



# Center for Competition and Market Regulation

## Background: Robinson-Patman Act (RPA)

Why strict enforcement of the Robinson-Patman Act hurts consumers and businesses.

**The RPA is inconsistent with the other antitrust laws.** Other antitrust laws, such as the Sherman and Clayton Acts, as well as the FTC Act, protect consumers, but the plain text of the RPA protects less efficient businesses from larger, more efficient businesses.

**The RPA leads to higher overall prices.** The RPA discourages discounts. Basic economics has proven that strict RPA enforcement leads to consumers on a whole paying more, not less.

**The RPA hurts poorer consumers the most.** The RPA's effort to set uniform prices hit some of the poorest consumers the hardest. According to USDA statistics, "the vast majority of food-stamp purchases are made at large retailers," but by discouraging large retailers from negotiating discounts, renewed enforcement would disproportionately harm lower income Americans.

**The RPA doesn't help small businesses – and may even hurt them.** Though superficially appealing, the a Congressionally chartered group of experts found that RPA generally appears to have failed in achieving its main objective of helping smaller businesses—and may have even harmed them. It argues that over time, suppliers found expensive ways to comply with the RPA that are likely to increase the seller's costs, but do nothing to protect small businesses. In fact, the RPA likely discouraged suppliers from selling to smaller businesses at all to avoid legal risks.

**Bipartisan experts recommend the RPA's repeal.** In the 1960s, a report recommended the repeal of the depression-era law due to the RPA's high costs, limited or non-existent benefits, and inconsistency with other antitrust laws. In 1977, President Carter concluded that "serious consideration" should be given to repeal. In 2007, the bipartisan Antitrust Modernization Commission again recommended that "Congress should repeal the Robinson-Patman Act in its entirety." In a recent survey, 98% of practitioners agreed that the Act should not be an enforcement priority.

**RPA enforcement.** The FTC recently dismissed a Biden-era RPA suit against Pepsi. Another Biden-era RPA suit, against Southern Glazer remains pending, though then-Commissioner Ferguson dissented from its filing. The Chamber called the suit an "antitrust folly, marked by a partisan attack on rebates that is ultimately inflationary." This statement could extend to the Robinson Patman Act across the board.



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