

## Anti-Consumer FDA Overhaul Bills Advance

**B**oth the House and Senate have given overwhelming approval to legislation to overhaul the Food and Drug Administration that poses a serious threat to public safety.

"Although negotiations in both chambers have produced improvements, these bills are nothing less than a rollback of safety and efficacy standards for drugs, medical devices, and food products," said CFA Chairman Sen. Howard Metzenbaum (Ret.).

The Senate passed its bill, S. 830, on a 98-2 vote in late September. The House followed suit in early October, passing H.R. 1411 on a voice vote.

Although a few differences remain, the House and Senate versions are very similar.

Both would reauthorize the Prescription Drug User Fee Act for five years. The current authorization expired September 30, although the program continues to operate without employee layoffs.

Under PDUFA – a measure with broad support from industry, consumer groups, and the FDA – drug manufacturers pay fees when they submit a product for FDA approval. Those fees underwrite the cost of FDA review of applications.

Despite their support for PDUFA reauthorization, consumer groups have opposed the bills because of the provisions they contain that pose a potential threat to the health of millions of Americans.

CFA outlined its reasons for opposing the bills in a September 30 letter to the president urging him to veto the measure.

### Key Anti-Consumer Provisions Outlined

Among other things, the letter notes, the bills would:

- allow drug companies to promote so-called "off-label" uses of their products, uses for which the products have not undergone safety and efficacy testing;
- lower the standards for the approval of new drugs and medical devices as effective;
- allow medical device manufacturers to send some of their products to a private contractor for testing, rather than having the FDA perform this function; and
- allow food labels to promote nutrition and health claims that have not met the FDA's requirement that they be based on "significant scientific agreement."

"The most glaring example of the risk this legislation poses to patients is the off-label provision," said CFA Legislative Director Mary Rouleau, noting that the

recent fen-phen disaster pointed out just how dangerous this provision would be.

In the fen-phen case, two drugs which had been approved separately by the FDA were prescribed in combination as a diet drug, a use for which they had not undergone FDA safety and efficacy testing.

Although published studies purported to show that the fen-phen combination was safe and effective, it is now estimated that as many as 30 percent of users, between 360,000 and 720,000 Americans, have suffered heart-valve damage as a result.

"With the recent fen-phen disaster, we expected the Congress to seize the opportunity to strip the off-label provision from the bills for further study," Rouleau said. "It is baffling that Congress would ignore what is among the worst drug disasters in history and pass legislation that increases the likelihood of repeated disasters of this type."

"Indeed, instead of making it easier for drug companies to get their products into the hands of patients, the industry should be reviewed for questionable current practices," she added.

Allowing medical device manufacturers to choose, negotiate terms with, and directly pay private, for-profit firms to review many of their products also poses serious threats, Rouleau said.

"This untested, conflict-ridden system will promote a race to the bottom in terms of standards," she said.

Although both the House and Senate bills continue to require FDA review of

the highest risk devices, the House bill would allow third-party review of devices that could prevent impairments, such as digital mammography equipment.

### Some State Cosmetic Regulation Retained

Largely through the efforts of Sen. Ted Kennedy (D-MA) – whose "overall leadership in opposing the bill's worst provisions were heroic," Sen. Metzenbaum said – consumer groups did win one important improvement in the bills.

Unlike previous versions, which would have preempted all stronger state consumer protection laws covering over-the-counter drugs and cosmetics, both the House and Senate bills would allow the FDA to create national standards for these products, but states could continue to regulate them in cases in which the FDA did not act.

"We found ourselves in an unusual position," Sen. Metzenbaum said. "Those who normally advocate states' rights were urging a federal takeover of those rights, because they knew the federal government didn't have the resources or the budget to do the job."

"With Sen. Kennedy's help, we forced them to back off this provision," he said.

Sen. Metzenbaum, emphasized, however, that the improvement in this one provision is not enough to outweigh the harm the bills' other provisions would do.

### President Withdraws Veto Threat

The Clinton administration, which had earlier threatened a veto, indicated in early October that it will support the bill, despite some remaining concerns, after a compromise on medical device testing was included in the House bill.

The Senate bill and the original House bill would have limited the FDA to testing medical devices only for uses manufacturers had listed on the label.

As adopted, the House bill would allow the FDA to review whether it was likely that the device would be used for other purposes and could cause harm. Manufacturers could continue to market the device, but the FDA could require them to include a warning that the product had not been found safe for certain specified uses.

The two hold-out opponents to the Senate bill – Sen. Ted Kennedy (D-MA) and Sen. Jack Reed (D-RI) – indicated they too would support the House compromise.

Staffers for the Senate Labor and Human Resources Committee and the House Commerce Committee were expected to work out the few remaining differences in the House and Senate bills in time to allow final passage before Congress adjourns for the year.

"These bills represent the first rollback of FDA protections in the history of the Food, Drug and Cosmetics Act," Sen. Metzenbaum said. "They open the door to a public health disaster."

## Electricity Deregulation Gains Steam

**A**fter giving the issue little attention for months, the House of Representatives has once again taken up the question of whether, or how, to deregulate the electric utility industry.

In the House, Rep. Dan Schaefer (R-CO) scheduled hearings in the House Energy and Power Subcommittee for late October on all the bills that have been introduced to date.

In the Senate, the only measure which had been moving – an anti-consumer bill to repeal the Public Utility Holding Company Act – was approved on a voice vote by the Senate Banking Committee in June, but has been kept off the floor thus far by a threatened filibuster and the lack of House action on the issue.

Meanwhile, a number of states have continued to move ahead with their own deregulation plans, with CFA and a number of its state and local members taking an active role in those debates.

As a participant in a Hill staff briefing, CFA Legislative Director Mary Rouleau

emphasized the need to ensure affordable service for all customers, adequate consumer protections against abusive marketing and sales practices, and equitable treatment of stranded costs.

These issues are outlined in a paper by CFA Research Director Mark Cooper, "A New Paradigm for Consumer Protection in the Transition to Electric Competition," which was released in conjunction with the briefing.

### Policy Needed To Ensure Affordable Rates

"Residential customers face large uncertainties under restructuring proposals. The most fundamental of these is the future price of basic service," Rouleau said.

"There must be a clear public policy to ensure affordability for all customers, as well as to address the needs of low income residential customers and customers in high-cost areas," she said.

Rouleau noted that Congress has

already provided the framework for a workable universal service policy in the universal service provisions of the Telecommunications Act of 1996.

However, of the bills introduced in the House and Senate this year, only H.R. 1960, introduced by Rep. Edward J. Markey (D-MA), contains a comprehensive approach to universal service, she said.

The Telecom Act also provides a model for how to deal with cost allocation issues, which is an important component of the affordable rate issue, she said.

That law's prohibitions against the subsidy of competitive services by non-competitive service and against basic service bearing more than a reasonable share of joint and common costs of the facilities being used to provide those services can and should be applied to electricity restructuring, she said.

(Continued on page 2)

## Pamphlet Offers Guide To Home Lead Checks

The U.S. Department of Housing and Urban Development, the Environmental Protection Agency, and CFA released a new pamphlet in October designed to assist consumers in determining whether their home contains lead hazards.

The pamphlet, "How to Check for Lead Hazards in Your Home," describes the different services that can be performed to help evaluate whether any lead abatement measures are needed. It also provides guidance on how to select a qualified professional to perform lead services.

"The information in this pamphlet will not only help consumers protect their families' health, but it also will help them understand the different options available and avoid getting ripped off by an unqualified business," said CFA General Counsel Mary Ellen Fise.

About three-quarters of the nation's housing stock built before 1978 contains some lead-based paint. Almost one million children in this country have blood-lead levels above safe limits, mostly as a result of exposure to lead-based paint hazards.

Lead poisoning can cause permanent damage to the brain and many other organs as well as reduced intelligence and behavioral problems. Lead can also cause abnormal fetal development in pregnant women.

The pamphlet describes three types of lead evaluations recognized by the federal government – a lead hazard

screen, lead paint inspection, and lead risk assessment – and provides guidance on factors to consider in selecting an evaluation service.

### Importance of Certification Emphasized

The pamphlet also emphasizes the importance of having tests performed by qualified, state-certified professionals and provides information on how to locate a certified professional.

"Special training is needed to perform most home lead evaluations," Fise said. "The most important thing consumers can do in purchasing lead evaluation services is to make sure anyone they hire is state-certified."

Over two-thirds of the states certify lead professionals. These individuals typically have taken a state-approved training course and passed a state examination.

Consumers who live in states that do not certify lead professionals should use one certified by another state, Fise said.

Disclosure about lead-based paint in houses and rental properties is now required during real estate transactions, under the Residential Lead-Based Paint Hazard Reduction Act passed by Congress in 1992.

In addition, home buyers are entitled to a ten-day period in which to conduct a lead-based paint inspection or risk assessment at their own expense.

### Lead Disclosures Aid Home Buyers, Renters

"By disclosing up front what they know about lead paint in the house and, especially, by giving home buyers some time to get more information, this law provides consumers with the opportunity to make informed purchase decisions regarding their family's housing and enables them to plan steps to reduce their lead exposures," Fise explained.

The pamphlet can help consumers take advantage of the law, by guiding them through the process of selecting

an evaluation service and service provider, she said.

Consumers can get answers to many lead-related questions and can obtain a free copy of the new pamphlet, "How to Check for Lead Hazards in Your Home," as well as the federal publication, "Protect Your Family from Lead in Your Home," by calling the National Lead Information Center at 1-800-424-LEAD.

These publications can also be accessed electronically through the Internet at: <http://www.epa.gov/oppt-intr/lead> or <http://www.hud.gov/lea>.

## Electric Deregulation (Continued from Page 1)

### Protections Against Abusive Sales Practices Needed

On the issue of consumer protections against marketing and sales practice abuses, the CFA paper focuses on issues raised during the pre-purchase, point-of-sale, and post-purchase phases of electric service delivery.

Specifically, during the pre-purchase phase, residential customers must have adequate access to accurate information about price and service features.

During point-of-sale activity, customers need protection against slamming or "shocking" (the unauthorized switching of providers), against pressure tactics, and against disclosure of private household information.

Post-purchase, customers are entitled to swift and fair investigation of complaints and resolution of billing disputes and to quick restoration of power in the event of an outage.

Finally, in evaluating the various state and federal approaches to deregulation, how stranded costs are handled will "determine the fate of the residential ratepayer," Rouleau noted.

This question of whether or how much to reimburse utilities for their investments in inefficient facilities has been a contentious issue at both the federal and state levels.

### Handling Of Stranded Costs Is Key

"There is no valid legal or economic claim that ratepayers must make utilities whole for every penny of investment made," Cooper said. "Utilities are not entitled to recover inefficient costs or costs from poor strategic decisions."

"Utilities have enjoyed a rate of return which has adequately compensated them for risks, with a virtual guarantee against bankruptcy," he added. "In allocating stranded costs, utilities must attempt to mitigate those costs, and new revenue opportunities must be taken into account."

Recent decisions in Pennsylvania and New York demonstrate the importance of consumer groups' getting involved in these debates, Cooper said.

In Pennsylvania, Philadelphia Electric Co. agreed to consumer rate reductions of at least one third of a billion dollars and a write-off of stranded costs of at least two billion dollars.

In New York, the Public Service Commission frowned on a settlement proposal in the Consolidated Edison case that gave large industrial customers a 25

percent reduction and residential consumers only a three percent reduction. In calling for a more equal sharing of the benefits, the commission guaranteed residential and small commercial rate payers hundreds of millions of dollars of additional rate cuts.

As these decisions indicate, consumers have an enormous stake in these debates and can influence the outcome, Cooper said.

"Electricity is a necessity for which there is no close substitute," he explained. "Residential customers, who have no history of 'shopping' for this service, need to be able to purchase a reasonable amount of electricity at a cost that will not put a strain on the household budget."

"In order to ensure this result in the transition to a competitive electric market, a new paradigm for consumer protection is needed. The three fundamental elements of the paradigm are universal service, protections against abusive marketing and sales practices, and the treatment of stranded costs," he said.

The new paper is available for \$10 prepaid by writing to "New Paradigm," CFA, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036. Separately available for \$10 prepaid is "A Consumer Issue Paper on Electric Utility Restructuring." Both are free to members of the news media.



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## Initiative To Improve Imported Produce Safety

The administration proposed a new initiative in early October to upgrade safety standards for domestic produce and ensure that imported produce also meet those standards. The proposal was endorsed by the Safe Food Coalition, of which CFA is a member.

"Most Americans enjoy the wide variety of food available in today's market, but we cannot accept a system that allows contaminated food, regardless of its source, to enter our homes and threaten our families," said CFA Public Policy Associate Diana Neidle.

"The administration's proposal to improve produce safety is an important step in addressing that problem," she added. "We urge Congress to act swiftly to put these new protections and increased funding to work for the American people."

The president's proposal, which follows on the heels of several outbreaks of disease linked to imported produce, would:

- require the Department of Health and Human Services and the Department of Agriculture to develop voluntary guidelines – the first-ever specific safety standards for fruits and vegetables – for good agricultural and manufacturing practices;

- would require the FDA to halt imports of fruits, vegetables, and other

foods from any foreign country whose food safety systems and standards do not meet those of the United States and from any country that does not allow FDA inspections to occur;

- expand FDA resources to provide for an increased inspection force abroad to prevent contaminated products from entering the country.

Currently, the U.S. Department of Agriculture has the authority to halt the import of contaminated meat and poultry, but the FDA can only send its investigators abroad if they are invited. While imports of produce have increased sharply in recent years – to 38 percent of fruit consumed and 12 percent of vegetables – FDA inspections of imports have dropped to less than half of what they were five years ago.

If Congress approves the proposal, and provides the additional \$24 million a year in FDA funding the president has said he will request, the FDA is expected to hire an additional 100 investigators to conduct inspections of foreign farming methods and food safety systems.

"If adopted, this proposal will help to bring our food safety system into line with a world in which food is grown in distant countries, travels thousands of miles, and passes through hundreds of hands before it finally comes to our family dinner tables," Neidle said.

## New Credit Practices Pose Consumer Risks

Consumer groups have called on Congress to enact new restrictions on practices by creditors that have significant potential to harm consumers.

In September testimony before the House Subcommittee on Financial Institutions and Consumer Credit, CFA Executive Director Stephen Brobeck urged Congress to address problems related to unsolicited loan checks.

Brobeck urged Congress to "restrict the marketing of these unsecured loans in the same way that it has restricted the marketing of credit cards — by prohibiting banks from mailing unsolicited credit offers."

To accomplish that goal, Brobeck endorsed H.R. 2053, introduced by Rep. Maurice Hinchey (D-NY), and called on Congress to pass the legislation quickly.

Since 1970, the mailing of unsolicited credit cards has been prohibited. Loan checks are attractive to lenders because they offer a means of evading that restriction, Brobeck said.

In contrast to the benefits they offer creditors, loan checks threaten to increase consumer inconvenience, while compounding the problems that have been created by the explosion of unsecured, high-cost credit card debt, Brobeck said.

"In sum, loan checks offer additional unsecured credit that consumers do not need but, instead, is likely to increase the heavy debt burdens carried by tens of millions of households. In addition, the loans will greatly aggravate those intended payees whose checks are cashed by others," he said.

Brobeck noted that creditors are calling on Congress for restrictions on consumers' ability to file for Chapter 7 bankruptcy at the same time that they continue to market credit cards aggressively and introduce new unsecured, high-cost loans, such as loan checks.

"Their aggressive marketing of this credit has largely created the crisis of rising consumer insolvency," he said. "In general, lenders should be restricting, not expanding, the availability of this high-cost credit to economically marginal households."

### Groups Call For Off-line Debit Card Reform

In August, CFA, CU, and U.S. PIRG issued an alert about a new type of debit card, often marketed under the guise of a replacement ATM card, which automatically withdraws funds from a consumer's bank account without first verifying that the person holding the card is the authorized user.

"Off-line debit cards pose a greater risk to consumers than credit cards, but currently have fewer protections," said CFA Director of Consumer Protection Jean Ann Fox.

"Without the security of a personal identification number, or PIN, these cards expose consumers to an unreasonable risk of fraud," she explained. "If victimized by fraud, consumers can find their entire bank account, possibly even their overdraft line of credit, drained."

Because federal rules protecting consumers from debit card fraud losses are riddled with loopholes, consumers who are victimized by fraud could have considerable difficulty recovering their money, the groups warned. Even if the stolen funds are eventually recovered, consumers could find themselves without the money they need to meet their daily

expenses for days or weeks.

In response to concerns raised about the "off-line" debit cards, MasterCard and Visa both announced that they were adopting new protections for the cards.

MasterCard announced in late July that it would cap liability for unauthorized use of all U.S.-issued MasterCard branded debit cards at \$50.

Two weeks later, Visa U.S.A. announced that it would reduce consumer liability to zero in the event of unauthorized use, provided loss or theft is reported within two days after discovery. For consumers who fail to meet that reporting deadline, liability would be capped at \$50.

Visa also announced that its members would not issue "live" unsolicited check cards without a cardholder activation trigger and would provide credit within five business days for cardholders who incur losses due to unauthorized use of their cards.

While applauding these voluntary steps, the consumer groups argued legislation is still needed to make strong consumer protections permanent and universal.

Bills have been introduced in both the House and Senate to strengthen consumer protections related to off-line debit cards.

The most comprehensive of the bills introduced to date is S. 1203, sponsored by Senate Banking Committee Chairman Alphonse D'Amato (R-NY). It would:

- prohibit the mailing of unsolicited cards;
- require that all off-line debit cards be mailed in an "unvalidated" form, becoming valid for use only after the recipient

identifies him- or herself as the proper owner;

- limit consumer liability for unauthorized use of the card to \$50;
- shorten the time period before a bank provisionally recredits a disputed account from ten days to five days for ATM use and from twenty days to five days for point of sale transactions; and
- improve disclosure regarding the nature of the cards and the risks associated with their use.

The House bills, H.R. 2319, introduced by Rep. Thomas Barrett (D-WI), and H.R. 2234, introduced by Rep. Charles Schumer (D-NY), are less comprehensive. Both would limit liability for unauthorized withdrawals on debit cards to no more than \$50.

However, both lack important protections contained in the D'Amato bill, including the prohibition on the mailing of unsolicited PIN-less debit cards and the further prohibition on replacing ATM cards with off-line debit cards for consumers who have not requested them.

In addition, CFA supports a speedier recrediting of accounts than is contained in either bill, specifically supporting a requirement that financial institutions that issue PIN-less debit cards restore lost funds within twenty-four hours after the consumer reports a loss.

"Consumers learn that their card has been stolen or their account accessed when checks start bouncing," Fox wrote in a letter to Sen. D'Amato endorsing his bill. "Waiting longer than 24 hours to recredit the account just adds to the cost of merchant fees for bad checks and hardship

experienced by consumers whose accounts are depleted through theft or fraud."

### Electronic Money Standards Needed

CU Counsel for Government Affairs Michelle Meier raised similar issues related to the broad range of electronic payments systems in July testimony on behalf of CU, CFA, and U.S. PIRG before the Consumer Electronic Payments Task Force.

"Any new payment system introduced for widespread use in the U.S. marketplace ... should carry similar protections against loss or theft" to those offered for checks, Meier said.

"Individual consumers are not in a position to assess the legal or technological aspects of a payment system to determine whether it is safe enough to use," she said. Furthermore, they "expect that the non-cash payment systems allowed to operate in our economy will be reliable and secure."

"The best way to meet these practical needs and cultural expectations is to shield consumers from liability when the security or reliability of a payment system is breached," she said.

She added that federal regulation is needed to accomplish that goal and should be in place before any new payment system becomes generally operational.

"To the extent possible, liability and error resolutions rules should be standardized across all electronic payment systems," she said.

## Benefit Transfer Rules Need Strengthening

After months of delays, the Treasury Department issued proposed rules to implement the Electronic Funds Transfer Act that consumer and low income advocates said contain serious flaws that will harm people and communities.

Known as EFT '99, the law was passed by Congress in 1996 to require that all federal benefits payments be made electronically by January 1, 1999.

From the beginning, as Treasury worked on developing the rules to implement the new law, the key question has been how to deal with the approximately ten million households that receive federal payments but do not have bank accounts into which these payments can be electronically deposited.

"Unfortunately, the proposed rules issued by Treasury do too little to ensure that the interests of this most vulnerable population will be protected," said CFA Director of Consumer Protection Jean Ann Fox.

"Instead of using the law to help draw these individuals into the mainstream banking system, the Treasury proposal will push all too many into the arms of the unregulated, unsupervised wing of the financial services industry — the check cashers and other fringe bankers," she said.

The most serious flaw in the proposed rules, she said, is that they fail to impose minimum requirements on the accounts recipients voluntarily establish to gain access to their electronic benefits payments.

CFA had strongly urged the Treasury to limit eligible accounts to those offered through federally insured and regulated

financial institutions; to limit costs that could be imposed for these accounts; and to ensure that federal consumer protections will apply.

Because there are no limits on the voluntary accounts, there is nothing to prevent banks from contracting with check cashers so that recipients can only access their account at the check cashing outlet.

Instead, strict regulations will exist — although they are as yet undefined — only for the special accounts Treasury will establish to handle the electronic transfer of funds for all those recipients who fail to establish their own accounts.

"In the meantime, Treasury will be launching an ambitious public education campaign to actively encourage federal benefits recipients to voluntarily set up accounts. Responding to that campaign, some may end up in accounts that are unregulated and unprotected and lose their opportunity to claim a hardship waiver or switch to Treasury's default account once it becomes available," Fox said.

Fox also criticized the proposed rules for taking too narrow an approach to providing waivers that allow certain recipients to continue to receive their money through paper checks.

Those who claim a physical disability or geographic barrier that causes a hardship would be eligible for a waiver, as would those without bank accounts who claim a financial hardship.

"While this basic framework for granting waivers is appropriate, more people should be eligible," Fox said, including those whose mental disabilities, literacy or educational problems, or lack of English fluency

would make it difficult for them to access their money electronically.

In addition, those recipients who find they cannot afford an account — because the fees are higher than anticipated, for example, or have increased since the account was opened — should be able to receive a waiver.

Finally, the special accounts that are subject to Treasury regulation to ensure real access, at a reasonable cost, subject to consumer protections should be available to any benefits recipient, Fox said.

Under the Treasury proposal, these accounts are only available to "unbanked" recipients who fail to establish their own account but are not eligible for a waiver.

National Consumer Law Center Managing Attorney Margot Saunders emphasized the same points in September testimony before the House Banking Committee on behalf of NCLC, CFA, and other consumer and low income groups. Saunders also discussed the need to assure recipients that their funds will be protected from the claims of creditors.

"Although many federal payments are protected by law from attachment and the claims of judgment creditors, banks routinely fail to abide by these restrictions," she said. That is a major reason many low income recipients of federal payments do not have bank accounts, she said.

"Treasury could go a considerable distance in convincing many recipients of federal payments to feel comfortable in doing business with a bank, if they would assure recipients that their funds would be safe from the claims of creditors," she said.

## FCC Urged To Freeze Cable Rates

Consumers Union and CFA filed a rulemaking petition with the Federal Communications Commission in September urging the agency to institute an emergency freeze on cable rates and take other steps to keep rates reasonable and to promote competition.

Noting that cable rates are now rising more than three times faster than inflation, CFA Research Director Mark Cooper called on the commission to "act immediately to restrain abuses in the cable television market."

The commission should "invoke its power to regulate prices to reverse the recent dramatic price increases imposed on the public" and "exercise its continuing regulatory authority to attack the underlying problem of market power and economic concentration in the industry," he said.

"Contrary to Congress's wishes, cable TV rates are now rising faster than ever before since passage of the 1996 Telecom Act," said CU Washington Co-Director Gene Kimmelman. "Federal officials have broken their promise to hold down rates and deliver competition."

In their petition, the groups asked FCC to use its power under the 1992 Cable Act and the 1996 Telecommunications Act to:

- initiate an emergency cable rate freeze;
- overhaul FCC rules defining reasonable rates;
- place tougher limits on ownership

of cable systems and programming; and

- adopt more effective rules for distribution of programming to potential competitors.

"Simply by freezing cable rates, the FCC could save consumers more than \$1 billion over the next year," Cooper said.

### Rates Are Sky-rocketing

CU and CFA based their rulemaking request on the fact that cable rates are high and rising fast.

Since passage of the Telecom Act in February of 1996, Bureau of Labor Statistics data shows a 5.6 percent a year real dollar increase in cable rates (factoring out inflation) and an 8.2 percent a year increase for regulated cable rates.

This is higher than the 4.3 percent a year inflation-adjusted rate hikes that consumers were being hit with when the FCC used its power to freeze cable rates in April 1993.

Furthermore, the groups noted in their petition, the FCC clearly has the power to act, since Congress directed the agency to regulate cable rates to ensure "reasonable" prices for all large cable systems until March 1999.

However, the relaxed standards instituted in the fall of 1994 have allowed rates to rise about as much (3.6 percent a year in real dollar increases) as they did when cable was an unregulated monopoly (4.3 percent a year in real-dollar increases), according to BLS data.

"The FCC's current regulations, which

permit monopoly-like rate increases, are not working as the Commission intended," Cooper said.

### Current Regulations Are Not Working

Cable rates are rising 50 percent faster than the FCC predicted three years ago, and cable tv subscribers are now paying four percent higher rates than the Commission said would be "reasonable," he noted.

"This means consumers are being hit with more than \$500 million in excessive cable charges over the next year alone," he said.

Because cable companies also inflate charges for popular regulated channels, consumers and satellite or other competitors are forced to pay monopolistic prices to cable companies, whose practices are protected by FCC regulation, the groups noted.

"The FCC inappropriately allows these excessive charges for popular programming networks to be passed along to consumers, which is exactly what the largest cable companies are doing," Cooper said.

These companies, including TCI and Time Warner, raised rates for basic and expanded basic programming 19 percent in 1995, at a time when premium channels and broadcast network channels raised their programming prices only two percent, he noted.

CU and CFA also criticized the agency for failing to "assert its authority to

police concentration of ownership to either limit the cable cartel or promote new competition."

### Agency Has Failed To Promote Competition

This failure to impose strict cable system and program ownership rules, as called for in the 1992 law, has slowed and potentially undermined the development of competition, the groups noted.

"A small cartel now controls ownership of cable systems and popular cable programming, and this concentration thwarts the development of competition," Cooper explained. "A few cable magnates are using mergers and joint ventures to develop a stranglehold on television program distribution."

As a result of these abusive practices, a systematic overhaul is needed, not only of the rate regulations, but also of the ownership limits and programming distribution rules, the groups said.

"Congress's goals of promoting competition and reasonable prices in passing the 1992 Cable Act and the 1996 Telecommunications Act cannot be attained unless the commission cracks down on anti-competitive transactions and agreements and freezes skyrocketing cable rates," Kimmelman said.

"Unless the Commission breaks open the cartel of cable companies that thwart competition, consumers will face a new era of Robber Barons that control the media and inflate prices," he said.

## CPSC Wins Budget Boost, OCA Abolished

Congress approved a VA-HUD spending bill in early October that includes a budget increase for the Consumer Product Safety Commission to \$45 million. The president was expected to sign the measure.

"This is an important victory for consumers," said CFA General Counsel Mary Ellen Fise. "A \$45 million budget is the bare minimum necessary to maintain important safety programs at the agency."

In their original appropriations bills, the House had approved a \$44 million budget, while the Senate had adopted a \$45 million budget. CFA wrote to conferees urging them to approve the higher level of funding provided in the Senate bill.

Fise noted that a \$44 million funding level would have forced the agency to cut at least \$500,000 from current product safety work and to eliminate all new initiatives planned for 1996.

"CPSC is one of the most important government agencies for the average American citizen, and it is a bargain for the consumer tax dollar," she said. "It accomplishes much on a shoestring budget."

The appropriations bill also zeroed out funding for the U.S. Office of Consumer Affairs, abolishing that agency and transferring responsibility for the popular "Consumer's Resource Handbook" to the Consumer Information Center.

The office was established by President Johnson to serve as the chief consumer adviser to the president and the coordinator of federal consumer protection activities.

Under early leaders like Esther Peterson and Betty Furness, who came to the office with impressive consumer credentials, the office did perform an important function.

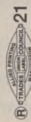
In part as a result of the consumer movement's successes in getting a consumer agenda institutionalized in a variety of federal agencies, however, since the Carter administration the office has waned in importance and suffered from a failure to articulate a convincing mission. Since then, it has been further weakened by a lack of support from the White House.

Although consumer advocates had written to Congress in support of continued funding for the OCA, the abolition of the agency was viewed by many as largely a symbolic defeat.

"It is a tribute to the 'near heroic' efforts of its staff that the consumer office has survived so long and accomplished so much," said CFA Executive Director Stephen Brobeck. "It is regrettable that several presidents failed to appreciate the agency's potential for coordinating executive branch consumer protection and education initiatives and keeping the White House sensitive to consumer concerns."

**CFAnews**

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