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[3/27/75]

D R A F T

NOTES FOR TALKING TO CABINET MEMBERS

The Consumer Advocate Bill discussed yesterday at the Cabinet Meeting, S.200, may be reported out right after the Congressional Recess.

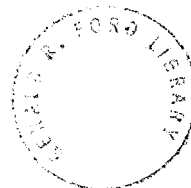
The President has asked the Domestic Council to develop alternatives.

I am sending over by messenger today, a copy of S.200, and a budget bureau summary of the bill.

Section 6, beginning on Page 12 of the bill specifically authorizes the Consumer Advocacy Agency to intervene in behalf of a consumer's interest ^{it,} ~~if~~ he can ~~define~~/in your department's proceedings and activities.

This bill has tremendous support in the Senate and probably will have in the House.

The President has directed the Domestic Council to develop alternatives.



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2

2. One thing we need to know is what specific efforts you are making now to better represent the consumer in your department's decisions and activities?

3. ~~Secondly~~, what are additional efforts you might take to better represent the consumer in your department's decisions and activities?

4. ~~Thirdly~~, what regulatory reforms would you suggest to assist the consumer?

We are trying to get your ideas to the President before he leaves on Saturday.

It would be very helpful to us if you could have your thoughts on these three points ^{either by phone or memo -} back to us by 3:00 p.m. tomorrow afternoon, ^{FRIDAY.}



THE WHITE HOUSE

WASHINGTON

March 27, 1975

Dear (Cabinet Member):

As a follow up to our conversation today, here is a copy of the Consumer Advocate Bill, S.200, and a summary of the bill.

The President has asked the Domestic Council to develop alternatives to the bill, and we would like to get your ideas to the President before he departs on Saturday.

Accordingly, could I please have your thoughts - by phone or memo - on the following three points by 3:00 p.m. tomorrow afternoon - Friday, March 28?

1. We need to know what specific efforts you are making now to better represent the consumer in your department's decisions and activities?
2. What additional efforts could you take to better represent the consumer in your department's decisions and activities?
3. What regulatory reforms would you suggest to assist the consumer?

Many thanks.

Sincerely,

James M. Cannon
Assistant to the President
for Domestic Affairs

Honorable _____

Attachments



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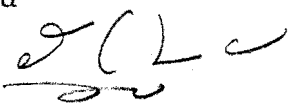


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Assistant to the President
for Domestic Affairs



Enclosures

The Honorable William E. Simon
Secretary of the Treasury
Department of the Treasury
15 th and Pennsylvania Avenue
Washington, D.C. 26220

Attention: Mr John Gartland

The Honorable Edward H. Levi
Attorney General
Department of Justice Room 5111
Constitution and Tenth Streets, N.W.
Washington, D.C. 20530

The Honorable Rogers C.B. Morton
Department of the Interior Room 6151
C Street between 18th and 19th Streets
Washington, D.C. 20240

ATTENTION: Mr. John Whitaker

The Honorable Earl L. Butz
Secretary of Agriculture
Room 200 A Administration
14th and Independence Avenue S.W.
Washington, D.C. 20250

The Honorable John K. Tabor
Acting Secretary of Commerce
Department of Commerce
14th Street between Constitution and E. Streets
Room 5425
Washington, D.C.

The Honorable John T. Dunlop
Secretary of Labor
Department of Labor Room 3136
14th and Constitution Avenue N.W.
Washington, D.C. 20210

The Honorable Casper W. Weinberger
Secretary of Health, Education, and Welfare
330 Independence Avenue S.W.
Washington, D.C.



The Honorable Carla Anderson Hills
Secretary of Housing and Urban Development
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

The Honorable William T. Coleman
Secretary of Transportation
Department of Transportation
400 Seventh Street, S.W. Room 10000
Washington, D.C. 20590

The Honorable Frank G. Zarb
Energy Resources Council
Federal Energy Administration Room 3400
Twelvth and Pennsylvania Avenue
Washington, D.C. 20461

The Honorable Russell Train
Administrator Environmental
Protection Agency
401 M Street S.W. Room 1201 West Tower
Washington, D.C. 20460

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Assistant to the President
for Domestic Affairs

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HAND CARRIED BY SPECIAL MESSENGER
Departed JMC's Office 3:40 p.m. Thurs., March 27, 1975

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Secretary of the Treasury
Department of the Treasury
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Washington, D.C. 26220

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330 Independence Avenue S.W.
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page 2

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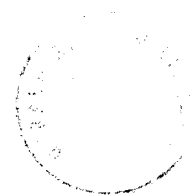
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Honorable _____

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ADDRESSEES:

Honorable William E. Simon
The Secretary of the Treasury
Room 330
Department of the Treasury
Washington, D.C. 20220

Dear Bill:

The Honorable Edward H. Levi
The Attorney General
Room 5115
Department of Justice
Washington, D.C. 20630

Dear Ed:

The Honorable Rogers C.B. Morton
The Secretary of the Interior
Room 6151
Department of the Interior
Washington, D.C. 20240
Attention: John Whitaker

Dear ~~John~~^{Rog:}

The Honorable Earl L. Butz
The Secretary of Agriculture
Room 200-A
Independence Avenue,
Washington, D.C. 20240

Dear Earl:

The Honorable John K. Tabor
~~The~~ Acting Secretary of Commerce
Room 5851
Department of Commerce
Washington, D.C. 20330

Dear John:

The Honorable John T. Dunlop
The Secretary of Labor
Department of Labor
Washington, D.C. 20210

Dear John:

The Honorable Caspar Weinberger
The Secretary of Health, Education
and Welfare
Room 5246, North Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Cap:



or Dear Carla:

The Honorable Carla A. Hills
The Secretary of Housing and Urban Development
Department of Housing and
Urban Development
471 7th Street, S.W.
Washington, D.C. 20410

The Honorable William T. Coleman
The Secretary of Transportation
Department of Transportation
Washington, D.C. 20590

Dear Bill:

The Honorable Frank Zarb
Administrator
Federal Energy Agency

Dear Frank:

Honorable Russell Train
Administrator, Environmental
Protection Agency

Dear Russ:



Commerce Under Sec

THE CABINET

Secretary of the Treasury	William E. Simon
Attorney General	Edward H. Levi
Secretary of the Interior	Rogers ^{<i>John Whiteaker</i>} C. B. Morton
Secretary of Agriculture	Earl L. Butz
Secretary of Commerce	(Vacant)
Secretary of Labor	John T. Dunlop
Secretary of Health, Education, and Welfare	Caspar W. Weinberger
Secretary of Housing and Urban Development	Carla A. Hills
Secretary of Transportation	William T. Coleman

Administrator, Federal Energy Agency	Frank Zarb
Administrator, Environmental Protection Agency	Russell Train

•THE CABINET OF PRESIDENT GERALD R. FORD
(As of March 1975)

The Vice President, The Honorable Nelson A. Rockefeller
Room 275, Old Executive Office Building
Washington, D. C. 20500

The Secretary of State, The Honorable Henry A. Kissinger
Room 7226, Department of State, Washington, D. C. 20520

The Secretary of the Treasury, The Honorable William E. Simon
Room 330, Department of the Treasury, Washington, D. C. 20220

The Secretary of Defense, The Honorable James R. Schlesinger
The Pentagon, Washington, D. C. 20301

The Attorney General, The Honorable Edward H. Levi
Room 5115, Department of Justice
Washington, D. C. 20630

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Room 6151, Department of The Interior, Washington, D. C. 20240

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20201

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Department of Housing and Urban Development, 471 7th Street, S. W.,
Washington, D. C. 20410

The Secretary of Labor, The Honorable William T. Coleman
Department of Transportation, Washington, D. C. 20590

S. 200

IN THE SENATE OF THE UNITED STATES

JANUARY 17, 1975

Mr. RIBICOFF (for himself, Mr. PERCY, Mr. JAVITS, Mr. MAGNUSON, Mr. CRANSTON, Mr. MOSS, Mr. WEICKER, Mr. ABOUREZK, Mr. BAYH, Mr. BIDEN, Mr. BROOKE, Mr. CASE, Mr. CLARK, Mr. CULVER, Mr. FORD, Mr. GRAVEL, Mr. GARY W. HART, Mr. PHILIP A. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HUMPHREY, Mr. INOUE, Mr. JACKSON, Mr. KENNEDY, Mr. LEAHY, Mr. MATHIAS, Mr. MCGEE, Mr. MCGOVERN, Mr. MONDALE, Mr. MUSKIE, Mr. NELSON, Mr. PASTORE, Mr. PROXMIRE, Mr. STAFFORD, Mr. STEVENSON, Mr. STONE, Mr. TUNNEY, and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To establish an independent consumer agency to protect and serve the interest of consumers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Consumer Protection Act
4 of 1975".

STATEMENT OF FINDINGS AND PURPOSES

6 SEC. 2. (a) The Congress finds that the interests of
7 consumers are inadequately represented and protected within
8 the Federal Government; and that vigorous representation



1 and protection of the interests of consumers are essential to
 2 the fair and efficient functioning of a free market economy.
 3 Each year, as a result of this lack of effective representation
 4 before Federal agencies and courts, consumers suffer per-
 5 sonal injury, economic harm, and other adverse consequences
 6 in the course of acquiring and using goods and services
 7 available in the marketplace.

8 (b) The Congress therefore declares that—

9 (1) A governmental organization to represent the
 10 interests of consumers before Federal agencies and courts
 11 could help the agencies in the exercise of their statutory
 12 responsibilities in a manner consistent with the public interest
 13 and with effective and responsive government. It is the
 14 purpose of this Act to protect and promote the interests
 15 of the people of the United States as consumers of goods
 16 and services which are made available to them through
 17 commerce or which affect commerce by so establishing an
 18 independent Agency for Consumer Advocacy.

19 (2) It is the purpose of the Agency for Consumer
 20 Advocacy to represent the interests of consumers before
 21 Federal agencies and courts, receive and transmit consumer
 22 complaints, develop and disseminate information of interest
 23 to consumers, and perform other functions to protect and
 24 promote the interests of consumers. The authority of the
 25 Agency to carry out this purpose shall not be construed to

1 supersede, supplant, or replace the jurisdiction, functions, or
 2 powers of any other agency to discharge its own statutory
 3 responsibilities according to law.

4 (3) It is the purpose of this Act to promote protection
 5 of consumers with respect to the—

6 (A) safety, quality, purity, potency, healthfulness,
 7 durability, performance, repairability, effectiveness, de-
 8 pendability, availability, and cost of any real or personal
 9 property or tangible or intangible goods, services, or
 10 credit;

11 (B) preservation of consumer choice and a com-
 12 petitive market;

13 (C) prevention of unfair or deceptive trade
 14 practices;

15 (D) maintenance of truthfulness and fairness in the
 16 advertising, promotion, and sale by a producer, distrib-
 17 utor, lender, retailer, or other supplier of such property,
 18 goods, services, and credit;

19 (E) furnishing of full, accurate, and clear instruc-
 20 tions, warnings, and other information by any such
 21 supplier concerning such property, goods, services, and
 22 credit; and

23 (F) protection of the legal rights and remedies
 24 of consumers.

25 (4) This Act should be so interpreted by the executive

1 branch and the courts so as to implement the intent of Con-
 2 gress to protect and promote the interests of consumers; and
 3 to achieve the foregoing purposes.

4 ESTABLISHMENT

5 SEC. 3. (a) There is hereby established as an independ-
 6 ent agency of the United States within the executive branch
 7 of the Government the Agency for Consumer Advocacy. The
 8 Agency shall be directed and administered by an Adminis-
 9 trator who shall be appointed by the President, by and with
 10 the advice and consent of the Senate, for a term coterminous
 11 with the term of the President, not to exceed four years. The
 12 Administrator shall be an individual who by reason of train-
 13 ing, experience, and attainments is exceptionally qualified to
 14 represent the interests of consumers. There shall be in the
 15 Agency a Deputy Administrator who shall be appointed by
 16 the President, by and with the advice and consent of the
 17 Senate. The Deputy Administrator shall perform such func-
 18 tion, powers, and duties as may be prescribed from time to
 19 time by the Administrator and shall act for, and exercise the
 20 powers of, the Administrator during the absence or disability
 21 of, or in the event of a vacancy in the office of, the Adminis-
 22 trator. On the expiration of his term, the Administrator shall
 23 continue in office until he is reappointed or his successor is
 24 appointed and qualifies. The Administrator may be removed

1 by the President for inefficiency, neglect of duty or malfea-
 2 sance in office.

3 (b) No employee of the Agency while serving in such
 4 position may engage in any business, vocation, other em-
 5 ployment, or have other interests, inconsistent with his of-
 6 ficial responsibilities.

7 (c) There shall be in the Agency a General Counsel
 8 who shall be appointed by the Administrator.

9 (d) The Administrator is authorized to appoint within
 10 the Agency not to exceed five Assistant Administrators.

11 POWERS AND DUTIES OF THE ADMINISTRATOR

12 SEC. 4. (a) The Administrator shall be responsible for
 13 the exercise of the powers and the discharge of the duties of
 14 the Agency, and shall have the authority to direct and su-
 15 pervise all personnel and activities thereof.

16 (b) In addition to any other authority conferred upon
 17 him by this Act, the Administrator is authorized, in carrying
 18 out his functions under this Act, to—

19 (1) subject to the civil service and classification
 20 laws, select, appoint, employ, and fix the compensation
 21 of such officers and employees as are necessary to carry
 22 out the provisions of this Act and to prescribe their au-
 23 thority and duties;

24 (2) employ experts and consultants in accordance

1 with section 3109 of title 5, United States Code, and
 2 compensate individuals so employed for each day (in-
 3 cluding traveltime) at rates not in excess of the maxi-
 4 mum rate of pay for Grade GS-18 as provided in section
 5 5332 of title 5, United States Code, and while such ex-
 6 perts and consultants are so serving away from their
 7 homes or regular place of business, pay such employees
 8 travel expenses and per diem in lieu of subsistence at
 9 rates authorized by section 5703 of title 5, United States
 10 Code, for persons in Government service employed in-
 11 termittently;

12 (3) appoint advisory committees composed of such
 13 private citizens and officials of the Federal, State, and
 14 local governments as he deems desirable to advise him
 15 with respect to his functions under this Act, and pay
 16 such members (other than those regularly employed by
 17 the Federal Government) while attending meetings of
 18 such committees or otherwise serving at the request of
 19 the Administrator compensation and travel expenses at
 20 the rate provided for in paragraph (2) of this subsection
 21 with respect to experts and consultants: *Provided, That*
 22 all meetings of such committees shall be open to the
 23 public and interested persons shall be permitted to at-
 24 tend, appear before, or file statements with any advisory

1 committee, subject to such reasonable rules or regula-
 2 tions as the Administrator may prescribe;

3 (4) promulgate, in accordance with the applicable
 4 provisions of the Administrative Procedure Act, title 5,
 5 United States Code, such rules, regulations, and proce-
 6 dures as may be necessary to carry out the provisions of
 7 this Act, and assure fairness to all persons affected by the
 8 Agency's actions, and to delegate authority for the per-
 9 formance of any function to any officer or employee
 10 under his direction and supervision;

11 (5) utilize, with their consent, the services, per-
 12 sonnel, and facilities of other Federal agencies and of
 13 State, regional, local, and private agencies and instru-
 14 mentalities, with or without reimbursement therefor, and
 15 to transfer funds made available under this Act to Fed-
 16 eral, State, regional, local, and private agencies and
 17 instrumentalities as reimbursement for utilization of such
 18 services, personnel, and facilities;

19 (6) enter into and perform such contracts, leases,
 20 cooperative agreements, or other transactions as may
 21 be necessary to carry out the provisions of this Act, on
 22 such terms as the Administrator may deem appropriate,
 23 with any agency or instrumentality of the United States,
 24

1 with any State, or any political subdivision thereof, or
 2 with any person;
 3 (7) accept voluntary and uncompensated services,
 4 notwithstanding the provisions of section 3679 (b) of the
 5 Revised Statutes (31 U.S.C. 665 (b));
 6 (8) adopt an official seal, which shall be judicially
 7 noticed;
 8 (9) establish such regional offices as the Adminis-
 9 trator determines to be necessary to serve the interests
 10 of consumers;
 11 (10) conduct conferences and hearings and other-
 12 wise secure data and expression of opinion;
 13 (11) accept unconditional gifts or donations of
 14 services, money, or property, real, personal, or mixed,
 15 tangible or intangible;
 16 (12) designate representatives to serve or assist on
 17 such committees as he may determine to be necessary to
 18 maintain effective liaison with Federal agencies and with
 19 State and local agencies carrying out programs and activ-
 20 ities related to the interests of consumers; and
 21 (13) perform such other administrative activities as
 22 may be necessary for the effective fulfillment of his duties
 23 and functions.

24 (c) Upon request made by the Administrator, each Fed-
 25 eral agency is authorized and directed to make its services,

1 personnel, and facilities available to the greatest practicable
 2 extent within its capability to the Agency in the performance
 3 of its functions.

4 (d) The Administrator shall prepare and submit simul-
 5 taneously to the Congress and the President, not later than
 6 April 1 of each year beginning April 1, 1976, an annual
 7 report, which shall include a description and analysis of—

8 (1) the activities of the Agency, including its rep-
 9 resentation of the interests of consumers before Federal
 10 agencies and Federal courts;

11 (2) the major Federal agency actions and Federal
 12 court decisions affecting the interests of consumers;

13 (3) the assistance given the Agency by other Fed-
 14 eral agencies in carrying out the purposes of this Act;

15 (4) the performance of Federal agencies and the
 16 adequacy of their resources in enforcing consumer pro-
 17 tection laws and in otherwise protecting the interests of
 18 consumers, and the prospective results of alternative
 19 consumer protection programs;

20 (5) the appropriation by Congress for the Agency,
 21 the distribution of appropriated funds for the current
 22 fiscal year, and a general estimate of the resource re-
 23 quirements of the Agency for each of the next three
 24 fiscal years; and

1 (6) the extent of participation by consumers in
 2 Federal agency activities, and the effectiveness of the
 3 representation of consumers before Federal agencies,
 4 together with recommendations for new legislation, new
 5 budget authority for the Agency, and administrative
 6 actions to deal with problems discussed in the report,
 7 to protect and represent the interests of consumers more
 8 effectively, and to carry out the purposes of this Act.

9 FUNCTIONS OF THE AGENCY

10 SEC. 5. (a) The Agency shall, in the performance of
 11 its functions, advise the Congress and the President as to
 12 matters affecting the interests of consumers; and shall pro-
 13 tect and promote the interests of the people of the United
 14 States as consumers of goods and services made available
 15 to them through the trade and commerce of the United
 16 States.

17 (b) The functions of the Administrator shall be to—

18 (1) represent the interests of consumers before
 19 Federal agencies and courts to the extent authorized by
 20 this Act;

21 (2) conduct and support research, studies, and
 22 testing to the extent authorized in section 9 of this Act;

23 (3) submit recommendations annually to the Con-
 24 gress and the President on measures to improve the

1 operation of the Federal Government in the protection
 2 and promotion of the interests of consumers;

3 (4) obtain information and publish and distribute
 4 material developed in carrying out his responsibilities
 5 under this Act in order to inform consumers of mat-
 6 ters of interest to them, to the extent authorized in
 7 this Act;

8 (5) receive, transmit to the appropriate agencies
 9 and persons, and make publicly available consumer
 10 complaints to the extent authorized in section 7 of
 11 this Act.

12 (6) conduct conferences, surveys, and investiga-
 13 tions, including economic surveys, concerning the needs,
 14 interests, and problems of consumers: *Provided*, That
 15 such conferences, surveys, or investigations are not
 16 duplicative in significant degree of similar activities con-
 17 ducted by other Federal agencies;

18 (7) cooperate with State and local governments
 19 and encourage private enterprise in the promotion and
 20 protection of the interests of consumers;

21 (8) keep the appropriate committees of Congress
 22 fully and currently informed of all the Agency's activi-
 23 ties, when asked or on his own initiative;

24 (9) publish, in language readily understandable by

1 consumers, a consumer register which shall set forth the
2 time, place, and subject matters of actions by Congress,
3 Federal agencies, and Federal courts, and other infor-
4 mation useful to consumers;

5 (10) encourage the adoption and expansion of effec-
6 tive consumer education programs;

7 (11) encourage the application and use of new
8 technology, including patents and inventions, for the
9 promotion and protection of the interests of consumers;

10 (12) encourage the development of informal dis-
11 pute settlement procedures involving consumers;

12 (13) encourage meaningful participation by con-
13 sumers in the activities of the Agency;

14 (14) promote the consumer interests of farmers in
15 obtaining a full supply of goods and services at a fair
16 and equitable price; and

17 (15) perform such other related activities as he
18 deems necessary for the effective fulfillment of his duties
19 and functions.

20 REPRESENTATION OF CONSUMERS

21 SEC. 6. (a) (1) Whenever the Administrator deter-
22 mines that the result of any Federal agency proceeding or
23 activity may substantially affect an interest of consumers, he
24 may as of right intervene as a party or otherwise participate
25 for the purpose of representing an interest of consumers, as

1 provided in paragraph (2) or (3) of this subsection. In
2 any proceeding, the Administrator shall refrain from inter-
3 vening as a party, unless he determines that such interven-
4 tion is necessary to represent adequately an interest of
5 consumers. The Administrator shall comply with Federal
6 agency statutes and rules of procedure of general applicabil-
7 ity governing the timing of intervention or participation in
8 such proceeding or activity and, upon intervening or partic-
9 ipating therein, shall comply with laws and agency rules
10 of procedure of general applicability governing the conduct
11 thereof. The intervention or participation of the Adminis-
12 trator in any Federal agency proceeding or activity shall
13 not affect the obligation of the Federal agency conducting
14 such proceeding or activity to assure procedural fairness to
15 all participants.

16 (2) Whenever the Administrator determines that the
17 result of any Federal agency proceeding which is subject
18 to the provisions of section 553, 554, 556, or 557 of title 5,
19 United States Code, relating to administrative procedure, or
20 which involves a hearing pursuant to the administrative
21 procedural requirements of any other statute, regulation, or
22 practice, or which is conducted on the record after oppor-
23 tunity for an agency hearing, or which provide for public
24 notice and opportunity for comment, may substantially affect
25 an interest of consumers, he may as of right intervene as a



1 party or otherwise participate for the purpose of representing
2 an interest of consumers in such proceeding.

3 (3) With respect to any Federal agency proceeding not
4 covered by paragraph (2) of this subsection, or any other
5 Federal agency activity, which the Administrator determines
6 may substantially affect an interest of consumers, the Ad-
7 ministrator may participate by presenting written or oral
8 submissions, and the Federal agency shall give full consid-
9 eration to such submissions of the Administrator. Such sub-
10 missions shall be presented in an orderly manner and with-
11 out causing undue delay. Such submission need not be
12 simultaneous with that of any other person.

13 (b) At such time as the Administrator determines to
14 intervene or participate in a Federal agency proceeding
15 under subsection (a) (2) of this section, he shall issue
16 publicly a written statement setting forth his findings under
17 subsection (a) (1), stating concisely the specific interest of
18 consumers to be protected. Upon intervening or participat-
19 ing he shall file a copy of his statement in the proceeding.

20 (c) To the extent that any person, if aggrieved, would
21 by law have such right, the Administrator shall have the
22 right, in accordance with the following provisions of this
23 subsection, to initiate or participate in any Federal court
24 proceeding involving a Federal agency action—

25 (1) The Administrator may, as of right, and in the

1 manner prescribed by law, initiate any civil proceeding in
2 a Federal court which involves the review of a Federal
3 agency action that the Administrator determines may sub-
4 stantially affect an interest of consumers. If the Administrator
5 did not intervene or otherwise participate in the Federal
6 agency proceeding or activity out of which such agency
7 action arose, the Administrator, before initiating a proceed-
8 ing to obtain judicial review, shall petition such agency for
9 rehearing or reconsideration thereof, if the statutes or rules
10 governing such agency specifically authorize rehearing or
11 reconsideration. Such petition shall be filed within sixty days
12 after the Federal agency action involved, or within such
13 longer period as may be allowed by applicable procedures.
14 The Administrator may immediately initiate a judicial re-
15 view proceeding if the Federal agency does not finally act
16 upon such petition within sixty days after the filing thereof,
17 or at such earlier time as may be necessary to preserve the
18 Administrator's right to obtain effective judicial review of
19 the Federal agency action. Where the Administrator did not
20 intervene or otherwise participate in the Federal agency
21 proceeding or activity out of which the judicial proceeding
22 arises, the court shall determine whether the Administrator's
23 initiation of such judicial proceeding pursuant to this sub-
24 section would impede the interests of justice.

25 (2) The Administrator may, as of right, and in the

1 manner prescribed by law, intervene or otherwise partici-
 2 pate in any civil proceeding in a Federal court which in-
 3 volves the review or enforcement of a Federal agency
 4 action that the Administrator determines may substantially
 5 affect an interest of consumers.

6 (3) The initiation or other participation of the Ad-
 7 ministrator in a judicial proceeding pursuant to this sub-
 8 section shall not alter or affect the scope of review otherwise
 9 applicable to the agency action involved.

10 (d) When the Administrator determines it to be in the
 11 interest of consumers, he may request the Federal agency
 12 concerned to initiate such proceeding, or to take such other
 13 action, as may be authorized by law with respect to such
 14 agency. If the Federal agency fails to take the action re-
 15 quested, it shall promptly notify the Administrator of the
 16 reasons therefor and such notification shall be a matter of
 17 public record.

18 (e) Appearances by the Agency under this Act shall
 19 be in its own name and shall be made by qualified representa-
 20 tives designated by the Administrator.

21 (f) In any Federal agency proceeding in which the
 22 Administrator is intervening or participating pursuant to
 23 subsection (a) (2) of this section, the Administrator is
 24 authorized to request the Federal agency to issue, and the
 25 Federal agency shall, on a statement or showing (if such

1 statement or showing is required by the Federal agency's
 2 rules of procedure) of general relevance and reasonable
 3 scope of the evidence sought, issue such orders, as are
 4 authorized by the Federal agency's statutory powers, for the
 5 copying of documents, papers, and records, summoning of
 6 witnesses, production of goods and papers, and submission of
 7 information in writing.

8 (g) The Administrator is not authorized to inter-
 9 vene in proceedings or actions before State or local agencies
 10 and courts.

11 (h) Nothing in this section shall be construed to prohibit
 12 the Administrator from communicating with Federal, State,
 13 or local agencies and courts at any time and in any manner
 14 consistent with law or agency rules.

15 (i) Each Federal agency shall review its rules of pro-
 16 cedure of general applicability, and, after consultation with
 17 the Administrator, issue any additional rules which may be
 18 necessary to provide for the Administrator's orderly inter-
 19 vention or participation, in accordance with this section, in
 20 its proceedings and activities which may substantially affect
 21 the interests of consumers. Each Federal agency shall issue
 22 rules determining the circumstances under which the Admini-
 23 strator may be allowed to make simultaneous submissions
 24 under subsection (a) (3) of this section. Any additional

1 rules adopted pursuant to the requirements of this subsection
2 shall be published in proposed and final form in the Federal
3 Register.

4 (j) The Administrator is authorized to represent an
5 interest of consumers which is presented to him for his con-
6 sideration upon petition in writing by a substantial number
7 of persons or by any organization which includes a substan-
8 tial number of persons. The Administrator shall notify the
9 principal sponsors of any such petition within a reasonable
10 time after receipt of any such petition of the action taken or
11 intended to be taken by him with respect to the interest of
12 consumers presented in such petition. If the Administrator
13 declines or is unable to represent such interest, he shall notify
14 such sponsors and shall state his reasons therefor.

15 CONSUMER COMPLAINTS

16 SEC. 7. (a) Whenever the Administrator receives from
17 any person any complaint or other information which
18 discloses—

19 (1) an apparent violation of law, agency rule or
20 order, or a judgment, decree, or order of a State or Fed-
21 eral court relating to an interest of consumers; or

22 (2) a commercial, trade, or other practice which is
23 detrimental to an interest of consumers;

24 he shall, unless he determines that such complaint or infor-
25 mation is frivolous, promptly transmit such complaint or

1 information to any Federal, State, or local agency which has
2 the authority to enforce any relevant law or to take appro-
3 priate action. Federal agencies shall keep the Administrator
4 informed to the greatest practicable extent of any action
5 which they are taking on complaints transmitted by the
6 Administrator pursuant to this section.

7 (b) The Administrator shall promptly notify producers,
8 distributors, retailers, lenders, or suppliers of goods and serv-
9 ices of all complaints of any significance concerning them
10 received or developed under this section unless the Adminis-
11 trator determines that to do so is likely to prejudice or im-
12 pede an action, investigation, or prosecution concerning an
13 alleged violation of law.

14 (c) The Administrator shall maintain a public docu-
15 ment room containing, for public inspection and copying
16 (without charge or at a reasonable charge, not to exceed
17 cost), an up-to-date listing of all consumer complaints of
18 any significance which the Agency has received, arranged
19 in meaningful and useful categories, together with annota-
20 tions of actions taken in response thereto. Unless the Admin-
21 istrator, for good cause, determines not to make any specific
22 complaint available, complaints listed shall be made avail-
23 able for public inspection and copying: *Provided*, That—

24 (1) the party complained against has had a reason-
25 able time to comment on such complaint and such

comment, when received, is displayed together with the complaint;

(2) the agency to which the complaint has been referred has had a reasonable time to notify the Administrator what action, if any, it intends to take with respect to the complaint;

(3) the complaint's identity is to be protected when he has requested confidentiality. Whenever the complainant requests that his identity be protected, or the complaint is unsigned, the Administrator shall place an appropriate designation on the complaint before making it available to the public.

CONSUMER INFORMATION AND SERVICES

SEC. 8. (a) In order to carry out the purposes of this Act the Administrator shall develop on his own initiative, and, subject to the other provisions of this Act, gather from other Federal agencies and non-Federal sources, and disseminate to the public in such manner, at such times, and in such form as he determines to be most effective, information, statistics, and other data including, but not limited to, matter concerning—

(1) the functions and duties of the Agency;

(2) consumer products and services;

(3) problems encountered by consumers generally, including annual reports on interest rates and commer-

cial and trade practices which may adversely affect consumers; and

(4) notices of Federal hearings, proposed and final rules and orders, and other pertinent activities of Federal agencies that affect consumers.

(b) All Federal agencies which, in the judgment of the Administrators, possess information which would be useful to consumers are authorized and directed to cooperate with the Administrator in making such information available to the public.

STUDIES

SEC. 9. The Administrator is authorized to conduct, support, and assist research, studies, plans, investigations, conferences, demonstration projects, and surveys concerning the interests of consumers.

INFORMATION GATHERING

SEC. 10. (a) (1) The Administrator is authorized, to the extent required to protect the health or safety of consumers, or to discover consumer fraud and substantial economic injury to consumers, to obtain data by requiring any person engaged in a trade, business, or industry which he determines may substantially affect an interest of consumers, by general or specific order setting forth with particularity the consumer interest involved and the purposes

1 for which the information is sought, to file with him a report
 2 or answers in writing to specific questions concerning such ac-
 3 tivities and other related information. Nothing in this sub-
 4 section shall be construed to authorize the inspection or
 5 copying of documents, papers, books, or records, or to compel
 6 the attendance of any person. Nor shall anything in this sub-
 7 section require the disclosure of information which would
 8 violate any relationship privileged according to law. Where
 9 applicable, chapter 35 of title 44, United States Code, shall
 10 govern requests for reports under this subsection in the
 11 manner in which independent Federal regulatory agencies are
 12 subject to its provisions.

13 (2) The Administrator shall not exercise the authority
 14 under paragraph (1) of this subsection if the information
 15 sought—

16 (A) is available as a matter of public record; or

17 (B) can be obtained from another Federal agency
 18 pursuant to subsection (b) of this section; or

19 (C) is for use in connection with his intervention in
 20 any agency proceeding against the person to whom the
 21 interrogatory is addressed if the proceeding is pending
 22 at the time the interrogatory is requested.

23 (3) In the event of noncompliance with any interroga-
 24 tories or requests submitted to any person by the Adminis-
 25 trator pursuant to paragraph (1), any district court of the

1 United States within the jurisdiction of which such person
 2 is found, or has his principal place of business, shall issue
 3 an order, on conditions and with such apportionment of costs
 4 as it deems just, requiring compliance with a valid order of
 5 the Administrator. The district court of the United States
 6 shall issue such an order upon petition by the Administrator
 7 or on a motion to quash, and upon the Administrator's car-
 8 rying the burden of proving in court that such order is for
 9 information that may substantially affect the health or safety
 10 of consumers or may be necessary in the discovery of sub-
 11 stantial economic injury to consumers, and is relevant to the
 12 purposes for which the information is sought, unless the per-
 13 son to whom the interrogatory or request is addressed shows
 14 that answering such interrogatory or request will be un-
 15 necessarily or excessively burdensome.

16 (4) The Administrator shall not have the power to re-
 17 quire the production or disclosure of any data or other in-
 18 formation under this subsection from any small business.
 19 For the purpose of this paragraph, "small business" means
 20 any person that (A) together with its affiliates, including
 21 any other person with whom such person is associated by
 22 means of a franchise agreement, does not have assets exceed-
 23 ing \$7,500,000, does not have net worth in excess of \$2,500,-
 24 000, and does not have an average net income, after Federal
 25 income taxes, for the preceding two years in excess of \$250,-

1 000 (average net income to be computed without benefit of
 2 any carryover loss), and (B) has had over the preceding
 3 two years an average number of full-time employees not in
 4 excess of twenty-five. Nothing in this paragraph shall be con-
 5 strued to prohibit the Administrator from requesting the vol-
 6 untary production of any such data or information. Notwith-
 7 standing this paragraph, the Administrator shall have the
 8 power, pursuant to paragraph 1, to obtain information from
 9 a small business if necessary to prevent imminent and sub-
 10 stantial danger to the health or safety of consumers and the
 11 Administrator has no other effective means of action.
 12 The Administrator shall, not later than eighteen months
 13 after the date on which this Act becomes effective, submit
 14 to Congress a detailed report with respect to the effect of the
 15 limitations contained in this paragraph on the purposes of
 16 this Act, for such action as the Congress may deem
 17 appropriate.

18 (b) Upon written request by the Administrator, each
 19 Federal agency is authorized and directed to furnish or allow
 20 access to all documents, papers, and records in its possession
 21 which the Administrator deems necessary for the perform-
 22 ance of his functions and to furnish at cost copies of specified
 23 documents, papers, and records. Notwithstanding this sub-
 24 section, a Federal agency may deny the Administrator ac-
 25 cess to and copies of—

1 (1) information classified in the interest of national
 2 defense or national security by an individual authorized
 3 to classify such information under applicable Executive
 4 order or statutes, and restricted data whose dissemina-
 5 tion is controlled pursuant to the Atomic Energy Act
 6 (42 U.S.C. 2011 et seq.) ;

7 (2) policy and prosecutorial recommendations by
 8 Federal agency personnel intended for internal agency
 9 use only ;

10 (3) information concerning routine executive and
 11 administrative functions which is not otherwise a matter
 12 of public record ;

13 (4) personnel and medical files and similar files the
 14 disclosure of which would constitute a clearly unwar-
 15 ranted invasion of personal privacy ;

16 (5) information which such Federal agency is ex-
 17 pressly prohibited by law from disclosing to another
 18 Federal agency, including, but not limited to, such ex-
 19 pressly prohibited information contained in or related
 20 to examination, operating, or condition reports concern-
 21 ing any individual financial instituton prepared by, on
 22 behalf of, or for the use of an agency responsible for reg-
 23 ulation or supervision of financial institutions ;

24 (6) information which would disclose the financial

1 condition of individuals who are customers of financial
2 institutions; and

3 (7) trade secrets and commercial or financial in-
4 formation described in section 552 (b) (4) of title 5,
5 United States Code—

6 (A) obtained prior to the effective date of this
7 Act by a Federal agency, if the agency had agreed
8 to treat and has treated such information as privi-
9 leged or confidential and states in writing to the Ad-
10 ministrator that, taking into account the nature of
11 the assurances given, the character of the informa-
12 tion requested, and the purpose, as stated by the Ad-
13 ministrator, for which access is sought, to permit
14 such access would constitute a breach of faith by the
15 agency; or

16 (B) obtained subsequent to the effective date of
17 this Act by a Federal agency, if the agency has
18 agreed in writing as a condition of receipt to treat
19 such information as privileged or confidential, on the
20 basis of its reasonable determination set forth in
21 writing that such information was not obtainable
22 without such an agreement and that failure to ob-
23 tain such information would seriously impair per-
24 formance of the agency's function.

25 Before granting the Administrator access to trade secrets

1 and commercial or financial information described in section
2 552 (b) (4) of title 5, United States Code, the agency shall
3 notify the person who provided such information of its in-
4 tention to do so and the reasons therefor, and shall, notwith-
5 standing section 21 (b), afford him a reasonable opportunity,
6 not to exceed ten days, to comment or seek injunctive relief.
7 Where access to information is denied to the Administrator
8 by a Federal agency pursuant to this subsection, the head
9 of the agency and the Administrator shall seek to find a
10 means of providing the information in such other form, or
11 under such conditions, as will meet the agency's objections.

12 (c) Consistent with the provisions of section 7213 of
13 the Internal Revenue Code of 1954 (26 U.S.C. 7213),
14 nothing in this Act shall be construed as providing for or au-
15 thORIZING any Federal agency to divulge or to make known
16 in any manner whatever to the Administrator, solely from an
17 income tax return, the amount or source of income, profits,
18 losses, expenditures, or any particular thereof, or to permit
19 any Federal income tax return filed pursuant to the provi-
20 sions of the Internal Revenue Code of 1954, or copy thereof,
21 or any book containing any abstracts or particulars thereof,
22 to be seen or examined by the Administrator, except as pro-
23 vided by law.

24 LIMITATIONS ON DISCLOSURES

25 SEC. 11. (a) No officer or employee of the Agency

1 shall disclose to the public or to any State or local agency—

2 (1) any information (other than complaints pub-
3 lished pursuant to section 7 of this Act) in a form which
4 would reveal trade secrets and commercial or financial
5 information as described in section 552 (b) (4) of title
6 5, United States Code, obtained from a person and privi-
7 leged or confidential unless the Administrator determines
8 that the release of such information is necessary to pro-
9 tect health or safety; or

10 (2) any information which was received solely
11 from a Federal agency when such agency has notified
12 the Administrator that the information is within the
13 exceptions stated in section 552 (b) of title 5, United
14 States Code, and the Federal agency has determined
15 that the information should not be made available to
16 the public; except that if such Federal agency has spec-
17 ified that such information may be disclosed in a par-
18 ticular form or manner, such information may be dis-
19 closed in such form or manner.

20 (b) The following additional provisions shall govern
21 the release of information pursuant to any authority con-
22 ferred by this Act, except information released through the
23 presentation of evidence in a Federal agency or court pro-
24 ceeding pursuant to section 6—

25 (1) The Administrator, in releasing information

1 concerning consumer products and services, shall deter-
2 mine that (A) such information, so far as practicable,
3 is accurate, and (B) no part of such information is pro-
4 hibited from disclosure by law. The Administrator shall
5 comply with any notice by a Federal agency pursuant
6 to section 11 (a) (2) that the information should not be
7 made available to the public or should be disclosed only
8 in a particular form or manner.

9 (2) In the dissemination of any test results or other
10 information which directly or indirectly disclose product
11 names, it shall be made clear that (A) not all products
12 of a competitive nature have been tested, if such is the
13 case, and (B) there is no intent or purpose to rate prod-
14 ucts tested over those not tested or to imply that those
15 tested are superior or preferable in quality over those
16 not tested.

17 (3) Notice of all changes in, or any additional
18 information which would affect the fairness of, informa-
19 tion previously disseminated to the public shall be
20 promptly disseminated in a similar manner.

21 (4) Where the release of information is likely to
22 cause substantial injury to the reputation or good will of
23 a person, the Administrator shall notify such person of
24 the information to be released and afford him a reason-
25 able opportunity, not to exceed ten days, to comment or

1 seek injunctive relief, unless immediate release is neces-
 2 sary to protect the health or safety of the public. The
 3 district courts of the United States shall have jurisdiction
 4 over any action brought for injunctive relief under this
 5 subsection, or under section 10 (b) (7).

6 (c) In any suit against the Administrator to obtain
 7 information pursuant to the provisions of section 552 of title
 8 5, United States Code, where the sole basis for the refusal to
 9 produce the information is that another Federal agency has
 10 specified that the documents not be disclosed in accordance
 11 with the provisions of subsection (a) (2) of this section, the
 12 other Federal agency shall be substituted as the defendant,
 13 and the Administrator shall thereafter have no duty to defend
 14 such suit.

15 NOTICE

16 SEC. 12. (a) Each Federal agency considering any
 17 action which may substantially affect an interest of consum-
 18 ers shall, upon request by the Administrator, notify him of
 19 any proceeding or activity at such time as public notice is
 20 given.

21 (b) Each Federal agency considering any action which
 22 may substantially affect an interest of consumers shall, upon
 23 specific request by the Administrator, promptly provide
 24 him with—

25 (1) a brief status report which shall contain a

1 statement of the subject at issue and a summary of pro-
 2 posed measures concerning such subject; and

3 (2) such other relevant notice and information, the
 4 provision of which would not be unreasonably burden-
 5 some to the agency and which would facilitate the Ad-
 6 ministrator's timely and effective intervention or partici-
 7 pation under section 6 of this Act.

8 (c) Nothing in this section shall affect the authority
 9 or obligations of the Administrator or any Federal agency
 10 under section 10 (b) of this Act.

11 SAVING PROVISIONS

12 SEC. 13. (a) Nothing in this Act shall be construed to
 13 affect the duty of the Administrator of General Services to
 14 represent the interests of the Federal Government as a con-
 15 sumer pursuant to section 201 (a) (4) of the Federal Prop-
 16 erty and Administrative Services Act of 1949 (40 U.S.C.
 17 481 (a) (4)).

18 (b) Nothing in this Act shall be construed to relieve
 19 any Federal agency of any responsibility to protect and
 20 promote the interests of consumers.

21 (c) Nothing in this Act shall be construed to limit the
 22 right of any consumer or group or class of consumers to
 23 initiate, intervene in, or otherwise participate in any Federal
 24 agency or court proceeding or activity, nor to require any
 25 petition or notification to the Administrator as a condition



1 precedent to the exercise of such right, nor to relieve any
 2 Federal agency or court of any obligation, or affect its discre-
 3 tion, to permit intervention or participation by a consumer
 4 or group or class of consumers in any proceeding or activity.

5 DEFINITIONS

6 SEC. 14. As used in this Act, unless the context other-
 7 wise requires—

8 (1) "Administrator" means the Administrator of
 9 the Agency for Consumer Advocacy;

10 (2) "Agency" means the Agency for Consumer
 11 Advocacy;

12 (3) "agency action" includes the whole or part
 13 of an agency "rule," "order," "license," "sanction,"
 14 "relief," as defined in section 551 of title 5, United
 15 States Code, or the equivalent or the denial thereof, or
 16 failure to act;

17 (4) "agency activity" means any agency process,
 18 or phase thereof, conducted pursuant to any authority or
 19 responsibility under law, whether such process is formal
 20 or informal;

21 (5) "agency proceeding" means agency "rulemak-
 22 ing", "adjudication", or "licensing", as defined in section
 23 551 of title 5, United States Code;

24 (6) "commerce" means commerce among or be-

1 tween the several States and commerce with foreign
 2 nations;

3 (7) "consumer" means any individual who uses,
 4 purchases, acquires, attempts to purchase or acquire, or
 5 is offered or furnished any real or personal property,
 6 tangible or intangible goods, services, or credit for per-
 7 sonal, family, agricultural, or household purposes;

8 (8) "Federal agency" or "agency" means "agency"
 9 as defined in section 551 of title 5, United States Code.
 10 The term shall include the United States Postal Service,
 11 the Postal Rate Commission, and any other authority
 12 of the United States which is a corporation and which
 13 receives any appropriated funds, and, unless otherwise
 14 expressly provided by law, any Federal agency estab-
 15 lished after the date of enactment of this Act, but shall
 16 not include the Agency for Consumer Advocacy;

17 (9) "Federal court" means any court of the United
 18 States, including the Supreme Court of the United
 19 States, any United States court of appeals, any United
 20 States district court established under chapter 5 of title
 21 28, United States Code, the District Court of Guam, the
 22 District Court of the United States Customs Court, the
 23 United States Court of Customs and Patent Appeals, the

1 United States Tax Court, and the United States Court
2 of Claims;

3 (10) "individual" means a human being;

4 (11) "interest of consumers" means any health,
5 safety, or economic concern of consumers involving real
6 or personal property, tangible or intangible goods, serv-
7 ices, or credit, or the advertising or other description
8 thereof, which is or may become the subject of any busi-
9 ness, trade, commercial, or marketplace offer or transac-
10 tion affecting commerce, or which may be related to any
11 term or condition of such offer or transaction. Such offer
12 or transaction need not involve the payment or promise
13 of a consideration;

14 (12) "participation" includes any form of submis-
15 sion;

16 (13) "person" includes any individual, corporation,
17 partnership, firm, association, institution, or public or
18 private organization other than a Federal agency;

19 (14) "State" means each of the several States of
20 the United States the District of Columbia, the Com-
21 monwealth of Puerto Rico, the Virgin Islands, Canal
22 Zone, Guam, American Samoa, and the Trust Territory
23 of the Pacific Islands; and

24 (15) "submission" means participation through the

1 presentation or communication of relevant evidence,
2 documents, arguments, or other information.

3 CONFORMING AMENDMENT

4 SEC. 15. (a) Section 5314 of title 5, United States
5 code, is amended by adding at the end thereof the follow-
6 ing:

7 "(60) Administrator, Agency for Consumer Ad-
8 vocacy."

9 (b) Section 5315 of such title is amended by adding
10 at the end thereof the following:

11 "(100) Deputy Administrator, Agency for Con-
12 sumer Advocacy."

13 (c) Section 5316 of title 5, United States Code, is
14 amended by adding at the end thereof the following new
15 paragraphs:

16 "(135) General Counsel, Agency for Consumer
17 Advocacy."

18 "(136) Assistant Administrators, Agency for Con-
19 sumer Advocacy."

20 EXEMPTIONS

21 SEC. 16. (a) This Act shall not apply to the Central
22 Intelligence Agency, the Federal Bureau of Investigation, or
23 the National Security Agency, or the national security or in-
24 telligence functions (including related procurement) of the

1 Departments of State and Defense (including the Depart-
 2 ments of the Army, Navy, and Air Force) and the military
 3 weapons program of the Energy Research and Develop-
 4 ment Administration, to any agency action in the Federal
 5 Communications Commission with respect to the renewal
 6 of any radio or television broadcasting license, or to a
 7 labor dispute within the meaning of section 13 of the Act
 8 entitled "An Act to amend the Judicial Code and to define
 9 and limit the jurisdiction of courts sitting in equity, and for
 10 other purposes", approved March 23, 1932 (29 U.S.C. 113)
 11 or of section 2 of the Labor Management Relations Act (29
 12 U.S.C. 152), or to a labor agreement within the meaning
 13 of section 201 of the Labor Management Relations Act, 1947
 14 (29 U.S.C. 171).

15 (b) Nothing in this Act shall be construed, and no au-
 16 thority in this Act shall authorize, the Administrator to
 17 intervene in any United States Department of Agriculture
 18 proceeding without considering the consumers' interest in an
 19 adequate supply of food, and without considering the inter-
 20 ests of farmers in maintaining an adequate level of income
 21 and production.

22 SEX DISCRIMINATION

23 SEC. 17. No person shall on the ground of sex be excluded
 24 from participation in, be denied the benefits of, or be sub-
 25 jected to discrimination under any program or activity car-

1 ried on or receiving Federal assistance under this Act. This
 2 provision will be enforced through agency provisions and
 3 rules similar to those already established, with respect to
 4 racial and other discrimination, under title VI of the Civil
 5 Rights Act of 1964. However, this remedy is not exclusive
 6 and will not prejudice or cut off any other legal remedies
 7 available to a person alleging discrimination.

8 FAIRNESS FOR SMALL BUSINESS

9 SEC. 18. (a) It is the sense of the Congress that small
 10 business enterprises should have their varied needs consid-
 11 ered by all levels of government in the implementation of
 12 the procedures provided for throughout this Act.

13 (b) (1) In order to carry out the policy stated in sub-
 14 section (a), the Small Business Administration (A) shall
 15 to the maximum extent possible provide small business en-
 16 terprises with full information concerning the procedures
 17 provided for throughout this Act which particularly affect
 18 such enterprises, and the activities of the various agencies
 19 in connection with such provisions, and (B) shall, as part
 20 of its annual report, provide to the Congress a summary of
 21 the actions taken under this Act which have particularly af-
 22 fected such enterprises.

23 (2) To the extent feasible, the Administrator shall seek
 24 the views of small business in connection with establishing

1 the Agency's priorities, as well as the promulgation of rules
2 implementing this Act.

3 (3) In administering the programs provided for in this
4 Act, the Administrator shall respond in an expeditious man-
5 ner to the views, requests, and other filings by small busi-
6 ness enterprises.

7 (4) In implementing this Act, the Administrator shall,
8 insofar as practicable, treat all businesses, large or small, in
9 an equitable fashion; due consideration shall be given to the
10 unique problems of small business so as not to discriminate
11 or cause unnecessary hardship in the administration or im-
12 plementation of the provisions of this Act.

13 AUTHORIZATION OF APPROPRIATIONS

14 SEC. 19. There are authorized to be appropriated to
15 carry out the provisions of this Act not to exceed \$15,000,-
16 000 for the fiscal year ending June 30, 1976, not to exceed
17 \$20,000,000 for the fiscal year ending June 30, 1977, and
18 not to exceed \$25,000,000 for the fiscal year ending June 30,
19 1978. Any subsequent legislation to authorize appropria-
20 tions under this Act for the fiscal year beginning on July 1,
21 1978, shall be referred in the Senate to the Committee on
22 Government Operations and to the Committee on Commerce.

23 EVALUATION BY THE COMPTROLLER GENERAL

24 SEC. 20. (a) The Comptroller General of the United
25 States shall audit, review, and evaluate the implementation

1 of the provisions of this Act by the Agency for Consumer
2 Advocacy.

3 (b) Not less than thirty months nor more than thirty-
4 six months after the effective date of this Act, the Comp-
5 troller General shall prepare and submit to the Congress a
6 report on his audit conducted pursuant to subsection (a),
7 which shall contain, but not be limited to, the following:

8 (1) an evaluation of the effectiveness of the Agen-
9 cy's consumer representation activities;

10 (2) an evaluation of the effect of the activities of
11 the Agency on the efficiency, effectiveness, and proce-
12 dural fairness of affected Federal agencies in carrying
13 out their assigned functions and duties;

14 (3) recommendations concerning any legislation
15 he deems necessary, and the reasons therefor, for im-
16 proving the implementation of the objectives of this Act
17 as set forth in section 2.

18 (c) Copies of the report shall be furnished to the Admin-
19 istrator of the Agency for Consumer Advocacy, the chairmen
20 of the Senate Committees on Commerce and on Government
21 Operations, and the chairman of the Committee on Govern-
22 ment Operations of the House of Representatives.

23 (b) Restrictions and prohibitions under this Act appli-
24 cable to the use or public dissemination of information by the
25 Agency shall apply with equal force and effect to the General

1 Accounting Office in carrying out its functions under this
2 section.

3 MISCELLANEOUS PROVISIONS

4 SEC. 21. (a) Nothing in this Act shall be construed to
5 limit the discretion of any Federal agency or court, within
6 its authority, including a court's authority under Rule 24 of
7 the Federal Rules of Civil Procedure, to grant the Adminis-
8 trator additional participation in any proceeding or activity,
9 to the extent that such additional participation may not be as
10 of right, or to provide additional notice to the Administrator
11 concerning any agency proceeding or activity.

12 (b) (1) No act or omission by the Administrator or any
13 Federal agency relating to the Administrator's authority
14 under sections 6 (a), (d), (f), (i), and (j), 7, 10, 11, and
15 12 of this Act shall affect the validity of an agency action or
16 be subject to judicial review: *Provided, That*—

17 (A) the Administrator may obtain judicial review
18 to enforce his authority under sections 6 (a), (d), (f),
19 (i), and (j), 10, and 12 of this Act: *Provided, That* he
20 may obtain judicial review of the Federal agency deter-
21 mination under section 6 (f) of this Act only after final
22 agency action and only to the extent that such determi-
23 nation affected the validity of such action;

24 (B) a party to any agency proceeding or a partic-
25 ipant in any agency activity in which the Administrator

1 ... intervened or participated may, where judicial review
2 of the final agency action is otherwise accorded by law,
3 obtain judicial review following such final agency action
4 on the ground that the Administrator's intervention or
5 participation resulted in prejudicial error to such party
6 (or participant based on the record viewed as a whole;
7 and
8 (C) any person who is substantially and adversely
9 affected by the Administrator's action pursuant to sec-
10 tion 6 (f), 10 (a), or 11 of this Act may obtain judicial
11 review, unless the court determines that such judicial
12 review would be detrimental to the interests of justice.

13 (2) For the purposes of this subsection, a determination
14 by the Administrator that the result of any agency proceed-
15 ing or activity may substantially affect an interest of consum-
16 ers or that his intervention in any proceeding is necessary to
17 represent adequately an interest of consumers shall be
18 deemed not to be a final agency action.

19 TRANSFER OF CONSUMER PRODUCT INFORMATION
20 COORDINATING CENTER

21 SEC. 22. (a) All officers, employees, assets, liabilities,
22 contracts, property, and records as are determined by the
23 Director of the Office of Management and Budget to be em-
24 ployed, held, or used primarily in connection with the func-
25 tions of the Consumer Product Information Coordinating

1 Center in the General Services Administration are transferred
 2 to the Agency and all functions of the Administrator of Gen-
 3 eral Services administered through the Consumer Product
 4 Information Coordinating Center are transferred to the
 5 Agency.

6 (b) (1) Except as provided in paragraph (2) of this
 7 subsection, personnel engaged in functions transferred under
 8 this section shall be transferred in accordance with applicable
 9 laws and regulations relating to transfer of functions.

10 (2) The transfer of personnel pursuant to this section
 11 shall be without reduction in classification or compensation
 12 for one year after such transfer.

13 PUBLIC PARTICIPATION

14 SEC. 23. (a) After reviewing its statutory authority and
 15 rules of procedure, relevant agency and judicial decisions, and
 16 other relevant provisions of law, each Federal agency shall
 17 issue appropriate interpretations, guidelines, standards, or
 18 criteria, and rules of procedure, to the extent that such rules
 19 are appropriate and are not already in effect, relating to the
 20 rights of individuals who may be affected by agency action
 21 to—

22 (1) petition the agency for action;

23 (2) receive notice of agency proceedings;

24 (3) file official complaints (if appropriate) with
 25 the agency;

1 (4) obtain information from the agency; and

2 (5) participate in agency proceedings for the pur-
 3 pose of representing their interests.

4 Such interpretations, guidelines, standards, criteria, and rules
 5 of procedure shall be published in proposed and final form in
 6 the Federal Register.

7 (b) Each Federal agency shall take all reasonable meas-
 8 ures to reduce or waive, where appropriate, procedural re-
 9 quirements for individuals for whom such requirements would
 10 be financially burdensome, or which would impede or prevent
 11 effective participation in agency proceedings.

12 (c) Any rules of procedure issued by any Federal
 13 agency pursuant to this section shall be published in a form
 14 and disseminated in a manner that is designed to inform,
 15 and that is able to be understood by, the general public.

16 EFFECTIVE DATE

17 SEC. 24. (a) This Act shall take effect ninety calendar
 18 days following the date on which this Act is enacted, or
 19 on such earlier date as the President shall prescribe and pub-
 20 lish in the Federal Register.

21 (b) Any of the officers provided for in this Act may
 22 (notwithstanding subsection (a)) be appointed in the man-
 23 ner provided for in this Act at any time after the date of the
 24 enactment of this Act. Such officers shall be compensated

1 from the date they first take office at the rates provided for
 2 in this Act.
 3 **SEPARABILITY.**
 4 **SEC. 25.** If any provision of this Act is declared uncon-
 5 stitutional or the applicability thereof to any person or
 6 circumstance is held invalid, the constitutionality and effec-
 7 tiveness of the remainder of this Act and the applicability
 8 thereof to any persons and circumstances shall not be affected
 9 thereby.



94TH CONGRESS
1ST SESSION

S. 200

A BILL

To establish an independent consumer agency to protect and serve the interest of consumers, and for other purposes.

By Mr. RIBICOFF, Mr. PERCY, Mr. JAVITS, Mr. MAGNUSON, Mr. CRANSTON, Mr. MOSS, Mr. WEICKER, Mr. ABOUREZK, Mr. BAYH, Mr. BIDEN, Mr. BROOKE, Mr. CASE, Mr. CLARK, Mr. CULVER, Mr. FORD, Mr. GRAVEL, Mr. GARY W. HART, Mr. PHILIP A. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HUMPHREY, Mr. INOUE, Mr. JACKSON, Mr. KENNEDY, Mr. LEAHY, Mr. MATHIAS, Mr. MCGEE, Mr. MCGOVERN, Mr. MONDALE, Mr. MUSKIE, Mr. NELSON, Mr. PASTORE, Mr. PROXMIRE, Mr. STAFFORD, Mr. STEVENSON, Mr. STONE, Mr. TUNNEY, and Mr. WILLIAMS

JANUARY 17, 1975

Read twice and referred to the Committee on
Government Operations

Listed below are objectionable provisions found in S. 200, the Consumer Protection Act of 1975:

1. Term of Administrator: Section 3(a) states that the Administrator of the Agency for Consumer Advocacy (ACA) can be removed from office only for inefficiency, neglect of duty or malfeasance and that his term is coterminous with that of the President. The result of this provision is to effectively insulate the Administrator of the ACA from oversight by the Administration. S. 707, as introduced in the 93rd Congress, had a similar provision which was deleted from the later versions.

2. Simultaneous Budget Submissions: Section 3(d)(5) would preclude OMB oversight and participation in the formulation of the agency's budget and spending as the provision allows the Administrator to submit agency annual reports and appropriation requests simultaneously to the Congress and to the President.

3. Representation of Consumers: Section 6(a)(1) allows the Administrator to participate or intervene in any action which may affect an interest of a consumer. This should be contrasted with S. 707 which arguably required the Administrator to reach a consensus of competing consumer interests. This provision allows the ACA to selectively pick and choose which consumer interest he will represent. His determinations as to which interest of consumers is to be represented are not reviewable by anyone.

4. Informal Activities: As with last year's S. 707, the ACA under S. 200 would be able to monitor all the informal activities of the various Federal agencies. This is especially true in light of the fact that "agency activity" is defined more broadly in S. 200 than it was defined in S. 707



(S. 707 defined activity as any "agency process or phase thereof conducted pursuant to any authority or responsibility under law, whether such process is formal or informal, but does mean each particular event within such process;..." The underscored portion has been deleted from the definition of agency activity in S. 200.) The affect of ACA involvement in informal activities may very well be to discourage Federal agencies from communicating informally with private enterprise thereby eliminating an important source of information and encouraging regulatory decisions to be made in a vacuum without taking into consideration the problems that businesses face.

5. Dual Prosecution: 6(c)(2) authorizes the ACA to intervene or participate in enforcement proceedings of another Federal agency. This dual prosecution provision is totally inappropriate since it means that a company will have to defend itself in a proceeding with prosecutors representing not only the Federal regulatory agency but also prosecutors representing the ACA. This provision will impact on the recently enacted Warranties/FTC Improvement Act, One provision of this act will allow the FTC to seek civil penalties of up to \$10,000 a day against any person, partnership or corporation which engages in a previously declared unfair or deceptive act or practice. In this regard, officials of the FTC have stated that they will not allow potentially interested parties to intervene in an on-going FTC proceeding to determine that the initial act was in fact unfair and deceptive. Yet the ACA would have full right to intervene in such a proceeding as a dual prosecutor.

6. Judicial Review: Section (c)(1) authorizes the ACA to seek judicial review of any agency action which the Administrator determines in

his discretion may affect an interest of consumers. Where the ACA did not participate below it must file a petition for rehearing or reconsideration. Presently most agencies' Rules of Practice make reconsideration available in limited circumstances. For example, often reconsideration is available if the petitioner can show good reason why it was impossible for him to participate in the original proceeding or can show new evidence or changed circumstances. These circumstances would not be applicable to the ACA under its automatic right to seek reconsideration at its own discretion. Consequently, regulatory agencies would have to change their rules in this respect.

7. Anonymous Consumer Complaints: Section 7(c)(3) authorizes the Administrator of the ACA to make public anonymous consumer complaints. A similar provision was contained in S. 707. Fairness dictates that when a complaint is unsigned it should not be made available to the public.

8. Interrogatories: Section 10(a)(1) authorizes the ACA to issue interrogatories directly to companies whenever the Administrator determines that the information requested is necessary to "protect the safety or health of consumers, or to discover consumer fraud and substantial economic injury to consumers...." Such authority is totally inappropriate for an agency whose primary function is advocacy rather than regulation. Further, this section continues to treat the agency as a regulator in that it makes the Federal Reports Act applicable to the ACA in the exact same manner as independent Federal regulatory agencies. Examination of the safeguards contained in Section 10(a)(2) show then to be totally empty.

S. 200 in Section 10(a)(4) "exempts" small business from ACA interrogatory authority. However, this exemption is not a total one and the ACA is free to intervene when, in its singular discretion, it determines that such information is needed from small businesses to "prevent imminent

and substantial danger to the health or safety of consumers and the Administrator has no other effective means of action." It should be emphasized that this determination is again within the sole discretion of the ACA. Further, the bill authorizes the ACA to affirmatively lobby for the repeal of this provision within 18 months after enactment.

9. Inter-agency Information Gathering: Section 10(b) generally authorizes the ACA to collect information from other government agencies. The Federal regulatory agency may deny ACA access to information under specified conditions which are narrower than the exemptions now found in the Freedom of Information Act. Of particular interest is Section 10(b)(6) which states that the ACA cannot collect information which would disclose financial conditions of individuals who are customers of financial institutions. This is a change from S. 707 which was not limited to individuals. Further, the ACA will be denied access to trade secrets only when the regulatory agency has gained access to such information under a pledge of confidentiality and only if such information would not have otherwise been available to it. Consequently, it would appear that the ACA will be able to acquire trade secrets from any Federal agency that has subpoena authority.

10. Exemptions: Because of the exemptions found in this bill, it can be duly classified as special interest legislation. ~~Exemptions concerning~~
~~that portion of Section 16(a) which exempts all labor disputes from ACA scrutiny~~
~~from the scrutiny of the ACA, on the grounds that broadcast audiences~~
~~are not consumers of broadcast services.~~ Of concern also is the labor exemption found in Section 16(a) which exempts all labor disputes from ACA scrutiny. Although it can be argued that many labor disputes do not involve an interest

of consumers, some obviously do. For example, an illegal secondary boycott has a direct impact on the cost and availability of consumer goods but such a proceeding would be exempt from ACA purview.



Possible Activities for Improving Consumer Representation
In Executive Departments

I. Broaden Hearing Opportunities.

- ... More notice publicity and more encouragement of public to comment.
- ... Extend length of hearings to include all interested participants.
- ... Utilize hearings in important matters even though not required by law.

II. Simplify Comment Procedures.

- ... Make it easy and inexpensive for the public to file written comment.
- ... Have some mechanism for acknowledging receipt and assuring due consideration.

III. Establish Intra-Agency Appeal Process.

- ... Provide a method to insure that all major lower level decisions relating to consumers be reviewed by the Secretary himself.

IV. Provide Assurance of Due Consideration.

- ... Publicize extensively the mechanisms available for consumer input.
- ... Certify that consideration has been given to consumer views prior to exercising discretionary powers.

V. Streamline Consumer Complaint Handling.

- ... Organizationally structure so that it can both:
 - produce substantive responses in reasonable period of time; and
 - provide input at policy level based on information derived from complaints.

THE WHITE HOUSE

WASHINGTON

March 27, 1975

Dear _____:

As a follow up to our conversation today, here is a copy of the Consumer Advocate Bill, S.200, and a summary of the bill.

The President has asked the Domestic Council to develop alternatives for consumer protection, and we would like to get your ideas to the President before he departs on Saturday.

Accordingly, could I please have your thoughts -- by phone or memo -- on the following four points by 3:00 p.m. tomorrow afternoon - Friday, March 28?

1. What specific problems does the bill present to your department?
2. We need to know what specific efforts you are making now to better represent the consumer in your department's decisions and activities?
3. What additional efforts could you take to better represent the consumer in your department's decisions and activities?
4. What regulatory reforms would you suggest to assist the consumer?

Many thanks.

Sincerely,

James M. Cannon
Assistant to the President
for Domestic Affairs

Enclosures

HAND CARRIED BY SPECIAL MESSENGER

Departed JMC's Office 3:40 p.m. Thurs., March 27, 1975

The Honorable William E. Simon
Secretary of the Treasury
Department of the Treasury
15 th and Pennsylvania Avenue
Washington, D.C. 26220

Attention: Mr John Gartland

The Honorable Edward H. Levi
Attorney General
Department of Justice Room 5111
Constitution and Tenth Streets, N.W.
Washington, D.C. 20530

The Honorable Rogers C.B. Morton
Department of the Interior Room 6151
C Street between 18th and 19th Streets
Washington, D.C. 20240

ATTENTION: Mr. John Whitaker

The Honorable Earl L. Butz
Secretary of Agriculture
Room 200 A Administration
14th and Independence Avenue S.W.
Washington, D.C. 20250

The Honorable John K. Tabor
Acting Secretary of Commerce
Department of Commerce
14th Street between Constitution and E. Streets
Room 5425
Washington, D.C.

The Honorable John T. Dunlop
Secretary of Labor
Department of Labor Room 3136
14th and Constitution Avenue N.W.
Washington, D.C. 20210

The Honorable Casper W. Weinberger
Secretary of Health, Education, and Welfare
330 Independence Avenue S.W.
Washington, D.C.

page 2

The Honorable Carla Anderson Hills
Secretary of Housing and Urban Development
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

The Honorable William T. Coleman
Secretary of Transportation
Department of Transportation
400 Seventh Street, S.W. Room 10000
Washington, D.C. 20590

The Honorable Frank G. Zarb
Energy Resources Council
Federal Energy Administration Room 3400
Twelvth and Pennsylvania Avenue
Washington, D.C. 20461

The Honorable Russell Train
Administrator Environmental
Protection Agency
401 M Street S.W. Room 1201 West Tower
Washington, D.C. 20460





DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

March 28, 1975

Subject: Consumer Advocate Bill, S.200

To: James M. Cannon
Assistant to the President for Domestic Affairs

In response to your request of March 27, 1975, attached are two copies of the Department of Agriculture's answers to your questions.

A handwritten signature in black ink, reading "William A. Carlson".

William A. Carlson, Director
Office of Planning and Evaluation

UNITED STATES DEPARTMENT OF AGRICULTURE

Comments on S. 200 and Consumer Representation in USDA1. Impact of S.200 on USDA Programs

S. 200 could impact significantly on over 700 USDA regulatory actions, proceedings and decisions, including such actions as

- CCC commodity supply and price support decisions, and CCC inventory operations
- Commodity procurement and distribution operations under Sec. 32
- Decisions on commodities available and shipped under P.L. 480
- Export promotion, export credit and market development decisions
- Forest Service timber sales and use permits
- Marketing agreement and order rulemaking
- Regulatory decisions and rulemaking proceedings for packers and stockyards regulations
- Decisions regarding commodity grades and standards
- Adjudication under various statutory authorities for licensing, issuance of cease and desist orders, withdrawal of meat and poultry inspection, etc.
- Appointment of advisory committees
- Decisions on food assistance programs (Food Stamps, food distribution, school lunch program, etc.)
- Decisions on plant and animal disease and pest control programs

The adverse effects of the activities of the Agency for Consumer Advocacy would include

- Significant and potentially costly delays in reaching decisions on rules, regulations and program actions
- Possible negation of USDA statutory responsibilities relating to protection of the public and certain industries, with potential danger to health, safety



and food supplies (many USDA actions are extremely time-sensitive, and unwarranted delays or interruptions can negate program objectives -- such as outbreaks of damaging plant and animal diseases, changes in marketing orders or commodity purchases geared to rapidly changing economic events, etc.)

- Duplication and confused lines of responsibilities for consumer representation (e.g., the Secretary of Agriculture represents the interests of farmers in transportation rate-making proceedings, and in other matters involving farmer interest in supplies and prices of purchased inputs; S. 200 would officially authorize the ACA to represent the same interests of farmers.)
- Substantially increased workload, with requirement for increased Federal employment and budgets

2. USDA Actions to Better Represent Consumers

During the past two years USDA has initiated a broad range of actions to improve the opportunities for obtaining informed consumer viewpoints on USDA operations, including

- Established (July 1973) the first full-time consumer affairs specialist reporting directly to the Secretary for any Federal Department
- Initiated consumer-oriented briefings, seminars and conferences on USDA programs, in Washington and the field (typical subjects covered: nutritional labeling, net weight information proposals, milk-marketing orders, export policies, grain reserves, meat marketing margins, etc.)
- Expanded level-of-effort with public information media (TV, Press, Radio, etc.) providing consumer-oriented information kits, TV films and slide sets, special features, reprints, etc.)
- Published special consumer-oriented editions of the annual Agriculture Yearbook
- Conducted a national public opinion survey to measure consumer opinion and understanding about food and agriculture
- Expanded research on food production, food safety and nutrition
- Initiated inflationary impact analyses for a broader range of program decisions to assess potential effects on consumer prices



- Reviewed marketing agreement and order programs, and other regulatory programs to identify those with potential for increasing consumer prices
- Enlisted participation by consumer representatives on advisory committees and task forces (e.g., National Industry Cattle Advisory Committee, Nutrition Standards Task Force, Labeling Standards Advisory Committee)
- Enlisted wider participation by consumers and other interest groups in program planning and decisions on the use of the 187 million acres of National Forests.

3. Additional USDA Administrative Actions Being Considered

- A. Establish an Office of Consumer Affairs in USDA.
- B. Establish a special national public advisory committee to represent consumer viewpoints to the Secretary of Agriculture
- C. Add a consumer representative to selected existing USDA public advisory committees that now include farmer and agribusiness representatives
- D. Review USDA commodity grading and product labeling standards and procedures to assure responsiveness to consumer needs.
- E. Further expand consumer-oriented public information activities.
- F. Improve the administrative processes for obtaining consumer viewpoints in key regulatory and rulemaking proceedings.

4. Possible Regulatory Reforms

- A. Review and revise Federal regulatory policies and procedures that create restrictions, rigidities, and costly inefficiencies in the marketing of agricultural products (e.g., ICC and FTC rules and regulations, labor standards and practices, maritime regulations, etc.).
- B. Establish formal mechanism in the Executive Office of the President to encourage more effective coordination between Federal regulatory agencies.

