

## NEW CONGRESS EYES CONSUMER PROTECTIONS IN BANKING

By Thomas Delaney



The banking industry can expect “consumer protection” to be a popular refrain in the 110th Congress. Both Senator Christopher Dodd (D-CT) and Congressman Barney Frank (D-MA), chairmen of the Senate Banking and House Financial Services Committees respectively, are well-known champions of the average consumer. Their oversight activity will be echoed by additional inquiries from the Senate Permanent Subcommittee on Investigations.

Look for investigations into the following consumer issues:

- WHETHER ALTERNATIVE MORTGAGE PRODUCTS THAT CAME INTO FASHION DURING THE HEIGHT OF THE RECENT REAL ESTATE BOOM ACTUALLY PENALIZE BORROWERS WHEN HOUSING MARKETS COOL AND PRICES FLATTEN OR DECLINE.
- WHETHER THOSE WHO ARE NOT ABLE TO OBTAIN TRADITIONAL BANKING SERVICES ARE VICTIMIZED BY BUSINESSES THAT CASH THEIR PAY CHECKS OR ENABLE THEM TO BORROW MONEY UNTIL THEIR NEXT PAYDAY.
- WHETHER BORROWERS WITH NO CREDIT HISTORY OR POOR CREDIT RECORDS PAY DISPROPORTIONATELY HIGHER INTEREST RATES OR FEES FOR THE CREDIT THEY ARE ABLE TO OBTAIN THAN MOST BORROWERS.
- IN LIGHT OF RECENT MEDIA ATTENTION GIVEN TO DATA BREACHES, WHETHER BANKS AND CREDIT CARD COMPANIES ARE DOING ENOUGH TO PROTECT THE INFORMATION THAT IS ENTRUSTED TO THEM.
- WHETHER THE ABILITY OF FEDERAL BANKING AGENCIES TO PREEMPT STATE LAWS PREVENTS STATE ATTORNEYS GENERAL FROM EFFECTIVELY ENFORCING STATE CONSUMER PROTECTION LAWS.

Chairman Dodd’s recent announcement that he will seek the 2008 Democrat presidential nomination only hastens these investigations. There are also other banking issues in the cue for this legislative session.

Both banking committees will hold oversight hearings into the levels of compensation paid to executives of publicly traded companies. Those hearings will likely also touch upon whether disclosures concerning compensation packages are

sufficient and whether restrictions should be imposed on the exercise of stock-options when the future economic performance of a publicly traded company declines. Compensation paid to executives of publicly traded companies is of particular interest to Chairman Frank who, while in the minority, unsuccessfully tried to address these issues by forcing a markup of legislation entitled the Protection Against Executive Compensation Abuse Act.

Hedge funds are also likely to receive scrutiny because of concerns about the marketing of such investment options to unsophisticated investors and pension funds.

Another focus is that the current temporary program to provide a federal insurance backstop for acts of terrorism will expire this year. Hearings are expected on whether to continue the program or adopt a more permanent solution will be held in both Committees. Chairman Frank has also requested that the FDIC delay lifting its current moratorium on chartering industrial loan companies (set to expire at the end of January) for an additional six-months to allow the Financial Services Committee to hold hearings on the issue and consider whether legislation is necessary.

One theme that will be continued from previous Congresses is whether banks and their regulators are taking sufficient steps to prevent the U.S. financial system from being used to fund terrorists and criminal enterprises. In addition to hearings on the part of both banking committees, the Senate Permanent Subcommittee on Investigations is expected to continue its examination of the role that domestic shell companies play in money laundering and tax evasion schemes.

As likely as these issues are to be addressed, it is just as likely that new issues will emerge that need to be monitored closely.

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