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consumer federation of america

Washington, D.C.

March 1976

# CFA Publishes 1975 Congressional Voting Record

With election fever already running high, Consumer Federation of America, the nation's largest consumer organization, has published its 1975 voting record featuring a list of Consumer Heroes and Zeroes for the first session of the 94th Congress.

The 39 Zeroes were chosen because they failed to vote for the best interests of consumers on at least 75% of the key consumer issues last year. In addition, all are likely to face tough re-election contests in which consumer votes will be important.

Heading the list of Zeroes are Senators James Buckley (NY), Robert Taft, Jr. (Ohio), Lloyd Bentsen (Texas) and Harry F. Byrd (Va.).

They are joined in the House of Representatives by Don Young (Alaska); Arizona's Sam Steiger (3) and John Conlan (4), Californians Don H. Clausen (2), Burt L. Talcott (16), William M. Ketchum (18), Del Clawson (33), Shirley Pettis (37), and Bob Wilson (41); Ronald A. Sarasin (5-Conn.), Richard Kelly (5-Fla.); Georgians John J. Flynt, Jr. (6) and Larry McDonald (7); George Hansen (2-Idaho); Henry J. Hyde (6) and George M. O'Brien (17) of Illinois; and Charles E. Grassley (3-Iowa).

The remaining Zeroes are Garner E. Shriver (4-Kansas); W. Henson Moore (6-La.); Robert E. Bauman (1-Md.); Michiganders Garry Brown (3) and Edward Hutchinson (4); Tom Hagedorn (2-Minn.); Gene Taylor (7-Mo.); Virginia Smith (3-Neb.); Willis D. Gradison, Jr. (1), Donald D. Clancy (2) and Thomas N. Kindness (8) of Ohio; Oklahomans Theodore Risenhoover (2) and Glenn English (6); Pennsylvanians Herman T. Schneebeli (17) and Albert W. Johnson (23); Robert Krueger (21-Tex.); J. Kenneth Robinson (7-Va.); and Robert W. Kasten, Jr. (9-Wisc.).

All together, there were 64 members of the House and 14 Senators who failed to cast a single vote in the best interests of consumers during the past session of Congress. (See Appendices A and B, page 3).

Fortunately, consumers had several heroes too. Seven Senators and 57 Representatives scored perfect 100% ratings on the CFA tally. The Senators are Floyd K. Haskell (Colo.), William D. Hathaway (Maine), both New Hampshire Senators John Durkin and Thomas J. McIntyre, both New Jersey Senators Harrison A. Williams and Clifford P. Case, and Richard S. Schweiker (Pa.). The Representatives scoring perfect ratings are listed in Appendix C, page 3.

"We publish our list of Heroes and Zeroes to inform the American consumers about which of their elected representatives are truly concerned with their problems and which are continuously selling out to the interests of big business," noted Carol Tucker Foreman, executive director of Consumer Federation of America. "We hope all consumers will consider our voting record carefully before casting their ballots in November. Those on our Zero list are pickpockets. They take from consumers not just dollars but health, safety and economic security which they put into the pockets of corporate giants."

On the whole, the U.S. Senate showed a significant decrease in its level of support for the American consumer in 1975. Of 17 key issues which came before them last year, a majority of Senators voted for consumers only nine times. At the same time, the number of Senators who never voted for the consumer increased from 11 to 14 while those with perfect consumer ratings decreased from 13 to 7.

The record of the House was slightly better than the Senate. Of 13 key issues, the majority supported the

consumer on 9. Perfect scores on behalf of consumers were compiled by 57 members, a substantial rise from the 9 of last year. However, a staggering 64 members failed to cast a single pro-consumer vote, an increase from 55 last year.

A number of Senators and Representatives never voted against the consumer, but due to absenteeism, did not score 100%. These "absent advocates" in the Senate and the number of votes they missed are Abraham Ribicoff (Conn.) (1), Adlai Stevenson (Ill.) (4), Birch Bayh (Ind.) (11), Edward Brooke (Mass.) (1), Lee Metcalf (Mont.) (2), James Abourezk (S.D.) (1), and 43 Representatives from 16 states (See Appendix D on page 3.)

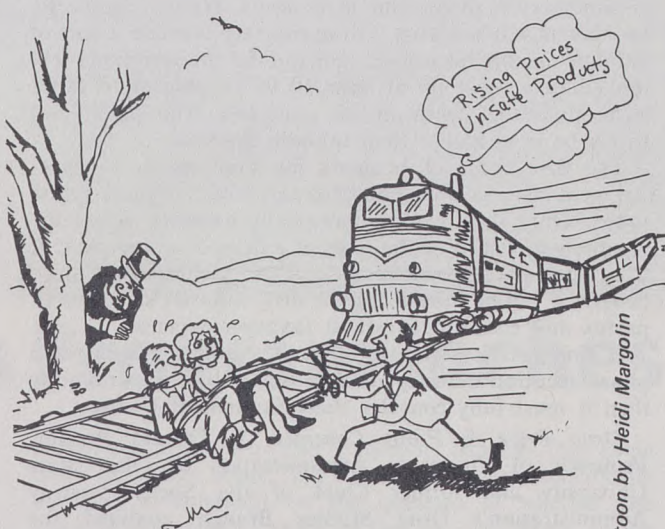
Ms. Foreman summarizes, "Although both Houses of Congress passed the most significant piece of consumer legislation of the decade, the Consumer Protection Agency bill, neither House did much to protect the consumer from rising prices, energy instability and the growing power of monopolistic industry.

The consumer advocacy bill is so vital to consumers that the vote is shaded to stand out on our voting record. More than anything else, this vote demonstrates whether each elected representative took a stand for the consumer's right to have an effective, legally potent voice in government decision-making. A right vote on S.200 and HR 7575 showed that the person chose to stand with consumers despite enormous efforts by the U.S. Chamber of Commerce and the White House to defeat this legislation.

We sincerely hope voters throughout the country will study the consumer voting records of their members of Congress on the key issues of 1975, including the consumer protection agency, oil price decontrol, natural gas, variable rate mortgages, increased authority for the Consumer Product Safety Commission, equitable mortgage money, food stamps, banking regulations and private industry promotion programs.

This year, the tax code has been changed to allow non-profit organizations such as Consumer Federation of America to endorse candidates. If CFA endorses candidates, it will occur in June. CFA will publish the voting record for the second session of the 94th Congress in September to allow consumers to study the record before they cast their ballots.

CFA's 1975 voting record is available for \$1.00 from CFA, 1012 14th St., N.W., Washington, D.C. 20005.



"Heroes and Zeroes"

## \$\$ Citizen Action Fund Offers New Hope \$\$

The Citizen Action Fund, organized by CFA and four other public interest groups, was recently formed to initiate fund-raising activities for independent public interest groups across the nation. Its Kick-off activity is sponsorship of premier showings of the film "All the President's Men" in twelve cities.

The April 8th showings will benefit consumer and environmental groups from Boston to San Francisco prior to the movie's official release.

The Fund will work for various groups that are not chapters of revenue-raising national organizations and will be directed by actor Robert Redford; Frances (Sissy) Farenthold, a former Texas legislator recently appointed president of Wells College in New York; John Seigenthaler, publisher of the Nashville Tennessean; and Robert Wood, President of the University of Massachusetts.

Citing "the importance of citizen monitoring to make the government accountable," Robert Redford noted that past abuses have given new credibility to the work of public interest groups.

"I am hopeful that the Citizen Action Fund will help insure the life and effectiveness of public interest groups all over the country—it's our only salvation," he added.

The fund was organized by Consumer Action Now, Public Citizen, Consumer Federation of America, Environmental Action and the Environmental Policy Center.

Commenting on the Fund's plans, consumer advocate Ralph Nader said, "It is fitting that these premiers of 'All the President's Men' around the country will help to support

citizen action groups whose mission is to prevent a repetition of all the President's men."

He emphasized that these are the type of groups that have led successful fights for safer cars, cleaner air and water, the preservation of wildlife sanctuaries, fair credit, open government and free information, clearer labeling of products and the removal of harmful food additives.

The groups chosen by the Fund for the first benefit all lobby for citizen interests thereby not qualifying for tax-exempt status under Internal Revenue regulations which forbid groups "influencing legislation" from collecting tax-deductible contributions.

Their tax status contrasts with that of private business which is allowed to write-off lobbying activities as "ordinary and necessary business expenses."

Because the public interest groups have no automatic fund raising base, the Citizen Action Fund will work to initiate revenue-producing projects through arrangements with entertainers in various fields for the donation of films or concerts generating proceeds to help finance public interest work.

The April 8th benefits represent a cooperative effort between the public interest groups and Warner Brothers, distributor of the Wildwood Enterprises production. The studio is contributing the film and local publicity, while the individual groups are handling ticket sales and special activities connected with the premier.

The following groups are participating in the first project, holding showings of "All the President's Men" in the following cities: Atlanta—Georgia Public Interest Research Group, Atlanta Coalition on the Transportation Crisis, SAVE; Sacramento—Western Bloc; San Francisco—Consumer Advocates (the lobbying corporation serving with Consumer Action, Project Survival); Dallas—Texas Com-

mittee on Natural Resources; Little Rock—Arkansas Consumer Research, Public Interest Citizen Action; New Orleans—Louisiana Consumers League; Hartford—Connecticut Citizen Action Group; Boston—Massachusetts Fair Share; Raleigh-Durham—Carolina Action, North Carolina Consumer Council, Conservation Council of North Carolina, North Carolina Public Interest Research Group; Chicago—Illinois Public Action Council; Portland—Oregon Environmental Council, Oregon Student Public Interest Research Group, Oregon Consumer League; and Southfield, Michigan—PIRGIM.

Of these Consumer Advocates, Arkansas Consumer Research, Louisiana Consumers League, North Carolina Consumer Council and the Oregon Consumer League are members of CFA.



Dustin Hoffman and Robert Redford star in the upcoming production of "All the President's Men."

Focus On Local Consumers will return in April featuring the Iowa Consumers League.



## SPEAK OUT!

by Fred Wegner, Leg. Rep.  
National Retired Teacher Association—  
American Association of Retired Persons

## Prescription Drugs— Expensive Pills to Swallow

It is not prescription drugs themselves that are hard for patients to swallow; it's their high cost.

Sick Americans are paying at least \$2 billion a year more than they should for prescription medication. That huge overcharge is subsidizing pharmaceutical manufacturers' excessive profits and economic waste of advertising and promoting brand name products; it is not providing a single health benefit to the patients who pay the bill.

Inflated drug prices are a hardship for millions of Americans who could be helped by a comprehensive prescription benefit under a future national health insurance program. It would be a bitter irony if Congress balks at giving them the help they need to meet high drug costs because it finds the cost of providing prescription coverage too high.

The obvious first step is to bring drug prices down and keep them down. That will require Congress to consider such bold reforms of this nation's drug delivery system as price controls, changes in patent law, elimination of brand names, and the possibility of federally funding drug research.

"Americans spend some \$7 billion a year on prescription drugs," asserted U.S. Representative Benjamin S. Rosenthal (D-N.Y.) in his 1973 prescription drug study, "and the evidence is strong that they are being overcharged, on the average, by at least 25 percent.

"The high cost of drugs is due primarily to a lack of competition, overprotective patent laws, exorbitant promotional expenditures, arbitrary pricing practices, unreasonable markups and inefficient management.

"The drug makers are earning profits at nearly double that of other U.S. manufacturing corporations. Their enormous profits are due largely to the fact that they are overprotected by government."

### The Untouchables

The fact that a few powerful drug manufacturers are the "Untouchables" of U.S. industry should alarm us all, but surprise no one. During anti-trust hearings on the pharmaceutical industry begun nearly two decades ago, Senator Estes Kefauver warned his fellow citizens: "Free competition has been hampered by patent monopoly control of prescription sales...by any test and under any standard, prices and profits in the ethical drug industry are excessive and unreasonable.

Congress and the public failed to react to the Kefauver warning, but the Wall Street bulls didn't. They marveled at the patent-protected prices and profits of the huge drug firms and loaded up with their rising capital stocks.

By 1973 *Forbes* magazine listed four drug companies—Johnson & Johnson, Merck Sharp & Dohme, American Home Products and Eli Lilly—among the nation's 25 biggest in market value. "As a group," observed *Forbes*, "drug stocks are among the most richly priced on Wall Street today, with price earnings ratios running 35 times earnings...Over the years no other major industry has been as profitable as drugs."

During the 1960's, prescription medication sales doubled. Since then, leaping upwards by about \$700 million each year, the nation's total annual drug bill has climbed to more than \$10 billion. As the burden of high drug costs continues to grow, it weighs heaviest upon those least able to bear it—elderly, low-income, and chronically ill persons. Older Americans, for example, are only 10 percent of the population but account for one-fourth of all prescriptions.

Public and private health plans that pay for prescription drugs are few and usually of limited assistance. Medicaid is supposed to cover prescription costs, but a recent Federal Trade Commission study concluded that difficulties in obtaining eligibility denied drug benefits to 80 percent of those living on poor and near-poor incomes. Medicare pays for an elderly person's drugs only when institutionalized. As a result, more than 86 percent of the nation's drug costs are paid for by patients out of their own pockets.

So far consumer groups have begun to take out their resentment on retail pharmacies, rather than the drug companies. Probably because the pricing abuses of the pharmacists are more obvious, and solutions are simpler. In state after state, consumers have been increasingly successful in their demands that pharmacies post prescription prices, that pharmacies be permitted to disclose prices in advertisements and catalogs, and that state pharmacy boards be opened up to include public members. The aim of these efforts is to help stimulate drug price competition between retailers.

Consumers are also trying to spur more competition between different manufacturers of the same drug product and reap the benefits of lower prices. To do so, they are seeking repeal of state ant substitution statutes. In their

place, they want laws that will permit pharmacists to dispense lower-priced equivalent drugs, usually nonproprietary generics, instead of the more expensive brand name products which doctors most often prescribe.

All of these actions are necessary and overdue. But none of us should be deceived into thinking they mean that we are at last coming to grips with the pharmaceutical industry or that prescription drug costs in general are on their way down.

Nothing could be further from the truth!

Posting, advertising, substitution and maximum allowable costs set by the Department of Health, Education and Welfare affect only about one of every four prescribed drugs—those whose patent rights have expired, making them available from various suppliers at competitive prices.

Seventy-five percent of the drug marketplace is still dominated by patent-protected products, each available from a single source. Production, marketing and pricing of these products are arbitrarily determined by manufacturers for the 17-year lives of their patents. With no governmental controls and no public accountability, U.S. drug firms force their own countrymen to pay the highest prescription prices in the world.

### Action Now

The time for action is now, as Congress deliberates over a national health insurance system and whether to include prescription drug coverage as a benefit. Some witnesses will tell Congressional committees of the enormous need for covering drug costs, and other witnesses will tell them of the enormous costs of covering drug needs. What is more, the lawmakers will hear that if drug coverage is made a part of national health insurance, demand for prescriptions will immediately shoot up at least 10 to 15 percent to fulfill currently unmet needs. So the costs of a drug benefit will surely be even higher than initially expected.

The first order of business for Congress is to enact stringent controls over the prices and profits of prescription drugs. Only then can it realistically consider either the comprehensiveness or the costs of a drug coverage plan. If Congress fails to include strict cost controls in a drug benefit, it will be subsidizing the drug industry's exorbitant profits and economic waste at taxpayer expense.

If Congress is seriously concerned about bringing the pharmaceutical industry into an era of public accountability then it must fully consider these fundamental issues:

**Drug Price & Profit Controls.** T. Donald Rucker, Professor of Pharmacy Administration at Ohio State University and former Chief of the Social Security Administration's Drug Studies Branch analyzed the wholesale prices of nine important U.S. brand name prescription drugs in 1969. The significance of the data is as relevant now as then.

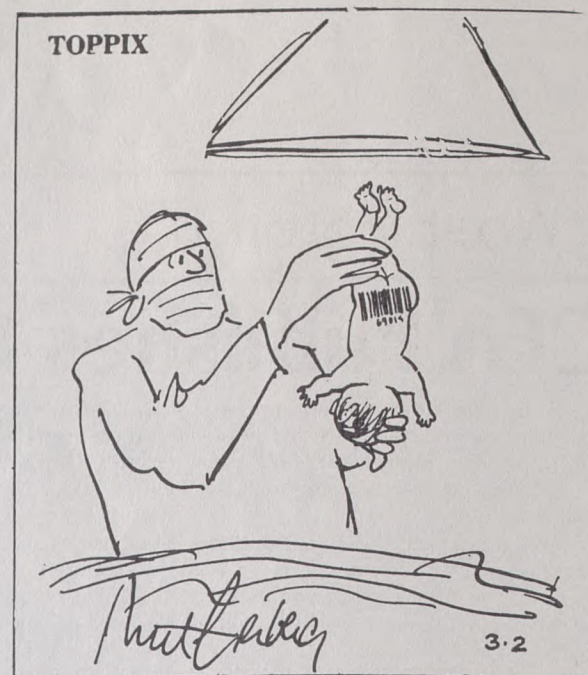
On the average for the nine drugs studied, ten cents of each sales dollar fully covered the costs of the ingredients, manufacturing and physical distribution. That left an average of 90 cents of each sales dollar to cover research and development, promotion, general administrative expense, taxes and profits.

**Drug Patents.** The United States is one of the only major countries in the world to allow patent protection on a medical process for the treatment of man. Congress needs to consider the ethics as well as the economics of granting a patent holder 17 years of monopolistic control over pricing and marketing health-sustaining medications, without any accountability to society.

**Drug Research Costs.** There is little question that stricter FDA requirements for safety and effectiveness, enacted by Congress, have helped inflate the costs of financing new drugs through discovery, testing, and final approval. While some argue this has caused a "drug lag" in this country, they have difficulty in naming important new drugs that are unavailable to Americans or defending a weakening of FDA standards.

Fewer approvals of new drug applications might actually be good news for sick people rather than bad. An FDA survey of drugs introduced between 1950 and 1973—most of which time effectiveness standards were not required—found two-thirds of the products offered little or no therapeutic value. If FDA is now approving only those drug discoveries that are really new, safe and effective, then the benefits are twofold: patients will stop wasting money for products of little or no value, and the industry will stop wasting much of its research and development funds on redundant products and similar formulations; for example, one supplier sells eight separate analgesics.

**Brand or Trade Names.** Estimates in recent years place the cost of advertising and promoting brand name products at 25 cents out of each sales dollar. Not only do these expenditures unnecessarily inflate drug prices, they provide



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## Universal Product Code: The Price of Prices

One of the most significant questions emerging from the debate over mandatory price marking legislation has been "how much will consumers save if prices are left off packages?" The answer, according to an economic analysis of a Giant Food study, is a scant \$1.13 to \$2.27 per year per shopper.

In February, 1975, Giant installed the first of its five electronic computer-assisted check-out systems. In mid-February of this year, the first cost figures from this promotion were publicly released. The study was commissioned by Giant to determine "tangible dollar savings" which might result from the installation of the new equipment.

According to Joseph Danzansky, president of Giant Food, "Assuming that all our 62 stores in the state of Maryland were converted to computer-assisted check-out systems and assuming the average savings would be \$2,745 [per month] found during our test, we would have \$2 million to share with Maryland consumers each year, since 900,000 people choose to shop in our Maryland stores each week."

These figures were recently analyzed by Donald Snyder, a University of Maryland economist working for the Public Interest Economics Foundation in Washington, D.C. By taking the Giant-supplied savings figure of \$2,745 per store per month, multiplied by the number of Giant stores (62) times twelve months, the total amount of savings is slightly more than \$2 million per year.

Dividing this by the approximate number of Maryland customers of Giant Food stores (900,000) the savings which could be realized by elimination of item pricing is \$2.27 per year per customer.

But the study also said that only about 23% of the savings can be attributed to original price marking. The other half is for remarking the prices on items already on the shelves. So without remarking, Snyder calculated that cost savings per customer per year could be reduced to \$1.13—a figure that is hardly a fair trade-off for the retention of vital consumer information which is necessary to make intelligent marketing decisions.

no benefit to patients who must pay the bill. The chemical ingredient of a drug product is what helps ailing persons, not its brand name or its promotional budget.

**Uniform Cost-accounting.** Accurate statistical data on the drug industry's research and promotional expenditures, direct and indirect costs of manufacturing, and prices and profits are difficult to uncover. The industry has preferred them that way.

Too often in diversified companies, high drug profits are masked by consolidating them with lower-profit, non-drug lines. (See line-of-business article, page 3.)

These are the important pharmaceutical issues confronting our nation today and demanding solutions in the public interest. Congress would do well to recall that human suffering and tragedy preceded each significant advancement in stricter regulation of the pharmaceutical industry. Must history keep repeating itself?

For more information contact:

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**APPENDIX A**

*Zero percent—House of Representatives Members who never voted for the consumer. (district no. in parentheses)*

Alabama:	Edwards (1) Dickinson (2)
Alaska:	Young (AL)
Arizona:	Rhodes (1) Conlan (4)
California:	Clausen (2) Talcott (16) Ketchum (18) Lagomarsino (19) Goldwater (20) Rousselot (26) Pettis (37) Wilson (41) Wilson (41) Burgener (43)
Colorado:	Armstrong (5)
Florida:	Kelly (5) Haley (8) Frey (9)
Georgia:	Landrum (9) Stephens (10)
Idaho:	Symms (1) Hansen (2)
Illinois:	Crane (12) O'Brien (17) Findley (20)
Indiana:	Myers (7)
Kansas:	Winn (3)
Louisiana:	Treen (3) Moore (6)
Maryland:	Bauman (1) Holt (4) Byron (6)
Michigan:	Esch (2) Brown (3) Hutchinson (4) Cederberg (10)
Missouri:	Taylor (7)
Nebraska:	McCollister (2) Smith (3)
New Mexico:	Runnels (2)
New York:	Hastings (39)
North Carolina:	Broyhill (10)
Ohio:	Guyer (4) Brown (7) Devine (12) Wylie (15) Ashbrook (17)

**APPENDIX A (continued)**

Oklahoma:	Risenhoover (2) Jarmin (5)
Pennsylvania:	Shuster (9) Goodling (19)
Tennessee:	Quillen (1) Beard (6)
Texas:	Archer (7) Hightower (13) de la Garza (15) Krueger (21)
Virginia:	Satterfield (3) Daniel, R. (4) Daniel, D. (5) Butler (6) Robinson (7) Wampler (9)
Wisconsin:	Kasten (9)

**APPENDIX B**

*Zero percent—Senators who never voted for the consumer.*

Arizona:	Fannin Goldwater
Idaho:	McClure
Mississippi:	Eastland
Nebraska:	Curtis Hruska
Nevada:	Laxalt
North Carolina:	Helms
North Dakota:	Young
Oklahoma:	Bartlett Bellmon
South Carolina:	Thurmond
Utah:	Garn
Wyoming:	Hansen

**APPENDIX C**

*House of Representatives—Perfect Record—100%.*

California:	Moss (3) Burton, J. (5) Miller (7) Dellums (8) Edwards (10) Waxman (24) Roybal (25) Burke (28) Hawkins (29)
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**APPENDIX C (continued)**

Connecticut:	Cotter (1) Moffett (6)
Illinois:	Murphy (2) Yates (9)
Indiana:	Roush (4)
Iowa:	Mezvinsky (1) Harkin (5)
Maryland:	Sarbanes (3) Mitchell (7) Gude (8)
Mass.:	Boland (2) Early (3) Drinan (4) Tsongas (5) Moakley (9) Burke (11) Studds (12)
Michigan:	Carr (6) Ford (15)
Minnesota:	Nolan (6) Oberstar (8)
New Jersey:	Howard (3) Maguire (7) Roe (8) Minish (11)
New York:	Downey (2) Ambro (3) Addabbo (7) Rosenthal (8) Scheuer (11) Chisholm (12) Holtzman (16) Badillo (21)
Ohio:	Whalen (3) Carney (19) Stokes (21)
Oregon:	Weaver (4)
Pennsylvania:	Green (3) Edgar (7) Rooney (15) St. Germain (1)
Rhode Island:	Harris (8)
Virginia:	Hechler (4)
West Virginia:	Baldus (3)
Wisconsin:	Zablocki (4) Reuss (5) Obey (7) Cornell (8)

**APPENDIX D**

*Absent Advocates—House of Representatives: Those who never voted against the consumer but were absent one or more times*

Arizona:	Udall (2)
Calif.:	Burton, P. (6) Stark (1) Wilson (31) Lloyd (35) Van Deerlin (42)
Florida:	Pepper (14)
Illinois:	Metcalfe (1) Fary (5) Collins (7) Rostenkowski (8) Mikva (10) Annunzio (11)
Indiana:	Brademas (3)
Maryland:	Spellman (5)
Mass.:	Harrington (6)
Michigan:	Conyers (1) Riegle (7) Diggs (13)
Minnesota:	Darth (4) Fraser (5)
Missouri:	Clay (1) Sullivan (3)
New Jersey:	Floria (1) Thompson (4) Helstoski (9) Rodino (10) Daniels (14)
New York:	Solarz (13) Richmond (14) Koch (18) Rangel (19) Abzug (20) Bingham (22) Ottinger (24) McHugh (27) Seiberling (14)
Ohio:	Vanik (22) Mottl (23)
Penn.:	Nix (2) Ellberg (4)
R.I.:	Beard (2)
West Va.:	Staggers (2)

# Line of Business Program Inches Along in Court

In May, 1974 the *CFA News* heralded the Federal Trade Commission's line-of-business (LB) reporting program as one of the most significant consumer advances in history. It is interesting to learn the scenario of events which has occurred since then.

The line-of-business program was proposed in order to stimulate competition in private industry. In brief, it required the nation's largest conglomerates to submit to the FTC profit data from each individual product line owned by the company, instead of allowing them to issue one generalized accounting report. For example, line-of-business would require ITT to divulge how much of its profit came from Wonder Bread and how much came from its various other subsidiaries.

This type of detailed disclosure is considered by many to be the most important single tool for effective analysis of inflation, economic concentration, and the effect of monopolies and oligopolies on consumer prices.

After a fierce battle for Congressional appropriations, the FTC in August of 1974 was able to mail line-of-business questionnaires to 345 companies. As of June 10, 1975, 227 of the companies had returned the completed forms while the remainder, or 34 percent, had failed to comply. Similarly, of the 440 line-of-business forms which the FTC mailed out in 1975, approximately 170 companies, or 38 percent, have not compiled or sought extensions of the deadline for reporting.

**Order in the Court**

Both the FTC and the companies have taken action in court. In the case of *A.O. Smith et. al. v. FTC*, fourteen companies in U.S. District Court in Delaware sought to enjoin the FTC from enforcing the LB program on the grounds that the FTC did not follow proper rulemaking procedures when implementing the program. The issuance of a preliminary injunction against the FTC by the Delaware judge indicated his findings that irreparable harm was being done to the plaintiffs and that the case of the plaintiffs was likely to prevail when considered on the merits. In February, 1976, this decision was reversed by the U.S. Court of Appeals for the Third Circuit, which found that "irreparable harm" had not been done to the companies. "Without intending to disparage the importance of such an injury, we observe that all that is lost is profits...there is no contention that compliance with the LB program would

render any appellee unable to meet its debts as they come due," the court wrote. The Court of Appeals specifically declined to comment on the question of whether the plaintiff companies' cause of action was likely to be successful on the merits, or on whether the loss of profits from compliance with the line-of-business orders could constitute irreparable injury in the context of a *permanent* injunction.

In the meantime, the fourteen companies have returned to the U.S. District Court in Delaware seeking a permanent injunction against the FTC. At this date, no action has been taken on this question.

Several cases involving line-of-business reporting are pending in U.S. District Court in New York. Approximately one hundred companies have joined together in *Alcoa v. FTC* to stop enforcement of both the 1973 and 1974 FTC questionnaires. At the same time, the FTC is suing about 110 companies for noncompliance with the new reporting program. While little action has been taken in any of these cases to date, there is speculation that the recent decision by the Third Circuit Court of Appeals in the case of *A.O. Smith v. FTC* may cause a shifting of the action to the New York cases.

**Your Friends and Ours**

Who are these companies that are refusing to divulge this vital data? Upon examination, we find many familiar household names that annually spend millions of advertising dollars to convince the American public that they are trustworthy and deeply concerned with the nutrition, health, and well-being of every American consumer.

Among them are Campbells Soup, Carnation, Del Monte, General Mills, H.J. Heinz, Hersheys, Kelloggs, Thomas J. Lipton, Nabisco, Oscar Mayer, Standard Brands, United Brands and Safeway Stores.

One can hardly turn on the television or pick up a magazine without being informed of the many wonderful things these corporations are doing for all of us. In almost every instance, the image portrayed by their substantial advertising budgets totally belie their defiance of the U.S. government. Safeway tells us, "Since we're neighbors, let's be friends." General Mills brags that the "Big G stands for Goodness." At least Oscar Mayer admits that they have a way with B-O-L-O-G-N-A.

The aforementioned list of companies has been limited to the food industry. There are many others involved in the suits, including among them the Hobart Corporation, Goodyear Tire and Rubber, Reynolds Aluminum, and the American Home Products Corporation. But as food is not, and never will be a luxury item, the consequences of the food companies withholding information are especially profound. If Congress and the FTC are unable to secure the line-of-business data for many of this country's largest food processors and retailers, it is unlikely that we will ever have an adequate answer to the totality of factors responsible for high food prices.

**Top Secret**

It is not difficult to ascertain why these corporations are so carefully guarding their secrets. F.M. Scherer, FTC Staff member, outlined his interpretation of the reasons to a recent hearing of the House Agriculture Committee. "As a general proposition," he said, "a lot of companies simply do not want that kind of information available because they are certainly afraid of what the Justice Department and the Federal Trade Commission might do with the data...The second reason is that they are afraid of what their stockholders might do if they found out that very substantial losses were being incurred in certain parts of the company...A third reason is that if detailed financial data were available, and if it were known that very high profits were made in certain lines of business, they might serve as a stimulus to the entry of new competition. That is not something a corporation has ever vigorously encouraged through its financial reporting practices...I don't know how we can make sensible public policy without knowing what is going on in our major manufacturing industries."

Indeed.

What happens now? CFA has urged Congress to equip itself to deal adequately with the reports it is requiring to be submitted. Carol Tucker Foreman, CFA's executive director, recently told the Monopolies and Commercial Law Subcommittee of the House Committee on Judiciary, "Congressional oversight in the food price field has been hit and miss. Hit the headlines and miss the substance. Congress must be willing to demand recommendations for legislative actions and to carry these through to law." As for line-of-business reporting, the ball is with the court. Is the court on the ball?



## Legislative Wrap-Up

### Equal Credit

The Equal Credit Act Amendments, having been approved by both Houses on March 9, are now awaiting the President's signature.

CFA actively led the lobbying efforts for a strong bill. Fortunately, despite many discouraging setbacks prior to the conference, the conferees ultimately approved a bill which substantially incorporated the best features of each version.

The significant provisions retained from the Senate version include: 1) The requirement that upon request a written statement be issued providing the reason(s) for the denial of credit; 2) a two year statute of limitations; 3) the inclusion of "public assistance" as a protected category in the ban on credit discrimination. (Sen. Alan Cranston (D.-Cal.) deserves much credit for the inclusion of this provision.) 4) Class action recoveries of the lesser of \$500,000 or 1 percent; 5) The absence of the requirement that a rejected credit applicant must prove that the creditor had willfully violated the Act as a prerequisite to the awarding of punitive damages. (Sen. Joseph R. Biden (D-Del.) is largely responsible for removal of the weaker House provision.)

The conferees arrived at several major compromises, some which will benefit consumers and others which will not. An amendment introduced by Rep. Gladys Spellman (D-Md.) exempted those creditors from the written requirements of the bill if they act on less than 150 credit applications per year. The rationale behind this measure was to relieve the relatively small creditor (including "Mom and Pop" stores) from the economic burden of providing written statements as to credit rejection and the reasons for the rejection.

A provision in the original Senate version permitted the use of empirically derived credit scoring systems which consider age and the receipt of public assistance as factors in determining an applicant's creditworthiness. The House bill did not contain a parallel provision but did state that it would not be a violation of the Act for age to be considered as a positive factor. This House provision reflected the House's desire to permit "Golden Age" type privileges.

Fortunately the compromise deleted the references to public assistance but allows age to be used, except that the age of an elderly person cannot be assigned a negative factor. This provision, although clearly beneficial to the elderly (and to that extent supported by CFA), does not at all protect the youthful credit applicant who suffers the consequences of age discrimination. CFA was particularly disturbed that there was no persistent effort on the part of the conference leaders to ensure that *all* credit applicants would be protected against the use of age as a negative factor in the evaluation of an applicant's creditworthiness.

Although the resultant bill contained many amendments which CFA actively supported, special mention must be made of the fact that Rep. Gladys Spellman (D-Md.) repeatedly voted in favor of weakening amendments. Joining ranks with Rep. Spellman, Millicent Fenwick (R-N.J.), Chalmers Wylie (R-Ohio) and Henry Reuss (D-Wisc.) tipped the vote in favor of the empirically derived data provision

rather than persisting in efforts to have age deleted as a factor altogether. Lastly, consumers were not well served when Sen. Edward Brooke (R-Mass.) chose to give his proxy to Sen. Jake Garn (R-Utah) who consistently fought to weaken and gut the bill.

### No-Fault

Vigorous efforts continue by the National Committee for Effective No-Fault (including CFA) toward the enactment of S 354 and HR 9650. It is expected that the Senate version of the bill will reach the floor sometime in mid-March and will win by essentially the same margin as in the last session. The House is awaiting Senate action before taking the matter up in the full House Commerce Committee.

### Credit Card Surcharge

On February 27, President Ford signed into law a bill amending the Fair Credit Reporting Act which will permit the use of cash discounts for cash-paying customers.

By way of background, it has been a general practice for credit card issuers to prohibit merchants with whom they contract to offer discounts to cash paying consumers. A Consumers Union law suit against several major credit card companies inspired efforts to solve the problem legislatively. The results were a House version specifically permitting cash discounts but expressly prohibiting the imposition of a surcharge on credit card customers; and a Senate version which would have permitted either cash discounts or credit card surcharges. CFA supported the House version, which was finally adopted.

### Antitrust Parens Patriae

Expected to come up for a House vote in mid March is a bill which authorizes state Attorneys General to sue violators of antitrust law on behalf of their citizens and to recover damages for them. A coalition which includes CFA is being organized to gather support for HR 8532, the Antitrust Parens Patriae Act.

Parens Patriae would give state Attorneys General realistic and practical tools to enforce existing antitrust laws and accordingly, to better protect consumers. It would plug a loophole in antitrust enforcement through which price fixers presently operate unencumbered. Price-fixing and other antitrust violations cause direct injury to consumers in amounts of millions of dollars in the form of higher marketplace prices, and are directly contrary to a competitive economy.

### Consumer Leasing

The Consumer Leasing Act was recently approved by both houses and is awaiting signature by the President.

The act requires that certain affirmative disclosures, including cost and potential liability be provided to the consumer before the consumation of a consumer lease of personal property which is leased for more than four months. The bill also affords specific and private class action relief for the violation of the bills standards.

One particularly noteworthy amendment was a provision which will allow a lessee to bring suit in connection with false advertising. This will hopefully serve as both a deterrent against questionable advertising practices and as a tool to provide adequate relief for injured consumers.

Due to the sharply increased costs of production and mailing, we have found it necessary to increase the subscription price of the CFA News to \$20.

## Food Day April 8

### Ford, Butz, FCC Rank in "Terrible Ten" of Food Policy

The "Terrible Ten," a list of ten influential organizations and individuals, who are said to oppose more responsible food policies and healthful eating habits, was published March 13 by the Food Day project of the Center for Science in the Public Interest.

The "Terrible Ten," according to Michael Jacobson, national coordinator of Food Day, "is intended to increase public awareness of the corporations, government officials, and others who share the responsibility for the high prices and low quality of food." The "Terrible Ten" serves as a counterpoint to the "Terrific Ten," a group the Food Day project has honored for working toward excellent local food policies.

Food Day is a national day of education and action set for April 8. The second Food Day will be celebrated in scores of communities around the country with food policy conferences, food fairs, TV and radio shows, poster contests, teach-ins, special classes in schools, and action-oriented workshops.

The "Terrible Ten" includes three government officials (President Ford, Secretary of Agriculture Earl Butz, FDA Commissioner Alexander Schmidt), the Federal Communications Commission, three corporations and a trade association (Coca-Cola, Nestle, Gulf & Western, Grocery Manufacturers of America), land grant colleges, and one professor of nutrition (Frederick Stare of Harvard).

According to Jacobson, the government officials and agency have been responsible for allowing advertising of junk foods on children's TV shows, liquidating the price-stabilizing grain reserves, allowing unsafe or poorly tested additives in our food supply, seeking to knock millions of low-income Americans off the food stamp program, and blocking passage of the consumer protection legislation.

Land grant colleges were alleged to work closely with food and chemical corporations, benefitting the companies at the taxpayers' and small farmers' expense.

Professor Stare was cited for having conflicts of interest. He was charged with having close ties with the sugar and breakfast cereal industries and for being an irresponsible defender of food additives, sugar, and food industry practices.

On the international level, Nestle and Coca-Cola were accused of contributing to malnutrition in developing nations by marketing infant formula (which replaces more nourishing and sanitary breast milk) and soft drinks. Gulf & Western was accused of profiteering in the Dominican Republic, of converting land that grew food for subsistence farmers to sugar cane fields, and of paying miserably low wages to cane cutters.

Food Day advisors include Bess Myerson, Carol Foreman, Peggy Charren, Ron Pollack, James McHale, Frances Moore Lappe, Ben Feingold, and Representatives Yvonne Burke, Fred Richmond, Ben Rosenthal, and Pat Schroeder.



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