Americans for Financial Reform

This Week in Wall Street Reform | Jan. 16–Jan. 22, 2016

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CONSUMER FINANCE & THE CFPB

Lawmakers Dispute Method to Identify Victims of Racial Bias in Auto Lending

Yuka Hayashi, Wall St. Journal, 1/19

Nearly a quarter million customers of auto lender Ally Financial Inc. are receiving checks for between $100 and $520 from the federal government this month, the outcome of a controversial test used to identify the victims of alleged discrimination against minority borrowers. The tally was among the findings of a new report from congressional Republicans, who have been investigating the Consumer Financial Protection Bureau's handling of a 2013 enforcement action in which Ally agreed to pay borrowers at least $80 million to settle allegations of racial and ethnic discrimination.

One focus of the lawmakers' probe was the federal watchdog's reliance on educated guesses to identify minority borrowers, using their last names and addresses. Critics say this may have resulted in a number of white borrowers receiving checks, even though they weren't subjected to discriminatory actions. Auto lenders are prohibited by law from collecting data on the borrowers' race or ethnicity.

A response to your petition on short-term lending rules

White House Response, 1/19

Thank you for taking the time to sign a We the People petition about the steps the Consumer Financial Protection Bureau (CFPB) is taking toward a potential rule to curb abusive practices in payday loans, title loans, and other short-term lending…Nobody should be in favor of a product that preys on a family's desperation or deceives people into a loan they cannot repay.

CFPB's goal is to design a solution that ensures borrowers still have access to affordable credit, while curbing abusive practices that are designed to trap consumers and their families in an endless cycle of debt. That's something that the President and Administration support, along with a diverse array of American families and grassroots leaders who know firsthand the challenges posed by abusive lending practices. That includes many leaders across the faith community who have made a strong moral case for action.

In March 2015, CFPB announced it was taking an important step towards cracking down on abusive practices involving payday loans and other short-term lending, by releasing an initial outline for a rule. Under the potential rule, lenders would be required to verify that borrowers can pay them back.

White House Response to FiSCA "We The People" Petition Ignores Concerns Of Consumers

Financial Service Centers of America, 1/21

Earlier this week the White House issued a response to a petition signed by more than 105,000 people who asked the administration to oppose the short-term loan rules proposed by the CFPB. The petition was created by Financial Service Centers of America (FiSCA) within the White House's "We the People" petition portal. If enacted, the rules would make it nearly impossible for consumers to access small loans that are currently permitted by most states and relied upon by millions of Americans.

"The White House response was disappointing because it ignored the concerns expressed by the more than 100,000 customers who signed the petition," said Edward D'Alessio, Executive Director of FiSCA. Those concerns included unrealistic limitations on borrowing that don't consider their real life, day-to-day needs; the creation of a federal database that will track their personal finances and dictate when they are allowed to get a loan; and denial of their financial freedom. These consumers objected to the fact that they are being singled out, and that the rules will apply only to those that use small loan products like payday loans. No other group of borrowers is being treated this way. Instead of responding to these concerns, the White House provided a regurgitated political message focused on "business models" and a financial crisis that had nothing to do with small loans or the Americans who use them.

Online Lender Elevate Credit Postpones IPO
Maureen Farrell, Wall St. Journal, 1/20
Online lender Elevate Credit Inc. has postponed its initial public stock offering, which would have been the first this year, due to difficult market conditions, people familiar with the deal said…

Why online lender Elevate had no shot at an IPO
Ari Levy, CNBC, 1/21

Joint statement on Elevate IPO by NCLC and CRL

CFPB orders Colo. dealer to pay $700K in restitution
BHPH (Buy Here Pay Here) Staff, 1/21
For the second time in two months, the Consumer Financial Protection Bureau took out an enforcement action in the buy-here, pay-here industry. On Thursday, the enforcement came against Herbies Auto Sales, an operator in Greeley, Colo., for what the bureau deemed to be abusive financing schemes, hiding auto finance charges and misleading consumers.

The CFPB said Herbies will pay $700,000 in restitution to harmed consumers, with a suspended civil penalty of $100,000. “Buying a car is often one of the most important purchases a consumer makes, so the experience needs to be fair and above-board,” said CFPB director Richard Cordray. “But concealing finance charges and the real cost of credit, as Herbies did here, is unlawful and unacceptable,” continued Cordray, whose agency penalized CarHop just before the holidays.

DERIVATIVES, COMMODITIES AND THE CFTC

U.S. Swap Rules Cut Transaction Costs, Bank of England Says
Silla Brush, Bloomberg, 1/15
Dodd-Frank Act swap-trading rules have cut the cost of executing deals, according to a research paper released by the Bank of England on its Website.

- End-users of the most widely-traded U.S. dollar interest- rate swaps have seen a $7m-$13m drop in daily transaction costs
- “Our results suggest that the improvements in transparency brought about by the Dodd-Frank trading mandate have substantially improved interest rate swap market liquidity”
- Finds that activity has increased on swap-execution facilities and liquidity has improved across the market

See **AFR comment letter** on de minimis exception to CFTC swap dealer registration threshold.

DODD FRANK (AND THE CONTINUED ATTACKS)

Deregulating Corporate America
NY Times Editorial Board, 1/19
If you think Congress is hopelessly divided on party lines on every issue, think again. When it comes to regulating — more precisely, deregulating — corporate America, Republicans and Democrats are all too eager to find common ground. This week a bipartisan group of senators — four Republicans, three Democrats and one independent — is expected to introduce legislation that would slow and complicate the already laborious process by which federal regulations are issued and enforced.

The winners would be big banks and big businesses. The losers would be ordinary Americans who would be deprived of timely and effective protection from the Consumer Financial Protection Bureau and other bank regulators, as well as from agencies that oversee consumer product safety, nuclear safety, investor safeguards, workplace rights and a host of other issues and activities. These agencies are supposed to work independently, with Congress providing oversight. Under the legislation, however, Congress would actively interfere in the rule-making process.

Proposed Legislation Would Add Scrutiny of Wall Street Regulators

Victoria Finkle, NY Times, 1/19

A congressional effort to put regulators under the microscope when they write new rules for Wall Street is gaining momentum, potentially creating new obstacles to the closer oversight of financial risk taking. A bipartisan group of senators is working on a package of regulatory reform bills that most likely would include a measure to subject the Consumer Financial Protection Bureau, the Securities and Exchange Commission and other independent agencies to a heightened cost-benefit analysis and review process for major rules, according to people briefed on the plans.

Supporters say the legislation would bring rule-making standards for independent regulators closer in line with those for executive branch agencies, providing more consistency and transparency in the rule-making process. But critics, including top Democrats, warn that the legislation is instead intended to create additional burdens and delays, as well as make agency rules more vulnerable to legal challenges.

THE ELECTION AND WALL STREET

Not much unites Democrats and Republicans. Anger at Wall Street does.

David Weigel, Washington Post, 1/18

On the left, Democratic front-runner Hillary Clinton is fending off the surprisingly potent populism of Sen. Bernie Sanders of Vermont and the accusation that she is Wall Street's candidate. On the right, Sen. Ted Cruz (R-Tex.) and New York developer Donald Trump have come to dominate the Republican field, and both have ties to Wall Street. Both are running as fast as their legs can carry them from the Wall Street brand.

As Cruz stumped across South Carolina, he found his audiences receptive to a story about how Washington colluded with Wall Street. At a town hall meeting in Columbia, the state's Republican attorney general, Alan Wilson, introduced Cruz by insisting that "Dodd-Frank is to the financial industry what Obamacare is to the health-care industry," a popular conservative framing. "It's centralizing power in the federal government to unelected bureaucrats," Wilson said. "It's causing small banks to struggle against the Too Big to Fail banks." Republicans have argued for dismantling Dodd-Frank on that basis, though studies have found the apoorgument wanting.

Last year, when Lake Research Partners polled on behalf of the progressive **Americans for Financial Reform**, it found 70 percent agreeing with the statement that "most people on Wall Street would be willing to break the law if they believed they could make a lot of money and get away with it."

How Bernie Sanders's 'political revolution' would change the nation

David Fahrenthold, Washington Post, 1/18

What is Bernie Sanders talking about when he says he wants a "political revolution"? The answer is a series of policies that would offer vast new government-funded benefits to individual Americans, including health insurance, paid maternity leave and free tuition at public colleges. To make those things possible, Sanders — a Vermont senator, "democratic socialist" and Democratic presidential candidate — would impose a variety of new taxes on the wealthy, on corporations and on Wall Street trade.

…Sanders wants to reinstate a version of the Glass-Steagall Act, a Depression-era law that separated commercial banking and investment banking — intended to keep bankers from losing their depositors' money in risky Wall Street bets. He also wants to go further, and "break up" the biggest financial institutions on Wall Street. Sanders's idea is for the Treasury secretary to compile a list of institutions whose size makes them "too big to fail." They would then be cut off from emergency lending from the federal government, and federal regulators would be charged with breaking them up.

A guide to what Ted Cruz wants to abolish, bar or change

Katie Zezima, Washington Post, 1/18

Consumer Financial Protection Bureau: Cruz's stump speech includes mention of abolishing "The C.F.P.B and the alphabet soup of regulators." Last year he introduced a bill to get rid of the agency, which was created after the 2008 financial crisis.

Department of Housing and Urban Development: Cruz would scrap many programs and reform those that would remain, including Section 8 housing, but it is unclear what would oversee them.

Hillary Clinton's Paid Speeches to Wall Street Animate Her Opponents

Nicholas Confessore and Jason Horowitz, NY Times, 1/21

Mrs. Clinton said the Dodd-Frank rules, while unpopular among some on Wall Street, were a necessary response to the financial crisis, according to one person who attended, while making clear she viewed Wall Street as a partner in securing the country's economic future, not an enemy. We have to win together, she said, not divide ourselves. But her paid speeches are now emerging as the central line of attack in an increasingly bitter primary clash with Senator Bernie Sanders of Vermont. In Sunday's debate in South Carolina and at a series of campaign appearances in Iowa this week, Mr. Sanders has argued that Mrs. Clinton is too personally beholden to Wall Street to effectively rein in the industry's excesses.

Dem Presidential Candidates Vow to Go Beyond Dodd-Frank

Ian McKendry, American Banker, 1/18

Trump or Cruz? No Sweat, Wall Street's Big Republican Donors Say

Max Abelson, Bloomberg, 1/22

ENFORCEMENT

Obama's Justice Department Likes Criminally Prosecuting People, But Not Corporations

David Dayen, The Intercept, 1/20

Fewer than one in eight federal agency criminal referrals of corporations led to actual criminal prosecutions between fiscal years 2010 and 2014, according to Justice Department data compiled by the Transactional Records Access Clearinghouse at Syracuse University.

While criminal referrals of individuals resulted in prosecutions at an 82.1 percent clip, corporate prosecutions from referrals only happened at a 12.3 percent rate. "This meant that for incoming referrals," according to the TRAC report, "prosecution of individual defendants was, on average, nearly seven times more likely than it was for corporations."

Ocwen to Pay $2 Million in SEC Settlement

Josh Beckerman, Wall St. Journal, 1/20

EXECUTIVE PAY

A.F.L.-C.I.O. Seeks to Curb Payouts to Bankers Who Go to Washington – This is atually a revolving door item, not an executive comp item

Liz Moyer, NY Times, 1/20

Big Wall Street banks are pushing back at an attempt by the A.F.L.-C.I.O. to ban an executive perk that rewards executives who leave their posts for jobs in the government. So-called government service golden parachutes allow bank executives heading for top government jobs to be paid their unvested stock and equity awards when they leave, rather than forfeit them as they normally would at resignation. The labor organization said on Wednesday that it was seeking to ban the practice at Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, Lazard and Bank of America.

The issue has emerged in recent years as attention has turned to the "revolving door" between Wall Street and Washington. A former Lazard executive, Antonio Weiss, received $21 million worth of accelerated executive pay when he moved to the Treasury Department last year, where he now acts as counsel to Secretary Jacob J. Lew, himself a former Citigroup executive.

[Jamie Dimon's pay rises more than a third to $27m]

Ben McLannahan, Financial Times, 1/22

JPMorgan Chase has given with one hand and taken away with the other — bumping up Jamie Dimon's pay by more than a third, while subjecting the chairman and chief executive to three years of tests before he is paid out in full. In a filing on Thursday afternoon the board of the New York-based bank said Mr Dimon's total pay for 2015 would rise to $27m from $20m last year. His base salary remains at $1.5m, while he receives a cash bonus of $5m, down from $7.4m last year. The remaining $20.5m comes in the form of performance share units (PSUs), earned only if the bank hits certain profit targets over a three-year period.

HEDGE FUNDS AND PRIVATE EQUITY FUNDS

[Private Equity's Golden Age Wasn't So Golden After All]

David Carey, Bloomberg, 1/21

Henry Kravis called it private equity's golden age. From 2005 to 2007, buyout firms paid fat prices to buy about 20 supersized companies, from Hilton Worldwide Holdings Inc. to Hertz Global Holdings Inc.

Now, a decade later, the results of that debt-fueled spree can be tabulated -- and it's hardly golden. The mega-deals produced mostly mediocre returns, falling well short of the profits that leveraged buyout shops typically seek, according to separate compilations by Bloomberg and asset manager Hamilton Lane Advisors. In more than half the deals -- each valued at more than $10 billion -- the firms would have been better off if they had put their investors' money into a stock index fund.

[Blackstone Gains From Banks' Financial-Crisis Pain]

Ryan Dezember, Wall St. Journal, 1/21

In August, a Blackstone Group LP deal-making team gathered one day at 2:30 p.m. in a conference room overlooking Park Avenue to clink beers and celebrate the anniversary of the moment Blackstone signed papers to purchase its business. The team, which buys stakes in private-equity funds, was acquired from Credit Suisse Group AG in 2013 following European banking rules that were implemented after the global market meltdown. Those rules, the bank said at the time, made it cumbersome to own the business and prompted it to hang a for-sale sign on it.

Those constraints don't apply to Blackstone, the world's largest private-equity firm. Led by billionaire Stephen Schwarzman, Blackstone has capitalized on that freedom from heavy regulation, snapping up assets—like the Credit Suisse group—cast off by some banks and entering businesses others are abandoning.

[A tax break that Wall Street cannot defend]

Editorial, Financial Times, 1/14

Voters' anger at Wall Street has produced a rare point of cross-party consensus in the US presidential race: on the need to close down a tax break that benefits some of the country's highest earners and is viewed as symbolic of a system that unduly favours the rich.

Both Hillary Clinton and Donald Trump are campaigning on a promise to scrap the favourable tax treatment of "carried interest", the fee that private equity, venture capital and hedge fund managers levy on their clients when they sell investments at a profit…

A number of prominent investors, from George Soros to the Clinton campaign supporter Marc Lasry, acknowledge the need for change, conscious that the issue has become a magnet for post-crisis resentment at financiers.

The challenge, though, is to turn campaign promises into actual reform. It is hardly the first time this tax break has come under fire. Democrats called for a crackdown in the previous US presidential race, when they were seeking to exploit their Republican opponent's private equity background. In the UK, the tax breaks enjoyed by private equity have caused outrage since 2007, but George Osborne, UK chancellor, is only now starting to tighten, not close, the carried interest loophole.

The Tax Treatment Of Carried Interest
PEGCCouncil, Medium, 1/20
In its January 14 editorial, “A tax break that Wall Street cannot defend,” the Financial Times’ Editorial Board incorrectly characterizes both the tax treatment of carried interest and the political support behind changing it.

While giving a history of carried interest — Venetian merchants retaining a “carry” for the risks incurred on a voyage to deliver goods — the Board fails to note that private equity, real estate, and venture capital investors also take on considerable risk in their investments. It is only when the private equity entrepreneurial risks are successful and long-held capital assets — such as over 3,000 private equity-backed companies in the U.S. — lead to a significant profit, that carried interest is realized. In essence, once investors (limited partners) succeed, then private equity general partners succeed — in that order.

Treasury Chief Jacob Lew Urges Congressional Action on Puerto Rico
Nick Timiraos, Wall St. Journal, 1/20

HIGH SPEED TRADING AND FINANCIAL TRANSACTION TAX

‘Flash Boys’ star IEX’s new battle plan against high-frequency trading
Jeremy Owens, MarketWatch, 1/21
Executives from IEX, the company that hopes to become Wall Street’s newest stock exchange, said Wednesday that they will not modify its signature “speed bump” meant to combat some high-frequency trading techniques while facing a fight for legitimacy. “If there was an alternative that didn’t compromise our ability to protect investors, we’d be listening, but I don’t think any of those alternatives would actually satisfy the other side,” Chief Executive and founder Brad Katsuyama said.

IEX, the focus of Michael Lewis’s best-selling book “Flash Boys,” has applied with the U.S. Securities and Exchange Commission to become a regulated exchange, but is facing resistance from potential competitors such as the New York Stock Exchange and Nasdaq. IEX’s “speed bump” is a 350-microsecond slowdown created through coiling 38 miles of cable in order to negate advantages gained through superfast connections to exchanges, which Lewis and IEX argue gives advantages to high-speed traders that harm other investors.

INVESTOR PROTECTION AND THE SEC

Potential accounting rule changes draw fire from SEC’s investor committee
Patrick Temple-West, Politico, 1/21
Accounting-industry rulemakers should rewrite proposed changes to the financial information that publicly-traded companies must disclose to investors, a Securities and Exchange Commission advisory committee said today. In September, the Financial Accounting Standards Board (FASB) released proposals to consider changing what financial information is "material" and must be reported by companies.

FASB set accounting standards and its rules govern the preparation of financial reports recognized as authoritative by the SEC. The proposals have been criticized by the SEC's Investor Advisory Committee, a group tasked with investor protection whose members included officials from the AFL-CIO and CalSTRS, a large pension fund. In a letter that the committee approved at a meeting today, members said FASB's proposed changes "entail a significant and substantive alteration to the current definition." The advisory committee asked FASB to maintain its current definition of materiality or withdraw what it proposed and start over.

How Wall Street Finds New Ways to Sell Old, Opaque Products to Retail Investors
Yakob Peterseil, Bloomberg, 1/21
As securities watchdogs crack down on complex investments that promise mom-and-pop investors access to strategies of trading pros, Wall Street is finding a way to sell the same products in places those regulators don't reach.

The investments, which follow proprietary indexes developed by banks including JPMorgan Chase & Co. and Credit Suisse Group AG, are quietly spreading into more opaque retail markets. Once popular in structured notes, a form of bank debt bundled with derivatives, they are now helping pump up sales of certificates of deposit and insurance annuities. Specialized indexes now underpin more than a fifth of the $13.8 billion market for indexed annuities—investments that target retirees.

The shift moves oversight largely out of the purview of the U.S. Securities and Exchange Commission, which levied UBS Group AG with a $19.5 million fine in October for allegedly misrepresenting the transparency of such products, and into a patchwork of state and federal regulation. That may frustrate efforts to supervise a burgeoning array of products that regulators have questioned for their complexity, fees and actual returns that often fail to live up to "backtested" results generated by computer models.

MORTGAGES & HOUSING

Warren: $5.1B Goldman Sachs Settlement is a "Farce"

Phil Hall, National Mortgage Professional, 1/18

Sen. Elizabeth Warren (D-MA) has offered a harsh criticism of the $5.1 billion settlement by Goldman Sachs to resolve federal charges related to its underwriting and sale of problematic mortgage-backed securities (MBS) between 2005 and 2007.

…Warren's comments were echoed by the nonprofit U.S. Public Interest Research Group (U.S. PIRG), which noted that Goldman Sachs would enjoy a sizeable tax deduction benefit from the settlement. "The proposed deal includes a substantial $2.385 billion civil monetary penalty, an $875 million cash payment, and $1.8 billion in consumer relief," the U.S. PIRG observed in a press statement. "The civil monetary penalty is non-deductible as per the tax code, but the remaining $2.675 billion is entirely tax deductible for the bank as an ordinary business expense. By law, fines and penalties cannot be treated as regular business expenses, and therefore are not tax deductible. The cash payment and consumer relief portions of the payment, however, are not specifically designated as penalties and can therefore be deducted from Goldman's taxes."

As Goldman settles, mortgage 'consumer relief' deals given mixed reviews

Andrea Riquier, MarketWatch, 1/21

"The big numbers in the settlements make headlines and can sound good," said Lisa Donner, executive director of **Americans for Financial Reform**, a progressive coalition group focused on Wall Street reform. "But when you look at the details, and at what's really happened, they often don't translate into relief for hard-hit borrowers and communities at the level that those big numbers would lead you to expect."

One of advocacy groups' biggest complaints is the way banks have accounted for their payments under the settlements. Banks claim "credit" for many activities they'd be undertaking anyway, rather than implementing new initiatives.

Elite justice for Goldman Sachs

Jim Caton, Legal Reader, 1/22

More than eight years after the market crash of 2007-08, no bank or mortgage company executive has faced criminal charges for fraudulent activities that resulted in millions of foreclosures and the Great Recession. Just as no General Motors executive will see the inside of a jail cell for the deaths of hundreds of car-owners who were the anticipated victims of faulty ignition switches, bank executives were able to breathe easy when the government finally got around to slapping wrists. Last week it was Goldman Sachs's turn for a trip to the woodshed, and it seems as if the regulators played favorites.

As reported in marketwatch.com, Goldman Sachs has agreed to pay $1.8 billion in "consumer relief," according to their press release, "in the form of principal relief for underwater homeowners and distressed borrowers; financing for construction, rehabilitation and preservation of affordable housing, and support for debt restructuring, foreclosure prevention and housing quality improvement programs, as well as land banks."

[Goldman Sachs Sees Silver Lining in $5 Billion Mortgage Settlement]
U.S. PIRG Press Release, 1/15

POLITICAL INFLUENCE OF WALL STREET

[Goldman Sachs contributions surge despite attack]
Isaac Arnsdorf, Politico, 1/20
Goldman Sachs, the powerful investment bank that has become a symbol of Wall Street influence among Democrats and Republicans alike, is on track to be one of biggest contributors in the presidential race again this year, with $794,609 chipped in so far. But its allegiances are spread across the political map — consistent with the firm's long history of cultivating influence no matter which candidate or party is in office. Goldman Sachs employees are the top contributors to the Republican campaigns of Jeb Bush and Marco Rubio, according to an analysis of federal campaign finance records the Center for Responsive Politics conducted for POLITICO. They've given $483,500 to the campaign and super PAC supporting Bush and $79,600 to Rubio's campaign and allied super PAC, the analysis shows.

Republican Ted Cruz's wife is a Goldman Sachs executive whose colleagues have begun to step up with donations since she took a leave of absence to campaign and raise money for her husband. He's taken in $43,575 from the company in total during his campaign. And the firm has a long alliance with Democrat Hillary Clinton dating back to her Senate days. Goldman Sachs gave $169,850 to Clinton's presidential campaign and super PAC, according to CRP's analysis. The bank doled out $675,000 in speaking fees to Clinton after she left office.

[Overnight Regulation: Dems push for political spending rule]
Lydia Wheeler and Tim Devaney, The Hill, 1/21
On the sixth anniversary of the Supreme Court's Citizens United v. FEC ruling, Senate Democrats are renewing calls for a rule requiring corporations to disclose their political spending. The landmark 5-4 ruling allowed corporations and unions to spend unlimited amounts on politics, so long as they do not coordinate with campaigns or parties. Critics have been pushing the Securities and Exchange Commission (SEC) to issue a rule ever since.

"Six years ago the Supreme Court drove a steamroller over this fundamental principle of our government -- this principle of we the people," said Sen. Jeff Merkley (D-Ore.) "It allowed companies to spend unlimited funds to influence the outcomes of elections."

RETIREMENT SECURITY & FIDUCIARY DUTY RULE

[The 2016 Retirement Landscape: 5 Predictions]
Mark Miller, Morningstar, 1/12
An End to Biased Advice
The U.S. Department of Labor's (DOL) long-running effort to create rules requiring all investment advisors to put the best interest of clients first will be completed this year. Republicans in Congress failed to kill the so-called "fiduciary rule" for retirement-account advice by attaching a rider to the big tax-and-spending bill passed in December that would have prevented or delayed the DOL's final rule proposal.

The DOL is on track to release a final rule this year, and to implement it over the following two years. That will make 2016 a landmark year in retirement investing--assuming no further legislative roadblocks are thrown in the way. "Best interest" will replace the current vague requirement that an investment only need be "suitable" for a client.
The idea is to close loopholes that govern retirement-investing advice from banks, brokers, mutual fund companies, and insurance agents. In many cases, they currently can bill themselves as advisors when they simply are selling whatever products are in their own best interest--products with higher fees and risk and lower returns. The new DOL rule will mean investors won't have to figure this out on their own--anyone advising you will be required to keep your interests at heart by keeping costs low and protecting your savings from excessive risk.

Roskam anticipates House approval of bill to stop DOL fiduciary rule

Mark Schoeff Jr., InvestnmentNews, 1/21

Rep. Peter Roskam, R-Ill. and a member of the House Ways and Means Committee, introduced the bill on Dec. 18, just before Congress began its holiday recess. It would require Congress to approve the DOL rule before it goes into effect. If Congress does not approve the rule, it would be replaced by a fiduciary standard drawn up in the legislation, which requires advisers to act in the best interests of their clients in retirement accounts and disclose conflicts, compensation and fees…

Critics say that the bills would not enforce fiduciary duty the way the DOL rule would. They maintain that Mr. Roskam and his colleagues are doing the bidding of the financial industry, which has praised their legislation and contributes to their campaigns.

STUDENT LOANS & FOR-PROFIT EDUCATION

The Vindication of Phoenix

Wall St. Journal, 1/18

The Obama Administration has conducted a running assault on for-profit colleges, so it's notable when a target survives. On Friday the Pentagon removed the University of Phoenix, which enrolls about 9,300 service members, from probation after a three-month detention. In October the Defense Department blocked Phoenix from enrolling new students using military tuition assistance and from sponsoring job training or "any recruitment-type activities" on military bases. Probation was a disproportionate use of force.

Phoenix's putative infractions included vague "inquiries" by the Federal Trade Commission and California Attorney General Kamala Harris as well as "allegations published by the Center for Investigative Reporting" that the for-profit was handing out unauthorized "challenge coins," which sundry businesses and colleges issue in recognition of service members.

Blockbuster Lawsuit Claims Abusive Practices Persist at ITT Tech

David Halperin, Huffington Post, 1/21

A federal whistleblower lawsuit against troubled ITT Tech, unsealed last week, reads like a greatest hits of abuses by America's predatory for-profit colleges. The suit alleges that ITT has repeatedly defrauded taxpayers by taking billions of dollars in federal student aid while systematically deceiving students and violating federal regulations.

The complaint, first described today by MarketWatch, was filed last April in federal court in Tallahassee, Florida, by Rodney Lipscomb, who served as the dean of academic affairs at ITT's Tallahassee campus from 2011 until early 2015. The case was unsealed on January 15 after the U.S. Justice Department declined to join the case on Lipscomb's side.

Lipscomb claims, among other things: that ITT directs recruiters to use coercive tactics to pressure students into enrolling; that ITT admits students who will not be able to succeed at the school; that ITT unlawfully pays what are, in effect, sales commissions to recruiters; and that ITT lies to students about the financial obligations they will assume, about the transferability of ITT credits to other schools, and about the jobs students can expect to get after graduating.

Thousands Apply to U.S. to Forgive Their Student Loans, Saying Schools Defrauded Them

Josh Mitchell, Wall St. Journal, 1/20

Americans are flooding the government with appeals to have their student loans forgiven on the grounds that schools deceived them with false promises of a well-paying career—part of a growing protest against years of surging college costs. In the past six months, more than 7,500 borrowers owing $164 million have applied to have their student debt expunged under an obscure federal law that had been applied only in three instances before last year. The law forgives debt for borrowers who prove their schools used illegal tactics to recruit them, such as by lying about their graduates' earnings.

The U.S. Education Department has already agreed to cancel nearly $28 million of that debt for 1,300 former students of Corinthian Colleges—the for-profit chain that liquidated in bankruptcy last year. The department has indicated that many more will likely get forgiveness.

[Dept. Of Education Working on Rules for Defense of Repayment Law After Influx of Claims]
Ashlee Kieler, Consumerist, 1/20

[Accreditors Seek to Challenge Consumer Bureau's Power]
Inside Higher Ed, 1/19
A group of national accreditors is seeking to weigh in on the dispute between the Consumer Financial Protection Bureau and the Accrediting Council for Independent Colleges and Schools over whether that controversial accrediting organization has to hand over records to the consumer bureau. Five national accrediting agencies and the Council for Higher Education Accreditation, which advocates for accreditation on behalf of colleges and universities, last week asked the federal judge in the case for permission to file a friend of the court brief.

The brief argues that the CFPB does not have the power to compel records from ACICS, which accredited campuses of the now-defunct Corinthian Colleges, and that any CFPB inquiry into an accreditor threatens the integrity of the accreditation process.

[States Urged to Step Up Protections for Students at Online Colleges]
John Sandman, The Street, 1/18
Distance learning, where students attend class while sitting in front of a computer, is higher ed's fastest growing segment according to a 2014 Senate Health, Education, Labor and Pension committee report. Some observers also fear that they operate in uncharted—and unregulated—waters, where students are vulnerable to scams.

That's because distance learning or online schools are allowed to set up shop in states, where they have no physical presence. Through deals made with state legislators, they avoid regulations that must be observed by schools that do teaching in a classroom, according to a December 14 report last month from the National Consumer Law Center (NCLC).

"Most states either exempt such schools from state oversight or have signed toothless state reciprocity agreements that prevent states from enforcing for-profit school consumer protection laws," said Robyn Smith, Los Angeles-based Of Counsel for NCLC. 34 states have used these agreements, called State Authorization Reciprocity Agreements, or SARAs, that exempt schools from complying with state consumer protections aimed at preventing for-profit college fraud.

[Gainful Back on Trial]
Allie Grasgreen Ciaramella, Politico, 1/22
Despite the impending blizzard, the U.S. Court of Appeals' DC Circuit judges still plans to hear oral arguments this morning in the Association of Private Sector Colleges and Universities' lawsuit over the gainful employment regulation. A federal judge ruled in the Education Department's favor in June, denying the for-profit college trade group's argument that the rule's debt-to-earnings metric is arbitrary and capricious and outside the scope of the Higher Education Act. The hearing is scheduled for 9 a.m. ET at 333 Constitution Ave., in Courtroom 31.

[Justice for all, including for-profit colleges]
Roel Campos, The Hill, 1/21
There is a full-scale war being fought against "for-profit" colleges. Despite the strong record of most of these institutions and the lack of evidence of wrongdoing in most cases, every college in this sector is now being branded by state and federal agencies as guilty of having deceived students and saddling them with high debt. Basic American constitutional principles don't matter in this war. The presumption of innocence, right to defend one's self, and due process under the law have been ignored at all levels of government in a rush to judgment and to win political favor.

[Nebraska should regulate for-profit schools]
Angela Ching, Daily Nebraskan, 1/20

SYSTEMIC RISK

[MetLife to Follow GE's Lead Dodging Dodd-Frank]

Jay Jenkins, The Motley Fool, 1/19

Last week, MetLife announced plans to sell its retail life insurance and annuity business in the U.S. The company has about $840 billion in assets today, of which up to $240 billion could be included in this sale. That's a huge portion of the company's business; so why is it selling? It's selling because MetLife doesn't want to be considered systemically important anymore.

Systemically important designation: In response to the financial crisis, the Dodd-Frank legislation called for the creation of a group called the Financial Stability Oversight Council. Its responsibility is essentially to make sure that the financial system never experiences the systemic problems that brought it to near collapse in 2008 and 2009.

One of the cornerstone policies of the Financial Stability Oversight Committee is the designation of certain large and important financial institutions as systemically important. Systemically important financial institutions are required by regulation to carry higher levels of capital on their balance sheets than they otherwise would, in addition to generally increased regulatory scrutiny. That higher capital adds an extra buffer of protection in another crisis situation; but it also limits the company's ability to use leverage to boost earnings.

[Breaking Up America's Big Banks is Key to Averting Future Financial Crises]

Between the Lines, 1/13

"Cutting these big banks down to size would have a lot of positive impacts. It would lessen the political power of the financial industry, it would put government in a position [to] let a bank fail and let that bank be restructured to be a healthy entity and experience the consequence of its actions… There's enormous amounts of money at stake and very complex and technical rules. The banks can fund a constant lobbying presence to hammer on all of these rules when often the general public might not even know these battles are going on, so it is a tough fight but I believe the public is on the side of stronger action." — Marcus Stanley, Policy Director, **Americans for Financial Reform**

OTHER TOPICS

[Five Smart Ways to Cut Red Tape]

Cass Sunstein, Bloomberg, 1/20