

June 10, 2010

Dear Conferee:

As you begin working to reconcile the House and Senate versions of financial regulatory reform legislation, the undersigned trade associations and business groups – representing hundreds of thousands of U.S. companies from a wide array of industry segments – write to express our strong opposition to the inclusion of provisions that would significantly expand the Federal Trade Commission’s (FTC) rulemaking and enforcement authority over virtually every sector of the American economy.

The proposed expansion of FTC authority envisioned in H.R. 4173¹ would eliminate procedural safeguards that were imposed upon FTC rulemaking decades ago, after Congress determined the Commission had repeatedly overstepped its regulatory authority. These provisions couple unrestrained rulemaking authority with enforcement powers to seek civil penalties for unfair or deceptive acts or practices; to seek such penalties without coordinating with the Justice Department; and to pursue companies that allegedly provide “substantial assistance” in an FTC Act violation, even without actual knowledge of the violation. Granting such sweeping powers to the Commission would enable it to act essentially as an unelected legislature, governing industries and sectors that had nothing to do with the financial crisis.

Particularly given their potentially far-reaching effects, these provisions received remarkably little attention during the legislative process, largely overshadowed by debate about the creation of a new agency focused on consumer financial protection. The House Energy & Commerce Committee reported H.R. 4173 after very brief consideration in committee markup and without affording affected industries any opportunity to present their concerns regarding the included proposal for FTC expansion.

The Senate Commerce, Science & Transportation Committee considered these provisions only in the context of the FTC’s role in the financial services sector, rather than the sweeping impact that such expanded authority would have on the broader economy. The proposal for FTC expansion did not receive a vote in committee or on the Senate floor. Rather, the Rockefeller-Hutchison amendment to S. 3217 adopted on the floor only granted the FTC concurrent jurisdiction relative to the new Consumer Financial Protection Bureau, without expanding the Commission’s rulemaking and enforcement authority over industries and sectors that had nothing to do with the financial crisis.

The balance struck in the Rockefeller-Hutchison amendment to the Senate bill makes the most sense in the context of financial reform legislation, whereas granting the FTC broad new authority across all but a few sectors of the American economy is not a necessary or relevant response to the causes of the recent recession.

These FTC-related issues deserve their own due consideration and debate in the more appropriate context of an FTC reauthorization, as has been done in the past. Thus, we strongly urge you to oppose the inclusion of any provisions that would expand FTC authority, rather than

¹ Title IV, Subtitle I, Sec. 4901 (“Improvements to the Federal Trade Commission Act”).

making changes to the Commission that would have a fundamental impact on the business community and broader American economy.

Sincerely,

Alliance of Automobile Manufacturers
American Advertising Federation
American Association of Advertising Agencies
American Bakers Association
American Business Media
American Financial Services Association
American Frozen Food Institute
American Herbal Products Association
Association of International Automobile Manufacturers, Inc.
Association of National Advertisers
Beer Institute
Consumer Data Industry Association
Consumer Electronics Association
Consumer Healthcare Products Association
Council for Responsible Nutrition
CTIA - The Wireless Association ®
Direct Marketing Association
Direct Selling Association
Electronic Retailing Association
Financial Services Institute, Inc.
Financial Services Roundtable
Food Marketing Institute
Interactive Advertising Bureau
International Franchise Association
Internet Commerce Coalition
Magazine Publishers of America
Marketing Research Association
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Association of Professional Background Screeners
National Association of Realtors
National Association of Wholesaler-Distributors
National Business Coalition on E-Commerce and Privacy
National Council of Chain Restaurants
National Restaurant Association
National Retail Federation
Natural Products Association
NetChoice
Online Publishers Association
Retail Industry Leaders Association
Shop.org

Snack Food Association
Software & Information Industry Association
TechAmerica
Toy Industry Association
United Natural Products Alliance
United States Organization for Bankruptcy Alternatives
U.S. Chamber of Commerce