CFA

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Anti-consumer FDA Bill Stalls in Senate

Despite breezing through committee with bipartisan support, an anti-consumer bill to overhaul the Food and Drug Administration was not brought to the Senate floor for a vote as planned before Congress adjourned for its August recess.

Consumer advocates have strongly opposed the bill – S. 830, the "FDA Modernization and Accountability Act" – on the grounds that it is an industry-driven, anti-consumer package that would lower the standards for health and safety for drugs, medical devices, and food.

"The drug and medical device industries have pushed provisions that would undermine the authority of the Food and Drug Administration," CFA Chairman retired Sen. Howard Metzenbaum said at a July 7 press conference.

"The industry has not made the case that this bill is needed, because it cannot," he added. "In fact, there is nothing in this bill that improves safety or provides further protections for patients."

Before talks broke down at the end of July, Sen. Edward M. Kennedy (D-MA), ranking minority member of the Health and Human Services Committee, had been in intensive negotiations with bill sponsor and Committee Chairman James M. Jeffords (R-VT) to rewrite some of the more controversial sections of the bill.

Ultimately, however, they were unable to reach an acceptable compromise, and Sen. Kennedy refused his support. The administration has also expressed concern about several of the bill's provisions.

Essential Protections Compromised

The bill's most controversial provisions would:

- allow medical device manufacturers to select, hire, and pay for-profit companies to review and approve their products;
- lower the standards for the approval of new drugs and medical devices as safe and effective;
- give drug and medical device companies the right to make certain economic claims about the costs and health care consequences of their products to HMOs and other large volume purchasers without subjecting those claims to clinical trials;
- repeal mandatory tracking and post-market surveillance of implantable, life sustaining, and life supporting medical devices;
- allow drug companies to promote their drugs for uses other than those for which they have been approved by the FDA ("off-label" usage);
- permit companies to make health claims about foods without FDA approval and without those claims' being supported by "significant scientific agreement;" and
- preempt stronger state consumer protection laws covering over-the-counter drugs and cosmetics.

Consumer groups, including CFA, have also criticized the bill for what it doesn't do, in particular its failure to provide the FDA with adequate enforcement powers.

"With the stepped up pace of both drug and medical device review, the need for FDA enforcement authority is greater than ever before," said CFA Legislative Director Mary Rouleau.

In an effort to rush through the bill's controversial provisions, supporters have attached them to reauthorization of the Prescription Drug User Fee Act (PDUFA), a measure with widespread support among industry, consumer groups, and the FDA.

Under PDUFA, drug manufacturers pay fees when they submit a product for approval to underwrite the costs of federal safety and efficacy reviews of those products.

PDUFA is scheduled to expire September 30. If it is allowed to expire, approximately 600 FDA employees conducting these reviews would be laid off.

"All parties consider PDUFA a success story," Sen. Metzenbaum said. "Approval times have decreased while product safety has remained intact."

Controversial Reforms Tied To Popular Legislation

FDA reform measures were too controversial to win passage in the last Congress, he noted, "so now industry has found an attractive legislative vehicle at its disposal, and these provisions are on the fast-track because they have been tied to PDUFA reauthorization."

Working with both Sen. Kennedy and the administration, consumer groups have sought to have only those provisions on which there is widespread consensus attached to PDUFA reauthorization.

"We have been unhappy with the Senate process," Rouleau said. "Patient and consumer groups were frozen out from the start, and we have been trying to play catch-up ever since. We think the tide is turning, however, as more negative publicity is being given to the legislation."

In the House, Commerce Committee Chairman Thomas J. Bliley (R-VA) is said to favor an approach similar to that in the Jeffords bill, tying PDUFA to a comprehensive overhaul bill. However, the House is expected to present two bills, one covering drugs and one covering medical devices.

Patient and consumer groups had met several times with House staff, but no bill had yet been introduced when Congress left for its August recess.

Life Insurance Reform Sought

Because rates of return on cash value life insurance policies – whole life and universal life – vary widely from year to year and from policy to policy, consumers lose billions of dollars annually by purchasing the wrong policies or failing to hold on to existing policies, according to a new CFA study released in July.

"For all practical purposes, consumers cannot evaluate cash value life insurance policies without expert, disinterested assistance," said CFA Life Insurance Actuary James H. Hunt, author of the report.

The report analyzes more than 100 representative policies. Hunt, who is a former Vermont Commissioner of Banking and Insurance, has evaluated more than 4,000 cash value policies for individual consumers since 1984.

"These policies are too complex, and many agents are either unwilling or unable to help consumers sort through this complexity," he said.

Based on the report's findings, CFA has advocated new protections for consumers of cash value life insurance policies, including:

- disclosure of commissions, as is required in the United Kingdom and Australia, to help reveal the high cost of early terminations; and
- suitability laws to protect buyers against sellers pushing unsuitable policies, in particular frequent replacements of existing policies. This protection now exists only on variable life purchases.

CFA plans to contact state insurance regulators and legislators to encourage them to consider these reforms.

Insurance Regulators Urged To Promote Reforms

"Consumers misspend more dollars on cash value life insurance policies than on almost any other financial services product," said CFA Executive Director Stephen Brobeck. "As well as advocating reforms, insurance regulators should aggressively inform consumers about how to purchase and how not to purchase life insurance."

The current report is a follow-up to a 1995 CFA report, also prepared by Hunt, which estimated that buyers of cash value life insurance lose $6 billion annually by terminating their policies prematurely. Through its analysis of more than 100 policies, the new study shows why these losses occur.

Because commissions are front-loaded, with most being paid to agents in the first year of the policy, the average estimated investment returns in the first several years of these policies are negative: -87.9 percent in year one; -54.9 percent in year two; -18.9 percent in year three, and 0.0 percent in year four.

Thus, most buyers who terminated their policies during this time period not only received no yield on their cash value investment, but actually lost some or most of this investment. In fact, for many of these policies, consumers who terminated the policy in the first two years lost all of their investment.

"Only when these cash value policies are held for at least 15 years do rates of return begin to become at all attractive," Hunt said.

The average rate of return for 15 years is 5.1 percent, while the average rate for return for 20 years is 6.1 percent. Because cash value policies offer tax advantages that are not available on many other investments, these rates of return may compare to yields of six to eight percent on these other investments, Hunt explained.

One small group of policies – "low-load" policies, which pay no agent commissions – offer higher rates of return, especially in the early years of the policies. After five years, these low-load policies paid an average annual rate of return of 6.7 percent, while policies sold by commissioned agents had a negative rate of return of -14.5 percent.

Furthermore, even after 20 years, the study found, rates of return on many policies examined varied considerably. The lowest rate of return for the entire period was 3.0 percent, while a number had rates of return above 7.0 percent.

Even within a single company, the rates of return of different policies could vary significantly. For example, the 20-year average rates of return for five Metropolitan Life policies analyzed were 5.2 percent, 5.6 percent, 6.0 percent, 6.3 percent, and 7.1 percent.

(Continued on page 2)

Investor Protection Update:

Fund Profile Rule Undermines Disclosure

The Securities and Exchange Commission has issued conflicting rule proposals on mutual fund disclosure that would simultaneously make it easier for investors to use prospectuses to compare funds and less likely that they will do so.

In comments filed with the agency in June, CFA strongly endorsed SEC's proposed rules to focus mutual fund prospectus disclosure on essential information about a fund that would assist investors in deciding whether to invest in that fund.

CFA warned, however, that a companion proposal to allow investment companies to sell their products from a fund profile "would undermine use of the full prospectus and give the SEC's stamp of approval to impulsive, ill-considered mutual fund purchase decisions."

CFA also noted that, "once investors are accustomed to purchasing funds by clipping a coupon in a direct mail flyer or by filling out an application on a web site, the fund profiles can also be expected to become a popular new vehicle for fraud."

"The SEC is giving with one hand and taking away with the other," said CFA Director of Investor Protection Barbara Roper. "The commission proposal to allow fund sales from a profile threatens to undermine use of the full prospectus at the very time when it is being made more useful."

"Mutual funds have become the investment of choice for parents saving to put their children through college and workers saving for a comfortable retirement," she added. "Do we really want to encourage people to make those crucial investment decisions based on a one or two paragraph description of the fund's investment strategies and another one or two paragraphs on the fund's risks?"

A major reason cited by the commission in justifying the fund profile proposal is that it promotes investor choice, but this is an inadequate basis for adopting such a radical policy, Roper said.

Adequacy of Profile Disclosure Questioned

"It should come as no surprise that many investors would respond favorably to the fund profiles, since they provide the illusion of simplicity and of informed decision-making," she said. "Investment decisions are rarely simple, however."

It is not clear that investors who use profiles have an adequate understanding of the funds these profiles describe, she said. In particular, they may fail to understand such key issues as how the fund risks relate to their particular investment goals, she said.

Instead of allowing fund sales from profiles, the agency could better provide the same degree of investor choice by allowing the use of profiles as a supplement to the prospectus, but still requiring investors to receive the prospectus for a direct-marketed fund in advance of the sale, she said.

Such an approach "would provide those investors who want to base investment decisions on summary information with easy access to such information without creating the impression that all relevant information is contained in the summary," she said.

Because of these concerns, CFA urged the commission to withdraw its proposal to permit the sale of mutual funds from a coupon in a fund profile.

Credit Card Bill Introduced

Rep. Joseph P. Kennedy II (D-MA) introduced legislation in June designed to protect consumers from predatory and unfair credit card marketing strategies.

CFA endorsed the bill, H.R. 1975, the "Credit Card Consumer Protection Act of 1997," at a Capitol Hill press conference held by Rep. Kennedy to introduce the bill.

Noting that increasing numbers of low- and middle-income households are burdened by credit card debt, CFA Executive Director Stephen Brobeck said, "Consumers now paying more than $60 billion a year in credit card interest and fees need relief from abusive practices of credit card issuers."

Brobeck, author of the CFA report, "Consumer Impacts of Expanding Credit Card Debt," released earlier this year, noted that H.R. 1975 targets such abusive practices by credit card issuers as: not disclosing the real costs of credit; discouraging consumers from canceling or paying off balances in full; and escalating costs on those who carry balances.

To address these abuses, key provisions of the bill would:

• require clear disclosure of permanent rates and the effective date for extensions of credit when the credit card company offers a "teaser rate;"

• prohibit charges for on-time payments; and

• allow cardholders to cancel a card and pay it off under current interest rates and terms if the company raises interest rates or other fees and require the company to notify cardholders of the right to cancel before raising rates or imposing new fees.

At the press conference, CFA released the results of a national public opinion survey which showed that consumers support the recommended protections.

For example, the survey found that 73 percent of those surveyed strongly agree that credit card issuers are not adequately disclosing "teaser" or introductory interest rates; 83 percent disagree strongly that credit card issuers should be allowed to charge penalty fees to cardholders who pay off the entire balance each month; and 75 percent agree strongly that cardholders should be allowed to cancel a card and pay off the unpaid balance at the existing fixed or variable rate of interest.

"The Credit Card Consumer Protection Act will not end all abuses or solve all problems. That will only occur if issuers exercise much more restraint in their extension of credit and the prices they charge," Brobeck said.

"But, Congressman Kennedy's bill establishes important protections that would give millions of low- and moderate- income households much relief," he added.

Action Sought on Financial Planner Disclosure Practices

CFA wrote to the SEC and to state securities regulators in April asking them to work together to address misleading compensation disclosure by financial planners.

In letters to SEC Chairman Arthur Levitt and North American Securities Administrators Association President Mark Griffin, CFA asked the securities regulators to look into disclosure practices by fee-and-commission planners that obscure the commission-related source of their compensation.

Specifically, CFA asked the regulators to:

• clarify that planners have an obligation to provide a full and clear oral explanation of their disclosure practices when potential clients raise questions about compensation or express a preference for a particular compensation method;

• require fee-and-commission planners, when they offer "fee-only" services to clients, to make a binding commitment not to accept any commissions or other third-party compensation of any kind in relation to that client account and not to exert any pressure on the client to implement the plan's recommendations through the planner or an affiliated firm;

• set standards for improved written compensation disclosure; and

• develop a plain English disclosure document for investment advisers.

"Consumers who are interested in learning how their financial planner is compensated shouldn't have to jump through a series of hoops to get relevant information," Roper said.

"Unless they happen to know exactly what questions to ask and exactly where to look for relevant information, unsophisticated consumers can be left with the false impression that they are dealing with a fee-only financial planner when that is not the case," she added.

The letters follow up on a "mystery shopper" survey released earlier this year by CFA and the National Association of Personal Financial Advisers, which found that the majority of planners who told callers they offer fee-only services were fee-and-commission planners.

"While some of these planners may be willing to work with certain clients on a fee-only basis, they failed to provide what most would consider highly relevant information – that they are not strictly fee-only financial planners, but instead offer fee-only services as an option within a fee-and-commission practice," Roper said.

"Consumers should not have to follow a carefully worded script to get clear and complete information about compensation from a financial planner," she added. "The poor quality of oral disclosure is particularly important, since we suspect many consumers will never follow up by reading written disclosure documents that describe compensation arrangements in more detail."

"Even those who do take the extra step of studying written disclosure documents could find it extremely difficult to find the pertinent information," she added, since that information is often buried in the fine print of the disclosure document.

Roper said regulatory action was necessary in light of the inadequate industry response to these issues.

"Compensation is an important factor for consumers to take into account when looking for an objective financial adviser. Federal and state securities regulators could do consumers an important service by improving compensation disclosure practices," she said.

Both the SEC and NASAA have said they will give the issue further study and report back to CFA on their findings.

Decimal Stock Pricing Advances

The New York Stock Exchange announced in June that it would begin quoting stock prices in dollars and cents "as soon as the essential systems are in place in the securities industry."

The NASDAQ market is also studying whether to adopt decimal pricing of stocks, and other markets are expected to follow the NYSE's lead.

Currently, most U.S. exchanges require stock prices to be quoted in eighths of a dollar, creating an automatic 12.5 cent minimum spread between the price at which brokers will sell a stock and the price at which they buy it.

NYSE, which has long resisted the move to decimal pricing, changed its position after the House Finance Subcommittee approved legislation, H.R. 1053, in May that would have mandated the change.

CFA and other consumer groups had endorsed the legislation on the grounds that it would "remove artificial regulatory restraints on price competition in our nation's equity markets" and make it easier for investors to compute the profits or losses on their stock trades.

In the wake of the NYSE action, sponsors of the bill agreed to drop it, allowing the industry to move to decimal pricing voluntarily.

"While we are pleased to see voluntary action on the part of industry, we hope Congress will continue to monitor the situation to ensure that the change occurs in a timely fashion," Roper said.

Cash Value Life Insurance

(Continued from page 1)

Hunt's analysis also uncovered specific abuses.

For example, Metropolitan Life penalizes whole life policy holders with high "interest charges" when they pay premiums throughout the year, rather than at the beginning of the year. The "annual percentage rates" on two policies where payments were made semi-annually were 25.5 percent and 34.8 percent, compared to 17 percent for the many policy holders who paid premiums monthly through automatic deductions from checking accounts.

The report also found sales of very high cost accidental death benefit riders. In a number of instances, the study found rates for this coverage that were higher than those for full coverage term insurance.

Similarly, the report found sale of very high cost children's riders. While the mortality cost for children under 14, according to one study, averages less than $.10 per $1,000 per child, the typical charge for this coverage is $5 per $1,000 for all children.

The report is available for $10 prepaid from CFA ROR Report, 1424 16th Street, N.W., Washington, D.C. 20036.

Product Safety Update:

CPSC Urged To Expand ATV Protections

With the consent decree governing the sale of all-terrain vehicles due to expire in April 1998, consumer groups are urging the Consumer Product Safety Commission to do more to reduce ATV-related deaths and injuries, particularly to children.

"Despite the provisions of the consent decree, approximately 240 people die every year and an additional 62,000 are injured riding ATVs," said CFA Product Safety Director Mary Ellen Fise.

"ATVs are particularly dangerous for children – about 40 percent of the deaths and injuries are to children under 16," she added. "Thus, even though a major goal of the consent decree was to reduce deaths and injuries to children, more than 80 children die and 22,000 are injured every year riding ATVs."

CFA has called on the agency to begin proceedings to ban the sale of ATVs for use by children, to codify the ban of three-wheel ATVs, and recall ATVs sold for use by children. Because these rules will take time to develop, CFA has also called on the agency to begin negotiations for a new consent agreement, or an extension of the current agreement, for an additional ten-year period.

"It is critical that the agency act expeditiously to assure that ATV fatalities and injuries do not increase any more," Fise said.

To help decide what action to take when the consent decree expires, the CPSC has proposed to conduct a survey to determine consumer exposure to the hazards associated with the use of ATVs.

CFA, Public Citizen, and the U.S. Public Interest Research Group submitted comments to the CPSC in support of the commission's proposal to conduct a survey, but urged substantial redrafting to provide more information on "why children continue to be killed and injured on ATVs in spite of the provisions of the consent decree."

In addition to providing specific suggestions on how to accomplish this goal, the comments urge the commission to use the survey to gather evidence on whether a ban on the sale of ATVs for use by children and a recall of ATVs sold for use by children would be more effective than the consent decree in preventing ATV-related deaths and injuries to children.

"While the Commission has considered both regulatory options, it rejected these additional protections because, in large part, it said it lacked the evidence to show that these steps would provide an additional level of protection above and beyond the consent decree," Fise said. "The ATV exposure study provides the ideal opportunity for the commission to gather such evidence."

The groups also emphasized that the survey should be used, not to determine whether additional regulatory action is needed, but what action is needed.

"The death and injury statistics, particularly to children, make clear that regulatory action is imperative," the comments state. "An ATV exposure survey can provide the commission with important data to assist in its deliberations about which regulatory actions will be most effective."

CPSC Budget Heads To Conference Committee

Both the House and Senate have voted to give the Consumer Product Safety Commission a budget increase for fiscal year 1998, but the House increase is insufficient to allow the agency to continue with important safety programs.

The House approved a $44 million budget, and the Senate approved a $45 million budget for the agency, up from its 1997 funding level of $42.5 million.

"While we are pleased to see that both the House and Senate favor increasing the CPSC's budget, it is essential that the Senate's higher funding level be adopted," Fise said.

"A $44 million budget would just barely fund CPSC's mandated increases in salaries, benefits, and rent costs," she explained. "As a result, it would force the agency to cut at least $500,000 from current product safety work and eliminate all new initiatives planned for 1998."

CFA had written to the Senate in July seeking an appropriation of at least $45 million for the agency, which it ultimately approved.

"CPSC is one of the most important government agencies for the average American citizen," Fise wrote. "CPSC is a bargain for the consumer tax dollar," she added. "It accomplishes much on a shoestring budget. But every dollar counts."

CFA will continue to work with conferees, when Congress reconvenes after Labor Day, urging them to support the $45 million appropriation.

Priorities, Plan for CPSC Discussed

CFA submitted comments to the CPSC in May on the agency's draft strategic plan and priority projects for fiscal year 1999.

The comments praise the agency for choosing "a good mix of results-oriented strategic goals addressing significant risks faced by the American public" and for selecting "service quality and customer satisfaction goals that will help assure that consumers are served efficiently and effectively and that will improve the delivery of important safety information, thereby enhancing the agency's ability to reduce deaths and injuries."

In the comments, however, Fise expressed concern that "given the current amount of resources, the comprehensive risk reduction envisioned by this plan will prove difficult."

"In the future, CFA hopes that the Commission will utilize the Strategic Plan to make the case for additional appropriations to cover staff and budget," the comments state.

The comments also listed a number of projects deserving CPSC attention in FY 1999, including playground safety and a number of juvenile products. In addition, CFA stressed the importance of assuring that ongoing rulemakings have adequate resources, of having a strong enforcement program, and of maintaining strong ongoing efforts to monitor compliance with voluntary standards.

Weak Gun Safety Lock Bills Introduced

Weak bills have been introduced in both the House and the Senate to require gun dealers to provide safety locks with every handgun sold. CFA has worked with a coalition of gun control, physician, and consumer organizations to draft stronger alternative legislation.

"The main problem with the current bills is that they do not require child safety locks to meet any minimum safety standards to ensure that the safety locks sold with handguns will work effectively," Fise said. "We've seen cheap plastic safety locks that shatter when hit once with a hammer. Such locks do not provide adequate protection."

The alternative bill would require child safety locks to be subject to the same standard-setting procedures used to develop safety standards for such products as toys, bicycle helmets, child-resistant medicine bottles, and cigarette lighters.

In addition, it: provides for clearer, more effective warnings; contains an anti-preemption clause preserving strong state safety lock provisions and child access prevention laws; preserves the rights of individuals injured by defective handguns or ineffective safety locks to bring lawsuits; and requires manufacturers and dealers to report to the federal government incidents in which a child was killed or seriously injured by a handgun sold after the child safety lock law goes into effect.

"This information will help policymakers gauge how well the law is working," Fise said.

The coalition is working with sponsors of the existing bills to get them strengthened and is seeking co-sponsors for their alternative legislation.

Product Liability Battle Renewed

Congress has once again taken up legislation that would restrict the ability of consumers injured by dangerous products to receive reasonable compensation for their injuries.

In May, the Senate Commerce Committee reported out legislation, S. 648, on a party line vote that is similar to legislation vetoed by President Clinton last year on the grounds that it would "endanger the health and safety of the entire American public" by undermining the "ability of courts to provide relief to victims of harmful products."

This time around, however, the president has established an interagency task force on product liability with the apparent intent of determining whether the Senate bill can be revised to accommodate both the objections of the president and the views of the business community.

In June, CFA Chairman retired Sen. Howard M. Metzenbaum wrote to the president urging him to "stand tough against efforts to compromise the rights of American consumers in product liability actions."

Noting the many objections the president had raised when he vetoed last year's bill, Sen. Metzenbaum urged the president not to reverse his position on such key issues as limiting recoveries of non-economic damages, capping punitive damages, and limiting the statute of repose.

"Nothing has changed – consumers still deserve to recover fully for their injuries, and wrongdoers must still be held accountable," he wrote.

CFA also joined with a broad-based coalition in writing to Vice President Al Gore and White House Chief of Staff Erskine Bowles in July expressing concern over the composition of the interagency task force established to study the product liability issue.

The task force includes "important departments and agencies more likely to reflect the concerns of industry," while agencies "more likely to reflect of the concerns of those who are wrongfully injured" have generally not been included, the groups noted.

"We want to ensure that the president receives a balanced perspective and that adequate attention is given to the interests of consumers, workers, and others who may be wrongfully injured," they wrote.

Online Privacy

(Continued from page 4)

enforceable guidelines or regulations to deal with the companies who do not voluntarily adopt good practices," she said. "Voluntary self-regulation is a start, but it is not sufficient."

Fox also noted that "this is a public policy issue, not a technology issue. Technology is a tool to solve the problem, but not the solution in and of itself," she said.

Fox followed up by providing the agency with supplemental comments on unsolicited commercial e-mail, based on the e-mail received by one consumer during a six-week period.

The 91 messages received during that period included ten "x-rated" messages, three e-mails offering private investigation services, and 77 messages pitching a wide variety of get rich quick schemes, products and services of dubious value, and ways to make money marketing on the World Wide Web.

Some messages not only ask consumers to send their credit card numbers and identification, but also request consumers to fax a copy of a check so that the seller can access the consumer's bank account.

"Consumers are bombarded with e-mail that wastes time, money, and Internet resources while exposing consumers to rip-offs and offensive messages," Fox said.

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Online Children's Privacy Standards Issued

Responding to a petition from the Center for Media Education (CME), the staff of the Federal Trade Commission issued a letter in July outlining principles for the collection of personally identifiable information from children online.

In the letter, the staff concludes that:

• it is a deceptive practice to represent that a Web site is collecting personally identifiable information from a child for one purpose, when the information also will be used for another purpose, without providing a clear and prominent notice to a parent regarding the practice; and

• a Web site that has collected identifiable information about children must obtain parental consent before releasing that identifiable information to third parties.

"This letter represents a very significant step forward in protecting the rights of children in cyberspace," said CFA General Counsel Mary Ellen Fise.

The CME petition had requested the agency to investigate the KidsCom site for soliciting information from children in a deceptive manner and for failing to provide full and fair disclosure of the purpose for which the information was being collected.

The FTC staff found that certain practices of KidsCom were likely to be unfair or deceptive but did not recommend enforcement action by the Commission, primarily because the site has modified its conduct in a manner that addresses the staff's concerns.

While the letter relates specifically to the CME petition regarding the KidsCom site, the staff emphasized that the principles outlined in the letter are intended to apply generally to sites that collect personally identifiable information from children.

"The FTC has sent a clear signal to marketers that it will not tolerate practices that violate children's and families' privacy," Fise said.

Targeting of Children Increasing

The letter addresses several points raised by CME and CFA over the last two years, during which time the two groups have presented documentation of electronic information collection and marketing practices targeting children through a series of research reports and FTC filings.

In June, as part of an FTC workshop on information privacy, and in a follow-up letter to the agency in July, CFA and CME again called on the agency to adopt enforceable guidelines "designed to ensure that children's privacy will be protected in the growing online market."

At the workshop, the groups presented new evidence of increasingly widespread information collection practices by companies targeting children on the Internet.

For example, the groups found that a growing number of children's Web sites use surveys, contests, and offers of free gifts in order to get children to give up such personal data as their e-mail address, street address, purchasing behavior, and product preferences.

Often, children's sites use "product spokescharacters" to solicit the information. And more and more sites are using this kind of information to begin an ongoing correspondence with children through the use of unsolicited e-mail.

"Such practices take unfair advantage of a child's trust and openness," Fise said.

The report also criticized children's web sites for not obtaining verifiable parental permission before asking for personal information and for not adequately informing children and their parents of their rights regarding data collection and use.

"Attempts by the industry at self-regulation have been inadequate," Fise said. "While we are pleased that the industry has finally begun to address the issue, the steps they have taken to date are not sufficient to effectively protect children's and families' privacy."

In particular, she noted that, "by not requiring meaningful parental consent, direct marketers have created a huge electronic loophole that puts children's privacy at risk."

In their comments at the June workshop, CFA and CME reiterated their call for the agency to require that online companies obtain permission in writing from parents before collecting any personally identifiable information from children.

Based on the information in their new report, the groups also made several new suggestions for guidelines, including: banning the sending of unsolicited e-mail to children; prohibiting the use of product and other fictional figures to solicit personally identifiable information from children; and prohibiting companies from promising free merchandise (or the chance to receive free merchandise) in exchange for personally identifiable information.

"While the FTC staff letter provides much needed agency guidance on these issues, CFA still urges the commission to issue formal guidelines," Fise said.

Adult Online Privacy Also A Concern

CFA Director of Consumer Protection Jean Ann Fox also participated in the FTC workshop as a consumer respondent on issues related to self-regulation and technology.

Fox emphasized that "consumers have a right to control individually identifiable transaction information," which means that they "should be able to decide to whom and for what purposes that information may go."

Furthermore, in order to "shift the balance of power to consumers," she said, this should have to be an affirmative choice by consumers, or "opt-in," forcing companies to persuade them "that it is worth their while to allow any information to be collected and used."

"The problem is that information collection in cyberspace is invisible to most consumers," Fox said. "If the same practices were carried out off-line, we would never put up with it."

Fox also dismissed the idea that voluntary guidelines were sufficient to deal with abusive practices. "We need

(Continued on page 3)

Controversy Surrounds EFT '99 Implementation

Amid increasing controversy over the effects of a requirement that all federal benefits payments be made electronically, the Treasury Department in July delayed for the second time releasing its proposed rules to implement the new law.

Known as EFT '99 because it is scheduled to take effect January 1, 1999, the new law was enacted by Congress as part of the Debt Collection Improvement Act of 1996. The question being raised by some members of Congress and by consumer and community groups is how the program can be implemented so that it does not place new burdens on the approximately ten million households that receive federal payments but do not have bank accounts into which these payments can be electronically deposited.

"The Federal government estimates that it will save $100 million per year by using direct deposit instead of printing and mailing checks," said CFA Director of Consumer Protection Jean Ann Fox. "To ensure that this cost is not shifted from the government to the consumers who can least afford it, the 10 million benefit recipients who do not have bank accounts should be provided with a bank account at a reasonable cost and with the same protections as other bank accounts.

"If the proposed regulation does not make a bank account a viable alternative for the unbanked, they will be pushed further into the arms of unregulated alternative financial providers and fringe bankers, such as check cashing outlets and finance companies," she warned.

In testimony before a House subcommittee and in letters to Treasury Secretary Rubin, a coalition of consumer and community groups has outlined the following principles for implementation of the new law:

• only federally regulated and insured depository institutions should be permitted to be the conduits for federal payments;

• the use of "authorized agents" as alternative conduits of federal payments should be limited to those individuals and entities who have a fiduciary duty to the recipient;

• those who do not have a relationship with a mainstream financial institution should be provided with essential banking services that are affordable, accessible, and include basic consumer protections; and

• hardship waivers to this requirement should be granted liberally for people who do not have access to a bank, such as those in rural areas.

"EFT '99 provides an opportunity to draw the unbanked into the financial mainstream, but it must be done in a manner that improves the lives of benefit recipients, not makes them harder," Fox said.

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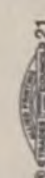

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