Americans for Financial Reform

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CONSUMER FINANCE & THE CFPB

Arbitration Everywhere, Stacking the Deck of Justice (Part I of III)
Jessica Silver-Greenberg and Robert Gebeloff, NY Times, 10/31
On Page 5 of a credit card contract used by American Express, beneath an explainer on interest rates and late fees, past the details about annual membership, is a clause that most customers probably miss. If cardholders have a problem with their account, American Express explains, the company "may elect to resolve any claim by individual arbitration." Those nine words are at the center of a far-reaching power play orchestrated by American corporations, an investigation by The New York Times has found.

Some state judges have called the class-action bans a "get out of jail free" card, because it is nearly impossible for one individual to take on a corporation with vast resources… By banning class actions, companies have essentially disabled consumer challenges to practices like predatory lending, wage theft and discrimination, court records show. "This is among the most profound shifts in our legal history," William G. Young, a federal judge in Boston who was appointed by President Ronald Reagan, said in an interview.

In Arbitration, a 'Privatization of the Justice System' (Part II of III)
Jessica Silver-Greenberg and Michael Corkery, NY Times, 11/1
Over the last 10 years, thousands of businesses across the country — from big corporations to storefront shops — have used arbitration to create an alternate system of justice. There, rules tend to favor businesses, and judges and juries have been replaced by arbitrators who commonly consider the companies their clients, The Times found. The change has been swift and virtually unnoticed, even though it has meant that tens of millions of Americans have lost a fundamental right: their day in court.

In Religious Arbitration, Scripture Is the Rule of Law (Part III of III)
Michael Corkery and Jessica Silver-Greenberg, NY Times, 11/2

More criticism of NY Times arbitration articles from U.S. Chamber of Commerce
Barbara Mishkin, CFPB Monitor, 11/6

Franken stumps to end "forced arbitration"
Jim Spencer, Star Tribune, 11/3
"It's about giving people the right to get to court," [Minnesota Senator Al] Franken said. He called forced arbitration "unbelievably unfair." Arbitration hearings are secret, and the businesses being accused of misbehavior hire the arbitrators, whose decisions are essentially not able to be appealed. The Supreme Court ruled mandatory arbitration legal in decisions in 2011 and 2012.

Forced arbitration and for-profit college scandal make it to 'The Good Wife'

Jillian Berman, MarketWatch, 11/2

In "The Good Wife" episode on CBS, a group of students from a fictionalized for-profit college Colosseum University, is trying to find a way to sue its former school, but two of the show's lawyers tell the students they can't because they signed away their rights to resolve disputes in court when they enrolled. Real-life critics have also derided the use of these so-called arbitration clauses in for-profit college enrollment agreements. Other kinds of companies, from credit card makers to fast food eateries are increasingly employing this tactic, known as an arbitration clause, the New York Times reported over the weekend.

See **YouTube clip** of "Good Wife" episode.

CFPB Recovers $107 Million in Relief for More Than 238,000 Consumers Through Supervisory Actions

Consumer Financial Protection Bureau Press Release, 11/3

Today the Consumer Financial Protection Bureau (CFPB) released its latest supervision report outlining the illegal practices uncovered by the Bureau's examiners from May 2015 to August 2015. The Bureau found violations in the student loan servicing, mortgage origination and servicing, consumer reporting, and debt collection markets. The report shows that CFPB supervisory actions resulted in $107 million in relief to more than 238,000 consumers… Today's report, which is the ninth edition of Supervisory Highlights, generally covers supervisory activities completed between May 2015 and August 2015.

Regulators Ramp Up Debt-Collection Crackdown

Yuka Hayashi, Wall St. Journal, 11/4

Regulators have shut four debt-collection agencies during the past month as federal and state authorities say they are intensifying a crackdown on abusive collection practices against borrowers.

The Federal Trade Commission highlighted on Wednesday the four cases as part of what it called a new national campaign with its state partners to rein in debt collectors that use tactics such as harassing phone calls and false threats of litigation. Since Oct. 1, federal and local regulators have brought 30 new law-enforcement actions against such companies, the FTC said.

Santander auto-loan unit to pay back $5.4m

Deirdre Fernandes, Boston Globe, 11/5

The subprime auto-loan business of Santander Holdings USA Inc. has agreed to provide $5.4 million in financial relief to several hundred Massachusetts consumers, primarily in lower-income communities, for charging them higher than allowed interest rates.

Emails Show Pro-Payday Loan Study Was Edited By The Payday Loan Industry

Ben Walsh and Ryan Grim, Huffington Post, 11/2

The payday loan industry was involved in almost every aspect of a pro-industry academic study, according to emails and other documents reviewed by The Huffington Post. The revelation calls into question a host of other pro-industry academic studies that were paid for by the same organization. While the researchers disclosed their funding source for the 2011 paper "Do Payday Loans Trap Consumers in a Cycle of Debt?" they also assured readers that the industry "exercised no control over the research or the editorial content of this paper."

The assertion was patently false, according to correspondence obtained from Arkansas Tech University through an open records request by the watchdog group Campaign for Accountability. The group subsequently shared the documents with HuffPost… The emails show that the payday loan industry gave economics professor Marc Fusaro at least $39,912 to write his paper, and paid an undisclosed sum to his research partner, Patricia Cirillo. In return, the industry received early drafts of the paper, provided line-by-line revisions, suggested deleting a section that reflected poorly on payday lenders, and even removed a disclosure detailing the role payday lending played in the preparation of the paper.

[Payday Loan Industry Admits 'Very Few' Borrowers Repay Their Loans]

Ben Walsh and Ryan Grim, Huffington Post, 11/2

Payday lenders make money by giving people loans they can't pay back. That fact has been apparent for years. A 2009 study from the Center for Responsible Lending found that people taking out new loans to repay old ones make up 76 percent of the payday market. Despite this information, the payday loan industry has consistently argued in public that its high-cost loans with interest rates ranging from 391 to 521 percent do not trap borrowers in a cycle of debt.

In private, it's a different story. According a newly released email, the payday lending industry knows that most people cannot pay back their loans. "In practice, consumers mostly either roll over or default; very few actually repay their loans in cash on the due date," wrote Hilary Miller, a key figure in the industry's fight against regulation, in an email to Arkansas Tech Professor Marc Fusaro.

[Lead Generators Use People's Deepest, Darkest Google Searches Against Them]

Adrienne LaFrance, Atlantic, 11/3

Being online increasingly means being put into categories based on a socioeconomic portrait of you that's built over time by advertisers and search engines collecting your data—a portrait that data brokers buy and sell, but that you cannot control or even see. Consider, for example, a person who googles "need rent money fast" or "can't pay rent." Among the search results that Google returns, there may be ads that promise to help provide payday loans—ads designed to circumvent Google's policies against predatory financial advertising. They're placed by companies called lead generators, and they work by collecting and distributing personal information about consumers online.

So while Google says it bans ads that guarantee foreclosure prevention or promise short-term loans without conveying accurate loan terms, lead generators may direct consumers to a landing page where they're asked to input sensitive identifiable information. Then, payday lenders buy that information from the lead generators and, in some cases, target those consumers—online, via phone, and by mail—for the very sorts of short-term loans that Google prohibits.

[TCF Bank overdraft practices could trigger legal action]

Becky Yerak, Chicago Tribune, 11/5

["How the Other Half Banks": Author Says America's Two-Tiered Banking System is a Threat to Democracy]

Interview with Mehrsa Baradaran, Democracy Now, 10/30

Juan González: You mentioned the payday lenders. A lot of them are being bankrolled by major firms on Wall Street.

Mehrsa Baradaran: That's right. These payday lenders operate behind this sort of façade of informality. They seem like these mom-and-pop community shops. They're not. They're huge corporations. They make plenty of profits. They're making a great margin on these loans. Look, I mean, yes, it is, you know, more expensive to lend to someone that is less liquid, right, has less money, but it's not as expensive as they say they are. And the reason is, look—I mean, you look at how much payday lenders charge. Most of them charge the cap, usury laws allowable per state, right? So they don't compete on price. These borrowers are not price-sensitive. They don't shop around. And so there's no incentive to lower the prices. And this is where a public option really steps in and says, "Look, we're going to lower the price at the cost of the loan—not the cost plus profits plus all of the other overhead that we have, and have the poor bear that cost." Lend at the cost of the loan and give a huge buffer to people who really need it.

DERIVATIVES, COMMODITIES AND THE CFTC

[Banks face capital call for commodity disaster costs]

Barney Jopson, Financial Times, 11/3

US banks that handle physical commodities will be forced to hold large new capital cushions under bold Federal Reserve plans to hedge against costly disasters such as tanker spills or gas pipeline explosions. The Fed wants to use capital charges to discourage banks from risky activities involving hazardous materials that could threaten their survival in the event of a catastrophe, according to people briefed on the matter.

New restrictions would affect banks led by Goldman Sachs, Bank of America Merrill Lynch and Citigroup, some of which are already rethinking their role in commodities due to pressure from regulators and a decline in profitability in the area.

Senator Elizabeth Warren, a liberal critic of Wall Street, has led Democratic calls for the Fed to put tighter controls on banks' commodity activities.

DODD-FRANK - ATTACKS AND DEFENSE

Wall Street and Obama Gird for Game of Chicken on Dodd-Frank

Cheyenne Hopkins, Bloomberg, 11/4

President Barack Obama may have to decide whether it's worth shutting down the government to protect tough rules for Wall Street. Lobbyists for the biggest banks are trying to force the Obama administration into a game of chicken to see how far it's willing to go to maintain industry reforms and some of the sweeping changes enacted in the Dodd-Frank Act of 2010. Despite Obama's veto threats, they're pushing lawmakers to include provisions that would roll back some of those changes in the end of year spending bill that has to be passed next month.

Wall Street's Sneak Attack

Jim Lardner, US News, 11/2

The big banks and their lobbyists are quietly but aggressively pushing a long wish list of spending bill "riders." These backdoor measures would roll back the reforms enacted after the 2008 financial crisis and undermine the Consumer Financial Protection Bureau, the first and only financial oversight agency with a mandate to put the interests of consumers ahead of the power and profits of the banks…

See **joint letter** from AFR and 13 organizations opposing financial policy riders.

Warren Tries to Head Off Wall Street Gifts on Congressional Christmas Trees

Carter Dougherty, InsideSources, 11/4

Since lawmakers passed a landmark overhaul of American financial regulation in 2010, congressional Democrats and the Obama administration have successfully fought changes to the law, known as Dodd-Frank. Among the proposed changes, Republicans have sought to restructure the Consumer Financial Protection Bureau or ease the regulatory burden on mid-sized banks, which have struggled to differentiate themselves from Wall Street behemoths. In those five years, Republicans have never had such clear opportunities to pass bills with provisions that President Barack Obama clearly doesn't like — but that he might sign anyway, just for the sake of ending budgetary wrangles that have paralyzed Washington. That's why groups that fought for Dodd-Frank are on high alert, trying to stop Democrats from defecting and keeping Republicans isolated.

"In spite of the importance of these reforms, and their broad popularity, some members of Congress are nonetheless attempting to use the appropriations process to roll them back, putting the public interest at risk to deliver a wish list to narrow Wall Street interests," **Americans for Financial Reform**, an umbrella organization of labor unions, civil rights groups and consumer advocates, wrote lawmakers on Oct. 28.

Budget deal offers way to sneak through financial changes

Darrell Delamaide, USA Today, 11/3

Wall Street lobbyists see the budget compromise working its way through Congress as the last chance before next year's election to sneak through repeals of new bank regulations. They want to attach rollbacks of the Dodd-Frank financial overhaul to the must-pass bipartisan legislation needed to fund the government. "Where others find dysfunction, Wall Street sees opportunity," Jim Lardner, communications director for **Americans for Financial Reform**, wrote in an op-ed this week criticizing "these backdoor measures" to weaken financial regulation.

The primary targets are two new institutions created by Dodd-Frank – the Financial Stability Oversight Council, a panel of top regulators which can subject some big financial institutions to additional regulations, and the Consumer Financial Protection Bureau, a regulatory agency with wide-ranging authority over mortgages, credit cards and other consumer services.

Ryan Leaves Door Open to Policy Riders in Spending Bill

Lindsey McPherson and Emma Dumain, Roll Call, 11/3

[GOP readying for end-of-year spending fights](#)
Burgess Everett and Seung Min Kim, Politico, 11/5

[Proposed law would increase risk of another financial crisis](#)
Patrick Pinschmidt, CNBC, 11/2
President Obama championed and Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. Among its crucial reforms, the law created the Financial Stability Oversight Council – a body that brings the entire financial regulatory community together to identify and respond to risks across the financial system in order to help prevent another crippling financial crisis. Unfortunately, some are now seeking to hamstring the FSOC, threatening to turn back the clock and potentially pave the way for a future crisis…

Unfortunately, there is legislation pending in both houses of Congress that would heavily tip the scales back in Wall Street's favor and leave our country vulnerable to another crisis. These changes would take the council's methodical process and mire it in a series of protracted, bureaucratic steps that would require the council to spend as many as four years studying a company before it could take any action. Some of these proposals would also raise the standard for action by the council to a dangerously high threshold, all but ensuring inaction despite the risk to financial stability.

Democrats offer compromise on regional bank bill
Zachary Warmbrodt, Politico, 11/3
House Democrats are offering their own plan for overhauling regulation of regional banks - a potential opening to compromise with Republicans on the issue and a potential industry win because it would be a vote against the current regime. The Democrats' alternative is expected to appear this morning in the form of an amendment from Rep. Carolyn Maloney during a House Financial Services Committee markup of a bill from Rep. Blaine Luetkemeyer.

Maloney, a senior Democrat on the House panel, is expected to offer an amendment that would require the Fed to sort banks above $50 billion in assets into different tiers based on the systemic risk each poses to the financial system. The Fed would then be required to tailor Dodd-Frank rules, such as annual stress test requirements, to each tier based on bank riskiness.

Shelby, Democrats in talks on bank regulations
Zachary Warmbrodt, Politico, 11/5
Shelby's original measure would ease rules on small and regional banks, overhaul the way regulators police the biggest financial firms outside the banking system and set up potential changes to the operations of the Federal Reserve. "We've been talking about potential regulatory relief legislation," Sen. Jon Tester (D-Mont.) said Thursday. "It's not ready for primetime yet."

Exactly how any financial regulatory provisions with bipartisan support would move forward in the Senate is unclear. In July, Shelby succeeded in attaching his original bill to an appropriations proposal approved in a partisan committee vote. While the current discussions are happening as Congress gears up to pass legislation before Dec. 11 that would fund the government and avert a shutdown, Democratic leaders have opposed policy riders in spending measures, particularly if they walk back regulations in the 2010 Dodd-Frank regulatory law.

Is Dodd-Frank Really Killing Community Banks?
Deena Zaidi, TheStreet, 11/3

Has Elizabeth Warren defeated Wall Street?
Ben White, Politico, 11/2

EXECUTIVE PAY

The Executive Paycheck Myth
Victor Fleischer, NY Times, 11/4
Every religion has a creation myth. Pay-for-performance is the fundamental tenet of the American approach to executive compensation. While groups in Britain and Switzerland have proposed capping executive pay, investors and regulators in

the United States are mainly concerned when there's a mismatch of pay versus performance. As long as a company is doing well, the sky's the limit…

Critics worry that the "pay for performance" rule encourages short-term thinking… In my view, the obsession with pay-for-performance is overkill. A risk-averse executive seeking the quiet life — if indeed such a person ever existed — would not climb the corporate ladder today. The labor market for executives already rewards those who act over those who stand on the sidelines. A risk-averse executive will soon find himself out of a job and unable to find a new one. Yet the tax code operates as if we need a special incentive to encourage risk-taking.

FEDERAL RESERVE

[Fed Imposes New Limits on Big Banks to Reduce Bailout Risks]

Ryan Tracy, Wall St. Journal, 11/2

The Federal Reserve proposed a new bank bailout-prevention rule that would place new restrictions on how big financial institutions manage their finances—increasing their costs and restricting the way they run their business—in the name of preserving financial system stability... Specifically, it would require those institutions to issue a combined $120 billion in new long-term debt to shore up their buffer in case of their own insolvency. It would likely increase the aggregate annual funding costs of the firms by between $680 million and $1.5 billion, the Fed estimated.

[U.S. Fed chief: big banks need "tighter compliance," smaller ones need a break]

Richard Satran, Thomson Reuters, 11/5

Janet Yellen sounded a stark compliance warning for big banks and a concessionary one for smaller institutions when the Federal Reserve chair spoke on the state of financial institutions in the post Dodd-Frank era, even though her Capitol Hill message to the industry on Wednesday may have had less immediate reaction than her soft hints on interest rates. Yellen let Congress know in testimony before the House Financial Services Committee that she has reached a crossroads in the re-regulation of the U.S. financial system aimed at averting another crisis. Big global banks pose a regulatory challenge that seems as intractable as ever, she said. Smaller banks have returned to normal and could even stand for a bit less heavy handedness from agency overseers. The largest global banks might face more, not less, scrutiny in the U.S. and abroad, Yellen suggested. "Compliance breakdowns in recent years have undermined confidence" in the biggest banks -- those overseen by the Fed's Large Institution

[US regulators: Still heavy risk in big bank loans]

Marcy Gordon, Washington Post, 11/5

Federal regulators say they're still seeing a heavy dose of risk in large loans made by banks and other financial institutions, despite the recovering U.S. economy. The Federal Reserve and other agencies cite ongoing loose lending standards and an increase in loans made for financing takeovers of companies. Those loans are risky because they can greatly exceed the amount of a firm's earnings.

[The stranger-than-fiction story of how the Fed was created]

Roger Lowenstein, LA Times, 11/2

HEDGE FUNDS AND PRIVATE EQUITY FUNDS

[A Hedge Fund Sales Pitch Casts a Spell on Public Pensions]

Gretchen Morgenson, NY Times, 11/6

It has been just over a year since the California Public Employees' Retirement System said it would wind down its $4 billion portfolio of hedge fund holdings. High costs and complexity made the vehicles "no longer warranted," Calpers said at the time. Given Calpers's leadership in the public pension arena, some thought other pension managers and institutional investors would follow suit. But that does not appear to be happening, even during this, a trying year for hedge fund performance. The question is, why not?

…A new report, “All That Glitters Is Not Gold,” examined the hedge fund performance of 11 large public pensions and found that these investments exacted a high cost, had laggard returns and generally moved in tandem with the overall stock market.

Bill Introduced to Require Hedge Funds to Disclose Holdings More Frequently
Mike Cherney, Wall St. Journal, 11/4
A bill requiring hedge funds to disclose their holdings more frequently was introduced in Congress on Wednesday, a move that if signed into law would represent a seismic change for the hedge-fund industry. Rep. Nydia Velazquez, a Democrat from New York who introduced the bill, tied the effort to the fiscal crisis in Puerto Rico, which has battled a sluggish economy and high debt load for years. Hedge funds and other investors who own the island’s bonds have negotiated with island officials over a possible debt restructuring and cost-cutting measures.

“It’s always difficult to do things that large and powerful financial institutions don’t like,” said Lisa Donner, executive director at **Americans for Financial Reform**, an advocacy group. Still, Ms. Donner said the bill is a “very valuable proposition to have on the table,” given the size of the hedge-fund industry and how little is disclosed compared with other institutions.

Puerto Rico’s Debt Crisis and the 1975 Law Complicating Matters
Mary Williams Walsh, NY Times, 11/4
On Wednesday, Representative Nydia M. Velázquez, Democrat of New York, introduced a bill that would require improved disclosures from another group of players in the municipal bond market: the hedge funds and other alternative investment firms that have been snapping up the bonds of distressed jurisdictions like Puerto Rico.

The problem, she and others say, is that the funds and firms representing bondholders are maneuvering behind the scenes to protect their stakes. But unlike an investor buying up a stock of a company, they do not have to reveal the amount or the type of investment they are making. That has made it harder to come up with a coherent negotiating strategy.

Hedge fund 'sunshine' bill introduced as shot over Wall St. role in Puerto Rico
Colin Wilhelm, Politico, 11/4
Rep. Nydia Velázquez, a senior member of the House Financial Services Committee, has introduced legislation to increase reporting requirements for hedge funds. According to Velázquez's office, the bill would require hedge funds to report to the Securities and Exchange Commission on any acquisition of more than a 1 percent equity in a class of equity securities, down from the current 5 percent threshold.

"It has become increasingly clear that hedge funds, which have purchased a sizeable part of Puerto Rico's debt, are exacerbating the crisis and profiting from the island's misery," Velázquez said in a release announcing the bill, entitled the "Hedge Fund Sunshine Act." "This bill will allow regulators and the public to see exactly what role these funds are playing in Puerto Rico's financial crisis and in our broader economy."

SEC Charges Private Equity Firm and Four Executives with Failing to Disclose Conflicts of Interest
SEC Press Release, 11/3

HIGH SPEED TRADING AND FINANCIAL TRANSACTION TAX

US high-frequency trader convicted in first US 'spoofing' case
The Guardian, 11/4
A jury has convicted a high-frequency trader of commodities fraud and “spoofing”, in the US government’s first criminal prosecution of the banned trading practice. The verdict in the trial of Michael Coscia, owner of New Jersey-based Panther Energy Trading, may prompt prosecutors to pursue market manipulation cases and spur some high-speed traders to review their strategies, in which orders are sometimes executed or canceled within milliseconds after they are entered.

“This is the clarity that people have been looking for – what exactly is spoofing, what defines it,” said Trace Schmeltz, a lawyer specialising in white-collar crime at the US-based law firm Barnes & Thornburg, who was not involved in the case. Coscia was accused of entering large orders into futures markets in 2011 that he never intended to execute. His goal, prosecutors said, was to lure other traders to markets by creating an illusion of demand so that he could make money on smaller trades, a practice known as spoofing.

High-Speed Trading Firm Virtu Tops Wall Street Views

Bradley Hope, Wall St. Journal, 11/4

O’Malley and Sanders have argued for breaking up the nation’s largest banks and for restoring the Glass-Steagall Act, which had separated commercial and investment banking.

Clinton has argued for imposing a “risk fee” on the largest financial institutions, and although she would give regulators more authority to break apart big banks, she has stopped short of calling for the reinstatement of Glass-Steagall.

INVESTOR PROTECTION AND THE SEC

Pressure on Chair White Continues as Decision on PCAOB's Leadership Awaits

Thomson Reuters, 11/4

With the SEC considering whether to renew PCAOB Chairman James Doty's term, which ended on October 24, 2015, five consumer groups sent a letter to SEC Chair Mary Jo White, urging her to reappoint him for a second five-year term. "We are concerned that these reports [about possible replacement] undermine Chairman Doty and his efforts to improve the independence and quality of public company audits," the AFL-CIO, American Federation of State, County and Municipal Employees (AFSCME), **Americans for Financial Reform**, Consumer Federation of America, and Public Citizen wrote on October 29. Former SEC Chief Accountant Lynn Turner also backed the groups' effort.

The groups said the corporate accounting scandals in the early 2000s cost investors trillions of dollars in market value. Investor confidence also plummeted. The accounting problems were not caught by the companies' external auditors, which added to the loss of investor confidence in the financial reporting process…If the SEC decides to consider other candidates, the consumer groups urged Chair White to limit her search to individuals with strong track records of protecting and serving investors.

SEC’s White should participate in PCAOB succession decision, Doty says

Patrick Temple-West, Politico, 10/30

The head of the U.S. watchdog for the auditing industry said today that he wants SEC Chair Mary Jo White to participate in the agency's decision about whether to give him a second term. James Doty, a Republican appointed in 2011, has been criticized by SEC officials for trying to push through tough accounting standards that are unwelcomed by accounting firms.

His five-year term as chairman of the Public Company Accounting Oversight Board expired on Oct. 24, and it's up to the SEC commissioners to decide whether to reappoint him. Earlier this month, 14 liberal-leaning groups, including MoveOn.org, asked White to recuse herself from the selection of the next PCAOB chairman because of possible conflicts of interest.

SEC Chair White Criticizes Bipartisan Bill Easing Investment Rules

Yuka Hayashi and Andrew Ackerman, Wall St. Journal, 11/5

Securities and Exchange Commission Chairman Mary Jo White criticized bipartisan legislation that would ease rules governing a specialty investment product that has become increasingly popular as an alternative to more regulated high-risk loans.

The House Financial Services Committee on Tuesday approved a bill that overhauls the regulation of “business development companies,” a type of tax-advantaged closed-end fund that invests in small and medium-size companies. It received heavy support from both Democrats and Republicans, a rare result these days, clearing the panel by a 53-4 vote. That came despite the fact that, a day before, Ms. White sent a letter—viewed by The Wall Street Journal—to the top members of the committee arguing that the proposed change would make the funds far riskier for retail investors.

[SEC Turns Disclosure into a Game of 'Where's Waldo?']

Barbara Roper, Huffington Post, 11/3

When it comes to investor protection, ensuring that investors have easy access to clear disclosure information is, quite literally, the least regulators can do. But these days even that seems to be a step too far for the folks at the Securities and Exchange Commission (SEC). There's a long list of examples of the SEC's failure to provide investors with useful information, whether it is pre-engagement information about broker-dealers' costs, conflicts of interest and legal obligations or clear, dollar-amount disclosures of the costs investors pay for investments such as mutual funds and annuities…

Last week the agency proved that, even when it does take action, its preferred approach is to make it considerably more difficult than it needs to be for investors to receive information that is crucial to an informed investment decision. The vote in question came on crowdfunding rules, which though strengthened over the original rule proposal in other important ways, have the potential to turn crowdfunding disclosures into a game of "Where's Waldo?"… If they won't even support cost-free, pro-investor disclosure policies, do you suppose we can at least get SEC officials to clearly disclose that the agency has become the industry's rather than the investor's advocate?

[Firms, Regulators Try to Sort Out What's Worth Disclosing to Investors]

Emily Chasan and Samuel Rubenfeld, Wall St. Journal, 11/2

Finance chiefs are preparing for changes in one of their most fundamental tasks: figuring out what's important enough to tell shareholders. Regulators in the U.S. and abroad are tinkering with the concept of "materiality," or how to determine what information is necessary for companies to disclose publicly.

[SEC approves online crowdfunding rules]

Mario Trujillo, The Hill, 10/30

The Securities and Exchange Commission on Friday approved crowdfunding rules that will give small investors the opportunity to buy a stake in private companies looking to raise money. The rules have been years in the making after President Obama signed the Jumpstart Our Business Startups Act in 2012, which authorized the commission to write the crowdfunding rules. The Friday vote completes the last major part of the law, with rules slated to take effect 180 days after the rules are published in the Federal Register.

MORTGAGES & HOUSING

[For Some Americans, the Housing Crisis Isn't Over]

Alana Semuels, Atlantic, 11/2

The report indicates that there are still more than seven million homeowners who are underwater in America—that is, they owe more on their homes than the homes are worth. In some 1,000 counties, the number of underwater homes is stagnant or increasing, threatening already struggling regions with the potential of more foreclosures, more empty and abandoned homes, and more people who opt to rent instead of buy, which drives up the price of apartments.

[Senators demand answers on New Jersey zombie foreclosure crisis]

Ben Lane, HousingWire, 11/2

In a letter sent last week to the heads of the Department of Housing and Urban Development, the Federal Reserve Board, the Consumer Financial Protection Bureau, the Federal Housing Finance Agency and others, Sens. Cory Booker, D-NJ, and Robert Menendez, D-NJ, say that the prevalence of zombie foreclosures in the state is seriously impacting the state's residents and its economy, and they want to know what the federal regulators are going to do about it… The senators write that banks' reluctance to do anything with abandoned properties is "unacceptable" when there are so many others who would gladly fill those houses.

RETIREMENT SECURITY & FIDUCIARY DUTY RULE

Democrats Undermine Efforts to Protect Retirement Savers

NY Times Editorial Board, 11/5

Forty-seven House Democrats are threatening to derail the Obama administration's effort to protect Americans from retirement advisers who put their own interest in earning commissions above their clients' need for expert advice.

Last week, the lawmakers wrote to Labor Secretary Thomas Perez, who leads the effort, asking for a delay in the rule-making process to allow for more public comment. The request is disingenuous. The Labor Department has already held a long comment period on its proposed rules, including four days of public hearings. The next step is to review the comments and then issue final rules.

The Democrats' request, if granted, would interrupt this process and very likely make it impossible to finalize the rules before the end of 2016, leaving the next administration to grapple with them anew (if a Democrat wins) or ditch them (if a Republican wins).

Democrats torn between Obama, financial industry on DOL fiduciary rule

Mark Schoeff Jr., InvestmentNews, 11/3

Some Capitol Hill Democrats are torn between President Barack Obama and the financial industry over a Labor Department proposal that would change investment advice standards for retirement accounts.

In an Oct. 30 letter to DOL, 47 House Democrats called on the agency to open a 15-30 day comment period after a final rule is promulgated, likely early next year. They assure DOL that such an accommodation can be made "without disrupting your intended timeline of implementing the rule by the end of 2016."… The Oct. 30 letter is an example of Democrats bending over backward to help the financial industry without directly opposing the rule, which Mr. Obama strongly supports.

Get good advice on retirement savings

Dana Muir and Robert Oliver, Detroit News, 11/3

When it comes to your retirement savings, would you rather get advice from someone who is required to put your interests first or from a salesperson?... Complex rules make it difficult for investors to differentiate between the various types of advisers. The good news: the Department of Labor has proposed rules that would mitigate conflicts of interest and require client-focused advice for IRAs and other retirement accounts…Wall Street is now battling the reproposed rules by claiming that middle-income Americans will lose access to financial advice. But this is simple and deliberate misdirection. The number of advisers who adhere to a fiduciary standard would grow if the rules were implemented as conflicted advisers adapt to the new model.

Lost Money in the Markets? Wall Street Thinks It's Your Own Fault

Susan Antilla, TheStreet, 11/2

Not that this would ever happen, of course, but let's say your stockbroker does a little unauthorized trading in your account. And say you don't realize what's happened until your portfolio has been ravaged and you're headed to arbitration -- your only choice because brokers make you give up your right to court before they'll do business with you.

Would it surprise you to learn that it was as much your responsibility to be on watch for rogue trades by your broker as it was your brokerage firm's? That's an argument Wall Street likes to make when it comes up against investors who file complaints saying they've been ripped off.

Boeing Agrees to Settle 401(k) Plan Lawsuit

Sara Randazzo, Wall St. Journal, 11/5

Boeing Co. agreed to pay $57 million to end a lawsuit accusing the aerospace company of offering risky investment options and passing on excessive fees to employees enrolled in its 401(k) retirement plan.

The settlement, which needs a federal judge's approval, would be among the largest payouts stemming from suits accusing employers of violating the Employee Retirement Income Security Act, or Erisa. Earlier this year, Lockheed

Martin Corp. paid $62 million to settle allegations of 401(k) mismanagement. In 2013, Cigna Corp. paid $35 million in a similar suit. The Boeing case involved accusations the company failed to uphold its fiduciary duties to employees, by allowing excessive 401(k) fees to go unchecked, choosing higher-cost retail mutual funds over cheaper options and improperly making 401(k) plan decisions to benefit vendors receiving other Boeing business.

STUDENT LOANS & FOR-PROFIT EDUCATION

Congress Made It Easier for Student-Debt Collectors to Robocall Your Cell Phone

Brendan Sasso, National Journal, 11/4

Buried in the budget deal that Congress passed last week is a provision that legalizes robocalls to cell phones to collect government debt, including federal student loans. And while the ink is just barely dry on the budget legislation, 11 senators already introduced a bill Wednesday to repeal the carveout for government debt collectors.

"The budget bill makes it easier to harass students, consumers, veterans—anyone with a debt backed by the federal government—on their mobile phones," Sen. Ed Markey, the sponsor of the new legislation, said in a statement. "That's why today I am introducing the HANGUP Act—the Helping Americans Never Get Unwanted Phone Calls Act—to repeal this problematic provision in the budget act and put a stop to these unwanted robocalls and texts."

Senators look to close student debt collection robocall loophole

Amy R. Connolly, UPI, 11/5

Federal lawmakers are looking to repeal a provision in the recently passed U.S. budget that allows the government to robocall and text cellphones to collect debts, including student loans. Sen. Ed Markey, D-Mass., is among a group of 11 lawmakers who unveiled legislation to revoke a section buried in the bipartisan budget bill…

See statement from AFR and other consumer groups.

The battle over for-profit colleges rages on in Miami

Janell Ross, Washington Post, 11/4

Ernesto Perez is the owner of the Dade Medical College for-profit school network. He's made a habit of navigating Coral Gables -- a wealthy Miami suburb -- in a pretty-hard to miss silver Bentley. He used to be in a rock band. And, of course, while his job at the medical college paid him a $431,999 salary, Perez managed to somehow make $750,000 in political contributions over the last few years.

On Friday, all six of the for-profit colleges in Perez's Florida network shut down amid what the Miami Herald previously described as "mounting debt" and intense scrutiny from the U.S. Department of Education. About 2,000 students were suddenly left with no school to go to.

After Lawsuit, For-Profit College Will Forgive $15 Million in Ex-Students' Loans

Andy Thomason, Chronicle of Higher Education, 11/5

Student loan repayment gets even more complicated and confusing

Mark Kantrowitz, Washington Post, 11/5

The U.S. Department of Education just released yet another student loan repayment plan based on the borrower's income, the Revised Pay-As-You-Earn Repayment Plan (REPAYER). The details of the new repayment plan are so complicated that it will be difficult for borrowers to calculate the monthly payment and compare it with the other three income-driven repayment plans.

Who Keeps Billions of Taxpayer Dollars Flowing to For-Profit Colleges? These Guys

Annie Waldman, ProPublica, 11/3

Accreditors are supposed to make sure that schools provide students with a quality education. They are not government agencies, but wield enormous power: Schools need accreditors' stamps of approval to maintain access to the government's annual $170 billion in federal student aid. One accreditor stands out: The Accrediting Council for Independent Colleges and Schools, also known as ACICS. It oversees hundreds of mainly for-profit schools where students struggle at remarkably high rates.

Just 35 percent of students at a typical ACICS-accredited four-year college graduate, the lowest rate for any accreditor. Nationally, the graduation rate at four-year schools is around 59 percent.

OTHER TOPICS

Wall Street Doesn't Work for New York, Let's Create a Bank that Will

Matthew Rigney and Evan Casper-Futterman, Gotham Gazette, 11/4

A state bank can and should address other issues as well. It would support local community banks and credit unions in small towns and rural communities in places like Rensselaer, Niagara, and Allegany counties to make more small business and agricultural loans. It would offer competitive financing and loan products for new green technology and energy investments. By supporting local community banks and credit unions, perhaps in conjunction with a pilot program to offer banking services at post offices, it could crowd out predatory check-cashing businesses.

Finally, it would create a means for refinancing student loans, taking the strain off straphangers and students--two constituencies in which Governor Cuomo has shown limited interest. The Bank of New York would be professionally staffed and independent from, but accountable to, both a citizen advisory board and elected representatives. Funds from state and local treasuries and from public benefit corporations like the MTA would make up the bank's deposits.

Stiglitz: Here's How to Fix Inequality

Gillian White, Atlantic, 11/2

A solution that only involves overhauling the few things that everyone agrees need to be overhauled is no solution at all, he argues.

Instead, he swings for the fences, suggesting a massive revision in the way the U.S. economy does business. First up is the attempt to tame what is called rent-seeking—the practice of increasing wealth by taking it from others rather than generating any actual economic activity. Lobbying, for example, allows large companies to spend money influencing laws and regulations in their favor, but lobbying itself isn't helpful for the economy besides creating a small number of jobs in Washington; it produces nothing but helps an already rich and influential group grow more rich and more influential. Stiglitz suggests that reducing rent-seeking is critical to reining in inequality, especially when it comes to complex issues such as housing prices, patents, and the power that large corporations wield.

Arguing about the costs of regulation, but ignoring the benefits

Stuart Shapiro, The Hill, 11/3

In fiscal year 2014, the regulations in the OMB report produced total benefits that range from $9.8 billion to $22.8 billion and costs that range from $3.0 to $4.4 billion in 2010 dollars. A large share of the benefits come from regulations from the Environmental Protection Agency (EPA) and the Department of Energy's (DOE) energy efficiency standards. Over the years, the lion's share of benefits and costs of regulation have come from the EPA.

Reactions to the OMB reports have been relatively stable over the years, as well. Opponents of regulation generally assert that the costs have been underestimated. They point to the many regulations that are not included, a reasonable objection but an incomplete one: Those regulations that are not included also have benefits.

As Rock Hill forum approaches, a look at Clinton, O'Malley and Sanders on the issues

Herald Online, 11/5