Americans for Financial Reform

This Week in Wall Street Reform | Aug. 13–26, 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.

CONSUMER FINANCE & THE CFPB

How Predatory Payday Lenders Plot to Fight Government Regulation | Vice
For starters, the industry plotted to bombard the Consumer Bureau with comments and studies suggesting regular people would be the real losers—even if their own oversized profits were obviously the focal point… In a breakout session called "Take Action in the Rulemaking Process Comment Period," [lobbyist Tony Dias of Jones Day] asked lenders to "get every customer that comes into your store... to write out a handwritten letter and tell the bureau why they use the product, how they use the product, and why this will be a detriment to their financial stability…"

Perhaps the conference's most interesting panel was called "Federal Rulemaking in 2016: What to Expect and What Alternative Products to Consider," run by Blake Sims and Justin Hosie of the consumer finance law firm Hudson Cook. This was a master class in how to exploit and manipulate regulatory loopholes.

"That's their business model," said Gynnie Robnett, who directs the payday lending campaign at **Americans for Financial Reform**, a coalition of consumer groups. "And they seem determined to preserve it, any weasel-y way they can."

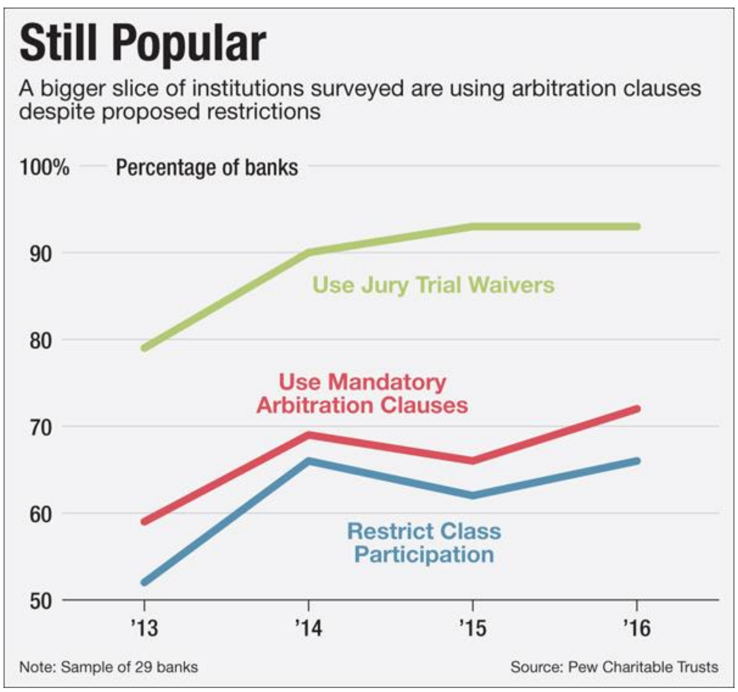
Payday Loans’ Potentially Predatory Replacement I The Atlantic
An uptick in what are called installment loans is the payday industry’s answer to that criticism—or, more precisely, the regulations that that criticism led to. Instead of making a lump-sum payment, installment-loan borrowers take out loans that are paid off a bit at a time, over a longer period of time. Installment loans are nothing new, and the same lenders who once predominantly peddled payday loans have been trying their hand at installment loans for some time, too. But now, they may try to make them a significantly larger share of their business. *The Wall Street Journal* recently reported that in 2015, lenders provided nearly $25 billion in installment loans to people with credit scores below 600. That’s 78 percent higher than the year before…

Looming federal regulations of payday loans will only accelerate the switch to installment loans, as lenders search for a way to make up lost revenue. While the CFPB’s payday lending rules include some regulation of installment products, they only focus on some of the more obviously pernicious terms: those that are open-ended, or allow lenders to access checking accounts or car titles in the event of nonpayment. Some fear that lenders will *just* toe the line, ensuring that loans don’t have the most egregious payday-like components—supershort payment periods and lump-sum payments—but will similarly target poor Americans and charge them high rates.

Progressive stance on payday loans saves NC residents $450+ million a year I NC Policy Watch

'Rip-off clauses' let Wall Street steal from consumers I The Hill (Lisa Gilbert and Lisa Donner)
By the close of the comment period, at least 100,000 individual consumers across the country had spoken out against forced arbitration in individual comments to the agency — outpacing comments critical of the rule several times over. This overwhelming push for reform echoes a recent national **poll**, which found that, by a margin of three to one, voters of all political parties support restoring consumers' right to bring class action lawsuits against banks and lenders…

The next few months will likely prove crucial to this ongoing fight to protect consumers' right to hold financial companies accountable. But the campaign against the rip-off clause is not simply a battle over fine print; it's a necessary step toward stopping Wall Street banks and predatory lenders from rigging our economy in their favor and padding their profits at the expense of the law and the public.



It's Gotten Harder to Sue Your Own Bank I Fortune
Frustrated consumers who want to take their banks to court are increasingly running into a wall. More and more, the nation's biggest financial institutions are requiring consumers to sign contracts lined with arbitration clauses when opening a bank account—waiving a customer's right to take a dispute to court, according to a Wednesday report from the Pew Charitable Trusts. About 70% of the 44 banks Pew surveyed in 2016 had arbitration clauses on their most basic checking accounts, compelling both parties to settle disputes outside of court with a third party mediator—giving consumers limited opportunity to appeal. That's up from 59% about 3

years ago. Similarly, 73% of banks restrict consumer participation in class action lawsuits, according to Pew, while an even higher 91% of banks prevent consumers bringing their disputes before a jury rather than a judge. Overall, 90% of banks have at least one provision restricting their customers' options when resolving a dispute. But those restrictions don't sit well with U.S. consumers, who overwhelmingly want access to the legal system—even if they're unlikely to take a dispute to court due to financial and time constraints.

Putting an End to Mandatory Arbitration Won't Be Easy I Time
A U.S. agency's plans to ban forced arbitration clauses from financial contracts faces a tough road, with early reaction pointing to a years-long battle that could take a Supreme Court test to settle. Thousands of angry consumers and business representatives have flooded the Consumer Financial Protection Bureau with comments on its May proposal to block companies from forcing customers to take disputes to arbitration instead of joining group lawsuits. Sentiment in the unusually high number of comment letters, more than 8,380 have already been filed though the deadline still is a week away, seems roughly divided between supporters and critics of the proposed rule. Some of its biggest opponents, such as the U.S. Chamber of Commerce and the Financial Services Roundtable, have yet to file their comments, although they are expected to do so closer to Monday's deadline.

How Credit Unions Learned to Love Arbitration Clauses I American Banker
Credit unions are lining up with banks in opposition to the Consumer Financial Protection Bureau's plan to rein in arbitration clauses, a surprise given their historical reluctance to use them. Because credit unions are member-owned cooperatives, they are often more closely aligned with consumer advocates' views that consumers should have the right to sue over disputes. But they have warmed to arbitration clauses in recent years, in part because more credit unions have been hit with class-action lawsuits.

Fighting back against the fine print I US News (Nan Aron)

Arbitration Study Supporting CFPB Rule Is Skewed, Industry Says I American Banker

Industry to CFPB: Start Over on Arbitration Plan I American Banker

CFPB Urged to Move Quickly on Arbitration Rules I BNA

CFPB's Arbitration Proposal Draws 13,000 Comments I Wall Street Journal

Proposed Arbitration Rules Vital to Consumers, says Pew I Credit Union Times

Consumer Ratings Added to CFPB Complaint Database I US PIRG (Ed Mierzwinski)
In 2015, the Consumer Financial Protection Bureau (CFPB) made two major changes to its successful public consumer complaint database… Now, the CFPB has come through with its latest improvement to the database. At the end of July, the CFPB announced it was improving the database again; its latest change will give consumers a chance to "rate the company's handling of his or her complaint on a one-to-five scale and provide a narrative description in support of the rating." It explains the history of the idea in this blog entry.

Of course, some opponents of the CFPB and its database will also attack this latest improvement. (Don't forget, however, that they also routinely attack the CFPB's independence, its authority to enforce the consumer laws and the very idea of a CFPB.)

Cordray Tells Senators CFPB Already Tailors Rules for Small FIs **I Credit Union Times**

Richard Cordray, the quiz show star policing US banks **I Financial Times**

SIFMA: CFPB Arbitration Proposal Usurps SEC Power **I Financial Advisor**

CFPB uses undercover 'Mystery Shoppers' for home loans **I Wall St. Journal**

Can't afford the latest smartphone? You can lease one, but it won't be cheap **I L.A. Times**

DERIVATIVES, COMMODITIES & THE CFTC

SEC Rule to Limit Derivatives Alarms Industry With Liquidity Concerns I Morning Consult
A Securities and Exchange Commission proposal to place caps on registered investment firms' exposures to derivatives is showing the hallmarks of a classic Washington battle — the industry is trying to tamp down advocacy groups' requests for broad regulations.

Although the SEC hasn't announced its plans, lobbyists who have been watching the derivatives rule expect the agency to move forward in the coming months.

Watchdog groups like Better Markets and **Americans for Financial Reform** have championed the proposal, but it has come under fire from the financial industry, which says it could harm the manner in which funds safely manage assets. The proposal has been the subject of public discussions since formal stakeholder comments came out in March, and it has continued to be scrutinized by lawmakers such as Sen. Sherrod Brown (D-Ohio), who weighed in on the debate last month.

DODD-FRANK (AND CONTINUED ATTACKS)

What Would Dismantling Dodd-Frank Look Like? **I Morning Consult**

THE ELECTION AND WALL STREET

The power of community banks I Politico (Mike Konczal)
On Thursday, Hillary Clinton demonstrated her support for community banks with a new agenda fact sheet, arguing that "many community banks and credit unions still struggle with unnecessary regulatory complexity." Clinton reasserts that she'll "veto any effort to weaken Wall Street reform," and the plan doesn't sneak in changes aimed to benefit the biggest players, for which community bank relief often covers.

But the proposal is also representative of an unfortunate tendency among politicians to overstate the difficulties community banks face. While most attention on Dodd-Frank has focused on the efforts of big banks to water down the financial regulations, community banks have received an astonishing amount of carve-outs and benefits. They've done this facing no opposition—conservatives want to use them to argue Dodd-Frank goes too far, liberals falsely hope they can be a countervailing pressure on Wall Street, and politicians want their support. But in addition to leading to increasingly bad policies, it can undermine the overall effort of reform.

See Clinton campaign fact sheet on measures to “support community banks and credit unions and protect consumers.”

Introducing the new sheriff of Wall Street I Financial Times
[W]hile Mrs. Clinton may be president, the sheriff of Wall Street will be Senator Elizabeth Warren. The senator, her progressive allies and her policy wonk followers have a lot to say about the financial sector. And not the sort of sugary reassurances you hear at high-end fundraisers.

The key to the progressives’ Wall Street strategy is that it is not centered on a list of legislative proposals, but on databases of prospective appointees to regulatory and administrative positions. The Warren-istas understand that the Republicans are likely to have just around half of the Senate, and are likely to retain control of the House. The bad news, for Ms Warren’s supporters, is that new laws will be hard to pass. The good news is that the existing laws, including Dodd-Frank and the SEC’s governing legislation, already give future appointees all the authority they will need.

What they do not believe they need is Wall Street experience. Marcus Stanley, policy director of the union-backed **Americans for Financial Reform**, the investor group, speaks for many progressives in stating: “We are reversing the status quo of many decades.”

EXECUTIVE PAY

British PM faces struggle to keep executive pay in check I Reuters

HEDGE FUNDS AND PRIVATE EQUITY FUNDS

Hedge funds are shrinking, not dying I Bloomberg

INVESTOR PROTECTION AND THE SEC

Crunch time on Wall Street rules for SEC I The Hill
Among [the items on the SEC’s agenda] are rules that would set new requirements on how executives at financial institutions earn a paycheck. Those rules would implement a part of Dodd-Frank aimed at ensuring compensation plans don't encourage bad behavior from executives looking to boost their paychecks. But given that the investment fund rules have a statutory deadline while the compensation rules do not, it’s likely the SEC will focus its work on the former.

Regulatory advocates are also pushing for a set of rules that would bar financial firms from engaging in certain securities trades that pose a conflict of interest. That Dodd-Frank language was aimed at barring certain trades seen during the financial crisis, in which institutions sold securities loaded with risky mortgages to clients, while betting in house that the securities would fail…

“They have an enormous number of significant rules that are kind of stacked up at the proposed rule stage, sometimes for many years,” said Marcus Stanley, policy director for **Americans for Financial Reform**.

Deutsche Bank Whistle-Blower Spurns $8 Million SEC Reward I Bloomberg
A former Deutsche Bank AG risk officer said he was refusing an $8.25 million reward from the Securities and Exchange Commission for blowing the whistle on the lender overvaluing a derivatives portfolio, because of his concern that the SEC didn't go after senior executives.

The $55 million fine that Deutsche Bank paid in a settlement announced by the SEC in May last year had penalized shareholders, while top executives retired with their multi-million dollar bonuses intact, Eric Ben-Artzi wrote in a Financial Times column published Friday.

SEC Requires Advisers to Provide More Information About Business I NY Times
The top U.S. securities regulator said on Thursday it would require more information from investment advisers about their separately managed account businesses, as it continues to tighten oversight on the sector.

SEC Seeks Review of Treasury Market Trading Rules I Wall St. Journal

Financial Advisors Face Consumer Skepticism Advisor News I Insurance News
Only 12 percent of Americans believe Wall Street banks and other financial services providers have changed their practices enough to not warrant further regulation.

"Efforts to bring transparency and fairness to personal finance may have begun but these new results signify that our work must continue," said Mike Calhoun, president of the Center for Responsible Lending (CRL).

Jointly commissioned by the CRL and **Americans for Financial Reform** (AFR), a national poll found that 66 percent of voters believe that more financial oversight is needed, including 49 percent of Republicans, 63 percent of Independents and 85 percent of Democrats.

Finance Execs Fill 'Public' Board Seats at Finra I The Street

SEC announces settlements with 71 municipal debt issuers I The Hill

MORTGAGES & HOUSING

Homeownership rate continues to decline I US News

REGULATION IN GENERAL

How to make big government agile again I The Week
[Cass Sunstein, former chief of the Office of Information and Regulatory Affairs] is a 1970s neoliberal who thinks that regulation is usually an economic drag, and should only be implemented after you prove in 19 different ways that it won't be an undue burden. And four years out of government, he's still peddling proposals for cutting "red tape" which involve forcing agencies to carry out*even more* expensive, complex studies, and writing into law other requirements that are currently executive orders — making the problem worse.

As Elizabeth Warren pointed out in a recent speech, what is needed is someone with the opposite view — that regulations are a huge net benefit that are absolutely critical to protecting the American economy and citizenry. Slow-walking regulation of finance or climate change with onerous cost-benefit nitpicking when Wall Street just obliterated the economy and American cities are suffering clockwork weather disasters is completely idiotic.

So given that Republicans stand a good chance of hanging onto Congress, if Hillary Clinton wants to achieve anything during her presidency, appointing people who believe in quality government to key regulatory posts might be the single smartest and easiest step she could take.

RETIREMENT SECURITY & FIDUCIARY DUTY RULE

How one campaign is pushing workers to save for retirement I EBN (Q&A with Barbara Roper)
"I think our financial system is premised on what I think is an unrealistic assumption, which is that most people are capable of making sound, informed decisions about their investments, and that if you just give them adequate information, they can protect their own interests.

"We have transformed our retirement system to one that relies on people's ability to make sound decisions about their retirement investments without any real evidence that that's an accurate assumption for the majority of the population. So we're forcing people to make important financial decisions they're ill-equipped to make, decisions that will determine their financial well-being in the future. By doing that, we almost force them to turn to financial professionals for help without providing the protections necessary to insure that they will get reliable help."

Edward Jones Really Likes Those Fees I Bloomberg
The full requirements of the rule don't go into effect until January 2018, so it remains to be seen how brokers will adapt. The first hint, however, recently came from Edward Jones -- the brokerage behemoth based in St. Louis. It's not encouraging.

Edward Jones said it will stop offering its clients mutual funds (and ETFs) for commission-based retirement accounts. Investors in those accounts will either have to make do with a hodgepodge of stocks, bonds, variable annuities and certificates of deposit, or move to a managed account that charges an asset-based fee (that is, a fee based on a percentage of assets under management).

Group asks judge to block Obama's financial adviser rule I The Hill
A trade group is urging a federal judge to block the Labor Department's "fiduciary rule" from taking effect next April. The National Association of Fixed Annuities (NAFA), an insurance industry group, is suing the Labor Department over the rule that forces investment advisers to act solely in their clients' interest.

Judge's questions show inclination to uphold DOL fiduciary rule I Investment News

Edward Jones Shakes Up Retirement Offerings Ahead of Fiduciary Rule I Wall St. Journal

STUDENT LOANS & FOR-PROFIT EDUCATION

Advocacy Group Puts Spotlight on Debt Relief Companies I Inside Higher Ed
Companies charging for student loan debt relief, forgiveness and consolidation are pervasive: 60% of respondents say they've seen advertisements for such companies and 44% say a company has contacted them directly.

Of those who paid for consolidation services, 65% did not believe the company's services improved their student loan situation.

The average amount spent for debt relief services was $613 per borrower.

Education Dep. won't let for-profit college sidestep federal rules I Washington Post

SYSTEMIC RISK

There Are Real Reasons to Bring Back Glass-Steagall I American Banker (Marcus Stanley)
When both major parties endorsed restoring the Glass-Steagall Act in their campaign platforms last month, they reaffirmed the powerful hold that the Glass-Steagall principle of separating commercial and investment banking has on the public imagination.

Unfortunately, much of the inside-the-beltway commentary on Glass-Steagall does not add depth and substance to the public debate and is often inappropriately dismissive and shallow. A number of respected experts on the banking system, such as Federal Deposit Insurance Corp. Vice Chairman Thomas Hoenig, are strong supporters of Glass-Steagall. But too many other commenters dismiss Glass-Steagall for reasons that are at best half-truths and at worst censor the robust debate that we need to have about our current system of universal banking.

The worst offenders are those who dismiss Glass-Steagall by asserting that the dismantling of Glass-Steagall and the rise of giant universal banks were unrelated to the 2008 financial crisis… The 2008 crisis was catastrophic for the global economy not simply because nonbank financial institutions failed, but because the problems in nonbanks spread throughout the financial system and threatened to bring down giant megabanks that combined commercial and investment banking, such as Citigroup, JPMorgan Chase and Bank of America. Glass-Steagall firewalls between Wall Street trading markets and ordinary commercial banking are directly relevant to stopping this kind of contagion.

World's Biggest Banks Still Pose Too-Big-to-Fail Risk, FSB Says I Bloomberg

Foot-Dragging on Volcker Rule Gives Banks' Critics Ammunition I NY Times

Preventing the next financial blowout I Washington Post

Unions push Congress to curb banks, restore Glass-Steagall I People's World
Unions and progressive groups are circulating a petition to congressional leaders, demanding they control the nation's banks by restoring the Glass-Steagall Act, the Depression-era law that erected a wall between financial finagling and regular consumer banking.

The petition, formulated by the American Federation of Teachers, the AFL-CIO, the Economic Policy Institute, Jobs With Justice, **Americans for Financial Reform** and their allies, declares "Wall Street greed and risky behavior is out of control and needs to be reined in.

"There is a simple solution: Pass the 21st Century Glass-Steagall Act," it says.

WHISTLEBLOWERS

Wells Fargo, Fifth Third could run afoul of U.S. whistleblower rules I Reuters
Wells Fargo, Advanced Micro Devices and Fifth Third Bank have in recent years agreed to settlement deals that seek to muzzle former employees in ways that some lawyers said could violate U.S. whistleblower protection laws. Five lawyers, including three who represent whistleblowers, said that the settlements appear aimed at blocking workers from airing their concerns and contain similarities to those used by other companies that ran afoul of government rules.

The deals by Wells Fargo, AMD, and Fifth Third Bank were among a dozen such corporate settlements reached between 2012 and 2015 that were reviewed by Reuters.

OTHER TOPICS

How Millennials became spooked by credit cards I NY Times
Some older Americans have also been shedding credit card debt since the financial crisis that began in 2008. But for no other age group has the decline in the proportion holding credit card debt been more rapid than it has been for young Americans — who are often referred to as millennials — the data from the Survey of Consumer Finances shows.

But it is clear to economists who study payment patterns that millennials are gravitating toward payment methods that skirt both cash and credit. Why carry cash when you can whip out a debit card for the smallest transaction — a sandwich or a bottle of soda — or use an app like Venmo or an online payment service like PayPal? All of those typically draw funds directly from a bank account.