

Congress Reauthorizes CPSC

In the last days of the session, Congress passed legislation to reauthorize the Consumer Product Safety Commission, giving consumers a major victory in their seven-year battle to improve the operations of this vital safety agency.

The CPSC, which is charged with ensuring the safety of 15,000 products, has seen its budget and personnel cut by nearly one-half since its last reauthorization in 1981.

"This action by Congress demonstrates a renewed commitment to the agency," said CFA Product Safety Director Mary Ellen Fise. "A stronger CPSC means safer products and fewer injuries and deaths."

The conference report on the bill, which was approved by unanimous consent in the Senate and a 375-41 vote in the House, contains authorization levels of \$42 million for fiscal year 1991 and \$45 million for 1992. (This is well above the \$37.1 million actually appropriated by Congress for 1991, and Fise said consumer advocates will continue efforts to increase appropriations next year.)

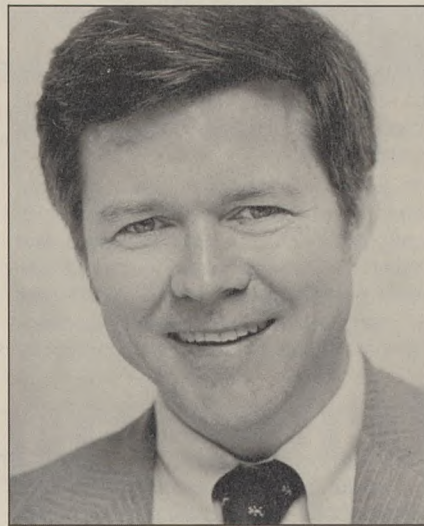
More importantly, the bill contains a number of provisions to improve CPSC regulatory practices, including requirements that the agency:

- only defer to voluntary standards that are actually in existence (not simply proposed or under development);
- allow an opportunity for interested parties, including consumers and consumer groups, to submit written comments on voluntary standards to which the agency proposes to defer;
- develop a system for monitoring compliance with voluntary standards;
- issue proposed rules within a year of starting the rulemaking process, unless the agency determines that the rule is not necessary or not in the public interest (extensions for good cause are allowed, with notification of congressional oversight committees of the reasons for the extension);
- make determinations on public petitions for rulemaking within a reasonable time and state the reasons for approving or denying any such petition; and
- only deny a petition on the basis of a voluntary standard if the voluntary standard is actually in existence, the agency has determined that the standard is likely to eliminate or adequately reduce the risk of injury involved, and it is likely that industry will be in substantial compliance with the standard.

These provisions respond to concerns about agency operating procedures raised in a 1987 CFA report, "The CPSC: Guiding or Hiding from Product Safety." That report concluded that the agency's undue reliance on voluntary standards and



Sen. Richard Bryan (left) and Rep. Doug Walgren guided the bill through Congress.



its pattern of inaction had allowed dangerous products to remain on the market while deaths and injuries, and associated economic costs, continued to mount.

Civil Penalties Raised

Another key provision in the bill is its increase in existing civil penalties from \$2,000 to \$5,000 per violation, up to a new maximum of \$1.25 million for a related series of violations. The previous cap was \$500,000.

Furthermore, the maximum penalties are to be adjusted for inflation every five years, to prevent a future erosion in penalty values similar to that which has occurred since enactment of the Consumer Product Safety Act in 1972.

The bill also imposes civil penalties for violation of the Federal Hazardous Substances Act, which governs not only hazardous substances, but all children's toys and products.

"Previously, manufacturers and importers of dangerous children's toys got off scot-free," Fise said. "This provision creates an incentive for compliance with the law that up until now has been sorely lacking."

In addition, although the conference committee dropped most of the product-specific provisions of the House bill — the Senate bill contained no product-specific language — the final version does retain a requirement that manufacturers of automatic garage door openers include devices on these products that prevent anyone from becoming trapped or injured by a closing door.

Since 1973, 65 children have died from being crushed in closing garage doors, and 26,959 consumers have been injured in garage door accidents.

More Work Remains

"Although this bill represents a tremendous victory, much remains to be done to establish the CPSC as a safety leader," Fise said. "A number of pro-consumer provisions were dropped from the legislation."

Particularly disappointing was the substantial weakening, due to pressure from business interests, of a provision that would have significantly increased the reporting of product hazards to the commission.

Although the bill requires manufacturers to report final settlements or court judgements in cases alleging death or grievous bodily injury caused by products, they only must do so if they settle or lose in court three times within two years.

"Stricter, more timely reporting requirements are needed if the CPSC is to best serve its safety mission," Fise said.

Also dropped from the bill was a provision that would have permitted the agency to release brand-specific information about product hazards. Unlike every other federal health and safety agency, the CPSC must first obtain manufacturers' permission before releasing any brand-specific information.

"Consumers whose lives may be in jeopardy as a result of dangerous products should not be the last to know," Fise said.

"Despite these setbacks, the overall news is good," she said. "This bill should help restore the CPSC as an effective watchdog for consumer safety."

Congress Approves Sustainable Ag

The final version of the Farm Bill approved by Congress in late October contains the first clear definition in law of sustainable agriculture, as well as a major redirection of research and training and flexibility in planting price programs to support this approach.

"This is a victory for consumers who are concerned about the safety, reliability and affordability of the nation's food supply, for environmentalists concerned about the preservation of our natural resources, and for family farmers concerned about their own health and economic well-being," said CFA Legislative Representative Peggy Miller.

"The conferees did an excellent job of piecing together a package of initiatives that addresses the concerns of all interested parties," she added. "Rep. George E. Brown, Jr. (D-CA), with continuous help from Sen. Patrick J. Leahy (D-VT), Rep. James Jontz (D-IN), and Sen. Wyche Fowler, Jr. (D-GA), fought long and hard to ensure that the integrity of this package was maintained."

The legislation defines sustainable agriculture as "an integrated system of plant and animal production practices having a site-specific application that will, over the long-term:

- satisfy human food and fiber needs;

- enhance environmental quality and the natural resource base upon which the agriculture economy depends;

- make the most efficient use of non-renewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;
- sustain the economic viability of farm operations; and
- enhance the quality of life for farmers and society as a whole."

"This is a good, broad definition that covers all the key points," Miller said. "It provides an excellent foundation for all the specific research and training provisions in the bill."

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Congress Approves Sustainable Ag (continued from page 1)



Rep. George E. Brown (D-CA) led the fight for sustainable agriculture.

program to train all agriculture extension agents in sustainable agriculture practices.

"Agriculture extension agents are one of the farmers' main information sources on new technologies and practices," Miller said. "In order to change our agriculture system we must first retool our technology transfer, the extension services, so they can convey information on sustainable agriculture to the farmer."

In addition, the bill:

- authorizes \$40 million of general research funds specifically for sustainable agriculture research;
- includes sustainable agriculture in the high priority research competitive grants program and federal-state matching grants program;
- provides for the inclusion of two consumer representatives on the newly created National Agriculture Research and Extension Users Advisory Board, which reviews and provides consultation to the Secretary on national policies, priorities,

and strategies for agricultural research and extension; and

- provides for the creation of a National Center for Sustainable Agriculture Research and Training within the land grant college system.

"We are particularly encouraged that the conferees decided to incorporate sustainable agriculture concerns broadly throughout the bill," Miller said. "This will stimulate research into sustainable agriculture by the federal and state research scientists who can most directly affect the direction agriculture policy will take."

In addition to the sustainable agriculture initiatives, the Farm Bill contains a number of other pro-consumer, pro-environment provisions.

Flexibility Encourages Conservation

Within the price support programs, for example, farmers are allowed to hold on

to their base acres while changing the type of crop grown on 25 percent of their land. Farmers may harvest and sell these crops and be guaranteed at least the support payment for their base crop.

"This creates an incentive for farmers to grow other crops that conserve soil and water, use fewer pesticides, or put land into the conservation reserves," Miller said.

Finally, the bill also mandates the establishment of national standards for organic food labeling and creates a USDA organic labeling and certification program. Such a program should assist farmers in marketing organically grown foods across state lines and through supermarket chains.

"We did not get everything we wanted in this bill," Miller said, "but we seem to be moving in the right direction. Next year, we will come back and fight to get better funding levels to support these programs through redirection of current program funds."

Extension Agents Trained

One important feature of the bill is its establishment of a new \$20 million

FERC Policies Impede Competition

The Federal Energy Regulatory Commission must redirect its regulatory policies if consumers are to reap the benefits of the tremendous potential for procompetitive, pro-consumer reform that exists in the electric utility industry, CFA Research Director Mark Cooper said in testimony submitted in October to the House Subcommittee on Environment, Energy, and Natural Resources.

"The technical and economic conditions for a competitive, non-discriminatory, least-cost structure exist," Cooper said in testimony on the electric utility policies of FERC submitted with Scott Hempling of the Environmental Action Foundation.

"However, we must not confuse the mere possibility of competition with its reality," Cooper said. "Where comprehensive reform is necessary, FERC has embarked on an ad hoc adventure into market-based pricing where no real, active markets exist. The result is to deny consumers both the benefits of real competition and the

protections of effective regulation."

Cooper outlined three goals that should be "paramount" in any proposal for structural change:

- encouraging entry into the market of entities that will bring new skills and technology into wholesale markets and that will compete fairly over the long term;
- preventing utilities with monopolies over distribution or transmission from competing unfairly against independent companies in newly developing markets for generation, conservation, and load management; and
- preventing retail monopolies from using corporate structure to avoid their historic duty to serve captive customers at competitive, lowest feasible prices.

"The status quo is inadequate," Cooper said, "but the direction away from consumer protective regulatory review at FERC could leave consumers without effective competition and with less regulatory protection — a worse state of affairs than exists at present."

Cooper and Hempling presented a number of specific recommendations toward achieving a system in which there is "competitive acquisition of generation in the context of least cost plans and non-discriminatory transmission access."

Until Congress can verify that the regulatory tools exist to prevent unfair competition, existing utilities should not be permitted to expand from their base as retail and transmission monopolists, they said.

One key to developing the needed regulatory tools is non-discriminatory wholesale transmission access, which would permit a wholesale customer fearing abuse from one supplier to shop for another, they said.

In order to accomplish this, FERC should set an explicit threshold for competition based on guidelines established by the Department of Justice, they said. "FERC should take a much more cautious approach to determining whether the level and type of competition produced by

bidding is sufficient to protect consumers," Cooper said. "At the outset, utilities should be precluded from bidding or becoming Independent Power Producers."

"They would still be allowed to build generating facilities under traditional regulatory concepts, if bidders fail to clear the market or cannot beat the benchmark utility price," he added.

Cooper and Hempling also called on Congress to "confirm the legal standing of retail and wholesale customers, competitors, and regulators to challenge agency decisions and to have expedited access to regulatory procedures and protections if the conditions warrant."

In two recent cases, utilities have challenged the legal standing of retail ratepayers to assert an interest in wholesale competition and corporate restructuring. "These challenges are disturbing," Cooper said. "If a captive retail ratepayer does not have a direct economic interest in fully competitive markets, who does?"

CFA Opposes Bank Trust Rule Change

At an October hearing, CFA Legislative Representative Peggy Miller called on members of the House Telecommunications and Finance Subcommittee to restrain the Office of the Comptroller of the Currency (OCC) in its move to allow greater leniency in the advertising, fee setting, and other related administrative features of bank common trusts.

The OCC proposed rule revisions would allow the use of common trust funds to be expanded through open advertising and sales to the general public, thus converting them into mutual transactions. The OCC, with its overburdened examination staff, would not be capable of preventing banks from operating these funds as mutual funds, Miller said.

A number of consumer problems could result, she said, including: threats to safety and soundness of financial institutions,

perhaps leading to additional bailout costs; consumer deception, through use of the bank logo in advertisements to imply they are federally insured; higher fees for trust services, particularly for consumers with smaller trust accounts; and a conflict of interest between the individual trust client and overall profitability of the fund.

"We have learned one very important rule from the current savings and loan crisis," Miller said. "If you give them the rope, they will hang themselves. The trouble is that, due to federal deposit insurance, when the banks hang themselves, they hang the consumer, too."

Regulators, already faced with massive responsibilities, lack the necessary tools to ensure proper examination and supervision to detect and prevent abusive practices, Miller said. "Adding the complex regulation of new mutual fund activities



CFA Legislative Representative Peggy Miller urged Congress to stop OCC's proposed rule change.

to their required areas of authority would be irresponsible and not in the public's interest," she said.

"We do not believe that all institutions would leap into such abusive behavior," Miller said, "but it does not take many to further destroy the deposit insurance fund and finally to destroy all consumer confidence in our banking system."

Mark Your Calendar

Financial Services Conference

December 13-14, 1990

Consumers Fail Competency Test

The first comprehensive test of the nation's consumer knowledge has found this knowledge to be inadequate. The test, which consisted of 249 questions on a broad range of consumption issues, was sponsored by CFA, developed by consumer experts, conducted by the Educational Testing Service (ETS), and funded by the TRW Foundation.

"The fact that consumers answered correctly, on average, only 54 percent of questions demonstrates that there are huge gaps in the nation's consumer knowledge," said CFA Executive Director Stephen Brobeck, author of the report on test results.

"Special efforts must be made to remedy particularly glaring deficiencies among the young, the poor, the least well educated, and minorities," he added.

Test questions pertained to six general areas of consumption: banking, insurance, housing, food, product safety, and durable goods. They were developed by a team of 39 experts from 27 government agencies, consumer groups, universities, and business organizations, working under the direction of ETS.

The multiple choice questions were administered to a sample population of 1139 persons in May and June of this year.

Study Reveals Areas of Weakness

The average overall test score was only 54 percent, despite the fact that one could expect to score about 25 percent simply by guessing. Among the specific subject areas for which scores were lowest were housing purchases (45%), checking/savings (50%), food purchases (50%), and life insurance (51%).

Of particular concern were the extremely low scores for certain individual questions testing essential consumer knowledge, including:

- APR as the best index of the cost of a loan (37%);
- the extent to which auto insurance rates vary from company to company;
- the decreasing importance of life insurance as one grows older (26%);
- who real estate agents legally represent (33%);



CFA Executive Director Stephen Brobeck (center) revealed results of a consumer knowledge test at a Washington, D.C. news conference, accompanied by Michael Van Buskirk of TRW (left) and Robert Smith of ETS.

- the basis for labeling of ingredients on food items (36%);
- when and how to remove asbestos (25%); and
- what agency issues information on auto recalls (17%).

The test results, however, did reveal areas where consumers were somewhat knowledgeable. The average score on drugs, for example, was 68 percent, and that on housing rental was 60 percent.

In addition, scores were high on a few questions that tested important knowledge:

- the significance of co-signing a loan (87%);
- the relation of salt consumption to high blood pressure (78%);
- cancer risk posed by inhaling asbestos fibers (79%);
- the relation between use of antihistamines and drowsiness (79%); and
- the meaning of a full warranty (76%).

"It is significant that much of this information has been widely advertised," noted Brobeck. "Clearly, advertisers could play an important role in closing gaps in consumer knowledge."

Study IDs Groups With Greatest Deficiencies

Although some difference in performance was expected between demographic groups, the magnitude of those differences

was surprising, Brobeck said. For example, there was a 22 percentage point difference between average scores of the most and least educated groups, a 17 percentage point difference between the most and least affluent, and a 13 to 15 percentage point difference between whites and minorities.

Predictably, among age groups, those in their twenties scored much lower than those in their forties and fifties. "What is surprising is how low the scores were for older persons (those over 60)," Brobeck said. "Of special concern are low scores by seniors on food purchases and drugs, since they frequently purchase these products."

Overall, there were not significant differences between men and women. Men, however, tended to score higher on questions involving finances, while women did better on questions related to product safety and nutrition.

CFA Initiates Efforts to Remedy Deficiencies

In response to test results, CFA has initiated several efforts to improve consumer knowledge, including:

- with TRW and the U.S. Office of Consumer Affairs, convening a roundtable discussion of leading educators, advocates, federal officials, and business leaders to

discuss the report's implications for education and for information disclosures;

- with the U.S. Food and Drug Administration, initiating grassroots educational efforts on nutrition and drugs, targeting groups with important information needs;
- with American Express, a follow-up test of the consumer knowledge of high school seniors, to be followed by efforts in the public schools to improve consumer education; and
- special reports on specific consumption areas (e.g., consumer credit and life insurance) to be followed by roundtable discussions between consumer, government, and business leaders on strategies for improving consumer knowledge in these areas.

Copies of the report are available for \$10 from Consumer Federation of America, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

AVERAGE SCORES BY DEMOGRAPHIC GROUP

Gender

Male	55%
Female	54

Age

18-29	49%
30-39	57
40-49	59
50-59	59
60 and over	52

Ethnicity

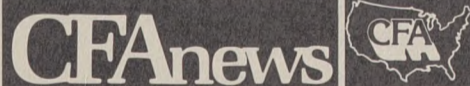
Black	45%
Hispanic	43
White	58

Education

No high school degree . . .	43%
High school degree	51
Some college	58
College graduate	63
Some graduate school . . .	65

Income

Under \$15,000	45%
15,000-24,999	52
25,000-34,999	55
35,000-49,999	60
50,000 and over	62



CONSUMER FEDERATION OF AMERICA
1424 16th Street, N.W., Washington, D.C. 20036
(202) 387-6121

- President:** Jean Ann Fox
- Executive Director:** Stephen Brobeck
- Legislative Director:** Gene Kimmelman
- Assistant Director:** Ann Lower
- Research Director:** Mark Cooper
- Public Affairs Director:** Jack Gillis
- Product Safety Director:** Mary Ellen Fise
- Legislative Representative:** Peggy Miller
- Product Safety Representative:** Barbara Roper
- Product Safety Coordinator:** Edith Furst
- Conference Manager:** Sheila Meade
- Administrator:** Sarah Gardner
- Secretary:** Lydia Grogan
- Administrative Assistant:** Mary Jesukiewicz
- Staff Assistant:** Miguel Carpio

CFAnews Editor: Barbara Roper

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Congress Passes Food Labeling Bill

Just before adjourning for the year, Congress approved legislation to require uniform and expanded nutrition labeling for most processed foods and to end deceptive health and nutrition claims on food labels.

The House-passed bill was amended and then approved on a voice vote in the Senate October 24. Amendments to the bill were considered so minor that a conference was not required, and the measure was approved under a unanimous consent agreement in the House October 26.

The president is expected to sign the bill.

The legislation would require labels on all but a few exempted food items to provide information on calorie content, including calories derived from total fat and from saturated fat, and to list the amount of total fat, saturated fat,

cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein.

Retailers would be required to provide this information, either by posting signs or by supplying brochures, for the 20 most frequently consumed vegetables, fruits, and raw fish.

"New evidence emerges daily on the importance of diet in protecting and improving health. Current labeling practices, however, are so confusing, and at times deceptive, that consumers find it difficult to make informed choices about the foods they eat," said CFA Legislative Representative Barbara Roper.

"This legislation is a major step forward in eliminating that confusion," she said.

In addition to setting uniform labeling

standards, the legislation directs the Food and Drug Administration to define such commonly used content terms as "light" and "low salt."

It also specifies that health claims for foods would only be permitted when the FDA determines in regulations that they are valid, based on "significant scientific agreement."

"Ever since the Reagan Administration decided to allow health claims on food labels, deceptive claims with little or no basis in scientific fact have mushroomed, leaving consumers confused by one nutritional fad after another," Roper said.

"This legislation will assure that the information consumers receive is based on firm scientific evidence," she said.

CFA Urges Closure of S&L Loophole

Responding to pressure from CFA, Congress, and federal thrift regulators, the Federal Deposit Insurance Corporation agreed in October to close a loophole in last year's savings and loan bailout bill that was allowing S&Ls to evade the law's restrictions on risky practices by converting to state chartered savings banks.

FDIC will continue to allow charter conversions but will not allow these new savings banks to engage in risky businesses.

The Office of Thrift Supervision, meanwhile, announced that it will require thrifts seeking charter conversions to provide extensive proof that the conversions are not intended to escape legal restrictions on thrifts.

"This is a partial victory," said CFA Legislative Representative Peggy Miller, who had pushed to stop charter conversions altogether until next year because of "concerns over fee evasion, evasion of lending restrictions, and general evasion of the law."

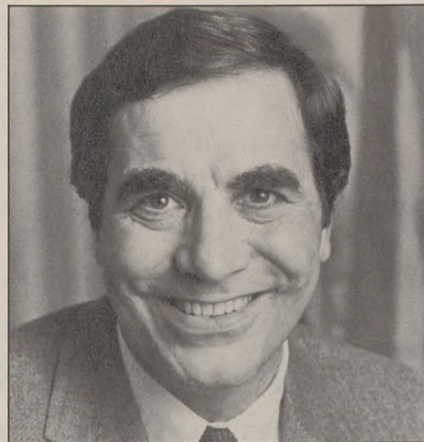
"The OTS action helps," she said. "If we can hold off all conversions for now, then next year Congress can act to get this straightened out."

Savings Banks Avoid Restrictions

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) does not apply the same safety and



OTS Director Timothy Ryan (left) and Rep. Bruce Vento joined CFA in urging immediate closure of the loophole.



soundness standards to state chartered savings banks as it applies to federal and state savings and loans. These institutions, for example, are not subject to prohibitions against direct investment in real estate developments and junk bonds or restrictions on the size of loans to a single borrower.

At the time the law was written, only about a dozen states allowed for state chartered savings banks, and there were only about 500 such institutions in existence. This particular loophole was not supposed to cover any new conversions.

Since the law's passage, however, savings and loans in those states discovered that the law also allowed them to convert and thereby get into risky ventures and

avoid bailout fees and other cumbersome but necessary requirements mandated for all S&Ls by FIRREA.

As a result, some thrifts have sought charter conversions allowing them to become savings banks. In addition, Illinois, Indiana, and Louisiana have passed laws allowing their S&Ls to convert to savings banks, and eight other states — California, Florida, New Jersey, North Carolina, Ohio, Tennessee, Texas, and Wisconsin — are considering such laws.

"It's devastating," said Miller, who urged Congress to pass legislation this year to close the loophole. "Junk bonds and direct investment in real estate just don't belong in federally insured institutions, period."

In testimony in early October before the Senate Banking Committee, Office of Thrift Supervision Director T. Timothy Ryan sent Congress the same message, calling the charter conversions "blatant attempts to evade reforms" in FIRREA.

"We know that state officials, their trade associations and lawyers are advertising state savings bank charters as a quick, easy way to evade FIRREA," he said.

In the Senate, Banking Committee Chairman Donald Riegle (D-MI) and ranking Republican Jake Garn (R-UT) responded by introducing proposals to stop all conversions, as did Reps. Bruce Vento (D-MN), Jim Leach (R-IA), and Frank Annunzio (D-IL) in the House.

FDIC Promises Action

Before Congress acted on the proposals, however, FDIC Chairman L. William Seidman wrote to Congress promising action to close the loophole.

"We concur that the important protections of FIRREA should apply to all state thrifts, whatever their charter," Seidman wrote. "Thus, I have asked appropriate staff at the FDIC to prepare a proposed regulation to bring to our Board that explicitly would subject state savings banks to these protections."

"We will need to watch closely to ensure that the regulations are drafted and are adequate," Miller said. "Next year the laws will need to be clarified on these powers, but for now the loophole is effectively closed."

Bush Opposition Kills Cable Reregulation Bill

Republican senators bent on protecting President Bush from the embarrassment of vetoing a popular consumer bill used delaying tactics at the end of the session to kill legislation to re-regulate the cable television industry. Similar legislation sailed through the House on a voice vote September 10, but the Senate bill, which was weaker on rate regulation but stronger on making cable-owned programming available to potential competitors, was destined for a bumpier ride.

By late September, Senate bill sponsors and managers John C. Danforth (R-MO), Daniel K. Inouye (D-HI), and Ernest F. Hollings (D-SC) had agreed on a package of amendments and were ready to bring the bill to the floor. That package included amendments by Sen. Howard M. Metzenbaum (D-OH) and Sen. Joseph I. Lieberman (D-CT) to strengthen rate regulation and customer service provisions of the Senate bill.

The bill was blocked from coming to the floor, however, by Sen. Tim Wirth (D-CO), who objected to language aimed at giving cable competitors better access to programming developed by cable networks. Sen. Malcolm Wallop (R-WY) backed up Wirth's efforts because of administration opposition to the entire cable re-regulation effort.

The Office of Management and Budget sent the Senate a strongly worded "Statement of Administration Policy," threatening a presidential veto. The policy statement singled out additional federal rate regulation, among other provisions, as triggering the administration's opposition.

Nonetheless, by mid-October Sen. Wirth and Sen. Al Gore (D-TN) had crafted a program access compromise aimed at getting the derailed bill back on track. By the time the agreement was arrived at, however, stalled budget negotiations and end-of-session time pressures made it necessary for the bill's managers to obtain a time agreement to bring the bill to the floor for debate and action. Republican senators, acting on behalf of the Bush Administration, maintained their opposition, making it impossible to obtain that agreement.

CFA, which had called for stronger legislation, nonetheless supported passage of the bill as an improvement over the current environment of an unregulated monopoly. "We are committed to coming back next year seeking even stronger legislation to protect consumers against unreasonable cable rates and open the door to increased competition in the video marketplace," said CFA Legislative Director Gene Kimmelman.

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