

Talking Points for Conference on Wall Street Reform Legislation

The Senate and House have begun a conference committee to reconcile differences between the Wall Street Reform and Consumer Protection Act (H.R. 4173) and the legislation and the Restoring American Financial Stability Act (S. 3217). The conferees will work from the text of the Senate bill which does not give accelerated rulemaking authority to the FTC.

The House conferees will have to propose this as an amendment – we must work to defeat it. That amendment likely will be offered by Reps. Bobby Rush (D-IL) and Henry Waxman (D-CA). Media and advertising businesses can use the points below to oppose this amendment. In addition, language in both the Senate and House bills must be corrected or deleted to prevent the unprecedented expansion of liability to media and advertising agencies when the FTC determines the creator of the ad was unfair, abusive or deceptive. Attached is a list of the Senators and Representatives on the Conference Committee.

- **FTC rulemaking expansion too complicated.** The unprecedented expansion of FTC rulemaking authority is far too complicated to consider as a side issue to financial regulatory reform. Financial reform demands action now – the FTC rulemaking changes do not.
- **Overly Broad FTC rules depress sales and jobs.** The FTC regulates the advertising purchased by manufacturers and other businesses and that supports the nation's media. Overly broad FTC rules can adversely affect sales revenues and drive down advertising supported jobs in every state and congressional district.
- **Advertising drives jobs and the economy.** Advertising today generates \$6 trillion or nearly 20% of total U.S. economic activity. The FTC regulates the marketing of food products, telecommunications products, energy for homes, manufacturing, and transportation, and it has jurisdiction over Internet marketing, privacy and antitrust matters. It often is referred to as the second most powerful legislature in the world. The House bill would give the FTC more power and less accountability to Congress, the courts or to the public.
- **Promotes less transparent government.** If the FTC rulemaking changes in the House bill were adopted, it would allow the FTC to issue practically any rule imaginable – even dictate what products may be advertised on TV, in print, or via other media following a brief notice and comment period. The proposed changes would insulate FTC rules from meaningful judicial review because courts could only overturn rules if they find an agency to have acted irrationally.
- **Bills would expand media and agency liability.** A provision in the House and Senate bills would permit the FTC, the CFPA or the CFPB to hold an ad agency or media company liable for a third party's ad even though it was not responsible for the substantiation of the ad claims, and the federal agency did not find the ad unfair or deceptive until years later. This provision should be corrected or deleted.
- **More resources for FTC, not more rules.** While it is doing a good job regulating consumer fraud, it needs more resources not more rules. Because the FTC overreached its authority in the late 1970s, the Congress sharply cut its budget and staff. It needs more people today to administer the rules on its books and to enforce those rules against bad actors in the marketplace. **It is important to note that when Congress has wanted the FTC to expedite rules for a major issue it has given the FTC narrow authority – issue by issue – for Do Not Call rules, predatory mortgage lending and children's online privacy.**