Testimony before the

U.S. HOUSE OF REPRESENTATIVE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

regarding

"Legislative Proposals for a More Efficient Federal Financial Regulatory Regime"

September 7, 2017

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INTRODUCTION AND SUMMARY

Mr. Chairman, Ranking Member Clay, and Members of the Subcommittee, thank you for inviting me to testify today regarding the six bills being considered at this hearing. I offer my testimony here on behalf of the low-income clients of the National Consumer Law Center.[1] We oppose each of the following bills because they will all harm the interests of American consumers:

1. **H.R. 2359, the FCRA Liability Harmonization Act**, would dramatically reduce accountability for credit bureaus and other companies, including when they wrongfully label innocent consumers as deadbeats, criminals, or terrorists. The bill eliminates punitive damages under the Fair Credit Reporting Act (FCRA), no matter how egregious the violation. It caps both statutory damages and actual damages for class actions to

[1] 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 many examples of the damage wrought by consumer abuses from every part of the nation. It is from this vantage point that we supply these comments. This testimony was written by Chi Chi Wu, with assistance from Carolyn Carter, Alys Cohen, April Kuehnhoff, Andrew Pizor, and Lauren Saunders of NCLC; Christine Hines of the National Association of Consumer Advocates, and Marcus Stanley of Americans for Financial Reform.

$500,000, no matter how many thousands or millions of consumers harmed or the extent of their losses caused by illegal conduct

2. The **Credit Services Protection Act of 2017** creates an unnecessary and harmful exemption for credit bureaus from the Credit Repair Organizations Act (CROA) and potentially allows illegitimate credit repair outfits to escape CROA. The bill substitutes weaker and far less enforceable provisions for the protection of CROA. These provisions fail to prohibit advance fees, lack clear disclosure of the right to cancel, allow providers to keep part of advance payments after cancellation, cannot be privately enforced, preempts state law and state attorney general enforcement authority, and could limit the CFPB's authority over the credit bureaus with respect to credit monitoring and identity theft prevention products.

3. **H.R. 1849, the Practice of Law Clarification Act of 2017,** exempts collection attorneys, who have a long history of illegal and abusive conduct, from essential protections against abusive and deceptive debt collection practices.

4. **H.R. 3312, the Systemic Risk Designation Improvement Act of 2017,** would put major new constraints on the ability of the Federal Reserve to provide basic oversight of large bank holding companies that are not among the largest eight global mega-banks, by prohibiting any enhanced systemic risk regulation of such banks unless the Federal Reserve passes special regulations that must be ratified by a two-thirds vote of all financial regulators. It would actually increase systemic risk by dramatically restricting prudential oversight over these large bank holding companies.

5. The **Community Institution Mortgage Relief Act** would create loopholes for abuse by rolling back essential consumer protections and inappropriately extend to larger institutions the carefully tailored exemptions that currently apply to community banks.

6. The **TRID Improvement Act of 2017** undermines incentives to comply with common sense mortgage disclosure requirements and weakens crucial incentives for lenders to exercise due diligence and self-oversight.

Our opposition to each of these bills is discussed further below.

I. H.R. 2359, the FCRA Liability Harmonization Act, would dramatically reduce accountability for credit bureaus and other companies

H.R. 2359 drastically decreases the consequences for credit bureaus, background check agencies, and other "consumer reporting agencies" when they violate the Fair Credit Reporting Act (FCRA), including when they malign the reputations of innocent Americans by falsely claiming they are deadbeats, criminals, or even terrorists. The bill would eliminate punitive damages, both in class actions and in individual cases, for willful violations of the FCRA, no matter how egregious the conduct. It would impose an arbitrary, one-size-fits-all cap on both statutory damages *and actual damages* for class actions to $500,000, no matter how many thousands or millions of consumers were harmed or the extent of their losses caused by the illegal conduct.

H.R. 2359 thus radically reduces accountability for credit bureaus, background check agencies, and other companies with respect to the most serious violations that they commit in besmirching the good names of innocent Americans. While being mislabeled a deadbeat, criminal, or terrorist by itself causes significant harm, the consequences go beyond that – this type of inaccurate information deprives consumers of their ability to access credit, employment, rental housing, and more.

Limiting the consequences for wrongdoers under the FCRA would enable credit bureaus and background check agencies to disregard federal protections meant to ensure accurate reporting of credit records and other consumer reports. The bill also would have a deleterious effect on the marketplace due to the almost inevitable spread of defective data and information on millions of consumers and workers that would result.

FCRA violations are far from just "technical" as supporters of this bill suggest. FCRA statutory and punitive remedies are only awarded when a company violates the law willfully or in reckless disregard of the law. Punitive damages have been a feature of the FCRA since its enactment in 1970. The bill's provisions would restrict damages where consumers already have met the burden of proving that the perpetrator understood the law and violated it anyway. And notably, the three major credit bureaus (Equifax, Experian and TransUnion) are often the top three most complained-about companies to the Consumer Financial Protection Bureau (CFPB) every month, with the vast majority of complaints involving incorrect information on consumers' credit reports. *See, e.g.*, Consumer Financial Protection Bureau, *Monthly Complaint Report*, Vol. 21, March 2017, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Monthly-Complaint-Report.pdf.

Consumer losses caused by credit reporting malfeasance are all too real. For example, Angela Williams of Cocoa, Fla. was rightfully awarded punitive damages by a jury after spending 13 years wrangling with, and submitting multiple disputes to, Equifax to fix her credit report, which had contained at least 25 accounts that did not belong to her. Ms. Williams was wrongfully pursued by creditors and debt collectors, and repeatedly denied credit due to the

company's systemic failure to fix the errors in her credit report. She suffered an enormous financial and emotional toll from the experience.

Another example of the real and dramatic harm caused by reporting agencies is the case of Richard Williams, who was repeatedly falsely labeled a criminal by First Advantage Background Services Corp. First Advantage's error was confusing Richard Williams with 'Ricky Williams,' who had the same birthdate as Richard and had been convicted or charged for a number of crimes including felony burglary and battery on a pregnant woman. This error cost Richard at least two jobs. First Advantage's error was especially outrageous given clear evidence that the two were different individuals, such as an on-line record that indicated that "Ricky" was still incarcerated at the same time Richard was applying for employment about 300 miles away. First Advantage also twice failed to use its special procedures for reviewing common names. A jury understandably awarded punitive damages to Richard, who was unemployed except for a short period for over 1 ½ years due to First Advantage's error. In fact, Richard Williams' attorney suggested a range of amounts in punitive damages and the jury, clearly outraged by the background reporting company's unlawful conduct, awarded the highest amount suggested.

Another example of egregious harm caused by credit reporting errors is from June of this year, when a California jury awarded statutory and punitive damages to 8,000 consumers in a class action after finding that TransUnion violated the FCRA when it recklessly misidentified class members as terrorists and drug dealers in their credit reports, confusing the consumers with similarly named individuals on a government watch list. TransUnion's liability for significant damages was appropriate as it willfully engaged in the exact same conduct that had resulted in a verdict against it upheld by an appellate court just six years earlier. But the company declined to

implement changes that could have reduced false matches. Trans Union's failure to properly verify affected consumers' information caused them tremendous injury. For example, the lead class member, Sergio Ramirez, alleged that he was prevented from buying a car because TransUnion told lenders he potentially matched two entries on the government watch list. The remedies in these cases were aimed at compensating harmed consumers, deterring similar bad behavior and protecting the marketplace from future damage.

Additional examples of consumers who were harmed by false and inaccurate information are included in Attachment A, and a letter from over 30 public interest organizations opposing H.R. 2359 is attached as Attachment B.

H.R. 2359 would deny consumers such as Angela Williams, Richard Williams, and Sergio Ramirez the ability to seek full accountability for the outrageous violations of the FCRA that affected their lives. In each case, a jury of ordinary Americans determined that the credit bureau or background check company should rightfully be penalized for its flagrant offenses. The bill restricts the remedies for consumers without sound or logical justification. In addition to eliminating punitive damages and capping class action damages at $500,000, the latter limitation would apply to a "series of class actions." Thus, consumers could potentially be limited to one recovery of $500,000, even if the credit bureau or other reporting company continued to break the law, necessitating a second class action. Furthermore, supporters of H.R. 2359 claim that the bill merely "harmonizes" the FCRA with other consumer laws, but no other consumer law limits *actual* damages in class actions to $500,000.

More fundamentally, the FCRA is unique among consumer laws because it supplants common law claims such as defamation and slander, which traditionally have allowed for punitive damages, when consumer reporting agencies are involved. As part of the legislative

bargain for the FCRA's protections, common law claims are severely restricted against reporting agencies and other industry actors. *See* 15 U.S.C. § 1681h(e) ("no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency,…except as to false information furnished with malice or willful intent to injure such consumer"). Thus, without strong remedies under the FCRA, consumers are left powerless to combat and deter false claims that ruin their financial reputations.

Under H.R. 2359, a company that willfully violates the law would escape punitive damages meant to punish and deter wrongdoing, and consumers would be denied justice for the losses caused by poor credit reporting and data practices. Careless and inaccurate credit reporting and data collection can devastate a consumer's wellbeing and financial health, including his or her pursuit of employment and access to credit. Liability for wrongful acts is a proven and powerful incentive for companies to comply with the law. By removing key tools to hold industry players accountable, the bill would weaken incentives to act properly and exacerbate misconduct in this sector, injuring more consumers and ultimately the marketplace.

II. The Credit Services Protection Act of 2017 creates an unnecessary and harmful exemption for credit bureaus from the Credit Repair Organizations Act.

The Credit Services Protection Act of 2017 would exempt the big three credit bureaus – and possibly many illegitimate credit repair organizations – from the Credit Repair Organizations Act (CROA). Instead, the bill would substitute a weaker and far less enforceable law governing "authorized credit services providers." The bill eliminates private remedies, preempts state law and state attorney general enforcement authority, and could limit the Consumer Financial Protection Bureau's authority as well.

This exemption from CROA is unnecessary and harmful to consumers and would remove protections for credit monitoring, identity theft prevention, and other products that are of dubious value. These products have been the subject of highly deceptive marketing as revealed by enforcement actions taken just this year by the Consumer Financial Protection Bureau (CFPB).

Currently, CROA applies to any person who provides services that purport to improve a consumer's credit record if they charge money for such services. Only non-profit organizations and a few other entities are exempted. The proposed amendment exempts from CROA any "nationwide consumer reporting agency" under the FCRA, 15 U.S.C. § 1681a(p) – *i.e.*, the credit bureaus Experian, Equifax and TransUnion - or any of their subsidiaries or affiliates. It also exempts any other entity that obtains the status of "authorized credit services provider" by applying and obtaining approval from the Federal Trade Commission (FTC). Approval is automatic after 60 days if the FTC does not act.

For years, the credit bureaus have sought an exemption from CROA in order to expand their sale of high-priced credit monitoring, identity theft prevention, and other subscription products. In addition to being far less effective for identity theft prevention than the simple tool of state-law mandated security freezes, the marketing of the credit bureaus' products has been notoriously rife with deception and abuse. These abuses are well-documented and include:

- Just this past January and March 2017, the CFPB took enforcement actions against all three credit bureaus for deceptive practices in their marketing of credit monitoring subscriptions. The CPFB ordered Equifax and TransUnion to refund over $17.6 million to consumers who were deceived into buying these subscriptions, plus pay fines totaling

$5.5 million. The Bureau also ordered Experian to pay a fine of $3 million for its deceptive practices.

- Ten years ago, the FTC took similar action against Consumerinfo.com d/b/a Experian Consumer Direct, ordering that credit bureau to refund nearly $1 million for deceptive practices in its promotion of credit monitoring products.
- The CFPB took enforcement actions against several of the largest credit card issuers (including Discover, Capital One, JPMorgan Chase, and Bank of America) over misleading marketing tactics in the sale of add-on products, including credit monitoring services. Collectively, these banks paid $1.38 billion in restitution and $79 million in civil fines in these cases.

There is absolutely no reason to exempt the credit bureaus from CROA so they can aggressively offer even more paid products similar to credit monitoring without the protections of the Act. While the proposed amendment does create a separate regulatory scheme for "authorized credit services providers," these protections are far weaker than CROA. Weaknesses of the proposed bill include:

- ***Eliminates protections.*** The bill does not include CROA's existing prohibition against charging advance fees. Nor does it require written contracts for these products, or require authorized credit services providers to provide copies of the contract to the consumer. It allows authorized credit services providers to sell products without CROA's existing requirement to retain signed disclosures for a minimum of two years to insure compliance.
- ***No clear right to cancel.*** The bill gives the consumer a three-day right to cancel a contract for these products, *but does not require that the consumer ever be notified of this*

right or that any notice be conspicuous, making it mere window dressing and a departure from other consumer protection laws.

- ***Requirement to pay fees.*** The bill creates a new requirement that a consumer who terminates a contract must pay "reasonable value for services actually rendered." In contrast under CROA, consumers may cancel without any penalty within 3 days. Thus, the bill allows credit bureaus to charge and retain steep "setup" fees or all of their fees upfront, so long as they refund some portion if the consumer cancels. The bill also could be read to imply that a consumer who has been sold a subscription for three years of credit monitoring services at $29.95 a month can cancel it only within the first three days, and has no right to cancel it later on if the services prove unsatisfactory or unnecessary.
- ***Automatic approval of applications after 60 days.*** The bill would allow a large number of organizations, not just the major credit bureaus, to escape from CROA. Illegitimate credit repair organizations are likely to apply *en masse* for registration with the FTC. Section 427(c)(3) of the bill provides that, unless the FTC acts upon an application within 60 days, it is "deemed as approved" and the applicant "shall be registered as an authorized credit services provider."
- ***Eliminates consumer remedies.*** This bill removes private remedies for consumers against the credit bureaus and other authorized credit services providers. It does not include a right of action for violation of its new additional provisions, including the prohibition against untrue or misleading statements regarding the services offered for credit education or identity theft prevention. More importantly, even when CROA does apply to a credit bureau or authorized services provider, it provides that only the FTC can enforce CROA with respect to those entities.

- ***Preempts stronger state laws.*** The bill preempts state laws that provide great consumer protection for credit education, identity theft protection and credit repair services offered by a credit bureau or an authorized credit services provider.
- ***Protections might be eliminated in fine print.*** Unlike CROA, there is nothing in the new additional provisions that states that any waiver of its protections is void and unenforceable. Thus, it is possible that the fine print of a contract could completely waive the bill's protections.
- ***Might eliminate CFPB authority.*** Section 425 of the bill could be interpreted to eliminate CFPB authority, making the FTC the sole enforcement authority for the credit bureaus with respect to credit education and identity protection services. The bill might have prevented the CFPB from bringing the recent enforcement actions discussed above.
- ***Denies state attorney general authority.*** Section 425 also appears to deny state Attorneys General the ability to enforce these provisions—either against one of the credit bureaus or against any other entity that obtained automatic approval of an application as an authorized credit services provider.

The credit bureaus claim that CROA impedes them from providing credit education to consumers. However, CROA merely institutes protections when the credit bureaus *charge for these products*. A plethora of websites and businesses provide the same or greater credit education than the credit bureaus for free, such as NerdWallet and CreditKarma. These websites earn revenue through referrals to credit card products but do not charge upfront fees and the consumer is not required to sign up for a credit card. In fact, one of the credit bureaus – TransUnion – is now offering a version of credit monitoring which is actually free using this

model, thus showing that the credit bureaus can offer these products without seeking an upfront payment.

On a global level, facilitating the credit bureaus' sale of highly profitable credit monitoring products would in fact give them a vested interest in the inaccuracy of the credit records they maintain. The more that consumers are concerned about inaccuracies in their credit records, the better these products will sell. There is no need or reason to give the credit bureaus an exemption from CROA. A letter from over 50 consumer, civil rights, and community organizations opposing the Credit Services Protection Act of 2017 is attached as Attachment C.

III. H.R. 1849, the Practice of Law Clarification Act of 2017, would allow collection attorneys a free pass from federal consumer protections regarding debt collection

H.R. 1849, the Practice of Law Technical Clarification Act of 2017, would eradicate essential protections against abusive and deceptive debt collection practices by collection attorneys. Passage of this bill would hurt consumers, especially people who have recently lost jobs, had a death in the family, or suffered another type of devastating personal loss.

In 1986, as the result of clear findings of abuses by debt collection attorneys, Congress amended the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692a, to ensure that attorneys who meet the statutory definition of debt collector must comply with all of the provisions of the law. Pub. L. No. 99-361, 100 Stat. 768 (effective July 9, 1986). Prior to this amendment, law firms were immune from the requirements of the FDCPA even when they were operating as debt collectors. They even advertised their competitive advantage over debt collection agencies that were required to comply with the FDCPA's consumer protections. H.R. Rep. No. 405, 99th Cong., 1st Sess. (Nov. 26, 1985) *reprinted in* 1986 U.S.C.C.A.N. 1752, 132 Cong. Rec. H10534 (daily ed. Dec. 2, 1985). H.R. 1849 would turn back the clock on this

important protection for struggling families by exempting attorney conduct from the consumer protections provided by the FDCPA.

Americans file more consumer complaints with state and federal officials about debt collectors than any other industry. Recent enforcement actions by federal agencies have highlighted numerous and widespread abusive and deceptive practices by collection law firms and attorneys. *See, e.g.,* Complaint, Consumer Fin. Protection Bureau v. Weltman, Weinberg & Reis Co., L.P.A. (N.D. Ohio Apr. 17, 2017); Consent Order, In the Matter of Pressler & Pressler, LLP, Sheldon H. Pressler, and Gerald J. Felt ¶ 39 (Apr. 25, 2016); Consumer Fin. Protection Bureau v. Frederick J. Hanna & Assoc., Stipulated Final Judgment and Order, 14-cv-02211-AT, at ¶¶ 10-11 (D.Ga. 2015).

Yet this bill would eliminate Consumer Financial Protection Bureau enforcement actions against law firms and attorneys. Your constituents would be harmed by this change in the law.

The FDCPA is a critical consumer protection statute designed to "eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e). In order to achieve this goal, it is critical that Congress ensure that the statute applies broadly to *all* debt collectors. A letter from 35 consumer, civil rights and community organizations opposing H.R. 1849 is attached as Attachment D.

IV. H.R. 3312, the Systemic Risk Designation Improvement Act of 2017,' actually increases systemic risk

H.R. 3312 would put major new constraints on the ability of the Federal Reserve to provide basic oversight of large bank holding companies that are not among the largest eight global mega-banks already designated by international regulators as global systemically significant banks. The legislation appears to prohibit any enhanced systemic risk regulation of such banks unless the Federal Reserve passes special regulations that must be ratified by a two-

thirds vote of all financial regulators.[2] These restrictions on basic prudential authorities are unprecedented and would significantly weaken the Federal Reserve's oversight authority as compared to its pre-crisis level.

Far from improving systemic risk regulation, this legislation increases the likelihood of big bank failures that could put at risk the economic security of millions of families. H.R. 3312 affects oversight of 27 large bank holding companies, which each hold over $50 billion in assets but are not among the eight U.S. global mega-banks. These banks, while smaller than the very largest Wall Street mega-banks, are still are among the largest one-half of one percent of all banks in the U.S. – enormously larger than community banks. Collectively, they hold over $4 trillion in assets, around a quarter of all banking system assets. Over sixty percent of deposits in the state of Ohio and over half of deposits in the state of Pennsylvania are held by large regional banks deregulated by this legislation. Should these banks become insolvent, there could be major economic impacts on regions that depend on them.

Large regional banks of a similar size to those affected by this bill played a major role in the 2008 financial crisis. Banks such as Countrywide, Washington Mutual, Wachovia, and Indymac were all significant participants in the housing bubble, and all of them failed during the 2007-2008 period. Their failures placed major stress on the financial system. H.R. 3312 would dramatically restrict prudential oversight of these kinds of large regional banks, putting our financial system at risk.

V. Community Institution Mortgage Relief Act would create loopholes for abuse

The Community Institution Mortgage Relief Act would roll back essential consumer protections and extend to larger institutions the carefully tailored exemptions that currently apply

[2] Specifically, these regulations must be ratified by a two-thirds vote of members of the Financial Stability Oversight Council (FSOC).

to community banks. Rather than expanding access to credit, the bill would create loopholes for abuse.

The bill raises the exemption from the Real Estate Settlement Procedures Act (RESPA) for small mortgage servicers from those servicing 5,000 loans to those servicing 30,000 loans. It also creates an exception that swallows the rule by supplementing the carefully tailored small lender exemption in the Truth in Lending Act that relieves them from the obligation to establish escrow accounts for higher-priced mortgages. Lenders with up to $50 billion in assets would be exempt. Targeted small-bank exemptions on servicing and escrow requirements should not be extended beyond community banks to larger banks and non-banks. Larger institutions operate with a different business model.

The CFPB already has provided small mortgage lenders and servicers with exemptions from specific rules, providing additional flexibility. Small banks play a critical role in providing borrowers from rural and other underserved markets greater access to credit. They participate much less in the capital market, have smaller transactions, and rely upon closer ties to the borrowers and communities that they serve. Expanding current exemptions to larger institutions, however, opens the door to abuses by larger banks primarily doing business outside the communities where they are based and by non-banks, which still make most of the risky, subprime mortgage loans.

Currently, companies that, along with their affiliates, are servicing no more than 5,000 loans are exempt from certain regulations if they own or originated those loans. This bill would not only increase that number six-fold but it also would remove the requirement that the loans be ones owned or originated by the servicer. As a result, much larger institutions would be exempted from procedures recently adopted to improve mortgage servicing efficiencies and

better align the incentives of mortgage servicers with those of investors, communities, and homeowners. By removing the requirement to own or originate the exempted loans, the bill would provide an exemption on loans where the servicer has much less of an investment in the loan's overall performance. Expansion of the small servicer exemption would unwind key protections recently adopted to prevent avoidable foreclosures.

The bill's escrow exemption also is overly broad and contrary to the lessons of the recent financial crisis. Escrow accounts protect consumers by ensuring that they have funds for reoccurring homeownership-related expenses, such as property taxes and insurance premiums. The current escrow requirement for higher-priced loans is modest and limited, and should not be further narrowed. It only applies to subprime loans and requires establishment of an escrow for only five years, after which the homeowner can choose to close the account. Moreover, the current rule already contains a specified exemption for small creditors operating predominantly in rural and underserved areas. Such creditors, along with their affiliates, must have total assets of less than $2 billion and must have extended no more than 2,000 first-lien covered transactions during the preceding calendar year.

The escrow rule was established because, in the years leading up to the financial crisis, many homeowners with subprime loans received loans without escrow included and then were surprised to find they owed additional monthly payments beyond their loan payments. It is not appropriate to exempt larger institutions from the requirement to establish escrows. These lenders have the resources to establish such accounts and the borrowers receiving these loans benefit from the streamlined payments. Moreover, the bill does not appear to require lenders exempted from the escrow requirement to hold the loans on their books going forward. This limits the lender's incentive to ensure the loan is affordable long-term. Overall, by reducing the

number of consumers that benefit from escrow protections, the bill increases the likelihood that consumers of higher-cost mortgages will not have the necessary funds to pay for ownership-related expenses.

We urge Congress to reject the Community Institution Mortgage Relief Act, which harms homeowners and communities by removing key protections for home lending and mortgage servicing.

VI. TRID Improvement Act of 2017 weakens incentives for mortgage lenders to self-monitor and promptly correct disclosure errors

We oppose the TRID Improvement Act of 2017, which undermines incentives to comply with common sense mortgage disclosure requirements and substantially weakens decades-old consumer protections. These amendments will weaken crucial incentives for lenders to exercise due diligence and self-oversight.

The existing statute encourages lenders to audit closed loans for compliance errors and to promptly correct them. The incentive for doing so is that the lender will not be liable for errors that it discovers and fixes on its own initiative. This bill, however, significantly extends the period of time a lender has after discovering a disclosure error to make a correction. This change will discourage lenders from promptly correcting inaccurate disclosures even when they are aware of them.

Of even greater concern, however, is the provision that eliminates the incentive to self-monitor, or to even be careful about accurate disclosures in the first place. This amendment will allow a lender to eliminate any post-closing compliance program and to ignore errors until a homeowner injured by deceptive disclosures tries to exercise her remedies under the law. This change will be particularly harmful to the majority of homeowners who will never realize that their lender's sloppiness has resulted in misleading and perhaps costly disclosure errors. Even a

supervisory action by a regulatory agency would be unable to provide meaningful accountability. Instead, the lender could correct errors found by a regulator without any additional liability. Under such a system, lenders will have little reason to get it right the first time. Addressing errors, even if systemic, would simply be a cost of doing business.

The existing error correction provision has been in the Truth in Lending Act for decades. It promotes accuracy and transparency by giving lenders a way to correct innocent mistakes without exposing themselves to liability. The proposed amendment will, instead, limit a lender's incentive to adopt business practices to ensure generally accurate disclosures. The existing error correction rule has served as a reasonable safety valve for lenders engaged in active compliance oversight. Undermining these provisions will promote inaccurate disclosure, decrease incentives to comply with existing requirements, and interfere with a transparent, efficient mortgage market.

The same bill also includes changes to how title insurance premiums are disclosed under the Real Estate Settlement Procedures Act (RESPA). The regulation of title insurance has long been a matter of state law. Federal regulations only address how the cost is disclosed. Given the many options and calculations involved, disclosing the correct cost of insurance can be a complicated matter and the CFPB carefully studied the best way to do so before issuing the current regulations. We believe such complex issues are best delegated to agencies that have the capacity to properly evaluate them with input from all parties. The CFPB has done so and can make appropriate changes as needed through the regulatory process. Hardwiring the disclosure of title insurance premiums by statute will prevent the disclosure rules from adjusting to a rapidly changing housing market.

As currently drafted, the bill only amends RESPA. In doing so, the insurance costs disclosed under TILA will be different from those disclosed under this bill. This type of inconsistency will confuse consumers. But even if that problem is fixed, this bill is also problematic because of the precedent it sets. The purpose of TILA and RESPA is to protect consumers and the economy through clear, effective disclosures. The CFPB has been charged with implementing this approach and can continue to exercise its authority to calibrate disclosures with the needs of the market. This bill, however, allows one participant in the mortgage market to dictate how to disclose their fees. That will take consumers back to the days of forms designed to obscure rather than clarify the true cost of mortgage settlement services.

Conclusion

For the above-stated reasons, we urge Congress to reject all of the proposals that are the subject of this hearing. Thank you very much for the opportunity to testify today. I would be happy to answer any questions.

Attachment A

Consumers Wrongfully Labeled by Credit Reporting and Background Check Agencies Must Have Full Access to Remedies

Consumer reporting agencies are notorious for failing to fix avoidable errors on credit reports and background check reports. These errors can obstruct meaningful events in consumers' lives, such as their ability to obtain a mortgage for a home, a car, rental housing or employment. There are instances where the failures of credit reporting and background check agencies (CRAs) are so damaging to consumers' circumstances that remedies are awarded to reform and deter the misconduct to prevent future harm to others. H.R. 2359, titled the "FCRA Liability Harmonization Act," would remove critical remedies for individuals and for consumers who band together to seek accountability for harm caused by the same wrongdoing. It would eliminate punitive damages in individual cases and limit damages in class action cases, no matter how egregious the misconduct.

Below are examples showing CRAs whose conduct was so detrimental that individual consumers were unable to get serious errors in their credit reports or background checks fixed until they sued in court, and examples of consumers who banded together in class actions to seek accountability for violations of their rights under the Fair Credit Reporting Act. Under H.R. 2359, these consumers would have been denied the ability to seek adequate remedies against bad actors.

Angela Williams v. Equifax

Angela Williams of Cocoa, Fla. had an Equifax report that included at least 25 accounts that did not belong to her. The accounts which had negative information belonged to a stranger with a similar name and Social Security number. Angela spent 13 years trying to get her credit report fixed. She sent multiple disputes to Equifax, but new accounts from the other woman would still appear in Angela's credit report. In addition, Equifax would send Angela's information to creditors and debt collectors, who in turn wrongfully pursued her for the other woman's debts. Equifax's continued failure to fix Angela's reports took an enormous financial and emotional toll on her. Her credit score dropped and she was denied credit repeatedly. She was even told to leave a store after an employee viewed her credit report. Eventually, Angela sought legal help and filed a lawsuit against Equifax. Equifax long fought Angela's suit despite glaring evidence that it failed to fix the harmful errors in Angela Williams' credit report. Ultimately after a trial, a jury entered a verdict against Equifax for its misconduct and awarded actual and punitive damages to Angela.

Julie Miller v. Equifax

Julie Miller of Marion County, Oregon first discovered a problem with her credit report when a bank denied her a loan in early December 2009. Equifax had merged Miller's credit file with a different person who had the same name and a similar Social Security number, but who lived in a different state and who had a bad credit record. Miller alerted Equifax 8 times between 2009 and 2011 to correct the inaccuracies. Yet Equifax did not once correct its numerous mistakes. In addition, because Equifax failed to fix her record, Miller could not help her disabled brother who was unable to get credit on his own. Miller eventually sued Equifax for its wrongdoing. A jury awarded her compensatory and punitive damages. "For two years [Miller] was frustrated, overwhelmed, angry, depressed, humiliated, fearful about misuse of her identity,

and concerned for her damaged reputation," wrote the judge in her case. "Equifax engaged in reprehensible conduct that caused real harm to Miller…Equifax should be punished financially for that wrongful conduct. [The punitive damages award] should be enough to deter Equifax…from repeating this type of conduct in the future."

David Daugherty v. Ocwen

David Daugherty of West Virginia discovered that his single mortgage serviced by Ocwen Financial Corp was listed twice on his Equifax credit report. Due to poor file maintenance, Equifax had added a second listed account or "tradeline," for the Ocwen account. One tradeline reported the mortgage as current, while the other incorrectly showed that the mortgage payment was in foreclosure and over 120 days past due. In fact, Daugherty was current on his loan. Daugherty sent numerous disputes to Equifax to fix the record. Equifax, in turn, asked Ocwen to investigate the dispute. At least 12 times, Ocwen, the mortgage servicer, would respond that the reporting was correct for both tradelines despite the fact that they were contradictory. Meanwhile, Daugherty, in anticipation of a "balloon" payment on his mortgage, sought to refinance his mortgage but was denied several times due to the negative reporting. He also was turned down for other credit. Daugherty's inability to obtain a mortgage caused him emotional trauma and significant anxiety because he feared he would lose his family home due to the false foreclosure tradeline. He filed suit, and Equifax subsequently deleted the erroneous tradeline. After trial, a jury awarded Daugherty actual damages as well as punitive damages to hold Ocwen accountable.

Richard Williams v. First Advantage

After Richard Williams of Florida obtained a B.A. degree in 2009 he struggled to find a good job during the years following the Great Recession. First Advantage Background Services Corp., a background check firm, made his job search even harder when it repeatedly provided incorrect information labeling him as a criminal to employers. When Richard applied for a job with Rent-A-Center, First Advantage's background check report matched Richard with the criminal records for 'Ricky Williams,' who had the same birthdate as Richard and had been charged for an illegal drug sale. Richard's job application was rejected as a result. When he learned of the error, Richard successfully disputed the erroneous information and a new corrected report was issued, but by then, Rent-A-Center had chosen another candidate. A year later, another job opportunity was lost for Richard when First Advantage provided an inaccurate background check report to potential employer Winn Dixie. First Advantage again wrongly matched Richard Williams with the criminal records for 'Ricky Williams' which included convictions for felony burglary and battery on a pregnant woman. First Advantage failed to adequately assess the records, which had clear evidence that the two were different individuals. For example, an on-line record indicated that the other man was incarcerated at the same time Richard was applying for employment about 300 miles away. First Advantage also twice failed to use its special procedures for reviewing common names. As a result of its errors, Richard was, except for a short period, unemployed for over 1 ½ years. Richard filed a lawsuit and a jury rendered a verdict against First Advantage, awarding actual and punitive damages. Richard's attorney suggested a range of amounts of punitive damages for the jury to consider, and the jury awarded the highest amount suggested.

Class action resolves widespread inaccurate reporting of consumer bankruptcy discharges
White v. Experian Information Solutions

Consumers in a class action alleged that the Big Three credit reporting agencies (Experian Information Solutions, Inc., Trans Union, LLC, and Equifax Information Services, LLC – "CRAs") recklessly failed to follow reasonable procedures to ensure the accurate reporting of debts discharged in bankruptcy and refused to adequately investigate consumer disputes regarding the status of discharged accounts. Creditors frequently had failed to report an updated status for these accounts, and the CRAs failed to update the accounts. The systemic and widespread failure to provide consumers a "fresh start" after a bankruptcy discharge, was, for

many years one of the most serious problems in the credit reporting system. Thousands of consumers were deprived of employment, mortgage, housing rentals, credit or auto loans. The CRAs eventually agreed to a settlement that required them to revise their procedures. They agreed to treat all pre-bankruptcy debts as discharged unless the creditor or debt collector provided information showing that a debt was excludable from discharge. It resulted in a major reform in credit reporting, benefitting millions of consumers. The CRAs also agreed to a settlement payment of $45 million to compensate about 770,000 class members. The settlement payment covered "convenience awards" for some class members and actual damages awards for others, as well as costs.

Class action compensates consumers misidentified in credit reporting as terrorists and criminals
Ramirez v TransUnion LLC

In 2017, a California jury rendered a verdict for 8,000 consumers in a class action after finding that the credit reporting agency TransUnion violated the Fair Credit Reporting Act when it carelessly misidentified class members as terrorists and criminals in their credit reports, confusing the consumers with similarly named individuals on a government watch list. Trans Union defended its poor matching procedures by arguing that consumers weren't financially harmed by the inaccuracies. Yet its conduct caused tremendous injury to class members. The lead class member for example alleged that he was prevented from buying a car because TransUnion told lenders he potentially matched two entries on a government watch list. Besides the name, there were other factors, including birthdates, which showed Ramirez was not any of the persons on the government list. Ramirez said that when he tried to get off of TransUnion's list, the company's customer service agents failed to explain how the error could be corrected. Transunion could have delivered better results in its credit reporting but its active failure to ensure accuracy amounted to willful violation of the FCRA. The jury awarded nearly $60 million in statutory and punitive damages to the harmed consumers.

Conclusion

Class actions and the Fair Credit Reporting Act are critical in these and other cases because individual consumers do not have the ability to fix these issues without banding together with other similarly harmed consumers. Punitive damages are necessary to deter egregious conduct and ensure meaningful consequences when CRAs recklessly mislabel consumers as deadbeats or criminals and repeatedly fail to correct these slanderous errors. H.R. 2359, which proposes eliminating punitive damages, a $500,000 limit on statutory damages, and a $500,000 limit on actual damages in class actions would obstruct consumers' rights under federal law. If applied to these cases, the class members and individual consumers would not have been adequately compensated for the harm suffered and the violation of their federal rights. Further, the CRAs would not have been deterred from engaging in future wrongdoing and similarly harming other consumers' livelihood and wellbeing.

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Attachment B

September 6, 2017

Hon. Jeb Hensarling, Chairman
Hon. Maxine Waters, Ranking Member
U.S. House Financial Services Committee
Washington, DC 20515

Re: *H.R. 2359 (Rep. Loudermilk), FCRA Liability Harmonization Act (Oppose)*

Dear Chairman Hensarling and Ranking Member Waters:

The undersigned public interest organizations write to urge your opposition to H.R. 2359, titled the "FCRA Liability Harmonization Act." The legislation would restrict remedies for American consumers whose credit reports and background check reports were recklessly distorted and who suffered serious consequences as a result, including losing their ability to access credit such as a mortgage, a car loan, rental housing, or employment. Limiting damages in Fair Credit Reporting Act (FCRA) legal actions, as this bill proposes, would embolden credit reporting and background check agencies to disregard federal protections meant to ensure accurate reporting of credit records and other consumer reports. The bill would allow bad actors in the credit reporting industry to wrongfully label consumers as deadbeats, terrorists, and criminals without fear of meaningful consequences. It also would have a deleterious effect on the marketplace due to the spread of defective data and information on millions of consumers and workers that almost inevitably would result.

H.R. 2359 would restrict Americans' access to justice without sound justification. It would amend the FCRA to eliminate punitive damages awards for individuals when credit reporting and background check agencies willfully break the law, no matter how egregious the industry player's conduct. It also would dictate a one-size-fits-all cap on damages in class actions to $500,000 for groups of consumers who seek accountability against bad actors in the industry, no matter how many thousands or millions of consumers harmed or the extent of their losses caused by the illegal conduct. An arbitrary cap on statutory damages in class actions would deter and practically block the most effective method for harmed consumers to stop systemic willful violations of the FCRA. And without class actions, it is not economically feasible in many cases for consumers to pursue claims on their own.

FCRA violations are far from just "technical" as supporters of this bill suggest. FCRA statutory and punitive remedies are only awarded when a company willfully violates the law. The bill's provisions would restrict damages where harmed consumers already have met the burden of proving that the perpetrator understood the law and violated it anyway. And notably, the three credit reporting agencies consistently are among the top most complained-about companies, with the vast majority of complaints involving incorrect information on consumers' credit reports.[1]

Consumer losses caused by credit reporting malfeasance are all too real. For example, Angela Williams of Cocoa, Florida was rightfully awarded actual and punitive damages by a jury after spending 13 years wrangling with, and submitting multiple disputes to, Equifax to fix her credit report, which had contained at least 25 accounts that did not belong to her. Ms. Williams was wrongfully pursued by creditors and debt collection agencies and repeatedly denied credit due to the company's systemic

[1] Consumer Financial Protection Bureau, *Monthly Complaint Report*, Vol. 20, February 2017, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Monthly-Complaint-Report.pdf

failure to fix the errors in her credit report. She suffered an enormous financial and emotional toll from the experience.

Just this year, a California jury awarded statutory and punitive damages to 8,000 consumers in a class action after finding that the credit reporting agency TransUnion violated the FCRA when it willfully misidentified class members as terrorists and criminals in their credit reports, confusing the consumers with similarly named individuals on a government watch list. TransUnion's liability for willfully engaging previously in the exact same conduct had been upheld by an appellate court, but initially declined to implement changes that could have reduced false matches making it a serial willful violator of the FCRA. Trans Union's failure to properly verify affected consumers' information caused them tremendous injury. The lead class member for example alleged that he was prevented from buying a car because TransUnion told lenders he potentially matched two entries on a government watch list. The remedies in these cases were aimed at compensating harmed consumers, deterring similar bad behavior, and protecting the marketplace from future damage.

Under H.R. 2359, a company that willfully violates the law would escape punitive damages meant to punish and deter wrongdoing, and consumers would be denied justice for the losses caused by poor credit reporting and data practices. As demonstrated, careless and inaccurate credit reporting and data collection can devastate a consumer's well-being and financial health, including his or her pursuit of employment and access to credit. Liability for wrongful acts is a powerful incentive for companies to comply with the law. By removing key tools to hold industry players accountable, the bill would weaken incentives to act properly and would exacerbate misconduct in this sector, injuring more consumers and ultimately the marketplace.

The Committee should reject this harmful proposal.

Sincerely,

A New Way of Life Re-Entry Project
Allied Progress
American Association for Justice
Americans for Financial Reform
Baltimore Neighborhoods, Inc.
Center for Digital Democracy
Center for Justice & Democracy
Center for Responsible Lending
Community Justice Project
Community Service Society of New York
Connecticut Legal Services, Inc.
Consumer Action
Consumers for Auto Reliability and Safety
D.C. Consumer Rights Coalition
Demos
East Bay Community Law Center
Florida Alliance for Consumer Protection
Georgia Watch
Greater Hartford Legal Aid, Inc.
Homeowners Against Deficient Dwellings
The Impact Fund
Legal Action Center
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low -income clients)
National Workrights Institute
Ohio Justice & Policy Center
Public Citizen
Public Justice
Public Justice Center
Social Justice Law Project
Texas Watch
U.S. PIRG
Virginia Poverty Law Center
Workplace Fairness
Youth Represent

ATTACHMENT C

September 6, 2017

The Honorable Jeb Hensarling
Chairman
House Committee on Financial Services
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
Washington, DC 20515

Re: Credit Services Protection Act of 2017 (Royce) (Oppose)

Dear Chairman Hensarling and Ranking Member Waters:

The undersigned consumer, civil rights and community organizations write to express our strong opposition to the misleadingly-named "Credit Services Protection Act" (Royce). This bill would exempt the big three credit bureaus – and possibly many illegitimate credit repair organizations – from the Credit Repair Organizations Act (CROA). Instead, the bill would substitute a weaker and far less enforceable law governing "credit services providers." The bill eliminates private remedies, preempts state law and state attorney general enforcement authority, and could limit the Consumer Financial Protection Bureau's authority as well.

This exemption from CROA is unnecessary and harmful to consumers and would remove protections for credit monitoring, identity theft prevention, and other products that are of dubious value. These products have been the subject of highly deceptive marketing as revealed by enforcement actions taken just this year by the Consumer Financial Protection Bureau (CFPB).

Currently, CROA applies to any person who provides services that purport to improve a consumer's credit record if they charge money for such services. Only non-profit organizations and a few other entities are exempted. The proposed amendment exempts from CROA any "nationwide consumer reporting agency" under Section 603(p) of the Fair Credit Reporting Act – i.e., the credit bureaus Experian, Equifax and TransUnion - or any of their subsidiaries or affiliates. It also exempts any other entity that obtains the status of "authorized credit services provider" by applying and obtaining approval from the Federal Trade Commission (FTC). Approval is automatic after 60 days if the FTC does not act.

For years, the credit bureaus have sought an exemption from CROA in order to expand their sale of high-priced credit monitoring, identity theft prevention, and other subscription products. In addition to being far less effective for identity theft prevention than the simple tool of state-law mandated security freezes, the marketing of the credit bureaus' products has been notoriously rife with deception and abuse. These abuses are well-documented and include:

- Just this past January and March 2017, the CFPB took enforcement actions against all three credit bureaus for deceptive practices in their marketing of credit monitoring subscriptions. The CPFB ordered Equifax and TransUnion to refund over $17.6 million to consumers who were deceived into buying these subscriptions, plus pay

fines totaling $5.5 million. The Bureau also ordered Experian to pay a fine of $3 million for its deceptive practices.

- Ten years ago, the FTC took similar action against Consumerinfo.com d/b/a Experian Consumer Direct, ordering that credit bureau to refund nearly $1 million for deceptive practices in its promotion of credit monitoring products.
- The CFPB took enforcement actions against several of the largest credit card issuers (including Discover, Capital One, JPMorgan Chase, and Bank of America) over misleading marketing tactics in the sale of add-on products, including credit monitoring services. Collectively, these banks paid $1.38 billion in restitution and $79 million in civil fines in these cases.

There is absolutely no reason to exempt the credit bureaus from CROA so they can aggressively offer even more paid products similar to credit monitoring without the protections of the Act. While the proposed amendment does create a separate regulatory scheme for "authorized credit services providers," these protections are far weaker. Weaknesses of the proposed bill include:

- ***Eliminates protections.*** The bill does not include CROA's existing prohibition against charging advance fees. Nor does it require written contracts for these products, or require authorized credit services providers to provide copies of the contract to the consumer. It allows authorized credit services providers to sell products without CROA's existing requirement that they retain signed disclosures for a minimum of two years to insure compliance.

- ***No clear right to cancel.*** The bill gives the consumer a three-day right to cancel a contract for these products, *but does not require that the consumer ever be notified of this right or that any notice be conspicuous*, making it mere window dressing and a departure from other consumer protection laws.

- ***Requirement to pay fees.*** The bill creates a new requirement that a consumer who terminates a contract must pay "reasonable value for services actually rendered." In contrast under CROA, consumers may cancel without any penalty within 3 days. Thus, the bill allows credit bureaus to charge and retain steep "setup" fees or all of their fees upfront, so long as they refund some portion if the consumer cancels. The bill also could be read to imply that a consumer who has been sold a subscription for three years of credit monitoring services at $29.95 a month can cancel it only within the first three days, and has no right to cancel it later on if the services prove unsatisfactory or unnecessary.

- ***Automatic approval of applications after 60 days.*** The bill would allow a large number of organizations, not just the major credit bureaus, to escape from CROA. Illegitimate credit repair organizations are likely to apply *en masse* for registration with the FTC. Section 427(c)(3) provides that, unless the FTC acts upon an application within 60 days, it is "deemed as approved" and the applicant "shall be registered as an authorized credit services provider."

- ***Eliminates consumer remedies.*** This bill removes private remedies for consumers against the credit bureaus and other authorized credit services providers. It does not

include a right of action for violation of its new additional provisions, including the prohibition against untrue or misleading statements regarding the services offered for credit education or identity theft prevention. More importantly, even when CROA does apply to a credit bureau or authorized services provider, it provides that only the FTC can enforce CROA with respect to those entities.

- ***Preempts stronger state laws.*** The bill preempts state laws that provide great consumer protection for credit education, identity theft protection and credit repair services offered by a credit bureau or an authorized credit services provider.

- ***Protections might be eliminated in fine print.*** Unlike CROA, there is nothing in the new additional provisions that states that any waiver of its protections is void and unenforceable. Thus, it is possible that the fine print of a contract could completely waive the bill's protections.

- ***Might eliminate CFPB authority.*** Section 425 of the bill could be interpreted to eliminate CFPB authority, making the FTC the sole enforcement authority for the credit bureaus with respect to credit education and identity protection services. The bill might have prevented the CFPB from bringing the recent enforcement actions discussed above.

- ***Denies state attorney general authority.*** Section 425 also appears to deny state Attorneys General the ability to enforce these provisions—either against one of the credit bureaus or against any other entity that obtained automatic approval of an application as an authorized credit services provider.

The credit bureaus claim that CROA impedes them from providing credit education to consumers. However, CROA merely institutes protections when the credit bureaus *charge for these products*. A plethora of websites and businesses provide the same or greater credit education than the credit bureaus for free, such as NerdWallet and CreditKarma. These websites earn revenue through referrals to credit card products but do not charge upfront fees and the consumer is not required to sign up for a credit card. In fact, one of the credit bureaus – TransUnion – is now offering a version of credit monitoring which is actually free using this model, thus showing that the credit bureaus can offer these products without seeking an upfront payment.

On a global level, facilitating the credit bureaus' sale of highly profitable credit monitoring products would in fact give them a vested interest in the inaccuracy of the credit records they maintain. The more that consumers are concerned about inaccuracies in their credit records, the better these products will sell. There is no need or reason to give the credit bureaus an exemption from CROA.

The Credit Services Protection Act of 2017 weakens an important law available to consumers. We strongly urge your opposition.

Sincerely,

Allied Progress
Americans for Financial Reform
Arizona Community Action Association
Arizona PIRG
Arkansans Against Abusive Payday Lending
CALPIRG
Center for Economic Integrity
Center for Responsible Lending
ConnPIRG
Consumer Action
Consumer Federation of America
CoPIRG
East Bay Community Law Center
Empire Justice Center
Florida Alliance for Consumer Protection
Florida PIRG
Georgia PIRG
Georgia Watch
Greater Boston Legal Services (on behalf of its low-income clients)
Illinois PIRG
Indiana PIRG
Iowa PIRG
Jacksonville Area Legal Aid, Inc.
Kentucky Equal Justice Center
Maryland Consumer Rights Coalition
Maryland PIRG
MassPIRG
MontPIRG
MoPIRG
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Housing Resource Center
NCPIRG
NHPIRG
NJPIRG
NMPIRG
Ohio PIRG
Oregon PIRG (OSPIRG)
PennPIRG
PIRG in Michigan (PIRGIM)

Public Good Law Center
Public Justice Center
Reinvestment Partners
RIPIRG
TexPIRG
Virginia Citizens Consumer Council
Virginia Poverty Law Center
WashPIRG
West Virginia Center on Budget and Policy
WISPIRG
World Privacy Forum

Attachment D

NCLC® | NATIONAL CONSUMER LAW CENTER®

May 5, 2017

United States House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

RE: Groups strongly oppose H.R. 1849 – Practice of Law Technical Clarification Act of 2017

Dear Committee Members:

The undersigned community, consumer, and civil rights groups urge you to oppose H.R. 1849, the Practice of Law Technical Clarification Act of 2017. Passage of this bill would hurt consumers, especially people who have recently lost jobs, had a death in the family, or suffered another type of devastating personal loss. It would eradicate essential protections against abusive and deceptive debt collection practices by collection attorneys.

In 1986, as the result of clear findings of abuses by debt collection attorneys, Congress amended the Fair Debt Collection Practices Act (FDCPA)[1] to ensure that attorneys who meet the statutory definition of debt collector must comply with all of the provisions of the law.[2] Prior to this amendment, law firms were immune from the requirements of the FDCPA even when they were operating as debt collectors. They even advertised their competitive advantage over debt collection agencies that were required to comply with the FDCPA's consumer protections.[3] H.R. 1849 would turn back the clock on this important protection for struggling families by exempting attorney conduct from the consumer protections provided by the FDCPA.

Americans file more consumer complaints with state and federal officials about debt collectors than any other industry. Recent enforcement actions[4] by federal agencies have highlighted numerous and widespread abusive and deceptive practices by collection law firms and attorneys. Yet this bill would eliminate Consumer Financial Protection Bureau enforcement actions against law firms and attorneys. Your constituents would be harmed by this change in the law.

The FDCPA is a critical consumer protection statute designed to "eliminate abusive debt collection practices by debt collectors."[5] In order to achieve this goal, it is critical that Congress ensure that the statute applies broadly to *all* debt collectors.

We strongly urge you to oppose H.R. 1849 and reject this attempt to weaken the FDCPA. For more information, please contact Margot Saunders (MSaunders@nclc.org) or April Kuehnhoff (AKuehnhoff@nclc.org) at the National Consumer Law Center.

Sincerely,

Americans for Financial Reform (AFR)
Arizona Community Action Association
Center for Responsible Lending
Civil Justice, Inc.
Connecticut Legal Services, Inc.
Consumer Action
Consumer Federation of America

Consumers League of New Jersey
Consumers Union
Corporation for Enterprise Development (CFED)
Florida Alliance for Consumer Protection
Kentucky Equal Justice Center
Legal Aid Society of the District of Columbia
Legal Services of New Jersey
MFY Legal Services, Inc.
Michigan Consumer Law Section[6]
Michigan Poverty Law Program
Mountain State Justice, Inc.
NAACP
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Consumer Law Center (on behalf of its low-income clients)
National Legal Aid & Defenders Association
New Economy Project
New Leaf's Mesa Community Action Network
North Carolina Justice Center
Protecting Arizona's Family Coalition
Public Good Law Center
Public Interest Law Center
Public Justice Center
Public Law Center
South Carolina Appleseed Legal Justice Center
Tzedek DC
U.S. Public Interest Research Group (PIRG)
Woodstock Institute

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[1] 15 U.S.C. § 1692a.

[2] Pub. L. No. 99-361, 100 Stat. 768 (effective July 9, 1986).

[3] H.R. Rep. No. 405, 99th Cong., 1st Sess. (Nov. 26, 1985) *reprinted in* 1986 U.S.C.C.A.N. 1752, 132 Cong. Rec. H10534 (daily ed. Dec. 2, 1985)

[4] *See, e.g.,* Complaint, Consumer Fin. Protection Bureau v. Weltman, Weinberg & Reis Co., L.P.A. (N.D. Ohio Apr. 17, 2017); Consent Order, In the Matter of Pressler & Pressler, LLP, Sheldon H. Pressler, and Gerald J. Felt ¶ 39 (Apr. 25, 2016); Consumer Fin. Protection Bureau v. Frederick J. Hanna & Assoc., Stipulated Final Judgment and Order, 14-cv-02211-AT, at ¶¶ 10-11 (D.Ga. 2015).

[5] 15 U.S.C. § 1692(e).

[6] The Consumer Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest. The position expressed is that of the Consumer Law Section only and is not the position of the State Bar of Michigan.