This Week in Wall Street Reform | October 15-21, 2016

Please share this weekly compilation with friends and colleagues.
To subscribe, email erin@ourfinancialsecurity.org, with "This Week" in the subject line.
Archive of past issues posted here.

WELLS FARGO

Senators Press Wells Fargo on Whether or Not CEO Sloan Knew of Sales Tactics | Wall Street Journal
In a letter Thursday to Wells Fargo's chairman, Sen. Elizabeth Warren (D., Mass.) asked the directors whether they had sufficiently questioned Timothy Sloan about his knowledge of the bank's sales-tactics scandal—what he knew and when he knew it—before he was appointed the new chief executive officer. The letter, co-written with Sen. Robert Menendez (D., N.J.), also asked whether Mr. Sloan's predecessor, John Stumpf, would receive any retirement benefits after abruptly leaving the bank earlier this month.

Even the Better Business Bureau has disowned Wells Fargo | Washington Post
Next week, San Francisco officials are scheduled to vote on whether to cut off business with Wells Fargo, in perhaps one of the most personal rebukes the bank has faced since acknowledging that it fired 5,300 employees for setting up unauthorized accounts customers didn't want to meet aggressive sales goals. California, Illinois and Massachusetts have all taken steps to suspend ties with the bank, one of the largest in the world. Ohio Gov. John Kasich said "Wells Fargo's culture was compromised by greed" when he announced the state would stop doing business with the bank for a year. The bank also lost its Better Business Bureau accreditation. The 100-year old organization cited the sales scandal among the reasons for pulling its seal of approval from Wells Fargo after more than 35 years. But the bureau has also has received more than 4,000 complaints about the bank over the last three years and of 107 customer reviews it has received, all but four were negative.

Big companies can abuse leverage on everyday consumers | Sentinel Source (Editorial)
Wells Fargo was, in fact, sued by many of its customers for signing them up to false accounts during the past few years. But those lawsuits were tossed out of court because the customers had agreed to binding arbitration in case of disagreements with the bank. The ideal response would be for consumers to refuse agreements that contain such clauses, fees and surcharges. But when you provide a near-monopoly service, you hold almost all the cards. If every big bank, every phone or cable company, every utility has the same language baked into its contract, well, who wants to go without oil, or phone service, or an ATM card? It seems, in these days of investor-driven, bottom-line corporate management techniques and increasingly dense fine print, the average consumer has two choices: become a lawyer or go without everyday services.

Attorney general leads criminal probe of Wells Fargo bank | Washington Post
California's attorney general is conducting a criminal investigation into whether employees at San Francisco-based Wells Fargo bank stole customers' identities in the sales practices scandal that rocked the bank and cost its CEO his job, documents released Wednesday show. A search warrant and supporting affidavit released by the state Department of Justice show that agents sought evidence related to allegations that bank employees created up to 2 million bank and credit card accounts without customers' approval in order to meet sales goals.

CONSUMER FINANCE & THE CFPB

CFPB is not going anywhere | The Hill (Adam Deutsch and Joshua Denbeaux)
And perhaps the most important factor for consumers to remember is that the appeal's court ruling has absolutely no impact on consumers who are seeking to bring their own private rights of action for violations of

statutes like RESPA and the Fair Debt Collection Protections Act (FDCPA). While the CFPB itself may take less aggressive action to enforce its own regulations, consumers continue to benefit from the work of the CFPB and can continue to bring the same private rights of action available prior to the PHH Corporation decision. For consumers, there is a reason to celebrate knowing the CFPB is here to stay.

Is the CFPB constitutional? The D.C. Circuit says no. Here's why. I Washington Post (Andrew Rudalevige)
The decision does not close CFPB or invalidate its decisions. But it pulls the bureau out of the realm of independent agencies and into Myers' executive branch hierarchy — albeit still safe from the legislative budget process. The case will almost certainly be appealed. Stay tuned for more episodes! But in the meantime, it breathes new life into the spirit of the unitary executive. In so doing, it strengthens President Obama's hold on the agency — and, more meaningfully, his successor's.

CFPB's Structure Ruled Unconstitutional, But Is It Really? I National Consumers League (Sally Greenberg)

CFPB Rulemaking Bound by Cost-Benefit Mandates, Hensarling Says I Bloomberg BNA
A recent federal appeals court ruling means the Consumer Financial Protection Bureau must abide by executive orders, including mandates for costs-benefit analysis in rulemaking, House Financial Services Committee Chairman Jeb Hensarling (R-Texas) told CFPB Director Richard Cordray. Hensarling's letter said the Oct. 11 decision by the U.S. Court of Appeals for the District of Columbia Circuit means that the CFPB, created by Congress as an independent regulator, is an executive branch agency, subject to executive orders. He asked Cordray for assurances by Oct. 26 that the CFPB would "comply in full" with several executive orders before issuing any future final rules, "including rules governing arbitration agreements; payday, vehicle title, and installment loans; and debt collection."

See statements by AFR (**Chairman Hensarling's Erroneous Claim)** and Public Citizen (**CFPB Still an Independent Agency, Should Not Submit to OIRA Review)**.

Court ruling highlights need for new CFPB structure I The Hill (Randy Neugebauer)

Reining in the CFPB's unchecked authority I Augusta Free Press (Rep. Robert Hurt)

After the Wells Fargo scandal, there is a better way I Chippewa Herald (Rep. Sean Duffy)

Hensarling questions CFPB rulemaking after court decision I The Hill House Financial Services Committee Chairman Jeb Hensarling (R-Texas) contended Wednesday that a ruling from a federal appeals court that altered the legal structure of the consumer agency now means the CFPB faces additional restrictions on its regulatory work. However, allies of the CFPB were quick to urge the agency to ignoring Hensarling's request. For one, some expect the government to eventually appeal the court's ruling.

And **Americans for Financial Reform** pointed out that the CFPB is listed by name in the U.S. code as an "independent regulatory agency." The group argued that no matter what the court said, the CFPB is specifically excluded from such requirements as an independent agency.

Hensarling seeks assurance of CFPB compliance with limits on executive agencies I JD Supra Business Advisor (Alan Kaplinsky)
Republican Congressman Jeb Hensarling, who chairs the House Financial Services Committee, has sent a letter to Director Cordray asking him to provide written assurance by October 26, 2016 that, as a result of the D.C. Circuit's decision in *PHH Corporation v. CFPB*, the CFPB will comply with the limits on executive agencies set forth in various executive orders.

In response to Mr. Hensarling's letter, **Americans for Financial Reform** issued a statement taking issue with the immediate application of the executive orders to the CFPB. However, rather than noting the court's withholding of the mandate, AFR stated that the CFPB is not subject to the executive orders because they "specifically exclude any agency defined as an "independent regulatory agency" by 44 U.S.C. 3502(5), which lists the CFPB by name. PHH v. CFPB did nothing to change that statutory definition." In our view, notwithstanding that the CFPB is currently defined as "independent regulatory agency," if the D.C. Circuit's decision takes effect, the CFPB should no longer be considered an "independent regulatory agency" for purposes of the executive orders.

Consumers Need Protection From the CFPB I American Banker (Adam C. Smith)

Payday-lending crackdown draws 1.4 million letters of protest I Politico
A plan to rein in high-cost loans has generated an estimated 1.4 million comments, in what may be a record for any federal rulemaking, as payday lenders pushed back against public opinion and the CFPB with surprising force. The flood of letters and emails to the bureau was the result of aggressive grassroots and astroturf campaigns by hundreds of groups across the political spectrum, with payday lenders and their customers generating an estimated 1 million comments to the bureau. **Americans for Financial Reform**, a coalition of more than 200 civil rights, consumer, labor, and community groups, tallied more than 400,000 comments from payday lender critics, including church congregations, labor unions, military veterans and senior citizens.

Texas Appleseed Cites Loan Model Launched in Brownsville I Brownsville Herald

The Problem With Car Title Loans I WiseBread.com

Single Widow Says She Was Trapped by High Interest Tribal Loan I KFOR (Lincoln, Neb.)

Why Payday Loans for Small Businesses are Bad News I Money Magazine
Merchant cash advances — a form of online small-business lending — are marketed as a way to help businesses invest in their future. But some small-business owners say this cash brought them to the brink of ruin…

Across the country, nonprofit organizations that help small businesses refinance debt have seen a wave of entrepreneurs… ask for help after getting merchant cash advances, which can have triple-digit annual percentage rates as high as 350%, according to several studies.

A March report by the Federal Reserve found that 7% of small-business owners in a 26-state region applied for a merchant cash advance last year. In Florida, for example, that figure is 18%, or nearly 1 in 5 small businesses.

"We see echoes of the early days of the subprime mortgage boom" in the rise of online small-business lending, Gerron Levi, director of policy at the microlender National Community Reinvestment Coalition, said in a hearing by a U.S. House subcommittee in July. Later this year, lawmakers in Illinois may tackle these concerns when they consider the nation's strictest rules on merchant cash advances and other online lending.

Voters to Decide South Dakota Payday Loan Industry's Fate I Yahoo Finance

Payday Loans in Regulators Cross Hairs I Star Tribune

The Flip Side of Payday Lending I CU Times

Piecemeal regulation is hindering US fintechs I Business Insider
High-level criticism of the US regulatory regime for fintech is gathering steam. Mark Warner, senior Senator of Virginia, said that there is a lack of expertise among the regulators responsible for fintech regulation, effectively making the industry a "Wild West space," at an event hosted by The Brookings Institute last Thursday.

Online Lenders Seek to Shape Industry Before Regulators Do I NY Times
Online lenders are drawing from a familiar playbook in Washington as scrutiny of the business heats up. A central plank of their strategy is to prove that the industry can tame itself without the need for additional government intervention. By distancing themselves from payday lenders and other businesses whose predatory tactics have drawn regulatory fire, online lenders hope to avoid a similar crackdown. At the same time, consumer advocates have increased warnings that a lack of federal oversight of the lenders could leave

some borrowers with unduly high fees or shut out of the market altogether.

SoFi, an Online Lender, Is Looking for a Relationship l New York Times

What Happens When the Arbitration Provider Makes a Mistake? l Legal Intelligencer

Mandatory arbitration can limit rights l My Central Jersey (Ronald Goldfarb)

Businesses Are Not Blocking Access to the Courts to Help Consumers l Morning Consult (George Slover)

Prepaid Cards Play Bigger Role for 'Unbanked' Households, Survey Finds l Wall Street Journal
More households that don't have bank accounts are using prepaid cards for basic financial services, such as making purchases, receiving deposits and saving for the future, a government survey found. Among U.S. households that have no access to the regular banking system, 27% reported using prepaid cards in the 12 months prior to June 2015, when the survey was taken, up from 22% in 2013. The Federal Deposit Insurance Corp. survey, released Thursday, found that 9.8% of all households reported using prepaid cards, up from 7.9% in 2013. The sharp increase in prepaid-card usage was among the findings of the FDIC's latest financial inclusion survey, which looks broadly at the behaviors and attitudes of households that have limited or no access to the mainstream banking system. The survey, done in partnership with the U.S. Census Bureau, collected responses from more than 36,000 households.

New rules could put new cybersecurity requirements on banks l Washington Post

Survey: More Americans now have access to bank accounts l Washington Post
The portion of Americans who do not have a bank account, known in industry jargon as the "unbanked," declined to 7 percent in 2015 from 7.7 percent in 2013, according to the survey from the Federal Deposit Insurance Corp. The improvements came mostly from households making less than $15,000 a year and among minority populations, particularly black and Hispanic households. Another way of looking at it: For every 10 households that were unbanked in 2013, one of those households is now banked.

FDIC: Unbanked Household at Record Low l USA Today

The Millions of Americans Without Bank Accounts l The Atlantic

DERIVATIVES, COMMODITIES & THE CFTC

U.S. CFTC regulator oversaw compliance at firm accused of illegal trades l Complinet

THE ELECTION AND WALL STREET

Could President Clinton be Tough on Wall St.? Staff's Emails Hint Yes l NY Times (Andrew Ross Sorkin)
[Wikileaks] readers may want to take a closer look not at Mrs. Clinton's speech transcripts — in which she does say a lot of what her audience presumably wanted to hear — but to the remarkably telling back-and-forth of emails among her staff members during the campaign. While the full record suggests that Mrs. Clinton may be a pragmatist, the emails sent by her staff hint that she may be inclined to impose heavier regulations on the financial industry than is fully understood. For people who don't like her coziness with Wall Street, this bit of nuance may be welcomed. For those who take comfort in her familiarity with the world of high finance, the leftward tug she seems to be feeling may disappoint.

Wall Street critics see hope in Clinton emails l Politico

Rejecting Trump, Wall Street Republican donors scatter largesse l Reuters

Clinton aide worried about 'demagoguing' on revolving door l Politico

Her First 100 Days: A Pledge to Take on Wells Fargo and Wall Street I Huffington Post
The Wells Fargo phony-account scandal may be worse that we've led to believe, even after a $185 million fine and the CEO's resignation. And this isn't Wells Fargo's first scandal. Its past exploits include discriminatory lending, exploitative payday loans, and a lucrative sideline in for-profit prisons.

Meanwhile, Hillary Clinton's Wall Street speeches are casting a pall over her potential victory and weakening her political capital before she even assumes office. She should make a pledge now: to take immediate action in her first 100 days that will address Wells Fargo's scandals and the systemic problems behind them. We have nine suggested actions, and there will undoubtedly be others.

Tim Kaine: We're planning to strengthen Wall Street regulations I CNBC

Hillary Clinton's Vow to the 99% I Huffington Post
Clinton also stressed consumer protection: by "defending and empowering the Consumer Financial Protection Bureau" created after the '08 financial crisis by Sen. Elizabeth Warren. By "building on the Dodd-Frank financial reforms.... because Wall Street can never, ever be permitted to threaten Main Street again." By slapping penalties on pharmaceutical companies for unjustified price hikes. And by eliminating the "fine-print gotchas" in contracts prohibiting lawsuits against corporations, forcing consumers into arbitration without court protections.

Where Hillary Clinton and Donald Trump Stand on Regulation I Fortune

EXECUTIVE PAY

Bankers, Regulators Find No Easy Answers at Bank Culture Workshop I Wall St. Journal
Top Wall Street officials gathered Thursday to discuss how to fix conduct problems at banks, but left without simple answers. Executives from big banks found sympathy among supervisors, some of whom said creating a healthy culture and reversing the breakdown in trust since the financial crisis take time. But regulators also voiced frustration that they can't address banking culture alone, saying values need to be owned by firms themselves…

U.K. banking rules now provide for unpaid bonus awards to be canceled or reduced, or bonuses to be returned or "clawed back" if misconduct is later uncovered. Adjustments in unpaid bonuses within major U.K. banks tripled to about £300 million in 2014, from £100 million in 2010, she said.

"On a lot of these cultural issues, it seems like the U.K. is tougher than the U.S.," said Marcus Stanley, policy director of **Americans for Financial Reform**, an independent advocacy group for effective financial regulation. "Their rules on bank bonuses are much stronger than our proposed controls, which are weak."

SEC Unveils Executive Pay Ratio Guidelines I Wall Street Journal

HEDGE FUNDS AND PRIVATE EQUITY

N.Y. state financial unit slams pension fund's hedge fund investments in new report I P&I

Labor Board Challenges Secrecy in Wall Street Contracts I New York Times

Financing 'trick' boosts lucrative private equity fees I Financial Times

INVESTOR PROTECTION, THE SEC

Are Fund Managers Doomed? Making the Case for Passive Investing's Triumph I Wall Street Journal
The question of whether investors can continue to get more for less isn't merely a case of grousing from beaten money managers.

Passive mutual funds are growing rapidly, pushing aside stock pickers and changing the investment world.

There are legitimate arguments against passive investing's virtues and sustainability. Past performance, as they say, is no guarantee of future returns. Nor is there precedent for what happens when so much money is invested blindly according to a formula.

After a slow start four decades ago when Vanguard Group's John Bogle launched a passively managed S&P 500 index mutual fund, the genre now comprises almost 30% of mutual and exchange-traded funds, according to the Investment Company Institute, more than double their share a decade ago and eight times the share 20 years ago.

SEC Approves New Treasury Tracker I Wall Street Journal
The Securities and Exchange Commission on Wednesday approved a long-awaited plan to boost oversight of the $13 trillion Treasury market, green lighting the first reporting system for trades in the world's most liquid market. The SEC approved a plan submitted by the Financial Industry Regulatory Authority in July that would create a data feed the government would be able to use to track Treasury trades. No such centralized reporting currently exists for Treasury trades, unlike those of corporate and municipal debt that brokers must report in near real-time.

Ernst & Young to pay SEC $11.8M to settle audit charges I The Hill

SEC Poised to Ease Restrictions in Corporate Elections I Wall Street Journal

Chamber of Commerce wages war against political transparency I The Hill
Last week, U.S. Sen. Elizabeth Warren (D-Mass.) wrote to President Barack Obama urging him to replace Mary Jo White as chair of the Securities and Exchange Commission (SEC). While Warren's call to replace White understandably drew big headlines, lost in the media maelstrom was her identification of one of the principal big money corporate groups that have fought political spending transparency: the U.S. Chamber of Commerce.

MORTGAGES & HOUSING

DOJ planning to sue Moody's over crisis-era mortgage bond ratings I Housing Wire
In the fallout from the financial crisis, many argued that the credit ratings agencies' competition for business led to ratings shopping among bond issuers and relaxed ratings standards for the ratings agencies themselves. Last year, Standard & Poor's reached a $1.375 billion settlement over just such claims. And now the Department of Justice is taking aim at Moody's Investors Service. Click the headline to read more.

How to Prepare for the End of HAMP I NCLC Digital Library

REGULATION IN GENERAL

The Red Tape Conundrum I Fortune
The idea that burdensome and overly complicated government regulation is strangling growth is almost as old as commerce itself. But right now the hue and cry from the business community is louder than at just about any time in recent memory.

Group claims White House delaying regs report until after election I The Hill

RETIREMENT SECURITY & FIDUCIARY DUTY RULE

Ameriprise spends another $7 million to get ready for fiduciary rule I Investment News
In its earnings release Tuesday afternoon, Ameriprise reported that its results for the quarter "included $7 million in incremental expenses related to the planning and implementation of the Department of Labor's fiduciary standard."

It was the second consecutive quarter Ameriprise has reported a $7 million expense resulting from the DOL's new rule. During a first-quarter earnings call, the firm's chief financial officer, Walter Berman, indicated

Ameriprise spent an additional $4 million to $5 million on DOL-related items.

That means Ameriprise has spent in the neighborhood of $18 million to $19 million so far this year on the new rule.

Financial Industry May Control Retirement Savings in Clinton Admin I International Business Times
While Hillary Clinton has spent the presidential campaign saying as little as possible about her ties to Wall Street, the executive who some observers say could be her Treasury Secretary has been openly promoting a plan to give financial firms control of hundreds of billions of dollars in retirement savings. The executive is Tony James, president of the Blackstone Group.

The investment colossus is most famous in politics for its Republican CEO likening an Obama tax plan to a Nazi invasion. James, though, is a longtime Democrat — and one of Clinton's top fundraisers. The billionaire sculpted the retirement initiative with a prominent labor economist whose work is supported by another investment mogul who is a big Clinton donor. The proposal has received bipartisan praise from prominent economic thinkers, and James says that Clinton's top aides are warming to the idea.

Trump adviser Anthony Scaramucci promises to 'repeal' DOL fiduciary rule I Investment News

Trump Wall Street Adviser: Obama's New Rule Treats Stock Brokers Like Dred Scott Decision Treated Slaves I Huffington Post

STUDENT LOANS & FOR-PROFIT EDUCATION

How some of the most vulnerable student loan borrowers are set up to fail I Market Watch
All federal student loan borrowers have the ability to become current on their loans through a program called rehabilitation, which allows them to cure their default by making nine on-time monthly payments in 10 months. The amount of the monthly payments is determined in part by a borrower's income. The CFPB report focuses on a cohort of borrowers who made the minimum monthly payment of $5 during rehabilitation, meaning that their income is likely low -- so low in fact that typically once they get out of default, they could stay current on their loans by paying just $0 a month.

The danger that these borrowers may default again is particularly concerning, the CFPB noted, because it indicates that both debt collectors and student loan servicers aren't doing enough to ensure that borrowers who are struggling have enough information to avoid a credit-ruining event a second time. Once a borrower rehabilitates her debt out of default her loan is then transferred to a loan servicer where she has access to plans that allow borrowers to make payments tied to their income. The CFPB found that communication breakdowns during this process put borrowers at risk of winding up in expensive repayment programs and defaulting again, even when they have access to affordable repayment plans.

Crack down on for-profit colleges? Pro and Con I Orlando Sentinel

Yes: Tough oversight protects students from predatory schools I Orlando Sentinel (Bob Shireman)
It's critical to understand that for-profit colleges in particular are more prone to predatory behavior, because the law allows the college owners to pocket as much of the college's money as they want, something that is not allowed at public and nonprofit colleges. Because they can make so much money, owners, at their worst, push their employees to recruit students whether or not they are qualified; then they charge high prices and spend very little on actual teaching, investing instead in advertising to recruit even more student victims. In recent years, this gambit cheated hundreds of thousands of students while making a lot of executives and investors rich.

Predatory for-profit colleges have been a real problem in Florida, where owners have curried favor with law-enforcement officials, and even arranged a takeover of the state regulatory agency, allowing abuses to continue unabated for far too long.

No: U.S. overregulation, politics disrupt students' lives I Orlando Sentinel (Curtis Austin)
For more than 50 years, the federal government had regulatory oversight of ITT-Tech. It approved changes of ownership and participation in federal financial aid. It approved every dollar of federal financial aid issued by the school. It had authority to make almost any demand of the institution.

If ITT-Tech presented significant challenges for students, one would think that the regulators would have acted well before the waning days of the Obama administration to require changes. In the past four years, the U.S. Department of Education has promulgated thousands of pages of regulations that attempt to limit student choices to public institutions.

Average Student Debt at Graduation up 4% to $30,100 for Class of 2015 I ticas.org

The Obama Administration Is Preparing For More College Shutdowns I Buzzfeed

DoED tells for-profit school to scale back student success claims I The Christian Science Monitor

This is Why Most For-Profit Colleges Really Suck – Loan Defaults and No Degree I Wake Forest News

Durbin Decries For-Profit Colleges I NPR Illinois

A Whistle Was Blown on ITT; 17 Years Later, It Collapsed I New York Times

Veterans are getting short shrift as for-profit colleges close down, report says I Washington Post

SYSTEMIC RISK

Paul Volcker: Breaking Up Big Banks Wouldn't Help I Wall Street Journal
Paul Volcker on Tuesday pushed back against calls to break up big Wall Street banks and ramp up oversight of large asset managers, while disputing claims that the rule named after him had caused a damaging drop in market liquidity. The former Federal Reserve chairman, speaking at a conference organized by WSJ Pro Financial Regulation, said he understood the appeal of breaking up complex and potentially compromised institutions but that he was "not convinced" such moves would improve financial stability.

OTHER TOPICS

Interview with Antonio Weiss I Wall Street Journal
"And let me make one very clear point, because it does pertain to the transition of power. In a few weeks, Congress will come back to deal with - and for those who are following this, and you all should follow this - the continuing resolution by which the government will stay open and maintain operations. And there will be an appropriations funding bill that will come with this. And that appropriations funding bill will take place in December.

"Now, last year, when faced with a similar appropriations bill, it was not just about funding; there were hundreds upon hundreds of unrelated policy riders, dozens and dozens of which were meant to amend, dilute, replace, repeal core elements of financial reform. Now, this year that will be happening in the midst of a transition of presidential power, we know that, and as congressional seats both in the Senate and the House are turning over. But let me say one thing, which is that the Obama administration and the Treasury Department will remain steadfast in making sure that those targeted efforts to upend the progress which I've just described do not meet with success.

Credit union regulator to repay $1B borrowed from Treasury I The Hill