

Written Testimony

Of

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Before the

Senate Committee on Banking, Housing, and Urban Affairs

July 19, 2011

Introduction

Chairman Johnson, Ranking Member Shelby and members of the Committee, thank you for the opportunity to bring the consumer perspective to the *Enhanced Consumer Finance Protections: After the Financial Crisis*. Specifically I hope to illustrate just a small part of the problems consumers' face which renders the Consumer Finance Protection Bureau ("the CFPB") an essential tool to level the playing field between consumers and businesses governed by the authority of the Bureau. My testimony represents a snapshot of the problematic experiences of consumers, particularly older Americans and members of the armed services I represent in Florida. I will share with you stories of individuals who have suffered because of our failed financial regulatory system. Their stories demonstrate a need for a strong independent Consumer Financial Protection Bureau that has both rule writing and enforcement power over banks and non-banks that provide financial products.¹ I have testified before the Federal Trade Commission, the Federal Reserve Board and before this Committee in 2006 when I spoke in support of the *Department of Defense Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*. The Senate passed the Talent-Nelson amendment to the John Warner Defense Authorization Act of 2007 in 2006 to prohibit predatory practices and rein in the fees charged in several types of consumer finance transactions.

¹ Since 1988, I have been a consumer protection attorney with Jacksonville Area Legal Aid, Inc. and represent low income consumers in the greater Northeast Florida area. I am a co-chair of the Board of Directors of the National Association of Consumer Advocates¹, chair of the Florida Bar Association's Consumer Protection Law Committee, teach mortgage foreclosure, debt collection and motor vehicle sales and financing litigation to attorneys all over Florida and nationwide, including the Judge Advocates in Newport News, Rhode Island. I am also an adjunct Consumer Law professor at the University of Florida College of Law

Today I will use the stories of the consumers I work for who could be assisted by the Bureau and recommend the full support of this Committee for the CFPB.

Why the Consumer Finance Protection Bureau is Important

Times are difficult for many consumers, including consumers who prior to the financial crisis never considered themselves vulnerable to illegal, deceptive or unfair practices of finance companies, lenders, debt collectors or credit reporting companies. This new class of targeted consumers is added to the older Americans and members of the armed services who have historically been targeted for abuse. Existing bank regulators have clearly failed to design and enforce fair rules of the road for credit, leaving these consumers exposed to tricks and traps on high cost loans and abusive mortgages that cost families their homes. With so many consumers being targeted and access to the courts being diminished it is important that a strong, unified Bureau focused on protecting consumers.

The CFPB should have broad authority to write rules, supervise a wide variety of financial institutions, and enforce federal consumer protection laws --- all with the ultimate goal of ensuring a more fair and equitable financial playing field for consumers.

As consumer advocates have previously shared with this committee, the idea of a federal consumer protection agency focused on credit and payment products has gained broad and high-profile support because it targets the most significant underlying causes of the massive regulatory failures that occurred in recent years. Federal agencies did not make protecting consumers their top priority; ignored many festering problems that grew

worse over time; when acting to protect consumers (and they often did not), the process was cumbersome and time-consuming. In the end, agencies often did not become involved to stop some abusive lending practices until it was too late. Finally, regulators were not truly independent of the influence of the financial institutions they regulated.²

In my testimony, I will highlight three main points:

1. The range of consumers being negatively affected by aggressive lenders with a wide variety of high cost and risky consumer financial products has grown exponentially during the financial crisis.
2. Victimized consumers are not being protected by most states, either because high cost lenders have crafted products which ostensibly take them out of the regulatory power of the state small loan laws and claim that state credit laws do not apply to them. Also, lenders are moving to the Internet to provide illegal products behind the veil of secrecy, putting them beyond the grasp of many states regulators with diminishing resources to pursue them. Many loan products on the market today are grossly one-sided and include unilateral, mandatory arbitration clauses utilized to deprive consumers of their day in court and to limit their remedies.

² For additional background on why there is a need for a strong Consumer Finance Protection see Testimony of Travis Plunkett, Legislative Director, Consumer Federation of America, before the Senate Committee on Banking, Housing and Urban Affairs, (July 14, 2009) available at: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=9a56da23-60cb-4fd0-ac04-f94ead7d1859&Witness_ID=18d80e15-8970-49d1-8867-54b81d389272

3. Because of the restrictions on availability of new credit, creditors and debt collectors are stepping up efforts to collect debt through illegal, unfair or deceptive means in my clients' stories.

Range of Consumers Hurt by Predatory Lending Increased During Financial Crisis

American consumers did not create the financial crisis with products such as no document mortgage loans, triple-digit interest rate loans secured by automatic access to a consumer's bank account or motor vehicle, and spurious open-ended credit. Nor did they profit from steering homeowners who qualified for safe, affordable mortgages into exploding adjustable rate loans. But consumers are paying the price of unfair and irresponsible financial products through record foreclosures, rising unemployment rates, abusive debt collection practices and a struggling economy. Even in good economic conditions, consumers are always under fire, whether it's from lending scams or deceptive marketing. The need for effective consumer protection regulation and enforcement is always there. However, the current financial crisis seems to emphasize this need even more as it has become a breeding ground for increased deceptive and abusive practices by lenders.

Recent Consumer Protection Laws, particularly those intended to protect Active Duty Servicemembers and their Families are being ignored or coverage is being evaded by carefully crafted loan products.

Military servicemembers are particularly affected by these deceptive and abusive practices. After President Bush signed the Military Lending Act (MLA), implemented by rules adopted by the Department of Defense, many consumer advocates were encouraged that those fighting for our country would be protected from abusive lending and collection activities. Unfortunately, lenders tweaked their product designs to get around the DOD covered credit definitions or are ignoring the law and are still charging triple digit interest rates and calling with threats of court martial and imprisonment for failure to pay these exorbitant terms. For example, I mentioned a service-member in my testimony five years ago who was being charged 1,000 percent interest rates. He spent five years faithfully attempting to pay off \$10,000 worth of pay day loan debt incurred as a result of his wife's illness and still owed \$12,000. The lender kept the service-member paying with threats of court martial and imprisonment. A year after the MLA became law reducing the interest rate caps to 36% for new loans he was still getting threats of court martial, loss of security clearance and/or imprisonment despite the prohibitions in state and federal consumer collection protection laws which have historically prohibited this conduct for all debt collectors.

Even in connection with new loans to active duty servicemembers, these same lenders are still putting borrowers' bank accounts at risk and charging triple digit interest rates well in excess of the 36% interest rate cap and are still threatening criminal prosecution. This and other lenders provide their loans through the Internet to avoid any type of state or federal regulation. They are also taking borrowers' wages before they obtain judgments against the borrowers by requiring its borrowers to sign documents

allowing an assignment of wages in violation of 16 C.F.R. §444.2(a)(3). This company and many others just like it avoid state credit protection laws, state and federal debt collection laws and FTC regulations by operating on the Internet. These companies also avoid the consequences of their illegal behavior by including unilateral, mandatory arbitration clauses in their contract.

Other payday lenders get around the ban on loans secured by checks or automatic access to a borrower's bank account as well as interest rate caps imposed by the MLA and state credit protection laws by crafting their loan products as open-ended transactions or by setting their loan terms at greater than 180 days. These lenders charge triple digit interest rates, require electronic access to borrowers' bank accounts as security for the loan, and claim they do not have to provide the cost of credit information required by the federal Truth in Lending Act, 15 U.S.C. 1601, et seq. in payday loans by merely pretending the borrower has the right to use the loan like a line of credit when in fact no further sums will be provided or by setting the loan term for in excess of 181 days rendering the loan outside of the protections of the MLA.

An example of a loan product targeted to servicemembers is an installment loan with a loan company with whom I've worked. It stated its interest rate was 32.77% which would appear to be within the MLA cap and many state small loan rate caps. However, the lender set the loan term to fall outside the MLA protections and is, therefore, ostensibly not covered by the MLA. The stated interest rate also did not include charges for a required insurance product which if included in the interest rate calculation would bring the rate to 66% rendering the loan criminally usurious in Florida where many

borrowers are located. In addition to using the loan term to avoid the MLA interest rate cap, this particular lender claimed to be a subsidiary of a national bank.

Under Dodd-Frank, this type of bank subsidiary would not be able to use the National Banking Act to evade state law consumer protection laws. Dodd-Frank ends preemption for bank operating subsidiaries by reversing *Watters v. Wachovia Bank*³ and the regulation *Watters* upheld. This “anti-preemption” provision of Dodd-Frank is important to all consumers, including those who are not covered by the MLA such as military veterans and older Americans.⁴ National Banks and their subsidiaries can no longer successfully claim to be exempt from application of state consumer protection laws by hiding behind the National Banking Act, 12 U.S.C. §85 .

Automobile title loans were also one of the problematic products listed in the *Department of Defense Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* . Now even after the passage of the MLA and in violation of state law, lenders still provide triple-digit rate automobile title loans and secure loans with the title to the borrower’s vehicle, a practice prohibited by the Military Lending Act. A family’s vehicle is probably their most valuable asset and this type of loan puts the vehicle at serious and unnecessary risk of repossession for a loan a fraction of the value of the vehicle owned by the borrower.

For example, Mr. B used the free and clear title to his truck as security for a \$2,200 loan. The stated interest rate is 24% but he is charged \$900.00, more than a third of the value of the loan for a “collateral damage waiver.” This fee is kept by the lender,

³ 550 U.S. 1 (2007).

⁴ Dodd-Frank §§ 1044, 1046.

is required to get the loan and provides no benefit to the service-member who is paying \$4,712.88 for a \$2,200.00 loan. When he missed a payment, the truck was repossessed meaning he lost his truck and the equity he had in the truck. The lender will only provide a loan in an amount equal to a third to a fourth of the value of the truck so the lender received months of payments plus the excess equity in the truck. The lender avoided the application of the MLA by extending the term of the loan and avoided state lender laws by illegally disguising interest as the fake insurance product.

Another type of loan highlights the ineffectiveness of the present regulatory structure and the need to enforce federal Truth in Lending and VA pay and pension laws intended to protect Veterans who have served our country. Companies have been stealing veterans' pensions through high cost loans branded as veterans' pensions loans. These like other loans targeted to servicemembers and veterans have names that make them appear to be affiliated or approved by the military and have flags and military symbols in their advertisements. A veteran is offered the right to "sell" his or her right to receive future benefits. These loans are structured as sales to avoid Truth in Lending and cost of credit laws and to hide the true costs of the loans which can run into the triple digits. Therefore, veterans lose the right to receive their pensions and pay exorbitant interest rates for the right.

The Bureau will Provide a Unified and Focused Entity to Address the Many Facets of the Mortgage Foreclosure Crisis

Much has been said about the mortgage foreclosure crisis. These issues have many layers. I've heard story after story of active duty servicemembers losing their homes while they are stationed overseas and state-side families who are struggling with the threat and reality of eminent foreclosure while their spouses are overseas. For example, we have received requests for assistance from military families who are being evicted from their homes by companies that have bought their home at foreclosure sales when the family did not even know their home was in foreclosure.

I know Congress is attuned to these issues based upon a recent forum relating to illegal foreclosures against U.S. Servicemembers and their families held by the Senate Committee on Commerce, Science and Transportation and the House Committee on Oversight and Government Reform on July 12, 2011. It is not uncommon for our office to hear of stories like those of Army National Guard Warrant Officer Charles Pickett and Army Captain Kenneth Gonzales. Foreclosures are proceeding when borrowers are not in default and without their knowledge while they are deployed for service to our country. The Director of the Office of Service-member Affairs, Hollister K. Petraeus spoke of the importance of the CFPB role in preventing these abuses. Our office sees real life examples of servicemembers fighting insurgents in Afghanistan and fighting Wells Fargo in an illegal foreclosure in the states or coming home to find their homes foreclosed upon and boarded up. Members of the military are supposed to receive special notice and delay of the foreclosure proceedings but many of them never receive this notice. It is not clear which agency if any is addressing these loan servicing issues harming our most deserving consumers.

I have many veteran clients with FHA and VA loans who are entitled to specific pre-foreclosure default servicing before a mortgage foreclosure is filed. Borrowers who have paid a premium for an FHA loan or served our country in order to be eligible for a VA loan do not get the assistance required by federal law and their mortgage loan contracts to help them avoid foreclosure. For example, I represent an older American widow with a VA loan she and her deceased Veteran husband obtained. Instead of working with her, the company servicing her loan sent a blizzard of form letters and either ignored her request for a loan modification or continuously lost her paperwork when she tried to follow the loss mitigation procedures. Her loan was sent to a law firm to foreclose. When the servicer did not have the assignments needed to foreclose, their attorney created and signed a fake assignment of mortgage to make it appear the company owned the loan when it did not. In fact the servicer did not own the loan until more than a year after the fake assignment was prepared and signed. This widow will lose her home as a result of the servicer's failure to comply with VA requirements contained in the note and mortgage and based upon fake documents. This also is the experience of a veteran who has been receiving the "lost document" run around for almost two years in an effort to utilize the VA protections to which he is entitled because of his service of our country.

This failure to evaluate loan modification documents or to continuously lose the documents is one of the main reasons why the HAMP program has not had the intended effect of helping all consumers save their homes. The use of fake documents is also rampant. I have clients who are being sued by two different companies represented by

two different law firms for the same loan. Both companies cannot own her loan but each continues to add foreclosure related fees to the amounts she owes. Servicers also have no incentive to modify loans because they are being paid in full by the loan guarantors Fannie Mae, Freddie Mac and Ginnie Mae. In other words our children, when they reach adulthood, will be paying off the debt created by the same entities that created the mortgage aspect of the financial crisis. These entities are being paid up front all the expense of all tax payers while homeowners are losing their homes, neighborhoods are deteriorating and homes sit vacant by the thousands further depressing the market.

Because loan servicers are not complying with the loss mitigation requirements imposed by the Servicemember Civil Relief Act and with FHA, VA, Fannie Mae, Freddie Mac loans and loans held or serviced by entities which received TARP funds, borrowers in trouble are turning to foreclosure assistance companies that offer to help keep consumers from losing their homes. These companies promise to stop foreclosures and collect hundreds if not thousands of dollars from homeowners already deep in debt. This money could be going toward the delinquency in the home payments but instead is taken by these foreclosure relief companies who pocket the money and move on to the next state of victims. The Federal Trade Commission has already said they will not be pursuing enforcement actions against these companies. Because of tight state budgets and the interstate nature of these companies, state regulators do not have the resources to address these companies preying on foreclosure victims.

The Bureau is Needed to Address Increased Illegal Debt Collection Activity

I have also noticed an increase in aggressive debt collection tactics. I have several clients who are being sued by debt buyers for debt that has already been repaid, was forgiven through litigation or discharged in bankruptcy. Because credit is more difficult to obtain, debt collectors are being more aggressive in trying to collect old debt.

The creation of false documents to support debt collection is not limited to mortgage foreclosure. It is also common, if not the norm, for debt buyers to create fake documents because they do not have the paperwork to prove they own the debt or the amounts owed. When they buy the debt, they only pay pennies on the dollar and they do not get the paperwork needed to back up their claims.

Not Only Are Our Homes Not Safe From Big Banks but Door to Door Sales and Finance Companies Seek us out for Illegal Products

Door to Door sales provides the delivery system for another form of false open-ended credit. The sales staff canvas neighborhoods including those whose demographics are primarily older American consumers, neighbors surrounding military bases and other vulnerable consumers to offer products such as water purifying equipment, solar panels and security systems. They offer on the spot financing. Sales staff use scripts and have a specialized routine most likely to trick homeowners into buying products financed by false open-ended credit. For example, I have represented over a dozen older American homeowners. Each time the story is the same, the salesman shows up at their house with a water testing kit, draws some tap water, places a tablet in the water and watches with the older American homeowner as their water clouds up. Then the salesman adds another

tablet and the water magically clears. The salesman then explains the cloudiness means the homeowners' water is dangerous to their health and that they can save their health and save money with water conditioned with their system. They usually will not leave until the consumer signs on the bottom line, spending hours at a time at the consumer's home.

The Truth in Lending cost of credit disclosures are not provided until after the equipment is installed. It is not until the disclosures are provided that the homeowner learns the payments are much more than they can afford. If there is a default on the loan, the lender sues the older American homeowner in a city which is a four hour drive from the consumer's home. They cannot afford to travel to court or to hire an attorney and a judgment is entered against them.

These companies also target young military families like clients of mine with little children and tell them their water is dangerous and will cause cancer if not treated. Salesmen refuse to leave until the contract is signed, staying through the consumers' dinnertime while their children want dinner, install the equipment and then days later provide the financing contracts. The salesman promised the interest rate would be really low because of their good credit and when the contract is presented; after the equipment is installed the interest rate is 17% which was significantly higher than the low rate they were promised because of their good credit score. The airman has to pay because he knows if he does not he may lose his security clearance has to pay even though the equipment makes their water taste bad and leaves their clothes yellow.

Why We Need a Consumer Financial Protection Bureau

Unfortunately, there are too many consumer victim stories to tell and this is why we need a strong Consumer Financial Protection Bureau (CFPB) with full authority to protect consumers, particularly our most vulnerable members of society. The CFPB will help protect consumers from many of the fraudulent, abusive, and deceptive practices I have shared with you this morning. Notably,

- The CFPB will put teeth into predatory lending laws:
 - Predatory lenders often get away with their deceptive practices because the Federal Trade Commission (FTC), which regulates debt collectors and mortgage brokers, has very few attorneys devoted to consumer protection and lacks basic tools such as rule-making and oversight/monitoring authority. In the past five years, the FTC has filed only 1 case against a mortgage broker. The CFPB will strengthen the enforcement and regulation of laws such as the Truth in Lending Act.
 - The Federal Deposit Insurance Corporation (FDIC) and Federal Reserve Board regulate predatory lending practices, but both are also charged with promoting the stability of the banks that make loans. By avoiding this kind of conflict of interest, the CFPB would increase the likelihood of fraudsters getting caught.
- The CFPB will combat abusive debt collectors and debt buyers:

- Debt collectors and buyers also ignore the law without penalty. Despite nearly 500,000 complaints under the Fair Debt Collection Practices Act (FDCPA) in the past five years, the FTC has filed only 8 cases against debt collectors. The CFPB would devote more resources and help strengthen enforcement, so that debt collectors no longer think they can get away with shady practices that they know are illegal.

- Currently, no federal law or regulation requires debt buyers to keep records of what they are buying or even to possess original documentation. By consolidating and streamlining rule-making and enforcement of consumer protection laws, the CFPB could identify this and similar loopholes in consumer protections and promote new, necessary protections.

The CFPB's launch is only a few days away; it vital that we provide them with the necessary support to be a successful consumer watchdog agency. Thank you for the opportunity to testify today. If you have any questions or comments regarding this testimony, please feel free to contact me.