AMERICANS FOR FINANCIAL REFORM

THIS WEEK IN WALL STREET REFORM
December 28 – January 3, 2014

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LOOKING BACK ON 2013

Financial Reform Went Way Better than Expected
Mike Konczal, New Republic, 12/29/13.
"[N]obody thought that banks would face tougher holding requirements for capital, that regulations of the financial derivatives markets would advance, or that the final Volcker [Rule] would be a pretty good start instead of an incoherent mess. Yet that is what appears to have happened in 2013."

"JPMorgan had been leading the charge against reform, arguing that the effort was over-harsh and destructive, and that Wall Street had already cleaned up its act on its own. Indeed, the big concern in 2012 was that Wall Street would convince enough moderate Democrats that Dodd-Frank had gone too far… and Congress would stop regulatory action before it was even completed. This fell apart right alongside the multi-billion dollar losses in JPMorgan's position.

"Though small compared to Wall Street and the right, groups like **Americans for Financial Reform** and Better Markets show up extensively in the comments on the Volcker Rule. In the final rule, there are hundreds of references to the detailed comment letter the Occupy the SEC group sent. These groups didn't exist before the crisis, and their existence is a major piece of what makes solid final rules happen."

Regulators Halfway Home on Dodd-Frank
Peter Schroeder, The Hill, 1/2/14
"More than half of the Dodd-Frank financial reform law has been fully implemented three and a half years after its enactment. As of Jan. 2, 50.5 percent of all Dodd-Frank rules have been finalized, according to outside **analysis** by the law firm Davis Polk. Regulators have proposed rules for another 21.9 percent of the Wall Street overhaul's rule-making requirements, leaving 27.6 percent of the law still untouched by regulators.

"Furthermore, regulators have now passed all 280 deadlines stipulated by the law. But that does not mean they have met all those deadlines. According to Davis Polk, regulators have met slightly more than half of the statutory deadlines of the law, 52.9 percent. Of the 47.1 percent of deadlines that have come and gone, regulators have not yet proposed any rule for 42.4 percent of them."

[The 25 Best Progressive Victories of 2013](#)
Peter Dreier, Common Dreams, 1/1/14
"The battle against Wall Street greed has many fronts. After it looked like Wall Street accountability was forgotten in a post-Occupy America, continued widespread outrage at the banks and at Attorney General Eric Holder's 'too big to jail' excuse, grassroots activist groups built pressure for action.

"Community groups and unions pushed the city of Richmond, CA to take on Wall Street with its plan to use eminent domain to help 'underwater' homeowners by purchasing mortgages and reducing the principal, making homes more affordable and protecting owners from foreclosure. Other cities, including Seattle and Newark, took steps to adopt the idea, which has generated national attention. Los Angeles sued Bank of America, Wells Fargo, and Citigroup for their discriminatory and predatory lending practices that 'led to a wave of foreclosures that continues to diminish the City's property-tax revenues and increase the need for, and the costs of, City services.' Nevada and Minnesota passed Homeowners Bill of Rights, joining California in defeating the banking industry. New York Attorney General Eric Schneiderman threatened to take Bank of America and Wells Fargo to court for disregarding the terms of 2012's $26 billion settlement by five banks to end foreclosure abuses.

"**Americans for Financial Reform**, Occupy Homes, and the Home Defenders League kept up the heat on the Justice Department (including civil disobedience at its headquarters by families who lost their homes to illegal foreclosures). Finally the department became more aggressive at investigating banks whose practices triggered the recession and negotiating large settlement agreements… Despite opposition from the bank lobby, in July the Senate finally confirmed Warren ally Richard Cordray to lead the Consumer Financial Protection Bureau (which was Warren's idea), allowing the new agency to get down to business, including serious action on credit card companies, car loans, and bank abuses… After three years of resistance from Wall Street, federal bank regulators finally adopted the Volcker Rule to refocus banks on service to customers and the real economy rather than on speculative trading and the exploitation of conflicts of interest."

Some Victories in Battle Over Banks
Darrell Delamaide, USA Today, 12/31/13

CONSUMER FINANCE AND THE CFPB

A Tool Consumers Need
Editorial, NY Times, 12/29/13
"The Consumer Financial Protection Bureau recently issued a report on 'pre-dispute' arbitration, also known as forced arbitration. That is the ubiquitous corporate practice of requiring consumers to agree in advance to use arbitration for any dispute that arises from a company's products or services, rather than go to court.

"Banks and businesses love forced arbitration, because it is a process they control for their own benefit. It shields them from accountability by closing the courthouse door to consumers. But no one should have to forfeit consumer protections and legal rights to use products and services…

"To the extent that consumers are aware of their vulnerability, they have learned the hard way. In the past several years, the Supreme Court has repeatedly upheld arbitration clauses, leaving consumers with virtually no meaningful way to challenge corporate wrongdoing. Ideally, Congress would pass a law to remedy that injustice. For now, it is relying on the consumer bureau. To work its way toward an effective ban on forced arbitration, the agency need only follow where the evidence leads."

[CFPB: Regulation Done Right]
Michael Calhoun, The Hill, 1/2/13
"Seven years after the start of the economic meltdown, public opinion continues to solidly favor effective regulation of financial companies. According to a national survey conducted this past summer by my organization, the Center for Responsible Lending, and **Americans for Financial Reform**, 90 percent of voters see regulating financial services and products as either important or very important. This view transcended differences of age, race, geography, and political party.

"The Consumer Financial Protection Bureau (CFPB) has shown that this regulation can be done right. Since its start in 2010, the CFPB has been transparent in its work, engaged stakeholders on all sides of its issues, met its deadlines, and used technology effectively. It's been a blueprint for the way you'd want an agency to operate in the 21st century."

[CashCall Case Sends a Message: Online Lenders Can't Collect on Loans that Break State Laws]
Rebecca Theiss, AFR Blog, 1/3/14
"Just before the holidays, the Consumer Financial Protection Bureau (CFPB) took an important action against CashCall Inc., an online loan servicer, along with its owner, J. Paul Reddam; a subsidiary, WS Funding LLC; and an affiliated company, Delbert Services. The CFPB found that CashCall and its affiliate were working with an online lending agency called Western Sky, and collecting on loans made by Western Sky that were void because they violated various state interest rate caps or licensing requirements.

"The CFPB's action was important in clarifying that it is against federal law to collect debts that consumers do not owe because the loans are void under state laws. And this in turn is particularly important because absent such decisions, online lenders could undermine abusive-lending laws enacted by state legislatures and/or directly by the voters through ballot measures."

[After Attacks by Payday Lenders, Former Lawmaker Returns Fire]
Lee Davidson, Salt Lake Tribune, 12/26/13
"Payday-loan companies gave new meaning to the term 'predatory lender' when they set out to ruin a critic, former Rep. Brad Daw, according to Utah House investigators. The Orem Republican is returning fire now by calling for legislators to go after that industry based on what investigators found.

"They [reported last week] that in retribution for Daw pushing a bill last year to restrict the industry, lenders used shell groups created by the campaign staff of former Attorney General John Swallow to funnel money for nasty mailers and phone attacks that helped defeat Daw without the public knowing who paid for them. The same type of campaign money 'laundering' was used to pay for TV and radio ads against Swallow's Republican primary rival, Sean Reyes, who recently was named attorney general by Gov. Gary Herbert after Swallow resigned. "

[Hold Online Lenders to Account]
Editorial, Los Angeles Times, 12/31/13

[Consumer Bureau Pushing Mortgage Disclosure]
Julian Hattem, The Hill, 12/20/13

DERIVATIVES, COMMODITIES AND THE CFTC

[Regulator of Wall Street Loses Its Hard-Charging Chairman]
Ben Protess, NY Times, 1/3/14

[Gensler Says Regulators Struck `Right Balance' on Rules]
Bloomberg TV, 12/30/13

ENFORCEMENT

[SEC's Mary Jo White Wants Companies to 'fess up']
Andrew Tangel and Jim Puzzanghera, LA Times, 1/1/4

[Regulators Have New Cases of Frauds and Abuses to Tackle]
Peter J. Henning, NY Times, 12/30/13

INVESTOR PROTECTION & SEC

[FINRA Warns Against Conflicts in Retirement-Plan Rollovers]
Mark Schoeff, Investment News, 12/20/13

MORTGAGES AND HOUSING MARKET

[Adjustable-Rate Mortgages Regain Popularity As Prices, Rates Rise]
Andrew Khouri, Los Angeles Times, 1/1/14
"Adjustable-rate mortgages, which all but vanished during the housing bust, are again gaining popularity. Home prices and interest rates rose last year, and adjustable mortgages can help keep the monthly payment affordable — at least temporarily. Such mortgages offer a lower initial rate, but that rate can rise over time with market changes.

"Last week, lenders offered, on average, a 3% interest rate for a 5/1-year ARM — which means a borrower receives that rate for five years, before the loan starts to adjust annually with the market. That's compared with 4.48% for a 30-year fixed loan, according to mortgage giant Freddie Mac."

[Behind the Headline Numbers of a Mortgage Settlement]
Peter Eavis, NY Times, 12/24/13
"Corporate America has long known the public relations power of putting a big dollar number on a deal. Regulators, it seems, do the same thing.

"Ocwen Financial is a behind-the-scenes firm whose business is to gather mortgage payments from millions of borrowers and pass them on to the banks and investors that own the mortgages. But last week, Ocwen moved into the foreground after a federal regulator, the Consumer Financial Protection Bureau, ordered it to enter into a $2 billion settlement over allegations that it had mistreated struggling borrowers…

"The $2 billion number is easy to misunderstand. Ocwen is not going to have to bear any of that $2 billion write-down itself, though the consumer agency's news release never makes that clear. Ocwen does not own the mortgages that it collects payments on. Bondholders own most of them, since banks packaged the loans into securities and sold those bonds into the markets. Indeed, a $2 billion write-down would probably wipe out most of Ocwen's $1.8 billion in capital.

"'There is not a hit to Ocwen when the loans are written down,' said Roelof Slump, a managing director at Fitch Ratings. 'The $2 billion is coming from the bondholders.'"

STUDENT LOANS

Loan Monitor Is Accused of Ruthless Tactics on Student Debt
Natalie Kitroeff, NY Times, 1/1/14
"Stacy Jorgensen fought her way through pancreatic cancer. But her struggle was just beginning. Before she became ill, Ms. Jorgensen took out $43,000 in student loans. As her payments piled up along with medical bills, she took the unusual step of filing for bankruptcy, requiring legal proof of 'undue hardship.'

"The agency charged with monitoring such bankruptcy declarations, a nonprofit with an exclusive government agreement, argued that Ms. Jorgensen did not qualify and should pay in full, dismissing her concerns about the cancer's return. 'The mere possibility of recurrence is not enough,' a lawyer representing the agency said. 'Survival rates for younger patients tend to be higher,' another wrote, citing a study presented in court."

Worrisome Spike in Student Loan Write-Offs
Chris Cumming, American Banker, 1/2/14
The dramatic rise in student loan volume is a worrisome trend for policymakers, but perhaps a more troubling one for banks is a big spike in write-offs… Between January and August of last year, lenders wrote off $13.6 billion in student loan debt, a 46 percent increase from the same period of 2012 and the highest amount for this period in any of the last eight years, according to the data from Equifax…

"The credit bureau's tally of write-offs includes both private and federal student loans, and is the sum of loans that either have been sent to collections or belong to people who have filed for bankruptcy. Federally insured loans are rarely written off, but must be adjusted if the borrower cannot repay; lenders typically write off the portion by which a loan has been reduced only at the end of the loan's amortization period, usually 20 years.

"The surge in write-offs comes as more banks shut down their student loan operations, generally because of a lack of profit resulting from changes to the federal program."

SYSTEMIC RISK

Portfolio Hedging Is Alive and Well Under Volcker
Akshat Tewary, American Banker, 12/20/13
"The Volcker Rule, as first proposed in October 2011, prohibited proprietary trading, but contained a broad exemption for portfolio hedging. The proposed regulatory language was so loose that the 'London Whale' trades might have been permissible under the initial Volcker proposal.

"Indeed, Occupy the SEC warned banking regulators about the potential for misuse of the portfolio hedging exemption as early as February 2012, months before the 'London Whale' beached itself onto the public consciousness. In the summer of 2012, after a series of hearings and investigations into the 'London Whale' losses, government officials began exhorting banking regulators to excise or severely limit the proposed Volcker Rule's exemption for portfolio hedging.

"Before December 10, 2013, it seemed like the regulators in charge of finalizing the Volcker Rule would accede to those exhortations. Unfortunately, the actual text of the final rule reveals quite a different story. Portfolio hedging is alive and well under the now-final Volcker Rule…"

Regulators Agree to Revisit 'Volcker Rule'
Peter Schroeder, The Hill, 12/27/13
"Financial regulators are considering a fresh exemption to the 'Volcker Rule' just weeks after they finalized the long-awaited crackdown on risky trading. Facing a legal challenge from banks, the Federal Reserve and other Wall Street watchdogs on Friday said they were reviewing whether it would be appropriate to exempt a small subset of securities from the rule. A final decision will be announced by Jan. 15…

"The specific type of security at stake is what is known as trust-preferred securities, which are often grouped and packaged into collateralized debt obligations. Such securities were often sold to smaller banks in the run-up to the financial crisis."

Regulators to Mull Whether to Exempt Certain CDOs from Volcker Rule
Douwe Miedema, Reuters, 12/27/13

Regulators Reviewing Volcker Rule Provision
Matthew Goldstein, NY Times, 12/27/13

The Volcker Rule Is Already Having An Impact
Marcus Stanley, AFR Blog, 3/20/13

Volcker Rule Halt Request Withdrawn by Bankers Association
Edvard Pettersson, Bloomberg, 12/31/13
"The industry group said the temporary restraining order it had requested is no longer needed after regulators said Dec. 27 they are reviewing challenged aspects of the rule, according to a filing yesterday in federal court in Washington. The bankers group isn't withdrawing the lawsuit it filed Dec. 24 and asked the judge to approve a schedule for it to proceed with seeking to halt the rule's implementation for the duration of the lawsuit.

"The American Bankers Associations, which represents mostly community banks, alleged in its complaint against the Federal Deposit Insurance Corp. and other regulators that small banks will suffer about $600 million in losses because the final version of the Volcker Rule requires them to divest their holdings in some CDOs."

Despite Possible Volcker Reprieve, Some Banks Move Ahead On CDO Sales
Andrew R. Johnson, Wall St. Journal, 12/31/13

Davis Polk: Explaining the Volcker Rule in 27 Pages
Wall St. Journal, 1/2/14
"Normally, it's not in the nature of law firms to oversimplify complex government regulations for their biggest customers. But Davis Polk & Wardwell LLP has decided to do just that for its mega-banking clients to start off the new year, giving them a handy, color-coded, 'user-friendly' flow chart to help them navigate the Volcker rule, which restricts banks from making market bets with their own capital.

"How simple? The chart extends over 27 pages.Take Step 2D-2, on page 11, which describes permitted trading in foreign government securities. There are 13 boxes, diamonds, or circles on the page, (plus eight yes's and eight no's). It notes how the rule impacts foreign affiliates of U.S. banks, but not foreign branches of the banks."

It's a Wonderful Life, Through a Chief Risk Officer's Eyes
Michael Cohn, American Banker, 12/31/13
"Since the beginning of 2008, approximately 490 institutions had assets of similar proportional value where the value was lost and the bank failed. Also since 2008 the Federal Deposit Insurance Corp. has initiated litigation against directors and officers of approximately 76 institutions. The CEO was named in 88% of the cases and the chief risk officer none. These institutions didn't have Clarence the angel or a CEO so loved as George that the community rallied to bail him out, and they weren't practicing risk management effectively enough to survive…"

WALL STREET'S POLITICAL INFLUENCE

Academics Who Defend Wall St. Reap Reward
David Kocieniewski, NY Times, 12/27/13
"Signs of the energy business are inescapable in and around Houston — the pipelines, refineries and tankers that crowd the harbor, and the gleaming office towers where oil companies and energy traders have transformed the skyline. And in a squat glass building on the University of Houston campus, a measure of the industry's pre-eminence can also be found in the person of Craig Pirrong, a professor of finance, who sits at the nexus of commerce and academia.

"As energy companies and traders have reaped fortunes by buying and selling oil and other commodities during the recent boom in the commodity markets, Mr. Pirrong has positioned himself as the hard-nosed defender of financial speculators — the combative, occasionally acerbic academic authority to call upon when difficult questions arise in Congress and elsewhere about the multitrillion-dollar global commodities trade.

"Do financial speculators and commodity index funds drive up prices of oil and other essentials, ultimately costing consumers? Since 2006, Mr. Pirrong has written a flurry of influential letters to federal agencies arguing that the answer to that question is an emphatic no. He has testified before Congress to that effect, hosted seminars with traders and government regulators, and given countless interviews for financial publications absolving Wall Street speculation of any appreciable role in the price spikes.

"What Mr. Pirrong has routinely left out of most of his public pronouncements in favor of speculation is that he has reaped financial benefits from speculators and some of the largest players in the commodities business, The New York Times has found."

The Unlobbyists
Thomas Edsall, NY Times, 1/1/14
"Many formerly registered lobbyists have decided to deregister in order to avoid falling under the new reporting requirements in 2007's Honest Leadership Act. Both academics and policy experts say that these reforms, adopted in the wake of the Jack Abramoff scandal, drove much of the work of manipulating legislative and regulatory processes underground.

"A study by Dan Auble, a senior researcher at the Center for Responsive Politics, 'Lobbyists 2012: Out of the Game or Under the Radar?' contends that lobbyists are purposely changing their modus operandi… In a November report for the Sunlight Foundation, Tim LaPira, a political scientist at James Madison University, estimated that for every registered lobbyist there is at least one 'shadow lobbyist' who is 'getting paid to influence public policy' without making any public disclosure of fees or clients. LaPira found a ratio of 52.3 to 47.7 of shadow lobbyists to registered lobbyists."

Joseph Lieberman Joins Private Equity Firm
Rachel Abrams, NY Times, 1/2/14

Joe Lieberman to Victory Park Capital
Lucy McCalmont, Politico, 1/2/14

WALL STREET SPECULATION TAX

Narrowing the Income Gap, Without Another Bust
Jared Bernstein, NY Times, 12/20/13
"The 2010 *increase* in the income of the top 1 percent was more than twice that of the average income of the middle class. That's just one year, but it's indicative of the pattern that's prevailed after each of the last two recessions.

"Inequality takes a big hit when asset bubbles burst and the safety net kicks in to offset some of the damage. Then, as the recovery gets underway and the safety net fades… asset values start to appreciate again, and inequality is back on the rise. Which of course raises the question: What can be done to break this pattern?

Among the ideas that Bernstein proposes: a financial transaction tax. "A very small tax on financial transactions… would both dampen noisy trading and raise some needed revenue…," he writes. "There's a bill in Congress for a financial transaction tax of three measly basis points (meaning three cents on a $100 trade) that has been scored as raising $350 billion over 10 years. There's also some research suggesting that such a tax would help to reduce some financial-sector activities associated with the economic shampoo cycle (bubble, bust, repeat)."

OTHER TOPICS

Regulatory Fights Loom Large in 2014
Julian Hattem and Ben Goad, The Hill, 12/29/13
"Battles lines are being drawn for a series of upcoming clashes over new regulations on the horizon in 2014… Among some 40 items on the Securities and Exchange Commission's rulemaking agenda is a particularly contentious regulation to require companies to disclose the gap in pay between their chief executives and average employees.

"Businesses groups strongly oppose the measure, saying it would be overly burdensome to calculate and unnecessary. But unions and liberals have pushed for the proposal as a way to shame companies and help workers negotiate their salaries. The regulation is one of many Dodd-Frank provisions whose fate may ultimately be decided in the courts."

MSNBC: Clearer Path For Obama Regulatory Agenda After 'Nuclear Option' Paves the Way
Tom Curry, NBC News, 12/28/13

Credit Unions Oppose Stress Test Rule
Julian Hattem, The Hill, 12/29/13
"Credit union groups have opposed many financial regulations stemming from the Dodd-Frank law. They say that credit unions weren't to blame for the 2008 financial crisis and shouldn't have to bear the brunt of new rules."