Consumer Federation of America NEWS

WASHINGTON, DC — AUGUST-SEPTEMBER, 1977

40,000 Nickels Sent To Congress

Tourists visiting the capitol building this summer see a rather unusual sight —members of Congress wearing "Consumer Nickel Brigade" buttons. The buttons are symbolic of the growing support for the Agency for Consumer Protection (ACP) since the Nickel Campaign was launched June 29. Members of Congress are discovering that their constituents really want them to vote for the bill.

Over 40,000 nickels have showered 84 targeted congressional offices in 34 states. Six members have had to deal with more than a thousand apiece, and the typical targeted representative has received about 500.

Of course, the bottom line for the Nickel Campaign is not sheer numbers of nickels mailed, media coverage or logistical havoc created in congressional offices, but rather the impact which heightened voter awareness will have on the final vote for ACP. Since the campaign started, seven representatives have made public commitments to vote for ACP. At least seven others have indicated privately that they will vote for ACP's passage but do not want to go

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public because of the anticipated onslaught of pressure which would be waged against them. Importantly, the Nickel Campaign has reversed the erosion of support for the bill that was created in May and June by the well-financed lobbying attack orchestrated by big business.

Congressional offices were not prepared for the nickel shower, and for a while were at a loss as to what to do with them. Some have contributed them to charities and consumer groups in their districts. Others have returned them to their constituents or turned them into the U.S. Treasury. One gave them to CFA. All have responded in writing to the constituents who mailed in the nickels.

Opposition forces are redoubling their efforts and will undoubtedly lobby

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Opposition Thwarted, McKinney Confirmed

In an episode replete with frustration, Robert McKinney was confirmed as Chairman of the Federal Home Loan Bank Board (FHLBB) as President Carter abandoned his specific and oft-quoted campaign commitment to lock the revolving door between industries and the agencies which regulate them. By confirming McKinney the Senate abandoned its serious responsibility to the nation's cities and to those who have fought hard to insure that the FHLBB would finally pursue a vigorous new direction of reform within the savings and loan industry.

On July 27th McKinney was approved 12-3 by the Senate Banking, Housing and Urban Affairs Committee which had been lobbied vigorously on behalf of McKinney by the White House and against the nomination by a coalition of consumer, housing, labor, community, senior citizen, religious and public interest groups spearheaded by CFA and Ralph Nader. Voting against the nomination were Senators Proxmire, Brooke and Sarbanes. Two days later McKinney's perfunctory confirmation by the Senate included the "no" votes of Chairman Proxmire and Senator Sarbanes.

On July 15 McKinney testified before the Senate Committee for 5-1/2 hours on his own behalf. His prepared statement and responses to questions were characterized by many misleading defenses of his record and by an unwillingness to be committed to anything more substantive than general agreement that there was a disinvestment problem in the city. McKinney's most disturbing ploy was to expand the definition of the inner city to include several wealthy communities with property values at least doubling those in the true inner city. Of course this dramatically improved his record. When questioned on his record or his plans for FHLBB McKinney was evasive and reticent although not lacking in rhetoric.

After those opposing the nomination testified, many questions remained unresolved and the majority of the committee expressed their reservations to CFA. The evening before the committee vote, Sen. Riegle (D-Mich.) set up a meeting between Ralph Nader and McKinney for his own benefit as well as for Sen. Stevenson (D-Ill.). (Nader was the only remaining vocal opponent of McKinney who had not met with

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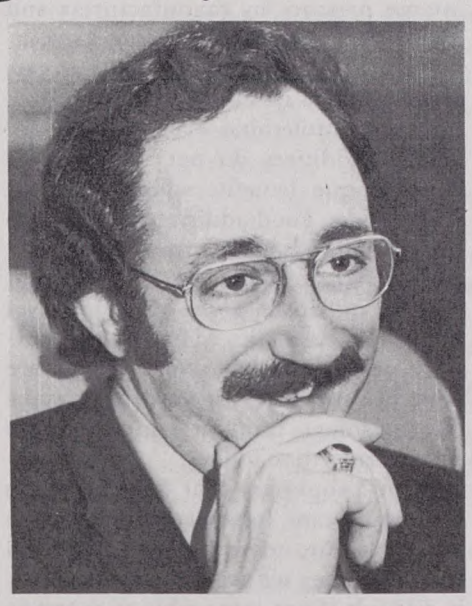
Pittle Reappointment to CPSC Strongly Urged by CFA

There is a recurring debate over the merits and progress of the Consumer Product Safety Commission (CPSC) but among consumerists there is no debate as to the high quality performance of one of its five Commissioners, R. David Pittle.

When Pittle was named to the Commission in 1973, he was the first and only regulator to come out of the consumer movement in almost a decade. As president of Pittsburgh's Alliance for Consumer Protection he had moved that organization from a handful of local volunteers to one of the most effective, nonprofit consumer organizations in the country. When his nomination was announced, CFA members were enthusiastic and supportive. Pittle clearly met the standard set by CFA's membership in evaluating nominees—"a demonstrated sensitivity to the public interest, independence of action, dedication to the furtherance of the role of the agency as well as knowledge of the subject field." Throughout



CPSC Commissioner David Pittle

his tenure at the CPSC Pittle has never deviated from that high standard. In addition to his direct knowledge of consumerism, Pittle served as Assistant Professor of Electrical Engineering and Public Affairs at Carnegie-Mellon University prior to his nomination.

Since joining the Commission, Pittle has represented the consumer viewpoint with courage, enthusiasm, imagination and expertise. He has been by far the Commission's most articulate and active spokesperson for the public interest. In addition, Pittle has consistently concerned himself with the larger question of the role of government regulation in the field of health and safety and in the need for active public participation in the decision-making process.

On several occasions, Pittle has testified in both houses of Congress on the value of consumer participation in the regulatory process. In a recent speech Pittle noted that "far too often complex decisions are made *for* the public rather than *with* the public . . . consumers need to thrust themselves into regulatory decision-making with new stamina and determination."

Largely as a result of Pittle's steady

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Speak Out!

Saccharin Ban: Case Study of Our Food Laws

By Anita Johnson
Attorney
Public Citizen
Health Research Group

Senator Edward Kennedy is sponsor and promoter of a bill that keeps saccharin on the market as a food additive. He has also announced that he may support a change in the food additives law which would allow the Food and Drug Administration (FDA) to permit hazardous additives when FDA (with the help of the food industry) decides the benefits exceed the hazards. Both measures will undermine long-established principles of food safety and should be opposed.

No food additive offers a unique benefit important enough to expose the entire population—young and old, healthy and sick—to a health risk, particularly if that risk is cancer. In the rare case where a real as opposed to cosmetic benefit is provided by a toxic additive, it should be provided by a safe alternative.

The FDA proposed saccharin ban is an excellent case study of the value of our food additives laws as they now stand. It was based on animal evidence that saccharin causes cancer.

Animal Studies—Enough Evidence?

The widespread opposition to the ban was apparently due to the false impression that an arbitrary food law forced

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an arbitrary ban on the basis of a single, bizarre animal study conducted by the Canadian government which showed saccharin to be a hazard only when consumed at the rate of 800 bottles a day. But at least 11 other laboratory studies are consistent with the Canadian results. In six rat studies saccharin caused increased bladder tumors, in some cases at low doses as well as high. Saccharin caused other kinds of cancer such as leukemia and cancer of the female reproductive organs, sometimes at a dose equivalent to human ingestion of 1.6 cans of diet soda per day. Not all of these studies met current scientific standards; together, however, they are impressive support for the results of the Canadian study.

FDA has long relied on animal studies to evaluate the safety of food. The general food law prohibits a food additive known to be toxic in animals or humans, whether or not the additive offers a benefit. The Delaney Clause of the food additives law specifically prohibits adding any amount of a cancer-causing chemical to food, saying, in effect, that any amount of a carcinogen is risky and therefore intolerable as a matter of policy.

The Delaney Clause prohibition applies equally to chemicals which cause cancer in humans and those which cause cancer in animals. Animal tests for cancer are considered important because the basic cell mechanisms, enzymes, etc. are similar in animals and man. Of the 17 chemicals known to cause human cancer, with one exception all cause cancer in animal studies. Although these tests are good at identifying what chemicals are carcinogens, at the present time they cannot determine a safe dose of a carcinogen for humans. Since safe doses cannot be found, the Delaney Clause's absolute prohibition of carcinogens reflects current technology.

Carcinogens: Benefits vs. Risks

A bill has been introduced by Congressman James Martin of North Carolina to repeal the Delaney Clause and allow FDA to approve carcinogens for overriding benefits. If this bill passes, it will ultimately result not only in a more dangerous food supply, but make it harder for the other regulatory agencies, such as the Environmental Protection Agency, to take strong action against carcinogens. While saccharin would probably be banned whether or not there is a Delaney Clause, as a practical matter it does protect FDA from intense pressure by manufacturers and makes sure that FDA does not cave in. It tells all the health agencies that carcinogens are a special class of chemicals which are intolerable, even in low doses.

Food additives do not have important, unique benefits which outweigh serious risks. Food additives are put into processed foods to improve their taste, appearance, texture, smell, and occasionally nutritive value. Most additives are purely cosmetic. Many involve outright deceit. For example, red dyes are added to strawberry ice cream to make the consumer think it contains more strawberries than it does.

Some people say that food additives have important "psychic benefits," such as the pleasure consumers are alleged to feel when they see soda pop dyed red. It is difficult if not impossible to measure psychic benefits. Saccharin proponents have stated that the overriding benefit of saccharin is that it makes a fat teenager or a diabetic teenager able to drink sodas at the corner store without have to count calories. How important is this benefit and how can it be measured? How important is it for consumers to have colored soda rather than clear soda? These psychic benefits are far too nebulous to undertake the risk of cancer.

As regards the medical uses of saccharin, Dr. Kenneth Melman, (Chief, Division of Pharmacology, University of California Medical Center, San Francisco), reporting for a National Institute of Medicine committee, stated in 1974:

> "The data on the efficacy of saccharin or its salts for the treatment of patients with obesity, dental caries, coronary artery disease, or even diabetes has not so far produced a clear picture to us of the usefullness of the drug."

Saccharin As a Health Issue

The American Diabetes Association has condemned the saccharin ban. The Canadian Diabetes Association, on the other hand, supports the ban. According to Dr. Jesse Roth, chief of diabetes at the U.S. National Institutes of Health, "Artificial sweetener has no special place in the diabetic's regime. The saccharin ban is of no consequence." Dr. Max Miller, Professor of Medicine and diabetologist at Case Western Reserve University School of Medicine, states: "Saccharin is a matter of taste and is not essential for health. Diabetics can do just as well without it." For these and other doctors, what diabetics must do is control their intake of calories and carbohydrates. "Sugar is not a sin." Those who crave a soft drink may drink it and cut back on other calories that day. The same is true for dieters. In Dr. Melmon's words, "Artificial sweeteners probably offer no more than convenience benefits."

There is no evidence that artificial sweeteners generally help in dieting, and animal studies have shown that those animals fed artificially-sweetened drinks make up for the fewer calories in the drink by eating more solid food. For saccharin in particular, studies have shown that saccharin lowers blood sugar.

Since the saccharin ban was proposed, human evidence has become available. A study conducted by the National Cancer Institute of Canada indicates that men using saccharin had a 60% greater chance of getting bladder cancer than men who did not. This dramatic finding, first announced June 17, demonstrates once again the value of animal cancer tests and the need to regulate additives as soon as animal results raise the alarm. No nebulous benefit should permit the deliberate introduction of a carcinogen or any other poison into our nation's food supply.

Senator Kennedy and other health legislators, such as Congressman Paul Rogers, Chairman of the House Subcommittee on Health and the Environment, should be strongly urged to support our present food additive laws.

House Bill Promotes Solar Energy Use

Legislation now before the Congress can, if enacted, give birth to a substantial nationwide adaptation of solar energy systems. Congressman Stephen Neal (D-N.C.) has just introduced the Solar Energy Bank Act (H.R. 7800) which promises to spur an unprecedented expansion of solar energy usage.

The Solar Energy Act, creates a $5 billion revolving bank to provide low interest (3 percent) loans for the purchase of solar energy equipment. As the bill now reads, maximum loans of $7500 and $100,000 for residential and commercial dwellings, respectively, may be offered for the purchase of any cost effective solar devices.

Another virtue of the Bank Act is its administrative operation. Instead of breeding new costly and inefficient bureaucracies to distribute the loans, existing institutions will be utilized such as the Federal Housing Administration (FHA), Federal National Mortgage Association (alias "Fannie Mae"), or the Federal Home Loans Mortgage Corporation ("Freddie Mac"). Similarly, as the bank's fund is revolving (or self sustaining), a small portion of its uncommitted capital will be invested in 6 percent notes. The revenue derived thereof, will be used to cover miscellaneous administrative fees. The Act then, incurs no cost to the taxpayer, nor to the treasury.

Low interest loan programs reduce the psychological barrier of initial investment in solar equipment, and minimize the homeowners monthly energy payments. Thus, it serves to have the greatest leverage in making renewable energy systems economically competitive with conventional energy sources. Moreover, the Office of Technology Assessment (OTA) has found that the manufacture of solar equipment is 2 to 8 times more labor intensive than the construction and operation of conventional energy generating facilities. Solar energy then, creates jobs.

Individuals, groups, or organizations interested in actively supporting the legislation, or desiring further information, are urged to contact Suzannah Lawrence at Consumer Action Now (CAN), 317 Pennsylvania Ave. SE, Washington, D.C. 20003; Phone 202/547-1100.

CFA Legislative Wrap-Up

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FTC Amendments

Ever succumbed to an unscrupulous merchant, a wily door-to-door salesman, or found that you owed money for goods sold to you by a fly-by-night firm and never delivered? Ever been taken advantage of by merchants violating government regulations or court orders? If the answer is "yes," your most frequent recourse has probably been to swallow the loss.

Two bills currently being considered by Congress (S. 1288 and H.R. 3816) contain a provision to allow you as an individual or as part of a class to sue when you have been injured because a Federal Trade Commission (FTC) rule or regulation has been violated. Both bills are called the FTC Amendments of 1977 and have been reported favorably by their respective Commerce Committees. Both need vigorous consumer support before floor votes are taken in September to counter heavy business lobbying against them.

At present consumer ability to obtain redress for monetary injury suffered in the marketplace because the FTC Act or FTC regulations have been violated is nil. The road to court is blocked with procedural and institutional barriers. Most disputes would cost the individual consumer more in attorney and other fees than could ever be recovered. Moreover, if consumers want to band together as a class, present law requires that each identifiable class member be given personal notice by mail. In addition, in order to gain entry to Federal court each individual (rather than the class) must have suffered at least $25,000 in losses.

Although the FTC has the authority to promulgate and enforce consumer protection laws, rules, regulations and court orders, it is far from having enough resources to investigate the countless violations which go unpunished and undeterred. The FTC receives more than 60,000 complaints a year, and the cost to consumers of fraudulent and deceptive practices is estimated at $2 billion annually. The proposed Amendments would serve the dual purpose of rectifying damages and deterring businesses from abusing the consumer.

Business opposition threatens to cause Section 7 of the House bill and Section 11 of the Senate bill, which contain the key provisions, to be deleted. Only a series of strong consumer communications to Congress will provide consumers their long overdue day in court.

Agency Accountability Legislation

Final drafting is now taking place on a bill which would expand a citizen's "standing" to challenge government actions in violation of the law. It would reverse recent Supreme Court decisions which have very narrowly defined the "injury in fact" required for standing and would recognize the right of taxpayers to challenge illegal expenditures of tax funds.

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By way of example, during the height of Watergate a number of White House staffers were working full-time for the Committee to Re-elect the President (CREEP) while still taking home their White House salaries. Several citizens filed lawsuits to enjoin the Treasury Department from issuing those paychecks. Yet in every instance the courts ruled that although there had been a violation of the law, the suits be thrown out of court because the plaintiff citizens could not identify what part (if any) of their tax dollar had gone toward payment of the White House salaries and because they could not distinguish themselves from every other citizen of this country.

The bill will probably be introduced shortly after the August recess by Kennedy, Metzenbaum and Ribicoff in the Senate and Harris in the House.

Product Liability

On July 18 CFA's Executive Director Kathleen F. O'Reilly testified before the House Small Business Committee on H.R. 6300, a bill to provide new products liability protection for manufacturers. In her testimony O'Reilly reiterated many of the serious consumer concerns about product liability legislation which she presented in her recent testimony on a similar Senate bill (see June/July newsletter).

Her analysis of the specific provisions of H.R. 6300 contained the following criticisms: 1) The statute of limitations on an injured party's right to sue for product related injuries is unjustified and arbitrary. As with other curtailments of rights of injured parties to recover damages, there is no documented evidence that such an abridgement of plaintiffs' rights will even help those allegedly inflicted by the excessive insurance costs which motivated the drafting of the bill. Even if costs could be reduced through lower insurance premiums, it would be only at the expense of the victims of less safe products. Since most consumers are willing to pay a reasonable amount more for safer products, curtailing their plaintiffs rights is unreasonable and unjustifiable, 2) The provisions which would effectively excuse the manufacturer from any liability for an injury caused by a defective product if the product had been out of the control of the manufacturer for 10 years or if the design was in compliance with Federal or State standards are unfair and discriminate against users of products whose hazards may not become evident for many years after purchase.

O'Reilly concluded that any legislation abridging the rights of an injured party to recover damages or providing for reinsurance for product liability insurers is premature, particularly since the existence of a product liability "crisis" has not been satisfactorily documented and since several important factors, such as the inadequacies of the current jury system and the role of judges in civil litigation, have been largely ignored.

Truth-in-Lending

So called Truth-In-Lending "simplification" legislation is being considered by both the House and Senate (and in many state legislatures as well).

On the Senate side, hearings were held on July 12 and 13 by the Banking Committee's Subcommittee on Consumer Affairs. Mark Silbergeld, Director of Consumer Union's Washington office and CFA board member, testified on behalf of both Consumer Federation and Consumers Union.

In a detailed analysis of various proposals to amend the Truth-In-Lending Act, Silbergeld emphasized the importance of improving Truth-In-Lending through the clarification of disclosures rather than elimination of information which consumers need and deserve. He expressed support for proposals for model disclosure forms, improved public enforcement of the law, restitution to borrowers in certain cases of violations, and dissemination of information about prevailing annual percentage rates in large metropolitan areas.

Other specific amendments supported in the testimony were: disclosure of violations to the consumer involved, and in some cases to the public (after a hearing); greater opportunity for private enforcement of the Act; strengthened enforcement powers for federal regulatory agencies, including cease and desist order authority accompanied by strict civil penalty authority; the inclusion of credit life insurance costs on the finance charge disclosure; tighter definition of "open end" credit transaction to prevent treatment of closed end credit as open end to avoid disclosure requirements; inclusion of the creditors name and address on the disclosure form; and the reimbursement of expenses for plaintiffs successful in exercising recission rights. Silbergeld objected to proposals to amend advertising requirements which have brought an end to bait-and-switch credit advertising unless facts are presented to show that the requirements have actually had substantial detrimental effects. In response to those who insist that disclosures are of little use to consumers because of their complexity, Silbergeld explained that the solution was clarification rather than elimination of this information.

made between cash costs of credit and terms of credit, such as penalties imposed for late or pre-payment, which are actually of great importance to consumers in shopping for and understanding credit arrangements, and suggested that such disclosures would be of much greater use if provided to consumers earlier, when a specific commitment had not yet been made to a particular credit offeror.

The pending bills, Garn's S. 1501, Riegle's S. 1653 and Proxmire's S.1312 in the Senate, and Rosenthal's H.R. 7733 are being considered by the Banking Committee's Consumer Affairs Subcommittee of each house. The bills are the culmination of a current industry outcry against the Truth-In-Lending Act (Sub-Chapter I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601, et. seq.) which was enacted in 1968. Some of the attacks which have been launched, in addition to those discussed in Silbergeld's testimony, together with the consumer response to those criticisms are as follows:

1. *Consumers aren't using Truth-In-Lending disclosures.*

Response The utility and effectiveness of Truth-In-Lending disclosures cannot be measured by sheer numbers of individual consumers actually requesting the information from a lending institution. It just takes one consumer organization or newspaper in a community, for example, to collect data from various lenders disclosed through Truth-In-Lending requirements, and use the information to educate large numbers of consumers on the comparative costs of credit from various lenders. It is also important to note that Truth-In-Lending can only have an optimum effect in a truly competitive market. What good does it do to comparison shop among institutions which all essentially offer the same terms? That is why more competition among institutions will result in more utilization of Truth-In-Lending.

2. *Disclosures regarding the "terms" of credit are already required by many state laws or are in the body of the contract, and therefore shouldn't have to be required by Truth-In-Lending.*

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Consumer Resources

TOWARD A NATIONAL FOOD POLICY by Joe Belden and Gregg Forte, 1976. This 228 page report builds an excellent case for planning as a substitute for free market forces to stabilize farm income and food prices. Planning in relation to the family farm, the environment, and world food issues is also addressed. Cost: $5 from the Exploratory Project for Economic Alternatives, 1519 Connecticut Avenue N.W., Washington, D.C. 20036.

HOLMES AND WATSON SOLVE THE ALMOST PERFECT CRIME . . . LIFE INSURANCE by Peter Spielmann and Aaron Zelman and published by Spielmann-Zelman Publishing Company. This highly readable consumer guide unravels the complexities and pitfalls of purchasing life insurance. The book exposes all the gimmicks and deceptions that are used to trap people into policies they neither want nor need. According to Dean Sharp, formerly of the Senate Antitrust Subcommittee which investigated the matter, "If read by consumers, it should help save them hundreds of millions of dollars in overcharges, and if read by members of Congress and the Federal Trade Commission it should help rekindle the Federal Truth in Life Insurance movement initiated by Philip Hart's S. 2065 in the 94th Congress." Cost: $3.95 plus $.45 postage from the Spielmann-Zelman Publishing Company, Box 23012, Milwaukee, Wisc. 48223.

THE LEAP DIRECTORY MAILING LIST and THE CITIZENS' ENERGY DIRECTORY, both published by the Local Energy Action Program (LEAP) of the Center for Science in the Public Interest, are compiled for action-minded people wanting to tackle the energy crisis within their communities. The 105-page *LEAP Directory Mailing List* is a comprehensive listing of the people and organizations working on clean, renewable, "alternative" energy sources. It contains the names and addresses of more than 3,000 citizen groups, product manufacturers, research institutes, government agencies, consultants, and equipment distributors arranged in zip-coded order with 33 names per page for easy copying onto sheets of standard mailing labels. The 150-page *Citizens' Energy Directory* offers detailed resource information on alternative energy sources from approximately 500 organizations, organized by state and indexed by area of expertise and type of organization. COST: $25 for the *LEAP Directory Mailing List,* $10 for the *Citizens' Energy Directory,* $30 for both, to LEAP Directory, 1757 "S" Street, N.W., Washington, D.C. 20009.

EPSDT—DOES IT SPELL HEALTH CARE FOR POOR CHILDREN? a report on the largest federal health program for children—the Early and Periodic Screening, Diagnosis and Treatment program of Medicaid (EPSDT). Recently completed by the Children's Defense Fund of the Washington Research Project, Inc., it includes findings from a 2-year study based on national data, as well as on field visits to communities in 5 states: Michigan, Mississippi, New Jersey, New York, and South Carolina. In addition to examining what the Medicaid/EPSDT program mandates, how it is administered, how it is currently working, and its present inadequacies, the report contains recommendations for improving EPSDT and for designing an effective national health insurance program. Cost: $4.00 plus postage and handling costs ($2.00 for first-class, $1.00 for third-class) from the Children's Defense Fund, 1520 New Hampshire Avenue, N.W., Washington, D.C. 20036. Copies may be ordered in bulk at reduced rates by calling 202-483-1470.

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Response It is doubtful that any disclosures are required by all states or required in similar language by those that do require disclosure. Disclosures in the body of the contract are usually difficult to find and often incomprehensible to the consumer.

3. *Truth-In-Lending claims are raised by consumers as a substitute for more substantive claims.*

Response It is true that other claims such as breach of warranty, fraud and harassment frequently accompany Truth-In-Lending claims and Lending claims are often heard first, leading to the prompt settlement of the entire claim. The fact that Truth-In-Lending claims are much more easily proven and disposed of than other claims, however, does not argue against their merit but rather suggests that more effective remedies are necessary for other "substantive" claims.

4. *Itemization of finance charges is unnecessary and should be eliminated.*

Response Such itemization (including, for example, brokers' fees, finders fees, or insurance charge) does have an important function. By disclosing these costs which are the most negotiable or avoidable all together, the consumer benefits from less expensive credit than might be available elsewhere.

5. *Truth-In-Lending has overburdened the courts.*

Response Despite cries that Truth-In-Lending is choking industry with law suits, Truth-In-Lending cases, in fact, represented only 0.3% to 1% of cases filed in federal district court in 1976. Moreover, the 2,147 Consumer Credit Protection Act (which includes many provisions in addition to Truth-In-Lending) cases filed in FY1976 were less than 2% of all civil cases and represented a 4% *decrease* from the previous year. The federal court response has been a general recognition of consumer rights and the need for their vigorous protection.

Clinical Laboratories Improvement Act

On July 28 the Senate passed by voice vote the Clinical Laboratories Improvement Act of 1977. The Act will require approximately 14,000 independent and hospital-based laboratories and 50,000-80,000 private physician office laboratories to meet minimum national standards both as to facilities and personnel. The House version of the bill is scheduled for mark-up after the August recess. CFA will lobby for passage of the same strengthening amendments adopted by the Senate. (See June-July CFA NEWS).

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