TESTIMONY

BEFORE THE
SENATE COMMITTEE ON
BANKING, HOUSING AND URBAN AFFAIRS

REGARDING

THE CONSUMER IMPACT OF REGULATORY RELIEF PROPOSALS AFFECTING BANKS, THRIFTS AND CREDIT UNIONS

MARCH 1, 2006

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ACORN
Center for Responsible Lending
Consumers Union
National Community Reinvestment Coalition

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Chairman Shelby, Senator Sarbanes, and Members of the Committee, this written testimony accompanies the verbal comments provided to you today by Travis Plunkett of the **Consumer Federation of America,**[1] Margot Saunders of the **National Consumer Law Center**[2] on behalf of its low income clients, and Edmund Mierzwinski of the **U.S. Public Interest Research Group**[3]. We thank you for the opportunity to provide comments on the many issues that may arise as you consider proposals for financial services regulatory reform. This testimony is also provided to you on behalf of **ACORN,**[4] the **Center for Responsible Lending,**[5]**Consumers Union,**[6] and the **National Community Reinvestment Coalition.**[7]

There are many proposals for changes to the laws governing financial services currently under consideration in the Congress. We support some of these proposals, we have no positions on others, and we have grave concerns regarding a number of others. However, in this testimony, we only focus on provisions we understand to be under serious consideration by the committee;[8] we do not comment on all 187 or more items in the so-called "regulatory reform matrix," although we certainly oppose others.

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[1]The **Consumer Federation of America** is a nonprofit association of about 300 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through research, advocacy and education.

[2]The **National Consumer Law Center** is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen examples of predatory practices against low-income people in almost every state in the union. It is from this vantage point--many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities--that we supply these comments. We have led the effort to ensure that electronic transactions subject to both federal and state laws provide an appropriate level of consumer protections. We publish and annually supplement fifteen practice treatises which describe the law currently applicable to all types of consumer transactions.

[3] The **U.S. Public Interest Research Group** is the national lobbying office for state PIRGs, which are non-profit, non-partisan consumer advocacy groups with half a million citizen members around the country.

[4]**ACORN** is the nation's largest community organization of low- and moderate-income families, with over 175,000 member families organized into 800 neighborhood chapters in 80 cities across the country.

[5] The **Center for Responsible Lending** (CRL) is a non profit, nonpartisan organization focused on policy research and advocacy to stop predatory lending practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development lenders, whose mission is to create and protect homeownership opportunities for low-wealth families through home and small business ownership.

[6]**Consumers Union**, the nonprofit publisher of Consumer Reports magazine, is an organization created to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and from noncommercial contributions, grants and fees. Consumers Union's publications carry no advertising and receive no commercial support.

[7]**National Community Reinvestment Coalition** (NCRC) is the nation's trade association for economic justice whose members consist of local community based organizations. Since its inception in 1990, NCRC has spearheaded the economic justice movement. NCRC's mission is to build wealth in traditionally underserved communities and bring low- and moderate-income populations across the country into the financial mainstream. NCRC members have constituents in every state in America, in both rural and urban areas.

[8] For example, many of the undersigned organizations also strongly oppose changes to Section 404 of Sarbanes-Oxley (Matrix item 175).

As the Committee evaluates which of these many proposals to include in a bill labeled "Regulatory Relief," it is critical that the *consumer interest* be the focal point of the process. A fair bill cannot be limited to proposals requested by financial institutions. A fair bill must include regulatory measures that would benefit consumers. In particular, our organizations urge you to take the long-overdue step of updating the jurisdictional limits and statutory damages allowed under the Truth in Lending Act (TILA) and the Consumer Leasing Act.

A fair bill must also exclude measures that would harm consumers. An analysis of the proposals suggested by the financial services industry indicates that many would do substantial harm to consumers by overriding important state laws with weak substitutes, undermining key consumer protections under federal law, and jeopardizing the safety and soundness of the deposit insurance system. Of particular concern are proposals that would:

- Exempt check diversion companies from consumer protections required under the Fair Debt Collection Practices Act, allowing these *for-profit collection* companies to operate outside the limitations of federal consumer protection and force consumers to pay fees that are not authorized by state law in order to avoid criminal prosecution.
- Expand the ability of Industrial Loan Companies to offer new products, such as business checking, and branch into states without permission, threatening the safety and soundness of the banking system and taxpayers.
- Override the interest rate ceilings put in place by the people of Arkansas, removing the state's ability to impose any limits on any loans in the state.
- Exempt financial institutions from providing some important privacy notices, and
- Override the few remaining states that prevent rent-to-own stores from overcharging consumers.

In this process, federal agencies and financial institutions often argue that various consumer protection regulations have an adverse impact on competition. Actually, it is the *removal* of consumer protection regulations that would most likely reduce the competitive advantage of responsible financial institutions in the marketplace. Consumer protection requirements are imposed on depository institutions not only for the benefit of consumers, but also to ensure that competition is appropriately fostered. Without the minimum consumer protections required by federal law, institutions that choose to provide more balanced and consumer friendly products would find themselves at a competitive disadvantage compared to institutions that choose not to treat consumers as fairly.

The consumer protections provided by such laws as the Truth in Lending Act, the Fair Debt Collection Practices Act, the Electronic Fund Transfer Act and others are often the only tools available to consumers to balance their bargaining power with influential federally chartered and insured financial institutions. After all, the broad range of consumer protections traditionally provided by state law in consumer transactions may no longer be applicable to federally chartered or insured financial institutions.[9]

It has been recognized for centuries that borrowers and lenders often do not enter credit contracts on an equal footing. The absence of equal bargaining power may manifest itself in different ways. It is a

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[9] See Regulations of the Office of Comptroller of the Currency, 12 C.F.R. Parts 7 and 34; and Regulations of the Office of Thrift Supervision, 12 C.F.R. part 560.

fact of the modern consumer credit market that creditors, not borrowers, draft loan documents, and that the terms of credit contracts offered to consumers are basically non-negotiable. A potential borrower can "take it or leave it" and go elsewhere, though sometimes the "elsewhere" is not so easy to find or involves identical terms. Moreover, the increased complexity of credit makes it difficult for consumers to do any meaningful comparison shopping to determine whether it is best to "leave it" or not. The ubiquity of adhesive credit contracts, combined with the ignorance of almost all consumers about the implications of the fine print contained in these contracts, leads to opportunities for the exploitation of typical borrowers that are just as great as those present with the classic desperate borrower.

The consumer protections provided by the federal laws under consideration in the present review generally provide the only antidote for consumers to protect them from overcharging and adhesion contracts with complex terms. In fact, as the refrain "predatory lending" should be quite familiar to this Committee, everyone should agree that the current panoply of federal consumer protections is clearly insufficient. As a result, to promote safety and soundness, ensure fairness and protect consumers, we urge the Committee to adopt *pro-consumer legislation*.

Additionally, any proposed reduction in federal consumer protections must be justified not only by the clearest showing that the burden on the financial services industry is unreasonably high, but also by an equivalent finding that the benefit to consumers provided by the protections being reduced is *de minimus.*

I. IMPORTANT PROPOSALS TO UPDATE FEDERAL LAWS TO PROTECT CONSUMERS

A. Update Truth in Lending Act and Consumer Leasing Act (Senate matrix Item 129).

TILA's jurisdictional limit for non-dwelling secured consumer credit transactions was set when the law was first passed in 1968 at $25,000. That amount was more than sufficient at that time to ensure that most automobiles and credit card transactions were included within TILA's umbrella. However, the value of $25,000 in 1968 dollars is $142,456.90 in today's money. [10] As a result, today most car loans as well as other consumer credit transactions are not protected by TILA.[11]

The same issue exists for statutory damages under TILA. The equivalent for the statutory damages amount of $1,000 in 1968 would be almost $6,000 today. The numbers in the current statute need to be updated, and an inflation factor built in. The Consumer Leasing Act requires similar treatment.[12]

B. The application of the Truth in Lending Act to overdraft "bounce" loans should be clarified (Senate matrix Item 127).

[10] See http://data.bls.gov/cgi-bin/cpicalc.pl.

[11] Amendment: Amend Section 104(3) of the Truth in Lending Act (15 U.S.C. § 1603(3)) and Section 181(1) of the Consumer Leasing Act (15 U.S.C. § 1667(1)) by deleting "$25,000" wherever it appears and replacing it with "$150,000".

[12] Amendment: Amend Section 130 of the Truth in Lending Act (15 U.S.C. §1640) by deleting "$100" or "$200" wherever either appears, and replacing both items with "$500", and by deleting "$1,000" or "$2,000" wherever either appears and replacing both items with "$5,000".

The Federal Reserve Board issued final rules last year to cover overdraft extensions of credit under the Truth in Savings Act, Reg DD, instead of recognizing that "bounce loan protection" should be regulated under the Truth in Lending Act as the extension of credit that it clearly is. The Board's rule is a completely inadequate response to the real need consumers have for information about the exorbitant costs of these loan products. Congress should step in and require--at the least--that overdraft "bounce" loans be treated just as all other extensions of credit are treated under the federal Truth in Lending Act. This equivalent treatment would simply--and most importantly--require that creditors of overdraft "bounce" loans *inform* consumers about the true costs of this credit and get affirmative consent to borrow money through use of a debit card at an ATM or point of sale terminal or by writing checks that overdraw the account.

Bounce "protection"[13] is a new form of overdraft protection that over 90 percent of banks are using to boost their non-interest revenue.[14] A 2005 study by the Center for Responsible Lending conservatively estimates that consumers paid over $10 billion in a year for overdraft loans.[15] As we wrote to this Committee last year, banks that use "courtesy overdraft" programs charge steep fees, take payment in full directly out of consumers' next bank deposit, and encourage consumers to overdraw their accounts, unlike traditional overdraft protection that consumers apply for and that guarantees coverage of overdrafts with reasonable fees and affordable repayment terms.

Bank overdraft "bounce protection" is a systematic attempt to induce consumers into using overdrafts as a form of high-cost credit. These plans offer short-term credit at triple-digit rates.[16] When a consumer uses bounce credit, the bank deducts the amount covered by the plan plus the fee by setting off the consumer's next deposit, even where that deposit is protected income, such as a welfare or Social Security check. The fee is often the same amount charged for an NSF fee on a returned check, and in some cases the bank also charges an additional, per-day fee.

Banks covering overdrafts do not ask for consumers' affirmative consent to borrow from the bank, do not guarantee to pay overdrafts, and do not disclose the loan's interest rate. Some regulators even allow their banks to deceive consumers about how much money they have in their accounts when they request an account balance inquiry.[17] Banks that advance cash at the ATM or point of sale when

[13]Bounce "protection" is a euphemism used by banks to describe this high-cost credit product.

[14]For more information on bounce credit, see Consumer Federation of America & National Consumer Law Center, Bounce Protection: How Banks Turn Rubber Into Gold By Enticing Consumers to Write Bad Checks (2003), available at www.consumerlaw.org/initiatives/test_and_comm/appendix.html.

[15] Center for Responsible Lending, "Underregulated & Overpriced: The $10 Billion Overdraft Loan Market," May 26, 2005.

[16]For example, a $100 overdraft will incur at least a $20 fee. If the consumer pays the overdraft back in 30 days, the APR is 243 percent. If the consumer pays the overdraft bank in 14 days, which is probably more typical for a wage earner, the APR is 521 percent. This arrangement is much more expensive than alternatives that most banks offer, such as overdraft lines of credit, linking the account to a credit card, and transfers from savings.

[17] The brochure issued by the OCC last summer entitled "Writing a Check: Understanding Your Rights," warns consumers: "Be sure that the available account balance you're counting on does not include funds from your bank's 'overdraft protection' program." See http://www.occ.treas.gov/ftp/release/2005-75a.pdf (last visited 25 February 2006). The OCC brochure intends to explain all check rights; we are not aware that OCC allows national banks to deceive consumers in this

consumers overdraw bank accounts turn consumers' debit cards into credit cards without the benefit of credit card protections. The Office of the Comptroller of the Currency has recognized that bounce loans are credit as defined by TILA.[18] Some state regulators have reached the same conclusion.[19] All federal bank regulators, except the Office of Thrift Supervision, acknowledge that overdrafts are credit. The Joint Guidance on Overdraft Protection Programs, issued by most federal bank regulatory agencies early last year, acknowledges that "When overdrafts are paid, credit is extended."[20] Yet consumers do not get credit protections.

Overdraft loan fees clearly meet Regulation Z's definition of a finance charge. Section 226.4(c)(3) of Regulation Z, which excludes fees for traditional overdrafts, provides that overdraft fees are finance charges when "the payment of such items and the imposition of the charge were previously agreed upon in writing." Although banks offering bounce credit have sought to avoid Regulation Z's coverage by claiming that the bank's payment of an overdraft in a "bounce protection" plan is "discretionary" and that such payments have not been agreed to in writing, these assertions fail. First, bounce credit is not discretionary. These plans are administered through computer software and thus are formal, systematic programs rather than an occasional customer courtesy. Moreover, banks extend bounce credit pursuant to an agreement in writing, whether through advertisements, correspondence, or on a website. Consumer assent is not necessary, and consumers often are held accountable for fees unilaterally imposed by banks.

A study by the Consumer Federation of America found that over eighty percent of the largest banks, controlling over half the deposit dollars in the United States, include fine print in account agreements that permits those banks to make overdraft loans through automated teller machines and at the point of sale.[21] These overdraft loans go beyond covering paper checks that would otherwise be returned unpaid and permit consumers to borrow the bank's money without notice, consent, or comparable cost disclosures. While it violates federal law for banks to repay cash advances on credit cards by withdrawing funds from consumers' checking accounts at the same bank, banks routinely repay their extensions of credit and fees on overdraft loans by exercising their right of setoff.

Congress must clarify that overdraft "bounce" loans are covered by the basic consumer protections found in the Truth in Lending Act. Federally insured depository institutions should be required to get affirmative consent for overdraft loans and to warn consumers when ATM and debit card

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manner.

[18] Daniel P. Stipano, Deputy Chief Counsel, Office of the Comptroller of the Currency, Interpretive Letter #914, September 2001.

[19] Indiana Department of Financial Institutions, Newsletter--Winter 2002 Edition (Nov. 2002), at 2; Letter from Assistant Attorney General Paul Chessin, Colorado Department of Law, Consumer Credit Unit, Mar. 21, 2001 (in response to referral from the Administrator for the Colorado Uniform Consumer Credit Code).

[20] Department of the Treasury, Joint Guidance on Overdraft Protection, Federal Reserve System Docket No. OP-1198, 70 Fed. Reg. 9,127 (February 24, 2005) p. 7.

[21] Consumer Federation of America, "Overdrawn: Consumer Face Hidden Overdraft Charges From Nation's Largest Banks," June 9, 2005.

transactions will overdraw an account and trigger a fee. They should also be required to provide affordable repayment terms when making these loans.

C. Expand the Electronic Fund Transfer Act to apply to all forms of electronically processed payments (Senate matrix Item 130).

Payment methods are increasingly converging, but the consumer rights available differ vastly depending on how the payment is processed. A consumer who pays by debit card, for example, has the protections of the federal Electronic Fund Transfer Act, including a 10 business day right of recredit of all disputed funds. The consumer never has to be without his or her funds for more than 10 business days when paying by electronic debit. When a consumer pays by check, however, the applicable consumer rights are much more murky. A paper check, or a check which is processed wholly electronically under bank to bank image exchange agreements, is subject to the Uniform Commercial Code and carries no baseline federal consumer protections and no promise of how long it can take to return the disputed funds to the consumer. Even though image exchange is an electronic processing method, the EFTA exemption for checks means that consumers don't get the crucial 10 day right of recredit, and thus are at the mercy of their banks or the courts to win a timely return of disputed funds. When the check is processed using a substitute check, the Check 21 Act provides a 10 business day right of recredit, but the Federal Reserve Board's narrow interpretation of the availability of this right in its regulations restricts this right to those consumers who were provided with a physical substitute check, and the final regulations do not even require that banks provide that document on request. If, instead of image processing (no federal rights) or Check 21 processing (limited federal rights), the check is processed through lockbox conversion or point of sale conversion, it is covered by the EFTA (full federal rights).

When something goes wrong with a check payment, the consumer shouldn't have to sort out how that check was processed after it left the consumer's hands in order to learn his or her rights. Congress can take a significant step toward solving this mess by amending the EFTA to include all checks which are processed in whole or in part by the transmission of electronic information.

D. Prohibit the misuse of banks and bank accounts by high priced payday lenders (Senate matrix Item 128).

The Federal Deposit Insurance Corporation, the only bank regulatory agency to permit its banks to partner with payday lenders, has recently taken steps to curtail the role of banks in facilitating payday lending. Last year, the FDIC issued a cease and desist order that led County Bank of Rehoboth Beach, DE to withdraw from the payday loan business. According to company announcements and filings with the SEC, the FDIC has asked the remaining "rent-a-banks" to stop partnering with payday lenders to make single-payment and installment loans. Last week, First Bank of Delaware announced that it will cease making these loans. Since the FDIC does not make public the content of supervisory letters, we do not know whether all banks will permanently be barred from renting their charters to storefront and online payday lenders.

The FDIC is the last of the federal bank regulators to take firm regulatory action to stop the use of "rent-a-bank" arrangements, designed to allow payday lenders to evade state usury and small loan laws.[22]

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[22]See report from Consumer Federation of America titled "Unsafe and Unsound: Payday Lenders Hide Behind FDIC Bank Charters to Peddle Usury," which documents the failure of the Federal Deposit Insurance Corporation to protect

Last year the FDIC revised its guidelines, directing banks to halt payday lending once consumers had been in debt three out of the prior twelve months. The 11th Circuit decision in *BankWest v. Baker*[23] found that the Federal Deposit Insurance Act does not preempt state laws that attempt to regulate banks' payday loan partners. To close this misuse of banks once and for all, we urge you to clarify that bank charters are not for rent by enacting S. 1878, Senator Akaka's "Predatory Payday Loan Prohibition Act of 2005."

In addition to prohibiting rent-a-bank payday lending, this bill prohibits the relatively new practice of holding a check as security for a loan. Using the check as security for the payment of a payday loan is the key to the coercive collection tactics used by the lenders. As the lender holds the check, at the end of the short term loan, the consumer is generally forced to choose among three untenable options: 1) allowing the check to be debited from their bank account where it will deplete money needed for food and other living necessities, 2) allowing the check to bounce, exposing the borrower to coercive collection tactics when lenders threaten civil or criminal liability for unpaid checks, and from the risk of losing their bank account or check-writing privileges, or 3) renewing the loan at the original high cost. Loans based on personal checks drawn on the borrower's bank account that will be deposited to repay the loan on the next payday is the modern version of lending secured by wage assignments, a credit practice long recognized as inherently unfair which violates FTC rules.

The Senate should not condone predatory lending based on enticing cash-strapped consumers to write checks without money in the bank to cover them.

E. Protect members of the military from predatory loans targeted at them.

One of the major problems that the Congress has considered, but failed to complete action on, is the growing threat to our nation's military readiness caused by predatory lenders targeting military families. High interest rates, unaffordable repayment terms, and the risk of losing valuable assets characterize lending to the military. Military personnel must live under the terms of the Uniform Code of Military Justice and security and evaluation criteria that place a premium on sound financial management.

We are particularly alarmed about payday lenders that entice military personnel, who are required to have a bank account in order to receive direct deposit of their pay, to borrow money by handing over personal checks for the loan and the finance charge. These quick cash loans cost over three hundred percent annual interest and must be repaid in full on the borrower's next payday. Payday loan users are often trapped in a cycle of debt, paying the finance charge every payday to keep checks afloat but unable to make the balloon payment required. A study recently published in the Ohio State Law Journal conclusively demonstrates that payday lenders target military personnel. A survey of twenty states, including nearly 15,000 payday loan outlets and over a hundred military bases, found that payday lender locations show greater concentrations per capita near military populations. An *Army Times* investigation documented that there are four times as many payday loan outlets per 100,000 population near Fort Lewis and McChord Air Force Base than in the rest of Washington.

As Navy Master Chief Petty Officer Terry D. Scott testified before a House Ways and Means subcommittee in February, "I am not being dramatic in my strong belief that loans from predatory lenders

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consumers and the safety and soundness of state-chartered, federally-insured banks that partner with store front payday lenders.

[23] 2005 WL 1367795 (11th Cir. June 10, 2005).

to our troops are a threat to our military readiness and our ability to fight effectively the Global War on Terror. Our country does not need Sailors distracted by the debt incurred from predatory loan establishments. In addition, the security risks from Sailors in debt who could be compromised are significant; the biggest factors in Sailors losing security clearances crucial to doing their jobs in the defense of our country are financial problems."

Two positive steps you could take would be to enact S. 418, by Senator Enzi and several other members of the Committee as well as other Senators, and also to enact legislation based on Senator Dole's original amendment to the Defense Authorization bill to cap rates for loans made to military personnel. As noted already, we also endorse Senator Akaka's S. 1878 to prohibit loans based on checks or debits drawn on the borrower's bank account.

S. 418, the Military Personnel Financial Services Protection Act, is a good response to abuses in the sales of periodic payment plans – both mutual funds and other investments, such as investments disguised as insurance products -- to military personnel. These abuses have been documented in the *New York Times* over the last several years. The bill would ban the sale of the most egregious products and would clarify that state insurance commissioners have jurisdiction over violations on military bases. The NASD already has this jurisdiction.

While the House has passed H.R. 458, that bill unfortunately suffers from a number of unacceptable deficiencies. Title II, Lending to Armed Forces Personnel, was presented as a consumer protection against payday lending. Due to the narrow coverage of the bill, it actually does not apply to many payday lenders or payday loan transactions made to military borrowers. For example, the only lenders covered are those that make over 10 percent of their loans to service members. Advance America, the country's largest payday loan chain, filed a challenge to Jacksonville's payday loan ordinance in 2005 and stated that less than five percent of its customers were members or spouses of military in Jacksonville, home of the Naval Base.

H.R. 458 *appears* to protect military borrowers, but is actually likely to cause harm by undermining existing protections for excluded borrowers, lenders, and loans.

- **H.R. 458 is likely to *reduce* existing rights for members of the military**. As it only covers a small portion of the predatory loans actually made to military personnel, transactions *not* covered may be less protected than under current law. The bill purports to prohibit some bad things (waiver, garnishment, assignment of wages) for only some loans, made by only some lenders. Yet under current law, the terms this bill would prohibit are generally already illegal. For example, if the "protections" only apply if the loans are made by lenders who target military borrowers, by inference these provisions would not apply to all other military borrowers, other loans or other lenders. By failing to protect all military borrowers from all predatory loans from all lenders, the effect is likely to provide credence to arguments that the prohibited terms are legal for all other loans.[24]

[24] The "rule of construction" in the amendment does not adequately protect from these negative inferences. If the rule were effective, it would render the underlying protections in the bill meaningless. The basic rules of statutory construction require that a law have some real effect. If the amendment adds any protections, then that must mean that in those situations that are not covered by the amendment, those protections would not be applicable. As a result, either the protections listed in the amendment are new – and thus inapplicable to non-covered transactions (which reduces existing protections) – or the amendment is meaningless.

- **The effect of the notice required for some loans would facilitate predatory lending, rather than reduce it.** The notice that would be provided to some military personnel by some lenders in some loans could mislead the members reading it into believing that there are meaningful protections applicable to those loans, when in fact there are not. This is likely to alleviate concerns that the member might otherwise have about entering into such a loan – although the bill's provisions provide no valuable protection from the dangers of such a loan.[25]

- **Generally most of the "protections" offered in H.R. 458 already exist in current law or Department of Defense regulations.** These provisions include:
  - Prohibition against garnishment of wages – yet federal law already provides significant protections against garnishment of wages for enlisted personnel.[26] High cost lenders typically use check holding or vehicle titles to ensure repayment, rather than using the courts to collect on payday and title loans.
  - Prohibition against assignment of wages – yet federal law already prohibits the assignment of wages of enlisted members.[27]
  - Prohibition against a covered lender contacting or threatening to contact the borrower's chain of command to collect a covered loan -- yet officers are directed by DOD not to assist creditors in collecting "exorbitant" debts.[28]
  - Prohibition against including any waiver of rights under federal or state law including the Servicemembers Civil Relief Act -- yet such waivers are already generally prohibited.[29]
  - Prohibition against lenders claiming to be endorsed by the Armed Forces or Department of Defense -- yet DOD regulations already prohibit endorsement by officials or the use of

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[25] In the limited instances the notice would be provided, military borrowers would not be warned about harmful consequences of predatory payday and title loans, such as repeat presentment of checks that trigger bounced check fees or loss of the vehicle whose title is signed over for a short term loan. Merely warning some borrowers about repeat borrowing does not protect against predatory products or coercive collection tactics.

[26] These restrictions exist under DOD regulations (32 C.F.R. Part 112), which include restrictions on the amount of wages that can be garnished, ensure that the member has the opportunity to contest the garnishment, ensure that all of the provisions of the Servicemembers Civil Relief Act have been complied with, and ensure that the exigencies of military duty do not provide a basis for prohibiting the garnishment. Garnishments may only follow a court decision against the borrower.

[27] Assignment of pay for all enlisted personnel is void. 37 U.S.C.A. Section 701. Also, the FTC Credit Practices Rule prohibits the assignment of wages. 24 CFR Part 444. Military allotments to repay debt are categorized as discretionary and voluntary according to DOD Financial Management Regulation Vol. 7A, Chapter 41. Arguably, an allotment used to repay predatory loans can be terminated at any time by the military borrower.

[28] DOD Directive 1344.9, par. 4.3.2. gives the commander contacted by a creditor discretion in assisting the creditor, within the context and rules of the state, and specifically states that assistance shall not be provided to creditors "whose claims are obviously exorbitant." Payday loans at 400% APR and car title loans at 300% APR should be considered "exorbitant."

[29] The SCRA prohibits the waiver of rights when the member enters into the contract. 50 U.S.C. App. § 517. However, the protections of the SCRA do not apply to loans entered into during the period of active duty. As a result the prohibition against this waiver in H.R. 458 purporting to deal with predatory loans made to active duty personnel is meaningless. Most state and federal consumer protection laws do not permit waivers.

organization names to suggest official endorsement or preferential treatment of any non-federal entity.[30]

F. Credit unions should be permitted to provide check cashing and remittance services to anyone in their field of membership (Senate matrix Item 9).

All consumers face the problem of skyrocketing bank fees. Numerous studies by our organizations have documented both that bank fees are rising and that credit unions offer a substantially better deal to their members than banks do to their customers.[31]

Yet, America's estimated 11 million or more un-banked and under-banked families (13 percent of all families) face even greater problems than bank customers do, when they seek to obtain financial services from the high-priced companies that make up the fringe banking system: check cashing stores, rent-to-own stores,[32] refund anticipation loan purveyors,[33] payday loan companies, and wire transfer or remittance operators. Some products from banks, such as over-priced, deceptively marketed "bounce protection," also look more and more like fringe banking products.[34]

We support the proposal to allow credit unions to offer check cashing and remittance services to anyone in their field of membership, not only to members, increasing competition in two very over-priced financial services. Not only would the consumers who take advantage of the services benefit, so would others, since the competitive effect of the credit union services would lower prices in the marketplace overall.

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[30] DOD 5500.7-R, Joint Ethics Regulation, par. 3-209. A commercial entity that advertised military endorsement is covered by the Federal Trade Commission Act and state consumer protection laws against unfair and deceptive practices.

[31] See "Big Banks, Bigger Fees," October 2001, U.S. Public Interest Research Group, finding that "the average annual cost of regular checking at the three hundred largest banks was $266, but only $191 at small community banks, and only $101 at credit unions." Also see "Banks Charge More Fees and Higher Fees Than Credit Unions," Consumer Federation of America, March 1998, available at http://www.consumerfed.org/bankchgpr.pdf The Federal Reserve Board of Governors publishes annual reports to Congress on "Fees and Services of Depository Institutions," finding consistently that fees are rising and that larger multi-state banking institutions impose higher fees than community banks. The Federal Reserve studies at this time do not include credit unions. Its 2003 report is available at http://www.federalreserve.gov/boarddocs/rptcongress/2003fees.pdf and previous reports can be accessed at http://www.federalreserve.gov/boarddocs/rptcongress/. H.R. 1224, the Business Checking Freedom Act, which has passed the House, includes a provision reinstating and improving the now lapsed requirement that the Federal Reserve Board conduct annual fees surveys. We support the fee study provision only, but as discussed in detail in the testimony, strongly oppose the underlying bill, H.R. 1224, which grants unacceptable authority to Industrial Loan Companies.

[32] For an archive of materials on rent-to-own stores see http://www.pirg.org/consumer/rtoloan.htm.

[33] See "All Drain, No Gain: Refund Anticipation Loans Continue to Sap the Hard-Earned Tax Dollars of Low-Income Americans," Consumer Federation of America and National Consumer Law Center, January 2004, available at http://www.consumerfed.org/RefundAnticipationLoanReport.pdf

[34] See "Bounce Protection: How Banks Turn Rubber into Gold by Enticing Consumers to Write Bad Checks, An Examination of Bounce Protection Plans." April 2003, Consumer Federation of America and National Consumer Law Center, available at http://www.nclc.org/initiatives/test_and_comm/appendix.shtml/.

Remittances. The problem of the high cost of remittances especially affects immigrant families. According to now-Federal Reserve Chairman Ben Bernanke, "typical nonbank fees for remittances remain high on an absolute basis, and consumers who deal with the less-scrupulous providers of remittance services may bear a significant financial cost."[35]

According to a recent Pew Hispanic Center report, "Billions in Motion,"[36] while the average cost of remittances has declined significantly (e.g., to just under 10 percent, or $20 for a $200 wire transfer to Central America), an increase in competition could lower costs even further. As Sheila Bair, then-Assistant Secretary of the Treasury for Financial Institutions pointed out at a conference in 2002, "[t]he industry continues to be dominated by a small number of money transmitters that generally tend to charge higher fees than banks or credit unions. By increasing competition, the price of remittances should continue to drop." The report estimates that a cost reduction to an average of 5 percent of the amount sent could transfer a billion dollars from high-priced operators to working families.

Credit unions could help provide that competition if they could provide remittance services to any consumer who qualifies to join their field of membership, instead of just to their members. A secondary benefit is that these consumers, frustrated by high bank fees, would be attracted to becoming full –fledged credit union members.

Of course, consumer groups believe that consumer protections for remittances should be provided, regardless of who provides remittance services. For example, the Electronic Fund Transfer Act should cover these transfers. There should be a limit on fees, minimum timing requirements for delivery of funds, limits on increases in exchange rate between the time the consumer hands over money and the transmittal is received on the other end. Consumers should get receipts and/or similar documentation and have access to a dispute resolution procedure. The sender should be responsible for losses if the remittance was not delivered to the right person or was delivered in the incorrect amount.

Check cashing services for non-members. When consumers cannot afford bank accounts, they often cash their paychecks at check cashing stores, or even at banks, which also impose high non-customer checking fees.[37] Many consumers may not be able to afford high bank fees, if they live from paycheck to paycheck, or they may have previous bounced check activity or other circumstances that prevent them from obtaining a bank account.

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[35] "Financial Access for Immigrants: The Case of Remittances." Remarks by Governor Ben S. Bernanke at the Financial Access for Immigrants: Learning from Diverse Perspectives conference, Federal Reserve Bank of Chicago, Chicago, Illinois, April 16, 2004, available at http://www.federalreserve.gov/boarddocs/speeches/2004/200404162/default.htm

[36] See "Billions In Motion: Latino Immigrants, Remittances and Banking," the Pew Hispanic Center and the Multilateral Investment Fund, November 2002.

[37] A relatively new and rapidly growing industry is marketing under-regulated payroll cashing cards that work at ATMs but are not connected to bank accounts. Employers lower their check transaction costs and the un-banked find them convenient, but the cards are no substitute for a bank account in terms of the potential for building wealth, nor are they free, since the cost of frequent ATM transactions can easily equal or exceed the cost of a bank account. Consumers Union has compiled resources on the pitfalls of payroll cards as an alternative. See, e.g., "Questions for Employees to Ask About Payroll Cards." By Gail Hillebrand, 2004, available in English at http://www.consumersunion.org/pub/core_financial_services/000920.html and in Spanish at http://www.consumersunion.org/pub/core_financial_services/000921.html

These consumers pay significant fees – ranging from 1-20 percent of face value -- to cash their checks at fringe banking outlets. Fees are highest for personal checks, lower for payroll and government checks. In the last several years, many retail companies, from 7-11 to Wal-Mart—have cashed in on the profitable business. Credit unions could cash checks for consumers in their field of membership at lower cost, while encouraging consumers to become members. We also believe that while credit unions provide these essential services to non-members they must also continue to meet their charter obligations to provide facilities and services in underserved communities.

G. Other important pro-consumer regulatory reforms should be enacted:

1. Repeal the CRA "Sunshine Law" (Senate matrix Item 7) (Section 48 of the FDI Act, 12 U.S.C. Section 1831y). This is an example of an extremely ill-conceived and misguided provision adopted into law. It imposes undue burdens on lenders, community and consumer groups, and regulators – that is why there is support from all quarters for its repeal.

2. End federal preemption of state regulation of consumer protection practices (Senate matrix Item 75). In passing their respective rules preempting the application of state consumer protections to national banks and federally chartered savings associations, as well as their operating subsidiaries, the OCC and OTS have seriously hampered the protection of consumers. While some federal agencies – the Federal Trade Commission and the Federal Reserve Board – are specifically charged with this task as well, nowhere in the National Banking Act is there any mention of the role of the OCC or the OTS to protect consumers. The states have traditionally paved the way for the protection of their citizens by creating state-specific laws designed to balance the needs of the credit industry with the need to ensure that consumers are protected from overly aggressive lending tactics.

National banks and federal savings associations, their subsidiaries and their affiliates are in business to make money. Many insured depository institutions and their affiliates profit from predatory lending in numerous ways, including:

making direct loans;
investing in loan portfolios that contain predatory loans;
providing securitization services for trusts which contain predatory loans.

Unfortunately, many predatory practices are not illegal under federal law. This is why many states have stepped in and declared certain practices to be illegal. However, the OCC and the OTS have exempted national banks and federal thrifts and their operating subsidiaries from the obligation to comply with state laws, thus leaving consumers who borrow money from non-exempt lenders potentially more protected than those who borrow money from banks. The experiment of deregulation and preemption of state consumer protection laws has resulted in a huge increase in foreclosures, bankruptcies and escalating consumer debt.

3. Improve liability coverage and other consumer protections for non-credit card payment mechanisms (debit cards, stored value cards and similar access devices). In 2003, consumers in the United States conducted more transactions with debit cards than with credit cards for the first time in history. When the Electronic Fund Transfer Act was passed in the 1970s, debit cards were only used as ATM cards, not used as substitutes for credit cards. Many other forms of stored value cards, including

payroll cards, Electronic Benefits Transfer (EBT) cards, specialized temporary EBT cards such as Katrina relief cards, pre-paid debit cards and merchant or bank gift cards did not even exist.

When a consumer uses a credit card, he or she is protected by a broad array of Truth in Lending Act rights, including its $50 liability limit38 and its Fair Credit Billing Act[39] rights to dispute mistakes and fraudulent charges. Conversely, debit cards are governed by the weaker Electronic Fund Transfer Act, which does not include Fair Credit Billing rights and has three tiers of liability, from $50, to $500, to all the money in a consumer's checking or savings account plus in any linked overdraft accounts. As the Federal Reserve warns consumers: "It's important to be aware of the potential risk in using an EFT card, which differs from the risk on a credit card. On lost or stolen credit cards, your loss is limited to $50 per card. On an EFT card, your liability for an unauthorized withdrawal can vary."[40]

The EFTA's protections are inadequate for debit cards, which are increasingly used as if they are credit cards. Consumers should not face higher liability when they use these cards, especially because the use of the cards is being aggressively promoted at this time through the use of rewards.[41] In addition, some of the other cards are covered by neither law. While the Federal Reserve Board recently announced positive changes to EFTA's Regulation E to extend its coverage to payroll cards, gift cards, certain pre-paid debit cards and other stored value cards are not covered by either the TILA or the EFTA.

As card types continue to converge, as non-credit cards are increasingly used on the Internet and in other transactions where the risk of loss or liability is high, and as new uses are developed for existing card platforms and new access devices, it becomes more critical that protections be harmonized upward and universally.

4. Shorten check hold times. Under both the new Check 21 Law and the fast-spreading practice of converting paper checks to electronic payments, the checks consumers write can clear much faster, but financial institutions do not have to give consumers quicker access to their deposits. The mismatch between checks clearing faster and the continued delays on check deposits increases the risk of bouncing a check, which comes with high consumer fees. The Federal Reserve Board has the authority to reduce check hold periods by regulation as check clearing speed increases. It has not, however, acted.

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[38] TILA Part B, §133, 15 U.S.C. §1643.

[39] Several of our organizations, in recent comments to the Federal Reserve Board, make detailed comments on ways to improve Fair Credit Billing Act rights. See http://www.federalreserve.gov/SECRS/2005/March/20050329/R-1217/R-1217_153_1.pdf (last visited 25 February 2006).

[40] Consumer Handbook To Credit Protection Laws, see http://www.federalreserve.gov/pubs/consumerhdbk/electronic.htm (last visited 25 February 2006).

[41] See testimony of Edmund Mierzwinski, on behalf of U.S. PIRG and the Consumer Federation of America, hearing on The "The Law and Economics of Interchange Fees," House Committee On Energy and Commerce, Subcommittee on Commerce, Trade and Consumer Protection, 15 February 2006, http://energycommerce.house.gov/108/Hearings/02152006hearing1774/Mierzwinski2730.htm (last visited 25 February 2006).

II. HARMFUL PROPOSALS TO CONSUMERS

H. No amendments to the Fair Debt Collection Practices Act are appropriate.

The matrix used by the Committee includes two proposals to amend the Fair Debt Collection Practices ("FDCPA") Act in a way that would harm consumers: Items 79 and 91. Additionally, the House Financial Services Committee included at the last minute four harmful amendments to the FDCPA in the Manager's Amendment to H.R. 3505. *All of these amendments would hurt consumers.*

1. Check diversion exemption. The first provision in the Manager's Amendment (Sec. 901) would exempt private, "check diversion companies" operating under contracts with local prosecutors from all provisions of the FDCPA. This amendment would undermine decades of consumer protection laws restricting unfair, deceptive and illegal collection of bad checks. It would harm consumers because it would allow these for-profit companies to threaten criminal prosecution if consumers fail to pay not only the bad check, but also **high fees (often $100 to $200) that are not authorized by state law** for classes which may not provide a benefit to consumers. Also, the FDCPA's important **30-day right to verification of the debt would not be applicable** to these collection efforts.

Check diversion companies are debt collectors that enter into contracts with District Attorneys to collect bounced checks for local merchants. These companies send letters on the DA's letterhead threatening criminal prosecution if the consumer does not attend a "financial responsibility" class, and pay high extra fees for these classes. Many consumers have been deceived by these companies into believing that if they did not pay these extra fees they would be criminally prosecuted, even when no prosecutor had ever determined that a crime had been committed, and the local prosecutor would never actually prosecute.

The federal FDCPA does not stop or inhibit the legal activities of check diversion companies. In fact, most collectors of bounced checks operate fruitful businesses while fully complying with the FDCPA. However, check diversion companies are so profitable that they share their income with the DA's office, providing funds to this government office rather than receiving money from it to perform a governmental function. Yet, in these check diversion programs the DAs have not done any investigation to determine the critical requirement of the crime, an intent to defraud. Indeed most of these consumers have not intended to defraud, and quickly pay off the checks upon receiving notice. As a result, many consumers who have inadvertently bounced small checks are deceived into paying as much as $100 to $200 extra to avoid a criminal prosecution which would never occur if the DA were actually handling the case. Indeed, regardless of the involvement of the for-profit check diversion program, the majority of bounced check cases are not criminally prosecuted because there is no intent to defraud, a required element of the crime.

The FDCPA only limits the activities of check diversion companies in its requirements that no deception be committed, that consumers be advised of their right to request validation of the debt, and that only *authorized* fees be collected. These are requirements that all debt collectors collecting bounced checks are able to comply with and still successfully collect. Specifically, check diversion companies have consistently been found by the courts, or have settled cases alleging three types of illegal conduct:

- **Deceptive behavior.** The check diversion companies' letters to consumers are deceptive because they look like they actually came from the District Attorney and imply that the DA had determined

the consumer had committed a crime. In fact no DA ever reviews the individual cases before the letter threatening criminal prosecution is mailed. In many situations, if the DA had reviewed the case, no intent to defraud would have been found, and no criminal prosecution would have been threatened.

- **Failure to provide notice of the right to verify the debt**. Unlike all other private debt collectors collecting debts, including bounced checks, the check diversion companies refuse to provide notice to consumers that they have the right to request verification of the debt. In many situations this right would allow consumers to explain that they have already paid off the check, or do not believe they owe it.

- **Attempted collection of illegal fees**. Generally, state laws specifically provide the extra fees that consumers owe when they write a check that bounces. Often the courts can impose monetary penalties after a conviction for writing a bounced check (which must include a finding of intent to defraud). Yet the check diversion programs insist upon the payment of these fees even when no court has found – or would find – the consumer guilty of bouncing a check. For consumers, this often turns a mistake of a $10 or $20 bounced check into a cost approaching $200.

The majority of District Attorneys in the nation do not use check diversion companies, finding alternative, far less abusive ways to enforce laws against writing checks which bounce for insufficient funds. Many DAs use dispute settlement programs to resolve bounced check issues between merchants and consumers. Other DAs simply write their own letters explaining the process to consumers. These letters do not require the payment of the exorbitant additional fees charged by the check diversion companies, they simply advise of the process involved when a payee of a check which has bounced brings the case to the criminal court. These DAs find that even without employing private companies that make millions of dollars in profit from consumers who have inadvertently bounced a check, only a very few cases are criminally prosecuted.

Check diversion companies do not need an exemption from the FDCPA. They can operate profitable, effective businesses without this exemption, simply by complying with the law. This would only mean that 1) the check diversion company not imply that the DA has reviewed the consumer's case and found that a crime has been committed, unless the DA has done so; 2) the letter to the consumer include the required notice of the consumer's right to request validation of the debt; and 3) the company only collect fees that can be legally charged.

The Fair Debt Collection Practices Act does not inhibit the collection of debts; it only prohibits deception and abuse, and requires that consumers be allowed an opportunity to show they do not owe the debt. These requirements are appropriate and necessary for private individuals who are collecting debts – whether they are acting for private creditors or government officials. As Congress determined when passing the FDCPA, once the incentive of profit is injected into the collection effort, more protections are required.

The provisions in H.R. 3505 do not replace the protections of the FDCPA. H.R. 3505 provides no meaningful right to verify the debt; it permits the collection companies to charge fees which are not authorized by state law, and there is no prohibition against harassment, or unfair or deceptive collection practices. We urge you to resist the effort of one small part of the collection industry to evade compliance with the Fair Debt Collection Practices Act. Bounced checks can be collected quite effectively by collectors complying with this important consumer protection law.

2. Three *Other* Amendments to FDCPA in House Manager's Amendment. Without a public hearing, three additional harmful amendments, were made to the FDCPA in the Manager's Amendment to H.R. 3505:

a) The first amendment (page 25, lines 6 – 9) exempts formal pleadings from the requirement **to include** the notice about the **right to request verification of the debt.** If the only communication provided to the consumer is the lawsuit **itself**, consumers would lose the essential right of requesting information about the underlying debt. It is a very different matter to request verification of a debt from a debt collector than it is for many low income consumers to have to go to court and defend themselves. If this amendment passes, consumers will likely have default judgments entered against them for debts that they do not owe.

b) The second amendment (page 25, lines 14 – 21) creates a new exemption for all notices required under other law which do not explicitly include a request for payment. The stated reason for this amendment is to exempt things like privacy notices from the Act's requirements for initial communications. However, the actual language goes much further. **The effect of the current language would be to exempt most notices required under state law from ALL protections of the FDCPA**. For example, notices provided under a state right to cure mortgage defaults (which generally need not explicitly include a request for payment, but simply require an explanation of what needs to be done to avoid foreclosure) would – if this amendment were to pass – be able to be deceptive, unfair, state amounts which are illegal and incorrect, and could be provided in a harassing manner. Also, debt collectors would be able to send IRS form 1099s – implicitly threatening to report to the IRS that the unpaid debt is taxable income – without being governed by the prohibitions against unfairness and deception (often collectors use this threat as a collection tactic, not to further tax collection).

c) The third amendment (page 25, line 22) purports to allow **debt collectors to continue collection activities during the 30 day verification period.** Both we and the FTC have consistently said we do not oppose this concept – as it is the current law – so long as the collection activities do not contradict or overshadow the consumer's right to request verification of the debt. Unfortunately, as the language in the amendment does not include the protection, the result would be that the **essential right to request verification of the debt would be lost in most cases.**

Consumers need more protections in dealings with mortgage servicers, not fewer. Although some may view the notice required by 807(11) as relatively insignificant, it nevertheless has been held to trigger important consumer protections under the FDCPA for bad acting mortgage servicers.[42] In a case in the 7th Circuit Court of Appeals, the court, obviously appalled by the bad faith acts of the servicer, held that the FDCPA applied to the servicers because it had sent the 807(11) notice. Clearly frustrated with the lack of available remedies against a servicer who so completely mistreated consumers, the court used one of the few remedies available. There are too few laws limiting the damage that mortgage servicers can do to homeowners. Full application of the FDCPA should not be restricted in this current legal environment.

If servicers have difficulty complying with the FDCPA, a much narrower amendment can be drawn. One stated rationale for this amendment is that servicers are purchasing mortgage loans in such

[42] See Schlosser v. Fairbanks Capital Corp., 323 F.3d 534 (C.A.7,2003).

large quantities that they often cannot determine between the time of purchase and the time the first notice is sent out, whether the loan is delinquent such that the FDCPA applies and the 807(11) notice must be included in the first communication. This claim is hard to believe. Since the servicer's job is to send billing notices, and an accurate billing notice has to tell the homeowner whether the loan is in default, one would think that the servicer would know whether the loan was in default at the time it sent out the bill. However, if the issue is really timing, then a narrower amendment would be to allow some period of time after the purchase of the loan by the servicer to pass before this notice is required. This would be far preferable to eliminating the requirement altogether.

Existing protections should only be exchanged for new protections. Consumers have experienced increasing problems with mortgage servicers in the past decade -- both those who are collecting delinquent mortgage accounts, and others. Given the current legal regime, if some consumer protections applicable to the relationship with servicers were to be eliminated, they should be replaced with other protections. Despite the extensive documentation of serious problems with mortgage servicers, there have been no updates to the FDCPA or RESPA in favor of consumers in two decades.

I. Expansion of industrial loan companies is dangerous to the banking system and taxpayers.

A number of pieces of legislation have been offered in the last few years that take the very dangerous step of allowing financial firms and some commercial entities to set up a new, nationwide commercial banking system through industrial loan corporations (ILCs) that is subject to much less rigorous oversight than under the current structure. This has enormous negative implications for the safety and soundness of these banks and thus for taxpayers who, of course, support the deposit insurance system. Our organizations agree with the Federal Reserve Board that the establishment of such a parallel, poorly regulated banking scheme would be very harmful. ILCs were intended to be limited purpose institutions. They are state-chartered banks insured by the Federal Deposit Insurance Corporation that were established at the beginning of the 20th century to make small loans to industrial workers. ILCs now seek to emulate the powers of big commercial banks without the oversight these banks receive. Allowing them to offer business checking or to branch nationwide would be a mistake.

A bill passed by the House last year (H.R. 1224) would allow many ILCs to offer interest on business checking accounts. Another bill that was reported to the Floor by the House Financial Services Committee (H.R. 3505) would allow many existing and new ILCs to branch into all 50 states, whether these states approve or not. Presently, ILCs are chartered and operate in only five states, although 17 states would permit ILCs to branch. Business checking can only be provided by very small ILCs with less than $100 million in deposits. Under these two proposals, huge financial firms like Merrill Lynch, American Express, and Morgan Stanley--all of which currently own ILCs--would soon be able to offer federally insured commercial banking services indistinguishable from those offered by real banks at hundreds of their offices throughout the country. Commercial firms that currently own ILCs, like General Motors and BMW, would also be permitted to expand.

Additionally, banks and securities companies would be allowed to set up new ILCs, an option many would likely take advantage of because of the decreased regulatory burden and the prospect of a national market. This risk may pose even greater threats to the financial system. If large financial firms were to place their commercial banks under ILC oversight rather than Federal Reserve oversight, this could rapidly increase the number of ILCs and dilute the number of large financial systems that are subject to the important safety and soundness rules that the current system requires.

One requirement of both bills could prevent some large commercial firms from offering interest on business checking accounts or branching de novo into some states in the future. Regarding ILCs established in the future, the states would be permitted to deny the establishment, acquisition or operation of an ILC branch – or, in the case of H.R. 1224, to deny the establishment of business checking accounts that pay interest -- if the states determine that the ILC is directly or indirectly controlled by a commercial firm receiving more than 15 percent of its annual revenue from non-financial sources. However, this minor limitation is overwhelmed by the fact that the overall number of ILCs and the amount deposited in them would likely escalate without a corresponding increase in the oversight of safety and soundness at these institutions. Even worse, while the Federal Reserve Board has the power to examine the parent of a commercial bank and impose capital standards, in an industrial loan company structure only the bank can be examined and regulators cannot impose capital requirements on the parent companies.

We should also note that proposals to allow the expansion of ILCs have not been restricted to the House. A Senate bill introduced in 2003 (S. 1967) would allow industrial loan companies to offer interest bearing checking accounts to businesses. The bill provides that the authority would take effect two years after the date of enactment. There is a requirement that the Secretary of the Treasury and the federal banking agencies issue joint regulations within two years after the date of enactment, but the authority goes into effect after two years whether the joint regulations are issued or not. This bill is a straightforward expansion of the authorities of industrial loan companies that we strongly oppose.

Our organizations have several specific concerns with both the House and Senate proposals:

1. The ILC loophole to the Bank Holding Company Act is being abused and should be closed --not expanded. Our organizations support the proposal identified in the Senate matrix as Item 101, which would eliminate the ILC exception in the BHCA. The Federal Reserve Board has also recommended that the ILC exemption be eliminated, while the GAO recently urged Congress to consider eliminating or modifying it.

ILCs were never intended to be large, nationwide banks that offered services indistinguishable from commercial banks. In 1987, Congress granted an exception to the BHCA for ILCs because there were few of them, they were only sporadically chartered in a small number of states, they held very few assets and were limited in the lending and services they offered. In fact, this exception specifically applied only to ILCs chartered in five states (Utah, California, Colorado, Nevada and Minnesota) that have either assets of $100 million or do not offer checking services. Since that time, however, everything about ILCs has grown: the number that exist, the amount of assets and federally insured deposits in them and the services and lending products that they can offer.

According to the General Accounting Office (GAO), ILC assets grew by over 3,500 percent between 1987 and 2004, from $3.8 billion to over $140 billion. In 2004, six ILCs were among the 180 largest financial institutions in the country with $3 billion in assets.[43] According to the Federal Reserve, the majority of ILCs had less than $50 million in assets in 1987, with assets at the largest ILC at less than $400 million. As of 2003, one ILC owned by Merrill Lynch had more than $60 billion in assets (and more than $50 billion in federally insured deposits).

[43] "Industrial Loan Corporations: Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority," General Accounting Office, September 2005, GAO-05-621.

Moreover, some of the states that are allowed to charter ILCs are aggressively chartering new institutions, allowing them to call themselves "banks" and giving them almost all of the powers of their state chartered commercial banks. These states, especially Utah, are also promoting their oversight as a less rigorous alternative to those pesky regulators at the Federal Reserve. For example, the web site of the Utah Department of Financial Institutions has trumpeted its "positive regulatory environment" and declares that "ILCs offer a versatile depository charter for companies that are not permitted to, or that choose not to, become subject to the limitations of the Bank Holding Company Act."

2. Large financial firms should not be permitted to establish a parallel banking system that is not subject to the rigorous oversight required for real banks. This represents an enormous and unacceptable risk to taxpayers. Securities firms that own ILCs have taken the lead in promoting the ILC expansions in this bill. They have not been shy about stating that they want to expand ILC powers because they do not want to deal with the regulatory oversight they would face from the Federal Reserve if they purchased a bank, as allowed under the Gramm-Leach-Bliley Act. Instead, they prefer to set up a "shadow" banking system through ILCs. They want to be able to offer the same services and loans as commercial banks without the same regulatory oversight.

According to the Federal Reserve, however, the deposits in ILC accounts are not as secure as those in real banks. As mentioned above, ILCs are exempt from BHCA, which allows the Federal Reserve to conduct examinations of the safety and soundness not just of banks, but of the parent or holding company of these banks. The BHCA also grants the Federal Reserve the power to place capital requirements and impose sanctions on these holding companies. The Federal Deposit Insurance Corporation (FDIC), which regulates ILCs, does not have these powers. In its recent report, the GAO concurred with this assessment:

> Although FDIC has supervisory authority over an insured ILC, it has less extensive authority to supervise ILC holding companies than the consolidated supervisors of bank and thrift holding companies. Therefore, from a regulatory standpoint, these ILCs may pose more risk of loss to the bank insurance fund than other insured depository institutions operating in a holding company…. Further, FDIC's authority has not been tested by a large ILC parent during times of economic stress.[44]

Oversight of the holding company is the key to protecting the safety and soundness of the banking system. It is immaterial whether the owner of the bank is a financial or a commercial entity. Holding company regulation is essential to ensuring that financial weaknesses, conflicts of interest, malfeasance or incompetent leadership at the parent company will not endanger the taxpayer-insured deposits at the bank Years of experience and bank failures have shown this to be true.

Moreover, the involvement of investment banking firms in recent corporate scandals has provided plenty of evidence of the need for rigorous scrutiny of these companies as they get more involved in the banking industry. In particular, the participation of some securities firms in the Enron and Wall Street analyst scandals has shown that these firms were rife with conflicts of interest that caused them to take actions that ultimately harmed their investors. Given this track record, it would be a serious dereliction

[44] Ibid, "What the GAO Found."

of duty on the part of Congress to tie the hands of regulators in looking at bank holding companies.

3. The bill violates long-standing principles of banking law that commerce and banking should not mix. Although the "15 percent rule" in the House bill may in some limited situations make it more difficult for some large commercial companies that do not presently own ILCs to acquire, establish or operate an ILC branch in states that move to block this action, it allows a large number of existing commercial ILC parent organizations to expand ILCs nationwide and to offer business checking services without limits. This includes firms such as General Motors, General Electric, Pitney Bowes, BMW, Volkswagen and Volvo. Moreover, the determination of whether ownership of an ILC is commercial in nature (thus preventing the branching of that ILC into particular states) would be made individually by each state. These are the very states that would likely seek to have ILC branches locate within their borders for economic reasons. The states have a clear conflict of interest in making this determination in an accurate manner. They might be tempted to skirt the "15 percent rule" to allow a large retail firm, for example, to purchase an ILC and set up branches in each of its stores.

Pressure is clearly increasing on Congress to take a clear position on increased attempts by commercial firms to mix banking and commerce through the use of the ILC exemption. As the GAO said in its recent report, "GAO finds it unusual that a limited ILC exemption would be the primary means for mixing banking and commerce on a broader scale and sees merit in Congress more broadly considering the advantages and disadvantages of a greater mix of banking and commerce." In its report, the GAO highlighted the fact that three of the six ILC charters that were approved in 2004 were for commercial entities.[45] Wal-Mart, the largest retailer in the world, applied for an ILC charter in Utah last year and is currently awaiting approval of this transaction from the FDIC. A number of consumer and community organizations have urged the FDIC to deny this approval, primarily because of concerns about the mixing of banking and commerce.

Moreover, recent corporate scandals show the serious risks involved in allowing any commercial entity to own a bank without significant regulatory scrutiny at the holding company level. Accounting scandals at Sunbeam, Enron, Worldcom, Tyco, Adelphia and many others involved deliberate deception about the financial health of the companies involved. If these companies had owned banks, not only would employees, investors and the economy have suffered, but taxpayers as well.

4. ILCs should not be allowed to skirt state restrictions by getting a charter in one of only five states and then branching to other states without their permission. Right now, only 17 states have agreed under the Riegle-Neal Act's "opt in" provision to a reciprocal arrangement that allows banks chartered in each state to compete in all of them. This means that, under this bill, Congress would be forcing 33 states to allow the entry of under-regulated banks that clearly represent a risk to the companies that might do business with these banks. Congress should not be tying the hands of states that wish to protect their residents from under-regulated ILCs.

J. Do not preempt the right of Arkansas to establish usury laws.

Item 77 on the matrix, as well as § 504 of H.R. 3505, would completely preempt the right of the state of Arkansas to establish any limits on interest rates for loans made in that state. **Preemption of the**

[45] Ibid, "What the GAO Found."

voter mandated Constitutional interest rate ceilings in the state of Arkansas is bad policy and unfair to Arkansas voters. Every state in the nation currently has the right to establish legal rates of interest for loans made by non-bank lenders in their state. This provision would treat Arkansas differently and not allow this basic right to the legislature or the citizens of that state.

Section 504 of the House Reg Relief bill, as well as S. 904 from the last Congress, would amend the Federal Deposit Insurance Act to remove usury limits currently applicable to Arkansas lenders under the state's constitution. This amendment not only undermines states' rights, it also will mean that Arkansas consumers will pay far more than necessary for credit and risk exposure to discriminatory lending practices -- that is why this proposal is opposed by a broad coalition of national civil rights, labor and consumer rights organizations.

The people of Arkansas have determined that there should be a usury limit and have passed one in their state Constitution. Nevertheless, § 504 of the House Bill and S. 904 deliberately exempt state lenders from this constitutional provision and the express wishes of the people of Arkansas. Despite the clear intent of the majority of voters in Arkansas that they be protected from high interest rates, § 504 would allow "any other lender" doing business in the state to avoid the interest caps set by the people and the legislature of the state of Arkansas.

The proponents of § 504 argue that the bill is necessary to remove the Arkansas interest rates caps to make credit more available in the state. Conversely, they argue that as many out-of-state lenders are already permitted to ignore the state usury limits, the bill is needed to bring more jobs to the state from credit facilities that cannot now operate under state law. Opponents of the bill argue that adequate credit is fully available to consumers in Arkansas, that lifting the usury ceiling would simply result in higher priced credit and abusive lending and that the people of Arkansas should be permitted to determine their own fate on this issue.

Status of interest rate caps in Arkansas. Like most states, Arkansas has a general usury ceiling that limits the amount of interest that can be charged on loans.[46] Unlike most states, Arkansas has not enacted a series of exceptions to the general usury law, allowing for either higher rates of interest, or unregulated interest rates on different kinds of loans. Arkansas is also unusual in that its usury ceiling is set by its state Constitution, rather than by statute, so that change must be agreed to by the voters of the state, rather than simply by the state legislature.

Despite the difficulties in changing the Constitutional provision on usury caps, the voters of Arkansas did change it in 1982, establishing a floating cap of 5 percent over the Federal Discount Rate.[47] The courts of the state of Arkansas have upheld both the constitutionality and the enforcement of this provision repeatedly since its enactment.[48]

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[46] For a general review of the usury laws in the states, their importance, and the exceptions to them, see National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges (2d ed. 2000) § 2.4.

[47] Const. Art. 19, § 13(a).

[48] See, e.g., Luebbers v. Money Store, Inc. 344 Ark. 232, 40 S.W. 3d 745 (2001).

Exceptions to the usury ceiling. There are two ways that loans can be made in Arkansas by an insured depository institution. As a result of the Gramm-Leach-Bliley Act, banks operating in Arkansas can charge the same rates as out-of-state banks which have branches within the state.[49] The second way is for a loan to be made by an out-of-state lender using a loan contract, which includes a choice of law provision naming the lender's state as the governing law, so long as the other state has a reasonable relationship with the loan transaction.[50]

Availability of credit in Arkansas. Proponents of § 504 have argued that because depository institutions can charge unlimited rates of interest, and other lenders cannot, that local lenders have a competitive disadvantage.[51] It has also been intimated that because of the usury cap in Arkansas, many consumers are turned down for car loans, when, presumably, they would have qualified for them if higher interest rates were permitted.[52] However, if there is real competition for interest rates, then a ceiling on interest rates should pose no problem, because lenders would be competing with each other to offer the lowest interest rates. Secondly, all indications are that there is no lack of available credit to Arkansas consumers. Conversations with the leading consumer lawyers in the state indicate that there are no complaints from consumers about lack of access to credit. In fact, just the opposite is evident to these long-time consumer advocates-- recent decreases in interest rates have led to the increased availability of low priced car financing, enabling many more consumers to afford car loans than in recent history.[53]

Effect of interest rate ceilings on jobs in Arkansas. Some jobs in the credit industry might be gained in Arkansas if the usury ceiling were lifted. Creditors located outside of the state could relocate in the state and make the loans directly, without having to invoke the legal fiction of the choice of law provision in the contract. However, the question is--how many jobs? And, at what cost to Arkansas consumers? First, the cost to Arkansas consumers: if § 504 passes, Arkansas would be at the complete opposite end of the spectrum for consumer protections compared to its current position. Instead of having the most protective of state statutes, it would have the least. If § 504 passes, unlike every other state in the union, Arkansas will have absolutely no usury ceiling, and no legal way of ever imposing any limits on interest rates. The number of jobs that would be gained in Arkansas if § 504 passes is speculative, at best. However, even if creditors make a firm promise to move a specific number of jobs to the state, the people of Arkansas--not Congress--should have the opportunity to determine whether a gain in jobs is an appropriate trade for a dramatic decrease in consumer protections.

Effect of interest rate ceilings on discriminatory lending. Currently, there is a practice in

[49]Pub. L. No. 106-102 (199), Section 731, amending 12 U.S.C. §1831u(f).

[50]Evans v. Harry Robinson Pontiac-Buick, Inc. 336 Ark. 155, 983 S.W.2d 946 (1999).

[51]See Letter to Senators Shelby and Sarbanes from Senator Blanche Lincoln, September 16, 2003.

[52]See Letter to Senators Lincoln and Pryor from Jeb Joyce, representing the Arkansas Fair Credit Coalition, October 20, 2003.

[53]Conversation with Susan Purtle, consumer attorney with Legal Aid of Arkansas, October 21, 2003; conversation with Mona Teague, Executive Director of Legal Aid of Arkansas, October 16, 2003; conversation with Jean Turner Carter, Executive Director, Center for Arkansas Legal Services, October 10, 2003. This sentiment was expressed by other consumer attorneys in Arkansas as well.

automobile financing which is the subject of significant litigation. It is alleged in a variety of lawsuits around the nation that car dealers routinely obtain higher referral fees from lenders for loans made to African American borrowers, than occurs on loans made to white borrowers.[54] These kickbacks to the car dealers are then recouped by lenders in the form of higher interest rates on the loans used to finance the cars. Studies show that in states that have interest rate caps on auto financing, there is less discrimination between borrowers of different races, because there is less room to increase the loan rates to cloak these referral fees. As a result, state interest rate ceilings not only have the effect of keeping interest rates low, they also have the effect of reducing discriminatory kickbacks on car loans. Indeed, these studies have shown that there is less discriminatory impact in Arkansas than in most other states, presumably as a result of the state cap on interest rates.

K. Do not exempt certain banks from requirements to provide consumers with annual privacy notices.

Senate matrix Items 63, 108, 134 and 174 all propose to eliminate or modify annual privacy notice disclosures required under Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 and its regulations, which also require annual notice of the right to opt-out of "other" information-sharing under the Fair Credit Reporting Act. We strongly oppose each of these provisions. Annual privacy notices serve many important purposes in addition to disclosing that (limited) opt-out. In addition, because the agencies have both an open rulemaking on notice simplification and have yet to complete the rulemaking under the FACT Act's provision providing for a "marketing use" opt-out (if the consumer opts-out, information could still be shared, but could not be used for marketing), it makes little sense to alter these requirements at this time.

Nor can this provision be seen as benefiting only small institutions, often a justification for so-called regulatory relief items. Perhaps as a result of pressure from the annual privacy disclosures, even "Bank of America does not sell or share your personal information with marketers outside Bank of America who may want to offer their own products or services."

The notices also describe the many ways that non-public information is shared among affiliates and with related third parties under a "no-opt" regime. This sharing is not subject to opt-out and consumers should be made aware of this annually. For example, Bank of America lists the affiliates it shares with and describes its information practices. The notices also require an annual disclosure of the "other" information opt-out provided by the Fair Credit Reporting Act, which allows consumers to learn about and prevent the sharing of information gathered from their credit reports, their applications and their references provided to an entity with its *affiliated* companies. For example, again, as Bank of America states: "You may request that Application Information, Consumer Report Information and Information from Outside Sources not be shared among Bank of America companies."

[54] Jones v. Ford Motor Credit Company, 00 Civ. 8330 (S.D. N.Y.); Cason v. Nissan Motor Acceptance Corp., C.A. No. 3-98-0223 (M.D. TN); Coleman v. General Motor Acceptance Corp., C.A. No. 3-98-0211 (M.D. TN); Baltimore v. Toyota Motor Credit Corporation, CV 01-05564 (C.D. CA); Smith v. Chrysler Financial Company L.L.C., C.A. No. 00-6003 (D. N.J.);. In addition, four cases were filed in 2002 against banks. Osborne v. Bank of America, C.A. No. 02-CV-364 (M.D. TN); Russell v. Bank One, C.A. No. 02-CV-365 (M.D. TN); Claybrook v. Primus Automotive Financial Services, Inc., C.A. 02-CV-382 (M.D. TN); and Bass v. Wells Fargo Financial Acceptance, Inc., C.A. No. 02-CV-383 (M.D. TN); Rodriguez v. Ford Motor Credit Company, C.A. No. 01 C 8526 (N.D. IL). Information concerning these cases may be found at **www.consumerlaw.org** and **www.faircreditlaw.com**.

L. S. 603, entitled, "The Consumer Rental-Purchase Agreement Act of 2005" is *not* a consumer protection bill -- it is solely designed to protect the rent-to-own industry from having to provide meaningful consumer protections.

Despite its name, The Consumer Rental-Purchase Agreement Act of 2005, S. 603 (also listed as Senate matrix Item 76) is not what it purports to be; it is *not* a consumer protection bill. This bill only provides protections for industry, not for consumers.[55] Although the bill pretends to advance consumer protections in rent-to-own (RTO) transactions, in actuality it does no such thing. Instead, the bill preempts the state laws providing the strongest protections for the consumers of these transactions. Congress should not overturn state laws that prevent predatory financial practices.

Rent-to-own businesses are essentially appliance and furniture retailers which arrange lease agreements rather than typical installment sales contracts for those customers who cannot purchase goods with cash or who are unsophisticated about money management. These lease agreements contain several special features. First, the leases are short term, so that "rental payments" are due weekly or monthly. Second, the lease agreements contain purchase options which typically enable the consumers to obtain title to the goods by making an additional payment at the end of a stated period, such as eighteen months. Third, the leases are "at will." In other words, the leases theoretically need not be renewed at the end of each weekly or monthly term.

The RTO industry aims its marketing efforts at low-income consumers by advertising in minority media, buses, and public housing projects. Statistics from the FTC show that the RTO customer base is among the poorest, and that the vast majority of their customers enter into these transactions with the expectation of buying an appliance and are seldom interested in the rental aspect of the contract. This attitude is encouraged by RTO dealers who emphasize the purchase option in their marketing even while they are minimizing its importance in the written contract.

The chief problems with RTO contracts are that these supposed leases are used to mask installment sales, and that these sales are made at astronomic, and undisclosed, annual percentage rates. Under most RTO contracts, the customer will pay between $1000 and $2400 for a TV, stereo, or other major appliance worth as little as $200 retail, if used, and seldom more than $600 retail, if new. This means that a low-income RTO customer may pay 1 ½ to 12 times what a cash customer would pay in a traditional retail store for the same appliance.

There should be no misunderstanding about S. 603: it is *<u>not</u>* designed to protect consumers. The entire purpose of this bill is to preempt stronger state laws that provide more meaningful consumer protections (*see* Sec. 1018(b)). A cursory reading of the bill might lead one to believe that some of the

[55]When S.603 was introduced in the Senate in the last Congress, as S. 884, a letter opposing the bill was sent to the entire Senate. The letter was signed by ACORN; Coalition for Responsible Lending; Consumer Federation of America; Consumers Union; International Union, UAW; National Association of Consumer Advocates; National Community Reinvestment Coalition; National Consumer Law Center; National Council of La Raza; U.S. Public Interest Research Group; Center for Civil Justice of Saginaw, Michigan; Coalition of Religious Communities; Community Legal Services of Philadelphia; Consumers League of New Jersey; Florida Legal Services; Mid Minnesota Legal Assistance; and Mountain State Justice Inc (WV).

provisions would actually help consumers. However, a close evaluation reveals that there are no meaningful protections whatsoever in this bill. The section that comes closest to requiring some helpful information to consumers (Sec. 1010), would require disclosures about the cost of the RTO transactions to be displayed on a tag attached to the item. However, the penalty to a dealer for failing to comply with this provision is meaningless--only equaling one quarter of one month's lease payment--thus providing no incentive for dealers to comply with even the minimal protection provided in S. 603.

The RTO customer base, almost exclusively low-income, could certainly benefit from meaningful consumer protections from an industry which preys upon consumers' lack of perceived options. Mostly these consumers need protection from high costs and unfair practices. There are numerous ways in which RTO legislation can be improved, none of which are included in a meaningful way in S. 603. Instead, RTO consumers would truly benefit from protections such as the following:

1. **Limitations on the total of payments** that a consumer should be required to pay for the purchase of the item. Some states have these limits already, but many do not.

2. **Limits on "fees"** such as late fees, insurance fees, home pick-up fees, reinstatement fees, etc. Some states have limits already, many do not.

3. **Reinstatement rights** that clearly allow the consumer to have payments made on previous contracts applied to new contracts for the same types of items. While S. 603 has a minimal provision on this point (Sec. 1005(a)(4)), it provides little protection to consumers, and there is no enforcement mechanism.

4. **Price tag disclosures,** as well as contract disclosures. By the time the customer gets the contract, the decision to proceed with the transaction has often been made. Yet, S. 603, while requiring price tag disclosures--in section 1010--does not provide an effective remedy for a dealer's failure to comply with this requirement.

5. **Meaningful penalties** for dealers who violate the provisions of the RTO statute. The maximum penalty to be assessed against a dealer who violates the minimal *disclosure* requirements of S. 603 is effectively only 25 percent of one month's rental payment. A single term's rental payment is generally less than $100, leaving the maximum amount of damages due for a violation of this Act, only $100 – hardly a sufficient incentive to ensure compliance with the law.[56]

6. A disclosure like the **annual percentage rate (APR)** which shows the consumer the true cost of renting to own, to allow comparison with other methods of purchasing personal items.

7. **Limits on maximum RTO interest rates**, as New Jersey requires.

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[56] S. 603 establishes a penalty for violations of the Consumer Leasing Act in 15 U.S.C. § 1640. See Sec. 1012(a). The statutory penalty for violating the Consumer Leasing Act is 25 percent of the total of the payments required under the lease, with a minimum of $100 and a maximum of $1,000. However, leases under the Consumer Leasing Act are always at least four months long (this is required to be covered by the Consumer Leasing Act, (15 U.S.C. § 1667(1)), and thus 25 percent of the total amount might amount to some real dollars. By contrast, leases governed by S. 603 are by definition only one term – one week or one month – automatically renewable in each of the following terms by the making of the payment. As a result, the penalties for violating S. 603's provision will almost never be more than the statutory minimum of $100.

S. 603 only serves to preempt the state laws of Wisconsin, Michigan, Minnesota, Vermont, North Carolina, and New Jersey--all of which provide more protections to consumers. It does not, in any way, advance consumer protection.

Finally, do not be deceived by proponents of the bill, who will tell you the bill does not preempt the states. S. 603 includes one change added in recent Congresses, which proponents use to make their claim that it now serves as a federal floor of protection and allows states to enact stronger laws. However, a close reading of this language indicates that it does not prevent preemption. The bill's intent remains the same: the explicit preemption of any state law that treats rent-to-own transactions as loans or credit sales. While the bill now allows the states to enact additional *rental* provisions, these provisions would not add significant benefits to consumers. In other words, the bill still preempts any state law that seeks to rein in unjustified rent-to-own costs.

M. Do not alter the TILA right of rescission

Item 64 on the Matrix would authorize the Federal Reserve Board to issue regulations permitting consumers to waive the three-day right of rescission in wider circumstances than the law currently permits, including voluntary waiver by borrowers seeking immediate access to funds with a signed written statement voluntarily waiving or modifying any rights to rescind the transaction. This proposal would require lenders to provide the closing documents three days prior to closing and incorporate the right of rescission into this three-day period. Item 104 is a similar proposal to repeal the right to rescind 1) for federally insured depository institutions; 2) when refinancing with a new lender when no new money is advanced; and 3) for home equity lines of credit.

In the meetings around the nation, many industry representatives shared our concerns about weakening or eliminating the right of rescission. The right of rescission should not be watered down. The right to rescind a consumer credit transaction that places the family home at risk is one of the most important protections of the Truth in Lending Act. The right of rescission means that the family has three days after signing to review the transaction and back out of the loan if it is abusive or different than the lender promised - or if, upon reflection, it is simply an unwise step for the family to take. If the lender misrepresented the terms of the loan in the Truth in Lending disclosure statement, the right to rescind can extend for up to three years. This extended right of rescission is a primary tool in stopping foreclosures resulting from predatory mortgage lending.

The right of rescission was created in recognition of the obvious truth that most consumers need more than the few minutes available to them at the time of closing to absorb and process the critical information relating to the costs of credit and the terms of the loan. Given the rush and confusion inherent in most home loan closings, Congress created the right of rescission just to ensure that homeowners have those additional three days to study the documents, familiarize themselves with the terms of the transaction and walk away from it – for any reason whatsoever. The right of rescission is used by consumers who find that the transaction is not what was promised when they applied for the loan.

Industry request for waivers of rescission rights. There is no need for a change in the law, as TILA already recognizes that there may be circumstances in which a consumer will need the money immediately for a bona fide emergency, and will truly not be able to wait even the three days for the rescission period to pass. To modify or waive the right to rescind, the consumer must give the lender a dated written statement (and not a form printed for this purpose) that:

- Describes the emergency;
- Specifically modifies or waives the right to rescind; and
- Bears the signature of all consumers entitled to rescind.[57]

Moreover, there are also already temporary waiver rules for disaster areas. Under the temporary authority of the Depository Institutions Disaster Relief Act of 1992,[58] the Federal Reserve Board has been provided with authority to make exceptions for TILA in areas declared by the President to be disaster areas in a number of instances in which homeowners have suffered through natural disasters and may need funds immediately to deal with these situations.[59] These regulations are temporary, generally expiring within a period of months. This temporary waiver has worked well in the past and is all that is necessary to deal with homeowners' need for immediate funds after disasters.

Industry request to provide the closing documents three days prior to closing and incorporate the right of rescission into this three-day period. The right of rescission keeps lenders honest. It deters bait and switch tactics, because lenders know that the consumer will have the opportunity to study the actual terms of the loan after the closing and compare them to what was promised. Knowing that consumers can rescind loans for any reason, for three days after closing, keeps unscrupulous lenders in line. They know that if they make the loan terms too onerous, the consumer may rescind and the lenders will lose all of their fees.

The right of rescission is critical to increasing and preserving homeownership. It gives homeowners an opportunity to reflect on the wisdom of placing their homes at risk. While the right of rescission is by no means sufficient to prevent predatory mortgage lending, it provides essential protection against abusive loans.

Industry proposal to repeal the right to rescind for federally insured depository institutions. Unfortunately insured depository institutions are not above predatory lending. Many of the most egregious predatory lending cases have involved just such institutions. There are numerous examples of pending and closed cases against national banks or their operating subsidiaries involving violations of law and/or predatory loans. These are illustrative of the range of illegal or predatory lending activities currently engaged in by national banks, their affiliates and their subsidiaries throughout the nation.[60] Given the unfortunate but unmistakable complicity of insured depository institutions in predatory lending, there is no reason to deprive consumers of one of their prime consumer protections when dealing with these institutions.

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[57]Reg. Z Sections, 226.15(e), 226.23(e).

[58]Pub. L. No. 102-485, 106 Stat. 2771, Sec. 3, (Oct. 23, 1992).

[59]Reg. Z, Sec. 226.23(e)(2), (3), and (4).

[60]For just a sampling of a list of predatory lending cases against federally insured financial institutions, see comments of the National Consumer Law Center, Consumer Federation of America, National Association of Consumer Advocates, U.S. Public Interest Research Group, to Office of Comptroller of the Currency, Real Estate Lending and Appraisals, Docket No. 03-16, October 6, 2003 in discussion beginning in text surrounding Note 18. http://www.consumerlaw.org/initiatives/test_and_comm/10_6_occ.shtml.

Industry proposal to repeal the right to rescind when no new money is advanced. The proposal set forth in Item 64 would allow lenders to nullify the critical right of rescission simply by having the consumer sign a waiver of the right to rescind.

Currently, perhaps the most prevalent form of predatory mortgage lending is the refinancing of existing home loans. Unscrupulous lenders and mortgage brokers target homeowners who are behind on their mortgages and sign them up for loans refinancing with no new money to the homeowner, just higher up-front fees and generally higher payments. Too often the lender will make a high-cost loan that refinances a subsidized mortgage, a Habitat for Humanity mortgage, or a low-cost prime mortgage. Eliminating the right to rescind refinance loans would have devastating consequences on consumers' abilities to fight predatory mortgages.

Industry proposal to repeal the right to rescind for home equity lines of credit. Finally, as to home equity lines of credit, the right to rescind is particularly important because of the limited information the consumer gets at closing. With a closed-end mortgage, the consumer is told the total finance charge, the payment amount, and the number of payments. For a home equity line of credit, the consumer gets none of these disclosures. In fact, some sellers finance consumers' purchases with an open-end line of credit for this very reason -- because they need not tell the consumer these important terms. To eliminate rescission for home equity lines of credit would only create greater incentives for sellers to set up spurious open-end credit as a means of financing purchases.

The industry has argued that few consumers exercise the right to rescind within the three-day period after closing. However, reduced actual use is not indication of its value. The right to rescind has a deterrent effect on bait and switch tactics and creates incentives for lenders to make sure their borrowers understand the terms of the loan and that the loan is appropriate for them. The existence of the right provides the incentive to lenders to avoid its use by resolving the problem. If the number of loans that are rescinded is low, it means that the right to rescind is working.

N. Reducing the number of financial institutions required to provide HMDA disclosures would be a serious mistake at this critical juncture (Senate matrix Item 105).

The Home Mortgage Disclosure Act (HMDA) is one of a class of laws enacted by Congress to ensure that depository and non-depository mortgage lending institutions serve their communities by providing credit in a fair and non-discriminatory manner. Some in the banking industry have advocated using regulatory relief legislation as a vehicle for amending HMDA to reduce the number of banking institutions that presently report under this law. We believe that reductions in HMDA reporting would undermine the utility and effectiveness of this vital information source and therefore, strongly oppose such changes to the HMDA statute.

Congress enacted HMDA in 1975 to make mortgage markets work more efficiently. The data source serves a number of important public purposes. First, HMDA provides the public and banking regulators with data that help to show whether lenders are serving the housing needs of the neighborhoods and communities in which they are located. Second, HMDA also helps public officials to target public investment to promote private investment where it is needed. Third, HMDA provides loan level data that assist in identifying possible discriminatory lending patterns and to assist with the enforcement of anti-discrimination, community reinvestment, and consumer protection statutes. HMDA is also relied upon

for a number of other regulatory and public policy research purposes, which include serving as the core database for the establishment of the annual affordable housing goals for Fannie Mae and Freddie Mac.

To accomplish these purposes, a comprehensive database is required. By design, HMDA now covers more than 80 percent of all home lending. Federal Reserve Board Governor Susan Schmidt Bies recently noted that "Congress believed those objectives would be served by requiring depository institutions to disclose mortgage loan information publicly, not just on an aggregate basis, but institution by institution and application by application."[61]

Accordingly, HMDA requires certain mortgage lenders with offices in metropolitan areas to collect, report, and disclose annual data about applications, originations, home purchases, and refinancing of home purchase and home improvement loans. At the same time, HMDA exempts the smallest depository institutions from these reporting requirements (those with assets under $34 million for calendar year 2005). This threshold is indexed annually.

Industry representatives have suggested that the HMDA reporting threshold be raised to $250 million. While such an adjustment may seem relatively minor, it is worth noting that about 60 percent of the nation's depository institutions have assets between $34 million and $250 million (5,348 of 8,861 banks and thrifts). Of this number, we estimate that approximately 2,300 of these currently report under HMDA. In 2004, nearly 9,000 lenders (including non-depository mortgage companies) reported 37 million HMDA loan applications, up from 8,100 lenders in 2003.[62] Thus raising the threshold to the $250 million mark would newly exempt about 25 percent of depository institutions and 25 percent of current HMDA filers from submitting HMDA reports.[63]

The elimination of loan level HMDA reporting for 2,300 lenders would hamper enforcement of the laws, such as the Equal Credit Opportunity Act, the Fair Housing Act, and the Community Reinvestment Act (CRA). Consider that since 1990 over 1,200 institutions with between $34 million and $250 million in assets received below satisfactory CRA ratings.[64] Instead these institutions received the two lowest ratings of "Needs to Improve" or "Substantial Non-Compliance" that require depository institutions to redress their poor performance of meeting the credit needs of the communities where they take deposits. The lack of HMDA reporting for many of these institutions significantly complicates ongoing regulatory oversight to ensure that lending occurs in a fair and non-discriminatory manner. For example, small bank CRA exam procedures require the regulators to assess anomalies in the spread of loans found in the HMDA data between different geographic areas. It notes that "If available, review HMDA data" (first in a list of possible data sources) to assess the lending patterns inside and outside the

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[61] Remarks by Governor Susan Schmidt Bies at the Financial Services Roundtable Annual Meeting, March 31, 2005.

[62] Remarks by Governor Edward M. Gramlich to the National Association of Real Estate Editors, Washington, D.C., June 3, 2005.

[63] CFA analysis of Federal Deposit Insurance Corporation (FDIC), Statistics of Depository Institution database, downloaded June 16, 2005, data as of March 31, 2005.

[64] CFA analysis of Federal Financial Institutions Examination Council (FFIEC) CRA Rating database, downloaded June 16, 2005, data as of April 1, 2005.

bank's assessment area.[65] However, if an institution is not required to report HMDA data, the institution is not required to collect mortgage data for the regulators during their CRA evaluation and instead the regulators sample the institution's lending pattern.[66] By eliminating the HMDA requirement for 2,200 lenders, the entire spread of home mortgage activity would essentially be eliminated from CRA consideration.

Two arguments are often offered to support additional exemptions to HMDA. In the first, advocates of weaker reporting requirements contend that while the number of lenders to be exempted is great, they represent a relatively small share of the collective assets in the banking system. Such reasoning ignores the plain reality that in many states lenders in this size category represent the vast majority of all banking institutions. For example, depository institutions with assets between $34 million and $250 million represent over 70 percent of all banks and thrifts chartered in Alabama, Iowa, Kentucky, Louisiana, and West Virginia, and over 60 percent of the assets in some 20 additional states. Further, within particular local markets these lenders could very well account for significant shares of the mortgage market. The best way to ensure that these lenders are lending fairly to all is for them to report under HMDA.

The second argument advanced by proponents of less reporting is that HMDA poses an unfair regulatory burden on smaller depository institutions. As mentioned previously, HMDA already exempts the smallest lenders and non-metropolitan based lenders. For the others, this argument seems to be a carryover from the days when HMDA was reported manually. Today, software for HMDA reporting is readily available and relatively inexpensive. The Federal Financial Institutions Examination Council offers free HMDA software on its website for any institution that wants to use it.[67] It has been our experience that lenders in all size categories routinely submit their HMDA reports to the regulators in electronic form, making the literal paperwork burden for HMDA compliance limited.

For these reasons, we urge the Committee not to make changes to HMDA reporting thresholds.

O. Congressional oversight is critical to ensure that CRA regulations are not weakened.

The Community Reinvestment Act (CRA) is an extremely vital tool for stimulating bank lending and improving access to banking services for the nation's underserved urban and rural communities. While we applaud the banking regulatory agencies for enacting final changes that improved upon the proposed changes originally issued in 2004, we still remain concerned that, if adopted, the new rules could permit banks under the $1 billion asset threshold level to reduce their levels of branches, availability of low-cost banking accounts and international remittance services, and community development loans and investments to low- and moderate-income communities. We urge the Committee to exercise the necessary level of oversight to ensure that cutbacks in these vital activities do not occur.

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[65] See, Federal Financial Institutions Examination Council, "Small Institution CRA Examination Procedures, November 13, 1995.

[66] FFIEC, "Community Reinvestment Act; Interagency Questions and Answers Regarding Commuity Reinvestments; Notice," Fed. Reg. 66 No. 134, July 12, 2001 at 36645.

[67] See http://www.ffiec.gov/crahmdacf/default2.cfm.

P. Other proposals that would harm consumers:

1. Federal Home Loan Bank benefits for some privately-insured credit unions. Section 301 of H.R. 3505 (and Senate matrix Item 22) would allow privately-insured credit unions meeting certain criteria the same access to the benefits of Federal Home Loan Bank membership as taxpayer-insured credit unions, essentially granting less expensive financing options such as the discount loan window to privately-insured firms**.** If credit unions switched from government-backed to private share insurance to take advantage of the benefits provided by Federal Home Loan Bank membership, it could risk the safety and soundness of the credit union system.

2. Repealing references to the main place of business of a national bank. Section 110 of H.R. 3505 (and Senate matrix Item 35) would replace "obsolete" language with the modern term "main office." Although this is being promoted as a "technical amendment" it appears to be a weakening of the current definition in the National Bank Act regarding what is done at a particular place to make it the main place of business of a national bank. The current legal standard uses language along the lines of "The place where its operation of discount and deposit are to be carried on." The replacement language is much more general – "The place where the main office of the national bank is, or is to be, located." This could effect rate exportation – allowing rates to be exported from a different state than where the main banking activities occur – just because the bank declares a particular state to be where the main office is located.

3. Allowing banking regulators to forgo or delay bank examinations that are currently required. Section 601 of H.R. 3505 (and Senate matrix Item 42) would provide federal banking agencies with greater discretion to adjust the exam cycle of insured depository institutions. There are potentially serious CRA implications from this proposal. Allowing examiners discretion to schedule CRA exam cycles will undoubtedly reduce the enforcement of CRA at some institutions. To uphold the Community Reinvestment Act, it is the responsibility of the federal banking agencies to provide a sufficient number of CRA examiners to ensure that the lending and credit needs of low- and moderate-income communities are met. To do so, CRA exam cycles should be as consistent and regular as possible.

4. Allowing banking agencies to forgo or delay bank examinations that are currently required for certain banks with less than $1 billion in assets. This proposal (Senate matrix Item 112) would weaken the effectiveness of CRA by allowing mid-sized banks to be examined infrequently. Currently, banks with assets *above* $250 million are required to undergo a CRA exam once every two years, while banks with assets *under* $250 million undergo a CRA exam approximately once every 5 years if they received an "outstanding" on their previous exam, once every 4 years if they received a "satisfactory" on their previous exam, or as deemed necessary by their federal regulator if they received a rating of less than "satisfactory record of meeting community credit needs." This provision would quadruple that threshold and permit banks with under $1 billion in assets to adhere to this stretched out exam schedule.

This provision will significantly weaken the effectiveness of CRA and hurt communities in need of loans and investments. When banks are examined infrequently, they have little incentive to affirmatively and continually adhere to their reinvestment obligations. They will have reduced incentives to make sufficient numbers of loans to low- and moderate-income borrowers during the lengthy period of time between exams, and may only focus their efforts during the last year or two before exams. It is commonsense that infrequent examinations lead to infrequent commitments to reinvestment, while more frequent examinations lead to more consistent commitments to reinvestment.

Instead, through a consistent exam process, such as the current exam schedule used to implement CRA exams, regulators can keep a more watchful eye on banks which may stray from their obligations to their communities and can better enforce its laws set by Congress. In addition, we would oppose similar proposals (Senate matrix Item 169), such as one proposed by the Conference of State Bank Supervisors that would provide relief from exam cycles, if they have CRA implications and conflict with the existing CRA exam schedule.

5. Increased CRA compliance flexibility for limited purpose credit card banks. This proposal (Senate matrix Items 135, 178 and 179) would permit limited purpose credit card banks to invest in, or directly offer, residential mortgage, small business and agriculture loans targeted at low and moderate income persons to meet the obligations of the CRA. Despite the references to CRA and the appearance of good faith efforts by the credit card banks to meet their CRA obligations, the implications of each item have a significant negative impact. Item 135 is a request to allow credit card banks to provide direct consumer services such as residential mortgage lending, small business and agricultural loans that they currently cannot provide as limited purpose credit card banks. Item 178 would further expand credit card banks services into community development loans. Item 179 then allows with broad and general language, "loans that would help meet the credit needs of low-and-moderate income people and neighborhoods while maintaining the institution's Bank Holding Company Act exemption." Therefore credit card banks would be allowed to expand into direct consumer services and community development lending while maintaining their exemption from the Bank Holding Company Act. They would also remain removed from any comprehensive regulatory supervision by the Federal Reserve Board.

The potentially damaging effects of these proposals are illustrated in the following example of the acquisition of Associates National Bank in 2000. Associates National Bank was a limited purpose credit card bank with a number of affiliates, such as Associates Financial Services and Associates Housing Finance, which issued subprime loans that many community groups and regulators concluded were predatory. When Citigroup purchased Associates National Bank and its affiliates, there was no regulatory application on which CRA was considered. Associates National Bank benefited from the Bank Holding Company Act exemption, and the only applications were to the OCC and FDIC, under the Change in Bank Control Act, which did not include CRA review. Community groups, consumers and the public were not able to provide any public comment under CRA, despite the predatory lending issues that were on record.

The net effect of these proposals is that limited purpose credit card banks like GE Capital Consumer Card Company (GECCCC) would no longer have to spin off into affiliates mortgage finance operations that they acquire. They would be able to bring these affiliates in-house and expand their lending inside the supposedly "limited purpose" credit card bank. Since they would enjoy an exemption under the BHCA, these expanded lending services would not be subject to any comprehensive regulatory supervision. Should these credit card banks be acquired (as was Associates National Bank), they would enjoy a streamlined and CRA-less application process, excluding the public and important issues of the type mentioned in the example of Associates National Bank.

In addition, many of the affiliates are subprime lenders and have been found to issue predatory loans, as was the case with Associates. Since the CRA does not examine with respect to interest rates, subprime loans would count towards their CRA obligations along with other non-credit card lending. Currently, credit card banks are not subject to a rigorous CRA exam nor are they constrained from

meeting their CRA obligations. These proposals are another attempt to exploit the loophole in the BHCA and undermine the intent and spirit of CRA enforcement by operating with an exemption.

We recommend that the exemption of so-called non-bank banks from the Bank Holding Company be limited or even eliminated, rather than expanded. Already, CRA enforcement is being made impossible with regard to banks like Associates National Bank, due to this exemption.

Q. Proposals that the Committee should more thoroughly investigate.

There are a number of additional regulatory relief proposals that merit much further investigation and analysis by the Committee. While our organizations have yet to take a formal position on these proposals, we are concerned that the very serious public policy implications of each have not yet been adequately reviewed. We urge the Committee not to act on these proposals until more information about the implications of each is obtained and assessed.

Section 109 of H.R. 3505 (Senate matrix Item 30) would allow national banks to organize as Limited Liability Corporations for the first time. Section 105 of H.R. 3505 (matrix Item 33) would eliminate the ability of states to place capital requirements on banks branching into their territory. Section 211 of H.R. 3505 (matrix Item 54) eliminates current state authority to evaluate qualified thrift lenders on a state-by-state basis. Four more provisions of H.R. 3505, sections 208, 216, 217, and 505, (matrix Items 82, 89, 90, 99, and 183) would remove current federal restrictions on thrift consumer lending, acquisition, agency and ownership of credit card savings associations. Thrifts currently enjoy significant advantages under federal law. These proposals would broaden the jurisdiction of thrifts considerably beyond the current federally mandated focus on mortgage lending. It is important that the Committee closely evaluate the impact of all of these changes taken together on consumers and lending markets and not proceed in a piecemeal fashion.

Attachment 1

AFL-CIO
Americans for Democratic Action
American Federation of Teachers
Association of Community Organizations for Reform Now (ACORN)
Common Cause
Consumer Federation of America
Consumers Union
Lawyers' Committee for Civil Rights Under Law
Leadership Conference on Civil Rights (LCCR)
National Association for the Advancement of Colored People (NAACP)
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Consumer Law Center
National Council of Churches
National Council of La Raza
National Gay and Lesbian Task Force
National Urban League
Unitarian Universalist Association
United Food and Commercial Workers
United Mine Workers of America
U. S. Public Interest Research Group

October 16, 2003

The Honorable Blanche Lincoln
United States Senate
Washington, DC 20510

The Honorable Mark Pryor
United States Senate
Washington, DC 20510

Dear Senators Lincoln and Pryor:

We, the undersigned national civil rights, labor and consumer rights organizations, are writing to express our opposition to S. 904, which will likely be offered as an amendment to the "National Consumer Credit Reporting System Improvement Act of 2003." S. 904 would amend the Federal Deposit Insurance Act to remove usury limits currently applicable to Arkansas lenders under the state's constitution. This amendment not only undermines states' rights, it also will mean that Arkansas consumers will pay far more than necessary for credit and risk exposure to discriminatory lending practices.

The people of Arkansas have determined that there should be a usury limit and have passed one in their state Constitution. Nevertheless, S. 904 deliberately exempts

state lenders from this constitutional provision and the express wishes of the people of Arkansas. Despite the clear intent of the majority of voters in Arkansas that they be protected from high interest rates**,** S. 904 would allow “any other lender” doing business in the state to avoid the interest caps set by the people and the legislature of the state of Arkansas.

S. 904 extends most-favored-lender status to non-bank finance companies. The “other lenders” who would be able to evade state credit and usury limits under this amendment would range from car dealers to auto finance companies, buy-here-pay-here subprime auto dealers, furniture stores, home improvement-based mortgage lenders, and appliance and electronic stores. Removal of such usury limits would open the door to unscrupulous and discriminatory lending practices by these lenders.

Recent studies have shown that African-American and Latino consumers are likely to pay higher markups for auto loans than white consumers when usury limits are not in place.1 Several auto finance companies and others have been sued by African-American and Latino consumers for such discriminatory markup practices in a number of states.2 In Arkansas, however, as the constitutional usury limits restrict the ability of automobile dealers to markup higher interest rates at their discretion, this type of discrimination appears to be less of a significant problem.3 Yet, S. 904 would eliminate this protection from discrimination and produce a financial environment where discriminatory pricing could prosper. We urge you not to allow this to occur.

While the amendment appears to only impact Arkansas, it sets a dangerous precedent for overturning the credit laws of all states. While depository institutions are subject to some supervision and examination, non-depository credit companies are less regulated. Many states exempt *banks* from usury and interest rate limits, permitting rates as agreed between the parties to be charged, largely because of the allowed exportation of interest rates by national banks. In contrast, most states have extensive laws and regulations that apply to non-depository institution lenders to protect at-risk consumers who have less bargaining power and to restrain abusive credit practices.

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[1]Mark Cohen, *Report on the Racial Impact of GMAC's Finance Markup Policy, In the Matter of Addie T. Coleman v. GMAC*, pp. 22, Aug. 29, 2003.

[2] *Jones v. Ford Motor Credit Company*, 00 Civ. 8330 (S.D. N.Y.); *Cason v. Nissan Motor Acceptance Corp*., C.A. No. 3-98-0223 (M.D. TN); *Coleman v. General Motor Acceptance Corp*., C.A. No. 3-98-0211 (M.D. TN); *Baltimore v. Toyota Motor Credit Corporation*, CV 01-05564 (C.D. CA); *Smith v. Chrysler Financial Company L.L.C*., C.A. No. 00-6003 (D. N.J.);. In addition, four cases were filed in 2002 against banks. *Osborne v. Bank of America*, C.A. No. 02-CV-364 (M.D. TN); *Russell v. Bank One,* C.A. No. 02-CV-365 (M.D. TN); *Claybrook* v*. Primus Automotive Financial Services, Inc*., C.A. 02-CV-382 (M.D. TN); and *Bass v. Wells Fargo Financial Acceptance, Inc*., C.A. No. 02-CV-383 (M.D. TN); . *Rodriguez v. Ford Motor Credit Company*, C.A. No. 01 C 8526 (N.D. IL). Information concerning these cases may be found at www.consumerlaw.org and www.faircreditlaw.com.

[3] Id.

S. 904 ignores this important distinction between banks and non-depository institution lenders.

If the people of Arkansas, or any other state, feel that the state limits on credit charges are hurting access to credit, the people of Arkansas can change those limits. It is entirely inappropriate for Congress to preempt the historical powers of the state to protect consumers in this regard. If the Congress grants this privilege to non-bank lenders in Arkansas, the industry will demand the same preemption privilege for the other forty-nine states. This is a very dangerous and an extremely controversial amendment. We strongly oppose adding this amendment to the Fair Credit Reporting Act bill.

Sincerely,

William Samuel
AFL-CIO

Charlotte Fraas
American Federation of Teachers

Darrell Fagin
Americans for Democratic Action

Maude Hurd
Association of Community Organizations for Reform Now (ACORN)

Chellie Pingree
Common Cause

Travis Plunkett
Consumer Federation of America

Janell Duncan
Consumers Union

Barbara Arnwine
Lawyers' Committee for Civil Rights Under Law

Wade Henderson
Leadership Conference on Civil Rights

Hilary O. Shelton
National Association for the Advancement of Colored People (NAACP)

Ira Rheingold
National Association of Consumer Advocates

John Taylor
National Community Reinvestment Coalition

Margot Saunders
National Consumer Law Center

Bob Edgar
National Council of Churches

Brenda Muniz
National Council of La Raza

Shanna Smith
National Fair Housing Alliance

Matt Forman
National Gay and Lesbian Task Force

William Spriggs
National Urban League

Meg Riley
Unitarian Universalist Association

Patricia Scarelli
United Food and Commercial Workers

Cecil E. Roberts
United Mine Workers of America

Edmund Mierzwinski
U. S. Public Interest Research Group

cc: The Honorable Richard Shelby
The Honorable Paul Sarbanes