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THE WHITE HOUSE

WASHINGTON

March 8, 1975

MR. PRESIDENT:

Dick asked that I send this over for your weekend consideration. It is a long, complex decision memo which you may want to handle one of two ways -- work through the decisions as you read it or read it and hold a meeting early next week for further discussion.

A handwritten signature in black ink, appearing to be "JH Jones", written over the printed name.

Jerry H. Jones
Staff Secretary

THE WHITE HOUSE

WASHINGTON

March 8, 1975

MEMORANDUM FOR THE PRESIDENT

FROM : JIM CANNON *J.C.*
SUBJECT : Consumer/Regulatory Reform Message

At your meeting last week with Virginia Knauer to discuss consumer issues, you directed that she and Bill Baroody work with us in developing options for a possible special message on consumer initiatives and regulatory reform. The following paper presents those options for your decision.

SUMMARY

The proposals that follow have been put together with the objective of providing options for a total package that would serve as a strong Administration alternative to Consumer Protection Agency (CPA) legislation.

Virginia Knauer says that your message could be an opportunity for you to reassert your leadership in the consumer area and highlight what you have already done and are doing for consumers.

The 24 options attached fall into two categories:

- 1) Consumer oriented proposals, e.g.,
 - a) To strengthen the present Office of Consumer Affairs,
 - b) To improve present procedures for determining food and drug safety.
- 2) Regulatory reform proposals, including
 - a) Surface transportation,
 - b) Air transportation,
 - c) Financial institutions,
 - d) Robinson-Patman Act,
 - e) Repeal of Federal laws allowing "fair trade" laws.

Should you decide to go with all or part of this package, we can be ready to send your message to the Hill next week.

The Senate held their last day of hearings on the CPA bill yesterday, and we feel it is important to offer an Administration alternative before the Senate Committee completes its mark-up.

OPTIONS

1. Consumer Representation Act of 1975

At your meeting with Mrs. Knauer you said you would consider her proposal to expand the present Office of Consumer Affairs as an alternative to Administration support of a CPA. The Consumer Representation Act of 1975 would do that in two ways. Title I would statutorily create an Office of Consumer Affairs within the Executive Office of the President. Title II would statutorily establish within each independent agency and executive department an Office of Consumer Representation.

Title I: Statutory establishment of an Office of Consumer Affairs within the Executive Office of the President.

An expanded version of Mrs. Knauer's present office, this agency would perform most of the amicus type functions outlined in the Brown CPA bill. In addition, it would publish a Consumer Register, coordinate the activities of the consumer offices established by Title II in other agencies, and transmit consumer complaints to the appropriate Federal agencies.

On an interim basis, the existing office could be expanded by Executive Order. This would entail a staff increase of 35 and an FY'76 budget increase of \$1.5 million.

Pro: In conjunction with the separate Offices of Consumer Representation, would permit the Office of Consumer Affairs (OCA) to more effectively carry out its duties, and would command strong support from Mrs. Knauer, many consumerists, and business as an alternative to CPA legislation.

Con: Would be a new spending program. Goes against Administration policy of not creating special interest offices in the Executive Office of the President. Also, could run the risk this would not stop CPA legislation, and we could end up with both this office and a CPA.

X

~~X~~

Title II: Statutory establishment of an Office of Consumer Representation within each independent agency and executive department.

These offices, similar to the CAB Consumer Advocate, would have the authority to participate in agency proceedings in the same manner as a private party. Their authority would be granted by agency regulations, with the head of each agency having the responsibility for determining the role of its office. Among their responsibilities, the new offices would ensure that consumer benefit data be considered in the agency decision making process. Finally, they would operate in coordination with the expanded Office of Consumer Affairs.

Pro: Combined with an expanded, amicus OCA, these consumer offices could provide a viable Administration alternative to a CPA. Could provide visible proof of the President's consumer commitment.

Con: Could require sizable increased spending to provide necessary staff. Could have the effect of relieving agency operational units of considering the public interest and risk that the consumer offices be "captured" by vested interests. Same undesirable effects as the previous issue.

Decision

_____ Pro (Marsh, Seidman, Knauer, Baroody,
Lazarus)

~~X~~_____ Con (OMB, CEA, Cannon)

~~X~~_____ Hold for further consideration

2. Consumer Benefit Analysis

Each executive department and independent agency would be responsible for preparing a Consumer Benefit Analysis setting forth the direct and indirect cost and benefits to consumers of proposed legislation and regulations. The consumer representative in each agency would be responsible for seeing that it be considered in decision making.

Pro: Could receive wide political support and be an adjunct to the Inflation Impact Statement.

Con: Could be expensive and could be considered already adequately covered in the Inflation Impact Statement.

Decision

_____ Pro (Marsh, Seidman, Knauer, Baroody, Lazarus)

~~X~~_____ Con (OMB, CEA)

_____ Hold for further consideration

3. Regulatory Reform Commission

Not only would the Administration continue its support for a Regulatory Reform Commission, but also we would expand its mandate to include semi-autonomous agencies, bureaus and departments with regulatory functions. Also, the Commission could be charged with examining agency responsiveness to consumer interests, giving a further reason why a CPA should not be established until the Commission's work is completed.

The Commission proposal would be supplemented by specific regulatory reform proposals you are making in this message.

Pro: Would strengthen both your consumer and regulatory reform programs by linking the two in this manner.

Con: With your specific proposals a Commission could be no longer necessary and could be viewed as an excuse for delay of further reforms.

Decision

X Pro (Marsh, Seidman, CEA, OMB, Knauer, Baroody, Lazarus)

_____ Con

_____ Hold for further consideration

4. Reform of Surface Transportation Regulation

ICC rules and regulations to regulate competition annually cost the consumer an estimated \$4-10 billion. As the result of a four month interagency task force effort, detailed legislative proposals to modify ICC pricing practices, liberalize market entry, exit and licensing restrictions, and eliminate antitrust immunities for both rail and trucking will be ready for submission to Congress by the end of the month.

Pro: Inclusion in this message would cast the issue as a consumer problem, taking transportation regulatory reform out of its normally special interest forum.

Con: Could receive opposition from truckers and teamsters and have some political cost.

Decision

X Pro (Marsh, Seidman, OMB, CEA, Baroody, Knauer, Lazarus)

_____ Con

_____ Hold for further study

5. Air Transportation Regulatory Reform

An Administration task force is currently developing specific legislative reforms to liberalize both CAB pricing practices and entry/exit restrictions and end antitrust immunities for the airline industry. The Administration has already testified on this before the Kennedy subcommittee and indicated that reform legislation would be forthcoming.

Pro: This issue is receiving considerable press attention and inclusion in the message could put the President out in front on this.

Con: Airlines will object to this reform.

Decision

X Pro (Marsh, Seidman, CEA, OMB, Knauer, Baroody, Lazarus)

_____ Con

_____ Hold for further consideration

6. Financial Institutions Act

The Administration is on the verge of resubmitting legislation seeking to remove outdated constraints on the services and rates which banks and savings institutions may offer. Not only would such action benefit the financial institutions and provide much needed credit, it would also give the average consumer a better opportunity to earn an honest return on his savings investment.

Pro: In the current economy, increased savings dividends would be popular with consumers.

Con: This is not a new legislative initiative.

Decision

☒ Pro (Marsh, Seidman, CEA, OMB, Baroody, Knauer, Lazarus)

☐ Con

☐ Hold for further study

7. Announce Legislation to be Submitted to Reform the Robinson-Patman Act

Like "fair trade" laws, the 1936 Robinson-Patman Act denies consumers the benefit of stiff competition in stores by making it difficult for producers to give price breaks they might otherwise offer. Legislation to be proposed by Justice will suggest revisions which preserve a special remedy against anti-competitive price discriminations while eliminating language and interpretations which discourage legitimate price competition. The existing law is patently anti-competitive and anti-consumer. Economists, lawyers, and two Presidential Commissions, are in broad agreement that a thorough revision of the Act is needed.

Pro: Could be seen as pro-consumer action on the part of the President and an example of Presidential leadership in reducing consumer costs.

Con: The proponents of Robinson-Patman will fight any modification of the Act on the grounds that it helps small businesses compete against the advantages of large firms.

Decision

X Pro (Seidman, CEA, Knauer, Baroody, Lazarus)

_____ Con

_____ Hold for further consideration (Marsh, OMB)

8. Provide for Easier Deviation from Food Standards in
Order to Develop New Foods

Legislation would be submitted to amend the Federal Food, Drug, and Cosmetic Act to encourage the marketing of new foods. The issuance of temporary permits to deviate from an accepted food labeling standard would be authorized while public acceptance of the new product is being evaluated.

Pro: Could encourage further development of new, less expensive food products.

Con: Administrative authority already exists for FDA to issue temporary deviation permits. Also, this could be interpreted by consumers as encouraging misleading food marketing.

Decision

_____ Pro (CEA, Knauer, Baroody)

_____ Con (OMB, Lazarus)

~~_____~~ Hold for further consideration (Marsh)

9. Establish Intergovernmental Task Force on State and Local Regulatory Reform Leading to a White House Conference

Following the President's October 8 call for a review of State and local regulation and restrictive practices, there has been considerable interest expressed by State and local governments on the types of actions they might take to remove such practices. In the message you could (1) highlight priority areas of concern (i.e. public utility regulation, occupational licensure, etc).; (2) set in motion an Intergovernmental Task Force including State and local officials; (3) announce a willingness to provide a forum for the discussion of these issues and the exchange of information. The latter could be a White House Conference.

Pro: Indicates a cooperative concern to work with State and local officials on this important issue.

Con: Could be inconsistent with allowing States and localities to exercise their own priorities and with your December 4 letter to those officials.

Decision

X Pro (Marsh, CEA, Knauer, Baroody, Lazarus, OMB:
Federal cooperation but not in a task force
or White House Conference

_____ Con

_____ Hold for further study

10. Announce Administration Support for Special Senate
Committee on Regulatory Reform

The Senate has action underway to create a joint Commerce-Government Operations Committee to review Government regulation over a one and a half year period. This body could prove a useful vehicle for airing a number of difficult regulatory issues.

Pro: Permits the President to state that such a group should be a vehicle for change not an excuse for inaction.

Con: Could undermine Administration support for a Regulatory Review Commission. Also, there is a real chance this committee could delay indefinitely consideration of reforms.

Decision

~~X~~ Pro (Seidman, Knauer, OMB: pending establishment
of the Review Commission

Con (CEA, Lazarus)

Hold for further consideration (Marsh, Baroody

11. Propose Legislation to Streamline Hearing Procedures
Under the Federal Food, Drug, and Cosmetic Act

The Administration could submit legislation to amend the Federal Food, Drug, and Cosmetic Act so that the hearing process is accelerated. In some cases hearings can now drag on for years.

Pro: These prolonged hearings have been criticized by the Administrative Conference of the U.S. and such a proposal would be popular with consumers.

Con: Could be too insignificant an issue for inclusion.

Decision

☒ Pro (OMB: the specifics must be identified by HEW first; Marsh; Seidman; CEA; Baroody; Knauer; Lazarus)

☐ Con

☐ Hold for further consideration

12. Repeal Federal Law Allowing for State Resale Price Maintenance Laws (with fair trade laws)

This proposal would reiterate the Administration's support for Senator Brooke's bill to repeal the Miller-Tydings Act (1937) and the McGuire Act (1952). Generally known as the Resale Price Maintenance Laws or "fair trade" laws, these acts allow a manufacturer to enter into a contract with one buyer at a set price and then allow that agreement to be binding on all other retailers who sell the product in that State. While it has been argued that these laws keep predatory retailers from drawing more than their share of the market by "undercutting" other businesses, in reality the laws have allowed manufacturers to set their prices at an artificially high level. The elimination of these laws should save the consumer between \$1.5 and \$3 billion a year.

Pro: Would be action strongly approved by consumers.

Con: Would be a restatement of earlier Presidential support. Also, because of pending action in many States it could more appropriately be a State issue.

Decision

☒ Pro (Marsh, Seidman, CEA, OMB, Baroody, Knauer, Lazarus)

☐ Con

☐ Hold for further consideration

13. Submit Legislation to Prohibit Pyramid Sales Transactions

The Administration could announce its support for legislation that would provide for the prohibition of pyramid sales transactions (transactions in which the incentive for the buyer of a distributorship is the prospect of monetary gain from the sale of further distributorships) in interstate or foreign commerce or by use of the mails. The SEC would be given regulatory authority to carry out the act.

Pro: Would show the Administration as willing to take action to protect the consumer from schemes such as Koscot, Dare To Be Great, and Holiday Magic.

Con: Could be seen as a regulatory measure in an essentially deregulatory message.

Decision

~~_____~~ X Pro (Seidman, CEA, Knauer, Baroody, OMB, Lazarus)

_____ Con

~~_____~~ X Hold for further consideration (Marsh)

14. Announce Decision on Auto No-Fault Legislation

A Presidential decision paper is being prepared on the no-fault issue. If you should change your position on this, the consumer message would be an appropriate time to announce it.

Pro: No-fault is a major consumer issue and a new position would be favorably received in a consumer message.

Con: Considerable opposition to Federal no-fault remains. Many see it as Federal encroachment upon individual choice and State responsibilities.

Decision

_____ Pro (Seidman, CEA, Knauer, OMB)

~~_____~~ Con (Marsh)

~~_____~~ Hold for further consideration (Baroody, Lazarus)

15. Announce a Review of Antitrust Immunities to be Completed in Ninety Days

In response to an Economic Policy Board request, a task force has been set up in the Executive Branch under the lead of the Justice Department, to review antitrust exemptions in a number of areas. Although specific legislative proposals other than modification of antitrust immunity in air and surface regulation and repeal of the fair trade laws will not be made at this time, the Consumer Message could announce that such antitrust immunities are under review and that further legislative proposals may be forthcoming.

Pro: Would be seen as pro-consumer Presidential leadership in trying to remove exemptions to antitrust actions and reliance on free competition and the marketplace.

Con: Could be seen as just another study.

Decision

X Pro (Baroody, Knauer, Marsh, Seidman, CEA, OMB, Lazarus)

_____ Con

_____ Hold for further consideration

16. Announce Intention to Veto Any Legislation Which
Unnecessarily Raises Prices to the Consumer or Restricts
Production

An appropriate statement could be made of your intention to carefully review legislation and veto any which would result in unnecessary price increases. Your veto of the Cargo Preference legislation last year could be given as an example of your commitment to this policy.

Pro: Would be example of your commitment to protect the interests of consumers.

Con: Could have difficulty agreeing with public on which price increases are necessary and which are unnecessary. Impact on consumers is already a consideration in approving legislation.

Decision

?

~~_____~~ Pro (Seidman, CEA, Baroody, Knauer, OMB: express strong Presidential disapproval of but not veto

_____ Con (Lazarus

_____ Hold for further consideration (Marsh

17. Propose Changes in the Federal Reporting Act and Federal Register to Give the Public Better Notice and Clearer Understanding of Proposed Federal Decisions

The Administration could submit legislation to modify the Federal Reports Act to encourage Federal consumer protection agencies to obtain better survey and marketing data before proposing (or denying) complex regulatory schemes. The legislation would provide for public (consumer) representation in form and survey review by OMB and encourage public representatives to identify needed survey areas. It would also create a public (including media) advisory board to the Director of the Federal Register and give the Director new authority to make the Federal Register a better working and source document.

Pro: Would have pro-consumer endorsement as making rule-making policy more visible.

Con: OMB already has a procedure for soliciting public comment. Also, the purpose of these changes has been addressed in the Inflation Impact Statement's policy.

Decision

X Pro (Marsh, Seidman, Baroody, Knauer)

_____ Con (Lazarus)

X Hold for further consideration (CEA, OMB)

18. Prohibit States and Localities from not Permitting
the Advertising of Prescription Drug Prices

The Administration would submit legislation that would prohibit States and localities from enacting or enforcing any law or regulation which would prohibit or inhibit the posting of prices of prescription drugs.

Pro: Would allow consumers to comparison shop for prescription drugs.

Con: Such Federal dictation of State and local laws could be condemned as heavy handed.

Decision

?

X Pro (Marsh, Seidman, CEA, Baroody, Knauer

Con (Lazarus

X Hold for further consideration (OMB: the details of how this would be enforced are critical

See #1

19. Make Note of the National Appliance and Motor Vehicle Energy Labeling Act of 1975

The National Appliance and Motor Vehicle Energy Labeling Act of 1975 is Title XII of the Administration's Energy Independence Act of 1975. It would authorize the President to require energy efficiency labels on all new major appliances and motor vehicles. This would ensure that consumers are fully apprised of the efficiency of various appliances and motor vehicles and would encourage the manufacture and greater utilization of more efficient products.

Pro: This would demonstrate consumer awareness in our energy program.

Con: Could be criticized as unwarranted Federal Government intervention into the private sector. Would increase costs to consumers.

Decision

☒ Pro (Marsh, Seidman, Baroody, Knauer, Lazarus)

☐ Con (CEA, OMB)

☐ Hold for further consideration

20. Resubmit Drug Identification Act

HEW is preparing to resubmit the Drug Identification Act which would establish a code system for the identification of prescription drugs. Labeling and direct product coding would allow quick identification of drugs in emergencies, and would facilitate prompt medical treatment. This legislation has been pending since at least 1969.

Pro: Would be seen as a pro-consumer initiative.

Con: Could be of some cost to the private sector.

Decision

~~_____~~ Pro (Seidman, Knauer, OMB, Lazarus)

_____ Con

_____ Hold for further consideration (Marsh, CEA, Baroody)

21. Note that the Administration Plans to Resubmit Medical Devices Legislation

The Administration supported legislation submitted to the 93rd Congress that would have allowed FDA to regulate medical devices. Current law does not require manufacturers of medical devices to establish the safety or efficacy of their products before marketing. HEW is planning to resubmit the Administration's bill to this Congress.

Pro: Could be packaged in message as a consumer protection measure.

Con: Could be interpreted as a regulatory measure and out of place in a deregulatory message. Could result in increased costs to consumers.

Decision

X Pro (Seidman, Knauer)

X Con (Marsh, CEA, Lazarus)

_____ Hold for further consideration (Baroody, OMB)

22. Propose Legislation Aimed at Product Testing in the Private Sector -- A Consumer Product Test Methods Act such as Has Been Supported by the National Bureau of Standards

Legislation could be proposed which would allow products to be identified and measured against tests and standards developed by the National Bureau of Standards. The products could be labeled and advertised accordingly, providing the consumer with an additional purchasing tool and the advertiser with a national and objective basis for product comparisons.

Pro: Could stimulate greater price and quality competition, improved product efficiency, and better value comparisons by consumers in the sale of consumer durables.

Con: Could be seen as unwarranted Federal intervention into the private sector; could also have a substantial inflationary impact on the products tested.

Decision

_____ Pro (Seidman, CEA, Knauer)

~~_____~~ X Con (Marsh, OMB, Baroody, Lazarus)

_____ Hold for further consideration

23. Improved Quality Grading Systems of Packaged Food

Direct the Special Assistant to the President for Consumer Affairs to develop a task force with USDA, FDA, and Commerce which would recommend harmonization of grade-labeling systems for packaged and canned fruits, vegetables, jams, meats, poultry, etc. This would be a measure to facilitate consumers value comparison.

Pro: Would be a pro-consumer initiative.

Con: Could be seen as another study.

Decision

~~_____~~ Pro (Marsh, Seidman, Knauer, CEA, Baroody, Lazarus)

_____ Con

_____ Hold for further consideration (OMB: the specifics and costs must be identified)

24. Improve the System for Disseminating Product Recall and Hazardous Information and Follow-up

Concern has been expressed both in the media and in Congress that sufficient product recall information is not getting to the affected consumer. In addition, business is worried that massive paid advertising campaigns might be required. You could direct Mrs. Knauer to chair a task force of the affected agencies such as FDA, the Consumer Product Safety Commission, Transportation, and Agriculture that would explore options for improving recall efforts and to report their findings to you.

Pro: Could be seen as an effort to solve this problem for both consumers and business.

Con: Could be interpreted as another ineffective study.

Decision

☒ Pro (Marsh, Knauer, Seidman, CEA, Baroody, Lazarus)

☐ Con

☐ Hold for further consideration (OMB: anticipated benefits must be identified)

CONCLUSION

Should you feel that there are an acceptable number of items in this package, we will proceed to work with the appropriate agencies in the development of a special message.

DECISION: Draft special message

☒ Approve ☐ Disapprove

Let to Committee concerned.

Call
Cavanaugh and

~~Ask~~

Q

3/5. M2g. 3/6

put w/ consumer package

THE WHITE HOUSE
WASHINGTON

February 24, 1975

MEMORANDUM FOR:

JACK MARSH

FROM:

JERRY H. JONES *[Signature]*

The President has reviewed the attached memorandum and has indicated his choice will be to send a consumer message. Before we go with this, it has been requested that you check to make certain this decision is consistent with what we may have told Senate GOP conservatives and they have been sufficiently consulted. Would you please get back to me on this as soon as possible -- Virginia Knauer's testimony begins Wednesday and she needs the President's decision in preparation.

Thank you.

ops. mtg. on Friday to discuss

3/5 - where did we finally end up w/ this

THE PRESIDENT HAS SEEN. 46

THE WHITE HOUSE

WASHINGTON

February 23, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CAVANAUGH

SUBJECT: CONSUMER PROTECTION LEGISLATION

Attached is a decision memorandum for your consideration on the consumer protection issue. We will probably be setting up a meeting for you with your advisors on this tomorrow.

Jerry Jones
Check w/ March to make
Certain this decision is consistent
w/ whatever we may have told
the Senate GOP concurred - have we
consulted sufficiently w/ them?
DR HAS SEEN
Phil


THE WHITE HOUSE

DECISION

WASHINGTON

February 23, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CAVANAUGH 
SUBJECT: Consumer Protection Legislation

Attached is a memorandum from Jim Lynn seeking your decision regarding (1) an Administration position on Consumer Protection Agency legislation and (2) whether or not to send a message to Congress covering consumer issues.

The Lynn paper also makes the suggestion -- which we concur in -- that you have a meeting to discuss this complex and politically sensitive issue.

BACKGROUND

While no Consumer Protection Agency (CPA) bills have yet been successful in passing both Houses of Congress, support for a consumer agency has steadily increased since 1971. Last March the House passed CPA legislation 293 to 94 and the Senate, after four attempts, was unsuccessful at invoking filibuster cloture, the last attempt failing by only two votes.

Attached is a table outlining the major points involved in the CPA issue and how they are treated by the major proposals.

The Holifield-Horton bill was the version passed by the House last year and opposed by you. In the Senate, a similar bill was the one unable to gain cloture. The Brown Amendments were an attempt to limit Holifield-Horton so as to give the CPA full party standing before many agency proceedings but substantially reduced investigative powers and gave only amicus status before the Federal courts. Although these amendments were defeated by the House, you indicated during the Senate debate last fall that should the Senate amend their bill to include the Brown provisions you could find the legislation much more acceptable. As a Member of Congress in 1971, you voted for a CPA bill along the lines of the Brown amendments.

Finally, the Dole bill was offered as a compromise last fall by Senator Dole. Acceptable to neither the Senate nor the Administration it failed to gain much support.

CURRENT SITUATION

The makeup of the 94th Congress and the departure of several Senators who led the Senate filibuster could result in the early passage of a Consumer Protection Agency bill possibly by such margins as to make a veto unsustainable.

This past week the Senate Government Operations Committee began hearings on CPA legislation although Committee staff tell us an Administration witness will not be invited unless we want to take a position.

At this point, the major CPA proposal is the Ribicoff bill, S.200, and contains all the features objectionable to the Administration in previous CPA proposals. Furthermore, it would also authorize appropriations averaging \$20 million a year and necessitate an employee level in the agency of 600 to 800 people.

CURRENT POSITION

Because the CPA issue is again heating up in Congress and the possibility of swift passage, we thought you would want to review the various options available to the Administration. Not only will pro-consumers be pressing us for our position soon, but so will opponents of any CPA legislation. As you recall, interest in your position has already been indicated by Senator McClure who feels strongly that members of the Senate Select Committee, instrumental in blocking the consumer bill last year, be consulted about any change in Administration policy.

Up to this time the Administration's position has been that it is opposed to any legislation creating a separate Federal consumer agency. Instead, we have maintained that our proposal for a comprehensive review commission of Federal independent regulatory agencies should be enacted and that until that review is completed it is inappropriate to create such a consumer agency. In addition, we have said that the review commission will be charged with addressing the matter of consumer protection in regulatory agency actions.

Options for dealing with the CPA proposals follow, as well as options for how you can best communicate your consumer stand no matter what it may be.

In the Lynn paper the vehicle proposed by Bill Baroody and Virginia Knauer is that of a consumer message. Such a message would provide the Administration with an opportunity to state a number of consumer proposals in the 1976 budget as well as several new ones and would provide a counterforce to the argument that the Administration is anti-consumer. In the message you could announce that you would or would not support a Consumer Protection Agency. In the latter case, you could then explain your proposal for regulatory reform and the necessity for such reform to precede the creation of any consumer agency.

Since the completion of the Lynn memo, however, we have developed an alternative to the consumer message. We think the interrelated issue of regulatory reform could be a topic for a special message that could also include treatment of the consumer agency.

We see the regulatory reform message as setting forth specific reform proposals rather than establishing a commission to study the problem. Merely calling for a regulatory reform commission would postpone perceived action on this issue and would result in the Administration making proposals very late into the 94th Congress. Instead, a Presidential message could be prepared which puts the regulatory reform problem in context and would be followed by specific proposed legislation for immediate consideration by the Congress and a conference of State and local officials to highlight the need for and various actions now occurring at the State and local regulatory level.

Furthermore, this message would provide a very convenient vehicle for a low key discussion of the Consumer Protection Agency issue. Having outlined the expensive problems of much Federal regulation in the economic area, you could state that a Consumer Protection Agency is not necessary at this time.

This approach would give us a viable package to advocate should you have to veto a CPA bill. While we have not had a chance to further develop this proposal, we wanted you to know of its possibility and that, independent of the consumer issue, we will be putting together options for you to deal with regulatory reform.

OPTIONS

With respect to a CPA bill, we see the options as:

- Option 1. Submit a restricted CPA bill along the lines of the Brown version in the 93rd Congress -- largely an amicus agency.
- Pro: Could give us a positive position and improve chances for restricting CPA legislation in Congress.
- Con: Could alienate CPA opponents by changing your position at this time and contradict your policy of no new spending programs this year.
- Option 2. Do not take a public position on CPA, but informally encourage Senator Dole and others to take the lead in working for a CPA bill like the Brown version.
- Pro: Could avoid a Presidential commitment until support for a restricted bill is assessed.
- Con: Would probably be difficult to maintain an informal position for very long.
- Option 3. Do not communicate an Administration position -- either formally or informally -- at this time.
- Pro: Allows maximum flexibility.
- Con: Failure to take a public position at this time could be criticized by both consumer supporters and opponents.
- Option 4. Indicate Administration opposition to CPA legislation and threaten a veto. Also indicate that our regulatory reform initiatives -- either a commission or specific proposals -- will address the matter of consumer protection.
- Pro: Would be supported by those who feel a CPA is the wrong way to protect consumers.
- Con: Could have the Administration characterized as anti-consumer if no CPA is supported.

Your options for a special message include:

Option 1. Submit a consumer message.

Pro: Could put the Administration on record as having a number of consumer proposals to counter the need for a CPA.

Con: Many of the items that would be in a message have been proposed before and could be attacked as relatively minor compared to a CPA. Also, could be inconsistent with the Administration's opposition to new spending programs and new Federal personnel.

Option 2. Do not submit a consumer message but instead include the consumer issue in a regulatory reform message.

Pro: Would give us a package of immediate proposals to stand by in any legislative debate on a CPA.

Con: Could be criticized as giving insufficient attention to popular consumer issues.

DECISION

(1) CPA legislation:

_____ Option 1 -- Submit a restricted CPA bill.

Knauer (favors something closer to Dole bill in 93rd Congress)

_____ Option 2 -- Work informally for restricted CPA.

_____ Option 3 -- Do not take position, formally or informally.

Secretary Weinberger (or Option 4)

Buchen (decide on CPA in context of consumer message)

_____ Option 4 -- Indicate opposition to any CPA proposal.

Secretary Weinberger (or Option 3)

Baroody (if consumer message goes forward)

OMB

Cavanaugh

(2) Special message:

NR 1

_____ Option 1 -- Send a consumer message.

Secretary Weinberger

Marsh

Baroody

Buchen

Knauer

_____ APPROVE

_____ DISAPPROVE

_____ Option 2 -- Develop further the idea of sending
a regulatory reform message that
covers your consumer position.

Cavanaugh

(This proposal has not yet been staffed to your
other advisers.)

_____ APPROVE

_____ DISAPPROVE

A



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DECISION

FEB 21 1975

MEMORANDUM FOR THE PRESIDENT

SUBJECT: A Consumer Message and Administration
Position on a Consumer Protection Agency

The Senate Government Operations Committee began hearings this week on Consumer Protection Agency (CPA) legislation. The Committee staff have told us that an Administration witness will not be invited unless we indicate we want to take a position.

Because of the complexity of the issue and its political sensitivity, I believe it would be useful for you to have a meeting to discuss this issue.

This memorandum presents several options for your decision on (1) whether or not to send a consumer message to Congress and (2) an Administration position on Consumer Protection Agency legislation.

A Consumer Message. Bill Baroody and Virginia Knauer favor your submitting a consumer message as soon as possible, no matter what position the Administration takes on CPA. They propose that such a message stress regulatory reform, affirming your support for measures which could include:

- the legislation submitted by the Administration to establish a Commission to review the activities of regulatory agencies, and legislation which will be submitted to reform surface and air transportation regulation and to reform financial institutions;
- the establishment of individual consumer advocacy offices in each Federal agency - if the consumer message does not endorse a CPA bill;
- various legislative proposals: repeal Federal laws allowing State resale price maintenance laws, for which you have already announced support; prohibit pyramid sales; improve the regulation of foods, drugs, cosmetics and other products;

- various Executive Branch task forces which are now considering consumer-oriented reforms in pricing and other trade practices;
- nonlegislative proposals concerning--among other things--home appliances, life cycle costs of autos, consumer awareness of product resales, and unit pricing;
- a new requirement for "Consumer Benefit Analyses"--along the lines of inflation impact statements--to be applied to all proposed legislation and regulations;
- a new program of Federal grants for upgrading of local small claims courts and other consumer complaint handling mechanisms; and
- the statutory establishment of the Office of Consumer Affairs (OCA) in HEW, or expansion by Executive Order of OCA to assume an amicus role.

According to Mrs. Knauer, the costs of these proposals "would be principally enforcement costs." There would however, be significant additional costs if a new grant program for small claims courts were established or if new personnel were added to Federal agencies to form consumer advocacy offices.

Administration Position on CPA Legislation. The House passed CPA legislation last March by a vote of 293 to 94. The Senate failed to pass a stronger bill after four attempts at filibuster cloture were defeated, the last by only two votes. The departure of Senator Ervin and five other Senators who led the Senate filibuster, as well as the makeup of the new Congress, are likely to result in passage of a CPA bill, unless the Administration intervenes successfully. Even if you choose to oppose CPA legislation, the chances are that a bill will pass and that a veto cannot be sustained.

The current CPA bill in the Senate authorizes appropriations averaging \$20 million a year. The new agency would probably employ 600 - 800 people. To oppose the legislation on the basis that it represents a new Federal spending program would not be inconsistent with other Administration positions.

CPA is a "fringe" political issue--the far left and far right in Congress disagree strongly with each other on CPA. Hard core support for the measure probably amounts to just 10 - 20% of Congress. Endorsement of CPA would probably alienate an important conservative coalition of Congressmen and Senators. The votes of individual Congressmen and Senators are shown at Attachment A.

Attachment B identifies the differences among major CPA bills. We believe the options are:

Option 1. Submit a bill along the lines of the Brown version in the 93rd Congress--a CPA with limited powers, largely an amicus agency. Virginia Knauer believes we should submit legislation stronger than Brown, closer to the provisions of what was known last year as the Dole compromise.

Option 2. Do not take a public position on CPA, but informally encourage Senator Dole and others to take the lead in working for a CPA with restricted powers along the lines of the Brown version.

Option 3. Do not communicate an Administration position--either formally or informally--at this time.

Option 4. Indicate Administration opposition to CPA legislation and threaten a veto. Also indicate that the Administration has submitted a bill to establish a regulatory agency Review Commission which will address the matter of consumer protection in regulatory agency actions. The consumer message package could be supported as an alternative to a separate CPA.

Major arguments for and against a consumer message and the CPA options are provided at Attachment C.

Decisions:

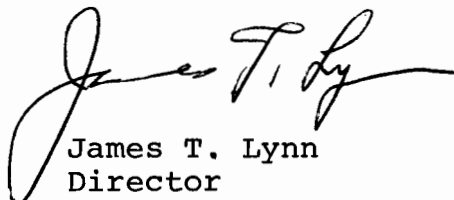
(1) A Consumer Message:

☐ Prepare a Consumer Message (Favored by Secretary Weinberger, Baroody, Knauer, Marsh and Buchen).

☐ Do not submit a Consumer Message (Favored by OMB).

(2) CPA Legislation:

- ☐ Option 1 - Submit a restricted CPA bill (Favored by Knauer--who prefers something closer to Dole Bill, 93rd Congress).
- ☐ Option 2 - Work informally for restricted CPA.
- ☐ Option 3 - Do not take position, formally or informally (Favored by Secretary Weinberger (or Option 4), and Buchen (decide on CPA in context of drafting a consumer message)).
- ☐ Option 4 - Indicate opposition to any CPA proposal (Favored by Secretary Weinberger (or Option 3), Baroody (if consumer message package goes forward), and OMB).


James T. Lynn
Director

Attachments

- A. House Vote Passing H.R. 13163
- B. Major Differences in CPA Bills
- C. Options--Submission of a
Consumer Message to Congress
& Admin's Position on CPA
Legislation
- D. Virginia Knauer's Views

House Vote Passing H.R. 13163

April 3, 1974

AYES—293

Albuz	Brinkley	Culver	Grover	Mezvisky	Staggers
Adams	Brooks	Daniels.	Gude	Mills	Stanton.
Addabbo	Broomfield	Dominick V.	Gunter	Minish	J. William
Alexander	Brotzman	Danielson	Gayer	Mink	Stanton.
Anderson,	Brown, Calif.	Davis, S.C.	Hatfield	Mitchell, Md.	James V.
Calif.	Brown, Mich.	Delaney	Hanley	Mitchell, N.Y.	Steed
Anderson, Ill.	Brown, Ohio	Dellenback	Hanna	Mizell	Steele
Andrews, N.C.	Broyhill, N.C.	Dellums	Hanrahan	Moakley	Steelman
Andrews,	Broyhill, Va.	Denholm	Hansen, Idaho	Mollohan	Steiger, Wis.
N. Dak.	Burke, Calif.	Dent	Hansen, Wash.	Morgan	Stokes
Annunzio	Burke, Fla.	Derwinski	Harrington	Moss	Stratton
Arends	Burke, Mass.	Diggs	Harsha	Murphy, Ill.	Stubblefield
Ashley	Burlison, Mo.	Dingell	Hastings	Murphy, N.Y.	Stuckey
Aspin	Burton	Donohue	Hawkins	Murtha	Studds
Badillo	Carney, Ohio	Downing	Hays	Myers	Sullivan
Baralis	Chamberlain	Drinan	Hechler, W. Va.	Natcher	Symington
Barrett	Chisholm	Dulski	Heinz	Nedzi	Talcott
Bell	Clark	du Pont	Helstoski	Nix	Taylor, N.C.
Bennett	Clausen,	Eckhardt	Hicks	O'By	Thompson, N.J.
Bergland	Don E.	Edwards, Calif.	Hillis	O'Brien	Thomson, Wis.
Blagel	Clay	Ellberg	Hinshaw	O'Hara	Thone
Bieber	Cleveland	Erlenborn	Hogan	Owens	Thornton
Bingham	Cohen	Esch	Holifield	Parris	Tiernan
Blatnik	Collier	Evans, Colo.	Holtzman	Patman	Udall
Boggs	Collins, Ill.	Evins, Tenn.	Horton	Patten	Ullman
Boland	Conte	Fascell	Howard	Pepper	Van Deelen
Bolling	Corman	Findley	Hungate	Perkins	Vander Veer
Brademas	Cotter	Fish	Hunt	Pettis	Vauk
Brasco	Coughlin	Flood	Ichord	Pepper	Voysey
Breckinridge	Cronin	Flowers	Jacobs	Pike	Vicent
Foley	McClory	Rosenthal	Johnson, Calif.	Podell	Walsh
Ford	McCloskey	Rostenkowski	Johnson, Colo.	Preyer	Wampler
Fountain	McCormack	Roush	Johnson, Pa.	Price, Ill.	Whalen
Fraser	McDade	Roy	Jones, Ala.	Pritchard	Whitehurst
Frelinghuysen	McFall	Roybal	Jones, Tenn.	Quie	Widnall
Frey	McKay	Ruppe	Jordan	Railsback	Wilson, Bob
Fulton	McKinney	Ryan	Karsh	Randall	Wilson,
Fuqua	McSpadden	St Germain	Kastenmeier	Rangel	Charles, Tex
Gaydos	Maddison	Sarasin	King	Regula	Winn
Gale	Madden	Sarbanes	Koch	Reuss	Wolf
Gibbons	Madigan	Schroeder	Kuykendall	Rhodes	Wright
Gillman	Mallory	Seiberling	Kyros	Riegle	Wyder
Glin	Mara	Shipley	Lagomarsino	Rinaldo	Wyman
Gonzalez	Mathias, Calif.	Shoup	Latta	Robison, N.Y.	Yates
Grass	Matsunaga	Sisk	Leggett	Rodino	Yatron
Gray	Mazoli	Skubitz	Lehrman	Roe	Young, Alaska
Green, Oreg.	Meeds	Slack	Leu	Rogers	Young, Ga.
Green, Pa.	Melcher	Smith, Iowa	Litton	Roncaglio, Wyo.	Young, Ill.
Griffiths	Metcalfe	Snyder	Long, La.	Roncaglio, N.Y.	Young, Tex.
			Long, Md.	Rooney, Pa.	Zablocki
			Lucken	Rose	

NOES—94

Abdnor	Froelich	Passman
Archer	Goldwater	Price, Tex.
Armstrong	Gooding	Quillen
Ashbrook	Gross	Rarick
Baker	Gubser	Roberts
Bauman	Haley	Robinson, Va.
Beard	Hammer-	Rousselot
Bowen	schmidt	Rush
Bray	Henderson	Satterfield
Breaux	Holt	Scherle
Buchanan	Hosmer	Schneebeli
Burgeler	Hudnut	Sebelius
Burleson, Tex.	Hutchinson	Shuster
Byron	Jones, N.C.	Smith, N.Y.
Carter	Kemp	Spence
Casey, Tex.	Ketchum	Steiger, Ariz.
Chappell	Landgrebe	Symms
Clancy	Landrum	Taylor, Mo.
Clayton, Del.	Lott	Teague
Cochran	McCollister	Towell, Nev.
Collins, Tex.	McEwen	Treen
Conable	Mahon	Vander Jagt
Daniel, Dan	Mann	Wagonner
Daniel, Robert	Martin, Nebr.	White
W., Jr.	Martin, N.C.	Whitten
Davis, Ga.	Mathis, Ga.	Wiggins
de la Garza	Mayne	Wyatt
Dennis	Millford	Wyllie
Duncan	Miller	Young, Fla.
Edwards, Ala.	Montgomery	Young, S.C.
Eshelman	Moorhead,	Zion
Fisher	Calif.	
Flynt	Nichols	

NOT VOTING—45

Bevill	Hebert	Rees
Blackburn	Heckler, Mass.	Reid
Butler	Huber	Rooney, N.Y.
Camp	Jones, Okla.	Runnels
Carey, N.Y.	Kazen	Sandman
Cederberg	Kluczynski	Shriver
Conlan	Lujan	Sikes
Conyers	Michel	Stark
Crane	Marshall, Ohio	Stephens
Davis, Wis.	Moorhead, Pa.	Ware
Devine	Mosher	Williams
Dickinson	Nelsen	Wilson
Dorn	O'Neill	Charles H.,
Forsythe	Pickle	Calif.
Frenzel	Poage	Zwach
Gettys	Powell, Ohio	

So the bill was passed.

The Clerk announced the following pairs:

On this vote:

Mr. Hébert for, with Mr. Sikes against.

Until further notice:

Mr. O'Neill with Mr. Crane.

Mr. Rooney of New York with Mr. Camp.

Mr. Rees with Mr. Blackburn.

Mr. Carey of New York with Mr. Devine.

Mr. Charles H. Wilson of California with Mrs. Heckler of Massachusetts.

Mr. Reid with Mr. Cederberg.

Mr. Bevill with Mr. Butler.

Mr. Pickle with Mr. Davis of Wisconsin.

Mr. Conyers with Mr. Kluczynski.

Mr. Stark with Mr. Frenzel.

Mr. Moorhead of Pennsylvania with Mr. Conlan.

Mr. Runnels with Mr. Dickinson.

Mr. Stephens with Mr. Huber.

Mr. Gettys with Mr. Lujan.

Mr. Dorn with Mr. Williams.

Mr. Jones of Oklahoma with Mr. Nelsen.

Mr. Forsythe with Mr. Powell of Ohio.

Mr. Mosher with Mr. Shriver.

Mr. Michel with Mr. Ware.

Mr. Sandman with Mr. Zwach.

Senate Vote Rejecting Cloture on S. 707
(last cloture attempt)

September 19, 1974

YEAS—64

Abourezk	Hartke	Muskie
Aiken	Haskell	Nelson
Bayh	Hatfield	Packwood
Brall	Hathaway	Pastore
Bentsen	Hollings	Pearson
Biden	Huddleston	Pell
Brooke	Hughes	Percy
Burdick	Humphrey	Proxmire
Eyrd, Robert C.	Isaacs	Randolph
Cannon	Jackson	Ribicoff
Case	Javits	Roth
Chiles	Magnuson	Schweiker
Church	Mansfield	Scott, Hugh
Clark	Mathias	Stafford
Cook	McGee	Stevens
Cranston	McGovern	Stevenson
Dole	McIntyre	Symington
Domenici	Metcalf	Tunney
Eagleton	Metzenbaum	Welcker
Fong	Mondale	Williams
Gravel	Montoya	
Hart	Moss	

NAYS—34

Allen	Dominick	McClellan
Baker	Eastland	McClure
Bartlett	Ervin	Nunn
Bellmon	Fannin	Scott
Bennett	Goldwater	William L.
Bible	Griffin	Sperkman
Brock	Gurney	Stennis
Buckley	Hansen	Taft
Byrd	Helms	Talmadge
Harry F., Jr.	Hruska	Thurmond
Cotton	Johnston	Tower
Curtis	Long	Young

NOT VOTING—2

Fulbright	Kennedy
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Major Differences in CPA Bills

<u>Issue</u>	<u>S. 200 (Ribicoff)</u>	<u>Dole Bill 93rd Congress</u>	<u>Holifield-Horton Bill 93rd Congress</u>	<u>Brown Amendments 93rd Congress</u>
Interrogatory Authority	Independent CPA interrogatory authority	CPA use of host agency interrogatory authority	CPA use of host agency interrogatory authority	No interrogatory authority
Term and Removal of CPA Administrator	4-year term, coterminous with that of President; limitations on President's power to remove	4-year term	No limitation on President's power to appoint or remove	No limitation on President's power to appoint or remove
Budget and Legislation	Annual report to contain simultaneous budget and legislative recommendations to OMB and Congress	Annual report to contain simultaneous budget and legislative recommendations to OMB and Congress	No provision	No provision
CPA Right to Obtain Judicial Review of Agency Regulatory Decisions	Right of judicial reviews comparable to that of private parties	Right of judicial reviews comparable to that of private parties	Right of judicial reviews comparable to that of private parties	No right of judicial review of agency actions
CPA Judicial Representation	CPA represents itself	CPA represents itself	CPA represents itself	Justice Department discretion to represent CPA
Exemptions from CPA Review	CIA, NSA, FBI, labor-related and FCC licensing matters, but only national security and intelligence functions of DoD, State and AEC	CIA, NSA, FBI, labor-related and FCC licensing matters, but only national security and intelligence functions of DoD, State and AEC	CIA, NSA, FBI, labor-related matters, but only national security and intelligence functions of DoD, State and AEC	CIA, NSA, FBI and entire DoD, State and AEC
CPA Access to Trade Secrets and Commercial and Financial Information Possessed by Federal Agencies	CPA denied such information <u>only</u> if given to other Federal agency on written promise of confidentiality	CPA denied such information <u>only</u> if given to other Federal agency on written promise of confidentiality	CPA denied such information <u>only</u> if given to other Federal agency on written promise of confidentiality	CPA denied information given both "voluntarily" to a Federal agency, or on a written promise of confidentiality
CPA Access to Criminal Investigation Files	Exemption for prosecutorial recommendations only	Exemption for prosecutorial recommendations only	No exemption for criminal investigative files (only for "internal agency policy recommendations," which could be interpreted to mean prosecutorial recommendations)	Full exemption for criminal investigation files

Options--Submission of a Consumer Message
to Congress and Administration Position on
CPA Legislation

A Consumer Message.

Pro - A message would provide the Administration with an opportunity to state a number of consumer proposals in the 1976 budget--as well as other new proposals--and would provide a counterforce to the argument that the Administration is "anti-consumer." It would link regulatory reform to consumerism, thus enabling the Administration to harness the political energy of several constituencies on a positive issue. By going on record as strongly advocating progressive consumer reforms, some of the most important of which are the proposals for regulatory reform, the President contributes to restoration of consumer confidence and takes a strong leadership role politically-- and does so with only a small outlay of Federal funds.

Con - Many of the proposals that would be highlighted in a consumer message have already been undertaken or proposed in the previous Congress. The new proposals could be attacked as relatively minor compared to a strong CPA. Moreover, new proposals would be inconsistent with the Administration's opposition to new spending programs and increased Federal personnel. Federal law enforcement funds are already available for small claims courts support at the discretion of the States and the Administration has strongly opposed grants to States and localities solely for "handling consumer complaints." A consumer message could draw attention to CPA in the absence of a strong CPA endorsement.

CPA Legislation.

Option 1. Submit an Administration bill establishing
a restricted Consumer Protection Agency

Pro - Enactment of some form of CPA legislation stands a good chance. An Administration bill would improve the chances for more restrictive final legislation and give the Administration a positive position on a consumer issue. Given the pressure for some type of CPA bill, the Brown amended version represents a "least damage" alternative.

Con - There is a substantial amount of opposition in the business community to any CPA legislation. On the merits, a CPA is not needed nor is it likely to be able to achieve the goals of its proponents. Administration proposed legislation would also be inconsistent with the President's public

opposition to new spending programs. Virtually all of the Brown Amendments were voted down by substantial margins in the House last year, making it unlikely that Congress would accept them. Finally, once a CPA is established, it would certainly seek expanded powers within a short time, a la the Equal Employment Opportunity Commission.

Option 2. Work Informally for a Restricted CPA

Pro - This option would avoid a Presidential commitment initially, and would allow those who favor a restricted CPA an opportunity to obtain such a bill to test the viability of a restricted CPA option.

Con - In the absence of an explicit "going in" position, the Administration would have difficulty maintaining policy control in the bargaining process. In the face of congressional requests for testimony and agency views, it would be difficult to maintain an informal position on legislation. Also, once established, a CPA would certainly seek expanded powers within a short time, a la the Equal Employment Opportunity Commission.

Option 3. Take No Position At this Time

Pro - This option allows you maximum future flexibility and maneuverability, depending on progress of the various CPA bills in the Congress.

Con - Failure to take a public position may be criticized as irresponsible, as well as maneuvering for the defeat of CPA legislation.

Option 4. Oppose Any CPA Legislation

Pro - On the merits, the adversary nature of CPA is the wrong way to assure that regulatory agencies take the interests of consumers into account. A more effective and efficient way would be for the agencies themselves to be forced--through congressional oversight and appropriate legislation--to organize for and heed consumer concerns. Strong Administration opposition would give opponents of CPA a rallying point.

Con - The Administration runs the risk of being characterized as "anti-consumer," by not having an alternative to CPA legislation. Failure to endorse a restricted CPA bill could result in a much stronger CPA bill coming out of Congress.

Attachment B

Options--Submission of a Consumer Message to Congress and Administration Position on CPA Legislation

A Consumer Message.

Pro--A message would provide the Administration with an opportunity to state a number of consumer proposals in the 1976 budget--as well as other new proposals--and would provide a counter-force to the arguments that the Administration is "anti-consumer." It would link regulatory reform to consumerism, thus enabling the Administration to harness the political energy of several constituencies on a positive issue. Such a message would contribute significantly to a restoration of consumer confidence through the President's recognition of consumer problems and his taking a leadership role in proposing solutions.

Con--Many of the proposals that would be highlighted in a consumer message have already been undertaken or proposed in the previous Congress. The new proposals unless coupled with some consumer representation initiatives could be attacked as relatively minor compared to a strong CPA. Moreover, new proposals would be inconsistent with the Administration's opposition to new spending programs. Federal law enforcement funds are already available for small claims courts support at the discretion of the States. A consumer message could draw attention to CPA in the absence of a strong CPA endorsement.

CPA Legislation.

Option 1. Submit an Administration bill establishing a restricted Consumer Protection Agency

Pro--Enactment of some form of CPA legislation stands a good chance. An Administration bill would improve the chances for more reasonable final legislation and give the Administration a positive position on a consumer issue. A legislative initiative someplace between Dole and Brown coupled with the OCA increase and small individual Offices of Consumer Advocacy would obtain for the President significant public and

political credit and usurp all the advantages of a lead consumer position. This package would provide visible proof of the President's commitment, establish a nucleus for the staffing of an independent consumer agency, and provide extensive leverage for legislative negotiations as well as a formidable justification for vetoing over-reaching legislation.

arrange for Congress to create offices have recently been established within SBA, FCC and the Post Service.

Con-- There is a substantial amount of opposition in the business community to any CPA legislation. On the merits, a CPA is not needed nor is it likely to be able to achieve the goals of its proponents. Administration proposed legislation would also be inconsistent with the President's public opposition to new spending programs. Virtually all of the Brown Amendments were voted down by substantial margins in the House last year, making it unlikely that Congress would accept them unless they are part of an overall package. But the statutory establishment of offices within agencies is generally undesirable and the Administration has strongly resisted this form of congressional organizing of the Executive Branch in the past. Finally, once a CPA is established, it would certainly seek expanded powers within a short time, a la the Equal Employment Opportunity Commission.

Option 2. Work Informally for a Restricted CPA.

Pro-- This option would avoid a Presidential commitment initially, and would allow those who favor a restricted CPA an opportunity to obtain such a bill and to test the viability of a restricted CPA option.

Con-- In the absence of an explicit "going in" position, the Administration would have difficulty maintaining policy control in the bargaining process. In the face of congressional requests for testimony and agency views, it would be difficult to maintain an informal position on legislation. The Administration would forsake any leadership role, be constantly on the defensive and substantially impair the credibility of its consumer spokesmen and initiatives.

Option 3. Take No Position At This Time.

Pro-- This option allows you maximum future flexibility and maneuverability, depending on progress of the various CPA bills in the Congress.

Con-- Failure to take a public position will be criticized as irresponsible, as well as maneuvering for the defeat of CPA legislation. Such a posture will add to the growing lack of consumer

confidence and substantially augment the charge that the Administration is controlled by big business and will consistently acquiesce to its demands. Regulatory Reform on its own will not satiate the congressional appetite for consumer representation and may ultimately be destroyed as a separate initiative. Knauer believes that this option would be a political catastrophe detracting from any future consumer initiative and making "anti-consumerism" a political issue in the 1976 Presidential campaign.

Option 4. Oppose Any CPA Legislation

Pro--On the merits, the adversary nature of CPA is the wrong way to assure that regulatory agencies take the interests of consumers into account. A more effective and efficient way would be for the agencies themselves to be forced--through congressional oversight and appropriate legislation--to organize for and heed consumer concerns. Strong Administration opposition would give opponents of CPA a rallying point. However, if Regulatory Reform is coupled with a substantial increase in OCA staff and amicus functions along with the establishment of significant individual Offices of Consumer Advocacy within Executive Departments and Regulatory Agencies, the Administration could have at least a credible "fall-back" position.

Con--The Administration will be characterized as "anti-consumer," Failure to endorse a restricted CPA bill or a viable alternative could result in a much stronger CPA bill coming out of Congress.

THE WHITE HOUSE

WASHINGTON

February 14, 1975

MEMORANDUM FOR:

Paul H. O'Neill *1/7 ischen/2*

FROM:

Virginia H. Knauer *Virginia Knauer*

SUBJECT:

Consumer Message and Consumer
Protection Agency *by MTS*

Attached is a slightly revised clean draft memorandum to the President on the issues of (1) submitting a Consumer Message to Congress and (2) an Administration position on Consumer Protection Agency (CPA) legislation.

The proposed revisions are designed to reflect and remedy my four major concerns with the draft you submitted to me for review. They are:

1. A more accurate reflection of my views and advice to the President.
2. The needed sense of urgency for an Administration position in light of the already scheduled Senate hearings on S. 200 next week.
3. The need to consider the increase of OCA staff and functions and the establishment of individual Offices of Consumer Advocacy in conjunction with options 1 and 4. Alternatively, this could be accomplished by the addition of two new options.
4. The request for cost data. We have addressed this matter by attaching a copy of our proposed "Specific Consumer Legislative Initiatives" with annotations connoting the originating agency and our estimated costs--most of which would be limited to enforcement costs. In addition it is our understanding that a more complete cost analysis for each legislative proposal is on hand or available to OMB pursuant to its requirement for "Inflationary Impact Statements."

5

Major arguments for and against a consumer message and the CPA options are provided at Attachment B.

Decisions:

(1) A Consumer Message:

☐ Prepare a Consumer Message (Favored by Baroody, Knauer, Marsh, and _____)

☐ Do not submit a Consumer Message (Favored by _____, _____, _____)

(2) CPA Legislation:

☐ Option 1 - Submit a restricted CPA bill. (Favored by Knauer, and _____)

☐ Option 2 - Work informally for restricted CPA. (Favored by _____, _____, _____)

☐ Option 3 - Do not take position, formally or informally. (Favored by _____, _____)

☐ Option 4 - Indicate opposition to any CPA proposal. (Favored by _____, _____, _____)

Attachments

Major Differences in CPA Bills

Issue	S. 200 (Ribicoff)	Dole Bill 93rd Congress	Holifield-Horton Bill 93rd Congress	Brown Amendments 93rd Congress
Interrogatory Authority	Independent CPA inter-rogatory authority	CPA use of host agency interrogatory authori-ty	CPA use of host agency interrogatory authori-ty	No interrogatory authority
Term and Removal of CPA Administrator	4-year term, coterminous with that of President; limita-tions on President's power to remove	4-year term	No limitation on Presi-dent's power to appoint or remove	No limitation on Presi-dent's power to appoint or remove
Budget and Legis-lation	Annual report to contain simultaneous budget and legisla-tive recommendations to OMB and Congress	Annual report to contain simultaneous budget and legisla-tive recommendations to OMB and Congress	No provision	No provision
CPA Right to Obtain Judicial Review of Agency Regulatory Decisions	Right of judicial reviews comparable to that of private parties	Right of judicial reviews comparable to that of private parties	Right of judicial reviews comparable to that of private parties	No right of judicial review of agency ac-tions
CPA Judicial Representation	CPA represents itself	CPA represents itself	CPA represents itself	Justice Department discretion to repre-sent CPA
Exemptions from CPA Review	CIA, NSA, FBI, labor-related and FCC li-censing matters, but only national secu-rity and intelligence functions of DoD, State and AEC	CIA, NSA, FBI, labor-related and FCC li-censing matters, but only national secu-rity and intelligence functions of DoD, State and AEC	CIA, NSA, FBI, labor-related matters, but only national secu-rity and intelligence functions of DoD, State and AEC	CIA, NSA, FBI and entire DoD, State and AEC
CPA Access to Trade Secrets and Commer-cial and Financial Information Possessed by Federal Agencies	CPA denied such infor-mation <u>only</u> if given to other Federal agen-cy on written promise of confidentiality	CPA denied such infor-mation <u>only</u> if given to other Federal agen-cy on written promise of confidentiality	CPA denied such infor-mation <u>only</u> if given to other Federal agency on written promise of confidentiality	CPA denied information given both "voluntar-ily" to a Federal agency or on a written promise of confidentiality
CPA Access to Crim-inal Investigation Files	Exemption for prosecu-torial recommendations only	Exemption for prosecu-torial recommendations only	No exemption for crimi-nal investigative files (only for "internal agency policy recommenda-tions," which could be interpreted to mean prosecutorial recommenda-tions)	Full exemption for criminal investiga-tion files

In summary, I believe the President must seize the initiative, exert leadership, and submit a substantive Consumer Message containing, among other things, either specific legislative support for an independent Consumer Protection Agency or a viable alternative.

My staff and I stand ready to work with you in resolving any differences in the preparation of the final draft of the OMB decision memorandum. However, in the event that a mutually satisfactory product cannot be arrived at, I respectfully request that I have the opportunity to prepare and submit my views in conjunction with the OMB memorandum to the President. I make this request because I believe that it is essential that the President be apprised of all views and options as he decides this most important matter.

DRAFT

DECISION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN

SUBJECT: A Consumer Message and Administration Position
on a Consumer Protection Agency

Congress is taking up the Consumer Protection Agency (CPA) legislation this week. Hearings start Thursday, February 20. The Administration will be pressed for its position. This memorandum presents several options for your decision on (1) whether or not to send a consumer message to Congress and (2) an Administration position on Consumer Protection Agency legislation.

A Consumer Message. Bill Baroody and Virginia Knauer favor your submitting a consumer message immediately, no matter what position the Administration takes on CPA. They propose that such a message stress regulatory reform, affirming your support for:

-- the legislation submitted by the Administration to establish a Commission to review the activities of regulatory agencies;

-- various legislative proposals: repeal Federal laws allowing

State resale price maintenance laws, ^{provided you have already announced support} prohibit pyramid sales;

improve the regulation of foods, drugs, cosmetic and other products.

-- various Executive Branch task forces which are now considering consumer-oriented reforms in pricing and other trade practices;

-- nonlegislative proposals concerning--among other things-- home appliances, life cycle costs of autos, consumer awareness of product resales, and unit pricing;

-- a new requirement for "Consumer Benefit Analyses"-- along the lines of inflation impact statements--to be applied to all proposed legislation and regulations; and

-- a new program of Federal grants for upgrading of local small claims courts and other consumer complaint handling mechanisms, ^π and the costs of these proposals--on a full year basis--would be primarily regulatory enforcement costs.

However, specific cost data is available to OMB from the originating agency through the required inflationary impact statements.

Administration Position on CPA Legislation. The House passed CPA legislation last March by a vote of 293 to 94. The Senate failed to pass a stronger bill after four attempts at filibuster cloture were defeated, the last by only two votes. The departure of Senator Ervin ~~and five~~ ^{and four other supporting Senators as well} other Senators--who led the Senate filibuster--and the makeup of the

new House could result in passage of a bill early in this Congress, unless the Administration intervenes successfully.

This matter should be considered in conjunction with either the statutory establishment of the Office of Consumer Affairs (OCA) in DHEW (not favored by Knauer); or an expansion by Executive Order (favored by Knauer) of OCA to assume an amicus role, along with the establishment of individual consumer advocacy offices in each Federal agency--the magnitude depending on whether and to what extent the message endorses a CPA bill.

Attachment A identifies the differences among major CPA bills. We believe the options are:

Option 1. Submit a bill along the lines of the Dole Compromise or at least equivalent to the Brown Bill (HR 13810) in the 93rd Congress--
If the President's legislative initiative is of the quasi amicus Brown type, then
 a CPA with somewhat limited powers.[^] This action would be coupled with an immediate establishment of various individual Offices of Consumer Advocacy which would be reasonable in size and accomplished within existing resources along with a reasonable (up to 25 people) expansion of OCA within DHEW with a Presidential mandate, through Executive Order, requiring the office to perform amicus-type functions.

Option 2. Do not take a public position on CPA, but informally encourage Senator Dole and others to take the lead in working for a CPA with restricted powers along the lines of the Brown version.

Option 3. Do not communicate an Administration position--either formally or informally--at this time.

Option 4. Indicate Administration opposition to CPA legislation at this time and submit a bill to establish a regulatory agency Review Commission which shall address the matter of consumer protection in regulatory agency actions. This initiative should be coupled with an action significantly increasing (up to 50 people) the Office of Consumer Affairs within DHEW and establishing individual Offices of Consumer Advocacy within Executive Departments and Regulatory Agencies with adequate resources and operational authority.

6 Specific Consumer Legislative Initiatives

6.1 Repeal federal law allowing for state resale price maintenance laws.

Justice
No Cost

We were pleased to note a White House statement dated January 30, 1975, indicating that the President would be sending legislation along these lines to Congress. Therefore, we feel no further comment is necessary. However, we believe this proposal should be included in the Message.

6.2 Prohibit pyramid sales transactions

SEC
Enforcement Costs Only

This proposal would provide for the prohibition of pyramid sales transactions (transactions in which generally the incentive for the buyer of a distributorship is the prospect of monetary gain from the sale of further distributorships) in interstate or foreign commerce or by use of the mails, and would give SEC regulatory authority to carry out the Act. This proposal is intended to follow generally along the lines of S. 1939 which was passed by the Senate in August 1974. This proposal is primarily a response to such promotional schemes as Koscot, Dare To Be Great, and Holiday Magic.

6.3 Remove impediments to advertising prices of prescription drugs and eyeglasses (Requires DHEW concurrence)

DHEW-FDA
No Cost

This proposal would prohibit states and localities from enacting or enforcing any law or regulation which would prohibit or burden the posting of prices of prescription drugs or eyeglasses. This would allow the consumer to stretch his medical dollars by allowing him to comparison shop when buying prescription drugs and eyeglasses.

Legislation based upon this proposal would not be expected to include any provision making FDA responsible for administering mandatory price posting. It also would not be expected to include any new authority for the FTC.

DHEW has agreed to this initiative as it relates to advertising prices of prescription drugs but to our knowledge has not yet taken a position as it relates to eyeglasses.

6.4 Provide the Food & Drug Administration specific authority to require net drained weight labeling for food products (Requires FDA-DHEW concurrence)

DHEW-FDA
Enforcement
costs only

This proposal would provide FDA with specific authority to require net weight labeling, to establish priorities for such labeling and to issue regulations therefor by class of foods covered.

6.5 Provide for easier deviation from food standards in order to develop new foods (Requires FDA-DHEW concurrence)

DHEW-FDA
No Cost

The Report of the White House Conference on Food Nutrition and Health speaks favorably about encouraging the marketing of new foods, provided the consumer is not misled or confused about the identity of what he is buying. A problem for consumers and marketers arises where a new food deviates in some way from a food standard, requiring "sub-standard" or "imitation" labeling, unless the marketer can obtain a temporary permit to deviate from the standard. No criteria for such deviation or permission for such permits can be found in existing law.

This proposal would amend the Federal Food, Drug, and Cosmetic Act to facilitate the issuance of such permits for reasonably lengthy periods to evaluate public acceptance of the new product with clear criteria stated in the amendment for FDA in the issuance of the permits.

6.6 Streamline hearing procedures under the Federal Food, Drug and Cosmetic Act

DHEW-FDA
No Cost

The Administrative Conference of the U. S., affected industry and consumer advocates have, from time to time,

criticized the prolonged hearing procedures under the Federal Food, Drug, and Cosmetic Act, hearings which in some cases (food standard hearings primarily) have lasted for years.

This proposal recommends that the hearing provisions of the FFD&C Act be amended in order to accelerate the hearing process without injuring the necessary due process protection of affected parties. (The recommendation of the Administrative Conference would be a good starting point.)

FDA and DHEW concur with this proposal.

6.7 Restrict the antitrust impact of agricultural cooperatives

OCA
No Cost
This proposal contemplates close coordination with the Department of Justice. Under review are the advisability of amending provisions providing special treatment to such cooperatives in the Capper-Volstead Act, the Internal Revenue Code, the Agricultural Marketing Act of 1929, and the Agricultural Marketing Agreement Act of 1937.

6.8 Provide for Social Security exempt earnings increase

OCP
Provide for increased earnings by Social Security beneficiaries to offset need for further increases in Social Security Benefits. Additional legislation could exempt earnings above the newly (1/1/75) established base of \$2510. This would allow Social Security beneficiaries to increase their income without Federal assistance.

OCP
7/15/79
Needless to say, this proposal would have to be staffed with appropriate data basis. Nevertheless, we believe the concept merits further consideration.

6.9 Propose medical devices legislation based upon the deliberations surrounding S. 1446

DHEW - 7/15/79
Extensive work
Present law imposes no duty upon medical device manufacturers to establish the safety or efficacy of their

products prior to marketing. Nor does FDA have authority to prescribe standards of safety to which these devices must conform. Instead, to prove a device unsafe or useless, consuming and expensive court efforts must be undertaken. Even where successful in court it is difficult to recapture those faulty devices distributed during the court battle.

Last year a device bill was passed by the Senate, but never reached the floor of the House. Although some say FDA's device inventory eliminated the need for medical device legislation, a close look at the inventory reveals it was compiled with information voluntarily submitted and not complete. Further, attempting to have all devices held to be drugs by the courts in order to give FDA jurisdiction is futile. This proposal would allow FDA to provide for classification of medical devices into three regulatory categories:

1. Those exempt from standard setting and premarket review
2. Those for which standards should be set and enforced
3. Those of a life threatening character which require premarket review.

Other gaps medical device legislation would fill include:

- mandatory registration for establishments manufacturing devices.
- specific Federal authority to assure the use of good manufacturing practices
- increased Federal inspection authority
- a requirement that device manufacturers maintain records and reports on clinical experience with devices

- procedures to require manufacturers or distributors of devices violative of Federal standards to repair or replace the devices or refund their purchase price.

6.10 Propose legislation aimed at product testing in the private sector -- a Consumer Product Test Methods Act such as has been supported by the National Bureau of Standards

DOC
DOC + NBS
for cost analysis

This proposal would stimulate greater price and quality competition, improved product efficiency, and better value comparisons by consumers in the sale of consumer durables. Product characteristics would be identified and measured against tests and standards developed by the N. B. S. and labeled and advertised accordingly (voluntarily by marketers) providing the consumer with an important purchasing tool (objective product information) and the advertiser with a national and objective basis for product comparisons (comparisons which are now frequently criticized by the FTC and the CBBB). FTC Chairman Engman has endorsed legislation going further -- mandatory labeling. Also, this proposal differs from the bill introduced by Senator Magnuson last session in that use of the test results in labeling and advertising would be voluntary.

6.11 Propose changes in the Federal Reporting Act and Federal Register that afford the public better notice and clearer understanding of proposed Federal decisions

OCA
Slight increase
costs for reporting
NOTES

This proposal would modify the Federal Reports Act to affirmatively encourage Federal consumer protection agencies to obtain better survey and marketing data before proposing (or denying) complex regulatory schemes. Present posture of agencies is to avoid White House clearance and industry scrutiny of survey forms -- resulting in more insular rule-making policy and practice. The proposal would provide for public (consumer) representation in form and survey review by OMB and encourage public representatives to identify needed survey areas. The proposal would also create a public (including media) advisory board to the Director of the Federal Register with new powers to the Director instructing and allowing him to make the Federal Register a better working and source document for school

curricula development as well as by public interest groups and media representatives seeking to obtain notice of Federal agency activities.

The Register is at present aptly described as an instrument of "minimum legal notice" at a time when Congressional delegations of greater rule - and policy-making powers to Federal agencies using the Register demand increasing public notice of involvement in the execution of such powers. This proposal should have endorsement by both ends of the philosophical and political spectrum as an instrument for piercing bureaucratic screen and make government more responsive and understandable.

6.12 Provide for licensing of motor vehicle repair shops and damage appraisers

OCA
No Cost to Public
Govt. Self-supporting at state level.
This proposal would require the states to establish licensing procedures for businesses which repair automobiles. These businesses include body repair shops, general garages, transmission shops, exhaust and muffler shops and damage appraisers.

The primary purpose of legislation based upon this proposal would be to encourage states to require competence and integrity on the part of automobile repairers within the states. Recordkeeping and limited deviation from estimated repairs cost would be two methods by which the states would enforce the Act. The proposal should also require that a mechanism be established for handling consumer complaints in the auto repair area.

6.13 Propose a National Appliance and Motor Vehicle Labeling Act

Recently introduced as S. 349 as Truth in Energy Bill
This proposal authorizes the President to develop energy conservation specifications for a broad range of motor vehicles and appliances in order to provide information to the public on the energy consumption characteristics of these "big-ticket" items so consumers,

by comparing such characteristics when purchasing major appliances and motor vehicles, may select those that can effect savings in energy consumption.

S. 3255 and H.R. 15616 of the 93rd Congress reflected this proposal and were submitted by and supported by the Administration.

Administration supported bill last Congress

6.14 Reevaluate federal no-fault insurance legislation

DOT

This proposal would establish minimum federal standards for state motor vehicle accident reparation acts on a nationwide basis. Such legislation would require all states to develop no-fault programs which would meet or exceed the minimum federal standards prescribed by the proposed bill. Such legislation would further require no-fault insurance coverage as a prerequisite to using a motor vehicle by any individual and thereby provide prompt and adequate benefits for all persons injured in motor vehicle accidents.

Enforcement Costs

A system of state no-fault laws built on federal minimum standards would provide coverage for many more people and return many more dollars to those who are injured than does the present system which is based in most jurisdictions on negligence liability. State activity in this area over the past few years has been very disappointing, and it is therefore essential to continue reevaluating the Administration's position on federal standards for state no-fault systems.

FCC

6.15 Propose an amendment to the Communications Act to give the Federal Communications Commission authority to adopt regulations establishing standards for the manufacture of home entertainment apparatus to ensure rejection of unwanted radio signals

This proposal would authorize the FCC to promulgate reasonable regulations regarding the manufacture of stereos,

television sets, electronic organs, and other electronic devices for home entertainment to ensure that these devices will reject RFI (radio frequency interference).

H. R. 3516, introduced by the late Congressman Teague in the 93rd Congress, makes provision for this proposal but does not refer to the larger problem of interference to audio devices.

6.16 Support DOT's proposal to permit air carriers to operate "one-stop inclusive tour charters"

Current CAB regulations impose various restrictions upon the capacity of charter carriers and regularly scheduled carriers alike to offer cost saving holiday inclusive tour charters to vacation travelers. Current regulatory restrictions impose minimum stay and minimum cost requirements upon inclusive tour charters.

Legislation liberalizing the rules surrounding ITC's could be expected to stimulate competition among all air carriers in the holiday charter market. And, development of cheaper, more saleable charter modes of air travel can be expected to open up substantial new markets for holiday travel among working and middle class vacationers who cannot now afford to take family vacations at regularly scheduled rates.

Senator Cannon's Subcommittee on Aviation, Commerce Committee, has scheduled hearings on S. 421, a similar proposal, for February 5 and 6. His office has invited Mrs. Knauer to testify on the bill on behalf of the Administration. Mrs. Knauer has declined the invitation based on her schedule. It should also be noted that the Department of Commerce has proposed an Administration legislative initiative in this area and the Department of Transportation favored the proposal last session.

6.17 Support DHEW's Omnibus food, drug, and cosmetics bill S. 3012 which includes:

- Requirements for labeling quantity of active ingredients in OTC drugs.

Declaration of all active ingredients in non-prescription drugs by quantity would provide further assistance to physicians called upon to administer antidotes for children or others who may have ingested these products. It would also help consumers make value comparisons and prevent accidental overdose of ingredients contained in two -O-T-C drugs which may be taken simultaneously. At present, such ingredient labeling is already required in prescription drugs and in O-T-C drugs containing certain ingredients.

- Reporting of formulas and adverse reactions

At present only manufacturers of new drugs are required to keep records and make reports to FDA on data relating to the safety and efficacy of their products. Proposed legislation would require food, cosmetic and other drug manufacturers to maintain records and furnish reports, where requested by FDA, on clinical experience, consumer complaints, test results, and other data bearing on possible violations of law.

- Adequate record and reports authority

FDA must be able to obtain needed information without having to send out an inspector each time it is believed such records may shed light on a potential hazard posed by any particular food or other product. This legislation would authorize FDA to require firms subject to the Act to maintain records and make reports necessary to insure implementation of the FDCA.

*DHEW-FDA
costs should be
available through
inflationary impact
statement available
to OMB from DHEW*

-- Increased fines

This bill would raise the \$1,000 basic maximum fine to \$10,000, while the fine for subsequent or fraudulent offenses would be raised from \$10,000 to \$25,000.

-- Administrative detention, subpoena authority

Proposed legislation would provide FDA authority to administratively detain suspect foods for up to 20 days, pending seizure. Such authority is similar to that now exercised by USDA and FDA with respect to meats, poultry and eggs. At present judicial seizure is FDA's primary enforcement tool and very often the suspected food is shipped before judicial seizure can be accomplished.

FDA has been rather unique among regulatory agencies in lacking authority to compel, by subpoena, the attendance of witnesses and production of documents to assist the agency in its investigations and proceedings. The proposed authority would be similar to that presently exercised by the FTC.

-- Broadened factory inspection power

Present authority to inspect food processors is severely limited. FDA inspectors are limited to visual examination of the processing in a particular establishment. The inspector may not inspect records showing source of materials, quality controls or formulation of the products. Thus, it is virtually impossible for an FDA inspection to detect potential micro-biological contamination, unapproved or improper amounts of additives, etc. This legislation would authorize FDA to have access to records bearing on possible adulteration or misbranding of any of the products subject to FDCA.

6.18

Propose food establishment registration (S. 2416)

This proposal would require all food processors and warehouses (engaged in intrastate and interstate

DHew-FDA
Same as Above

commerce), to register with FDA specifying the class of products processed therein. Registration is in no way intended as a licensing law; but is merely to be used as a tool to provide regulation and inspection. Without registration it is difficult to assure the safety and quality of food due to a lack of accurate data on who is in the business of processing food.

DHEW-FDA
Some are above
enforcement costs
only

6.19 Proposed enhanced labeling authority to combat consumer confusion and deception (more ingredient labeling, explicit authority for FDA to require date labeling and nutrition labeling). (S. 1451)

Mandatory ingredients in a food for which a standard of identity has been established need not be declared on the label. This mode of operation was based on the assumption that consumers would be familiar with the mandatory ingredients of a standardized product. Proposed legislation would put standardized and non-standardized foods on equal footing in terms of ingredient disclosure.

DHEW-FDA
Some are above

6.20 Propose drug identification coding (to combat accidental poisonings). (S. 2825)

This legislation was prepared to carry out a recommendation by President Nixon contained in his consumer message of October 30, 1969, and reiterated in his message of January 26, 1971. In sum, the Drug Identification Act would establish a code system for the identification of prescription drugs. Present labeling provisions of the Food, Drug and Cosmetic Act relating to the identification of drug products and their production or distribution origin do not require that this information be shown directly on the tablets or capsules of drugs marketed in these forms. Thus in cases of personal emergency, such as over-dosage or accidental ingestion of a drug, identification may be seriously delayed and may require elaborate and time consuming laboratory analysis. A quick identification of the drug in such emergencies, by labeling and direct product coding, would facilitate prompt medical treatment. Moreover, a uniform drug coding system to identify drug manufacturers and distributors would also be of great value to this and other Federal and State agencies in the administration of drug purchase and reimbursement programs.

7. Specific Non-Legislative Consumer Initiatives

7.1 Improved System for Disseminating Product Recall and Hazard Information and Follow-up.

Federal agencies having direct stake in getting product recall notices to affected public including FDA, CPSC, DOT, USDA, and OCA can relate numerous instances of ineffective product hazard warnings and recalls. Companies affected by recalls risk bankruptcy when recalls must be massively advertised (paid advertising). Options such as amending Federal Communications Act to require public interest hazard notices need to be explored in interests of consumers, producers, and government. This proposal would direct those agencies to explore the options within a Presidential Committee framework including the Special Assistant to the President for Consumer Affairs and report findings to President with recommendations.

7.2 Develop a Mechanism for Coordinating National Nutrition Policy.

This proposal would establish a Special Assistant to the President for Nutrition to provide unified coordination -- including policy guidance, accountability and evaluation -- of the nutrition or nutrition-related activities of the more than 30 Federal agencies or offices with such responsibilities.

Spokesmen for the Nation's professional nutrition community, the food industry, and consumer organizations have pointed out on numerous occasions that the lack of such coordination of Federal nutrition programs has delayed and hampered efforts to deal with problems of hunger and malnutrition as well as food safety, quality, and cost. In view of the changing relationships of peoples to the world's food supply, it begins to appear imperative that a coordinative structure be established at the White House level, both to assure that the health and well-being of Americans is not undermined by scarcity or poor use of available nutrients and to optimize U. S. capacity to assist in feeding the hungry.

7.3 Retaining Individual Package Pricing in Adoption and
Implementation of Universal Product Code.

Coding and scanning (laser) of groceries will permit greater speed at supermarket checkouts and automatic inventory control -- among various other benefits. However, consumers currently oppose removal of price marking from individual containers. Proposal would have President instruct National Productivity Commission, USDA (Ag. Extension) and the Special Assistant to the President for Consumer Affairs to develop series of hearings with consumers and supermarkets to explore options and develop consensus.

7.4 Further Adoption of Unit Pricing.

Proposal would instruct the Special Assistant to the President for Consumer Affairs that President wants report on her efforts over next six months to promote public understanding of and voluntary expansion of unit pricing as an inflation-fighting mechanism, with a report from her on whether legislation should be endorsed. Utilize USDA Ag. Extension Service in effort.

7.5 Improved Public and Private Complaint Resolution
Mechanisms.

Unresolved consumer complaints represent number one consumer problem. The proceedings of the September 1974 Public Policy Conference on Complaint Handling sponsored by the Special Assistant to the President for Consumer Affairs, the Council on Better Business Bureaus, and The George Washington University, will soon be edited and printed. Proposal would instruct the Special Assistant to the President that President wants proceedings and report to include her evaluation of progress and spread of voluntary mechanisms with recommendation on whether Federal legislative initiative is appropriate, timing thereof, etc.

7.6 Improved Quality Grading Systems.

The USDA has recently announced that consumers do not understand the numerous (sometimes inconsistent) and disparate voluntary grade-labeling system promoted by USDA (and others) for packaged and canned fruits, vegetables, jams, meats, poultry, etc. Inability to understand and use these systems means insufficient information for consumers. Proposal would direct the Special Assistant to the President for Consumer Affairs to develop a task force with USDA (Ag. Extension), FDA, and DOC which would recommend harmonization of grade-labeling systems to facilitate consumers' value comparison and thereby fight inflation.

8. Proposed Regulation, Reform and Consumer Initiatives (OMB)

Items 8B (Repeal of Fair Trade Enabling Legislation) and 8E (Creation of a National Commission on Regulatory Reform) have been discussed above.

The Office of Consumer Affairs supports each concept regarding Items 8A (Transportation Regulatory Reform), 8C (Review of Antitrust Exemptions), 8D (Reform of Financial Institutions Regulation) and 8F (State and Local Regulatory Reform). In addition, OCA would provide input and coordination with the respective agencies and departments in fostering these proposals.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DECISION

FEB 21 1975

MEMORANDUM FOR THE PRESIDENT

SUBJECT: A Consumer Message and Administration
Position on a Consumer Protection Agency

The Senate Government Operations Committee began hearings this week on Consumer Protection Agency (CPA) legislation. The Committee staff have told us that an Administration witness will not be invited unless we indicate we want to take a position.

Because of the complexity of the issue and its political sensitivity, I believe it would be useful for you to have a meeting to discuss this issue.

This memorandum presents several options for your decision on (1) whether or not to send a consumer message to Congress and (2) an Administration position on Consumer Protection Agency legislation.

A Consumer Message. Bill Baroody and Virginia Knauer favor your submitting a consumer message as soon as possible, no matter what position the Administration takes on CPA. They propose that such a message stress regulatory reform, affirming your support for measures which could include:

- the legislation submitted by the Administration to establish a Commission to review the activities of regulatory agencies, and legislation which will be submitted to reform surface and air transportation regulation and to reform financial institutions;
- the establishment of individual consumer advocacy offices in each Federal agency - if the consumer message does not endorse a CPA bill;
- various legislative proposals: repeal Federal laws allowing State resale price maintenance laws, for which you have already announced support; prohibit pyramid sales; improve the regulation of foods, drugs, cosmetics and other products;

- various Executive Branch task forces which are now considering consumer-oriented reforms in pricing and other trade practices;
- nonlegislative proposals concerning--among other things--home appliances, life cycle costs of autos, consumer awareness of product resales, and unit pricing;
- a new requirement for "Consumer Benefit Analyses"--along the lines of inflation impact statements--to be applied to all proposed legislation and regulations;
- a new program of Federal grants for upgrading of local small claims courts and other consumer complaint handling mechanisms; and
- the statutory establishment of the Office of Consumer Affairs (OCA) in HEW, or expansion by Executive Order of OCA to assume an amicus role.

According to Mrs. Knauer, the costs of these proposals "would be principally enforcement costs." There would however, be significant additional costs if a new grant program for small claims courts were established or if new personnel were added to Federal agencies to form consumer advocacy offices.

Administration Position on CPA Legislation. The House passed CPA legislation last March by a vote of 293 to 94. The Senate failed to pass a stronger bill after four attempts at filibuster cloture were defeated, the last by only two votes. The departure of Senator Ervin and five other Senators who led the Senate filibuster, as well as the makeup of the new Congress, are likely to result in passage of a CPA bill, unless the Administration intervenes successfully. Even if you choose to oppose CPA legislation, the chances are that a bill will pass and that a veto cannot be sustained.

The current CPA bill in the Senate authorizes appropriations averaging \$20 million a year. The new agency would probably employ 600 - 800 people. To oppose the legislation on the basis that it represents a new Federal spending program would not be inconsistent with other Administration positions.

CPA is a "fringe" political issue--the far left and far right in Congress disagree strongly with each other on CPA. Hard core support for the measure probably amounts to just 10 - 20% of Congress. Endorsement of CPA would probably alienate an important conservative coalition of Congressmen and Senators. The votes of individual Congressmen and Senators are shown at Attachment A.

Attachment B identifies the differences among major CPA bills. We believe the options are:

Option 1. Submit a bill along the lines of the Brown version in the 93rd Congress--a CPA with limited powers, largely an amicus agency. Virginia Knauer believes we should submit legislation stronger than Brown, closer to the provisions of what was known last year as the Dole compromise.

Option 2. Do not take a public position on CPA, but informally encourage Senator Dole and others to take the lead in working for a CPA with restricted powers along the lines of the Brown version.

Option 3. Do not communicate an Administration position--either formally or informally--at this time.

Option 4. Indicate Administration opposition to CPA legislation and threaten a veto. Also indicate that the Administration has submitted a bill to establish a regulatory agency Review Commission which will address the matter of consumer protection in regulatory agency actions. The consumer message package could be supported as an alternative to a separate CPA.

Major arguments for and against a consumer message and the CPA options are provided at Attachment C.

Decisions:

(1) A Consumer Message:



Prepare a Consumer Message (Favored by Secretary Weinberger, Baroody, Knauer, Marsh and Buchen).



Do not submit a Consumer Message (Favored by OMB).

(2) CPA Legislation:

- ☐ Option 1 - Submit a restricted CPA bill (Favored by Knauer--who prefers something closer to Dole Bill, 93rd Congress).
- ☐ Option 2 - Work informally for restricted CPA.
- ☐ Option 3 - Do not take position, formally or informally (Favored by Secretary Weinberger (or Option 4), and Buchen (decide on CPA in context of drafting a consumer message)).
- ☐ Option 4 - Indicate opposition to any CPA proposal (Favored by Secretary Weinberger (or Option 3), Baroody (if consumer message package goes forward), and OMB).

James T. Lynn
Director

- Attachments
- A. House Vote Passing H.R. 13163
 - B. Major Differences in CPA Bills
 - C. Options--Submission of a
Consumer Message to Congress
& Admin's Position on CPA
Legislation
 - D. Virginia Knauer's Views

THE WHITE HOUSE
WASHINGTON

TO: JERRY JONES

FROM: RICHARD B. CHENEY

DATE: December 3, 1974

FYI _____

ACTION _____

OTHER _____

Comments

Put through the system please.

12/30 - SC checking
check and

THE WHITE HOUSE
WASHINGTON

Don't handle

11/22

Dear Don —

Here's a copy of
a letter I'm dispatching
to the President, which
I consider to be very
important; because of
the time frame of one of
the options — Time is
of the essence.

I'd be happy to
discuss the various options
I've outlined —
Best always
Virginia

THE WHITE HOUSE

WASHINGTON

- November 20, 1974

MEMORANDUM FOR PRESIDENT GERALD R. FORD

FROM:

Virginia H. Knauer 

SUBJECT:

Consumer Protection Agency Initiative Options
in the 94th Congress

The composition of the next Congress strongly suggests a membership whose large majority is likely to favor very far-reaching CPA legislation. Moreover, in the Senate seven of the 35 supporters of the filibuster against CPA will not return--including Senator Ervin. His place as Chairman of Gov. Ops. will be taken by Senator Ribicoff who has announced his intention to make CPA legislation his top priority in the next Congress. Even now in the remaining days of the 93d Congress Gov. Ops. has scheduled hearings on November 21, 22 and 26 which include S. 770, a sweeping consumer agency bill which would provide for full party participation for such a CPA in all state and federal agency and court proceedings involving the interests of consumers.

In light of these considerations I believe it essential to bring to your attention the various options which, in my opinion, now present themselves to the Administration in regard to CPA legislation for the balance of the 93d and in the upcoming 94th Congresses:

1. AMICUS
H. R. 564, the "Brown-Fuqua" bill.
2. PARTIAL STANDING
H. R. 13810, the "Brown" amendments.
3. FULL FEDERAL STANDING
The "Dole Compromise" amendments to S. 707.
4. FULL FEDERAL AND STATE STANDING
S. 770 now before Senate Gov. Ops.
5. NO ADMINISTRATION LEGISLATIVE INITIATIVE
Maintain a basically reactive position.

RECOMMENDATIONS: Given the dedication of principal Democratic leaders in both houses to make CPA legislation a major priority in the next Congress, it would seem impractical, difficult and politically unwise for the Administration to take no public position on this important topic. Therefore I recommend the following in order of desirability:

1. Endorse the Dole substitute during the remainder of this session of Congress, thereby eliminating CPA as a legislative issue in the impending 94th Congress.

2. If No. 1. is unacceptable, develop a well written and packaged legislative proposal, reflecting unified Administration, Congressional, and business support for a bill modeled after the "Brown" amendments, H.R. 13810.

3. If neither 1. nor 2. is acceptable, reaffirm the necessity for a thorough review by a National Commission on Regulatory Reform prior to any further legislative initiatives, and, at the same time, significantly augment the staff of the Office of Consumer Affairs so that it may perform amicus functions on behalf of consumers.

I have attached a brief analysis of each of these options and would appreciate discussing these with you as well as the role of OCA in the development and implementation of such an initiative.

Approve Option # ____.

Disapprove All Options _____

Investigate Further Option(s) _____

Set Up Meeting _____

Copies to:

Don Rumsfeld ✓

William Timmons

Roy Ash c/o Paul O'Neill

Ken Cole c/o James Cavanaugh

CPA INITIATIVE OPTION #1--AMICUS

This approach is along the lines of H.R. 564 known as the "Brown-Fuqua" bill. This bill was voted on in the House during the 93d Congress and lost 241 to 149. If it was not a viable option then, I believe it is even less so now.

Agree _____ Disagree _____

However, a reasonably expanded Office of Consumer Affairs could perform most of the amicus type functions outlined in H.R. 564 without any further legislation. Such an expansion would call for a staff increase of about 35 (most of whom would be lawyers, economists and support personnel) plus an Executive Order transferring the Consumer Product Information Center from GSA to OCA. The budget of such a combined and expanded operation would be about \$4 million--only 40% of the proposed CPA and \$2.5 million of which is already in the FY '75 budget. Therefore, such an action would entail only a \$1.5 million FY '76 budget increase.

This augmentation of OCA would be taken immediately after the first of the year in recognition of the importance of consumers to the Ford Administration and any further CPA legislative initiative would be deferred pending a full review of the desirability of such legislation as part of the work of the National Commission on Regulatory Reform.

Agree _____ Disagree _____ Pursue _____

Comments:

CPA INITIATIVE OPTION #2--PARTIAL STANDING

This approach is along the lines of H.R. 13810 known as the "Brown Amendments." It would give the CPA full party standing before many agency proceedings but reduced investigative powers and only amicus status before the Federal courts.

Such an initiative would not be warmly greeted by organized consumer groups and certain Senators and Congressmen. At best it may be viewed as "half a loaf."

But in light of the long term disparity and non-productive negotiations between the Nixon Administration and Congress in regard to the most desirable form such a CPA bill should take, now is an excellent time for a Ford Administration initiative. If such an initiative were to take as its base the Brown Amendments and it was carefully drafted, truly substantive in nature, well packaged under a new title and presold to certain business, labor and congressional leaders, it might be passed. Alternatively it would put the Ford Administration in a positive position, provide us with a tangible anvil on which compromise legislation could be hammered out or provide the basis for a veto of unacceptable legislation.

Therefore, if the Dole Compromise still goes further than the Administration wishes to go even in light of current events, I believe that H.R. 13810 provides us with the only viable base for a realistic initiative.

Agree _____ Disagree _____ Pursue _____

Comments:

CPA INITIATIVE OPTION #3--FULL FEDERAL STANDING

This approach in moderation is epitomized by what has become very well known as the Dole Compromise, which is in effect S. 707 amended to meet all major Nixon Administration and House recommendations. Full Standing before Federal agencies and courts are provided for but the measure is a significant political compromise from the original legislative leadership positions and it has attracted broad based support from business, labor, consumers and Congressmen from both sides of the aisle.

Enough said on this already over-debated measure!

However, given recent developments, if the Administration is willing to back a measure similar to this, why not do it now?

Support it during this short session. Seize the initiative. Get it off the table. Encourage an immediate vote and it would undoubtedly pass both Houses eliminating the need for a conference and

- . The Ford Administration would get all the credit, and
- . It would take the whole issue out of the 94th Congress.

I still believe that this is the most attractive, viable, immediate and positive course of action available.

Agree _____ Disagree _____ Pursue _____

Comments:

CPA INITIATIVE OPTION #4--FULL FEDERAL AND
STATE STANDING

This approach is more along the lines of major Congressional advocates. It is already being toted out for public view as S. 770 in the Senate Gov. Ops. hearings scheduled for November 21, 22 and 26.

Although S. 770 still does not go as far as many of CPA's Congressional and organized consumer advocates wish, it still far surpasses the limits the Nixon Administration had ever been willing to go. However, such a measure does have real potential in the newly constituted Congress.

I believe that a course along the lines of S. 770 or beyond is not at all advisable for the Administration to pursue. However, I do believe that its potential Congressional viability does add credence to my espousal of a positive Ford Administration initiative as an alternative.

Thus an approach similar to S. 770 or beyond should not be the basis for a Ford Administrative initiative.

Agree _____ Disagree _____ Pursue _____

Comments:

CPA INITIATIVE OPTION #5--REACTIVE

This is the approach that has been used to date and its success or lack thereof depends upon one's point of view.

However viable it may have been as a reasonable posture in the past, I believe recent events make it impractical, difficult and politically unwise because:

- . It leaves Congress with all the credit for a positive leadership action,
- . It provides no public base for negotiation or viable alternative to support a veto, and
- . It keeps the Administration in at best a half-hearted pro-consumer stance when we can and should be in a much stronger position.

Therefore, in light of these considerations and the number of better alternatives available to us at this time, I do not believe that this is a viable option.

Agree _____ Disagree _____ Pursue _____

Comments:

THE WHITE HOUSE
WASHINGTON

Date _____

TO:

D -

FROM:

JERRY H. JONES

*Hold -
Paul O'Neill
will write a
paper - Should
be due tomorrow
J*

THE WHITE HOUSE

WASHINGTON

September 27, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: William E. Timmons *BT*
SUBJECT: Consumer Protection Agency

Attached is a letter to me from Rep. Frank Horton (R-NY) urging that the President give Congress amendments necessary to make the Consumer Bill acceptable. He points out that this may be the last opportunity to realize responsible legislation.

I recommend you authorize Bill Timmons to tell Mr. Horton that you feel it impossible to get an acceptable measure before elections and, at any rate, you doubt the Senate would support your position. (Indeed, Senator Percy told you in Chicago that the Senate would not accept your Brown substitute.)

APPROVE _____ DISAPPROVE _____

OTHER _____

FRANK HORTON
U.S. REPRESENTATIVE
34TH DISTRICT OF NEW YORK

COMMITTEE:
GOVERNMENT OPERATIONS
RANKING MINORITY MEMBER

DAVID A. LOVENHEIM
ADMINISTRATIVE ASSISTANT

Congress of the United States
House of Representatives
Washington, D.C. 20515

September 26, 1974

WASHINGTON OFFICE:
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(202) 225-4916

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ROCHESTER, NEW YORK 14614
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WAYNE COUNTY OFFICE BUILDING
LYONS, NEW YORK

SEP 27 1974

Personal and Confidential

Honorable William E. Timmons
Assistant to the President
for Legislative Affairs
The White House
Washington, D. C. 20500

Dear Bill:

I want to bring to your attention my feeling that we have a fleeting opportunity now to obtain responsible Consumer Protection Agency legislation. By taking this opportunity, we would demonstrate the concern and commitment of the President and the party to the interest of consumers. Such an expression is vitally important in my opinion as we go through this long period of very high inflation. There is no better vehicle available for such an expression than the CPA bill. If we do not take this opportunity, the President and House Republicans in particular will surely be labeled as anti-consumer when we try to amend next year's very tough Senate CPA bill.

President Ford has been a long-time supporter of this bill. Now is the ideal time for him to call for its passage with some amendments, if he felt them necessary. In my opinion, he will never again be able to strike the compromises that are possible now.

As you know, I believe the House bill and the Dole amendment in the Senate are both reasonable. But more restrictive amendments probably would gain acceptance now because of the disappointment caused by the Senate's failure to move the bill. Restrictive amendments which would be accepted now by most consumer groups will be totally unacceptable after the November election if the Democrats gain seats.

The Senate bill next year probably will be unstoppable, no matter how extreme its provisions. Of the Senators who voted against cloture, four are retiring this year, and several others face a very difficult reelection.

House Republicans will then find themselves on the front line, branded as anti-consumerist for offering responsible amendments. Should the bill go through the House, President Ford would face the same labeling. Such a posture will be most unpopular after another year of inflation.

We could avoid this political situation if President Ford would call for the enactment of the bill, with such amendments as he thought necessary. The bill is now tabled in the Senate, but could be called up at any time in response to the President's request for action.

Hon. W. E. Timmons
Page two
September 26, 1974

President Ford would be protected on the right by the amendments and the widespread feeling in the business community that next year's bill may be more extreme and unbeatable. He could gain important political advantage for himself and the party prior to the November election by claiming it was a part of his program to treat all interests fairly, and particularly to give consumers effective representation in these inflationary times.

In my opinion the need to demonstrate our concern for the consumer and the political risks faced next year at least justify discussions of possible compromises now.

With kindest personal regards.

Sincerely,



Frank Horton

FH:sn

Personal and Confidential

THE WHITE HOUSE

WASHINGTON

March 26, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON
FROM: JERRY H. JONES
SUBJECT: Consumer/Regulatory Reform Message

Your memorandum to the President of March 8 has yielded the following decisions:

1. Title I - Hold for further study and consideration.
Title II - Con
2. Con
3. Pro
4. Pro
5. Pro
6. Pro - But consider more attractive bill title.
7. Pro
8. Hold for further consideration
9. Pro - Federal cooperation but not in a White House conference
10. Pro - But do it in such a way as to not interfere with Senate activities - in other words low key it.
11. Pro
12. Pro
13. Hold for further consideration and figure out way so that good organizations like Amway-Avon and others will not be hurt.
14. Con - No decisions yet on basic no fault decision - (1) Jim Cannon, in the Domestic Council study of the relative functions between governments, will look at the question of what is the appropriate level of government to regulate; (2) the new Attorney General and the new Secretary of Transportation should be involved and consulted in the development of the decision paper on no fault before it goes to the President; (3) the President raised the question of whether or not any definitive studies had been done to see if in fact people saved money in States that had no fault in operation.

14. continued NOTE: Mike Duval should make sure this item is covered in the President's decision paper on no fault.
15. Hold for further consideration.
16. Pro - Express strong Presidential approval but hold short of a firm veto.
17. Hold for further consideration - consider implications of the Federal Reports Act of 1942.
18. Hold for further consideration - should first be considered by intergovernmental task force identified in item 9.
19. Pro
20. Hold for further consideration.
21. Hold for further consideration - it's a new program.
22. Con
23. Hold for further consideration - keep it task force level.
24. Pro

It was also decided in view of the above decisions that a special message would not be sent to the Congress this session on consumer affairs.

MAR 22 1975

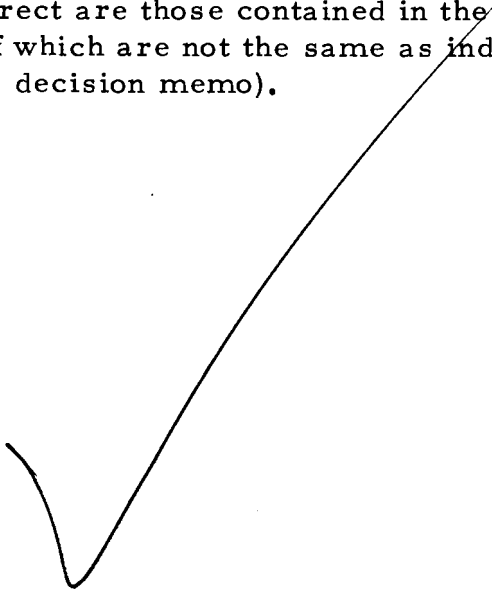
THE WHITE HOUSE
WASHINGTON

March 22, 1975

MEMORANDUM FOR: JACK MARSH

FROM: JERRY L. JONES 

With regard to the attached, the decisions we understand to be correct are those contained in the Cavanaugh memo (some of which are not the same as indicated on the President's decision memo).



MAR 19 1975

THE WHITE HOUSE
WASHINGTON

March 18, 1975

MEMORANDUM FOR: JACK MARSH

FROM: JERRY H. JONES

Jim Cavanaugh has forwarded a list of the decisions made on the consumer/regulatory question as worked out in the meeting with the President. Do these agree with what you understand to be the decisions?

Yes,

I'm assuming on certain pages where there are two marks the heavier mark is the choice.

JH

THE WHITE HOUSE
WASHINGTON

March 13, 1975

MEMORANDUM FOR:

DICK CHENEY

FROM:

JERRY H. JONES

Jim Cavanaugh has forwarded a list of the decisions made on the consumer/regulatory question as worked out in the meeting with the President. Do these agree with what you understand to be the decisions?

Check
John March

THE WHITE HOUSE

WASHINGTON

March 12, 1975

MEMORANDUM FOR THE FILES

FROM: JIM CAVANAUGH

SUBJECT: Consumer-Regulatory Decisions Contained in Jim
Cannon's Memorandum of March 8, 1975

1. Title I - Hold for further study and consideration
Title II - Con
2. Con
3. Pro
4. Pro
5. Pro
6. Pro - But consider more attractive bill title
7. Pro
8. Hold for further consideration
9. Pro - Federal cooperation but not in a White House conference
10. Pro - But do it in such a way as to not interfere with
Senate activities - in other words low key it
11. Pro
12. Pro
13. Hold for further consideration and figure out way so that
good organizations like Amway-Avon and others will not be
hurt
14. Con - No decisions yet on basic no fault decision -
(1) Jim Cannon, in the Domestic Council study of the
relative functions between governments, will look at the
question of what is the appropriate level of government
to regulate (2) the new Attorney General and the new

Secretary of Transportation should be involved and consulted in the development of the decision paper on no fault before it goes to the President (3) the President raised the question of whether or not any definitive studies had been done to see if in fact people saved money in States that had no fault in operation.

NOTE: Mike Duval should make sure this item is covered in the President's decision paper on no fault.

15. Hold for further consideration
16. Pro - Express strong Presidential approval but hold short of a firm veto
17. Hold for further consideration - consider implications of the Federal Reports Act of 1942
18. Hold for further consideration - should first be considered by intergovernmental task force identified in item 9
19. Pro
20. Hold for further consideration
21. ~~Con - It's a new program~~ *Hold for further consideration - it's a new program*
22. Con
23. Hold for further consideration - keep it task force level
24. Pro

It was also decided in view of the above decisions that a special message would not be sent to the Congress this session on consumer affairs.

THE WHITE HOUSE

WASHINGTON

March 8, 1975

MEMORANDUM FOR THE PRESIDENT

FROM : JIM CANNON *J.C.*
SUBJECT : Consumer/Regulatory Reform Message

At your meeting last week with Virginia Knauer to discuss consumer issues, you directed that she and Bill Baroody work with us in developing options for a possible special message on consumer initiatives and regulatory reform. The following paper presents those options for your decision.

SUMMARY

The proposals that follow have been put together with the objective of providing options for a total package that would serve as a strong Administration alternative to Consumer Protection Agency (CPA) legislation.

Virginia Knauer says that your message could be an opportunity for you to reassert your leadership in the consumer area and highlight what you have already done and are doing for consumers.

The 24 options attached fall into two categories:

- 1) Consumer oriented proposals, e.g.,
 - a) To strengthen the present Office of Consumer Affairs,
 - b) To improve present procedures for determining food and drug safety.
- 2) Regulatory reform proposals, including
 - a) Surface transportation,
 - b) Air transportation,
 - c) Financial institutions,
 - d) Robinson-Patman Act,
 - e) Repeal of Federal laws allowing "fair trade" laws.

Should you decide to go with all or part of this package, we can be ready to send your message to the Hill next week.

The Senate held their last day of hearings on the CPA bill yesterday, and we feel it is important to offer an Administration alternative before the Senate Committee completes its mark-up.

OPTIONS

1. Consumer Representation Act of 1975

At your meeting with Mrs. Knauer you said you would consider her proposal to expand the present Office of Consumer Affairs as an alternative to Administration support of a CPA. The Consumer Representation Act of 1975 would do that in two ways. Title I would statutorily create an Office of Consumer Affairs within the Executive Office of the President. Title II would statutorily establish within each independent agency and executive department an Office of Consumer Representation.

Title I: Statutory establishment of an Office of Consumer Affairs within the Executive Office of the President.

An expanded version of Mrs. Knauer's present office, this agency would perform most of the amicus type functions outlined in the Brown CPA bill. In addition, it would publish a Consumer Register, coordinate the activities of the consumer offices established by Title II in other agencies, and transmit consumer complaints to the appropriate Federal agencies.

On an interim basis, the existing office could be expanded by Executive Order. This would entail a staff increase of 35 and an FY'76 budget increase of \$1.5 million.

Pro: In conjunction with the separate Offices of Consumer Representation, would permit the Office of Consumer Affairs (OCA) to more effectively carry out its duties, and would command strong support from Mrs. Knauer, many consumerists, and business as an alternative to CPA legislation.

Con: Would be a new spending program. Goes against Administration policy of not creating special interest offices in the Executive Office of the President. Also, could run the risk this would not stop CPA legislation, and we could end up with both this office and a CPA.

Decision

 Pro (Knauer, Baroody, CEA, Marsh, Lazarus)

~~X~~ Con (OMB, Seidman, Cannon: would prefer
it established by Executive Order)

yes ~~X~~ Hold for further study and consideration

Title II: Statutory establishment of an Office of
Consumer Representation within each independent
agency and executive department.

These offices, similar to the CAB Consumer Advocate, would have the authority to participate in agency proceedings in the same manner as a private party. Their authority would be granted by agency regulations, with the head of each agency having the responsibility for determining the role of its office. Among their responsibilities, the new offices would ensure that consumer benefit data be considered in the agency decision making process. Finally, they would operate in coordination with the expanded Office of Consumer Affairs.

Pro: Combined with an expanded, amicus OCA, these consumer offices could provide a viable Administration alternative to a CPA. Could provide visible proof of the President's consumer commitment.

Con: Could require sizable increased spending to provide necessary staff. Could have the effect of relieving agency operational units of considering the public interest and risk that the consumer offices be "captured" by vested interests. Same undesirable effects as the previous issue.

Decision

Pro (Marsh, Seidman, Knauer, Baroody,
Lazarus)

yes ~~X~~ Con (OMB, CEA, Cannon)

Hold for further consideration

2. Consumer Benefit Analysis

Each executive department and independent agency would be responsible for preparing a Consumer Benefit Analysis setting forth the direct and indirect cost and benefits to consumers of proposed legislation and regulations. The consumer representative in each agency would be responsible for seeing that it be considered in decision making.

Pro: Could receive wide political support and be an adjunct to the Inflation Impact Statement.

Con: Could be expensive and could be considered already adequately covered in the Inflation Impact Statement.

Decision

_____ Pro (Marsh, Seidman, Knauer, Baroody, Lazarus)

yes ~~_____~~ Con (OMB, CEA)

_____ Hold for further consideration

3. Regulatory Reform Commission

Not only would the Administration continue its support for a Regulatory Reform Commission, but also we would expand its mandate to include semi-autonomous agencies, bureaus and departments with regulatory functions. Also, the Commission could be charged with examining agency responsiveness to consumer interests, giving a further reason why a CPA should not be established until the Commission's work is completed.

The Commission proposal would be supplemented by specific regulatory reform proposals you are making in this message.

Pro: Would strengthen both your consumer and regulatory reform programs by linking the two in this manner.

Con: With your specific proposals a Commission could be no longer necessary and could be viewed as an excuse for delay of further reforms.

Decision

yes Pro (Marsh, Seidman, CEA, OMB, Knauer, Baroody, Lazarus)

_____ Con

_____ Hold for further consideration

4. Reform of Surface Transportation Regulation

ICC rules and regulations to regulate competition annually cost the consumer an estimated \$4-10 billion. As the result of a four month interagency task force effort, detailed legislative proposals to modify ICC pricing practices, liberalize market entry, exit and licensing restrictions, and eliminate antitrust immunities for both rail and trucking will be ready for submission to Congress by the end of the month.

Pro: Inclusion in this message would cast the issue as a consumer problem, taking transportation regulatory reform out of its normally special interest forum.

Con: Could receive opposition from truckers and teamsters and have some political cost.

Decision

yes X Pro (Marsh, Seidman, OMB, CEA, Baroody, Knauer, Lazarus)

 Con

 Hold for further study

5. Air Transportation Regulatory Reform

An Administration task force is currently developing specific legislative reforms to liberalize both CAB pricing practices and entry/exit restrictions and end antitrust immunities for the airline industry. The Administration has already testified on this before the Kennedy subcommittee and indicated that reform legislation would be forthcoming.

Pro: This issue is receiving considerable press attention and inclusion in the message could put the President out in front on this.

Con: Airlines will object to this reform.

Decision

yes ☒ Pro (Marsh, Seidman, CEA, OMB, Knauer, Baroody, Lazarus)

☐ Con

☐ Hold for further consideration

6. Financial Institutions Act

The Administration is on the verge of resubmitting legislation seeking to remove outdated constraints on the services and rates which banks and savings institutions may offer. Not only would such action benefit the financial institutions and provide much needed credit, it would also give the average consumer a better opportunity to earn an honest return on his savings investment.

Pro: In the current economy, increased savings dividends would be popular with consumers.

Con: This is not a new legislative initiative.

Decision

yes ☒ Pro (Marsh, Seidman, CEA, OMB, Baroody, Knauer, Lazarus) *but consider more attractive bill title*

Con

Hold for further study

7. Announce Legislation to be Submitted to Reform the Robinson-Patman Act

Like "fair trade" laws, the 1936 Robinson-Patman Act denies consumers the benefit of stiff competition in stores by making it difficult for producers to give price breaks they might otherwise offer. Legislation to be proposed by Justice will suggest revisions which preserve a special remedy against anti-competitive price discriminations while eliminating language and interpretations which discourage legitimate price competition. The existing law is patently anti-competitive and anti-consumer. Economists, lawyers, and two Presidential Commissions, are in broad agreement that a thorough revision of the Act is needed.

Pro: Could be seen as pro-consumer action on the part of the President and an example of Presidential leadership in reducing consumer costs.

Con: The proponents of Robinson-Patman will fight any modification of the Act on the grounds that it helps small businesses compete against the advantages of large firms.

Decision

yes ~~X~~ Pro (Seidman, CEA, Knauer, Baroody, Lazarus)

 Con

 Hold for further consideration (Marsh, OMB)

8. Provide for Easier Deviation from Food Standards in
Order to Develop New Foods

Legislation would be submitted to amend the Federal Food, Drug, and Cosmetic Act to encourage the marketing of new foods. The issuance of temporary permits to deviate from an accepted food labeling standard would be authorized while public acceptance of the new product is being evaluated.

Pro: Could encourage further development of new, less expensive food products.

Con: Administrative authority already exists for FDA to issue temporary deviation permits. Also, this could be interpreted by consumers as encouraging misleading food marketing.

Decision

_____ Pro (CEA, Knauer, Baroody)

_____ Con (OMB, Lazarus)

yes ~~X~~ _____ Hold for further consideration (Marsh)

9. Establish Intergovernmental Task Force on State and Local Regulatory Reform Leading to a White House Conference

Following the President's October 8 call for a review of State and local regulation and restrictive practices, there has been considerable interest expressed by State and local governments on the types of actions they might take to remove such practices. In the message you could (1) highlight priority areas of concern (i.e. public utility regulation, occupational licensure, etc).; (2) set in motion an Intergovernmental Task Force including State and local officials; (3) announce a willingness to provide a forum for the discussion of these issues and the exchange of information. The latter could be a White House Conference.

Pro: Indicates a cooperative concern to work with State and local officials on this important issue.

Con: Could be inconsistent with allowing States and localities to exercise their own priorities and with your December 4 letter to those officials.

Decision

yes ☒

Pro (Marsh, CEA, Knauer, Baroody, Lazarus, OMB:
Federal cooperation but not in a task force
or White House Conference

Con

Hold for further study

10. Announce Administration Support for Special Senate
Committee on Regulatory Reform

The Senate has action underway to create a joint Commerce-Government Operations Committee to review Government regulation over a one and a half year period. This body could prove a useful vehicle for airing a number of difficult regulatory issues.

Pro: Permits the President to state that such a group should be a vehicle for change not an excuse for inaction.

Con: Could undermine Administration support for a Regulatory Review Commission. Also, there is a real chance this committee could delay indefinitely consideration of reforms.

Decision

yes Pro (Seidman, Knauer, OMB: pending establishment of the Review Commission *but do it in such a way as to not interfere w/ senate activities - in other words low key it)*
Con (CEA, Lazarus)

Hold for further consideration (Marsh, Baroody)

11. Propose Legislation to Streamline Hearing Procedures
Under the Federal Food, Drug, and Cosmetic Act

The Administration could submit legislation to amend the Federal Food, Drug, and Cosmetic Act so that the hearing process is accelerated. In some cases hearings can now drag on for years.

Pro: These prolonged hearings have been criticized by the Administrative Conference of the U.S. and such a proposal would be popular with consumers.

Con: Could be too insignificant an issue for inclusion.

Decision

yes ~~X~~ Pro (OMB: the specifics must be identified by HEW first; Marsh; Seidman; CEA; Barody; Knauer; Lazarus)

Con

Hold for further consideration

12. Repeal Federal Law Allowing for State Resale Price Maintenance Laws (with fair trade laws)

This proposal would reiterate the Administration's support for Senator Brooke's bill to repeal the Miller-Tydings Act (1937) and the McGuire Act (1952). Generally known as the Resale Price Maintenance Laws or "fair trade" laws, these acts allow a manufacturer to enter into a contract with one buyer at a set price and then allow that agreement to be binding on all other retailers who sell the product in that State. While it has been argued that these laws keep predatory retailers from drawing more than their share of the market by "undercutting" other businesses, in reality the laws have allowed manufacturers to set their prices at an artificially high level. The elimination of these laws should save the consumer between \$1.5 and \$3 billion a year.

Pro: Would be action strongly approved by consumers.

Con: Would be a restatement of earlier Presidential support. Also, because of pending action in many States it could more appropriately be a State issue.

Decision

yes ~~X~~

Pro (Marsh, Seidman, CEA, OMB, Baroody, Knauer, Lazarus)

_____ Con

_____ Hold for further consideration

13. Submit Legislation to Prohibit Pyramid Sales Transactions

The Administration could announce its support for legislation that would provide for the prohibition of pyramid sales transactions (transactions in which the incentive for the buyer of a distributorship is the prospect of monetary gain from the sale of further distributorships) in interstate or foreign commerce or by use of the mails. The SEC would be given regulatory authority to carry out the act.

Pro: Would show the Administration as willing to take action to protect the consumer from schemes such as Koscot, Dare To Be Great, and Holiday Magic.

Con: Could be seen as a regulatory measure in an essentially deregulatory message.

Decision

~~X~~ Pro (Seidman, CEA, Knauer, Baroody, OMB, Lazarus)

_____ Con

yes ~~X~~ Hold for further consideration (Marsh
and figure out way so that good
organizations like Amway - Door
and others will not be hurt)

14. Announce Decision on Auto No-Fault Legislation

A Presidential decision paper is being prepared on the no-fault issue. If you should change your position on this, the consumer message would be an appropriate time to announce it.

Pro: No-fault is a major consumer issue and a new position would be favorably received in a consumer message.

Con: Considerable opposition to Federal no-fault remains. Many see it as Federal encroachment upon individual choice and State responsibilities.

Decision

 Pro (Seidman, CEA, Knauer, OMB

yes X Con (Marsh *see notation on Car. memo*

X Hold for further consideration (Baroody, Lazarus

15. Announce a Review of Antitrust Immunities to be Completed in Ninety Days

In response to an Economic Policy Board request, a task force has been set up in the Executive Branch under the lead of the Justice Department, to review antitrust exemptions in a number of areas. Although specific legislative proposals other than modification of antitrust immunity in air and surface regulation and repeal of the fair trade laws will not be made at this time, the Consumer Message could announce that such antitrust immunities are under review and that further legislative proposals may be forthcoming.

Pro: Would be seen as pro-consumer Presidential leadership in trying to remove exemptions to antitrust actions and reliance on free competition and the marketplace.

Con: Could be seen as just another study.

Decision

X Pro' (Baroody, Knauer, Marsh, Seidman, CEA, OMB, Lazarus)

_____ Con

yes Hold for further consideration

16. Announce Intention to Veto Any Legislation Which Unnecessarily Raises Prices to the Consumer or Restricts Production

An appropriate statement could be made of your intention to carefully review legislation and veto any which would result in unnecessary price increases. Your veto of the Cargo Preference legislation last year could be given as an example of your commitment to this policy.

Pro: Would be example of your commitment to protect the interests of consumers.

Con: Could have difficulty agreeing with public on which price increases are necessary and which are unnecessary. Impact on consumers is already a consideration in approving legislation.

Decision

? yes ~~X~~ Pro (Seidman, CEA, Baroody, Knauer, OMB: express strong Presidential disapproval of but not veto

_____ Con (Lazarus

_____ Hold for further consideration (Marsh

17. Propose Changes in the Federal Reporting Act and Federal Register to Give the Public Better Notice and Clearer Understanding of Proposed Federal Decisions

The Administration could submit legislation to modify the Federal Reports Act to encourage Federal consumer protection agencies to obtain better survey and marketing data before proposing (or denying) complex regulatory schemes. The legislation would provide for public (consumer) representation in form and survey review by OMB and encourage public representatives to identify needed survey areas. It would also create a public (including media) advisory board to the Director of the Federal Register and give the Director new authority to make the Federal Register a better working and source document.

Pro: Would have pro-consumer endorsement as making rule-making policy more visible.

Con: OMB already has a procedure for soliciting public comment. Also, the purpose of these changes has been addressed in the Inflation Impact Statement's policy.

Decision

X Pro (Marsh, Seidman, Baroody, Knauer)

_____ Con (Lazarus)

yes X Hold for further consideration (CEA, OMB)
per notation

18. Prohibit States and Localities from not Permitting
the Advertising of Prescription Drug Prices

The Administration would submit legislation that would prohibit States and localities from enacting or enforcing any law or regulation which would prohibit or inhibit the posting of prices of prescription drugs.

Pro: Would allow consumers to comparison shop for prescription drugs.

Con: Such Federal dictation of State and local laws could be condemned as heavy handed.

Decision

7 X Pro (Marsh, Seidman, CEA, Baroody, Knauer)

 Con (Lazarus)

yes X Hold for further consideration (OMB: the details of how this would be enforced are critical)
see notation
see 229

19. Make Note of the National Appliance and Motor Vehicle Energy Labeling Act of 1975

The National Appliance and Motor Vehicle Energy Labeling Act of 1975 is Title XII of the Administration's Energy Independence Act of 1975. It would authorize the President to require energy efficiency labels on all new major appliances and motor vehicles. This would ensure that consumers are fully apprised of the efficiency of various appliances and motor vehicles and would encourage the manufacture and greater utilization of more efficient products.

Pro: This would demonstrate consumer awareness in our energy program.

Con: Could be criticized as unwarranted Federal Government intervention into the private sector. Would increase costs to consumers.

Decision



Pro (Marsh, Seidman, Baroody, Knauer, Lazarus)

Con (CEA, OMB)

Hold for further consideration

20. Resubmit Drug Identification Act

HEW is preparing to resubmit the Drug Identification Act which would establish a code system for the identification of prescription drugs. Labeling and direct product coding would allow quick identification of drugs in emergencies, and would facilitate prompt medical treatment. This legislation has been pending since at least 1969.

Pro: Would be seen as a pro-consumer initiative.

Con: Could be of some cost to the private sector.

Decision

~~X~~ Pro (Seidman, Knauer, OMB, Lazarus)

Con

yes Hold for further consideration (Marsh, CEA, Baroody)

21. Note that the Administration Plans to Resubmit Medical Devices Legislation

The Administration supported legislation submitted to the 93rd Congress that would have allowed FDA to regulate medical devices. Current law does not require manufacturers of medical devices to establish the safety or efficacy of their products before marketing. HEW is planning to resubmit the Administration's bill to this Congress.

Pro: Could be packaged in message as a consumer protection measure.

Con: Could be interpreted as a regulatory measure and out of place in a deregulatory message. Could result in increased costs to consumers.

Decision

X Pro (Seidman, Knauer

X Con (Marsh, CEA, Lazarus

yes Hold for further consideration (Baroody, OMB

no notation

22. Propose Legislation Aimed at Product Testing in the Private Sector -- A Consumer Product Test Methods Act such as Has Been Supported by the National Bureau of Standards


Legislation could be proposed which would allow products to be identified and measured against tests and standards developed by the National Bureau of Standards. The products could be labeled and advertised accordingly, providing the consumer with an additional purchasing tool and the advertiser with a national and objective basis for product comparisons.

Pro: Could stimulate greater price and quality competition, improved product efficiency, and better value comparisons by consumers in the sale of consumer durables.

Con: Could be seen as unwarranted Federal intervention into the private sector; could also have a substantial inflationary impact on the products tested.

Decision

____ Pro (Seidman, CEA, Knauer)

 ____ Con (Marsh, OMB, Baroody, Lazarus)

____ Hold for further consideration

23. Improved Quality Grading Systems of Packaged Food

Direct the Special Assistant to the President for Consumer Affairs to develop a task force with USDA, FDA, and Commerce which would recommend harmonization of grade-labeling systems for packaged and canned fruits, vegetables, jams, meats, poultry, etc. This would be a measure to facilitate consumers value comparison.

Pro: Would be a pro-consumer initiative.

Con: Could be seen as another study.

Decision

~~X~~ Pro (Marsh, Seidman, Knauer, CEA, Baroody, Lazarus)

____ Con

yes
____ Hold for further consideration (OMB: the specifics and costs must be identified)
see notation

24. Improve the System for Disseminating Product Recall and Hazardous Information and Follow-up

Concern has been expressed both in the media and in Congress that sufficient product recall information is not getting to the affected consumer. In addition, business is worried that massive paid advertising campaigns might be required. You could direct Mrs. Knauer to chair a task force of the affected agencies such as FDA, the Consumer Product Safety Commission, Transportation, and Agriculture that would explore options for improving recall efforts and to report their findings to you.

Pro: Could be seen as an effort to solve this problem for both consumers and business.

Con: Could be interpreted as another ineffective study.

Decision

Yes ☒

Pro (Marsh, Knauer, Seidman, CEA, Baroody, Lazarus)

Con

Hold for further consideration (OMB: anticipated benefits must be identified)

CONCLUSION

Should you feel that there are an acceptable number of items in this package, we will proceed to work with the appropriate agencies in the development of a special message.

DECISION: Draft special message

☒ Approve

Yes ☐ Disapprove

Let the Committee decide.