AMERICANS FOR FINANCIAL REFORM

AFR Update - Spring 2015

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

Big day in the fight against payday lending

On Thursday March 26th, President Obama was in Birmingham, Ala., speaking at Lawson State College and participating in a roundtable conversation with community leaders about payday lending reform. "You borrow money to pay for the money you already borrowed," the President said, describing the way most payday loans play out. "... If you take out a $500 loan, it's easy to wind up paying more than $1,000 in interest and fees." See video of the President's speech.

That same day, the Consumer Financial Protection Bureau held a field hearing in Richmond, Va., where the Bureau released a rough first draft of its plans to regulate payday and other small-dollar consumer loans. CFPB Director Richard Cordray spoke at the Richmond event, along with Virginia Attorney General Mark Herring and panelists from the Center for Responsible Lending, the Virginia Poverty Law Center, the California Reinvestment Coalition, and the Leadership Conference on Civil and Human Rights. More than 80 advocates and allies held a press conference and community meeting before the hearing, and more than 30 people – borrowers, faith leaders, state and national advocates, consumer lawyers, and others – went on to testify in favor of a strong payday rule. Click here to check out some of the national and local press coverage of the gatherings in Birmingham and Richmond.

AFR and its partners have been steadily pressing the case for reform, mobilizing supporters to turn out for events like these, coordinating with consumer, faith, and social-justice groups around the country, meeting with the CFPB and with lawmakers, and telling the payday story through a #StopTheDebtTrap social-media campaign and press outreach efforts that have helped generate more than two dozen positive newspaper editorials in the past month and a half alone.

Two of our coalition's key policy concerns were reflected in the CFPB's draft regulatory outline: the Bureau has embraced the idea of a rule that is both broad in scope, covering installment and car-title as well as traditional payday loans, and built around an "ability to repay" requirement. At the same time, the proposal leaves a dangerous amount of room for lenders to sidestep the process of verifying borrowers' ability to repay. (See Center for Responsible Lending summary of the proposal.) We will be working together to push the CFPB to close the loopholes as its rulemaking process moves forward.

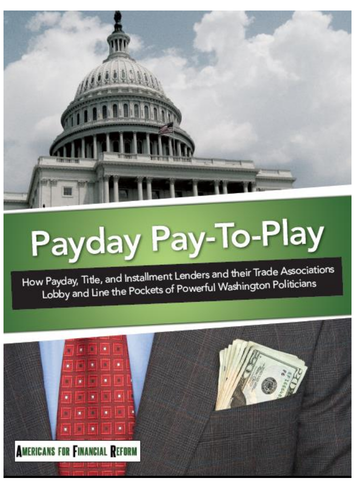
Pressing for limits on the Fed's emergency lending authority

During 2007-2009, the Federal Reserve dispensed trillions of dollars in emergency liquidity assistance to failing Wall Street banks, with little accountability or oversight. Now Republican Senator David Vitter of Louisiana and Democratic Senator Elizabeth Warren of Massachusetts have joined forces to push for curbs on the Federal Reserve's emergency lending powers. They are targeting a problem that AFR highlighted last year, when we urged the Fed to live up to the clear intent of the Dodd-Frank Act and take steps to ensure that its emergency loans are not abused again or used to bail out insolvent entities.

This is an issue on which AFR has worked with some unusual allies for us, joining with the libertarian Cato Institute, for example, to urge reforms. In Congress too, the idea of restricting the future use of the Fed's emergency lending authority commands support on both sides of the aisle – most recently from Warren and Vitter, but also from conservative Republicans like Jeb Hensarling, chair of the House Financial Services committee. Last summer a Congressional letter calling for such restrictions had 15 signers, split almost evenly between the two parties. The breadth of support for reform makes this an area of policy where progress could be made even in a divided Washington.

Two AFR reports examine political spending by the financial sector

In the 2013-14 election cycle, Wall Street banks and financial interests spent more than $1.4 billion on lobbying and campaign contributions – a total that works out to an average of more than $1.9 million a day, or about $2.6 million spent to elect or influence each of the 535 members of Congress. These figures come from an updated and expanded version of AFR's "Wall Street Money in Washington" report. Drawing on data collected by the Center for Responsive Politics (CRP) from the Federal Elections Commission (FEC) and Senate Office of Public Records, the report tracks the spending of PACs and employees associated with financial sector companies and trade associations, and details the lobbying expenditures and campaign contributions made by 344 separate entities. It breaks out contributions to members of both the Senate Banking Committee and the House Financial Services Committee, and highlights a set of top congressional recipients of financial industry money – 15 Senators and 20 House members.



The New York Times cited AFR's data and our conclusion that the financial industry spent more on political influence in 2013 and 2014 than it had in 2009 and 2010, when the Dodd-Frank Act was making its way through Congress. "Wall Street has been a steady donor, particularly to members of the House Financial Services Committee…," the Times article noted, adding that committee chairman Jeb Hensarling of Texas had "received donations on 13 separate occasions from political action committees run by Bank of America, Citigroup, Goldman Sachs and JPMorgan Chase."

On his weekly public-television show, Bill Moyers referred to AFR's report at the beginning of an interview in which he and the MIT economist Simon Johnson discussed the striking level of continued support in Congress for looser financial regulation. "I couldn't find any evidence," Moyers remarked, "that Republican candidates, or Democrats for that matter, asked voters last November if they wanted to let the wolves of Wall Street loose again."

A second AFR report, "Payday Pay-to-Play," focuses on spending by payday, car-title, and installment lenders. In late March the CFPB went public with its proposed rules for small-dollar loans (see top story), and the political influence of the industry loomed large in the news coverage, with CNN Money and The Huffington Post, among others, running articles that referred to our spending report. AFR's data was also cited by the Miami Herald in its reporting on a letter in which all but one member of the Florida House delegation urged the CFPB to rethink its proposal and consider adopting Florida's own – looser – rules as a model. The payday lending industry "has made campaign contributions to Florida legislators and their political action committees in the past, including those who signed the recent letter," the Herald pointed out, crediting AFR's report as its source.

Jon Stewart Interviews Elizabeth Warren

"We started getting groups like – God bless 'em – AARP, Consumers Union, the AFL-CIO, the NAACP, La Raza… More than a hundred groups got organized into **Americans for Financial Reform**. They pushed, and we got that consumer agency passed into law."

-- Senator Elizabeth Warren, recalling the fight to create a strong and politically independent Consumer Financial Protection Bureau

Click here to see the interview.

Reducing big-bank leverage

Excessive leverage was a major contributor to the 2008 financial crisis, with Wall Street's largest banks sometimes borrowing as much as $30-40 for every dollar they held in hard capital. The effort to limit borrowing to safe and responsible levels has been a significant part of financial reform, and of AFR's work as well. Those efforts have met with fierce industry resistance, however, since there is a direct tradeoff between leverage and profit margins: simply put, banks get to keep more of their profits when they borrow more money.

In December, the Federal Reserve took an important step in restraining bank leverage. Going beyond guidelines already advanced by international regulators, the Fed proposed that the eight largest U.S. banks be required to hold more capital than smaller institutions, with the level scaled to the size and risk profile of each bank. As expected, this move has come under fire from the financial lobby; the Chamber of Commerce, for example, has called for the proposal to be withdrawn on the basis of its supposed negative effects on the economy.

AFR weighed in with a letter strongly supporting the concept of increased capital while highlighting economic evidence and institutional risk factors that more than justify the proposed requirements. Our letter argued that the limits proposed by the Federal Reserve are, if anything, not strict enough.

A step forward on forced arbitration

In March, the CFPB completed its Dodd-Frank-mandated study of the impact of forced arbitration on the consumer finance market. The Bureau's report documents what AFR members and others have long said about this practice: it gives banks and lending companies what amounts to a license to steal – systematically.

Forced-arbitration clauses have become an increasingly common feature of the take-it-or-leave-it agreements for credit and prepaid cards, payday loans, private student loans, and other financial products and services. They require consumers to give up the right to go to court; instead, complaints must be argued before private arbitrators who are typically chosen by the company and know they're unlikely to be chosen again if they make a habit of giving consumers a fair shake.

The overwhelming majority of contracts with forced-arbitration clauses also prohibit class actions, effectively immunizing companies for misconduct in which the cost to any one consumer is simply too small to justify the trouble and expense of a complaint – even if the overall harm to the public, and the gains for the company, are very large.

Take the common bank practice, in recent years, of playing around with the sequence of a day's checking account transactions in order to generate additional overdraft fees. In a comparative analysis of check-reordering complaints against banks with and without class-action bans, the CFPB identified 18 class actions that collectively produced $1 billion in cash relief for some 29 million people. By contrast, five banks that invoked arbitration against their customers escaped accountability and largely did not have to answer for their overdraft charges.

AFR joined more than one hundred state, local and national co-signers in a letter praising the study and calling on the Bureau to embark on the rulemaking process. What happens next will be watched far and wide. A great many different kinds of companies have gotten on the forced-arbitration bandwagon, and they will be in Wall Street's corner, fighting hard to stop the Bureau from moving forward with a rule that really takes on the abuses of forced arbitration. But that is exactly what the CFPB now has both the clear statutory authority and a compelling case for doing.

Demanding debt relief for Corinthian Students

The Corinthian Colleges chain went out of business on April 26th, closing its remaining 28 campuses. Corinthian had become a poster child for the worst practices of the for-profit education world, sucking up federal loan dollars (over $1 billion a year at its peak) while lying to students about their job and income prospects, steering them into high-cost private loans on top of the federal loans the company depended on, and ultimately leaving tens of thousands of them with little to show for their efforts beyond a mountain of debt.

Corinthian's problems began to surface in 2007; yet even after government investigations revealed fraud – right up until a few days before its closing, in fact – the Department of Education allowed the company to go on enrolling new students and receiving taxpayer funds. The urgent issue now, however, is the one brought to the fore by a group of about 150 former students who have declared a debt strike. Thirteen Senators, nine state Attorneys General, three members of the House of Representatives, and a host of advocacy organizations have united in calling for comprehensive loan relief and other measures on behalf of Corinthian's students.

In September 2014 the CFPB sued Corinthian for predatory lending and illegal debt collection practices. That suit was settled in February, with Corinthian's successor company, ECMC, agreeing to provide nearly half a billion dollars in private loan relief. But the students should have their federal loans forgiven as well. As the National Consumer Law Center argued in a May 5th letter to Secretary of Education Arne Duncan, they should not have to pay for Corinthian's fraud, especially not in view of the Department of Education's complicity, which included its role as both an issuer and an aggressive collector of federal student loans.

In addition to the debt strikers, more than a thousand ex-students have already asked the Department to waive their debts, arguing that, as the New York Times put it, "the school used false graduation and placement statistics to entice them" into borrowing. On May 1, as the Times went on to note, 34 organizations, including AFR, sent a letter to Secretary Duncan, reiterating the case for federal loan relief and calling for emergency measures to guarantee that students are not only fully informed of their loan-discharge rights but cannot be rushed into signing them away in the act of transferring their credits to other institutions. "We are particularly concerned," the letter declared, "that students whose entitlement to federal loan discharges is crystal clear – those recently enrolled in the 30 Corinthian campuses that closed on Monday – are being given incomplete, incorrect, and harmful information about their options from Education Department staff and from schools that do not have these students' best interests in mind."

Unfortunately, the problems of the for-profit education industry go way beyond Corinthian; and so, even as advocates focus on the immediate crisis facing this group of students, they must also continue to demand government actions that will end the abuses that created this situation.

Attacks on the CFPB continue; so does the organizing to defend its work

Since the 2014 elections, Wall Street and its congressional allies have stepped up their efforts to undermine the CFPB through various sham "reforms." Rep. Randy Neugebauer (R-Tex.), for example, has introduced a bill that would replace the Bureau's single director with a five-member board. Putting regulatory agencies under the control of boards or commissions, with party leaders dividing up the right to choose the members, is a well-known recipe for regulatory gridlock and unaccountability. "It is notable," AFR pointed out in a letter to Congress, "that those who backed the CFPB's creation and support its work overwhelmingly agree that one director is the preferred structure, whereas most of those who push for a commission opposed the creation of a consumer protection agency at the outset."

On April 22 the House approved a bill, HR 1195, calling for long-term cuts in the CFPB's budget. As originally proposed by Rep. Robert Pittinger (R-N.C.), this legislation subjected the Bureau to a set of additional procedural requirements involving three new "advisory" bodies; then a majority in the Rules Committee voted to add language reducing the available funding for the Bureau in 2015 and 2020. With the help of a rapid mobilization by AFR and our members, however, HR 1195 in its new form was widely recognized as a dangerous attack on consumer protection. The White House issued a statement declaring the President's readiness to veto the bill if it reached his desk, and in the end it passed the House on a sharply partisan basis, with only four Democrats in support and five Republicans in opposition. That result strengthens our hand in continuing to prevent such measures from advancing in the Senate.

On the Senate side, the first attacks of the new session took the form of amendments to the FY 2016 budget. Senator David Perdue of Georgia won approval for an amendment that would have the Bureau lose its independent funding and become subject to the annual appropriations process. Another successful budget amendment, offered by Senator Mike Crapo of Wyoming, would defund Operation Choke Point, a Justice Department crackdown on banks that abet financial fraud. While Crapo's proposal was not explicitly directed at the CFPB, it would impede the Bureau's joint efforts with DOJ and other agencies to stop banks from, among other things, helping payday lenders operate in states that have declared them illegal.

In response to these measures, Senator Jeff Merkley of Oregon introduced a different kind of budget amendment – one assuring the CFPB of the continued authority and autonomy to fulfill its consumer protection mission. Unfortunately, his proposal, unlike the others, was defeated.

These budget blueprints are nonbinding, but they indicate a ferocious level of continued opposition to the CFPB. We can expect more such attacks, including continued efforts to insert changes during the appropriations process or as part of other "must pass" or procedurally privileged legislation.

House committee thinks twice about throwing servicemembers to the sharks

Another recent Hill battle ended successfully, with AFR members beating back efforts to help payday lenders hang onto their ability to target members of the military.

Tucked deep inside a subcommittee-approved version of the National Defense Reauthorization Act was a provision meant to block the Department of Defense from finally putting teeth into the Military Lending Act (MLA), a 2007 law setting a 36% interest rate cap on consumer loans to service members. The proposed legislation would have forced the DoD to delay its plan by a year or more while pointlessly repeating studies it had already done.

Led by CFA, our partners organized quickly, calling attention to this shameless gift to the payday industry and building support for a last-minute amendment introduced by Rep. Tammy Duckworth (D-Ill.), an Iraq veteran. In the end, the House Armed Services Committee approved the Duckworth amendment, stripping the MLA provision out of the bill by a bipartisan vote of 32-30.

The committee's vote was a victory for service members who deserve fair and affordable credit, but it wasn't the end of our opponents' attempts. One week later, Rep. Steve Stivers (R-Ohio) proposed an amendment requiring the Pentagon to certify that its database of service members and their families meet nonexistent "industry standards" before putting the updated rule into effect.

Again, our members and champions in Congress sprang into action. This time Rep. Denny Heck (D-Wash.) took the lead, negotiating language that would satisfy critics of the Defense Department's efforts to date, without slowing down protections for service members and their families. Now that the Reauthorization Act has been approved, with no riders or amendments to slow down the new MLA rules, the Department is in a position to move full steam ahead toward their timely implementation this summer. See media coverage of MLA fight.

'Trade pact' could threaten financial reform

Congress recently moved toward providing "fast track" authority for the Administration's efforts to reach a major new trade pact covering much of Asia and the Pacific. The Trans Pacific Partnership (TPP) is being negotiated in secret. If fast track is granted and the negotiators come to an agreement, Congress will have little or no opportunity to review and modify its details before the deal goes into effect.

We are particularly concerned about one potential TPP provision, involving so-called "investor state dispute settlement" (ISDS). Under ISDS, foreign companies operating in the U.S., including some of the world's largest banks, would be permitted to bring cases in front of private, industry-friendly tribunals, which could force U.S. taxpayers to compensate them for supposed losses created by compliance with U.S. financial regulations; this could pose a major threat to the authority of U.S. regulators. Leaks from the secret TPP negotiations show that ISDS is part of the current package, and it is impossible to tell whether the terms of the treaty will provide effective protections for financial regulations. AFR has been steadily meeting with policymakers to discuss our concerns. In April, as the debate intensified, we circulated a statement on our concerns about the damage ISDS could do to financial reform for to our members, the public, the press, and lawmakers.

Changes in DASP program should benefit homeowners and communities

In a welcome piece of progress for homeowners, efforts by AFR and our members and allies have helped secure some useful changes in the Department of Housing and Urban Development's Distressed Asset Stabilization Program (DASP). On April 24, HUD and the Federal Housing Administration (FHA) announced a set of new guidelines. They call for an increase in the number of loans going into pools with higher homeowner-protection standards; for the creation of a separate not-for-profit buyer pool; for an extension from six to twelve months of the moratorium on foreclosures on loans sold through the program; and for what we hope will be strong requirements that all borrowers be evaluated for sustainable loss mitigation plans including principal reduction.

DASP is a program in which HUD sells off pools of delinquent FHA-insured mortgages to qualified non-government bidders. While some loan buyers have been able to help families stay in their homes, overall rates of home retention in the program have been unsatisfactory; moreover, some people have been offered meaningless loan modifications, and some sales have raised serious concerns about speculative buyers and their destabilizing effects on struggling communities. Advocates have pushed for steps to prioritize sustainable loan modifications, or, where that is not possible, for affordable homeownership and rental options and efforts to make it easier for mission-driven buyers (who thus far have produced the best outcomes) to succeed in buying loans.

The Right to the City Alliance and the Center for Popular Democracy, along with the Center for American Progress and the National Community Reinvestment Coalition, which have focused on this issue, all praised the changes while also laying out additional needed measures. These groups and others will continue to push for clarification that HUD will really require (and enforce requirements) that borrowers be evaluated for sustainable loan modifications, including principal reduction, by all buyers; for further steps to make sure that not-for-profit and/or mission-driven buyers are actually able to acquire loans; for more notice and protections for homeowners before their loans can be sold; and for more focus on affordable housing outcomes when homes cannot be saved.

Asset managers and systemic risk

Big banks aren't the only entities that can pose risks to the financial system. There is an ongoing debate among U.S. and global financial regulators over the possible risks posed by asset managers – in particular by such giants as Blackrock and Fidelity, which manage trillions of dollars in investments for a wide range of clients.

The Financial Stability Oversight Commission – the council of regulators charged by Dodd Frank to coordinate the ways in which various agencies address such threats – recently requested comment on potential systemic risks in this area of the market. AFR responded by making the case for strong and coordinated oversight and pointing to several places (including fund transparency to regulators and derivatives risk management) where regulation could be improved. "The significance of the asset management industry to financial stability can be seen in the history of financial disruptions in U.S. markets," we pointed out. "With the exception of the S&L crisis, asset management practices have played a significant role in every major financial stability event of the last thirty years."

While asset management doesn't generate the same kind or level of systemic risk as the activities of the Wall Street dealer banks, poor risk management on the part of fund managers could nonetheless be a source of financial instability. AFR will continue to campaign for effective regulation across the financial sector, for banks and nonbanks alike.

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

- Dodd-Frank Supporters Argue Safer Financial System Justifies Cost of Regulation (Wall St. Journal)
- SEC nods to industry in proposals on CEO pay, overseas swaps (Bloomberg)
- How Warren's Banking Agenda Could Influence Clinton (American Banker)
- Florida Congressional delegation criticizes proposed rules on payday lending (Miami Herald)
- Jon Stewart Interviews Elizabeth Warren (Daily Show)
- Democratic Support Wanes for Changes in Dodd-Frank (CQ Roll Call)
- Financial Reformers Counter Regional Bank Lobbying (PoliticoPro)
- The Failure Behind Wall Street Bonuses (USA Today)
- In New Congress, Wall St. Pushes to Undermine Dodd-Frank Reform (New York Times)

Previous AFR Updates posted here. `