Rules at Risk Report

Consumer protection progress at risk?

By Rath Swauwetin

Consumers have seen some major improvements in consumer protections, particularly in the past year. Many of these gains have been made by various government agencies that have passed rules to help protect our personal safety, our privacy online, our dispute resolution rights, our financial future and much, much more.

Here’s some of the progress that’s been achieved for American consumers. Many of these protections are now at risk and regulation.

Privacy online: Consumers gained the right to protect their privacy online in October, when the Federal Communications Commission (FCC) voted to put consumers in control of their online information sharing. Internet service providers (ISP) are now required to get customer consent before using or sharing their personal information (e.g., location, health data and browsing history) with a third party online. The FCC rule also requires companies to tell customers what data they collect and why.

Safe rental cars: Consumers no longer have to drive a rental car with dangerous defects because of neglected recall repairs. Rental car companies must repair any defects prior to renting a car to unsuspecting drivers. The National Highway Traffic Safety Administration (NHTSA) rule applies to fleets of rental cars under recall for safety problems. Unfortunately, no law prevents the sale of used cars with outstanding recalls. (For more on that controversy, see “FCC crucial judgment and banned” rule at right.)

Retirement advice: Thousands of dollars in retirement savings can quietly, legally be lost from retiree accounts, over time, because of conflicts of interest. Conflicts arise when a broker focuses more on profits than providing independent financial advice. The U.S. Department of Labor’s fiduciary rule, adopted last year, eliminates many of those conflicts because it requires financial advisors to put their clients’ best interests first when offering advice about retirement funds.

“Risk” continues on page 3

Consumer access and control online at the FCC

By Alegra Howard

When it comes to internet access and privacy, the Federal Communications Commission (FCC) served up some big wins for consumers over the past year. Under a new administration, consumers cannot rely on keeping these gains.

Broadband privacy

The websites you visit and the apps you use can reveal a great deal of personal information about you, such as health conditions, sexual preference, political associations and religious practices. In October 2016, the FCC voted to give broadband customers the right to make choices to protect their privacy online. The FCC’s landmark privacy rule, championed by former Chairman Tom Wheeler, requires internet service providers (ISP) to give clear notice and get explicit consent before sharing subscribers’ personal information for purposes other than providing broadband service. User information is highly valuable to advertisers and other third parties.

The FCC’s decision requires providers to get opt-in consent from subscribers to share sensitive information, which includes the content of communications, location information, and web browsing and mobile app usage history for the subscriber and anyone in the home. However, in the final days of February, new FCC Chair Ajit Pai announced plans to freeze the part of the new internet privacy rule requiring customer consent. Opponents of the rule—mostly online broadband providers—argue that the FCC lacks the authority to protect broadband customers’ privacy, and that broadband providers should be free to use and share their customers’ data, particularly browsing history. Consumer Action and its allies have argued that the FCC is the guardian of subscribers’ privacy information with respect to broadband providers. The FCC reclassified broadband providers as “common carriers” under the Communications Act of 1934, which requires that they protect the confidentiality of customer information. However, the FCC has no jurisdiction over large internet companies like Google, Netflix and Facebook.

Lifeline

Late last year, the FCC expanded its Lifeline program to include broadband internet access for qualified low-income households. The Lifeline program has provided a discount on phone service, since 1985, for qualifying low-income consumers to be able to connect to jobs, family and emergency services. The program now allows people who are eligible to connect to the internet. The Lifeline program also serves to close the digital divide. While most Americans have internet access, only 48 percent of those earning less than $25,000 per year have internet service at home, according to the FCC. Under the change, qualifying low-income consumers would have access to employment opportunities, educational resources, like homework help and class assignments, and government social services for veterans and seniors.

New leadership

Chairman Pai revoked the participation of nine new providers of Lifeline’s subsidy for internet access last month. This action is a blow to low-income consumers, seniors, students, businesses and schools. While the program now allows people who are eligible to connect to the internet, the Lifeline program also serves to close the digital divide.
Risks to progress in consumer protection

By Lauren Hall

W
ith the speed and pur-
pose of a wrecking ball, the new Congress and the new administration have kicked off 2017 with attacks on critical consumer and environmental pro-
tections. The actions seem mostly an effort to reduce regulations consid-
ered overly burdensome to business. Use of the new administration’s so-called the Congressional Review Act (CRA), lawmakers are able to streamline re-
peal of recent laws and ban federal agencies from issuing new regulation sub-
stantially similar rules.

Right now, anti-consumer law-
makers are using the CRA in an attempt to eliminate dozens of rules, including the Consumer Financial Protection Bureau’s precard rule. If Congress votes to disap-
proving the legal protections on prepaid card fraud losses, error resolution and fee disclosures will no longer apply.

The Federal Communications Commission (FCC) rule on internet privacy and net neutrality (a free and open internet) are also in jeopardy. This FCC mandate strengthens consumer protections by prohibiting internet service provid-
ers (ISPs) from using customers’ information without their explicit consent, and banning telecommu-
nications companies from blocking or slowing access to the internet for certain content or by delivering information in an equal or neutral way. However, the new FCC Chairman Ajit Pai has chosen to roll back these rules. (For more, see “Consumer access to the online world” on the next page.)

A multitude of advocacy organiza-
tions, including Consumer Ac-
tion, have long urged the FCC to protect consumers’ privacy online (bit.ly/2fCT90E).

One ally, Susan Grant of the Congressional Federation of America, cited Verizon’s “super cookie” tracking system as a type of behavior these rules were designed to stop. The FCC ruled that Vez-
ron was keeping close tabs on its wireless customers’ website activity without providing any choice in the matter.

Lawmakers have also introduced dangerous new bills like the Mid-


ight Rules Relief Act, which would allow federal agencies to bundle federal agency rules together and ban them, and the Regulations from the Executive in Need of Scrutiny (REINS) Act, which would require votes by both the U.S. House and Senate to approve each significant rule issued by a federal agency. This would undoubtedly slow or stop most regulations and reduce agency authority.

While Consumer Action and its allies are busy battling current at-
tacks on consumer protections, we simultaneously are keeping a close eye on those yet to come, such as President Trump’s threats to repeal the Affordable Care Act (ACA). Despite the framework of the ad-
ministration’s dislike of the ACA, a record number of people (nearly 6.4 million) recently signed up for 2017 insurance coverage through the federal healthcare exchange. Unfortunately, experts agree that a wholesale repeal of the law without replacement would lead to losses of healthcare coverage for 20 million or more people. According to an Urban Institute report, “The num-
ber of uninsured people would rise from 28.9 million to 58.7 million in 2019, an increase of 29.8 million people (103 percent).” Ironically, many of the counties that voted for Donald Trump in the election also had bigger increases in ACA health insurance coverage than that of the national overall rate, according to The Boston Globe.

At this particular risk of repeal is a planned Medicaid expansion; cost-
sharing reductions that lower the cost of ACA coverage for consum-
ers; and the individual mandate that requires nearly all Americans to have health insurance.

Last, but certainly not least, are lawmakers’ calls for increasingly hostile attacks on the Consumer Fi-
nancial Protection Bureau (CFPB). The federal Bureau’s sole mission is to protect consumers from bad actors in the financial marketplace (like predatory lenders, big banks that charge exorbitant and unfair fees, harassing debt collectors and much more). The reason the Bureau is under attack? It has proposed rules that would rein in payday lending, where small-
dollar loans (with 300-plus-percent interest rates) are often overused to vulnerable consumers, trap-
ping them in an endless cycle of debt, and force arbitration (a legal process that blocks class actions from taking companies to court). Learn more about mandatory arbitration here: www.fairpracticesnow.org.

The CFPB’s proposed rule would preserve the rights of consumers to participate in class action lawsuits, an opportunity that is often blocked by companies as a condition of service.

As Consumer Action’s Ruth Suss-
wein points out (bit.ly/2fCT78m), certain lawmakers and the adminis-
tration “want to cripple the CFPB or starve it by draining its fund-
ing.... These lawmakers also seek to weaken the agency’s director with a weak, politically-appointed leader to dilute the agency’s effec-
tiveness.”

Susswein continued, “No matter whom we voted for in November, consumers must reach their rep-
resentatives to stand together and stand up for the agency that has had our backs time and again: the CFPB.”

Healthcare protections have grown under ACA

By Lauren Hall

P
rior to the passage of the Affordable Care Act (ACA), commonly known as Obam-
are, health insurers could deny customers coverage for health issues the consumer experienced prior to the date of coverage. These pre-
existing conditions ranged from cancer to pregnancy. Under the ACA, insurance companies are no longer permitted to deny coverage—or charge individuals more—for pre-existing conditions. This change alone has put millions of Americans at ease. With insurance they can receive, and afford, crucial healthcare coverage.

The ACA also mandated that insurers would be required to cover certain critical services that were sometimes considered elective. For instance, the National Women’s Law Center notes that in 2013, ma-
ternity benefits were included in a mere 12 percent of individual plans. Once the ACA went into effect, all

new healthcare plans were required to include maternity and newborn care, as well as other critical services, like mental health treatment and children’s dental and vision care. Prior to the ACA, health insurers typically dropped young people (de-
pendents) from their parents’ plans at the age of 19 or upon graduation from college. The ACA mandated that dependents could stay on their parents’ health insurance plans until age 26. The law was straightforward on this: Regardless of marital status, educational pursuits or financial status, dependent coverage would stay the same until age 26. Another major benefit of the ACA has been that it prohibits health plans from putting annual or lifetime dollar limits on most of the benefits you receive. This is particu-
larly valuable to those who are diag-
nosed with a costly chronic medical condition. Insurers must continue to pay for ongoing treatment with-
out capping coverage or cost.

The ACA allows millions of low-
income families to afford health insurance because it offers robust subsidies for those who enroll in its marketplace plan cannot afford the standard premiums. Congress and the Trump Adminis-
tration have said they will repeal the Affordable Care Act, but no replace-
ment plan had been released by press time. While very popular with much of the public, it is unclear if this exact healthcare protec-
tions will remain. Consumer Action hopes they survive, and we’ll fight to keep them. 

Help protect these rules!

Use Consumer Action’s free Take Action Center (www.consumer-
action.org/takeaction) to email your elected officials.
For as long as the Bureau has existed, President Trump told reporters. [http://bit.ly/2mBlEhG](http://bit.ly/2mBlEhG), “...jeopardy,” at the president savers “best interest” rule in the Department of Labor rule, read “Retirement savings. For more about the Department of Labor rule, read “Retirement savings.”

For the first time since the Bush administration, President Donald Trump and Republican congressional leaders have promised to “repeal and replace” Obamacare, leaving many consumers fearful that some of the protections they have come to expect are now at risk of being eliminated.

The protections are now at risk of being eliminated cover financial, environmental, health and safety protections. Examples include:

- The FTC’s new privacy protections that prevent online tracking without consumer permission;
- Updates to the Nursing Home Reform law to prevent exploitation, abuse and neglect;
- Department of Education’s “Borrower Defense” rule allowing students to apply for loan forgiveness if their colleges have defrauded them;

Time will tell how many of these regulatory rollbacks will happen and what their impact will be.

Several recent court rulings may impact the momentum of consumer protection efforts.

Several recent court rulings may impact the momentum of consumer protection efforts.

Consumers can make their voices heard by participating in the comment process. To learn more or make a claim,

(For more, see “Healthcare protections have grown under ACA” on page 2.)

### Rules at risk

Many of these consumer protections are now at risk of being dismantled under a new administration that has made it clear that it believes that the consumer financial regulator is too powerful and independent.

(To learn more about the Bureau’s successes, see “Gains for consumers’ financial protection” on page 4.)

The Congressional Review Act (CRA) gives Congress the ability to strike down rules of that were issued to protect the public. With the recent return of a new opportunity for appeal, the CRA allows lawmakers to repeal rules that date as far back as June 2016. While a president can veto congressional actions, President Trump has signaled he supports efforts to use the CRA to further the conservative agenda.

The CRA prevents regulators from issuing rules that are “substantially similar” to those repealed by the CRA. A group of维奇 means that the CRA was to file a resolution to repeal the CFPB rule to ensure that prepaid card issuers’ “best interest” rule is safe and sound. The long-awaited rule requires card issuers to provide fraud protection, fee disclosures and error resolution for cardholders.

Rules at risk of repeal include:

- CFPB’s new financial, environmental, health and safety protections. Examples include the:

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Time will tell how many of these regulatory rollbacks will happen and what their impact will be. Consumer advocates have expressed concern that the consumer financial watchdog agency, the CFPB, is now targeted for termination.

### Future in flux

With two open seats (out of five) on the Commission, President Trump has the opportunity to give the CFPB a Republican majority for the first time since the Bush administration. Indeed, Trump’s appointment of Republican Maureen Ohlhausen as the CFPB’s acting chair may offer some indication of what the Obama administration’s rule supportive of the CFPB’s mandate to protect consumers from fraud, deception and unfair practices, is a cornerstone of current government regulation and expressed “worry that the FTC imposes unnecessary and disproportionate costs on business” in a recent report.

The FTC is headed by five Commissioners, nominated by the president and confirmed by the Senate, each serving a seven-year term. No more than three Commissioners can be of the same political party. Democratic Commissioner Terrell McSweeny was appointed by President Barack Obama and sworn in April 2014. President Trump will have the opportunity to choose three of the five remaining commissioners. Each of whom will have to be a Democrat or an Independent.

While it is impossible to predict exactly where the FTC will move as the open seats come to be, the FTC climate appears to be changing. With the recent exit of Jessica Rich, director of the FTC’s Bureau of Consumer Protection, after 26 years, consumer advocates have expressed concern that the agency might be less supportive of consumer protection and privacy take a back seat to the interests of big business.

To review more of the FTC’s recent actions, see the FTC’s “Consumer Confirmation” page ([www.ftc.gov/ news-events/commission-actions](http://www.ftc.gov/news-events/commission-actions)).
Gains for consumers’ financial protection

By Ruth Susswein

The one federal financial regulator created to protect consumers from financial deception and abuse, the Consumer Financial Protection Bureau (CFPB)—is in the fight of its brief life. Following the Great Recession, it was designed by Congress as an independently funded agency with a sole director in order to be free of political maneuvering. Only in the past five-and-a-half years, the CFPB has prevented predatory practices; defined how to understand the terms of a mortgage, student loan and credit card in its Know Before You Owe campaign; and held companies accountable for unfair and deceptive behavior.

Its supporters, including Consumer Action, say the Bureau’s multipart approach toward consumer protection—supervision, enforcement, regulation, research and consumer education—has led to safer financial contracts, more transparent lending and fewer deceptive practices. The CFPB has returned $12 billion to about 29 million aggrieved consumers.

Recently, the CFPB slapped Wells Fargo with a noteworthy $100 million fine for opening two million unwanted bank accounts and charging consumers fees on the phantom accounts.

The Bureau filed suit against the nation’s largest student loan servicer, Navient, which is among “opportunistic” servicers that if they are out of their right to lower loan repayment options.

The CFPB required (non-bank) mortgage servicer Ocwen to pay $2 billion in home loan modifications and $125 million to borrowers who had lost their homes to foreclosure because of bad actions of lenders and servicers.

The agency created mortgage-servicing rules, including a process to help prevent lenders and servicers from completing unfair foreclosures. For one, servicers can no longer sell a home while a borrower is being considered for a loan modification.

The CFPB also created rules that require lenders to reasonably determine a borrower’s ability to repay a mortgage and servicers to correct errors quickly.

Thanks to the CFPB and the U.S. Department of Justice, more than 200,000 minority borrowers who were charged higher mortgage rates on auto loans for no reason were paid $80 million in damages stemming from discriminatory pricing by auto lenders Ally Financial and Bank of America.

The CFPB issued a rule to protect prepaid card users (effective October 2017) that requires card issuers to disclose fees, limit charges for fraud and unauthorized withdrawals, and include a process to resolve errors. The new rule enacts protections that are substantially similar to those that exist for ATM and debit cards.

CFPB investigations found that most of the top credit card issuers had misled consumers into spending for expensive “add-on” credit card protection plans. The Bureau ordered Citibank, American Bank of Commerce, AAdvantage Express and Enterprise to return $3.48 billion to affected consumers.

The Bureau has created a consumer complaint system that helps regulators spot patterns of problems for a business’s performance using the CFPB’s public complaint database. More than one million consumers have reported their mortgage, credit card, student loan, payday, money transfer, bank/credit union, car loan, credit card, debt collection, and other collection complaints to the CFPB.

The CFPB’s director, Richard Cordray, has said his goal is to help create a marketplace “where prices are clear up front, ads are visible, nothing is buried in fine print, and everyone plays by the rules.” But not all see the consumer bureau’s achievements as a benefit to the public. Republican congressmen and industry leaders have complained since its inception that the CFPB is too independent, since its budget comes automatically from the Federal Reserve, not at the behest of Congress. Some Republicans claim the CFPB has over-regulated businesses, particularly similar to those Financial services committee chair Jeb Hensarling (R-TX) authored the Financial Choice Act, which would change the structure of the CFPB by replacing its director with a political appointee who could be fired with the president’s decision would further reduce the Bureau’s independence by placing its budget under congressional control, where its funding would be at the whims of its allies to rein in abusive practices diminished by political whim.

As a further attack on the CFPB’s independence, opponents would like to see the president fire the Bureau’s director. At press time, legal wrangling continues over whether the president has the authority to do so.

Many issues the CFPB has begun to tackle, from payday lending, to credit card reform, to housing discrimination by foster agencies, to redlining (denying minorities access to housing), are some of the top expectations the new administration. Consumer Action has already proposed to repeal the CFPB’s prepaid card rule and dozens of other important consumer protection rules. The Bureau and its allies have pledged to preserve the consumer financial watchdog and the improvements it has fostered on behalf of U.S. consumers.

Help on the home front

By Ruth Susswein

The U.S. Department of Housing and Urban Development (HUD) has been nudging communities to become more inclusive and improve fair housing opportunities for residents.

HUD’s Affirmatively Furthering Fair Housing (AFFH) Rule requires “meaningful action” to help end housing discrimination by fostering inclusive communities where all have access to fair housing and community services. The AFFH Rule requires HUD-funded program participants (cities, counties, public housing agencies to:

• identify factors that have impeded local fair housing choices,
• set fair housing goals and
• act to overcome obstacles.

HUD then evaluates participants’ fair housing priorities and goals. While the rule does not require communities to take specific actions, it does expect a meaningful action plan with locally-based solutions. In some areas, furthering fair housing will mean rezoning for additional affordable housing units; in other areas it will include changing public transportation schedules to meet the needs of that community.

But new legislation, the Local Zoning Discrimination Protection Act (HR 482 and S 103), has been introduced that would repeal the fair housing rule and halt the pending of data on racial disparities in affordable housing. The bills, introduced by Rep. Paul Driscoll (R-MAZ) and Senator Mike Lee (R-UT), are intended to have local communities retain full control of housing and zoning decisions.

Credit access

Increased mortgage lending to underserved borrowers, housing counseling services and greater use of alternative credit scoring models are some of the top expectations the Federal Housing Finance Agency (FHFA) has for Fannie Mae and Freddie Mac. (Fannie and Freddie buy mortgages from lenders to free up funding for lenders to make additional loans.) FHFA’s latest Scorecard gives the housing finance giants a “B” for its progress toward the goals it set for the upcoming year. With the end of HAMP, the government’s voluntary mortgage modification program, FHFA expects to expand access to credit for consumers with limited English proficiency (LEP). So far there have been no threats to dismantle HAMP, but it’s too early to tell if priorities will be refocused in the days ahead.

Housing counselors will be required to take an exam over the next three years to become certified to operate as a HUD-approved housing counselor (no word on whether the new criteria will change under the new administration). Consumers who work with HUD-approved housing counselors have greater savings, better credit histories and less likelihood of foreclosure, according to independent studies.

FCC

Continued from page 1

many other providers are eligible to offer subsidized internet access, the FCC does not currently know of any who are offering the service. While the chairman insists that he intends to close the digital divide, he explained that his decision to call for more transparency would allow time to address any potential waste or fraud in the program. There are also concerns for the future of a free and open internet. net neutrality regulations, which are a key win for consumers during the Obama Administration because they ensure equal access to internet content. Pai has strongly and consistently opposed the ISP privacy rules and the net neutrality order. Pai also shut down multiple net neutrality inquiries into carriers’ “zero rating” programs. These programs allow only AT&T, Verizon, T-Mobile and Comcast subscribers to access certain websites and/or downloads that do not affect their data-caps, and appear to run counter to the FCC’s net neutrality ban on prioritization. Most concerning is the risk of repeal of the FCC’s new internet privacy rule. Pai has previously argued the agency’s rule to protect the confidentiality and security of customers’ online information “disproportionately burdens ISPs” instead of major entities like Google, Netflix, Twitter and Facebook, whose use and collection of consumer information is regulated by the Federal Trade Commission. Consumer Action has urged the FCC to maintain the rule that gives consumers a measure of control over their sensitive information online.

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