

# Legislative Highlights

## ***Some New Credit Card Rules Now in Effect***

**C**ard issuers must give consumers more time to pay their bills (21 days from when bills are mailed rather than 14) and more notice of interest rate hikes (45 days rather than 15) under the terms of the new credit card law signed in May. Other key provisions take effect in February, including a rule that prevents companies from raising interest rates on existing balances unless the customer is at least 60 days late with a payment. Banned practices include double-cycle billing and automatic overdraft charges for overlimit purchases.

## ***Fed Extends TALF into 2010***

The Federal Reserve and Treasury Department have extended the Term Asset-Backed Securities Loan Facility (TALF), a key program aimed at boosting the flow of credit to businesses and households as well as financing for the distressed commercial real estate market. The government plans to extend TALF loans against newly issued asset-backed securities and legacy commercial mortgage-backed securities through March 31, 2010.

## ***Regulators Defend Turf Against Obama Consolidation Plans***

Against a backdrop of agency heads fighting to protect their turf, some key Senate Banking Committee members have raised the specter of even greater consolidation among federal banking regulators than has been proposed by the Obama administration. Senate Banking Chairman Christopher Dodd (D-Conn.) at an Aug. 4 committee hearing wondered if the country really needs three federal agencies to regulate banks as called for under the Obama plan, which would consolidate the Office of Thrift Supervision and the Office of the Comptroller of the Currency into a new National Bank Supervisor but does not go as far as a single national regulator as some critics wanted. The plan also would continue to leave supervision of state banks to the FDIC and the Federal Reserve, whose role would be strengthened to supervise bank holding companies. "There are reasons for one strong, powerful and efficient regulator," said Sen. Charles

Schumer (D-N.Y.). "I think more people who are objective, who don't have any turf considerations...tend to think that should happen in the banking area." FDIC Chairwoman Sheila Bair testified against a single regulator, noting that community banks would suffer because such a system would focus on larger banks. She added that it could place at risk the deposit insurance system. She also took aim at the administration's plans to give the Fed the power to identify and regulate "too big to fail" institutions.

## ***GOP Regulation Reform Plan Would Ban Bailouts, End Government Picking "Winners and Losers"***

The House Republican alternative to the Obama regulatory reform plan (H.R. 3310) would call for the resolution of insolvent non-bank institutions, no matter the size, via a new chapter 14 of the Bankruptcy Code. The new chapter would facilitate coordination between regulators and the courts to ensure that technical and specialized expertise is applied.

## ***Obama Sends Derivatives Bill to Capitol Hill***

The President sent Congress his proposal for reining in over-the-counter derivatives, including restrictions on municipalities and small investors seeking to trade in the \$592 trillion industry. The proposal includes a provision to "better protect" small municipalities and "unsophisticated investors" by limiting their eligibility to trade derivatives. The proposal overall mirrors earlier legislative outlines by asking Congress to impose higher capital and margin requirements, move most derivatives to regulated exchanges and clearinghouses and impose supervision over all dealers. The Obama administration is asking Congress to subject derivatives users to new capital rules and to require all standardized derivatives products to be cleared through regulated clearinghouses and executed on a regulated exchange or trading platform. Customized products that can't be centrally cleared would carry higher capital and other requirements.

## ***GAO Critical of Federal Regulators Enforcement***

The Government Accountability Office (GAO) has issued a report critical of federal regulators' ability to effectively and efficiently enforce the nation's fair-lending laws. In the report, the GAO found that "[f]ederal enforcement agencies and depository institution regulators face challenges in consistently, efficiently and effectively overseeing and enforcing fair lending laws due in part to data limitations and the fragmented U.S. financial regulatory structure." Although depository institution regulators' fair lending initial activities to assess evidence of potential fair lending violations generally have been more comprehensive than those of the enforcement agencies, the report also found that differences in the various oversight programs raise questions about the consistency and effectiveness of their efforts and highlight challenges associated with a fragmented regulatory system. The House Financial Services Committee is already considering a number of the GAO's recommendations to enhance the data available to detect potential fair-lending violations as part of H.R. 3126, a bill to create a new federal Consumer Financial Protection Agency, including amending the Equal Credit Opportunity Act to require collection of race and ethnicity information and some loan data for small business loans.

## ***Sen. Durbin Ready to Push for Mortgage Cramdown Again***

Senate Majority Whip Dick Durbin (D-Ill.) has renewed a pledge to push for a cramdown measure allowing bankruptcy judges to modify home mortgages, even though his last effort fell 15 votes short in April on a key test. Durbin said that his bill, which is bitterly opposed by the mortgage-lending industry, is necessary because the economy remains gripped by the foreclosure crisis and voluntary restructuring plans are not working. He added that he might include new sweeteners such as giving homeowners extra time to stay in their homes by letting them pay fair-market value during foreclosure proceedings. In addition, Durbin said, there should be federal funds for cities that implement mandatory

*continued on page 95*

## **Legislative Highlights**

*from page 8*

mediation proceedings for foreclosures, but banks that do not meet an Obama administration goal to have started 500,000 loan modifications by Nov. 1 should face penalties. One of those penalties could be a bankruptcy option, in which judges would have the ability to lower a loan to its fair-market value.

### **House Passes Shareholders “Say” on Executive Pay**

The House voted in early August to give shareholders greater say over executive pay and expand the powers of regulators to limit compensation

packages that they deem improper. Rather than setting precise limits on what such firms can pay employees, the House bill adopts a more indirect approach, taking aim at the pay practices that encourage traders and executives to take big risks. Regulators could ban pay packages and would have the power to decide appropriate compensation not just for top executives but for all employees of financial institutions. The bill also gives shareholders the right to reject a pay package, but their vote would be advisory. Corporate compensation

committees, meanwhile, would have to sever ties with management.

### **Terminated Auto Dealers Press for State Law Remedies**

The Automobile Dealer Economic Rights Restoration Act of 2009 has more than 250 House sponsors of both political parties and is designed to preserve the state law legal rights of terminated General Motors and Chrysler dealers as they existed prior to the companies' chapter 11 filing. The bill is opposed by the Obama administration. ■

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