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On behalf of the National Pawnbrokers Association and the Alabama Pawnbrokers Association

Committee on Financial Services

Subcommittee on Financial Institutions

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Chairman Capito, Ranking Member Maloney, and Honorable Members of the Subcommittee, my name is Fran Bishop. I have owned my own pawnshop for 24 years and have served the National Pawnbrokers Association (NPA) as its president and as chair of its government relations committee. I also have been actively involved with the Alabama Pawnbrokers Association.

The NPA, the only nationwide pawn trade association, represents more than 1800 independent owners of pawn stores across the United States. By number of stores and percentage of the overall pawn market, our membership dwarfs the three publicly traded companies in the pawn industry. Independent, family-owned pawn stores or small regional chains represent approximately 78 per cent of the market for pawn transactions. None of the publicly traded pawn companies are members of our Association. None have any authority to speak for the Association or the pawn industry as a whole. Our members serve roughly 30 million consumers across the United States every year. The NPA only represents pawnbrokers; the Association takes no position on other non-depository providers' products.

The NPA is strongly and unequivocally opposed to both H.R. 1909 and H.R. 6139. We recognize that the sponsors of both bills were well-intentioned, but we see both bills as having consequences far beyond those the sponsors intended, which we describe below in greater detail.

H.R. 1909 and H.R. 6139 qualify as among the most sweeping deregulations of financial service providers ever introduced into Congress**.** Either bill, if passed, would allow a small number of mega providers to grab huge market shares and to be subject to relatively little or no regulatory oversight at the federal or state levels. But most of us who operate independent, family-owned, community-based providers will continue to be subject to the array of federal, state and local laws and regulations that the industry supporters of these two bills want to escape. And being free of those levels of laws and regulations will save the big charter holders so much money that they can price their products well below ours and keep their profits high. These bills will place millions of middle-class consumers at the mercy of these large, remotely operating companies and place thousands of family-owned, local businesses like mine at enormous competitive disadvantage.

I. <u>Industry Overview and Compliance Requirements:</u> Pawnbrokers, the oldest providers of consumer credit in the world, enjoy a long working relationship with the States. New York enacted the first state law regulating the pawn industry – a consumer protection law, I might add in the 1890's. Many other states enacted pawn consumer protection laws during World War I and others since the explosion of consumer credit products occurred in the 1960's and 1970's.

Pawnbrokers are among the most heavily regulated providers of consumer credit products in the nation. We are regulated by local governments, as well as being supervised and examined by the States. In most states, a single state agency issues our general business licenses. In all states, law enforcement agencies can inspect our records. State-level regulation of the pawn industry allows the States to make laws that suit the needs of their own residents. Over the years, many of the more populous States, such as New York, California, Michigan, Ohio, Illinois, and Massachusetts, have enacted lower permissible ceilings on the interest and other charges pawnbrokers may charge. Some of the less populated States allow higher interest rates and charges to enable pawnbrokers and other traditional State-licensed lenders to offer credit to their residents. A few larger States allow among the highest interest rates in the nation. One thing we have learned is that States enact laws that fit their residents' interests and that regulation of pawn transactions are not "one-size-fits-all" propositions no matter how much anyone claims they are. This bill, however, effectively allows federal charter holders to "export" the interest rates and charges from one state to the next, taking away from the States the power to decide what packages of interest rates and charges make sense for that State's residents.

Pawnbrokers must comply with thirteen assorted federal laws and regulations. The majority of these are federal consumer credit protection laws, including laws enforced by federal bank regulatory agencies, the Federal Trade Commission, the Department of Defense, and now the Consumer Financial Protection Bureau (the CFPB). Other applicable laws and regulations involve reporting of cash transactions to the Internal Revenue Service and compliance with the anti-money laundering laws and anti-terrorism laws enforced by agencies within the Department

of the Treasury. Pawnbrokers are subject to the CFPB for enforcement and rule-making purposes, but are not subject to the same examination and supervision authority that the CFPB has over payday and title lenders, mortgage originators, or student loan originators.

It's pretty clear to us that escaping the general jurisdiction of the CFPB, and particularly that agency's powers to examine and supervise them and to promulgate regulations over their products, is a major goal of industry supporters of H.R. 1909 and H.R. 6139.

Freedom from the CFPB's grasp is not the only reason why certain large companies want the protections that H.R. 1909 and H.R. 6139 offer them. They also want to escape from restrictions being imposed on their products by the States that granted them their current corporate charters and licenses to operate – whether those restrictions are imposed by State legislatures or by the voters of the States in which they wish to operate unfettered. States including North Carolina, Ohio, and Georgia have restricted or prohibited products that the companies supporting H.R. 1909 and H.R. 6139 want to offer. Others States such as Pennsylvania have insisted that companies seeking to do business with their residents get licensed and operate under the terms of those licenses. Citizens in Missouri will be voting in the general election this fall on new limits on certain loan products (but not on pawn loans) following a successful ballot drive by residents and prominent church groups in that State.

The NPA's independent, family-owned members stand ready to play the same role in the consumer credit market that we have played for more than 120 years under state regulation and since Christopher Columbus pawned Isabella of Spain's jewels to finance his search for the New World, and the Vatican financed the kings in Europe. We're a vibrant group with the interests of our local customers, employees, and local communities at heart.

Independent pawnbrokers are the nation's "safety net" lenders to individuals who do not have credit cards or bank accounts. We help middle-class Americans get to work, buy trade supplies, and we help business owners make payroll when their business customers do not pay them on time. We help families of soldiers deployed, injured and killed abroad cope with the emergency financial needs they have. Big providers located outside communities are not likely to care as much or do as much for individual customers in need as we do, or to help out the local church or police benevolent associations with charity campaigns.

H.R. 1909 and H.R. 6139 are likely to wipe our businesses off the map and destroy the locally provided credit and tens of thousands of jobs in communities like yours for the benefit of a few large companies.

II. <u>NPA's General Concerns about H.R. 1909 and H.R. 6139:</u> As far as the NPA is concerned, the overall credit market should continue to have both a wide array of products from which consumers can choose, and a wide array of providers. In other words, we believe that more competition, not less, makes for a better overall consumer credit market.

However, both H.R. 1909 and H.R. 6139 would have the result, in a relatively short period of time, of reducing the number of providers in the overall market. Lessons from the past tell us that fewer competitors mean higher prices for consumers and small businesses, not lower prices. Anyone whose neighborhood lost a pharmacy, grocery store, or gas station knows that prices rise when fewer competitors are in the local market.

Both bills make it sound as if non-depository consumer financial services providers are not regulated sufficiently and thoroughly. We objected when banks tried to use this argument to cause more attention to be paid to non-banks during the Dodd-Frank Act debate. We object now that this same argument is being used to suggest that the Office of the Comptroller of the Currency (OCC) will necessarily do a better job of regulating non-depository providers and products than the states have been doing for decades.

A. Effect on State Consumer Protections: Consumers in our States enjoy consumer protections that are enforced and the states also see to it that we meet our obligations under federal laws. The manner in which pawnbrokers and pawn loans are being regulated is working: one rarely hears consumer complaints about pawn transactions. That old adage about "not fixing what's not broken" comes to mind every time I hear or read about how state-licensed providers need more federal supervision.

Moreover, the bills would leave as the primary enforcer of important consumer protection laws and regulations the OCC, an agency that already has enormous responsibilities for the safety and soundness of all national banks and for their compliance with federal consumer credit protection laws. No matter how sincere the OCC's intentions are to exercise the important supervisory roles Congress assigns to it and to perform the same level of supervision and enforcement over new non-depository providers to whom the OCC grants federal charters, it is unrealistic to expect that non-depository providers will or should compete for attention with the banks on which other parts of the national and global economies depend.

Thus, enactment of either H.R. 1909 or H.R. 6139 virtually guarantees that non-depository charter holders will get less attention from regulators and enforcers of federal consumer credit protection laws than they have for the past 40 years. This is clearly what the industries and industry members urging enactment want. Indeed, a careful reading of H.R. 6139 reveals that *the OCC will have less power over products offered by non-depository charter holders than it has over the depository providers in its jurisdiction, national banks and federal savings associations.*

B. Effect on Markets: These giant companies and certain individuals want to control the market for consumer financial products for the millions of consumers who either do not have bank accounts or who normally do not get bank loans for their short-term credit needs, persons not only among the most eager to have credit opportunities and to build credit histories, but also among the most vulnerable. The bills' supporters want to take the market shares that their

competitors have – by being allowed to slash their costs and thus under-cut our prices while retaining their profits (or increasing them) to out-compete us – with a federal charter and complete freedom from the enforcement of laws the States have enacted providing the juice for their plans.

These giant providers want Congress to give them this extraordinarily un-level playing field, and NPA's members hope you will have the good sense and respect for States' rights not to give industry supporters of these bills this charter bonanza.

National banks have never been big players in the consumer credit market, except in their roles as issuers of credit cards, and leading up to the 2008 recession, in their roles in housing finance. Instead, local banks, credit unions, and state-licensed non-depository providers such as pawnbrokers have been the bread-and-butter providers of consumer credit, and particularly of installment loans and of short-term loans. Pawnbrokers are the major safety-net lenders to middle-class Americans.

III. Specific Concerns about H.R. 1909 and H.R. 6139: Contrary to representations you may have heard, H.R. 6139 is just as much about offering a small number of potential providers of practically unlimited consumer credit products as is H.R. 1909. Both are go-anywhere, offer-anything "perpetual hall pass" type of legislation. If anything, H.R. 6139 gives more authority to providers than H.R. 1909 does.

A. Specific Concerns about H.R. 1909, which:

•allows non-bank lenders to make any type of loan, consumer or commercial, with no dollar limits in any location or through any medium of their choice with virtually no regulation *of the products or providers* by any federal or state regulator;

• limits ownership of non-bank charter holders to certain giant providers in the non-bank and bank sectors, and excludes all but the biggest players from holding charters;

• allows charter holders to avoid making the Annual Percentage Rate (APR) disclosure required by the federal Truth in Lending Act (TILA) since 1969, but keeps the requirement in place for other bank and non-bank providers;

•allows charter holders to make loans larger than state law permits for lenders currently licensed under state law;

• preempts all State laws and State law-writing authority, as well as State enforcement authority, with a preemption standard that is much broader than Dodd-Frank's preemption standard;

• exempts federal charter holders from all State and local licensing fees, thus depriving them of revenues and transferring for these giant providers those state and local revenues to the OCC, but leaves their competitors subject to fees;

• overrides State legislation that bans payday loans as an exercise of the "police powers" that the States expressly reserved when they signed the United States Constitution, or that limits the terms on which consumer products may be offered – including frequency and conditions or rate caps, but leaves all such restrictions in place for all other providers;

• eliminates all State powers to enforce laws, such as State fair lending laws, depriving States of their "police powers" over entities who market and provide products in their States; and,

• exempts charter holders from the CFPB's jurisdiction for all purposes, but leaves current competitors under the CFPB's jurisdiction for all purposes.

B. Specific Concerns about H.R. 6139, which:

• still limits charter eligibility to "qualified non depository creditors" and gives the OCC discretion on approving charters for applicants;

•requires only an initial, three-year plan to operate "its primary business activity" as serving the needs of underserved consumers and small businesses. This "three-year plan period" is the only period in which the applicant must explain how its products will be affordable;

• exempts all products not part of the suite of products for "underserved consumers and small businesses" from regulation and enforcement by the OCC as well as from regulation and enforcement by the States. Products outside the suites will not be subject to the supervision or regulation of the CFPB or other federal or State agencies;

• allows persons in joint ventures or affiliated with charter holders to enjoy benefits comparable to those H.R. 6139 would give charter holders, thus extending the bill's huge umbrella powers to providers not under the supervision of the OCC or CFPB, or, effectively, of the States without even the opportunity for a regulatory agency to approve their participation or to supervise them; and

• gives charter holders additional authority to engage in activities that are "incidental, implied, or reasonably necessary" to carry out the express powers granted in the bill. The terms "incidental, implied, or reasonably necessary" are common terms in federal statutes and case law interpreting the National Bank Act and have been, particularly since 1960, the sources of greatly expanded powers being exercised by national banks. These boot-strap adjectives, if retained in the final bill, would allow charter holders a wider expanse to engage in bank-like activities, with the exceptions of taking deposits or making commercial loans in excess of $25,000 small business loans, than even this broad bill appears to allow. These additional powers also suggest that the bill's real intent is to create unlimited powers beyond products for underserved consumers and small businesses without review by appropriate Federal or State regulators or and reference to State laws that currently regulate products in the general consumer loan marketplace.

C. **H.R. 6139 does not:**

• require that "more affordable" consumer credit products be offered to consumers – indeed, because no restrictions or "rate caps" can be placed on credit products, there is no guarantee that consumers will realize any savings over the costs of products currently being offered by state-licensed competitors of the bill's industry supporters. The bill's repeated references to products that are "commercially viable" make the lip service to affordable products look even weaker. Nothing in H.R. 6139 actually requires "affordable" terms for credit products;

• require many protections for underserved consumers. The exclusive protections described include (a) a once-annual opportunity for an underserved consumer who is unable to repay an extension of credit with a term of less than 120 days to obtain a no-cost extended repayment plan, (b) products or services with features to facilitate personal savings or to assist in enhancing credit records, but only "to the extent reasonably possible" – which means no requirement at all, and (c) a ban on consumer loans of 30 days or less or extensions of credit unless it has a "reasonable basis" for believing the consumer can repay the loan;

• restrict the ability of payday or other lenders whose products have been restricted by the States to offer products similar to payday loans so long as they are of at least 31 days' duration. Just call these *stretch* payday loans;

• merely "replace" the APR disclosure required by the TILA since 1969. Rather, H.R. 6139 exempts all consumer credit extensions with terms of one year or less from all of Subpart A of Subchapter I of TILA, among TILA's most valuable requirements. The result is the loss of useful credit shopping tools to the class of consumers who most needs to be educated about and engage in comparison shopping for credit;

• do much to help consumers who are underserved enhance their credit standing;

• allow "only OCC approved loans" to be offered. The bill's "deeming approved" provisions, its high hurdle for OCC disapproval of products, and the 45-day limit on the OCC's opportunity to disapprove products means that most products will come to the market just as the provider wants them to be and without explicit "approval" from the OCC. The OCC can disapprove products only based on a "fair and reasonable determination of the facts and circumstances regarding a proposed financial product or service" and must conclude that "offering the proposed product or service will significantly harm the interests of underserved consumers or small businesses." Thus, you should expect that OCC disapproval will be extremely rare, and that is what H.R. 6139's industry supporters hope will be the result of these requirements.

• require the use of model forms or any other standardized replacement for TILA's model forms or standardized APR credit cost disclosures. Creditors will be free, unless directed otherwise by OCC regulations, to make "true cost disclosures" without restriction on how they present the information;

• allows the OCC to take action against providers of products "deemed approved" only to ensure that products will not significantly harm underserved consumers or small businesses;

• give the OCC any authority to regulate any other product offered by the charter holder if the product is not offered for the underserved or small business markets. Thus, H.R. 6139 provides no regulatory power whatsoever by any federal entity, and a complete escape from regulation and licensing by every unit of state government for all products other than those specifically designed for underserved consumers and small businesses. This bill would create, for the majority of products that charter holders may seek to offer, a small group of unregulated credit providers;

•grant any approval, supervision, or enforcement powers to the CFPB or any other federal or state regulator of products offered by charter holders, contrary to representations made by industry supporters of H.R. 6139. This appears to include insured depository institutions and bank and thrift holding companies, which are currently subject to jurisdiction of the FDIC or the Board of Governors of the Federal Reserve System (Board);

• provide any protection for consumers against offshore lenders or lenders based on or affiliated with sovereign tribes in the United States. The bill may help charters holders compete against these two classes of lenders, but it will not stop consumers who choose to use those lenders from doing so. It grants no new federal enforcement authority to thwart offshore lenders operating in the United States, and indeed weakens the States' ability to act to prevent remote offshore, tribal, or online lenders from taking advantage of consumers;

•provide the CFPB authority to oversee the activities of charter holders. H.R. 6139 expressly grants exclusive "examination and supervision" authority over charter holders and the responsibility to "monitor" charter holders' compliance with the charter act and "all other applicable laws and regulations" enumerated in Dodd-Frank's section 1002(12) to the OCC. H.R. 6139 gives to the OCC exclusive power to prescribe regulations to govern products offered by charter holders – with the very limited powers to disapprove or condition approval of products noted above;

* give the OCC power to regulate "unfair, deceptive, or abusive powers" that the CFPB has and the FTC also has; and

• provide any the CFPB authority to enforce federal consumer financial protection laws (as enumerated in section 1002(12) of the Consumer Financial Protection Act of 2010, 12 U.S.C. 5481(12) against charter holders. The only other entity with enforcement powers under H.R. 6139 will be the attorneys general of the States (or the holders of equivalent State powers). State AG powers will be limited by H.R. 6139's "consultation" requirements except in "emergency" cases and the OCC will have power to replace the State AG as plaintiff and remove the action to federal courts.

IV. <u>Conclusion:</u> H.R. 6139 is H.R. 1909 in the Emperor's New Clothes. Both are sweeping changes in the diversified regulatory landscape for consumer financial products and services that exists today. Both are huge grabs of regulatory authority from the States without a national emergency or comparable national interest as justification. Both bills create a new bureaucracy inside the OCC. H.R. 6139 just grants less authority to the OCC, and more to the companies that support it and plan to become charter holders.

Both bills will permit charter holders to operate at vastly reduced costs by eliminating most of their current compliance obligations at the State and local levels, granting broad preemption powers over State and Federal efforts to regulate their activities, and allow them in the not distant future to impose oligopoly powers in a vastly less-populated market. Providers with such powers eventually will be able to impose significant and permanent price increases on the consumers and small businesses they claim need their help to get credit once they undercut their competitors (that includes my business) and drive us from the marketplace. Both bills will allow elite companies and individuals to take economic benefit out of our communities and shift it to some other State.

On behalf of the NPA and the tens of millions of consumers who are our customers, consumers we know and work with when they need credit, and the thousands of individuals our members employ in local communities like yours, we urge subcommittee members – and the members of the Committee as a whole – not to vote for H.R. 1909 or H.R. 6139. I mentioned my impression that these bills are a lot like the Emperor's New Clothes. But, down in northern Alabama, my customers would more likely say that these bills are like "pigs in a poke." And whichever of these analogies one uses – that pretty much sums up why the NPA's membership opposes these bills.

Thank you for this opportunity to share the views of the National Pawnbrokers Association, which proudly represents independent, family-owned providers of pawn loans and tens of millions of consumers who use our services every year. We are proud contributors to the communities and consumers we serve. I respectfully request that this prepared statement be made part of the formal record for this hearing.