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no. 29
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REMARKS OF
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FEDERAL TRADE COMMISSION

THE OLDER CONSUMER

Presented by:

COUNCIL OF BETTER BUSINESS BUREAUS
In Consultation With
American Association of Retired Persons
And The
Center on Aging, University of Maryland

DECEMBER 8, 1983

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Crystal City Marriott Hotel
Arlington, Virginia

The Federal Trade Commission is the primary law enforcement agency in the federal government charged with protecting the general public against unfair and deceptive business practices. That jurisdiction, generally understood to confer consumer protection authority on the agency, was given to the FTC by statutory amendment in 1938. The FTC's work touches the lives of all citizens, including older consumers, in dozens of meaningful ways. Some things we do fairly well, and sometimes in ways that especially aid older consumers, but some things we do not--or have not--done so well. Since the subject of this panel is "The Older Consumer--The Government Perspective", let me begin by saying plainly that I don't believe there is a government perspective on the older consumer. And further, I believe there should be. We have a role surely--but it would be more effective if we had a perspective.

As it is now, our agency, at least our staff, is organized for enforcement purposes by subject matter categories reflecting both our congressionally mandated duties and our own self-selected priorities. Thus, we have divisions of credit, market practices, advertising, product reliability, professional services, and so forth. That is clearly one sensible way to organize our work. It results in a variety of consumer initiatives which often have important benefits for older consumers, and I will mention some of those in a minute.

But it seems to me--and has for a long time--that we would do well to recognize in a concentrated way that older consumers are a specific, large and growing segment of our society--one that is here to stay, which will only get larger and more complex so that its special needs and vulnerabilities will only multiply with time. I believe those special needs and vulnerabilities should have more organized concentration by all of the agencies and departments of government--and certainly ours--where consumer problems are concerned. Surely we--not just at the FTC--but we as several arms or branches of the government know enough already about these special needs and vulnerabilities to pull together a conceptual framework--with a variety of profiles--to provide our staffs with a strategy in order that we are constantly alert for predictable problem categories in pursuing areas where problems for the elderly are either predictable or potentially of the most serious concern. Continued research would be necessary to stay abreast of this dynamic area--but actually, if we just pulled together the studies and reports that already exist plus the actually quite large amount of information we all have already as a result of cases or investigations--we could compile the various profiles and construct the kind of conceptual framework I'm talking about. The FTC has done this in some discreet areas--but not as an agency-wide undertaking.

For example, we are responsible for seeing that there is no illegal discrimination against older persons in the granting of

credit. Finally, after years of having that responsibility, we brought this year the first case we have ever brought in this area. The company settled. They were clearly--or I should say allegedly--denying credit to otherwise creditworthy applicants because of their age--discounting their retirement income and marking down their applications because they were not employed full-time. Let me add that our economists were quite helpful in the pursuit of this problem and, hopefully, their cooperation will result in greater compliance with the law in the future. We have several other cases under investigation.

This is one example. But the truth is that except where we were asked--either by Senator Heinz or Congressman Pepper--e.g., to report on what we have done for elderly consumers over the past year to six months, only then do we scramble about to compile a list of whatever we have done, and we list everything we have done that affects older consumers especially. The list is usually reasonable substantial, but it is an "after-the-fact" compilation. We have no centralized monitoring section or device which leads a strategy for those consumers or which keeps oversight tabs on special areas of concern. It would be very useful if we did.

Now what do we know about older consumers? Building on what David has already said, at the FTC, as a direct result of our responsibilities and work, we know that older consumers suffer from discrimination--because of their age-- in the granting of credit;

we know they have disproportionate health care needs against the general population and are the most vulnerable to skyrocketing health care costs. Specifically, among other things, we know that over one-half of people over 65 in this nation have no remaining natural teeth and that medicare does not cover dentures or dental services. We know the elderly are mostly on fixed incomes which leads to a variety of concerns in addition to health care--what of housing and basic services? We know the older they become the less ambulatory they may be and so more vulnerable to high pressure door-to-door sales and deceptive mail order practices. We know a lot of things which could, if coordinated in one place, provide impetus for a careful, vigorous strategy on behalf of older Americans.

Now the FTC knows all the above, and more, because of things we have done and are doing.

We have promulgated and enforced the Door-To-Door Sales Rule. That rule requires that if you buy something costing over \$25.00 from someone who comes to your house, you have three days within which--free of the salesperson's presence--to think it over and cancel any contract you may have signed. That rule was not primarily designed to aid elderly consumers, but it does--and will increasingly--if they know their rights.

We have promulgated and enforced the Mail Order Rule. If you order something through the mail and it doesn't arrive within the specified time--or if no time is specified--within a reasonable

time, usually 30 days, you have a right to cancel the order and get your money back. Again, this rule was not especially designed to aid older consumers but it does--as they are less ambulatory and may come to rely, because they need to, on mail order sales. This rule can be important to them--if they know their rights.

Also, if you receive merchandise in the mail that you didn't order it is yours to keep for free. You do not have to pay for it and you do not have to send it back. Again, the elderly may be more vulnerable than others to threats from those who still send unordered merchandise by mail and so, while this rule was not specifically designed to aid them, it does--if they know their rights.

What else have we done? Finally, after a decade of study and debate, the Commission promulgated The Funeral Rule. It cleared congressional scrutiny and is now under challenge in the federal courts. If it survives, it will provide important protections for consumers on what is the third largest purchase--after a house and a car--that most of us make in a lifetime. Nearly 5-1/2 billion dollars are spent on funerals each year. The Rule will require funeral directors to disclose itemized prices and service-related information both in advance and at the time of purchase. I believe this rule, which imposes minimum burdens on the funeral industry, while seeking to ensure that funeral purchasers are able to make informed decisions during this extremely difficult transaction, is

one of the most important consumer protection measures the Commission has ever initiated.

We have examined the marketing and management practices of the life care industry--a fairly new and potentially quite significant concept which links retirement community living for the still independent and healthy elderly with the guarantee of future, long-term nursing care. From our activities, which include an important consent agreement with the owner of one of the largest chains of life care homes, the Commission has learned that it is vital that life care home developers be aware of what can occur in the absence of proper planning and that it is absolutely necessary for prospective residents to be alert to possible misrepresentations and to require full disclosure of the financial risks involved in entering into life care contracts.

In our life care home initiative we have prevented potential harm to older consumers both by interrupting the activities of the company and its owner, with whom we have this consent agreement, and by providing warnings about the potential problems of others. The great tragedy is that those who were victims in this case, lost everything which otherwise they had planned and saved in order to secure their independence and care for the rest of their lives.

Now I have mentioned some of the things we have done. There are others. But there are areas where we have fallen down miserably and where there is little prospect for useful action.

We have messed around with the nursing home care problem for years and done very little useful work. At last we have recently revitalized our moribund investigation of this industry and, hopefully, that will lead to useful action or recommendations. We have a variety of rulemakings of special interest to the elderly that have gone nowhere and are unlikely now to result in anything worthwhile. These involve hearing aids and mobile homes, among others.

The Commission has recently spent a great deal of energy and resources on consumer fraud, and while that can be useful, none of our cases so far has specifically targetted fraud against the elderly, which is a serious concern and which stems from characteristics of this population segment and could be, I believe, targetted and dealt with as a special concern.

Well, my time is up. I could describe other useful projects involving elderly consumers and describe areas where we have failed, or are failing to act in any useful way.

I will, however, just summarize by saying that the Commission's activities are important to older consumers; they know that and we have been gratified by their support in times of trouble. On the other hand, we could unquestionably be more effective, both by taking more aggressive and positive action in areas where we are already involved and by developing an overall strategy to target the special problems of this sizeable and growing segment of our society.