

97-20 Consumer Protection Programs, Department of Agriculture, Trade and Consumer Protection and Department of Justice

Summary

Since 1970, both the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Justice (DOJ) have shared responsibility for enforcing consumer protection laws against unlawful business practices, including pressure sales techniques, failure to disclose, deception, and fraud. Authority for investigating most consumer complaints and providing consumer education was consolidated in DATCP on July 1, 1996, as specified by the 1995-97 Biennial Budget Act. DOJ's authority was limited primarily to litigating court cases, but DOJ continues to share with DATCP responsibility for enforcing laws prohibiting deceptive advertising and regulating telecommunication services. DOJ also has special powers to bring action in federal court on certain telemarketing and other cases, and DOJ functions as the contact for interstate consumer protection activities and for investigative inquiries from the Federal Trade Commission.

In fiscal year (FY) 1996-97, DATCP expenditures for consumer protection totaled an estimated \$3.9 million. These funds supported 72.8 full-time equivalent (FTE) positions, including consumer specialists, compliance investigators, attorneys, and support staff. During the same period, DOJ's expenditures for consumer protection totaled an estimated \$742,000, which supported 9.3 authorized positions, including attorneys, investigators, and support staff.

At the direction of the Joint Legislative Audit Committee, we reviewed the available data on the number and type of activities DATCP and DOJ engaged in to enforce consumer protection laws both before and after responsibilities were consolidated in DATCP. At the direction of the Committee, we did not attempt to determine which agency is better suited to provide consumer protection services, and we did not review consumer protection activities of other state agencies.

When compared to other states, Wisconsin's use of both an administrative agency and the office of Attorney General to enforce deceptive advertising and unfair business practice laws is relatively uncommon. Wisconsin is one of nine states to have two agencies involved with enforcement efforts.

The two agencies differ on which is the best approach to carrying out consumer protection programs. DATCP officials believe that because most businesses want to comply with consumer protection laws, the most cost-effective approach to consumer protection includes providing information to consumers and businesses on how to resolve their disputes, intervening on behalf of consumers to mediate disputes, and using administrative procedures to encourage businesses to comply. Only if these efforts fail does DATCP believe court action should be initiated, unless there is clear indication of an illegal act, such as an intent to defraud consumers.

DOJ, on the other hand, believes that efforts to investigate and mediate cases must always be carried out in a manner that can lead to court action if necessary, so that injunctions barring continued illegal activity can be obtained and fines and restitution orders imposed. DOJ questions whether DATCP is doing enough to develop court cases that will aggressively deal with fraudulent activities, especially those that are perpetrated by out-of-state businesses against Wisconsin consumers.

Most consumers initially contact the State by calling the toll-free consumer telephone hotline maintained by DATCP. In FY 1996-97, DATCP received more than 122,000 calls to the hotline, and DATCP officials reported that an additional 62,000 calls were made to regional consumer protection offices. The number of hotline calls has continued to increase since the two agencies' hotlines were consolidated in October 1995. Many of these callers are seeking information rather than reporting complaints, and they can listen to recorded educational messages or obtain answers to specific questions from a consumer specialist.

Consumers whose complaints involve alleged illegal business practices are asked to submit written complaints. Although the number of written complaints received by DATCP and DOJ declined from 13,119 in FY 1994-95, the last year before the consolidation of responsibilities in DATCP, to 12,364 in FY 1996-97, the number of complaints received since January 1997 has been consistent with the level observed prior to the transfer.

DATCP and DOJ officials agree that fewer written complaints have been received because of the consolidation of responsibilities, but the agencies have different explanations of why consolidation reduced the number of complaints. DATCP officials believe that the number was initially reduced because of complications in the process of transferring programs. In contrast, DOJ officials believe that written complaints decreased because DATCP staff advise many consumers to resolve their own disputes independently with businesses. DOJ officials are concerned that with fewer written complaints it will be difficult to identify new fraudulent practices, but DATCP officials believe that such trends can be recognized.

It is difficult to determine the extent to which consumers call the hotline but do not submit written complaints, because the agencies have maintained limited data. Nevertheless, the information indicates that for every written complaint DATCP received, it received more than ten telephone calls to the hotline in FY 1996-97, whereas DOJ received approximately seven telephone calls for every written complaint it received in FY 1994-95, the last year it operated a consumer hotline. This difference, however, may be the result of differences in the types of calls being received rather than differences in the approaches used by the agencies.

Once written complaints are received, a variety of methods can be used to close them, including contacting the parties to attempt to resolve the complaints, mediating between consumers and businesses, warning businesses to comply with the laws, negotiating an assurance that illegal practices will be discontinued, negotiating consent judgments, or filing civil or criminal court actions. In FY 1996-97, DATCP used all these methods, closing 7.9 percent of the complaints it handled by contacting the parties, 76.6 percent through mediation, and 14.8 percent by warning the business or obtaining assurances. Only 0.7 percent of complaints handled were closed by referral for court action. In contrast, in FY 1994-95, the year before consolidation, DOJ closed 16.8 percent of the complaints it handled by contacting the parties, 76.5 percent through mediation, 2.0 percent by negotiating assurances, and 4.7 percent through court action.

Court actions are initiated after an investigation provides evidence of unlawful business activities. DOJ is concerned that even though DATCP was assigned new responsibilities and added four investigators, DATCP has initiated too few investigations and failed to adjust its investigative priorities to give adequate attention to its new responsibilities or address emerging problems. In FY 1994-95, DATCP's 11 investigators initiated 88 investigations, or 8 per investigator. In FY 1996-97, DATCP's 15 investigators initiated 113 investigations, or 7.5 per investigator.

DOJ points out that no investigations were initiated in such areas as health services fraud or contests and sweepstakes, and only two were initiated in mail order fraud. DOJ is most concerned that the use of telemarketing by businesses outside Wisconsin to promote a wide range of business scams has been identified by the Federal Trade Commission as a major national concern, but DATCP has initiated few investigations of telemarketing practices. Fifty percent of the complaints DATCP handled in FY 1996-97 are related to six business activities, all of which were regulated by DATCP prior to consolidation. In FY 1994-95, DATCP initiated 79 investigations for these six types of business activities. In FY 1996-97, 77 investigations were initiated related to these six types. For four new types of business activities transferred from DOJ, DATCP initiated 5 investigations in FY 1996-97, and for four activities for which previously shared responsibilities were consolidated in DATCP, the number of investigations initiated declined from 31 in FY 1994-95 to 21 in FY 1996-97.

DATCP points out that its investigative priorities have continued to focus on its traditional responsibilities, rather than telemarketing and other cases that in DOJ's opinion should be given priority, because DATCP guidelines for selecting cases to be investigated adequately consider the seriousness, scope, and urgency of the problem. DATCP also considers whether means other than investigation and litigation can best resolve the problem.

DATCP does not litigate court cases, so it refers most criminal cases to district attorneys and most civil cases to DOJ, which may also decide to pursue criminal charges. The two agencies disagree on whether enough case referrals are being made. To determine the change in the number of court actions, we reviewed both the number of referrals made by

DATCP and the number of court cases completed by district attorneys and DOJ. We found that referrals to district attorneys increased from 39 in FY 1994-95 to 41 in FY 1996-97, and referrals to DOJ increased from none in FY 1994-95 to 11 in FY 1996-97.

One reason for the limited number of case referrals to DOJ appears to have been poor communication and disagreement between the two agencies about DOJ's willingness to accept referrals from DATCP. Since January 1, 1997, DOJ has returned three cases to DATCP indicating more evidence is needed, a contention that DATCP officials dispute. DOJ officials state they, as prosecutors, must be able to determine when additional investigation is needed to develop sufficient evidence in support of court action. DATCP has argued that, given DOJ's refusal to accept some cases, it is easier to work with district attorneys to prosecute cases.

DATCP officials have also stated they expect the number of referrals to DOJ will increase as the number of investigations initiated in DATCP's new areas of responsibility increase. On the other hand, DOJ officials have expressed concern that if DATCP does not increase substantially its referrals to their agency, consumer protection will be severely diminished.

Limited investigations and referrals for court action may have contributed to a decline in the number of court cases completed by district attorneys and DOJ, and the fines assessed in these cases over the past three years. Fines, forfeitures, and restitution from cases completed by DOJ declined from \$2.9 million in FY 1994-95 to \$849,057 in FY 1996-97. These declines, however, may not reflect changes in the trend in court cases and settlements, because decisions on which cases to prosecute and court-ordered judgments may vary significantly from year to year. In addition, because court cases often take more than one year to complete, differences that have resulted from consolidation may not yet be apparent. DATCP also points out that these amounts do not include recoveries achieved through mediation and other efforts, but no information on such recoveries was collected before 1996.

Although the number of completed multistate cases, in which Wisconsin joins with other states to halt illegal practices by telemarketers and others operating across state lines, increased from four in FY 1994-95 to ten in FY 1996-97, DOJ officials believe their agency's ability to participate in multistate cases has been hampered. Since consolidation of responsibilities, they no longer maintain the State's consumer protection database, which DOJ formerly used to determine which Wisconsin cases are related to consumer complaints in other states. DATCP officials, who have maintained the database since consolidation, contend that DOJ officials may contact DATCP at any time to request data but are concerned about the purposes for which DOJ may use the information. DOJ contends that requesting information through DATCP rather than having on-line access to the information may jeopardize the confidentiality of federal and multistate investigations.

The agencies have also had difficulty in coordinating their efforts. For example, although the agencies meet at least once a month to discuss consumer protection and occasionally inform each other in writing about consumer protection activities, there has been miscommunication and disagreement between the agencies. However, some have argued that consumer awareness of consumer protection issues may actually be increasing as a result of the competition between the two agencies and the aggressive efforts each has undertaken to notify the public of their efforts to protect them.

While consumer satisfaction with state consumer protection programs is only one measure of program effectiveness, we attempted to measure the level of consumer satisfaction by surveying 1,000 randomly selected consumers who submitted complaints to DATCP and DOJ between October 1, 1995, and September 30, 1996. We found that over one-half of the 493 consumers who responded to our survey were satisfied with the services, but there was no significant difference in the level of satisfaction between those individuals filing complaints with DATCP and those filing with DOJ. However, it should be noted that during this period, DOJ was reducing the services it offered as staff and resources were transferred to DATCP, and DATCP was assuming new responsibilities and training new staff.

Additional efforts are needed by both agencies to measure the effectiveness of consumer protection activities. DATCP officials have indicated they intend to improve the complaint-tracking system by increasing the amount of information collected from consumers who call the hotline, including the reasons for the call, identification of the business generating the consumer concern, and how the call was resolved. Additional effectiveness measures could include the amount of fines, restitution, and settlements realized from all activities; changes in the frequency of specific types of

fraudulent activities after educational and other preventive efforts have been made; and overall consumer satisfaction among those who seek assistance. Monitoring the effectiveness of consumer protection programs will be important so that new strategies can be developed as new deceptions and efforts to defraud emerge.
