

March 4, 2009

To: Members of the U.S. Senate

Re: Crapo Amendment to H.R. 1105

We are very concerned about section 626, Division D, Title VI of H.R. 1105, the Omnibus Appropriations Act of 2009, and strongly support an amendment that will be offered by Senator Crapo to strike this provision from the bill.

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).

If enacted into law, Section 626 will create 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 support the Crapo amendment to remove Section 626 from H.R. 1105.

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