2014 ACCI Esther Peterson Lecture

The Fourth Great Wave of Consumer Reform

Stephen Brobeck, Executive Director
Consumer Federation of America

It is a great honor to give a lecture in honor of Esther Peterson at your annual meeting. With Ralph Nader, Esther has been the most important consumer leader in the history of our country. It was not just her impact, which was considerable, including the creation of my own organization. It was also her example—as I discussed at your 1998 annual meeting—that combined integrity, political engagement, concern for all consumers in the world, and recognition of the importance of information and education as well as policy reform. I think it very appropriate that ACCI, which is committed to research and education to serve the consumer interest, has named a lecture in her honor.

A month ago, I informed Ginger I would talk about the past and future evolution of consumer advocacy. But in researching and thinking about this topic, I thought it would be more interesting to focus on one aspect of this subject—the recent, fourth great wave of consumer advocacy and policy reform.

Back in 1970, ACCI member Bob Herrmann published a paper—*The Consumer Movement in Historical Perspective*—in which he identified three periods of unrest that led to significant consumer reforms. In his 1989 book on the consumer movement, another ACCI member, Rob Mayer, elaborated Bob's thesis that there had been three eras of consumer activism in the U.S. Then, in an entry in our 1997 Encyclopedia of the Consumer Movement, Rob and Bob summarized and extended this thesis.

For the past couple decades in my teaching and speaking about consumer advocacy, I have found this thesis to be of great value and have used the metaphor of waves to characterize each era of reform. Waves build, crest, break, foam, then ebb. That is generally what has occurred in each of the first three eras, and it is still occurring as we probably near the end of the fourth era.

The first wave took place during the early 1900s and was part of a broader reform movement, Progressivism, that attempted to mitigate problems arising from rapid industrialization and urbanization. At the top of the list of consumer problems was the sale of unsafe food and drugs. But the public was not fully aware of these problems until muckraking journalists, such as Upton Sinclair, wrote about them. Sinclair's fictional book, *The Jungle*, vividly portrayed meat packing plants in which rats, other vermin, even dead people ended up in ground meat. It provoked sufficient public outrage to persuade President Theodore Roosevelt to investigate the plants and then propose legislation that was passed by Congress in 1906. Among its provisions, this legislation created a new federal agency that was the forerunner of the Food and Drug Administration.

Not long after, in 1914, Congress passed legislation creating another consumer agency, the Federal Trade Commission, whose main purpose was to ensure a fair, competitive marketplace. This occurred, in part, because muckraking journalists had exposed corporate concentration and monopoly, such as the growing dominance of both the oil and railroad industries by John D. Rockefeller.

In this period, there was little organized consumer activism. The one national consumer group that existed, the National Consumers League, focused more attention on workplace problems than on consumer problems. Activist leadership came instead from journalists and from reformers who held public office.

A second, smaller wave of consumer activism took place during the Great Depression of the 1930s. With unemployment over 20 percent for several years, most reformers sought to create jobs, improve working conditions, and create an adequate social safety net. But there remained public concern about the safety of consumer products—not just those entering our bodies, such as food and drugs, but also those providing financial security. This concern was aroused further by the publication in 1933 of *100 Million Guinea Pigs*, the first in a series of guinea pig books written by Arthur Kallett and F.J. Schlink. The guinea pigs were American consumers, who the authors alleged were being used by manufacturers to test products. This expose was so popular it went through 13 printings. But the two reformers didn't stop there. In 1929, they founded Consumers Research, an organization to test products. And in 1936, Kallett helped form a new group, Consumers Union that began publishing the magazine Consumer Reports (and today remains the world's largest and most active nonprofit consumer organization).

Efforts by these and other Depression-era activists helped persuade Congress to approve legislation creating the Food and Drug Administration. They also helped convince Congress to pass a bill establishing the Federal Deposit Insurance Corporation to require safer and sounder bank practices and to insure consumer deposits. During the earlier years of the Great Depression, depositors had lost the current equivalent of hundreds of billions of dollars in thousands of bank failures.

The third wave of consumer activism and reform took place during the late 1960s and early 1970s. It was part of a tidal wave of activism that sought to establish new civil, minority, women's, and environmental rights as well as those for consumers. This was also the period of massive protests, many by students facing the draft, against the Vietnam War. Several current consumer leaders, including myself, participated in these protests.

The most noteworthy consumer expose of this era was Ralph Nader's *Unsafe at Any Speed*, published in 1965, which accused auto manufacturers of willfully ignoring consumer safety. Ralph then persuaded hundreds of students to spend time investigating the failure of federal agencies to adequately regulate industry. The exposés of these Nader's Raiders supported the leadership of Congressional leaders and staff who successfully worked for the passage of many new consumer protections, including fair credit reporting, truth in packaging, and truth in lending. Perhaps the culmination of these reforms was Congressional establishment of two new consumer safety agencies—the Consumer Product Safety Commission and the National Highway Traffic Safety Administration—in the early 1970s.

By that time, Nader had inspired the establishment of a number of new consumer groups—most notably, Public Citizen, Center for Auto Safety, Center for Science in the Public Interest, and the Public Interest Research Organizations, the PIRGs. They joined the Consumer Federation of America (CFA), which had been founded back in 1968 by Esther with strong support from Consumers Union, consumer cooperative organizations, industrial trade unions, and the few state and local consumer groups which existed at that time. However, during the 1970s, hundreds of new state and local consumer groups were organized by activists to expose abuses and advocate reforms. Many of these reforms, such as state lemon laws, were adopted.

That brings us to the fourth wave of consumer activism and reform. Between 2007 and 2011, presidents signed into law seven major consumer reform bills. The 2007 Military Lending Act—targeted at payday, car title, and tax-related loans being sold to military personnel—capped the interest rate on these loans at 36 percent. The 2007 Energy Independence and Security Act required increases in the average fuel economy of new cars and light trucks to 35 miles per gallon by 2017. The 2008 Consumer Product Safety Improvement Act significantly increased the budget of the CPSC, established new regulations on a number of child-related products, including bans on lead and phthalates in toys, and increased penalties for violating product safety regulations. The 2009 Credit Card Act prohibited a number of industry practices, including rate hikes on existing balances, inadequate notice of new rate hikes, and the assessment of several types of fees. It also mandated new simpler, clearer disclosures to consumers.

In 2010, President Obama signed into law two of the most significant consumer reforms in the history of the country. The Wall Street Reform and Consumer Protection Act—commonly known as Dodd-Frank—represented the most comprehensive financial services reform since the Great Depression. This 849-page bill was intended primarily to stabilize the financial services system, but it also included important new consumer protections. The most significant was creation of a new federal agency, the Consumer Financial Protection Bureau, to protect consumers of financial products.

The Affordable Care Act sought to increase the number of Americans with insurance, control costs, and improve quality by introducing more competition, regulation, and incentives into the health care system. It attempted to do so through mechanisms such as individual and employer mandates, insurance exchanges, and subsidies to lower-income Americans who had not qualified for Medicare or Medicaid. In the same year, Congress also approved the Food Safety and Modernization Act, which gave the Food and Drug Administration greater responsibility and authority to regulate the safety of many foods, and was signed into law the following January.

During the same period these seven laws were approved, agencies issued a number of important consumer regulations. These reforms included measures that would disclose stores carrying unsafe foods, expand the number of E. coli strains considered to be adulterants, prohibit certain unfair overdraft loan practices, require clearer mortgage disclosures, increase average fuel economy to 54.5 miles per gallon by 2025, increase the energy efficiency of many appliances, increase driver visibility, set new safety standards for infant cribs, establish net neutrality protections, and expand children's online privacy. All these laws and regulations represented the most extensive set of new consumer protections approved by Congress or federal agencies in any five-year period of our nation's history.

However, several key questions remain, most importantly: What accounts for the development and approval of the new laws and regulations? What was the role of consumer advocates in this development and approval? And, what impacts have the new laws and regulations had to date and are likely to have in the future?

Starting with the question of causation, there appear to have been several necessary conditions for these reforms. Especially important was Democratic control of Congress and the Executive Branch. All new consumer regulations mentioned above, but one, were issued by agencies during the Obama Administration. In each case, Democratic appointees took the lead and, in the independent agencies, usually were opposed by Republican appointees. Moreover, all seven consumer laws were approved by a Congress in which Democrats controlled both the House and Senate. In several instances in the Senate, Democrats depended on a few Republican votes to make up the 60 needed for closure. But even when the final votes reflected bipartisan support, Democrats had usually led advocacy for the reforms, and many Republicans had reluctantly cast favorable votes.

There were three partial exceptions to this pattern. In the last two years of the George W. Bush Administration, large numbers of both Democrats and Republicans approved the Military Lending Act, the Energy Independence and Security Act, and the Consumer Product Safety Improvement Act. In each case, the laws were believed to have important national security implications. Base commanders, and then the Pentagon, were increasingly convinced that large, unsustainable increases in high-cost debt, carried by service members, impaired military readiness. Higher fuel economy standards were approved after oil imports increased to more than 60 percent of domestic consumption, and President Bush himself lamented the nation's "addiction to oil." The product safety legislation largely reflected growing concern about the safety of products manufactured in China—food, toothpaste, tires, pet food, and children's products containing lead—at a time of increasing concern that these imports were destroying America's manufacturing base. In addition, two of these three laws sought to protect vulnerable groups for which there was widespread public concern—in one case, young service men and women with low incomes and little experience with how to manage money, and in the other, children and also pets.

However, Democratic leaders would not have been able to move legislation without widespread popular support. That support was fed by extensive media coverage of abuses against consumers. I just noted several types of abuses against vulnerable populations. Yet, other problems potentially threatened all consumers. These included frequent outbreaks of food poisoning, the high error rates in hospital emergency rooms, the inability of many with pre-existing conditions to obtain affordable health insurance, and a massive number of consumer complaints about banking practices. One credit card debt of $1,900 that increased to $5,564 because of fees and penalties was in the visible tip of the iceberg, but the tens of millions of consumers who saw their credit card rates retroactively increased, or were charged fees after making what they believed to be on-time monthly payments, made up the less visible bulk of consumer dissatisfaction. These grievances fed widespread animosity to big banks and "Wall Street," who were largely blamed for the financial crisis and Great Recession.

That brings us to the all-important role of consumer advocates outside government. For most of the fourth wave reforms, their most important role was to document problems, then communicate this research, and proposed solutions, to the press, policymakers, and allied organizations. This documentation and communication sometimes took as long as a decade before reforms were seriously considered. That was the case for many financial services abuses related to checking accounts, credit cards, mortgage loans, and payday and other high-cost loans. Without the pressure applied by the frequent release of critiques by groups such as the Center for Responsible Lending, US PIRG, National

Consumer Law Center, Pew Charitable Trusts, and CFA over a period of many years, it is unlikely that many reforms would have been seriously considered, let alone approved.

Yet, beyond these exposés, consumer groups played important roles in winning reforms. In a couple of instances, these groups worked individually. That was true for Consumers Union's energetic support for health care reform that included finding and documenting individual stories, mobilizing its extensive grassroots network, and covering the issue in Consumer Reports. It was also largely the case for CFA's advocacy for higher fuel economy standards—also supported by Consumers Union—that had been championed by environmental groups. CFA's key role was demonstrating, through analysis, that these standards would save consumers money and, through national surveys, that the standards were supported by most consumers.

However, on most issues, consumer groups worked together in coalitions that agreed on strategy, reached out to non-consumer allies, mobilized grassroots and grasstops support in states and congressional districts, and communicated forcefully with policymakers and their staffs. The most ambitious of these coalitions was Americans for Financial Reform, which is the focus of Larry Kirsch and Rob Mayer's excellent recent book, *Financial Justice: The People's Campaign to Stop Lender Abuse*. To support the passage of Dodd-Frank, and the creation of the Consumer Financial Protection Bureau, consumer groups joined with labor, civil rights, and women's organizations in an ambitious and well-coordinated three-year campaign.

Consumers and consumer advocates prevailed despite strong opposition from well-funded business groups. On one of the seven congressional reform bills, industry was split. Farmers opposed FDA reform but most food manufacturers and retailers supported this legislation. On two of the seven bills, business opposition was weak. The Obama Administration had made compromises and cut deals on health care reform that muted the opposition of powerful industry groups. And only car dealers fought hard against higher fuel economy standards. Oil companies and car manufacturers who earlier had strongly resisted these standards saw the political handwriting on the wall and mounted little or no opposition.

The financial services industry, however, battled aggressively against all financial services reforms. In the case of the Military Lending Act, that opposition was mainly from a narrow sector of this industry, high-cost lenders, who had limited influence in Washington. But credit card legislation was fought hard by several of the largest financial institutions in the country. And Dodd-Frank was vigorously resisted by most financial institutions ranging from payday lenders to Morgan Chase. Business groups also opposed product safety reform, but did not seem fully aware of its practical effect—forcing many retailers to withdraw unsafe products from store shelves—until the law had been implemented.

Finally, what can we say at this early date about the impact of this fourth wave of reforms, especially its effect on consumers? The three financial services bills clearly reduced risks for consumers participating in financial services markets. They curbed many industry abuses and questionable practices—the credit card reforms alone saved consumers $22 billion a year according to a study by leading academics. They required financial services companies to provide more useful information to shoppers and buyers. And perhaps even more importantly, by creating a new agency with substantial authority and resources, they established a "cop on the beat" to monitor industry conduct and check abusive practices. Already, just through monitoring and public reporting, the Consumer Financial Protection Bureau appears to have persuaded many financial institutions to treat consumers more fairly. The impact of Dodd-Frank on investor protections, however, is less clear. Most experts agree that the financial services system is safer and sounder, but they are not certain to what extent, in part because federal agencies are still writing the regulations.

The benefits of higher fuel economy standards are also becoming apparent. The average fuel economy of new cars has already risen to nearly 28 miles per gallon, the number of cars getting at least 30 miles per gallon has risen from 13 in 2008 to 52 in 2012, increased fuel economy has contributed to the decline in oil imports from three-fifths to only two-fifths of domestic oil consumption, and car manufacturers are working to improve fuel economy, are marketing this economy more extensively, and are complaining little about being able to meet the standards. As President Obama has noted, the improved standards represent the Administration's most effective response to global climate change.

The food and product safety reforms have not yet had highly visible effects, except that certain child products, including cribs and toys, are much safer. However, there is widespread agreement that the increased funding, responsibility, and authority given to the CPSC and FDA will allow the continuation of long-term improvements in food and product safety.

As to the Affordable Care Act, I would only say about this complicated issue, with all its uncertainties, that health care reform is expanding insurance coverage and the quality of care, and it is unlikely that a future Republican President and Congress will be able to repeal this reform. However, it will certainly need tweaking, possibly even significant restructuring, and it is not at all clear at this early date whether it will increase or restrain total system-wide costs. At the same time, we should recognize that because of unyielding Republican opposition and a system largely based on employer-provided health insurance, it was not politically feasible to establish a simpler and more efficient single-payer system, say, by expanding Medicare coverage to all Americans.

At present, this great wave is still foaming; it has not yet started to ebb. Efforts by conservative Republicans, often allied with affected businesses, have spent much time trying to repeal the Affordable Care Act, restructure the Consumer Financial Protection Bureau to reduce its budget and its influence, and persuade regulatory agencies to issue the weakest possible rules. And in regard to the latter, they have had some successes. However, in almost all cases, leaders in the Obama Administration are not seeking to weaken regulations, and efforts on the Hill to shackle regulatory agencies, despite support from some Democrats, have yet to gain great traction.

In my view, the wave will likely ebb only when a Republican is elected president, especially if Republicans also win control of both houses. Your guess is as good as mine when this will occur. But even when this happens, it is unlikely that most fourth wave reforms will be eviscerated. Yes, regulations will probably not be rigorously enforced, but if they enjoy popular support, they will not be rescinded. Particularly in the case of the Affordable Care Act, however, that will depend on whether the Obama Administration makes much progress meeting the stiff challenges of a disruptive transition.

Can we expect another wave of reform in the next decade or even two? While consumer advocates certainly hope so, and history is not destiny, the past suggests little basis for this hope. These waves have taken place about every thirty years. And this re-occurrence is not entirely coincidental. After reforms have been approved and implemented, opponents point out flaws and mount counter-attacks, which consumer advocates must spend time and energy trying to repulse. Moreover, since effective reforms mitigate problems, there is diminished public enthusiasm for new government interventions.

As time passes, the world continues to change, with new conditions requiring new regulatory responses. But those experiencing the last reform wave are often slow to realize this. Finally, decades later, new generations encourage the country to confront growing problems, and a new wave of reform starts to build. Perhaps this will occur sooner. Expanding health care costs may force us to more explicitly ration health care services and transition to a single-payer system. The inadequate regulation of derivatives may force strict separation of banking and commerce and much tougher regulation of commerce. Accelerating global climate change may make drastic improvements in energy efficiency more necessary. Or, the increasing access of everyone, especially institutions, to information about everyone else may create a groundswell of support for tight individual control of this information. Regardless of when, or even if, this wave builds, it is essential for consumer advocates to continue monitoring industry practices, defending existing protections, working for incremental reforms, and preparing for the next wave.

