

Consumer Action • Consumer Federation of America • Consumers Union
National Association of Consumer Advocates • National Consumers League
National Consumer Law Center • Public Citizen
U.S. Public Interest Research Group

An Agenda to Ensure Consumers Are Heard

Elevate the consumer voice in government

Powerful special interests have always had their voices heard by a responsive government. Their hundreds of millions of dollars in lobbying and campaign expenditures and effective use of revolving doors have guaranteed their influence, year-in and year-out. Conversely, government often is slow to respond to the needs of the average consumer. It often takes a crisis, such as the recent financial collapse, for remedial reforms to include significant consumer protections. Yet even then, powerful special interests step in to influence the regulatory process and roll back the reforms. Consumers and their advocates will never have the resources to counter special interest influence completely. They need more speakers and more megaphones inside the government.

Just over 50 years ago, in March of 1962, President John F. Kennedy issued a “Special Message to the Congress on Protecting the Consumer Interest.” This extraordinary document laid out the consumer case for the right to safety, the right to be informed, the right to choose and the right to be heard. While some of the reforms it proposed, such as food safety, were not enacted until very recently, others were enacted almost immediately. Part of the reason for the early action is that Presidents Kennedy, Johnson and Carter chose to give consumers a greater voice in government, indeed, in the White House itself. Yet, consumers no longer have that voice.

While much has been done to address the financial meltdown, rising health care costs and unsafe food and products, much more needs to be done in these and other areas. With consumer protection currently spread across so many different federal agencies and departments, we believe having a strong, centralized voice on behalf of consumers in the White House itself is critical.

President Kennedy tapped Esther Peterson from the Department of Labor to advise him on consumer issues, which set the stage under the Carter Administration to establish the Office of Consumer Affairs. That office, also led by Peterson, had regular and direct access to the President, giving a voice to consumer issues, and balancing the ever-present and extremely well-funded corporate business lobby.

Actions for the Administration: 1) In this, the 50th year after the original Kennedy consumer message, the President should hold a White House conference discussing its legacy and measuring the state of the consumer today. (2) Just as the President holds regular meetings with corporate leaders, he should hold regular meetings with consumer leaders. (3) The position of Consumer Advisor to the President in a White House Office of Consumer Affairs should be reinstated, with a clear mandate to coordinate consumer-related matters, to influence legislation, write executive orders, intervene as a full party in adjudicatory proceedings, and have input at policy meetings. The post should be filled

with someone with known credentials in the consumer world, and consumer advocacy organizations should be consulted before the director is chosen. Most importantly, the director of the USOCA should have direct and regular access to the President.

Continue to work to make health care affordable, accessible and safe

The historic 2010 health reform law will expand coverage to a large proportion of U.S. citizens and legal residents, provide subsidies to those who cannot otherwise afford insurance and provide significant protections to consumers such as ending the insurer practice of excluding individuals with pre-existing conditions. It also made a start on some incremental payment reforms in our entitlement programs that will provide incentives for physicians to provide quality care rather than volume of services. But much more must be done to improve the quality of care and to rein in spiraling health care costs. We need to build on service delivery system reforms that will transform our health care system to one that rewards quality and safety of care, promotes prevention and discourages inappropriate and costly over-utilization. Some of us believe that the best way to achieve the triple objectives of controlling cost, improving care and achieving universal coverage is through a single-payer, Medicare-for-All system.

One in four patients is likely to be harmed while hospitalized. That amounts to nearly nine million people each year, yet most of this harm is preventable. Moreover, harm to hospital patients, including errors and hospital infections, kills an estimated 225,000 people each year, making it a leading cause of death in America. A December 2012 Johns Hopkins University School of Medicine study of surgical "never events" – the kind of mistakes that should never happen – like operating on the wrong patient or sewing someone up with a sponge still inside shows that these events are happening with “alarming frequency,” more than 4,000 times a year in the U.S.

Federal and state governments have published information about health care-acquired infections, but we still have information about only a fraction of the problem. The Affordable Care Act (ACA) and other federal programs have begun implementing financial payments based on performance, which should create incentives for doctors and hospitals to provide safer care. In addition, the Food and Drug Administration (FDA) has limited authority to require safety testing before medical devices are cleared for sale and limited ability to track the safety of even the highest risk implants. Further, court decisions are limiting FDA’s ability to protect the public. And, FDA has not adequately used its existing authority. As a consequence, certain pharmacies are manufacturing a high volume of unregulated drugs, and drug and device companies continue to market products for unapproved uses.

The public should have the tools and information they need to make health care choices that are right for them and are likely to provide the best quality and safest outcomes. We need to ensure that medical treatments, implants and medicines patients take are high-quality, safe and affordable.

Actions for Congress and the Administration: 1) Protect funding for the ACA, Medicare and Medicaid by supporting policies that reduce wasteful and unnecessary spending,

rather than cutting services or shifting costs to consumers. 2) Continue efforts to prevent unjustified insurance rate increases by providers and continue to encourage health exchange policies that promote competition and lower costs. 3) Build on demonstrations in the ACA that encourage better care coordination for high cost individuals, expand pay for performance and chronic disease management, promote evidence-based medicine, and increased primary care by all payers, private and public. 4) Promote the use of generic drugs and expand competitive bidding in public health care programs. Medicare should have the power to negotiate lower drug prices, similar to what the Veterans Administration is able to do. 5) FDA should have the necessary authority and resources to ensure that medical implants and drugs are safe, and should increase oversight of compounding pharmacies and drug manufacturing facilities. 6) Counter the well-financed drug and device industry's sometimes misleading advertising with better consumer information. 7) Adopt information technology that protects privacy while providing consumers, doctors and pharmacists with important medical information. 8) Promote and broaden public reporting on health care-acquired infections, medical errors and other adverse events to provide the public a clearer assessment of the safety of whole facilities.

Continue to protect and expand upon the financial consumer protections secured in recent years

Measures to rebuild customer confidence and ensure effective consumer protection are essential to the health of not only the U.S. economy, but global financial stability as well. The first four years of the Administration were extraordinary in the depth and breadth of the consumer protection and financial service reforms that were enacted. Many of these reforms, such as the CARD Act, the passage of the far-reaching Dodd-Frank Act, and the creation of the Consumer Financial Protection Bureau (CFPB), have already begun to provide real benefits to consumers and our economy. Unfortunately, since these historic victories, we have seen Wall Street and the U.S. Chamber of Commerce time and again attempt to block full implementation of the essential investor, consumer protection and financial stability reforms of the Dodd-Frank Act, and the necessary and independent regulatory, supervisory and enforcement work of the CFPB. We intend to continue to fight alongside Congressional champions and the Administration to protect these historic reforms.

In addition to protecting Dodd-Frank and the CFPB, policymakers must go further. The CFPB and the prudential regulators must continue efforts to regulate or eliminate harmful financial products and practices and to ensure appropriate redress in the event of financial institution failure and fraud. Responsible American families continue to suffer financially under an outdated regulatory system that fails to prioritize saving homes over foreclosure, leaves our students struggling with unaffordable debt, allows banks to trick consumers into incurring billions in overdraft fees, and fails to stop unscrupulous practices by payday lenders, debt collectors, credit reporting agencies, credit card companies, prepaid card providers, auto dealers and other financial service companies.

The foreclosure crisis—the worst since the Great Depression—is barely half over. State and federal efforts to stop mortgage servicing and foreclosure abuses and compensate injured homeowners have been disappointingly slow and woefully inadequate. Far too many unnecessary foreclosures continue to occur, devastating families, communities (especially communities of color) and the overall economy. Further, homeownership opportunities have essentially dried up for many lower income families, while rents have simultaneously skyrocketed.

In the U.S., total student loan debt now exceeds \$1 trillion and nearly one in five households has a student loan. Students struggling with a difficult job market or burdened with predatory loans are saddled with debt that will follow them to their grave. Private lending institutions and for-profit colleges know there are enormous profits to be made on the backs of the unemployed seeking new job opportunities, ex-military and young people who hope a degree will help them achieve financial success.

The financial services industry continues to make outrageous profits through abusive products that target low-income, unsophisticated and unbanked consumers. Profits from abusive overdraft fees continue to climb, up to \$31.5 billion a year, and some banks are introducing 300% APR payday loans. Other new products, like prepaid cards and mobile payment services, are beginning to explode in the marketplace, and carry great risks for consumers because they are loaded with fees, can be used to evade state interest rate caps, and lack basic consumer protections, such as dispute rights and deposit insurance protection.

Much remains to be done to protect consumers.

Actions for Congress and the Administration: 1) Implement the too-big-to-fail reforms in the Dodd-Frank Wall Street Reform and Consumer Protection Act. 2) Continue to implement the other vital reforms of the Dodd-Frank Act including meaningful implementation of the Volcker Rule designed to limit risky proprietary trading, strong executive compensation rules that decouple risky behavior from pay incentives for financial institutions, strong leverage limits on systemically critical Wall Street banks, strong implementation of Dodd-Frank's Title VII derivatives and over-the-counter swaps market reforms, and important transparency measures like the ratio of CEO to worker pay. 3) Consider additional structural reforms to restore the stability of the financial system, including imposing hard limits on the size of big banks and the reinstatement of the Glass-Steagall Act's separation of commercial and investment banking. 4) Oppose any efforts to weaken the CFPB or deprive it of the resources and independence it needs to protect consumers in the financial marketplace. 5) Support strong rules to reform mortgage servicing to prevent avoidable foreclosures, including a mandate to offer loan modifications that also benefit investors and stop to foreclosures during loan modification review. 6) Protect student borrowers from unscrupulous lending practices, restore bankruptcy relief for student loans, and provide relief to struggling students. 7) Stop banks and prepaid cards from encouraging and profiting off of overdraft fees and payday products, and extend basic protections to prepaid cards and mobile payments. 8) Oppose abusive financial practices by payday lenders, debt collectors, credit reporting

agencies, credit card companies, auto dealers and other financial service companies. 9) Continue to investigate large-scale financial fraud and, for the guilty, impose penalties that are a significant deterrent and serve as a true incentive to stop the practices. 10) Continue to investigate ways to ward off runs on money market funds and the systemic threat they pose to the financial system. 11) Enact a financial transaction tax as a mechanism both for new revenue and a check on risky high frequency trading. 12) Work with states to preserve consumer rights and affordability in the disaster insurance marketplace. [We note that our organizations are all members of the ongoing multi-stakeholder coalition Americans for Financial Reform and continue to develop and pursue our joint priorities through that coalition. The preceding highlights are intended only as examples drawn from that work.]

Ensure our food and products are safe

Robust consumer product and food safety laws were passed by Congress in 2008 and 2010 respectively. While these laws have had a significant and positive impact on the safety of our products and food, effective and complete implementation of these laws is only possible with adequate resources.

The passage of the Consumer Product Safety Improvement Act (CPSIA) in 2008 was a huge stride forward in protecting consumers from risks posed by unsafe products. Before passage of this law, we saw the need for the Consumer Product Safety Commission (CPSC) to recall over 20 million unsafe products – *after* they entered our homes and injured children. The CPSIA created important new consumer protections. Robust mandatory standards have been implemented for cribs, play yards, and four other infant and toddler products. Lead levels in children’s products have been substantially reduced and consumers now have access to a useful database, www.saferproducts.gov, as a resource where they can report and research product hazards.

However, the CPSIA has not been fully implemented and CPSC’s ability to continue its implementation efforts must be protected. CPSC must still finalize mandatory safety standards for many infant and toddler products. In addition, legislative and legal efforts have sought to eliminate or limit the www.saferproducts.gov database. Further, budget cuts threaten CPSC’s ability to implement the CPSIA and fulfill its broad safety mission.

The Food Safety Modernization Act (FSMA) was passed in 2010, following numerous high-profile foodborne illness outbreaks linked to common, everyday foods such as peanut butter, spinach, peppers and eggs. FSMA provides FDA with new tools and enforcement powers to prevent contamination from occurring rather than simply reacting after consumers have already become sick. We applaud FDA for moving forward recently on rules to improve produce safety and preventive controls for food manufacturers. We urge prompt action on additional rules involving animal food, a foreign supplier verification program, and a third party certification program. Full and expeditious implementation of this important law is critical to protecting consumers from foodborne illness.

Recent actions by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) have improved public health protections for meat and poultry products. FSIS established a zero-tolerance policy for six additional disease-causing strains of *E. coli*; developed new performance standards for reducing pathogens in raw poultry; and established a hold and test policy for agency pathogen tests of raw beef products. However, an FSIS proposal to substantially change its poultry inspection program would be a step backwards, potentially putting consumers at greater risk for foodborne illness from raw poultry. Furthermore, the laws governing FSIS' authorities need to be modernized, similar to new authorities granted to FDA through FSMA. Ultimately, the responsibility for food safety, currently dispersed across 15 federal agencies and departments, should lie with a single, independent food agency governed by a modernized food safety law. Budget cuts threaten the ability of food safety agencies to adequately inspect facilities and oversee the safety of our food supply.

Bisphenol A (BPA), is a chemical found in cans and many plastic products that has been linked to a wide range of adverse health effects, including hormonal changes and cancer. While FDA has already moved to ban BPA in baby bottles, sippy cups, and infant formula containers, it needs to complete its own long-overdue assessment of BPA's health impacts, and remove BPA from all food and beverage containers.

To address the growing problem of loss of effectiveness of antibiotics, we must reduce antibiotic use on food animals, which accounts for 80 percent of all antibiotics sold in the U.S. FDA should act aggressively to reduce antibiotic use on animals, and Congress should support legislation to mandate broad reductions as outlined in the Preservation of Antibiotics for Medical Treatment Act (PAMTA) introduced in the last Congress.

Actions for Congress and the Administration: 1) Release FSMA rules from OMB and ensure efficient review of future rules. 2) Ensure FSMA rules provide strong protections for consumers. 3) Adequately fund federal food safety activities by both FDA and USDA. Increase and enhance inspections of domestic and imported foods and products before they enter our shores and stores. 4) Support and enhance activities for FDA and USDA to ensure that food producers are producing food in a safe and sanitary manner and to eliminate antibiotic use except for the treatment of sick animals. 5) Reintroduce and support passage of PAMTA in Congress. 6) Withdraw FSIS poultry proposal until critical safety issues can be addressed. 7) Provide the USDA with modernized authorities to assure the safety of meat and poultry products. 8) FDA should complete its assessment of BPA's health impacts, and ban its use in all food and beverage containers. 9) Appoint strong consumer representatives to the CPSC, ensure that it obtains adequate resources, and carefully oversee CPSC's implementation of the safety law and ensure that efforts to limit implementation are not realized.

Provide consumers with affordable and sustainable energy options

Addressing the stark reality of climate change and improving consumers' financial health need not be at odds. A clean energy future can reduce greenhouse gas emissions, give

consumers more energy options, and offer sustainable, affordable fuels that are not tethered to global commodity markets. Energy costs remain unaffordable for many families, and our nation's continued dependence on fossil fuels threatens our economy, national security, public health and the environment.

In order to transition to a cleaner future, public policy is critical in guiding the market towards reducing oil consumption and aligning renewable energy production, alt-fuel infrastructure, and alt-fuel vehicles. Energy efficiency and fuel economy are essential opportunities for savings. By encouraging the development of alternative fuels, infrastructure and vehicles that are affordable and sustainable, consumers will have greater choices and opportunities to reduce their fuel costs and live healthier lives.

Actions for Congress and the Administration: 1) Enact policies that address climate change in an equitable manner, that protect consumers from climate change impacts, and that assure an equitable transition to a cleaner energy future. 2) Encourage the development of alternative fuels, infrastructure and vehicles that are affordable and sustainable. 3) The National Highway Traffic Safety Administration should acquire robust data and ensure that mid-term review of CAFE standards will be at least as stringent as those currently in place (54.5 mpg by 2025). 4) The Environmental Protection Agency should finalize strong Tier III standards to deliver lower sulfur gasoline that can improve fuel economy and promulgate other Clean Air Act measures that protect public health and reduce pollution-related illness and health care costs. 5) Increase investments in transportation and livability initiatives that reduce oil consumption. 6) The Department of Energy should adopt appliance efficiency standards across the full range of household consumer durables that reduce energy consumption and lower consumer costs. 7) Ensure that federal buildings are in compliance with the most current building energy codes and encourage states to adopt and enforce those codes. 8) Provide adequate oversight over the Federal Energy Regulatory Commission's directive to ensure that all electric rates are "just and reasonable." 9) Increase financial assistance to lower income families who cannot afford their basic energy needs, and help families reduce their fossil energy use through weatherization and efficiency programs and renewable energy options, financed in part by eliminating subsidies to the oil industry.

Ensure that the Internet and other telecommunications services remain affordable and accessible, and consumers' privacy is protected

The Internet and other telecommunications services play an increasingly central and critical role in the everyday lives of consumers. Consumers are living more of their lives online and through mobile tools. Affordable, quality broadband should be available for all. Yet Internet service, quality, and costs are uneven. Millions of Americans are only able to get slow and/or expensive Internet service. Competition in the broadband market is extremely limited. This lack of competition comes at a time when high speed Internet is becoming increasingly important to participate in civic life and commerce. Security and privacy on the Internet also varies widely, with many consumers having little or no

idea about the vast amount of information collected about them every time they go online. This is particularly troubling in the case of children who are increasingly using social media.

As technology evolves and people adopt new and more advanced services, our laws and regulations must keep pace with these innovations. We need policymakers to help ensure that a framework is in place to protect consumers' online privacy, encourage telecommunications competition, root out abusive practices in the marketplace, and ensure people have fair access to vital services.

Actions for Congress and the Administration: 1) As the nation transitions from a Public Switched Telephone Network to a Public Digital Communications Network, policymakers should ensure that the public interest principles on which the telephone network was built are preserved and strengthened including the fundamental commitment to universal service and nondiscriminatory access to the communications network. 2) Enact legislation to protect consumers' online privacy by providing robust "do not track" options and tools. 3) Strengthen and reinforce current rules prohibiting the tracking of children's online activities. 4) Ensure and preserve net neutrality efforts so consumers can freely and equally access the Internet and the online environment continues to grow and develop. 5) Ensure that consumers using wireless and Internet phone services are granted the same protections as traditional landline customers by expanding protections to prevent unauthorized charges from third party billers. 6) Continue and grow the commitment to building out and expanding our nation's broadband infrastructure so that it is affordable and all consumers are able to access the multitude of telecommunications technologies available in order to be active participants in the online, wireless and mobile environments.

Support regulations that improve our quality of life, protect our health and safety and pave the way to a sound economy that benefits all of us

All too often we hear the misleading and inaccurate rhetoric that regulations by their very nature are "job-killing," or "bad for the economy." But these claims are not supported by evidence. Regulations are often the only means by which government agencies, often at the direction of Congress, can act to protect the public from documented emerging threats. Americans overwhelmingly support regulations that make products and food safer, the environment cleaner and our workers safer.

The federal rulemaking process, while necessary, is lengthy and often subject to undue influence by powerful special interests with prominent political patrons. Many pieces of legislation proposed in the previous Congress – from S. 299, the Regulations from the Executive in Need of Scrutiny Act (the REINS Act), to S. 1606, the Regulatory Accountability Act (RAA), to S. 3468 the Independent Agency Regulatory Analysis Act – would exacerbate this problem and undercut the ability of federal agencies to protect consumers from unsafe food, predatory financial products and schemes, and dangerous consumer products. These proposed bills and others like them would make it

even more time-consuming, expensive, and burdensome for federal agencies to propose consumer protection measures. The result of passage of these types of bills will be harmful to consumers.

We urge support for legislation that would strengthen our regulatory system and oppose legislation that would hinder it. We also encourage the Administration to work to ensure a well-functioning and transparent Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) that expedites the rulemaking process.

Actions for Congress and the Administration: 1) Support legislation that strengthens regulatory protections by reducing special interest influence in the federal regulatory process and holds corporate violators of regulatory standards accountable to the public with stiffer penalties that deter future violations. 2) Oppose “regulatory reform” legislation that attempts to slow down or stymie the crucial work of federal agencies in protecting the public from harm. 3) Support OIRA transparency and efficient movement of critical protections through OMB to provide a strong regulatory safety net for the public.

Improve consumer access to justice by reinstating legal rights

Consumer legal rights remain under constant assault. In states throughout the country, powerful special interests continue to push to eliminate and/or limit the reach and effectiveness of state consumer protection laws. Limits on claims and causes of actions, statutory and punitive damages, and private rights of action have served to restrict consumers’ access to justice and removed significant incentives for businesses to comply with consumer protection law. On both state and federal levels, we have seen legislatures actively restrict consumers’ ability to act collectively and seek redress through the important legal mechanism of class actions. Finally, we have seen our nation’s courts, led by the Supreme Court, effectively encouraging businesses to deny consumers access to our public justice system by sanctioning the use of forced arbitration in all consumer contracts and under almost any and all circumstances.

Actions for Congress and the Administration: 1) Enact legislation to restore an unbiased and open justice system that remedies harms and holds wrongdoers accountable. 2) Ensure a consumer's right to choose alternative dispute resolution, judicial review, or a jury by barring pre-dispute mandatory binding arbitration clauses from consumer contracts. 3) Ensure the viability and enforceability of federal consumer protection laws by updating outdated liability provisions, preserving access to counsel through fee shifting statutes and permitting enforcement by state attorneys general. 4) Ensure that systematic wrongs are righted by providing for class actions when pervasive and expansive misconduct occurs.

Protect consumers by ensuring open, competitive and fair markets

Consumers have a right to expect markets to operate competitively and fairly, with strong protections in place against monopolistic, collusive and anti-competitive practices.

Across the economy, however, market concentration has skyrocketed in recent decades, resulting in higher consumer prices, reduced consumer choice, diminished product quality, barriers to innovation and unfair disadvantages to small business. Many deeply felt consumer abuses are the direct result of oligopolistic practices and market manipulation: the lower quality meat and poultry from factory farms; outrageously high pharmaceutical prices; high energy prices; excessive charges for live performance tickets; a cable TV universe of 500 channels and nothing to watch; unjustified banking fees; and much more. Small businesses suffer as well, diminishing both marketplace diversity and community connectivity. Yet even as industry concentration and anti-competitive practices have worsened, public and private enforcement of antitrust and competition laws has waned, with few new remedies available to address evolving anti-competitive practices.

Action for Congress and the Administration: 1) Toughen enforcement of antitrust prohibitions on anti-competitive mergers. 2) Enact legislation to remove court-created barriers to antitrust enforcement, including unreasonably high pleading standards. 3) Enact legislation and toughen enforcement against patent monopoly abuse, including pay-to-delay pharmaceutical arrangements and the grant of patents on business methods and other inventions that do not meet appropriate patentability standards. 4) Enact legislation mandating the break up of too-big-to-fail financial institutions, and start trust-busting aimed at other monopolies and oligopolies that undermine the competitive functioning of markets. 5) Strengthen and apply the "incipiency doctrine," which recognizes that mergers may have domino effects and should be assessed accordingly. 6) Conduct oversight hearings and enact legislation creating a special commission to evaluate the impact of corporate concentration on our economy and society.

This agenda of essential consumer reforms is intended as a guide for federal policymakers and others concerned about consumer issues. The leaders of eight national consumer organizations produced the platform to underscore its importance. Because the organizations involved and the issues addressed are diverse, not every organization works on or endorses each item listed, although all firmly support the vast majority. These leaders are unanimous in their support for pro-consumer action on these issues.