AFR Americans for Financial Reform

AFR Update - Summer 2015

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

The Dodd-Frank Act turns five

“We cannot forget,” Senator Sherrod Brown of Ohio told an AFR conference marking the fifth anniversary of the enactment of the Dodd-Frank Act. He was taking about the Wall Street abuses that Dodd-Frank was intended to prevent, and about the magnitude of the damage they caused – damage to be reckoned not just in dollars, Brown said, but in disrupted lives and careers and countless painful conversations in which parents had to tell their children that they would be leaving their homes, neighborhoods, schools, and friends.

This was the upshot of a “decade of deregulation”; and yet, Brown continued, many in Washington are trying to undermine Dodd-Frank. At “one hearing after another,” he said he has listened to colleagues who “just seem oblivious to the whole notion – the historical fact – that… Wall Street greed took us into this situation seven and eight years ago.”

Brown was followed by panels of regulators and advocates offering an agency-by-agency and issue-by-issue assessment of the gains made, and the challenges that remain, in the work of building a safer, simpler, and more broadly useful financial system.

The final speaker, Senator Elizabeth Warren, laid out two simple principles of Wall Street reform: “Financial institutions shouldn’t be allowed to cheat people,” and they “shouldn’t be allowed to get the taxpayers to pick up the tab for their risks.” While Dodd-Frank has made progress on both counts, she added, “there’s a lot more work to be done to complete the unfinished business of financial reform.” She cited two particular pieces of unfinished business, both embodied in bipartisan bills that Senator Warren has co-introduced.

The Bailout Prevention Act, co-sponsored with Senator David Vitter, would cut back on the Federal Reserve’s ability to provide emergency lending to a giant bank that gets into trouble. The 21st Century Glass-Steagall Act, co-sponsored with Senators John McCain, Angus King, and Maria Cantwell, would reestablish the wall between commercial and investment banking, which “produced a healthy financial system and sustained economic growth for half a century,” Warren said. “The idea is simple: If banks want to engage in high-risk trading, they can go for it – but they can’t get access to insured deposits and put the taxpayer on the hook for some of that risk.”

Corporate pay ratios to be revealed at last

A check mark goes next to one more item on the Dodd-Frank To Do list: the Securities and Exchange Commission has finally come out with a rule requiring public corporations to disclose the ratio of their CEO’s pay to their median employee’s pay. Beginning in 2018, investors and the public will be able to use this information to identify and call out companies with questionable compensation practices. (That could mean a great many companies, since the typical CEO of an S&P 500 corporation made more than 350 times as much money as the average worker last year, according to the AFL-CIO’s Executive Paywatch.)

This was one of Dodd-Frank’s most straightforward provisions, but also a fiercely resisted one. With corporate interests lined up in opposition, it took the SEC until 2013 to issue a proposed rule, which set off a frenzy of protest from the Chamber of Commerce and the Business Roundtable (lobbying arm of the nation’s corporate chiefs), leading to a series of delays and worries that the SEC might shelve the issue indefinitely.

But members of AFR’s executive compensation task force and our allies waged a nonstop campaign to get the SEC to act. In March 2015, 59 House members signed a joint letter, led by Reps. Maxine Waters, Raúl Grijalva, and Keith Ellison, reminding the SEC of its duty. (Many of the same members signed a similar letter in July.) In June, Senator Elizabeth Warren cited the pay-ratio delays in a scathing letter to SEC Chair Mary Jo White. In July, the AFL-CIO filed a Freedom of Information Act request for records of the SEC’s deliberations, and AFR, joining forces with the AFL-CIO, Public Citizen, CREDO, MoveOn and the Teamsters, delivered petitions in which more than 165,000 people called for action.

That action came at last on August 5, when the SEC approved a final rule by a vote of 3 to 2.

Out-of-control compensation was a big factor in the chain of events leading to the financial and economic meltdown of 2008-09. Runaway pay, as AFR pointed out in an August 5th statement, reduces employee morale and productivity, besides encouraging executives to make dangerous short-term bets. “Now that the SEC has met this requirement,” the statement continued, “it is past time for regulators to move ahead on a strong rule implementing section 956, which prohibits compensation for executives at big banks that encourages excessive risk taking, putting the public at risk.”

Progress on protecting retirement savings

In the first week of August, the Department of Labor held a marathon four days of hearings on the problem of conflicted retirement advice. The 75 groups testifying included (among those arguing for the Department to proceed with a strong rule) AFR, AARP, Better Markets, Center for American Progress, Committee for the Fiduciary Standard, Consumer Federation of America, Fund Democracy, Pension Rights Center, and the Public Investors Arbitration Bar Association.

The current regulations date back to the era of the defined-benefit pension. Although some retirement advisers are required to look out for the best interests of their clients, others can recommend investments that generate more income for *them* while saddling their clients with high costs or inappropriate risks. They can and they do – often enough to cost American workers and retirees an estimated $17 billion a year. That's $17 billion siphoned out of our potential retirement savings by Wall Street salespeople presenting themselves (and profiting from being perceived) as neutral financial advisers.

The beneficiaries of this regulatory loophole will defend it to the last; in fact, some of the most intense fighting may still be yet to come. So far, though, this has been a year of steady progress, with the Department on track toward issuing a final rule in late 2015 or early 2016.

In February, President Obama came to an event at AARP to offer strong support for the DOL's rulemaking. In April, the Department out with a revised proposal, which AFR praised as a "critical and long overdue improvement of investor protections mandated by the Employee Retirement and Income Security Employee Retirement and Income Security Act (ERISA)." In July, AFR, CREDO Action, MoveOn.org, and Public Citizen delivered petitions in which more than 230,000 Americans urged DOL to follow through on the promise of a strong fiduciary-duty standard for retirement investment advice across the board.

With us for the petition delivery was Ethel Sprouse of Cedar Bluff, Alabama, whose family lost nearly $400,000 in retirement savings after being persuaded to liquidate a safe and appropriate portfolio with Fidelity in order to invest in a much riskier package of investments with the "You're in Good Hands" people of AllState.

Since the August hearings, there has been a good deal of positive media coverage of the DOL's efforts, including this CBS Evening News piece built around an interview with Mrs. Sprouse.

"I am proud to stand with AFR because of the work you have already done. But I am even prouder to stand with AFR because of the work we will do together in the future… Right now, the Republicans want to roll back Dodd Frank, returning us to the days of bubbles and bailouts. We are here to fight back. We know the changes that we need so that financial markets don't just work for powerful insiders, but so that financial markets work for everyone. The key steps aren't complex or difficult to understand. They just take a little political courage. So I'm glad to be here among the courageous."

- Senator Elizabeth Warren, speaking at AFR's Dodd-Frank anniversary conference

101 Lawmakers join the call for strong CFPB action against payday abuses

With the Consumer Financial Protection Bureau working on a proposal to rein in the abusive practices of payday, car-title, and other triple-digit-interest consumer lenders, AFR and our allies have been trying to persuade lawmakers and other influential figures to go on the record in favor of strong action.

This spring, a number of the state and local groups in our #StopTheDebtTrap coalition took part in a sustained round of outreach to congressional offices, seeking support for letters urging the Bureau to enact tough rules. We were up against a well-financed effort by the other side, with payday industry lobbyists urging lawmakers' offices *not* to sign our letters. Nevertheless, we wound up with 101 signers – 33 on a Senate letter led by Senators Dick Durbin of Illinois and Jeff Merkley, and 68 on a House letter led by Representative Terri Sewell of Alabama. Those impressive results generated media coverage in Virginia, New Mexico, Oregon, and Washington.

Meanwhile, the payday industry has been promoting congressional letters of its own. Perhaps the most problematic so far is a bipartisan letter signed by all but one member of the Florida House delegation (including Democratic leadership member Debbie Wasserman Shultz), citing Florida's inadequate rules as a model for the CFPB to follow.

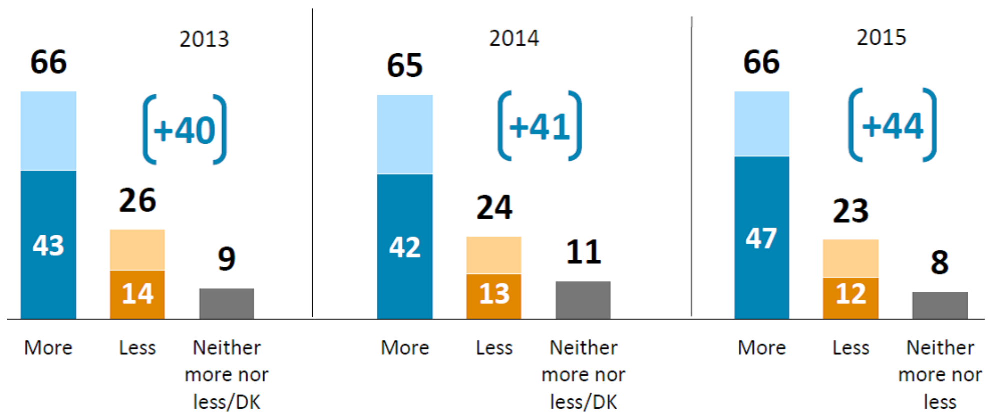
In response, 21 groups joined the Florida Alliance for Consumer Protection in a letter describing the failure of Florida's "best practices" standards. As the letter noted, those standards "have not changed the fact that most payday loan consumers in Florida take out, on average, almost 9 loans per year," while "63% of payday loan borrowers take out 12 or more loans per year."

Putting teeth into the Military Lending Act

Since 2012, AFR members led by the Consumer Federation of America have been pushing the Department of Defense to close a set of loopholes that allowed triple-digit-interest lenders to go on targeting service members and their families despite the 36 percent annual-interest rate cap established by the Military Lending Act (MLA) of 2006.

In a previous AFR Update, we reported on a last-ditch industry effort to block the Department from implementing new rules it proposed late last year. After raising a public outcry, our side ended up winning that fight. And on July 21, the Defense Department took the final step of approving rules designed, as President Obama said, addressing a Veterans of Foreign Wars gathering in Pittsburgh, to "protect our men and women in uniform from predatory lenders" because "it is the right thing to do."

New poll finds continued strong support for financial regulation



Support for more regulation of the financial sector has held steady at about 65%. In 2015, nearly half of all voters (dark blue) said there should be much more regulation.

Since 2013, AFR and the Center for Responsible Lending have been commissioning an annual voter survey on financial reform issues. This year's survey, conducted by Lake Research at the end of June, once again found broad support for tough regulation of banks and financial companies in general, and for the work of the Consumer Financial Protection Bureau in particular.

The results were similar to those of our 2013 and 2014 surveys – an important fact in and of itself now that the financial crisis has begun to recede in the national memory. After a disaster, the desire for reform typically fades over time; here is a case where it has remained consistently high. Financial regulation, moreover, is an area of policy where public opinion often crosses lines of party or ideology. When voters hear a description of the Consumer Bureau's work, for example, the great majority (including 85% of Democrats, 74% of Independents, and 66% of Republicans) express support for the agency. Most voters, again regardless of party, say they are highly concerned about the influence of Wall Street on elected officials, and would be less likely to vote for a candidate known to have received large sums of campaign money from big banks and financial companies.

Fending off a fresh round of attacks on financial reform

When Senator Richard Shelby became the chairman of the Senate banking committee, he vowed to do "everything I can" to "modify" the Dodd-Frank Act, since, Shelby said, he didn't think he could actually repeal it, "which I'd like."

In May he introduced S 1484 – a bill that would drastically weaken financial reform. He described the legislation as a moderate package of regulatory relief for smaller banks. In fact, along with a few provisions targeted at community banks, Shelby's bill calls for dramatic changes benefitting the largest financial institutions in the country. Among other things, it would roll back new rules against subprime mortgages like those that played a central role in the financial crisis; weaken controls against excessive borrowing and financial risk-taking at banks with hundreds of billions of dollars in assets; and make it harder to designate giant non-bank financial institutions for enhanced regulatory oversight.

AFR and more than two dozen of our members voiced opposition to this legislation when it came before the Banking Committee. While the committee ended up approving Shelby's bill, it did so on a straight party-line vote – a result that dims its prospects for passage in a closely divided Senate. In a further sign of the polarized nature of current congressional debate, a Democratic alternative to the Shelby bill – a compromise measure limited to moderate and potentially bipartisan changes that would actually benefit community banks – was defeated, again in a purely partisan vote.

Although S. 1484 is unlikely to advance through regular order, its proponents have been looking for opportunities to attach it to "must-pass" spending bills – the device used to roll back key derivatives reforms in late 2014. In July, the entirety of Shelby's 218-page bill was tacked on to a regulatory appropriations bill, along with policy riders that would dramatically weaken the CFPB. AFR and other organizations spoke out against this effort to hijack the budget process in order to roll back financial reform. While this particular appropriations measure is unlikely to come to the floor, we have every reason to expect more budget-rider attacks on Dodd-Frank and financial reform in the coming months.

Setting the record straight on bond market liquidity

Critics of the Dodd-Frank Act say they are worried by a recent decline in bond-market liquidity, which they attribute new regulations. "The theme of declining liquidity," National Public Radio recently reported, "has been the subject of industry panels, hedge-fund memos to clients and extensive research projects by big banks."

And on Aug 3rd it was the topic of an AFR-organized telephone press briefing. The speakers – AFR Policy Director Marcus Stanley, John Parsons of MIT's Sloan School of Business; Jonathan Tiemann, founder and President of Tiemann Investment Advisors; and Wally Turbeville, Senior fellow at Demos and a former Vice President at Goldman Sachs – challenged every part of the industry argument. They questioned the premise that market liquidity has significantly declined, as well as the idea that more liquidity is always desirable and the claim that recent changes in market behavior can in fact be traced to Dodd-Frank regulations.

"The bond market looks pretty healthy," Stanley noted. "If you look at each of last three years, corporate bond issuance exceeds historical averages, and risk spreads for corporate bonds are low, so it's not hard for corporations to access money at reasonable rates." Some recent bond-market developments, such as occasional disruptions in trading, are likely due to increases in electronic trading that are leading to market abuses, the panelists argued. "We are way behind the ball on electronic trading… We can't even audit the market," John Parsons said. Industry lobbyists are particularly misguided, Parsons and the others agreed, in calling for the loosening of limits on excessive borrowing by giant banks, so that such banks can supposedly act as "shock absorbers" in the bond market. As the panelists pointed out, that kind of excessive borrowing was a major driver of the financial crisis and could be expected to increase financial instability rather than provide a cushion against it.

CFPB begins publishing stories behind consumer complaints

A "milestone for consumer empowerment" – that's how Director Richard Cordray described the CFPB's decision to expand the publicly searchable part of its complaint database to include, at consumers' discretion, their own accounts of the experiences they're complaining about.

Since 2012, the Bureau has been disclosing categorical data on complaints involving credit cards and, eventually, mortgages, bank accounts, private student loans, vehicle loans, payday loans, debt collection and a range of other financial products and services. AFR and our members have long urged the Bureau to let consumers make their narratives public as well; and at the end of June the CFPB finally took this step, over the loud objections of Wall Street banks and other financial interests.

Now that people can opt to share their experiences (with identifying information omitted), consumers can use the complaint database to learn about problems that others have encountered, find out how different companies have responded, and make better decisions for themselves. With narratives added, we expect the database to become better known and more popular, enriching its value for consumers and for the CFPB itself as a window onto the financial marketplace.

Cordray addresses AFR event marking CFPB's 4th birthday

Director Cordray used his opening speech at our July 16 symposium marking the CFPBs 4th birthday to announce another new feature of the Bureau's complaint system: a monthly summary that will include a ranking of "most complained about" companies. "Hearing directly from consumers in their own words about their problems with financial products and services is fundamental to our mission," Cordray said. "It gives us a true compass, in real time, about the issues and problems that individual consumers find themselves dealing with in their financial lives."

The event was organized by AFR, and co-sponsored by the Consumer Federation of America, the Leadership Conference on Civil and Human Rights, National Association of Consumer Advocates, National Consumer Law Center, National Council of La Raza, Public Citizen, and U.S. PIRG. Cordray's keynote remarks were followed by a panel discussion with experts from AFR member organizations discussing the CFPB's accomplishments to date, and the work that remains.

"In a few short years, the Bureau has thoughtfully, deliberately given consumers some critical tools to help protect themselves in the marketplace," said Ruth Susswein, Deputy Director of National Priorities for Consumer Action. She went on to say that "we all have a responsibility, along with the Bureau, to ensure that consumers know about these valuable tools and know how to use them."

Rising to the CFPB's defense

The financial industry has kept up its attacks on the CFPB this year, once again getting friendly members of Congress to introduce measures that would limit the Bureau's authority or funding. AFR, in addition to responding to individual threats, has worked hard to make it clear that the great majority of voters, regardless of party affiliation, support tougher regulation of banks and lenders in general and strongly approve of the Consumer Bureau's work in particular.

In March, we joined forces with CREDO Action, Other 98%, National People's Action, ColorofChange.org, National Council of La Raza, Public Citizen, and Senator Jeff Merkley to deliver petitions in which more than 274,000 Americans expressed their strong opposition to efforts to undermine the CFPB's effectiveness. Allied groups followed up with in-state petition deliveries to members of the Alabama, Florida, Kentucky, New Jersey, Ohio, and West Virginia congressional delegations.

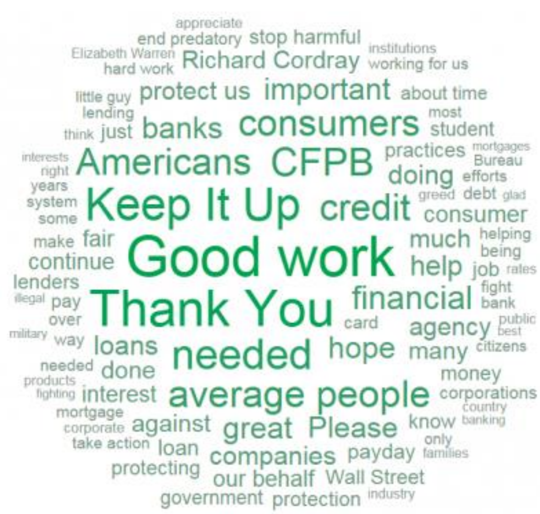
In Alabama, for example, the Women's Fund of Greater Birmingham and the YWCA of Central Alabama, made the delivery, which coincided with the fifth anniversary of Dodd-Frank and the fourth birthday of the Consumer Bureau. In Florida, Pamela Burch Fort of the NAACP and Alice Vickers of the Florida Alliance for Consumer Protection presented petitions with more than 13,000 Florida signatures to Rep. Gwen Graham, during a meeting in which they urged her to support stronger regulation of payday lending.

The good news is that a number of House members and Senators have risen to the Consumer Bureau's defense, as did President Obama in his July 23 weekly radio address. "We can't put the security of families at risk by returning to the days when big banks or bad actors were allowed to write their own rules," he said, adding that "If any bill comes to my desk that tries to unravel the new rules on Wall Street, I will veto it."

Happy Birthday and keep up the good fight

That was the theme of a set of birthday-card-style petitions signed by more than 13,500 people and delivered to CFPB Director Richard Cordray on August 3rd. More than 2,100 of the petition-signers added a personal message about why they value the Consumer Bureau's work.

"Thank you for looking out for the consumer's interests," Kathryn Burns of Austin, Texas, wrote. "Sadly, that seems unpopular in Washington and in a lot of statehouses these days. But I'm very glad you're there!"



Karen Boehler of Roswell, New Mexico, urged the Bureau to “continue to be a watchdog, not a lapdog agency.”

“A government agency doing something positive for the people,” wrote James Baker of Keswick, Va. “Thank you and take well deserved pride in your work.”

“My spouse was victim of a payday-style, debt-trap loan and we are still dealing with the aftermath,” said Arlyus Fones of Portland, Oregon. “Thanks for all you're doing to prevent this sort of thing.”

SEC clarifies the scope of whistleblower protection

The Dodd-Frank Act established new incentives and safeguards for corporate whistleblowers reporting potential violations of federal securities laws. Last year AFR was one of the more than 50 signers of a letter to SEC Chair Mary Jo White, led by the Government Accountability Project and Labaton Sucharow, expressing alarm about a “quiet and growing epidemic” of retaliation against whistleblowers. On August 4, the SEC did one thing our letter had recommended: it issued an interpretive guidance laying out a clear and broad definition of the range of whistleblowing activity (including internal as well as external disclosures) that the law protects.

This step taken, there is more to be done, including a stronger SEC response to nondisclosure agreements, charges of “property” theft, and other creative ways in which corporations seek to block disclosures, punish whistleblowers, and evade the intent of the law.

Putting brakes on the revolving door

In the runup to the financial crisis, federal regulators ignored laws that could have been used to crack down on many of the bad practices that finally crashed the banking system in 2008. More recently, some of the same regulators have been less than energetic in their efforts to carry out the reforms of the Dodd-Frank Act.

The Securities and Exchange Commission, for example, has failed to fulfill a number of its Dodd-Frank assignments, even as it has continued to fall short in its basic role as a guardian of investor rights and the integrity of the financial markets. The SEC has also made a habit of settling criminal cases against big banks with, at most, vague acknowledgments of wrongdoing and modest financial settlements.

With two of the five commission seats soon to become vacant, AFR and our members are working to shine a spotlight on the importance of these positions. In a June 15 letter to President Obama, we pointed to a pattern of nominating “revolving-door insiders with a history of moving back and forth between Wall Street firms seeking to escape accountability and the agency charged with defending the public interest.” The letter appealed to the President to find candidates who are “genuinely independent of these industry interests and [have] a record of clear commitment to the public interest and to the protection of ordinary investors.”

The Commodity Futures Trading Commission is another agency with large Dodd-Frank responsibilities and two looming vacancies. Here, too, AFR will press for nominees who are genuinely independent of Wall Street. We will also be making the case for changes in the law, like those embodied in the Financial Services Conflict of Interest Act, a bill introduced in July by

Senator Tammy Baldwin and Representative Elijah Cummings. Their legislation would ban the "golden parachutes" that Wall Street uses to reward executives for taking jobs in government; limit the lobbying that can be done by financial regulators after they leave government; and expand the range of situations in which officials have to recuse themselves from decisions affecting former employers.

RECENTLY RELEASED

- Payday Pay-to-Play (updated June 2015)
- Voting Record (for complete 2014 election cycle)
- Cost of Crisis (updated July 2015)
- Ten Good Reasons to Support the CFPB (updated July 2015)
- The Story of Dodd-Frank (video with Senator Elizabeth Warren)

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

- Did the Volcker rule really harm the bond market? (NPR MarketWatch)
- Want to know how much more your boss makes than you? (CBS MoneyWatch)
- Not perfect, but a boon for consumers and the economy (Austin Statesman-American and numerous other newspapers)
- Is your adviser truly protecting your retirement? (Washington Post)
- Dodd-Frank at Five: Wall Street Remains Humbled, But The War Over Financial Reform Is Nowhere Near Over (International Business Times)
- 5 years later, 5 things to know about Dodd-Frank (CNBC)
- Senate Democrats Want Tough Rules to Rein In Payday Lenders (Wall Street Journal)
- Payday lenders prey on the poor (Detroit News and many other newspapers)
- Mo. lawmaker among top recipients of donations from payday, short-term lenders (St. Louis Post-Dispatch)
- Banks' living wills show Goldman and Morgan imperiled (Financial Times)
- Elizabeth Warren says passing Dodd-Frank was like David beating Goliath (Business Insider)
- Democrats Are Fed Up with the SEC's Weak Financial Crimefighting (New Republic)

Previous AFR Updates posted here.