AMERICANS FOR FINANCIAL REFORM

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A periodic report on our work and recent developments
in the fight for a simpler and safer financial system

Financial Advice We Can Trust

"It's a very simple principle," President Obama declared in a Jan. 23 speech at AARP. "You want to give financial advice, you've got to put your client's interests first."

A simple principle, but one long and fiercely resisted by elements of the financial industry – accustomed to the extra profits that come from getting workers and retirees to put their savings into investment products that are needlessly expensive or risky.

The President was announcing his support for reforms developed and championed by the Department of Labor (DOL). Those reforms will update a set of 40-year old rules governing advice that affects the investment of money in employee retirement plans.

The old rules, which date from the 1970s, fail to cover many situations that arise in today's era of individual retirement plans - "rollovers" between a 401-K and an IRA, for example. Brokers in such cases are often free to recommend investments that benefit *them* and harm their clients. That kind of advice costs retirement savers some $17 billion a year, according to a new report from the President's Council of Economic Advisors. The report calculated that retirees typically lose more than 10 percent of their potential returns due to losses connected to broker conflicts of interest.

AFR has long advocated a "fiduciary duty" standard for investment advisers, and is a core member of the Save Our Retirement coalition. The proposal still has a ways to go: in addition to the review and comment process, it faces massive financial industry opposition and a campaign for Congressional action to revoke the DOL authority to act. But with editorial pages, columnists, and a long list of public-interest groups voicing their support, momentum is on our side. As AFR's Lisa Donner told the Huffington Post, "It makes sense, it's right and it's important."

Wall Street Runs Into Unexpected Resistance

In the closing days of the 113th Congress, Wall Street lobbyists succeeded in getting a significant rollback of financial reform incorporated into a broad government spending bill. Their aim was to eliminate the "swaps push out" provision of Dodd-Frank, which directed banks to separate their risky derivatives operations from funds backed by public deposit insurance.

AFR, as a long-time defender of the "swaps push out" rule, helped organize a resistance campaign that came surprisingly close to winning the day, thanks to forceful leadership from members of Congress including Maxine Waters and Nancy Pelosi in the House and Elizabeth Warren and Sherrod Brown in the Senate.

Facing intense pressure to fund the government, Congress wound up passing the bill, which gives banks a renewed license to gamble with taxpayer-backed funds. But the financial industry was widely seen as having lost political ground. A vote intended to slip by with minimal public notice made national headlines, and the story those headlines told was of a behind-the-scenes power grab by the nation's largest banks. It was a victory that could "soon come back to haunt the nation's largest financial institutions," the normally industry-friendly American Banker observed.

That prediction was borne out in January. When the new Congress convened, House leaders picked up where they had left off by advancing two more bad bills. One, AFR warned, would create a major delay in carrying out the Volcker Rule; the other would tie key regulatory agencies up in procedural knots, and incidentally cut the CFPB's budgetary authority by $36 million.

The plan was to push the two measures through quickly and quietly; but once again our side mobilized in a hurry, generating a surprising amount of grassroots opposition and unfavorable media coverage. Although both bills passed the House, neither got enough bipartisan support to translate into momentum for passage in the Senate.

As the House prepared to approve the first bill, HR 37, Treasury Secretary Jacob J. Lew called House Minority Leader Pelosi to make it clear that President Obama would veto the legislation if he had to. In his State of the Union Message, the President suggested that the same fate awaited other efforts to unravel "the new rules on Wall Street."

In a post-mortem assessment, Bloomberg pointed out that the financial industry had spent nearly $170 million on the 2014 elections, expecting its "bid to loosen regulations [to] get easier with Republicans in control of both the House and Senate." But now, the Bloomberg story added, lobbyists say "there is second-guessing that banks overplayed their hand."

Making Prepaid Cards Safer

The Consumer Financial Protection Bureau (CFPB) has come out with a proposal—currently up for public comment—that should ultimately make prepaid and payroll cards safer and more straightforward for consumers.

AFR and our members had called on the Bureau to bring basic standards of fair play to this rapidly expanding market and to bar practices that would force consumers to make sacrifices in safety or cost, relative to other payment options, for the obvious convenience benefits of prepaid cards. The CFPB's proposal will restrict the use of overdraft fees in connection with a range of prepaid accounts, including codes and devices capable of being loaded with funds. This has been a priority for us: prepaid cards should truly be prepaid – people choose to use them for this safety feature. We would like to have seen an outright ban on overdraft fees in order to eliminate the potential for loopholes. Still, the Bureau has taken a giant step in this direction.

More generally, the proposal establishes a wall between credit products and prepaid funds and mandates a set of new disclosures and error resolution procedures in addition to setting liability limits for unauthorized transactions. The proposal also requires compliance with basic credit card rules (including limits on fees and advance verification of the consumer's ability to repay) when prepaid companies offer credit.

The National Consumer Law Center (NCLC), which has been a leader in advocating for fair rules of the road for prepaid cards, praised the proposed rules, arguing that they will "increase consumer and employee confidence… Prepaid cards will be safer and more transparent with better fee disclosures and the same protections that bank account debit cards get in the case of identity theft."

We and many of our members will submit comments supporting major elements of the proposal. We also call for improvements, including strengthened overdraft protections, a more emphatic separation between prepaid and credit accounts, mandatory deposit insurance for prepaid card balances, and clearer rules to protect students and employees from being forced to accept funds on a card.

From the Margins Toward the Center – The Idea of Taxing Wall Street Trades

In January, Representative Chris Van Hollen, the top Democrat on the House Budget Committee, called for a .1 percent tax or, as he put it, a "high-roller fee" on Wall Street trades. With his proposal – part of a broader "action plan" that is also backed by House Minority Leader Nancy Pelosi – the idea of a financial transaction tax (or FTT) took a big step from the margins toward the center of economic policy debate.

AFR and many of our members, including the AFL-CIO, Public Citizen, CEPR, and IPS, have long and actively made the case for such a tax. It's a way to address dangerous and costly high-frequency trading, tip the financial scales away from wasteful churning toward sustained investing, and raise substantial revenue – all at the same time.

The idea got a boost last year as the finance ministers of France, Germany, Spain, Italy and seven other EU nations moved toward a coordinated transaction tax, now set to take effect by the beginning of 2016. The Obama administration has been resistant so far; but in his State of the Union message the President called for a tax on big-bank leverage, as did Republican David Camp in his budget proposal last year. A leverage tax, AFR noted, is a worthy policy in itself.

One big argument for both taxes: the financial sector, which reaps more than 30 percent of the nation's corporate profits, currently pays only about 18 percent of U.S. corporate taxes while contributing less than 2 percent of total tax revenues. A leverage tax, like a transaction tax, would be a way to get Wall Street to bear something more like its rightful share of the tax burden.

Ending Debt-Trap Lending and Defending the CFPB – It's One Mission

"This is powerfully important work where grass roots makes a real difference in our outcomes. So I'm counting on everyone here. I hope we're going to be shoulder to shoulder all the way."

That was Senator Elizabeth Warren, on a January 23rd call organized by AFR, speaking to some 300 consumer advocates around the country. One big item on the agenda: the campaign for action by the Consumer Financial Protection Bureau to end a two-decades-long wave of predatory consumer lending.

The great majority of the country is with us in this fight. As past polls commissioned by AFR, the Center for Responsible Lending and others have shown – and as a new bipartisan CRL poll confirms – Republicans, Democrats and Independents overwhelmingly object to the idea of triple-digit-interest loans. Payday and car title lenders, most voters say, should be required to verify borrowers' ability to repay before a loan is issued, just as other responsible lenders do.

Nevertheless, advocates will need to work very hard to secure (and then to defend) a strong CFPB rule – one broad enough to cover car-title and installment loans that follow the same basic formula of systematically drawing people into unmanageable, long-term debt, and effective enough to prevent the kind of evasions payday lenders specialize in. And success will hinge on our ability to defend the CFPB and financial regulation in general during a period when, as Senator Warren warned, "Wall Street and its army of lobbyists are stepping up their efforts to roll back Dodd-Frank on every front."

AFR and our allies have taken that message to heart. Over the past several months, members of our coalition have:

- Gathered the support of 500 organizations – from every state in the union – on an open letter to the CFPB calling for a strong payday lending rule.
- Led by the Faith and Credit Roundtable, organized a national "fly-in day" in which faith leaders from more than 22 states held more than 80 meetings with lawmakers or Congressional staff;
- Mobilized Senators, state legislators, state and local consumer affairs regulators and other influential leaders to call on the CFPB to write a strong rule;
- Led by NPA and PICO, held attention-getting events outside payday and title loan outlets in Idaho, Michigan, Colorado, Iowa, Missouri, Kansas, Maine, Minnesota, Illinois and Nevada; and
- Launched a "messages to Cordray" campaign, sending quotes, anecdotes, and photographs from all around the country to the CFPB Director a few times a week.

And that's just a start to what promises to be a year of high-intensity effort. Working with a growing network of state and local as well as national partners, we will use a wide variety of tools old and new to beat back the attacks and maintain the space to continue taking on payday lending and making progress on other high-stakes consumer protection issues.

On Mortgage Servicing, Some Progress and Room for More

The CFPB has proposed a set of improvements in its rules for mortgage servicers, addressing a number of concerns that AFR members have raised about gaps in protections for homeowners. We will support these changes, even as we continue to press for more comprehensive protection and more effective enforcement. Our goal is to see to it that more struggling homeowners actually get loan modifications that allow them to remain in their homes.

The Bureau's initial servicing rules, which went into effect in January 2014, included some important protections. Most important, the Bureau insisted that all homeowners in distress be evaluated for all the modification options that a company offers, including principal reduction as well as interest-rate discounts. But a number of key problems, as AFR pointed out, went unaddressed.

The new proposal (comments are due March 16) makes progress on those problems. It includes strengthened protections for widows, widowers, and heirs, who have often had trouble even getting conversations about modifications started; rules to keep borrowers from being ignored or forced to start the modification process all over again when loans are transferred from one company to another (this is a very frequent occurrence); and new rights to have requests for help considered if families run into fresh trouble – through a job loss or reduced working hours, for example – after successfully modifying a loan.

Among our priorities for further action are better protections for homeowners who are not fluent English speakers; measures to guard against repeated requests for paperwork that has already been submitted (a common servicing practice, and one that can lead to preventable foreclosures); and a move in the direction of substantive rights, rather than just procedural rights, to loss mitigation.

Paul Krugman and Elizabeth Warren Headline Joint Event on Fed Policy

In December, AFR partnered with the Roosevelt Institute and the Economic Policy Institute to convene a half-day conference on Managing the Economy: The Federal Reserve, Wall Street and Main Street.

The discussion – kicked off by Senator Elizabeth Warren and Princeton University economist (and New York Times columnist) Paul Krugman as keynote speakers – focused on the debate over whether the Fed should raise interest rates, and how it might make use of new regulatory powers. Speakers presented strong evidence that the current state of the labor market did not justify higher interest rates, and that the Fed should in fact be looking for additional ways to help the economy. They argued that better use of regulatory tools, combined with better economic analysis, could enable the Fed to target concerns about speculative bubbles and excessive financial risk-taking while minimizing the damage to the broader economy that could occur from broad increases in interest rates.

Big Regional Banks Seek to Elude Regulation; We Push Back

Banks that call themselves "mid-sized" have been lobbying for several years now to be excluded from key provisions of the Dodd-Frank Act. These banks are smaller than the Wall Street giants but still among the largest banks in the country. They are regulated less stringently than the likes of JP Morgan or Wells Fargo; but Dodd-Frank does require enhanced oversight of large regional banks – and with good reason. These institutions were far from immune to the epidemic of excessive borrowing and risk-taking that led to the last crisis; in fact, two of them, Washington Mutual and Wachovia, not only contributed to the crisis but managed to destroy themselves in the process.

After the November elections, the large regional banks intensified their efforts to escape regulation, hoping that the new Congress would be more sympathetic than the old one. AFR responded with a briefing paper – "Large Regional Banks and the Dodd-Frank Act: Myths and Realities" – pointing out that these roughly two dozen institutions collectively hold $3.9 trillion in assets, more than a fifth of the assets of the entire banking system, and that their level of regulatory oversight is already scaled to their relative significance in the system as a whole. With Congressional hearings on this issue coming up, AFR will continue our work to ensure that these important financial players do not escape oversight.

AFR IN THE NEWS (a sampling of recent op eds and media coverage)

- **Obama Attacks Advisors Selling Snake Oil, Lauds New DOL Fiduciary Rule** (Forbes)
- **How Democrats Almost Strangled The Obama-Warren Retirement Security Plan In The Cradle** (Huffington Post)
- **Wall Street Captures Billions A Year In Fees On American Retirement Savings** (International Business Times)
- **Lure of Wall Street Cash Said to Skew Credit Ratings** (Bloomberg)
- **Regional Banks Face Big Test in Fight Over $50B 'Systemic' Label** (American Banker)
- **Kicking Dodd-Frank in the Teeth** (New York Times)
- **Payday Lenders Throw Millions at Politicians to Get Their Way** (CNN M**oney)**
- **Critics Say Spending Bill Includes a Bonanza for Wall Street** (NBC News)
- **After Criticism, Fed Will Study Wall St. Oversight** (New York Times)