Testimony

before the

Senate Committee on

BANKING, HOUSING AND URBAN AFFAIRS

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regarding

Current Proposals Considered for Regulatory Relief Legislation

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ACORN
Center for Responsible Lending
Consumers Union
National Association of Consumer Advocates
National Community Reinvestment Coalition
U.S. Public Interest Research Group

Chairman Shelby, Senator Sarbanes, and Members of the Committee, this written testimony accompanies the verbal comments provided to you today by both Travis Plunkett of the **Consumer Federation of America**[1] and Carolyn Carter of the **National Consumer Law Center**[2] on behalf of our low income clients. We both thank you for the opportunity to provide comments on the many issues that may arise as you consider proposals for financial services reform. This testimony is also provided to you on behalf of **ACORN**[3], the **Center for Responsible Lending**[4], **Consumers Union,**[5] the **National Association of Consumer Advocates**[6]**,** the **National Community Reinvestment Coalition**[7] and the **U.S. Public Interest Research Group.**[8]

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[1]The **Consumer Federation of America** is a nonprofit association of over 280 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]**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.

[4] 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.

[5]**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.

[6] **The National Association of Consumer Advocates** is a non-profit corporation whose members are private, and public sector attorneys, legal services, law professors and law students, whose primary focus involves the protection and representation of consumers.

[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]The **U.S. Public Interest Research Group** is the national lobbying office for state PIRGs, which are

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 few. In this testimony, we will first address those proposals we believe pose the greatest threat to the low and moderate-income consumers that we represent. Next we will describe our support for a number of important changes that are needed to update federal law to protect consumers. *Given the huge potential number of proposals that could be considered under the rubric of financial services reform, if we do not address a particular proposal, it should* not *be assumed that we support it. We have endeavored to identify those proposals which we believe you may consider and address those, but we may have missed some.*

I. Harmful Proposals to Consumers

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

B. Diluting the protections provided through the **disclosures and the right of rescission in the Truth in Lending Act** would be very harmful to consumers.

C. Reducing the number of financial institutions required to provide **HMDA disclosures** would be a serious mistake at this critical juncture.

D. Preemption of the voter-mandated Constitutional **interest rate ceilings in the state of Arkansas** is terribly unfair to Arkansas voters, as it would completely remove the state's ability to impose *any limits* on *any loans* in the state.

E. The proposed **mortgage servicers' exemption from a requirement in the Fair Debt Collection Practices Act** is bad public policy and will undermine efforts to rein in foreclosure inducing practices of some mortgage servicers.

F. Allowing virtually unlimited **diversity jurisdiction** in federal courts for national banks and federal thrifts is a bad idea.

G. 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.**

H. We urge you to resist the efforts of **check diversion companies** to obtain an exemption from the Fair Debt Collections Practices Act ("FDCPA").

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non-profit, non-partisan consumer advocacy groups with half a million citizen members around the country.

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

II. Important Proposals to Update Federal Laws to Protect Consumers

J. The application of the Truth in Lending Act to **bounce loans** should be clarified**.**

K. All banks, including state chartered banks, should be prohibited from providing exorbitantly priced **payday loans** in violation of state laws.

L. The jurisdiction limits and statutory penalties of the **Truth in Lending Act** and the Consumer Leasing Act need to be brought up to 21st Century standards.

M. **Credit unions** should be permitted to provide check cashing and remittance services to anyone in their field of membership.

N. The **Electronic Fund Transfer Act** should be expanded to apply to all forms of electronically processed payments

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I. Harmful Proposals to Consumers

<u>A. Expansion of industrial loan companies is dangerous to the banking system and taxpayers.</u>

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 companies (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 month (H.R. 1224) would allow many ILCs to offer interest on business checking accounts. Legislation passed by the House last year (H.R. 1375) would allow many existing and new ILCs to branch into all 50 states, whether these states approve or not, and to offer business checking services. 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.** 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 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) while eight other large ILCs had at least $1 billion in assets and a collective total of more than $13 billion in insured deposits. Moreover, the five states cited in the law are aggressively chartering new ILCs, 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.

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 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.

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.

B. Diluting the protections provided through the disclosures and the right of rescission in the Truth in Lending Act would be very harmful to consumers.

There has been considerable discussion by both regulators and the financial services industry in the context of Regulatory Relief about consumer disclosures and the right of rescission. The Acting Comptroller of the Currency has talked about the need to revisit the purpose of disclosures, and streamline them to avoid information overload.[9] She has compared credit card disclosure rules under the Truth in Lending Act to the nutritional disclosure developed by the Food and Drug Administration, and concluded that the TILA disclosures come up short.

There is much in the Acting Comptroller's testimony with which we agree:

- Credit disclosure requirements should not be developed hastily, and their design should involve consumer testing.
- Credit disclosures should be made in a standardized disclosure format that consumers can readily navigate.
- Key information should be highlighted, with other information provided in a fair and clear manner.
- Simple language should be required.
- Credit card issuers should be required to disclose several additional important terms that the Truth in Lending Act regulations currently do not require. The Acting Comptroller listed, among other things, the circumstances under which a promotional rate can be terminated, the specific circumstances under which a penalty rate can be imposed, the duration of a penalty rate, and the lender's reservation of a unilateral right to increase the interest rate or fees or change the other terms of the account.

We strongly *disagree*, however, with the Acting Comptroller's suggestion that there should not be detailed, prescriptive rules specifying the content of the disclosures to be made to consumers. Indeed, this suggestion is at odds with the Acting Comptroller's own recommendation that credit disclosures should be made in a standardized format so that consumers can easily find the information that is important to them. The use of a standardized format and uniform terms is essential if consumers are to be able to find and absorb information. While there is clearly legitimate room for debate about whether *Congress* or an *agency* should establish the detailed, prescriptive rules for the content and format of credit disclosures, there should be no debate that such rules are necessary.

Second, we strongly disagree with any implication that, in the name of "streamlining," consumers should be deprived of disclosures that are currently required. Making credit disclosures more effective should involve improving their format and language, not reducing the amount of information given to consumers. It may be true that a buyer or borrower can absorb only a few bits of information at one time. While we would never rule out the possibility of eliminating required disclosures that are completely worthless to consumers, different buyers are looking for different pieces of information. To use the nutritional label analogy, one buyer may be shopping for low sodium foods, so will look for the sodium content and ignore everything else on the nutritional label. The next person may be looking for low cholesterol foods, so will look just for that. A majority of people may pay no attention to the sodium disclosure, but as long as there are some who do, it should not be eliminated. The same is true with credit disclosures. One

[9] See Testimony of Julie L. Williams, Acting Comptroller of the Currency, Before the Committee on Banking, Housing, and Urban Affairs of the United States Senate, May 17, 2005.

consumer may plan to carry a balance on a credit card, and so will be concerned with the interest rate, while the next consumer may plan not to carry a balance and will be most concerned with the grace period. Providing both of these bits of information in a uniform, easily navigated format, enables these two consumers to pick out the information they need. When a large array of information is disclosed clearly and in a uniform format, people can pick out the information that concerns them most.

For example, in comments to the Federal Reserve Board on Regulation Z, many of our groups recommended moving the required disclosure for calculating credit card balances from the "Schumer Box" on applications and solicitations to a less prominent location. This is because many consumers do not understand balance calculation methods and because there is other key information – such the cost of late and over-limit fees that may be assessed – that should be disclosed in the Schumer Box instead. But our groups did not recommend eliminating the balance calculation disclosure entirely, because some consumers will in fact use it in making a determination about whether to sign up for a particular credit card.

In evaluating credit disclosures, it must be stressed that they serve not just an immediate function but also a long-term function. For example, many consumers will gather several credit card solicitations, and then sit down and compare them side-by-side. Having a complete set of disclosures makes this possible, even though a consumer might not be able to absorb all of the information when first seeing a credit card solicitation. Similarly, with home-secured credit, there is a three-day rescission window. The consumer cannot be expected to absorb all the important terms of the transaction at closing. But after closing, the consumer can make a more careful, detailed review of the disclosures and evaluate whether the loan is a good idea and whether unexpected terms were slipped in at closing. Again, having a few key terms presented prominently is helpful, but all the important terms should be disclosed in a clear format so that the consumer can review everything after closing.

In this respect, the analogy to nutritional labeling breaks down. A person who checks a nutritional label and buys a candy bar will probably eat the candy bar and throw the wrapper away without ever referring to the label again. With consumer credit terms, the consumer is likely to keep the disclosure statement and refer to it from time to time over the life of the transaction. Consumer testing should evaluate not only what credit disclosures consumers can absorb at the initiation of a transaction, but also what disclosures they can find and understand at a later point.

The Acting Comptroller argues against a knee-jerk response of piling on additional disclosure requirements as a way of solving consumer problems. We agree that disclosures alone are insufficient. Substantive regulation - prohibition of unfair, abusive credit terms - is necessary. To return to the nutrition labeling analogy, for food we do not rely on disclosure; we also affirmatively forbid poisonous substances in foods. We would never contend that it was acceptable to allow cyanide in foods as long as the label disclosed it. By the same token, disclosure alone is not sufficient to protect consumers from toxic credit terms. Yet, because of federal preemption of state credit laws, disclosures are currently the primary consumer protection for many types of transactions. Congress - and the regulatory agencies - should affirmatively forbid unfair and abusive credit terms.

2. 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.

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

Section 201 of H.R. 2061 would completely undermine this crucial protection for homeowners. It would create three exceptions - one for insured depository institutions, one for all refinance loans, and one for all home equity lines of credit. These changes would undermine homeownership and give a green light to predatory lenders.

Congress should not assume that insured depository institutions are above predatory lending. Many of the most egregious predatory lending cases have involved just such institutions. For example, many banks have rented their charters out to payday lenders who are making abusive loans at triple-digit interest rates to vulnerable borrowers. Even for insured depository institutions that have resisted abusive loans and bait and switch tactics, there is no reason to remove the deterrent that the right to rescind provides.

As to refinance loans, these have been perhaps the most prevalent form of predatory mortgage lending. Unscrupulous lenders and mortgage brokers target homeowners who want to borrow a small amount of money, and sign them up for loans refinancing their existing home mortgages. 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 be the worst step Congress could take.

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. 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. Thus, the very existence of the right to rescind should reduce the number of borrowers who want to rescind. Also, the number of rescissions may be reduced because, when a borrower does consider rescinding, the lenders may resolve the problem by explaining or deleting the term the consumer did not expect. If the number of loans that are rescinded is low, it means that the right to rescind is working.

The right to rescind is important even for a good loan, because it gives the family a chance to review whether to put their home on the line. But it is far more important for bad loans. As long as there are a significant number of bad loans, Congress should not undermine the right to rescind.

C. Reducing the number of financial institutions required to provide HMDA disclosures would be a serious mistake at this critical juncture.

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."[10]

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

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). 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.[11] 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.[12]

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.[13] 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 bank's assessment area.[14] 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.[15] By eliminating the HMDA requirement for 2,200 lenders, the entire spread of home mortgage activity would essentially be eliminated from CRA consideration.

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

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

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

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

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

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.[16] 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.

D. Preemption of the voter mandated Constitutional interest rate ceilings in the state of Arkansas is bad policy and unfair to Arkansas voters.

In the last Congress, S. 904 was proposed to 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. This bill is opposed by a broad coalition of national civil rights, labor and consumer rights organizations (*see* attached letter regarding S. 904 listing these organizations).

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.

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

The proponents of S. 904 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.[17] 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% over the Federal Discount Rate.[18] The courts of the state of Arkansas have upheld both the constitutionality and the enforcement of this provision repeatedly since its enactment.[19]

Exceptions to the Usury Ceiling. There are two ways that loans can be made in Arkansas 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.[20] 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.[21]

Availability of Credit in Arkansas. Proponents of S. 904 have argued that because depository institutions can charge unlimited rates of interest, and other lenders cannot, that local lenders have a competitive disadvantage.[22] 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.[23]

[17]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.

[18] Const. Art. 19, ' 13(a).

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

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

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

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

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

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.**[24]

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 S. 904 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 S. 904 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 S. 904 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 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.[25]

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[24] 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.

[25] *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**.

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. However, 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.[26] 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.

E. The proposed mortgage servicers' exemption from a requirement in the Fair Debt Collection Practices Act is bad public policy and will undermine efforts to rein in foreclosure inducing practices of some mortgage servicers.

The House has passed H.R. 1025, which would allow "covered mortgage servicers" to avoid providing a notice to consumers currently required by the Fair Debt Collection Practices Act ("FDCPA"). We believe this is a bad provision which will be harmful to consumers.

Currently the FDCPA covers all mortgage servicers *except those* who collect on mortgage loans which were "not in default at the time . . . obtained."[27] This coverage is especially important in recent years when allegations of abusive collection practices have been prevalent in the mortgage servicing industry.[28] The FDCPA requires debt collectors to notify consumers in the initial written communication to them that "the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose."[29]

The notice to consumers required in the initial communication from mortgage servicers who are collecting delinquent debts is important to consumers. This notice informs them that they are protected in their dealings with the mortgage servicer by the application of a federal law – the Fair Debt Collection Practices Act.

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[27] 15 U.S.C. § 1692a(6)(F)(iii). The Senate report emphasized the application of this section to "mortgage service companies and others who service outstanding debts for others, so long as the debts were not in default when taken for servicing. . . ." S. Rep. No. 382 , 95th Cong., 1st Sess. 3, *reprinted in* 1977 U.S.C.C.A.N. 1695 at 3.

[28] See, e.g. Settlement between Fairbanks Capital and FTC and HUD: "Fairbanks Capital Settles FTC and HUD Charges: *Agencies Allege Fairbanks Engaged in Illegal Practices in Servicing Subprime Loans; Defendants Will Pay Over $40 Million for Consumer Refunds."* November 12, 2003; http://www.ftc.gov/opa/2003/11/fairbanks.htm.

[29] 15 U.S.C. § 1692e(11).

1. The exemption for some mortgage servicers would apply to *all* mortgage servicers. Although the exemption in H.R. 1025 for mortgage servicers is framed as a narrow exception to be applicable only to those mortgage servicers "for whom the collection of delinquent debts is incidental to the servicer's primary function of servicing current federally related mortgage loans," it would actually apply to all mortgage servicers. This is so because no consumer would have any reasonable way of knowing the servicer's "primary function." How is a servicer's primary function determined? By the mortgage servicer? Where is the information publicly available? At what point in time does the test apply -- when the loan was transferred for servicing, at the beginning of that calendar year, or at some other point in time?

Because qualification for the exemption would be impossible to determine, the effect would be to exempt all mortgage servicers from the requirement for the 807(11) notice. This is neither the stated intent of the bill, nor of the Congressional sponsor.

2. The FDCPA notice which would no longer be required of mortgage servicers is helpful to consumers and should not be eliminated. Homeowners are experiencing increasing problems with their mortgage servicers. The consumer protections that apply to servicers are few (some state laws, and those under RESPA), and generally completely unknown to consumers. However, once the consumer receives the 807(11) notice from a mortgage servicer, the consumer is alerted that another consumer protection law is applicable to the dealings with the servicer – the FDCPA. This information is valuable to a consumer who has an ongoing dispute with a servicer, especially where there is some question about the application of payments, and/or the degree of delinquency. As consumers benefit from this notice, it should not be eliminated for all mortgage servicers.

3. 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.[30] 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). 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.

4. 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 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) must be included in the first communication. However, if the issue is really timing, then a narrower amendment would be to allow some period of time after

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

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.

5. 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.

F. Allowing virtually unlimited diversity jurisdiction in federal courts for national banks and federal thrifts is a bad idea.

Both the Office of the Comptroller of the Currency and Office of Thrift Supervision have proposed provisions which would establish that for diversity purposes in federal court, both federally chartered savings banks and national banks would be considered citizens only in the states in which they have their main office. These provisions are very bad ideas--they would clog up the federal courts, and worse, in most states they would create a procedural morass that would likely result in many consumers losing their homes to illegal foreclosure. Because of a split in the circuits on this issue, the case is now pending before the U.S. Supreme Court.[31]

These proposals would essentially make the federal courts the collection mills for the federally chartered banks and thrifts. This is not good federal policy. Moreover, it is likely to hurt consumers, as federal courts have been known, on numerous occasions, to interpret state laws differently--and in a less friendly fashion--than state courts.

A prime example of how damaging this proposal would be to homeowners and communities is its potential application to the foreclosure process. The procedural requirements to *stop* a foreclosure are complex in many states, often requiring that a separate action be filed to enjoin the foreclosure action while the homeowner's defenses and claims are determined in a separate proceeding. How would a consumer try to stop a foreclosure if every case involving a national bank would always be removed to federal court? If the bank initiated a non-judicial foreclosure against a homeowner, and the homeowner sued in state court to stop the foreclosure, the bank could then remove the consumer's case to federal court based on this new diversity jurisdiction. But while all these legal maneuvers are worked through, the foreclosure process would continue unabated. This would likely leave homeowners with valid claims to stop foreclosures unable to effectively fight through the procedural morass of state versus federal court jurisdiction, resulting in needless and unfair loss of homes.[32]

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[31] Wachovia Bank, Nat. Assn. v. Schmidt, 388 F.3d 414, (4th Cir. 2004), No. 04-1186.

[32] It may be possible for a federal court to enjoin *the parties* from proceeding with a foreclosure; however, a federal court cannot enjoin a state court's proceedings. Do these federal agencies anticipate that the federal courts will adjudicate foreclosure disputes as well as all other actions involving federally chartered financial institutions?

The concept of diversity jurisdiction is based on the idea that a person or business which does not have a real presence in the community will not receive a fair hearing in the state court, thus necessitating hearing the dispute in the more "neutral" arena of the federal court. However, the proposal to establish by rule that federally chartered national banks and thrifts are only considered residents of the state in which they have "declared" their main office to be, threatens to make a mockery of this basic idea. In all the states in which the institution has branches, it would be "foreign" in name only. The bank or thrift might have hundreds of branches, and employ hundreds of state residents. Yet because of this arcane proposed language to be added to the federal statutes, it would legally be considered to not be a resident of the state. In its ruling against the bank on this issue recently, the Fourth Circuit Court of Appeals also recognized the legal absurdity of the bank's argument on the *need* for diversity jurisdiction.[33] The bank with branches in a state has just as much of a tie to that state, and perhaps more, than it does to the state in which it has declared it "main office" to be.

These proposals are an absurd and cynical use of the federal courts to further tilt the balance of power away from consumers. Both national banks and federal thrifts should be considered residents of the states in which they have a legal presence, for purposes of federal court diversity jurisdiction.

<u>G. 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.</u>

Despite its name **The Consumer Rental-Purchase Agreement Act of 2005, S.603** is not what it purports to be; it is *not* a consumer protection bill. This bill only provides protections for industry, not for consumers.[34] Although the bill pretends to advance consumer protections in

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[33] As the court said:

[T]he "rationale underlying the concept of diversity jurisdiction" would still provide no warrant to adopt the dissent's position. The notion that Congress believed that national banks that actively conduct business in a state cannot get a fair adjudication of state-law claims in that state's courts is rank speculation, as even the dissent would have to acknowledge. In fact, if one were to engage in surmise, it would be just as defensible to conclude that Congress believed it entirely reasonable in such circumstances to deny national banking associations resort to the federal courts, over the courts of the states in which the banks have chosen to locate branch offices; for it might have appeared unseemly to permit the national banks to seek and receive the trust and business of a state's citizens, but at the same time to permit them to refuse, out of distrust of those citizen-customers, to subject themselves to the courts created by those citizens to protect their rights against those who seek, receive, and reach their trust reposed. Wachovia Bank v. Schmidt, 388 F.3d 414, (4th Cir. 2004) at 424, 425.

[34]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).

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 12 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 *not* 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 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% 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.[35]

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.

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.

H. We also urge you to resist the efforts of check diversion companies to obtain an exemption from the Fair Debt Collections Practices Act ("FDCPA").

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[35] 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% 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% 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.

If this exemption is granted, hundreds of thousands of innocent American consumers will pay unnecessary and unauthorized charges to these for-profit companies in response to deceptive threats to criminally prosecute them for writing bounced checks.

Check diversion companies are debt collectors which 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 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--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 $140 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 with which all debt collectors collecting bounced checks are able to comply and still successfully collect. Specifically, check diversion companies have consistently been found guilty by the courts in, or have settled cases alleging three types of illegal conduct:

- **Deceptive Behavior.** The check diversion companies' letters to consumers were deceptive because they looked like they actually came from the District Attorney and implied that the DA had determined the consumer had committed a crime. In fact no DA ever reviews 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, but 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 which 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.

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.

I. 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 improving upon the proposed changes originally issued this past fall, 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.

II. Important Proposals to Update Federal Laws to Protect Consumers Include:

J. The application of the Truth in Lending Act to overdraft "bounce" loans should be clarified

The Federal Reserve Board recently issued final rules to cover overdraft extensions of credit under the Truth in Savings Act, Reg DD. That 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.

Bounce "protection"[36] is a new form of overdraft protection that over ninety percent of banks are using to boost their non-interest revenue.[37] A recent study by the Center for Responsible Lending estimates that consumers paid over $10 billion for overdraft loans.[38] As we recently wrote to this committee, 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.[39] 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

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

[37]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.

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

[39]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%. If the consumer pays the overdraft bank in 14 days, which is probably more typical for a wage earner, the APR is 541%. 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.

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. Banks that advance cash at the ATM or point of sale when consumers overdraw bank accounts turn consumers' debit cards into credit cards without the benefit of credit card protections. The Office of Comptroller of Currency has recognized that bounce loans are credit as defined by TILA.[40] Some state regulators have reached the same conclusion.[41] 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 this year, acknowledges that "When overdrafts are paid, credit is extended."[42]

Overdraft loan fees clearly meet Regulation Z's definition of 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 recent 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 permit those banks to make overdraft loans through automated teller machines and at the point of sale.[43] 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.

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

[41]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).

[42] 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.

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

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

K. Prohibit all banks, including state chartered banks, from providing exorbitantly priced payday loans in violation of state laws.

The Federal Deposit Insurance Corporation, the only bank regulatory agency to permit its banks to partner with payday lenders, has failed to protect consumers and is instead threatening the safety and soundness of state-chartered, federally-insured banks by permitting them to partner with store front payday lenders. These "rent-a-bank" arrangements are designed to allow payday lenders to evade state usury and small loan laws.[44] Recently the FDIC announced revisions to its guidelines, directing banks to halt payday lending once consumers have been in debt three out of the prior twelve months. While this announcement may discourage some banks from continuing to partner with storefront lenders, we urge you to clarify that bank charters are not for rent. The 11th Circuit decision in *BankWest v. Baker*[45] found that the Federal Deposit Insurance Act does not preempt state laws that attempt to regulate banks' payday loan partners.

The FDIC is the only federal regulatory agency that permits banks it supervises to engage in payday lending with third-party check cashers, pawn shops and payday loan outlets. Following vigorous enforcement by the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Reserve Bank of Philadelphia, no federally-chartered banks or members of the Federal Reserve System align themselves with quick cash payday lenders that charge triple-digit interest rates for small loans and trap vulnerable consumers in perpetual debt.

Payday lenders face growing resistance from state legislatures, especially in states where these loans are not legal. In 2005, the Texas legislature killed an industry safe harbor bill and last year Georgia legislators passed a tough anti-payday loan enforcement bill, recently upheld by the 11th Circuit in an appeal brought by the FDIC banks and their payday loan partners.

Congress never intended for state chartered, federally insured banks to be empowered to rent their interest rate exportation powers to third party entities to make predatory loans. Rent-a-bank payday lending undercuts state authority to enforce usury laws, small loan regulations, and even state payday loan laws. We urge you to take immediate action to stop this practice.

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

[45] 2005 WL 1367795 (11th Cir. June 10, 2005).

L. The jurisdiction limits and statutory penalties of the Truth in Lending Act and the Consumer Leasing Act need to be brought up to 21st Century standards

TILA's jurisdictional limit for non-dwelling secured consumer credit transactions was set at $25,000 in 1968. That amount in today's dollars would be over $132,000.[46] The equivalent for the statutory damages amount of $1,000 in 1968 would be over $5,000 today. The numbers in the current statute need to be updated, and an inflation factor built in. The Consumer Leasing Act requires similar treatment.

M. Credit unions should be permitted to provide check cashing and remittance services to anyone in their field of membership.

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.[47]

Yet, America's estimated 11 million or more un-banked and under-banked families (13% 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,[48] refund anticipation loan purveyors,[49] 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.[50]

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[46] See Consumer Price Index, Inflation Calculator, U.S. Department of Labor, Bureau of Labor Statistics, http://www.bls.gov/bls/inflation.htm.

[47] *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/

[48] For an archive of materials on rent to own stores *see* http://www.pirg.org/consumer/#rent

[49] *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

[50] *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/.

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.

Remittances. The problem of the high cost of remittances especially affects immigrant families. According to Federal Reserve Governor 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."[51]

According to a recent Pew Hispanic Center report, "Billions In Motion,"[52] while the average cost of remittances has declined significantly (e.g., to just under 10%, 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% 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 Funds 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

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[51] "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

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

impose high non-customer checking fees[53] 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.

These consumers pay significant fees – ranging from 1-20% 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.

N. Expand the Electronic Fund Transfer Act to apply to all forms of electronically processed payments.

Payment methods are increasingly converging, but the consumer rights available differ vastly depending on how the payment was initiated. A consumer who pays by debit card, for example, has the protections of the federal Electronic Fund Transfer Act, including a 10-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. 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 return of disputed funds. When the check is processed using a substitute check, the new Check 21 Act provides a 10 day right of recredit, but the Federal Reserve Board's narrow interpretation of the availability of this right in its proposed regulations will restrict this right to those consumers who were provided with a physical substitute check, and 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

[53] 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

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.

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