THE CONSUMER PROTECTION ACT OF 1977

HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 1262

TO ESTABLISH AN INDEPENDENT CONSUMER AGENCY TO PROTECT AND SERVE THE INTEREST OF CONSUMERS, AND FOR OTHER PURPOSES

APRIL 19 AND 20, 1977

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THE CONSUMER PROTECTION ACT OF 1977

TUESDAY, APRIL 19, 1977

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:30 a.m., in room 3302, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman) presiding.

Present: Senators Ribicoff, Percy, and Sasser.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Ellen S. Miller, professional staff member; Claude Barfield, professional staff member; John B. Childers, chief counsel to the minority; Marilyn A. Harris, chief clerk, and Elizabeth A. Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will be in order.

I welcome you here today, Mrs. Peterson to testify on S. 1262.[1] I will forego any formal statement. We have been up the hill, down the hill, and around the hill on this legislation for the past 7 years.

I do not think there is a single new thing to be added, either by witnesses or by Senators.

The one ingredient that is new and has been added is that the President of the United States is with us this time, and that is the additional ingredient that will bring success to this legislation through the Congress, to the President's desk, and to the people of the United States.

I do want to pay special tribute to Senator Percy and Senator Javits, who have worked so closely and ardently for this legislation during these 7 years.

We have taken the brunt of filibuster after filibuster. We have been frustrated, but it looks like a new day has really dawned, so without further ado, and after some remarks from Senator Percy, we would welcome your testimony.

Without objection, the opening statement of Senator Javits will be inserted in the record at this point.

OPENING STATEMENT OF JACOB K. JAVITS

Mr. JAVITS. Mr. Chairman, we have now been considering the establishment of a statutory mechanism for consumer representation in the Federal Government for almost 14 years. The Senate has passed bills embodying many of the principles contained in S. 1262 twice and the House has passed similar legislation 3 times. We have witnessed the defeat of the bill in a Senate filibuster twice, despite

[1] See appendix for copy of S. 1262 as introduced.

the fact that a large majority in both house have supported the bill over the years.

A coalition of more than 130 groups, organizations of all types and businesses support it. Organized labor has been a major source of strength in our long fight for the bill. Consumer organization and public interest groups have provided extraordinary assistance each year when the bill has been considered in the past. And now, with the support of President Carter and his extremely able consumer affairs advisor, Ester Peterson, I believe that finally we will be successful.

In a democracy, citizen access to Government decisionmaking is absolutely critical. Too often, Federal regulatory agencies result in barriers of bureaucracy which cannot be breached by citizens who are not organized to have their voices heard as effectively as so many special interest groups in our society.

I recognize that this proposal has had a turbulent history. It has evoked and continues to generate substantial opposition from those who are concerned about the interference and disruption which they allege would spread in the wake of the activities of such an agency.

But, the Agency for Consumer Advocacy proposed in the bill which we take up today is sensible, carefully measured legislation which will give the consumer a voice in Government policymaking, without upsetting delicate balances which now exist in the Federal decisionmaking process.

It focuses in one agency an ability to marshal the facts concerning the economic, health, and safety interests of consumers, and to present these facts on behalf of consumers. That agency is not conceived as, nor can it become, a regulatory agency in any sense of the word. It cannot harass. it cannot frustrate and delay Government action.

In the exercise of its role before other Government agencies, it will only have procedural rights, and will not grant or deny rates, routes, applications, or other substantive rights and remedies. I believe that the agency would not be antibusiness—and it is certainly not antibusiness in its conceptualization.

The ACA would be bound by the same procedural rules and time limits which apply to business and other parties to agency proceedings. Virtually all decisionmaking in the public as well as the private sector is, in the broader sense, adversary. At the heart of the regulatory system is a requirement that all formal decisions and findings be supported by evidence developed in an adversary process. The fact that agencies and departments of the Federal Government have frequently failed to take into account the interests of the consumer in the regulatory process in contrast to the interests of private sector organizations, is a serious institutional flaw which many students of the regulatory system have noted.

Mr. Chairman, I again look forward to working with you and Senator Percy, as well as the other members of our committee in moving this bill as quickly as possible to enactment.

Chairman RIBICOFF. Senator Percy?

OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. I share the sentiments of our chairman. No one knows better than Esther Peterson about the work we have done through the years to bring this legislation to fruition.

We have had testimony from corporate executives. We have heard every conceivable argument of why this legislation is not needed.

We have exaggerated claims both for it and against it, more I think, than I have ever heard for any single piece of legislation.

It will not fulfill all of the hopes and dreams of those who believe the consumer is king in this economy. There will always be a way to get around even an agency for consumer advocacy. But it is also not going to fulfill the fears.

We need to centralize and focus attention on the fact that this is a consumer economy.

It was not set up for the convenience of producers. I was a producer, and I never thought that the whole purpose of this society was to favor the producer.

It is to favor the consumer, and a good producer should never fear that.

One point I think we should bring out is that, with the cooperation of the chairman, we have included a provision in this bill which will require regulatory agencies to be cost effective when they issue a regulation, to tell the consumer how much it will cost him, and what the expected benefit will be.

That provision alone should answer many of the complaints made by the business community that they are being harassed, that we are adding on regulations without any regard of what they cost the consumer. I think it will prove very effective and through the years helping to eliminate unnecessary regulation.

We do not want to look for more regulation. We want to look for less. But we want to make certain that we emphasize again and again that we do believe in serving the interests of the consumer and that it is in the best interests of any good business and the free enterprise system itself.

I do not know of a single State in which there is a movement to abolish the State agency for consumer advocacy, although the agencies exist in 38 States.

I welcome, Mr. Chairman, the opening of these hearings. I welcome the fact that we have a fine chance now to move forward and enact this legislation in this Congress.

I ask unanimous consent that the full text of my comments be incorporated into the record.

Chairman RIBICOFF. Without objection, so ordered.

[The prepared statement of Senator Percy follows:]

PREPARED STATEMENT OF SENATOR CHARLES H. PERCY

American consumers continue to this day to claim their right to a just and sound economy—an economy that provides goods and services at fair and reasonable prices. They claim the right to goods and services that are at least satisfactory if not superior. They claim the right to goods and services that assure their wellbeing and which do not expose them to unwarranted health and safety risks. They claim the right to get what they bargained for and bargain for what they get.

Consumers throughout the nation are demanding that their rights be fully and fairly protected in the marketplace, that their concerns be expressed in the proceedings of Washington officialdom, and that their interests be represented in the courts of American justice. It should be obvious to all assembled here today that these are important and reasonable demands. These are demands which we are—in all good conscience—obligated to honor with no further delay.

These hearings take on a certain historical significance, for they represent what I fully expect to be the last stage in a long process we began here some seven

years ago. They will continue to focus the concerns of millions of American consumers on their need for representation in the courts and within government. The hearings will help put into better perspective the proper balance between consumer and business representation in the articulation of government standards and safeguards. And from these hearings there should come into being an agency with a mandate and a commitment to preserve and protect the rights of consumers to safe and effective products, honest merchandising and fairness in the marketplace.

Today, there are high expectations of success. We are all resolved to reform the ways of government regulation and make it better serve the interests of American consumers.

Many of the basic provisions of this bill have been hammered out with craftsmanlike sensitivity to the subtleties of legislatvie compromise, and I do not expect us to expend much attention to those areas. I do, however, want to state at the beginning of these hearings that there are areas of concern to which I do expect to address my questions.

Specifically, I want to assure myself that duplicative or ineffective representation of consumer interests presently housed in various agencies throughout government is eliminated. This should be done by folding essential functions into the new Agency for Consumer Advocacy and doing away with non-essential functions.

Secondly, more attention needs to be given to the issue of mandatory cost/benefit assessments of the impact which government regulation has on the economy as a whole. This is in the interest of consumers and businessmen alike. I am concerned, as are many of my colleagues in both Houses, that government agencies once and for all take stock of themselves and begin to weigh the full range of consequences of their actions.

It is time we began to assure ourselves that government will look objectively at all facets of its actions, that agencies calculate not only the benefits of their proposed action but the costs as well, that government officials be more sensitive to the unintended effects of their actions as well as the intended ones, and that they articulate these effects and subject them to public scrutiny. I am aware that the Administration has stated its good intentions in this area, but I believe there may be no better manner to assure the realization of these intentions than through the adoption of the cost-benefit provision in this bill.

Finally, I am hopeful that the witnesses today and tomorrow can help us to identify the means by which this Committee and this Congress can articulate criteria by which this new agency can be held accountable—so that, years hence, we can look back on the performance of the ACA and demonstrate conclusively that the time and effort and monies that went into it were well spent in behalf of American consumers.

Chairman RIBICOFF. We will proceed with Mrs. Esther Peterson, Special Assistant to the President for Consumer Affairs.

TESTIMONY OF ESTHER PETERSON, SPECIAL ASSISTANT TO THE PRESIDENT

Mrs. PETERSON. Thank you, Senator Percy, for your remarks, and Senator Ribicoff.

I want to say I do bring the personal thanks of the President to you, all of you who have worked on this for these years, and I think in the interest of time, I will go through my statement rather rapidly.

I do want to say though that the legislation before us has a long history, way back from Mr. Kefauver, and through President Kennedy and President Johnson, as I think you pointed out, Senator Ribicoff, the big difference between this year and those in the recent past is that this bill has the support of the President.

There is no question that if this bill gets to the White House, it will be signed. I think that in itself does make it possible for us to look forward to victory for your long years of work.

I would like to move in my testimony now to the prepared statement.

I want to thank the Committee on Governmental Affairs for this opportunity to testify on behalf of the President on the need for an Agency for Consumer Advocacy. On behalf of President Carter, I congratulate the sponsors on both sides of the aisle for their long standing efforts to give new meaning to the phrase "in the interest of consumers" found throughout the United States Code and the Code of Federal Regulations.

President Carter has said that this important legislation "will enhance the consumer's influence within the Government without creating another unwieldy bureaucracy" and "will increase confidence in the Government by demonstrating that Government is considering the people's needs in a sensitive and responsive way."

The idea of a separare entity to represent the interests of consumers has been around for some time. It has persisted because the need for consumer representation in Government has persisted.

Some of you may remember that in 1959 Senator Estes Kefauver introduced legislation for the creation of a Department of Consumer Affairs. When introducing his bill, Senator Kefauver stated that the:

> . . . Government abounds with departments, agencies and bureaus set up by the Congress to represent producer interests of virtually every conceivable type. There is no such representation of the consumer interest. Such consumer representation as does exist is limited, fragmented and relatively ineffectual.

The Senator's words are even more appropriate today.

In 1962, President Kennedy recognized that consumers needed to be represented in the Government process. In his consumer message to Congress, he articulated the now famous consumer bill of rights: The right to safety, the right to be heard, the right to choose, and the right to be informed. He established the Consumer Advisory Council under the Council of Economic Advisers to promote these goals. That was a great start.

President Johnson also recognized the need for representation by consumers. He set up the President's Committee on Consumer Interests and appointed a special assistant for consumer affairs.

These efforts were steps toward answering the need for consumer representation in Government processes. I was privileged to be in Government service when many of these steps were taken.

In 1966 the House held hearings on a Cabinet-level Department of Consumer Affairs. In 1969 both Houses held hearings on a variety of proposals for improving consumer representation. For the next 6 years the debate revolved around the structure of such an agency. In 1975, both Houses of Congress passed legislation to establish an independent agency to represent consumers before Federal agencies and courts where consumers' interests are substantially affected. This year, let us work together and pass this legislation again. There will be no need for doubt about the reception it will receive in the White House this time. It will be signed. President Carter strongly supports enactment of this bill.

Why do consumers need representations? The rationale for S. 1262 is as follows. Federal agencies often make decisions affecting both business and consumer interests. Business has the resources to make its views known, but consumers are typically underfinanced and inadequately organized; they cannot participate on an equal basis with industry. This inequality has often resulted in inadequate recognition by Government agencies of the problems of consumers.

Although there are programs within some agencies to provide consumer input in the decisionmaking process, the success of the in-house advocate depends upon the freedom and the authority he or she is given by agency heads to express consumer views. Even if the consumer advocate is relatively unrestricted in presenting these views, his or her effectiveness still depends upon the availability of resources and information. Hence agency consumer advisers have found it difficult to represent consumers effectively in agency decisions.

What we need to do is to consolidate some of the consumer advocacy functions, so that a focused and independent assessment can be made of the consumers' need for representation in Federal decisionmaking, and so that the resources will be available to make the consumer's case effectively heard. S. 1262—section 22—provides that the President shall within 120 days following passage of the bill submit to Congress a reorganization plan transferring appropriate existing consumer-related functions to the ACA. We support this provision but recommend that it be modified to assure that completion of this particular reorganization plan does not interfere with consideration by Congress and the President of the broad task of reorganization of the executive branch which we have set for ourselves. The Office of Management and Budget wishes to confer with the committee to design language to accomplish this goal.

Individual consumers and groups of consumers have been able on occasion to apply needed stimulus to wasteful, unresponsive, and reluctant administration of consumer protection laws and regulations. Realistically, however, consumers cannot provide even a modest amount of coverage of agency activities or monitor the progress of the multitude of consumer programs in Government. To monitor even the most important of the hundreds of rules, orders, and decisions that issue or fail to issue from the hands of thousands of regulatory technicians each month, an agency/advocate for the consumer is needed. While congressional oversight is important, it is not the whole answer. I believe day-to-day urging of the consumer point of view complements congressional scrutiny. One thing is certain: "Out of sight, out of mind" can too often apply to the relationship between the consumer and the regulatory technician.

S. 1262 furthers the consumer's "right to be heard" by providing for representation of consumer interests before Federal agencies and courts. In formal hearings, the ACA is authorized to intervene as a party if the Federal agency is engaged in activity which may substantially affect an interest of consumers. As a party, the new Agency would be bound by the same procedural rules and time limits as representatives of industry. This legislation would also permit ACA to take part in informal rulemaking and other agency activities, as many decisions which affect consumers are made in this less formal context.

The next Agency would also have the power to request—but not require—a Federal agency to initiate a proceeding or other necessary action authorized by law to protect a consumer interest. Perhaps a petition by a consumer protection agency could have shortened the 2-year delay in FTC's promulgation of essential warranty standards that will improve competition between warrantors. Perhaps a consumer

protection agency could have speeded up the tire quality grade labeling which already has taken 10 years to develop and still is not available to consumers. And perhaps a consumer protection agency could encourage more effective implementation of the Fair Packaging and Labeling Act.

I think of many examples of labeling from my own experience, where an advocacy agency could have helped.

The ACA would also have the authority to represent consumers in Federal civil proceedings involving review or enforcement of Federal agency actions which substantially affect a consumer interest. Besides participating in suits brought by others, the new Agency would be able to initiate lawsuits to review agency decisions if a substantial consumer interest is involved.

The Agency's ability to effectively represent consumer interests will be furthered by its authority to obtain information. This information will enable the ACA to identify problem areas and to encourage appropriate remedial measures by industry, by consumers, and, where necessary, by Government.

ACA will be greatly aided in determining its priorities by consumer complaint letters. S. 1262 provides for a complaint clearinghouse which will notify industry and Federal agencies of complaints which involve them. After a reasonable opportunity for response, the complaints will be placed in a document room open to public inspection.

Under appropriate restrictions, the Agency may obtain information from other Federal agencies. However, the ACA properly does not have access to important categories of material in the possession of other agencies. Moreover, before the ACA secures trade secrets or confidential commercial information from another agency, affected persons must be notified and given an opportunity to comment or seek injunctive relief.

Finally, the ACA may submit written interrogatories to business when necessary to protect consumer health and safety, or to discover consumer fraud or substantial economic injury to consumers.

However, interrogatories—I would say questionnaires which must be answered—may not be used to obtain information which is a matter of public record, information which ACA can obtain from another Federal source, or information which ACA wishes to use in an agency proceeding which is already underway. Further, the recipients of these written questions can object if they view them as irrelevant or unduly burdensome; the burden is then placed on the ACA to persuade a Federal judge that the interrogatories are appropriate.

In addition to these limitations, the President believes that the legislation should provide that the Office of Management and Budget review proposed interrogatories before they are issued by the ACA. To assure that this review process does not unnecessarily complicate ACA's work, the administration would not oppose reasonable safeguards, such as a time limit.

It is important to note that once ACA has obtained information, there are detailed safeguards to assure that the confidentiality of such information is protected. Where release of information is likely to cause injury to a person's reputation, ACA is required to give notice and an opportunity to comment or seek an injunction. The only exception to this rule is where immediate release is necessary for health or safety reasons.

The President believes that it is important for the Agency to have this independent information-gathering authority, as the bill provides. He also believes that the use of this authority should be subject to adequate check.

The cost of the representation and protection provided by this bill is modest—only about 25 cents per year for the average family. Costs will be kept to a minimum by consolidating many existing consumer functions into one agency. The Agency's authorization is limited to 3 years and subject to review by the Comptroller General.

We believe the Agency should be headed by an Administrator who would be especially qualified to represent the interests of consumers. We believe the Administrator should be appointed by the President, should serve at his pleasure, and should be confirmed by the Senate. President Carter in his April 6 consumer message stressed the need for accountability within the executive branch to insure a vigorous and effective Consumer Protection Agency.

The President is also concerned about the possibility that the language in section 4(d)(5) requiring the Agency to provide in its annual report a "general estimate of the resource requirements of the Agency for each of the next 3 years" may be used as a backdoor for bypassing the usual executive budgetary processes. I therefore ask that this language be deleted from the bill.

I want to turn for a moment to the cost-benefit analysis section—section 24 of this legislation—which you have stressed, Mr. Chairman. The President is in full agreement with the objectives of this section; he strongly believes that the mass of regulations pouring out of Federal regulatory agencies these days must be stringently analyzed to assure that they impose minimal costs on industry and the public, and that they achieve statutory goals in the most efficient and convenient way possible. At this moment, the economic policy group within the Cabinet is developing a new system for subjecting major regulations to economic analysis and review before they are published in the Federal Register. But we strongly believe that these hearings and this legislation are not the proper context in which to develop sensible governmentwide regulation review standards and procedures. This is a very complex problem which should be considered on its own.

I emphasize the President's agreement is that this is a factor that has to be worked at.

I believe that to be fearful—as some are—of this legislation is to misunderstand it. The Agency will have no authority to make laws, set standards, issue licenses, or otherwise regulate business. Its purpose it to improve the way in which other agencies make rules, regulations, and decisions by providing an advocate for consumer interests in the decisionmaking process. Moreover, ACA can aid in the fight against inflation, monitoring agency activities and, where appropriate, discouraging regulation which, in the viewpoint of consumers, is unnecessary or excessively costly.

I must say this is one of the areas I personally feel very strongly about. I serve on the Paperwork Commission, and in going over these regulatory paperwork requirements, I see the burdens we place on consumers and on industry. I am hoping that if the consumer's recommendations are accepted, we can streamline. I think this is another

place—there are so many places—where the interests of business and consumers can be together in really helping to streamline these efforts.

We have many examples where business and consumer interests coincide, examples which I will be able to supply for that.

My experience in the last 15 years, especially since 1970, has convinced me that there is nothing in this legislation that business should fear. In fact, promotion of consumer interests is entirely consistent with our economic system. As Adam Smith stated 200 years ago in "The Wealth of Nations":

> Consumption is the sole end and purpose of all production; and the interests of the producer ought to be attended to, only insofar as it may be necessary for promoting the interest of the consumer.

To promote the interest of the consumer requires that the consumer be a party to the decisionmaking process in Government.

As an aside, I read that quote to students in a school of marketing recently, and I asked, "Who do you think said that?" Their answer was Ralph Nader. The only person who knew it was Adam Smith was the professor.

To me, it seems so clear that we really should be heard in this area. A regulator in making a decision must view the labor interest, the industrial interest, all of these interests. If he does not also have the consumer interests there, as a regulator he cannot make a real decision in the public interest, which is a composite of all of these interests.

This legislation presents an opportunity to rebuild faith in the institutions of business and Government. As Mr. Peter E. Haas, president of Levi Strauss & Co., stated in his recent letter to President Carter concerning the ACA legislation:

> We . . . believe that having a separate consumer agency with the authority to represent consumer interests in proceedings of other agencies will improve the prospects of such interests being consistently and fully considered. This will give consumers additional grounds for confidence in the fairness and soundness of our Government's procedures and decisions which affect the pocketbook, health, and safety of all of us.

My personal experience really underlines that.

The President's message recognized the long evolution as well as the careful, bipartisan honing of this bill by the Congress. We now look forward to speedy enactment of this important legislation.

Chairman RIBICOFF. Thank you. Because of the large number of witnesses, we will confine each Senator to a limit of 10 minutes for each panel.

I have no questions.

Senator Percy?

Senator PERCY. I would like to ask just three question very briefly.

I would be interested in the administration's official reaction, if there is one, to section 24 of the bill. That provision requires that, for the promulgation of Federal rules or regulations having substantial impact on the economy, the authorizing agency must weigh the costs likely to result from its actions.

Mrs. PETERSON. That is the cost benefit section?

Senator PERCY. Yes, section 24.

Mrs. PETERSON. And your question is what?

Senator PERCY. The question is what is the administration's attitude toward that section?

Does it support that section?

Mrs. PETERSON. I hope I made it clear on page 10 of my testimony, that the President supported fully the concept of the cost benefit section, but is asking that the administration have time, through the Economic Policy Committee, to decide specifically how we are going to deal with this recognition that analysis is important.

Senator PERCY. The reason I ask this question specifically is that in the reorganization bill, we had quite a difference of opinion with OMB Director Lance. He finally did concur when we laid down in the legislative history that what we are looking for is the best estimate to be provided. That is what we are looking for here. Before a regulation is promulgated, there ought to be an estimate as to what the impact is going to be on the economy, how much it will cost, and what the benefits are likely to be. Agencies should not rush into issuing regulations until they know that, and all we would like to be assured is that the administration is in accord with that.

Mrs. PETERSON. I think the administration is in accord with the principle. The technique of how it is accomplished, we will not be able to discuss at this time.

Senator PERCY. We will be happy to discuss it at any time, but we look upon it as an integral part of this.

If it is agreed in principle, then I think we ought to know how it will be implemented.

Mrs. PETERSON. We look forward to working with your staff on that question.

Senator PERCY. I would like to ask a specific question.

Even before I really became enthusiastic about this legislation, I was quite a consumer advocate. We went after what I considered to be certain violations of what good producer-consumer relationships should be. We took on the baby crib industry, the hearing aid industry, the eyeglass industry, and the carpeting industry, and tried to figure out ways to end the misunderstanding that existed between consumers and producers. I think we have had very solid results.

I would like to ask whether or not an agency for consumer advocacy, if one had existed at the time of the Brazilian coffee freeze, and during the time when the United States entered into the international coffee agreement, could have looked at this problem and tried to determine what would happen, and hopefully, ward off the tremendously high increase in prices, or at least warn the consumers ahead of time so they could adjust to it?

Mrs. PETERSON. Certainly I think the consumer voice should have been heard and would have helped in that area.

Exactly how the consumer voice would be measured, with all of the other factors that had to be considered at that time I think is important.

I think the important thing is that there would have been a consumer impact there. Probably we could have told people many times, "drink less coffee," it is very complicated, but certainly it would have helped if the consumer's representatives had been in all of those proceedings.

Senator PERCY. I would like to ask a question relating to your testimony. Under present law, all independent regulatory agencies are required to submit identical industrywide questionnaires to the GAO for clearance.

Why should the ACA be required to submit its questionnaires to OMB, as you suggest?

Mrs. PETERSON. I think that there is some legal question there, and I think I would like to turn to my attorney on this question.

Mr. McClaughlen is our acting director of the HEW Office of Consumer Affairs, and Nancy Chasen is special counsel in my White House office.

Mr. MCCLAUGHLEN. This is a constitutional issue there, as you quite correctly pointed out.

Whether the Office of Management and Budget is the correct agency to be reviewing these interrogatories is obviously a very key question.

When it comes to the decision as to whether it should be the Justice Department, or whether it should be OMB, about all we can say is that that particular constitutional issue is being addressed right now, as we sit here.

Senator PERCY. The last question pertains to how we appraise whether this Agency is performing its functions after enacted.

We are all working now toward zero-based budgeting, sunset legislation, and self-destruct buttons. We do not want to retain an agency that does not prove it has lived up to its expectations.

Does the administration have an idea as to how we can evaluate the effectiveness of this Agency?

Let us say it is authorized for 3 years. At the end of 3 years, by what test can we determine whether it has proven cost effective, whether it is really worth the effort we put in, what the consumers are really getting out of it, or whether it is just again some sort of illusion we set up?

Can you help us on that? We would really like to build into this legislation something along that line. We ought to do it on every piece of legislation in every Department and Agency we set up.

Mrs. PETERSON. I agree with you, we must do that.

I am convinced sometimes we have so much deadwood around, but part of the President's whole reorganization plan is to do that very thing.

I am not yet conversant with all of the standards that are being selected, but we must do that. I agree with you on the principle of it. I would like a little time to see what standards are to be set.

Mr. MCCLAUGHLEN. Yes, Senator, I think it is an excellent question.

Obviously we could do simple things like counting the number of informal or formal proceedings that the Agency was involved in.

Certainly we could look at dollar savings that perhaps the Agency has been able to win for the consumer, not only for the consumer, but for business too. Your example about coffee prices, certainly the coffee companies that are telling us that they are not getting back their costs, and not passing along all these costs to the consumer, they have the same interest as the consumer has in seeing that the consumer point of view is adequately addressed within these international agreements. But ultimately, in the final analysis, the real test of whether the Agency will be effective, and it is in the public attitude toward the regulatory agencies and the executive agencies.

The consumer sees countless cases of where the executive branch agencies and the regulatory agencies are not enforcing the law.

Years go by, they hear things that should not be heard. The public has real doubts about whether the consumer's point of view is being considered by these agencies.

The real test, the acid test of the Agency for business, for consumers, and so on, will be whether there is a corresponding rise of public faith and confidence in those agencies.

Senator PERCY. Thank you very much indeed. I ask unanimous consent that a couple of questions from Senator Danforth, who expresses regret at his inability to be here, be incorporated.

Chairman RIBICOFF. Without objection, so ordered.

[The material follows:]

QUESTIONS TO ESTHER PETERSON ON BEHALF OF SENATOR DANFORTH

Question 1. Given that consumers have an interest in the decisions of the National Labor Relations Board, do you see any valid basis for exempting certain NLRB proceedings from the jurisdiction of the ACA?

Do you believe that it would be worthwhile for the Senate to re-examine the propriety of this exemption.

Answer. There has traditionally been general agreement among both labor and industry representatives that there should be no outside participants in the collective bargaining process. This view is evidenced in the National Labor Relations Act and the Administration believes it is consistent with this general policy that the Agency for Consumer Advocacy not play a part in this process.

Question 2. With particular regard to the issue of import quotas, what role do you foresee for the ACA in proceedings before the International Tariff Commission?

Do you foresee that the Agency would consistently press for lower tariffs—even at the expense of American jobs? What do you perceive to be the opinion of American consumers on this question?

Answer. In general, the International Trade Commission's investigations and recommendations are not subject to the provisions of the Administrative Procedure Act. It is therefore likely that the consumer agency would do no more than communicate its views to the Commission.

The provisions of 19 U.S.C. 1337(a) relating to unfair methods of competition are, however, subject to the APA. The section provides that the following activities are unlawful: Unfair methods of competition and unfair acts in the importation of articles into the United States . . . the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States.

This section has traditionally been invoked for practices such as patent violations, palming off of merchandise of one person for that of another or antitrust violations. As such, the ACA would be authorized to intervene in these proceedings and such intervention would, most likely, be in behalf of domestic industry and labor in opposition to the unfair act or practice.

We do not foresee that the Agency "would consistenctly press for lower tariffs." However, the precise position which the agency would take in a particular case depends, of course, upon the circumstances of the case.

Chairman RIBICOFF. Thank you very much. We would appreciate responses to the questions as soon as possible.

Mrs. PETERSON. Thank you, Senator.

Chairman RIBICOFF. The next panel will consist of Attorney General Julius G. Michaelson of Rhode Island, Michael R. Szolosi, first assistant attorney general, State of Ohio, testifying on behalf of Attorney General William J. Brown, and he is accompanied by Mr. Robert S. Tongren, chief of the consumer fraud and crime section of the State of Ohio.

We do appreciate you gentlemen coming here, and we value your input, because you gentlemen have been dealing with similar problems on the State level, and it is very obvious many of these problems

are national. Without the Federal Government involved, your work is so much more difficult.

Your entire statements will go in the record as if read, and we would appreciate, because of the time problem a summary of your position.

Mr. Michaelson, you are to be the first.

TESTIMONY OF JULIUS G. MICHAELSON, ATTORNEY GENERAL OF THE STATE OF RHODE ISLAND

Mr. MICHAELSON. Mr. Chairman, and members of the committee, if I may, I would like to submit a written statement with more detailed remarks at some subsequent time.

Chairman RIBICOFF. Without objection, any written statements or comments or exhibits, upon submission to the committee will be included and made a part of the record.

Mr. MICHAELSON. Mr. Chairman, Senator Percy, I appear before you as the vice chairman of the Consumer Protection Committee of the National Association of Attorneys General.

The association consists of all of the Attorneys General in the United States. The association supports the proposed legislation for an independent consumer advocate.

I also appear as the attorney general of the State of Rhode Island. The State attorney general is involved in consumer protection law enforcement in most States. The attorneys general throughout the United States have different jurisdictions, but all attorneys general have some consumer jurisdiction.

In Rhode Island, for example, the attorney general has jurisdiction over all of the criminal laws of the State, as well as the consumer affairs, since we have no district attorneys.

In my State, we receive more mail, more calls, and more visits from citizens on matters involving consumer problems than any other matter. Notwithstanding the serious problems of street crime, organized crime, and problems of political corruption, all of these things combined, they do not arouse the people like high utility prices.

A State as small as Rhode Island, we can receive as many as 3,000 telephone calls a week, with reference to consumer complaints, as well as hundreds of individual visits from citizens.

In less than 18 months, we have returned to the people of our State more than $1 million in cash and services and warranties, and other kinds of benefits.

Yet we cannot really do the job, because the problem virtually always involves the Federal level.

In Rhode Island, since about 1970, we have had almost as many protests and meetings about utility rates, as there were protests and meetings about the war in Vietnam.

We are a State in which the last 2 years have seen unemployment rise up to 20 percent. We are a State that has perhaps the second largest percentage of senior citizens in the Nation living on fixed incomes. Utility company costs and oil costs have swelled the budgets of our educational institutions, our welfare recipients, and our factories.

Our people feel powerless and frustrated. When I was first elected in 1975, I went to the Federal Power Commission, looking for some

help on the problem of utility rates. The U.S. Supreme Court has consistently stated that ratemaking involves a balance of interests, between the ratepayer and the stockholder.

Shortly after I was elected attorney general in 1975, I inquired of two men that I met at the Federal Power Commission, whether I could talk with someone in the Agency who had a consumer perspective.

They were unable to refer me to anyone. I was seeking help on problems dealing with the automaatic fuel adjustment laws, and I was concerned with problems of conflict of interest among the regulated utility companies.

The price of food, the cost of electricity, gas, telephone, the cost of shelter, all of these matters are determined federally.

For example, it was determined to sell wheat to Russia, and the ultimate result of that was a significant increase in the price of many food products to American consumers.

The State Department had input, the Agriculture Department had input. I do not think there was any input from the point of view of the consumer, as to whether or not that Federal program should have been undertaken in the manner that is was.

I believe the consumer should be involved at the highest levels of government. Business has its representatives in the Commerce Department. Agriculture is represented, and consumers make up the largest group in the Nation, yet nowhere are they represented on a high level of government.

In my view the consumer advocate ought to be an unofficial member of the Cabinet. I think a consumer advocate agency can particiapte greatly and contribute significantly in the war against inflation.

We need such a law.

Let me give you an example, Mr. Chairman, of the problems that we have with Federal regulatory agencies, and how they impact on the cost of living of our whole country and on our local citizens.

When I was elected attorney general, and even today, there is a considerable controversy in the State of Rhode Island, as to whether a nuclear plant should be located in that State.

I take no position on the desirability of whether such a plant should be located in Rhode Island or elsewhere; however, hundreds of citizens communicated with me, and were concerned about whether as a part of their electric bill, the cost of the propaganda, the cost of the advertising, the cost of the program promoting the nuclear plant was indirectly being added to their electric bill.

I have not yet in 2 years been able to receive an answer of that from the Federal Power Commission, Mr. Chairman, and only recently on such a relatively uncomplicated problem, it was necessary for the State of Rhode Island to file a brief with the Federal Power Commission.

The thing I think we object to most of all in the Federal regulatory aspect is the inability of the States to be heard.

We are confronted with the problem of what we call pancakeing. If a utility which sells power to a retail company in my State comes before the Federal Power Commission and seeks a rate increase on its wholesale rates, that rate increase will be passed on to the retail company, and ultimately the consumers of the State of Rhode Island and elsewhere.

They get that rate increase without a hearing. They simply file papers, and automatically there is an increase in wholesale rates.

Those wholesale rates now go to the retail company, and they are passed on to the consumer.

Subsequently a hearing is held. That hearing may take 2 or 3 years before it is ultimately held. In the meantime, that same company has filed several other applications for rate increases, and also have those applications for rate increases rendered, so we pancake those one on top of the other.

Ultimately the first case is heard. Recently the Providence Gas Co., the largest supplier of gas in the State of Rhode Island, was given a $1 million refund from its supplier, the Algonquin Transmission Co.

The Federal Power Commission determined they had incorrectly permitted Algonquin to charge this $1 million to the Providence Gas Co. We just went through a very severe winter in the State of Rhode Island, Mr. Chairman. Approximately 400 people in our State every month since February have had their utility shut off because of inability to pay bills.

That $1 million refund which the local company finally got after all of those years is now in litigation. The question is whether it has to be returned to the consumers on a cash basis, or whether it can be credited against future bills, which means different people will be getting the credit, than those who actually paid the additional money, and it is still in litigation.

That money would have meant a great deal since it was an overcharge, if it had been paid directly to the consumer, so that perhaps he might not have had to have his power turned off during these winter months.

I think it has been estimated that a minimum of 50 percent of the cost of the utilities on the State level come about as a result of Federal legislation. I think that the figure is larger than 50 percent, and so confining myself mostly to the problem of utility rates which most concerns our people, and including the problems of all kinds of consumer costs, we think it is indispensable that there be a Federal regulatory agency which articulates the consumer's point of view in an independent manner as an advocate for the consumers in order that the people from the States can be benefited.

Thank you.

Chairman RIBICOFF. We will now hear from Mr. Michael R. Szolosi, the first assistant attorney general, State of Ohio.

TESTIMONY OF MICHAEL R. SZOLOSI, FIRST ASSISTANT ATTORNEY GENERAL, STATE OF OHIO, TESTIFYING ON BEHALF OF ATTORNEY GENERAL WILLIAM J. BROWN

Mr. SZOLOSI. Senator, I am the first assistant attorney general in the Ohio attorney general's office, and appearing with me today is Robert S. Tongren, chief of our consumer frauds and crimes section in our office.

I would initially express the regrets of Ohio Attorney General William J. Brown, for his inability to appear today.

He has a number of pressing matters in Ohio he must attend to, and he has asked me to appear in his stead and to express his enthu-

siastic support for Senate bill 1262, both in his capacity as the attorney general of Ohio, and as chairman of the Consumer Protection Committee of the National Association of Attorneys General.

I will be happy to abide by the Senate committee's request to have the testimony appear in the record, and to briefly make oral remarks summarizing that testimony.

I hope to make two points in my testimony today. First, that this legislation is much needed from the standpoint of the State attorneys generals who are in a position to observe the needs of consumers in their respective States, and, second, to suggest that those same attorneys general believe that one addition is necessary in this legislation, and that is to authorize a grant-in-aid program which might offer some hope of strengthening the efforts on the State level.

First, with respect to the need for this legislation, it has already been recited before the committee this morning, that the legislative history is long, beginning with the 91st Congress. There are a number of examples of Federal regulation which impact on the citizens of Ohio, which I think will be helpful if I could briefly point those out.

First, with respect to the Federal Power Commission, which as you know regulates among other business entities, the natural gas industry. Ohio's problems have been very severe with respect to natural gas during this past winter's heating season.

Three instances or examples I would like to bring to the attention of the committee include the fact that self-help gas was unable to be moved through Columbia Gas transmission lines. Had Columbia Gas or the FPC authorized the use of those lines to carry self-help gas, it might have reduced the impact of the natural gas problem in Ohio.

Second, there were a number of purchases of gas which were not made as a result of the Columbia Gas system distribution methods, and, third, figures nationally show that more and more of the natural gas is being sold on an intrastate basis, and not available for interstate use.

All of these matters could be the subject of action before the Federal Power Commission, were there a consumer advocate who was able to go and appear before the Federal Power Commission and initiate those actions.

Second, with respect to the Federal Communications Commission, which regulates the telephone industry, only recently did a Federal Communications Commission decision allow competitors of the telephone industry, of the Bell system particularly, to sell their terminal equipment without interconnection charges.

One impact in Ohio, as a result of that action having come so late, was evidenced at Kent State University. An effort had been made to reduce the cost of telephone equipment, where the university purchased telephone terminal equipment to service the college of business. Their purpose was to reduce costs to the students, and to their parents, so they might enjoy college education at a reduced cost.

The net effect of their action was to have the centrex charges increased from approximately $8 per station to something nearing $28 per station without any evidence of increased cost to the Ohio

Bell Telephone Co. Had the FCC decision come sooner, the situation in Ohio might not have occurred.

Third, I would like to refer to the Securities and Exchange Commission jurisdiction as a result of the Utility Holding Company Act. That jurisdiction permits the SEC to regulate utility companies, and this was made especially clear to us in Ohio in our efforts to determine whether or not the fuel adjustment clause of Ohio Power as utilized in Ohio, was actually passing through those costs that should be passed. through to consumers, or whether Ohio Power had ever investigated the use of scrubbers instead of the use of exensive low-surphur coal.

Documents in possession of the American Electric Power Co. system were not available in Ohio, and they would likely be available if the Federal consumer advocate is established, and, in fact, he might well press to make those kinds of documents and that kind of information available to the States generally.

Ohio's recent experience within the State is also perhaps evidence of the need to pass this legislation.

Last year in Ohio, the general assembly did pass for the first time a consumer counsel bill which set up a governing board, which in turn appoints a consumer counsel to represent residential utility consumers before the State and Federal reglatory bodies and the utility regulatory agencies.

The purpose was to afford residential utility consumers a voice to counter that of the utility and other large industrial consumers.

The Ohio attorney general feels the same reasons apply in support of this legislation for other States as well as Ohio.

In September, 1976, at the NAAG midterm meeting, there was passed a resolution,[1] which is attached to my testimony, and which is available for the committee.

Chairman RIBICOFF. Without objection, that resolution will go into the record.

Mr. SZOLOSI. Thank you, Senator.

The resolution urges the adoption of this legislation. It also urges the committee consider a grant-in-aid program as an amendment to this legislation. the purpose of that suggestion is to assist States in their efforts locally to afford consumer representation.

Only 16 States have consumer counsels for utility matters, and of those 16, I believe 9 have less than $300,000 in annual budgets.

Some 48 States perform some of the consumer protection functions, and I think 38 of those are solely in the office of attorney general.

In effect, the States need more resources to establish assistance in this effort of protecting the consumer.

One example of that which I would like to point out for the committee is again, found in the Ohio Bell Telephone rate increase which was granted in Ohio this past year. Ohio Bell is estimated to have spent over one-half million dollars in presenting their rate case.

Our office was privileged to represent the residential consumers in some of the Ohio Public Utility Commission proceedings, and it spent only $30,000, which was a very large expenditure for our office.

The Ohio Bell Telephone Co. received nearly $200 million in revenues over those that they had been receiving.

[1] See p. 20.

I think if there had been more substantial representation, there might have been better results, and likewise, in the other States the same type of resource situation exists, and for those reasons, we urge this committee to consider an amendment which would effect a grant-in-aid program for the States.

In conclusion, I would like to again thank the committee for this opportunity to appear today and to express enthusiastic support for this legislation.

Chairman RIBICOFF. Thank you very much.

Does Mr. Tongren have anything to add?

Mr. TONGREN. Mr. Chairman, in the interest of time, I would aline myself with Mr. Szolosi's comments, and I would be pleased to answer any questions.

Chairman RIBICOFF. Thank you very much. We have no questions, but we would like to reserve the privilege of submitting questions to you gentlemen, and we hope you would respond.

Thank you for your courtesy, and we do appreciate your valuable contribution.

[The prepared statement of Mr. Szolosi follows:]

PREPARED STATEMENT OF MICHAEL R. SZOLOSI, FIRST ASSISTANT ATTORNEY GENERAL, OHIO ATTORNEY GENERAL'S OFFICE; ACCOMPANIED BY ROBERT S. TONGREN, CHIEF, CONSUMER FRAUDS AND CRIMES SECTION, ON BEHALF OF OHIO ATTORNEY GENERAL WILLIAM J. BROWN

Mr. Chairman and Members of the Committee, I would like to thank you for inviting the Ohio Attorney general's Office to make a presentation here today in support of the federal Agency for Consumer Advocacy. I am Michael R. Szolosi, First Assistant Attorney General, and with me today is Robert S. Tongren, Chief of the Consumer Frauds and Crimes Section. We appear today on behalf of Attorney General William J. Brown, the chief legal officer of the State of Ohio and the Chairman of the Consumer Protection Committee of the National Association of Attorneys General. He was unable to be here due to other legal matters which require his presence in Ohio, and asked that I come in his place to express his enthusiastic support for S. 1262.

Legislation to establish a federal Agency for consumer Advocacy has been considered, discussed and debated since the 91st Congress. Unfortunately, the consumers of our country have not yet been provided with the representation they need in the federal regulatory decision making process. Although that process is often adversary in nature, opposing interests are seldom presented. The problem with this process is that the regulator, quite naturally, is exposed only to the views of those persons with a sufficient economic stake in the proceeding to justify the expense of hiring lawyers and expert witnesses to present their case. Non-economic interests, or economic interests which are too small or diffuse to justify the expense of representation are seldom, if ever, adequately advocated. As a result, the consumer's interest has not had a truly active advocate anywhere in the federal regulatory system.

Last year, the Ohio General Assembly considered the question of consumer representation in the Ohio administrative decision making process with respect to the utility industry. It realized that our consumers had virtually no effective representation before the Ohio Public Utilities Commission and, in response, enacted legislation establishing a "Consumer's Counsel" to represent "residential consumers" in administrative matters regarding utilities. Under the law, the Counsel may: (1) Appear before the Commission to examine and cross-examine witnesses and present evidence; (2) Take appropriate action on consumer complaints concerning the quality of service, service charges and operation of the commission; (3) Institute, intervene in, or otherwise participate in proceedings in both state and federal courts and administrative agencies on behalf of consumers concerning review of decisions rendered by, or failure to act by, the commission; and (4) Conduct long-range studies concerning rates charged to consumers.

Although his application is limited to public utilities, the basis for this recent enactment by the Ohio General Assembly is identical to that of the proposal to establish a federal Agency for Consumer Advocacy. Both will ensure effective representation of consumers in proceedings which affect their economic well being.

The Attorneys General of the country have been leaders in the field of consumer protection. They have led the fight in many states for legislation to protect their consumers from marketplace abuses and ensure effective representation of consumer interests. According to a recent survey by the National Association of Attorneys General, the Attorneys General exercise some or all consumer protection responsibilities in forty-eight states, Puerto Rico and Guam. In our work as a nationwide organization, we have realized the extreme need for an effective and cooperative state-federal relationship in coordinating our consumer protection efforts. It is difficult, if not impossible, to obtain, sufficiently analyze and effectively respond to the multitude of regulations which daily appear in the Federal Register. As Attorneys General with common law and numerous statutory responsibilities, we cannot begin to cope with the quantitative regulation of the federal regulatory agencies. We cannot possibly be expected to effectively represent our consumer's interests before both our state and the federal regulatory agencies.

It is understandable then that Attorney General Brown and the National Association of Attorneys General have previously gone on record in support of the establishment of a federal Agency for Consumer Advocacy. In 1974 and 1975, Attorney General Brown, in urging Ohio's senators and representatives to vote for then S. 200 and H.R. 7575, stated:

"We in Ohio have been vigorously fighting consumer fraud on the state level with all the legal tools at our disposal. But no state or its officials are in a position to effectively monitor important federal agency decisions affecting the vital interests of Ohio's citizens and millions of consumers nationwide. We believe the consumers of Ohio and this nation have the right to be represented and have access to information on decisions affecting their health, welfare and economic status."

The Consumer Protection Committee of the National Association of Attorneys General, as well as the National Association itself, has advocated the adoption of this legislation. At its 68th Annual Meeting in June, 1974, the National Association of Attorneys General endorsed the concept of a federal Agency for consumer Advocacy. At its Mid-Term Meeting in December 1976, the Association passed a second resolution, a copy of which is attached, reiterating its support for this legislation.

Opponents of the Agency for Consumer Advocacy have charged that it would become a regulatory agency itself, that it would cost taxpayers too much money and that it could not determine what is the consumer interest. The proposed Agency for Consumer Advocacy will clearly not bring about more regulation; rather, it will produce better regulation through its participation in other agency regulatory proceedings. It could not impose fines, set rates or ban products. It would merely present evidence and arguments to the federal decision makers regarding the effect of their decisions on consumers.

Even if the 15 million dollars appropriated for the Agency's first year of operation is spent, the resulting benefit of its advocacy could produce a savings to consumer-taxpayers far in excess of that amount. We are all familiar with the beneficial savings that have resulted through consumer representation on the state level in just one area, the utilities. Intervention by Attorneys General or other consumer advocates has saved consumers millions of dollars in rate increase request cases. The monetary savings to consumers produced through the enforcement efforts of the Consumer Frauds and Crimes Section in Attorney General Brown's Office since 1972 establish that the Office has virutally paid for itself. We have consistently returned more money to Ohio consumers through our complaint handling activities and enforcement actions than these taxpayers have paid for our efforts. Since 1972 when our consumer law became effective, we have recovered $1 million in excess of the cost of consumer protection activities. Clearly, the monetary benefit resulting from consumer representation by a federal Agency for Consumer Advocacy will more than outweight its estimated cost to the average American taxpaying family.

Reasonable guidelines are available for the Agency to determine what is the "consumer interest". Attorney General Brown and his fellow Attorneys General have to do this everyday. Some of the criteria we use to determine this interest are who is being injured; what is the cost of the injuries in dollars; is the interest already being adequately represented; would this interest be best served by consumer education, prosecution and so forth. The "consumer interest" is obvious in federal administrative proceedings regarding economic regulation, health, safety, misleading advertising and other apparent aspects of consumer protection. On those occasions when several and perhaps competing, consumer interests may apply, the Agency will first determine whether any of those particular interests are being represented. If that representation is provided, the Agency, rather than advocate that particular interest, would ensure that the decision maker is presented with other consumer viewpoints without defining

one at the expense of the other. the Agency's participation will ensure that the ultimate decision is based upon a thorough and objective analysis of all the information and arguments.

Legislation introduced in 1973 to establish a federal Consumer Protection Agency contained provisions for grants to state and local agencies to assist them in the establishment and operation of state and local consumer protection programs. Those provisions recognized that many states, because of budgetary reasons, do not have active consumer protection agencies. Attorneys General themselves, with limited budgets, have been forced to use substantial volunteer help in order to detect violations of their consumer protection laws. The resolution adopted by the National Association of Attorneys General addresses this issue in calling for an adequate funding program through the Agency for Consumer Advocacy to ensure a coordinated effort between local, state and federal enforcement agencies and to strengthen each agency's ability to respond to consumer needs. Attorney General Brown and the National Association of Attorneys General urges you to include language in S. 1262 to provide for an effective grant-in-aid program to benefit state and local consumer protection agencies. We have been fortunate in Ohio to have an adequate budget to respond to a lot of consmuer problems. However, there is much more that we could, and should, do to more effectively protect Ohio consumers. Unfortunately, we don't have the resources with our limited budget to provide the *full* protection our consumers need and deserve. An effective grant-in-aid program through the Agency for Consumer Advocacy would help Ohio and the other states in their efforts to work with the Agency and better protect consumers throughout our country. The savings in consumer dollars to state and local consumers that could result from such a grant program would equal if not surpass the cost of the program.

Citizens have become increasingly disillusioned with the federal government. They have neither the expertise, finances nor perseverence to cope with the numerous federal agency decisions which affect their lives. Attorney General Brown shares these frustrations with Ohio citizens, and he believes that the federal Agency for Consumer Advocacy will help give consumers a much needed voice in federal decision making and in turn, help federal agencies to become more responsive to the needs of the people.

Attorney General Brown is proud of the support Senator Glenn has provided for previous legislation to establish an Agency for Consumer Advocacy. He is proud of the fact that Ohio's newest Senator, Howard Metzenbaum, is a co-sponsor of S. 1262. Ohio's Senators have already gone on record in their support of this very important and long overdue legislation. We urge this Committee and the entire Senate to quickly enact S. 1262.

RESOLUTION VII—FEDERAL AGENCY FOR CONSUMER ADVOCACY, ADOPTED BY THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, DECEMBER 14, 1976, HONOLULU, HAWAII

Whereas, the National Association of Attorneys General, whose members have provided leadership for consumer protection law enforcement in their respective States, endorsed the concept of an independent and effective Consumer Protection Agency to afford consumer advocacy at the federal level at its 68th Annual Meeting, held in Coeur D'Alene, Idaho on June 23–26, 1974:

Whereas, the Association desires to reaffirm its support of this important concept as embodied in that resolution which called for the coordinated efforts of local, state and federal enforcement agencies and for the insuring of adequate funding to strengthen each agency's ability to respond to consumer needs; therefore, be it

Resolved That:

1. The National Association of Attorneys General again urges the United States Congress to pass legislation which establishes an independent an effective Consumer Protection Agency for consumer advocacy on a federal level and designed to strengthen state and local consumer programs through federal grants-in-aid, which would recognize the necessity for maintaining effective enforcement of our consumer protection laws at the state and local level.

2. The Association's Washington Counsel is authorized and directed to take all reasonable and appropriate steps to communicate this Association's support for an independent Consumer Protection Agency, and for federal grants to states for consumer protection programs.

3. The special Subcommittee on Legislation of the Association's Consumer Protection Committee shall monitor and coordinate efforts of the Washington Counsel and Association members in regard to this legislation.

Chairman RIBICOFF. We will now hear from Ms. Mary Gardiner Jones, president of the National Consumers League, and Ms. Edith Barksdale Sloan, Director of the District of Columbia Office of Consumer Protection.

You may proceed, Ms. Jones, and your entire statement will go in the record.

TESTIMONY OF MARY GARDINER JONES, PRESIDENT OF THE NATIONAL CONSUMERS LEAGUE

Ms. JONES. Thank you very much, Mr. Chairman.

It is a real honor and privilege to present testimony of the National Consumers League, of which I am the president.

I should make it clear the views I am stating are those of the National Consumers League and not of any other organizations I belong to nor of the company I work for.

I will highlight just a few points of the league's position. As you know, the league is the oldest national consumers organization in the country and we have long experience in the consumer area.

We regard this bill as the single most important consumer bill that has come down in the last 10 years.

Why? Because it is the central building block in our democratic system. It gives the consumer a voice in Government decisionmaking on the national level, which the consumer has needed for a long time.

As you well know, from your own constituents, we suffer in this country from a sense of consumer powerlessness, and a sense of being left out of the decisionmaking process.

This bill will redress that lack of power since consumers regard this bill as giving them this voice on the Federal level.

They do not regard it as an agency which will impose more regulations on them, and I can pledge to the Senators, that we in the league are doing everything in our power to make sure that consumers understand the voice that is being give to them by this bill and the nature of the Agency which it will establish.

The second thing I would like to point out, very briefly, is the importance of the right of intervention and appeal power which this bill gives the Agency.

Senator Percy asked how can we be sure that this bill will in fact create an effective agency, how can we be sure that the consumer advocate will do his job. It is my sense based on my Federal Trade Commission experience that the mere fact that this Agency exists, and has the right to intervene, or to appeal, will by itself redress a great deal of the consumer's sense of being left out and a sense that Government decisions do not take their interests into account.

Why? Because agencies must of course address the problems that the people who take them to court are concerned with.

Now that the consumer's voice can also be heard in Government proceedings and can appeal agency actions in court, agencies automatically and instinctively will be addressing the consumer interests in their opinions and in their actions, and in their deliberations. Even if the consumer agency does not intervene in a proceeding, I am convinced that you will see a shift in the agency's attention to the concerns of all groups affected by their decisions, to the point that

they will deal equally with the consumer interests, as well as with the producer and other interests involved in their decisions.

Also, I think that your section 3(d), where you have imposed on the Agency Administrator the duty to make detailed reports to Congress on the Agency's activities will provide you with what Senator Percy asked in terms of the facts necessary to enable you and consumer groups to appraise the Agency's effectiveness.

Those reports I think will force the Agency to provide to the public, to consumers, and to the Congress, the kind of information they will need, which will enable them to hold the Agency accountable, for what it has done, and for what it has not done.

Third, we have talked a good deal in terms of how the Agency will operate, why it is necessary.

I do not want to belabor the point other than to say that in most discussions, dialogs, and argumentation of the agencies, too often the consumer has been referred to in very indirect terms, in terms this will cost consumers too much, or consumers are not interested in this, or have a variety of interests.

This bill for the first time will change that rhetoric. It will change that emotional argument. The consumer will not be used now as an argument pro and con. The consumer will have a voice, and that voice will give us hard data.

Thank you.

[The prepared statement of the National Consumers League follows:]

PREPARED STATEMENT OF MARY GARDINER JONES, PRESIDENT, NATIONAL CONSUMERS LEAGUE

Mr. Chairman, members of the Committee, the National Consumers League thanks you for the opportunity to address you regarding S.1262 (H.R. 6118) which will at long-last establish the Agency for Consumer Protection. I want to make clear that the views I am expressing here this morning are my personal views and those of the National Consumers League of which I am the President. I am not speaking either for the company for which I work or any other organization with which I am associated.

The National Consumers League is the oldest consumer organization in the country. Founded in 1899, NCL for the past 78 years has fought for the health, safety and economic well-being of the American worker and consumer. NCL's pioneering work has led to the end of abusive child labor, exploitively low wages, and senseless safety risks in the workplace. In recent decades NCL has defended and promoted the rights and well-being of the consumer—not only the purchaser of goods and services in the marketplace but also the recipient of services such as health care.

NCL's leadership is as distinguished as its legacy of action. Louis Brandeis and Felix Frankfurter served as the League's counsel. Eleanor Roosevelt served as Vice-President. With its notable history, the National Consumers League is particularly pleased to comment today on legislation urgently needed to benefit the consumer.

The National Consumers League regards S.1262 (H.R. 6119) as the single-most important consumer bill to come before the Congress during the last decade. If enacted, it will provide the mechanism by which the views of American consumers can be represented and integrated into the Federal governmental decisionmaking process.

The United States is facing a critical period. Wracked with inflation and unemployment, this country is also confronted with complex problems such as pollution, soaring health costs, lack of population planning, deteriorating quality of goods, decreasing levels of productivity, and inadequate security for the poor. Above all we have the new problem of severe energy shortages. Superimposed on these problems are both a deep sense of individual powerlessness and an unfortunately increasing sense of mistrust on the part of citizens toward all institutions, particularly government.

The Congress, and particularly the members of this Committee, deserve praise and gratitude for your efforts over the past eight years to establish an independent agency to alleviate much of this distrust. Now, with bipartisan support and the full weight

of President Carter behind this legislation, the prospects for passage of S. 1262 (H.R. 6118) are much brighter. However, prompt enactment will require all of our best thinking and full support. We are grateful for the leadership of Esther Peterson, Special Assistant to President Carter, who serves as Vice Chairperson to the League and who is devoting her wisdom and experience to establishing an effective Agency for Consumer Protection.

The Agency for Consumer Protection is needed now. Every day hundreds of Federal agency decisions are made which affect consumers. The decisionmaker has ample opportunity to hear from business, labor, and the farm community who have been well represented in Washington for decades. But consumers have no institutionalized representative in the halls of government. Too often decisionmakers do not consider the impact of their actions on the consumer. They lack the incentive—since the consumer voice is not a full partner in the action—and they lack the data.

How many unnecessarily inflationary regulations or Federal programs have been perpetuated which inadequately reflected the consumers' priorities, needs and trade-offs? The 1974 FEO regulations, for example, are estimated to have cost consumers $40 million in higher oil charges. How can consumers be expected to support such regulations unless the consumers of this country know that their interests were formally—and visibly—represented in the decisionmaking process and, most important, were seriously taken into account.

Similarly, the current issues with respect to clean air regulations could substantially benefit from consumer input. The impact of cleaner air on consumer health, on clothing and household cleaning bills, on the use of medical facilities and medication—all of this data reflecting consumer concerns and costs should be systematically presented and integrated into the larger picture of social impact, capital resource requirements and other factors which must be weighed in arriving at optimum solutions for the nation. Without an agency for Consumer Protection, the multifaceted consumer interests in any single issue will not be identified, analysed and available to the decisionmaker. The ultimate decision—and I truly believe the nation as a whole—will be the poorer.

Finally, drawing on my own experience at the Federal Trade Commission, I know that the Commission would have benefited from consumer expertise during the period when we were struggling with the very real credit and warranty problems plaguing consumers.

Government agencies should not have to depend on the fortuitous arrival on the scene of skilled citizen groups to point out weaknesses and to articulate consumer concerns. Our democracy demands a more fundamental structured approach to ensure that the consumer interest is integrated into government decisionmaking along with the other interest groups. Much of the current lack of confidence in governmental decisions and programs would disappear if, in fact, consumers knew their views were integrated into the policies and decisions along with those of other major interest groups.

At long last the Agency for Consumer Protection wil provide consumers with a formal, institutionalized voice in the decisions made by their Federal Government, affecting their pocketbooks and the quality of their lives. The ACP legislation restores consumers to their rightful position of equality alongside business and labor and other organized interests.

The National Consumers League is convinced that consumer viewpoints are as essential as business viewpoints for the government's effective decisionmaking. Consumer concerns are essential because the government must receive a balanced presentation of the issues in order to try and determine where the public interest truly lies. We do not equate the public interest with the consumer interest even though all of us frequently refer to consumers as the public. The public interest is made up of the business, the labor, the farm, the international and the consumer interests. All these interests overlap and inter-relate. They all have a right to call upon their government to hear and protect them. But if government is exposed to only one side of a problem, to only one set of viewpoints, to only one interpretation of the data, the resulting decision may well be a discriminating and destructive one, rather than balanced, thoughtful action taken on the basis of knowledge, sensitivity and compromise where delicate trade-offs must be made. The bill before us will eliminate the gross imbalances and will provide consumers with equal representation in our democratic system.

There are several aspects of the bill under consideration about which the National Consumers League feels adamant. There are certain crucial features of the bill which, in our judgment, are critical if we are to achieve the essential goal of providing the consumer with an effective voice in government.

The primary function of the ACP must be to "represent the interests of consumers before Federal agencies and courts." The bulk of the ACP's resources and time commit-

ments should be devoted to this undeniably important function. To carry out this crucial function, the ACP must have the right to participate in Federal agency proceedings affecting the consumer, the right to intervene for the purpose of representing an interest of consumers, and the right to have certain Federal agency decisions, which the Administrator finds after careful examination did not consider or did not reflect the consumer's interest, reviewed by the Federal courts.

1. The right to participate and to have the Administrator's submission taken into full account in an agency's proceedings (as in Section 6) is essential for the orderly and regular representation of consumers. This right assures that as numerous policy and programmatic decisions are made on a daily basis, the decisionmakers are alerted to the consumer's concerns.

2. The right of the ACP to intervene and to be a part in the proceedings of Federal agencies (Section 6) which involve the consumer interest provides needed legal backing to consumer representation. Without this firmly established, definite right the ACP will not be listened to and the consumer interest will not, in fact, be treated on a par with other interests.

3. The right to initiate or participate (also Section 6) in a review or appeal of a decision made by another Federal agency which the ACP finds to have failed to treat the consumer interest properly is an essential integral part of the right to participate and to intervene. It is the consumer agency's right of appeal which will have the greatest positive impact on the government decisionmaking process and which will ensure effective consideration of the consumer interest, whether or not the agency actually participates in a specific proceeding. When all but one of the possible interests in a decision can appeal, the decisionmaker will, of necessity, pay more heed to the arguments and data of the party who has the power to appeal and reverse the decision. By granting the Agency for Consumer Protection the right to appeal, Congress ensures the type of equitable weighing of all issues and balanced decisionmaking which government must pursue.

The ACP must be empowered to gather information "required to protect the health or safety of consumers or to discover consumer fraud or substantial economic injury to consumers." The right to obtain data from existing sources, or to develop specialized data where needed, is crucial if the ACP's representation of the consumer interest is to be effective and is to make a genuine, substantive, high-quality contribution to the decisionmaking process. Expertise based on analyzed data and considered judgment, rather than argumentation and advocacy alone, must distinquish the ACP and to this end, the agency must have data gathering powers.

Thus, what we believe Congress intends for the ACP and what we as the oldest consumer organization support is a small, effective, tightly organized agency which cuts through—not adds to—the bureacratic layers and reaches the core issues affecting consumers.

The ACP is clearly not a regulatory agency; no one who reads your legislation can come to such a conclusion. It will not restrict the efficient working of any responsive organization, firm or agency in either the public or private sector. Instead, it is an innovation in regulatory reform, in careful and selective intervention, and the long overdue opening up of government.

The ACP is small and its authorizing legislation provides only a bare minimum budget. In fact, this mechanism for consumer representation, this badly-needed consumer voice, this instrument of government reform will cost the average taxpaying family $.25—one quarter—per year. Surely, we can support such an investment to obtain essential balanced representation of the major interest group in our society.

In addition to the features and functions of the ACP which the National Consumers League finds to be essential, NCL would also like to comment on the need for each agency to establish citizen communication or citizen participation units at a high level within their agencies, subject to their control and charged with implementing specialized citizen outreach functions as required. During the past two years, some agencies have established internal consumer offices; others have created public participation offices which have taken on the tasks of handling communications with citizens.

These internal citizen communication or public participation units work from the inside on a full time, day-to-day basis to help their departments respond to citizen groups concerned with particular, individual agency programs. These units can provide important input to staff and can sensitize their agency to individual citizen concerns. They also can perform important outreach functions to ensure that citizen groups, including small businesses and farmers, are aware of the various departmental activities affecting them. These offices can serve the Agency for Consumer Protection in the same way by identifying the programs and decisionmaking stages of the proceedings within their departments in which the ACP may have an interest. Thus, these internal

units in no way duplicate the purpose envisaged for the Agency for Consumer Protection which is to ensure that the consumer viewpoint is adequately represented in departmental and agency decisions on major programs. Indeed, internal citizen units will make it possible for the Agency for Consumer Protection to remain a small, tightly organized agency whose primary job will be to mount selected interventions and appeals in major government departmental proceedings.

In conclusion, we would like to stress that the bill to establish the Agency for Consumer Protection, S. 1262 (H.R. 6118) is, in our judgment, the capstone of the democratic process. It is the 1977 answer to the complexity of the technological society in which we find ourselves today. It provides the mechanism for ensuring that the views of our citizens are clearly heard, considered and acted upon in the Federal executive branch of the government.

The National Consumers League urges you to pass this critical piece of legislation as quickly as possible.

Chairman RIBICOFF. We will now hear from Ms. Edith Barksdale Sloan, Director of the D.C. Office of Consumer Protection.

TESTIMONY OF EDITH BARKSDALE SLOAN, DIRECTOR OF THE D.C. OFFICE OF CONSUMER PROTECTION

Ms. SLOAN. Thank you, Mr. Chairman.

First and foremost, I would like to express the regrets of the executive director of the Consumer Federation of America. Because of the time change, she is not able to be here, but her testimony will be submitted for the record.

Chairman RIBICOFF. Without objection, that will be made a part of the record.

PREPARED STATEMENT OF EDITH BARKSDALE SLOAN, DIRECTOR, D.C. OFFICE OF CONSUMER PROTECTION

Thank you Mr. Chairman. I am Edith Barksdale Sloan and I am Director of the District of Columbia Office of Consumer protection. I appreciate the opportunity to be here today to testify in support of S. 1262, the bill to establish a federal agency for consumer protection.

If I have a single regret about being here this morning, April 19, 1977, it is only that I wish we could turn back the clock. I am impelled to tell the committee that if this bill had become law last year, or two or five or twenty years ago the physical and economic health of our countrymen would have been spared countless brushes with catastrophe—and a lot of people who are now dead would be alive.

This nation, in its entirely appropriate zeal to preserve and protect the doctrine and the spirit of free enterprise, historically has been slow to react to abuses in various sectors of the economy. I cannot think of a regulatory body that was not established as a result of public outcry or abuse so outrageous it could not be ignored.

It is a given fact that again and again persons appointed to the commissions and boards were more identified with the industries or services they were to oversee than with the consumer, the ultimate user. Too many foxes have been placed in position of power over too many chicken coops for too long.

Many commissions and boards have been overcautious in their deliberations and timid in their resolutions. It is, I fear, because of the proponderance of testimony offered them for an increase in shipping rates, a modification of an air safety rule or a delay in drug or product safety regulations.

This committee knows of the vast resources any industry or service group can call upon to get across its point of view at every level of government.

The committee is aware, as well, of the impoverished state of the consumer advocate groups. A condition which holds their voices to a relative whisper. Not satisfied with muting the consumer, many would silence him.

This committee issued a report in September last year in which Senators Muskie and Metcalf made reference, in their introduction, to a study of gas and electric utilities rates for 1974 which showed an increase of $9.6 billion for that year. Saying, "We wanted to determine whether the massive increase of 1974 had put ratepayers on a plateau or a foothill," the report found, "the utilities customers are being hoisted upward from the 1974 ledge to an invisible peak."

According to the study the gas and electric utilities nationwide in 1975 received rate increases of $12.6 billion, or a two-year total of $22.2 billion.

The study also noted what it called "a modest but noteworthy step toward helping consumers equalize the burden of increased energy costs" by including in Public Law 94-385 a $2 million grant program for "establishment and operation of offices of consumer services to assist consumers in their presentations before utility regulatory commissions."

It said the "concept was strongly endorsed by consumers—and as strongly denounced by utilities."

If my arithmetic is correct that would allow the utilities to spend $11,000 of their revenue increase for each $1 provided for consumer testimony which might have opposed that increase.

While I know that the bill under discussion today does not deal directly with utilities, the knee-jerk reaction of the utilities to a $2 million consumer representation fund spread among fifty states is, I think, a case in point.

It is not my intention to draw a totally negative picture of the regulatory bodies as they exist. But, it is my conviction that they must have information from the users equal to that from the producers and suppliers if they are to include all available knowledge in their deliberations. Additionally, an appeal from their decisions by an independent entity such as this bill proposes would go far in assuring judicious consideration.

It is my job to protect the consumer of the District of Columbia in the marketplace. We have a good, strong law—the strongest in the country, in fact—which details exactly what are and are not fair trade practices. For those merchants, repairpersons or servicepeople who choose to flout the law there are significant sanctions. I am proud of our law and I am honored to have been chose to administer it. Even so, I often go home at night frustrated at my inability to fully protect the residents of the city. There are areas into which I cannot reach.

A consumer protection agency as described in this bill would have been able to do much to lighten my burden in the past few months and at the same time reduce fear and sometimes panic among parents all over America.

I am sure the committee is aware that Tris, a flame retardant used in children's sleepwear, was banned by the Consumer Products Safety Commission on April 7. The chemical had been in use for four years and under study as a possible carcinogenic and mutagen for two.

While banning further sale and manufacture of Tris-treated materials and clothing, the committee voted two-to-three not to require retailers to accept for refund garments which had been washed. In a survey of District stores two weeks before the Commission's decision, my office found that most were willing to take back for cash refund any Tris-treated garment, new or used, washed or unwashed.

Thus, the Commission allowed the stores to do less than they had already expressed a willingness to do.

What I found frightening in the commission's majority ruling on no refunds for laundred garments was that washing the sleepwear, they said, would "reduce the risk to an acceptable level."

I submit that in talking about cancer in children there is no acceptable level of risk.

Two other chemicals have now fallen under suspicion and one, THPC, has been placed in a life cycle study by the National Cancer Institute. No results will be known for two years.

It would appear to me that under Sections five and ten of this bill—had it been law—the Administrator could have effectively acted on behalf of the consumer during the two years the evidence against the chemical built up, and at the time of the hearings, and after the decision of the Commission.

As a consumer, a consumer protectionist and as a mother, I pray that should the bill before you become law, the first action of the Administrator will be to get all the facts on these chemicals and related studies swiftly and put them just as swiftly before the Consumer Product Safety Commission and ask for a ban or a warning if indicated. I would urge him not to wait two years to find that we have poisoned children who today have yet to be born.

Manufacturers of children's sleepwear and the fabrics that go ino them are currently crying havoc and ruin because of the commission's decision. In two years should THPC or Fyrol, FR2, the other flame retardant chemical causing concern to some scientists, be found to be indeed carcinogenic and utlimately banned, we can expect to hear the same anguished laments.

Why not anticipate that and deal with it now?

If the manufacturers and consumers alike were kept apprised of every stage of testing—not just chemicals in children's pajamas—but on all things, then consumers

could make a choice with some knowledge, and stores and manufacturers could control their inventories to supply buyer demand.

As these hearings unfold, S. 1262 will be described by some as unnecessary, a further layering of bureaucracy, redundant and designed to push free enterprise down the road to oblivion. Others will tell you that it is the flawless answer to all the consumer's problems.

The true import of this bill lies somewhere in between. It is neither the be-all-and-end-all of consumer protection nor does it pollute the wells of commerce.

In my opinion, this bill takes significant steps toward establishing peace in the marketplace, health and safety in the home, and confidence in the conscience of government. It has my full support.

Thank you.

STATEMENT OF KATHLEEN F. O'REILLY, EXECUTIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Consumer Federation of America is a federation of 220 national, state and local non-profit organizations that have joined together to espouse the consumer viewpoint. CFA and its member organizations represent over 30 million consumers throughout the United States. Among our members are Consumer Union, publisher of Consumer Reports, 17 cooperatives and credit union leagues; 55 state and local consumer organizations; 66 rural electric cooperatives; 27 national and regional organizations ranging from the National Board of the YWCA to the National Education Association; and 16 national labor organizations.

CFA was chartered in 1967 and began operation in 1968. It is frustrating to comprehend that, as we approach our 10th anniversary, the independent consumer protection agency which has consistently been CFA's number one priority, is still on drawing boards. Fortunately, there is every indication that this will be the year of final passage. We take this opportunity to thank Senators Ribicoff, Javits, and Percy for the endless leadership, energy, and enthusiasms they have devoted to this measure and CFA assures you that once again we join with you in redoubling our efforts to secure passage of the strongest possible bill.

At its most recent annual meeting in February of 1977, CFA's membership voted overwhelmingly in support of the following policy resolutions:

AGENCY FOR CONSUMER PROTECTION

1. The creation of an independent Agency for Consumer Protection (ACP) is CFA's number-one priority. The ACP must be capable of representing consumers before government agencies and the courts. The ACP must have full access to judicial review and maximum independence from the executive branch.

2. We urge that legislation establishing the ACP direct the head of each federal agency to create an Office of Consumer Ombudsman at the level of Assistant Secretary or its equivalent to receive and monitor consumer complaints and to ensure that the complaints are appropriately channeled into the decisionmaking process of the agency.

3. Each such office shall further be directed to: (a) provide frequent information to consumers concerning rulemaking proceedings and programs which have significant impact on consumers; (b) assist consumers in their inquiries about how to participate in those proceedings and programs; (c) identify stages of decisions in the agency and departmental proceedings and programs which have a significant impact on consumers; and (d) use its expertise to provide these programs with its impact.

4. State and local agencies which now exist to protect consumers suffer uniformly from a critical shortage of financial resources. The shortage is made more critical by the lack of adequate federal funds available to state and local governments for consumer protection.

CFA therefore urges that the legislation establishing the ACP provide grants to states and localities for establishing or expanding such consumer agencies or for programs conducted by such agencies.

CFA views the Agency for Consumer Advocacy in the larger context of regulatory reform. In addition to the Agency, consumers deserve public participation reimbursement, class action and standing reform, and the use of higher standards in the agency appointment process. All are addressed in CFA's policy resolutions.

The fact that CFA has become increasingly concerned with regulatory reform is evidenced by the fact that in 1976 it was decided that "Regulatory Reform" was of sufficient importance to merit a separate category of policy resolutions.

The anti-government, anti-Washington mood across the country in recent years has intensified, not lessened. Consumers in growing numbers are demanding reform. It is no secret, however, that the frustrations consumers experience with unresponsive government, cannot be solved by any one bill. Only a comprehensive approach will ultimately be effective. Yet as CFA and its 220 member organizations work toward that comprehensive regulatory reform approach, we will not lose sight of our conviction that the most basic, sensible, and equitable first step is the creation of an Agency for Consumer Advocacy.

Only that independent agency can correct the structural flow in our regulatory process—a process which unreasonably expects federal agencies to be independent decision-makers in quasi-judicial settings while simultaneously representing one of the parties to the proceeding, namely the consumer. Anyone who has ever been in the courtroom, or ever viewed a few episodes of Perry Mason understands that the adversary process in those agencies can never function effectively if that "wearing two hats" procedure is allowed. Examples of the need for an Agency for Consumer Advocacy are legion. A few recent ones include:

A. Home heating oil.—A prime reason why homes were colder and budgets tighter during the winter of 1976–1977, was because the Federal Energy Administration (FEA) removed price and allocation controls from home heating oil. The FEA took this action despite strong evidence that the consequences would be great, and that their underlying assumptions (that there would be no natural gas shortage, and that competition would lower prices) were unjustified. In fact, the Federal Power Commission (the agency having jurisdiction over natural gas) had estimated that there would be natural gas shortages even if the winter was average, and it has long been acknowledged that the market for petroleum products is not competitive. The FEA estimated that with controls the price would rise two to three cents per gallon over the winter, and that price increases without controls would not exceed that figure. Further, the FEA projected that without controls supply would be more than adequate. Finally, the FEA assured the public that prices would be monitored, and if excessive, controls would be reimposed.

In actuality, after those price and allocation controls were removed by the FEA, the price of residential home heating oil went up anywhere from five to eight cents a gallon and oil industry profits soared. Each one cent increase translates into a collective consumer cost of $400 million. Thus the impact on consumers over and above the estimate that prices (with controls) would increase three cents was (as estimated by the Library of Congress) between $800 million and $2 billion. A measure of the burden this placed on consumers is that Congress was compelled to appropriate $200 million in emergency funds to assist low income consumers in paying their bills. This action paralleled action taken by many states. Taxpayer money filled oil company coffers.

Of no less consequence is the fact that the removal of allocation controls led to shortages and great distribution inefficiencies. The FEA's monitoring system which should have protected the public simply did not. As is typical, the oil industry had the FEA's undivided attention in the agency proceedings. Consumers and consumer groups simply did not have the financial resources or the technical expertise to challenge industry data and arguments, which inevitably and conveniently show that decontrol and higher prices are necessary.

An agency for consumer advocacy could have intervened in those proceedings with their resources and clout they could have argued forcefully that the FEA was underestimating winter demand, that the oil industry is not competitive, and that the FEA should proceed with caution in decontrol of petroleum products. Further the Agency could have cross-examined industry's witnesses, called its own experts, and made the appropriate legal and economic arguments to rebut industry's data and position.

B. Oral diabetic drugs.—The Food and Drug Administration originally planned in 1972 to issue a warning label for oral diabetes drugs. Scientific evidence demonstrated that these drugs do little if anything to reduce the risk of dying from diabetes and indeed a strong case was made that the drugs caused death from cardiovascular disease. The FDA's effort was blocked however, by a group of doctors who obtained an injunction against the proposed label. Although the original court injunction was vacated by an Appeals Court in July, 1973, the FDA has still not issued a warning label.

The danger inherent in the drugs received renewed public attention as on July 10, 1975 when Morton Mintz reported in the Washington Post on the FDA's failure to control these dangerous drugs. The report quoted Dr. J. Richard Crout, director of the FDA's Bureau of Drugs, as saying that phenformin, one of the drugs, "has no role in the treatment of diabetes," and is so dangerous that it should be taken off the market. Dr. Crout testified to the Senate Monopoly Subcommittee that this

action however, must come from the FDA's Metabolic and Endocrine Advisory Committee. That committee conducted hearings in August of 1975 and requested an audit of the University Group Diabetes Program which had come up with the findings. It is now April, 1977 and the audit is not complete. There is no indication as to when, if ever, the FDA will act. Indeed it is not the Advisory Committee which decides, for as its name suggests, it is an advisory committee. Dr. Crout must decide. Subcommittee Chairman Senator Gaylord Nelson has said that 10,000–15,000 persons die every year from cardiovascular disease related to these drugs and 99 percent of the users should never have them prescribed.

An Agency for Consumer Advocacy could monitor this program, expose the delays, and push for expeditious action.

C. In 1973 Consumers Union sued the Federal Reserve Board because of its refusal to release information which it already had and which was readily made available to its banking customers, information as to ranges of interest rates among different banks on different categories of consumer loans. In 1975 CU was finally successful in its suit under the Freedom of Information Act, but Arthur Burns refusal in the future to release the information could drive consumers back into court. The Agency for Consumer Advocacy is expressly directed to make reports on interest rates, information which helps consumers make meaningful comparisons, thus more intelligent marketplace decisions.

D. Natural gas withholding.—This winter Americans were subjected to the devastating effects of shortages of natural gas: Unemployment and reduction in their standard of living. Much of that hardship could have been avoided if the Department of Interior had exercised its statutory authority to compel holders of Federal off-shore natural gas fields to produce with "due diligence."

In abandoning its responsibilities, the Department of Interior ignored evidence that producers were dragging their heels. In spite of studies, by among others the Federal Power Commission, the Library of Congress Congressional Research Service and the Subcommittee on Oversight and Investigations of House Commerce Committee Department never took any action. Significantly, a recent study by the Subcommittee discoverd that just two fields in the Gulf of Mexico ½ trillion cubic feet of natural gas was available for production. The actual winter shortage was less than 1.5 trillion cubic feet. Had that gas been in production, factories could have remained open and the economy would not have been so severely impacted. An agency for consumer advocacy could have taken action to compel the Department to fulfill its responsibilities and compel production.

These examples, together with the dozens of examples accumulated over the years, make a persuasive case for the creation of this agency. Consumers are increasingly impatient with the maneuvers which have stalled creation of the Agency. The time for passage is now!

Chairman RIBICOFF. Thank you very much.

We do appreciate your being with us, and I do hope that members of this committee will have an opportunity of submitting any written questions to you, and that you amplify your testimony.

Thank you very much for your thoughtful comments and support.

We will now hear from Mr. Peter Taylor Jones, senior vice president and general counsel, Levi Strauss & Co.

Mr. Robert Wittenberg, president, Wrangler Hosiery.

Mr. Wayne Naugle, president-elect, Professional Insurance Agents.

And Mr. Bud Barger, division sales manager, T.D.K. Electronics Corp.

We do appreciate the presence of you four gentlemen.

You represent the business community, and it has been our continuous contention that legitimate business with a reputation to uphold has nothing to fear from this legislation.

As a matter of fact, it will be helpful. It is those businesses that do not play fair with the marketplace that should be concerned, and we consider, gentlemen, your testimony most important.

Your written statements will go into the record as if read, and we would appreciate your giving us your ideas.

Mr. Jones, you are first on my witness list, so suppose we start with you.

STATEMENT OF PETER TAYLOR JONES, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, LEVI STRAUSS & CO.

Mr. JONES. Thank you, Senator Ribicoff. I am glad to be here.

I would like to begin by quoting from a letter written by Peter E. Haas, the president of Levi Strauss, to President Carter recently, which summarizes our views on this bill.

> I am writing to inform you of Levi Strauss and Co.'s strong support for the early enactment into law of a Consumer Protection Agency bill so long as that bill contains carefully balanced benefits and safeguards for consumers, business and other government agencies approximating those embodied in the two similar bills passed by the Senate and House last year.
>
> . . . Of prime importance, such a bill would establish a separate consumer agency with the power to represent consumer interests in proceedings of other agencies but without the power to change the substantive laws administered by those agencies or to issue any regulation of its own.
>
> . . . In addition, we must remember that businessmen can go to the Department of Commerce; farmers to Agriculture; bankers to Treasury and workers to Labor and find government officials with expertise and responsibilities regarding their problems, needs and views. We believe that consumers should also have a separate home within the councils of government.

There is a basic philosophy which underlies our support of this bill as summarized by our chairman, Walter A. Haas, Jr., when he said:

> We believe that a corporation must become actively involved in facing and solving the social problems of America. Today's corporation must develop practical means of giving human needs the same status as profit and production. This does not mean that business will not continue to assume its responsibility for making a profit for stockholders, insuring ample income for its management and providing quality products for its customers, but the positive and negative social forces at work in our Nation today demand that the corporation must make a philosophical and a material response to the other needs of the people and the community.
>
> In the long run, this new task of the corporation will be in its own best interest, since it cannot prosper as fully or as long in a society frustrated by social ills and upheavel.

It is with this attitude in mind that the company has decided to support the consumer bill.

I think we know what the issues are in this particular legislation. We also know that for many years, since 1971, when I first appeared on behalf of this bill, the threat of veto by past administrations and the intense efforts from segments of the business community have caused the delay in its passage. But now it is clear, as Esther Peterson has said, that the threat of veto has been removed, and that a growing number of major corporations support the legislation, including United Artists, the Jewel Companies, the Dreyful Corp., Mobile Corp., Montgomery Ward, and so forth. Yet opposition from other business interests continues. That opposition is understandable, but I feel it is misplaced. I believe that the problems in the legislation when it began its legislative course several years ago have by and large been met by amendments to it, and that the idea of a super agency, with fearful powers over business and other Government agencies, is a bugaboo and not a reality.

If we bear in mind the reactions of constituents to too much Government, we have to take this into account, and remind them

this new agency is not just one more layer of bureaucracy. Even those who have opposed it recognize it will be relatively small, it has a built-in sunset feature, it must be reauthorized after 3 years, if it is to continue to exist. But they say that Parkinson's law still is at work, and agencies that have begun small, may become big.

When it was argued that the Agency would have no power to impose new regulations on business, they agree. But opponents point then to its ability to gather information, and cause other agencies to gather information.

With all of this background, with the campaign of 1976, when Republicans and Democrats alike promised to reduce Government intervention in people's lives, President Carter has still sent this bill to the Hill with his own strongest possible support, and business must ask itself why has the President done so.

It is clear he did this first to give consumers a continuing voice in Government and second to improve those agencies which have as part of their mandate attending to the needs of consumers.

The first purpose is democratic. The second is managerial—to increase efficiency.

I think both purposes make sense, and I think this is the principal reason more and more businessmen are supporting this legislation, not only because they think it is right, nor because they are being purely altruistic, but because business is interested in public opinion polls that tell them that public confidence in business and Government is low.

They are examining the reports of pilferage, vandalism, and debt delinquency, that indicate at best a carelessness, and at worse a contempt toward private property and economic responsibility.

They are looking down the line toward a society in which ordinary citizens view Government and business as their alien enemies, cooperating to gouge them.

The allegation is that business and Government negotiate easy compromises and turn a blind eye to shady practices, and so forth, all behind closed doors, through which the public is not allowed to enter.

A number of businessmen, on the other hand, feel equally remote from the decisionmakers, equally victimized; they assume that Washington dances to the tune of the most aggressive pressure groups in town—the environmentalists, the civil rights and equal rights activists, Ralph Nader, and others—and produces whatever regulations and results they demand.

Yet, if they read the bill, they will see that this bill provides the businessman with numerous effective safeguards as enumerated by Senator Percy when he introduced the bill recently on the Senate floor.

To sum up. In my view, and in the view of Levi Strauss and Co., consumers should have the standing to assert their interests, systematically and as of right, not only on the Hill, but in the departments and agencies downtown.

That strikes us as fair. And in our opinion, fairness toward consumers, whether in Government or in the marketplace, is a prerequisite for regaining or strengthening their confidence.

Senator Percy asked what standards could be used to judge the success of this Agency. It seems to me there are three. It will have

to show business it is fair, it will have to show Government bureaucrats it is responsible, and it will have to show consumers it is effective.

We believe the current bill provides a sound legislative basis for doing just that, and that the requisite number of able and dedicated people that can be found to administer it successfully. It is for these reasons, Senator, we at Levi Strauss and Co. support the Consumer Protection Act of 1977.

Chairman RIBICOFF. Thank you very much for your valuable testimony, Mr. Jones.

Mr. JONES. Thank you, Mr. Chairman.

[The prepared statement of Mr. Jones follows:]

PREPARED STATEMENT OF PETER TAYLOR JONES, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, LEVI STRAUSS & CO.

Mr. Chairman: My name is Peter T. Jones. I am senior vice president and general counsel of Levi Strauss and Co., and I am here today to present Levi Strauss's views on the proposed Agency for Consumer Advocacy.

Let me begin by quoting a letter written by Peter E. Haas, president of Levi Strauss, to President Carter:

"I am writing to inform you of Levi Strauss and Co.'s strong support for the early enactment into law of a Consumer Protection Agency bill so long as that bill contains carefully balanced benefits and safeguards for consumers, business and other government agencies approximating those embodied in the two similar bills passed by the Senate and House last year.

". . . Of prime importance, such a bill would establish a separate consumer agency with the power to represent consumer interests in proceedings of other agencies but without the power to change the substantive laws administered by those agencies or to issue any regulation of its own.

". . . In addition, we must remember that businessmen can go to the Department of Commerce; farmers to Agriculture; bankers to Treasury and workers to Labor and find government officials with expertise and responsibilities regarding their problems, needs and views. We believe that consumers should also have a separate home within the councils of government."

I will not impose on the committee's time to record Levi's commitment and performance in the area of corporate social responsibility. I would only say that the company, with the active involvement of three (3) generations of the Haas family, has long been recognized by many observers, including Business Week, Business and Society, and Financial World, as having demonstrated a special alertness to the needs of the employees, customers and communities it serves, as well as the needs of its stockholders. This commitment to the policy and practice that the business of business must be something more than just business was summarized by Levi's chairman, Walter A. Haas, Jr., when he wrote:

"We believe that a corporation must become actively involved in facing and solving the social problems of America. Today's corporation must develop practical means of giving human needs the same status as profit and production. This does not mean that business will not continue to assume its responsibility for making a profit for stockholders, insuring ample income for its management and providing quality products for its customers, but the positive and negative social forces at work in our Nation today demand that the corporation must make a philosophical and a material response to the other needs of the people and the community.

"In the long run, this new task of the corporation will be in its own best interest, since it cannot prosper as fully or as long in a society frustrated by social ills and upheaval."

Consistent with that attitude, the company has determined to support the establishment of a consumer advocate's office within government, whose purpose is to assert and defend the interests of the people who have made Levi's a success—the American consumer.

The issues involved in this legislation are well known. Indeed it is difficult to think of another measure which has had majority support in both Houses, and the backing of so many groups of citizens for so many years, and which is still not an enacted statute. The threat of veto in past administrations, and the intense efforts of some segments of the business community, are responsible for this delay.

Now it is clear that the threat of veto has been removed and a growing number of major corporations support the measure including United Artists, The Jewel Companies, the Dreyfus Corporation, Mobil Corporation, Montgomery Ward, etc. Yet opposition from other business interests continue. That opposition is understandable, but I feel it is misplaced. I believe that the problems in the legislation when it began its legislation course several years ago have by and large been met by amendments to it, and that the idea of a "super-agency", with fearful powers over business and other government agencies, is a bugaboo and not a reality

Let me address myself this morning to some of the criticisms which have been levelled at the proposed agency and its powers.

Last year, while discussing the bill with a group of freshmen House members, a fundamental concern emerged which seemed to be shared by some liberals, moderates, and conservatives alike. It was that this was just another government agency that will start small and grow large, imposing yet another set of burdens on the backs of businessmen.

What those Members were reflecting was their constituents' reaction againt too much government—against the multitude of forms, reports, compliance requirements, clearances, and delays, with all their attendant costs, that are imposed on businesses, unions, states, cities, and non-profit organizations by various Federal agencies. They were reacting against the cost of bureaucracy, surely. But their irritation went beyond that. They were saying to their Congressmen, "Even granting that the purposes of these regulations and requirements are good—hiring the disadvantaged, the handicapped, veterans, women, and minorities; maintaining a safe workplace; producing safe consumer goods; offering truthful advertising and fair credit terms to all; preserving the environment—even granting the benevolence of these purposes, there comes a time when the over-load of government regulations becomes too heavy, depresses private initiative, and imposes economic costs on private firms and individuals far greater than the public benefits which the regulations were intended to provide".

In response to those constituent complaints, a number of moderate-to-liberal Congressmen, who had good records on consumer issues, voted "no" on the Consumer Protection Act. They saw the proposed agency as just one more layer of bureaucracy. In response to the argument that it would be relatively small, and that it has a built-in "sunset" feature—it must be re-authorized after three years if it is to continue to exist—they answered that other government agencies had also begun small, and had grown under the influence of Parkinson's Law. The ACA would do the same. When it was argued that the agency would have no power to impose new regulations on business, they agreed. But they also pointed to the information-gathering authority in Section 10, and they worried that the result of the agency's interventions would be to induce or require other agencies to unreasonably increase their requirements for information.

Now, the campaign of 1976 was marked by careful deference to these views. Both the Republican incumbent and the Democratic candidate spoke often of their intention to cut back on government—to limit its intervention in people's lives. Mr. Carter pointed to his record in Georgia, where he had reduced the number of state agencies. The clear implication was that he would do the same in Washington.

Yet he has sent this legislation to the Hill, and backed it in the strongest terms. Why should he have done so? I don't believe he yielded to pressure from the consumer interests. While we are all consumers, the organized consumer groups do not carry the same political clout in Washington that other interest groups do. I think he recommended this bill to achieve two basic purposes: to give the consuming public a voice in government, and to improve the performance of these government agencies which have, as part of their mandate, attending to the needs of consumers. The first purpose is democratic—little "d". The second is managerial—to increase efficiency. I think both purposes make sense.

The question remains, why should business support the bill? A corporate board would have to be pretty naive to anticipate an immediate and discernible impact on its sales, as a result of backing this legislation. Few potential customers are going to come through the doors out of gratitude for the progressive position taken by the management on the Consumers Protection Act of 1977. Supporting it may put us on the "good guys" list at consumer group headquarters, but it won't ring the cash registers.

Businesses do, of course, take steps that are not intimately related to improving the balance sheet. Most businessmen want to be good citizens. So one reason why a number of businesses are supporting this legislation is that they think it's right for the country.

But they are not entirely altruistic. They are also reading the opinion polls that tell them public confidence in business and government is low. They are examining the reports of pilferage, vandalism, and debt delinquency, that indicate at best a carelessness, and at worst a contempt toward private property and economic responsibility. They are looking down the line toward a society in which ordinary citizens view government and business as their alien enemies, cooperating to gouge them. To the extent that they are successful, businessmen are part of the "establishment"—and they sense that an important part of each succeeding generation is becoming more and more skeptical, not to say cynical, toward any and all "establishments".

One response to this situation would be simply to indulge in economic class warfare. In the framework of government, this would mean fighting every Federal statute or regulation designed to impose greater social responsibility on business. It would mean hiring armies of lawyers and statisticians to delay and confound the regulatory process. It would mean making every effort to co-opt Federal agencies, or at least to neutralize them. Choosing this course would mean accepting the downward slide of the public's attitude toward business as a given, and deciding to get and hold as much as can be gotten before the roof falls in on the private sector.

Another course is to examine the root causes of public cynicism toward business, and to try to eliminate some of them. One cause, in my view, is the conviction in some circles that business and government have a cozy arrangement that permits business to get away with murder on some matters affecting consumer interests. They negotiate easy compromises, set low standards, ignore threats to safety, turn a blind eye to shady practices, and so on, all behind closed doors through which the public is not allowed to enter. A number of businessmen simply cannot understand how any reasonable person—anyone not indoctrinated with a Marxist view of our economy—would entertain such a conviction. As I mentioned earlier, they feel burdened and harrassed by Federal regulatory requirements. If the outpouring of forms and reports that now crosses their desks is the result of a conspiracy of which they are a part, they wonder what it would be like if there were no conspiracy—if the bureaucrats were operating on their own.

I think this wide disparity in perspective offers the main reason why many businesses continue to oppose this bill. The consumer-citizen feels that he alone is unrepresented in the regulatory and administrative processes of government; only the "big guys" get a hearing. A number of businessmen, on the other hand, feel equally remote from the decision-makers, equally victimized; they assume that Washington dances to the tune of the most aggressive pressure groups in town—the environmentalists, the civil rights and equal rights activists, Ralph Nader, and others—and produces whatever regulations and results they demand.

The truth is that the consumer groups *are* pretty effective in making their views known to Congress. But they are far less likely to be able to present their case before the departments and agencies. Consumer representatives lack standing in most adjudicatory proceedings. They lack authority to elicit information from government and industry. They lack standing to appeal decisions which they believe run counter to consumer interests. They lack the right to be heard in the informal decisionmaking processes, where government operates most of the time. they lack the means for systematically collecting consumer complaints and disseminating information about problems encountered by consumers.

So while consumer groups may succeed in persuading Congress to include "consumer interests" among the purposes of legislation, the means are not there to effectuate that purpose.

In my view, and in the view of Levi Strauss and Co., consumers should have the standing to assert their interests, systematically and as of right, not only on the Hill, but in the departments and agencies downtown. That strikes us as fair. And in our opinion, fairness toward consumers, whether in government or in the market place, is a prerequisite for regaining or strengthening their confidence.

I should like to make two brief points before concluding. One is that I do not regard government officials as being in the pocket of industry. Despite the scandals and revelations that sometimes fill the papers, I think we have a Federal government whose integrity and probity is matched by that of few governments in the world.

The problem is not, as it is in many countries, that officials are bought by big money and power. It is that the absence of a representative of the ordinary consumer may mean that his interests are overlooked when decisions are made—not that they will be, but that they may be; certainly that they are more likely to be overlooked in the absence of such a representative, than in his or her presence.

The second point is that there is a superfluity of regulation and reporting requirements today. Congress is responsible for much of that. Each time you pass legislation authoriz-

ing an agency—old or new—to establish regulations or require reporting, you set in motion a new wave of paper, and you add new costs to business and thus to the consumer which do very little for productivity. Then, because your responsibilities are so many, you have neither time nor inclination to see what the agencies produce in carrying out your legislation. When your constituents write and call you, complaining about this or that regulation or requirement, you burn the backsides off the responsible agency—rarely acknowledging that it was Congress itself that started the whole enterprise.

I hope you do not resent my putting it this way. I do so, as a friend of this legislation, because I believe that if this new Agency for Consumer Advocacy is to gain the acceptance that is necessary to enable it to do its job, it must not become "just another agency"—levying more and more onerous burdens on business. The Agency must truly exercise that discretion not to intervene unless it is necessary. it must be diligent and skeptical and aggressive. But it must try not to harass, and it must not pursue vendettas.

It will not be enough for it to win Ralph Nader's praise, or even to win that of the companies who now support its creation. It will have to show business that it is fair; it will have to show government bureaucrats that it is responsible; and it will have to show consumers that it is effective. We believe the current bill provides a sound legislative basis for its doing just that and that the requisite number of able and dedicated people can be found to administer it successfully. If these things are done, we further believe the new Agency can also help to create a climate in which more and more consumers, realizing that they have a more effective voice in the councils of government, will come to have greater confidence in the fairness of our mixed economic system. It is for these reasons that we at Levi Strauss and Co. support the Consumer Protection Act of 1977. Thank you.

Chairman RIBICOFF. We will now hear from Mr. Robert C. Wittenberg.

TESTIMONY OF ROBERT C. WITTENBERG, PRESIDENT OF WRANGLER HOSIERY CO.

Mr. WITTENBERG. Thank you, Mr. Chairman.

My name is Robert C. Wittenberg. I am president of Wrangler Hosiery Co. I am pleased to be here to offer my support for the creation of a small agency to represent consumer interests in other agency rulemaking proceedings, hearings, court cases, and so forth.

I have tried to conduct my business affairs on the principle that joint business/consumer considerations must dominate all company policy strategies. I believe that it is in the interest of business to see that consumer's views are adequately aired in Government decisionmaking. It is not necessary to public faith in Government that the consumer view always dominate all other considerations. It is essential to that faith however that the consumer view by adequately and prominently presented. I think that the consumer who voted in the last national election wanted to make a statement about the responsiveness of government. I think we should listen to him.

Business views are well represented here in Washington, as are labor and other interests. The fact that this consumer agency bill has been before Congress for years is eloquent testimony to the need for greater consumer advocacy.

To do its job here the consumer's agency needs to have access to information in Government and private industry. I trust the good judgment of the committee to build in safeguards against unnecessary requests or improper disclosures. I would exempt small business from information requests but do not believe that any consumer interests should be exempted from the legislation.

In view of the fact that the consumers' agency would be an advocate and not a regulator, a promoter of what is in the business/consumer

interest and a means of bringing order and coherence to consumer demands—I frankly wonder what all the debate has been about all these years.

Thank you.

Chairman RIBICOFF. We will now hear from Mr. Wayne L. Naugle, president-elect of Professional Insurance Agents.

TESTIMONY OF WAYNE L. NAUGLE, PRESIDENT-ELECT OF PROFESSIONAL INSURANCE AGENTS

Mr. NAUGLE. Thank you, Mr. Chairman.

Mr. Chairman, my name is Wayne L. Naugle of Davidsville, Pa. I am president of the Naugle Insurance Agency, and president-elect of the Professional Insurance Agents, a national association headquartered in Washington, D.C., representing 28,000 independent property and casualty insurance agents in the United States, Canada, Puerto Rico, and the Virgin Islands.

Two years ago this month, at our midyear board of directors meeting, our association endorsed the establishment of an Agency for Consumer Advocacy. We were the first insurance industry group to support the Consumer Protection Act of 1975, and we joined with consumer groups in seeking its passage. We were disappointed that these efforts failed, but PIA since has reconfirmed its commitment to the consumer movement by undertaking the creation of the Insurance Consumer Action Panel (ICAP). This third-party complaint-handling mechanism is the first such project in the insurance industry. It is still in the pilot test stage, with two objectives in mind:

No. 1. To determine if nonbinding mediation is feasible as a complaint-handling mechanism for the property/casualty insurance industry when applied to consumer complaints which participating State insurance departments have decided cannot be resolved by traditional methods;

No. 2. To monitor the complaints received, for the purpose of detecting whether any patterns of generic or repeated conflict situations exist; and to channel such information to interested parties within the industry, consumer groups and regulatory agencies, with recommendations for remedial action.

PIA believes that Federal regulatory agencies make decisions every day which have substantial impact on all citizens. The individual consumer rarely has an opportunity to involve himself in the decisionmaking process. A consumer protection agency would speak for the interests of the consumer before Federal agencies and provide the public with information about consumer matters.

As small business persons, we are convinced that the support we give to this bill will improve the business/consumer relationship. We do not rejoice in the fact that an agency for consumer protection is necessary. It would be preferable if the business community would sell and service quality products and guarantee their usefulness in the stream of commerce. Our organization is dismayed with the so-called cosmetic approach to consumer problems. As small independent business persons, we believe in our product and are willing to debate its attributes in the public domain.

Professional insurance agents are consumers as well as insurance executives. We want the products we buy and use to be safe and

sound and to accomplish the purpose for which they are offered. PIA believes that S. 1262 goes a long way toward accomplishing these goals. We believe, however, this bill should include additional safeguards to protect the rights of small business.

Section 10, information gathering, should be strengthened to reflect the language in S. 200, as passed by the Senate on May 15, 1975. S. 200 gave the Comptroller General authority to review any request for information to assure that it did not impose an undue burden upon persons receiving such requests. We urge this committee to include similar language in S. 1262.

With regard to the small business exemption, we believe it is necessary to tighten up the definition of "small business." Once again, the language found in S. 200, as passed by the Senate in 1975, would be more appropriate. S. 200 excluded businesses if assets did not exceed $7.5 million and net worth did not exceed $2.5 million. Also excluded from interrogatories were businesses with 150 full-time employees or fewer, compared to the 25 employees specified in S. 1262.

PIA is also concerned that there are not enough safeguards for the disclosure and release of information. As individuals engaged in small businesses, we want to make absolutely certain that no information is released that would inadequately describe the situation involved.

Finally, Mr. Chairman, we believe the statute should limit the authority of the Administrator of the Agency for Consumer Protection as follows: No. 1. To speak for consumers before the Federal Government only; No. 2. To take the views of small business into account in setting its priorities; No. 3. To solicit advice from small business before promulgating any rules and regulations under the act; No. 4. To prohibit the Agency from regulating the activities of businesses.

The bill should also require the General Accounting Office (GAO) to review all ACP activities and provide a full report to Congress within 3 years of the date of enactment, with an evaluation of ACP's effectiveness and recommendation for any modifying legislation.

Thank you very much for giving PIA an opportunity to express its views on this issue. I would be most happy to answer your questions.

Chairman RIBICOFF. We will now hear from Mr. Bud Barger, division sales manager, TDK Electronics Corp.

STATEMENT OF BUD BARGER, DIVISION SALES MANAGER, T.D.K. ELECTRONICS CORP.

Mr. BARGER. Thank you, Mr. Chairman.

My name is Bud Barger and I'm pleased to be here representing TDK Electronics Corp. speaking in support of the bill to create, through consolidation by the President, a small agency to advocate the consumer's point of view before other Government agencies.

My support and that of my company is based on these points:

No. 1. The agency is not a regulator, but merely a consumer advocate before government regulators,

No. 2. The news papers continue to carry stories of agency decisions which failed to consider the consumer's views—from decisions on auto ignition interlocks to clearances for unsafe food additives,

No. 3. If consumers have an advocate they will trust Government decisions more than they do now—that's good for the business climate.

No. 4. As the President's message indicates the agency will set consumer priorities—that will promote more predictability in the actions of regulators and more order in the demands of consumers.

No. 5. My company makes quality audio tape cassettes and we welcome the public's and consumer agencies' interest in our products. In fact I would like to urge this committee to include in the final legislation an instruction to the agency to give high priority to those issues representing joint business/consumer problems—problems that hurt consumer pocketbooks and the reputation of good companies. In the case of my own company we and our customers are being hurt by imitations of our products which trade off our good name, our advertising, our packaging, our trade symbols and our good consumer relations.

We hope that you will give favorable consideration to our suggestion.

Mr. Chairman, this particular problem has been brought before the Federal Trade Commission, and an organization such as this one being considered would serve to make sure that these Federal agencies do proceed, and protect the consumer and business.

Thank you very much.

Chairman RIBICOFF. Thank you very much.

Senator Sasser, do you have any questions?

Senator SASSER. No questions, Mr. Chairman.

Chairman RIBICOFF. For the purpose of the record, I notice that Mr. Naugle, your association represents 28,000 agents.

Mr. NAUGLE. That is correct.

Chairman RIBICOFF. If it is public property, and it is not confidential, could you, Mr. Jones, Mr. Wittenberg, and Mr. Barger, tell us how many people you employ and the gross business you do a year?

Mr. JONES. We employ a total of 35,000, and we operate worldwide $1.2 billion in sales, about one-third of that overseas and on every continent of the globe.

Chairman RIBICOFF. Thank you.

Mr. WITTENBERG. We are a small company compared with Levi Strauss. We employ 1,500 people, and we do in excess of $40 million.

Mr. BARGER. Worldwide we employ approximately 5,000 people, and the corporate sales volume is approximately $310 million a year.

Chairman RIBICOFF. That is very significant, because you have a cross-section representation here of large business, median business, small business, the independent operator with the insurance people, and yet you have no difficulties supporting this measure.

You have been constructive in some of your suggestions, which we will take into account, because they are valuable, and on behalf of the entire committee and the President, I want to thank you very much, because it has been our contention continuously that business does not have anything to fear from this legislation, especially businesses whose success is built on quality and reputation.

Your testimony has been of great value, and I want to thank you four gentlemen for being with us today.

The committee will stand adjourned until 9:15 tomorrow morning.

[Whereupon, the committee was recessed at 11:50 a.m.]

THE CONSUMER PROTECTION ACT OF 1977

WEDNESDAY, APRIL 20, 1977

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:15 a.m., in room 3302 Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman) presiding.

Senators present: Senators Ribicoff, Percy, Javits, Sasser, and Heinz.

Staff members present: Richard A. Wegman, chief counsel and staff director; Paul Hoff, counsel; Ellen S. Miller, professional staff member; Claude Barfield, professional staff member; John B. Childers, chief counsel to the minority; Marilyn A. Harris, chief clerk, and Elizabeth A. Preast, assistant chief clerk.

Chairman RIBICOFF. The committee will come to order.

Our first panel of witnesses will be Mr. John Riehm, Mr. Forrest Rettgers, Mr. James McKevitt and Mr. Robert Schaus.

As you know, gentlemen, we have many witnesses. Your written statements will go in the record as if read and each one of you should confine yourself to not more than a 10 minute presentation orally.

So the first witness is Mr. John Riehm.

Mr. Riehm is not here.

Mr. Forrest Rettgers?

TESTIMONY OF FORREST RETTGERS, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. RETTGERS. Good morning, Mr. Chairman.

My name is Forrest Rettgers, and I am the executive vice president of the National Association of Manufacturers. With me is John Lucas, the assistant general counsel of NAM.

Mr. Chairman, since you have entered our complete statement in the hearing record, I will highlight very, very briefly the objections which my association has with this proposal before the committee today.

NAM is not here to oppose the effective remedying of consumer complaints, or product improvement, or any necessary protection of purchases from unfair treatment in the marketplace.

Rather, we are here to oppose the intervention of a new agency into all aspects of government and its relationship with the people.

The NAM has long endorsed proposals which provide protection from redress for wrongdoings to consumers. For example, in the recent past we have endorsed the establishment of the Consumer Product

Safety Commission. Recognizing the cost burden to consumers of governmental regulations, we have supported various regulatory reform proposals such as zero-based budgeting, sunset legislation and Government reorganization.

Last year we supported a proposal which would have reformed the Civil Aeronautics Board to the benefit of the consumer. The NAM has been in the forefront in developing within American industry a greater and more responsive consumer awareness.

When we have seen a need, Mr. Chairman, we have not hesitated to ask the Congress to enact specific legislation to meet a specific need. That is why we are here today, Mr. Chairman, because we do not see a need for the Agency for Consumer Advocacy.

Not only is there no need for the agency with such broad, sweeping powers, powers which cut across the whole fabric of the Government; but if it is established we believe that both Government and business will substantially be harmed to the great detriment of the consumer and to the American people.

We cannot help but believe that all the departments and agencies within the Government were established to serve the people who are the ultimate consumer. Now we are establishing an agency to watch the agencies to be sure that they serve the people.

The President in his various messages on Government reorganization has said that the goal of this process will be to make our Government more responsive to the needs of its citizens. The creation of this agency is an apparent portion of the reorganization plan proposed by the President, but we find in the proposal which we are considering now many exemptions from this bill for special interest groups or situations. Does this mean that these groups are to be exempt from need to make them more responsive to the public or is it recognition by the Congress that the problems that will arise in the implementation of this bill will bring about delays in the solving of controversies in this area.

The most serious drawback to the proposal and the one area that previous amendments over the years have not resolved is the indiscriminate power of the Administrator to intervene as a matter of right in Federal proceedings where he decides there is an interest of consumers. This right will lead to delay in resolving controversies between agencies and the regulated sector of our economy. Such delays will benefit no one—be it manufacturer or consumer.

I am also concerned that the ACA will have rulemaking powers under this bill. We fully agree with the President's recommendation that the Administrator serve at the discretion of the President and not be completely independent as called for in this bill.

The Administrator will have enormous authority to wield and the Presidential oversight is a valuable safeguard.

In closing, Mr. Chairman, let me reiterate our support for all reasonable legislation to make Government more responsive to the public and all reasonable laws to insure protection for consumers. We do not doubt the fact that the sponsors to this bill believe sincerely that there was a need for this legislation, and at the same time I would like to underscore our continued belief that the Agency for Consumer Advocacy is the wrong bill, at the wrong time and for the wrong reasons.

Chairman RIBICOFF. Thank you for your remarks, Mr. Rettgers.

[The prepared statement of Mr. Rettgers follows:]

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS BY FORREST RETTGERS, EXECUTIVE VICE PRESIDENT

My name is Forrest Rettgers, and I am Executive Vice President of the National Association of Manufacturers (NAM). With me today is John Lucas, NAM's Assistant General Counsel.

The NAM is a voluntary membership organization of over 13,000 companies and is affiliated with an additional 125,000 businesses through the National Industrial Council, covering every state, and of every size and industrial classification. Together, the companies which the NAM represents produce approximately 80 percent of the goods manufactured in the United States.

Our views are reflective of the majority of our members through their participation in the establishment of NAM policies and their specific guidance with respect to legislation that concerns them.

Our testimony with respect to establishing an Agency for Consumer Advocacy—a new type of government agency with a variety of authorities over the administrative decisions and actions of other federal agencies and departments—will touch upon four main areas: (1) The fundamental errors and fallacies in the concept of a special interest agency having the powers proposed here; (2) The development within both government and the private sector of a host of consumer protection laws and mechanisms which render an Agency for Consumer Advocacy—if such an agency were ever needed—less necessary today than ever before; (3) The incalculable costs, in terms of disruption of both the government process and the private economy, which must offset the supposed benefits of the agency; and (4) Recommendations as to an appropriate role of the federal government in the remedy of identified problems arising between business and consumers.

Our Association first appeared before the Congress with respect to this legislation in 1971, and our position has been and is supported broadly throughout the business community. The NAM is here not to oppose effective remedying of consumer complaints, or product improvements, or any necessary protection of buyers from unfair treatment in the marketplace. We are here, essentially, to oppose intervention by a new agency into nearly all the economic and commercial affairs of the nation, and into political decision-making, which eventually will detract from the ability of our members to manage their enterprises so as to increase their productivity in the supply of goods and services. We believe that however popular the proposal for a new agency of the type described may be, its enactment by Congress will be a very bad management decision—harmful to both the operation of government and to the operation of the competitive enterprise system.

During hearings in November of 1974, before the United States Senate concerning proposals to establish a National Commission on Regulatory Reform, chairmen of major agencies, and a former Commissioner of a major agency, questioned the need for an intervention agency such as the ACA. This was significant, because the bedrock reasons advanced for a new agency—that the existing agencies do not adequately protect consumers—have been presumed, but never demonstrated. We submit, as Attachment "A" to this testimony, excerpts of these statements commenting upon the extent of consumer protection functions already exercised by them. We invite your attention in particular to an array of court decisions holding that the Federal Power Commission, for example, has continuing legal responsibility to represent consumer interests within its area of expertise.

It is the "intervention concept," lying behind the catchwords "consumer protection" and "consumer interest," which is the root fallacy of the legislation. We submit that the ACA is not designed as a friendly ombudsman helping shoppers in their day-to-day problems in the marketplace, or obtaining justice from unscrupulous sellers. If it were, you would not find the business community so alarmed over its powers, just as the business community was not unduly alarmed by, but endorsed creation of a Consumer Product Safety Commission with the power to impose perhaps the most rigorous industrial regulations ever granted to a government agency. Rather, the cause for alarm is the fact that the ACA's intervention powers will range unchecked across practically every government-business relationship, and could do irreparable damage to the process of government, to the law and to the private economy.

We submitted four years ago, and we submit again, that the ACA is, on its face:

A needless agency, with the principal objective of involving itself in the great economic issues affecting the country, even though these are already the responsibility of the Executive Departments and the regulatory agencies specifically created by the Congress to protect the interests of the public, including consumers.

A disruptive and unworkable agency, because it will be mandated as an adversary, deliberately equipped with legal authority to oppose, dispute and litigate the decisions of other government agencies. Such power, without responsibility for solutions, cannot fail to produce chaos as Federal officers lose accountability for their decisions and actions.

A special interest agency, employing federal funds to advocate administrative decisions and regulations in behalf of a "consumer interest" which should be part of—but may prevail over—the whole public interest. In practice, the ACA would face the impossible task of choosing fairly between competing consumer interests, and of protecting some consumers at the expense of others.

A costly agency, not merely by the placing of an additional burden on the federal budget, but by imposing new costs upon every agency subject to its authority, and ultimately upon each company and industry subject to its proceedings.

The basis of all our objections is our unshaken belief that the "public interest" contains all of the elements from which all public policy should be derived. The public interest is a dynamic balance of competing forces—the most good for the most poeple is its guiding principal—but it is a delicate balance that is responsive to the evolutionary changes that occur within society.

Much has been said in the extended debate on this issue which has filled the record over the years. We suggest that the debate has been helpful as more questions have been raised and more potential problems have been exposed for the Congress' understanding. Nearly six years ago, our Association testified:

"Some say it is too late to ask Congress to consider the overall validity and wisdom of the consumer agency concept. They imply that the minds of our respresentatives are fixed and that there remains only the question of how a new agency shall be structured. We prefer to think it is never too late to turn away from an unwise or unneeded action, particularly when it is a permanent law which will set in motion new forces in our total trade and commerce. . . ."

At that time, we reviewed the many changes taking place in marketplace matters within government at federal, state and local levels, within the business community, and within the consumer movement itself.

This evolution continues to this time. It can be fairly said that if the kind of consumer advocacy and intervention proposed for the ACA was not needed in the structure of government then, it is needed even less now. The Congress itself has brought about two remedies of landmark proportions. One was the creation of the Consumer Product Safety Commission, which this association supported. The CPSC is now beginning to make its impact on the market economy, with unparalleled jurisdiction over the production and sale of practically every product, component, and service bought or used by consumers.

Of equal impact, as least in the context of consumer protection, was the enactment and signing into law of new powers for the Federal Trade Commission. This Commission, long intended as the major consumer protection agency in day-to-day marketplace transactions, today is equipped with authority to make detailed rules over selling and other commercial trade practices; to impose penalties for violation of those rules and of its own orders; and to sue on behalf of consumers or classes of consumers to bring about redress of their complaints, including compensation to the marketplace for damages. Moreover, it is supplied with a $1 million fund for private legal representation of consumers and their organizations who are otherwise unable to finance themselves. In an interview with the Bureau of National Affairs, J. Thomas Rosch, former Director of the FTC Bureau of Consumer Protection, stated with certainty: "There can be simply no question at all about the fact that the Commission is now a vehicle for consumer redress."

At the state and local level, the years have produced new departments and agencies with specific responsibility to monitor the marketplace, and to assist and educate both consumers and business in their commerical relationships.

Within the business community, there has been developing a wide range of new mechanisms responsive to public criticism by both governmental and private groups. Individual companies, industry associations and such national groups as the Better Business Bureau have set in motion a variety of techniques to handle consumer complaints which it is doubtful the government itself could match.

There is little question but that the evolution of most of these complaint-handling procedures can be credited to the force which has become known as the "consumer movement." At this point, it is necessary to make a distinction between advocacy by this voluntary movement and compulsory consumerism with a breadth of powers over any other agency within the government. We believe today's circurstances, therefore, merit a re-examination of the original premises on which this bill was

predicated—that the individual consumer is unrepresented, or voiceless, or helpless, both in the marketplace and before the government.

Whether or not all of us are pleased with the details of the new political force known as the "consumer movement," it is functioning both visibly and vigorously. Today's consumers are not unrepresented. We have seen the rise of effective, well-organized citizen groups with articulate and aggressive national leadership. The major federated consumer structure consists of nearly 200 autonomous units. It has a network of volunteer groups in urban centers and smaller cities. It has a substantial and articulate press of its own. It has a variety of monetary sources, including fees from highly paid speakers, public subscriptions and grants from private foundations. It has many legal arms and has even developed a professional sector of newsletters, consumer research bureaus and consultants.

The consumer movement is now so widespread that consumerism is taught in colleges and universities. Many of them have initiated functioning consumer action centers. Finally, the consumer movement enjoys a highly sympathetic press, and the public criticisms and allegations concerning consumer products and services are daily fare on radio and television.

We in the business community may disagree with many of the excesses of this phenomenon, but we must concede that the consumer establishment is within its rights as a voluntary public critic, in the sense that it attracts its own adherents and raises its own funds. The consumer movement has proven itself capable of creating and maintaining a very effective representation of the consumer interest. It has certainly shaped the public interest.

A consumer movement within the government is another matter. The ACA, as proposed, is a federally-financed advocate which will function as critic and adversary in the same manner that militant consumer organizations already are doing outside of government, but with institutionalized powers that will inevitably be disruptive and insulated.

There is the historic presumption that the interests of consumers are inadequately represented and protected within the federal government agencies and courts. The record of government, of course, is replete with evidence of scores of commissions, bureaus and departments, operating more than 1,000 programs on behalf of consumers. Our Association is not convinced that the public interest will be better served by the creation of yet another institution and program. Conversely, we believe that the effective representation of the public interest will be unnecessarily disrupted by the proposed agency.

Time does not permit more than a brief allusion to some of the specifics, but if the Congress should establish an ACA, it may look for results like these:

In the field of law

A new criterion may be established for both statutes and administrative policy, under which an undefined "interest of consumers" will be equal to, or prevail over, the whole public interest to which all government is accountable.

The complex field of administrative procedures will be challenged and impeded by injection of yet another party with a single special interest, having disproportionate legal standing to oppose the interests of both affected private parties and the government itself.

Federal courts will be further burdened and clogged with the task of adjudicating intra-governmental disputes, assuming serious constitutional issues are settled in favor of the ACA.

Private persons and companies involved in Federal agency proceedings (even those involving fines and penalties) may be confronted with two adversaries and dragged by two conflicting agencies with conflicting positions through the federal court system.

In the Government

The decision-making responsibilities of federal officers will be blurred by the spectre of one government administrator disputing with others their respective powers, rules, procedures, personnel budget, programs and priority decisions of all kinds.

An evergrowing bureaucracy will be required as the ACA seeks to cope with a multitude of complex matters ranging over the national economy and requiring an expert knowledge of virtually every facet of government and business.

In the Congress

The Congress will transfer its historic responsibility to exercise oversight of regulatory agencies and the Executive Branch to a single federal administrator appointed by the President.

In the private sector

The cost of operating the ACA will be dwarfed by the additional expense incurred by enterprises and whole industries ACA chooses to intervene in and thereby cause delay. This delay will inevitably be translated into higher prices of goods to the consumer, inflation and unemployment.

Attendant publicity against companies, products, and services may be costly in terms of someone's sales, someone's job and someone's savings (and the jobs and incomes of those in the community dependent upon the enterprise affected).

Competitive damage will result through inevitable release of private financial data, trade secrets and other proprietary information the examination of which is permitted to the ACA Administrator.

We might add to these foreseeable results the intangible costs of impeding the administrative process. The disruption will likely extend into local communities, despite any prohibitions against direct intervention by ACA into official state and local proceedings. You may be reminded that most federal actions, such as energy regulation, wage-price controls, land and mineral leasing, airline routes, agricultural orders and proceedings involving enterprises of all kinds ultimately affect the welfare of people in the cities, towns and rural areas of the nation, as well as the decisions of government bodies in those jurisdictions. You will find it impossible to exclude the ACA from intervention, *in practice*, into state and local affairs.

It is also hypocritical to say that labor costs can be excluded from the scope of this legislation while effectively advocating consumers' interests. Labor costs represent often, the largest single component of consumer prices for goods and services. If one of the functions of the ACA is to protect consumers from unwarranted price increases it is inconsistent that the ACA not be authorized to intervene in labor disputes.

We are aware of a search for "alternatives" to the ACA idea, among both Congressmen and business groups. We have stated our Association's alternatives in the past, and we believe they have been validated by the passage of time as effective methods of dealing with the issue known as consumer protection.

First, if there is found to be a failure in any regulatory agency or the Executive branch in dealing with problems of consumers, the Congress should proceed to identify the particular problem and, as it has done many times before, enact specific legislation to remedy the situation. This does not preclude new powers, new programs, or even new agencies, where the problem is substantial, and where special expertise is justified.

Second, if any existing agency is found lacking during Congressional oversight in resources to adequately protect any segment of the consuming public, we recommend use of the appropriation process by the Congress to provide funds and the competency to deal properly with fraud, deception, unfairness, or other inequity affecting the consumer's health, safety, or economic welfare.

Third, because the execution of our laws is vested, constitutionally, in the Executive branch, we believe the responsibility for protecting all the public interest would best reside there. A prototype for consumer protection already exists in the Office of Consumer Affairs of the Department of Health, Education and Welfare, and it is now performing some of the functions which would be assigned to the ACA.

Fourth, the dynamics of the free market place provide the best gurantee of consumer protection and it cannot be ignored or underestimated. They are continuously functioning with an effectiveness unmatched by new laws or new agencies, and we believe they have not failed the American consumer. The broadest of these forces is the competitive system, and we reaffirm our support of the full and fair enforcement of traditional laws against monoply and restraint of trade. The mechanisms for consumer protection also exist in every step of the production-distribution process. The producer's technical competence seeks out the best materials for his processes and components. The distributor or a chain of distributors interpose their relentless judgment to select the products which perform best for the consuming markets which they serve. At the end of the line the retailer, in daily contact with his customers, is a final screening of the products he offers for the ultimate judgment of consumers.

The process I have described is the practical application of what we mean by consumer sovereignty in the free market. We are aware of many voices seeking to deprecate this market mechanism, but we caution against cynicism leading to political substitutes. Make no mistake, consumer needs and desires are recognized by every seller, and he ignores them at his peril.

These proposals constitute, in our view, the "better alternatives" being sought for any reamining marketplace problems and which, at the same time, would avoid the administrative confusion which will flow from the bill before you.

In conclusion, we state that the Congress itself, in a representative form of government, is the ultimate advocate for protection of over 200 million citizens in their many diverse interests—as workers, farmers, merchants, manufacturers, savers, investors, taxpayers and consumers. We believe the Congress has acquitted itself very well in this respect. It should continue along the road it has taken in the past of enacting specific statutes to remedy specifically identified problems.

My Association thanks you for the opportunity to present our views before this committee.

Chairman RIBICOFF. Mr. McKevitt, please?

TESTIMONY OF JAMES D. McKEVITT, WASHINGTON COUNSEL, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. MCKEVITT. Mr. Chairman, I would like to point out that I am the Washington counsel for the National Federation of Independent Business which now has 500,000 member firms as of last week.

I would like to ask that my statement be incorporated into the record.

Chairman RIBICOFF. Without objection, all your statements will go into the record as if read.

Mr. MCKEVITT. Thank you, Mr. Chairman. I will make my remarks brief in the interest of time and also the panel appearing here today.

I would like to state that the National Federation's members oppose the ACA for several reasons. First, being their solid distrust of big Government. It just means there will be one more large agency. They do not feel it will be different than any other agency that has been created. It will just create a great deal more paperwork and many more problems for small business across the country.

No humane employer is against industrial health and safety, but we believe that the majority of our members strive to maintain a safe working place for their employees without the Government telling them to do so.

Statistics bear us out in our opinion since small business is adjudged by experts to have the best record for safety within the business sector.

We are also concerned that the formation of the ACA will result in an abdication of the responsibility on the part of other public officials to consider the interests of the consumer before any action is taken.

We feel the answer to this problem lies in a thorough review of existing consumer services within the Government. If there are deficiences, then steps should be taken to correct them.

Finally, Mr. Chairman, we feel that NFIB's membership is not opposing the safeguarding of consumers interests. After all, consumers are customers and satisfied customers patronize those stores that give them quality goods at a competitive price. Good business practice means satisfied customers and profitable businesses, and for a businessman, profits are measured not only in terms of dollars, but in the building of a reputation as an ethical, dependable and fair businessman.

Of equal importance is the fact that some proponents of the ACA bill seem to have forgotten: Every businessman is also a consumer. He has a vested interest in assuring that both Government and business take care of the consumer. The creation of an ACA, however, would form an imaginary dividing line separating consumers from producers.

The ACA will encourage an adversary relationship between consumers and businessmen that does not, in reality, exist. The small businessman will encounter an agency that is eager to listen to his complaints about other businessmen, but which is distrustful of his own business practices. By all means, let us join forces to insure the well-being of the consumer. But the creation of the ACA will ultimately lead to divisiveness, distrust, and disillusion among the American people. Thank you.

Chairman RIBICOFF. Thank you very much, Mr. McKevitt.

[The prepared statement of Mr. McKevitt follows:]

PREPARED STATEMENT OF JAMES D. "MIKE" MCKEVITT, WASHINGTON COUNSEL, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. Chairman, the more than 500,000 member firms of the National Federation of Independent Business (NFIB) are unalterably opposed to the creation of an Agency for Consumer Advocacy.

In 1962, President Kennedy told Congress that consumers were the only important group in the economy who did not have their views heard by government. Since then we have listened to repeated claims that consumers are the only group who must stand by helplessly while the federal government increasingly regulates their everyday lives.

Mr. Chairman, our membership can attest to the fact that consumers are not alone in feeling left out of the political process. As small and independent businessmen, they have seen time and again that the small business sector of our economy is ignored and overburdened by the regulatory agencies. In fact, every argument that has been made in favor of a consumer agency also applies to the plight of the small businessman. But small business is not looking for this kind of help and would rather not have an expansion of federal authority in areas traditionally left to free enterprise.

However, if the ACA is created, the balance of power between consumer and businessman will be disrupted so severely it may be necessary to strengthen the Small Business Administration simply to restore some balance. The same would be true of agriculture and other parties as well. Where does it end?

NFIB's members oppose the ACA for several reasons, the first being their solid distrust of big government. Small businessmen are painfully aware that big government means overregulation of their daily activities, mountains of paperwork, and litigation delays. All of these add up to increased costs and large periods of time spent away from the conduct of business, neither of which small business can afford.

Let me make it clear that small business often reflects the same concerns that prompt the government to action. For example, no humane employer is against industrial health and safety, and we believe that the majority of our members strive to maintain a safe working place for their employees—without the government telling them to do so. Statistics bear us out in our opinion since small business is adjudged by experts to have the best record for safety within the business sector. Yet none checked the facts before the bill creating OSHA was passed in 1970. As a result, OSHA has become one of the major headaches a small businessman must face today. Because of OSHA, CPSC, and other regulatory agencies, the small businessman is justifiably fearful of our government, since more often than not, government actions lead to increased burdens upon small business.

The creation of yet another agency, however laudatory in theory, will only add another layer of bureaucracy, thereby, removing the American public one step further from their government. Passage of the ACA would contradict the avowed wishes of Americans for the reorganization and simplification of our government. The people want their government to be more accessible to them; easier access cannot ensue from expansion of the existing bureaucratic muddle.

There are at present numerous consumer advocates scattered throughout the Executive Branch. The claim has been made that these public officials are simply not doing a good enough job in protecting consumer interests. For this reason, the proponents of the ACA justify its creation by arguing that the new agency will consolidate consumer expertise within one agency, and that these advocates will not be diverted by any one special interest group seeking favors from the government at the expense of the rest of the American people. We do not consider this argument a valid justification of the ACA.

We are also concerned that the formation of the ACA will result in an abdication of the responsibility on the part of other public officials to consider the interests of the consumer before any action is taken. Each agency is mandated to act in the best interests of the American people, i.e., the consumers of the nation. If we give this responsibility to one agency alone, we may well be offering public officials the opportunity to ignore their responsibilities and pass the buck to the ACA Administrator—who can only voice consumer concerns but has no voice in the final decisions of the other agencies.

NFIB feels that the answer to this problem lies in a thorough review of existing consumer services within the government. If there are deficiencies, then steps should be taken to correct them. If the various existing agencies cannot be made more responsive to consumer demands, how logical is it to assume that another federal agency will be more successful?

As the bill is presently drafted, the ACA is given no regulatory powers. NFIB believes that, in all probability, the ACA will evolve naturally into a regulatory role. With the ACA in existence, it would become logical for Congressmen and professional consumer groups to seek out the ACA's advice and opinions concerning new consumer legislation. Soon every consumer-oriented bill that passes Congress will be sent to the ACA for review. The next step is implementation, and who better to implement a consumer bill than the experts in consumer affairs? The agency's powers will have to be expanded in order to meet the demands for new services. With regulatory powers, the ACA will be able to implement legislation; it will also have more influence in the proceedings of other agencies. In short, the ACA will have the necessary "clout" to push consumer causes in the government. In no time at all, the Agency for Consumer Advocacy will become a costly, full-blown regulatory agency, doing exactly what it was intended to prevent other agencies from doing—providing unwarranted interference and arbitrary regulation of people's lives.

Some of you may be wondering why the small business is concerned about the ACA since there is included in the bill an exemption for small business from enforcement of interrogatories (paperwork). NFIB is gratified that special attention was given to small business in the drafting of this bill. Even so, our members have serious reservations about the exemption.

The criteria used in this bill to define small business is unacceptable to us. If, as stated in section 18, the SBA is to work closely with the ACA in protecting the interests of small business, it would be advisable for both agencies to share the same point of reference. Since SBA is universally recognized as the official representative of small business concerns, we feel that the definition in the bill in Sec. 10(a)(4) should conform to SBA standards. It would be much easier to amend the bill than to expect the SBA to function with two different perspectives—one for their own programs, and another for those of the ACA.

One way to conform to SBA standards would be to define small business by its annual gross receipts instead of by its assets or net worth. Assets and net worth are not accurate indicators of the size of the business, since they can be as closely related to holdings that are not related to the business as to actual business activity. Annual gross receipts are a much more accurate indicator of small business activity.

Section 18 also requires that the ACA and all other federal agencies give "due consideration . . . to the unique problems of small business" when implementing the Act. The language is too vague and insubstantial for the small business sector to feel assured of adequate consideration. The intent of this section needs to be clarified, so we know whether "due consideration" will mean that potentially harmful actions to small business will not be undertaken, or simply that small business will get a specific mention each time agencies discuss implementation.

By far, the most important concern regarding the exemption for small business is whether it is permanent or temporary in nature. We belive our members are justified in being skeptical about the exemption. They can see that concessions have been made to them in the short run, but with no guarantee that they will remain perpetually exempt from the paperwork requirements of the bill. This is a deep concern because small business already spends too many hours and too many dollars in filling out government forms. Unlike large companies, these businesses rarely employ a full-time accountant. Either they employ the services of an independent accounting firm, or the businessman and his family spend their limited free time in complying with government regulations and resultant paperwork. If the exemption is temporary, small business will be faced with an additional burden, taking more time away from running their businesses and increasing the costs of accounting services.

The claim has been made that without enforcement of interrogatories, the ACA will have no means to investigate consumer complaints against small businesses and

will be powerless to prevent abuses. Since the vast majority (97%) of all businesses in this country are small, NFIB members are convinced that they will be a primary target for consumer groups seeking expansion of the ACA's powers. Congress will be pressured to remove the small business exemption. If this happens, complying with the requirements of the ACA will become yet another headache for which there is no cure.

The fear of reduction or removal of the small business exemption is not ungrounded. Smnall businessmen have seen their exemption under the minimum wage laws flatly reduced by an Act of Congress, then a further reduction as a result of erosion caused by inflation. Very likely the pattern will be repeated in the case of ACA.

In closing, let me assure you that NFIB's membership is not opposing the safeguarding of consumer interests. After all, consumers are customers, and satisfied customers patronize those stores that give them quality goods at a competitive price. Good business practices mean satisfied customers and profitable businesses. And for a businessman, profit is measured not only in terms of dollars, but in the building of a reputation as an ethical, dependable, fair businessman.

Of equal importance is a fact which some proponents of the ACA bill seemed to have forgotten: every businessman is also a consumer. He has a vested interest in assuring that both government and business take care of the consumer. The creation of an ACA, however, would form an imaginary dividing line separating consumers from producers. The ACA will encourage an adversary relationship between consumers and businessmen that does not, in reality, exist. The small businessman will encounter an agency that is eager to listen to his complaints about other businessmen, but which is distrustful of his own business practices. By all means, let's join forces to ensure the well-being of the consumer. But the creation of the ACA will ultimately lead to divisiveness, distrust, and disillusion among the American people.

Thank you.

Chairman RIBICOFF. Mr. Schaus, please?

TESTIMONY OF ROBERT L. SCHAUS, PRESIDENT, QUALITY BAKERS OF AMERICA, TESTIFYING ON BEHALF OF INDEPENDENT BAKERS ASSOCIATION AND THE NATIONAL SMALL BUSINESS ASSOCIATION

Mr. SCHAUS. Mr. Chairman, my name is Robert L. Schaus. I am senior president of the Quality Bakers Cooperative of America, chief operating executive officer of the Nation's largest cooperative of wholesale bakers. QBA is an active member of both the National Small Business Association, an organization represeting 1,000 of 1,200 SIC classifications, and the Independent Bakers Association, a trade group of small- and medium-sized wholesale bakers representing all areas of the United States and an estimated 45 percent of the Nation's wholesale bakery production and the three bakery cooperatives in the United States.

I also am the national chairman of the ABA's National Affairs Committee which represents the entire baking industry.

In short, Mr. Chairman, I represent a collection of small business views on S. 1262, which would create a new agency for consumer advocacy. But they all agree on one main point—opposition to this unneeded legislation.

Small business is approximately 98 percent of all firms in the United States. It employs between two-thirds and three-fourths of the work force. When you add the self-employed to the small business category, small business has a work fore of about 50 million people.

Unfortunately, Government policies have been directed toward solving problems of concern to larger companies and the large unions. There should be recognition in Government that small businesses are first to feel the impact of Federal regulation and control. Many do not have the financial ability to rapidly adjust their trade policies made necessary by congressional legislation.

Much of the publicity and emotion generated for legislation to establish an Agency for Consumer Advocacy deals with advertising and promotion practices by the larger companies.

The small business community is caught in a squeeze. In the area of consumer proposals in particular, small business becomes a shuttlecock between proponents of consumer legislation and the big business community. When charges are made in the press about automobiles, home appliances and many other products, it is the larger firms that are mentioned. Very little attention is given to the role of the small manufacturer and distributor and to whether or not he will be able to survive if the mandatory standards that are being proposed in various bills before Congress become law. Actually, many of the major companies are assemblers of products; the parts are supplied by small business firms.

Although a small firm supplies a part meeting the standards of a larger firm, it is the small supplier who really bears the brunt of consumer discontent if the public does not accept the assembler's final product. It is the small supplier who must bear ultimate responsibility through litigation, ever-increasing insurance premiums for product liability, cancellation of contracts, and other mounting burdens.

Mr. Chairman, as presently written this bill only asks for small business advice and counsel with no rights of intervention in behalf of small business interests.

Most small business firms are not financially able to appear before all Government agencies on the many complex issues affecting their interests. Therefore NSB recommends:

The small business community must have an advocate with the same rights to intervene as are provided for an agency for consumer advocacy.

Small business must have the right to appear in any proceeding before any agency that has a concern for consumers. And believe me, if you come down here to Washington as a small businessman and start looking at the 33 regulatory agencies, it is almost impossible to adequately cover your interests.

Small business must be placed in a position to give governmental agencies the facts and implications of possible rulings and regulations on the small business community.

Therefore, we ask that the Small Business Administration be given by legislation the same rights and authority given to the proposed Federal Agency for Consumer Advocacy.

Other witnesses before this committee will analyze the actions of the Federal Government in protecting the consumer interest. There is no question as to the need for study of the possible overlaps in jurisdiction and duplication of efforts of the many agencies. These and other problems need considerable objective study, and the independent bakers support these efforts.

Mr. Chairman, the fact that small business has been exempted from the interrogatory power of ACA may not be good because the agency will have unprecedented power to make investigations into the records to the largest corporations, and will be drawing its conclusions from these records. Thus, small business may find itself held accountable to standards appropriate for large companies only. While the bill

as currently written does not provide independent standard-setting policy to the ACA, it is quite possible this will be added at a later date. If it is, small business could find itself the losing bystander in the battle between big business and big Government. As you are aware——

Chairman RIBICOFF. Pardon me, Mr. Schaus—the point you are making is that the Small Business Administration should have the same rights to intervene in agency proceedings as the ACA. Is that the basic point?

Mr. SCHAUS. That is basically the idea to be worked out through the proper legislation.

As it has been admitted by the regulators themselves, small businesses are sought out in actions by the Government because small businesses are least likely to fight back. The justice of having a Government agency pick on the small guy is already questionable. Authorizing another big guy, ACA, to help the first in pounding the little guy into the ground seems unconscionable.

Certainly, there are arguments for protection of the consumer, who cannot by himself remedy all the defects of the marketplace, or the problems of human or corporate greed. However, in view of the rising public outcry against big Government, redtape, and overregulation, it would seem that the solution to problems that exist lies not in the creation of another superagency—another layer of bureaucracy—but in examining closely why the existing bureaucracies are not working. There are plenty to be looked at.

Establishment of an Agency for Consumer Advocacy may answer the demands of self-appointed guardians of public interest, but it does not solve the problems of the consumer, of the regulators, or of small business. Indeed, by increasing litigation and fostering more paperwork and delay, it may hurt consumer interests by increasing prices, adding to inflation, and fueling unemployment.

The Consumer Protection Act of 1977 does not address the real problem, it only adds to it.

I only say—in not repeating some of the things that have been said here before in previous testimony—in 1975 some 63,000 people were employed by regulatory agencies in Washington at close to $2 billion a year. the ACA could second-guess any agency decision or any one of these regulatory agencies and businesses would not know where they stand. One of the greatest things in business is not knowing what to do and how to plan.

In 1975 the estimate of the ACA was $60 million a year for 3 years. Now the cost is down to someplace near $15 million and I do not know what it would finally be. But I would predict it would be far greater than anyone here in this room imagines it would be in a few short years.

We are definitely against any exemption. We think this country has 220 million Americans, every one of us is a consumer, and there should be no exemptions when we have any kind of legislation that affects consumer interests.

The last point I will make. I have been dealing probably with a product that no one else here deals with, but we have contact with the American consumer more, all on a daily basis by selling bread and cakes and sweet rolls. If we ever make any that she does

not like, we find out about it the next day. Most of our people that I know in business lay awake nights—not to take things away from the consumer—but they lay awake nights trying to figure out how to give them more of the so-called baker's dozen. The consumer turns us off just like that if we produce a poor product—maybe the first time we can get by with it, but the second time never. Today's consumer is a smart, educated housewife and she does not need help in making marketplace decisions.

Again, I would say that the consumer interests with their many organizations have far better clout with the regulatory agencies than the small business community.

Thank you.

Chairman RIBICOFF. Thank you.

Mr. Joseph, please?

You do not have testimony. I notice you are listed here.

Mr. JOSEPH. Our witness, Mr. Riehm, is not here yet.

Chairman RIBICOFF. Is there anybody else in this group that has not testified?

Senator Sasser, do you have any questions?

Senator SASSER. No questions.

Chairman RIBICOFF. Senator Heinz, do you have any questions?

Senator HEINZ. No, Mr. Chairman.

Chairman RIBICOFF. I want to thank you gentlemen.

You know, this has been before us for 7 years. We have had hearing after hearing. The fact that there are no questions does not mean that we are not concerned and interested in all points of view. The record is voluminous. There are very few new thoughts or ideas. The only one that I have heard so far was from Mr. Schaus who talks about the right of small business to have some say, which is an interesting point.

But all this will go into our consideration.

I thank you very much for coming here and presenting your point of view. All of your statements will be included in the record as if read.

Mr. SCHAUS. Senator, may I add one point?

Chairman RIBICOFF. Yes, sir.

Mr. SCHAUS. I did not make the report, but ABA would like to have its position paper included in the record.

Chairman RIBICOFF. Without objection, so ordered.

[The position paper of the American Bakers Association follows:]

PREPARED STATEMENT OF AMERICAN BAKERS ASSOCIATION

My name is Robert Schaus. I am President of Quality Bakers of America, and today am representing the American Bakers Association and speaking on behalf of the baking industry. The American Bakers Association includes in its membership bakers who produce about 80% of the commercially baked bakery products distributed to grocery stores, restaurants and institutions.

I want to express our opposition to the concept of an agency for consumer advocacy, as is proposed in the legislation, S. 1262, before this Committee.

A new federal agency to intervene in department and agency proceedings on behalf of consumers is not needed. Since this legislation was first proposed many years ago, existing federal agencies have taken steps to see that consumer interests are fully heard. We now have a Government in Sunshine Act that opens practically all government sessions to public participation. We now have a Consumer Product Safety Commission, the FTC has risen as a potent guardian of consumer interests under the FTC Improvement Act, the Justice Department has an Office of Public Counsel, and the

Department of Health, Education and Welfare has a Consumer Office, to name a few.

We believe that adding a new bureaucracy to watch over the existing bureaucracy is unnecessary, wasteful and inefficient. The agency, if established, in our opinion, would generate conflict with other government agencies, delay decision making, increase litigation costs, and thus add to inflationary pressures. We honestly believe that the consumer, and that is everybody at one time or another, needs protection from over-regulation rather than more regulation.

There is enough delay today in getting decisions from federal agencies on matters of importance to us, and we fear that an agency with a formal right to delay actions, for whatever reason they might feel is legitimate, would further tie up the decision making process, add to our paperwork burden, and waste tax dollars. For example, we have been waiting for three years for an FDA decision on adding more iron to bread to fill a recognized dietary need for a large part of our population. This has been held up because of the testimony of a doctor, who fears that a very few people for whom added iron in the diet, might be injurious, might eat some of our product. Every possible aspect of this issue is being or has been researched without any master agency checking on FDA. We think that is enough.

There is obviously a lot more that will be said and can be said about this subject, but I will leave that to my colleagues.

A copy of our position paper is attached to my comments, for the record. Thank you for your attention.

AMERICAN BAKERS ASSOCIATION POSITION PAPER ON SENATE AND HOUSE BILLS ESTABLISHING AN AGENCY FOR CONSUMER PROTECTION

1. A new federal agency to intervene in department and agency proceedings on behalf of consumers is not needed. This legislation originated in 1969, in the belief that the consumer interest was not adequately represented in the administrative process. Since then the Consumer Product Safety Agency has been created, the Federal Trade Commission has been revived as a potent guardian of the consumer interest and the Justice Department has established an Office of Public Counsel to represent consumers. Adding another new bureaucracy, which will cost $60 million over the next three years, would be wasteful and inefficient.

2. The bill is discriminatory. The labor exemption makes it clear this is one-sided legislation. The proposed ACP cannot effectively represent consumers if it is prohibited from intervening in cases involving wages and labor practices which can add millions of dollars to the cost of consumer goods.

3. The Agency would generate conflict with other governmental units and thereby cause greater delay in an already long and burdensome federal decision making process. Under the bill, after the ACP presents its views and the department or agency reaches its decisions, the ACP could then appeal that decision to the courts. This is unnecessary overkill, which cannot benefit the consumer and will only increase the cost of litigation, thereby adding to inflation.

Chairman RIBICOFF. Mr. John Miller?

Mr. Richard Simpson?

TESTIMONY OF RICHARD O. SIMPSON, FORMER CHAIRMAN OF THE U.S. CONSUMER PRODUCT SAFETY COMMISSION

Mr. SIMPSON. Thank you, Mr. Chairman.

My name is Richard O. Simpson and I appreciate the opportunity to appear today to express my personal views on S. 1262, the Consumer Protection Act of 1977. This legislation would create a new Federal agency to represent the American consumer before the other Federal regulatory agencies.

Mr. Chairman, let me also state that my appearance here today is on my own behalf. No one is paying me to be here and my testimony is entirely my own. I say that because in answer to an inquiry in the House, I was asked the question of whether or not I was being paid to appear here.

During my tenure as the first Chairman of the U.S. Consumer Product Safety Commission, CPSC, I gained firsthand knowledge of the problems facing the regulator and I also became very well aware of the feelings and the frustrations experienced by citizens in their dealings with the Federal bureaucracy. Let me briefly share with you some of those experiences.

In about midyear of 1973, during the first few months of the existence of this new regulatory agency, we established a toll-free consumer hotline so that consumers could communicate directly with their Government and tell us what they thought about what we were doing. When I left the Commission last June, we were receiving approximately 50,000 phone calls per year.

We also asked for citizen volunteers to help the Commission with retail store surveillance for compliance with toy regulations, child-proof packaging requirements for aspirin, et cetera. During the time I was with the Commission, a little over 3 years, over 4,000 citizens had actively participated by volunteering their time to this program. I might add this volunteer participation was without any compensation whatsoever for the volunteers.

Also, during my term as Chairman, we asked for consumer volunteers to actively participate with us and help us write mandatory safety standards—participate with us on committees. In nationwide solicitations, over 5,000 citizens from all walks of life and all skill levels volunteered to offer their time and expertise to that effort.

I personally chaired a meeting in Washington where we asked 80 consumers who had actually participated in the first four mandatory standards-writing panels to come to Washington and share with us their views about the experience, tell us how to improve it, tell us whether it was meaningful, et cetera.

They said the experience was meaningful and they were very pleased to have been asked by their Government to help. The message was also very loud and clear from this group assembled that they wanted to speak for themselves before Government agencies—not have someone else speak for them.

The statement which accompanies the introduction of S. 1262 says that this bill will give "consumers a voice in Government." Mr. Chairman, the consumers I have talked to would not necessarily agree with that assessment. In fact, this bill would give another group of "bureaucrats a voice in government"—unelected bureaucrats who would be the officially designated consumer spokesmen.

I am for consumer protection but I am personally opposed to the passage of this bill. Lest I be misunderstood, let me also hasten to add that I agree that the principal public arguments used in support of the CPA have merit. I think it is an accurate statement that there has been inadequate opportunity for public involvement, public knowledge of, and public scrutiny and participation in, the regulatory process.

However, agreement that there is a serious problem does not constitute an agreement on my part that this legislation would present either a best or even an adequate solution to that problem.

It is my view that sincere, and well-intentioned, legislators too often seek instant cures for such problems by the creation of yet another Federal agency. The CPA legislation would appear to me to be an

attempt at such a legislative panacea. Unfortunately, as we are all too aware, the cure is often worse than the illness. Just because the title of the legislation says "Consumer Protection," does not mean that in practice the consumer will be well served. I believe that the rhetoric, Mr. Chairman, surrounding the 7 years of discussion on this legislation has unfortunately focused the national debate on the wrong subject. There have been knee-jerk reactions on both sides starting when the bill was first introduced about 7 years ago. I think we have spent too much time choosing up sides on whether or not we should have a Consumer Protection Agency and too little time exploring the alternatives and deciding whether this is a good solution to curing the problems we had originally identified. In my view, the CPA would be inadequate; and in fact would be counterproductive. I would say it will be anticonsumer, if you will, for several reasons.

No. 1. As mentioned before, I certainly am skeptical of the basic concept of the CPA. As others have told you, if we accept the premise that existing Federal agencies are not responsive to the interests of consumers, it escapes me by what logical reason we could create another Federal agency and thereby correct the deficiency.

No. 2. A CPA, as the designated official spokesman for consumer interests in regulatory activities, will provide just another Federal layer, further isolating regulatory agencies from the citizen's voice. This is exactly what consumers I have talked to do not want to happen.

No. 3. The level of public expectation for the CPA that has been created over the past 7 years is far in excess of the Agency's ability to deliver on those expectations. I would predict that within 2 years or less of the establishment of this Agency, supporters of the legislation would be expressing critical disappointment in the Agency for not delivering on those expectations. In truth, I believe this Agency is an inadequate organizational mechanism with which to cure or even reasonably attack the problems which have resulted from many, many years—probably over 75 years—of ineffective attention to regulatory review and regulatory reform. The net result can only be another adverse credibility reaction of our citizens to the governmental process. It would be certainly ironic if at this time we would create an agnecy to ostensibly help consumers that had the actual effect of working against the efforts of President Carter and others to restore citizen confidence in their Government. Efforts which I applaud and support.

No. 4. For years, we have heard that the regulatory agencies have not only been nonresponsive to consumer interests, but we have also heard that they have become captives of the industries they regulate. If this is so, it is a deplorable commentary on the state of our Federal Government. But, Mr. Chairman, I wish to remind you that the agencies concerned, particularly the independent agencies, are now and have always been accountable to the U.S. Congress through the oversight function, the budget process and the authority of the U.S. Senate to either confirm or reject the heads of those agencies. If the agencies have not been performing according to their congressional mandate, then it is also true that the Congress must share part of the blame.

If they have the wrong mandate, I would commend to you that Congress should change it.

Creation of the CPA could be viewed, if you are cynically inclined, as an admission at best of congressional inability or at worst congressional unwillingness to hold the regulatory agencies accountable for their actions. Or for that matter, to hold them accountable for their inactions.

No. 5. Last and most important, Mr. Chairman, establishment of this Agency would provide an escape mechanism for those elected officials and appointed commissioners who already have been given mandate by the Congress of insuring that the public's views are honestly solicited and reasonably considered in the regulatory process. Every official in a regulatory agency already has the assigned responsibility to consider all societal views, including consumer views, when he makes decisions on behalf of our citizens. The most difficult and the most elusive part of that process is to identify the consumer's point of view. The creation of the CPA would have the effect in practice of lifting this burden from the individual commissioner and placing the responsibility for articulating the consumer's viewpoint on the CPA officials. Mr. Chairman, can you imagine what would happen—the effect of a CPA when a bureaucrat who has the regulatory authority is told by another bureaucrat how to do his job. You will have removed the difficult task from the regulator, but the votes remain as before—with the regulatory official. The net effect can only be a cop-out for the regulatory commissioner and a reduction in the consumer's voice and influence in our Federal activities.

While at the Commission, I received a request from Consumer's Union, an organization which I highly respect, to establish a consumer counsel office, or a mini-CPA if you will, within the Commission. I refused to do so because the creation of such an office would have provided a convenient excuse mechanism for myself and my fellow commissioners. I told CU that we were charged by Congress to be responsible to consumer views and I would be negligent if I did not take means to make the entire Commission responsible to those views. Further, I would not engage in a token effort that would be ineffective.

A far better solution, in my view, would be to tackle the very tough job of forcing the existing agencies and those appointed officials—and if they are the wrong ones remove them—to meet their responsibilities to the public in a manner intended by their enabling statutes. It would be far less glamorous than creating a new agency; it would be tougher to accomplish; the task would take commitment and leadership by the regulatory agencies, the President and the Congress. However, in my view it is the only way you are really going to get the job done.

Further, Mr. Chairman, the consumers I have talked to already feel they have in place what could be described as a Consumer Protection Agency to represent them. One which they elected. It is called the U.S. Congress. I urge you to accept that responsibility and not abdicate this responsibility to a new agency.

Thank you and I would be pleased to respond to questions.

Chairman RIBICOFF. Thank you very much, Mr. Simpson.

Senator Sasser?

Senator SASSER. No questions, Mr. Chairman.

Chairman RIBICOFF. Thank you very much for your testimony. It was interesting and provocative and we do appreciate your coming here, Mr. Simpson.

Mr. SIMPSON. Thank you for the opportunity to be here.

Chairman RIBICOFF. Margaret Cox Sullivan?

John Riehm?

Ralph Nader?

Have all the witnesses been notified that the committee was going to start at 9:15?

None of these witnesses have been forced to come here. All have wanted to come to testify. We adjust our schedule to be here on time. To my knowledge, while I have been chairman, every committee meeting has started exactly at the time set. It was set for 9:15 so we could hear all the witnesses. The committee is here.

I will make an exception at this time, but hereafter if a witness is not here before the testimony is concluded, then the committee will adjourn.

I will take a recess until 10:30 and the testimony of those witnesses who are not here to answer to their names will be received as if read.

We will stand in recess until 10:30.

[At which time there was a short recess.]

AFTER RECESS

Chairman RIBICOFF. Margaret Cox Sullivan?

TESTIMONY OF MARGARET COX SULLIVAN, PRESIDENT, STOCKHOLDERS OF AMERICA, INC.

Ms. SULLIVAN. I apologize. I was told that I would not go on until about 11:30. I am sorry I inconvenienced you.

Chairman RIBICOFF. Well, we started at 9:15 and I try to start these hearings on time. We all have busy schedules and we try to accommodate those people who are to testify. From now on when someone is supposed to testify and they are not here, we will adjourn the meeting and the privilege to testify will not be afforded.

So you may proceed, Ms. Sullivan.

Ms. SULLIVAN Thank you.

I do appreciate this opportunity to appear before this distinguished committee on behalf of the over 25 million stockholders in this country—the real owners of American business. My name is Margaret Cox Sullivan. I am president of Stockholders of America, Inc., a nonprofit, nonpartisan organization of stockholders, headquartered in Washington, D.C.

The membership is a very diversified group comprised of people from every State across our great country and from every walk of life. They have only one thing in common: They are investors in the equity capital market. They are capitalists. Collectively they own a large portion of American business. They are the schoolteachers and telephone operators, linemen, barbers, shopkeepers, salesmen, office workers, construction workers, pilots, truckdrivers, doctors, lawyers, military personnel, retired people, and the many factory workers who have bought stock through their employee stock purchase

plans. They are the backbone of our free enterprise system—a system often called people's capitalism. A system that has made us a nation of owners.

Since Stockholders of America is committed to public issues which affect stockholders and our free enterprise system, we strongly oppose the Consumer Protection Act of 1977. We feel that this legislation is fraught with many dangers. It is a wrong concept. It is against the very premise of free enterprise defined in our American Heritage Dictionary as: "The freedom of private businesses to operate and compete for profit with minimal Government regulation."

The existing Government regulations could hardly be called minimal and we certainly do not need a superregulator to regulate the regulatory agencies. There are now consumer affairs sections in most Federal departments and agencies working with the Office of Consumer Affairs which advises the executive branch on consumer-related policies and programs.

There is now a Special Assistant to the President for Consumer Affairs whose duties include analyzing and coordinating all consumer protection activities.

The Federal Trade Commission established in 1914 and recognized as a major consumer protection agency now has authority to make detailed rules over selling and other trade practices and the authority to impose penalties for violation of those rules. This Commission may sue on behalf of consumers or classes of consumers to bring about redress of their complaints including the awarding of damages. Further, the Commission now has a fund for private legal representatives of consumers and consumer organizations who are otherwise unable to finance themselves.

I understand that other departments—such as Transportation and HEW—are also studying plans for the establishment of such funds.

Further, the creation of the Consumer Protection Safety Commission in 1972 established unprecedented jurisdiction over the production and sale of practically every component, product, and service bought and used by consumers.

The Food and Drug Administration was established to protect the consumer against impure and unsafe foods, and drugs and cosmetics.

We could add that we have the President's Council on Wage and Price Stability which is responsible for appraising the programs and policies of the Government to determine their inflationary impact which would be of direct concern to the consumer.

It is my understanding that there are more than 1,000 consumer-related programs handled by 33 Federal departments and agencies. If these agencies are not doing their work effectively, then they should be abolished. If there is duplication of effort and overlapping of mandates, the programs should be reevaluated and the unnecessary or overlapping ones terminated. And not add another layer of regulation which the Consumer Protection Act of 1977 will do by creating a Federal agency for consumer advocacy—an agency with the power of subpena; the right to demand information; and the legal authority to have confidential data from corporations. If it cannot make its case in the regulatory agency when it has intervened, it has authority to appeal the decision to the courts and challenge another arm of the Government and the business respondent. The consumer will pay for this.

The consumer is paying to be consumed. And remember: Stockholders are consumers too.

So as stockholders, consumers, and taxpayers, we are paying for more government than we want, more than we need, and as a nation more than we can afford. The Federal Government is trying to do more than its resources will permit; it is trying to do many things that it cannot do very well; and endeavoring to do some things that it should not do at all. Legislation emanating from Congress, in our judgment, should be directed away from more Government controls. In our continuing surveys to the question: Do you favor more or less Government regulation of business: 97 percent to 98 percent of those polled answered less. There certainly is a trend in our country against Government regulations, redtape, and bureaucracy. This was evidenced in the last national election—a Washington outsider was chosen President. Other examples: The uproar over the ban of saccharin; and then, of course, not accepting the ignition interlock system.

At the suggestion of Stockholders of America, many companies are informing their stockholders about the number of records to be kept, reports which the company is required by law to file, and the number of regulatory agencies that they must report to. We have even suggested that companies include the number of man-hours expended for these purposes and put a price tag on it so that their stockholders will know exactly what Government reporting and record-keeping is costing them.

The stockholders' pocketbooks are affected; their investments eroded; and equity investment becomes less attractive. This is occurring at a time when the need for equity investment in our country is crucial, and the number of stockholders is declining. According to the latest statistics released by the New York Stock Exchange, the number of individual stockholders declined by 18 percent from 1970 to 1975. This figure is particularly jolting on two counts: At the same period in our national history when the number of stockholders was growing, we as a country were enjoying rapid, prosperous economic expansion; and it has been estimated that we should have 50 million stockholders by 1980 to meet the expanding capital needs for a growing work force, to keep our industrial leadership in the world, to keep our country strong, and to keep our standard of living.

It has been estimated that over the next 10 years American industry will need $4.5 trillion. We have allowed our great American business machine to get rusty, our equipment is becoming obsolete, and many industries operate short of capacity. We have to realize that 67 percent of all metalworking machinery in this country is more than 12 years old. Whereas in Japan the figure is only 30 percent and in Germany 37 percent. That is typical of all our plants and equipment; and it shows why our long-term production advantages are fading—as in Great Britain.

Given the equity investment needed, we can rebuild our great economic engine and expand our economy. Jobs can be created in the private sector and our country can return to a position of a lower unemployment rate. We then can work toward creating jobs for the 10 million more who will be coming into the work force by 1980. To a large degree, this equity investment will have to come from the American people.

Historically, it has been the people: The individual investors, the stockholders, the little guys, who have been the source of equity capital. They have been called the strongest ingredient, the backbone of our capital markets. Their role is vital. They are the capital force of our country. Just as the millions of workers in the labor force supply labor services, so capital services are supplied by the capital force—the millions who invest in the American business system.

Our capital raising process, the equity capital markets, has been successful because we have provided a mechanism—the auction market—where individuals with diversified interests and judgments can invest in companies of their choice and share in the ownership of these companies. The success and strength of our free enterprise system—the American business system—come from this large, diversified ownership base. We should be considering how we are going to protect this system from the elements that are trying to strangle it—perhaps not intentionally, but the end results will be the same. Untempered zeal is dangerous. For we must be continually aware that it is our free enterprise system that has allowed its people to build out of a wilderness the greatest industrialized Nation in the world with its people having the highest standard of living, while keeping their freedoms.

We must get back to the basic principles upon which this country was founded. Liberty, freedom, independence, and justice are engraved in the thinking of Americans. Americans want to control their own lives and make their own choices. However, this Government has become so inflated and has grown to such monstrous dimensions that it has become a sprawling giant with more fingers in our economic pie and picking the pockets of the people.

We have a wonderful country with good people. There is a spirit of American. And the last thing we need or want is a consumer czar. Therefore we vehemently oppose this legislation with the final plea: Let's keep the "free" in free enterprise.

Chairman RIBICOFF. Thank you very much.

Senator Percy?

Senator PERCY. Yes, I first of all would like to say that I share your goals and objectives, Ms. Sullivan.

Ms. SULLIVAN. Thank you.

Senator PERCY. I think one of my proudest accomplishments is that when I left a corporation with over 10,000 employees, everyone of them was a stockholder.

Ms. SULLIVAN. Isn't that great.

Senator PERCY. That is the "people's capitalism" and that is what we want to promote.

Having shared that, I must say that I come to a diametrically opposed point of view than you. First of all I find your statement somewhat factually confusing. On page 1 you state that we do not need a "superregulator to regulate the regulatory agencies."

Could you cite in the bill before you that section which creates this?

Ms. SULLIVAN. I do not have the bill.

Senator PERCY. Well, I will give you a copy.

Ms. SULLIVAN. It is my understanding that there was an administrator to be appointed, and the administrator would regulate the regulatory agencies now operating.

Senator PERCY. That is not in the bill. Find that section in the bill, please, Ms. Sullivan.

Ms. SULLIVAN. I could not. I really could not.

Senator PERCY. It is not there, but you have said it is, in your testimony before us. You call this a superregulator to regulate the regulatory agencies.

Ms. SULLIVAN. Is that not the intention though, Senator Percy?

Senator PERCY. It is not.

Ms. SULLIVAN. Why would you want another administrator with the subpena power?

Senator PERCY. Have you read the bill yourself?

Ms. SULLIVAN. Yes, she just gave it to me.

Senator PERCY. The reason I bring this out is that we have had so many witnesses who have said they will create a superregulator. Not one of them can find it in the bill. But they keep mouthing these clichés which are absolutely inaccurate.

Ms. SULLIVAN. How would it work then—this administrator?

Senator PERCY. As a matter of fact, we put in this bill a section—listen to this——

It says, "the authority of the Agency"—this is at the bottom of page 2 of the bill—"to carry out this purpose shall not be construed to supersede, supplant, or replace the jurisdiction, functions, or powers of any other agency to discharge its own statutory responsibilities according to law."

So there cannot be any possibility that this Agency could "regulate the regulatory agencies." In fact there is specific language prohibiting it. Now how could you possibly have read the bill and then testify before us that this is a "superregulator to regulate the regulatory agencies."

Ms. SULLIVAN. Well then why would the administrator have the right to go to court if it is not over something?

Senator PERCY. He is an advocate.

Ms. SULLIVAN. Well, I know.

Senator PERCY. He is protecting. He has a right to take a consumer interest to court, but he cannot direct. In other words, he cannot regulate. He cannot order any regulatory agency. He cannot take any power away from them that they had. He cannot supersede their powers. All he can do is appeal decisions or actions through the process of court. What is wrong with that? Is not that the same recourse a stockholder has if a corporation does something that they do not like?

Ms. SULLIVAN. He can sell his stock.

Senator PERCY. He can go to court, can't he?

Ms. SULLIVAN. Yes, I think so. We advise him to sell his stock.

Senator PERCY. I would hope that when you find malfeasance on the part of a corporation that you will take the corporation to task and go to court. Would you want to deprive consumer advocates of the right to use the courts if they feel that the regulatory agency is not serving the consumer interest? This is a consumer economy, isn't it? Would you agree with that?

Ms. SULLIVAN. Yes, I think so.

Senator PERCY. You think so. Well, you must know so. It was not set up for the purpose of the producer, much as I would have

liked to have thought that all my life when I was a producer. I always had to get straight in my thinking that the interest of the corporation is to serve the consumer. The consumer is the king.

Ms. SULLIVAN. That is right.

Senator PERCY. Not necessarily the stockholder.

Now, I would just want to ask you one other question. You say on the last page, "We should be considering how we are going to protect this system from the elements that are trying to strangle it—perhaps not intentionally, but the end result will be the same."

I really urge that you carefully read section 24 of this bill.

It was carefully constructed to eliminate the kind of problem that you see and many of us have seen with regulatory agencies issuing regulations without regard to the cost of those regulations, and without regard to cost effectiveness, That alone should cause you as a representative of stockholders to come forward and say, "Pass that bill so we can get a handle on these regulations." It is the only place in any piece of legislation we now have before us that that appears, and I urge that you study that and see whether it will protect the stockholder/consumer interests in this country more than anything else.

I have no further questions, Mr. Chairman.

While we disagree on some things, I am delighted to have had you here. Ms. Sullivan.

Ms. SULLIVAN. Thank you.

Senator PERCY. For your bedside reading I hope you go back and read the bill once again with a constructive thought in mind.

Thank you very much.

Ms. SULLIVAN. Thank you, Senator.

Chairman RIBICOFF. Thank you. Ms. Sullivan.

Ms. SULLIVAN. Thank you.

Chairman RIBICOFF. Mr. Nader?

Senator PERCY. Mr. Nader, a friend of yours, Mr. Henry Ford has just arrived in my office to talk about, I hope, his support for the Consumer Protection Agency. I will be back just as soon as we have finished and I am sorry I have to leave now. [Laughter.]

Mr. NADER. If you can accomplish that, Senator Percy, it will be a worthy use of your time this morning. [Laughter.]

TESTIMONY OF RALPH NADER, CONSUMER ADVOCATE

Mr. NADER. Thank you, Mr. Chairman, Senator Percy.

I have a feeling that we have all been here before.

Chairman RIBICOFF. Seven years.

Mr. NADER. Many times. This I believe is the eighth year, starting in 1970, that this bill has received consideration by the U.S. Senate, and reflects the need and desirability of legislative stamina to overcome the vigorous opposition which industry and commerce, with few exceptions, have visited upon this bill.

I think also the effective concept of the bill, namely that of being an advocacy agency rather than a regulatory agency, has been vindicated by virtue of this vigorous opposition.

The consumer protection bill, I understand, has been subjected to more filibuster votes than the Treaty of Versailles, and the opposition by industry and commerce has been without parallel, although partly

based as a way to ingratiate trade associations with their members back home.

It is also a recognition that this is a concept that can work. This is a concept that can break the close fraternity between the regulators and the regulatees which have characterized Washington and which have been described so intensively in many congressional hearings.

It is a bill which will provide advocacy functions for an agency to both participate in existing proceedings, petition for the initiation of proceedings, and take agencies to court for judicial review of agency decisions, all of which are designed to further the interest of consumers. In that sense, it is a very crisp and clear-cut piece of legislation with a great deal of the ambiguities ironed out year after year through negotiations, clarification, and redrafting.

I would like to avoid repeating the elaborate case for the Consumer Protection Agency in its quest for advancing the health, safety, and economic interests of millions of consumers in this country.

I would like to avoid this, in the interest of time, by submitting for the record some concise materials illustrating the derelictions of existing agencies too indentured to their corporate clientele and how these derelictions have harmed the health, safety, and economic interests of consumers, and how these derelictions could have been anticipated and thwarted by the existence of a lean consumer advocacy agency.

Chairman RIBICOFF. Without objection the material will go into the record.

Mr. NADER. Thank you, Mr. Chairman.

In elaborating the arguments against this Agency, industry and commerce and some of their supporters in the Congress have raised a number of philosophical issues. In the attempt to raise the "Why not?" approach to this consumer Agency, I put together a list of brief questions which I thought those Members of Congress who have voted against the consumer agency in the past might wish to answer in order to clarify their thinking.

These brief questions are as follows, namely, to keep in mind that these questions are directed at Members of Congress who have voted against the Agency such as Senator Allen who has led the filibuster against this bill for so many years.

Question No. 1—What has Congress done for consumers in the period racked by rising prices, business-dominated Government and widespread disclosures of corporate and Government violations?

Question No. 2—How can a Member of Congress vote against a modest consumer agency and yet support or condone billions of dollars of taxpayer funds to promote and subsidize many business interests.

Examples here are the Maritime Administration, the Department of Commerce, the Department of Agriculture, and other agencies and departments who spend a total of many billions of dollars annually promoting and advancing the interests of specific business and industrial companies.

Question No. 3—Why is it fair to approve large subsidy and advocacy activities on behalf of corporate interests by such departments as Commerce, the Maritime Administration, Interior, while denying millions of consumers in this country, young and old, just the right

to advocacy at less than 10 cents per consumer per year in Washington.

Question No. 4—Does not Congress need a Consumer Advocacy Agency to balance the adversary process before Federal regulatory agencies who make quasi-judicial decisions affecting the health, safety, and economic well-being of millions of Americans. This is inescapably an adversary system that we have in the Federal executive branch. Not only do corporations have their trade associations and law firms to represent themselves under deductible expenses, but inside Government these corporations have their own agencies and departments with billions of dollars and ample budgets and ample resources and staff to advocate their interests.

I would like to just bring to your attention a recent illustration of that where the Commerce Department intervened on behalf of the Borden Co. in a Federal Trade Commission case which would require Borden to license other companies to make and sell Borden's ReaLemon under the ReaLemon name. The Commerce Department intervened cross-laterally to another agency to represent what it believes to be the proper course of action.

Chairman RIBICOFF. What year was that?

Mr. NADER. This year. The cite on that, Senator, is the Wall Street Journal, March 21, 1977.

And by doing this the Commerce Department in fact reflected a widespread policy in the executive branch to assure that the business interest was developed and considered by the Federal Trade Commission. Of course, most of the Government agencies and departments who subsidize or advocate business interests, do so directly. That is their mission like the Department of Commerce.

Question No. 5—Is there not needed a nonregulatory consumer agency to advise Congress about what really is going on in these regulatory institutions and to work for deregulation where it benefits consumers?

I might add here that President Carter has added another reason for the Consumer Protection Agency when he stated on several occasions that he wants such an agency as an advisor to him.

Chairman RIBICOFF. Let me ask you—how do you answer the critics of Congress who ask—is not it the job of Congress to oversee the regulatory agency so that there will not be these abuses.

Mr. NADER. There certainly is a general oversight obligation upon Congress, but Congress cannot engage in the day-to-day review and challenge of procedures and substantive decisions that the Consumer Protection Agency can engage in, all the way to judicial review.

Furthermore, in advancing the congressional oversight the consumer agency would be an important factor in informing Congress of what is going on. For example, an abuse will develop in the Interstate Commerce Commission, illustratively, where the holders of certificates for truck routes are trading in these certificates and selling them to other companies who buy them from the holder of the certificate. Now that has been going on for years. If you had a consumer agency, the Congress might have been more coherently informed of this practice than having to wait until some reporter for a newspaper dug it up or until some other sort of indeterminate process revealed these conditions.

Also, the President does not have anyone to tell him in detail what is going on in these regulatory agencies. These agencies do not like to reveal their weaknesses, and again President Carter has recognized this in saying that he wants this agency to be his eyes and ears as to what is going on in regulatory government in Washington.

Question No. 6—Is not there a need for a consumer agency to push for fairer procedures that would permit participation before these departments and agencies by citizens and civic groups all around the country who are now shut out of this part of their Government because of the expense and other unjust procedural obstacles?

I think it is very underemphasized in the supportive testimony to this legislation, Senator Ribicoff, that this agency would also be trying to improve the procedures, to improve the streamlining of these agencies and departments and to make sure that complexity per se is not tolerated. The kind of complexity that only provides a larger market for corporate law firms here in Washington—not the kind of complexity that is designed to reflect equity, and the Agency would be a mover for procedural fairness and openness and accessibility by citizens and civic groups all over the country.

Question No. 7—Are you not interested in the ways in which the consumer agency is equipped to help small businesses and farmers as consumers of products and services in the course of doing business?

Past hearings on this legislation have shown repeatedly how small businesses are harmed by deceptive practices on the part of large businesses——

Chairman RIBICOFF. Let me ask you—our witness this morning from the National Federation of Independent Business made a point that he thought that the Small Business Administration should have the same rights of the consumer advocate to intervene in regulatory agencies on behalf of small business. Would you want to comment on that?

Mr. NADER. Yes.

The Small Business Administration has the right now to extend commentary to other agencies and departments considering matters that affect small businesses.

Chairman RIBICOFF. But they have failed to do so?

Mr. NADER. They have failed to do so. They really are very ineffective advocates of small business, and they need to have even a stronger congressional mandate to do what you just described. I would certainly favor that.

Chairman RIBICOFF. Do you see anything inconsistent in highlighting something in this bill calling attention to the fact that the Small Business Administration does have the right to come in and make its position known before regulatory agencies on behalf of small business? Do you see anything inconsistent in that?

Mr. NADER. No, I do not. Obviously, we can all think of examples where small business deceptive practices would have to be subject to the kind of intervention by a consumer agency, but in many cases the name of the game is big business predatory activities on small business in the antitrust context, in the deceptive practice context, et cetera, which would invite the challenge of the Consumer Advocacy Agency.

For instance, Senator, the Treasury Department issues tax rulings at times that benefit big businesses at the expense of small businesses, and the SBA has not been very active in even reviewing those kinds of proposals. So anything that can reflect and enhance support for a small business interest as they compete for justice in Washington with their larger business brethren would be advisable.

As I was mentioning—are you not interested in ways in which the consumer agency is equipped to help small businessmen and farmers as consumers of products and services in the course of doing business?

An earlier draft of this legislation, largely through the efforts of Senator Dole, put a larger emphasis on farmers as consumers, and members of the committee went along with it. I think that ought to be emphasized because there has been a tendency to try to pit the farmer against the consumer in this kind of legislation when for the most part this is simply not the case. The farmers consume fertilizer, farm equipment, interest rates, insurance, pesticides, all of which relate to some form of Government regulatory activity which the consumer advocate would be involved in, and of course anything that helps the consumer per se in these areas is likely to help the farmer per se as consumers of the same products.

Question No. 8—Do you intend to vote against all future special interest business subsidies and promotional activities renewed or initiated that build up the Government at the taxpayer expense if you vote againsty the consumer bill?

This is designed to reveal the inconsistency between, for example, some Members of Congress who vote for tobacco subsidy, or who vote for the cotton promotional organization, or who vote for other promotional activities for special interests, and then turn around and suddenly become very economy minded and say we cannot afford this 10 cents per consumer per year consumer advocacy bill.

I might add that the Department of Health, Education, and Welfare now spends about $13–$14 million an hour on the average of 24 hours a day, the Pentagon is not far behind, and I think that places in clear relief just what a remarkable innovation this bill is. Because while its horizons are extraordinarily significant, its budget is extraordinarily small.

Chairman RIBICOFF. Let me ask you—in this proposal the President has a certain amount of time to come with suggestions to fold in other consumer related activities into this particular agency.

Do you have any thoughts where else in the Government you can find consumer activities that ought to be part of ACA?

Mr. NADER. I would separate out the advocacy activities of these consumer offices and meld them into ACA. However, I think that every department would benefit from a small consumer office to handle consumer complaints and to advise on nonadvocacy consumer activities, such as citizen participation rules in the department.

Chairman RIBICOFF. Would you eliminate completely President Ford's arrangement in which every department had a so-called consumer advocate?

Mr. NADER. Well, in terms of advocacy, yes. I think the advocacy functions are best handled by the Consumer Advocacy Agency. Not only in terms of organizational theory, but also because it is not

likely that an advocacy unit inside a department is going to have the elbow room as well as the authority to challenge a departamental policy. However, there does seem to be some interesting, useful experience building up in some of these consumer offices, such as HUD, dealing with consumer complaints and citizen participation factors that is meritorious. I think the total budget, Senator Ribicoff, of all of these inhouse consumer offices is less than $5 million. So that the recommendation is more of one on how to further the interests of consumers rather than any possible saving in the budget.

Chairman RIBICOFF. I think the staff ought to request from all the departments that have a consumer function within the department, their experience and a report of what their accomplishments have been during the past year. I think it would be very interesting to see what the results of their activities have been, whether it is justified. I think we have an interesting point that Mr. Nader makes here, and I am curious as to what they have achieved and accomplished.

Mr. NADER. That is an excellent idea. There has not been much review of what is going on there, except what we in the course of our daily activities come across.

Chairman RIBICOFF. And you say from your experience, HUD has done a good job?

Mr. NADER. Well, I can see a useful role and I can see some activity that, given its tiny staff, is helpful.

I would just like to go through a number of points relating to the bill itself, S. 1262.

First I would hope that you retain the interrogatory section without requiring interrogatories to be cleared by the Office of Management and Budget. I do not know how that White House position emerged suddenly, but I do not think the OMB is the kind of review agency that would enhance the consumer protection envisioned in this legislation. The history of OMB in approving questionnaires by other Government agencies has not been detached and objective. It has been heavily delegated in the past to advisory committees made up of the very business and industry people who are going to receive the questionnaires in the first place. This in one reason why Congress recently has been more prone to turn to the GAO for such clearance as is the case in the Federal Trade Commission amendments. I would hope that the Consumer Advocacy Agency be given the freedom from that kind of OMB constraint.

Next, the question on State and local proceedings. I understand that the bill permits a response to inquiries for information by State and local agencies but prohibits the Consumer Protection Agency from participating in State and local proceedings. I think that should be loosened a bit. I think that if a State insurance commission or if a State consumer agency would request the formal participation of the Consumer Protection Agency in Washington, that the Agency here should be permitted to participate.

Chairman RIBICOFF. Do you not think that would sort of innundate the ACA because it would find a tendency of State government to pass the buck to the Federal Government in some of its problems. So you would have 50 States covering up by saying we have asked the Federal Government to come in and do it. They are too busy, they cannot, so nothing happens on the State level.

Eventually you are going to have to have some arrangements in the States with Federal support—I am concerned from my own State's experience that this would in the long run hurt the ACA at this stage of its development.

Mr. NADER. Of course, the ACA still can say no, that well, we would rather submit a statement rather than put this——

Chairman RIBICOFF. Well, you know, once you do that it gives a State official an opportunity to pass the buck, rather than undertake its own responsibility on the State level. That concerns me.

Mr. NADER. Well, we certainly do not want them to be able to pass the buck.

The next point I would like to make is that I would hope the broadcast license renewal proceedings would not be exempted as they are in section 16A from the purview of the consumer advocate agency. That exemption has been in prior Senate bills. It usually has been initiated by members of the Senate Commerce Committee, but it has not been in House bills. I do not see any reason whatsoever, why broadcast renewal licensing should be exempted other than the sheer power of the television industry.

There was an objection by Esther Peterson yesterday about putting in the annual report of the Agency to Congress a general estimate of resource requirements. There was a feeling that this would bypass the conventional budgetary processes, and I would disagree with that. I think Congress has the right to ask an agency any questions it wants to have answered in its annual report, and I cannot see that this is going to bypass the normal budgetary processes.

The judicial reveiw part of the legislation is well-treated by the next witness from the American Bar Association, particularly in the area where it would be considered cumbersome if the Agency intervened in the court proceedings without having prior intervened in the administrative proceedings to have the judge determine that this was in the interest of advancing consumer justice. I believe his remarks are well taken.

On the authorization, Senator Ribicoff, I have always thought it was a good idea to specifically authorize funds rather than leave that up to the Appropriations Committee, and it probably is good to have the Agency start with a $15 million budget going up in a 3-year period to $25 million, just to prove how much can be done with that amount of money. I think the Government is starving for proof that you can get more from less. And while it is tempting to say how nice it would be for the Agency to have a $50 million budget given all the past work it has to make up for in these executive branch agencies, I think it would be a real salutory experiment to see how the Agency works in the first 2 or 3 years on that level of budget.

However, the budget may produce a lot in terms of advocacy but it is not going to be able to support much surveying and testing and other information collection activities that are in this bill. I think the committee should keep that in mind. That those functions tend to be fairly expensive and they are not going to be performed to any great degree under the strictures of the $15–$20–$25 million budget escalation over the next 3 years.

We could use one of industry's arguments and say that inflation and pay increases have reduced that $15 million to about $11 million since that figure was first proposed by this committee about 5 years or 6 years ago. But we will let that one pass.

On the question of removal for cause, I approve the way it is drafted in this legislation as it has been in the past, but it is still a difficult question nevertheless. If you have a good consumer-oriented President you might say well, why not have the administrator of this Agency removeable at will. It makes him more accountable to the President and it puts the President more closely in touch with what the Agency is doing. But if you do not have a consumer-oriented President, it is quite necessary to have this level of insulation, similar in part to that which characterizes the Federal Trade Commission and other independent agencies. While the signs look pretty good for President Carter's proconsumer performance, do you write a bill for the President who happens to be in office now, or do you write it for the Agency in terms of safeguarding it against the kind of intrusion that might have been all too frequent under the Nixon-Ford years. Anyway, it is an interesting question with points that can be made on both sides.

I would like to point out that this Agency will further the goal of regulatory reform which this committee has been studying for some time now. It will further the goal of abolishing some of the regulatory agencies or agency functions that are useless, other than to preserve monopolistic or quasi-monopolistic rites for the regulated industry. It will advance the procedural justice characterizing these Government agencies and departments as well as the overriding substantive goals of safety, health, and economic justice for over 200 million American consumers. In so doing this legislation is part of an emerging and quite dramatic reevaluation of executive branch performance by the Congress. I think in future years, political scientists and historians will be able to recount a quite impressive pattern that was formed in the last few years of opening up government to citizens, reducing the economic barriers to participation, and developing an internal counterveiling force on behalf of consumer justice in the form of this Agency for Consumer Advocacy.

I have noticed that there are different phrases to describe this Agency. I still prefer the old phrase which is in the official preamble—the Consumer Protection Agency that will come from that act.

Over in the other body, Senator Ribicoff, there are provisions in the House bill which I would hope that the Senate would stand firm against, namely some of the agricultural exemptions that are listed, and I object to the termination date for this Agency of 1985. If people are going to go by the way of sunset legislation, there is a certain equity involved in doing it across the board rather than picking on the most vulnerable agency to be subjected to a sunset treatment, because it does not have an organized, well financed constituency the way the maritime interests have for the Maritime Administration to stand up against the struggle that would inevitably be forthcoming in 1985.

I will submit the remainder of my materials for the record with your permission.

Chairman RIBICOFF. The remaining material will be submitted and become part of the record.

Senator JAVITS. Mr. Chairman, I have already submitted my opening statement for the record. I have to run away to the Labor Committee which is marking up a bill.

I want to thank Mr. Nader for his testimony. We do not always agree but he is always very stimulating, and I like to have him on my side.

Chairman RIBICOFF. All I can say is that the one privilege that the chairman never has is to run away. [Laughter.]

I am stuck.

Senator JAVITS. Well I will save you.

Chairman RIBICOFF. Well, if you had joined the Democratic cause, you would have been the chairman a long time ago. [Laughter.]

Senator JAVITS. That happens to be too true. [Laughter.]

Chairman RIBICOFF. Well, Mr. Nader, you have taken a lot of time. We welcome you and we have one more witness. I will have to break off at 5 minutes to 12 o'clock, so I hope between you and the next witness you will keep that in mind.

Mr. NADER. I would like to leave just one suggestion for industry and commerce who are opposing the bill—that this year their opposition is wasted time. They are better off allocating their resources to other legislation that is now before the Congress.

Chairman RIBICOFF. Well, I am not talking for industry, but there is no such thing as wasted time. I do believe in the democratic process that everyone should have the right to make their point of view known. You have been with this for 8 years now and it has not been wasted time. Industry has been successful for 8 years.

Mr. NADER. Of course, nobody is suggesting that they should not present their viewpoints, but we foresee another massive round of telegrams out to the field and a lot of energy which could be better spent for these trade associations in other areas of government. When I say wasted time, I say wasted time from their own standards of improving efficiency and justice in government. They could for example spend some more of their time on what the $250 billion of loan guarantee authority that is now outstanding in the Treasury Department, of what that loan guarantee authority is doing to efficiency and innovation in industry.

I always think that consumer advocates have the right to give gratuitous advice to industry and commerce. [Laughter.]

Chairman RIBICOFF. The trouble is Mr. Nader, a lot of America feels that you are too free with gratuitous advice.

Mr. NADER. I will let that one pass.

Senator JAVITS. Now you are getting to be a real smart politician. [Laughter.]

Mr. NADER. This is like a reunion, Senator Javits. This is the eighth year on this. We are all entitled to a few liberties.

Chairman RIBICOFF. We do thank you, Mr. Nader.

I do believe that this is the year where this legislation will become law. The added ingredient is the fact that we do have a President of the United States who is for it and the fact that the legislation does not face veto would indicate that that would be a substantial change.

Thank you very much, Mr. Nader.

Mr. NADER. Thank you, Mr. Chairman.

[Additional information submitted by Mr. Nader follows:]

NATIONAL COMMISSION ON REGULATORY REFORM

John N. Nassikas, Chairman, Federal Power Commission

"Among Congress' chief concerns was the provision of meaningful protection of the interests of the ultimate consumer. The predominant concern of the Federal Power Commission, therefore, is the protection of the consumer interest in reliable electric and gas service at a reasonable price.

"In accordance with the mandate of Congress, the Supreme Court has repeatedly stated that the Commission is under a legal obligation to protect consumers, *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, at 610 (1944); *Federal Power Commission* v. *Tennessee Gas Co.*, 371 U.S. 145, at 154 (1962); and see *Louisville Gas & Electric Co.* v. *Federal Power Commission*, 129 F. 2d 126, at 133 (6th Cir. 1942), *cert. denied*, 318 U.S. 761. Thus, in *Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 343 U.S. 414, at 418 (1952), the Court said:

> A major purpose of the whole Act is to protect power consumers against excessive prices. . . .

"In *Federal Power Commission* v. *Louisiana Power & Light Co.*, 406 U.S. 621, 631, 640–641 (1972) the Court observed:

> The Natural Gas Act of 1938 granted FPC broad powers 'to protect consumers against exploitation at the hands of natural gas companies.' *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). * * * Congress created 'a comprehensive and effective regulatory scheme,' *Panhandle Eastern Pipeline Co.* v. *Public Service Commission*, 332 U 332 U.S. 507, 520 (1947), to 'afford consumers a complete, permanent and effective bond of protection . . .' *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, 388 (1959).

and again in *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, at 19 (1961);

> 'When Congress enacted the Natural Gas Act, it was motivated by a desire "to protect consumers against the exploitation at the hands of natural gas companies." ' *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 364 U.S. 137, 147 (1960).

In *Gainsville Utilities Dept.* v. *Florida Power Corp.*, 402 U.S. 515, at 529 (1971) the Court recognized that the Commission is /charged both with assuring industry a fair return and with assuring the public reliable and efficient service, at a reasonable price.'

". . . Over the years, the staff of the Federal Power Commission has accepted its legal obligation to provide forthright presentation and advocacy of the consumer viewpoint before the Commission and the Courts. In addition to staff representation and consumer participation directly or through consumer associations, the consumer interest is also effectively represented by gas distributors[1], state commissions[2], environmental organizations in many instances, and others who participate regularly as parties or intervenors in Commission proceedings. In performing its quasi-judicial function of determining and protecting the public interest, the Commission has been aided by vigorous and effective advocacy of various facets of the consumer interest.

"Since the Commission is diligently protecting the consumer interest, we do not recognize the need of consumers for an organization at the Federal level with primary responsibility for protection of consumer interests insofar as our responsibilities are concerned.

Richard Wiley, Chairman, Federal Communications Commission

"As the members of this Committee may be aware, in the past several years the FCC has attempted to introduce the stimulus of competition into certain traditionally

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[1] In *Southern Louisiana Area Rate Cases* (*Austral Oil Co.* v. *Federal Power Commission*) 428 F. 2d 407 (5th Cir. 1970) the Court affirmatively recognized the representation of consumer interests by natural gas distributors. (p. 434 n. 86). In its opinion (p. 435) the Court stated: "The FPC must evaluate each rate set against policies as broad as the Natural Gas Act itself. *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581, 605, 65 S.Ct. 829, 840, 89 L. Ed 1206. The purposes of the Act encompass not only reasonably low rates but maintenance of adequate service for the consumer, and the latter objective is the reason for the *Hope* requirement that rates must be 'sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.' . . . Indeed, the *Hope* case interprets the policy of the Act as involving both consumer interests and the autonomous interests of the industry. The Commission must 'balance . . . the investor and consumer interests.' 320 U.S. at 603, 64 S.Ct. at 288."

[2] *Id.* at 414 n.3." (Nassikas testimony pp. 15–18).

monopolistic or oligopolistic telecommunications services. We have done so not for the sake of competition per se, but in recognition of our statutory mandate to regulate in the public interest. Obviously, there are situations in which competition is not always appropriate or advisable (for example, we long ago rejected the notion of having two telephone poles in every backyard). However, we believe that where competition is feasible—that is, where no undue technical or economic harm to basic services would be caused by its introduction—the public is likely to benefit from lower rates, improved service and more rapid innovation, as well as greater diversity of choice. (p. 7)

"One further administrativbe step which we have taken to improve our ultimate regulatory product is the holding of regional meetings throughout the country between the Commissioners and key staff, the members of industries we regulate, and the public at large. We believe that these meetings are conducive to the mutual exchange of ideas, comments, and criticism which is essential to ensure regulation responsive to the changing needs and perceptions of the public interest. (p. 11)

"As the FCC celebrates its 40th anniversary, we believe that the purposes and objectives of the Communications Act of 1934 remain valid and necessary and that its general mandate to the Commission continues to serve as a viable means of ensuring that the public interest will be effectuated by the communications media." (p. 12)

Ray Garrett, Jr., Chairman, Securities and Exchange Commission

"This agency is necessarily quite proud of the fine reputation it has earned over the years. (p. 7)

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"We are not aware, generally, of any significant deficiencies within our regulatory processes which tend to lessen competition, adversely affect the public and regulated companies, or contribute to inflation. (p. 8)

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"Of course, this Commission's specific mandate is to uphold the interests of investors. To that end, private interests cannot be exalted over the public interest. And the policies of any Administration cannot be given full effect if inconsistent with our statutory mandate. (p. 14)

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"Question five, posed by the Committee, suggests that increased public intervention in agency proceedings is desirable. The Commission (SEC) does not completely agree with this proposition. While, as a general matter, we encourage public or consumer representatives to express their views in proceedings before the Commission, absolute rights of intervention may be used, in a deleterious manner, merely to delay the timely completion of the proceeding. In order to avoid such undesirable results, this Commission generally limits intervention by private parties in its adjudicatory proceedings to persons who are able to demonstrate that their participation as parties with all the rights attendant thereto, will be in the public interest, and that limited participation, through leave to be heard, would not be adequate to protect their interests.

"In this connection, I should like to refer, for a moment, to S. 770 (in 1974).

"S. 770 would establish a separate independent agency, the Office of Consumers' Counsel for Regulated Services (the "Counsel"), which, inter alia, would be authorized to represent the interests of consumers of regulated companies before state and federal agencies, and in the courts. In addition, the bill would provide for improved methods of obtaining and disseminating information with respect to the operations of certain regulated companies to consumers, through the Counsel. With respect to companies under the jurisdiction of the Securities and Exchange Commission, however, the bill would apply only to those regulated under the Public Utility Holding Company Act of 1935. (p. 20)

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"But, while we would welcome participation by the Counsel in Holding Company proceedings in most instances, we are troubled by the provisions of S. 770 which apparently would give the Counsel an absolute right to intervene or to appear as a party in all such proceedings, and to initiate proceedings.

"In certain types of proceedings under the Holding Company Act, particularly those involving financing applications by registered holding companies, the delays likely to result from intervention as a matter of right by a third party could cause the subject matter of the proceedings to become moot. In such proceedings, time is of the essence. (p. 22)

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"Also troublesome is that portion of the bill which would give the Counsel the power to initiate proceedings generally under the Holding Company Act and to initiate appeals from such proceedings. We strongly object to vesting such broad and undefined authority in any person or entity. Under the Holding Company Act, such power may enable the Counsel, for example, to initiate a proceeding designed to require a regulated company to divest itself of certain holdings; to deny or revoke an exemption previously granted; or to require a regulated company to restructure its capitalization.

"Whether to initiate such proceedings, we believe, should be exclusively within the discretion of the Commission. We believe that it is unnecessarily duplicative and an inefficient employment of government resources to empower another agency to do precisely what our mandate under the Holding Company Act calls on us to do—protect investors and consumers. In this context, we would not object to empowering the Counsel to petition the Commission to institute proceedings subject, of course, to our discretion whether such a proceeding would be necessary or appropriate. (p. 23)

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"Aside from the specific objections noted above concerning the Counsel's right to intervene in or to initiate any Holding Company Act proceeding or appeal relating thereto, I should like also to express my doubts as to the feasibility of expecting one man or one entity to represent effectively all consumers' interests. As a general matter, consumers are not a unified group of which all members have the same interest." (p. 24)

Richard O. Simpson, Chairman, Consumer Product Safety Commission

"May I at the outset state that I believe that such a regulatory review is not only warranted, but also highly desirable, for I believe that the people of this country are well served by the process of continuous examination of and awareness of Federal services and Federal activities.

"I am pleased because, in addition to the 'independent regulatory commissions' which have been clearly established and defined as such, there also exist within the broad framework of our Executive Branch, other 'regulator'—agencies, councils, boards, administrations, commissions, etc., that are found in cabinet level departments. All such governmental regulators should be reviewed so that their actions can be assessed; their independence established if necessary; and most importantly, the chain of accountability be clearly understood and followed.

"A review of the economics of regulatory actions is, I believe, a valid—and needed—one. I suggest that such a study should, however, encompass the cost and benefits of regulatory actions, that is, the measurement of the positive effects of regulation, as well as the assessment of the negative impact.

"The Consumer Product Safety Commission is, as you know, the newest of the regulatory commissions in Washington; one in which the Chairman has been given a mandate which one member of Congress has described as 'more power than a good man should want or a bad man should have.' I agree. And because I agree, and I see that there are possibilities for abuse, for circumvention of the public interest, and for self-aggrandizement, I doubly welcome this opportunity to come before you today.

"The Consumer Product Safety Commission has jurisdiction, as you know, over more than 10,000 individual consumer products, and new products are entering the marketplace continuously. The Commission is required by statute to develop and

promulgate, when warranted, either from its own initiative or in response to citizen petition, safety standards to guard against unreasonable risk of injury to the consumer.

"In addition, the Consumer Product Safety Act mandates a 'blanket,' if you will, safety standard, contained in Section 15 of the statute. To paraphrase, Section 15 says that no manufacturer shall manufacture a product which contains a defect which creates a substantial product hazard. Manufacturers (and distributors and retailers and importers) are under legal requirement to report to this Commission, under penalty of law, when they have reason to believe that such a product has been entered into commerce that could create such a hazard. The Commission, further, has the authority, after following certain procedures, to order public notice and either repair, repurchase, or replacement of the offending product, at no cost to the consumer.

"At this point, the scope and authority of this Commission may appear to some to be overwhelming. It is. And yet this is but a portion of the mandate and the authority vested in this Commission. Vigorous Congressional oversight is necessary to ensure that such broad authority is properly used and not abused.

"I believe the Committee is aware of the 'openness' policy adopted—and, we believe, effectively implemented by—the Consumer Product Safety Commission. I am proud of the Commission for adopting such a direction, and I am especially pleased to report that we feel it is working. We know we are doing the public's business, and the public has a right to know what we are doing, how we are conducting our affairs, and where we are allocating our priorities. Openness can be an effective check against the extraordinary powers vested in regulatory agencies, for the continuous scrutiny of every facet of activity, by the public, by the press, by the affected industries, by the Congress, and by other Federal agencies, leaves few if any areas unexplored and opens to discussion even the most minor activities.

"Clearly, in every agency, certain policies can—and in fact, must—be enunciated. These are visible decisions, accompanied by public announcements. Basic policy decisions, which are made by the Consumer Product Safety Commission are generally proposed for public comment prior to final adoption, I am attaching copies of such published policies of the CPSC, e.g., the Public Meetings Policy; the Freedom of Information Policy; Proposed Sampling Plan Use in Standards Policy; Staff Participation in Standards Development Policy; and various regulations implementing the authorities of the Act.

Richard Simpson, CPSC chairman; BNA, *Daily Report for Executives,* November 22, 1974:

"Under questioning by Senator Lee Metcalf (D-Mont), CPSC Chairman Simpson went beyond support for a reform commission to recommend steps for insuring that the regulatory agencies operate as Congress intended.

"Simpson said that conducting all agency meetings and proceedings in public would guarantee that the regulators continually served the public interest. 'If secrecy is abolished, it will be difficult for private interests to twist the arms' of the regulatory commissions, he contended. Opening all of an agency's affairs to public scrutiny might preclude the need for a 'consumer counsel' or a consumer protection agency, Simpson added. 'Creating a consumer council or agency is an admission that the (regulatory) agencies are not doing their jobs,' he contended.

Simpson agreed with Metcalf's suggestion that a portion of each agency's appropriations be allocated to pay the costs for public interest representation at agency proceedings. He said CPSC has paid travel and other expenses for lawyers representing public interest groups at Commission hearings." (p. A–4)

"Recently the Congress has seriously considered surrendering a large measure of its oversight of independent regulatory agencies to an administrator to be appointed by the Chief Executive. This was provided for in recent proposals for the establishment of a department, office or ageny, ostensibly to ride herd on independent regulatory agencies in the interest of complaints from the public and particularly from consumers.

"Quite frankly I feel I should suggest to you that in my view, such proposals, however well-intentioned, would result in bad administration of the public's business and operate against the public interest. I say that not only because Congress would thereby be legislating for others to exercise a measure of oversight it should exercise, but also because, on the basis of my experience of approximately 40 years in this field of antitrust and trade regulations activity, I am convinced that thus building a large federal bureaucracy to oversee the operations of other federal agencies would bring the present slow operations of the co-called independent regulatory agencies

to a virtual halt. For these reasons, I urge that the Congress direct the National Commission on Regulatory Reform to study carefully, this aspect of the problem and to report with its recommendations to the Congress. Such report should detail how the provisions of S. 707 (in 1974)—The Consumer Protection Agency Bill, as well as the provisions of S. 782 (in 1974)—The Antitrust Revision Bill would affect the operations of the independent regulatory agencies and what impact they would have upon the implementation of our national policy to promote free and fair competition and to enhance all aspects of the public interest. I suggest that because both of these bills provide for private persons to inject themselves as third parties in U.S. Government proceedings before regulatory agencies and the courts in cases arising under trade regulations and antitrust laws.

"The public interest encompasses the interest of consumers, but includes more. A member of the public is a consumer at the dinner table but he is a producer as a farmer, worker or businessman during the other hours of the day before dinner.

"The national policy for free and fair competition involves the concept of protecting a member of the public in all aspects of his interests, including his interest as a consumer. The independent regulatory agencies are obligated to serve that concept of our national policy. Hence, the National Commission on Regulatory Reform should consider the entire problem relating to the independent regulatory agencies in all of the aspects involved. They should be considered and acted on as a whole, not fragmented by fragment." (p. 8–9).

From A. Everette MacIntyre, former Federal Trade Commission commissioner.

Lewis A. Engman, Chairman, Federal Trade Commission

"As you know, several bills and resolutions have already been introduced. We suspect that, we shall see a number of other bills proposed. When the rhetoric is stripped away, it seems to us that all these legislative proposals will really be aimed at the same thing, namely, a greater voice in the governmental process for those who are ultimately affected by its decisions and who are stuck with having to foot the bill.

"There is a risk, however, that in attempting to reform the regulatory process with an eye toward providing a greater voice and lower costs for the consumer, we may end up knee-deep in new agencies and commissions, all more or less pointing in the same direction, all pouring over the same subject matter, all dedicated to the twin propositions that governmental fat can and ought to be trimmed and that the marketplace must be insulated against those who would abuse it for private gain." (p. 10)

Examples of the Need for a Consumer Protection Agency

One area of agencies' decisionmaking where the consumer voice could be most effective is that of health and safety. The following examples are cases where ACP intervention will mean greater agency and industry accountability for consumer health and safety.

NURSING HOME FIRE HAZARDS

About 7,000 skilled nursing homes receive federal funds through Medicare and Medicaid, programs administered by the Department of Health, Education and Welfare. HEW requires that nursing homes receiving such benefits be inspected to determine that they comply with federal requirements, including fire safety regulations. As part of an audit, the GAO accompanied HEW inspectors to 32 nursing homes that were exempted from water sprinkler requirements on the basis of their construction, in order to determine whether these homes were violating fire provisions or if they were properly classified as not requiring automatic sprinklers. Twenty-three of the homes (72 percent) had one or more deficiencies, and nine (28 percent) should have been required to have sprinklers. Upon visiting 26 other homes granted special waivers from the sprinkler requirements, the GAO found that 22 of these homes did not satisfy all four factors established by HEW indicating that an equivalent level of safety has been achieved as would be provided by sprinklers. Finally, in late 1973 HEW regional offices submitted data on 7,318 skilled nursing homes certified for participation in Medicare and/or Medicaid. Over 4,300 of these homes had deficiencies.

This data indicates that HEW has been lax in administering and enforcing Federal fire safety requirements and monitoring state inspection and certification activities. Furthermore, GAO found that HEW and the States have not taken sufficient action to force nursing home administrators to correct fire safety and other deficiencies.

Because the GAO has no authority to challenge an agency's failure to enforce its own laws, a consumer advocate is needed to see that positive corrective steps are taken when such a situation is uncovered.

EXPLODING WHEELS

In 1968 the National Highway Traffic Safety Administration (NHTSA) held meetings with General Motors to investigate alleged defects in certain ¾ ton, 1960–65 model trucks with wheels which unexpectedly exploded while in use. When GM and the agency agreed that the only wheels which were defective were those on trucks with camper bodies (50,000 trucks, not the entire 200,000 in question, the Center for Auto Safety in Washington filed suit (1970). The judge in the Kelsey-Hayes/GM case ruled that this distinction could not be made and that the investigation had to be reopened to consider the hazards of the remaining 150,000 trucks. A mere two months later, all 200,000 trucks were found to be defective. Nevertheless, notice to the owners didn't go out until 1974 when court battles were finally resolved. And, until the NHTSA makes a formal finding if a defect (or no defect), its investigations are not open to the public, the party with the greatest stake in the outcome. The ACP could, however, represent consumers right from the start.

CHILDREN'S ASPIRIN

The FDA has frequently failed to regulate products unless they have been proven to cause human deaths, and has relied instead upon voluntary compliance from the industry it is charged to oversee. For example, the aspirin order of February 16, 1972 was the first regulation under the Poison Prevention Packaging Act of 1970, an act which allows FDA to prescribe childproof safety packaging for hazardous household substances. The regulation took over two years to promulgate and the FDA took the unprecedented step of soliciting exemption petitions from manufacturers. Thereafter, FDA granted permission for non-compliance for three categories of aspirin products and extended the deadline for compliance by other categories until July 1, 1973. According to FDA figures, approximately 800 children under five years of age were suffering accidental poisoning each month and 90 percent of these accidents would be prevented by special packaging. During the delay, over 25,000 aspirin poisonings could have been avoided.

DRUG DEVIATIONS

In 1973 the GAO found, upon reviewing the inspection records of 73 drug producers, that 48 percent of the producers critically deviated from good manufacturing practices on successive inspections. A critical deviation is one which creates the greatest probability of the manufacture of adulterated products. The investigation by GAO found that FDA has taken relatively few legal actions to ensure good manufacturing practices. During fiscal year 1971, FDA made a total of 7124 inspections of drug producers, 4000 of which were follow-ups where deviations from good manufacturing practices had been reported previously. Of these followup inspections, 2174 showed that producers still were not complying with good manufacturing practice. GAO suggests that producers chronically deviating from good manufacturing practices do not have sufficient incentive to correct their practices because FDA has not used available legal enforcement measures. Such cases of non-enforcement of federal law persist because the users of these products have no representative like an ACP pressing the FDA to fulfill its responsibilities.

COCKROACHES, FLIES, AND RODENTS

The GAO in 1972 found that about 40 percent of food manufacturing plants which are regulated by the FDA under the Food, Drug and Cosmetic Act, were operating under conditions that were unsanitary or worse. The report documented such conditions as cockroaches and other insects, rodent excreta, and non-edible materials in and around products and equipment; improper use of pesticides in close proximity to food-processing areas; use of unsanitary equipment. The GAO report, together with FDA's own inspecting records showing a general decline in food industry sanitation practices, indicates that the Food, Drug and Cosmetic Act has been flagrantly disobeyed. The need for a consumer advocate is especially clear when revolting situations like this are exposed and little is done about them. The ACP could have carefully kept track of Agriculture's and FDA's responses to the GAO reports and insisted that necessary measures were undertaken to clean up the meat and food processing plants.

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THE DEADLY CARGO DOOR

On March 3, 1974, an airline crash occurred just after a McDonnell-Douglas DC–10 took off from a Paris airport. All 346 persons aboard were killed because of negligent regulatory action by CAB. The accident resulted from an inadvertent opening of the aft cargo door during flight, causing the plane to lose pressure and the floor to collapse. The possibility of this cargo door danger was brought to the attention of both McDonnell-Douglas, the manufacturer, and the FAA on at least two occasions during the prior four years—first when ground pressure tests conducted in 1970 revealed the problem and then again on June 12, 1972 when another in-flight incident occurred over Windsor, Ontario. In the Windsor accident, fortunately, the plane was able to land safely despite the crisis. In dealing with the problem after the Windsor incident, the FAA chose, on the strength of a "gentleman's agreement" with an official of McDonnell-Douglas, not to issue a mandatory Airworthiness Directive (which would have involved FAA oversight in the correction of the defect) as recommended by the National Transportation Safety Board, but instead to allow the manufacturer to handle the problem through its own service bulletins. These are usually issued for non-essential matters, and they are not mandatory and are not sent to government officials or airplane operators. A Senate Committee investigating the incident harshly criticized the FAA for this approach to the problem, noting that the public interest in safety requires strong regulatory action. The ACP could have protested FAA's minimal involvement, petitioned it to issue an Airworthiness Directive after the Windsor incident, and perhaps corrected the cargo door defect and averted one of the deadliest plane crashes in history.

TOXICITY OF HCP IN BABY POWDER

In September 1972, the FDA classified all products containing hexachlorophene (HCP) as prescription drugs, ending profligate use of the untested substance and hundreds of over-the-counter remedies and cosmetics, after 30 to 40 French children died from exposure to HCP in baby powder. Animal evidence on the toxicity of HCP has been available to the FDA from its own scientists for several years and FDA admitted at the time of the action that the central nervous system lesions in these infants were identical to those that had been produced in experimental animals. A consumer advocate could have forced action far earlier.

WARNING DEVICE ORDERED INSTALLED AFTER CRASH

Over 50 percent of all airline crashes worldwide are caused by what is referred to as "controlled flight into terrain" (CFIT). A Boeing study revealed that CFIT accidents in 1972 and 1973 resulted in the loss of 1,120 lives and 20 aircraft in the Western world. The FAA is aware of these facts. The FAA also is and was aware that a device called a "ground proximity warning system" (GPWS) warns pilots with lights and taped loud voices to "pull up" should the plane be in danger of a crash due to inadvertent proximity to the ground. The device continues to signal until the pilot pulls up to a safe altitude.

The cost of installing the warning system is about $11,000 per plane—an insignificant amount considering the $5 to $25 million price for each airliner.

Finally, in December, 1974, the crash of a TWA 727 into a mountainside near Dulles International Airport in Washington in which 92 persons were killed, led to an FAA ruling that a limited version of this device be required on all airliners by December, 1976.

An Agency for Consumer Protection could have worked for installation of an adequate device several years earlier and perhaps hundreds of lives would have been saved.

FDA IGNORES TOXICITY OF HCL

In September 1972, the FDA classified all products containing hexachlorophene (HCP) as prescription drugs, ending profligate use of the untested substance and hundreds of over-the-counter remedies and cosmetics, after 30 to 40 French children died from exposure to HCP in baby powder. Animal evidence on the toxicity of HCP has been available to the FDA from its own scientists for several years and FDA admitted at the time of the action that the central nervous system lesions in these infants were identical to those that had been produced in experimental animals.

An Agency for Consumer Protection could have urged the FDA to act earlier saving countless lives.

DEFECTIVE HEART PACERS

A 1975 Report by the Comptroller General of the United States found that the Food and Drug Administration did not comply with its own procedure in a "life threatening situation." Apparently, the FDA failed even to follow its own procedures to independently investigate the cause of a recall of cardiac pacemakers by manufacturers. The common defect in the pacemakers was a leakage of body fluids through the plastic seal of the pacemakers causing short circuiting which led to sudden speeding up or slowing down of the electronic heart pacing. To date, no standard has been issued by the FDA to deal with this problem.

The FDA has not independently established how many deaths and injuries have been caused by this defect, and the number could be substantial. What we do know is that the FDA did not give adequate consideration to possible adoption of a standard developed by the Navy for hermetic sealing of electronic components to prevent short-circuiting caused by moisture. Had there been an ACP, the Agency could have urged the FDA to consider the advantages of hermitically sealing, perhaps saving many lives.

"TIRED BLOOD" ADVERTISING

When the Federal Trade Commission ruled that "tired blood" advertising for Geritol was deceptive and ordered it stopped, the Company was able to continue the ad campaign for 9 years while it ran the case through the appeals process. The consumer advocate could have recommended to Congress at an early date that the Trade Commission authority be adjusted to avoid such an abuse.

RADIATION EXPOSURE

On August 15, 1972, the FDA promulgated performance standards for diagnostic x-ray equipment, which would significantly reduce the major source of man-made radiation exposure. The FDA subsequently extended the deadline for compliance to 1974. These performance standards, which apply only to new equipment, came four years after passage of the 1968 Radiation Control Act. While the FDA was dragging its feet on standards for the new equipment, millions of people were exposed to unnecessary radiation. And old equipment is still radiating thousands of people daily. A consumer advocate would assert the consumer's interest in safe diagnostic techniques, minimizing the unnecessary risks of excessive radiation.

SAFER PRODUCTS AND BETTER WARNINGS

The Food and Drug Administration routinely makes decisions affecting the public health and safety. Most of these decisions are made behind closed doors, with little or no opportunity for consumer participation. FDA has approved the use of DES as a "morning-after" birth control pill, despite evidence linking DES to vaginal cancer in offspring of women taking DES during pregnancy. FDA does not require that women be warned of this risk, even though the "morning-after" pill is not 100 percent effective. FDA refuses to ban or more strictly regulate "feminine hygiene" sprays, although injury complaints about these products run several times higher than FDA's own "acceptable" complaint level. The agency finally proposed weak warning label requirements but even these have not been put into effect. FDA has also refused to ban red dye No. 2 from use in foods, drugs, and cosmetics, although evidence has linked this substance to cancer in animals. Because of deficiencies in the law, consumers do not know which products contain this color additive. A consumer advocate would argue for safer products and better warnings.

FAA AND RADIOACTIVE MATERIALS

On April 6, 1974 a Delta airlines passenger flight from Washington, DC to Baton Rouge, Louisiana carried some radioactive materials which were improperly packaged, resulting in the uncontrolled radiation exposure of hundreds of passengers. The Federal Highway Administration representative in Louisiana who also single-handedly covers the entire state for the Federal Aviation Administration testified that he did not consider enforcement of the hazardous materials packaging regulations to be part of his responsibility, nor did he have enforcement capability. In practice, the FAA relies on the sender to self-enforce the federal regulations, and under the doctrine of federal preemption, the state's power to issue regulations governing shipments of hazardous cargoes in commerce is severely restricted. The state of Louisiana found it was unable to protect passengers traveling into or out of the state. An active ACP could have assisted Louisiana in its fact-finding efforts, and pressed FAA to enforce the federal radiation regulations.

SCHOOL BUS SAFETY

The Department of Transportation failed for seven years to issue standards to improve survivability of school buses despite numerous Congressional requests. This failure finally necessitated Congressional enactment of statutory deadlines requiring DOT action. A consumer advocate could have pressured DOT to follow the will of Congress.

The consumer voice in agency proceedings will demand that the federal bureaucracy be more accountable. The following examples are cases where ACP intervention could have saved consumers money.

ICC LIMITS COMPETITION OF NEW TRUCKERS

The ICC has recently been criticized for restricting the formation of new trucking companies—limiting competition that would hold shipping rates down. According to the New York Times (4/11/77) a small number of trucking companies have paid more than $80 million for Federal licenses in the last four years that theoretically they could have obtained for less than $150,000 in license fees. Consequently, consumers and businessmen are overcharged for what they buy. ACP could intervene in the ICC licensing procedure and demand more competition between shipping companies, hence bringing prices down for consumers and businesses.

FEA REGULATION COSTS CONSUMERS $20 MILLION

On May 29, 1974, the Federal Energy Administration (FEA) promulgated a price regulation on unleaded gas which set the unleaded gas price equal to the cost of premium gas. The regulation was issued without the usual notice provisions required by law except in emergencies. Worse yet, the regulation was issued despite evidence that the refining costs of unleaded gasoline was about the same as regular grade gasoline, not higher priced premium. On July 10, the FEA agreed that the earlier price rule was wrong and withdrew it. During the six week period, however, consumers paid the unnecessary higher prices for gas which were estimated at $20 million. Later, Consumer's Union sued the FEA and sought restitution. In a decision that is being appealed, the D.C. District Court ruled that FEA had acted illegally but did not order restitution.

FEA LETS GAS PRICES RISE AGAIN IN 1977

After issuance on July 1974 of the rule limiting the price increase of lead free gasoline to a penny per gallon, the oil industry complied for the next two years, saving the consumer about 1 billion dollars. But beginning in the summer of 1976, the oil industry gradually raised the price of lead-free gas to the point where the price difference between lead free and leaded gas was about three cents per gallon.

The reason for the price increase was the lax enforcement by FEA. In December 1976, FEA proposed and then adopted by February 1977 a complex new set of gas price regulations that effectively permitted a price difference of up to seven or eight cents per gallon for lead free gasoline.

Clearly the price increase was not justified and reflects no consumer input. The ACP could demand a higher standard of consumer protection from the FEA.

EMPTY TRUCKS COST BILLIONS

Interstate Commerce Commission regulations which require trucks to return empty from delivery, to make mandatory often out of the way stops, and which allow companies to cooperate in rate-setting have been estimated to cost consumers several billion dollars yearly. The trucking industry has little incentive to argue with the ICC because it passes these costs on to consumers who have no representation in ICC rate-setting activities.

$300 MILLION RATE HIKE

The Civil Aeronautics Board (CAB) seems regularly to take action detrimental to the consumer after inadequate consumer participation in the decision-making process. The Board staff routinely puts airline tariffs into effect without special board action. One especially notable increase was the increase of 4 percent effective November 15, 1974. The CAB was involved in a conspiracy under which all the airlines were persuaded to file identical rate increase applications, thus obviating the requirement of a hearing at which citizens' groups could protest the hike. This plot was an attempt to avoid the rule announced by the U.S. Court of Appeals in *Moss* v. *CAB*, which required hearings for CAB-directed rate changes, and was in addition seemingly in violation of laws against price-fixing. The rise in prices cost the public $300 million, at a time when prior increases and elimination of most discounts had already raised the average per-mile passenger revenues for such major airlines as United and TWA

by about 18 percent in the previous 12 months (New York Times, November 1, 1974). The bottom line in this unwarranted rate hike was that air travel dropped off so markedly in the months following that the airlines had to scramble to reinstitute the discounts they had been so anxious to eliminate only months before. Citizen groups were without the resources needed to appeal this apparently illegal ratemaking action and there was no help forthcoming from the Justice Department, despite requests from many members of Congress. The Board's internal consumer advocate strongly protested but was without power to initiate a court challenge. The role of the ACP in such a case is obvious.

300 PERCENT INCREASE IN PROPANE GAS PRICES

In 1973 the Cost of Living Council issued a rule which segregated petroleum products into two categories for pricing purposes. For a category of "special products" refiners were allowed to include in the price only the actual cost of the crude oil used in those products plus their historic profit margins. For other refined products, refiners were allowed to load the cost of crude oil price increases on the refined products of their choice. Propane was one such product in this latter category, so the result of the rule was that refiners allocated a disproportionate share of their costs onto the price of propane. Refiners chose propane to carry the burdens of price increases because it has the most inelastic demand of all petroleum products: i.e., consumers are more likely to consistently buy a certain amount of propane regardless how high the price gets. This is because propane is relied on very heavily by the broiler chicken industry, for grain drying and for heating and cooking by poor families, especially in the South. Crude oil cost increases were tilted onto the price of propane so much that between mid-1973 and early 1974 the price rose 300 percent. When the FEA came into existence in 1973, it could have changed the special products rule. Instead, gradual changes were belatedly instituted by August 1974, and then largely due to legislation rather than FEA rulemaking. An active ACP could have petitioned the FEA to act more swiftly to alleviate this unjust pricing system.

OIL REFINERS AND "DOUBLE DIPPING"

An FEA regulation permitted oil refiners to collect increased oil costs twice. This practice which has been dubbed "double dipping" might have evenatually led to $332 million in consumer overcharges. After 6 months this loophole was discovered and eliminated. An Agency for Consumer Protection might have spotted the loophole and spared us 6 months of "double dipping."

USDA FAVORS GAS-RIPENED TOMATOES

In 1937, the Department of Agriculture issued a rule that vine ripened tomatoes must be larger than those which are picked prematurely and colored artificially with ethylene gas. The effect was to give premature tomatoes a competitive advantage. Although the gas ripened vegetables are inferior in taste, texture, and vitamin content, the USDA kept the regulation on the books long after the Depression based rationale for the rule had become obsolete. Two weeks ago, consumer groups won a lawsuit to overturn the regulation. An Agency for Consumer Protection could have petitioned USDA far earlier to reverse the rule and sought court review to insure consumers tasty and nutritious tomatoes.

FPC CONFLICTS OF INTEREST

In September, 1974, the GAO released a report charging that the Federal Power Commission (FPC) has been decidedly lax in enforcing its own requirements for disclosure of potential conflicts of interest among its high-level officials. Although FPC standards of conduct regulations require disclosure of financial holdings by officials, the report said a 10-month GAO investigation had revealed numerous failures in filing and reviewing the forms filed. For example, of 125 officials required at the time they were hired to file financial disclosure forms, 55 did not do so, and nine used a less detailed form intended for lower-level officials. Nineteen officials (including administrative law judges and officials in the Commission's Bureau of Power and Office of Economics) were found to own prohibited securities in gas production and pipeline and electric power companies such as Exxon, Texaco, Tenneco and Potomac Electric Power. Under GAO prodding the nineteen were ordered by the FPC to divest holdings "that could conflict with their duties." An ACP could make sure that the necessary divestitures are carried out and that the FPC does a better job of enforcing its regulations in the future.

RAISING THE PRICE OF OLD OIL

The Cost of Living Council raised the controlled price of old oil (two thirds of U.S. production) from $4.25 to $5.25 a barrel in December 1973 without opportunity for any public comment or even a statement for reasons. Subsequent freedom of information requests revealed that the agncy's own documents argued against the increase which cost consumers about $2½ billion. A Federal advocate within the government could have found out about this imminent increase before it took place and argued against it.

FEA ALLOWS PROFIT MARGINS TO GAS RETAILERS

On January 15, 1974 and again on March 1, 1974, the FEA granted increases totalling 3 cents per gallon in the permissible profit margin limitations allowed gasoline retailers. These increases were granted to cover fixed costs during the period of decreased gasoline sales caused by government allocation during the oil embargo. When gasoline sales returned to pre-embargo levels, FEA continued its policy of expanded profit margins. In response to a consumer petition, FEA finally reviewed the profit margins on April 24, 1975, over one year after the special dealer margin increase was no longer warranted. A consumer advocate could have forced the FEA to act sooner, saving consumers millions of dollars.

RUSSIAN WHEAT DEAL

In the summer of 1972 the USSR bought over 700 million bushels of grain from six large U.S. grain corporations. Nearly 440 million bushels of this was wheat—25 percent of the total U.S. wheat crop. The Department of Agriculture (USDA) paid $300 million in export subsidies—supposedly as an incentive for the Soviets to buy—despite intelligence reports indicating poor crop conditions in the USSR and the fact that the U.S. was the dominant world wheat supplier. Secretary Butz, as chairman of the Board of Directors of the Commodity Credit Corporation, decided to grant the subsidy which allowed the grain companies to sell for prices lower than those prevailing in the domestic U.S. market. The Export Marketing Service in USDA then established the daily subsidy rates.

The USDA decision to subsidize the sale of an unlimited amount of wheat to the Russians cost consumers dearly. The direct cost of unnecessary subsidies was $300 million. In addition, consumers paid enormous indirect costs including higher prices for bread and flour-based products, increased prices for beef, pork, poultry, eggs and dairy products due to higher costs for feed grains and a severe disruption of transportation facilities, resulting in higher costs and shortages or delays in delivering certain supplies. Joseph Ferri, Assistant Director of GAO, estimated that the total cost to the American consumer was about $1 billion.

The Soviet grain deal also had an adverse effect on farmers who were unaware of the same and sold their crops at low prices in the beginning of the summer. Farmers in Texas, Oklahoma, Illinois and Missouri sold their wheat in July for $1.38 a bushel; on August 8 a bushel of wheat cost $2.04.

If an ACP had existed, it could have participated in the USDA's decisions and perhaps averted the losses suffered by consumers and farmers.

CAB TURNS DOWN CHEAP FLIGHTS TO LONDON

CAB, in its role of controlling the entry of airlines into the market has not approved a new trunk carrier since 1938. In September 1974, CAB rejected an application by Laker Airways, a privately owned British airline, to fly regularly scheduled New York-to-London flights for $125 each way—a little more than one-third the "economy" fare now charged by Pan Am, TWA, and other members of the IATA, the International rate-fixing cartel. The consumer advocate could have intervened in the application proceeding and sought Judicial review of the agency rejection on behalf of the consumer interest in competition.

IMPORT TRADE RESTRAINT

Voluntary trade restraint agreements are generally negotiated by inter-agency task forces in informal proceedings that provide no opportunity for input by interested consumer groups. Three examples illustrate the need for an ACP in this area:

(1) Consumer groups estimate that voluntary restraint agreements on steel negotiated by the State Department without public notice until December 1974 cost U.S. consumers between $500 million and $1 billion. The GAO reported that although restraints on steel protected the domestic industry against import competition between 1969 and 1971, they did not result in increased modernization or other improvement in the industry.

(2) The Committee for the Implementation of Textile Agreements provides no formal public hearings before agreements with foreign exporters are announced. Consumer groups estimate that this added between $1 billion and $2.5 billion in costs to consumers in 1972.

For both steel and textile restraints, the GAO estimated costs of $430 million for administration of the quotas, loss of Treasury revenue from import taxes, and concessions to foreign governments as compensation for their loss due to restrained exports. There were set-offs to this cost but GAO did not suggest a figure. GAO did suggest, however, that these restraints were negotiated without a careful assessment of the arguments for protection and the most appropriate form it should take, and without regard to current or prospective conditions.

(3) Although high meat prices and consumer outrage brought an end in 1972 to voluntary restraint agreements limiting the amount of meat the U.S. imported, new restraint agreements have been negotiated in response to cries for protection from cattlemen throughout 1974.

The ACP could introduce consumers' views to these and other heretofore closed negotiations detrimental to consumer interests.

Wasting funds in federal agencies is a common occurrence, due to inefficiency, disorganization, and inertia. The following cases are examples where the ACP could have intervened and saved the federal government money.

EXPENSIVE DRUGS

HEW issued a regulation in July 1975 which states that the government will reimburse, under Medicare and Medicaid, only for the "maximum allowable cost" of prescription drugs, which is the lowest cost at which a drug is widely available. HEW's action comes in response to evidence documented by a variety of sources (including Congressional hearings) that although drugs of the same quality are sold at widely differing prices, the difference often depends simply on whether a drug is sold under its generic or a brand name. When the new regulation is in effect, it will save state and federal governments from 60 to 75 million dollars a year, according to Dr. Mark Novich, Deputy Assistant Commissioner of Medical Affairs. However, as of April 1977, the regulation has not yet been implemented. Two drugs, ampicilin and penicilin pk, are nearing final action. These two drugs alone will save the government two million dollars a year. Twenty to thirty more "MAC" limits will be imposed within the next year, according to Dr. Novich. AMA filed a lawsuit to block the implementation of this program—which was settled in March '77 in favor of the government. The ACP could have been instrumental in defending this program, and ensuring a thorough and more immediate implementation.

USDA'S WASTEFUL STUDIES

USDA recently spent $45,000 on a study for food industries to discover how long Americans usually take to cook breakfast. Similar studies are planned for cooking lunch and dinner. The agency spends $16 million annually on press releases and television films as self-promotion. $16 million is spent on publications to be distributed to the public. The Department spends $22 million annually on cotton research, and the same for wheat, corn and soybean research—although the latter are far more important to US farm income. ACP intervention could prove these kinds of activities wasteful, and consequently save federal funds.

TAXPAYERS PAY TO FIND OUT WHY MONKEYS CLENCH THEIR JAWS

In 1975, the National Science Foundation (NSF) spent $84,000 on three studies to learn why people fall in love. NSF, the Space Agency, and the Office of Naval Research spent $500,000 jointly to research why monkeys clench their jaws. In 1976, National Aeronautics and Space Administration (NASA) requested $2.8 million to build housing for 100 pounds of moon rocks. NASA already spent $8.7 million in 1971 for a building to store, handle, and study the rocks. ACP could examine these kinds of wasteful expenditures and tighten the government's budget.

WASTE IN HEALTH CARE SYSTEM

The magnitude of wasteful costs tolerated by our system of health care is staggering. It has been estimated for example, that unnecessary hospitalizations cost about $10 billion every year, and that unnecessary surgeries cost over $4 billion per year. (See testimony by Dr. Sidney Wolfe before House Subcommittee on Oversight and Investigations, July 15, 1975). HEW has the power to reduce substantially some of this waste, yet it has not taken sufficient action. For example, Medicare and Medicaid payments could be made contingent upon hospitals' use of preadmission certification to verify

the necessity of every hospitalization, or second opinions to confirm the necessity of every elective surgery. In 1974 HEW was considering a proposal to require preadmission approval of all federally-reimbursed hospitalization, but the proposal was withdrawn by Secretary Weinberger. Subsequently, in February 1975, HEW did issue a regulation requiring the hospitals to review hospitalizations within 24 hours of admission, but the regulation is in jeopardy from an AMA lawsuit challenging it. Furthermore, HEW has done nothing to require second surgical opinions or other waste trimming measures such as pre-admission testing which have been shown to be effective in reducing costly overutilization without sacrificing quality of care. An ACP could prod HEW into action in this area.

Precedents for Such an Agency

Large government subsidy and advocacy programs that benefit business ineterests already exist.

GOVERNMENT SUBDIDIES TO BUSINESS

A study published in the Joint Economic Committee in 1974 projected the amount of federal subsidies in 1975 as $95.1 billion. The committee's staff estimates that the amount has now passed the $100 billion level (New York Times). The study defines a subsidy as "the provision of Federal economic assistance, at the expense of others in the economy, to the private sector producers or consumers of a particular good, service or factor of production." Government subsidizes a plethora of areas: Food and agriculture, health, education, transportation, trade, commerce and economic development, etc. The following examples are industries subsidized by federal funding.

Conrail, the nation's largest railroad, began operations in April of 1976. The 17,000 mile rail system employs some 96,000 people thru 16 northeast states. In the first nine months, Conrail lost $205.5 million on revenues of $2.45 billion. Edward Jordan, chairman and chief executive officer of Conrail, estimates that the industry will make a profit by the end of 1980. The government will invest more than $2 billion during this time to keep the railroad operating.

The annual subsidy in 1975 for the maritime industry was $589.7 million for the construction of ships, sailors' wages, and research and development. The '77 authorization bill calls for a half billion dollars for the entire maritime industry.

Secretary Bergland estimates that the price supports program for agriculture as submitted by the administration for 1978 will be around $2 billion.

The USDA will spend $4 million in 1977 on peanut research, including studies examining how to increase yields. At the same time, the Department will pay $188 million for surplus peanuts.

U.S. Travel Service spent $11.2 million in 1975 to promote travel to this country. In effect, the government funded an advertising campaign for airline and hotel industries.

Overseas Private Investment Corporation provides insurance and guarantees for corporations investing in undeveloped countries. Between 1970 and 1975, the government funded OPIC with $106 million: of which 70 percent supported the 500 largest industrial corporations.

The number of federally insured and federally guaranteed loan programs total 147, with a substantial amount of the monies underwriting business interests.

Loan Guarantee Catalog

DEPARTMENT OF AGRICULTURE

1. Farm Credit Administration.
2. Farmers Home Administration—Emergency Loans.
3. Farmers Home Administration—Farm Labor Housing Loans and Grants.
4. Farmers Home Administration—Farm Operating Loans.
5. Farmers Home Administration—Farm Ownership Loans.
6. Farmers Home Administration—Grazing Association Loans.
7. Farmers Home Administration—Irrigation, Drainage and Other Soil and Water Conservation Loans.
8. Farmers Home Administration—Low to Moderate Income Housing Loans.
9. Farmers Home Administration—Rural Housing Site Loans.
10. Farmers Home Administration—Recreation Facility Loans.
11. Farmers Home Administration—Resource Conservation and Development Loans.
12. Farmers Home Administration—Rural Rental Housing Loans.
13. Farmers Home Administration—Soil and Water Loans.

14. Farmers Home Administration—Water and Waste Disposal Systems for Rural Communities.
15. Farmers Home Administration—Watershed Protection and Flood Prevention Loans.
16. Farmers Home Administration—Business and Industrial Loans.
17. Farmers Home Administration—Indian Tribes and Tribal Corporation Loans.
18. Farmers Home Administration—Community Facilities Loans.
19. Farmers Home Administration—Emergency Livestock Loans.
20. Farmers Home Administration—Federal Crop Insurance Corporation.

DEPARTMENT OF COMMERCE

21. Bureau of Indian Affairs—Indian Loans, Economic Development.
22. National Oceanic and Atmospheric Administration—Fishermen Reimbursement of Losses.
23. National Oceanic and Atmospheric Administration—Fishing Vessel Obligation Guarantees.
24. Maritime Administration—Maritime War Risk Insurance.
25. Maritime Administration—Federal Ship Financing.
26. Trade Adjustment Assistance for Firms.
27. Trade Adjustment Assistance for Communities.
28. Economic Development—Business Development Assistance.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

29. Health Maintenance Organization Development.
30. Nursing School Construction Assistance Direct Loans, Grants Guarantees and Interest Subsidies.
31. Higher Education Act Insured Loans.
32. Student Loans.
33. Academic Facilities Loan Insurance.
34. Academic Facilities Loan Insurance.
35. Student Loan Marketing Association.
36. Hospital Construction Loan Program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

37. Federal Insurance Administration: Flood Insurance.
38. Federal Insurance Administration: Urban Property Insurance.
39. Federal Insurance Administration: Crime Insurance.
40. Housing Production and Mortgage Credit: Interest Reduction Payment—Rental and Co-op Housing for Lower Income Families.
41. Housing Production and Mortgage Credit: Interest Reduction Acquisition and Rehabilitation of Homes for Resale to Lower Income Families.
42. Housing Production and Mortgage Credit: Interest Reduction and Mortgage Insurance for Homes for Lower Income Families.
43. Housing Production and Mortgage Credit: Interest Reduction and Mortgage Insurance for the Rehabilitated Homes for Lower Income Families.
44. Major Home Improvement: Loan Insurance for Housing Outside Urban Renewal Areas.
45. Mortgage Insurance: Mobile Homes.
46. Mortgage Insurance: Construction or Rehabilitation of Condominium Projects.
47. Mortgage Insurance for Development of Cooperative Housing Projects.
48. Mortgage Insurance for Group Practice Facilities.
49. Mortgage Insurance for Home Purchases.
50. Mortgage Insurance for Homes for Certified Veterans.
51. Mortgage Insurance for Homes for Disaster Victims.
52. Homeownership Mortgage Insurance for Low and Moderate Income Facilities.
53. Mortgage Insurance for Homes in Outlying Areas.
54. Mortgage Insurance for Homes in Urban Renewal Areas.
55. Mortgage Insurance for Housing in Older Declining Neighborhoods.
56. Mortgage Insurance for New Communities.
57. Mortgage Insurance for Management-Type Cooperative Projects.
58. Mortgage Insurance for Hospitals.
59. Mortgage Insurance for Mobile Home Courts and Parks.
60. Mortgage Insurance for Nursing Homes and Related Care Facilities.
61. Mortgage Insurance for Purchase of Sales-Type Cooperative Housing.
62. Mortgage Insurance for Purchase by Homeowners of Fee Simple Title Lessors.
63. Mortgage Insurance for Purchase of Units of Condominiums.
64. Mortgage Insurance for Rental Housing.

65. Mortgage Insurance for Rental Housing for Moderate Income Families.
66. Mortgage Insurance for Rental Housing for Low and Moderate Income Families, Market Interest Rate.
67. Mortgage Insurance for Rental Housing for the Elderly.
68. Mortgage Insurance for Rental Housing in Urban Renewal Areas.
69. Mortgage Insurance for Special Credit Risks.
70. Property Improvement Loan Insurance for Improving All Existing Structures and Buildings of New Non-Residential Structures.
71. Property Improvement Loan Insurance for Construction of Non-Residential Farm Structures.
72. Property Insurance Loans for Existing Multifamily Dwellings.
73. Property Insurance Loans for Construction of Non-Residential or Non-Farm Structures.
74. Supplemental Loan Insurance for Multifamily Rental Housing and Health Care Facilities.
75. Mortgage Insurance for Experimental Homes.
76. Mortgage Insurance for Experimental Projects Other Than Housing.
77. Mortgage Insurance for Experimental Rental Housing.
78. Mortgage Insurance for the Purchase of Refinancing of Existing Multifamily Housing Projects.
79. Community Planning and Development—New Communities Loan Guarantees.
80. Single Family Home Mortgage Coinsurance.
81. Multifamily Housing Coinsurance.
82. Mortgage Insurance for Graduated Payment Mortgage.
83. Aid to Indian Housing—Annual Contributions to Pay Off Bonds and Notes.
84. College Housing Debt Service Grants.
85. Mortgage Insurance for Armed Service Housing in Impacted Areas.
86. GNMA Mortgage-Backed Guarantees.
87. GNMA Special Assistance Mortgage Purchases.
88. Mortgage Insurance for One to Four Family Homes.
89. Homeowner's Emergency Relief to Assist Homeowners in Danger of Foreclosure—Coinsurance.
90. Mortgage Insurance for Multi-Family Rental Housing.
91. Low-Income Public Housing Contributions for Payment of Bonds and Notes.

DEPARTMENT OF THE INTERIOR

92. Indian Loan Guarantees.
93. Indian Loan Insurance.

DEPARTMENT OF TRANSPORTATION

94. FAA—Aviation War Risk Insurance.
95. National Capital Transportation Act.
96. Rail Passenger Service Act.
97. Regional Rail Reorganization Act.
98. Aircraft Loan Guarantee Program.
99. Emergency Rail Guarantee Program.
100. Guarantee Program for Washington Metropolitan Area Transit Authority Obligations.
101. Passenger Rail Improvement Program.
102. United States Railway Association (acquisition and Modernization loan).
103. Emergency Assistance for Railroads Operating Passenger Service.

DEPARTMENT OF STATE

104. Worldwide and Latin American Housing Guarantee Program.
105. Protection of Ships from Foreign Seizure.
106. Agricultural and Productive Credit and Self-Help Community Development Program.
107. Foreign Housing Investment Guarantees.

EXPORT-IMPORT BANK

108. Loans Sold with Recourse.
109. Medium Term Guarantees.
110. Certificates of Loan Participation.
111. Medium Term Insurance.
112. Short-Term Insurance.

SMALL BUSINESS ADMINISTRATION

113. Displaced Business Loans
114. Economic Injury Disaster Loans.
115. Economic Opportunity Loans for Small Businesses.
116. Lease Guarantees for Small Businesses.
117. Physical Disaster Loans.
118. Small Business Loans.
119. Small Business Investment Companies.
120. State and Local Development Company Loans.
121. Coal Mine Health and Safety Loans.
122. Bond Guarantee for Surety Companies.
123. Meat and Poultry Inspection Loans.
124. Occupational Safety and Health Loans.
125. Base Closing Economic Injury Loans.
126. Handicapped Assistance Loans.
127. Handicapped Assistance Loans.
128. Emergency Engery Shortage.
129. Strategic Arms Economic Injury Loans.
130. Water Pollution Control Loans.
131. Air Pollution Control Loans.
132. Loans to Minority Enterprise Small Business Investment Companies.
133. Small Business Loan Program.
134. Pollution Control Financing Program.

OVERSEAS PRIVATE INVESTMENT CORPORATION

135. Foreign Investment Insurance.
136. Foreign Investment Guarantee.

VETERANS ADMINISTRATION

137. Mobile Home Loans
138. Veterans Insured Loans for Residential Housing.
139. Veterans Guaranteed Loans for Residential Housing.

ADDITIONAL

140. Emergency Loan Guarantee Board.
141. Defense Production Act.
142. Foreign Military Credit Sales.
143. Federal National Mortgage Association.
144. Farm Credit Administration Banks for Cooperatives.

GENERAL SERVICES ADMINISTRATION

145. Federal Building Loan Guarantee.
146. Guaranteed Loans.
147. Real Property Guarantees.

There are several government agencies which already intervene in other agency's proceedings. Occasionally the consumer interest gets represented in this fashion, but more often than not it is the business interest that gets represented.

COMMERCE DEPARTMENT

The Commerce Departmen intervened on behalf of Borden, Inc. in a Federal Trade Commission (FTC) case that woud require Borden to license other companies to make and sell Borden's Real Lemon under the RealLemon name. (Wall Street Journal, March 21, 1977). The government insured that the business interest was developed and considered by the FTC.

SMALL BUSINESS ADMINISTRATION

The SBA represents small businesses primarily in rule changes or proposed legislative changes. SBA has never intervened in formal agency proceedings, but works behind the scenes to have agencies respond to individual complaints. SBA will not represent a small business unless the case will benefit the small business industry at large. SBA has a liaison with 37 agencies, and acts as ombudsman for industry.

Steve Millet of SBA says the SBA budget is approximately $750,000. SBA's authority comes from 15 USC 631, 637 B 12, 639 F. The supplemental executive order, 11-518, March 20, 1970, and Federal Register, Vol. 35, p. 4939, provides for increased representation of small business concerns. He said that SBA "saves small businesses three times what they spend on us." The following are examples of SBA cases:

FEA proposed that all businesses turn off their signs at night. SBA intervened because for many small businesses, signs lighted at night are the ony form of advertising.

ICC controls the movement of freight by determining a specific route (gateways) for independent truckers. SBA became involved in this case as small businesses who do not have a direct route as described by the ICC are at a disadvantage.

When DOD decided to change the bidding system for moving the household goods of military personnel around the world, SBA intervened on behalf of the small freight forwarders. The new system would consolidate such moves by geographic area. Large freight forwarders would have the advantage as they have more equipment, more authority from the ICC to move across state lines and can underbid the small forwarders. This new bidding system would eventually eliminate 60 small freight forwarder companies and effect some 20,000 individuals.

GENERAL SERVICES ADMINISTRATION

The GSA is primarily interested in state cases, representing the interests of the government as an advocate. There are six lawyers in the agency who travel in various states to litigate. These lawyers are in the Regulatory Law Division in the Counsel Department. This division has worked on and off since 1949, and consistently since 1973. The agency has 14 jurisdictions, dealing with issues in transportation, electricity, gas, telephone—basic revenue issues. Annually GSA works on 20–25 cases actively, mostly among state commissions. The authority for GSA derives from 40 USC 481–A4. The following is an example of GSA intervention:

Florida has the highest business telephone rates in the country, but Southern Bell Telephone and Telegraph is applying for still higher rates. GSA will intervene in the rate proceedings, representing federal agency interests.

JUSTICE DEPARTMENT—ANTITRUST DIVISION

In the last decade, the Antitrust Division has become increasingly involved in cases and proceedings before regulatory agencies. One third of the Justice Department's Washington-based attorneys are involved in litigation before regulatory agencies. This section, approximately 50 lawyers, handles some 200 cases each year.

There is no statute granting the Justice Department authority to intervene in regulatory proceedings. The Antitrust Division takes authority from Justice Department regulations, 28 CFR 0.40, and is referenced by appropriation bills.

According to George Hays of the Economic Policy Office, approximately $6 million is designated for litigation with regulatory agencies. He says it is impossible to state how much money is saved by such intervention, but cites examples of cases in which a considerable amount of money is saved.

In 1968 the AD worked to eliminate the fixed rate at the New York stock exchange, which saved approximately $300 million in the first year.

The Antitrust Division is presently intervening in CAB regulations on behalf of the airlines. If the CAB regulations are relaxed, affecting 22–50% of the nation's airfares, approximately $1.5 billion will be saved.

In 1966, the FCC approved the ITT acquisition of the American Broadcasting Company. The AD found this merger anti-competitive, and requested the FCC to reverse its decision. As FCC refused, the AD filed suit in federal court to prevent the sale. ITT and ABC abandoned their deal before the case went to trial.

In February 1977 the Antitrust Division urged the FEA to amend its regulations to encourage increased supplies of and lower prices for residual fuel oil and refined petroleum products. Residual fuel oil is used by utilities for the generation of electricity and as boiler fuel, primarily on the East Coast.

CIVIL AERONAUTICS BOARD—OFFICE OF CONSUMER ADVOCACY

The Office of Consumer Advocacy (OAC) is a staff component of the U.S. Civil Aeronautics Board. In a March 1977 compendium OCA listed the following as an example of it representation of the consumer interest: Domestic Baggage Liability Rules Investigation.

However, the original petition to increase baggage liability from $500 to $750 came from the Aviation Consumer Action Project in August 1973. OCA filed its first comments in the matter in June 1975 even though its complaint handling section finds that 10–12 percent of complaints are on baggage. No real action was taken by the CAB on the issue until February, 1977, two weeks after ACAP filed suit. The final rule raising baggage liability to $750 plus consequential damages is scheduled to become effective April 19, 1977—four years after the formal petition by ACAP.

Although the OCA developed a position comparable to that of the outside consumer advocate, as an in-house critic the office was not that influential.

To provide some historical perspective to this testimony, I am providing a synopsis of some of the issues that faced the 94th Congress.

QUESTIONS SET TO OPPONENTS OF CPA ACT

1. What has Congress done for consumers in a period racked by rising prices, business-dominated government, and widespread disclosures of corporate and government violations?

2. How can a member of Congress vote against a modest consumer agency yet support or condone billions of dollars of taxpayer funds to promote and subsidize many business interests?

3. Why is it fair to approve large subsidy and advocacy activities on behalf of corporate interests by the Department of Commerce, the Maritime Administration, the Department of Interior and other Departments while denying millions of American consumers, young and old, just the right to advocacy (at less than 10 cents per consumer per year) in Washington, DC?

4. Does not Congress need a consumer advocacy agency to balance the adversary process before federal regulatory agencies who make quasi-judicial decisions affecting the health, safety and economic well-being of millions of Americans?

5. Is there not needed a non-regulatory consumer agency to advice Congress about what really is going on in these regulatory institutions and to work for deregulation where it benefits consumers?

6. Isn't there a need for a consumer agency to push for fairer procedures that would permit participation before these departmnts and agencies by citizens and civic groups around the country who are now shut out of this part of their government because of the expense, and other unjust obstacles?

7. Are you not interested in the ways in which the consumer agency is equipped to help small businessmen and farmers as consumers of products and services in the course of doing business?

8. Do you intend to vote against all future special interest business subsidies and promotional activities, renewed or initiated, that build up the bureaucracy at the taxpayer expense if you vote against the consumer bill?

9. Do you dismiss the judgment and experience of hundreds of consumer, civic, religious, labor, cooperative, women, senior citizens and farm groups, along with several dozen companies, who strongly favor H.R. 7575 and who both oppose bureaucracy, inflation and marketplace injustices that have led to so many casualties and so much depletion of consumers' income?

10. If you oppose this bill, would you be willing to debate your position with consumer advocates on radio and television from your office or the House studio for transmission back to your district?

OBJECTIONS TO THE CONSUMER REPRESENTATION PLANS PROPOSED BY THE FORD ADMINISTRATION

The following is a list of the major objections the consumer movement has to the Ford Administration's proposed Consumer Representation Plans. The fact that representatives of consumer organizations have been denied the opportunity to present their views at these regional conferences manifests the lack of interest the White House actually has in hearing what consumers have to say.

1. The plans were developed as a cosmetic devise to allow Gerald Ford to claim that he is interested in the plight of consumers despite his declared intention to veto the Consumer Protection bill, which passed the Senate in May and the House in November. This bill, long and actively supported by consumer groups, would establish an independent advocate to argue the consumer's interest before federal agencies and courts. Were the White House truly concerned about the American consumer, Gerald Ford would sign the Consumer Protection bill.

2. The plans create no new legal rights for consumers. Citizens have no legal right to assure that the agencies obey the guidelines they have set out.

3. Many of the plans add new jobs and new layers of bureaucracy. By doing so, they may well make citizen access to government more difficult and will certainly cost many taxpayer dollars.

4. The plans fail to addres the problem of consumer advocacy. What the Consumer Protection bill does, and what these plans fail to do, is to assure that the consumer interest will be presented before any government agency makes a decision which affects the health, safety, or pocketbook of the American consumer. Quicker response to consumer complaints, establishment of more advisory councils, and abstract pledges to consider the interest of consumers cannot substitute for the creation of a consumer advocate.

5. Plans were submitted by only seventeen agencies and departments. Regulatory agencies, whose decisions directly impact on every American's life, submitted no plans.

6. Symptomatic of the White House attitude towards consumers is the format of the regional conferences. They are set up to assure that the press covers the statements of the White House officials. The opportunity for citizen statements is scheduled to prevent significant press attention. Furthermore, the length of individual statements is severely limited.

7. The release of the Consumer Representation Plans and the planning of regional conferences are designed to delude the public about Gerald Ford's record on consumer issues. As President, Gerald Ford has been a disaster for the American consumer. He has opposed measures to require tougher health and safety standards while endorsing efforts to increase profits for large corporations.

The politics of consumer protection

Although many new democratic procedures have been adopted in the Congress during the 1970's, minority rule still governs. For five years[1] the Consumer Protection Agency bill has been the captive of a few vigorous Congressional opponents and a lobby of multinational corporations. With no regulatory or enforcement power, the consumer agency would act solely as a representative and advocate of consumer interests. The embattled consumer would be assured, for the first time, that his voice is heard when federal agencies make the important daily decisions that affect his health, safety and pocketbook which buys 8.8 percent less today than it did last year, and 18.2 percent less than it did in 1973.

Fearful that the enlightened 94th Congress might enact the long-awaited consumer bill, the business establishment has mounted a massive campaign to secure a Presidential veto commitment and to capture enough progressive votes to prevent a two-thirds veto override. Their techniques mirror a James Bond novel—Computer directed mail campaigns from companies all over the United States sparked to oppose the bill by misleading trade association information; discrete conversations with the President while playing golf; an expensive, unethical public opinion poll purporting to show that people no longer want government supported consumer protection[2]; a lengthy television film with retired Senator Sam Ervin railing against a bill never understood during the years he filibustered it in the Senate ("the Administrator would be an official scandal-monger and would destroy business without any recourse to the courts."[3]); grassroots lobbying by corporate district managers; withheld or promised campaign contributions; big dollar honoraria for speeches by members of Congress; a misleasing and intimidating letter sent at the request of the Chamber of Commerce by Representative Don Fuqua (D-FL) to the business supporters[4] of the bill suggesting that their position had been misstated by the supporters of the bill, and on and on.

Securing the promise of a Presidential veto was easy for the corporate lobbyists, even though it required reversal of Ford's prior support for the bill as Congressman from Grand Rapids[5] and rejection of the 1972 Republican platform by an unelected Presdient. The Challenge was to co-opt the new Congress. After the third Senate filibuster against the bill was finally broken by a vote of 71 to 28, the business lobby focused its fire on the House where the bill is certain to pass but needs to muster a ⅗ vote for enactment over the veto.

Business lobbying to deny consumers the privileges it enjoys

While the Chamber of Commerce (budget: $20 million), National Association of Manufacturers (budget $6.7 million), Grocery Manufacturers Association (budget: $3 million), Business Roundtable (budget: $3 million) and others[6] oppose giving consumers

[1] The Senate passed the bill by a vote of 74 to 4 in 1970, but a tie vote in the House Rules Committee prevented the house from voting on the measure. The House overwhelmingly passed the bill in the 92nd and 93rd Congresses, but the Senate filibustered both times. 65 Senate votes in 1974 was one vote short of the ⅗ needed.

[2] The Library of Congress analyzed the poll in depth and concluded that "The public may favor the Consumer Advocacy Agency or oppose it, but it is not possible to use the Opinion Research poll to arrive at a final consclusion on this matter."

[3] The Chamber sent the film and tape to hundreds of television and radio stations but refused to disclose the list to the bill's sponsors who have filed a complaint with the FCC.

[4] Supporters of the bill include: AMFAC, Inc.; Atlantic Richfield Co.; Bantam Books; Connecticut General Life Insurance Company; the Dreyfus Corporation; Gulf and Western Co.; Jewel Companies, Inc.; King Super Markets Inc.; Labenthal Company; Mobil Oil Co.; Montgomery Ward; Phillips-Van Heusen, Polaroid Corporation; Stop and Ship Companies; Stride Rite Shoes; United Artists.

[5] In the 92nd Congress, Representative Gerald Ford said: ". . . it is a sound, workable bill . . . I think we will be well on the road to good legislation in the consumer area."

[6] Major business opponents: Chamber of Commerce, National Association of Manufacturers, Business Roundtable, National Association of Food Chains, Grocery Manufacturers Association, General Motors, Ford Motor Co., American Cyanamid, Greyhound, Goodrich Tires, Sears Roebuck, Gulf Oil, Proctor and Gamble, Union Carbide, General Electric, American Can, Bryce Harlow of Proctor and Gamble and Rodney Markley of Ford are Presidential confidents.

the capability in a modest $10 to $20 million agency to monitor the federal agencies and present their case at the appropriate time, they themselves have long enjoyed these privileges. Although business receives tax deductions for the costs of lobbying federal agencies, there is scarcely a major business interest group which does not also have an agency or department expressly designed to spend its many millions of dollars of annual budget to promote, subsidize or advocate its interests: aviation, maritime, trucking, cotton, tobacco, banking, nuclear power, drugs, automobiles, agribusiness, etc. A few examples of legislated subsidies recently passed or renewed are:

On February 19, the House increased railroad assistance grants from $85 million to $282 million for operating expenses. The next day it added $100 million for Penn Central and other bankrupt railroads.

On May 12, the House passed the maritime industry's annual subsidy. Much of the $589.7 million budget subsidizes the construction of ships, research and development.

On May 13, the House gave $11.2 million to the U.S. Travel Service to mount an advertising campaign promoting business for the hotel and airline industries.

On June 26, the House passed the Department of Commerce appropriation. Included was $61 million for the Domestic and International Business Administration which subsidizes the sale of U.S. goods in foreign and domestic markets.

On July 14, the House refused to delete a subsidy for Cotton, Inc. from the Agriculture appropriations bill despite flagrant abuses by the corporation, inculding building renovation and moving expenses of well over a million dollars and payment to the corporation's President of a salary twice that of the Secretary of Agriculture. The remainder of the $3 billion in funds is spent on research which the industry should be doing itself.

On September 15 the tobacco industry obtained an alteration of the formula which determines tobacco price supports. The cost over the next 15 months: $157 million.

In the face of evidence that about 5,000 deaths and 200,000 injuries result each year from burns associated with falmmable fabrics, Congress strengthened the Flammable Fabrics Act in 1967. The Commerce Department charged with administering this law, took no action under it for four years. Finally, the agency issued clothing standards for children's sleepwear up to size 6X (fits children 6–7 years old). Manufacturers were given a two-year grace period to meet these requirements. There are still no flammability standards for any clothing over size 6X.

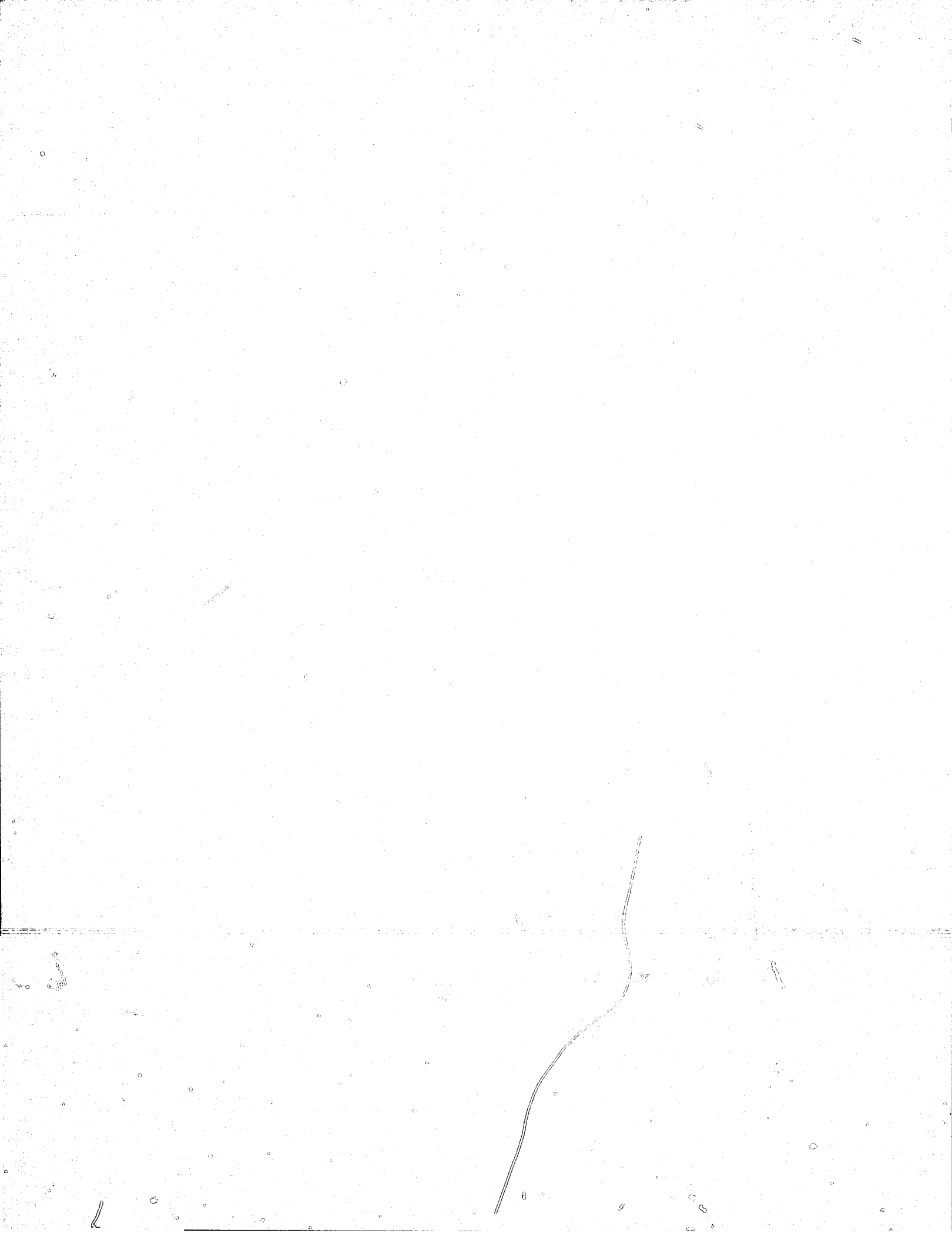
The Department of Transportation failed for seven years to issue standards to improve the crash survivability of school buses despite numerous Congressional requests. This failure finally necessitated Congressional enactment of statutory deadlines requiring DOT action.

The Federal Energy Office raised the maximum profit margin for gasoline retailers from 8 cents to 11 cents per gallon during the early months of 1974 to compensate them for a reduction in sales caused by government allocation. But when gasoline sales returned to normal, the Federal Energy Office failed to roll back the maximum profit margin to 8 cents.

A 1975 Report by the Comptroller General of the United States found that the Food and Drug Administration did not comply with its own procedures to independently investigate the cause of a recall of cardiac pacemakers by manufacturers. The common defect in the pacemakers was a leakage of body fluids through the plastic seal of the pacemakers causing short circuiting. The FDA did not give adequate consideration to possible adoption of a standard developed by the Navy for hermetic sealing of electronic components to prevent short-circuiting caused by moisture, and still has not issued any standards to deal with this problem.

THE AGENCY FOR CONSUMER ADVOCACY AND LABOR-MANAGEMENT RELATIONS

One provision in the consumer agency bill, S. 1262, which has attracted considerable attention and debate states that the ACA shall not, intervene in labor-management disputes before the National Labor Relations Board (NLRB), and its sister agency, the Federal Mediation and Conciliation Service (FMCS). It is argued that a consumer advocate should be able to participate in federal agency activities involving labor as it will before those regulating business inasmuch as wages contribute significantly to the ultimate cost of consumer products. The purpose of this memorandum is to show that under the basic definition of "interests of consumers" in S. 1262 and under



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the scope of the NLRB and FMCS authority, the consumer advocate would be powerless to affect the terms of labor contracts.

It is important initially to stress that the limitation under discussion is not an exemption of organized labor. To the contrary, unions that intervene directly in the product and service market are as much subject to S. 1262 as any other person.

During the last forty years it has been acknowledged that labor-management bargaining could not work effectively unless the parties were left to negotiate without outside interference. The labor laws in this country have accordingly been extensively and carefully nurtured over the years to accommodate this reality. Thus, the NLRB and the FMCS—the only two agencies which brush the bargaining process—may not determine or dictate in any way, shape or form the parties' demands or the terms of their settlement.

The NLRB was created to protect employees' rights to select bargaining representatives without management interference and to bargain collectively. Beyond that, the NLRB does not have the authority to affect the actual outcome of the bargaining process. Indeed, the Supreme Court just five years ago expressly held that the Board may not intervene in that process or dictate any of the substantive terms (including the ecomomic impact on consumers) of collective bargaining agreements. Justice Black, speaking for the Court in *Porter* v. *NLRB*, 397 U.S. 99, 106, 107–108, had this to say about the Board's role: "it is clear that the Board may not, either directly or indirectly compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements * * * and that Sec. 8 (d) [in particular] was an attempt by Congress to prevent the Board from controlling the settling of the terms of collective bargaining agreements. * * * It is implicit in the entire structure of the Act that the Board acts to oversee and referee the process of collective bargaining, leaving the results of the contest to the bargaining strengths of the parties." Since Congress has determined that the Board is not to assess the "substantive terms of collective bargaining agreements", it would be mischievous to empower the ACA to intervene before the Board to argue issues which are outside the scope of the Board's jurisdiction.

Thus, while there can be no doubt that the activities of unions in representing the interests of their members—the working men and women of this nation—do from time to time "impede the flow of goods in interstate commerce" or temporarily "impair the operations of an instrumentality of commerce", as found by the Congress in section 1 of the National Labor Relations Act (29 U.S.C. 151), the purpose of the Congress there was not to confer responsibility or authority upon the NLRB to evaluate economic considerations of labor-management controversies as has been suggested by certain opponents of the ACA. In fact, any casual student of the legislative process readily recognizes that this language was inserted in the National Labor Relations Act as a means of bringing it within the scope of the interstate commerce clause of the United States Constitution. Moreover, even a summary examination of the history of that Act reveals that the Congress hoped to reduce the number and frequency of the many long, bitter and often violent strikes which characterized the times as a result of total employer recalcitrance to the very notion of collective bargaining. Indeed, this goal has been largely obtained by guaranteeing employees the right to organize, to strike, if need be, and to select representatives with whom employers must bargain collectively.

Another misconception advanced by some opponents of the ACA is that the NLRB is authorized, and does regularly consider, many other public interest objectives such as the safety and general welfare of the population at large when resolving various disputes arising under the National Labor Relations Act. Were this the case, then ACA intervention in NLRB proceedings might be appropriate to present such considerations. In fact, however, the Board is charged with responsibility under its Act for protecting employees' rights, including the right to strike, regardless of the consequences unless the strike is directed against a neutral or secondary employer.

In order to provide relief to the general public in emergencies when a strike might threaten the public health, safety or welfare, the Congress conferred authority upon the President to impose what are commonly called Taft-Hartley injunctions. 29 U.S.C. Secs. 176 et seq. By exempting the NLRB from the ACA, the Congress would hardly be prohibiting that agency from calling upon the President to issue such an injunction. The important point is quite simply that the NLRB is not empowered to consider the effects of its actions upon the general consuming public.

Those who argue that the ACA should be entitled to participate in proceedings before the NLRB argue that cases arising under Section 8(b)(4) and (e) of the National Labor Relations Act can have a substantial impact on consumers. The provisions in question prohibit union activities, including strikes, which are directed at neutral, or

secondary employers, as a tool for obtaining a favorable settlement of a dispute with a primary employer whose employees the union actually represents. An illustration of this type of proscribed activity, which has in fact been cited repeatedly by opponents of the labor-management provision, is where a union is seeking to preserve work for its members and is striking to present an employer from purchasing prefabricated materials from an entirely neutral company.

In *Woodwork Mfgrs. Ass'n.* v. *NLRB*, 386 U.S. 612 (1967), the Supreme Court was presented with the issue whether a strike by carpenters to protest their employer's decision to purchase prefabricated doors, instead of permitting them to cut the doors themselves, was a prohibited secondary union activity. In affirming an NLRB finding that in the circumstances of the case Sections 8(b)(4) and 8(e) had not been violated, the Court made it clear that these provisions were "limited to protecting employers in the position of neutrals between contending parties" and that the NLRB's task was not to weigh the economic effects, but rather to determine whether the strike was really directed toward the striking employees' own employer (viz., a "primary strike protected by Sections 7 and 13), or toward another "neutral" employer (viz., a "secondary" strike prohibited by Section 8(b)(4) and (e)). See 386 U.S. at 625, 645–646.

As to the relevance of economic considerations in arriving at this determination, the Supreme Court stressed:

"The Woodwork Manufacturers Association and amici who support its position advance several reasons, grounded in economic and technological factors, why [work preservation strikes] should be invalid in all circumstances. Those arguments are addressed to the wrong branch of government. It may be that the time has come for a re-evaluation of the basic content of collective bargaining as contemplated by the federal legislation. But that is for Congress. Congress has demonstrated its capacity to adjust the Nation's labor legislation to what, in its legislative judgment, constitutes the statutory pattern appropriate to the developing state of labor relations in the country. Major revisions of the basic statute were enacted in 1947 and 1959. To be sure, then, Congress might be of opinion that greater stress should be put on . . . eliminating more and more economic weapons from the . . . [Union's] grasp. . . . But Congress' policy has not yet moved to this point. . . . *Labor Board* v. *Insurance Agents' International Union*, 361 U.S. 477, 500." (386 U.S. at 644.)

In light of the foregoing, should there still be any lingering doubt about the Supreme Court's command to the NLRB to refrain from taking into consideration the economic and other peripheral consequences of its decisions which are to be based solely upon the legal criteria set forth in the National Labor Relations Act, then an analysis of Section 4 will surely remove that doubt. From the date of its creation in 1935 through 1940, the NLRB utilized the services of an internal organization known as the Division of Economic Research which prepared economic data for use by the Board when resolving cases arising under its Act. When the Congress learned of this fact in 1940, it specifically abolished the Division. (See S. Min. Rep. No. 105, pt. 2, 80th Cong., 1st Sess., p. 33.) But in 1947 Senator Taft and Congressman Hartley were so intent on assuring that the Board would attend to the law, and not to potential economic consequences, that they added to Section 4 the proviso that "Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of * * * economic analysis." The point that under our present national labor policy the ACA has no place in NLRB or FMCS proceedings could not be more forcefully put.

Similarly, there is no role for the ACA to serve before the Federal Mediation and Conciliation Service which was created simply to offer mediation services to parties in labor disputes to help them resolve their disagreements peacefully. It has no regulatory functions. The FMCS cannot impose its services upon unwilling parties nor dictate the outcome of negotiations where their services have not been solicited.

Historically, the Congress has studiously followed a course of non-interference with free, give-and-take collective bargaining and has sought only to create and preserve the delicate balance between organized labor and business management. While some people may believe that the time has come to readjust this balance, the place to do so is not in the consumer agency bill. Any legislative tinkering with the collective bargaining process or the potential economic strength of the respective parties will require a thorough analysis of all labor laws and the amendment of many of their provisions. The relative state of labor peace we have achieved in this country by allowing two evenly matched, albeit economically powerful, parties to engage in unencumbered negotiations is not to be so cavalierly discarded.

Should a decision to readjust this delicate balance and to encourage consumer intervention be made, the Congress would have to give consumers the tools needed to

effectively participate in labor-management negotiations, including a distinct group of expert personnel, subpoena power, and full rights of participation.

A consumer representative could not intelligently assess union demands, nor effectively advocate a position of restraint without first making an extensive inquiry into productivity, an important correlative factor in the consumer price function. The consumer representative would accordingly have to be able to secure from management extensive information dealing with such zealously guarded matters as profits on various lines of products, decisions relating to the type, cost and supply of raw materials, the design or composition of products, the design of assembly lines and allocation of the labor force, the availability of more advanced or efficient machinery, plant locations, etc. As Mr. Lloyd T. Williams, Assistant General Counsel for Automotive Distribution, Ford Motor Company, said in the 1973 House hearings on the consumer agency bill, intervention by consumers in labor-management negotiations would be costly to the parties. It is apparent few legislators are now prepared to insert consumer interests into the midst of labor-management negotiations on a full partnership basis.

The case for the creation of the independent Agency for Consumer Advocacy proposed in S. 1262 and for arming it with the painstakingly delineated powers stated in Sections 4, 5, and 6 has been so strongly made that some opponents of the bill, bereft of arguments on the merits, have resorted to fabrication of a superficially appealing issue. Their public posture against the labor-management relations provision is billed as advocacy of equal treatment of business and labor and opposition to an exemption for a powerful special interest group. The hypocrisy of these new converts to strengthening the ACA's powers with authority to intervene in labor-management activities is made evident by their simultaneous opposition to removal of Section 10(a)(4) which exempts over 90 percent of all businesses from the duty to provide information to the ACA. The so-called "labor exemption" smokescreen is another creation designed to confuse many well-intended members of Congress who as a matter of principle do not favor special exceptions in legislation.

General Background Materials

Responses to Questions About the Agency for Consumer Protection

Question. Why not reform the existing agencies instead of creating a new agency?

Answer. The Agency for Consumer Protection is the most sensible route to regulatory reform. It is an anti-bureaucratic ombudsman which can prod the regulatory agencies to perform. And it addresses the fundamental flaw in the regulatory process—the failure of agencies to consider the interests of all affected persons in making crucial decisions affecting citizens' health, safety and economic wellbeing.

Regulatory agencies act in a quasi-judicial capacity and base their decisions on the record of information before them. To be an effective advocate before an agency requires considerable expertise and money. Large corporations and trade associations have the wherewithal to present a strong case to a regulatory agency. Consumers, however, lack the organization and resources. While they are charged with acting in the public interest, regulatory agencies are not obliged to search out rebuttal information and analyses to make a balanced record on behalf of consumers, and indeed they rarely do so. As a result, agencies have habitually tilted toward those exerting the most persistent pressure. With a consumer representative, the regulators would have to strike the fairest balance between opposing views because capricious accommodation of one party would form the basis for a judicial challenge by the other side.

Thus, while agency procedures can and should be reformed, procedural reform is no substitute for equal representation. No amount of procedural reform will provide consumers with the expertise and analysis that is developed by an advocate in a specific proceeding. And not to be dismissed is the fact that, with that expertise in hand, citizens would be better able to express their individual views.

Question. How can the Consumer Protection Agency contribute to regulatory reform?

Answer. The consumer advocate would enhance and further the goals of regulatory reform. For example, it would seek: more openness in the conduct of government and participation by citizens in decision-making; explicit reasons publicly stated for actions taken or not taken by an agency; review and exposure of excesses and violations of rights by agencies; abolition of whole or parts of agencies, particularly those which shield industries from competition, deter new entrants, and prevent enforcement of the anti-trust laws; systematic non-partisan reporting to the Congress about the contributions and the deficiencies of regulatory actions, especially as they affect the victims who are supposed to be protected; consistent, in-depth review of specific agency activities.

Regulatory reform is a continuing process, not a one time decision. As an independent participant in agency proceedings, the consumer advocate would be in a position to continually push for, evaluate, and report on agency reform.

Question. Will the Consumer Agency be another layer of bureaucracy?

Answer. No. Because it is an advocate, not a regulatory agency, its rights are virtually identical to those of any other person under the law. It cannot stop a regulatory agency from acting, nor can it force it to act. It cannot impose any penalties, nor issue any licenses. It does not constitute another step in the regulatory process with which the regulated industry must contend, except to the extent that it must be accorded due process rights to comment or otherwise participate in an agency proceeding and to seek judicial review on behalf of consumers just as the regulated industry is accorded these rights.

To suggest that representation of interests not otherwise represented in a government proceeding constitutes a "layer" of activity is to misunderstand advocacy and due process rights. In addition, the consumer advocate's activities do not duplicate any responsibilities or functions of existing agencies.

Question. In view of the need to cut Government spending, how can the creation of this agency be justified?

Answer. First, it is a mere polka dot in the federal budget, with a maximum authorization of $15 million in the first year and $25 million in the third (less in the House bill). The appropriation will be smaller. This represents about two to three hours of the Pentagon budget, or about 25 cents per American taxpaying family per year. By way of comparison, the Commerce Department, which is charged with the duty to "foster, promote, and develop commerce and industry," has a budget of $1.4 billion, many times that of the consumer agency.

Second, it is hypocracy to suggest that we cannot afford a tiny consumer advocate at a time when the government is spending billions and billions of dollars of taxpayer money for subsidies and promotion of a multitude of business interests including aviation, maritime, trucking, cotton, tobacco, banking, nuclear power, drugs, automobiles, agribusiness, small business, and on and on. Each of these industries has a government agency concerned specifically about its welfare. Cotton, Inc., for example, was recently appropriated $3 million in federal funds to promote cotton.

Third, the consumer agency is not a subsidy program. Historically, the mushrooming budgets have supported subsidy programs, not the regulatory agencies. The budgets for the federal regulatory agencies are together less than about $500 million, and agencies like the Federal Trade Commission which have been in existence since 1914 have budgets of only $40 million. Claims that the consumer advocate's budget will balloon ignore historical precedents.

Question. Won't the consumer advocate increase the cost of agency proceedings?

Answer. To the extent that existing proceedings are budgeted to hear opposing views, as they obviously should, it is unlikely that one additional voice will increase agency costs. To the extent that agencies do not now consider a variety of views, it is possible that a small incremental cost will be added. On the other hand, a consumer advocate can be a catalyst for more expeditious proceedings by opposing the kind of intentional delay now practiced by regulated industries as their way of avoiding enforcement and maintaining the status quo. Because deaths, injuries and frauds are continuing, consumers are usually interested in speedy action. Where delays are short circuited, costs are cut.

Other gains can also offset costs. These include:

1. Effective consumer advocacy in opposing unjustified or excessive increases in prices sought by regulated industries can reduce budgetary pressures on federal agencies who are large consumers of goods and services supplied by regulated industries (e.g., the Defense Department is one of the largest users of long distance telephone calls);

2. Regulated industries will tend to exercise restraints in seeking excessive or unjustified increases and concessions in the face of effective consumer opposition;

3. The sharpening of issues and narrowing of debate likely to result from adversary proceedings in which all sides are reasonably represented will lead to more efficient desicion-making, and more importantly, fairer decisions.

Question. Won't the Consumer Advocate increase the cost of complying with Government regulations?

Answer. There is no inherent reason why consumer participation should increase compliance costs. In fact, for many cases the presence of a consumer advocate should help reduce compliance costs because consumers do not want to pay higher prices. Thus, regulations which require trucks to travel empty to accommodate the trucking monopoly or railroad cars to remain idle would be opposed.

As to health and safety standards, one role of a consumer advocate could be to press for performance standards, thus allowing the manufacturer to meet the standards with any design it wishes, including the most cost/effective design. To a great extent the costs of compliance lie clearly within the discretion of the regulated industry which can use cost/effective or cost/ineffective designs.

Regulated industries have blamed the government again and again for increased prices when in fact only a small portion of an increase, if any, is attributable to the regulations. Automobile manufacturers are a case in point. An important role for a consumer advocate is to dissect cost claims so that regulatory agencies can strike the fairest balance between protection of the public and the costs of achieving that protection. Without consumer participation in regulatory proceedings, the cost claims of the regulated industry are rarely examined.

Question. How will the Consumer Advocate decide what is in the interest of consumers?

Answer. The consumer interest in health, safety and economic well being in marketplace transactions is generally both apparent and uniform. For example, all consumers have an interest in preventing consumer fraud. Where there are different consumer interests, the responsibility of the advocate is to make sure they are reasonably heard, not to decide which to represent and which to ignore. To the extent anyone is already adequately represented, the advocate is directed to focus on others. The bill also makes it clear that the agency is not an exclusive advocate, thus encouraging private consumer representation wherever feasible.

Thus, the consumer advocate need not decide what is "the" consumer interest. Rather, it would present facts and arguments about the effect of federal agency decisions on consumers, with either single or multiple points of view. In this regard, the consumer agency is no different from other organizations which represent diverse points of view, whether they are the Department of Agriculture or the Chamber of Commerce.

The fact that consumer interests may be diverse is hardly a reason for perpetuating the present monopoly of representation by producers, and rejecting representation by a consumer advocate.

Question. Can't consumers be adequately represented by offices within the regulatory agencies or by private organizations?

Answer. Consumer protection offices within federal agencies can serve as an important referral service and prod for consumers interests, but they are not a substitute for an independent office outside the regulatory agencies. A consumer advocate must not be beholden to the interests of the agency before which it is appearing. Businessmen routinely hire outside the auditors to review business activities independently. The same principle applies to consumer representation. Agency consumer offices are merely adjuncts of the agency, with little or no authority (for example, no right of judicial review) and meager budgets. *Business Week* referred to them, whether in corporations or agencies, as "window dressing." If adequately staffed, a consumer advocate office within each agency, even without judicial review, would cost more than H.R. 7575 or S. 200.

As to private organizations, historically they have been under-financed and forced to compete beyond their means with business trade organizations as the Chamber of Commerce (budget: about $20 million); the American Petroleum Institute (budget: about $18 million); the National Association of Manufacturers (budget: about $6.7 million); the Grocery Manufacturers Association (budget: about $3 million); the Business Roundtable (budget: about $3 million); the National Association of Food Chains (budget: about $1.25 million). In addition, the corporate members of these trade associations have millions of dollars to spend on representing their interest in addition to being the key source for information about the matter subject to regulation. Furthermore, it is unrealistic to suggest that even a combination of consumer groups could handle intervention or participation in major cases such as long distance telephone rate increases or corporate fraud.

Question. Is it appropriate for one Government agency to sue another?

Answer. The belief that the United States cannot sue itself is the greatest misconception of all. In the *U.S.* v. *I.C.C.*, the Supreme Court overturned a district court decision which had held the government was restricted in this way.

The Justice Department has stated that intra-governmental litigation "in fact, of course . . . is far from unique." Milton M. Carrow, Chairman of the ABA Section of Administrative law has written: ". . . no new problems, either doctrinal or practical, are presented by the proposal to give the CPA the right to initiate or intervene in proceedings for judicial review of other agency's actions, and that the feasibility and desirability of interagency litigation should accordingly be recognized in this context as readily as elsewhere."

RESPONSE TO BUSINESS COMMENTS ON CONSUMER PROTECTION AGENCY

Question. Would CPA create more unnecessary bureaucracy unresponsive to consumers?

Answer. CPA is a response to the fact that the existing governmental decision making has been closed to those without power, money, and organization. CPA would "break in" to the bureaucracy, carrying the views of consumers who have been unable to penetrate the agencies making crucial decisions affecting them. Rather than increase bureaucracy, CPA would help to make it more responsive to citizen interests.

Question. Would CPA be a super agency with powers never before given to a Government agency?

Answer. CPA would have absolutely no power to regulate, to impose penalties, to grant or deny licenses, or to make rules. It would serve simply as an advocate. CPA would have no greater right to obtain information from business or from other agencies than other government agencies.

Question. Would CPA radically alter the way Government relates to Business?

Answer. To the extent that government and business have reached closed-door decisions without giving due consideration to the consumer viewpoint, CPA would change the present relationship. However, CPA would not change the regulatory responsibilities of other agencies nor would it prohibit business and other interested parties from communicating with these agencies. CPA would simply open the door on these deliberations, exercising its right to participate to the same extent as other interested parties.

Question. Would CPA mean more delay and red tape for business?

Answer. CPA would be bound by the same procedural rules and time limits which apply to business and other parties to agency proceedings. CPA would simply enter an ongoing agency proceeding or activity, in accordance with the rules of the host agency. Also, the CPA will have limited resources ($15 to 25 million)—loss, for example, than the Defense Department's public relations office on the annual budget of the Chamber of the Commerce, and it therefore would be able to participate in relatively few, carefully chosen cases.

Question. Would CPA be a "dual prosecutor"?

Answer. CPA would have no power to decide the outcome of a case or to impose fines or other penalties. Its rights in enforcement proceedings would be the same rights of advocacy, discovery, cross-examination of witnesses, and presentation of evidence as other parties or participants.

Question. Would CPA harass business with "fishing expeditions"?

Answer. CPA is given limited power to gather consumer-related information by sending interrogatories (i.e., questionnaires) to those engaged in business activities which substantially affect consumers' interests. Business can challenge these requests in court and they will be enforced only if CPA can show that they seek information that substantially affects consumer health or safety or which is necessary to discover consumer fraud or other unconscionable conduct detrimental to consumers. They will not be enforced if the recipient shows that they are excessively burdensome. Moreover, CPA cannot use this power if the information is already available publicly or from another agency.

CPA has no independent subpoena power, but it does have the same right to ask a host agency to use its subpoena power during an agency proceeding as any other party, including any business, has under the Administrative Procedure Act. CPA may also request that an agency issue a subpoena relevant to a structured proceeding in which it is a participant but not a full party, but the host agency will issue the subpoena only if it is relevant and the evidence sought is reasonably related to the proceeding.

Question. Could CPA expose trade secrets?

Answer. CPA employees would be subject to the same criminal penalties for unauthorized disclosure of trade secrets and other confidential information which apply to employees of other federal agencies. CPA would not be authorized to disclose trade secret or other information acquired from another agency if that agency stated that the information is exempt from disclosure under the Freedom of Information Act. Where CPA acquired trade secret information from another source, it could be disclosed *only* if necessary to preotect the public health and safety.

Question. Does the bill bar CPA from intervening in any matter affecting labor unions?

Answer. No. CPA would be barred only from participating in labor-management negotiation sessions before the NLRB or the Federal Mediation and Conciliation Service, agencies that serve principally as impartial arbiters assuring that both sides follow procedural rules in working out their differences. Although labor costs do affect prices in the market-place, both labor and management (including active opponents of CPA

who berate this exemption) favor exclusion of CPA from participating in these sessions, as CPA would require access to management's productivity and other financial data in preparing its case. Of course CPA would not be precluded from intervening where a union serves in a role other than collective bargaining agent. For example, CPA could act where a union conspired with an employer to violate anti-trust laws or where a union owned bank violated truth-in-lending laws.

Question. Would CPA have unique rights to seek judicial review or agency decisions which would open all agency decisions to "second guessing?"

Answer. No. Any person who is "aggrieved" by an agency decision may seek judicial review of that decision whether or not he participated below. Participation in an agency proceeding is *not* a prerequisite for standing to seek review of the agency's decision, according to case law. CPA is given statutory standing where consumer interests are aggrieved and thus may initiate judicial action or intervene in an ongoing case, as any "aggrieved" party could.

Prior to initiating judicial review of decisions in which he did not participate, however, CPA must petition the host agency for rehearing or reconsideration. No other person is required to automatically file such a petition in every case. It is a unique burden placed on CPA. Thus, CPA's ability to seek review of these decisions is not unique and would not open decisions to "second guessing" to which they are not already subjected.

Question. Would CPA make informal negotiations between Government and business impossible?

Answer. No, but CPA could participate in these non-structured activities by presenting written or oral submissions in an orderly manner and without causing undue delay. The Federal agency would have to give full consideration to these submissions. Such orderly participation does not make negotiations impossible. It merely assures that the decision-makers are cognizant of the impact proposed negotiated agreements will have on consumers before negotiations are concluded.

Question. Would CPA result in less consumer protection by increasing costs and reducing choice in the marketplace?

Answer. CPA would have no power to take products off the market or to set standards which products must meet. If products on the market are unsafe or ineffective, the consumer interest warrants bringing these facts to the attention of the appropriate regulatory agency. CPA could petition the agency to act, but the regulatory agency would decide whether to take the products off just as they do today.

CONSUMER PROTECTION AND SMALL BUSINESS

In many ways the plight of the small businessman and the consumer are parallel. The Consumer Protection Agency bill creates an instrument, a consumer advocate, which will substantially benefit small businesses as well as consumers in the following ways:

1. Some of the most significant and necessary costs to consumers and to small businesses emanate from anticompetitive and monopolistic practices. Professors William Shepherd and Richard Barber have both calculated that up to two-thirds of our manufacturing sector is characterized by oligopoly power—where four or fewer firms control 50 percent or more of the market. In a preliminary 1972 study of just 100 major industries, the Federal Trade Commission found consumers overcharged a total of $15 billion due merely to their concentrated structures. F. M. Scherer, director of the Federal Trade Commission's Bureau of Economics, has estimated the economic waste and losses from oligopoly and other breakdowns of competition at 6.2 percent of the GNP—which based on the 1974 GNP of $1,396.7 billion amounts to $87 billion annually.

In addition to their overpayment of costs because of monopoly power, small business is continually squeezed out by the monopoly power of large companies. One key obligation of the consumer advocate will be to focus on monopolistic practices and press for strict enforcement of the antitrust laws through participation in antitrust consent decree hearings, through sending data to the Justice Department Antitrust Division and the Federal Trade Commission Bureau of Competition, through petitions to these agencies for initiation of cases enforcing the law, and recommendations to Congress for new legislation to facilitate antitrust enforcement on behalf of consumer interests.

2. Business fraud is a major source of illegal revenue and much of it is taken from honest small businessmen as well as from consumers. Other criminal activity by business increases prices or results in unfair competition. An unprecedented wave of corporate illegality has been sweeping the business community, with daily revelations about political payoffs, tax fraud, illegal campaign contributions, (some in return for

specific favors), over charges by government contractors, failure to comply with securities disclosure laws and others.

In the 18 months ending in December, 1974, the FBI announced that white collar convictions were up 30 per cent, and the United States Chamber of Commerce reports that white collar crime costs Americans at least $40 billion annually.

One responsibility of the consumer advocate will be to press for enforcement of federal regulatory laws against violators, whether they be deceptive advertisers, price fixers, or manufacturers of defective products. While protecting consumer interests, such action by the consumer advocate will also facilitate the business operations of honest small businessmen who are disadvantaged by dishonest competitors or corrupt sellers of products small businessmen use in the course of doing business.

3. Many of the rate-making regulatory agencies have become governmentally sanctioned price fixers for the regulated industries, such as trucking, airlines and telecommunications. The agencies' slow pace and expensive clearance procedures deter entry of newcomers into the marketplace, their requirements often cost consumers far more than an unregulated, competitive industry, and the antitrust immunity granted the regulated industry fosters monopoly which in turn demands continued regulation. The consumer interest and small businessman's interest in deregulation of such industries and reintroduction of competition is similar. The consumer advocate could petition existing agencies to release some of their regulatory controls and recommend corrective legislation to the Congress.

4. The small farmer will also be significantly assisted by the consumer advocate. Like all American families, farmers face the same consumer injustices, such as price gouging, fraudulent schemes, mail-order gyps, unsafe products, credit abuses, and energy manipulations. Farmers also consume products for their operations—propane and other fuels, fertilizers, seed, farm equipment—and need such services as credit and animal health care. Just in the farm equipment area alone, a volume could be written about farmer grievances. And farmers often speak, as do state attorneys general, of monopolistic practices and corporate collusiveness designed specifically to relieve farmers of their hard earned money. Another concern of farmers is transportation of farm products. Railroad freight rates and practices may not concern the Interstate Commerce Commission but they do concern farmers. Exorbitant "middle men" profits raise the price of food to consumers for which farmers often receive the blame. The Washington D.C. based trade associations which represent many of these "middle men" are predictably against the consumer agency.

LISTS OF ORGANIZATIONAL AND BUSINESS SUPPORTERS OF THE LEGISLATION

Our coalition, consisting of various consumer, farm, senior citizen, religious, and community groups, labor unions, and state and local officials, favor enactment of the agency for consumer advocacy legislation.

NATIONAL GROUPS

Amalgamated Clothing Workers of America (AFL–CIO).
Amalgamated Meat Cutters and Butcher Workmen (AFL–CIO).
American Association of Retired Persons.
American Association of University Women.
Americans for Democratic Action.
B'nai B'rith Women.
Common Cause.
Communications Workers of America (AFL–CIO).
Consumer Action for Improved Food and Drugs.
Consumer Federation of America.
Consumers Union of the United States, Inc.
Cooperative League of the United States of America.
Friends of the Earth.
International Association of Machinists and Aerospace Workers (AFL–CIO).
International Union of Electrical Radio and Machine Workers (AFL–CIO).
International Ladies Garment Workers Union (AFL–CIO).
Movement for Economic Justice.
National Black Media Coalition.
National Congress of Hispanic-American Citizens.
National Consumers Congress.
National Consumers League (Esther Peterson, President).
National Council of Senior Citizens.
National Farmers Union.
National Women's Political Caucus.

Oil, Chemical and Atomic Workers International Union (AFL–CIO).
Public Citizen (Congress Watch).
Retail Clerks International Association (AFL–CIO).
Sierra Club.
United Auto Workers.
United Mine Workers of America.
United Presbyterian Church (Washington Office).
United Steelworkers of America (AFL–CIO).
Women's Equity Action League.
Women's Lobby.
Women's National Democratic Club.
Consumer Advocates.

LOCAL GROUPS AND INDIVIDUALS

Alabama

Alabama Labor Council (AFL–CIO).
Julian Butler, Attorney-at-Law (Huntsville).
Morris Dees, Civil Rights Attorney (Montgomery).
Elmore Community Action Committee (Wetumpka).
Dr. Higdon Roberts, Jr., Director, Center for Labor Education and Research, University of Alabama (Birmingham).
Ronald Menton, Director, Alabama Credit Union League.
William Baxley, Attorney General.

Arizona

Paul Castro, Governor.
Arizona Consumer Council.
Arizona Committee for Social Utility.
Tucson Public Power.

Arkansas

David Pryor, Governor.
Earl Anthes, Community Development Consultant (West Memphis).
Arkansas Community Organization for Reform Now (Little Rock).
Arkansas Consumer Research (Little Rock).
Jim Guy Tucker, Attorney General.

California

Alamada County Consumer Action, Inc.
California Citizen Action Group.
California Public Interest Research Group.
CalPIRG Advocates.
Coalition for Santa Clara Valley.
Consumers Cooperative (Don Rothenberg, Richmond).
Consumers Coop of Palo Alto.
Consumers United of Palo Alto.
Fight Inflation Together (Los Angeles).
Friends Committee on Legislation of Southern California.
Gil Graham, Esq., Lawyers Committee for Urban Affairs (San Francisco).
Bob Fellmeth, Deputy District Attorney (San Diego).
People's Lobby (Los Angeles).
San Francisco Consumer Action.
San Francisco Consumer Advocates.

Colorado

Colorado League for Consumer Protection.
Colorado Public Interest Research Group.

Connecticut

Connecticut Citizen Action Group.
Connecticut Consumer Association, Inc.
Connecticut Public Interest Research Group.

Delaware

Mrs. Frances West (Director, Consumer Affairs Division).

District of Columbia

District of Columbia Public Interest Research Group.

Florida

Reubin Askew, Governor.
American Consumers Association, Inc.
Concerned Consumers of Dade County.
Congress of Senior Citizens.
Consumer Information Center of Central Florida, Inc.
Mrs. Stanley Goldberg, Commissioner of Metropolitan Dade County.

Georgia

Citizens Consumer Council of Georgia.

Guam

Ricardo Bordallo, Governor.

Idaho

Cecil D. Andrus, Governor.

Illinois

Dan Walker, Governor.
Illinois Public Interest Research Group.

Indiana

Indiana Public Interest Research Group.

Iowa

Iowa Consumers' League.
Iowa Public Interest Research Group.

Kansas

Consumer Relations Board, Kansas State University.
Consumer United Program.
William Griffin, Assistant Attorney General & Chief, Consumer Protection Division.
Kansas City Consumers Association.
Richard L. D. Morse, Professor, Family Economics, Kansas State University.
Earl Sayre, Legislative Chairman, Kansas Council on Aging.
Curt Schneider, Attorney General.

Kentucky

Consumers Association of Kentucky, Inc.
Kentucky Public Interest Research Group.

Louisiana

Acadiana League.
Consumer Protection Center.
William Guste, Attorney General.
Louisiana Consumers' League.
Mayor's Office of Consumer Affairs (New Orleans).
Charles W. Tapp, Director, Louisiana Governor's Office of Consumer Protection.

Maine

COMBAT, Inc. (Portland).
Maine Public Interest Research Group.

Maryland

Marvin Mandel, Governor.
Alliance for Democratic Reform (Montgomery County).
Maryland Citizens Consumer Council.
Maryland Public Interest Research Group.
Montgomery County Office of Consumer Affairs.

Massachusetts

Father McEwen, President, Association of Massachusetts Consumers (Boston).
Massachusetts Public Interest Research Group.

Michigan

William G. Milliken, Governor.
Consumer Alliance of Michigan.
Michigan Citizen's Lobby.
Michigan Consumer's Council.
Michigan Public Interest Research Group.
Esther K. Shapiro, Director, Consumer Affairs Department, City of Detroit.
Robert Leonard, District Attorney (Flint).

Minnesota
Wendell R. Anderson, Governor.
Sherry Chenoweth, Director, Minnesota Office of Consumer Services.

Missouri
Housewives Elect Lower Prices.
Mid-American Coalition for Energy Alternatives (Clinton).
Missouri Public Interest Research Group.
St. Louis Consumer Federation.

Montana
Thomas L. Judge, Governor.
Consumer Affairs Council, Inc., of Montana.

Nebraska
J. James Exon, Governor.
Consumer Alliance of Nebraska.

Nevada
Consumer League of Nevada.
Rex Lundberg, Commissioner of Consumer Affairs.
Robert List, Attorney General.
Elliot Sattler, Deputy Attorney General.

New Jersey
Brendan Byrne, Governor.
Center for Consumer Education Services (Edison).
New Jersey Public Interest Research Group.

New Mexico
Toney Anaya, Attorney General.
Emily Belasquez, Director, Consumer Education Program, All Indian Pueblo Council.
Delacroix Davis, Jr., Chairman, FEB Consumer Issues Committee (Albuquerque-Santa Fe).
Herman Grace, Director, Division of Human Resources, Office of the Governor.
Mrs. Viola Pena, Director, Consumer Protection Division (Albuquerque).
New Mexico Public Interest Research Group.
Jerry Apodaca, Governor.

New York
Adolfo Alayon, Consumer Action (Bedford Stuyvesant).
Center for Community Issues Research (Rochester).
Consumer Action Now (CAN).
Consumers Association of New York (Rochester).
Consumer Protection Board (Huntington).
Metro-Act of Rochester.
New York Consumers Assembly.
New York Public Interest Research Group.
James Picken, Commissioner of Consumer Affairs (Nassau County).

North Carolina
North Carolina Consumer Council.
Consumer Center of North Carolina.
Conservation Council of North Carolina.
North Carolina Public Interest Research Group.

North Dakota
Arthur A. Link, Governor.
Community Action Line (Grand Forks).

Ohio
Consumer Action of North Dayton.
Consumer Conference of Greater Cincinnati.
Consumer Protection Association of Cleveland.
Consumers League of Ohio.
Ohio Consumers Association.

Oregon
Community Care Association, Inc. (Portland).
Oregon Consumers' League.

Pennsylvania

Milton Shapp, Governor.
Alliance for Consumer Protection.
Bucks County Consumer Organization.
Pennsylvania League for Consumer Protection.
Philadelphia Area Consumers' Council.
Ruth Rodman, Director, Consumer Affairs Education Division, Philadelphia School District.

Rhode Island

Philip W. Noel, Governor.

South Dakota

Richard F. Kneip, Governor.

Tennessee

Tennessee Consumer Alliance.

Texas

John Hill, Attorney General.
Texas Consumer Association.
Texas Public Interest Research Group.

Vermont

Thomas P. Salmon, Governor.
Vermont Public Interest Research Group.

Virginia

Virginia Consumers Citizens Council.

Washington

Daniel J. Evans, Governor.
Washington Committee on Consumer Interests.

West Virginia

West Va. Citizen Action Group.

Wisconsin

Patrick J. Lucey, Governor.

Wyoming

Wyoming Public Interest Research Group.

BUSINESS SUPPORTERS OF THE CONSUMER PROTECTION BILLS H.R. 6118 AND S. 1262

Advanced R & D, Inc., Orlando, Florida.
Aldi-Benney, Burlington, Iowa.
Alexander Hamilton Life Insurance Co., Farmington, Michigan.
American Income Life Insurance Co., Waco, Texas.
American Sound Corporation, Warren, Michigan.
AMFAC, Inc., Honolulu, Hawaii.
Amivest Corporation, New York, New York.
Applikay Textile Process Corporation, Passaic, New Jersey.
Atlantic Richfield Company, Los Angeles, California.
Bantam Books, New York, New York.
Blake's, Springfield, Mass.
Brands Mart, New York, New York.
Cardinal Outdoor Advertising, Erie, Pennsylvania, Danville, Illinois, Terre Haute, Indiana.
Chain Store Systems, Burlington, Iowa.
Chief Auto Supply, Cerritos, California.
Cinema 5 Development, New York, New York.
Coffee Associates Food Enterprises, South Windsor, Connecticut.
Condamatic Company, Inc., Warren, Michigan.
Connecticut General Life Insurance, Hartford, Connecticut.
Consumers Cooperative of Berkeley, Inc., Berkeley, California.
Consumers Cooperative Society of Palo Alto, Palo Alto, California.
Consumers United Insurance Company, Arlington, Virginia.
Co-op and Consumer Supermarkets, SCAN Contemporary Co-op Furniture, Silver Spring, Maryland.
Cummins Engine Company, Columbus, Indiana.

Dansk Design, Mt. Kisco, New York.
The Dreyfus Corporation, New York, New York.
Dyna Day Plastics, Inc., Warren, Michigan.
Dyson-Kissner Corporation, New York, New York.
Walter Emery, Bank of Denver, Denver, Colorado.
Executive Life Insurance of New York, New York, New York.
Factory Equipment Corporation, Los Angeles, California.
Federation of Cooperatives, New York, New York.
Feuer Precision Gauges, Inc., Forest Hills, New York.
Florida Investors Mortgage Corporation, Gainesville, Florida.
Frankel Carbon & Ribbon, Denver, Colorado.
General Instrument Corp., New York, New York.
Laurence Good, L. S. Good, Wheeling, West Virginia.
GRT Corporation, Sunnyvale, California.
Gulf & Western Company, New York, New York.
Hamburger's, Baltimore, Maryland.
Hang Ten International, San Diego, California.
Harper Systems, Little Rock, Arkansas.
Harris & Frank, Los Angeles, California.
Robert Hart, Boulder National Bank, Boulder, Colorado.
Henhouse Interstate, St. Louis, Missouri.
Hydro Medical Science, New Brunswick, New Jersey.
International Creative Management, New York, New York.
International Group Plans, Inc., Washington, D.C.
Jewel Companies, Inc., Chicago, Illinois.
Joseph & Feiss, Cleveland, Ohio.
KB Marketing System, Inc., Brillant, Ohio.
Kennedy's, Boston, Massachusetts.
King Super Markets, Inc., Irvington, New Jersey.
Labenthal Company, New York, New York.
Levi-Strauss, San Francisco, Calif.
Lloyd's Shopping Center, Middletown, New York.
Maxell Corporation of America, Moonachie, New Jersey.
MCA (parent of Universal Pictures). Universal City, California.
Mobil Oil Company, New York, New York.
Monogram Industries, Inc., Los Angeles, California.
Montgomery Ward, Chicago, Illinois.
Myers Bros., Springfield, Ill.
National Patent Development Company, New York, New York.
Oakland Consolidated Corporation, Maitland, Florida.
Optical Systems Corp., Los Angeles, Calif.
Phillips-Van Heusen, New York, New York.
Piedmont Industries, New York, New York.
Pioneer Systems, Manchester, Connecticut.
Polaroid Corporation, Cambridge, Massachusetts.
Professional Insurance Agents, Washington, D.C.
Puritan Fashions Corp., New York, New York.
Putnam-Gellman Corporation, New York, New York.
Ratner Corporation, San Diego, California.
Redwood & Ross Stores, Kalamazoo, Michigan.
Rice's/Nachman's Stores, Norfolk, Virginia.
Rob Roy, New York, New York.
Royal Transmission, Las Vegas, Nevada.
Scottie Car, Springfield, Illinois.
Scottish Inns of America, Knoxville, Tennessee.
Stop and Shop Companies, Boston, Massachusetts.
Stratford Town Fairs, Stratford, Connecticut.
Stride Rite Shoes, Boston, Massachusetts.
TDK Garden City, N.Y.
United Artists, New York, New York.
Warner Communication, New York, New York.
Wrangler Hosiery, N.Y.C., New York.

Chairman RIBICOFF. Mr. Riehm?

I just want you to know Mr. Riehm that as long as I am chairman nothing is cut and dry. I welcome the point of view of every segment

of society, whether I agree with it or not. But I would hope that I will always accord an opportunity for every person and every group to make their position known whether I agree with it or not. I think that is the very basis of democracy and open government.

I do welcome your position and I know it is taken sincerely. Whether I agree with it or not, you do represent a substantial body.

TESTIMONY OF JOHN W. RIEHM, DIRECTOR, VICE PRESIDENT AND SECRETARY TO THOMAS J. LIPTON CO., INC., ACCOMPANIED BY JEFFREY JOSEPH, DIRECTOR OF GOVERNMENT AND CONSUMER AFFAIRS, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. RIEHM. Mr. Chairman, I appreciate your very thoughtful observation and open mindedness and willingness to listen to our remarks.

I am J.W. Riehm, the vice president of external affairs of Thomas J. Lipton, Inc., and a member of the consumer affairs committee of the chamber of commerce. With me is Mr. Jeffrey Joseph, the director of government and consumer affairs for the national chamber.

We are, as you might well expect, appearing on behalf of the chamber in opposition to S. 1262.

I have a prepared statement and request that it be filed for the record.

Chairman RIBICOFF. Without objection your entire statement will go in the record as if read and I assume you would like the exhibits to also go in the record.

Mr. RIEHM. If they may.

Chairman RIBICOFF. The entire statement with the exhibits will go into the full committee record.

Mr. RIEHM. Thank you. That will permit me to offer a few brief summary remarks—which I want to suggest that the Agency for Consumer Advocacy is an idea whose time really has come and gone. Since it was first proposed 8 years ago, there have been sweeping changes in Government including a change in administration which renders the ACA concept, we believe, irrelevant, obsolete, and in fact disruptive of the current administration's goals.

Substantively there has been a near revolution in the creation of Government programs and authority to fill gaps in serving and protecting the consumer. I also appended to these remarks a partial listing, but one of the earlier speakers has detailed them to such a degree I do not feel it necessary to repeat that.

In addition, significant procedural steps have also been taken to make existing agencies and programs more responsive to consumers and the public generally.

The ACA's purpose is not in fact to assist the President and the Congress in identifying bureaucratic bottlenecks, but rather I submit it is to create costly and time-consuming litigation. Nor is the ACA's purpose to really help individual agencies themselves identify the consumer interests, but rather to threaten them with litigation after they have acted.

The ACA was originally conceived by our former speaker, Mr. Nader, as an agency strike force for regulatory reform, and its open-ended litigation powers would permit the ACA to challenge virtually any Government decision in court from environmental policy to trans-

portation to energy policy. Neither the consumers nor even the President could question the ACA's activity and it would decide solely on its own what its position is going to be and how it would espouse it. Agencies are created under our system of government as agents of the President or the Congress to lend expert judgment in carrying out agreed upon policies in a complex society. The establishment of an ACA with sufficient expertise to second-guess every governmental decision in the courts means that either the Government or the ACA is redundant. The presence of a Democratic President in the White House makes possible a joint Presidential and congressional program of Government reorganization and reform. To create a litigation strike force at this time is completely inconsistent with any rational reorganization and reform program.

I said earlier before you came in, Senator Percy, that one of the central points of this legislation is the giving of this power to the advocate or to the Administrator to carry on these proceedings both in an intervening sense at the administrative level and at the judicial level.

The ACA bill treats all government alike, lumping State, Treasury together with OMB, the CAB and the FBC. Yet the very premise of reorganization is the need for selective approaches such as, for example, deregulation in some areas like the CAB, and the ICC, and consolidation in others such as in energy. I cannot help wondering whether Mr. Carter reflected on the potential inconsistency between his message to you on the ACA and his position on energy. And I cannot help wondering how happy he would be with an ACA intervention in an energy department determination to raise natural gas rates or reallocate the use of reserves.

Instead of instructing its own committees to seek information from agencies to evaluate their performance and ensure their accountability to the public, this bill would have Congress delegate that task of congressional oversight to yet another agency by granting it the right to unrestricted access to the files of all the Government without making the agency accountable to the President or anyone but itself. This goes to the point, Senator Ribicoff, which you mentioned earlier in your observations to Mr. Nader about the relative degrees of oversight responsibilities of the Congress on the one hand and what the advocate would be doing on the other.

Instead of urging or enabling agencies to cooperate in obtaining more complete data on industry, Congress would be creating yet another agency to issue its own subpenas, forms, and requests for reports. Instead of trying to create a framework for responsive decisions that need not be reviewed and litigated in courts, Congress would be creating an agency, one of whose purposes would be to subject as many governmental decisions as possible to court review.

In short, without going into the detailed language of the bill, we believe all of the inherent defects of the earlier bills are still present and the comments we submitted on those bills are equally applicable here.

Appended to this statement is an index of 400 newspapers around the country which have editorialized in opposition to the ACA concept of more government and more complex regulatory mechanisms disrupting the Government.

Also attached are copies of editorials written in the last several days.

It is apparent that public opposition to this concept continues to grow as its true meaning is better understood. We submit that the legislation should be defeated once more and hopefully for the last time.

Thank you.

Chairman RIBICOFF. Thank you very much.

Senator Percy, do you have any questions?

Senator PERCY. Not at the moment, thank you.

Chairman RIBICOFF. Thank you very much, Mr. Riehm.

Mr. RIEHM. We may disagree but we are still friends, Senator.

Chairman RIBICOFF. As I said to you, we try and we always will try to give every point of view known to come here before this committee, and frequently even though people do disagree, they may have very constructive suggestions to make about changes or weaknesses in the bill that we can see and understand. We know that you do represent an important segment of American society and we would welcome your testimony on any issue at any time.

Senator PERCY. I would like to say this, Mr. Chairman.

Mr. Riehm, you said in your testimony that you have consistently opposed this legislation. I hope that you would take into account that from the inception of the idea some years back, we have met with a great many business groups, including three meetings that I have had with U.S. Chamber of Commerce panels. We have taken into account many objections, including the objection that it might burden small businesses. We have amended and improved steadily and consistently. Many major businesses in this country have had such an impact in improving the legislation that they are not only not opposing it, they are advocating it. They think it is a good thing for business. There is a long list of major corporations now that have come to that conclusion, and I think their voices should be taken into account. I would like to express appreciation to those businesses that have really helped us on this. Section 24 alone ought to be something that business groups would applaud. I think it may prove to be the most valuable single item ever embodied in a piece of legislation. Section 24 aims to end harassment by regulatory agencies who issue regulations without regard for costs to the consumer.

We have really worked hard to make this a bill that is responsible.

Mr. RIEHM. Senator, I appreciate that observation and obviously it is the basis on which good friends can disagree on fundamental principles, and obviously there is not complete uniformity within industry. Industry is not a monolithic structure, neither are consumers a monolithic structure, and this is where I think we in the chamber come apart with our friends is on these fundamental principles that there are not the kinds of controls, and frankly I do not believe you can draft them into the legislation, that would place the proper kinds of restraints on the consumer advocate. He is given, in effect, unlimited power and the old adage that power corrupts and unlimited power corrupts absolutely is the thing that we really fear in light of past performance. Thank you very much.

Senator PERCY. We will continue our oversight in this area just as we have in other areas where we have legislated. We are certainly

doing it in the budget area and the drug area. We are pledged to oversee the consumer advocate, including use of the "advise-and-consent" function. I think and hope that 5 years from now industry will have no cause for complaint, and I hope they will look back to the cases and agree that they have been good for business. We hope to end the kind of practices that no good businessman would countenance and which really hurt the free enterprise system.

Mr. RIEHM. I might offer one final observation.

Before you came in, Senator, we were commenting on the other legislation which has been developed, and I would only hope that you would exercise the most stringent kind of oversight with respect to all of the existing agencies for 5 years, and then look and see if you need the act.

Senator PERCY. Well, as you know, Senator Ribicoff, Senator Bob Byrd, and I are the authors of sweeping regulatory reform legislation, S. 600, which we think will get right to the heart of the problem you describe.

Chairman RIBICOFF. Thank you very much.

[The prepared statement of Mr. Riehm with exhibits follows:]

STATEMENT OF J. W. RIEHM, ON S. 1262, CONSUMER PROTECTION ACT OF 1977

I am J. W. Riehm, Vice President—External Affairs and Secretary, Thomas J. Lipton, Inc., and a Member of the Consumer Affairs Committee, Chamber of Commerce of the United States. With me is Jeffrey H. Joseph, Director of Government and Consumer Affairs for the National Chamber.

As the world's largest federation of businesspeople and business organizations, the Chamber of Commerce of the United States counts among its members most of the nation's best known manufacturing, retailing and service companies, trade associations and state and local chambers of commerce. Our membership clearly has a vital stake in S. 1262, to establish a Federal Agency for Consumer Advocacy (ACA), because of its impact upon the relationship of business and consumers in the marketplace.

We have, on numerous occasions, expressed the belief that legislation should be enacted to provide a stronger program within the federal government for the representation and coordination of the consumer interest.

We have, on numerous occasions, made known our full support for a statutorily created and strengthened office within the executive branch of the government to coordinate existing federal consumer programs.

In addition, we are currently working through our broad membership to improve the structure and increase the accessibility of small claims courts at the state and local government level. This effort has recently been lauded by Attorney General Bell, Chief Justice Burger and the American Bar Association.

But we have steadfastly opposed the creation of an independent Agency for Consumer Advocacy which would be empowered to intervene, at will, in regulatory agency proceedings, and when dissatisfied with the outcome, immediately would take an appeal to the courts. Some members of Congress and some consumer activists say this stance casts us in an anti-consumer posture. We completely disagree. It is our belief that consumers will be more effectively served, not by establishing a meddlesome new bureaucracy, but by a strong voiced Congressional commitment to effective oversight of agency programs and to consumer protection embodied in a statutorily established executive office to coordinate and oversee the activities of agencies in the area of consumer protection.

We have consistently made these points as this issue has been debated over the last several years. Some will say that in making them again we having nothing new to offer. Yet, the record shows that support has grown dramatically for our position while those who advocate the legislation have been steadily losing ground.

History shows that members of Congress have become increasingly disenchanted with the idea as they become more educated. The House of Representatives, for example, passed this legislation in 1971 by a vote of 344 to 44, but the margin was razor thin in 1975—208 to 199—with over 400 newspapers, representing over 80% of this country's total daily circulation editorializing in opposition.

Members of this Committee have publicly stated that this legislation has been considered, discussed, debated and analyzed to an unprecedented degree and there is not much new to explore. Well, that is true, but only to an extent. The arguments for the bill are the same today as they were seven years ago. Yet, circumstances have changed radically since this legislation was first introduced. For example, a related concept, direct reimbursement to public interest groups who wish to participate in regulatory agency proceedings under certain circumstances is now in full bloom. This session, the House and Senate have already held hearings on legislation which would authorize all federal agencies to reimburse such groups. This concept is currently in place or is being considered in the Federal Trade Commission, the Consumer Product Safety Commission, The National Highway Safety Transportation Agency, Department of Transportation and others. At hearings on S. 2715, last Congress's bill to broaden this concept, Senator Javits stated before this committee that there was a need for either an Agency for Consumer Advocacy or the direct reimbursement concept of public interest groups, but not both. Yet, no mention is made of this development now and supporters of the ACA again push for the legislation using the same old arguments.

EVALUATION OF THE ACA PROPOSAL

The principal difficulty with this legislation today derives from the fact that Congress has eliminated the major reasons for creating it. The ACA was initially conceived to address two basic problems. First was the enormous gap in governmental authority over wide, substantive areas of consumer protection, such as basic product safety,[1] environmental pollution[2] and consumer fraud.[3] Second was the ineffectiveness of existing governmental agencies which were not exercising their existing authority to protect consumers, either because of bureaucratic inertia (such as 20-hour work weeks at the FTC[4]), domination or "capture" by the industries supposedly subject to regulation,[5] information secrecy[6] or a combination of these and related factors adversely affecting performance. It is instructive to review how many of these problems have already been addressed (due largely to the ACA sponsors' efforts) in order to determine whether the ACA is an appropriate or inappropriate response to any problems that remain.

Substantively, there has been a near revolution in the creation of governmental programs and authority to fill the gaps, as the following partial list indicates:

—Environmental Protection Agency (EPA) (1970) augmented by NEPA (1969), Clean Air Act Amendments (1970), Water Pollution Control Act Amendments (1972), and most significantly, the Toxic Substances Control Act (1976); Consumer Product Safety Commission (CPSC) (1972); FTC Improvements Act (1974); Occupational Safety and Health Administration (OSHA) (1970); Agriculture and Consumer Protection Act (1973); Federal Energy Administration Act (FEA) (1974); Medical Device Amendments (1976) (giving the FDA the equivalent of new drug control over medical devices); the Antitrust Penalties and Procedures Act (1974) and the Antitrust Improvements Act of 1976 (for the Antitrust Division and the FTC).[7]

There have also been significant procedural efforts to make existing agencies and programs more responsible to consumers and the public generally. The FTC, for example, has become highly activist on behalf of consumers, in large part as a result of a critical Ralph Nader study in 1969, the new authority granted by the legislation cited above and the consumer movement generally. The Antitrust Division now often intervenes before the regulatory agencies to ensure that the consumer interest in competition is not sacrificed more than minimally necessary.[8] Many agencies have begun

[1] See, for example, Hearings on S. 860 and S. 2045 before a Subcommittee of the Senate Committee on Government Operations, 91st Congress, 1st Sess. (1969), p. 368 (Ralph Nader), and Hearings on S. 1177 and H.R. 10835 before a Subcommittee of the Senate Committee on Government Operations, 92d Congress, 1st Sess. (1971), p. 29 (Statement of Representative Rosenthal).

[2] See, for example, Hearings on S. 1177, *supra*, at 65 (Ralph Nader), and "Federal Role in Consumer Affairs"—Hearings on Numerous Bills Before a Subcommittee of the Senate Committee on Government Operations, 91st Congress, 2d Sess. (1970), p. 296 (Dr. Herbert L. Ley).

[3] See, for example, Hearings on S. 1177, *supra*, at 348 (Betty Furness), 355 (Senator Ribicoff), and 366 (Ralph Nader).

[4] Hearings on S. 860, *supra*, at 391 (Ralph Nader).

[5] Hearings on S. 1177, *supra*, at 24 (Ralph Nader).

[6] *Id.* at 56 (Ralph Nader); Hearings on S. 860, *supra*, at 111 (Senator Gurney) and 375 (Ralph Nader).

[7] See also the Fair Credit Reporting Act (1970), Fair Credit Billing Act (1974), Consumer Goods Pricing Act (1975), Home Mortgage Disclosure Act (1975), Consumer Leasing Act (1976), Federal Boat Safety Act (1971), Safe Drinking Water Act (1974) and Noise Control Act (1972).

[8] See testimony of Thomas Kauper, Assistant Attorney General, Hearings on S. 2028 Before a Subcommittee of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. (1976). pp. 18–36.

to dispense funds to public interest consumer groups for intervention in proceedings. The Freedom of Information Act Amendments of 1974 and the "Government in the Sunshine Act" of 1976 have radically opened agency proceedings to public scrutiny.

The principal remaining problem is the perceived domination of federal agencies by, and their identification with, the industries they regulate.[9] The two reasons for this preceived domination—often called the "capture" theory—appear to be inadequate appointments and lax Congressional oversight.[10] Many invariably go back into industry for better financial rewards as part of the "revolving-door" syndrome. This creates troublesome conflict-of-interest problems and deprives the government of sufficiently long—and disinterested—service. Many in Congress have admitted that it has contributed to a politicization of the appointments process and that it has failed to monitor the enforcement and implementation of legislation it enacts. As ACA sponsor Representative Rosenthal once stated in 1971 in an ACA hearing, "(I)f the Congress had the opportunity, the inclination and the time, the motivation, to oversee all these agencies and to monitor them the way they should be, we wouldn't have to be here today."[11]

The current steps to finish the process of eliminating the possibility of excessive industry influence to make agencies more responsive are numerous and well-known. Both the House and the Senate Reports have urged appointment of more independent and qualified administrators, along the lines proposed by President Carter and recently followed by Governor Brown in California. President Carter has already made consumer-oriented appointments to the Federal Trade Commission, the Department of Agriculture and the National Highway Transportation Safety Agency. The Peterson Commission's executive pay and ethics recommendations should enhance the ability of agencies to attract and retain qualified personnel, in addition to reinforcing President Carter's proposals regarding financial disclosure, four-year commitments to office, the "revolving-door" syndrome and the adoption of strict conflict rules.

Regulatory reform should complete the process, begun nearly a decade ago, of making government more accessible, accountable and responsible. Both the executive and the legislative branches should learn as a byproduct of the reform exercise precisely how to institute effective ongoing oversight with respect to the widely varying governmental activities affecting consumers and the public generally.

The ACA, however, would contribute little to the fundamental need for oversight and accountability. It would more likely perpetuate the underlying problems by permitting (and perhaps requiring) the President and Congress thereafter to ignore consumer interests and regulatory oversight. Moreover, the ACA's purpose is not in fact to assist the President or the Congress in identifying bureaucratic bottlenecks, but rather to help create them by costly and time-consuming litigation. Nor is the ACA's purpose to help the individual agencies themselves identify the consumer interest, but rather to threaten them with litigation after they have acted. Finally, the ACA assumes that its powers are just as applicable to and required for the State Department and the conduct of foreign policy as the prosecution of fraudulent advertising. As Ralph Nader himself described the ACA, it is to be a "strike agency" designed to "revolutionize" the government.[12] As noted above, there already has been something of a revolution. But the job that remains can surely be accomplished better directly than indirectly by the creation of yet another agency that is itself no more accountable to the public than the agencies it is to harass and by definition a great deal less expert.

Instead of instructing its own committees to seek information from agencies to evaluate their performance and ensure their accountability to the public, Congress would delegate this task to yet another agency by granting it the right to unrestricted access to the files of all of government without making that agency accountable to the President or anyone but itself.

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[9] See the Senate Report on the CPA bill, S. Rep. No. 94–66, 94th Cong., 1st Sess., pp. 9–10. See also "Federal Regulation and Regulatory Reform," Report by the Subcommittee on Oversight and Investigations of the Commitee on Interstate and Foreign Commerce, House of Representatives, 94th Cong., 2d Sess., October 1976, p. 474.

[10] See, in addition to the reports noted above, the first and second volumes of the Study of Federal Regulation, prepared pursuant to S. Res. 71, Committee on Government Operations, United States Senate, February 1977.

[11] Hearings on S. 1177, *supra*, at 27.

[12] Hearings on H.R. 6037 and Related Bills Before the Executive and Legislative Reorganization Subcommittee of the House Committee on Government Operations, 91st Cong., 1st Sess., pp. 175–76.

Instead of urging or enabling agencies to cooperate in obtaining more complete data from industry, Congress would create yet another agency to issue its own subpoenas, forms, and requests for reports.

Instead of trying to ensure the framework for responsive decisions that need not be reviewed and litigated in the courts, Congress would create another agency whose principal purpose is not to eliminate the need for time-consuming court review, but rather to subject as many governmental decisions as possible to court review.

Quite apart from the propriety of delegating to the overburdened judiciary increasing day-to-day control over Executive Branch operations, "adversary" government conducted by lawyers under threat of litigation and subpoena is simply not good government. The problem is even worse if the lawyers are accountable to no one, let alone the consumer. Yet, the ACA is such an unaccountable creature. Neither consumers nor even the President could question the ACA's activities, and it could decide solely on its own what position to espouse before the government and what decisions to take to court. The smaller the ACA, the less expertise it can possibly have as to responsible positions to take, and therefore the more irresponsible its actions are likely to be. To give the ACA sufficient expertise, on the other hand, would require the creation of an agency sufficiently large to constitute a shadow government. Put another way, if the ACA were to be large enough to represent all the relevant interests of consumers in all relevant activities, then it might help influence agency decisions so that no appeal to the courts would be necessary—but at a cost that would be prohibitive. But because in fact the ACA will be too small to appear in more than a very few proceedings, it will necessarily be unable to participate in most initial decisions and therefore will have to litigate later in court to vindicate its peculiar view of the consumer interest.

One of the most interesting cited examples of the need for an ACA—the Soviet grain sale of 1973[13]—is also one of the best examples of the utter futility of entrusting the goal of "consumer" protection and responsive government to one unaccountable and inexpert agency. Even if artificially low food prices were clearly more important than foreign exchange earnings to consumers in an increasingly interdependent world economy, an effort by an ACA to block a foreign wheat sale would still not guarantee that farmers, in the future, would not reduce supply in response to lower prices. How can any President have consistent control over foreign policy or honor campaign promises of no further grain embargoes, if another part of government can—with total abandon—effectively nullify any trade decision by taking the issue to the courts?

Agencies are created as agents of the President or Congress to lend expert judgment in carrying out agreed-upon policies in a complex society. The establishment of an ACA with sufficient expertise to second-guess every governmental decision in the courts means that either the government or the ACA is redundant; on the other hand, if grain sales are beyond the competence of a lean ACA because of its limited resources and expertise, then it is hard to understand why every other governmental issue is within the ACA's competence.

It is true, of course, that as amended on the floor, the Senate ACA bill last session would exempt governmental decisions involving farmers from the ACA, notwithstanding the criticized Soviet grain deal. The importance of this and other exemptions is not so much that they are unfair, but that they reveal the total inadequacy and irrationality of dealing nonselectively with the myriad problems of consumers and regulatory reform by creating one monolithic agency to litigate with the rest of government agencies over what it thinks is in the interests of all consumers.

The plain fact is that if the regulated industries dominate agencies to exclude consideration of other legitimate concerns, the answer is to try to eliminate the factors which account for the domination before creating another agency. If, after these factors are addressed, there is still an underrepresentation of legitimate consumer and other public interests, it is then possible to make corrections on a rational, selective and targeted basis.

However, any viable consumer protection proposal must address the varied needs of consumers in the context of the different types of governmental activities involved. It is impossible to view a trade decision by the State Department or a loan agreement by the Exim Bank as presenting the same kind of decision-making problems as a Federal Reserve Board decision on the money supply, a Federal Trade Commission

[13] Hearings on S. 200 Before the Senate Committee on Government Operations, 94th Cong., 1st Sess. (1975), p. 73 (Carol Tucker Foreman), and P. 108 (Ralph Nader).

deceptive advertising case, or a Federal Communications Commission COMSAT rate decision. While no effort to categorize agencies in terms of the need for and ability to accommodate consumer representation can ever be fully successful, almost any effort to do so is better than the sweeping "strike-force" litigation concept of the ACA.

To assert the need to create an independent new agency to make the rest of government more responsive to the public is by definition to ignore the varied needs of actual consumers and the bureaucracy entirely. It is to assert the failure or irrelevance of all of the consumer legislation of the last ten years, as well as current attention on regulatory reform, a stricter code of ethics and financial disclosure, rules against the "revolving-door," more careful appointments, simpler regulations, more open government and higher salaries for the civil service. Finally, it is to assert that the President cannot represent the public, for the ACA would indeed vest the interests of 210 million consumers in an agency over which the President could have no control.

CONCLUSION

Since the ACA was first proposed eight years ago there have been sweeping changes in government—including the change in Administrations—which render the ACA concept wholly irrelevant, obsolete, and in fact disruptive of the current Administration's goals.

The ACA was originally conceived by Ralph Nader as an "agency strike-force" for regulatory reform, and its open-ended litigation powers would permit the ACA to challenge virtually any governmental decision in the courts—from environmental policy to transportation policy to energy.

The election of a Democratic and consumer-oriented President now makes possible a joint Presidential and Congressional program of government reorganization and regulatory reform. A litigation strike-force is thus wholly unnecessary and in fact is completely inconsistent with any rational reorganization and reform program. The ACA treats all of government alike—lumping the State and Treasury Departments together with OMB, and CAB and the FTC. Yet, the very premise of reorganization is the need for selective approaches—such as, for example, consolidation of agencies in the energy fields.

The litigation and subpoena strike-force concept of the CPA is also inconsistent with the President's reorganization efforts to reduce governmental dependence upon lawyers' writing and litigating floods of complex regulations and report forms. Asked if the new energy reorganization would reduce the work of lawyers, James Schlesinger answered, "that is a consummation devoutly to be wished." The ACA, on the other hand, is a government-by-lawyers bill, a codification of Dickens' Bleak House and the lawyer's prayer, "God bless the man who sues my client."

Appended to this statement is an index of 400 newspapers from around the country which have editorialized in opposition to the concept of more government, more lawyers and more complex regulatory mechanisms disrupting the government. Also attached are copies of the most recent editorials written in the last several days. It is apparent that public opposition to this concept continues to grow.

This legislation should be defeated one more time and put to rest for good.

[From the Dallas Morning News, *Tuesday, April 12, 1977.*]

SUCH A NERVE

To contemplate the frustration of those who style themselves "consumer activists" is to enjoy a kind of perverse satisfaction. Seven years have the consumerists labored to bring forth a federal Consumer Protection Agency, and there is not, we rejoice to say, such an agency yet in existence.

The problem is that we may have one by the end of the year.

Where his two predecessors were loathe to give a Consumer Protection Agency sweeping powers to "speak for" consumers, Jimmy Carter is heartily in favor of the notion. The agency he proposes to create would be called the Agency for Consumer Advocacy, but the distinction between it and the Consumer Protection Agency would likely prove a fine one. "Advocates" always see themselves as protectors anyway.

Protectors of whom? Of all of us—rich, poor, smart, dumb, old, young, white, black. To the consumer activists we are all 'consumers.' We all think alike. We have the same interests.

This is of course the most impudent kind of nonsense, but it is the orthodoxy of the consumer advocacy movement. It is the orthodoxy that the massively Democratic Congress may be expected to engrave on tablets of stone once it gets around to acting on Carter's proposal.

What makes this sort of thinking nonsensensical? Let us dwell on just one example—energy prices.

Consumerist—or, if you prefer, Naderite—orthodoxy holds that the lowest prices are the best prices. You see consumerists therefore crusading against rate increases for utilities and lobbying against deregulation of natural gas prices. Viscerally, many of us want to cheer them on, the prospect of higher, ever higher, prices being no pretty one.

But then arises the question: Where is the realistic alternative to price increases? The utilities must cover their costs, and so they must raise their rates. The natural gas producers need the spur of higher prices to get them looking for and producing new supplies of natural gas. Is this not plain to us by now? For 23 years interstate natural gas prices have been regulated at a rate too low to encourage long-term replacement of supplies. In consequence, we are running out of natural gas.

Besides affording economic incentives, higher prices encourage conservation. We are told that utility bills this summer will be ghastly Very well; we raise our windows, and turn on the buzz fans.

In fine, the matter of low prices is not so simple as the Naderite zealots suppose it to be. Which means there are widely divergent views on how the federal government should proceed with regard to energy prices. This being the case, it makes no sense to endow any bureaucrat, or any bureaucracy, with the power to represent the "consumer viewpoint" on this matter. There is no one consumer viewpoint, and the consumerist who pretends there is, is talking through his hat.

Of course this scarely means that the consumer agency bill will not pass, and that various consumerists will not thereafter try to fob themselves off on us as our "spokesmen." No, the point is that they will be imposters. And we all know just how carefully imposters are to be listened to.

[From the Dallas Times Herald, Friday, April 8, 1977]

PROTECTING CONSUMERS

President Carter pledged during his campaign that one of his principal goals would be the reduction of the number of government agencies and an attack on bureaucratic red tape which frustrates citizens and adds billions to the cost of government.

Ignoring these promises, President Carter has now asked Congress to create an "Agency for Consumer Advocacy," an unguided missile which can create havoc in the functioning of government—all in the name of protecting the consumer.

It is our view that consumers are not a unique group standing apart from the rest of the citizenry. All of us are consumers; all of us are affected by the activities of all levels of government. The federa government is not an enemy of the people, nor a monster out to maul the consuming public.

The President and most governmental agencies may indeed need consumer advisers to insure that adequate attention is given consumer interest, but the creation of another bureaucratic conglomeration with vague powers and guidelines is an unnecessary and potentially dangerous move.

The Congress itself is, or ought to be, an "agency for consumer advocacy." Its members can make certain that consumers are heard during consideration of legislation and existing federal agencies can be instructed to be more sensitive to consumer needs.

But the Carter program, already embodied in legislation now before Congress, would establish an agency with a budget of $15 million, charged with advocating the views of consumers before other federal agencies. It could, for example, urge the Federal Communications Commission to set telephone rates that benefit consumers, take a position on whether the Food and Drug Administration should ban saccharin, advise the State Department and the White House about actions in regard to coffee agreements or shoe tariffs that might help hold prices down, and lobby for or against grain sales to foreign countries.

It could take another agency to court if it thought a given decision ignored consumer views. Exactly how the agency would operate would depend on the decisions, or whims, of the President and the person he names to head the consumer agency. The legislation does not define consumer interests nor provide any predictability as to the government's attitude when different groups of "consumers" have conflicting interests.

President Carter's special message to Congress also urged legislation giving citizens more of a right to sue the government, more chances to file class action suits and more help in making their views known to federal agencies and in court suits. The measures he recommends, the President said, will "enhance the consumer's influence within the government without creating another unwidely bureaucracy."

We fail to see how the consumer agency could be kept small, given the comprehensive scope of consumer interests. But small or large, a consumer advocacy agency could gum up the works of all other departments and load the courts down with thousands of suits.

We believe deeply in the need to protect consumers, but we think that it is a job for President Carter, all of his cabinet officers and executive department administrators, all regulatory agencies and all the members of Congress.

Specific problems of consumers can be answered by specific legislation or specific regulations issued by governmental agencies. Creating a special agency with a vague charter will solve few problems but will, in all likelihood, cause needless conflicts and confusions.

[From the Dispatch, Henderson, N.C., February 19, 1977]

PROTECTING PEOPLE FROM THEIR GOVERNMENT

In America in these latter times, it has come to the point that the individual thinks he needs help in protecting himself from his own government. In more common sense years such a thing was unthinkable. What would the Founding Fathers have thought of such a monstrosity?

This is the reason for the long agitation for the so-called Consumer Protective Agency. It ought not to be necessary, and would not but for the maze of bureaucracy which throws its weight around in imposing decrees, restrictions and restraints upon the individual.

This Consumer idea has been repeatedly rejected by Congress and the administration. It did get by House and Senate but was vetoed by the President. It would only add another layer of bureaucratic harassment and creation of unlimited jobs and payrolls to increase government costs.

Congress created these agencies but lacks the confidence that they will function properly, and hence a watchdog must be provided in every office to assure proper treatment for citizens. These sleuths would hear consumer complaints and seek to make adjustments in fairness to those involved.

President Carter has said he wants to reduce the labyrinth of agencies which regulate the lives and privileges of citizens. He has not expressed an opinion on the proposed Consumer Protective Agency in particular. If he goes for it, Congress will follow. Then the American people will have an additional haltar around the neck. It's a poor brand of democracy, or freedom, if you please.

[From the Washington Star, Friday, April 8, 1977]

CLOTHING THE CONSUMER

The Ralph Nader appreciation bill has begun its journey through Congress again, this time propelled by a jet stream of White House rhetoric.

It would establish the Agency for Consumer Advocacy, nee the Consumer Protection Agency, that Mr. Nader and others among the vocal consumer groups have been pushing for nearly a decade. Its alleged purpose is to protect the consumers who, Mr. Nader would have us believe, stand naked in the marketplace before greedy, abusive, insensitive merchants.

The ACA (we've never really understood why they changed it from CPA—perhaps it sounded too bookkeeperish) would not, President Carter vowed, be a "regulatory agency." Its purpose, he said, "is to improve the way rules, regulations and decisions are made and carried out, rather than issuing new rules itself."

That suggests what critics have been saying all along: It's going to be a "super" agency—a watchdog over the watchdogs—that will insinuate itself into the business of nearly every other agency in town and before long may be telling them all what to do.

Mr. Carter said the agency will not cost more than $15 million a year. Maybe that's all it will cost in the beginning but it's a gross misreading, we suspect, of what it will cost eventually.

Playing to consumer interests is usually good politics. But is a consumer protection agency really all that important to the American public? An opinion poll a couple of years ago indicated that a large majority of people don't want such an agency.

Is Mr. Carter's advocacy of another layer of bureaucracy likely to be interpreted as contrary to his pledge to reduce government?

Where's the savings in a consumer protection agency? Any saving that the agency produces very likely will be offset, even outweighed, by the cost to the taxpayers of operating the agency and the cost to business of complying with the additional red tape it's bound to create—a cost that will be passed on to consumers.

Mr. Carter would do more for the consumer by holding down inflation.

He would do more by putting the government to work finding cheaper sources of energy.

He would do more by reducing the cost of government, which in turn would reduce the tax burden.

He would do more by seeing that existing agencies do a better job. There are enough agencies that are supposed to look out for the public interest; there's no need for another Naderesque super-watchdog unit.

We had hoped Mr. Carter would not fall victim to that Washington syndrome that makes too many officials hereabouts think that the only way to solve a problem is to create another government agency.

[From the Wall Street Journal, April 8, 1977]

The Sugar and Cream Boycott

We support the idea of a coffee boycott; if the price goes up consumers should buy less. What puzzles us, though, is the lack of a similar organized squawk over the price of sugar and cream.

The prices of both these products would be artificially boosted by measures the Carter administration has taken or is being urged to take. For the sake of 225,000 commercial dairy farmers, President Carter and his Agriculture Secretary Bob Bergland have boosted milk-price supports by a hefty 9 percent. Consumers will shortly be paying up to six cents more a gallon. President Carter is now mulling over recommendations from his International Trade Commission to reduce quotas for sugar imports, to boost domestic prices and protect some 22,000 United States sugar growers.

Mr. Bergland makes some feeble arguments about steadying swings in the free market price, but he's determined to even them out for the benefit of sellers, not buyers. Even though we can remember when the milk lobby was a dirty word, he quite frankly admits that milk prices are going up to pay off a campaign promise Jimmy Carter made to Wisconsin dairy farmers.

The proposed sugar boosts would benefit an even narrower interest group, the beet sugar growers whose costs are inherently higher than cane sugar. (Some of these beet farmers, incidentally, used to be former Congressman Bergland's constituents.) In short, both these measures are classical examples of squeezing the general public for the sake of special interests.

So where are the consumer advocates? Joan Braden, the State Department's resident consumerist, has written several "impact" statements on the sugar question, but her superiors have filed them away, and with a few exceptions, most private groups have failed to connect talk of "import quotas" with rising prices. The only concerted lobbying against the sugar restrictions has come from the large sugar refining companies, which rely on imported cane sugar. The milk boosts, says Secretary Bergland, actually had the approval of Carol Foreman, the consumerist recently appointed Assistant Agriculture Secretary for food and nutrition.

President Carter is parading his support for consumers by proposing a new Agency for Consumer Advocacy, but we can't see how this new bureaucratic outpost would do more than these present appointees to reverse politically inspired presidential decisions like the milk price increase.

Rarely has such a large slap in the face for consumers been so lightly passed over by their professional defenders. The "consumer movement" seems to be indifferent when prices are being pushed up not by the market or a real or imagined foreign cartel, but by our own government in Washington, D.C.

[From the Boston Herald American]

No Need for Super Snoops

Ralph Nader's hopes of achieving official federal power are rising again with the imminent introuction of new Capitol Hill legislation which would establish the Consumer Protection Agency he conceived eight years ago and has been battling for ever since. It is a proposal which Congress, this time, should reject beyond the possibility of further consideration.

As envisioned by the nation's buzziest consumer gadfly and his supporters, the CPA would be a tax-financed, independent agency whose function would be to protect consumers by representing their interests in government. The idea sounds good enough in theory, and its adoption may once even have been desirable, but today it has become irrelevant, obsolete and potentially disruptive.

In the past eight years there has been a revolution in consumer protection legislation and reorganization. Currently, the federal government has 33 agencies and approximately 400 bureaus and subagencies operating more than 1,000 consumer-oriented programs. In addition, Congress has created a dozen special regulatory agencies to ride herd on the others.

The nation, in sum, simply no longer has any need of a super agency whose chief intended function—as proposed—would be to argue the consumer cause in court actions involving federal regulatory agencies. How this purpose would work out in practice, moreover, is as doubtful as it would be expensive.

It would cost a minimum of $60 million to get up the CPA and run it for three years. Far more onerous to the taxpayer would be the incalculable added costs of other agencies responding to the demands of the proposed super agency—or acting even more slowly than usual through fear of CPA interference.

There would be plenty of that because the CPA, in practical operation, would in fact be little more than an official agency constantly looking for places to interfere. It would have absolute power to meddle in the affairs of other agencies—from Defense Department procurement to foreign trade—and to second guess actions through its open-ended litigation authority to challenge and possibly overturn any government decision.

The clearly inherent danger of giving such vast authority to one group, especially one which would be operating independently of the executive branch and Congress, always has been the most potent argument against the CPA. Today, when there no longer is a demonstrable need for such an agency, the argument should be overwhelming and irrefutable.

Government admittedly cannot protect everyone from everything. In this case, however, Congress can protect all taxpayers by emphatically defeating the idea of creating a costly, unnecessary anf probably despotic new bureaucracy of Naderite super snoops.

[From the Sunday Republican, Sunday, April 10, 1977]

Protection for Motherhood

Voicing support for the consumers of America is akin to speaking out in defense of motherhood. Therefore U.S. Sen. Abraham A. Ribicoff and others have no compunction about hailing the proposed Consumer Protection Agency. He and others are almost daring opponents to admit they are "anticonsumer."

The proposal will permit Ralph Nader to dust off his slightly tarnished armor and sally forth again as the protector of the innocent consumer.

Neither Ribicoff nor Nader nor the others who favor the creation of the new bureaucracy predict the cost to the consumer. Sen. Charles Percy, Illinois Republican, has estimated the cost at $15 million the first year, $20 million the second and $25 million the third. Wanna bet!

If Ribicoff and the others would be honest with the public, then his bill could be assessed more fairly. But he ignores the countless governmental agencies—some estimates exceed 400—presently operating programs designed to benefit consumers. There are more than 1,000 different consumer-oriented programs at present.

Who does OSHA protect, if not consumers? Was the Federal Drug Administration created to protect drug manufacturers? What about the Federal Communications Commission, the enforcers of anti-trust laws, the Food and Drug Administration, the Employment standards Administration, and the host of other alphabetical units with staffs paid for by taxpayers?

Let's not deceive the public into thinking that every one of the existing governmental agencies was created merely to protect the industry and to oppress the consumer.

There is already fighting among agencies with some, for example, proposing that more coal be used to reduce oil imports and others prohibiting the use of coal to avoid air pollution.

Just imagine what will happen when the Consumer Protection Agency starts fighting with consumer protection bureaucrats already on other agency payrolls. The end result will be court cases which will negate all progress because the courts today are not noted for speedy decisions.

Meanwhile the consumers will pay the bill for federal employes in two different departments with two sets of opinions, for court staffs to evaluate them, and for the extra expense imposed on industry. The $25 million cost estimate by Sen. Percy is the tip of the iceberg.

Look at the controversy over saccharin. The pending prohibition is supposed to be in the interest of consumers. But the consumers of this nation won't abide by the decision and have told their congressmen so in no uncertain terms. Even Cancer Society authorities question the merits of the restrictions.

Yes, opposing consumer protection is like opposing motherhood. But medical experts will agree that there are times when motherhood can be harmful to health.

The Consumer Protection Agency backed by Ribicoff and others will cost consumers more than they will save—if they save anything.

[From the San Antonio Light, Thursday, March 31, 1977]

SUPER SNOOPERS NOT WARRANTED

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In the past eight years, there has been a revolution in consumer protection legislation and reorganization. Currently, the federal government has 33 agencies and approximately 400 bureaus and sub-agencies operating more than 1,000 consumer-oriented programs. In addition, Congress has created a dozen special regulatory agencies to ride herd on the others.

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It would cost a minimum of $60 million to set up the CPA and run it for three years. Far more onerous to the taxpayer would be the incalculable added costs of other agencies responding to the demands of the proposed super agency—or acting even more slowly than usual through fear of CPA interference.

There would be plenty of that because the CPA, in practical operation, would in fact be little more than an official agency constantly looking for places to interfere. It would have absolute power to meddle in the affairs of other agencies—from Defense Department procurement to foreign trade—and to second guess actions through its open-ended litigation authority to challenge and possibly overturn any government decision.

The clearly inherent danger of giving such vast authority to one group, especially one which would be operating independently of the Executive Branch and Congress, always has been the most potent argument against the CPA. Today, when there no longer is a demonstrable need for such an agency, the argument should be overwhelming and irrefutable.

Government admittedly cannot protect everyone from everything. In this case, however, Congress can protect all taxpayers by emphatically defeating the idea of creating a costly, unnecessary and probably despotic new bureaucracy of Naderite super snoops.

[From the Orlando, Fla., Sentinel Star, Wednesday, April 6, 1977.]

PROTECT OR VEX CONSUMERS?

An eight-year-old bill to create a Consumer Protection Agency is alive and well in Congress and shows no significant signs of aging despite the lapse of years. It is scheduled for committee hearings this month, probably in the House first.

CPA supporters contend federal regulatory agencies do not adequately represent consumers; that a consumer or representative groups could not possibly attend all the hearings necessary for effective oversight of government action as it related to them; that a new agency is the only effective remedy.

Critics claim the proposed new super-agency is scaled to the interests of organized consumer activists rather than to individuals; that consumers can be better served with existing agencies such as the Federal Trade Commission, Consumer Product Safety Commission and others with Broad protection power and responsibility; and that if the agencies are not performing properly Congress should intercede, not create another sprawling bureaucracy.

While arguments on each side are valid, zealous CPA sponsors are overlooking the new administration's rapid implementation of its promise of a more efficient and open government.

President Carter has said he will personally represent the consumer and is working with the Congress toward government reorganization and regulatory reform.

At present, the federal government has more than 1,000 consumer oriented programs operating within 33 agencies, 400 bureaus and sub-agencies, and at least a dozen separate regulatory commissions established by Congress to protect consumers.

A massive CPA with absolute power to interfere with the current conglomerate, as the legislation proposes, would clog federal courts, inconvenience firms and individuals who must then deal with two agencies instead of one, and cost taxpayers a minimum of $60 million its first two years of operation. And that doesn't include the additional costs of other agencies forced to respond to CPA intervention.

That's consumer vexation, not protection, and certainly more government than this country needs, wants or can afford.

CPA should be tabled until the Carter administration has fulfilled its pledge of rational reorganization and regulation reform.

[From the News American, Sunday, April 3, 1977]

NADER'S POWER PLAY

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As envisioned by the nation's buzziest consumer gadfly and his supporters, the CPA would be a tax-financed, independent agency whose function would be to protect consumers by representing their interests in government. The idea sounds good enough in theory, and its adoption may once even have been desirable, but today it has become irrelevant, obsolete and potentially disruptive.

In the past eight years there has been a revolution in consumer protection legislation and reorganization. Currently, the federal government has 33 agencies and approximately 400 bureaus and subagencies operating more than 1,000 consumer-oriented programs. In addition, Congress has created a dozen special regulatory agencies to ride herd on the others.

The nation, in sum, simply no longer has any need of a super agency whose chief intended function—as proposed—would be to argue the consumer cause in court actions involving federal regulatory agencies. How this purpose would work out in practice, moreover, is as doubtful as it would be expensive.

It would cost a minimum of $60 million to set up the CPA and run it for three years. Far more onerous to the taxpayer would be the incalculable added costs of other agencies responding to the demands of the proposed super agency—or acting even more slowly than usual through fear of CPA interference.

There would be plenty of that because the CPA, in practical operation, would in fact be little more than an official agency constantly looking for places to interfere. It would have absolute power to meddle in the affairs of other agencies—from defense department procurement to foreign trade—and to second guess actions through its open-ended litigation authority to challenge and possibly overturn any government decision.

The clearly inherent danger of giving such vast authority to one group, especially one which would be operating independently of the executive branch and Congress, always has been the most potent argument against the CPA. Today, when there no longer is a demonstrable need for such an agency, the argument should be overwhelming and irrefutable.

Government admittedly cannot protect everyone from everything. In this case, however, Congress can protect all taxpayers by emphatically defeating the idea of creating a costly, unnecessary and probably despotic new bureaucracy of Naderite super snoops.

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Chairman RIBICOFF. Mr. John T. Miller, please?

Mr. Miller, you are our final witness, and we have to break up at 5 minutes to 12, so you may proceed.

TESTIMONY OF JOHN T. MILLER, JR., PAST CHAIRMAN OF SECTION ON ADMINISTRATIVE LAW, AMERICAN BAR ASSOCIATION

Mr. MILLER. Mr. Chairman, Senator Percy, I regret that I was not here when my name was called, but both sides of the Hill are holding hearings on this same very important legislation at the same time, and it is a little difficult to coordinate.

My name is John T. Miller, Jr. I am a practicing attorney in Washington, D.C., an adjunct professor of law at Georgetown, and a past chairman of the Section of Administrative Law of the American Bar Association.

I have been asked by the president of the American Bar Association, Mr. Justin Stanley, to appear here today to express the American Bar Association's support for legislation establishing an Agency for Consumer Advocacy.

I have a prepared statement, Mr. Chairman, which I ask be copied in the record as though read so that I may make a brief statement in lieu of that.

S. 1262 would establish an independent Agency for Consumer Advocacy. We support the proposition in principle because we believe it would facilitate the consideration of consumer interests in administrative proceedings.

There are two aspects of this legislation which we are very much interested in. We testified about this when we appeared 4 years ago before this committee on similar legislation.

The first is the right to intervene. We believe that the Administrator ought to have an effective right to intervene in administrative proceedings. To make him an amicus curiae, which means he hopes that what he writes will be read, is not the way to permit him or to leave him.

The legislation as we see it will permit him to be an effective participant at the administrative level and we support that.

On the appellate level, we have two recommendations. We believe it is very important that the Administrator be allowed to appeal to the courts wherever such an appeal is otherwise permitted by law to anyone who would be effective in this manner. But we would recommend that you amend the legislation to the extent it would permit the court to decide whether the Administrator should proceed on appeal.

We realize there is a problem where the Administrator did not participate in the Agency proceeding and has decided that there is a substantial consumer interest which requires protection through a court of appeals. We think that it is important in such a situation that if the regulation requires that one apply for rehearing to the Agency first, that the Administrator be required to follow that course so that the Agency can correct error if there is error before there is a court challenge. But where there is not that kind of provision, and the Administrator has not participated in the agency proceeding, we do not think it advisable to leave it to the court to decide whether the Administrator should be allowed to appeal.

The legislation now requires the court to in effect block the Administrator if his action in the court of appeals would not advance the interests of justice. That requires the courts to make two value judgments on the appeal. First to decide whether the Administrator should be allowed to appeal, then later on after briefs, the merits of the appeal.

We think that on the one hand, you give the court a standard for knocking out the Administrator which does not have any background to it. It will just add to confusion and concern. On the other hand, we think that the courts are quite able to protect themselves against appeals which are unwarranted and to tell the Administrator so when they catch him in that situation.

I have an additional comment to make on this in light of the fact that you have a sunset provision in this law. I think it is fair to say that if this law dies in 3 to 4 years and we express no opinion on the merits of that, but if it does you may well have the situation where the Administrator is about ready to go to the court of appeals at the time this legislation ends. And you will not have had a fair demonstration of whether appeals to the court of appeals by the Administrator are worth it in terms of protecting consumer interests.

We can conceive the possibility, immediately after the Agency is set up, he will find situations where, because he did not have a statutory existence before, he could not participate. And yet the situation warrants a court review.

Well, this legislation would pretty well block him from that kind of court participation until the seasoning process had taken place and he had actually participated in new Agency proceedings and appealed those. I do not think that is what you really intended, because there is going to be an area of failure to protect the consumer interests on the appellate level for some period of time the way the law is now written.

Senator PERCY. Mr. Miller, I would like to ask a question at this point. Is there any precedent for the Government intervenor to initiate court review without participation in the Agency proceedings?

Mr. MILLER. Well, there are many cases I believe involving appeals by, say, the Department of Justice Antitrust Division, of ICC actions where there is a collision between the regulatory function and the antitrust laws. And I believe in those instances you will find cases where there was not a particularly active role played by the Department of Justice in the agency proceedings before they went to court. I believe you can find an article entitled "Administrative Agencies as Judicial Review Petitioners". It is in the joint hearings before the Subcommittee on Reorganization, Research and International Organizations of the Committee on Government Operations and the Subcommittee on Consumers of the Committee on Commerce in the U.S. Senate on the prior bill, S. 707. These were held in March, April, and June 1973. I think you will find a handle there for court decisions along this line.

Senator PERCY. In view of the fact that we are short on time this morning and that your full testimony will go in the record without interruption and questions will follow, would you mind if I ask a couple of questions at this stage?

Mr. MILLER. Yes, sir.

Senator PERCY. I have gone over your testimony and we are very grateful for it. Please express my appreciation, if you would, to my valued constituent, Justin Stanley.

We have built in a 3-year sunset provision. Such a provision would evaluate how much money has been spent and what benefits have been derived.

Is there any set of criteria that you could develop and submit for the record to us that we could use in the evaluation process?

Mr. MILLER. None that occurs to me right now, Senator, but let me explain a few thoughts that go through my mind.

I do not think an evaluation that says that the Administrator appeared in so many hearings is any help. I have spent 25 years in administrative proceedings largely representing what people might call consumer interests. Although those consumers are often giant utilities or industries and so on.

What you have to do is to get an evaluation of the participation. That is the only way it is meaningful. Did the attorney who showed up from the Administrator's office play an effective job? Was he prepared for his job? Did he do his homework? And perhaps the key to it, because we tend to lose sight as lawyers that we sometimes play a subordinate role, it may be very important that the Administrator tap the resources of economists and others who can present a viewpoint as to why the rule or regulation or adjudication ought to go one way rather than the other.

In other words, the material turning point in these proceedings may well be not the lawyer's arguments but the evidence, the facts. So the evaluative process you set up has got to determine whether or not there is really a use of the tools available to our society in terms of technical help and skills to present the other point of view which the Administrator is trying to present.

So I think you should give consideration to an evaluate process not unlike that that is used when recruiting administrative law judges. You try to get an opinion from those who participated in proceedings in which that person appeared, and try to get a value judgment as to whether that participation was truly well prepared.

Senator PERCY. I wonder if you could expand on why you feel that the right to appeal to the courts is an important power of the ACA Administrator. I have had problems with the business community on this particular point. They take issue with it. They think it is just going to harass them. Why do you consider it an important power?

Mr. MILLER. The courts consider their role as one of partnership with the administrative agencies. The administrative agencies often groan that they are the junior partner in that transaction. But as a matter of fact the courts of appeal have helped the agencies very much to a better understanding of the laws that they administer and the kinds of facts and proof necessary to carry it out.

It is important therefore that there be someone interested who can carry to the courts of appeal problems that require that kind of helpful elucidation by that part of the partnership. After all, we are not talking about creating a new law which burdens anybody in society, but rather trying to create somebody or a group who will make those perform more effectively.

If somebody is saying that it is better that they not work well just as they are—then it is better to just get the laws off the books. If that is really the value judgment that must be made. But if those laws supposedly are there to protect consumers among others, there ought to be effective review by the court of appeals when they stray from the function they are suppose to perform. Too many people do not have the means to go to the court of appeals or to prepare the necessary record.

Senator PERCY. You have obviously given this bill careful consideration. Would S. 1262 as now adapted and as you have gone through it obviously in any way prevent the Administrator from appealing to the court on those questions which may need court review?

Mr. MILLER. I have mentioned the one problem that we have. We do not think that he ought to have to ask the court's permission first to go on appeal. We would ask that that be amended.

The second is a perhaps unintended problem raised by the draftsmanship which is spelled out in my testimony. You have a provision in section 21(b) which in effect if they do not affect the validity of the Agency decision. The language is so written that if the Administrator does not get the documents he needs through his subpena requests and so on, that that might be considered one that does not affect the validity of the final decision. So it guts his right to raise on appeal—the right he ought to have to challenge—the failure of his subpena power.

I think that is an unintended effect of draftsmanship that could be easily changed.

Senator PERCY. Thank you. I have one final question.

When the Congress passed the National Environmental Protection Act of 1970, it intended for Government agencies to substantively consider the environmental impact of their actions. In the past few years, agencies have too frequently just gone through the motions. The act often serves simply as a costly procedural delay, and it has not fulfilled the hopes of some of the drafters of that legislation.

Now we are proposing in this bill, section 24, that agencies must assess the cost-benefit relationship. How can we insure that this

cost-benefit proposal avoids some of the weaknesses that resulted from our environmental legislation that was passed in 1970?

Mr. MILLER. This particular provision was not before the American Bar Association, so let me respond as an individual.

I think the idea is excellent. But I think what it lacks—and this gets back to your evaluative process we were discussing a moment ago as part of the sunset provision of this statute itself. What I see lacking is an evaluative part which in effect says to an agency—look 3 years you gave a cost-benefit analysis of something you were going to do. Now time has shown that is a lot of hocum. It was a beautiful act of draftsmanship, lots of skill with rhetoric, but it just proved to be wrong. I think you need that kind of a followup, so you get these cost-benefit evaluations into some kind of a real world, much as a businessman would have to when he is called to account afterwards for his recommendation in the form of a budget.

Senator PERCY. Mr. Miller, I want to thank you very much indeed. You are the final witness in these hearings. I think the hearings have been constructive and very helpful. I think everyone has been given an opportunity to express himself, and Senator Ribicoff has conducted the hearings with his usual dispatch and fairness.

The hearings are therefore adjourned and completed.

Mr. MILLER. Thank you.

[Whereupon, the hearing was adjourned at 11:55 a.m.]

[The prepared statement of Mr. Miller follows:]

STATEMENT OF JOHN T. MILLER, JR. PAST CHAIRMAN, SECTION ON ADMINISTRATIVE LAW, ON BEHALF OF THE AMERICAN BAR ASSOCIATION

My name is John T. Miller, Jr. I am a practicing attorney in Washington, D.C. and a past Chairman of the Section of Administrative Law of the American Bar Association.

Four years ago I appeared before the predecessor of this Committee in the 93d Congress to express the American Bar Association's support for legislation establishing an Agency for Consumer Advocacy, or a Consumer Protection Agency as it was then called.[1] My successor as Administrative Law Section Chairman (Acting) reiterated the ABA position in correspondence with the other body the following year.[2] I am pleased to return once again, at the request of President Justin Stanley of the ABA, to assure this committee of our continued support for the principles which underlie the relevant provisions of S. 1262, the proposed Consumer Protection Act of 1977.

S. 1262 would establish an independent Agency for Consumer Advocacy to participate on behalf of consumer interests in proceedings before other administrative agencies and on judicial review of other agencies' actions. At the 1972 Annual Meeting of the American Bar Association, the Association's House of Delegates endorsed in principle the enactment of comparable provisions in a Consumer Protection Agency bill then pending in the 92d Congress (H.R. 10835, 92d Cong., 1st Sess., as passed by the House of Representatives on October 14, 1971). The basis for our endorsement was our belief that such legislation would materially improve the administrative process by facilitating agency consideration of important interests—those of the consumer as defined in the bill. We further applauded the bill's utilization of the scheme of the Administrative Procedure Act as the frame of reference for defining the role of the Consumer Protection Agency.

By creating an Agency for Consumer Advocacy with authority to intervene or otherwise participate in administrative proceedings before other agencies, and to seek judicial review of other agencies' actions, S. 1262 would similarly facilitate the consideration of consumer interests in administrative agency proceedings and thus, in our view,

[1] Joint hearings on S. 707 and S. 1160 Before the Subcomm. on Reorganization of the Senate Government Operations Comm. and the Subcomm. on Consumers of the Senate Commerce Comm., 93d Cong., 1st Sess. 241–49, 314–35 (1973).

[2] Letters from Marion Edwyn Harrison, Acting Chairman, ABA Section of Administrative Law, to Hon. Chet Holifield and Hon. Frank Horton, Committee on Government Operations, House of Representatives, March 14, 1974.

would materially improve the fairness of the administrative process. We are aware that S. 1262 differs in some respects from H.R. 10835 as passed by the House in the 92d Congress, as well as from S. 707 on which we testified in 1973, and we express no position on their relative merits. What we endorse in the fundamental principle of all these bills—that an independent consumer advocate should be established with authority to participate in proceedings before other agencies, including the right to intervene in appropriate cases, and the authority to seek judicial review of administrative agency action when necessary to vindicate the interests of consumers.

PARTICIPATION IN AGENCY PROCEEDINGS

There can be no dispute with the basic proposition that every administrative agency should be fully cognizant of the effect of its actions on the interests of consumers. Every agency is explicitly or implicitly required by law to act in the "public interest". Regardless of the particular aspect of public interest committed to its jurisdiction, an agency must also be concerned with the broader impact of its actions on consumers if it is to act in a sound and responsible manner. The American Bar Association believes that the Agency for Consumer Advocacy which would be created by S. 1262 would be an important aid to many agencies in considering consumer interests, and would be a vital source of protection for such interests wherever they might otherwise go disregarded or misunderstood.

We do not mean to suggest that the administrative agencies are presently insensitive to consumer interests, and our support of the principles underlying S. 1262 is not based on any lack of confidence in the abilities or dedication of existing agencies in carrying out their assigned responsibilities. Rather, we believe that for many kinds of agency proceedings and activities, the growing complexity of the task of defining consumer interests, and of reconciling consumer interests with the over-all "public interest", requires new safeguards against actions based on inadequate information or superficial analysis.

The increasing (and increasingly accepted) efforts of consumer organizations to participate in a wide range of agency activities reflect a growing belief that administrative agencies are not performing adequately their assigned roles of promoting the "public interest" insofar as consumer interests are concerned. We can well understand a reluctance of some agencies to permit the kind of participation in agency activities which has been sought, and their concern with possible loss of control over their own proceedings and with additional burdens on agency resources. We suggest, however, that the felt need for additional consumer representation can to a great extent be satisfied, without the adverse effects envisioned by some agencies, by means of a measure such as S. 1262.

There is an important role for an Agency for Consumer Advocacy even where another agency is charged with the protection of some specific consumer interest. Many administrative activities which are designed to promote a single consumer interest may at the same time impinge upon or conflict with other important consumer interests. Actions designed to increase product safety may necessarily increase product price; actions intended to maintain low transportation rates may result in eventual deterioration of service; actions designed to relieve the energy crisis may directly reduce competition or harm the environment. Beyond such obvious conflicts and dilemmas are more complex and subtle interactions of discrete consumer interests which must be examined and weighed in order to ensure a sound resolution. Whenever such conflicting or overlapping interests are affected by a proposed agency action, the best way to assure that the action finally taken will serve the over-all interest of consumers is to provide an opportunity for effective independent advocacy on behalf of each of the interests affected.

The proposed Agency for Consumer Advocacy would provide such an opportunity. In formulating a position, the Administrator would consider all aspects of the consumer's viewpoint, and, in presenting the position to other agencies or on judicial review, his would be an independent voice on behalf of important consumer interests which might otherwise go unrepresented.

We stress that adoption of a measure such as S. 1262 will not and should not eliminate efforts by private organizations to play a constructive role in agency activities. Indeed, as recently as two months ago the ABA House of Delegates endorsed the enacment of legislation encouraging the participation of non-governmental representatives in agency proceedings in areas of the law which Congress finds would benefit from increased citizen participation. Rather, we suggest that appropriate participation by an Agency for Consumer Advocacy in other agencies' activities will complement the need for private intervention of interests which would otherwise go unrepresented.

In earlier stages of the development of this legislation there was substantial debate as to whether the Agency for Consumer Advocacy should be authorized to intervene as a full party in administrative agency proceedings, or whether it should be confined to the role of an amicus curiae. The American Bar Association believes that particular circumstances may well necessitate full intervention by the Administrator as a party if consumer interests are effectively to be represented. We therefore endorse the grant of statutory authority to the Administrator to intervene as a party in appropriate cases.

The central purpose of S. 1262 is to assure opportunity for effective representation of consumer interests where they are presently lacking. The procedural rights of parties to administrative proceedings, as spelled out in the Administrative Procedure Act, are those rights which Congress has deemed essential to enable a party adequately to develop and present his case. An *amicus curiae*, by contrast, has no such rights except as may be conferred by the agency before which the proceeding is pending. If the Administrator of the Agency for Cosumer Advocacy determines in a particular case that the effective representation of consumer interests requires him to act as a party rather than merely as *amicus*, he should be given the procedural tools to do his job.

In fact, many agencies are presently empowered to allow other governmental agencies to intervene as parties in proceedings before them, in the exercise of the host agency's discretion, and in some instances these agencies are required by statute to allow such intervention. Legislation such as S. 1262 would simply guarantee to the consumer's advocate the benefits of this well-established practice. The agency before which a proceeding is pending should plainly have the same power to regulate the Administrator's exercise of procedural rights which it has when a representative of some other recognized interest is concerned, and S. 1262 expressly so provides.[3] But surely no greater power over the consumer's representative would be warranted.

JUDICIAL REVIEW

The American Bar Association also endorses the grant of authority to the Agency for Consumer Advocacy to initiate and participate in proceedings for judicial review of administrative action affecting consumer interests. The right of participation in an agency proceeding, to ensure that consumer interests are properly considered, would be of little value without the complementary right to judicial review of the final agency action. Wherever conflicting interests must be reconciled in accordance with a statutory mandate, judicial review is essential to guard against arbitrary or unreasoned administrative decisions. This is no less so in matters involving agency resolution of conflicting consumer interests, such as where the agency itself is the proponent of one interest and the Agency for Consumer Advocacy intervenes to ensure consideration of another interest important to consumers.

The right to seek judicial review so as to protect interests within the safekeeping of the Agency for Consumer Advocacy may well be implicit in its authority in any event. As with intervention as a party at the agency level, there are ample statutory precedents for explicit recognition of that right, and in this regard S. 1262 is well within the mainstream of federal administrative law.

We also note the requirement in Section 6(c)(1) of the bill that, where the filing of a petition for rehearing or reconsideration at the administrative level is specifically authorized by the host agency's statutes or rules, the Agency for Consumer Advocacy must file such a petition before seeking judicial review if there was no previous participation in the proceedings. This ensures that every agency will have the same opportunity to correct its own errors as when private parties are aggrieved by agency action, and that the power of the Agency for Consumer Advocacy to seek judicial review will be exercised only where necessary.

The American Bar Association, believes, however, that the judicial review provisions of S. 1262 should be strengthened in two important respects.

First, the Administrator's right to secure judicial review of agency action should in no way depend upon whether or not he participated at the agency level. As presently written, Section 6(c)(1) would grant an unqualified right to judicial review of any final action that the Administrator of the Agency for Consumer Advocacy determines may substantially affect an interest of consumers, but only if he intervened or participated in the agency proceeding or activity out of which the agency action arose. The right to review in any other case (i.e., where the Administrator did not participate at the agency level) is withheld by this provision of the bill where the reviewing court fails to determine that the initiation of a review proceeding by the Administrator "would advance the interests of justice."

[3] Section 6(a)(1). See also Section 6(a)(3).

While we do not believe that the Administrator should initiate a judicial review proceeding that would not in fact "advance the interests of justice," we believe that the incorporation of such a vague and confusing phrase as a statutory standard is undesirable. This language provides no meaningful criteria for the courts to apply in deciding whether to allow the Administrator to initiate a judicial review proceeding, and would be susceptible of the most rigidly exclusionary application. Moreover, the likely desire of the Administrator to avoid this potential barrier, of uncertain dimensions, to his opportunity for judicial review might lead him to file pro forma papers and appearances in all agency proceedings which look toward final actions he may subsequently wish to challenge in court.

The courts have ample authority to prevent abuses of the judicial review process, through such means as a remand for further administrative consideration, without the necessity for an "advancement of the interests of justice" clause such as in Section 6(c)(1) of the bill. We therefore urge the deletion of this open ended and potentially troublesome language.

Second, we not an apparent inconsistency within Section 21(b) of the bill relating to vindication of the Administrator's rights under Section 6(f) to utilize the host agency's compulsory process powers. As presently worded, Section 21(b)(1)(A) permits the Administrator to seek review of the host agency's denial of a Section 6(f) request for compulsory process "only to the extent that such determination affected the validity of * * * [the final agency] action." The introductory language in Section 21(b)(1), however, states generally that "no act or omission * * * relating to the Administrator's authority under * * * [Section 6(f)] shall affect the validity of an agency action * * *."

It seems clear from the structure of Section 21(b)(1) as a whole that the last-quoted language is directed only to third-party claims that a Section 6(f) request of the Administrator was improperly denied. This intent should be clarified so as to avoid any possibility that the language might be held to derogate from the clear authority conferred upon the Administrator, to seek review of a Section 6(f) denial.

CONCLUSION

The American Bar Association is convinced that S. 1262, as modified in accordance with our suggestions, would materially improve the administrative process by facilitating agency and court consideration of important consumer interests. We urge the prompt amendment and enactment of S. 1262 or other legislation embodying the same statutory principles.

APPENDIX

95TH CONGRESS
1ST SESSION

S. 1262

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, FEBRUARY 21), 1977

Mr. RIBICOFF (for himself, Mr. JAVITS, Mr. PERCY, Mr. MAGNUSON, Mr. CRANSTON, Mr. JACKSON, Mr. METCALF, Mr. MATHIAS, and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To establish an independent consumer agency to protect and serve the interest of consumers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Protection Act of 1977".

STATEMENT OF FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that the interests of consumers are inadequately represented and protected within the Federal Government; vigorous representation and protection of the interests of consumers are essential to the fair and efficient functioning of a free market economy. Each

year, as a result of this lack of effective representation before Federal agencies and courts, consumers suffer personal injury, economic harm, and other adverse consequences in the course of acquiring and using goods and services available in the marketplace.

(b) The Congress therefore declares that—

(1) A governmental organization to represent the interests of consumers before Federal agencies and courts could help the agencies in the exercise of their statutory responsibilities in a manner consistent with the public interest and with effective and responsive government. It is the purpose of this Act to protect and promote the interests of the people of the United States as consumers of goods and services which are made available to them through commerce or which affect commerce by so establishing an independent Agency for Consumer Advocacy.

(2) It is the purpose of the Agency for Consumer Advocacy to represent the interests of consumers before Federal agencies and courts, receive and transmit consumer complaints, develop and disseminate information of interest to consumers, and perform other functions to protect and promote the interests of consumers. The authority of the Agency to carry out this purpose shall not be construed to supersede, supplant, or replace the jurisdiction, functions, or powers of any other agency to discharge its own statutory responsibilities according to law.

(3) It is the purpose of this Act to promote protection of consumers with respect to the—

(A) safety, quality, purity, potency, healthfulness, durability, performance, repairability, effectiveness, dependability, availability, and cost of any real or personal property or tangible or intangible goods, services, or credit;

(B) preservation of consumer choice and a competitive market;

(C) price and adequacy of supply of goods and services;

(D) prevention of unfair or deceptive trade practices;

(E) maintenance of truthfulness and fairness in the advertising, promotion, and sale by a producer, distributor, lender, retailer, or other supplier of such property, goods, services, and credit;

(F) furnishing of full, accurate, and clear instructions, warnings, and other information by any such supplier concerning such property, goods, services, and credit;

(G) protection of the legal rights and remedies of consumers; and

(4) This Act should be so interpreted by the executive branch and the courts so as to implement the intent of

Congress to protect and promote the interests of consumers, and to achieve the foregoing purposes.

ESTABLISHMENT

SEC. 3. (a) There is hereby established as an independent agency of the United States within the executive branch of the Government the Agency for Consumer Advocacy. The Agency shall be directed and administered by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, for a term coterminous with the term of the President, not to exceed four years. The Administrator shall be an individual who by reason of training, experience, and attainments is exceptionally qualified to represent the interests of consumers. There shall be in the Agency a Deputy Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions, powers, and duties as may be prescribed from time to time by the Administrator and shall act for, and exercise the powers of, the Administrator during the absence or disability of, or in the event of a vacancy in the office of, the Administrator. On the expiration of his term, the Administrator shall continue in office until he is reappointed or his successor is appointed and qualifies. The Administrator may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(b) No employee of the Agency while serving in such position may engage in any business, vocation, other employment, or have other interests, inconsistent with his official responsibilities.

(c) There shall be in the Agency a General Counsel who shall be appointed by the Administrator.

(d) The Administrator is authorized to appoint within the Agency not to exceed five Assistant Administrators.

POWERS AND DUTIES OF THE ADMINISTRATOR

SEC. 4. (a) The Administrator shall be responsible for the exercise of the powers and the discharge of the duties of the Agency, and shall have the authority to direct and supervise all personnel and activities thereof.

(b) In addition to any other authority conferred upon him by this Act, the Administrator is authorized, in carrying out his functions under this Act, to—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary to carry out the provisions of this Act and to prescribe their authority and duties;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maxi-

mum rates of pay for Grade GS–18 as provided in section 5332 of title 5, United States Code, and, while such experts and consultants are so serving away from their homes or regular place of business, pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(3) appoint advisory committees composed of such private citizens, including consumers and business representatives, and officials of the Federal, State, and local governments as he deems desirable to advise him with respect to his functions under this Act, and pay such members (other than those regularly employed by the Federal Government) while attending meetings of such committees or otherwise serving at the request of the Administrator compensation and travel expenses at the rate provided for in paragraph (2) of this subsection with respect to experts and consultants: *Provided*, That all meetings of such committees shall be open to the public and interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe;

(4) promulgate, in accordance with the applicable

provisions of the Administrative Procedure Act, title 5, United States Code, such rules, regulations, and procedures as may be necessary to carry out the provisions of this Act, and assure fairness to all persons affected by the Agency's actions, and to delegate authority for the performance of any function to any officer or employee under his direction and supervision;

(5) utilize, with their consent, the services, personnel, and facilities of other Federal agencies and of State, regional, local, and private agencies and instrumentalities, with or without reimbursement therefor, and to transfer funds made available under this Act to Federal, State, regional, local, and private agencies and instrumentalities as reimbursement for utilization of such services, personnel, and facilities;

(6) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the provisions of this Act, on such terms as the Administrator may deem appropriate, with any agency or instrumentality of the United States; with any State, or any political subdivision thereof, or with any person;

(7) accept voluntary and uncompensated services notwithstanding the provisions of section 3679 (b) of the Revised Statutes (31 U.S.C. 665 (b));

(8) adopt an official seal, which shall be judicially noticed;

(9) establish such regional offices as the Administrator determines to be necessary to serve the interests of consumers;

(10) conduct conferences and hearings and otherwise secure data and expression of opinion;

(11) accept unconditional gifts or donations of services, money or property, real, personal, or mixed, tangible or intangible;

(12) designate representatives to serve or assist on such committees as he may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies carrying out programs and activities related to the interests of consumers; and

(13) perform such other administrative activities as may be necessary for the effective fulfillment of his duties and functions.

(c) Upon request made by the Administrator, each Federal agency is authorized and directed to make its services, personnel, and facilities available to the greatest practicable extent within its capability to the Agency in the performance of its functions. An agency shall not be required to provide such services, personnel, or facilities to the Administrator where to do so would seriously affect in an

adverse manner the agency's ability to carry out its responsibilities, including any responsibility the agency has to protect the public health or safety.

(d) The Administrator shall prepare and submit simultaneously to the Congress and the President, not later than February 1 of each year beginning February 1, 1978, an annual report, which shall include a description and analysis of—

(1) the activities of the Agency, including its representation of the interests of consumers before Federal agencies and Federal courts;

(2) the major Federal agency actions and Federal court decisions affecting the interests of consumers;

(3) the assistance given the Agency by other Federal agencies in carrying out the purposes of this Act;

(4) the performance of Federal agencies and the adequacy of their resources in enforcing consumer protection laws and in otherwise protecting the interests of consumers, and the prospective results of alternative consumer protection programs;

(5) the appropriation by Congress for the Agency, the distribution of appropriated funds for the current fiscal year, and a general estimate of the resource requirements of the Agency for each of the next three fiscal years;

(6) consumer complaints received (in summary form) and actions taken thereon; and

(7) the extent of participation by consumers in Federal agency activities, and the effectiveness of the representation of consumers before Federal agencies, together with recommendations for administrative actions to deal with problems discussed in the report, to protect and represent the interests of consumers more effectively, and to carry out the purposes of this Act.

(e) The Federal Register shall publish a notice indicating that the annual report prepared pursuant to subsection (d) of this section is available.

FUNCTIONS OF THE AGENCY

SEC. 5. (a) The Agency shall, in the performance of its functions, advise the Congress and the President as to matters affecting the interests of consumers; and shall protect and promote the interests of the people of the United States as consumers of goods and services made available to them through the trade and commerce of the United States.

(b) The functions of the Administrator shall be to—

(1) represent the interests of consumers before Federal agencies and courts to the extent authorized by this Act;

(2) conduct and support research, studies, and testing to the extent authorized in section 9 of this Act;

(3) submit recommendations annually to the Congress and the President on measures to improve the operation of the Federal Government in the protection and promotion of the interests of consumers;

(4) obtain information and publish and distribute material developed in carrying out his responsibilities under this Act in order to inform consumers of matters of interest to them, to the extent authorized in this Act;

(5) receive, transmit to the appropriate agencies and persons, and make publicly available consumer complaints to the extent authorized in section 7 of this Act.

(6) conduct conferences, surveys, and investigations, including economic surveys, concerning the needs, interests, and problems of consumers: *Provided*, That such conferences, surveys, or investigations are not duplicative in significant degree of similar activities conducted by other Federal agencies;

(7) cooperate with State and local governments and encourage private enterprise in the promotion and protection of the interests of consumers;

(8) keep the appropriate committees of Congress fully and currently informed of all the Agency's activities, when asked or on his own initiative, except that this paragraph is not authority to withhold information requested by individual Members of Congress;

(9) publish, in language readily understandable by consumers, a consumer register which shall set forth the time, place, and subject matters of actions by Congress, Federal agencies, and Federal courts, and other information useful to consumers;

(10) encourage the adoption and expansion of effective consumer education programs;

(11) encourage the application and use of new technology, including patents and inventions, for the promotion and protection of the interests of consumers;

(12) encourage the development of informal dispute settlement procedures involving consumers;

(13) encourage meaningful participation by consumers in the activities of the Agency;

(14) coordinate its activities with the activities of other executive departments and agencies with respect to consumers; and

(15) perform such other related activities as he deems necessary for the effective fulfillment of his duties and functions.

REPRESENTATION OF CONSUMERS

SEC. 6. (a) (1) Whenever the Administrator determines that the result of any Federal agency proceeding or activity may substantially affect an interest of consumers, he may as of right intervene as a party or otherwise participate for the purpose of representing an interest of consumers, as provided in paragraph (2) or (3) of this subsection. In any proceeding, the Administrator shall refrain from intervening as a party, unless he determines that such intervention is necessary to represent adequately an interest of consumers. The Administrator shall comply with Federal agency statutes and rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with laws and agency rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Administrator in any Federal agency proceeding or activity shall not affect the obligation of the Federal agency conducting such proceeding or activity to assure procedural fairness to all participants.

(2) Whenever the Administrator determines that the result of any Federal agency proceeding which is subject to the provisions of section 553, 554, 556, or 557 of title 5, United States Code, relating to administrative procedure, or

which involves a hearing pursuant to the administrative procedural requirements of any other statute, regulation, or practice, or which is conducted on the record after opportunity for an agency hearing, or which provides for public notice and opportunity for comment, may substantially affect an interest of consumers, he may as of right intervene as a party or otherwise participate for the purpose of representing an interest of consumers in such proceeding.

(3) With respect to any Federal agency proceeding not covered by paragraph (2) of this subsection, or any other Federal agency activity, which the Administrator determines may substantially affect an interest of consumers, the Administrator may participate by presenting written or oral submissions, and the Federal agency shall give full consideration to such submissions of the Administrator. Such submissions shall be presented in an orderly manner and without causing undue delay. Such submission need not be simultaneous with that of any other person.

(b) At such time as the Administrator determines to intervene or participate in a Federal agency proceeding under subsection (a) (2) of this section, he shall issue publicly a written statement setting forth his findings under subsection (a) (1), stating concisely the specific interest of consumers to be protected. Upon intervening or participating he shall file a copy of his statement in the proceeding.

(c) To the extent that any person, if aggrieved, would by law have such right, the Administrator shall have the right, in accordance with the following provisions of this subsection, to initiate or participate in any Federal court proceeding involving a Federal agency action—

(1) The Administrator may, as of right, and in the manner prescribed by law, initiate any civil proceeding in a Federal court which involves the review of a Federal agency action that the Administrator determines may substantially affect an interest of consumers. If the Administrator did not intervene or otherwise participate in the Federal agency proceeding or activity out of which such agency action arose, the Administrator, before initiating a proceeding to obtain judicial review, shall petition such agency for rehearing or reconsideration thereof, if the statutes or rules governing such agency specifically authorize rehearing or reconsideration. Such petition shall be filed within sixty days after the Federal agency action involved, or within such longer period as may be allowed by applicable procedures. The Administrator may immediately initiate a judicial review proceeding if the Federal agency does not finally act upon such petition within sixty days after the filing thereof, or at such earlier time as may be necessary to preserve the Administrator's right to obtain effective judicial review of the Federal agency action. Where the Administrator did not

intervene or otherwise participate in a Federal agency proceeding or activity, the Administrator shall not be permitted to initiate a judicial proceeding with respect to such agency proceeding or activity unless the court shall first have determined that initiation of such a proceeding by the Administrator would advance the interests of justice. In advance of the initiation of such a proceeding by the Administrator, he shall file a statement setting forth the reasons why he did not intervene or otherwise participate in the Federal agency proceeding or activity out of which the contemplated judicial proceeding arises, for the court's consideration in connection with its determination whether the initiation of such judicial proceeding would advance the interests of justice.

(2) The Administrator may, as of right, and in the manner prescribed by law, intervene or otherwise participate in any civil proceeding in a Federal court which involves the review or enforcement of a Federal agency action that the Administrator determines may substantially affect an interest of consumers.

(3) The initiation or other participation of the Administrator in a judicial proceeding pursuant to this subsection shall not alter or affect the scope of review otherwise applicable to the agency action involved.

(d) When the Administrator determines it to be in the interest of consumers, he may request the Federal agency

concerned to initiate such proceeding, or to take such other action, as may be authorized by law with respect to such agency. If the Federal agency fails to take the action requested, it shall promptly notify the Administrator of the reasons therefor and such notification shall be a matter of public record.

(e) Notwithstanding sections 514–519 inclusive, of chapter 31, title 28, United States Code, appearances by the Agency under this Act shall be in its own name and shall be made by qualified representatives designated by the Administrator.

(f) In any Federal agency proceeding in which the Administrator is intervening or participating pursuant to subsection (a) (2) of this section, the Administrator is authorized to request the Federal agency to issue, and the Federal agency shall, on a statement or showing (if such statement or showing is required by the Federal agency's rules of procedure) of general relevance and reasonable scope of the evidence sought, issue such orders, as are authorized by the Federal agency's statutory powers, for the copying of documents, papers, and records, summoning of witnesses, production of books and papers, and submission of information in writing.

(g) The Administrator is not authorized to intervene or appear in proceedings or activities of State or local

agencies and State courts, or to engage directly or indirectly, in lobbying activities before State or local agencies, or the Congress, in the manner prohibited by section 1913 of title 18, United States Code.

(h) Nothing in this section shall be construed to prohibit the Administrator from communicating with, or providing information requested by any Federal, State, or local agencies and State courts at any time and in any manner consistent with law or agency rules.

(i) Each Federal agency shall review its rules of procedure of general applicability, and, after consultation with the Administrator, issue any additional rules which may be necessary to provide for the Administrator's orderly intervention or participation, in accordance with this section, in its proceedings and activities which may substantially affect the interests of consumers. Each Federal agency shall issue rules determining the circumstances under which the Administrator may be allowed to make simultaneous submissions under subsection (a) (3) of this section. Any additional rules adopted pursuant to the requirements of this subsection shall be published in proposed and final form in the Federal Register.

(j) The Administrator is authorized to represent an interest of consumers which is presented to him for his consideration upon petition in writing by a substantial number

of persons or by any organization which includes a substantial number of persons. The Administrator shall notify the principal sponsors of any such petition within a reasonable time after receipt of any such petition of the action taken or intended to be taken by him with respect to the interest of consumers presented in such petition. If the Administrator declines or is unable to represent such interest, he shall notify such sponsors and shall state his reasons therefor.

CONSUMER COMPLAINTS

SEC. 7. (a) Whenever the Administrator receives from any person any complaint or other information which discloses—

(1) an apparent violation of law, agency rule or order, or a judgment, decree, or order of a State or Federal court relating to an interest of consumers; or

(2) a commercial, trade, or other practice which is detrimental to an interest of consumers;

he shall, unless he determines that such complaint or information is frivolous, promptly transmit such complaint or information to any Federal, State, or local agency which has the authority to enforce any relevant law or to take appropriate action. Federal agencies shall keep the Administrator informed to the greatest practicable extent of any action which they are taking on complaints transmitted by the Administrator pursuant to this section.

(b) The Administrator shall promptly notify producers, distributors, retailers, lenders, or suppliers of goods and services of all complaints of significance concerning them received or developed under this section unless the Administrator determines that to do so is likely to prejudice or impede an action, investigation, or prosecution concerning an alleged violation of law.

(c) The Administrator shall maintain a public document room containing, for public inspection and copying (without charge or at a reasonable charge, not to exceed cost), an up-to-date listing of all consumer complaints of significance which the Agency has received, arranged in meaningful and useful categories, together with annotations of actions taken in response thereto. Unless the Administrator, for good cause, determines not to make any specific complaint available, complaints listed shall be made available for public inspection and copying: *Provided*, That—

(1) the party complained against has had a reasonable time to comment on such complaint and such comment, when received, is displayed together with the complaint;

(2) the agency to which the complaint has been referred has had a reasonable time to notify the Administrator what action, if any, it intends to take with respect to the complaint;

(3) the complainant's identity is to be protected when he has requested confidentiality. Whenever the complainant requests that his identity be protected, the Administrator shall place an appropriate designation on the complaint before making it available to the public;

(4) no unsigned complaints shall be placed in the public document room.

CONSUMER INFORMATION AND SERVICES

SEC. 8. (a) In order to carry out the purposes of this Act the Administrator shall develop on his own initiative, and, subject to the other provisions of this Act, gather from other Federal agencies and non-Federal sources, and disseminate to the public in such manner, at such times, and in such form as he determines to be most effective, information, statistics, and other data including, but not limited to matter concerning—

(1) the functions and duties of the Agency;

(2) consumer products and services;

(3) problems encountered by consumers generally, including annual reports on interest rates and commercial and trade practices which may adversely affect consumers; and

(4) notices of Federal hearings, proposed and final rules and orders, and other pertinent activities of Federal agencies that affect consumers.

(b) All Federal agencies which, in the judgment of the Administrator, possess information which would be useful to consumers are authorized and directed to cooperate with the Administrator in making such information available to the public.

STUDIES

SEC. 9. The Administrator is authorized to conduct, support, and assist research, studies, plans, investigations, conferences, demonstration projects, and surveys concerning the interests of consumers.

INFORMATION GATHERING

SEC. 10. (a) (1) The Administrator is authorized, to the extent required to protect the health or safety of consumers, or to discover consumer fraud or substantial economic injury to consumers, to obtain data by requiring any person engaged in a trade, business, or industry which substantially affects interstate commerce and whose activities he determines may substantially affect an interest of consumers, by general or specific order setting forth with particularity the consumer interest involved and the purposes for which the information is sought, to file with him a report or answers in writing to specific questions concerning such activties and other related information. Nothing in this subsection shall be construed to authorize the inspection or copying of documents, papers, books, or records, or to compel

the attendance of any person. Nor shall anything in this subsection require the disclosure of information which would violate any relationship privileged according to law. Where applicable, chapter 35 of title 44, United States Code, shall govern requests for reports under this subsection in the manner in which independent Federal regulatory agencies are subject to its provisions.

(2) The Administrator shall not exercise the authority under paragraph (1) of this subsection if the information sought—

(A) is available as a matter of public record; or

(B) can be obtained from another Federal agency pursuant to subsection (b) of this section; or

(C) is for use in connection with his intervention in any agency proceeding against the person to whom the interrogatory is addressed if the proceeding is pending at the time the interrogatory is requested.

(3) In the event of noncompliance with any request submitted to any person by the Administrator pursuant to paragraph (1), any district court of the United States within the jurisdiction of which such person is found, or has his principal place of business, shall issue an order, on conditions and with such apportionment of costs as it deems just, requiring compliance with a valid order of the Administrator. The district court of the United States shall issue such

an order upon petition by the Administrator or on a motion to quash, and upon the Administrator's carrying the burden of proving in court that such order is for information that may substantially affect the health or safety of consumers or may be necessary in the discovery of consumer fraud or substantial economic injury to consumers, and is relevant to the purposes for which the information is sought, unless the person to whom the interrogatory or request is addressed shows that answering such interrogatory or request will be unnecessarily or excessively burdensome.

(4) The Administrator shall not have the power to require the production or disclosure of any data or other information under this subsection from any small business. For the purpose of this paragraph, "small business" means any person that, together with its affiliates, including any other person with whom such person is associated by means of a franchise agreement, does not have assets exceeding $7,500,000; or does not have net worth in excess of $2,500,000; or at the time of proposed discovery by the Administrator does not have more than the equivalent of one hundred and fifty full-time employees. Nothing in this paragraph shall be construed to prohibit the Administrator from requesting the voluntary production of any such data or information. Notwithstanding this paragraph, the Administrator shall have the power, pursuant to paragraph (1), to obtain

information from a small business if necessary to prevent imminent and substantial danger to the health or safety of consumers and the Administrator has no other effective means of action.

(b) Upon written request by the Administrator, each Federal agency is authorized and directed to furnish or allow access to all documents, papers, and records in its possession which the Administrator deems necessary for the performance of his functions and to furnish at cost copies of specified documents, papers, and records. Notwithstanding this subsection, a Federal agency may deny the Administrator access to and copies of—

(1) information classified in the interest of national defense or national security by an individual authorized to classify such information under applicable Executive order or statutes, and restricted data whose dissemination is controlled pursuant to the Atomic Energy Act (42 U.S.C. 2011 et seq.);

(2) policy and prosecutorial recommendations by Federal agency personnel intended for internal agency use only;

(3) information concerning routine executive and administrative functions which is not otherwise a matter of public record;

(4) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(5) information which such Federal agency is expressly prohibited by law from disclosing to another Federal agency, including, but not limited to, such expressly prohibited information contained in or related to examination, operating, or condition reports concerning any individual financial institution prepared by, on behalf of, or for the use of an agency responsible for regulation or supervision of financial institutions;

(6) information which would disclose the financial condition of individuals who are customers of financial institutions; and

(7) trade secrets and commercial or financial information described in section 552(b)(4) of title 5, United States Code—

(A) obtained prior to the effective date of this Act by a Federal agency, if the agency had agreed to treat and has treated such information as privileged or confidential and states in writing to the Administrator that, taking into account the nature of the assurances given, the character of the information requested, and the purpose, as stated by the Administrator, for which access is sought, to permit

such access would constitute a breach of faith by the agency; or

(B) obtained subsequent to the effective date of this Act by a Federal agency, if the agency has agreed in writing as a condition of receipt to treat such information as privileged or confidential, on the basis of its reasonable determination set forth in writing that such information was not obtainable without such an agreement and that failure to obtain such information would seriously impair performance of the agency's function.

Before granting the Administrator access to trade secrets and commercial or financial information described in section 552 (b) (4) of title 5, United States Code, the agency shall notify the person who provided such information of its intention to do so and the reasons therefor, and shall, notwithstanding section 21 (b), afford him a reasonable opportunity, not to exceed ten working days after receipt of such notice, to comment or seek injunctive relief. Whenever notice is served by mail, such notice shall be considered to be received three days after the date on which it is mailed. Where access to information is denied to the Administrator by a Federal agency pursuant to this subsection, the head of the agency and the Administrator shall seek to find a

means of providing the information in such other form, or under such conditions, as will meet the agency's objections.

(c) Consistent with the provisions of section 7213 of the Internal Revenue Code of 1954 (26 U.S.C. 7213), nothing in this Act shall be construed as providing for or authorizing any Federal agency to divulge or to make known in any manner whatever to the Administrator, solely from an income tax return, the amount or source of income, profits, losses, expenditures, or any particular thereof, or to permit any Federal income tax return filed pursuant to the provisions of the Internal Revenue Code of 1954, or copy thereof, or any book containing any abstracts or particulars thereof, to be seen or examined by the Administrator, except as provided by law.

LIMITATIONS ON DISCLOSURES

SEC. 11. (a) Except as provided in this section, section 552 of title 5, United States Code, shall govern the release of information by any officer or employee of the Agency.

(b) No officer or employee of the Agency shall disclose to the public or to any State or local agency any information which was received solely from a Federal agency when such agency has notified the Administrator that the information is within the exceptions stated in section 552 (b) of title 5, United States Code, and the Federal agency has determined that the information should not be made available to

the public; except that if such Federal agency has specified that such information may be disclosed in a particular form or manner, such information may be disclosed in such form or manner.

(c) The following additional provisions shall govern the release of information by the Administrator pursuant to any authority conferred by this Act, except information released through the presentation of evidence in a Federal agency or court proceeding pursuant to section 6—

(1) The Administrator, in releasing information concerning consumer products and services, shall determine that (A) such information, so far as practicable, is accurate, and (B) no part of such information is prohibited from disclosure by law. The Administrator shall comply with any notice by a Federal agency pursuant to section 11(b) that the information should not be made available to the public or should be disclosed only in a particular form or manner.

(2) In the dissemination of any test results or other information which directly or indirectly disclose product names, it shall be made clear that (A) not all products of a competitive nature have been tested, if such is the case, and (B) there is no intent or purpose to rate products tested over those not tested or to imply that those

tested are superior or preferable in quality over those not tested.

(3) Notice of all changes in, or any additional information which would affect the fairness of information previously disseminated to the public shall be promptly disseminated in a similar manner.

(4) (A) Where the release of information is likely to cause substantial injury to the reputation or good will of a person, the Administrator shall notify such person of the information to be released and afford him a reasonable opportunity, not to exceed ten working days after receipt of such notice, to comment or seek injunctive relief, unless immediate release is necessary to protect the health or safety of the public. Whenever notice is served by mail, such notice shall be considered to be received three days after the date on which it is mailed. The district courts of the United States shall have jurisdiction over any action brought for injunctive relief under this subsection, or under section 10(b) (7).

(B) Nothing in this paragraph shall affect the rights of the public to obtain information under section 552 of title 5, United States Code.

(d) In any suit against the Administrator to obtain information pursuant to the provisions of section 552 of title 5, United States Code, where the sole basis for the refusal to

produce the information is that another Federal agency has specified that the documents not be disclosed in accordance with the provisions of subsection (b) of this section, the other Federal agency shall be substituted as the defendant, and the Administrator shall thereafter have no duty to defend such suit.

NOTICE

SEC. 12. (a) Each Federal agency considering any action which may substantially affect an interest of consumers shall, upon request by the Administrator, notify him of any proceeding or activity at such time as public notice is given.

(b) Each Federal agency considering any action which may substantially affect an interest of consumers shall, upon specific request by the Administrator, promptly provide him with—

(1) a brief status report which shall contain a statement of the subject at issue and a summary of proposed measures concerning such subject; and

(2) such other relevant notice and information, the provision of which would not be unreasonably burdensome to the agency and which would facilitate the Administrator's timely and effective intervention or participation under section 6 of this Act.

(c) Nothing in this section shall affect the authority or obligations of the Administrator or any Federal agency under section 10(b) of this Act.

SAVING PROVISIONS

SEC. 13. (a) Nothing in this Act shall be construed to affect the duty of the Administrator of General Services to represent the interests of the Federal Government as a consumer pursuant to section 201(a)(4) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)(4)).

(b) Nothing in this Act shall be construed to relieve any Federal agency of any responsibility to protect and promote the interests of consumers.

(c) Nothing in this Act shall be construed to limit the right of any consumer or group or class of consumers to initiate, intervene in, or otherwise participate in any Federal agency or court proceeding or activity, nor to require any petition or notification to the Administrator as a condition precedent to the exercise of such right, nor to relieve any Federal agency or court of any obligation, or affect its discretion, to permit or facilitate intervention or participation by a consumer or group or class of consumers in any proceeding or activity.

(d) Nothing in this Act shall be construed to affect the duty of the Small Business Administration to aid, counsel,

assist, and protect the interests of small business concerns, pursuant to section 631(a) of the Small Business Act of 1958 (15 U.S.C. 631(a)).

DEFINITIONS

SEC. 14. As used in this Act, unless the context otherwise requires—

(1) "Administrator" means the Administrator of the Agency for Consumer Advocacy;

(2) "Agency" means the Agency for Consumer Advocacy;

(3) "agency action" includes the whole or part of an agency "rule", "order", "license", "sanction", "relief", as defined in section 551 of title 5, United States Code, or the equivalent or the denial thereof, or failure to act;

(4) "agency activity" means any agency process, or phase thereof, conducted pursuant to any authority or responsibility under law, whether such process is formal or informal;

(5) "agency proceeding" means agency "rulemaking", "adjudication", or "licensing", as defined in section 551 of title 5, United States Code;

(6) "commerce" means commerce among or between the several States and commerce with foreign nations;

(7) "consumer" means any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services, or credit for personal, family, or household purposes;

(8) "Federal agency" or "agency" means "agency" as defined in section 551 of title 5, United States Code. The term shall include the United States Postal Service, the Postal Rate Commission, and any other authority of the United States which is a corporation and which receives any appropriated funds, and, unless otherwise expressly provided by law, any Federal agency established after the date of enactment of this Act, but shall not include the Agency for Consumer Advocacy;

(9) "Federal court" means any court of the United States, including the Supreme Court of the United States, any United States court of appeals, any United States district court established under chapter 5 of title 28, United States Code, the District Court of Guam, the District Court of the United States Customs Court, the United States Court of Customs and Patent Appeals, the United States Tax Court, and the United States Court of Claims;

(10) "individual" means a human being;

(11) "interest of consumers" means any health, safety, or economic concern of consumers, including but not limited to the factors enumerated in section 2(b)(3), involving real or personal property, tangible or intangible goods, services, or credit, or the advertising or other description thereof, which is or may become the subject of any business, trade, commercial, or marketplace offer or transaction affecting commerce, or which may be related to any term or condition of such offer or transaction. Such offer or transaction need not involve the payment or promise of a consideration;

(12) "participation" includes any form of submission;

(13) "person" includes any individual, corporation, partnership, firm, association, institution, or public or private organization other than a Federal agency;

(14) "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Canal Zone, Guam, American Samoa, and the Trust Territory of the Pacific Islands; and

(15) "submission" means participation through the presentation or communication of relevant evidence, documents, arguments, or other information.

CONFORMING AMENDMENT

SEC. 15. (a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"(60) Administrator, Agency for Consumer Advocacy."

(b) Section 5315 of such title is amended by adding at the end thereof the following:

"(100) Deputy Administrator, Agency for Consumer Advocacy."

(c) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(135) General Counsel, Agency for Consumer Advocacy.

"(136) Assistant Administrators, Agency for Consumer Advocacy (5)."

EXEMPTIONS

SEC. 16. (a) This Act shall not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, or the National Security Agency, or the national security or intelligence functions (including related procurement) of the Departments of State and Defense (including the Departments of the Army, Navy, and Air Force) and the military

weapons program of the Energy Research and Development Administration, to any agency action in the Federal Communications Commission with respect to the renewal of any radio or television broadcasting license, or to a labor dispute within the meaning of section 13 of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 113), or of section 2 of the Labor Management Relations Act (29 U.S.C. 152), or to a labor agreement within the meaning of section 201 of the Labor Management Relations Act, 1947 (29 U.S.C. 171).

SEX DISCRIMINATION

SEC. 17. No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a person alleging discrimination.

LIMITATIONS RELATING TO SMALL BUSINESS AND FAMILY FARMING INTERESTS

SEC. 18. (a) It is the sense of the Congress that small business and family farming interests should have their varied needs considered by all levels of government in the implementation of the procedures provided for throughout this Act.

(b) (1) In order to carry out the policy stated in subsection (a), the Small Business Administration and the Department of Agriculture (A) shall to the maximum extent possible provide small business and family farming interests with full information concerning the procedures provided for throughout this Act which particularly affect such interests, and the activities of the various agencies in connection with such provisions, and (B) shall, as part of its annual report, provide to the Congress a summary of the actions taken under this Act which have particularly affected such interests.

(2) To the extent feasible the Administrator shall seek the views of small business and family farming interests in connection with establishing the Agency's priorities, as well as the promulgation of rules implementing this Act.

(3) In administering the programs provided for in this Act, the Administrator shall respond in an expeditious man-

ner to the views, requests, and other filings by small business and family farming interests.

(4) In implementing this Act, due consideration shall be given to the unique problems of small business and family farming interests so as not to discriminate or cause unnecessary hardship in the administration or implementation of the provisions of this Act.

(5) For the purposes of this section, the term "small business" shall have the same meaning as provided in section 10(a)(4) of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. There are authorized to be appropriated to carry out the provisions of this Act, not to exceed $15,000,000 for the fiscal year ending September 30, 1978, not to exceed $20,000,000 for the fiscal year ending September 30, 1979, and not to exceed $25,000,000 for the fiscal year ending September 30, 1980. Any subsequent legislation to authorize appropriations under this Act for the fiscal year beginning October 1, 1980, shall be referred in the Senate to the Committee on Governmental Affairs and to the Committee on Commerce.

EVALUATION BY THE COMPTROLLER GENERAL

SEC. 20. (a) The Comptroller General of the United States shall audit, review, and evaluate the implementation

of the provisions of this Act by the Agency for Consumer Advocacy.

(b) Not less than thirty months nor more than thirty-six months after the effective date of this Act, the Comptroller General shall prepare and submit to the Congress a report on his audit conducted pursuant to subsection (a), which shall contain, but not be limited to, the following:

(1) an evaluation of the effectiveness of the Agency's consumer representation activities;

(2) an evaluation of the effect of the activities of the Agency on the efficiency, effectiveness, and procedural fairness of affected Federal agencies in carrying out their assigned functions and duties;

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of the objectives of this Act as set forth in section 2.

(c) Copies of the report shall be furnished to the Administrator of the Agency for Consumer Advocacy, the chairmen of the Senate Committees on Commerce and on Governmental Affairs and the chairman of the Committee on Government Operations of the House of Representatives.

(d) Restrictions and prohibitions under this Act applicable to the use or public dissemination of information by the Agency shall apply with equal force and effect to the Gen-

eral Accounting Office in carrying out its functions under this section.

MISCELLANEOUS PROVISIONS

SEC. 21. (a) Nothing in this Act should be construed to limit the discretion of any Federal agency or court, within its authority, including a court's authority under rule 24 of the Federal Rules of Civil Procedure, to grant the Administrator additional participation in any proceeding or activity, to the extent that such additional participation may not be as of right, or to provide additional notice to the Administrator concerning any agency proceeding or activity.

(b) (1) No act or omission by the Administrator or any Federal agency relating to the Administrator's authority under sections 6 (a), (d), (f), (i), and (j), 7, 10, 11, and 12 of this Act shall affect the validity of an agency action or be subject to judicial review: *Provided*, That—

(A) the Administrator may obtain judicial review to enforce his authority under sections 6 (a), (d), (f), (i), and (j), 10, and 12 of this Act: *Provided*, That he may obtain judicial review of the Federal agency determination under section 6 (f) of this Act only after final agency action and only to the extent that such determination affected the validity of such action;

(B) a party to any agency proceeding or a participant in any agency activity in which the Administrator

intervened or participated may, where judicial review of the final agency action is otherwise accorded by law, obtain judicial review following such final agency action on the ground that the Administrator's intervention or participation resulted in prejudicial error to such party or participant based on the record viewed as a whole; and

(C) any person who is substantially and adversely affected by the Administrator's action pursuant to section 6(f), 10(a), or 11 of this Act may obtain judicial review, unless the court determines that such judicial review would be detrimental to the interests of justice.

(2) For the purposes of this subsection, a determination by the Administrator that the result of any agency proceeding or activity may substantially affect an interest of consumers or that his intervention in any proceeding is necessary to represent adequately an interest of consumers shall be deemed not to be a final agency action.

(3) The Administrator's determination, pursuant to subsections 6(a)(2), 6(a)(3), and 6(d), that an agency action may substantially affect an interest of consumers shall be subject to review during judicial review of a final agency action.

TRANSFER OF PROGRAMS, OPERATIONS, AND ACTIVITIES

SEC. 22. (a) The President is hereby directed to submit, not later than one hundred and twenty days after the

date of enactment of this Act, a reorganization plan to the Congress pursuant to chapter 9 of title 5, United States Code, which provides for the transfer to the Agency of those consumer-related programs, operations, and activities of Federal agencies which can be performed more appropriately or with greater efficiency by the Administrator under the authority contained in this Act. Such plan shall be consistent with the Agency's responsibilities under section 5 of this Act.

(b) The Administrator, pursuant to section 4 of this Act, shall be responsible for incorporating such programs, operations, and activities as may ultimately be transferred and for issuing such organizational directives as he deems appropriate to avoid any duplication of effort and to otherwise carry out the purposes of this section.

PUBLIC PARTICIPATION

SEC. 23. (a) After reviewing its statutory authority and rules of procedure, relevant agency and judicial decisions, and other relevant provisions of law, each Federal agency shall issue appropriate interpretations, guidelines, standards, or criteria, and rules of procedure, to the extent that such rules are appropriate and are not already in effect, relating to the rights of individuals who may be affected by agency action to—

(1) petition the agency for action;

(2) receive notice of agency proceedings;

(3) file official complaints (if appropriate) with the agency;

(4) obtain information from the agency; and

(5) participate in agency proceedings for the purpose of representing their interests.

Such interpretations, guidelines, standards, criteria, and rules of procedure shall be published in proposed and final form in the Federal Register.

(b) Each Federal agency shall take all reasonable measures to reduce or waive, where appropriate, procedural requirements for individuals for whom such requirements would be financially burdensome, or which would impede or prevent effective participation in agency proceedings.

(c) Any rules of procedure issued by any Federal agency pursuant to this section shall be published in a form and disseminated in a manner that is designed to inform, and that is able to be understood by, the general public.

COST AND BENEFIT ASSESSMENT STATEMENTS

SEC. 24. (a) In furtherance of the purpose and policy of section 2 (b) (4) of this Act, and except as otherwise provided in this Act, each Federal agency which is authorized to promulgate rules (as defined in section 551 (4) of title 5, United States Code) shall prepare a cost and benefit assessment statement with respect to any rules to which section

553 (b) of title 5, United States Code, is applicable, which are likely to have a substantial economic impact, for the agency's consideration in connection with the promulgation of such rules. Each such statement shall be short and concise and, together with such supporting documentation as the agency in its discretion determines to be necessary or appropriate, shall consist of the following three elements:

(1) estimated costs, that are foreseeable as a result of the effective implementation of such rule;

(2) estimated benefits, that are foreseeable as a result of the effective implementation of such rule; and

(3) the apparent relationship, if any, between such costs and benefits.

To the extent deemed practicable by the agency responsible for its preparation, each cost and benefit assessment statement shall indicate in an appendix the assumptions, if any, which were made by it regarding the means, or alternative means, and attendant costs of compliance with the proposed rule, including any manufacturer's costs and consumer costs reflected in the price of any product affected by such rule. Before releasing any cost and benefit assessment statement to the public, such agency shall transmit to the Comptroller General such assessment and any appendix thereto which indicates the assumption made regarding the means and attendant costs of compliance with the proposed rule includ-

ing any manufacturers' costs and consumer costs reflected in the price of any product affected by such rule.

(b) With respect to any proposed rule subject to the requirements of subsection (a), each Federal Register notice of proposed rulemaking shall request interested persons to submit to the applicable agency, in writing, comments, materials, data, information, and other presentations relevant to the preparation of the required cost and benefit assessment statement.

(c) Each such agency shall, to the extent it deems necessary or appropriate, seek to obtain comments, materials, data, information, and presentations relevant to the costs and benefits, if any, likely to ensue from effective implementation of any proposed rule, within the time prescribed for consideration of the proposed rule, from other Federal agencies and persons. No extensions of time for comment shall be granted solely for the purpose of receiving any such presentations with respect to such benefits.

(d) Each person who contends that effective implementation of a proposed rule will result in increased or decreased costs, shall furnish to the applicable agency the information upon which he bases such assertion, and which is in his possession, is known to him, or is subject to his control. Such information shall be furnished to the agency in such form, manner, and detail as such agency in its discretion prescribes.

Whenever any relevant information, which an applicable agency deems necessary or appropriate to the preparation of a cost and benefit assessment statement, is or may be in the possession or control of a person who may be directly affected by the proposed rule, such agency is authorized to request such relevant information as reasonably described by it, and such person shall furnish such relevant information promptly to such agency. Such request for information shall be enforceable by appropriate orders by any court of the United States. Such information as is furnished shall be considered a statement for purposes of section 1001 of title 18, United States Code.

(e) A cost and benefit assessment statement prepared pursuant to subsection (a) shall be published at the end of the year in the Federal Register in a report which shall contain all cost and benefit assessment statements applicable to rules promulgated during the preceding twelve months. All relevant information developed or received by the applicable agency in connection with the preparation of such statement shall be available to all interested persons, subject to the provisions of section 552 of title 5, United States Code, and other applicable law.

(f) The President shall issue, pursuant to the provisions of this subsection, (1) regulations providing guidelines for Federal agencies as to the nature and content of any cost and

benefit assessment statement required by subsection (a) and (2) regulations which shall insure that any agency shall be able to obtain information deemed by it to be necessary or appropriate to the preparation of any such cost and benefit assessment statement. Such regulations shall be issued by the President upon the recommendations submitted to the President by the Office of Management and Budget, the General Accounting Office, and the Agency for Consumer Advocacy. In issuing or modifying any regulations implementing this section, the President shall proceed in accordance with the procedures prescribed by subsections (b) and (c) of the new section inserted by section 202, Public Law 93–637 (88 Stat. 2193; 15 U.S.C. 57a (b), (c)). The President shall provide public notice of proposed rulemaking to implement this subsection within sixty days of the effective date of this Act, and shall issue regulations implementing this subsection within one hundred and eighty days of the effective date of this Act. After issuance of any regulations implementing this section, the President shall transmit them to the Congress, together with all recommendations submitted to the President pursuant to this subsection. Such regulations shall take effect ninety legislative days after such transmittal to the Congress by the President, unless either House of Congress by resolution of disapproval, pursuant to procedures established by chapter 35, title 44, United States Code, and

by section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407), disapproves such regulations, except that Congress may by concurrent resolution modify such regulations within such ninety-day period, in which case such regulations shall take effect in such modified form.

(g) No Federal officer or agency shall submit proposed legislation to the Congress which is likely, if enacted, to have a substantial economic impact, unless such legislation is accompanied by a cost and benefit assessment statement. The statement required by this subsection shall be prepared in accordance with the provisions of subsection (a). The requirements of this subsection may be postponed upon the request of a committee of Congress having jurisdiction over such legislative proposal, for a period not to exceed thirty days from the date of submission to the Congress of such legislation.

(h) In addition to the definitions in section 14 of this Act, the following definitions shall apply with respect to the provisions of this section:

(1) the term "rule" means "rule" as defined by section 441(4) of title 5, United States Code;

(2) the term "legislation" or "law" means a statute of the United States or any amendment thereto;

(3) "benefit" includes any direct or indirect, tangible or intangible, gain or advantage which the agency, in its discretion, deems proximately related to the promulgation of a proposed regulation or the enactment of the proposed legislation. The term shall include such nonquantifiable benefits as the agency identifies and describes. Benefits may include the costs that would be likely to result from the agency's failure to act, but which are likely to be avoided by the agency's action; and

(4) "cost" includes any direct or indirect expense, including component costs of production and supply, and any loss, penalty, or disadvantage which the agency, in its discretion, deems proximately related to the promulgation of a proposed regulation, or the enactment of proposed legislation. The term shall include such nonquantifiable costs as the agency identifies and describes.

(i) The Comptroller General of the United States shall monitor and evaluate the implementation of this section. In addition to any other reports or studies made by the Comptroller General relating to this section, he shall, three years after the effective date of this section, conduct a comprehensive review of this section including an evaluation of the advantages and disadvantages of cost and benefit assessment statements and of the nature and extent of Federal agency compliance with this section. The Comptroller General shall

prepare and submit to the Congress a report based on such study and review. Such report shall include, but need not be limited to, his recommendations as to the necessity or advisability of the provisions of this section, and of the need to amend subsection (k), or any other provision, of this section. The Comptroller General shall, if he determines that the assumptions contained in any statement submitted to it pursuant to subsection (a) of this section are inaccurate, incomplete, or unjustified so report to the committees of the Senate and House of Representatives having jurisdiction over any Federal department or agency that prepared such statement.

(j) No court shall have the jurisdiction to review, or enforce or shall review, or enforce and, except for the general review of the effectiveness of this section provided for in subsection (i), no officer or agency of the United States, other than the agency responsible for the preparation of a cost and benefit assessment statement and the duly authorized committees of the Congress, shall have the authority to review, or enforce or shall review, or enforce, in any way the compliance of any cost and benefit assessment statement with this section, or, except where the agency preparing such a statement seeks to enforce in court its request for information, the compliance, by such agency with any other requirement of this section, including the manner or process by

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which such statement is prepared: *Provided*, That a Federal court may, upon the request of any interested person, review and enforce compliance with the provisions of this subsection.

(k) The requirements of this section shall supersede the requirements of any existing executive order imposing any economic, cost-benefit, inflationary, or other similar impact assessment requirement. No requirement of this section shall alter or supersede any Federal agency statutory requirement, regulation, or lawful practice which such agency determines to be inconsistent with any of the requirements of this section. Further, no agency shall be required to prepare and issue a cost and benefit assessment statement required by this section, if information which would be contained in such statement is encompassed within another statement required by law to be prepared in connection with the promulgation of the applicable rule.

(l) The provisions of this section shall become effective upon the effective date of implementing regulations submitted

EFFECTIVE DATE

SEC. 25. (a) This Act shall take effect 90 days after the date of enactment, or on such earlier date as the President shall prescribe and publish in the Federal Register.

(b) Any of the officers provided for in this Act may (notwithstanding subsection (a)) be appointed in the manner provided for in this Act at any time after the date of the

enactment of this Act. Such officers shall be compensated from the date they first take office at the rates provided for in this Act.

SEPARABILITY

SEC. 26. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality and effectiveness of the remainder of this Act and the applicability thereof to any persons and circumstances shall not be affected thereby.

STATEMENT OF ROBERT O. ADERS, PRESIDENT, FOOD MARKETING INSTITUTE

I am pleased to submit for the record this statement on behalf of our members in regard to the legislative proposals before the Congress to establish an independent consumer agency (H.R. 6118 and S. 1262). The Food Marketing Institute (FMI) represents some 850 food retailing and wholesaling members. In submitting this statement our desire is to insure that the Congress in its efforts to establish a mechanism for more direct consumer input into the government decision-making process takes into account every possible consideration as it prepares this legislation.

The creation of an independent consumer advocacy agency represents an important step in providing a centralized avenue or forum for the citizen's voice into the Federal government's process of creating policies and regulations which impact directly or indirectly the consumer. This hopefully will enable government and industry to be more responsive to consumer needs.

Consumer advocacy or input is no stranger to the members of this association. Food retailers and wholesalers justifiably are proud of the progress they have made in providing a "consumer voice" within their own industry.

Having made a substantial investment in consumer affairs programs as one element of improved operations, our members have found that this function offers within their own companies a two-way communication process which not only enhances consumer rights in the marketplace, but also improves business performance.

Also, within the Food Marketing Institute, our members have established a mechanism to provide consumer input into the development of overall policy formation. FMI's Consumer Affairs Department was established to coordinate that important consumer input, to effectively represent the consumer's point of view in the overall industry decision-making process and to advise industry policy makers on consumer considerations.

This consumer commitment on the part of FMI and its members was an important cornerstone in the Institute's formation. FMI's by-laws begin by recognizing the food retailers' and wholesalers' responsibility as the purchasing agent for the customer. These by-laws, adopted by the membership, state: "The grocery store retailer, from the smallest corner store to the largest supermarket company, is the purchasing agent for the customer . . . and, in all of its activities and actions the interests of the customer will be given first consideration."

The Food Marketing Institute believes the establishment of a separate, independent agency for the advocacy of consumer interests within the Federal government and the intention of these legislative proposals can, if properly constructed, provide a system for much needed public participation within our growing bureaucratic and complex government structure.

Presently, there are numerous, and often conflicting, choices seeking to represent the consumer in federal matters, with the result that clamor, more often than constructive input or coherence, has been the case. Consequently, much of the work of the substantive agencies has been unnecessarily disrupted and the orderly and responsible management of agency proceedings impaired. If government's consumer advocacy function could be formulated through a single responsible agency and duplication minimized, substantial public benefits could be realized. Consolidating the consumer advocacy function within the federal government would, naturally, make possible the transfer of consumer advocacy responsibilities now existing in other agencies to a single agency.

It is particularly important, I believe, that the FMI approved position on an independent consumer agency be included in this statement. That position adopted on March 15, 1977, states: "Support the concept of an independent consumer agency that would accomplish the following: promote the interest of consumers regarding the safety, quality, availability and dependability of goods and services; preserve the consumer's freedom of choice; provide accurate and appropriate information on goods and services of interest to consumers; provide a central place, without duplication by other agencies, for the receipt and transmittal of consumer complaints directed to the Federal government and provided that: such proposals be designed within the concept of the President's desire for more efficient government management; the coverage of those subject to the activities of such an agency be all-inclusive (exemption of labor, agriculture or any other economic segments would be unfair and inequitable and not in the consumer interest); such an agency be established to represent the consumer interest before Federal agencies and courts and in other proceedings, where appropriate but in carrying out this purpose it should not supercede, supplant or replace the jurisdiction of any other Federal agency over any subject matter, nor deprive any agency of any responsibility to exercise its statutory authority according to law; such an agency, in a proceeding or in preliminary activities that might lead to such a proceeding, not be provided the use of unilateral subpoena power or other procedural or discovery

devices not available to all persons; such an agency, in the dissemination of public information of importance to consumers, be required to protect the confidentiality of proprietary information; the proposals of such an agency should be subject to a cost-benefit analysis.

While FMI endorses the concept of H.R. 6118 and S. 1262, it is our position that the best interest of all can be served only if modifications are made in several important areas within the existing legislative proposals. These modifications are based on two underlying concepts held by FMI about an Agency for Consumer Advocacy and designed to insure that the agency is structured within a framework of equity and fairness to all.

First, while it is appropriate for an ACA to have a voice equal to that of other interested parties (business, labor, farmers, etc.) the overall public interest will not be served by any tilting of the power balance toward such an agency, and . . .

Second, a consumer advocacy agency should be just that—an advocate—not an agency with substantive adjudicatory rulemaking or investigatory power to be exercised independently of the substantive agencies. In this context, the following modifications are proposed to the current legislative proposals under consideration.

1. If the agency is to be given some investigatory power, that power, regardless of limitations currently proposed, should not be exercised independently of the substantive responsibilities of other agencies. An acceptable procedure might be to require ACA to operate through the substantive agency, petitioning the agency for the issuance of whatever investigative discovery process might be available to them and receiving the responses through them. This approach, while furnishing interrogatory power to an ACA, would be more compatible with the advocacy role of working with and through the substantive agencies than the proposal in the pending legislation. It is not the function of an ACA to make law, but most importantly, to advise other agencies of consumer interest with regard to the actions of those agencies.

2. In keeping with an ACA's advisory functions, it is important to preclude disclosure by ACA of all materials exempt from disclosure under the Freedom of Information Act, particularly those exemptions related to trade secrets and materials gathered for law enforcement purposes. Such a limitation would not affect the power of ACA to make any appropriate disclosure in connection with any agency proceeding in which it is participating, or in matters affecting public health and safety. While the current proposed legislation contains some limitations on disclosure, those limitations are not full satisfactory. The proposed legislation does not make clear, for example, that information obtained from a Federal agency, which might be subject to exemptions to the Freedom of Information Act, could not be disclosed by ACA where the agency provided the information has not notified the ACA that the material is exempt from disclosure.

3. The legislation creating an ACA should contain no exemption for various interest groups on grounds of political expediency. Specifically, labor and agriculture should be included in the legislation. Two major factors affecting the consumer in the food distribution system are the cost of raw materials and labor productivity. Neither of these exemptions in the legislation is justified. If the ACA is truly going to fully represent the interests of consumers, the jurisdiction of any consumer advocacy agency should be as inclusive as possible.

4. Authority to initiate judicial review of a final substantive agency action should be granted to an ACA only if two court requiresments are met: (1) such a review would avoid a substantial detriment to the interest of justice and (2) that ACA has some new and important factor to add. The public interest—and that of affected parties—generally would not be well served in situations where a protracted agency adjudication leading to a final order could be attacked after its effective date by an ACA which had not shown prior interest.

5. An ACA, when it is participating in a formal proceeding, should not be granted greater access to substantitive agency subpoenas than that granted to other parties. As the statutes and rules of the substantive agencies presently stand, the present legislative proposals require far less of an ACA to obtain a subpoena, for example in an FTC proceeding, than is required of a private respondent in such a proceeding. Such inequitable treatment under the law is certainly not in the public interest.

The Food Marketing Institute considers the above legislative modifications critical to any legislation which has as its design the creation of a workable, effective and equitable Agency for Consumer Advocacy.

In summary, because of FMI's inherent commitment to consumers—our customers—and because of our realization of the important benefits derived from consumer inputs to the food retailing and wholesaling business, we support the concept of an indepedent consumer advocacy agency.

The Food Marketing Institute, however, believes that it is imperative that the framework for such an agency be designed to assure efficient, fair and equal treatment to all sectors of the economy which are involved in producing goods and providing services for America's consuming public. We feel our proposed modifications assist in meeting these objectives.

With proper legislation, such an agency could; fulfill its intent to ensure that the consumer's viewpoint is represented in the government's decision-making process; promote the interests of consumers regarding the safety, quality, availability and dependability of goods and services; gather and disseminate appropriate information of importance to consumers; and guarantee the customer's freedom of choice.

STATEMENT OF WILLIAM CROOK, PRESIDENT, NATIONAL ASSOCIATION OF RETAIL GROCERS OF THE UNITED STATES

Mr. Chairman and Committee Members, I am William Crook, president of the National Asssociation of Retail Grocers of the United States (NARGUS). NARGUS is a national trade association representing independent retail grocers with over 40,000 members operating supermarkets as well as convenience stores.

NARGUS opposes the so-called independent consumer agency bill for two basic reasons. First, the interests of consumers, including better representation of consumers in the activities of the federal government, will not be adequately served by the proposed bill. Second, the bill goes contrary to the urgent need to reduce the federal bureaucracy.

I

One of the reasons frequently given for creating a new independent consumer protection agency is that the federal government has grown too big and to complex for consumers to be heard. President Carter's recent consumer message to Congress referred to the need to plead the consumer's case within the government.

The bill, in its declaration of proposed findings, makes the statement that "consumers are inadequately represented and protected within the Federal Government." Supporters of the bill say its purpose is to protect and promote the interests of the people of the United States as consumers.

Since the entire population of some 212 million persons in the country are consumers, and almost everything the federal government does affects consumers, the complexity of making sure that government decisions are made in the consumer interest is as great and wide-ranging as the huge federal bureacracy itself.

What is the answer to the question why the federal government makes decisions affecting consumers without adequate consideration of consumer interest and why consumers cannot make their influence felt when it is needed?

The answer is that because of the huge size of the federal government, it is very difficult to manage. Government reorganization and reform are badly needed.

Another answer to the problem is to impose on every government agency the obligation to give a high priority to consumer interests. Place on each agency administrator the responsibility to promote and protect the interests of the people of the United States as consumers in keeping with their other duties and responsibilities.

Give each administrator and agency director adequate powers to establish procedures for carrying out consumer protection. Have Congress oversee the entire operation through periodic checks. Supplement this effort with directives from the President. Establish clear lines of accountability.

What we are proposing here is that instead of centralizing consumer advocacy in a new independent agency, give consumer protection a high priority in every government agency.

Considering the immense size of the federal bureaucracy—2,000 agencies at last count—and taking account of the wide range of government policies that affect consumer interests, the most progress can be made by decentralizing this important concern throughout the federal government. The job is too big to assign to one agency. It is too important to be delegated to a relatively few agency employees among so many on the public payroll.

If Congress creates a so-called consumer protection agency, government administrators will give less attention to the effects of their actions on consumers with the result that consumer interests will be more inadequately protected and less promoted in the federal government than is the case today.

If a consumer protection agency is created by this legislation, it won't be long before Congress will receive complaints that the Agency is not doing its job, that

the purposes of the Agency are not being carried out, that the Agency is ineffective and weak. Complaints will be made that the Agency lacks sufficient size, power, and independence to do its job. Urgent requests will be made to substantially increase the size of its appropriations, staff, and power. Cries will be made to strengthen the new Agency by giving it more independence of action with wider coverage. Various possibilities come to mind, such as demands for direct power to compel the production of documents and witnesses, authority to write rules of business conduct, and prosecute offenders. In the course of time, the new Agency will tend to grow and duplicate functions performed by existing agencies. This is the way the federal bureaucracy has worked in the past. Nothing suggests the process will be any different with respect to the Consumer Protection Agency.

If we accept the argument that some federal agencies have not carried out their responsibilities for protecting consumers, the most effective remedy is to find out the cause for such deficiency and take measures that will enable the agency to perform better. The answer is to correct any bad practices from within, and not to create another federal bureaucratic layer.

If some agencies of federal government are not working like they should in protecting consumer interests, nothing is gained by adding to the number of agencies already in existence.

If the bureaucracy is not responsive to consumers, it will only make matters worse to create another layer of government making the bureaucracy larger and even more unresponsive.

Whatever the federal government is doing wrong in connection with protecting consumers will not be corrected by creating another new independent agency in Washington. Reducing the number of federal agencies and requiring those that remain to do their job more effectively with better supervision from Congress are more likely to achieve the desired results.

II

Proponents of this legislation stress that small business has nothing to fear from the proposal because it is exempt from the Agency's information-gathering authority. The statement is made that small businesses are exempted from compulsory disclosure of information where an imminent and substantial health or safety danger is not involved.

It seems to be recognized that without effective safeguards, the Agency's powers to obtain information from business could impose a burden on small enterprises that would threaten their success.

Section 10 of the bill gives to the Agency's Administrator authority to require businesses to file with him reports or answers in writing to specific questions. The Administrator can obtain data and information from business concerns whose activities he determines may substantially affect consumers. He can also obtain information through a federal agency issuing its orders, including access to all documents, papers, and records.

The provision in the bill providing a small business exemption from the Agency Administrator's power to require filing reports and answering Agency questionnaires defines a small business concern in terms of not having assets or employees exceeding narrow limits. However, in determining whether any of these limits is exceeded, the small business concern and any of its affiliates, including those arising out of a franchise agreement, are to be considered together.

Requiring that small business concerns and their affiliates be considered as one enterprise when attempting to qualify for the small business exemption, will result in denying the proposed exemption to the vast majority of independent retail grocers. The reason for this is that a large percentage of independent grocers are affiliated with either a cooperative or a voluntary wholesale group.

Almost 90 percent of total independent grocery store sales are presently accounted for by members of a retailer-owned cooperative or grocery wholesaler-sponsored voluntary group. These grocers, numbering well over 100,000, are commonly referred to in the trade as "affiliated independents." They are not exempt from the consumer Agency Administrator's demands for filing reports and answering questionnaires under the proposed legislation. Affiliated independent retail grocers, including small single store operators, would be required to file consumer Agency government reports and questionnaires.

The requirement for filing Agency reports and questionnaires poses a burdensome government paperwork problem for affiliated independent grocers. The solution to this problem is not, in our opinion, to broaden the small business exemption in Section

10 of the bill. A better answer is to postpone approving the proposed measure at least until the need for a new independent consumer agency is clearly justified in light of current prospects for governmental reorganization and reform proposals. These prospects include, in addition to various reorganization plans, zero base budgeting, the sunset concept, and regulatory reform. When the idea of a consumer protection agency first arose over eight years ago, there was nothing approaching the urgent efforts toward government reorganization and reform that exist today. In light of current wide-ranging efforts to improve and reorganize government activities, it would be best to wait awhile before proceeding with creation of a new independent consumer agency.

III

A basic objection to the bill is that it operates counter to the need for reducing the size, complexity, and unmanageableness of the federal bureaucracy.

The President has just signed legislation authorizing him to begin reorganization of the Executive Branch. One of Mr. Carter's most repeated campaign pledges was to reorganize the federal government and make what he has termed "the horrible, bloated bureaucracy" manageable. There are so many federal agencies now in existence, no one knows their exact number. Coordination of the activities of federal agencies is a matter of such concern that some 129 interagency units are in operation to resolve conflicts, overlapping, and duplication of efforts.

The point of these comments are: first, that this is not the time to consider creating another independent federal agency; second, that the most urgent governmental need today is reform, reorganization, and streamlining of the federal bureaucracy; third, that adding another layer of the federal bureaucracy will cost consumers more than any benefits they may receive from the proposed new agency; fourth, that business, including small business, such as "affiliated" independent retail grocers are threatened by a heavier government paperwork burden connected with compulsory filing of Agency reports and questionnaires; and, fifth, if a new consumer agency is established it will not be long before supporters of the Agency will return to Congress contending the Agency is too weak and too small to adequately protect consumers. They will urge legislation expanding the Agency's size and powers so that eventually it becomes a "super agency" of Government.

Thank you for the opportunity of presenting this statement.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION PRESENTED BY JOHN C. DATT, DIRECTOR, WASHINGTON OFFICE

Farm Bureau is the largest general farm organization in the United States with a membership of 266,259 families in 49 states and Puerto Rico. It is voluntary, non-governmental organization, representing farmers who produce virtually every agricultural commodity that is produced on a commercial basis in this country.

Farm Bureau policies are developed through study, discussion, and decision by majority vote at community, county, state, and national meetings. Our statement today is based on the following policy adopted by the voting delegates of the member State Farm Bureaus at the 1977 annual meeting of the American Farm Bureau Federation: "Government standards of quality, safety, health, and labeling have a role in the marketplace. However, we do not believe the government can protect every consumer in each of his transactions without infringing upon his personal freedom. We oppose the establishment of any consumer agency or council having other than advisory powers."

In the past our organization has opposed the creation of a so-called Consumer Advocacy Agency on the basis that it is wrong in concept and wrong in principle. We will not take time today to elaborate upon these two points, but we reaffirm them.

We need not now repeat the arguments well made in the past that the "consumer" is not in truth and fact an identifiable group. This is a flaw in the concept of a government agency to represent consumers. Those who have not grasped this essential fact will not be convinced in the few minutes we shall take here today.

The proposed ACA Act is a design for government agency chaos. It creates a mislabeled cloak of alleged "consumer interest," and vests the total decision in such matters in the hands of an Administrator who is to decide where and when he will appear in other agency proceedings and in court. The Administrator is empowered to undertake to represent whatever interest he may call a "consumer interest". These are enormous powers. They are circumscribed only slightly by a certain obeisance to administrative law regarding petitions for rehearing, etc. None of these would limit in any true sense the awesome legal and practical power of the Administrator.

This bill proposes agency vs. agency confrontations with final resolution of differences to be made in the federal courts, if need be.

Necessarily, we look with keenest interest upon the impact such legislation would have on the agency with which agriculture has the most dealings, the USDA. This Department has long administered the programs, regulations, practices, and government corporations that affect American agriculture. In the past, exemptions for agriculture have been offered in various forms. We have neither asked for nor supported them then—we do not now. Exemptions granted by one Congress can easily be withdrawn by another, if, indeed, this Congress were to agree upon one.

From all that has been said in the past, and all that we can perceive in today's economic circumstances, prices would likely be the first target of any ACA created by the Congress. Let us take just a moment to look at the nature of agricultural prices.

The American farmer produces only when and what he perceives will return him his costs and a profit. Overhang his markets with artificial imponderables affecting prices and his problems are compounded. The ability and judgement of those to whom he sells to move their products, the semi-processed or processed products of the farmers, are the measure of the farmer's market. From these influences there is possible exemption. So long as there remains a vestige of a free market, prices will be established by supply and demand and known economic forces. But if artificialities are created by an approach to market intervention such as is foreseeable in ACA, then the producer's price risk is tied identically to the risk of the processor, wholesaler, and retailer; and arbitrary government interference can warp the market.

During the last hearing on the ACP proposal the supporters of this bill said, in effect, that, given the job of the Administrator, the first thing they would undertake to do would be to shut off the exports of grains. This we know as an "embargo." In the agricultural areas "embargo" has become an ill-favored word. Parenthetically it is a favored word in other quarters. The local morning paper found in the announcement of these bills in the House and Senate powers for the ACA director to "lobby for or against foreign grain sales."

In agriculture we have had three experiences with embargoes in the last several years. One was the Nixon embargo of soybeans to Japan. The so-called "shock" of this to our Japanese customers was wholly destructive. It has made the Japanese, and others, less certain that the United States is by contract or otherwise a reliable supplier. It has led, in fact to Japan's undertaking to become self-sufficient by financing and creating soybean contractors, and financing their production in Latin America. And this was a customer to whom the United States supplied more than 90 percent of their requirements.

This bill is in truth nothing but the product of a small but relentless group who see in a ACA a mechanism to lend force to the advocacy of their viewpoints. There is, in truth, little broad public support for this kind of a bill.

What is clearly perceived, by those committed to the "consumerist" idea and by those who oppose the bill, is that such an agency, once in being, can be used to wield enormous influence. It will be made powerful in all sorts of markets, industries, businesses, and professions through the attention the media will give it. This could result in such things as forcing the Secretary of Agriculture to open up CCC stocks to bring down market prices.

It is not difficult to imagine the effects upon the futures market were the ACA Administrator to call a press conference merely to announce that he was growing concerned about the price situation and that he felt quite certain that the Administration would be doing something very soon.

Mr. Chairman, we can see in this proposal a really monstrous instrument for jawboning, institutionalized in the government and available to self-appointed representatives of the public, representatives who need not represent a substantial body of opinion but need only an agreement from one man, the ACA Administrator. Then it can proceed into the fray with the media observing and reporting, as it should. The public and political impact would be enormous. In fact, a willful ACA could by this process bring other agencies into great disrepute, if not outright ruin.

Let us apply all that we have just said to a current situation, and see how this might work.

Last year the U.S. exported $22 billion worth of agricultural products. We have to believe that Mr. Blumenthal at Treasury looks upon this figure as one of the strong timbers in his balance-of-payments structure. Agricultural exports generate much of the exchange used to pay for our enormous oil imports.

Thus the question arises: Who is the consumer? Is it those who clamor for lower food prices (though it is only the farmer's price which would be reduced if exports

are curbed)? Or is it the oil-consuming public which lives, works, and exists by an oil-fueled economy?

To repeat, then who is the consumer indeed—the one who seeks lower cost food—all of us—or the one who lives by imported petroleums—also all of us? And, Mr. Chairman, all markets in our economy, affected by the government or not, are vulnerable to an ACA.

To reiterate, it is perhaps less what is in the bill than the mechanism it creates with a great potential power which can be wielded far outside the structure, the intent, or the design of the bill that causes such grave concern.

STATEMENT OF J. EDWARD DAY, SPECIAL COUNSEL, CONSUMER ELECTRONICS GROUP, ELECTRONIC INDUSTRIES ASSOCIATION

Mr. Chairman and members of the Committee, my name is J. Edward Day. I am Special Counsel for the Consumer Electronics Group (CEG) of the Electronic Industries Association. The Consumer Electronics Group represents the great majority of United States manufacturers of consumer electronic products consisting of televisions, radios, phonographs, audio systems and small calculators. CEG membership also includes several Japanese companies which have manufacturing facilities in the United States.

There are 11 companies which manufacture television receivers in the United States and a number of major importers which sell television receivers under their own label in this country. There are some very large and some very small companies in this group, and many more small companies which manufacture phonographs, audio systems and components, and calculators. The companies we represent are intensely aware of the importance of consumer satisfaction and fair treatment of the consumer.

In our Group, we have a Consumer Affairs Council made up of executives of many of the leading manufacturers. We have a full-time director of Consumer Affairs to work with the Council and various ones of our members have long embarked on their own programs with special emphasis on consumer satisfaction.

The Consumer Electronics Group is primarily concerned with three aspects of S. 1262.

Specifically, CEG is concerned with how the proposed Agency for Consumer Advocacy would choose the one particular "interest of consumers" it would represent before a federal agency from among the numerous competing consumer interests. CEG is also concerned that the duplication in function inherent in the bill will produce unnecessary and burdensome delay in agency decision-making. This problem will be particularly pronounced in the realm of informal agency decision-making in the context of which so much of the country's day-to-day regulatory problems are expeditiously resolved. Finally, CEG is concerned that this bill will remove the focus of responsibility for consumer protection from where it ought to be—with the regulatory agencies themselves.

I realize that you gentlemen have heard much of this before, but we feel our arguments have not been convincingly refuted. We have studied the many statements and debates on this and previous, similar bills, and we feel more strongly about our objections than ever.

Determination of the consumers' interest

Section 6 would authorize the ACA to "intervene" or "participate" in agency activities when the Administrator of the ACA determines that an agency proceeding or activity may "substantially affect an interest of consumers." The bill, however, provides no standards for determining that interest.

In an age of competing consumer interests, CEG has grave doubt as to how the ACA is expected in many situations to select a single consumer interest to represent. For example, in a proceeding looking towards the establishment of more efficient automobile emission control devices and standards, which side would the ACA represent? On the one hand, there is the position which, in the name of public health and environmental protection, calls for ever stricter standards and ever more exacting devices. On the other side, there is another legitimate consumer position: The economic cost to the car owner. In a time of continuing inflationary and tax pressures on the cost of gasoline and, having in mind proper concern for the energy crisis, where should the ACA stand: with the environmentalist-priority consumers or with the economic-priority consumers? This latter group has a right to be concerned over poor gas mileage and with the increased cost of automobiles resulting from super-exacting standards for pollution control devices.

What position would the ACA have taken in the Trans Alaska Pipeline controversy, that of the protector of the tundra or that of the homeowner caught up in the spiraling costs of home heating oil and natural gas? Would the ACA favor a consumer interest

in cheap geothermal generation of electricity to combat the energy crisis or the interests of consumers living near a geothermal plant who would be subject to the nauseating odors associated with geothermal generation of electricity?

What about a Federal Power Commission proceeding to develop rules exempting small producers of natural gas from rate regulation in order to stimulate exploration and increase the gas supply? Which side of that issue is the consumer side?

The Consumer Federation formed a task force on energy several years ago. Many people are becoming active on the energy crisis. How is it going to help to have the ACA get into that act—and on which side? If there is rationing of fuel, which would the ACA prefer to cut back: the factories where people work or the house where they live?

Neither liberals nor conservatives are able to agree within their own groups as to which is the pro-consumer side in tariff cases or cases under the Antidumping Law or the Countervailing Duty Law. Does the consumer side support low consumer prices for imported products or does it support protection of American workers against unfair foreign competition? As Senator Percy said during hearings on an earlier version of this legislation: "How do you get consumers to be consumers unless they have got a paycheck?"

What is going to be the consumer side in proposed decisions of the Federal Reserve Board? What about the Office of Management and Budget and the General Accounting Office? The FBI is exempted, but what about the Secret Service and the Postal Inspection Service? What is the consumer side on overuse of Yosemite National Park or on the routes of federally funded interstate highways?

These inherent conflicts between the desire for low rates and the desire for good service can be expected to be present in nearly every rate case before the ICC, FCC, CAB and other agencies. The efforts of commission staffs to resolve this dilemma in the consumers' best interests will not be advanced by the intervention of the ACA, which is likely to be uninformed on the intricate issues involved, or worse yet, tend to opt always for only the immediate, short-term politically-visible consumer interest in lower rates.

I have heard various attempted rebuttals to this concern about how the ACA would determine which of competing consumer interests was the one to be espoused with all the power, prestige and publicity advantage of a federal government agency.

Some of the rebuttals say it is only a matter of judgment and that the ACA can be expected to make proper judgments and strike the proper balance.

I am curious as to where the Executive Branch is going to find such supermen with such far-reaching wisdom. Apparently, the other departments and agencies haven't always been able to find such rarely gifted people; for the basis of this bill is that the mere humans heading up the various other departments and agencies need a super agency to ride herd on them.

I have also heard an asserted "expertise" of the ACA used as a rebuttal to the argument that the consumer interest side of a case will often not be capable of clear cut identification. How can we expect an ACA to be expert on hundreds of different laws and programs to a degree which would be more reliable than the expertise of a specialized agency having responsibility for a few of those laws or programs? To acquire expertise in any real sense as to all the variety of federal, state and local proceedings the ACA would need a mammoth, unmanageable bureaucracy of its own: lawyers, accountants, statisticians, technicians, investigators, economists, doctors, pharmacists, geologists, nutritionists, and all the rest.

Delays

A second major concern of the CEG is the burdensome delay that will be generated out of unnecessary duplication in serving the consumer-protection function. The main criterion by which federal agencies are supposed to make regulatory decisions is the "public interest." The public interest, of course, includes the interests of consumers. Yet under this bill, a federal commission will not only be required to consider the recommendations of its own staff respecting the consumer's interest, but the recommendations of the Agency for Consumer Advocacy as well.

In commenting on a similar bill introduced in 1972, S. 1177, the Federal Power Commission stated that the ACA authority, "if improvidently exercised, could substantially hamper effective regulation . . . by postponing finality of decisions in matters of pressing public concern" (letter from John N. Nassikas, Chairman, Federal Power Commission, to Senator James B. Allen, July 5, 1972, 118 Cong. Rec. S. 11237 (Daily ed., July 19, 1972)). The Justice Department, too, rightly feared that S. 1177 "pose[d] a threat [to] the orderly and effective dispatch of the public business . . . (letter from Ralph E. Erickson, Deputy Attorney General, to Senator James B. Allen, July 20, 1972, 118 Cong. Rec. S. 15808 (Daily ed., July 25, 1972).

A classic illustration of both of the concerns I have just described is provided by the Postal Rate Commission. The statute setting up that independent Commission provides for the designation of the Officer of the Commission "who shall be required to represent the interests of the general public." An attorney was hired to fill that role, and he acquired a staff. These people were totally independent of the other staff of the Commission and of the Commission's hearing officer and become deeply involved with all aspects of the first postal rate case throughout six months of hearings.

The case, however, is not one to give encouragement to supporters of the idea of an ACA. The participation of the "Officer of the Commission" in the proceedings before the Commission simply added to the complications of discovery, cross-examination, briefing, and all the rest. Although the Congress provided in the statute that postal hearings were to be conducted as expeditiously as possible, the very first hearing involved some 14,000 pages of repetitious and often irrelevant transcript, and over 1,000 filed documents. Perhaps 20 percent of this huge output was caused by the presence of the Officer of the Commission in the case. His initial brief, alone, was over 300 pages long.

Moreover, it was never clear in that postal rate case just what decision was supposed to be in the best interest of consumers. While higher rates for anything are unpalatable to many, they may well be necessary to permit the Postal Service to keep up with rising costs and to give service to consumers.

ACA participation in informal agency proceedings

Section 6(a)(3) of S. 1262 authorizes the ACA to "participate" in informal agency activities which may "substantially affect an interest of consumers." CEG opposes ACA "participation" in such informal proceedings because it believes that such participation will tend to formalize and complicate informal proceedings and, thereby, lead to disruption of such administrative action and to increased delay in reaching final decisions.

Additionally, this provision will interfere with necessary and legitimate negotiations and compromise in the regulatory sector. There is so much regulation of business in so many details and on so many levels that you simply can't go to a full-fledged hearing on each controversy. The whole regulatory apparatus would bog down. There have to be settlements and compromises. It is hard enough now for the FDA, for example, to settle a controversy by compromise for fear they will be jumped on as not being tough enough. But if they are to be put in the position of being jumped on each time by a "coequal" federal agency—with unique power to attract publicity—they will be under pressure never to settle anything. (This would be a case where one agency would be more "coequal" than others.)

I know this answer of mine is subject to being dislocated into a charge that business wants to get off easy by compromising on its problems. But it's not a matter of getting off easy. Rather it is a fact of life that settlements and compromises are necessary to keep the system working. (Without settlements of court litigation, the courts would probably have a 15-year backlog.) But how can you have sensible, agreed winding up of cases if an ACA is to be in there calling foul every time the supposed consumer side fails to come out with a 100 percent victory.

Section 6(a)(1) provides that in participating, the Administrator shall comply with the agency statutes and rules of procedure governing timing and conduct. Presumably, if neither statute nor agency rules provide for participation by third parties, which is normally the case with regard to informal agency activity, the Administrator will not be able to participate. Moreover, under Section 12, a federal agency need only notify the Administrator of activities—"at such time as public notice is given," or "on specific request" by the Administrator. Therefore, it appears likely that much of the time the Administrator will not learn of contemplated informal activity so as to participate. Indeed, it appears that the drafters of this bill did not really intend for the Agency for Consumer Advocacy to participate in most informal proceedings. The CEG believes that this point should be clarified and that the ACA should not be permitted to participate in such proceedings.

Responsibility would be Misplaced.

Finally, the CEG believes that by creating a superagency to ensure that the interest of consumers is taken into consideration, Congress would remove that responsibility from where it truly belongs—with the federal agencies. We recognize that Section 13(b) states that this bill does not relieve any federal agency of its responsibility to protect and promote the interests of consumers. However, where responsibility is officially vested elsewhere, it will only be human nature for federal agency personnel to take their own responsibility a little less seriously. Moreover, it will only be human nature for a President to take less seriously his responsibility for appointing agency

heads who will carefully weigh the consumer interest in arriving at conclusions respecting the public interest. In short, this bill presents an invitation for buck-passing.

This will not be an "Independent" Agency

I frequently hear the argument that the ACA would be independent and free of industry pressure. I don't go along with the idea that when a government agency agrees with industry it has caved in to pressure but when it agrees with professional consumerists it has acted in the public interest. I don't think the ACA would be independent at all. It would come to each proceeding with a built-in bias and through its special potential for attracting publicity would impose the pressure of that bias on every step of that proceeding.

Agency rules against ex parte communications, government-wide rules against conflict of interest, high ethical standards in selecting appointees, Congressional and media oversight, are the ways to keep agencies independent and objective.

Conclusion

CEG submits that if a person is a poor driver, it won't solve the problem to give him a back seat driver. If a man is a poor family man and husband, he won't be cured by a nagging mother-in-law. The better approach to protecting the interests of consumers lies in amendments, where needed, of the various enabling acts for the federal agencies in order to specify more precisely what those agencies must do in order to regulate evenhandedly and satisfactorily. Thus, the better answer lies in seeking to improve the host agencies and in continued, but even more effective, Congressional oversight, not in delegation of the basic oversight function to a new, untried agency that would be subject to its own "growing pains" and temptations to empire building.

We appreciate the opportunity to submit this statement and hope that the Committee will find it helpful in its consideration of the closely related problems of constructive, meaningful protection for consumers and a fair opportunity for business to meet consumers' needs.

STATEMENT OF CHARLES FITZMORRIS, PRESIDENT, CHAIN STORE SYSTEMS

Mr. Chairman, my name is Charles Fitzmorris. I am President of Chain Store Systems, a company supplying computer services and systems to domestic and foreign food chains. I am also President of the Aldi-Benner Food Chain, limited stock, economy stores operating in several midwestern states.

I am pleased to be with you today to advocate the joint consumer/business interest in the bill being considered by this committee, a bill to establish a small agency which would remind other parts of government, not to forget the consumer's needs when major decisions are made.

I know that some businessmen have an automatic negative reflex when government officials talk about proposals on behalf of the consumer. I remember the objections in my industry to unit pricing when it was first suggested by the Special Assistant to the President for Consumer Affairs. Unit pricing helped the industry, consumers, and made money for people like myself who enjoy selling something that is ethically and economically sound. So I wouldn't be really suprised if there are some negative business attitudes towards the creation of a consumer advocate agency.

I know this is not another layer of government regulations—a "super agency" to make their lives miserable. I have taken the time to find out that the proposed consumer agency isn't a regulator at all—that it will have no power to issue regulations, policies, licenses, etc. The bill isn't aimed at business deficiencies at all, but rather at the failure of regulators' decisions to adequately consider the consumer viewpoint. If consumers have more confidence in these decisions, this increase of confidence is good for the business environment.

I am pleased to see that this ACA with a budget of $15 million (or about 400 positions) will be created largely through consolidation of existing positions around government, and that both Senate and House bills call for major Congressional evaluations as to what kind of job the agency is doing after a trial period.

I'm also glad to see that the Senate bill allows the ACA to question food marketing orders and other food pricing decisions regarding their effect on consumers. I hope the final House bill does the same thing, because the food chain and the consumer have the same interest here. I also urge the committees of both Houses to allow the ACA to participate in labor negotiations of NLRB. Again, we in the food business share the consumer's interests and the occasional presence of the consumer voice will have a healthy effect upon the negotiations. It is after all the consumer who always pays the bill when management and labor are imprudent in their negotiations.

A small agency would, as the President's message suggests, have to set priorities and the number of rule making cases, hearings and other decisions it could speak up for consumers in will be very small. That's too bad because the more cases the ACA can look into the greater the sensitivity of government regulators to consumer needs—and that's good for business. I don't want some regulator who doesn't even shop having sole responsibility over my stores. I want the ACA to tell that regulator that his regulations are supposed to help the consumer.

Business should be especially interested in that part of the bill which is directed at business—the so called power of interrogatory which would allow the ACA to obtain data from business on issues substantially affecting the interests of consumers. I feel that the appeal rights and safeguards in the bill plus the clearance procedures proposed by the President are sufficient to preclude unreasonable burdens on business. I understand that small business is completely exempted from the ACA's ability to gather data for use in representing consumers before other agencies of Government. I believe this is wise. Naturally, information which is exempt from disclosure under the Freedom of Information Act should not be disclosed by the ACA.

Let's look at the benefits of ACA to business.

I have already mentioned the benefit to business derived from increased consumer confidence in Government's decisions. There are more immediate benefits. Most of the major problems facing consumer product and service industries today are joint business/consumer problems. I refer to such problems as: (1) Differing regulations of different states. (2) Differing state vs. Federal regulations. (3) The need to get Federal agencies to act more promptly on joint consumer/business problems. (4) The need to get Federal agencies to establish sound priorities and to stick to those priorities so business and consumers can make plans to deal with changed governmental policies. (5) Differing regulatory policies among Government agencies.

Let me give you a concrete example. Large food chains are installing front end scanners which read a label code and automatically compute the current price from the code, eliminating the stores need for readable prices. Consumers may still feel this need and have asked states and cities to require the price to continue to appear on the label. There is no national policy here, and it is a problem. Consider new chains like mine which offer limited stock of goods, available at lower price and which cut costs by providing consumers with a list of all today's prices on the limited stock list so that they can compare prices to their heart's content. The consumer can take her small price list with her. It isn't necessary to repeat it on the item itself. Yet according to some jurisdictions' laws our stores may also have to add to costs and consumer prices through a redundant pricing of the item. I favor the ACA because I need consistent consumer protection legislation that is based on common sense not on the peculiar prerogatives of a few jurisdictions. The ACA will have a mandate to advocate consumer interests on major consumer programs, and believe me this is one. I am here today to ask you to permit, indeed to mandate, ACA to enter the states and encourage uniformity of regulation before state and federal government—not just communicate information but encourage and facilitate uniform regulations that will save the consumer's dollar. If the truth were known business needs ACA more than consumers. We need less regulation through more uniform regulation. ACA should be a force for uniformity calling for Federal and state regulators to get their act together.

I support ACA because I see in it some hope for uniformity.

Thank you.

Statement of Melinda Halpert, Executive Director, National Citizens Communications Lobby

The National Citizens Communications Lobby (NCCL), a membership organization devoted to broadcast reform, is in general support of S. 1262, a bill to establish an Agency for Consumer Advocacy (ACA), but we are seriously distrubed by one of the bill's exemptions.

S. 1262 differs from the House bill (H.R. 6118) on one key point that is crucial to citizens concerned with improving the media. The Senate bill expressly prohibits the ACA from participating in broadcast license renewal proceedings before the Federal Communications Commission, while the House bill does not.

We hope that this subcommittee eliminates this unnecessary and detrimental restriction.

We recognize that some legislators have "difficulty in determining the appropriateness of the intervention of the (ACA) in broadcast license renewal proceedings . . ." as noted in the 1975 House Report. They fear that the ACP would become mired down in myriad license challenges in which seemingly small numbers of consumers

would be affected. The House Report further states that "although such license renewal proceedings were not specifically exempted in the bill . . . (t)ime, energy, and expertise of the (ACA) should be devoted to matters having a more widespread impact."

We cannot think of any proceedings that have a more "widespread impact" than that of broadcast license renewals.

The citizen movement in broadcast reform was sparked by a license challenge in the famed 1966 WLBT case in Jackson, Mississippi. The ramifications of this case go well beyond the correction of racist programing in a small Southern community. What is significant about this case is that it established the very notion of standing for citizen participation in FCC proceedings.

Just as every court case enhances and adds to the established body of law, so, too, does each license renewal proceedings set a precedent for our entire communications system. License renewal proceedings have not only clarified industry-wide programing standards and equal opportunity employment practices, but also have opened the way to meaningful dialogues between citizen groups and broadcasters.

Fears of license challenges leading to instability in the broadcast industry have always been greatly exaggerated by broadcasters who seek to protect their lucrative interests. Well over 99% of all licenses are renewed!

We would neither urge nor expect the ACP to become enmeshed in every license renewal. That would be an unlikely occurrence, since the ACA will exercise full discretion in deciding which cases to pursue. But the ACA should, at the very least, have the option of intervening in those few license challenges it feels to be particularly significant.

We fervently hope that the final version of the bill will reflect the House's good sense in not hamstringing this agency before it even exists.

STATEMENT OF ODESSA KOMER, VICE PRESIDENT AND DIRECTOR OF THE CONSUMER AFFAIRS DEPARTMENT, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) with its 1.4 million active members, has vigorously and consistently supported the creation of a federal consumer advocacy agency ever since the issue was first raised many years ago by the late Senator Phillip A. Hart of Michigan.

It is, in fact, difficult to believe that we still do not have an agency to advocate consumer interests so long after the obvious need for and the importance of such an agency had been demonstrated over and over again.

There is an adage that nothing worthwhile is ever easy. If the effort needed to create it were a measure of its worth, the agency by now is practically invaluable.

For consumers, of course, an independent consumer interest advocacy agency at the federal level was invaluable from the start. There was really never much doubt that consumer needs would have been taken into account more completely and adequately if such an agency had been around to advocate consumer interests at the federal level. The more effective and efficient implementation of consumer protection laws would have been the undoubted result of that consumer interest advocacy.

Business, after all, spends untold millions of dollars every year advocating its interests at the federal level. They assuredly do not expend this kind of money and other resources if the effort was worthless or pointless.

Unfortunately, the advantages business derives from its advocacy are all too often purchased at the consumer's expense. The presence of effective consumer advocacy could at least have assured that the benefits from or the costs of federal actions would have been more equally balanced between the two sides than when only one side was a part of the action.

The time that has elapsed since the proposal to create the consumer advocacy agency was advanced, has already cost American consumers dearly in actual lives and dollars lost to marketplace practices which could have been curbed or eliminated by the more forceful or effective actions federal agencies would undoubtedly have been induced or compelled to take by such an advocate.

We are therefore, very hopeful that no more time be lost and that the agency will shortly become a reality rather than just a consumer dream.

We are, of course, very encouraged by the fact that some of the major obstacles to success have been cleared away and that your committee has seen fit to act on this legislation so promptly.

Since this issue has been debated for so long, it is practically impossible to say anything about it which has not already been repeated countless times. The proposal has been examined under a microscope. It is a product of compromise which has

fine tuned the Senate and House bills to the point that only a few adjustments need to be made between the two versions.

In fact, we feel very strongly that the bill the committee is now considering has been stripped down to the minimum necessary to enable the agency to live up to its name as a consumer advocate. Any further limitations on its authority or functions would turn it into just another of those mirages that undermine public confidence in government.

The proposal now before the committee is a reasoned and reasonable one which will allow the agency to do the minimum necessary to get the job done.

Since this issue has been debated for so long, we see little point in commenting on or reviewing each of the improtant provisions contained in the bill.

However, we do wish to re-emphasize the significance of a couple of especially improtant provisions and to show why these are especially vital for the effective operation of the agency.

AGENCY INDEPENDENCE AND ADMINISTRATOR QUALIFICATIONS

It is imperative that the agency be independent; that the administrator appointed to head it be required to have the qualities which demonstrate that he or she is likely to be a forceful consumer advocate; and that the administrator be sufficiently insulated from political pressures in this sensitive position by permitting his or her removal only for not doing the job.

No other arrangement can work and still result in effective consumer advocacy.

We can just imagine how effectively the rights of our members would be protected under a collective bargaining agreement if the failure by management to comply with it were policed solely by a labor advocate appointed by management.

Yet that is almost precisely the type of solution some have proposed as an alternative to an independent consumer protection agency. This seemingly reasonable alternative amounted to having each federal department or agency head appoint a consumer advocate who was expected to hold his or her superior accountable when the department or agency failed to take sufficient account of consumer interests, including taking the superior to court.

It should not possibly take anyone very long to figure out why such a scheme could not possibly work, and why the agency must be independent and headed by an especially qualified person if consumer interests are to be effectively advocated.

INTERVENTION AND PARTICIPATION IN, AND JUDICIAL REVIEW OF, AGENCY PROCEEDINGS

The statutory right to intervene and participate in agency proceedings is, of course, the essence of the bill. There is simply no way that isolated consumers could participate in these proceedings individually, or even do it collectively on a consistent and continuous basis. The effort and resources required to do the job on the thousands of issues which come up annually are simply not available.

This inability to participate in these proceedings can be, and has been very costly to consumers.

One excellent example of this cost is the so-called "double dip" provision in the old FEO oil regulations which the House Small Business Subcommittee on Regulatory Activities unearthed in 1974. The provision designated the methods oil companies were to calculate crude oil costs which could be passed on to their customers. Some companies interpreted the regulation to mean that they could include the cost of crude oil they had sold to other refiners under the crude oil allocation program in the cost of raw materials they used for their own production.

According to testimony before the House Small Business Sub-Committee on Regulatory Reform, consumers had been double billed for $40 million as of October, 1974.

The FEO quickly eliminated this provision (in fact, claiming the regulation never allowed for the practice) when the spotlight was turned on it.

An effective agency could have monitored the complicated regulations the FEO turned out and intervened right at the beginning to prevent this massive double billing.

The right to seek judicial review of agency actions is vital, and in fact necessary, for the effective implementation of the intervention and participation provisions. An agency will give the consumer advocate's recommendations the full weight they deserve only when it knows that it can be taken to court when it fails to do so. Consequently, the mere ability to seek judicial review is likely to reduce the need to use it.

INFORMATION GATHERING

It is vitally important that the agency be able to gather the information and data it will need to make sound decisions.

The authority to obtain information from business by the use of interrogatories, to conduct testing and to have available the processes granted to regulatory agencies during interventions are the minimum necessary if the agency is to obtain the information required to act wisely and responsibly.

The addition of PBB into the food chain which occurred in Michigan more than three years ago is an excellent example of how these powers would have enabled the agency to get the facts about the problem. It would then have been in a position to minimize the catastrophe which has now developed.

The fact is that in this case the agencies which might have done something sat around for far too long instead of getting the information needed to determine the extent of the problem. Moreover, it now appears that the testing initially performed to evaluate the PBB danger was done more as a means to allay fears than to assess the potential dangers.

The agency could have insisted on having the proper tests performed and obtained information from the chemical firms about the extent of the food pollution which occurred. Prompt action, instead of the initial bureaucratic whitewashing which took place, would very likely have minimized the problem which now exists.

Instead, consumer confidence in food has been shaken to the point that some packers are refusing to buy any Michigan meat products, and are openly saying so in an effort to rebuild consumer confidence in the products they sell.

EVALUATION OF AGENCY PERFORMANCE

The ACA's obligation to evaluate the effectiveness of other agencies, and its own advocacy before these agencies is an important part of regulatory reform.

The ACA's activities would expose those agency procedures and actions which were unresponsive or inadequate, and thus point the way to reform. Injecting effective advocacy into the regulatory process would, by itself, revitalize and reform it by transforming it into an effective adversary proceeding.

Finally, contemplated regulatory reform will be adequate only if they are based on unbiased and comprehensive evaluations of an agency's performance and limitations and of the proposed alternatives.

The ACA could perform the vital job of providing that unbiased and comprehensive evaluation, without which any proposed reform cannot possibly be effectively judged.

It is simply too much to expect that the candidate for reform, or the industries it regulates, will furnish the unbiased information needed to implement effective reforms which also protect vital consumer interests.

ADEQUATE BUDGET

The agency must have adequate budget to carry out the responsibilities the act confers upon it.

The proposed budget authorizations grant the agency the minimum it would require to do the job it has been assigned.

It is really a very small price that consumers would pay for the substantial and tangible benefits which they will receive. After all, the proposed budget amounts to only 25 cents per tax paying family. It is also only 1/60th of the budget of the Department of Commerce.

If that Department can be funded at that level and charged with the duty to "foster, promote and develop commerce and industry", we can certainly devote the much smaller amount to an agency which would represent and advocate consumer interests.

As we have already noted, the provisions we outlined above, as well as the others which are now incorporated in both the House and Senate versions, are absolutely essential if we are to have an effective agency.

Not only are all the essential ingredients incorporated in both versions, but there appears to be only relatively minor difference between them. In fact, the differences appear to be so small that we are convinced these can be resolved without difficulty and without impairing the agency's potential effectiveness.

While we again wish to avoid going into details about these differences, we do want to urge that the following differences be resolved as suggested below:

CONFLICT OF INTEREST PROVISION

While both versions address the conflict of interest problems of agency employees during their employment, the House version also places some limitations on certain professional activities following employment.

The House version (Sec. 3(d)) more adequately addresses this problem and would minimize the revolving door shuffling of policy-making personnel between government

and business which has undoubtedly undermined the impartiality of the regulatory process.

FUNCTIONS OF THE AGENCY

The Senate version (Sec. 5) includes a more complete and comprehensive description of the agency's functions than the House version. Although the agency might not be precluded from engaging in the activities mentioned in the Senate, but not the House version: the inclusion of the items listed in the Senate bill would eliminate any possible uncertainties.

CONSUMER COMPLAINTS

The provision in the House version pertaining to complaints is unfortunately too limiting (Sec. 7). This provision apparently authorizes various actions only with respect to complaints which involve probable violations of law or federal court orders. The Senate version, on the other hand, would clearly enable the agency to act on complaints involving trade practices which were detrimental to consumer interests but not necessarily violations of law. The broader Senate version would clearly give the agency the authority to deal with complaints it will undoubtedly receive concerning such matters.

INFORMATION GATHERING

The small business exemption contained in the House version is more reasonable (Sec. 10(d)). The $2.5 million net worth test contained in the Senate version is likely to be much too limiting. For example, the Dun and Bradstreet Million Dollar Directory, listing firms with net worths of over $1,000,000, states that firms of this size represent about 1 percent of all U.S. firms, or about 42,000 out of 4.2 million firms.

The House exemption would clearly ensure that only sizeable firms likely to have a considerable impact on the marketplace are going to be covered by this provision without the exemption being so large that too many will be excluded.

There are, of course, additional differences which will have to be resolved. However, we are sure that these are more a matter of language than substance, and that they can be resolved without limiting the overall objectives incorporated in both bills.

We, therefore, urge that the Committee and Congress act quickly to make this agency a reality for American consumers.

Although we have strongly urged for some time that the ACA be created, we want to make sure that our support for it is not interpreted as meaning that we believe it is an alternative to or substitute for the citizen participation in government bills (H.R. 6221 and S. 270).

The fact is that both are vital if consumer interests are to be adequately represented. The ACA's limited budget will never allow it to intervene effectively in all issues affecting consumers. Moreover, in some cases, direct participation by consumers can bring out more information about an issue than if the advocacy were left solely to one agency.

However, the ACA is the only vehicle through which the necessary expertise and information can be obtained to make effective advocacy possible on the major and technically complicated issues which arise, and which individual consumers could never be able to tackle individually or through consumer organizations.

We therefore urge the speedy enactment of not only the bills to create the ACA, but the bills to fund public participation in government.

STATEMENT OF JOHN W. SCOTT, MASTER OF THE NATIONAL GRANGE

Mr. Chairman and Members of the Committee, The National Grange, the nation's oldest and second largest farm organization, is opposed to legislation that would establish, as a part of the executive branch of government, an agency for consumer advocacy.

The Grange is more than a farm organization. It has a heterologous membership—farmers, ranchers, rural and urban residents are represented in our half-million members located in 41 states and nearly 7,000 local communities. We not only have a basic, inherent interest in agriculture as it is represented by the family farmer, but also are keenly aware of the family farmer's contribution and responsibility to his community.

One of the purposes of the Grange is to serve the total interest of its diversified membership. Thus, policies and programs of the Grange encompass a broad array of circumstances affecting the lives of rural and suburban Americans; they result from

member action generated by total community and national interest—not by agricultural interest alone.

The delegate body of the National Grange adopted the following resolution at its 109th Annual Meeting held in November of 1975:

AGENCY FOR CONSUMER PROTECTION

"RESOLVED, that the National Grange oppose the creation of the Agency for Consumer Protection in the federal government; and be it further

"RESOLVED, that the National Grange take immediate action to express its continued opposition."

It is because of the action taken by the delegates, on behalf of our one-half million members, that the Grange is opposed to an "agency for consumer protection" or "consumer protection agency" or "agency for consumer advocacy". Any way you phrase it, it spells trouble to government, business and consumers.

The "agency" was initially—and still is—the dream vehicle by which a few self-appointed, Washington-based guardians of the public will try to direct the government towards their view of what's best for the American consumer. Control will be indirect through litigation, subpoenas, paperwork and delay.

The CPA is an idea whose time has come and gone. Since its proposal eight years ago, there have been sweeping changes in government—including the change in Administrations—which render the CPA concept wholly irrelevant, obsolete, and in fact disruptive of the current Administration's goals.

There has been, for example, a revolution in consumer protection legislation and reorganization—including the establishment of the CPSC, FEA, OSHA and EPA, passage of the Magnuson-Moss FTC Improvements Act, the Hart-Scott Antitrust Improvements Act, the Toxic Substances Control Act, the Medical Devices Amendments of 1976, the "Government in the Sunshine" Act, the Freedom of Information Act Amendments and countless other consumer protection bills. Moreover, the Peterson Commission recommendations for higher government salaries and an effective code of ethics are going into effect. Oversight committees of the House and the Senate have concluded studies with recommendations to improve conflict rules and the appointment process.

The doctrine that agencies are dominated by the industries they are supposed to regulate derives from perceived conflicts-of-interest, lack of complete disclosure of reulatory contacts with industry, appointment of persons partial to industry and the "revolving-door" syndrome.

It obviously makes more sense to attack these problems directly than to create a new bureaucracy that is no more immune from "capture" than any other bureaucracy. The President and Congress are already taking the direct actions necessary—financial disclosure, open decision-making, effective conflict-of-interest rules (including termination of the "revolving door"), higher salaries to attract and retain personnel and more consumer-oriented appointments (such as Joan Claybrook at NHTSA, Mike Pertschuk at FTC and Carol Foreman at USDA.

We find it difficult to understand why a President who was elected in part on a promise of more responsive, efficient and open government, and has moved rapidly to implement that promise, now finds it necessary to endorse and have introduced a consumer protection bill. The Administration's ACA consumer package is as confusing and bewildering as the complexity of government bureaucracy itself. Indeed, the Administration's lack of any clearly-defined role for the ACA underscores the fundamental weakness of the premise of the ACA—namely that the problems of the bureaucracy can be cured by creating more bureaucracy. The fact that the Administration would retain the Office of Consumer Affairs in the White House and most of the consumer functions of agencies in the present departments of government is clear indication that the Administration is not sure of the purpose of the new agency or of its chances of success.

The National Grange wishes to express its concern over certain features of the bills now being considered by the committee. We are firmly convinced that these bills go too far and that such legislation would disrupt the orderly process of administration of federal laws, result in damaging delays in necessary government regulation and, on balance, harm rather than help consumer interests. Whenever the consumer protection agency so created (whatever its name) decided that a consumer interest was involved in any activity of any other federal agency or department, it would be empowered to intervene on behalf of consumers as an adversary with full powers to subpoena witnesses and evidence and, most important, to appeal to the courts any action taken, with almost no statutory limitation or restriction.

In an effort to improve consumer representation and perhaps to correct shortcomings in the operations of some agencies, the bills would create a new level of bureaucracy in the federal government instead of setting out to improve consideration of consumer interests within the existing framework. Taking into consideration past activities of consumer activist groups in the nation and the current climate of challenge of almost every government action, we fear that the proposed agency would use its powers to the utmost and create havoc in established federal procedures. Delay and additional cost to the government and interested parties would be considerable.

While it is our understanding that the proposed legislation would affect the powers of about thirty-five major federal agencies and well over a thousand proceedings and activities, we are primarily concerned about the impact on the long-standing and well-settled activities of the United States Department of Agriculture (USDA). USDA alone has about 75 types of formal proceedings and twice that number of informal activities in which the new consumer protection agency could intervene. We understand that these include such wide-ranging activities as marketing agreements; regulation of packers and stockyards and the marketing of fresh fruits and vegetables; food standards, inspection, grading and labeling; plant patent proceedings; seed standards; issuance of licenses to warehousemen and others; conservation programs; price support and adjustment programs; Commodity Credit Corporation activities generally; feeding programs; quarantines; agricultural chemicals; export programs; rural assistance programs; and Forest Service programs. The list could be extended and many other activities of indirect concern to farmers could be added.

USDA has operated effectively under its regulatory role for two-thirds of a century. There is no reason to disturb the role it has performed and inject an "eager beaver" into the situation.

We urge the defeat of the proposed legislation to establish a consumer agency.

Please make this statement a part of the hearing record on this legislation. Thank you.

STATEMENT OF NANCY HARVEY STEORTS, PRESIDENT, NANCY HARVEY STEORTS, ASSOCIATES

Mr. Chairman and Members of the Committee: I am Nancy Harvey Steorts, formerly Special Assistant to the Secretary of Agriculture for Consumer Affairs, and now President of Nancy Harvey Steorts, Associates, Specialists in Consumer Affairs.

The consumer today wants to be heard and wants to be a part of the decision making process. No longer will today's consumers sit back and allow government and industry to formulate policies and programs which will affect their increasingly changing life styles without consumer input.

Consumers today are putting quality and value at the top of their buying decisions. They are listening and reacting and they are insistent on being heard at the highest levels of both government and industry.

There has been a great deal of discussion and proposed legislation over the last few years as to which was the best way to have consumer interests represented.

Some felt that consumers were already being represented fairly in government, others felt that individual consumer offices within the Executive Branch would assist the consumer in being heard, whereas others felt the only way for the consumer to be truly represented was to have an independent agency which would serve as a focal point and overseer for consumer interests in the government decision making process.

Having served as Special Assistant to the Secretary of Agriculture for Consumer Affairs, I would like to address this question from my perspective of having served in that position for almost four years.

The independent agency which will represent the consumers' interests, I feel, is most important today, as I feel this will serve as the focal point in government to bring together and focus on the various issues which are important to and will have impact on the consumer. It can serve as a catalyst, if you will, at the earliest stages to look at all sides of the issue. It can bring together producers, manufacturers, retailers and consumers to look at the alternatives before an issue becomes a crisis. It can request new studies and research so that the best scientific data can be made available, it can bring together the appropriate government offices within agencies that may have expertise in a specific field so as to avoid later duplication and overlap of responsibilities. It can tap into the states and local jurisdictions for additional information and expertise. It can interpret for the grass roots consumer in lay language what the major facts are about the issues, so that they can make their facts heard on the issue. It can also intervene and review government decisions if they have not adequately heard the viewpoint of the consumer.

Producers and industry officials should welcome this new proposed agency as an opportunity to work more closely with the consumer and the government. Most industry officials want to do what is best for the consumer—otherwise why would they be in business! I believe industry officials, when they understand what this agency can be, should welcome it as a tool that will help them be more effective and responsive to their customers.

Not everything has to end up in court with litigation—only that which has not had full public involvement should end up in court.

If government is to be responsive, then all interests should have an opportunity to be heard. Once all interests have an opportunity to have input, then the decision makers must make a decision which is in the public's interest. Not always is the consumers' interest going to come out on top. The important concept *is* that the consumers' interest be heard right along with all the other special interests. That is what consumer input into the decision making process is all about.

AGRICULTURE EXEMPTIONS

There has been a great deal of discussion as to what should or should not be exempted from this bill.

It is not in the best interest of the consumer, the producer or agricultural industry to have agricultural exemptions. Agriculture and food policy is of paramount importance to the consumer. No decision that relates to market prices, price supports or payments for raw agricultural commodities should be made without full consumer involvement in the issue. Supply and pricing decisions are some of the most important decisions made in agriculture. There is *no* reason to have agriculture programs exempted from this Act. The same procedures should be in effect for the agriculture producer as for the oil, steel and auto manufacturer. I urge you to delete the proposed agriculture exemptions from the bill before it is enacted.

It is much better to have consumer involvement in these agricultural issues at the early stages of the decision making process than to have the consumer excluded and then have them react after the fact. The Secretary of Agriculture should have the benefit of consumer input in all major decisions that will impact the consumer, not just a few.

The Agency for Consumer Protection, as I see it, will be involved with the major issues that have an impact on consumers. It should be small, with well qualified, nonpartisan individuals who will represent the consumer view point, and it should focus on carefully selected, major priorities.

OMBUDSPERSON WITHIN EACH DEPARTMENT

In addition to the independent agency, it is extremely important that there be within each Executive Department and regulatory Agency an Office of Consumer Affairs or an ombudsperson to represent within the Department the concerns and viewpoint of the consumer. This is essential, as each Department needs to have at this stage a focal point for the consumers' interests.

Having served as the first Special Assistant to the Secretary of Agriculture for Consumer Affairs, I know how important that function was. This office should report directly to the Secretary of the Department or to the Administrator of the Agency and should have as its functions the representation of the consumer viewpoint and the coordination of the consumer activities within the Department. It is extremely important that consumers have one central source within each Agency that they can go to. This office is the key contact for consumers regarding new proposals, procedures, and issues that may have an impact on them. This office should work closely with all the officials with the Department to be sure the consumer is being heard and is being involved in the decision making process. The ombudsperson should serve as the spokesperson and advocate for the consumer viewpoint both within and outside the Department. The ombudsman should work very closely with the Agency for Consumer Protection and should establish a good working relationship with all the appropriate officials within the Agency for Consumer Protection as well as within the individual Department. Respect and rapport is built up when you are within a Department, however, it is essential that in addition to the inside office there be the back-up and assistance from an independent agency as the independent agency will have the power to intervene legally if the consumers' interests are not being adequately represented.

TODAY AT USDA

Today at USDA, there is no separate Office of Consumer Affairs or ombudsperson for the consumer. It was the decision of Secretary Bergland to abolish the Office

of Special Assistant to the Secretary of Agriculture for Consumer Affairs when I left on February 4. Today there is no central coordinator whose full-time responsibility is to see that the consumer viewpoint is being heard throughout all agencies of the Department. There is no one that the consumer can turn to when the price supports are raised with no input from consumers. There is *no* one to handle and coordinate the hundreds of consumer complaints and phone calls that come in each week. There is no one to arrange briefings, conferences, seminars, and ad-hoc meetings for consumer leaders. There is no one to testify or speak for the consumers' viewpoint in agriculture policy. In other words, there is a real void today at the U.S. Department of Agriculture for the consumer.

Carol Foreman, formerly Executive Director of Consumers Federation of America, who is now Assistant Secretary for Food and Consumer Services, is a welcome addition at USDA. In this position she cannot be expected or should she be an advocate for the consumer position. Many areas of concern to consumers are not under her jurisdiction such as marketing orders, export policies, research programs, support programs, extension education priorities, to name a few.

SUPPORT AGENCY FOR CONSUMER PROTECTION WITH SEPARATE OMBUDSPERSON IN EACH DEPARTMENT AND AGENCY

A foundation for consumer involvement at USDA has been laid, but the frame is still to be built. Consumer involvement within a major Department such as Agriculture is slow and tedious, but possible. Thus, it is essential that, along with the independent Agency for Consumer Protection, the Congress direct the head of each Executive Department and Regulatory Agency to establish an Office of Ombudsperson and that these offices be adequately staffed and budgeted to be an effective spokesperson and advocate for the consumer within the Department. This will not duplicate the efforts of the Agency for Consumer Protection but it will enhance it. This, I feel, will be the most effective way to represent the consumer viewpoint in the governmental decision making process.

STATEMENT OF WILLIAM H. TANKERSLEY, PRESIDENT, COUNCIL OF BETTER BUSINESS BUREAUS, INC.

Mr. Chairman, I am William H. Tankersley, President of the Council of Better Business Bureaus, Inc. I appreciate this opportunity to submit for your consideration comments relating to the proposed Consumer Protection Act of 1977.

These views are expressed on behalf of the Council of Better Business Bureaus, the national organization for the Better Business Bureau system consisting of 143 Better Business Bureaus and satellites in 41 states and the District of Columbia. Our statement is presented with the approval of the Council's Executive Committee.

For 65 years, the Better Business Bureaus have been the prime organization to which consumers turn when they have problems in the marketplace. Independent polls have reflected that more than half of the American people would turn first to the Better Business Bureau if they could not resolve their marketplace problem with business. More than half of the people surveyed by Roper Reports stated that they would "most likely get satisfaction" from the Better Business Bureau if they were to take their problem to it. According to Roper Reports, the better Business Bureau "overshadowed all other places or people to whom to turn for help."

The Consumer Protection Act of 1977 focuses on two important areas: one relates to the representation of the consumer within the federal establishment; the other relates to issues involving business and its customers in the marketplace.

Representing the Consumer in the Federal Government

To date, most attention relating to this proposed legislation has been directed to the Agency for Consumer Advocacy roll or representing the consumer before federal agencies and courts. Because this issue involves the internal oversight functions of the Federal Government, itself, we deem it inappropriate to take a position on any section of the proposed Act which relates to this issue.

The legislative, executive and judicial branches of government all have oversight functions which are parallel to the activities contemplated for the proposed Agency for Consumer Protection in representing consumers within the federal establishment. However, if Congress deems a new agency essential to create a consciousness of public obligation within government, we express only the hope that any such Agency would seek to achieve this objective within the existing Federal establishment, rather than duplicating staffs and costs already committed to these functions.

We note with approval the language in the proposed Senate version, calling for an evaluation of the proposed Agency by the Comptroller General; and we note with similar approval the automatic termination on "sunset" provision in the House version. Both are important, in our view, to assure continuing oversight of the proposed Agency.

However, we urge that Congress consider the fact that, since this legislative proposal first came before Congress many years ago, the scope of the Federal Trade Commission powers has been significantly expanded, the Consumer Product Safety Commission has been created, special consumer offices and functions have been established in 17 federal agencies, and substantial budgetary increases have been made in the interest of better service to the consumer.

Finally, to the extent that the oversight function of the proposed Agency may be interpreted as a criticism of those federal agencies concerned with consumer protection, we must note that in our many dealings with these agencies we have found them dedicated to the public interest and specifically cognizant of the consumer aspect of that interest

Cost-Benefit Analysis

An element in the proposed law that impels comment is the omission in the House version of a requirement of cost-benefit analysis for taxpaying consumers, and we urge the Congress to take a hard look at the proposal in these terms. We wholeheartedly endorse the principle that, for all laws and regulations relating to consumer-business issues, cost-benefit analyses be applied prior to their promulgation. The absence of formal recognition of this element in the House version, in our judgment, is an omission of vital importance

Business-Consumer Issues in the Marketplace

Our statement is primarily directed to those sections of the proposed law which relate to the Agency's powers to deal with business-consumer issues in the marketplace. Too little attention has been directed to these provisions during Congressional debate, and this is one area where we have professional interest and expertise. As an organization, we stand for the same basic goal of protecting consumer interests in the marketplace; however, we must oppose the proposed powers of the Agency to deal with this objective.

At the outset of this statement in opposition to these portions of the proposed Act, let me state that we do not hold out the Better Business Bureaus as the complete answer for all consumer problems in the marketplace. However we believe that the private sector, through individual company efforts, through industry associations and through the Better Business Bureaus, is doing an increasingly better job of resolving consumer concerns.

Recent years have also seen increased activity and effectiveness at the federal, state and local levels of government to accomplish the same goal, especially where violations of law are found.

Our primary areas of concern with this measure relate to Sections 7 (Consumer Complaints), 8 (Consumer Information and Services), and 10 (Information Gathering) in both the Senate and House versions of the bill, and to Section 9 (Testing and Research) in the House version.

CONSUMER COMPLAINTS

The proposed Agency for Consumer Protection would have the power to deal with any consumer complaint regardless of its source and nature. Specifically, the Agency would be empowered to receive any complaint "concerning actions or practices which may be detrimental to the interests of consumers." The term "interests of Consumers" is further defined to include every aspect of the marketplace.

Such an unlimited definition would establish a function of massive proportions for an Agency headquartered in Washington, D.C. Complaints would be received ranging from a minor scratch on an article of furniture that has been damaged during delivery to a multi-thousand-dollar housing complaint by a home owner against a contractor. If added frustrations are to be avoided for the complaining consumer, the Agency must be prepared to handle each of these complaints in a fast, consistent and thorough manner.

Judging from our experience, it would be extremely difficult and costly for a centralized national office to undertake effectively the full scope of complaint handling as required in Section 7. Of course, both versions of the bill would give the Administrator of the Agency authority to establish as many regional offices as necessary; however, in our view, this would be an unnecessry and confusing addition to the many state and local authorities and private sector agencies already in existence.

We perceive other problems for the Agency in conducting the complaint handling functions directed by the proposed legislation. Section 7 requires the Agency to notify producers, distributors and retailers of ". . . complaints of any significance concerning them. . . ." This requirement adds a significant burden to an already massive task. As we read this section, a controversy relating to service on an automobile by a gas station should be referred to (i) the auto manufacturer, (ii) the auto dealer, (iii) the service station, and (iv) the parent oil company, on the ground that all are or should be "concerned." Moreover, in the nicked furniture example cited on the preceding page, the law would require the same type of notification be given to the manufacturer and retailer.

Finally, there is no direction to the Agency to avoid duplication of contact under this section and we can envision many situations where a retailer or manufacturer would receive multiple notifications of the same kind from various public and private agencies. Indeed, these requirements, taken together, would seem to encourage duplication on the part of public agencies, and the total cost of handling complaints would be greater, thereby leading to the possible increase in the cost of consumer products to the public

But, Section 7 goes one step further by requiring all of these multiple notifications, together with Agency and business responses as well as every other document relating to a single case or a single company, to be maintained in a "public document" room. It is predictable that such a room would eventually grow to a size comparable to the Library of Congress with a vast accumulation of records, many of which would be of little value to either the government or the public.

Reports which have been accumulated by Better Business Bureaus on individual companies, and complaints about such companies, total in the millions even though our filing systems are purged from time to time to permit the elimination of outdated reports and complaints. The costs to maintain a document room required by this Act would grow from year to year and very likely would soon consume the entire authorized budget for such an Agency.

In summary, the Agency is directed to deal with large numbers of compalints requiring multiple notifications and extensive storage, seemingly without any real study or knowledge of the extent of work actually required.

Apart from the complaints which were handled satisfactorily on a direct basis by business itself, last year local Better Business Bureaus processed approximately 400,000 written complaints and handled another half million on the telephone. If consumers were encouraged to send all of their complaints to the proposed Agency rather than to exercise their own competence to deal directly with the business or already established mechanisms, the Agency would be inundated to the extent that it would be incapable of devoting its activities to the accomplishment of major projects.

However, limiting the Agency's complaint handling functions to those involving violations of U.S. laws, federal rules and orders, or federal court judgments, decrees and orders, and then only when other federal agencies are unwilling or unable to handle them, the Agency for Consumer Protection would be able to undertake those other functions which have been discussed most frequently in the debate by Members of Congress.

It is our strong belief that there must be a delineation of the respective roles for the government and the private sector in this admittedly important area of resolving consumer grievances. It is clear that government should and must be capable of handling all clear violations of the law such as outright fraud in the marketplace. Also, governmental mechanisms should exist for handling consumer grievances when the private sector refuses or is unable to resolve marketplace disputes voluntarily. But the private sector should be the first line of action and the means for prompt, fair and inexpensive resolution of consumer complaints. Only when this line of action has been exhausted should governmental mechanisms be utilized. In short, government should serve as the remedy of last resort, when parties are unable through the mechanisms of the marketplace to resolve their differences by agreement, mediation or arbitration.

Today the private sector is devoting a large investment of time and money to provide an effective means for resolving customer complaints. Through individual corporate programs, collective industrywide endeavors, and the network of Better Business Bureaus, complaint-handling mechanisms are resolving with increasing efficiency, the product and service difficulties that are an inevitable result of an active marketplace involving millions of transactions each day. These privately supported actions demonstrate the rising determination of the private sector to improve the marketplace and to be increasingly responsive to the consumer. They also reflect the proper decision of the consumer to represent his own interests and to achieve appropriate recognition of those interests through his own efforts. The consumers' interest obviously is to be neither a ward of the state nor a captive of business.

The growing importance of consumer programs in the private sector is reflected by the increasing numbers of consumer affairs offices in many major corporations. This in turn, has spawned a four-year old organization—The Society of Consumer Affairs Professionals in Business (SOCAP), which was formed with the assistance of the Council of Better Business Bureaus. This organization of corporate executives, who are responsible for the handling of consumer affairs in their respective businesses, has more than 700 members and a goal of further upgrading the consumer affairs profession in the business community. This organization promotes the establishment of meaningful consumer affairs policies, the development and implementation of effective internal consumer programs within individual corporations and the exchange of proven techniques for handling consumer grievances. The programs developed within corporations by this group of professionals are contributing significantly to the resolution of marketplace problems.

In recent years, the Better Business Bureaus have demonstrated an increased capability for effecting final resolutions of consumer problems. Outstanding examples of these efforts are the National Consumer Arbitration Program and the National Advertising Review Program.

Five years ago the Council of Better Business Bureaus announced the beginning of a national program to arbitrate those consumer disputes which could not be resolved through informal means. The program is under way and expanding. To date, more than 100 Bureaus in major marketplaces throughout the country have arbitration programs and other Bureaus are adopting this program to provide a final resolution of complaints that might otherwise constitute a burden on the courts.

One emphasis of these programs is to precommit business to arbitrate in any dispute which it and the Better Business Bureau are unable to resolve and to give the customer a choice of utilizing this free public service or turning to the small claims courts. To date, more than 23,000 businesses have precommitted to this process.

Our experience has demonstrated that arbitration becomes an extremely popular alternative for resolving consumer grievances when the public is adequately educated.

We are experiencing an expanding partnership with federal, state and local governmental bodies under this program. The Federal Trade Commission has written Better Business Bureau arbitration into five consent orders; the Attorneys General in Ohio, Texas and Louisiana have done the same. Small claims courts in Washington, California and North Carolina have either referred or directed consumer-business disputes to Better Business Bureau arbitration.

The National Advertising Division/National Advertising Review Board mechanism is designed to handle consumer complaints as well as advertising representations which give rise to such complaints. These grievances originate through the monitoring of advertising by our National Advertising Division or through complaints from consumers, consumer groups, government agencies or competitors. An investigation by NAD determines whether a reasonable question exists with respect to the accuracy of an ad, and if so, it attempts to eliminate or correct the advertising through direct negotiations with the advertiser. Most cases are resolved through this procedure. If a satisfactory resolution is not achieved, the matter is brought before the National Advertising Review Board, cosponsored by the American Association of Advertising Agencies, the Association of National Advertisers, the American Advertising Federation, and the Council of Better Business Bureaus. A panel of distinguished individuals drawn from advertisers, advertising agencies and the public sector reviews the dispute and renders a decision as to whether or not the ad is false or deceptive.

The effectiveness of this mechanism in eliminating advertising capable of inducing consumer complaints is immeasurable. Commerce Secretary Juanita Kreps recently pointed to this program as an example of self-regulation by business. While the procedure provides for prompt public reference to the appropriate law enforcement agency should any advertiser not be willing to eliminate objectionable advertising, to date with more than 1200 cases handled, no advertiser has forced us to take this action. This emphasizes the Better Business Bureau function of maintaining an orderly and effective marketplace, and, as such, it must foster the interests equally of the consuming and business communities.

Although this proposed legislation contains little or no recognition of, or reliance on, the considerable resources and efforts now being exerted by the private sector, it has been the announced policy of Congress to encourage the public use of private mechanisms. For example, in the Consumer Product Warranty-FTC Improvement Act, Section 110 specifically authorizes the writing of informal dispute settlement mechanisms into the actual warranty itself. The Conference report on that bill stated that it was the intention of Congress to encourage such mechanisms. Yet this proposed law purports to establish a federal agency to accomplish the same results with tax

dollars rather than private means. We hope that Congress will follow the direction established in the warranty law and adopt a legislative approach which encourages private efforts rather than one which seeks to duplicate or supplant them.

Other Congressional Committees have addressed their activities to the question of resolving consumer controversies in the best possible way. In the last Session of Congress, the Senate passed the "Consumer Controversies Resolution Act," a measure designed to strengthen state and local mechanisms for resolving consumer complaints. At the suggestion of the Council of Better Business Bureaus, that bill was amended to reflect involvement by the private sector. The same measure has now been introduced for consideration by both Houses of Congress in this Session. Surely it is not the intent of Congress to move in such a duplicative fashion on such an important issue at such great cost to the taxpaying consumer.

CONSUMER INFORMATION AND SERVICE

Another function of the Agency for Consumer Protection is the development, publication and distribution of information and material designed to inform consumers of "matters of interest to them." While we applaud any activity which would increase consumer confidence in the marketplace, we would point out that today millions of dollars are already being spent for this very purpose.

Public schools, colleges, universities, companies, industries, associations, consumer advocates and groups, and innumerable other organizations, including governmental agencies at the federal, state and local levels, are conducting consumer information programs.

In addition to the educational and informational activities being undertaken by the organizations listed above, the Better Business Bureaus have substantial programs aimed at preventing disputes from arising in the first instance. Examples include informational efforts to tell consumers how to be more effective in the marketplace both in terms of wise buying decisions and the avoidance of deception. With the cooperation of all of the major networks, the public service radio announcements developed by the Council of Better Business Bureaus are aired on a regular basis over approximately 4,000 radio stations across the nation.

Nor have we overlooked America's children. A television series of "Junior Consumer Tips," designed to inform children about good nutritional habits, saving and spending money wisely, etc., has been developed and is exposed to more than six million youngsters each week. "Tips for Consumers," a weekly newspaper column, is now provided by the Council of Better Business Bureaus at no charge to more than 600 newspapers with a combined circulation of over nine million.

These efforts by the Better Business Bureaus are part of a national effort by many public and private agencies to accomplish similar goals. If federal legislation were going to be meaningful in this area it might establish a program to coordinate these already duplicative activities in such a way that the private and public sectors can make current expenditures more productive, rather than spending more at a time when costs of government are becoming a topic of intense public concern.

TESTING AND RESEARCH

In the House version, this proposed law specifically directs the Agency for Consumer Advocacy to support the testing of consumer products. Again, we have difficulty understanding why the Congress would direct the spending of additional monies in an area where millions are already being spent by the public and private sectors. For example, in the all-important areas of food purity, product safety, and product standards, the Food and Drug Administration, Consumer Product Safety Commission, Department of Agriculture, Bureau of Standards and others, are already functioning, and the proposed law is silent with respect to specifying other areas for the Agency to undertake independent testing. Private concerns such as Consumers Union and Consumers Research, are currently undertaking independent testing and research in areas of consumer interest. Additionally, colleges and universities from coast-to-coast are involved in this important area. But all of the expenditures by all of these organizations and institutions are small when compared to the millions of dollars now being expended for testing and research by business.

Since one of the major functions of the Council of Better Business Bureaus relates to the way in which products are advertised to the public, we raise serious question about the provisions of both versions which would permit the publication of test data. Our question relates to the way competitors might use this information, which could be incomplete and, hence, misleading in their comparative advertising. At a very minimum, we hope that some restrictions would be made on the use of such test data in advertising, especially where the public could be led to believe a product has been given "government approval."

INFORMATION GATHERING

The section relating to the gathering of information has generated extensive comment and we will not repeat such comments here. However, to the extent that such information gathering includes the conducting ". . . of conferences, surveys and investigations including economic surveys concerning the needs, interests and problems of consumers which are not duplicative in significant degree in other government agencies. . . ." this again fails to recognize the substanial activity in the private sector and by state and local levels of the public sector. Moreover, there is no showing anywhere that another function of this type is even needed but, as with the educational and informational functions, perhaps some coordinating efforts would be welcomed.

We applaud the directives in the proposed law which would require cooperation "with State and local governments and private enterprise in the promotion and protection of the interests of consumers." However, this fails to provide more specific direction to the Agency by delineating the kind of partnership that exists today and should exist in the future between an Agency, the state and local consumer protection agencies, consumer groups and the Business sector. This failure could well result in unneeded bureaucratic procedures, unnecessary expenditures and, most important, added frustrations for the consumer.

CONCLUSION

In summary, Mr. Chairman, it has been our intention in this statement to:

1. question but take no position on the proposed function to represent the consumer within the federal establishment. This is an internal oversight function of government itself and outside the ambit of our special competence;

2. oppose as ill conceived, duplicative, costly, bureaucratic and legislatively unwise those portions of the Act relating to proposed Agency functions in dealing with business-consumer issues in the marketplace; and

3. point out the current state of consumer protection activity by the private sector and by the state and local levels of the public sector, while urging that there be greater recognition of such activities in all portions of this proposed legislation. For example, a booklet recently published by the Better Business Bureaus of Massachusetts for the State, entitled The Commonwealth of Massachusetts Consumer Resource Guide, contains a listing of more than 400 public and private agencies in that state which serve consumers (copies of this booklet are being sent to you under separate cover).

It is our view that this legislation should be restudied, with unnecessary and duplicative sections removed or referred to more appropriate Congressional Committees which are already considering legislation to meet the objectives sought.

STATEMENT OF PAUL S. WELLER, JR., VICE PRESIDENT FOR PUBLIC AFFAIRS, NATIONAL COUNCIL OF FARMERS COOPERATIVES

Mr. Chairman, the National Council of Farmers Cooperatives is pleased to present the views of the nation's farmer-owner cooperatives on legislation currently before Congress to establish an independent consumer agency. I am Paul S. Weller, Vice President for Public Affairs of the National Council, and have primary responsibility for working closely with consumers and their organizations on behalf of the farmer cooperatives.

There are currently some 7,500 farmer-owned cooperatives in the U.S. These member-owned and controlled organizations currently market nearly 80 percent of the nation's dairy products, 40 percent of its grain, 35 percent of its cotton, and some 25 percent of its fruit and vegetables. Total annual volume of these consumer-owned businesses now approaches $55 billion, helping to provide the nation with the world's most plentiful supply of food and fiber.

Because of farmer cooperatives are themselves consumer-owned, they have had a deep commitment to consumer affairs. Staff members of the National Council helped form the Agriculture Council of America, an organization dedicated to developing close working ties between farmers and consumers. Today, I serve on the organization's advisory committee, a dairy cooperative member serves as its chairman, and much of its funds come from farmer cooperative organizations from coast to coast. We in the cooperatives are part of American agriculture, the nation's largest industry serving consumers—with assets of more than $200 billion. And we are dedicated to a strong consumer effort for the benefit of all Americans.

It is for this reason that the National Council chooses to present this statement on government consumer efforts. We do not separate farmers and consumers into distinct groups, for we are convinced that both must work together as a team. Indeed, we are also convinced that the groups are inseparable, and that farmers rank among

our most important consumers—purchasing goods and services far in excess of the national norm. We have an important stake in any consumer effort by the federal government.

In brief, farmers and their cooperatives generally support legislation that would protect consumers' rights. But we find ourselves in a dilemma on S. 1262, legislation designed to establish an independent consumer agency in the executive branch of government. We would like to address our remarks to that proposed legislation.

Section 2 says the Act will promote protection of consumers as to safety, quality, performance, and related features of consumers' goods and services—yet we already have an independent Consumer Product Safety Commission, charged with this responsibility.

Section 2 says the Act will protect the consumer through prevention of unfair or deceptive trade practices, and maintenance of truthfulness and fairness in advertising and sale of products and services—yet we already have a Federal Trade Commission, charged with the responsibility to do this.

Section 2 says the Act will protect consumers' legal rights and remedies—yet we already have a Department of Justice and related federal agencies to do this.

And Section 5 says the Act will provide for the adoption and expansion of consumer programs in the Executive Branch—yet most of the 17 major executive agencies have already begun development of such consumer representation programs, tailored to their own respective disciplines.

But what concerns us in the farmer cooperative most are these provisions of the Act:

Sec. 6(c)(1).—Initiation of federal court proceedings involving a federal agency action. There are an estimated 200 decision-making processes within the U.S. Department of Agriculture which could be deterimed to "substantially affect the interest of consumers . . ." These include the critically needed commodity marketing orders that even out the flow of perishable milk, fruit, and vegetables to the nation's marketplace. They also include much of the $20 billion in agricultural exports that help this nation pay for much of its escalating energy costs from foreign imports. We in the agricultural sector have nothing to hide from such an agency. But none of us—consumers and farmers alike—can afford the lengthy disruptions in the nation's finely tuned food and fiber programs that would be caused by judicial actions brought by persons not skilled in agricultural production and marketing. The same is true of succeeding provisions that permit agency intervention in private judicial proceedings. As addendum at the end of this statement lists some of the most serious disruptions that could be forthcoming from agency action.

Sec. 10(a)(1).—Information gathering. This section authorizes yet another federal agency to send its subpoenas and its staff members into the daily workings of private business. Sometimes we in the farmer cooperatives feel we are working more for the federal government, than for our farmer members. Let me cite an example of how this increasing federal information gathering can cripple and impede the operations of business. Not long ago, the Federal Trade Commission—another consumer agency of the executive branch—sent a 17-page subpoena to one of our northeastern dairy cooperatives. It demanded detailed business records of a 10-year period. What ensued nearly brought this farmer-owned cooperative to its knees, for it was required to spend approximately 46,500 man-hours at 42 different locations in five states, collecting approximately 29,200 documents requested. At $10.00 per hour—a reasonable estimate—it cost this already financially troubled cooperative nearly a half-million dollars just to get the data for the Federal Trade Commission. That didn't include legal fees. Now we propose to add yet another burden through another consumer agency. And we propose to prosecute those who cannot comply through the fedral district courts. Nearly all of our farmer-owned cooperatives would be liable under this section's small business exemption.

Sec. 16(a).—Exemptions. Legislation to establish an Agency of Consumer Protection, passed by the U.S. Senate on May 15, 1976, carried a partial exemption for agricultural production programs. It read, as follows: "Nothing in this Act shall be construed to authorize the Administrator to intervene or participate in any proceeding or activity directly affecting producers of livestock, poultry, agricultural crops or raw fish products, including but not limited to, such proceedings and activities relating to the initial sale by such producers of raw agricultural commodities; Commodity Credit Corporation price support, procurement, loan and payment programs; P.L. 480 and other export programs; acreage allotment and marketing quotas; federal crop insurance, soil conservation and land adjustment programs; Farmers Home Administration and Rural Electrification Administration loans; marketing orders; and programs to prevent the spread of livestock and poultry diseases, plant pests, and noxious weeds."

An Amendment of this type would not exempt agency action or non-farm food costs. If price manipulations and anti-consumer practices exist in the processing, distribution, and retailing sector, then any new consumer agency would have full authority to intervene on behalf of the consumer. But it would prevent federal government intervention into the production of agricultural commodities, where historic precedent has proven that such action is almost invariably counter-productive. If we are to have an Agency for Consumer Protection, then it is absolutely imperative that such an amendment be added to this legislation. We do not feel that the limitations carried in Sec. 18(a) and Sec. 18(b) provide any kind of adequate protection for agricultural production.

Mr. Chairman, it is not the tradition of the farmer cooperatives to be completely negative on legislative issues. And we don't want to be at all negative on consumer protection and representation within the federal government. We are consumers, our members are consumers, and of course, our customers are consumers.

Mr. Chairman, we would propose to this committee that the most sensible and effective consumer protection would be forthcoming—not from another federal agency—but rather from increased consumer representation and involvement within the federal executive agencies, where technicians and specialists actually understand the problems and possible solutions. We in agriculture have made a substantial move in that direction. We have a Secretary of Agriculture who is strongly pro-consumer. And we have an Assistant Secretary of Agriculture for Consumer Affairs, Mrs. Carol Tucker Foreman, who has been committed throughout her professional career for consumer portection.

In brief, we propose that the work of the previous Administration to activate and support consumer affairs programs within each of the executive agencies to be continued. This is the logical course of action, and we in the farmer cooperatives support this type of program:

That each agency organize and adequately fund an Office of Consumer Affairs, and that such an office be headed by a qualified consumer advocate with full authority to represent the consumer's voice in all agency affairs. For the U.S. Department of Agriculture, under the new Assistant Secretary for Consumer Affairs, we would propose such a program:

(1) That the Assistant Secretary for Consumer Affairs be included in all USDA policy meetings thought to have any interest or impact on consumers;

(2) That the USDA's Office of Consumer Affairs have an advocacy role, designed in each case to fully represent the interests of individual consumers;

(3) That an economic impact study be required on each consumer-oriented decision, taking into account its cost not only to consumers, but to farmers and agribusiness as well.

(4) That every effort be made within USDA to get valid consumer input at the beginning of each pertinent decision-making process. Regulations should not be publicly proposed without full consumer input into their preparation and direction;

(5) That the USDA Office of Consumer Affairs be allowed to operate with its own independent budget and limited supporting staff, to include research and accounting assistance for maximum effectiveness.

(6) That regular consumer forums be scheduled by USDA through its nationwide Cooperative Extension Service to involve consumer input at the local grassroots level;

(7) And that the full capabilities of the USDA Office of Communications and the Cooperative Extension Service be utilized to publicize these consumer forums, as well as to publicize all USDA actions that warrant consumer input and action.

Mr. Chairman, that is the kind of plan that we propose for each of the executive agencies, for we are convinced that such an inter-agency effort aimed at individual consumers will be much more effective than an external bureaucracy designed to take pot-shots at other executive agencies and businesses.

Our basic objection to this Bill is that it will surely increase the risks of farming—already at an intolerable level for many. The Washington Post published an editorial last year that sums up our thoughts on the subject. It said, in part:

"The more uncertain and speculative farming becomes, the harder it will become to achieve the maximum production that the country now urgently needs, for both consumers here and those large populations abroad that now depend upon us . . ."

We, and the American farmers whom we represent, respectfully ask your consideration of these comments. Thank you for this opportunity to appear here this morning.

ADDENDUM—STATEMENT OF AN AGENCY FOR CONSUMER PROTECTION

There is potential in S. 1262 to:

(1) Disrupt emergency food aid to foreign nations thorugh the beneficial P.L. 480 food assistance programs, and thus seriously affect U.S. foreign policy;
(2) Suspend or otherwise disrupt the orderly processes of federal marketing orders that exist to even out the distribution—and thus the prices—of milk, fruits, and vegetables to market;
(3) Embargo the export of U.S. agricultural commodities to foreign customers, thus reducing markets for U.S. farmers, adding to the critical balance of payments deficit, and disrupting long-standing contracts with buyers around the world;
(4) Burdern and negate the contractual arrangements of USDA's commodity procurement and distribution program that provides food for the nation's School Lunch project;
(5) Damage the orderly marketing and price surveillance activities provided to U.S. livestock producers by the Packers and Stockyards Administration;
(6) Boost operating costs, administrative delays, and tax revenue needs of the Food Stamp program;
(7) Delay beyond critical deadline dates USDA price support and Commodity Credit Corporation food supply programs and inventory control operations;
(8) Negate and render ineffective the food inspection services and responsibilities of USDA in protecting the consuming public;
(9) Duplicate and complicate the Federal channels of responsibility for consumer protection and representation.

STATEMENT OF THE NATIONAL LP-GAS ASSOCIATION BY ARTHUR C. KREUTZER, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL

This comment is submitted by the National LP-Gas Association for consideration in connection with Governmental Affairs Committee hearings on S. 1262, the bill calling for creation of the Agency for Consumer Advocacy. The national LP-Gas Association, a trade association, has as members, companies engaged in supplying an energy source, principally propane, to approximately 13 million installations throughout the United States. It represents over 5400 members, including 43 affiliated states. Our member companies are predominately small businesses. This comment reflects the opinion of our members particularly of these small businesses.

In submitting this statement we do not intend to imply lack of concern with consumer protection. However, our members are now overwhelmed with governmental regulation, and the superimposition of another agency adds to an already heavy burden. We are now confronted with regulatory matters in Departments of Labor, occasionally Defense, and with such agencies as FEA, ACPSC, OSHA, DOT, ICC, FRB, and occasionally FTC. In addition, Agriculture, Interior and Commerce seek informational reports. It is our concept that these Departments or Agencies are dedicated to the public interest, which includes the consumer. In some Agencies protection of the consumer is their prime purpose. In others, specific offices for consumer representation have been created and are functioning. We recognize that it is proposed to transfer to ACA consumer activities of other Agencies. We question the feasibility of discarding the more specific expertise that these Agencies have in their jurisdictional areas. Accordingly, we consider that the consumer interests are adequately, if not fully represented and to superimpose the ACA is both a costly and injudicious duplication of bureaucracy.

ACA represents unnecessary cost to government, and to the regulated businessman that must ultimately be borne by the consumer. We question that this represents consumer protection. The small businessman supplying propane is particularly distressed in that he must first contend with the requirements of the Departments and Agencies earlier listed in the duplication of governmental activity.

To briefly point out soe areas of duplication or overlap presented in this legislation, Section 5(b) directs that ACA:

"(2) conduct and support research, studies, and testing to the extent authorized in Section 9 of this Act". (Section 9 appears to be simply a repetition of this authority.)

CPSC and DOT provide these services; and to;

"(4) obtain information and publish and distribute material x x x x in order to inform consumers of matters of interest etc.".

CPSC primarily, and other Agencies in varying degrees, so function; and also to;

"(6) conduct conferences, surveys, and investigations, including economic surveys concerning the needs, interests and problems of consumers: x x x x x that x x x x are not duplicative in a significant degree etc.".

While apparently recognizing the duplication that will be created with other agencies, it is sought to limit it to that which is of a "significant degree". Here is a ripe

opportunity for interagency conflict with the businessman caught in the middle. Section 8(b) provides:

"(b) all Federal Agencies which, in the judgment of the Administrator, possess information which would be useful to consumers are authorized and directed to cooperate etc.".

This is a direct superimposition of ACA over other Agency functioning.

In addition to the unnecessary cost that ACA poses in duplication, an added element of cost, and damage to business appears in the delay in handling of regulatory matters that is inherent in the superimposition of added agency, beyond those in existence, to enter into regulatory development or change. We have been fully frustrated by the delays encountered in present agency action, without the governmental gift of an added layer of bureaucracy.

Section 10 of the bill provides extensive information gathering power. As related to information gathering, it should be noted that the Commission on Federal Paperwork recently completed its study with strong criticism of the paperwork burden. The creation of ACA is a reversal of the Commission's recommendation in adding ACA to the lengthy list of agency information gatherers. While ACA would be required to obtain available information from other agencies, it still has the authority to add to the burden. It will be useful for an agency not to do its own thing.

We realize that there is an attempt to moderate the burden on small business. However, apart from this, other provisions make the exemption somewhat meaningless. The Administrator can still request "voluntary" production. LP-gas dealers have experienced being harassed with "voluntary" submissions that have the guise of being mandatory. Again, the Administrator has the power "if necessary to prevent imminent and substantial danger to the health or safety".

It is our impression that this is one of the duties imposed upon, and being carried out by, CPSC. Here is obvious duplication. To further negate the protection for small business, there is no protection from the stimulous to litigation that is inherent in the bill's provisions. While the intent to protect small business may exist, Section 10 does not provide this protection.

Continued viability of many small businesses is now threatened by governmental overregulation. In the past three years of FEA allocation and price controls we have seen LP-gas dealers sell out, or simply close their doors. The Agency for Consumer Advocacy will add to this destruction of viability.

It is our strong recommendation that the burden of bureaucracy be not increased through the creation of an Agency for Consumer Advocacy. We consider it to be unnecessary and costly duplication, and the imposition of another layer of government regulation. If additional consumer interest representation is considered in agency functioning, we suggest that in the interest of economy and moderation of the regulatory burden it be accomplished through the existing facility available in the agencies.

STATEMENT OF THE UNITED STATES INDUSTRIAL COUNCIL

During the campaign which led up to his election to the nation's highest office, President Carter repeatedly promised the American people that he would reduce the size and scope of the federal bureaucracy. Since taking office, he and his advisors have promised businessmen that every effort will be made to free business of our unwarranted federal regulations and red tape that have been strangling our private enterprise system. Introduction of Administration-sponsored legislation to create a new federal bureaucracy, the so-called Agency for Consumer Advocacy, flies in the face of both these promises.

In a speech introducing this legislation in the Senate, one of its sponsors, Senator Abraham Ribicoff, stated that the President has indicated he intends to implement the legislation to a great extent through reorganization by consolidating and eliminating duplicating existing consumer functions in the Federal bureaucracy. Yet the proposed legislation plainly states that the authority of the ACA to carry out its purpose "shall not be construed to supersede, supplant, or replace the jurisdiction, functions, or powers of any other agency to discharge its own statutory responsibilities according to law." This provision of the bill seems to make it clear that it can only add another layer of federal bureaucracy, despite what the President may have indicated.

The United States Industrial Council and its 4,000 members employing some 4,000,000 people will yield to no one in our interest in the welfare of consumers. The survival of our member companies depends on their ability to serve the needs of consumers and provide them with products and services of a quality that meets with their approval and at prices they are willing to pay. By conferring or withholding their patronage, the consumer determines which business enterprises shall succeed and

which shall fail. When government tries to think for the consumer and make decisions for him or her, we move away from the private enterprise system that has produced such a wealth of goods and services at affordable prices, and further along the road to a socialist state.

The fallacy of the ACA bill is in the premise that consumers are a separate and distinct class whose interests are distinct and different from those of other citizens. Every citizen is a consumer. The decisions and actions of every agency should, therefore, give the fullest consideration to the best interests of every citizen as a consumer, as well as taxpayer, and producer—for each of us plays these multiple roles.

In its Statement of Findings and Purposes, the bill says: "The Congress finds that the interest of consumers are inadequately represented and protected within the federal government. . . . Each year, as a result of this lack of effective representation before federal agencies and courts, consumers suffer personal injury, economic harm, and other adverse consequences. . . ."

If this be true, it is a strong indictment of the Congress and the federal agencies it has created. It shows that Congress has failed miserably in meeting its responsibility for oversight of the federal agencies. Enactment of legislation creating an Agency for Consumer Advocacy to make sure that federal agencies are considering the welfare of consumers would be simnply buck-passing.

Instead of setting up one more agency—another level of bureaucracy—Congress should start riding herd on the agencies that it already has created to make sure they are doing their job of looking out after the interests of consumers.

The ACA legislation is nothing more than politics, pure and simple. Every member of both the House and Senate wants to be on the side of the consumer—as they should be. They shouldn't have to prove it be setting up another federal bureaucracy. The people of the United States have begun to recognize they are the victims, not the beneficiaries of "big brother" government. They hoped the present Administration would get "big brother" off their backs, cut the federal government down to size, and lift some of the tax burden caused by having to support more and more federal bureaucrats. That hope will be dashed if Congress, with the support of the President, sets up the ACA bureaucracy.

Sponsors of the ACA legislation say it is not a "major" new spending program since it would authorize the spending of only $60 million the first three years for the new agency. It is a sad commentary on how far we have gone in flinging around federal dollars that a federal spending program is not considered "major" unless it involves billions, rather than millions, of dollars. Furthermore, if the ACA follows the same path as other government spending programs, the costs of operating it will grow year after year.

Instead of creating the efficiency and good management practices in the federal government that are the announced aim of the President, the proposed legislation would lead to inefficiency in the functioning of federal agencies by authorizing the ACA to intervene in agency proceedings and administrative hearings virtually at will. It would deprive agencies of staff time and facilities needed to perform the functions with which they are charged, since the bill provides that each federal agency is "directed to make its services, personnel and facilities available to the greatest practicable extent within its capability to the Agency (ACA). . . ." Federal agencies also are directed to provide statistics and information when requested by the ACA, which means added work loads for the agencies.

In an attempt to silence critics of the independent consumer agency proposal, a number of changes intended to answer criticisms have been made in the legislation since it originally appeared in earlier sessions of Congress. For example, special exemptions for small business and family farmers have been written into the bill to keep down opposition from those quarters. Some protections against the revelation of trade secrets have been included. A whole new section requiring cost-benefits justification for new agency rules and regulations has been added. The result, however, is an exceedingly long, complex and cumbersome bill. The changes are mainly cosmetic. They do not correct the basic fallacy in the bill—that we don't need another federal bureaucracy to meddle with, and interfere in, the work of other agencies and to intervene in, and initiate, litigation in the courts purportedly to help consumers.

Despite protestations of its sponsors to the contrary, the legislation establishing an ACA would lead to harassment of business and could cause irreparable injury to business firms. It requires companies to answer written interrogatories from the ACA. This authority given to the ACA could easily be abused and lead to "fishing expeditions." At the best, it could cause the loss of considerable amounts of time and money, and create numerous headaches, for companies in trying to provide all the information that some ACA bureaucrat decides he needs.

The testing of products by the ACA and dissemination of test results would give federal bureaucrats the power to make some companies rich and put others out of business. This is too much power to place in federal employees who are subject to human error and prejudices. Like other sections of the bill, it would move us away from a markeet economy, which has been the source of our strength as a nation, and expand the scope of government control.

We have faith in the American consumer and in his ability to make his own independent decisions on what meets his needs and the prices he is willing to pay. As businessmen, we are willing to leave our fate in his or her hands.

As far as the effect of federal agency actions and regulations on the consumer, we believe this is best determined at the point where the actions are taken and the regulations determined—rather than in a new federal agency to serve as a watchdog over the other agencies. The role of watchdog over the actions of federal agencies properly lies with Congress, and Congress should not try to shirk that responsibility by setting up one more agency.

Setting up an independent consumer protection agency would be a fraud upon consumers because it would not produce the benefits for them they would be led to expect but would just set up another bureaucracy. If Congress wants to help consumers, the best thing it can do is to stop creating new agencies, reduce the bureaucracy, cut federal spending, and eliminate a substantial portion of government regulations and red tape. In that way, it will reduce inflation so that the consumer's dollar will buy more, and ease the tax burden so he will have more dollars to spend. It also will enable the free enterprise system to function in a way that will produce more goods and services at lower cost.

The Agency for Consumer Advocacy is an idea whose idea has come and gone. It should now be put away for all time.

STATEMENT BY THE AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION

Dear Mr. Chairman. The American National Cattlemen's Association (ANCA) offers comment relative to legislation which would establish a Federal agency for consumer protection.

ANCA is the national spokesman for the beef cattle industry. The association is comprised of individual cattlemen members, plus 52 affiliated state cattle producing and feeding organizations and 15 national breed organizations. Combined, the industry represents 280,000 professional cattlemen in all parts of the nation.

The above figures were presented to you as a means of expressing our memberships' deep concern regarding the necessity for this type of legislation. The reason simply being that we as professional cattlemen along with our families are also consumers. We feel remiss that such legislation would, by interference, pit consumers against cattlemen.

We as cattlemen and consumers have recognized the right and entitlement to protection against misrepresentation, fraud, unfair and deceptive trade practices. These are basic rights afforded by our system of government.

In the event there is a compelling reason to assure consumers a representative voice, then we suggest that the President, who now has full authority, establish within the Executive Branch of Government the appropriate vehicle for responding to "consumer" needs, demands and rights.

We further stand opposed to any language in this or similar legislation which provides for an agricultural exemption. Cattlemen, who are engaged in production agriculture, have vivid and real memories of similar such exemptions which were levied during 1973 when wage and price controls were imposed by the President. Although basic livestock production was exempt from those controls, the residual impact, as a result of controls at the slaughter and packer levels, dramatically aided in forcing live cattle price downward. The resultant effects of this action, taken in 1973 by the Federal government, lingers with the industry today.

Attached to this statement are relative documents which support cattlemen's concerns in opposition to the need for such an agency: the Appendix section deals with; (a) the effects of no grain feeding on total beef supplies and prices; (2) Breakeven Prices for Various Types of Beef; (3) Summary of Report on Feedlot Finishing Versus Non-Confinement Feeding; (4) Comparative Costs of Beef Production; (5) Cost and Efficiency of Beef Production and; (6) How Proposed Consumer Protection Legislation Affects Cattlemen.

The information contained in these documents give you an instant insight as to the complexity of the beef cattle industry. Any action, outside of normal market supply/demand functions, artificially imposed, automatically wreaks havoc with the system.

Also apparent within the documentation is visible evidence of Federal agency jurisdiction whereby any litagatory action triggered could result in lengthy and costly delays to producers . . . delays that compound themselves once a basic production decision is made five years previous to marketing of product.

It is for these reasons that ANCA opposes legislation of this nature to "protect" the American consumer. The Committee's consideration of our views in behalf of the beef cattle industry is appreciated.

APPENDIX I

EFFECTS OF NO GRAIN FEEDING ON TOTAL BEEF SUPPLIES AND PRICES TO CONSUMERS

In 1976, the cattle slaughter mix was as follows:

Fed cattle	25,085,000
Nonfed steers and heifers	5,948,000
Cows	10,617,000
Bulls	997,000
Total	42,644,000

This total slaughter resulted in production of 25.7 billion pounds of beef on a carcass weight basis. Of that total beef output, approximately 17 billion pounds came from cattle finished on grain-containing rations in feedlots. This estimate is based on a 1,092-lb. average live weight, and a 62 percent yield, resulting in a 675-lb. carcass.

If all of the 25 million fed cattle had been slaughtered off grass and hay, at an average weight of 750 lbs., without any feedlot feeding, they would have produced only 9.97 billion pounds of beef. (This is based on a carcass yield of 53 percent per animal.)

The result then would have been total 1976 beef supplies of 18.7 billion lbs., or only 73 percent of what supplies were with cattle feeding.

Economists agree that demand for beef is relatively inelastic. That is, a 1 percent change in supply results in more than a 1 percent change in price. However, even if the ratio were only 1 to 1, the 27 percent supply reduction resulting from elimination of grain feeding would have raised the retail average price of beef from the actual 1976 average of $1.39 per pound to $1.90.

The above figures assume no change in size of basic cow herd and the marketing of all steers and heifers off grass, without feedlot feeding. If steers and heifers were kept on pasture and hay until they reached normal slaughter weight, they would be at least 2 or 3 years old—at least a year older than if they went into feedlots, where they gain weight more rapidly. This procedure could reduce the range and pasture capacity available for cows by 30 to 40 percent. The net result would be essentially the same as outlined above—there would be a sharp drop in total annual beef production, and resulting higher prices to consumers.

In a presentation to the National Livestock Feeders Association, M. D. McVay of Cargill, Inc., estimated that, without grain feeding, per capita beef supplies would drop to about 80 lbs. on a carcass weight basis, compared with approximately 120 lbs. in recent years.

The reason for reduced beef production when cattle are not grain-fed is that the energy content of a strictly grass or roughage ration is much less, and most of the feed consumed by an animal on pasture goes just to maintain the animal, not to help it grow. A steer on grass may gain an average of only 1 lb. per day, rather than 2.5 or 3 lbs., as in a feedlot.

Source: ANCA

BREAKEVEN PRICES FOR VARIOUS TYPES OF BEEF

Following is a breakdown on costs of producing different types of beef on a carcass weight basis. Note that a major difference between grass-fed and grain-fed beef is a reduced yield (carcass weight as a percent of live weight) of meat in the case of animals without grain finishing.

1. Calf Meat. A 450-lb. calf requires approximately 55 cents per pound, live weight, for the producer to break even. This amounts to $247.50 per head. A calf will yield about 50 percent in the form of carcass weight. Thus, the carcass cost would be approximately $1.10 per pound.

2. Non-Fed Steers or Heifers. If the calf is put on grass for the summer, after being purchased from the cow-calf operator, there will be a cost of $105 to add 300 lbs. to the animal. This makes a total liveweight cost per animal of $352.50. A 750-lb. yearling animal marketed off grass in the fall would yield approximately 53 percent, and the carcass cost would be 88.7 cents per pound.

3. Mature Grass-Fed Animals. If a yearling is kept on grass and hay until it weighs 1,050 lbs., the cost of the additional 300 lbs. of gain will be about $120—making a total liveweight cost of $472.50. The carcass yield would be 55 percent, and the carcass cost would be at least 82 cents per pound.

4. If the 750-lb. animal is placed in a feedlot, it will cost approximately $135 to add 300 lbs. of gain. A fed steer will yield approximately 61 percent, and the carcass cost will be 76 cents per pound.

Thus, the comparative costs on a carcass weight basis are:

	Per lb.
Calf Off Grass	$1.10
Yearling Off Grass	.87
Mature Animal Off Grass	.82
Feedlot-Finished Animal	.76

The above costs are calculated simply on the basis of cattle production costs and dressing (or yield) percentage for each type of animal. For reasons of simplification, consideration is not given to variations in hide and offal value, processing costs or other factors. With smaller average weights per animal, per unit processing costs will be higher—another reason for finishing animals in feedlots.

Source: ANCA

SUMMARY OF A REPORT BY THE ECONOMIC RESEARCH SERVICE, USDA, ON FEEDLOT FINISHING VERSUS NON-CONFINEMENT FEEDING

An ERS study of the comparative economics of confinement versus non-confinement feeding arrived at these conclusions:

1. Confinement feeding requires less total feed consumption than non-confinement feeding—about 30 percent less total feed units by time of slaughter.

2. The feed conversion ratio (feed per pound of gain) is much less for confined beef.

3. Confinement is economically advantageous to both the livestock feeder and the consumers.

4. Much of the feed consumed, even by confined cattle, is roughage (and by-products) that cannot be consumed by other livestock species or humans. In fact, half (or more) of a steer's slaughter weight is achieved prior to confinement and before concentrate feeding, and four-fifths of all feed in beef production is pasture and harvested forage. (In 1976–77, among cattle on feed, it is estimated that the total rations will consist of 56.5 percent feed grain, 6.9 percent by-products and 36.6 percent harvested forage.)

5. Confined feeding results in a relatively uniform supply of beef to the consumer.

6. If a range calf did not go into a feedlot, it would require 30 percent more feed and as much as an additional year to reach 1,000-lb. market weight. Without confinement, the producer's cash flow is reduced, overhead and labor per unit are increased, and the risk of death loss is greater.

7. A close look at relative feed costs, using season average prices for corn and hay (with hay serving as a proxy for all roughages), shows that, on the basis of nutrient values, corn is consistently more economical.

8. As a result of development of the feeding industry, producers have found a better and larger market for their calves, and the public has benefited from larger, more uniform, more palatable beef supplies, at a lower unit cost.

Source: ERS, USDA, November, 1976.

COMPARATIVE COSTS OF BEEF PRODUCTION

An analysis of costs of beef production was made by Dr. B. P. Cardon of Arizona, president of the Council for Agricultural Science and Technology. This was based on the average price of feedlot rations in the winter of 1975–76. The data below include all feeding costs except interest on the money invested.

The most economical beef which the industry can produce comes from an animal that is placed in the feedlot shortly after weaning and is fed a balanced high-energy ration until it reaches approximately 1,000 lbs. This animal would be expected to grade low Choice.

ROUGHAGE BREAK-EVEN COST OF PRODUCTION (GAIN-1 POUND PER DAY)

Weight	Cost/gain	Dollar cost per live pound	Dressing (percent)	Break-even cost per carcass pound
Less than 400	$200.00	.500	50	$1.00
400 to 500	49.80	.500	50	1.00
500 to 600	57.90	.513	50	1.02
600 to 700	65.70	.533	51	1.05
700 to 800	73.00	.558	52	1.07
800 to 900	80.00	.585	53	1.10
900 to 1,000	87.00	.613	54	1.14

BREAK-EVEN COST OF PRODUCTION (FEEDLOT)

Weight	Cost/gain	Dollar cost per live pound	Dressing (percent)	Break-even cost per carcass pound
Less than 400	$200.00	.500	50	$1.000
400 to 500	34.70	.469	50	.938
500 to 600	37.70	.454	51	.890
600 to 700	41.00	.448	53	.845
700 to 800	44.30	.447	55	.813
800 to 900	49.00	.452	58	.779
900 to 1,000	55.00	.462	61	.757
1,000 to 1,100	60.20	.474	62	.765
1,100 to 1,200	70.00	.493	63	.788
1,200 to 1,300	85.00	.521	64	.814

Source: Dr. B. P. Cardon, Arizona, 1976.

COST AND EFFICIENCY OF BEEF PRODUCTION

Dr. Danny G. Fox and associates at Michigan State University analyzed the costs of beef production under various systems—including all-forage and different proportions of grain in the ration after calves are weaned from their mothers.

The following table shows results of different systems per beef cow unit. The calculations are based on feed for cows and their calves to slaughter weight. The data assume operation at 100 percent efficiency in use of forage and grain. The cattle on all-forage would grade standard, and those getting grain would grade low Choice.

	Ration 1st half of post-weaning gain		
	All forage	All forage	40 percent grain
	Ration 2d half of post-weaning gain		
	All forage	All forage	72 percent grain
Cow units maintained (million head)	31.8	47.6	49.4
Pounds of grain per pound of retail beef		2.89	4.33
Pounds of retail beef per capita per year	50.7	75.9	78.8
Daily consumption of protein per capita (grams)	15.5	23.2	24.1

The table shows that, with an all-forage system, the nation's cow herd would be sharply reduced, and amount of edible beef and protein produced per capita would be reduced substantially, as compared with systems that involve grain feeding during all or part of the period following weaning. As less grain is fed, less beef is produced because more of the forage energy has to be used for growing and finishing calves

rather than for mother cows in the basic herd. As a result, consumers would have less beef to consume, and the beef would be of lower acceptability because of increased age (less tender) at slaughter and less intramuscular fat (marbling).

The ultimate determinant of the level of grain feeding is the price of grain. Levels and periods of time of grain feeding are affected by grain costs a well as beef demand.

The following table shows data on the economics of grain feeding, with systems at 100 percent efficiency.

	Ration 1st half of post-weaning gain		
	All forage	All forage	40 percent grain
	Ration 2d half of post-weaning gain		
	All forage	All forage	72 percent grain
Expected animal performance:			
Daily gain, pound	1.00	1.96	2.16
Pound feed per pound of gain, dry matter basis	18.91	11.55	7.98
Turnover rate in production unit per year	.58	1.13	1.24
Feed cost for 600 pounds of gain:			
Corn at $1.50 per bushel	$223.36	$149.13	$106.74
Corn at $3.00 per bushel	$223.36	$204.35	$211.40
Nonfeed cost for 600 pounds gain	$82.29	$76.75	$82.62
Feed and nonfeed cost:			
Corn at $1.50	$306.65	$225.88	$189.36
Corn at $3.00	$306.65	$281.10	$294.02

The beef produced with an all-forage program would grade standard, while the two grain systems shown would result in low-Choice beef. The all-forage beef, in addition to costing more to produce, would result in a carcass with $37.80 less value.

The above table includes just part of the data from the Michigan report. However, it helps show that, when grain is cheap, it pays to feed more of it. When it is higher priced, it pays to feed less. Actually, at this time, the grain price is between the two values shown in the table.

All-forage systems would not become least-cost until corn was at least $4.50 per bushel, and even then Choice carcasses might be high-enough priced so that grain would have to go even higher in order to force a change to an all-forage system. Also, forage would tend to increase in price if grain prices rose.

Source: Excerpts from "Producing Beef: What It Costs and Opportunities for Improving Efficiency," Michigan State University, January, 1977.

APPENDIX II

HOW PROPOSED CONSUMER PROTECTION LEGISLATION AFFECTS CATTLEMEN

Through litigation, subpoena and paperwork delays, ACA could affect such important USDA regulatory functions as:

A. Agricultural Marketing Service (AMS): (1) Marketing agreements and orders; (2) Beef Board (if upcoming referendum passes).

B. Food Quality and Safety Service: (1) Meat inspection; (2) Beef grading.

C. Animal and Plant Health Inspection Service (APHIS): (1) Veterinary service program.

D. Packers and Stockyards Administration (P&S): (1) Posting of public markets; (2) Bonding.

E. Agricultural Stabilization and Conservation Service (ASCS): (1) Commodity Programs (target prices): a. Feedgrain; (2) Production adjustments (acreage allotments): a. Feedgrain; (3) Small Watershed projects; (4) Emergency assistance.

F. Conservation Research and Education: (1) Agriculture Research Service (ARS): a. Pesticides, disease affecting livestock, marketing research.

G. Forest Service (FS): (1) Public use of grazing livestock (permits); (2) Research for increased forage on public lands.

H. Agricultural Economics: (1) Economic Research Service (ERS): a. Economic Research.

Statement by the National Lumber and Building Material Dealers Association

The National Lumber and Building Material Dealers Association consists of 29 federated state, regional and metropolitan retail lumber and building material dealers associations with an aggregate of some 15,000 companies throughout the United States. Our members supply building materials for the majority of the housing built in the United States, as well as a considerable amount of commercial and industrial construction. We also sell building materials direct to the consumers. The great majority of our members would be classified as small businessmen and businesswomen by any definition.

We appreciate this opportunity to present our views before the distinguished U.S. Senate Government Affairs Committee on the proposal, S. 1262, Consumer Protection Act of 1977, offered by the distinguished Chairman, Mr. Ribicoff, to establish an Agency for Consumer Advocacy (ACA) within the Federal Government.

The NLBMDA would like to state our position forthrightly, that we are opposed to this legislation and to the concept of any type of additional consumer agency within the Federal structure. We do support the Office of Consumer Affairs within the Executive Branch to coordinate the existing consumer programs.

It is our feeling that the creation of the proposed Agency for Consumer Advocacy will only add to government complexity, delay and red tape, and thus ultimately inflation and unemployment at a time when the national economy needs strengthening instead of weakening. We strongly feel we do not need another layer of government bureaucracy when the existing agencies and programs are adequate to function in the best interest of the American consumer. As small business, it has always been and continues to be, our experience that less government proves best for business and for the consumers.

It is our understanding that the ACA is to be an independent, non-regulatory agency to speak for the interests of the consumer, authorized to advocate the interests of consumers before agencies and the courts, and to provide the public with information about consumer matters. Such an agency would have an adverse impact. Today, there exists bureaucratic over-regulation and further intervention would only add to that situation.

It would seem that the creation of an Agency for Consumer Advocacy is a contradiction of the President's and the Congress' efforts to reorganize and reduce both the direct and indirect costs of government and to increase its responsiveness to the American public. In view of the increasing public demand for reorganization and simplification, it would be interesting to survey the public as to their true wishes for yet another bureaucracy to complicate the existing bureaucracy.

We, as members of the business community, are concerned about fairness and good products and service to our customers and to the general public; however, we continue to hold fast to the idea that the house that polices itself, serves and works best. We realize that there may be abuses, but feel such abuses to be in the minority and certainly do not justify creation of an ACA.

The NLBMDA has certain reservations about the guidelines that will supposedly govern the jurisdiction and administration of the ACA as proposed in the legislation, S. 1262. We also wish to express our concern over the potential for expansion of an ACA in terms of cost, size and scope. It seems to us that it will be most difficult to have the ACA, as outlined in this legislation, to appropriately function as a consumer advocate before Federal agencies, to have judicial review, to serve as a clearing house for complaints, to serve as an information gathering agency and to obtain information from other agencies, and not expand considerably beyond the legislative intent of the bill being offered in the United States Senate.

The National Lumber and Building Material Dealers Association respectfully urges the members of this Committee, and the members of the Congress in its entirety, to consider the alternatives to S. 1262. We urge your attention to the paperwork and regulatory restrictions already placed on business—small business in particular—and, subsequently the consumers, in considering whether enactment of S. 1262 and creation of, what we feel will be a bureaucratic Agency for Consumer Advocacy, is the best solution to assisting consumers at this time.

Finally, we wish to express to this Committee our reservations about an agency being created to supposedly "zero-in" on problems that will be, in the end, only for certain special interests that of which this issue has sprung.

Your consideration of our views on S. 1262 and inclusion of our statement in the public hearing records of the proceedings of the Committee will be very much appreciated.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., April 8, 1977.

HON. ABRAHAM A. RIBICOFF,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I understand that your committee will be holding hearings on S. 1262, legislation to create a new Federal Agency for Consumer Advocacy, on April 19–20.

On behalf of the Transportation Association of America and its members, I wish to express our opposition to this legislation as it pertains to transportation.

The Transportation Association of America (TAA) is a national non-profit organization of carriers of all modes of transportation (air, motor, rail, water, pipeline and freight forwarders), as well as users of the services of those carriers and investors in the transportation industry. TAA is the forum wherein the divergent views of this broad membership may be reconciled on issues of importance for the good of the transportation community as a whole. Members of the Association include major companies from all sectors of U.S. business; for your information, a roster of our Board of Directors is enclosed.

S. 1262 is of particular concern to TAA because it would add yet one more layer to the already burdensome structure of regulation that exists in the U.S. transportation industry.

At present, transportation is subject to some degree of regulation by, among others, the Interstate Commerce Commission; the Civil Aeronautics Board; the Federal Maritime Commission; the U.S. Department of Transportation and numerous sub-units of that department such as the Federal Railroad Administration, Federal Highway Administration, Federal Aviation Administration, etc.; the Maritime Administration and other units of the Department of Commerce; some units of the Department of the Interior; the Occupational Safety and Health Administration; the Equal Employment Opportunity Commission, and others. In addition, some degree of governmental scrutiny and control of transportation is maintained by the Departments of Defense and Justice, the General Services Administration and the Federal Energy Administration.

To this heavy weight of governmental control would be added by this legislation yet another agency. Moreover, the goals of the proposed Agency for Consumer Advocacy would largely duplicate purposes already legislatively endowed on existing Government agencies. For example, the three independent regulatory agencies listed above (ICC, CAB and FMC) are charged with the affirmative responsibility to administer their programs in a manner consistent with the public interest—an interest which has been consistently interpreted to embrace consumers. Each of these agencies maintains separate offices expressly charged with the duty of consumer protection. To a greater or lesser degree, the same may be said for the other Government agencies with a voice in transport regulation.

In our view, this approach to consumer representation offers distinct advantages. First, it avoids the bureaucratic proliferation—not to mention the $20 million average annual added cost—inherent in creation of a separate consumer agency. TAA and its members wish to emphasize that they do not oppose—indeed, they favor—fair and equitable representation of consumer interests before Federal agencies; our opposition to this legislation is merely based on our belief that this function may best be executed through the medium of existing agencies, without the need to establish a redundant and burdensome separate bureaucracy to serve that end.

Second, reposing consumer protection functions within existing agencies will be, in our view, most conducive to effective and efficient implementation of those functions. Under such a system, consumer representatives would be in a position to call on the expertise already present in each agency with respect to the particular programs and activities of that agency. If a separate agency is established, it will be faced with the unappetizing choice of developing its own duplicative expertise in those areas in which it seeks to be active, or entering into cases while lacking the requisite skill and experience to make a useful contribution.

Third, we believe retention of consumer protection functions within existing agencies will be most conducive to orderly and efficient resolution of issues affecting consumers. The proposed legislation clearly envisions litigatory resolution of at least some questions through the court system—a system already badly overburdened by a heavy caseload. We consider it inappropriate to obligate courts to mediate internecine disputes within the Federal Government where such disputes may, under the present organizational structure, be resolved on an intra-agency basis without appreciable diminishment of the level of protection afforded consumer interests.

If the Congress deems that the programs of the existing agencies are not being administered in a manner consistent with the public interest and, in particular, the interests of consumers, it has all the necessary means—through oversight hearings, legislative emendation, etc.—to correct any deficiencies it finds. We do not feel it is either necessary or appropriate for the Congress to abdicate its role in favor of yet another regulatory agency which, furthermore, would owe allegiance to the Executive rather than the Legislative Branch of government.

For these reasons, we believe this legislation should not be enacted, and we urge that your Committee not report it favorably.

Thank you very much for your attention and courtesy. We request that this letter be made part of the formal hearing record regarding this legislation.

Sincerely,

PAUL J. TIERNEY.

TRANSPORTATION ASSOCIATION OF AMERICA

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AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., April 25, 1977.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: This is to record our opposition to S. 1262, which would establish an Agency for Consumer Advocacy insofar as it would apply to operations of interstate motor carriers.

As representative of an industry that is already thoroughly regulated by the Interstate Commerce Commission, the Department of Transportation, and other federal agencies, e.g., the Occupational Safety and Health Administration, and the Environmental Protection Agency, we believe the trucking industry has already reached the point where the cost resulting from overlapping jurisdiction is not justified by the public benefits, if any, derived therefrom. Enactment of S. 1262 would just add to the problem mentioned, with no real benefit that we can foresee.

Insofar as motor carriers of property regulated by the Interstate Commerce Commission are concerned, we believe there is no justification for the proposals embodied in the bill referred to. The shippers of property transported by interstate motor carriers are generally organized to protect their interests on a local, state, and national level. Our experience in contested proceedings before the Interstate Commerce Commission indicates that these shipper organizations do an excellent job of representing their interests, and that the agency is careful to protect them. The major area of property transportation by motor carrier, where the shippers are not sophisticated, i.e., in the movement of used household goods, has received the diligent attention of the Commission in the last few years through numerous in-depth rulemaking and enforcement proceedings. In addition, the Commission has recently increased its activity in providing assistance and protection to the consuming public by strengthening its compliance program and instituting a tariff examination program.

The Committee should also be aware of a relevant legislative development in the past year. The Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94–210, created an Office of Rail Public Counsel to provide further consumer protection. This Office has authority to undertake a series of independent actions to participate in Interstate Commerce Commission proceedings and contest Commission actions involving railroads. While the President has not yet appointed a Rail Public Counsel, the Commission is performing many of the functions of that Office. As for the other modes of transportation, the Commission is supporting legislation (S. 547) to broaden the Public Counsel's Office to include motor carriers, freight forwarders, water carriers and pipelines under its jurisdiction. That bill is presently being considered by the Committee on Commerce, Science and Transportation. We believe a Public Counsel for all mode of transportation—should Congress decide one is needed—would be able to perform more appropriately and with greater efficiency than various and sundry staff members of an overall Agency for Consumer Advocacy, who would not necessarily possess a knowledge or expertise in transportation matters.

For the reasons stated, there is no need to create jurisdiction in still another federal agency, and assign to it the authority which would be granted by S. 1262 to intervene in the daily affairs and operations of interstate motor carriers. Section 16 of S. 1262 exempts from the bill's coverage, among others, "any agency action in the Federal Communications Commission with respect to the renewal of any radio or television broadcasting license. . ." We submit that, at the very least, a similar exemption should be extended to "any agency action in the Interstate Commerce Commission with respect to the purchase or extension of motor carrier operating authority."

We therefore, respectfully request that S. 1262 provide for an exemption for motor carriers regulated under Part II of the Interstate Commerce Act. Finally, please make this letter a part of the hearing record on S. 1262.

Sincerely,

BENNETT C. WHITLOCK, JR.

COX, LANGFORD & BROWN,
Washington, D.C., April 26, 1977.

Re S. 1262—Agency for Consumer Protection.
Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C. 20510

DEAR MR. CHAIRMAN: There is an aspect to the above proposal which I am calling to your attention because it is unlikely that it will be mentioned in other comments.

There is already in operation in one agency of the federal government a statutory "consumer advocate." This is the "Officer of the Commission" established by the Postal Reorganization Act to represent the interests of the "general public" in proceedings before the Postal Rate Commission.

This real-world example of a "consumer advocate" in operation is not one to give encouragement to supporters of the idea of an Agency for Consumer Protection. The participation of the Officer of the Commission and his staff in proceedings before the Postal Rate Commission has added enormously to the complications and delays of discovery, cross-examination, briefing, motions, objections and all the rest. The first hearing involving postal rates before the Postal Rate Commission involved 14,000 pages of transcript and over 1,000 filed documents. I would estimate that 20 percent or more of this huge output was caused by the presence of the Officer of the Commission in the case. His initial brief alone was over 300 pages long.

A major objection to the Officer of the Commission's performance is that there is no effort, formal or informal, made by this official to determine the actual views of members of the public on disputed issues. He sends out no questionnaires, holds no meetings and has no program of any kind for providing himself with guidance as to where the public thinks its interest lies. Instead, he makes his own judgments purely on the basis of theory and ivory tower thinking as to what are "the interests of the general public." On the basis of these one-man judgments he takes positions and puts forward proposals which cause enormous expense and expenditure of time for other participants in the proceedings.

I respectfully suggest that a worthwhile contribution to the material on the Agency for Consumer Protection proposal could be produced by a study by your staff of the functioning of the Officer of the Commission at the Postal Rate Commission.

I would appreciate it if this letter could be included in the record of the hearings.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Stamford, Conn., April 27, 1977.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN RIBICOFF: The Senate Governmental Affairs Committee is presently considering hearings on S. 1262 which propose to create an "Agency for Consumer Advocacy."

The National Industrial Traffic League wishes to take this opportunity to submit comments for the record of hearings on S. 1262 as it applies to the transportation reguatory agencies.

The League is a voluntary organization of 1800 shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation services of all carrier modes. It is the only shipper organization which represents all types of shippers nationwide. Its members include large, medium and small shippers who use all modes of transportation and who ship all types of commodities. The League is not a panel or committee of a trade group, or a spokesman for a particular commodity or transportation point of view, and does not permit carrier membership.

The League's primary concern is to provide for the nation and all its shippers a sound, efficient, well-managed transportation system, privately owned and operated.

To arrive at positions reflective of the broad range of shipper interests within the League, the League membership at its annual and special meetings considers, debates and votes on actions to be taken. During its seventy years of existence, the League has frequently been the spokesman for the nation's shippers before Congress on proposed transportation and regulatory reform legislation.

According to President Carter the "Agency for Consumer Advocacy" has four main purposes:

"First, most government consumer functions should be consolidated in the Agency. The Office of Management and Budget has begun a comprehensive review to help me identify those units that should be transferred to the Agency. This review will also determine how remaining functions in the individual agencies can be strengthened. Of course, I still expect that all Federal agencies will be responsive to the consumer's concerns.

"Second, the Administrator of the Agency, like the heads of other executive agencies, should be appointed by the President and serve at his pleasure. The Agency should be subject to the normal executive budget and legislative clearance procedures. Accountability within the executive branch is necessary to ensure that the Agency will be as vigorous and effective as the people expect. It will not undermine the independence of the Agency's representational role.

"Third, the Agency should be empowered to intervene or otherwise participate in proceedings before federal agencies, when necessary to assure adequate representation or consumer interests, and in judicial proceedings, involving Agency action. The Agency, at its discretion, should be represented by its own lawyers. I will instruct the Administrator to establish responsible priorities for consumer advocacy.

"Fourth, the Agency should have its own information-gathering authority, including, under appropriate safeguards, access to information held by other government agencies and private concerns. However, small businesses should be exempt from the Agency's direct information-gathering authority. Additional safeguards should be included to assure that needless burdens are not imposed on businesses or other government agencies."

President Carter also commented regarding the proposed new agency, "The Agency for Consumer Advocacy is mainly designed for participation in very large administrative proceedings; it is only one of a number of steps which will better protect the consumer."

The National Industrial Traffic League believes the nation's consumers are already protected in proceedings before the Interstate Commerce Commission, the Federal Maritime Commission and the Civil Aeronautics Board.

The Railroad Revitalization and Regulatory Reform Act of 1976 (Section 204) established the Office of Rail Public Counsel to protect the public interest in railroad proceedings before the ICC. The League supports expanding the ICC's Office of Rail Public Counsel to other modes.

The Federal Maritime Commission has a Bureau of Hearing Counsel charged with representing the public interest. FMC Chairman Bakke advised Senate Commerce, Science and Transportation Chairman Magnuson on December 29, 1976, that he believes that present FMC procedures are adequate in serving the public interest.

The Civil Aeronautics Board has an "Office of the Consumer Advocate" charged with representing the public interest.

In transportation cases, unlike other agency proceedings, thee is now not only intervention by Agency Public Counsel, but also active intervention by users of transportation, such as the NIT League.

The subject of a consumer protection agency was brought before the entire membership at the 1974 Annual Meeting and the members voted unanimously to continue to oppose a federal office to represent consumers before Federal transportation regulatory agencies as unnecessary and undersirable since the agencies themselves are charged with protecting the public interest in transportation matters.

One of President Carter's major objective involves speeding up the decision process of federal administrative agencies. The NIT League and others have long and often voiced their complaints regarding the length of time required in achieving decision by the transportation regulatory agencies. Passage of a bill creating an "Agency for Consumer Advocacy" could only further delay the already slow decision-making process of transportation regulatory proceedings. Additionally, the League believes the nation's taxpayers will also be burdened with additional costs which in many instances will not be justified. The National Industrial Traffic League, therefore, opposes S. 1262 which would create a separate "Agency for Consumer Advocacy."

As an alternative, the NIT League supports the broadened authorization of the Interstate Commerce Commission's Office of Rail Public Counsel to handle public interest in other modes of transportation. Additionally, similar offices established in the Civil Aeronautics Board and the Federal Maritime Commission's Bureau of Hearing Counsel could be strengthened.

On behalf of The National Industrial Traffic League, I respectfully request that you consider our opposition to S. 1262 and the League's suggested alternatives.

Sincerely,

J. ROBERT MORTON,
President.

LAW OFFICE OF JOHN B. MINNICK,
Fairfax, Va., April 27, 1977.

Re S. 1262 on Establishing an Agency for Consumer Advocacy: Public Hearings.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I favor proper measures to give consumers a voice in government, but question the wisdom of trying to cure the symptoms before diagnosing the real cause of the problem.

Our pressing need for consumer advocacy is symptomatic of the breakdown of our basic constitutional principles. The real cause of the breakdown, however, is the collapse of our constitutional concept of separation of powers under the weight of Acts of Congress. The particular Acts in question delegate legislative and judicial powers to the executive branch (including the so-called "independent" regulatory agencies) as well as legislative powers to the judicial branch. Federal regulations which create the need for consumer advocacy are based upon congressional delegations of power.

All of the delegated powers in question have been handed out by Congress without giving due consideration to the basic constitutional principles involved. As a direct result of Congressional delegations of power to the other two branches, the federal bureaucracy has mushroomed into a government of men and not of laws. On the other hand, separation of powers is the only true foundation for a government of laws and not of men. Moreover, the two systems are incompatible and mutually exclusive no matter how hard we try to make them work together. Sooner or later we must face up to the breakdown of separation of powers and the sooner the better.

In essence, separation of powers means that one branch shall never exercise the powers nor perform the functions of the other two branches, or either of them. For example, please see Article XXX of the Massachusetts Bill of Rights and the correlative provisions of other State Constitutions and Bills of Rights, including Connecticut. Moreover, James Madison's understanding of the problem no doubt prompted him to declare that the separation of our legislative, executive, and judicial powers is the most sacred principle of our federal constitution. In short, separation of powers is the foundation upon which our constitutional system of government was built. Unfortunately, President Madison never told us why; and neither has anybody else for that matter. In any event, the reasons once taken for granted have long since been covered up or otherwise forgotten.

At the outset, our own unique American principle of the separation of our powers of government was first articulated on this continent by George Mason. His public work at Williamsburg in the Spring of 1776 laid the foundation for our Declaration of Independence, our State and Federal Constitutions, and our State and Federal Bills of Rights. The official public record of it all can be found in the Library of Congress. For example, please see the original Virginia Declaration of Rights, Preamble, and First Constitution of Virginia, as adopted in June, 1776. These constitutional roots of our government have not been studied nor taught as such in our schools and colleges from the beginning. Why? Simply because historians, educators, political scientists, and clergymen missed the point altogether. Judges, lawyers, politicians, and newsmen covered it up. Students, voters, taxpayers and consumers never had a chance to learn what it is all about. Actually, the whole story did not begin to unfold publicly until the advent of our American Constitutional Bicentennial Era (June 12, 1976–December 15, 1991).

One of the unaccountable facts of our history is that millions of Americans never heard of George Mason. Moreover, most of those who did happen to hear about him never learned why separation of powers is an indispensible element of a government of laws and vice versa. Regrettably, millions of Americans today do not know the difference between a government of laws and a government of men. Why? Because the difference between separation of powers and delegation of powers has never been taught. Why? Simply because there is nothing in our Federal Constitution to prevent one branch from using the powers of the other two branches. Moreover, the adverse effect of the omission has been compounded by the continuous neglect of our education along these lines for nearly two hundred years. Under the circumstances the only constitutional way to have maintained separation of powers within our federal system of checks and balances was not to have given any away. As you know, current thinking in and out of the federal triangle freely acknowledges that Congress has given broad legislative and judicial powers and functions to the executive branch (including the so-called "independent" regulatory agencies). Moreover, state and local jurisdictions have followed suit willy-nilly despite express provisions in most of our State Constitutions and Bills of Rights to the contrary. (Except it took a constitutional amendment

to do it in Virginia, but the voters were never told the whole story.) Besides, Congress has given specific legislative powers to the judicial branch. Likewise, it has acquiesced in and encouraged the use of other legislative and executive functions by the judicial branch while trying to control all three powers of government itself. Thus, it actually appears upon the face of the official record of the Government of the United States that Congress has broken down the principle of separation of powers by its own Acts. Furthermore, Congress has wiped out our system of checks and balances and has subverted the rule of law in the process.

One of the principal reasons why one branch should not use the powers nor perform the functions of the other two branches is because separation of powers means a government of laws, and vice versa. Our State and Federal Constitutions were written and balanced upon these two inseparable corollaries. Like love and marriage, we cannot have one without the other no matter what the breakdowners say. When we lose one we lose both, anything in President Ford's inaugural and farewell messages to the contrary, notwithstanding.

The substantive reason for separation of powers is simply a matter of the rules. That is, the rules of one branch do not work in the other two branches. As between the three branches, the rules are incongruous no matter how hard we try to make them fit. For example, the legislative branch operates under the rules of parliamentary procedure, including the committee system. The executive branch operates under administrative rules and regulations, including executive orders and agreements, and the commission system. The judicial branch operates under rules of court subject to the rules of evidence. Some overlapping is unavoidable, of course, due to the limitations of our vocabulary. As a practical matter, however, the rules of parliamentary procedure do not work in the executive and judicial branches. Administrative rules and regulations do not work in the legislative and judicial branches. Rules of court and evidence do not work in the legislative and executive branches. If you do not believe me, try to use the rules indiscriminately in practice sometime.

Another reason why one branch should not use the powers of the other two branches, or either of them, may be summarized in terms of our basic functions of government. That is, the essential function of the legislative branch is to make the law under its rules. The essential function of the executive branch is to carry out and to enforce the law as necessary under its rules and regulations. The essential function of the judicial branch is to apply the law under its rules subject to the rules of evidence. Furthermore, each branch has oversight responsibilities and functions with respect to each of the other two branches. That is what our constitutional system of checks and balances is all about. As it was in the beginning, so it is today: Undue concentration of all three functions in any one branch subverts the rule of law and wipes out the equalizing effect of our system of checks and balances. Thus, instead of a government of laws, all of a sudden we wind up with a government of men not of our own creation.

Finally, separation of powers should be examined in the light of public policy. It is undisputed that the legislative power vested by the people in Congress includes the power to make national policy. But when all three branches are busy making, enforcing, and applying our policies under the wrong rules, the net result is an expensive maze of conflicting opinions and trimetrically opposed positions. Such legislative, executive and judicial confusion of the rules generates and perpetuates the artificial bureaucratic state imposed upon us by Congress. Moreover, it also spawns the principal causes of popular dissatisfaction with the administration of justice and prevents effective public participation at all levels.

Although the examples of the breakdown are legion, the chief mischief makers can be found in the Administrative Procedures Act of 1946 and the correlative provisions of the Judicial Code. Under the APA, the executive branch (including the so-called "independent" regulatory agencies) is given the power to "prescribe law or policy" as well as a broad range of judicial powers and functions. Likewise, an obscure 1949 amendment to the Judicial Code gives the judicial branch substantive rulemaking powers and functions otherwise reserved to Congress by the people under Article III of our Federal Constitution. These particular Acts of Congress in effect were the last straws that finally broke down separation of powers and wiped out our system of checks and balances.

Obviously, there is a great deal more to all of this than meets the public eye. For openers, therefore, please try to put the following question into the context of separation of powers: Why is it OK for Congress to break down our basic constitutional principles with impunity, but wrong for others to take advantage of the situation? An agency for consumer advocacy may seem to be the right approach for some in the beginning, but separation of powers will produce the most satisfactory results for all in the end.

Under the circumstances, the most constructive corrective action for the benefit of consumers and the relief of taxpayers would be to repeal all unconstitutional delegations of power instead of trying to restructure our government on an ad hoc basis. This is a prime legislative function of Congress. Furthermore, it will open up the greatest possible opportunity for effective public participation without spending a lot of money. In time, it may even be come to be known as our American Constitutional Bicentennial Project.

Please include this statement in the public record of the hearings on S. 1262.

Sincerely yours,

JOHN B. MINNICK.

NATIONAL HOME FURNISHINGS ASSOCIATION,
Washington, D.C., April 29, 1977.

Hon. ABRAHAM RIBICOFF,
Chairman, Governmental Affairs Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: The National Home Furnishings Association, a national trade association of nearly 10,000 home furnishings retail stores, is grateful for the opportunity to comment on S. 1262, a bill to establish an Agency for Consumer Advocacy.

NHFA has long supported the need for a single department in the federal government to coordinate the consumer activities of the various governmental agencies. The most logical method to satisfy this need is for Congress to make permanent the White House Office of Consumer Affairs (OCA). The Association does not feel that the best interests of consumers would be served by the creation of an additional new agency of the federal government for consumer representation. For this reason NHFA opposes the creation of an Agency for Consumer Advocacy.

At a time when citizens are increasingly concerned about government efficiency and growth it makes better sense for Congress to review the experience of existing agencies before striking out in new directions. The White House Office of Consumer Affairs has established a solid record of accomplishments in raising the level of consumer awareness in both industry and government. This Association has enjoyed a close working relationship with the OCA in developing mutually advantageous consumer programs for home furnishings customers.

In many respects the OCA already performs several critical functions contemplated in this legislation. The OCA acts as a clearinghouse for consumer complaints and serves as a focal point for organizing voluntary business-supported consumer affairs programs. Consumer views are also expressed to other federal agencies through the OCA. This capability can easily be strengthened through the "reorganization" authority which Congress has already granted the President. It is important to note, moreover, that OCA carries out all of these functions in a spirit of cooperation and mutual respect.

The proposed Agency for Consumer Advocacy, in contrast, would have little choice but to carry out these functions as an adversary. Given the power to intervene in the proceedings of other federal agencies and to challenge their actions in court, there is little doubt that the new agency would act as an antagonist. The very nature of this legislation would likely result in confusion, delay and second-guessing whenever a federal agency attempts to issue a rule or regulation affecting the home furnishings industry.

More importantly, home furnishings retailers are concerned about the authority granted in this legislation which allows the proposed agency to intervene in other agency activities involving "adjudication", "sanction", and "relief." This includes individual complaints against businesses issued by agencies such as the Federal Trade Commission and the Consumer Product Safety Commission. Investigation and prosecution of alleged wrong-doing should be undertaken only by the enforcement agency authorized by Congress to perform this task. A consumer agency representative has no proper role in these proceedings. The presence of a consumer agency representative during a FTC cease-and-desist negotiation, for example, would not only be unwarranted, but would also result in the government "double-teaming" against business.

Business would have to face two agencies, either concurrently or consecutively, on the same issue.

In summary, the members of the National Home Furnishings Association support statutory authority to make permanent the White House Office of Consumer Affairs and oppose legislation to create a new Agency for Consumer Advocacy because:

The White House Office of Consumer Affairs has already proven its ability to work in harmony with both government and industry to represent the consumer viewpoint,

The proposed Agency for Consumer Advocacy would wield unwarranted authority to interfere in the rulemaking proceedings of other federal agencies, and

Business firms would be subjected to governmental "double-teaming" in enforcement proceedings as the proposed Agency for Consumer Advocacy would force the firm to comply with its own interpretation of the enforcement agency's rules and regulations.

Your careful consideration of these views will be appreciated by the nearly 10,000 stores represented by the National Home Furnishings Association.

Sincerely,

WILLIAM I. LEVENSON,
Chairman, Governmental Affairs Committee.

GROCERY MANUFACTURERS OF AMERICA, INC.
Washington, D.C., May 3, 1977.

HON. ABRAHAM A. RIBICOFF,
Chairman, Senate Governmental Affairs Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Grocery Manufacturers of America is the trade association of the nation's leading producers of food and related products sold to consumers in retail outlets. We are thankful for this opportunity to state our views on S. 1262, the proposed Consumer Protection Act of 1977.

GMA POSITION ON CONSUMER ADVOCACY PROPOSALS

GMA has fully supported the underlying concept of this sort of legislation since it was revived during the 91st Congress. That is, we agree that all identifiable interests, including consumer interests, that may be affected substantially be federal agency action deserve to be represented within the decisionmaking process that leads to that action.

AGMA has never objected to the creation of an independent federal agency to implement this concept; nor have we objected to the funding of private advocates for that purpose; nor have we objected to the housing of consumer advocates in the Federal Trade Commission, in all regulatory agencies, or in the Office of the President, to list a few of the consumer advocacy proposals that have been suggested since the 91st Congress. We feel that the structuring of consumer representation functions within any new federal plan is best left to the Congress and the Executive Branch.

However, GMA favors the use of additional government funds, services, or procedures only where necessary to assure a balance in the advocacy of interests and sufficiency of information within federal decisionmaking. S. 1262 goes well beyond the boundaries of that principle; therefore GMA strongly opposes the bill.

MAJOR AREAS OF CONCERN

The bill contains all of the problem areas that made its predecessors so controversial and unsuccessful. To these old, continuing problem areas, new ones have been added. Yet, little is being said about the major changes that were made in the consumer agency bill of last Congress, S. 200, before it was reintroduced during this Congress as S. 1262.

For this reason, we attach to this statement an analysis of the major differences between the consumer agency bills of the 94th and 95th Congress. We respectfully ask that it be considered part of this document and appear in the hearing record immediately following this statement.

There are many areas of GMA concern in S. 1262, too many to list all of them. However, the following six areas should be of major concern to anyone who is regulated by the federal government:

1. Unwarranted Regulatory Investigative Powers

Section 10 (a) of the bill allows the consumer agency to issue court-enforceable orders to businessmen for reports or written answers to questions in the absence of any ongoing federal regulatory inquiry. Furthermore, a critical safeguard provision of the predecessor bill, requiring the Comptroller General to review such consumer agency information demands to prevent undue burdens, is no longer in the current bill.

The potential for abuse contained in the information order provision is great. This is regulatory power, pure and simple. Yet it is to be used without relevance to any ongoing regulatory effort. The prospect of federal harassment is clear, the need for such power in an advocacy agency is not.

2. Inadequate Trade Secret Protection

The trade secret provisions of the bill are also disturbing. The consumer agency apparently will be assured of access to most trade secrets and other confidential information in the hands of businessmen under Section 10 (b). The latter provision is a sieve with no guarantee that sensitive information divulged to a regulatory federal agency will remain with that agency.

3. Power to Seek Court Reversal of Regulatory Decisions

Section 6 (c) of the bill grants to the consumer agency, a nonregulatory unit, the power to initiate court review of regulatory action by other federal agencies. This provision is objectionable, not only because it pits the government against the government, but, more importantly, because it upsets the basic foundations of our administrative system.

Congress delegated to the regulatory agencies the authority to make decisions and take actions in certain specialized areas. The courts traditionally have deferred to an agency's judgment in its area of expertise. The practical effect of this judicial review provision is that it unnecessarily upsets the presumption of agency expertise and redelegates the final administrative authority to the courts which will find such "U.S. v. U.S." suits among the most frustratingly difficult cases they face.

4. Unfair Dual Prosecutor Power

Section 6 (a) of the bill would allow an attorney from the consumer agency to intervene as a full party in administrative adjudications of alleged violations of law. The Administrative Law Judge would have no discretion to prevent such an intervention.

The consequences of full party interventions in agency prosecutions are immense. We safely can assume that the consumer agent will invariably intervene in prosecutions against businessmen. To the extent that the consumer agent's prosecution parallels that of the regulatory prosecutor, there will be wasteful duplication. To the extent that the consumer agent's prosecution varies from that of the regulatory prosecutor, there will be inconsistent prosecutions.

5. Unconscionable Special Interest Exemptions

Section 16 of the bill would prevent the consumer agency from issuing any statement on, or invesigating, any action by the Federal Communications Commission with respect to broadcasting license renewals. The section also carries the same prohibition against consumer agency attention to matters relating to labor disputes and labor agreements.

The exempted matters potentially are of great significance to the interests of consumers—an illegal dock strike could adversely affect hundreds of millions of consumers. The special interest exemptions stand as an admission that the powers proposed in the bill are too far reaching. Otherwise why would special interests have to seek and gain such political favor?

6. Potentially Dangerous Bureaucratic Surprise Package

GMA is apprehensive about the possible consequences of section 22 of the bill which directs the President to provide for the transfer of countless unnamed (and presumably unknown at this time) federal activities to the new consumer agency. The Administrator of the consumer agency then would have the authority to reorganize the transferred activities to his or her own liking.

The transfer would be accomplished by use of the new reorganization plan power. The President is mandated by this bill to use his reorganization power for the benefit of the consumer agency within 120 days of the enactent of S. 1262. This raises significant questions with respect to Congress' mandating what the President's reorganization priorities must be and how he should divest himself of executive powers. It also may raise serious threats to the viability of the proposed consumer agency.

Section 22 of the bill holds the real prospect for doubling, tripling, or quadrupling the size and apprpriations of the consumer agency four months after it is created. There is also the prospect of a future drastic change in the new agency's mission, if the wrong type of function is transferred to the consumer agency on the take-it-or-leave-it basis of a reorganization plan.

UNANSWERED QUESTIONS ABOUT S. 1262

In addition to the issues discussed above, there are a number of questions left unanswered by the bill. Some of these questions are:

1. Should Congress provide more guidelines with respect to the type of consumer activity it deems appropriate for representation?

For example, Consumers Union has advocated reform of the marijuana laws, a subject of most concern to consumers of the drug.

Another related issue is cigarette smoking—the consumers being primarily the smokers—should the consumer agency advocate the consumer's interest in smoking or not smoking? Or should the agency avoid controversial issues?

2. Why is the proposed consumer agency's role in international relations, especially on export-import questions, not clearly defined?

3. Is S. 1262, as presently drafted, a threat to the President's energy program, or will the President seek to use the proposed consumer agency as a tool to implement the program?

4. Why is it necessary to grant the consumer agency the right to appeal to the courts the final decisions of regulatory agencies?

Is this done out of a fear that the regulatory agencies would not pay attention to a mere Congressional mandate that requires them to listen to the consumer agency? If so, should there not be a similar fear about the consumer agency not paying attention to its own Congressional mandates?

CONCLUSION

We thank you for the opportunity to express our views on this important piece of legislation. Providing adequate representation for the consumer interest in government decisionmaking is a concept we support without hesitation. S. 1262, however, distorts and bloats this worthwhile concept beyond recognition. We sincerely believe that this bill, if enacted, will prove to be one of the most anti-consumer forces ever let loose in the marketplace. Should you have any questions about our position on the bill, please do not hesitate to contact us.

Sincerely,

GEORGE W. KOCH.

Enclosures

DIFFERENCES BETWEEN PROPOSED CONSUMER PROTECTION ACTS OF 1975 AND 1977

Bills to create an independent consumer protection agency to advocate the interests of consumers were again introduced during this 95th Congress. They are S. 1262 in the Senate and H.R. 6118 in the House.

Similar bills passed the Senate as S. 200 and the House of Representatives as H.R. 7575 during the 94th Congress.* Those bills were not brought to a conference committee to resolve differences because proponents felt that a threatened veto by then-President Gerald R. Ford likely would have been sustained.

This analysis identifies the major differences between the Senate bill of this Congress and the Senate bill of the last Congress and the differences between the House bill of this Congress and its predecessor in that chamber.

I. CHANGES IN SENATE BILL

A. Certain Special Interest Exemptions Deleted

The proposed Consumer Protection Act of 1977, S. 1262, does not contain the following exemptions which were placed in the 1975 Senate bill before it passed that chamber:

1. Farmers and Fishermen—Exempted from the consumer agency's advocacy authority were any federal agency proceeding or activity directly affecting producers of livestock, poultry, agricultural crops or raw fish (S. 200, 94th Cong., Sec. 16(b));

2. Firearms and Ammunition—The consumer agency was expressly prohibited from using its advocacy powers to restrict or limit the manufacture, sale, or possession of firearms or ammunition (S. 200, 94th Cong., Sec. 6(k));

3. Alaska Pipeline—The consumer agency was expressly prohibited from using its advocacy powers with respect to matters affecting the routing or construction of oil or natural gas pipeline systems located in Alaska (S. 200, 94th Cong., Sec. 16(c)).

B. Promotion of Farmer Interest Deleted

One of the functions of the consumer agency under the bill last Congress was to "promote the consumer interests of farmers in obtaining a full supply of goods

*Technically, H.R. 7575 passed the House as a substituted S. 200.

and services at a fair and equitable price" (S. 200, 94th Cong., Sec. 5(b) (14); 14(7)). This is not found in the 1977 version, although new provisions on family farming interests were added. (See E below)

C. Safeguard Against Burdensome Information Demands Deleted

The bill last Congress would have required the Comptroller General to review all consumer agency information requests to assure that they would not impose an undue burden upon the person receiving them. (S. 200, 94th Cong., Sec. 10(a) (1).) This safeguard does not appear in the 1977 bill.

D. Special Recognition of Small Business Administration Advocacy Status Deleted

The bill last Congress expressly recognized that "the Small Business Administration remains the sole executive advocate for the interests of small business concerns". (S. 200, 94th Cong., Sec. 13(d).) This provision does not appear in the 1977 bill.

E. Recognition of Family Farmer Interests Added

Added to the 1977 bill are provisions requiring the consumer agency to give due consideration to the unique problems of family farming and to respond expeditiously to family farmer requests and views. (S. 1262, 95th Cong., Sec. 18)

In addition, the U.S. Department of Agriculture must provide family farmers with information about procedures and activities arising under the consumer agency act which affect such farmers. U.S.D.A. must also provide Congress with an annual summary of the actions taken under the consumer act which particularly have affected family farmers. (S. 1262, 95th Cong., Sec. 18)

F. Presidential Reorganization Plan Requirement Added; CPICC Transfer Deleted

The bill last Congress would have transferred to the consumer agency the personnel and functions of the Consumer Product Information Coordinating Center in the General Services Administration. (S. 200, 94th Cong., Sec. 22) That provision is not in the 1977 proposal.

The new bill directs the President to submit a reorganization plan within 120 days of enactment of the consumer agency bill. The plan would provide for the transfer to the consumer agency of existing federal consumer programs that could be performed more appropriately or efficiently by the new agency. (S. 1262, 95th Cong., Sec. 22)

G. Consumer Advocacy Budget Estimates Requirement Deleted

The bill last Congress would have required the Office of Management and Budget and the Congressional Budget Office to give Congress annual estimates of the amount of funds expected to be allocated for consumer representation by agencies other than the new Agency for Consumer Advocacy. (S. 200, 94th Cong., Sec. 25) This provision is not in the 1977 proposal.

II. CHANGES IN HOUSE BILL

A. Conflict of Interest Provision Added

Former top officials of the consumer agency would be prohibited from representing or professionally advising a regulated party or association representing a regulated party concerning issues on which the officials acted in a decisionmaking capacity while they served at the consumer agency. Further, these former officials would be prohibited, for a 2-year period, from representing any such party or association concerning *any* matter in which the consumer agency was involved at the court or administrative agency level during their employment. (H.R. 6118, 95th Cong., Sec. 3(d)) No similar provision was in the prior House bill.

B. Authority to Establish Regional Offices Added

The 1977 bill also expressly grants the consumer agency authority to establish such regional offices as it deems necessary (H.R. 6118, 95th Cong., Sec. 4(b) (10)).

C. Amicus Curiae Court Status Deleted

The 1975 bill provided that the consumer agency, on its own motion, could transmit to attorneys representing the federal government in court information and evidence thought relevant; additionally, the bill provided that the courts would have discretion to recognize the consumer agency as an amicus curiae (friend of the court) to present written or oral argument to them. (H.R. 7575, 94th Cong., Sec. 6(c)) The 1977 bill no longer provides for these, although the deletion overlooks several references to court proceedings which now remain as drafting errors.

D. Judicial Review Safeguard Diluted

With respect to the consumer agency's appealing to the courts another agency's action, when the consumer agency did not participate in the agency proceeding out of which that action arose, the 1975 bill *required* that the court make a preliminary finding that the consumer agency's "institution of the judicial proceeding would be *necessary* to the interest of justice." (H.R. 7575, 94th Cong., Sec. 6(d))

The 1977 bill makes the preliminary finding discretionary, rather than mandatory, with the court, and shifts the finding criterion from one of necessity to the less rigorous question of whether the consumer agency's action "would impede the interests of justice." (H.R. 6118, 95th Cong., Sec. 6(d))

E. Consumer Agency Subpoena Rights Broadened

The 1975 bill provided that the consumer agency could take advantage of another federal agency's subpoena powers if the consumer agency were a "party" in one of that agency's proceedings. (H.R. 7575, 94th Cong., Sec. 6(g))

The 1977 bill would allow the consumer agency to take advantage of such subpoena powers even if the consumer agency did not have the status of a party in a proceeding; in fact, the consumer agency could take advantage of such powers as a mere participant in a notice and comment rulemaking proceeding where no other participants had such an opportunity. (H.R. 6118, 95th Cong., Sec. 6(g))

F. State Activity Prohibition Diluted

The 1975 bill and the 1977 bill both prohibit the consumer agency from intervening in proceedings or actions before state or local agencies and courts. (Sec. 6(h), both bills)

However, the 1975 bill expressly provided that the prohibition should not be construed as prohibiting the consumer agency from "communicating" with state or local agencies, while courts were not mentioned. (H.R. 7575, 94th Cong., Sec. 6(i))

The 1977 bill would allow the consumer agency not only to communicate with state and local agencies, but to provide them with information and analyses under their rule (in many state and local proceedings, that is all any participant can do); it also would allow the consumer agency to do the same with state or local courts. (H.R. 6118, 95th Cong., Sec. 6(i))

G. Product Testing Role Added

The 1975 bill directed the consumer agency to encourage and support others in the development and application of testing *methods* for consumer products and services. (H.R. 7575, 94th Cong., Sec. 9(a) (1))

The new bill also directs the consumer agency to encourage and support the development and application of product testing and its resulting information. (H.R. 6118, 95th Cong., Sec. 9(a) (1))

H. Feasibility Report on "Tel-Tag" Deleted

The 1975 bill directed the consumer agency to report to Congress on the feasibility of establishing a National Consumer Information Foundation to administer a voluntary information tag system similar to "Tel-Tag" in Great Britain. (H.R. 7575, 94th Cong., Sec. 9(a) (3)) This provision is not in the 1977 bill.

I. Use of Product Testing Results Expanded

The 1975 bill authorized and directed all federal agencies with consumer product testing capabilities to perform for the consumer agency such tests as the agency requested to assist in its consumer advocacy functions. Use by the consumer agency of the results of these tests, however, was limited—"such tests may be used or published only in proceedings" of other agencies in which ACP is participating. (H.R. 7575, 94th Cong., Sec. 9(b))

The 1977 bill would allow the consumer agency to use or publish product test results outside a proceeding in which it is appearing, so long as this is done "in connection with" such a proceeding. (H.R. 6118, 95th Cong., Sec. 9(b))

J. Statutory Trade Secret Protection Reduced

1. No Opportunity to Seek Court Protection.—The 1975 bill allowed the consumer agency to request other federal agencies to disclose to it trade secrets and other confidential commercial or financial information. However, the bill required these other agencies to give the person who provided them the sensitive information notice of their intent to give the consumer agency access to it and "a reasonable opportunity to comment or seek injunctive relief." (H.R. 7575, 94th Cong., Sec. 10(b) (6))

The 1977 bill does not contain the words "or seek injunctive relief," thereby limiting the statutory guaranty to the opportunity to make a mere comment to the agency holding the information.

2. No Prohibition on Disclosure.—The 1975 bill expressly prohibited the consumer agency from revealing to the public trade secrets or other confidential commercial or financial information received from a person and considered privileged or confidential. (H.R. 7575, 94th Cong., Sec. 11(a) (1)). No such prohibition appears in the 1977 bill.

3. No Prohibition on Disclosing Legally Protected Information.—The 1975 bill expressly allowed other federal agencies to withhold from the consumer agency any information the disclosure of which is prohibited by law. (H.R. 7575, 94th Cong., Sec. 11(b)) No such provision appears in the 1977 bill.

K. Consumer Agency Reports to Congress Limited

The 1975 bill required the consumer agency to keep the appropriate congressional committees currently informed with respect to the nature and status of *all* interrogatories or other mandatory information demands issued by the agency; also, the consumer agency was required to transmit to such committees copies of *all* communications alleging abuse of that information demand authority or stating reasons for noncompliance with it. (H.R. 7575, 94th Cong., Sec. 10(e))

The 1977 bill would require the consumer agency to report to its congressional oversight committees on allegations of abuse of its information demand powers only if requested by them to do so, and the bill would not expressly require the consumer agency to keep such committees informed of *all* its information demand, but just such demands generally. (H.R. 6118, 95th Cong., Sec. 10(e))

L. Information Release Fairness Rules Deleted

The 1975 bill required the consumer agency to issue in a public proceeding, and be bound by, rules that would assure fairness to all persons affected by the agency's use of its information gathering, development and dissemination powers and which provided persons with an opportunity to comment on the proposed release of product test data containing product names, prior to such release (H.R. 7575, 94th Cong., Sec. 12).

That provision does not appear in the 1977 bill, although the bill does provide that the consumer agency promulgate rules to assure fairness to all persons affected by its actions (H.R. 6118, 95th Cong., Sec. 4(B) (4).

M. Presidential Reorganization Plan Requirement Added

The new bill directs the President to submit a reorganization plan within 180 days of enactment of the consumer agency bill. The plan would provide for the transfer to the consumer agency of duplicative federal consumer programs that could be performed more appropriately by the new agency (H.R. 6118, 95th Cong., Sec. 14).

N. Cost-Benefit Statements Deleted

The 1975 bill would have required federal agencies to issue and consider cost and benefit assessment statements with respect to rules which likely would have a substantial economic impact (H.R. 7575, 94th Cong., Sec. 22). This provision does not appear in the 1977 bill.

O. Appropriations Increased

The 1975 bill called for $10 million per year for the consumer agency's first two fully operational years. (H.R. 7575, 94th Cong., Sec. 21) The 1977 bill calls for $15 million and $17 million for the first two such years. (H.R. 6118, 95th Cong., Sec. 20)

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS,
Washington, D.C., May 4, 1977.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Governmental Affairs Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: On behalf of the members of the Association of Home Appliance Manufacturers (AHAM) we respectfully request that the following comment be included in the record of the Governmental Affairs Committee hearing on S. 1262, "The Consumer Protection Act of 1977."

AHAM is a national trade association representing both major and portable appliance manufacturers. It membership includes the companies that manufacture the vast majority of such appliances sold in the United States. A roster of AHAM members is attached as Exhibit 1 to this letter.

AHAM's members have demonstrated a unique and far-reaching commitment to consumer interests by pioneering such programs as the Major Appliance Consumer Action Panel, the first informal complaint resolution program of its kind; the National Home Appliance Conference, a 29 year-old education program for consumer communicators; and the Recommended Advertising Practices Guidelines, to establish the highest standards for industry advertising to consumers.

With this history of consumer interest commitment and involvement, AHAM testified against legislation to establish a Consumer Protection Agency before the House Government Operations Committee in the 94th Congress. This testimony is attched as Exhibit 2 because so much of the industry's objections to earlier legislation remains pertinent to the bill before this Committee.

AHAM, therefore, wishes to go on record again as opposing S. 1262.

A new Federal agency is not justified for the purposes set forth in the legislation. If the multi-faceted consumer interests are not now adequately considered in Federal agency activities, this is a failure best corrected by the Congress dealing with these agencies directly through its oversight function rather than delegating its authority to an additional agency.

Respectfully submitted,

CHARLES R. EVANS,
Chairman, AHAM Board of Directors.

EXHIBIT 1

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

MAJOR APPLIANCE MEMBERS

Absocold
Addison
Arvin
Blackstone
Boston Stove
Broan
Carrier
Design & Manufacturing
Ebco
Fedders
  Airtemp
  Norge
  Fedders Refrigeration
Friedrich
General Electric, Major
  Appliance Business Group
General Motors
  Frigidaire Division
Gerling Moore
Glenwood Range
Hardwick Stove
Hoover
In-Sink-Erator Division
  of Emerson Electric
Jenn-Air
KitchenAid-Hobart
Litton
Magic Chef
  Gaffers & Sattler
Maytag
McGraw-Edison
  Air Comfort
  Modern Maid
  Speed Queen
  Intl. Metal Products
Natl. Union Electric
  Emerson Quiet-Kool
Preway
Revco
Rockwell International
  Admiral
Roper
Tappan
  Anaheim
  O'Keefe & Merritt
Vernco
West Bend
Whirlpool
White Consolidated Industries
  Athens Stove Works
  Franklin-Freezer Division
  Franklin-Laundry Division
  Gibson Products
    Belding
    Gibson Appliance
    Greenville Products
  Kelvinator
    GR Manufacturing
    Kelvinator Appliance
    Kelvinator Intl.
    Kelvinator Comm. Prods.
  White-Westinghouse
    White-Westinghouse Appl.
    Columbus Products
    Mansfield Major Appliance
    Edison Products

PORTABLE APPLIANCE MEMBERS

Aluminum Specialty
American Electric
Arvin
Capitol Products
Clairol
Conair
Farberware
General Electric
Gillette
Hoover
Intermatic
KitchenAid-Hobart
Markel Electric
McGraw-Edison
  Port. Appl. & Tool
  Time Products
Metal Ware
Mirro Aluminum
National Presto
Regal Ware
Richmond Cedar
Rival
  Titan
Salton
SCM Corporation
  Proctor-Silex
Scovill
  Dominion
  Hamilton Beach
Son-Chief
  Black Angus
Sperry Remington
Sunbeam
  Oster
Superior Electric
Vita Mix
Waring
Wear-Ever
West Bend

ASSOCIATE MEMBERS

AMP, Inc.
Armco Steel
Bethlehem Steel
Calgon
Clorox
Colgate-Palmolive
Copeland
Corning Glass Works
Davis Walker
Drackett
Eagle-Picher, Inc.
  Chi-Vit Corp.
Eaton Corp.
  Auto. & Appliance
  Control Operations
Economics Lab.
Electro-Therm
Emerson Electric
  Browning Mfg.
  Chromalox
  Emerson Motor
  Fusite Division
Emerson Electric (Cont.)
  Therm-O-Disc
  Tuttle Electric
  U. S. Elec. Motors
  White-Rodgers
  E. L. Wiegand
Ferro Corporation
General Electric
Gould, Inc.
Hooker Chemicals
Inland Steel
International Nickel
Lever Brothers
Litton (Electron Tube)
Mallory Timers
Monsanto
MSP Industries
  Easy Heat-Wirekraft
Owens/Corning
Procter & Gamble
Ranco
Raytheon
Robertshaw
Scott & Fetzer
  Kingston Division
  Kirby Company
Scott Paper
  Foam Division
Singer
  Control Division
A. O. Smith
Tecumseh
Teledyne
Texas Instruments
TRW Incorporated
  United-Carr Division
Union Steel
U. S. Steel
Westinghouse Electric
White Consolidated Industries
  Americold Compressor

EXHIBIT 2

STATEMENT OF THE ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

This statement is presented on behalf of the members of the Association of Home Appliance Manufacturers (AHAM). AHAM's members manufacture such major appliances as refrigerators, home laundry equipment, room air conditioners, electric ranges, humidifiers, and dehumidifiers; and such portable appliances as coffee makers. electric knives, blenders, electric fry pans, and so on. A list of these members is attached to this statement, which is made with their strong support.

AHAM's members are opposed to the establishment of an independent Agency for Consumer Protection. The basic fallacy in the concept of a single agency to represent consumers in proceedings or activities of other federal agencies is that there is one overriding consumer interest. There are many conflicting consumer interests. In the market place one group of consumers prefers a less durable product at a lower price, while others want a more durable product and are willing to pay more for it. One group emphasizes appearance over serviceability. This diversity and industry's ability to provide goods and services to satisfy the conflicting preferences has made the American market place the envy of many nations.

The conflict between "consumer interests" in governmental activity is recorded daily in the media, as those interested in low cost fuel argue with those who would sacrifice immediate cost for purposes of conservation, as ecologists argue with those who support the construction of power plants.

The choice of one interest to be represented, no matter how conscientiously made or how well documented, will deny representation by a federal agency of many other interests in a given proceeding. The argument that no consumer interest is now represented in federal agency proceedings, whereas business interests are alleged to be more than adequately represented, does not justify the creation of an independent agency to advocate one interest over all others and oversee the work of all other federal agencies.

This is not the time to create any new federal agency. A study of the regulatory agencies may be undertaken by a Commission on Regulatory Reform or by a Congressional committee. The purpose of the study would be to examine the regulatory agencies and to determine those thay may have outlived their usefulness, the extent to which their functions overlap, the economic costs and benefits of regulation, and how the regulatory process can be made more effective, efficient and responsive to the public need. Such a study, currently languishing, could benefit the public, both as consumers and as taxpayers, to a far greater extent than an Agency for Consumer Protection.

In addition, the concern of the President, the Congress, and the taxpayers over inflation and the ever increasing federal expenditures stresses the need for caution in creating an agency whose cost to the economy is not known. Appropriations for the agency itself would be but a small part of the total cost to the economy. Costs would be incurred by other agencies and by industry as a result of other federal agencies. A serious effort must be made to ascertain these over-all costs before the public is asked to assume them, through taxes and increased prices.

Consumers Not Neglected by Congress

Actually, the consumer has not been neglected by the Congress. A study by the Library of Congress, made at the request of Senator Taft (R-Ohio), reported that "almost every activity of the Federal Government touches upon the American consumer." Some 75 agencies, with hundreds of functions, were said to affect consumer affairs directly, with a current cost of many billions of dollars. (*Congressional Record*, May 15, 1975, P. S 8383)

Statutes enacted by recent Congresses to promote consumer interests include the Consumer Product Safety Act, the Flammable Fabrics Act, the Hazardous Substances Act, the Wholesome Poultry Act, the Radiation Control for Health and Safety Act, the National Traffic and Motor Vehicle Safety Act, the Fair Packaging and Labeling Act, the Fair Credit Reporting Act, and the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act. Now, in considering the creation of an Agency for Consumer Protection, the Congress is saying that these and numerous other statutes that promote consumer interests have gone for naught, that a consumer czar is needed to stimulate the agencies charged with administering these statutes.

If the federal agencies are not doing their jobs effectively in the public interest, the remedy lies with Congress. Congress itself should analyze the agencies' deficiencies, and correct those that are found. To place this responsibility in as permanently established agency, responsible neither to the Chief Executive, the Congress nor the electorate, is an abdication of power.

Support for Agency Rests on Narrow Base—Opposition Strong

Support for legislation to establish an Agency for Consumer Protection or an Agency for Consumer Advocacy, rests on a very narrow base, the professional consumer organizations.

Business is strongly opposed to the legislation, as is shown by repeated testimony before Congressional committees by the United States Chamber of Commerce and the National Association of Manufacturers. Small business' opposition to the legislation is forcefully demonstrated by a survey of 412,000 small businessmen made late in 1974 by the National Federation of Independent Business. According to the survey, 84% of the firms opposed the creation of an agency to represent consumers, 12% supported such an agency, and 4% expressed no opinion. Only 14 or 15 major businesses were mentioned in the Senate debate on S. 200 as supporting the legislation. (*Congressional Record*, May 12, 1975, pp. S 7910 and S7911)

Consumers themselves, apart from the professional consumer organizations, are opposed to the legislation. (Poll entitled "Government and the Consumer," by Opinion Research Corp., made public in March 1975)

The *Administration* is opposed to the legislation. (Letter of April 17, 1975 from President Ford to Congressman Jack Brooks, Chairman, House Government Operations Committee; Congressman Harley O. Staggers, Chairman, House Interstate and Foreign Commerce Committee; and Senator Abraham A. Ribicoff, Chairman, Senate Government Operations Committee)

Organized labor is opposed to the legislation, unless it is exempt. (*Congressional Record*, May 12, 1975, p. S 7908)

Agricultural and fishing interests are opposed, unless exempt. (*Congressional Record*, May 15, 1975, pp. S 8393 and S8411)

A bill that elicits support for important segments of the economy if they themselves are exempt cannot be sound legislation for segments not exempt.

Effect on Government Processes

Only confusion and delay in government can result from the creation of an agency with unlimited authority to intervene or to participate in activities of other federal agencies. No agency, except those expressly exempt by the legislation, could proceed with its work free from apprehension that, at some point, the consumer agency might come in to be heard, to request information, or to take other action. No agency decision could become final until the statutory time for the consumer agency to seek judicial review of a decision had passed, or for the consumer agency to seek a "rehearing," if it had not participated in the proceeding leading to the decision.

This uncertainty as well as the main thrust of the consumer agency legislation, which is to make every federal agency, except those expressly exempt, accountable to a single agency is simply bad government. It would turn the democratic process of government completely around. Government of the "people, by the people, for the people" would become government by one entity. The consumer interest to be represented in government, how and where it would be represented would be determined by one individual and his staff, rather than by the people speaking through duly elected legislators, or by the consumers making choices in the free market place of ideas, services and goods.

Provisions of H.R. 7575

Specific provisions of H.R. 7575 to which AHAM's members are opposed could be mentioned, but they are secondary to our opposition to the concept of the legislation. The unlimited authority with respect to the testing of consumer products and services, Sec. 9(a)(1) and (2), could make the agency the determining factor in directing governmental research in fields even remotely related to consumer interests. The information gathering authority of Sec. 10, limited only by concern for the "health or safety of consumers" or by "consumer fraud or substantial economic injury to consumers," goes, we believe, far beyond the information gathering authority of any existing governmental agency.

Areas of Legitimate Consumer Concern

There are four areas of legitimate consumer concern that perhaps are not being met adequately under current federal or state law. One is the need for a judicial forum, with minimum procedural requirements, in which redress may be obtained quickly for valid complaints about goods or services. This need is addressed by H.R. 1952, entitled the "Consumer Controversies Resolution Act."

A second is the need for a thorough study of federal regulatory programs so that they may be made to promote consumer interests effectively, at reasonable cost, or be eliminated. This problem is addressed by H.R. 1956.

A third is the need for information on the cost to the government and to industry of proposed legislation as well as proposed programs to be established under existing laws, a need now recognized only in part by a House rule.

Fourth, is the possible need for in-house representation of consumers for selected agencies whose activities impinge directly upon consumers, another need not addressed by proposed legislation.

Consumer interests will be better served by addressing each of these needs than by creating an unstructured agency with unlimited power to call other federal agencies to account in the name of a monolithic, and nonexistent, consumer interest.

Conclusion

As developers and manufacturers of products that have lightened the burden of housekeeping immeasurably and have made the home a more healthful and enjoyable place to live, AHAM's members have long worked to promote consumer interests. They are convinced that the creation of an Agency for Consumer Protection, to roam at will through the federal government and to make virtually unbridled demands on industry without adequate Congressional guidance, will be detrimental rather than beneficial to consumers. They urge that H.R. 7575 not be enacted.

Respectfully submitted,

GEORGE P. LAMB,
General Counsel,
Association of Home Appliance Manufacturers.

U.S. SMALL BUSINESS ADMINISTRATION,
Washington, D.C., June 9, 1977

Hon. LEE METCALF,
U.S. Senate
Washington, D.C.

DEAR SENATOR METCALF: Since Congress will soon consider S. 1262 and H.R. 6805, legislation to create an Agency for Consumer Protection, I want to take this opportunity to call to your attention the Small Business Administration's support for this important consumer measure.

When the concept of an advocacy agency was first proposed eight years ago, there was concern that the agency's information-gathering powers could impose an undue burden on the resources of small businesses. However, in recent years the bills have been altered in both the House and Senate to accommodate this concern. Small businesses are now exempt from the interrogatory authority of the consumer agency in both the House and Senate bills.

In addition, section 17 of S. 1262, as reported, directs SBA to provide small business with information concerning ACP procedures and activities of other agencies related to ACP. It futher provides that ACP is to seek the news of small business in establishing its priorities and to give due consideration to the unique problems of small businesses so as not to discriminate or cause unnecessary hardship. Under an amendment recently adopted by the Senate Governmental Affairs Committee, this section also provides that ACP's Administrator must notify SBA prior to intervening in a proceeding which is likely to have a substantial impact on small business.

These provisions, added to the bills over the long course of legislative consideration, reflect the sensitivity to small business which SBA considers essential. With the provisions discussed above, SBA supports enactment of S. 1262 and H.R. 6805, consistent with the President's position on this matter.

Sincerely,

A. VERNON WEAVER, *Administrator.*

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