

Consumer Protection in the United States: An Overview

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INTRODUCTION

The history of consumer protection in the United States is the story of specific formal legal responses to crises and emergencies that generate great public outrage and require a public response. This pattern began against the background of the 19th century common law, which emphasized freedom of contract and caveat emptor (let the buyer beware). Over time, specific crises and political events led to both the creation of government bureaucracies with jurisdiction over specific products and practices affecting consumers and a broad array of private rights of actions where consumers can sue for damages, injunctions, attorney fees, and litigation costs if they can show harm from the illegal practice.

One of the earliest examples was the deplorable conditions in the American meat packing industry which were exposed by Upton Sinclair in his best selling 1905 novel *The Jungle*. The outrage generated by Sinclair and other investigative writers led to the creation of the Food & Drug Administration and the first comprehensive inspection and regulation of food safety in the United States. The early portion of the 20th Century, including both the Progressive Era and the New Deal Era of President Franklin Roosevelt, led to a further growth of a large number of federal, state, and local regulatory agencies and laws, many of which dealing with consumer protection.

However, the modern consumer protection movement began in the 1960s with reference to a Consumer Bill of Rights by President Kennedy, the growth of the so-called “Great Society” program of the Johnson Administration, and the efforts of Ralph Nader and other

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consumer advocates to highlight the existence of unsafe products and the need for greater government regulation.

The result is that American consumers are protected from unsafe products, fraud, deceptive advertising, and unfair business practices through a mixture of national, state, and local governmental laws and the existence of many private rights of actions. These public and private rights both protect consumers and, at a formal level, equip them with the knowledge they need to protect themselves. Although U.S. mechanisms for consumer protection often exist separately from each other, what the overall scheme lacks in centralization, it gains in depth and variety of protection. Its strength is the array of governmental actors, formal legal rights, and remedies protecting consumers. Its weakness lies in the unequal reality of who has access to the government and the courts.

I. FEDERAL MECHANISMS FOR CONSUMER PROTECTION

The principal, but not the only, consumer protection agency at the federal level is the United States Federal Trade Commission (“FTC”).⁴ This section outlines the powers and remedies of the FTC in the consumer protection area and then briefly describes some of the other federal agencies with significant consumer protection responsibilities.

A. Federal Trade Commission

The United States Federal Trade Commission (FTC) works alone, and in concert with other federal agencies, to administer a wide variety of consumer protection laws. The overall goal is to afford consumers a deception-free marketplace and provide the highest-quality products at competitive prices. The FTC is an independent federal agency with five Presidentially-appointed, Senate-confirmed

⁴ The United States Federal Trade Commission also jointly enforces U.S. federal civil competition law along with the Antitrust Division of the Justice Department. See generally STEPHANIE KANWIT, FEDERAL TRADE COMMISSION (2010); AMERICAN BAR ASSOCIATION, ANTITRUST SECTION, FTC PRACTICE AND PROCEDURE MANUAL (2007). The web site for the Federal Trade Commission covering both its competition and consumer protection activities can be found at <http://www.ftc.gov>.

commissioners who each serve seven-year terms.⁵ No more than three commissioners may be members of the President's political party. Created in 1914, the FTC has two principal goals:

1. to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace and
2. to maintain competition by preventing anticompetitive business practices.

The FTC's Bureau of Consumer Protection aims to achieve the first goal, and is the focus of this section.⁶

1. The FTC's Jurisdiction

The FTC derives its consumer protection authority primarily from Section 5(a) of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce."⁷ According to the FTC, deception occurs when there is a material representation, omission, or practice that is likely to mislead a consumer who is acting reasonably under the circumstances. Unfair practices are those which cause, or are likely to cause, reasonably unavoidable and substantial injury to consumers without any offsetting countervailing benefits to consumers or competition.

In addition to its authority under Section 5(a), the FTC has enforcement and administrative abilities under forty six other statutes, thirty-seven of which relate to the FTC's consumer protection mission. Among these laws are credit-related acts, such as the Truth in Lending Act, Fair Credit Billing Act, Fair Credit Reporting Act, and the Equal Credit Opportunity Act, as well as continuing enforcement of industry-specific acts, such as the Petroleum Marketing Practices Act, and the Comprehensive Smokeless Tobacco Health Education Act of 1986, and additional laws relating to consumer privacy such as the Do-Not-Call Registry Act of 2003, and the Controlling the Assault of Non-Solicited Pornography and Marketing ("CAN-SPAM") Act of 2003.

⁵ Biographies of the current commissioners can be found at <http://www.ftc.gov/commissioners/index.shtml>.

⁶ For more information on the relationship between consumer protection and competition law in the United States, see Spencer Weber Waller, *In Search of Economic Justice: Considering Competition and Consumer Protection Law*, 36 Loy. U. Chi. L. J. 631 (2005), also available at <http://ssrn.com/abstract=726512>.

⁷ 15 U.S.C. § 45(a)(1).

2. *FTC Investigation and Enforcement Authority*

The FTC uses its investigative authority to uncover deception, unfair activities, or violation of any statute under which it has authority. The Bureau of Consumer Protection may issue civil investigative demands (“CIDs”) to explore possible violations.⁸ Like a subpoena, a CID can compel the production of existing documents or oral testimony, while also requiring that a recipient file written reports or responses to questions.⁹ Investigations can be triggered by Presidential or Congressional requests, court referrals, consumer complaints, or internal research.

Upon completion of an investigation, if the FTC has reason to believe that a violation exists, and that enforcement is in the public interest, it may issue a complaint to the violating person, partnership, or corporation. A hearing will be held in front of an Administrative Law Judge (“ALJ”), and if the actions at issue are deemed a violation, the ALJ may recommend entry of a cease and desist order.

Cease and desist orders are the FTC’s primary tools to stop anti-consumer practices. If a party violates a cease and desist order, the FTC is authorized to use the courts to seek civil penalties and restitution for consumers who are harmed.

A party may appeal an order to the full FTC, then the federal appellate court, and eventually the Supreme Court of the United States, if it chooses to accept the case. If neither party appeals the order, it becomes final within sixty days of being issued. Once final, a respondent’s violation of the order could bring a civil penalty of up to \$10,000 per violation. A non-respondent who has actual knowledge and violates Commission standards articulated in an order may also be subject to fines.¹⁰

The FTC further has the authority to make trade regulation rules that specifically define unfair or deceptive trade practices. For example, according to the FTC Telemarketing Sales Rule, it is deceptive when a telemarketer fails to truthfully disclose the cost of products or services, or the nature of certain return policies.¹¹

⁸ 15 U.S.C.A. § 57b-1(c)(1).

⁹ 15 U.S.C.A. § 57b-1(c)(1).

¹⁰ 15 U.S.C.A. § 45 (l).

¹¹ 15 U.S.C.A. §6102(a)(3)(C).

Knowingly violating FTC trade regulation rules may result in a civil penalty of up to \$10,000 per violation.¹²

The FTC also can make victimized consumers whole through restitution and force wrongdoers to disgorge their ill-gotten gains.¹³ The FTC seeks these remedies when it can objectively determine a clear violation of a law and reasonably calculate the damages payment. However, where the FTC determines that private actions or criminal proceedings will result in complete relief for the consumer, it may choose not to use the restitution or disgorgement remedies. Finally, if the FTC has reason to believe that a party is violating, or will violate a law, it may seek a preliminary or permanent injunction from the federal district court to prevent the violation from occurring.¹⁴

The FTC does not have the power to bring criminal charges. Any such federal cases in the consumer protection area would be brought in federal courts by the U.S. Department of Justice. A defendant can be convicted of a criminal offense only upon proof beyond a reasonable doubt before a judge or jury.

3. *Carrying Out the FTC Mandate*

Seven divisions of the Bureau of Consumer Protection carry out the FTC's mandate to protect consumers against unfair, deceptive, or fraudulent practices. These divisions include: Advertising Practices, Financial Practices, Marketing Practices, Privacy and Identity Protection, Planning and Information, Consumer and Business Education, and Enforcement.

The Division of Advertising Practices works to prevent false advertising claims, particularly when the claims affect health and safety or cause economic injury. In addition to advertising claims regarding dietary supplements, weight loss products, alcohol, and tobacco, this Division also monitors the marketing of food, violent movies, as well as music and electronic games to children.

Until 2010, the Division of Financial Practices of the FTC was the only agency specifically protecting consumers from fraud or deceptive practices in the financial services industry. Credit card offers, mortgage practices, and debt collection practices were all covered by

¹² 15 U.S.C.A. § 45 (l).

¹³ 15 U.S.C. § 53(b).

¹⁴ 15 U.S.C.A. § 45.

this Division. These functions are now carried out jointly with the new Bureau of Consumer Financial Protection of the Federal Reserve Board created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2009 discussed below.¹⁵

The Division of Marketing Practices addresses the marketing of products and services over the Internet, the telephone, or through the mail. This Division has issued a number of trade regulation rules to address marketing practice concerns. For instance, the Telemarketing Sales Rule governs when and how marketers may use the telephone for sales pitches. Other rules, such as CAN-SPAM Rules, the Franchise and Business Opportunity Rule, the 900 Number Rule, and the Funeral Rule outline proper methods for how, when, and to whom products or services may be marketed.

The newest division, the Division of Privacy and Identity Protection, protects consumers' personal information from being used improperly, and works to ensure that companies with access to that information, such as credit card companies, keep it secure. The FTC also maintains a website wholly dedicated to preventing identity theft.¹⁶

The Division of Planning and Information manages the Consumer Response Center and the Consumer Sentinel database. The Consumer Response Center receives and addresses consumer complaints via the phone or mail, while the Consumer Sentinel is a central database which contains over 3.5 million fraud and identity theft complaints. The Sentinel website analyzes complaint data to better understand and prevent fraud and identity theft.

Finally, the Division of Consumer and Business Education seeks to equip consumers with skills to protect themselves by disseminating information to consumers through a myriad of media, including print, broadcast, and electronic outlets. Recent education efforts include the creation of industry-specific websites to educate consumers about how competition in the healthcare, real estate, oil and gas, and technology marketplaces can result in better products at lower prices. When a survey showed that Hispanics were more than twice as likely than non-Hispanic whites to be victims of consumer fraud, the Division extended its outreach by releasing its educational materials in both Spanish and English. The Division also educates young consumers to

¹⁵ See Section IC, *infra*.

¹⁶ <http://www.ftc.gov/bcp/edu/microsites/idtheft/>.

be smarter shoppers through publications such as “The Real Deal,” a booklet that teaches through the use of games, puzzles, and cartoons.¹⁷

A list of the most frequent consumer complaints gives a quick sense of the agency priorities in recent times. In 2009, the top fifteen categories of consumer complaints¹⁸ were:

| Rank | Category | No. of Complaints | Percentages |
|-------------|--|--------------------------|--------------------|
| 1 | Identity Theft | 278,078 | 21% |
| 2 | Third Party and Creditor Debt Collection | 119,549 | 9% |
| 3 | Internet Services | 83,067 | 6% |
| 4 | Shop-at-Home and Catalog Sales | 74,581 | 6% |
| 5 | Foreign Money Offers and Counterfeit Check Scams | 61,736 | 5% |
| 6 | Internet Auction | 57,821 | 4% |
| 7 | Credit Cards | 45,203 | 3% |
| 8 | Prizes, Sweepstakes and Lotteries | 41,763 | 3% |
| 9 | Advance-Fee Loans and Credit Protection/Repair | 41,448 | 3% |
| 10 | Banks and Lenders | 32,443 | 2% |
| 11 | Credit Bureaus, Information Furnishers and Report Users | 31,629 | 2% |
| 12 | Television and Electronic Media | 26,568 | 2% |
| 13 | Health Care | 25,414 | 2% |
| 14 | Business Opportunities, Employment Agencies and Work-at-Home Plans | 22,896 | 2% |
| 15 | Computer Equipment and Software | 22,621 | 2% |

These categories of complaints have been quite stable over the past few years.

An example of a successful major FTC initiative that goes beyond dealing with individual law enforcement and complaint resolution came through rule making and innovative market oriented

¹⁷ See <http://www.ftc.gov/bcp/edu/pubs/consumer/general/gen16.pdf>.

¹⁸ A complete list of complaints can be found at: <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2009.pdf>.

solution in the area of consumer privacy. Prior to 2003, a major annoying fact of American life was the unsolicited telemarketing call where dinner, family, or sleep time would often be disrupted by one or more unsolicited telephone calls seeking to sell unwanted products and services. Typically, these could be credit card offers, insurance deals, newspaper subscriptions, and sometimes outright solicitations for fraudulent schemes. These calls had grown so invasive that a Time magazine internet poll named telemarketing the fourth worst invention of the 20th Century. By 2003, twenty-seven states tried to help by creating their own Do Not Call Registries, compilations of individual phone numbers that are off-limits from telemarketers, but individual state efforts could not solve what was a problem of national scope.

The FTC had already implemented a Telemarketing Sales Rule in 1995 that governed certain aspects of unsolicited calls, but in 1999 the agency began to investigate possible changes to better protect consumers. After spending three years studying consumer concerns and hearing commentary from interested parties, the FTC published a newly amended Telemarketing Sales Rule on January 29, 2003, complete with Do Not Call Registry provisions.¹⁹ Through this new rule, Americans could end unwanted telemarketing calls with one free phone call to the FTC or through registration through the FTC web site.

When the FTC opened the Registry on June 27, 2003, Americans immediately took advantage of the free service. Less than three months after it opened, over 50 million phone numbers had been registered. By the end of September 2006, more than 132 million phone numbers were registered on the Do Not Call Registry, indicating that the FTC is correct that this is an effective consumer protection initiative.²⁰

B. Other federal agencies

Other federal agencies also play an important role in protecting consumers. The U.S. Consumer Product Safety Commission (“CPSC”) is a federal regulatory agency with the mandate of reducing injury or death caused by consumer products.²¹ The CPSC develops

¹⁹ See <http://www.ftc.gov/donotcall>.

²⁰ See <http://www.ftc.gov/bcp/menus/consumer/phone/dnc.shtm>. See generally Douglas C. Nelson, *The Do-Not-Call Implementation Act: Legislating the Sound of Silence*, 16 LOY. CONS. L. REV. 63 (2003).

²¹ <http://www.cpsc.gov/>.

product standards for manufacturers while also conducting recalls of any products that could, or do, cause harm.

The CPSC does not however have jurisdiction over all consumer products. For example, food, drug, cosmetic and medical device safety is the focus of the U.S. Food and Drug Administration (“FDA”).²² A major recent initiative of the FDA has been to more deeply regulate the tobacco industry. As a result of the 2009 Tobacco Control Act,²³ the FDA has important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. The new law contains restrictions on the use of “Light,” “Mild,” “Low,” or similar descriptors in the labeling or advertising of tobacco products.²⁴ The law also grants the FDA new powers to impose civil penalties and even forbid tobacco sales by retailers who fail to comply with age limits and age identification rules regarding tobacco sales to minors. In addition, the FDA is seeking to add new larger more graphic warnings to cigarette packages regarding the health risks of smoking.²⁵

The National Highway Traffic Safety Administration (“NHTSA”) covers automobile, truck, and motorcycle safety.²⁶ Its consumer protection powers derived from public scandal in the mid-1960s. In the 1950s and 1960s automobiles were designed for style, not safety. Even with accident prevention and driving improvement efforts, automobiles remained the leading cause of death for the population below age forty-four in the 1960s, with about 50,000 vehicular deaths in 1965.²⁷

The consumer advocate Ralph Nader made automobile safety a major priority of his grass roots efforts. Inspired by engineering advances made by the Cornell Aeronautical Laboratory, Nader

²² <http://www.fda.gov/>.

²³ Family Smoking Prevention and Tobacco Control Act, P.L. 111-31, 111th Cong., 1st Session.

²⁴ <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm214597.htm>.

²⁵ <http://www.fda.gov/TobaccoProducts/Labeling/CigaretteProductWarningLabels/default.htm>.

²⁶ <http://www.nhtsa.gov/>.

²⁷ Committee on Trauma and Committee of Shock, *Accidental Death and Disability: The Neglected Disease of Modern Society*, National Academy of Sciences, 1966, at 8.

exposed automobile safety design weaknesses in the April 11, 1959 issue of *The Nation*, and urged that the automobile industry could better prevent injury and death by focusing on crash protection over chrome and styling. Nader's ideas gained national attention when his book, *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile*, was published in 1965.

Newly-elected Senator Abraham Ribicoff of Connecticut prepared hearings on the government's role in traffic safety, assisted by Nader. As Senator Ribicoff's subcommittee questioned automobile executives about the industry's comparatively small investment in safety features despite billions in profits, media interest grew, and the public increasingly favored safety legislation. Accordingly, the White House introduced a car safety bill in 1966 and President Lyndon Johnson called for an end to "the slaughter on our highways."²⁸ Not to be outdone for their work, Nader, Ribicoff, and others immediately pushed for better protection through an even stronger law.

Eventually, the National Traffic and Motor Vehicle Safety Act was passed unanimously by the U.S. Congress, and on September 9, 1966, President Johnson signed it into law. For the first time in U.S. history the automobile industry was subject to unified standards through federal oversight of automobile safety, and cars began to include head rests, energy-absorbing steering wheels, shatter-resistant windshields, and safety belts. Thanks to these changes, and other road safety innovations, motor-vehicle-related death rates had begun to recede by 1970.²⁹

The Federal Communications Commission ("FCC") has broad jurisdiction over broadcast communications and communication common carriers.³⁰ The FCC has a Consumer and Governmental Affairs Bureau that ensures that consumer interests are considered in FCC decisions. The Bureau also monitors and resolves consumer complaints regarding communications services. Similarly, virtually every federal executive branch and independent agency has some

²⁸ Lyndon B. Johnson, Remarks Upon Proclaiming National Defense Transportation Day and National Transportation Week (Apr. 22, 1966) (transcript at <http://www.presidency.ucsb.edu/ws/index.php?pid=27556>)

²⁹ Ralph Nader, *THE RALPH NADER READER* (2000); Jerry L. Mashaw & David L. Harfst, *THE STRUGGLE FOR AUTO SAFETY* (1990); John D. Graham, *AUTO SAFETY: ASSESSING AMERICA'S PERFORMANCE* (1989).

³⁰ <http://www.fcc.gov/>.

similar office or bureau designed to advance consumer interest in its particular field.³¹

C. The Bureau of Consumer Financial Protection

The most significant change in federal consumer protection came this past year as a result of the worldwide financial crisis. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2009 (“Dodd-Frank Act”)³² contains a provision, entitled the “Consumer Financial Protection Act of 2010” which established an independent entity within the Federal Reserve System, the Bureau of Consumer Financial Protection (“the Bureau”).³³ The new bureau eventually will have a budget of up to \$500 million and will consolidate various consumer protection functions now being performed by the FTC and other federal agencies such as the Federal Reserve, the Federal Deposit Insurance Corporation, and the Department of Housing and Urban Development.³⁴

1. Powers of the Bureau

The Bureau is charged with:

Conducting financial education programs; collecting, investigating, and responding to consumer complaints; collecting, researching monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets; supervising covered persons for compliance

³¹ All federal resources for consumers may be reached via www.consumer.gov.

³² For an analysis of the full financial reform provisions of the new legislation see DAVID SKEEL, *THE NEW FINANCIAL DEAL: UNDERSTANDING THE DODD-FRANK ACT AND ITS (UNINTENDED) CONSEQUENCES* (2010).

³³ Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173 §1011(a), 111th Cong. (2nd Sess. 2010) (enacted).

³⁴ John E. Villafranco and Kristin A. McPartland, *New Agency, New Authority: What You Need to Know About the Consumer Financial Protection Bureau*, *THE ANTITRUST SOURCE*, Dec. 2010, available at <http://www.abanet.org/antitrust/at-source/10/12/Dec10-Villafranco12-21f.pdf> (last accessed Jan. 3, 2011)

with Federal consumer financial law; and issuing rules, orders, and guidance implementing Federal consumer financial law.³⁵

The Bureau has broad supervisory powers over “nondepository covered persons” and over large banks, credit unions, and savings associations. A nondepository covered person is a person to who provides “brokerage or servicing of loans secured by real estate for use by consumers”, who “offers or provides to any consumer any private education loan,” “offers or provides to a consumer a payday loan,” and that the bureau has cause to believe “has engaged in conduct that poses risks to consumers.”³⁶ The Bureau is authorized to collaborate with the Federal Trade Commission or any other Federal or State agency that may assist it in carrying out its supervisory tasks.³⁷

With regard to large banks, saving associations, and credit unions, the Bureau has exclusive authority to examine any insured institution with total assets of more than \$10 billion any affiliate thereof.³⁸ Institutions with less than \$10 billion in assets are subject to oversight by the Bureau, but only so far as necessary to support the implementation of Federal consumer financial laws and to determine risks to consumers and consumer financial markets.³⁹

The Bureau is charged with regulating “the offering and provision of consumer financial products or services under the Federal consumer financial laws.”⁴⁰ The statute explicitly defines the “consumer financial products” that are regulated by the Bureau. Financial products include “extending credit and servicing loans,” “extending or brokering leases of personal or real property,” “providing real estate settlement services...or performing appraisals of real estate or personal property,” “engaging in deposit taking activities,” “selling, providing, or issuing stored value or payment instruments,” “providing check cashing, check collection, or check guaranty services,” “providing financial advisory services to consumers on individual financial matters,” and other similar financial instruments and activities.⁴¹

³⁵ H.R. 4173. Title X Subtitle B §1021(c)(1-5).

³⁶ H.R. 4173 Title X Subtitle B §1024(a)(1)(A-E).

³⁷ H.R. 4173 Title X Subtitle B §1024(c).

³⁸ H.R. 4173 Title X Subtitle B §1025(a)(1-2).

³⁹ H.R. 4173 Title X Subtitle B §1026(a-b).

⁴⁰ H.R. 4173 Title X Subtitle A §1011(a).

⁴¹ H.R. 4173 Title X §1002(15)(A)(i-x).

The Bureau is also granted the power to include other financial products or services under its scope as it sees fit.⁴² Similarly, the bill goes to great length to identify those previously enacted consumer laws, which will now be enforced by the Bureau. These “enumerated consumer laws” include the Alternative Mortgage Transaction Parity Act of 1982, the Consumer Leasing Act of 1976, the Equal Credit Opportunity Act, The Fair Credit Reporting Act, The Truth in Lending Act, the Truth in Savings Act, among others.⁴³

If the Bureau finds an organization to be in violation of a federal consumer financial protection law, it has enforcement authority to pursue actions against that entity.⁴⁴ Additionally, the Bureau is required to coordinate its enforcement activities with the FTC. The agencies may take joint or individual actions against an entity in violation of any of the consumer financial protection laws.⁴⁵ The Bureau’s main enforcement power is the power to bring a civil lawsuit against the entity for any violation of any provision of federal law under its jurisdiction.⁴⁶ Such a suit may be brought independently of or in conjunction with charges brought by the FTC.

2. *Specific Bureau Activities*

The Bureau may take any action allowable under the statute “to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer.”⁴⁷ The Bureau may prescribe and apply any rules or require any public disclosures it deems necessary to carry out this obligation.⁴⁸ Additionally, the Bureau requires that a covered person make available to consumers any information concerning a financial product or service that the consumer obtained from the covered person, excepting

⁴² H.R. 4173 Title X §1002(16)(A)(xi).

⁴³ H.R. 4173 Title X §1002(12)(A-R).

⁴⁴ H.R. 4173 Title X Subtitle B §1024(c)(1).

⁴⁵ H.R. 4173 Title X Subtitle B §1024(c)(3)(A).

⁴⁶ H.R. 4173 Title X Subtitle B §1024(c)(3)(B).

⁴⁷ H.R. 4173 Title X Subtitle C §1031(a).

⁴⁸ H.R. 4173 Title X Subtitle C §1031-32. The rulemaking will require both formal and informal coordination with the Federal Trade Commission. See Villafranco & McPartland, *supra* note 35, at 5.

any confidential information and information that cannot be retrieved in the ordinary course of business.⁴⁹

Finally, the Secretary of the Treasury, in consultation with the Director of the Bureau is required to appoint a “Private Education Loan Ombudsman” to provide assistance to borrowers of private education loans.⁵⁰ This Ombudsman is charged with collaborating with the Department of Education to oversee the distribution of loans and provide assistance to borrowers of private or Federal education loans.⁵¹ Additionally, the Ombudsman is required to respond to borrower complaints and to make recommendations to the Director, Secretary of the Treasury, Secretary of Education, Committee on Banking, Housing, and Urban affairs and the Committee on Health, Education, Labor and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.⁵²

3. *Specific Enforcement Powers*

The Bureau has a variety of mechanisms for enforcing the federal consumer financial laws. The first is general investigatory powers. The Bureau can appoint an investigator to conduct an inquiry into whether any person has violated a law or provision. A Bureau investigator holds subpoena power over witnesses and documents in connection with any investigation or hearing over a suspected offender.⁵³

After investigation, the Bureau may determine that further adjudication is required, at which point it can subpoena evidence in formal hearings.⁵⁴ The hearing serves as a trial to determine whether the covered person is guilty of a violation. Decisions by the Board are appealable to the United States Court of Appeals for the circuit where the principal office of the covered person is located.⁵⁵ Should the offending party be found guilty, the penalty is a monetary civil penalty and possibly a referral for criminal proceedings as well.⁵⁶

⁴⁹ H.R. 4173 Title X Subtitle C §1033(a-b).

⁵⁰ H.R. 4173 Title X Subtitle C §1035(a).

⁵¹ H.R. 4173 Title X Subtitle C §1035(c)(1-2).

⁵² H.R. 4173 Title X Subtitle C §1035(c)(3-4).

⁵³ H.R. 4173 Title X Subtitle E §1052(a-b)

⁵⁴ H.R. 4173 Title X Subtitle E §1053.

⁵⁵ H.R. 4173 Title X Subtitle E §1053(b)(3).

⁵⁶ H.R. 4173 Title X Subtitle E §1055-56.

It is easy to see how the Dodd-Frank Act has rapidly expanded the power of the Federal Reserve and the Federal Government to enforce consumer financial laws that are aimed to protect consumers from unfair business practice. In addition, the Bureau takes an active role to educate consumers about financial products and services so that they can make informed decisions to protect their financial well-being.

4. Structure Of The Bureau

President Obama has appointed Elizabeth Warren, a noted consumer advocate,⁵⁷ as a Special Assistant to the President and Special Adviser to the Secretary of the Treasury allowing her to serve as the de facto interim head of the Bureau. The Bureau eventually will be led by a Director who is appointed by the President with the advice and consent of the Senate for a five-year term.⁵⁸ The Director is charged with establishing the departments within the Bureau, which will assist with carrying out the Bureau's mandate.⁵⁹ There are three "Specific Functional Units": Research, Community Affairs, and Complaint Collection and Tracking.⁶⁰ In addition to these units there are four separate offices within the Bureau: the Office of Fair Lending and Equal Opportunity, the Office of Financial Education, the Office of Service Member Affairs, and the Office of Financial Protection for Older Americans.⁶¹

The Office of Fair Lending and Equal Opportunity is responsible for overseeing and enforcing any Federal laws "intended to ensure the fair, equitable, and nondiscriminatory to access to credit for both individuals and communities."⁶² Additionally, the Office of Fair Lending and Equal Opportunity is charged with coordinating fair lending efforts between the Bureau and other Federal and State agencies, and working with private industry and consumer advocates on the promotion of fair lending compliance and education.⁶³

⁵⁷ For a sample of Professor Warren's previous views see Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1 (2008).

⁵⁸ H.R. 4173 Title X Subtitle A §1011(b-c).

⁵⁹ H.R. 4173 Title X Subtitle A §1011.

⁶⁰ H.R. 4173 Title X Subtitle A §1013(b).

⁶¹ H.R. 4173 Title X Subtitle A §1013 (c-e, g).

⁶² H.R. 4173 Title X Subtitle A §1013(c)(2)(A).

⁶³ H.R. 4173 Title X Subtitle A §1013(c)(2)(B-C).

The Office of Financial Education develops and implements “initiatives intended to educate and empower consumers to make better informed financial decisions.”⁶⁴ Additionally, it is charged with developing programs to improve the financial literacy of consumers through financial counseling, providing information to aid in understanding credit histories and credit scores, and advising consumers with regards to educational expenses, debt reduction and improving long-term savings strategies.⁶⁵

The Office of Service Member Affairs is responsible for developing and implementing initiatives for military service members and their families to help them make informed decisions with regards to financial products.⁶⁶ Similarly, the Office of Financial Protection for Older Americans which provides individuals over the age of 62 with protection from unfair and abusive practices and activities to assist in the financial literacy of senior citizens.⁶⁷

Within the Bureau there have also been established a Consumer Advisory Board and a Consumer Financial Civil Penalty Fund. The Consumer Advisory Board functions to “provide information on emerging practices in the consumer financial products or services industry.”⁶⁸ The Advisory Board is composed of six members appointed after recommendation by the Federal Reserve Bank Presidents and meets at a minimum of twice a year.⁶⁹ The Civil Penalty Fund is maintained in order to provide relief for victims of activities for which charges have been brought against a financial service provider.⁷⁰

While the Bureau is still in its infancy, it is expected to eventually have several hundred employees and with a budget of up to \$500 million it will eventually become the largest consumer protection agency in the United States.⁷¹

⁶⁴ H.R. 4173 Title X Subtitle A §1013(d)(1).

⁶⁵ H.R. 4173 Title X Subtitle A §1013(d)(2)(A-F).

⁶⁶ H.R. 4173 Title X Subtitle A §1013(e)(1)(A).

⁶⁷ H.R. 4173 Title X Subtitle A §1013(g)(1).

⁶⁸ H.R. 4173 Title X Subtitle A §1014(a).

⁶⁹ H.R. 4173 Title X Subtitle A §1014(b-c).

⁷⁰ H.R. 4173 Title X Subtitle A § 1017(d)(1-2).

⁷¹ *Obama Appoints Warren Special Adviser to Set Up New Consumer Protection Bureau*, 99 ANTITRUST & TRADE REG. REP. (BNA) 367 (Sept. 24, 2010); Rob Lieber, *7 Tasks to Get the Consumer Chief Off to a Good Start*, N.Y. TIMES B1 (Sept. 18, 2010).

II. STATE MECHANISMS FOR CONSUMER PROTECTION

Much like the federal government, state governments act as both consumer law enforcement agencies and consumer advocates, again highly decentralized and without the presence of any single overarching consumer protection department or agency.⁷²

A. State Level Investigation and Enforcement

In most of the fifty states, the State Attorney Generals are charged with enforcing state consumer protection laws.⁷³ As consumer advocates for their state populations, Attorney Generals may file lawsuits on behalf of consumers, investigate possible violations, issue injunctions to terminate ongoing illegal activity, obtain restitution on behalf of consumers, bring criminal cases when authorized by law, and make rules to govern trade practices. The National Association of Attorneys General (NAAG) facilitates cooperation among Attorney Generals to enhance their consumer protection effectiveness and support multi-state consumer protection activity and litigation.⁷⁴ In larger cities and counties, there may also be a consumer protection division or bureau handling criminal and civil investigations and cases under state or local law.⁷⁵

I. State Investigative Powers

When State Attorney Generals become aware of a possible violation, the agencies have the authority to issue Civil Investigative Demands, or CIDs. These CIDs may request documents or oral testimony from specific individuals or companies. Attorney Generals

⁷² See generally DEE PRIDGEN & RICHARD M. ALDERMAN, CONSUMER PROTECTION AND THE LAW (2009); AMERICAN BAR ASSOCIATION, SECTION OF ANTITRUST LAW, CONSUMER PROTECTION LAW DEVELOPMENTS (2009); AMERICAN BAR ASSOCIATION, SECTION OF ANTITRUST LAW, CONSUMER PROTECTION HANDBOOK (2004)(each surveying consumer protection law at the state level).

⁷³ See PRIDGEN & ALDERMAN, *supra* note 72. See e.g., Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505 (2010).

⁷⁴ Information about NAAG's consumer protection efforts can be found at http://www.naag.org/consumer_protection.php.

⁷⁵ See e.g., City of Chicago Department of Business Affairs and Consumer Protection, available at <http://www.cityofchicago.org/city/en/depts/bacp.html>.

may issue CIDs when they have reason to believe a violation has or will occur, and need not have probable cause. Criminal investigations are conducted through the grand jury process and must be proved beyond a reasonable doubt in the appropriate state court before a judge or jury.

2. Prevention and Enforcement

Most states have statutes prohibiting unfair and deceptive acts and practices modeled to varying degrees on the Federal Trade Commission Act. Under these “Little FTC Acts,” each state Attorney General has statutory authority to seek injunctions to remedy unfair or deceptive trade practices. A company may face contempt charges if it continues a practice after an injunction has been issued. Attorney Generals may also obtain voluntary assurances of compliance from violating companies. Where state statutes allow, breach of the voluntary assurance is akin to an injunction violation. States also may use civil and criminal penalties to penalize unfair or deceptive trade practices.

Finally, Attorney Generals may seek restitution on behalf of consumers who are victims of fraud and deception. Some states expressly grant Attorney Generals the statutory power to obtain restitution. Other states do so implicitly as a result of state court decisions authorizing such actions. This remedy is especially effective when consumers have been harmed, but monetary damages are not large enough to warrant litigation by private individuals. Restitution is paid directly to affected customers when they can be readily identified and otherwise distributed in lump sums to consumer groups and related nonprofit organizations under the doctrine of *cy pres*.

In addition to investigatory and enforcement powers, most state consumer protection statutes allow the Attorney General, or other state regulatory or enforcement agency, to create rules that advise businesses of prohibited and acceptable business practices. Approximately twenty states have chosen to create such rules.

3. State Regulatory Authorities

All states have different systems for addressing the special needs of regulated industries such as energy, transportation, health, and financial institutions. The fifty states have a variety of

mechanisms for addressing consumer concerns in these industries, although there is little uniformity between the states or within the same state among the different regulatory structures for each industry.

States also regulate trades and professions through licensing boards and enforcement divisions. These state departments attempt to protect consumers by licensing only qualified individuals to work in specific professions, from health care providers, real estate agents, lawyers, and accountants. Consumers may search state license databases to research potential service providers or lodge a complaint against a licensed professional. Professional licenses can be suspended temporarily or permanently revoked after a hearing with the losing party having a right to appeal within the state court system.

III. PRIVATE RIGHTS OF ACTIONS FOR CONSUMERS

As private citizens, Americans use the state and federal court systems to protect themselves from fraud and deceit in the marketplace. At the state level, consumers may use both common law and statutory causes of action such as the Little FTC Acts to bring unsavory merchants into court.⁷⁶ Although the federal courts and each state court system operate independently, there are numerous commonalities to the private rights of action protecting consumers.

A. *Common Law Torts*

Common law legal action is one of the oldest forms of consumer protection. Although common law torts initially developed during an era where “caveat emptor” or “let the buyer beware” was the dominant doctrine, current common law actions provide consumers protection through torts for deceit, fraud, misrepresentation, and breach of warranty.

A consumer may file a lawsuit for deceit or fraud when a vendor intentionally conceals a material fact or makes a false representation of a material fact, knows that the representation is false, and meant to induce the consumer to act based on the

⁷⁶ For an analysis of how the private enforcement of state consumer protection laws may deviate from the federal FTC Act see Henry N. Butler & Joshua D. Wright, *Are State Consumer Protection Laws Really Little FTC Acts?*, 63 FLA. L. REV. 163 (2011).

misrepresentation. In order for the consumer to be successful in court, a plaintiff must also reasonably rely on the misrepresentation and suffer damage as a result of the reliance. Deceit can occur when a vendor makes a direct false statement, or when a misrepresentation is achieved through silence, concealment, half-truths, or ambiguity about a good. While misrepresentation of product facts may bring legal action, mere puffery or opinions are generally not subject to lawsuits for deceit.

If successful in court, a consumer may receive damages for out of pocket losses, rescission of the transaction at issue, damages to ensure the consumer receives the benefit of the bargain, or even punitive damages. Most common law consumer protection actions are brought in state court, although actions between citizens of different states can be brought in federal court under certain situations.

B. Statutory Causes of Action

Although common law actions have long protected consumers from fraud, it is burdensome to successfully plead and prove such a case, particularly because a consumer must prove that the seller intended harm. If a common law claim is not possible, consumers may rely on state unfair trade practice statutes to remedy misrepresentations or material omissions.

There is no private right of action under the Federal Trade Act, although there may be private rights under the more specific statutes enforced by the FTC and the new Bureau of Consumer Financial Protection. Each state also has some form of consumer protection law, and many are modeled after the Federal Trade Commission Act and prohibit “unfair and deceptive” trade practices. These state laws normally allow consumers to sue for damages and injunctive relief. Consumers have a better chance of success in combating misrepresentations under these statutes because they do not typically require proof that the seller intended harm or relax other requirements of common law fraud. In addition to protection from unfair and deception trade practices, many states also specifically prohibit certain deceptive pricing, bait and switch tactics, and pyramid sales scheme practices. In addition to preventing the broader harms of “unfair and deceptive” trade practices, state “lemon” laws streamline the remedy process for consumers who purchase a defective new or used car.

C. Class Actions and Attorney Fee Shifting

Although filing a lawsuit is an option for combating fraud, when the economic harm is small, expensive litigation is not always a viable option. Class action lawsuits allow victimized consumers with smaller damages to file a lawsuit collectively. Bringing a class action lawsuit for common law fraud is difficult because U.S. courts require a high degree of commonality among all the plaintiffs' claims in order for the class lawsuit to proceed.⁷⁷ Still, where there is such commonality, class actions can be a useful tool for consumers to assert their rights.

Attorney fee shifting also makes legal action a possibility for consumers who have suffered low amounts of damages. In the American legal system, each party customarily pays its own legal expenses. However, in many federal and state consumer protection causes of action, and in most class actions, a prevailing party may be entitled to reasonable attorney fees and litigation costs paid by the defendant in addition to any applicable damages. In most circumstances, unsuccessful plaintiffs are not responsible for the attorney fees and costs of the prevailing defendant. Such provisions have the effect of both increasing the incentives to bring such claims and minimizing the cost of a successful lawsuit.

D. The Importance of Warranties

Warranties help protect the consumer and guarantee that they receive what they have bargained for even when no misrepresentations about the product were made. Forty-nine states use the framework of the Uniform Commercial Code to protect consumers through express and implied warranties. Express warranties are explicit promises that the manufacturer or seller will stand behind the product sold. These may be either written or oral, but all only as strong as the explicit promise made by the seller.

A more standard level of protection exists in the implied warranty of merchantability. The Uniform Commercial Code requires that all merchant-sold goods are, at a minimum "fit for the ordinary

⁷⁷ The full requirements of bringing a class action in federal court are set forth in Rule 23, Federal Rules of Civil Procedure. Each of the fifty states has their own separate rules on when class actions are allowed. Most are modeled on the federal rules.

purposes for which such goods are used.”⁷⁸ This protects consumers against product defects when the goods are purchased from a merchant or someone with a similar level of expertise and skill with the product.

When a product fails to conform to an express or implied warranty, the consumer may either keep the product and seek damages or return the product for a refund. In most cases consumers choose the latter action. If a consumer retains the product, he may seek difference in value between the good in hand and the warranted good.

The Federal government also affords consumers warranty protection through the Magnuson-Moss Warranty Act.⁷⁹ Although it does not require warranties for consumer products, the Magnuson-Moss Warranty Act requires standardization of terms when a written warranty is offered. Such regulation is meant to minimize confusion about warranty terms while increasing warranty coverage clarity.

IV. CONSUMER CREDIT AND DEBT COLLECTION

Most Americans use some form of credit to make almost all major purchases. A variety of laws are in place to attempt to protect credit consumers from fraud or deceptive practices in the credit industry.

A. Credit Reports

Companies extend credit to a consumer if he or she is deemed creditworthy through a credit history or credit report. These reports contain individual identifying information, descriptions of existing credit and bank accounts, payment history on those accounts, as well as public record information. Until the Fair Credit Reporting Act (FCRA) was passed in 1970, consumers could not easily confirm the accuracy of the information.⁸⁰ Passage of the FCRA allowed consumers the ability to view and repair possible mistakes thereby increasing their opportunity to obtain better credit. In 2003, the FCRA was amended to ensure American consumers annual access to a free copy of their credit reports.

⁷⁸ § 2-314, Uniform Commercial Code.

⁷⁹ 15 U.S.C. § 2301 *et seq.*

⁸⁰ 15 U.S.C. § 1681 *et seq.*

B. Credit Disclosures

Consumers face a complex credit marketplace where terms in small print, changing interest rates, and a variety of fees can contribute to confusion. To combat such confusion, Congress passed the Truth in Lending Act, which requires standardized credit disclosures to facilitate consumer ability comparison shop for the best credit opportunity.⁸¹ It further attempts to protect credit consumers from unfair billing practices. The Fair Credit Billing Act also created procedures to require creditors to promptly process billing disputes and corrections.⁸² It also created an option for consumers to withhold payments when a good purchased with credit is defective.

C. Debt Collection

From 1990 to 2008, U.S. credit card debt increased 294 percent from \$243 billion⁸³ to \$957 billion.⁸⁴ In addition to enhancing consumer opportunity to obtain the best credit possible, federal statutes also protect consumers who fall behind in debt payments from improper collection processes. The Fair Debt Collection Act prevents debt collectors from using threats, profanity, or lies when attempting to collect from debtors. Collectors are limited to contacting a debtor during reasonable times of the day.⁸⁵

D. The Credit Card Act of 2009

The financial crisis of 2008 and beyond produced further changes in the way that credit cards were issued and used by consumers. The Credit Card Accountability Responsibility and Disclosure Act of 2009 (“Credit CARD Act”) was enacted on May 21, 2009 to amend the Truth in Lending Act to further protect consumers from abusive practices by credit card issuers.⁸⁶ It not only provides

⁸¹ 15 U.S.C. § 1601 *et seq.*

⁸² 15 U.S.C. § 1601 *et seq.* (enacted as an amendment to the Truth in Lending Act)

⁸³ US. Federal Reserve, Statistical Release (Mar. 7, 1990).

⁸⁴ U.S. Federal Reserve, G.19 Consumer Credit Statistical Release, (Dec. 7, 2010).

⁸⁵ 15 U.S.C. § 1692 *et seq.*

⁸⁶ Associated Press, *Obama Signs Credit Card Bill*, CBS News, May 21, 2009, available at

for increased disclosure and availability of the terms of a credit card agreement, but also specifically prohibits and restricts certain activities and practices by credit card issuers.

The Act places restrictions on the way in which card issuers may adjust the interest rate of an individual's credit card. The Act requires that a cardholder be given notice of an increase to their interest rate or other significant change no later than 45 days before that increase or change is to take effect.⁸⁷ At the time of this notice, the cardholder must also be notified of their right to cancel the account.⁸⁸ The Act also prohibits a credit card issuer from increasing the interest rate on a card unless it occurs after a previously specified period of time, it is in accordance with the card agreement and is tied to a publicly available index out of the issuer's control, or the increase is pursuant to a payment plan worked out due to hardship on the part of the cardholder.⁸⁹

The Act also places limits on the fees and charges that a credit card issuer may impose on a cardholder. A card issuer may not impose any finance charge on a balance that accrued prior to the current billing period unless it relates to the resolution of a dispute or an adjustment to a prior charge.⁹⁰ The Act also requires card issuers to allow a consumer to opt-in to programs, which allow transactions to occur even if they would be over the limit whenever a fee would be involved for such an allowance.⁹¹ This means that if a consumer wishes to be allowed to use the card, despite an inadequate balance they would have to elect to do so with their card issuer, otherwise the transaction will simply be denied. The Act requires that such penalty fees be "reasonable and proportional" to such a violation of the cardholder agreement.⁹²

The Act requires specific procedures for the payment of credit cards. A credit card bill payment is required to come due on the same day of each month.⁹³ However, if such a payment is due on a weekend

<http://www.cbsnews.com/stories/2009/05/22/politics/main5033322.shtml> (last visited, August 5, 2010).

⁸⁷ Credit Card Accountability Responsibility and Disclosure Act of 2009, H.R. 627 Title I §101 111th Cong. (1st Sess. 2009) (enacted).

⁸⁸ Credit Card Act, H.R. 627 Title I §101 111th Cong. (1st Sess. 2009) (enacted).

⁸⁹ *Id.*

⁹⁰ H.R. 627 Title I §102.

⁹¹ *Id.*

⁹² *Id.*

⁹³ H.R. 627 Title I §106.

or holiday on which the card issuer does not receive mail, the bill may not be considered a late payment until the next business day.⁹⁴ Finally, the card issuer may not issue a credit card unless it takes into consideration the ability of the prospective cardholder to make the required payments under the card agreement.⁹⁵

The Act takes various steps towards the protection of consumers from deceptive practices and towards the protection of young consumers. The Act requires that card issuers make available on the Internet, the credit card agreement that it has issued to a consumer.⁹⁶ It also requires that any company that offers a free credit report also disclose that a free credit report is already available under Federal law at “annualcreditreport.com.”⁹⁷

With regard to younger consumers, a credit card may not be issued to a person under the age of 21 unless the agreement is also signed by a legal guardian or cosigner, or the applicant submit proof of an independent means of repaying the obligations under the agreement.⁹⁸ Furthermore, any institute of higher learning that markets credit cards to its students in conjunction with a credit card issuer must publicly disclose such activities.⁹⁹

Finally, The Credit CARD Act goes so far as to protect users of prepaid store gift cards. In general, the Act prohibits expiration dates on gift cards unless it is more than five years after the issuance of the card and the expiration terms are clearly stated.¹⁰⁰ Additionally, the issuer of a gift card may not charge a service or inactivity fee to the user of a gift card unless the fee is conspicuously stated and there has been no activity with respect to the card within the 12 preceding months.¹⁰¹

V. CONSUMER ASSOCIATIONS AND RELATED GROUPS

In addition to government based agencies, consumer associations and other nonprofit entities also play an important role in consumer protection matters. They have played a critical role in

⁹⁴ *Id.*

⁹⁵ H.R. 627 Title I §109.

⁹⁶ H.R. 627 Title II §204.

⁹⁷ H.R. 627 Title II § 205.

⁹⁸ H.R. 627 Title III §301.

⁹⁹ H.R. 627 Title III §304.

¹⁰⁰ H.R. 627 Title IV §401.

¹⁰¹ *Id.*

investigating, publicizing, lobbying, litigating, and researching consumer issues. US consumer groups or associations lack the statutory right to bring super-complaints or collective action suits as is the case in several European countries, but they do have the power to bring complaints to the agencies and sue in their own name in the courts. Unlike the situation in the EU and most European countries, an agency complaint in the US is normally informal and does not require formal agency action (or judicial review) if the government agency chooses not to pursue the matter further.

Nevertheless, many of the developments described above are the result of one or more private actors bringing to the government's, or the public's, attention conduct that harms consumers either physically or economically. Much like governmental action in this area, there are numerous different private groups focused on different aspects of the consumer protection field as outlined above. A small sample of such private sector entities follows.

A. *Citizen Utility Boards*

Citizen Utility Boards are nonprofit, nonpartisan agencies that exist to represent the interests of residential utility consumers in their respective states or regions. They typically address concerns related to quality and price of natural gas, electric, and telephone services.¹⁰²

B. *Consumer Federation of America*

The Consumer Federation of America has four main functions. First, it advocates for consumers to state and federal legislative and regulatory bodies. Second, it researches consumer behavior and concerns through polling and surveys. Third, it attempts to provide education about consumer concerns by disseminating press releases, reports, and other material to the media, government representatives, and consumers. Finally, it supports a variety of local consumer-related organizations.¹⁰³

¹⁰² See, e.g., Citizens Utility Board, available at <http://www.citizensutilityboard.org/> (last accessed Jan. 3, 2011).

¹⁰³ Consumer Federation of America, available at <http://www.consumerfed.org/>, (last accessed Jan. 3, 2011).

C. Consumers Union

The Consumers Union was founded in 1936 and is a nonprofit, nonpartisan organization that educates consumers about a wide variety of products. To achieve its stated mission, “to work for a fair, just, and safe marketplace for all consumers,” the Consumers Union publishes the magazine, *Consumer Reports*, as well as two newsletters, *Consumer Reports on Health* and *Consumer Reports Money Adviser*.¹⁰⁴ *Consumer Reports* provides product reviews of cars, computers, appliances, extended warranties, and even sporting equipment so that consumers may have reliable third-party information before making a purchase. The Consumers Union also supports initiatives for health care access, food safety, and consumer choice in media.¹⁰⁵

D. Institute for Consumer Antitrust Studies

The Institute for Consumer Antitrust Studies is a nonpartisan, independent, academic center designed to explore the impact of antitrust enforcement and consumer protection law on the individual consumer and the public, and to shape public policy in these fields. Part of the Loyola University Chicago School of Law, the Institute contributes to consumer protection through teaching, research, symposia, publications, consumer advocacy, and academic colloquia on consumer and competition law.¹⁰⁶

E. National Consumer Law Center

The National Consumer Law Center is a nonprofit organization that advocates on behalf of low-income individuals who have been harmed by deception, fraud, or unfair practices. In addition to addressing concerns with credit, credit reports, and debt collection, the

¹⁰⁴ ConsumersUnion.org, About Consumers Union, available at <http://www.consumersunion.org/about/>, (last accessed Jan. 3, 2011).

¹⁰⁵ Consumers Union.org, available at <http://www.consumersunion.org/>, (last accessed Jan. 3, 2011).

¹⁰⁶ Loyola University Chicago School of Law, Institute for Consumer Antitrust Studies, available at <http://www.luc.edu/antitrust>, (accessed Jan. 3, 2011).

National Consumer Law Center deals with payday loans, predatory lending, public utilities, and other fraud.¹⁰⁷

F. Public Citizen

Founded in 1971 by Ralph Nader, Public Citizen is a nonpartisan, nonprofit organization that represents consumer interests before the executive, legislative, and judicial branches of the U.S. Government. In order to retain its independence and maintain its ability to impartially represent consumers, Public Citizen refuses donations from the government, corporations, or professional associations. Public Citizen advocates specifically for clean and safe energy sources, just trade policies, safe vehicles, and effective, affordable prescription drugs and health care.¹⁰⁸

Conclusion

Judging how the United States compares to other jurisdictions or satisfies the international standards set forth in the United Nations Guidelines for Consumer Protection is difficult.¹⁰⁹ The rights of safety, information, choice, representation, redress, consumer education, basic needs, and a healthy environment are enshrined in a plethora of formal statutory and regulatory protections at the federal, state, and local level. In addition, the sheer size and scope of economic activity in the United States economy and the relatively high GDP and per capita income often by itself provide a reasonably competitive and consumer friendly economy.

However, focusing on the formal rights and remedies of consumers provides only a partial picture of the state of consumer protection in the United States. Because of the emphasis on the formal nature of legal consumer rights, much depends on access to the legal system. Unfortunately, there is no constitutional or statutory right to legal representation in consumer protection matters, or civil litigation in

¹⁰⁷ National Consumer Law Center, *available at* <http://www.consumerlaw.org>, (accessed Jan. 3, 2011).

¹⁰⁸ Public Citizen, *available at* <http://www.citizen.org>, (accessed Jan. 3, 2011).

¹⁰⁹ Department of Economic and Social Affairs, United Nations Guidelines for Consumer Protection, *available at* http://www.un.org/esa/sustdev/publications/consumption_en.pdf.

general. Consumers without practical access to the courts still benefit when the many government agencies discussed above take action on their behalf. Consumer associations also help fill the gap, as do legal aid bureaus and other forms of legal clinics. The availability of private rights of action which provide for different types of damages, attorney's fees, and costs to prevailing plaintiffs further help, but are still an incomplete solution.

Only certain causes of actions are covered, and only those cases with the best chances of prevailing and the best chance of recovering substantial damages will be brought, because of the needs of the private bar to obtain its fees at the end of the litigation. The United States has come a long way from the era of caveat emptor, but much improvement is necessary in terms of education for consumers to have the working knowledge to effectively protect themselves and utilize the many formal rights they enjoy. The critical research in the years to come must focus not on the law on the books, but on the law in action to determine whether consumers fully benefit from their impressive set of formal legal rights.