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May 10, 2010

**Why We Should Keep the Fed Away From the Consumer: the Hurt Incident**

By ANDREW COCKBURN

Boyed by the thrill of seeing Goldman Sachs squirm just a little at the witness table it may be that a financial "reform" bill emerges from congress some time this summer. Without a doubt, human wave assaults by Wall Street's famously effective lobbyists will produce many amendments and alterations to the draft legislation currently under debate. Some of these may be momentous in effect yet scarcely visible to anyone but a securities lawyer – think the Commodity Futures Modernization Act, slipped through congress without debate in December 2000, that unleashed credit default swaps on a defenseless world. Other compromises congenial to the financial industry have already been incorporated in Senator Chris Dodd's Senate Banking Committee bill, with little prospect of reversal. Chief among these is the interment of the proposed Consumer Finance Protection Agency within the Federal Reserve – an early Dodd concession to the Republicans.

There are a lot of good reasons why the Federal Reserve should not be allowed anywhere near the consumer, not least its prior record in consumer financial protection. Consider the experience of Adrienne Hurt, a career staff attorney at the fed. In 2003, Hurt was Associate Director of the bank's Division of Consumer and Community Affairs and a potent influence in the arcane but vital field of consumer-related financial regulation, where the Fed plays a commanding role. It is thanks to her, for example that car and truck leasing agreements must set out clearly what we will have to pay. "Adrienne Hurt was by far the most talented and responsible person on the Fed's consumer affairs staff," says Professor Patricia McCoy, of the University of Connecticut Law School, herself a recognized authority on consumer finance law.

Among the Fed's responsibilities are the administration of various consumer-finance laws such as the Truth in Lending Act, the Equal Credit Opportunity Act, etc. These laws generally require that disclosures to the borrower be "clear and conspicuous." But the regulations implementing several of these laws differed in the way they defined "clear" and "conspicuous."
In 2003 Hurt thought it would be a fine idea if all these regulations were to be standardized, a concept on which she thought all reasonable people would agree. So she crafted a regulation defining "clear and conspicuous." Credit card companies, for example, would have to spell out card charges, fees and penalties "in clear, concise sentences, paragraphs, and sections," while avoiding "legal or highly technical business terminology whenever possible." "Conspicuous" would mean using "a typeface and type size," such as 12 point type, "that are easy to read." Banks would similarly to clarify such important matters as overdraft fees.

As Hurt told me recently, "I was hoping to get people using mouseprint to stop using mouseprint." And so the proposed regulation changes were drawn up and duly published for review and comment in a highly technical 19-page press release on November 26, 2003.

The financial services industry – banks large and small, credit card companies, mortgage lenders, in her words, "went crazy." Written protests poured in, mostly via the industry’s politically muscular trade associations. The regulations would require "costly compliance." They would be "litigation bait" for unscrupulous tort lawyers. Credit card companies argued that their customers could better understand how an account operates "when required disclosures are interspersed among other contract terms." Some advanced the bizarre claim that printing disclosures in larger type with wider margins would be actually be a disservice for the consumers because "they would be less inclined to read them." Meanwhile the board of governors, chaired at the time by Alan Greenspan, were deluged with personal calls from senior financial services industry executives.

Normal procedure in such matters calls for such proposals to be reviewed by a three-person committee drawn from the seven federal reserve governors. In January 2004, the relevant committee, Consumer Affairs, was chaired by the late Edward Gramlich, now remembered for having warned Greenspan of the perils lurking in the subprime lending boom. One of the other two members was a Tennessee banker, Susan Bies, quoted after the crash (when she had left the board) as saying that regulators had been caught by surprise by the subprime boom, and that she regretted there was not quicker action taken to protect borrowers. The third member was a mild mannered academic economist soon to leave the Fed to serve as Chairman of George Bush’s Council of Economic Advisers, Ben Bernanke.

Though the committee did not meet until January 2004, the writing was already on the wall. The official notice withdrawing the proposal did not appear for another six months, but in a cruel irony, Hurt had had to write a formal memo to the board recommending withdrawal.

At the end of a recent long conversation in her current small, bare office at Federal Reserve headquarters, – on the same floor but a long, long way from the grand chamber where the Board of Governors meet -- I asked Hurt about the episode’s impact on her career. "I am no longer involved in consumer affairs," she answered drily. She is instead an "adviser" to the Staff Director for Management Affairs.

"The fed board caved to the banking industry and Hurt was exiled," says McCoy. "That’s all you need to know."

Andrew Cockburn is the co-producer of the 2009 documentary American Casino. He can be reached at: amcockburn@gmail.com
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