

February 27, 2009

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

Dear Majority Leader Reid and Minority Leader McConnell:

We are very concerned about section 626, Division D, Title VI of H.R. 1105, the "Omnibus Appropriations Act of 2009". Section 626 directs the Federal Trade Commission ("FTC") to issue new rules for mortgage loans and provides broad duplicative authority for state attorneys general ("State AGs") to enforce these rules and all consumer lending covered by the Truth-in-Lending Act ("TILA").

This provision was inserted in H.R. 1105 at the last minute with no consultation with the Banking Committee, which has exclusive jurisdiction over this issue, and no notice or consultation with the Federal Reserve Board ("Fed") or other federal regulatory agencies which are the experts in this area and already have exclusive authority to enforce TILA for insured depository institutions.

The provision is unnecessary because state AGs already have the authority to bring action against state licensed businesses engaged in deceptive activities. The FTC also has existing authority to bring action against businesses that are not subject to federal banking agency supervision and that engage in unfair or deceptive actions with respect to mortgage and other consumer lending.

The provision is harmful because it creates uncertainty and confusion. The Fed and other federal bank, thrift and credit union regulators already enforce federal mortgage laws and TILA (which covers mortgages and other consumer transactions) with respect to insured depository institutions. Section 626 will create a patchwork of conflicting authorities and interpretations of federal laws dealing with home loans and other types of consumer finance transactions. In fact, the Fed and other government agencies recently adopted new regulations for mortgages. Adding Section 626 to the existing regulatory framework will create confusion and uncertainty for all businesses that finance these transactions and provide credit throughout the country at a time when the housing market and the overall economy are already highly unstable.

Section 626 is also likely to lead to costly and unnecessary litigation at a time when businesses across the country are facing a very difficult economic environment. Several states have already used contingency fees and other legal services arrangements with private law firms to "outsource" their consumer protection enforcement responsibilities to private law firms, often with little oversight from either the State AGs or state legislatures. Using private law firms to enforce state law sets up an inherent conflict that is not always beneficial to the public, and enactment of Section 626 will only add fuel to this disturbing trend.

The substance of this issue should be dealt with by the appropriate committees. Therefore, we strongly urge you to remove Section 626 from H.R. 1105 when it is considered by the Senate next week.

American Bankers Association  
American Financial Services Association  
Consumer Bankers Association  
The Financial Services Roundtable  
U.S. Chamber of Commerce  
U.S. Chamber Institute for Legal Reform

cc: The Members of the United States Senate