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Survey Shows Need for Banking Protections

Citing the results of its fifth annual bank fees survey, CFA called on the House Banking Committee to pass, without weakening amendments, the consumer protections included in the committee print of the banking deregulation bill released July 7.

The survey, released in June, found that in the past year costs to consumers for routine bank services have escalated at a rate far higher than inflation, while interest rates paid consumers on their deposits have declined.

The survey also found that fees on interest bearing checking (or NOW) accounts have increased 56 percent in the five years that CFA has been keeping survey results, and fees on standard checking accounts have increased 20 percent.

Meanwhile, although more than 17 million families have no accounts, 71 percent of banks continue to refuse to cash government checks to non-account holders, and only 20 percent offer basic bank accounts.

Bill Addresses Needs of Low, Moderate Income Consumers

CFA Legislative Representative Peggy Miller said many of these needs are addressed by new, compromise language on basic banking and government check cashing in the committee print. Also important for low income consumers are the provisions in the committee print to:

- strengthen the Community Reinvestment Act and to make a strong CRA rating mandatory for approval of applications for a variety of activities, including sale of securities, insurance, and real estate;
- to require 90-day advance notice of branch closings, including an economic analysis of the expected closing's impacts on the community.

The needs of middle income Americans are also addressed by the print of the deregulation bill through the inclusion of already passed truth in savings and home equity loan legislation. (See related article, this page.)

The print does not contain statutory language on financial consumers associations or commercial loan disclosures also sought by consumer advocates.

Mark-up Expected in July

Mark-up of the House legislation was expected to follow almost immediately upon the release of the committee print.

"This is a well-crafted compromise addressing the banking needs of both low income and average income people in this country," Miller said, adding that the need for such legislation is made clear by the results of CFA's five annual bank fees surveys.

"We have come back five times to Congress reporting these fee increases for basic services. We have come back five times to tell Congress that banks aren't offering low income people check cashing or low cost bank accounts," Miller said. "Maybe this year, finally, Congress will hear us and respond with adequate legislative solutions."

Rep. Joseph P. Kennedy II (D-MA), who has been a major supporter of stronger consumer banking protections, said the results of the survey show a clear trend in the banking industry toward catering exclusively to the wealthy.

"Banks are given privileges in our society, and they are expected to fulfill an important public purpose in return," Rep. Kennedy said. "When they ignore an entire segment of our population, they fail in their duty to the American people."

NOW Account Costs Climbed 9.9 Percent

The survey found that the net cost of NOW accounts climbed 9.9 percent in the year ending April 1988.

Meanwhile, interest rates on savings and NOW accounts have dropped, although rates charged to consumers for loans have increased. While the prime rate, mortgage rates, and other lending rates increased over the past year, only 22 of 132 surveyed institutions increased the rates they paid consumers for NOW account deposits. Thirty-four surveyed institutions reduced rates, and overall the average rate paid a consumer with just under $1,000 in a NOW account dropped more than a third of a point, from 4.66 percent to 4.32 percent.

Announcing the findings of the fifth annual bank fees survey, CFA's Peggy Miller, Ken McEldowney (left) and Rep. Joseph P. Kennedy II called on Congress to enact legislation to protect low and moderate income banking consumers.

"The cost of paying bills to the average income American is becoming prohibitive," said Ken McEldowney, CFA President and Executive Director of San Francisco Consumer Action. "Small depositors pay as much as $225 per year for a NOW account, $160 for a low-balance checking account, and 'variable rates' on deposit accounts are variable all right, they vary downward. There's no excuse for this, especially in a year when inflation was low, banks were computerizing a lot of their operations, and the level of service was declining."

Thrift institutions (savings and loans and savings banks) pay consumers more interest and charge lower fees, according to the survey. Thrift interest rates range from .22 percentage points to .68 percentage points higher than banks' rates, depending on the type of account. For low balance depositors, thrifts' NOW accounts were 30 percent cheaper, and their noninterest checking accounts were 15 percent cheaper. Many thrifts still do not offer noninterest checking accounts, however.

Consumers with less than $1,000 to save—about 40 percent of all households according to a Federal Reserve Board study—are better off putting their savings in old-fashioned savings accounts than in "market-rate" Money Market Deposit Accounts (MMDAs), according to survey findings.

Findings of the survey—which was conducted jointly by CFA, San Francisco Consumer Action (CA), and more than 20 other consumer organizations affiliated with CFA from around the country—were released at a news conference in Washington, D.C.

Participating groups were: Alaska Public Interest Research Group; American Council on Consumer Awareness (MN); Arizona Consumers Council; Association of Massa-

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House Passes Home Equity Bill

The House passed legislation by voice vote June 20 to put an end to the use of unfair contract clauses, misleading advertisements, and incomplete disclosures about contract terms on home equity loans. The bill, H.R. 3011, "goes a long way toward rendering these potentially disastrous loans safe for consumers," said CFA Legislative Representative Peggy Miller.

In perhaps the most substantial consumer protection offered, the bill prohibits lenders, except in narrow circumstances, from changing the terms of the loan contract after the agreement has been signed by both parties. Furthermore, under the new legislation, lenders would be allowed to call in the loan only in the case of fraud or misrepresentation by the borrower in connection with the loan; failure to meet the payment obligations; or borrower behavior that jeopardizes the value of the home.

The bill also requires that the interest rate for the loan be based on an index that is out of the lender's control and available to the public.

In addition, the bill sets disclosure requirements for both applications and advertisements. Mandated disclosures at the time of application include: the interest rate or, if it is a variable rate, the index and margin that will be used to set the rate; the largest possible rate change in a year or a statement that no limit exists; the highest possible interest rate during the term of the loan; and all fees charged for the loan.

Disclosure also must include a description of the repayment plans and whether the plan includes a balloon payment and the length of time, if a teaser rate is used, that the rate will be in effect.

In general, disclosure will be provided on or with the application, and the borrower will have three days before any fees are due. Slightly different rules apply for applications taken over the telephone, by third-party brokers, and from publications.

Lenders are also subject to advertisement disclosure requirements when they include specific terms about the loan in the ad. For example, lenders who advertise a teaser rate must state how long it is in effect and show the current rate with equal prominence.

In March, the Senate passed similar provisions as part of general banking legislation. Because of differences between the House and Senate in the approach to bank deregulation, enactment of these and other consumer banking protections may have to await a break in the deadlock between House and Senate on the structural issues.

Product Liability Bill Advances in House

Having lost most of the major battles, consumers appear, at least for another year, to have won the war against weakening the nation's product liability laws.

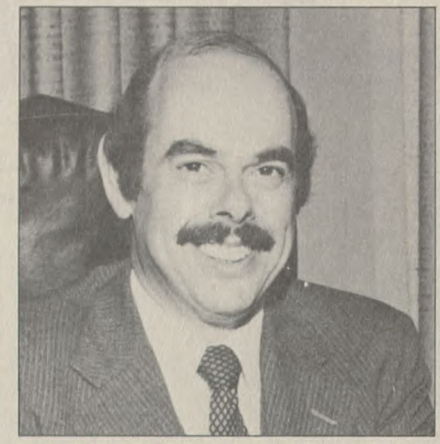
This good news came in early July, after a lengthy mark-up of H.R. 1115, the "Uniform Product Safety Act of 1987," in the House Energy and Commerce Committee. That committee reported a bill that would seriously reduce manufacturers' liability for producing and selling defective products and restrict victims' rights to compensation.

But the bill has been referred to the House Judiciary Committee, where consumer advocates expect a more favorable hearing. Judiciary Chairman Peter W. Rodino Jr. (D-NJ) sought a lengthy review period and was granted 45 legislative days, more days than are left on the Congressional calendar without a major schedule change.

"We are optimistic that this will keep this anti-consumer legislation from passing the House this year," said CFA Legislative Director Gene Kimmelman.

After a lengthy debate and consideration of dozens of amendments, the Energy and Commerce Committee passed a version of the legislation strongly opposed by consumer advocates by a vote of 30 to 12. All of the committee's Republican members and 12 of the committee's 25 Democratic members supported the measure.

The bill, which is supported by manufacturers and insurers, would pre-empt state laws with a federal liability standard.



Reps. Henry A. Waxman (D-CA) and John Bryant (D-TX) led the opposition to H.R. 1115.

Although a few minor concessions to consumer objections were incorporated in the bill during committee mark-up, the majority of consumer protections suggested were rejected outright, Kimmelman said.

Of particular concern to consumer advocates is the fact that the legislation would undermine the standard of strict liability, which state courts established in order to compensate people injured by defective products and to improve product safety.

In most instances, manufacturers would be completely protected from liability if they did not know and could not have known of a design defect in light of knowledge "reasonably available" to them or if there were no feasible alternative design.

"Using this standard, manufacturers who fail to test or inspect their products and manufacturers who reject safer designs simply because the safer designs are costlier or otherwise impractical could be shielded from liability," Kimmelman said.

In addition, manufacturers of most drugs and medical devices would be immune from punitive damages if their product had been approved by the Food and Drug Administration. Manufacturers of other products would be safe from punitive damages unless a plaintiff had "clear and convincing evidence" of flagrantly bad conduct. This imposes a greater burden of proof than that required by many states.

Proponents of the legislation say it is necessary to relieve the huge increases in the premiums manufacturers must pay for insurance to protect against liability suits. Consumer advocates argue that anti-competitive practices among insurers are primarily responsible for rising liability costs.

The committee, however, rejected a proposal offered by Rep. Edward J. Markey (D-MA) to allow the Commerce Department to collect data from insurance firms in order to assess the impact of the bill on insurance rates. Instead, the committee accepted a weaker proposal offered by Rep. Al Swift (D-WA) that would require state insurance regulators to report data on pricing practices and other information to the Commerce Department.

Among the provisions that are more favorable to consumers are: a restriction on secrecy agreements that manufacturers commonly require plaintiffs to enter into as a precondition of obtaining important documents; creation of incentives to settle claims out of court, without exorbitant legal fees; and a requirement that the U.S. Attorney General develop procedures to expedite settlement of product liability claims of $10,000 or less. Manufacturers claim the latter provision will encourage "nuisance" claims by parties who would otherwise not bother to bring a lawsuit.

Kimmelman predicted that business interests would renew their efforts to pass this legislation next year.

"Because this legislation is clearly anti-consumer, we will fight hard to prevent it from moving one inch further," Kimmelman said. "If consumer organizations continue to express their opposition, we stand a great chance of success this year and into the future."

Insurance Antitrust Exemption Challenged

On the heels of state antitrust lawsuits and California insurance reform initiatives, a House Judiciary subcommittee voted in mid-June to repeal much of the antitrust immunity provided to the insurance industry by the McCarran-Ferguson Act.

By an eight to six vote, the Monopolies Subcommittee approved H.R. 2727, the "Fairness in Insurance Act of 1987." This bill represented a compromise offered by Rep. Jack Brooks (D-TX) to a measure, authored by Rep. Don Edwards (D-CA), requiring total repeal.

While retaining antitrust immunity for certain insurer activities—including the collection of historical data to help determine risks—the legislation repeals this exemption for price fixing, monopolization of regional markets, and tying the purchase of one insurance product to another.

J. Robert Hunter, President of the National Insurance Consumer Organization (NICO), said that, if enacted, this measure could save consumers tens of billions of dollars. The major change that it would compel is elimination of the Insurance Services Office (ISO), which effectively sets property/casualty rates charged by insurers.

The ISO collects loss data, averages these for specific risk classifications, then predicts future losses for these categories. These predicted losses and an administrative expense component serve as the bases for published rates used by property/casualty companies in setting prices.

Hunter and other critics claim that industry inefficiency is built into the administrative expense component, thereby inflating consumer costs.

Although only a subcommittee vote, the Judiciary Committee action was the first taken by Congress, since the passage of the McCarran-Ferguson Act in 1945, to restructure the insurance industry. This measure was given impetus by approval, the day before, of product liability legislation by the full House Energy and Commerce Committee. (See related article, this page.)

H.R. 2727 was also bolstered by antitrust suits filed by states and by California insurance reform initiatives.

States Charge Insurer Conspiracy

In March, eight states, including California and New York, filed separate lawsuits charging that 31 insurance companies, reinsurers, brokers, and trade associations had conspired to manipulate the availability and cost of commercial liability coverage.

The suits contended that Hartford, Allstate, Aetna, and Cigna had conspired with ISO, Lloyd's of London, and others to eliminate all coverage for environmental damages from pollution and to reduce sharply liability coverage available to public agencies, businesses, and nonprofits.

At press conferences announcing the lawsuits, the attorneys general were especially sharp in their criticism, denouncing the insurance companies for afflicting such institutions as day-care centers, recreational facilities, and other public and private services with unnecessary anguish and even bankruptcy. California Attorney General John Van de Camp characterized the companies as engaged in a "collusive exercise in corporate greed."

Specifically, the suits charge that conspirators forced the industry to abandon traditional "occurence" coverage, under which losses can be collected after expiration of a policy, for "claims-made" coverage, which compensates for losses only during the term of the policy. The suits also accuse the companies of conspiring to add retrodates to policies which typically limit liability to the period beginning with the starting date of the policy, thus eliminating insurer liability for chronic injuries caused earlier.

One response of the accused insurers and the ISO is that their conduct is within the bounds of the federal antitrust exemption and state regulation. The attorneys general are alleging "boycott, coercion, and intimidation," practices not granted immunity.

California Initiatives Target Insurance

Earlier this year, several California groups began developing state initiatives to reform insurance practices. The one gathering the most support was written by ICAN, the Insurance Consumer Action Network, headed by Steven Miller. This initiative would, among other reforms:

- guarantee an immediate 20 percent reduction in auto insurance rates;
- eliminate insurer arbitrary and unfair rating practices, including territorial ratings;
- enable all accident victims to receive full compensation for injuries;
- more effectively regulate medi-gap and long-term care insurance;
- subject insurers to antitrust laws;
- require the state insurance department to maintain a computerized information system with auto insurance rates and to mail the six lowest quotes for a $3 fee; and
- allow banks to sell insurance.

To defeat this measure, insurers have developed a competing initiative that would establish a no-fault auto insurance system to bring down rates.

Currently, the ICAN proposal is receiving far greater support in opinion polls, but the insurers have not yet spent most of their estimated $30 million budget to convince voters that their proposal is better. The initiative receiving the most votes wins, and all others lose.

Consumer leaders around the country are intensely interested in the fate of the California initiatives. "If passed," noted CFA Executive Director Stephen Brobeck, "the ICAN initiatives would thoroughly overhaul the insurance system in California and serve as a model for advocates in other states."

Chafee Calls Indoor Air Bill Long Overdue

The time has come for the federal government to get actively involved in improving the quality of indoor air, Sen. John H. Chafee (R-RI) told the third national Indoor Air Conference.

"Indoor air must become EPA's next frontier," Sen. Chafee said in his keynote address at the conference, which was convened by CFA with support from the Environmental Protection Agency. "This does not mean we have won all the battles regarding clean outdoor air, clean water, or toxic wastes," he said, "but at least we know where we're going, and we have money devoted."

Sen. Chafee said hearings this spring on indoor air pollution before the Senate Environmental Protection Subcommittee made it "painfully clear that there is not an adequate effort by federal agencies or states to conduct research on indoor air contaminants."

In response, Sen. Chafee and Sen. George Mitchell (D-ME) introduced comprehensive indoor air quality legislation, which was passed unanimously by the subcommittee in May and was scheduled for markup in full committee in early July.

"We're not putting Big Brother right there in the living room. All we're doing is providing information on hazards and how to alleviate them. I don't think that's rampant socialism. I think that just makes good sense for Americans' health," he said.

Sen. Chafee said the legislation is "long overdue" and called on conference attendees to support its passage. "The best defense we have against an unhealthy indoor environment is an informed consumer," he said.

Sen. Chafee also criticized the House for not having passed radon legislation, which the Senate passed unanimously more than a year ago. He urged the audience to "put the squeeze on them to get on with a radon bill. There is no reason in the world that legislation shouldn't be passed," he concluded.

The need for action was agreed on by members of a panel on radon, at which the latest in radon research, and particularly the need for improved measurement techniques, was discussed.

John Spears, of the National Association of Home Builders Research Foundation, described private research now underway

Sen. John H. Chafee called indoor air quality EPA's next frontier.

to improve the accuracy of radon measurement and the effectiveness of mitigation, as well as construction techniques. Among the construction techniques being explored, he said, are methods to reduce a building's vacuum effect, cut off radon entry routes, and provide alternative pathways for radon transportation.

There is an immediate need for reliable measurement techniques because of the radon liability issues that are arising when houses are bought and sold, said Jason Gartner of the Pennsylvania Bureau of Radiation Protection.

"More and more real estate contracts contain provisions that refer to the consequences of finding unacceptably high levels of radon in a home being offered for sale," he said. "The marketplace cannot tolerate holding up a sale for six months to await test results."

Gartner urged all groups to try to develop a workable solution to this growing problem.

The rights of people to know about hazards was raised from a different angle in a panel on asbestos. Bill Borwegen, of the Service Employees International Union, pointed out that maintenance and service workers encounter a greater than average risk, because they actually handle asbestos containing materials in buildings.

"These workers have a right to know whether asbestos is present, not only for their own sakes, but for the protection of all building occupants," he said.

The conference also included a keynote address by EPA Deputy Assistant Administrator Eileen Claussen and panels on state-of-the-art techniques for measurement, health effects assessment, and mitigation of major indoor air quality problems, including secondary tobacco smoke, wood and gas stoves and other combustion appliances, pesticides and organic compounds and biologicals.

Proceedings of the conference are expected out in September. Conference participants will automatically receive a free copy. Others who wish to obtain a copy should send a check for $20, along with a written request, to CFA, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

HUD Needs Radon Policy

CFA Legislative Representative Susan Weiss called on Congress to prod the Department of Housing and Urban Development into action to establish and carry out a policy to address radon contamination in public housing.

"No agency has a greater responsibility than HUD to take steps to reduce radon exposure for low income families and at the same time assume this leadership role for the nation's housing market," Weiss said in a hearing before the Superfund and Environmental Oversight Subcommittee of the Senate Committee on Environment and Public Works.

Weiss singled out preventive measures for new construction as "a logical place to begin," since, according to the Environmental Protection Agency, it is five to six times cheaper to install radon-resistant features during construction than to try to reduce elevated radon levels after completion.

At the same time, however, HUD must look at strategies to address radon contamination in existing federally subsidized housing units. "While we recognize that reducing radon contamination in existing housing is a massive and potentially costly undertaking, avoiding the problem will not alleviate it," Weiss said.

Without a HUD initiative, there is likely to be little or no protection for the nearly six million single family dwellings insured under HUD's Home Mortgage Insurance Program, the approximately 800,000 families receiving assistance under the Section 8 Low Income Assistance Program, and the over 1.3 million public and Indian housing units which are home to more than three million Americans, she said.

Priorities for HUD action should include: assessing the magnitude of the problem; providing testing and abatement information to all local housing authorities; and creating an aggressive policy towards reducing radon contamination in public and Indian housing.

"Establishing a radon policy is critical; carrying it out is imperative. Absent a directive from Congress, this is not likely to occur," Weiss said.

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Bank Fees Survey

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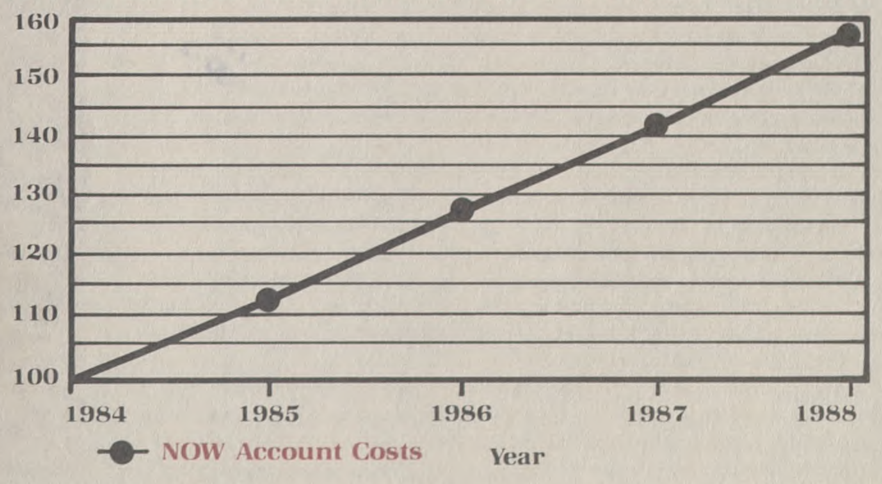
NOW Account Cost Index, 1984–88 (1984 = 100)



Senate Calls for Study of Airport Fees

Responding to a study by the Consumer Federation of America, a Senate Appropriations subcommittee has called for a Department of Transportation evaluation of airport pricing practices with regard to off-premises rental services.

The study is to be conducted by the DOT in consultation with the Federal Trade Commission. In particular, the report is to evaluate the reasonableness and competitiveness of those pricing practices.

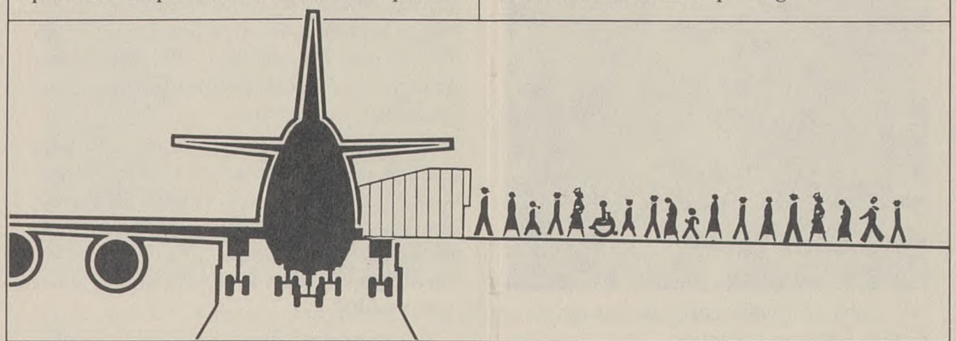
The Transportation Subcommittee decision was prompted in part by a study released by CFA in June entitled, "Airport Fees for Auto Rental Companies: A Consumer Perspective." Comparing fees charged for ground and air services, the study concludes that airport fee structures are both inefficient and inequitable.

The report evaluates airport pricing from four perspectives—taxing the benefits derived from airport use, revenue maximization, resource allocation, and congestion control.

In particular, the report examines airport charges for rental car companies that have no facilities located on airport property but pick up and discharge customers in vans that use airport roadways and curbsides.

An increasing number of airports have begun charging these companies a percentage of their total revenues—a gross receipts fee. Frequently, the percentage charged the off-premises companies is the same or nearly as much as the charge to rental companies that have facilities, such as concession stands and parking lots, on airport grounds.

The report estimates that widespread imposition of gross receipts fees on off-premises airport users could raise prices for auto rentals alone by $500 million or more. The direct increase in the cost of doing business will be passed through to the consumers. Furthermore, the off-premises companies, who have been forcing pricing competition in the auto rental industry, will be unable to compete.



The most direct burden would fall on tourists, who are the ones most likely to use the off-premises companies and least able to negotiate discounts with the big, on-airport firms, as do major corporate renters, the report concludes.

"The airports are behaving like Robber Barons, gouging those customers with the least economic and political power, while letting others freeload," said Mark Cooper, CFA Research Director and author of the report. "You cannot convince us that, when the airports charge tourists for the privilege of riding a van to and from the airport but let small and medium sized jets land and park for free, they are engaging in fair and reasonable pricing."

The cost to the airport per vehicle trip is approximately $.25, but even a one day rental would be charged five to 10 times that amount with a gross receipts fee. Individuals who build up a higher rental bill would pay proportionately more for their one trip to and from the airport.

The fees also are unrelated to ground traffic control, since they are not differentiated by time of day to reflect peak usage. And they do not reflect differences in the traffic burden placed on airports, since other vans which use the airport in the same way are charged less, and on-premises companies which cause more congestion are charged no more.

In fact, a passenger who rents both a room and a car at an off-premises establishment could avoid paying the fee entirely by going to the hotel first.

At the same time, at virtually all of the airports imposing gross receipts fees, small planes are allowed to land and park for free. Many of these airports collect more from fees on auto rental companies than from landing fees.

"These fees are not only inequitable and inefficient, they are also anti-competitive in an industry that has a very checkered past," Cooper added. "The big three on-premises companies have found a perfect trigger man to kill their competition. They want the airports to put their off-premises competitors at a tremendous disadvantage, just the way they did themselves back in the 1970s before they signed the FTC's cease and desist order."

The pricing irregularities have been perpetuated because of a legal loophole that has allowed airports to escape both regulatory and judicial oversight.

"Frankly, airport pricing structures have become so irrational that we are urging Congress to consider making just and reasonable fees a precondition for use of the trust fund in all cases," Cooper said.

Rather than rely on the regulatory intervention of a reluctant agency or creation of a new agency, the report recommends as a permanent solution that a right of private action against unfair pricing be allowed under the FAA Act. "The right standards already exist in the law," Cooper concluded, "we simply need to bring airport service under those standards."

CPSC Votes to Ban Lawn Darts

In a major victory for consumers, the Consumer Product Safety Commission voted 2-1 to authorize a Notice of Proposed Rulemaking to ban lawn darts. The new rule will ban all lawn darts capable of causing puncture wound injuries. The notice will exclude those products which, for example, do not have pointed tips, are not intended to stick in the ground, and thus do not have the potential to cause such wounds.

The ban, which has been pushed by Commissioner Anne Graham, was made possible when Chairman Terrence Scanlon dropped his opposition following agreement over exempting certain products.

Existing regulations make a distinction between lawn darts intended for use by children and those intended for use by adults, with the former banned—along with the sale of lawn darts in toy stores or toy departments—and the latter required to carry warning labels. Both CPSC and CFA have found frequent violations of these regulations.

"We are delighted that the CPSC has finally taken this essential action to protect America's children and their families," said CFA Product Safety Director Mary Ellen Fise. "The distinction in the existing regulations, between lawn darts intended for adults and those intended for children, is meaningless. The simple fact is that, regardless of intended use, children play with lawn darts and are injured and killed by them."

Data collected by CPSC indicates that 81 percent of the lawn dart injuries reported in 1986 involved children age 14 and younger. More than 50 percent of the victims were below age 10. All these injuries were caused by lawn darts intended for adults. Injuries are frequently serious, including brain damage and blinding.

"I am extremely pleased that the commission is finally taking the action it should have taken months ago," said Graham, who originally proposed the ban in March. "My only regret is that, because of the lack of a second vote in March, we did not pass this motion sooner."

CPSC had considered preparing a performance standard to eliminate the risk of lawn dart penetration, but CPSC staff estimated that such a standard would require three years, five to 10 staff full time equivalents, and $200,000 in contract funds.

"CPSC has been faced with the dilemma time and again of having limited resources to address many consumer product hazards. By voting to revoke the existing exemption for lawn darts, the commission is assured of reducing the risk of injury while incurring the lowest cost to the agency," Fise said.

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