent a letter to lawmakers saying “various academic analyses of the financial crisis have found that it was not caused, in whole or in part, as a result of the failure of existing corporate governance structures.”

The Senate bill would give the Securities and Exchange Commission explicit authority to write rules that give shareholders a way to directly nominate board members on the corporate ballot. Shareholder groups have lobbied the SEC on this issue for years and business groups have strongly opposed it, saying it could allow special interests to hijack the boardroom.

The bill would also give shareholders an annual nonbinding vote on executive pay packages and require companies to have policies in place outlining how they would claw back pay from executives. The SEC has proposed a so-called proxy access rule, but it hasn't been finalized.

Monday at the Council of Institutional Investors annual meeting, Deputy Treasury Secretary Neal Wolin told the crowd the administration supports all the governance measures calling them "a significant enhancement" that could be used to "rein in the irresponsible pay practices that led so many firms to act against the interests of their shareholders."

While the Senate bill passed through the Banking Committee without any amendments or Republican support, Republican Senators have echoed concerns of big business and suggested they will offer amendments to strip out some of these measures.

NYSE Euronext Introduces NYSE Money Sense, a New Online Resource for Personal Finance Education and Information
Market Watch, Wall Street Journal
April 6, 2010

NYSE Euronext (NYSE) announces the launch of NYSE Money Sense (www.nysemoneysense.com), a new online educational resource for consumers to improve their money-management skills and knowledge. With literally hundreds of financial education resources available to consumers, NYSE Money Sense seeks to help connect consumers to valuable content, tools and online resources.

NYSE Money Sense encompasses a wide spectrum of personal-finance topics, connecting consumers with a variety of leading sources and experts in the financial industry to provide insights on topics ranging across five category umbrellas: Earn, Spend, Save, Borrow and Protect. NYSE Euronext is also encouraging its listed companies to further advance financial literacy, distribute NYSE Money Sense content to their employees, and offer links to the NYSE Money Sense on their internal networks.

"Financial education is a priority at NYSE Euronext and NYSE Money Sense offers high-quality, trusted information on personal finance and money management for consumers and employees of our listed companies," said Duncan L. Niederauer, CEO, NYSE Euronext. "The importance of being financially literate is underscored by the financial crisis and by the kind of decisions Americans face in their everyday lives."

Features include:

-- The Course: A series of financial education lessons that lead up to a test so users can check their own financial literacy and obtain an NYSE Euronext promotional certificate showing their score on the test

-- Ultimate Web Guide: In-depth reviews of sites containing financial advice, education or information

-- Financial FAQs: Straightforward answers to frequently-asked questions about personal finance

-- Dilemmas: Multi-media personalized questions, answered by top experts in the financial community

To create NYSE Money Sense, NYSE Euronext worked closely with Dr. Tahira K. Hira, PhD, a professor of personal finance and consumer economics, who vetted the site content. Dr. Hira is chairing the NYSE Euronext Financial Literacy Advisory committee which is composed of some of the most respected names in financial literacy and education.

Dr. Hira said: "I am very proud of NYSE Euronext for making financial literacy one of its priorities, and for dedicating resources and expertise to develop and make high quality financial education resources available to general public and the employees of its listed companies. The current economic crisis has demonstrated the need for a better preparation of all Americans in key financial concepts so that they can successfully function in an increasingly complex financial environment. I am honored to be part of this effort."

The Financial Literacy Advisory Committee will assist in the development of NYSE Euronext's financial Literacy programs, and will review and recommend various opportunities to advance this initiative. Its members are:

-- Dr. Tahira K. Hira, professor, Iowa State University, and internationally known leader in the field of Personal Finance and Consumer Economics. For over 30 years has taught graduate and undergraduate courses and conducted research in family financial management, investing, consumer credit, gambling and consumer bankruptcy in the United States and abroad.

-- John Hope Bryant, founder, chairman and chief executive officer of Operation HOPE, America's first non-profit social investment banking organization;

-- Muriel Siebert, founder, president and chief executive officer of Muriel Siebert & Co., Inc. and the first woman member of the NYSE;

-- Alvin Hall, financial educator and 25-year veteran of Wall Street, author of many articles and several bestselling books, and former host of the BBC's award-winning series, Your Money or Your Life;

-- Dr. Jeanne M. Hogarth, manager for the Consumer Education and Research Section of the Division of Consumer and Community Affairs at the Federal Reserve Board and 13 year veteran on the consumer economics faculty at Cornell University;

-- Walter Schubert, a third generation member of the NYSE, Founder and CEO of The Schubert Group LLC, and founder of The Gay Financial Network, the first fully integrated financial information and services website for the LGBT community.

NYSE Money Sense launched on April 1, 2010 in conjunction with National Financial Literacy Month (April). Additionally, **NYSE Euronext will celebrate Financial Literacy Week during April 26 -- 30 when Opening and Closing Bells will recognize listed companies and other organizations for their contributions to financial literacy and advocacy. Among the companies and organizations being recognized that week are Charles Schwab, Visa, the Principal Financial Group, Viacom's MTV subsidiary, Morgan Stanley and Biz-Kids\$, the McGrawHill Companies, Operation Hope, and the Financial Services Roundtable.** On April 28, NYSE Euronext markets in Amsterdam, Brussels, Lisbon, New York and Paris will dedicate the market opens to financial literacy.

To learn more on NYSE Money Sense, go to www.nysemoneysense.com. A NYSE Money Sense demonstration and explanation by David Cautin, NYSE Euronext Senior Vice President and Chief Digital Officer, is available at www.nyse.com/about/Video/1270115471481.html

Intersections Inc. Partners With Identity Theft Assistance Center for Identity Theft Recovery Services
Yahoo Finance
April 12, 2010

IDENTITY GUARD® BEST IN CLASS SERVICE* GAINS BEST IN CLASS RECOVERY WITH ITAC VICTIM ASSISTANCE

CHANTILLY, Va., April 5 /PRNewswire-FirstCall/ -- Intersections Inc. (Nasdaq:INTX - News), a leading provider of consumer and corporate identity theft prevention services that has protected over 30 million consumers announced that starting today, its IDENTITY GUARD® product suite will be enhanced with a more robust identity theft recovery service, ITAC Victim Assistance. ITAC, the Identity Theft Assistance Center, is the national advocate for identity theft victims and a leading voice on identity policy. A nonprofit supported by financial services companies, ITAC is dedicated to protecting all consumers through education, research and the criminal prosecution of identity crime. Intersections is the exclusive service provider of ITAC Victim Assistance.

"Identity theft isn't going away anytime soon. Javelin Strategy & Research's 2010 Identity Fraud Survey Report saw a 12 percent increase in the number of identity theft victims in the U.S. just last year," said Steve Schwartz, Executive Vice President, Intersections Inc. "While no one can guarantee identity theft prevention, consumers have come to rely on the IDENTITY GUARD® award winning services to assist them in their fight against identity theft and to help protect them from the latest threats. Now we are joining with ITAC to offer industry leading recovery services to our customers."

ITAC created the first national identity theft resolution network six years ago for financial services companies that offer it as a free service for their customers. Recognized for its innovative public/private solution to identity theft, ITAC and its dedicated team of identity theft recovery professionals will add significant value to the IDENTITY GUARD® product suite.

An exclusive feature of ITAC Victim Assistance that will now be available to IDENTITY GUARD® customers is the electronic notification to all ITAC Member companies, primarily banks, that alert them of suspected fraud. Customers can also rely on ITAC recovery professionals to:

- Conduct a review of their current credit reports to make sure there are no account inaccuracies or red flags that might indicate previous incidents of identity theft;
- Contact creditors about suspicious accounts so they can be properly handled or shut down to prevent credit damage;
- Assist them in the recovery process and provide guidance on what steps to take to fully recover their financial reputation;
- Document findings during the recovery process for future reference; and
- Share information with law enforcement officials and the Federal Trade Commission (FTC) to help investigate identity crimes and lead the customers through the loss reporting and recovery process.

"ITAC and its member companies have worked with Intersections for six years and are impressed by their integrity and their commitment to consumers and to innovation," said ITAC President Anne Wallace. "This agreement helps us come closer to meeting our goal of making victim assistance available to all consumers by extending our reach and ability to help them in their time of need."

About Intersections

Intersections Inc. (Nasdaq:INTX - News) is a leading global provider of consumer and corporate identity risk management services. Its premier identity theft, privacy, and consumer solutions are designed to provide high-value opportunities to its marketing partners, including leading financial institutions, Fortune 100 corporations, and other businesses. Intersections also markets full identity theft protection solutions under its brand, IDENTITY GUARD® (<http://www.identityguard.com/>). Intersections' consumer identity theft protection services have protected more than 30 million consumers.

To address the growing threat of corporate fraud, Intersections and its subsidiaries provide cutting-edge identity management solutions including security breach remediation; pre-employment background screening; and corporate brand protection.

For advice, opinions, and the latest news on identity theft for consumers, visit <http://www.IDGuardian.com>. Twitter handle: IDGuardian. For educational tools and resources on breach readiness for businesses, visit <http://www.BreachCenter.com>. Twitter handle: BreachCenter

About ITAC

ITAC, the Identity Theft Assistance Center (<http://www.identitytheftassistance.org/>), is the national advocate for identity theft victims and a leading voice on identity policy. Millions of consumers have access to the ITAC victim assistance service through our members – the financial services companies who support ITAC and offer it as a free service for their customers. ITAC is dedicated to protecting all consumers through education, research and the criminal prosecution of identity crime. Through our partnership with Intersections Inc., ITAC's world-class victim assistance and identity management service is available to everyone through ITAC Sentinel® (<http://www.itacsentinel.com/>)

*Rated "Best in Class" for Personal Information Monitoring Services in Javelin Strategy and Research's 2009 Consumer Identity Protection Services Scorecard for Identity Protection