

**H.R. 4332, THE FINANCIAL CONSUMER  
HOTLINE ACT OF 2007: PROVIDING  
CONSUMERS WITH EASY ACCESS TO THE  
APPROPRIATE BANKING REGULATOR**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS  
AND CONSUMER CREDIT  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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**Wednesday, December 12, 2007**

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS  
AND CONSUMER CREDIT,  
COMMITTEE ON FINANCIAL SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2128, Rayburn House Office Building, Hon. Carolyn B. Maloney [chairwoman of the subcommittee] presiding.

Members present: Representatives Maloney, Waters, McCarthy, Green, Hodes, Klein; Biggert and Royce.

Chairwoman MALONEY. This hearing of the Subcommittee of Financial Institutions and Consumer Credit will come to order. The hearing will focus on H.R. 4332, the Financial Consumer Hotline Act of 2007. The bill establishes a single toll free telephone number that consumers can call if they have a problem with their bank, and want to speak to the appropriate banking regulator.

I would like to welcome all of the witnesses, and thank them for their time, their testimony, and for being here today.

For our first panel, we will hear from representatives of: the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the National Credit Union Administration; and the Office of Thrift Supervision. We will also hear from Superintendent Richard Neiman—a very special welcome to him from my home State of New York—who is here on behalf of the Conference of State Bank Supervisors.

A second panel will include witnesses from consumer groups.

This legislation builds on a suggestion that Comptroller Dugan put forward in a hearing before this committee back in June, to provide consumers one-stop service with their banking regulatory issues. Given that depository institutions in the United States can be regulated by any of five Federal regulators or a State regulator, consumers often don't know what entity to call if they have a problem.

Apparently, customers often end up calling their attorney general, or the FDIC, even if that is not the right regulator, because their bank window or Web site states that the institution is FDIC-insured.

We hope and expect this legislation will be cost-efficient as well as consumer-friendly. Right now, as our witnesses will explain, each of the agencies has a Web site, provides a phone number for consumers to call with questions, and has a staff to follow up on complaints or inquiries.

The single hotline will help route calls to each agency more quickly, and encourage frustrated consumers to call and get answers to their questions. The establishment of a single, toll free number could also assist the banking regulators in compiling consumer complaints and inquiries, so that better information would be available about problems or issues that cut across institutions that the various agencies supervise.

Congressional legislation and oversight would also be better informed by such centralized statistics. Also, the establishment of a single, toll free number could help raise the profile of banking regulators as consumer resources. This committee has called on the Federal bank regulators to provide more consumer assistance in a variety of contexts throughout this Congress, and this is a simple way to get this started.

The legislation directs the Federal financial institutions' examination council to set up the hotline. The council is an existing interagency body established by statute to prescribe uniform principles and standards for financial institutions, and to otherwise coordinate regulatory activity among the Federal banking regulators.

The Federal Reserve, FDIC, NCUA, OCC, and OTS are all members of the council. The legislation also directs the council to work with State banking regulators to integrate them into the hotline service. And Superintendent Neiman of the New York State Banking Department is here on behalf of New York and the Conference of State Bank Supervisors to address how that will be implemented.

He has also come forward with a number of suggestions to improve the legislation, and I thank him for that. The Act also requires the council to report to Congress 6 months after enactment on the Agency's efforts to establish a public interagency Web site, likewise directing and referring consumer complaints and inquiries received on the Internet concerning any financial institution to the appropriate Federal or State financial institution regulatory service.

I should note that not only the OCC, but the council as a whole has taken some steps in this direction on its own initiative, with an eye to both cutting costs and improving service to consumers.

This past fall, the council formed a working group to study ways in which the separate consumer complaint handling systems of each regulator could be streamlined and leveraged to better and more efficiently serve customers. The council is considering hiring an independent consultant to evaluate the existing centers and make recommendations on how that might be consolidated.

This legislation provides a statutory mandate that supports and guides these efforts in a framework for congressional oversight. It is an important step forward. It is simple to implement, but very necessary. I very much look forward to the testimony, and I recognize Mrs. Biggert, the ranking member, for 5 minutes.

Mrs. BIGGERT. Thank you very much, Madam Chairwoman, and thank you for calling today's hearing. In these challenging times, it's important that consumers be able to quickly and easily get in touch with State and Federal banking regulators to provide comments or to make complaints about their financial institutions.

I think, given the complexity of our banking system and the various regulators that work in this area, consumers may not know where to turn when they have a dispute with their institutions.

The chairwoman has introduced legislation to create a single hotline to try to alleviate any consumer confusion. I think this idea is worthy of consideration, and I am interested to learn more about it today.

It is my understanding that regulators already have an informal system in place to redirect misplaced consumer complaints, a system that they are constantly trying to improve. For example, when the OCC receives a complaint from a consumer about a thrift that should have been directed to the OTS, it is my understanding that these informal agreements exist to make every reasonable effort to redirect the complaint to the overseer of that thrift.

I hope to hear more about this informal network, and how the regulators ensure that no consumer complaint falls through the cracks. Consumers should not be punished for misplaced complaints.

I am also interested to hear what our witnesses think about such a hotline, and how that would work. It is—in my view, any hotline should be, number one, easy for consumers to register complaints or inquiries, and number two, simple for the regulators to obtain and evaluate the meaningful information provided.

I look forward to the testimony today and to working with the chairwoman to ensure that consumer complaints are heard and that regulators are responsive. I yield back.

Chairwoman MALONEY. Thank you. I now recognize Congressman Green for 5 minutes, and welcome him up to the top panel, since not a lot of people are here. Thank you for being here.

Mr. GREEN. Thank you, Madam Chairwoman, and I thank the ranking member, as well. And I would like to associate myself with the comments made by each of you.

I would also like to thank the persons who are here to testify today. I have had an opportunity to meet several of you, and I am very much impressed with the outstanding list of witnesses that we have. I, too, am of the opinion that a hotline can be of great benefit to consumers, especially given the amount of concern that is currently in the marketplace with reference to banking, financial institutions, and some of the home mortgage concerns.

I think that, while this may not address all of the consumer complaints and concerns, I think it is a good means by which we can have some semblance of one-stop shopping, such that persons will have a line that they can depend on to acquire some intelligence about concerns that they may raise.

I think that one of the things that will make it efficacious is having access to the statistical information. I think that can drive a process, knowing that the information is available, and knowing that others will have an opportunity to evaluate the program itself.

So, I am honored to associate myself with the comments of the chairwoman and the ranking member and I would endorse the chairwoman's proposal and would be honored to be a cosponsor of the legislation. I yield back the balance of my time.

Chairwoman MALONEY. Congressman Royce, for 3 minutes.

Mr. ROYCE. Thank you, Madam Chairwoman. I would like to commend the chairwoman for holding this hearing.

We are here today to discuss legislation which is going to establish a single telephone number that consumers with complaints or inquiries can call, anywhere around the country, and thereby locate the appropriate Federal or State regulator. I am sure that this is going to be a useful tool for consumers trying to file a complaint, or consumers who have an inquiry about something, and thus will be able to get in touch on the banking issue that they need to discuss.

Now, I have coauthored the National Insurance Act with my colleague, Representative Melissa Bean, which would create an optional Federal charter for insurance. And some of those opposed to that legislation argue that, even if it creates greater market efficiencies, the creation of an OFC might cause confusion among insurance customers trying to determine the company's regulator.

Well, in reviewing the Financial Consumer Hotline Act, which is going to be a Federal act, I believe this endeavor for the insurance sector would be beneficial, should a Federal regulator be created in the future. Any meritorious effort to increase consumer disclosure and shorten the distance between consumers and the appropriate regulator should be encouraged.

So, I encourage the chairwoman, and I would like to thank the regulators here for their work on this issue, and I look forward to hearing about the progress made in the future. Thank you again, Madam Chairwoman, for the bill and for the hearing.

Chairwoman MALONEY. Thank you. And, without objection, all members' opening statements will be made a part of the record. I welcome all of the witnesses.

First, we have Mr. John Walsh, Chief of Staff and Public Affairs, Office of the Comptroller of the Currency, and then we will go right down the line. Thank you. You are recognized for 5 minutes. And thank you for coming forward with the idea in the first place.

**STATEMENT OF JOHN G. WALSH, CHIEF OF STAFF AND PUBLIC AFFAIRS, OFFICE OF THE COMPTROLLER OF THE CURRENCY**

Mr. WALSH. Subcommittee Chairwoman Maloney, Ranking Member Biggert, and members of the subcommittee, on behalf of Comptroller John Dugan and the Office of the Comptroller of the Currency, I thank you for this opportunity to discuss H.R. 4332, which would direct the Federal banking agencies to establish a single toll free number to help consumers reach the right banking agency for assistance with a complaint or inquiry.

Banks come in a variety of sizes, with both State and Federal charters, which offers choice and diversity to consumers. However, it can also present a complex maze for them to navigate when they have a problem and need help from their bank.

When direct contact with the bank does not resolve an issue, figuring out where to turn next may be very challenging. The consumer with a complaint or inquiry must sort through dozens of phone numbers, Web sites, and addresses for the various State and Federal agencies. Few bank regulators are household names, and most are unfamiliar to consumers.

The result is that consumers with a problem often reach the wrong regulator. Misdirected calls represent a significant portion of the 70,000 total cases opened by the OCC each year. This year, the OCC has received 11,000 referrals of misdirected complaints and inquiries from other Federal and State regulators, and has referred 10,000 misdirected complaints and inquiries to other regulators.

This volume suggests that a large percentage of people who have questions or concerns about their financial service provider do not know where to turn for help. The OCC believes that this burden should not fall upon the consumer, and supports the goals of this legislation to develop simpler means for consumers to find their way to us, by phone or Internet, and for banking agencies to expedite the routing of misdirected consumer complaints.

Development of a single toll free number, in coordination with the Federal financial institution's examination council would make it easier for consumers to register a complaint with the appropriate banking regulator. It would eliminate the burden of searching for the right agency, the frustration of being referred from one agency to another, and most delays that result from misdirected calls.

A single toll free number would also help banking agencies compile and act on consumer complaints more efficiently. Eliminating the burden associated with rerouting misdirected calls would make existing agency complaint handling processes more efficient, and free up resources for use in responding to consumer concerns.

A second objective of the bill on which Federal regulators would be required to report back to Congress in 6 months is establishment of a public interagency Web site for directing and referring Internet consumer complaints and inquiries, and a system to expedite the prompt, effective rerouting of any misdirected consumer complaint or inquiry documents.

The OCC is currently working with other members of the FFIEC to study options in this area. This study will examine how we might leverage existing agency resources to simplify the process for identifying the appropriate regulator for consumers, and improve the complaint filing and resolution process.

The council approved this study at its December 4th meeting, and we look forward to a report and recommendations by the end of 2008.

The OCC itself has taken the initiative to reduce obstacles that consumers may face in registering complaints, and to improve the service they receive when they reach our customer assistance group, or CAG. The OCC has expanded the CAG's capabilities through a number of investments and upgrades in the last several years, most recently launching a new consumer Web site, [HelpWithMyBank.gov](http://HelpWithMyBank.gov).

The OCC is developing a Web-based complaint referral system to reduce inefficiencies involved with forwarding documents associated with misdirected complaints. And the system will transmit

complaint-related documents via the Web to authorized users, while ensuring information security and privacy.

The OCC is also working with the Conference of State Bank Supervisors and with State regulators on a number of initiatives to expedite the referral of misdirected questions and complaints. In November 2006, the OCC and CSBS agreed on a model memorandum of understanding to improve referrals and information sharing regarding misdirected consumer complaints, and provide needed assurance of confidentiality for sharing that information. To date, 30 States and Puerto Rico have entered into agreements with the OCC.

In conclusion, the OCC fully supports the goals of H.R. 4332, creation of a single toll free number and call routing system, and a companion routing system for Internet-based inquiries and complaints. Improvements in these areas will promote timely assistance for consumers of bank services.

I thank the subcommittee for the opportunity to testify and I appreciate Chairwoman Maloney's leadership in this important area. [The prepared statement of Mr. Walsh can be found on page 100 of the appendix.]

Chairwoman MALONEY. Thank you very much for your testimony.

I now recognize Sandra Braunstein, Director of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. Thank you for joining us once again.

**STATEMENT OF SANDRA F. BRAUNSTEIN, DIRECTOR OF CONSUMER AND COMMUNITY AFFAIRS, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

Ms. BRAUNSTEIN. Thank you. Chairwoman Maloney, Ranking Member Biggert, and members of the subcommittee, thank you for the opportunity to discuss the recently introduced Financial Consumer Hotline Act of 2007.

In addition to its responsibilities for rule writing and enforcing many Federal consumer financial protection laws, the Federal Reserve's Division of Consumer and Community Affairs administers a national consumer complaint and inquiry program.

The proposed legislation would amend the FFIEC Act by requiring the Federal regulatory agencies to establish a single telephone number that consumers with complaints and inquiries concerning financial institutions or issues could call and be routed to the appropriate Federal supervisory agency or State bank supervisor for assistance.

The Federal Reserve concurs with the intent of the proposed bill, and strongly supports the current efforts by the regulatory agencies to improve the consumer's experience with getting complaints involving banking services and transactions addressed promptly and accurately.

However, given that the regulatory agencies are collaborating and cooperating on how to facilitate the consumer complaint handling and resolution process in ways that are consistent with the proposed bill, and the considerable progress being made already on both an interagency basis, as well as through our own efforts, legis-

lation does not appear to be needed to ensure the continued momentum.

Additionally, it is important that the agencies maintain flexibility so that they may benefit from recommendations that will result from the current agency initiatives and future technological advances.

The regulatory agencies have been coordinating on consumer complaint processing since the 1970's. For example, the agencies have had procedures in place for decades to promptly refer misdirected consumer telephone calls and misdirected consumer complaints and inquiries to the appropriate Federal and State regulator.

Recently, the agencies have started using new technology to speed up and improve the referral process, which has significantly reduced the paper flow between the regulatory agencies.

Moreover, the agencies meet periodically to share complaint data, and to discuss emerging issues identified through the complaint process. To build upon the efforts of the agencies, in September, the FFIEC formed an interagency working group to identify ways to collectively improve the agencies' consumer complaint programs, and to make those programs even more consumer friendly.

This group advanced several promising initiatives that will produce results similar to those envisioned by the proposed legislation. Additionally, it was recommended that a third party vendor be engaged to address the ideas for improvement, and to explore the feasibility of pursuing the initiatives related to leveraging the agencies' resources.

Earlier this month, the FFIEC approved the working group's recommendations, and has begun the process of hiring a vendor. We believe the vendor's work will provide the agencies with the insight needed to develop a comprehensive strategy to further enhance the consumer complaint process.

Consistent with the intent of the proposed legislation, and the Federal Reserve's longstanding commitment to consumer protection, we have recently announced enhancements to our own consumer complaint handling procedures.

On November 19th, we launched Federal Reserve Consumer Help, a new centralized resource that consolidates and streamlines the Federal Reserve's consumer complaint and inquiry program. This resource includes a toll free number and centralized Web site for easy consumer access. Trained customer service professionals are available to answer questions and assist with a wide range of issues relating to financial products and services and consumer protection laws.

Simply put, it serves as a one-stop complaint and inquiry site where consumers can go to get help from the Federal Reserve, or be directed to the appropriate regulator or agency.

Consumers do not have to know which Federal bank regulator supervises the financial institution that they are concerned about in order to file a complaint or inquiry. Our customer service representatives query a national database in order to determine the appropriate regulator responsible for the institution in question. Misdirected telephone calls are transferred directly to the correct agency, and misdirected written or electronic correspondence is for-

warded. And for agencies with the capability, these complaints and inquiries are passed on electronically.

Through our work with the other agencies, and through our own program, the Federal Reserve remains strongly committed to ensuring that consumer issues and inquiries are handled promptly, courteously, and thoroughly, and that consumers have access to an effective and efficient means for resolving complaints.

[The prepared statement of Ms. Braunstein can be found on page 34 of the appendix.]

Chairwoman MALONEY. Thank you.

Next, Sandra L. Thompson, Director of the Division of Supervision and Consumer Protection of the Federal Deposit Insurance Corporation. Thank you for being here.

**STATEMENT OF SANDRA L. THOMPSON, DIRECTOR, DIVISION OF SUPERVISION AND CONSUMER PROTECTION, FEDERAL DEPOSIT INSURANCE CORPORATION**

Ms. THOMPSON. Chairwoman Maloney, Ranking Member Biggert, and members of the subcommittee, I appreciate the opportunity to testify today on behalf of the FDIC.

The FDIC recognizes the importance of providing consumers a convenient and timely way to get help with complaints and questions about a financial institution or other banking matters. From a supervisory perspective, consumer complaints and inquiries often provide our examiners insight into problems in an institution and developing industry issues.

Currently, consumers can contact the FDIC through our Web site, as well as through our toll free phone number, 1-877-ASK-FDIC, which is answered by our call center staff. The call center has received over 133,000 calls this year.

In addition to consumer issues and concerns, the call center staff handles questions about deposit insurance and bank resolutions. For example, last year's deposit insurance reform led to many inquiries about the increase in coverage for retirement accounts. And, when a bank fails, the FDIC provides institution-specific information for customers about the insured status of their deposits.

When the call center receives a consumer complaint about an FDIC-supervised institution, or an inquiry that requires subject matter expertise, the caller is connected to the FDIC's consumer response center. As part of the investigation of complaints, response center staff informs consumers of their rights under Federal consumer protection laws, and they review the bank's actions to assess its compliance with the law.

In order to help consumers determine where to send complaints, the FDIC Web site features a search tool called Bank Find. By entering the name of a bank, a consumer can immediately access information on the bank, including financial data, insured status, and its primary Federal regulator.

The consumer can also link directly to the Web sites of the other bank regulatory agencies. The FDIC Web site also offers an online complaint form that consumers may use to file a complaint or inquiry.

We are also working with our colleagues at the other Federal and State banking agencies to streamline the process for referring com-

plaints between agencies. A little over half of the complaints and inquiries received by the FDIC this year related to institutions supervised by other Federal and State regulators, and we promptly and directly referred those consumers to the appropriate regulator.

Last week, the agencies that are members of the FFIEC agreed to explore the feasibility and technical requirements of additional improvements to the interagency referral process. We want to ensure that future enhancements to the agencies' processes are both technically feasible and cost effective.

The FDIC supports the intent of H.R. 4332, the Financial Consumer Hotline Act of 2007. The bill is consistent with the approaches that the Federal banking regulators have already committed to study through the FFIEC. Although conceptually simple, the creation of a single toll free number and Web site for interagency activities raises a number of issues and technical challenges. We must ensure that any improvements that the agencies undertake actually can achieve efficiencies that will benefit consumers.

And because consumer correspondence, often by necessity, contains confidential, personally identifiable information, such as bank account numbers, Social Security numbers, and other financial data, it is imperative that any new information sharing system has sufficient controls to protect the consumer's privacy and confidentiality.

Because our consumer contact system addresses several issues that are unique to the FDIC, we are recommending a clarification that the bill's requirement of a single toll free number and interagency Web site are intended to supplement, rather than replace, existing systems.

Customers with questions about deposit insurance issues or issues regarding a failed bank should be able to continue to contact the FDIC for assistance directly, as they do now.

In conclusion, the FDIC supports systems to ensure that consumers can get the answers they need on a convenient and timely basis. We look forward to working with the Congress and our fellow regulators to maintain and develop systems that achieve this goal.

This concludes my testimony, and I would be happy to address any questions.

[The prepared statement of Ms. Thompson can be found on page 87 of the appendix.]

Chairwoman MALONEY. Thank you. Thank you very much.

Ms. Cassandra McConnell, Director, Consumer and Community Affairs, Office of Thrift Supervision.

**STATEMENT OF CASSANDRA McCONNELL, DIRECTOR, CONSUMER AND COMMUNITY AFFAIRS, OFFICE OF THRIFT SUPERVISION**

Ms. McCONNELL. Good morning Chairwoman Maloney, Ranking Member Biggert, and members of the subcommittee. Thank you for the opportunity to present the views of the OTS on Chairwoman Maloney's bill, "The Financial Consumer Hotline Act," to establish a single toll free telephone number for consumers to call if they have a complaint or inquiry regarding a regulated institution.

The consumer complaint process is an important link between the institution's regulator and its customers. It enables agencies to assist consumers in addressing problems at regulated institutions, and it helps agencies identify potential areas of risk at an institution for follow-up during an examination, as well as industry trends that warrant closer scrutiny.

It also informs the agencies on areas where consumer education may be beneficial. A strong consumer complaint program is a valuable regulatory tool that strengthens the examination function.

At the OTS, consumer complaints have revealed important information about weaknesses in internal controls, violation of Federal consumer protection laws, and potential unfair acts and practices.

We share the concerns of the Chair, that consumers be able easily to identify the appropriate place to file a complaint or inquiry about a regulated institution. This not only helps the consumer, it helps us do our job more effectively.

Establishing a single toll free consumer hotline is long overdue. We applaud the leadership of the Chair on this issue. The OTS is committed to fair access to financial services for all consumers, and fair treatment of customers at the institutions we regulate. OTS staff works directly with consumers to address their questions and inquiries, to investigate allegations and complaints, and to ensure that thrifts are in compliance with all applicable consumer protection laws and regulations.

We use consumer complaint data to identify higher risk practices at institutions for follow-up by our examiners during regularly scheduled examinations. When warranted, we initiate specialized targeted investigation of particular institutions, based on information provided to the agency by consumers.

All of this, of course, is predicated on the timely receipt of consumer complaints on the institutions we regulate. When this fails to occur, consumers become frustrated and may be harmed by the inability of a regulator to address their concerns.

The FFIEC recently adopted a proposal to identify ways to improve the interagency consumer complaint process. This effort is aimed at simplifying the process for identifying appropriate regulators, creating easier complaint filing procedures, and improving the complaint filing procedure.

It is intended to identify opportunities for enhancing the consumer experience, and leveraging the FFIEC agency resources to ensure that consumers reach the appropriate regulator.

The OTS is working closely with the FFIEC to implement the initiatives set forth in the Financial Consumer Hotline Act, as well as additional items, to improve consumers' access and confidence in our financial system. The proposals outlined in the bill are among the highest priority for the FFIEC.

Given the work currently being conducted by the FFIEC, our only concern is the extent that the legislation could be viewed as limiting our ability to craft consumer solutions that it does not currently address, or delaying development of an FFIEC-sponsored proposal because of uncertainties surrounding a final framework of the legislation.

The Financial Consumer Hotline Act sets forth a number of sound consumer protection initiatives that should be incorporated

in our banking system. These will improve the accessibility and confidence of consumers in our system, by providing a clear mechanism for filing consumer complaints.

Given that the FFIEC is working hard to address these issues and other similar initiatives, we ask that you consider allowing the FFIEC to move forward on its work unfettered by legislative overlay. While we understand and appreciate your desire to address these issues expeditiously, we believe the FFIEC process will do that, while minimizing disruption to existing agency consumer protection programs.

Thank you for your leadership on this issue, Madam Chairwoman, and for the time and effort of all the members of the subcommittee. I am happy to answer your questions.

[The prepared statement of Ms. McConnell can be found on page 53 of the appendix.]

Chairwoman MALONEY. Thank you very much.

Mr. Leonard Skiles, executive director, National Credit Union Administration. Thank you for being here.

**STATEMENT OF J. LEONARD SKILES, EXECUTIVE DIRECTOR,  
NATIONAL CREDIT UNION ADMINISTRATION**

Mr. SKILES. Thank you Chairwoman Maloney, Ranking Member Biggert, and members of the subcommittee. I appreciate this opportunity to testify on behalf of the National Credit Union Administration regarding the proposal to improve the process by which consumers have their problems addressed and resolved.

NCUA commends you for identifying this important consumer issue, and for formulating a well thought-out and sensible legislative approach. This proposal is consistent with NCUA's long-standing position that every effort should be taken to safeguard consumers.

We particularly note your interest in eliminating confusion about which regulators should be responding to the consumer. I think it is safe to say that we in Washington are somewhat familiar with the alphabet soup of Federal regulatory bodies, but it is unfair to expect average Americans to know which government agency can best help them. Frankly, they just want the problem fixed. And this proposal would improve the process to do just that.

As you are aware, credit unions differ from other financial institutions in several respects. These differences are important, and are relevant to how complaints are addressed.

First, they are not-for-profit financial cooperatives owned by their members. That member ownership carries with it certain rights, including the right of a member to be informed about decisions made by their credit union.

Second, Congress has recognized the unique structure of Federal credit unions, and mandated, by statute, that each have a supervisory committee. This committee, comprised of three to five credit union members, is responsible for independent oversight of the board of directors, and to advocate the best interest of the members.

In practice, members, because of their relationship with their credit unions and NCUA, have viewed the supervisory committee as a first responder for credit union members who seek redress.

When a complaint is received, we encourage direct contact with a credit union. We believe this is consistent with the cooperative structure of credit unions.

At the initial stage of the complaint process, we contact the supervisory committee, and direct a thorough review of the complaint. While that review normally resolves the issue in a timely manner, in case the member is not satisfied with the outcome, or the supervisory committee's explanation suggests noncompliance with laws or regulations, NCUA has the authority to intervene. Importantly, at all stages, NCUA is actively engaged and oversees the process, to ensure that the member's rights are protected.

I should also mention that NCUA has taken steps to ensure consumers know who to contact if they do have an inquiry or complaint. This information is available on loan denial forms, posters, statements, and a centralized 800 number posted prominently on the NCUA Web site, through which a consumer can register complaints or make inquiries. This line averages about 120 calls per month, and is a focal point of the consumer contact with the agency.

In short, NCUA encourages and facilitates consumer contact, has a structure in place to investigate complaints and provide answers, and, through our experience in regulating and supervising credit unions, we have a high degree of confidence that the system is working to the benefit of the credit union member.

Turning to the proposed legislation, NCUA supports this initiative. Given the multitude of regulators, the distinction between Federal and State regulatory responsibility, and the increasing complexity of financial institution ownership structures, it provides another avenue for consumers to better understand the efficacy and procedures in place to protect their interests.

Since a centralized call routing system would be a widely advertised process, it could, however, have an unintended result for credit union members. It is our experience that credit union members do not appear to be confronted with at least some of this government labyrinth. The name "credit union" provides a strong initial indicator of where a consumer should direct a contact, and NCUA believes it is important to preserve this distinction.

So, while NCUA would be pleased to participate in any new consumer complaint structure, we want to emphasize the importance of a separate ability to assist consumers who are members of credit unions. The established NCUA method of dealing with consumer input, where the decentralized national system of regional offices can respond quickly, combined with the statutorily mandated supervisory committee structure overseen by NCUA, is a process that we believe Congress should want to preserve.

The member-centric focus by credit unions is an element that NCUA not only recognizes, but attempts to foster. A credit union is expected to treat its members in a fair, beneficial, and, above all, legal manner. When that does not occur, NCUA proactively and aggressively polices the process, and makes certain that the members' rights are protected.

It is our view that the current system for credit unions is working. We believe it can continue to work in the proposed consumer complaint structure. And NCUA looks forward to opportunities to

collaborate with Congress and the FFIEC, as we take steps to assist consumers.

Congress has recognized a need for improvement, and NCUA wants to be a part of the solution of ensuring that consumers do not, as earlier stated, fall through the cracks. Thank you very much.

[The prepared statement of Mr. Skiles can be found on page 78 of the appendix.]

Chairwoman MALONEY. Thank you. Thank you very much.

I would like to give a very special welcome to the superintendent of banks from New York, Superintendent Neiman. He is here today testifying on behalf of the Conference of State Bank Supervisors, not just New York, but the whole conference of all State banks in our country. I thank you, and I welcome your testimony.

**STATEMENT OF RICHARD H. NEIMAN, SUPERINTENDENT OF BANKS, NEW YORK STATE BANKING DEPARTMENT, ON BEHALF OF THE CONFERENCE OF STATE BANK SUPERVISORS AND THE NEW YORK STATE BANKING DEPARTMENT**

Mr. NEIMAN. Thank you, Madam Chairwoman, Ranking Member Biggert, and distinguished members of the subcommittee. On behalf of the Conference of State Bank Supervisors, and the New York Banking Department, I really appreciate this opportunity to speak with you today. I personally also want to commend Chairwoman Maloney for her efforts on this very important issue.

I am pleased to share our perspective on the proposal to establish a national call number and centralized intake for consumer inquiries directed to Federal regulators. States are on the front lines, and have provided many innovations with respect to handling of consumer complaints, including Web-based and consumer satisfaction surveys.

We believe that the creation of a national system, one that also routes calls to the respective State agencies, when appropriate, is much needed.

For those of you who are familiar with New York City's general hotline information line, I envision this functioning as a national 311 for financial complaints. This issue has been on the Department's agenda for some time. My predecessor, Diana Taylor, as superintendent of banks, also promoted this 311 concept before I joined the Department. And I concur that the time is right to put the idea into practice.

Ideally, over time, if successful, this could be expanded to include a wider range of financial services beyond just those regulated by Federal bank regulators and State regulators, with the possible inclusion of the FTC.

Consumers with a variety of concerns, whether related to credit cards, payment billing, or funds availability would benefit from an enhanced interagency information sharing. And in the context of the present turmoil in the mortgage market, a streamlined approach for handling consumer inquiries would be especially useful in outreach to borrowers facing a mortgage hardship.

The goal is to connect with these homeowners early in the delinquency process, before their credit history is damaged, or they lose their homes to foreclosure. With our complex, financial services

system, however, consumers who want to be proactive may be confused, and understandably so, when trying to identify the correct government agency to contact.

A consumer should not need to know whether their financial institution is a thrift, a savings bank, or a commercial bank, or a State-chartered institution or a national-chartered institution, or a sub of a bank or a sub of a holding company in order to receive assistance.

And with many citizens unaware of the chartering authority for their financial institutions, State agencies regularly receive local inquiries related to institutions that are federally supervised.

Troubled consumers tend to look locally first, when seeking help, and the statistics bear this out. In 2006, the New York Banking Department referred more than 1,300 complaints to the Federal regulators, well over half of the volume of the approximately 2,200 complaints we received. The figures for the year-to-date are virtually the same.

It is critical, however, that any national hotline linking the Federal regulatory agencies include the capability to refer consumer inquiries back to the States. Resolution of the underlying issues that prompted the complaint often requires assistance at the local level. This is especially true in the case of mortgage lending, which, due to the nature of the collateral, is unavoidably local.

Therefore, I am pleased that the current proposal provides for this referral to the States. In reviewing the draft of The Financial Consumer Hotline Act of 2007, we are encouraged that it represents a positive development toward the type of integrated system that is needed.

In my remaining time, I would like to offer a few suggestions to further enhance the current proposal. First, while the Federal-to-State referral mechanism is addressed in the proposed legislation, the reverse ability, to refer State to Federal, is not directly addressed in the current draft. We would suggest making this a two-way process more explicit, as there could be significant flow of referrals in this direction.

Troubled consumers tend to look locally first when seeking help. And with many citizens unaware of the chartering authority for their financial institution, State agencies regularly receive local inquiries related to institutions that are federally supervised.

Second, the database connected to a centralized intake system would be a source of vital statistics about trends and consumer complaints. This information could also be used to identify institutions generating a high volume of complaints that may warrant a target exam, or other form of enhanced supervision, or to identify the need for regulatory or legislative changes.

The same system could also be used to track case resolution status and response times. We recommend expanding the proposed legislation to mandate the FFIEC to produce such monitoring reports to maximize the value of the system.

And, third, consideration should be given to the development of model forms and intake processes, to ensure that all participating agencies collect consistent and sufficient information. CSBS has developed a model form and is preparing best practices for agencies in the operation of their call centers. A copy of the form and a list

of the standards that CSBS is developing for its members is included in my written submission for your reference.

The States welcome the opportunity to share our perspective on the approaches to complaint case management that we have tried, and have found to be effective. The New York State Banking Department was the first State regulator to enter into a complaint sharing agreement with the OCC, and we offer our positive experience with this partnership in support of the concept of a nationwide hotline.

I thank you for your time this morning, and for inclusion of the States' perspective. I would be glad to address any questions.

[The prepared statement of Mr. Neiman can be found on page 69 of the appendix.]

Chairwoman MALONEY. Thank you very much. I would like to ask Mr. Walsh, the statistics on consumers who call the wrong number are certainly impressive, the numbers that you gave. And the FDIC alone, it seems that about a third to half of all the people who call a Federal bank regulator call the wrong one.

I would say that it seems logical that if each agency spends a third of its time sending calls to the other agencies, that a great deal of consumer frustration and needless cost and time to the agency occurs. Would you say that these statistics are strong support for this bill?

Mr. WALSH. Madam Chairwoman, certainly the numbers are support for the contention that a lot of calls wind up in the wrong places. Of course, it's worth bearing in mind that receiving a call that needs to be redirected does not take the time of handling a case, or sorting through a complex issue.

So, it—the numbers are too large to be acceptable, but they wouldn't represent a third of the time that our consumer assistance people spend.

Chairwoman MALONEY. You also mentioned the need for a public relations campaign to raise consumer awareness of the hotline. What sort of campaign do you envision, and do you believe that it is required to be part of this bill?

Mr. WALSH. Well, the notion there was that if there—if FFIEC, for example, decides to create some of these centralized functions, that the natural part of including that process would be to publicize the creation of a single number, or a single Web site, whatever it might be, and that process of making consumers aware of a single Web site would, of course, increase awareness, generally, of the service that is available.

So, we would expect that to be part of any plan to roll out any new system that would be agreed to.

Chairwoman MALONEY. Thank you. Superintendent Neiman, I liked your idea to add a mandate to collect data on consumer calls to the centralized hotline. What should such a mandate include?

And I liked, also, your idea of a centralized form, to have uniformity in the system. But what would you see in this mandate, and what are the key measures that should be part of it, for us as regulators, to monitor?

Mr. NEIMAN. Certainly trends in the nature of the complaints. Are they folks in a particular area? Within credit cards? And even

within credit cards, is there a particular segment of complaints around a particular issue?

As some of the other regulators mentioned, that type of information is extremely helpful in preparing for examinations, as well as follow-up supervisory reviews at those institutions.

I think it also is important to identify those institutions that do have a higher rate of complaints in comparison to their peers. So I think it is extremely useful information for individual regulators taken separately, but also taken as a group, to identify trends and areas requiring further review, further supervision, or possibly areas that require regulatory change, if these areas of concern are expansive.

Chairwoman MALONEY. It would also be very helpful for congressional oversight.

You mentioned in your testimony that sharing information with the OCC was pioneered by New York State. Are other States following your lead? Do the other States have these types of programs?

Mr. NEIMAN. There are certainly a number of States. I think the specific number now—I bet John has it—is 30. Thirty States have now signed on to that memo of understanding confidentiality agreement.

Chairwoman MALONEY. Okay, and how could the establishment of a single toll free number help raise the profile of banking regulators as a consumer resource for registering complaints and inquiries.

Mr. NEIMAN. Well, I agree that a consistent marketing approach would be an important element of identifying for consumers a single national hotline to call for financial complaints.

Chairwoman MALONEY. And I would like to ask—some of the panelists raised concerns that this legislation may interfere with initiatives that they already have in place. That was certainly not the intent. It was more of referring to the appropriate place, saving consumers time, helping monitor trends, and so forth.

Are there any specific examples in the legislation where it, in any way, interferes with what is happening in your own agency's regulation and oversight? Anyone?

Ms. BRAUNSTEIN. Well, I think our concerns are that mandating certain kinds of practices, like the 1-800 number and other things in the legislation, could end up conflicting with whatever we learn from the third-party vendor that we hire.

We all have—we recognize the intentions of the legislation, and I think we are all on the same page, that we need to do whatever we can to improve the complaint process for consumers. But we, the agencies, just decided to hire a third-party vendor to get some professional advice about what would improve things for consumers.

And suppose the recommendations that come out of that study somehow conflict with what is in the legislation, but we're locked in by the legislation? I think that is one of our concerns.

We also have concerns, in terms of legislation locking us in in the future, in terms of being able to take advantage of technological advances in the future. Who knows, 10 years from now, what kinds of operations people will use to file complaints?

And so, we want to be able to remain—we just want to be able to have some flexibility, in terms of the changes and the enhancements that we do make to the systems.

Chairwoman MALONEY. Well, just to be clear, the legislation does not relieve any agency of the responsibility to respond to consumer complaints, it only takes away the significant burden of helping consumers find the right agency. And I would say that is a valuable resource. And, obviously, legislation is always updated to respond to new technology.

I now call upon my good friend and colleague, the ranking member on this committee, Congresswoman Biggert, for 5 minutes.

Mrs. BIGGERT. Thank you, Madam Chairwoman. My line of questioning is somewhat similar.

But I think that we, a couple of years ago, passed legislation that was to deal with financial literacy in education, and asked the various agencies to work together so that there wasn't duplication, and so that the agencies would know what the others were doing.

But my goal was always to do no harm. And I think when we look at legislation like this, it still is to do no harm. And when I hear the word "mandate," I get a little concerned. But maybe you can relieve me of that concern.

For example, do you see any other unintended consequences arising from the proposed legislation?

And another question I have is, how is this paid for? Ms. Braunstein, you talked about the Federal Reserve having a hotline now, and directing it to other agencies, and the FDIC, too. Of course, I would assume that is something that comes out of your pocket. But with this bill, I don't know where that comes from. Would all the agencies have to get together? Would this just be something else that comes out of the Federal Government?

Ms. BRAUNSTEIN. I would think we would all have to chip in to enact whatever is done in the legislation.

But the current system, as you said, comes out of our budget. Our system, as do the other agency systems come out of their budgets.

Also, I do want to clarify something that Congresswoman Maloney raised, and also you just raised, is that, frankly, the consumers now don't have to know which agency to go to, because we have established some pretty robust systems among us to get them to the right place.

So, I know if they call us, and it's a misdirected call, we get them to the right place very quickly. I am not sure that's any different than if they call a 1-800 number and they still will have to be transferred to the right place.

Mrs. BIGGERT. How do they get—

Ms. BRAUNSTEIN. I believe that is going to get very—

Mrs. BIGGERT. How do they get to you, though, right now, with the hotline? How do they know to call you?

Ms. BRAUNSTEIN. Well, we have advertised the hotline. I would assume there is information in some of their financial institutions. And some of the consumers we find just—they kind of take a shot in the dark. And they know—the Federal Reserve is known, so we get a call. Or the FDIC is known, so people pick up the phone and call them.

And, like I say, if they did call the wrong place, or they wrote to the wrong place, we get it to the right place very quickly.

Mrs. BIGGERT. Ms. Thompson, would you like to comment on that?

Ms. THOMPSON. Yes. Certainly, the FDIC supports the intent of the legislation, and we would just like to make a recommendation that there is a clarification in the bill that a single toll free number is intended to supplement, and not replace, existing processes.

The FDIC logo is prominently displayed on all insured depository institutions, and we do get lots of calls. Apart from consumer complaints and inquiries, we get lots of calls about deposit insurance, such as, "Am I covered if a bank fails, or is having problem?" People want to know what their deposit insurance status is. So we just want to make sure that this supplements, and does not replace.

Mrs. BIGGERT. Are you concerned about the possibility that the legislation could slow down the projects that you are currently working on to improve customer service?

Ms. THOMPSON. Well, we are going to move forward with the FFIEC program, and we are supportive of anything that makes a process easier for consumers to understand. But we would like to work out the details.

Mrs. BIGGERT. What would be the—I do not know if there would be liability, but say somebody does call the hotline, and is misdirected to the wrong place, and the consumer never does kind of find the right place to—for their complaint, or—and then they are not helped.

Is there any issue on that, or any issue of privacy?

Ms. THOMPSON. There are issues regarding privacy, and also information security. When people call, they usually call with a specific question about their specific bank account, so they have to provide identifying information.

So, we would be very concerned that any system—whether it was through the Web or through a telephone—made sure that a customer's private information was secure, and that the information was safe.

Mrs. BIGGERT. Anybody—Mr. Walsh?

Mr. WALSH. Yes, if I could. I think, in this case, since the legislation—since the idea here is focused on a facing-the-world new piece of technology, if you will, or a new place that people can go to that is unified in nature, and its basic purpose is to route calls to the right end point, it has not been—I think it was agreed by the council when they met that, as Ms. Thompson has mentioned, the idea in the project that we are looking at is to add something to the process that would handle this routing issue, not to change or interfere with other processes.

The project itself is funded through a cooperation within the council, and any eventual 1-800 number, whatever else, would similarly be shared cost among the agencies, and that is quite routine within the activities of the council.

So—and as to questions of privacy or protection of the information of the consumer, that problem, that issue, exists no matter how that intake occurs. So, I think as long as we're talking here about simpler and more assured routing, I don't see that any substantial problems arise.

Mrs. BIGGERT. Thank you. My time is expired. I yield back.

Chairwoman MALONEY. I would like to just add that in the Act establishing the council, as Mr. Walsh says, everyone would chip in, unless they agree otherwise, so as to maintain maximum flexibility.

And certainly, the intent is not in any way to supplant the wonderful activities that many of you are doing already in your agencies; it is just to provide a more simplified routing system to save consumers time and help them receive the information that they need to have more quickly.

I now recognize Mr. Green for 5 minutes.

Mr. GREEN. Thank you, Madam Chairwoman. And, again, I thank you for this most valuable piece of legislation.

Let us start with identifying a term. There is a French term, "voir dire." Lawyers are familiar with it. Some of you may not be familiar with the term. It is a term that means, "to speak the truth," and we use this in trials, so as to examine large numbers of persons en masse when we are asking our questions. So, I am going to ask questions of you en masse, and hopefully I will get through this a little bit faster.

If you agree that we need one number so that all consumers can call one number and be properly routed to the correct agency, if you agree that one number is needed that will not preempt other numbers, would you kindly raise your hand?

[Show of hands]

Mr. GREEN. Thank you. Let the record reflect that everyone agrees that one number that does not preempt other numbers is needed.

If you support this bill, as currently drafted, would you kindly raise your hand?

[Show of hands]

Mr. GREEN. Okay. All right. Now, if you did not raise your hand then, would you raise your hand now?

[Show of hands]

Mr. GREEN. All right. So, let the record reflect that all but one of the witnesses seems to support the bill as currently drafted.

If the bill can be tweaked such that you can find a means by which it is acceptable and supported—this would apply to Ms. Braunstein—would you conclude that it can be tweaked, such that you can support it?

Ms. BRAUNSTEIN. Yes. And I do want to say we support the intent of the bill, absolutely, 100 percent. We just are not sure that it is necessary to sustain momentum, and that we are already moving in the direction—

Mr. GREEN. Well, now—

Ms. BRAUNSTEIN. —that the bill is—

Mr. GREEN. Let me just ask you this, Ms. Braunstein. My initial question was, do you think we need one number? And your response to the initial question was "yes."

Ms. BRAUNSTEIN. Well, we—that is why we hired a consultant, was to move in that direction.

Mr. GREEN. Okay. Now, in Texas—

Ms. BRAUNSTEIN. I support that we are—

Mr. GREEN. So you are getting ready now to do something, you are starting to do something. In Texas, we call that, "fixing to do." And I appreciate what you are fixing to do, but I don't see how that would preclude us from doing what we are fixing to do.

Why would what you want to do preempt in some way what we are trying to do? Or should it preempt what we are trying to do? Why should it?

Ms. BRAUNSTEIN. I guess I do not want to presuppose what the conclusions of our consultant will be.

Mr. GREEN. Let us assume—

Ms. BRAUNSTEIN. And so I cannot predict—

Mr. GREEN. Let us assume that your consultant tells you to do whatever you can imagine. Would your consultant say to you that we don't need that single number, do you think?

Ms. BRAUNSTEIN. I don't know that. I would think not, that it would not be a problem, which is why I raised my hand about the 800 number. But I don't know what the consultant will or will not say. I don't think we can predict that.

Chairwoman MALONEY. Will the gentleman—

Ms. BRAUNSTEIN. But we are hiring somebody.

Chairwoman MALONEY. Will the gentleman yield for a second?

Mr. GREEN. Always to the Chair, absolutely.

Chairwoman MALONEY. The planned study apparently will not yield a report until the end of 2008. And don't you think that consumers should get the benefits of one-stop shopping and information sooner than that? The chairwoman yields back.

Mr. GREEN. I would gladly want to hear the lady's response to the question.

Ms. BRAUNSTEIN. Well, yes. I agree with anything that will improve the process for consumers.

Mr. GREEN. How is it, Ms. Braunstein, that you would conclude that we need the number, but we really do not need the number if the number impacts my operation. Let me retract that.

The number has no impact on what you are doing. You continue to do what you are doing. You continue to publish your number. You continue to be effective in doing what you are doing. Now, why would this number become a problem?

Ms. BRAUNSTEIN. It is not.

Mr. GREEN. Okay. One more thing. On the question of privacy—and, Mr. Walsh, you addressed this, but I just want to go back to it—did you not say, sir, that the same question exists, regardless of what number we have? Is this correct?

Mr. WALSH. Well, we would be—we are concerned, we do deal very carefully with protection of privacy of any case that is brought to us by whatever means, and that would be true whether it came through a referral through an 800 number or—

Mr. GREEN. So this doesn't present some peculiar set of circumstances that we don't already have to cope with?

Mr. WALSH. I don't believe so.

Mr. GREEN. Okay. My final question is this: Do you each now have a number for consumers to call? If you do, raise your hand.

[Show of hands]

Mr. GREEN. All right. You all have a number. So now, can you agree that if you all have a number, if one number can get the con-

sumer to each of your numbers, can you agree that would be beneficial? If so, would you raise your hand?

[Show of hands]

Mr. GREEN. Okay. Let the record reflect that all persons agreed. Thank you, Madam Chairwoman. I yield back.

Chairwoman MALONEY. Thank you for your questioning. I now recognize Mr. Hodes for 5 minutes.

Mr. HODES. Thank you, Madam Chairwoman, and thank you for offering this legislation.

I noted in the testimony of the OCC that there are 70,000 total cases opened each year. Of those, what is the current inventory in active cases? How quickly are your cases turning over?

Mr. WALSH. Within that number, there are about 40,000 that are, in fact, inquiries. They are the kind of questions that can be answered relatively expeditiously.

And about 28,000, in the most recent year, became what we call actual complaints that were opened, that then have to be processed. And the goal, with those complaints, is to complete them within 60 days. We have—I am not sure at this moment of the backlog. There is always a kind of a time trail behind that.

Our staff has actually been doing Saturday work to work at that backlog, because the numbers have been up a bit, although not as much as one might expect, given some of the problems taking place out in the credit markets.

Mr. HODES. Thank you. I appreciate the importance that the regulators who are testifying here today place on handling consumer complaints, and the efforts that you are making, sort of inter-agency, to work together towards the goal of efficient handling and directing of the kinds of complaints we are dealing with.

Are there any statistics that tell us how many total consumer complaints, among all the groups of regulators that are here today, that we are seeing on an annual basis now? Do we know what that number is?

Mr. WALSH. We certainly know individually. I have not consulted with the others to add them together, but we can certainly provide that number.

Mr. HODES. So, for instance, that piece of information is not something that, so far, regulators have gotten together to talk about yet. Is that correct?

Ms. THOMPSON. We do get together periodically. In fact, we get together quite often.

A couple of years ago, the FDIC sponsored a conference where we talked about these issues. This year it was at the OCC. Next time it is at the Federal Reserve. We do speak frequently.

But, to your point, there is no mechanism. We would all have to get together and bring our numbers. There is no central repository of information for that data.

Mr. HODES. So, would you agree that it is possible that this legislation, and the creation of this number, would facilitate that kind of data sharing?

Ms. THOMPSON. Yes.

Mr. HODES. Ms. Braunstein, you said an interesting thing during your oral testimony. In answer to a question about what was available to consumers, you said that you assume there is some infor-

mation in their financial institution telling consumers who to reach and how to reach them.

The use of the word “assumed” to me was interesting, because I am trying to think back—I go into my bank quite frequently—about what is displayed, and how I know about where to go if I have a complaint. And I am not the most observant person in the world, but I cannot think of any prominent display in my financial institutions, the ones I use regularly, that say, “If you have a problem, here is where to go.”

And so, what strikes me in listening to the testimony, and reading the testimony that all of you have presented, is that the good news is that, in some way, each of the folks here have good access for consumers’ complaints. Everybody has an 800 or an 888 number, and everybody is trying to do something. That is the good news.

The bad news is that everybody has a different 800 number, or 888 number, and everybody is trying to do something. And it strikes me that, both in terms of data and the ability to facilitate sharing, as well as being able to provide one-stop shopping for consumers, the number is a good idea.

I confess I have not read the legislation in detail, so I don’t know whether this is in there. Would you find that a requirement that there be a prominent display in the covered financial institutions of the 800 number—assuming that the legislation goes through and there is an 800 number—that there be a prominent display in each financial institution that says, “Here is your 800 number. If you have a problem, here is where to call,” would be a good idea? I will take it from any one of you.

Ms. BRAUNSTEIN. I think that is an excellent idea.

Mr. HODES. Anybody have a problem with it? Anybody—

Mr. NEIMAN. I don’t have a problem. I think it is very important. And, in fact, even more important with respect to operating subsidiaries of institutions.

So, if you have a mortgage subsidiary that is a mortgage subsidiary of a Federal bank, those States would not have any jurisdiction, and that complaint should be directed to a banking regulator.

If it is a subsidiary of a holding company, and the mortgage subsidiary is regulated by the State, it should be directed to the State supervisors.

So, a mandated number, a national number, whether it be prominent in a statement or a brochure or a Web site of that service provider, would be extremely helpful.

Mr. HODES. Okay. I am actually thinking about some kind of poster that is right there, where people are dealing with it, where they cannot miss it. That kind of thing, that can direct to State or Federal, or whoever it ought to go to, but the consumer now knows there is one place to call if you have a problem.

Ms. BRAUNSTEIN. A poster in the lobby is an excellent idea, but a lot of people don’t go into their banks anymore, so you might also think of other means—

Mr. HODES. Sure. Understood. Great. Thank you. I have no further questions at this time. Thank you very much.

Chairwoman MALONEY. I thank my colleagues for their questions, and I would like to note that all of the witnesses' testimony, their written testimony, will be made a part of the hearing record.

And I would like to note that members who may not have been able to be here—it is a busy week—will have an additional opportunity to ask questions of this panel. They may submit them in writing and without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

I thank you very much for your time and for your excellent testimony today. Thank you for being here, and we will go to the next panel.

I now recognize and welcome Jeannine Kenney, the senior policy analyst of the Consumers Union, and Edmund Mierzwinski, the consumer program director of U.S. Public Interest Research Group. Thank you both for being here.

First, Ms. Kenney, the senior policy analyst of Consumers Union.

**STATEMENT OF JEANNINE KENNEY SENIOR POLICY ANALYST,  
CONSUMERS UNION**

Ms. KENNEY. Thank you, Madam Chairwoman, and members of the subcommittee. On behalf of Consumers Union and the Consumer Federation of America, we appreciate this opportunity to talk about the significant barriers that consumers face when they simply want to complain about their bank.

Assuming consumers even know they have the right to complain in the first place, it is understandable that they have such difficulty in knowing where and how to complain.

Consider what consumers must understand to know where to complain. They must know that there is a difference between a national bank and a State chartered bank, and that there is an OCC, and that it regulates national banks. They must know that the national bank operating subsidiaries—which may not call themselves banks—are regulated by the OCC, as well. They must know that the Fed supervises State-chartered banks that are members of the Reserve system, but that the FDIC supervises State-chartered banks that are not members of the Federal Reserve system.

They must know that there is a difference between a bank and a savings and loan, that a savings bank is a thrift, and that the OTS regulates them. And they must know that credit unions can be State- or federally-chartered, and that there is an NCUA.

This sounds ridiculous, and it is. To most consumers, a bank is a bank is a bank. Regardless of how and by whom it is regulated, they need to know how to complain. And when they have a problem, it should be easy for them to do so. Right now, it is difficult for all but the most persistent consumer to determine where, how, and to whom they should complain. And faced with a dizzying array of options, consumers may simply give up.

A single consumer toll free complaint hotline provided for in your legislation, Madam Chairwoman, The Financial Consumer Hotline Act, is an excellent first step in rectifying the inherent difficulties created by what is a fragmented and Byzantine regulatory system, and we are pleased to offer our support for it.

We also applaud the legislation's directive that the agencies report back to Congress on their efforts to establish a single inter-agency Web site for the routing of complaints, and are pleased that the agencies are working together to look for improvements.

But to be truly effective, a complaint system must do the following: It must be easy for consumers to access and use; it must be effective for the individual consumer; and it must provide transparent and meaningful results to the Congress, to the public, and to the regulators.

To that end, we would argue that the agencies should establish a seamless, integrated complaint system on the front-end—not just a referral site or a toll-free number—with a consistent complaint procedure, a single, easy-to-understand complaint form, a single snail-mail and e-mail address, and a single fax number.

So long as the agencies maintain their own stovepipe Web pages, the confusion will simply not end. The agencies should work out the difficulties and complexities on the back-end, and those complexities should remain hidden to consumers.

In addition, both formal and informal complaints should be accepted by phone and via secure online connection. The current requirement by most agencies that consumers mail their formal complaints erects just one more barrier to the process. And any single Web site and hotline should be widely promoted, as the prior panel suggested.

But perhaps most importantly, an effective complaint system should not discourage consumers from complaining, but encourage consumer input, commentary, and complaints. We believe that the current system is structured not just so that the process itself discourages complaints, but so that the substance of the Web sites and the brochures that the agencies provide subtly discourage consumers from complaining.

Consumers are told to contact their bank first, before complaining. Someone upset by the conduct of their bank is understandably discouraged by this advice, and it probably means that some violations of law will go undetected by the regulator.

Consumers are also told that their complaint will be routed to the bank for a response, a process unlikely to be encouraging to a consumer who has been down that road, only to hit a dead end.

They are told that when it comes down to believing what the bank said and the consumer said—that is, when there is a question of fact—the consumer is on her own, and advised to consult legal counsel, an option ludicrous on its face for all but the most significant financial injuries.

OCC's HelpWithMyBank Web site advises consumers to contact the complaint line if they cannot find their answer online. Unfortunately, when they look for the answer online, they are more frequently than not told that what the bank is doing that is so bothering them is perfectly legal. The content on the Web site provides, more often than not, what the bank's rights are, not what the consumer's rights are. Also, as we point out in our written testimony, in some cases, the information is flat out wrong.

On an issue I know you have been very concerned about, Madam Chairwoman, overdraft loan fees, on HelpWithMyBank, consumers are told that there are no limits on the size of fees that banks must

charge, that banks are not required to process checks so as to avoid overdraft fees, that banks get to choose whether to reject the check or charge the overdraft fee, that the law does not require deposits be processed before debits, and so on.

Nowhere, by the way, are consumers told that they could opt-out of this service and pursue other, less costly, overdraft protection services.

Would any rational consumer bother to tell the regulator that they don't like what the banks are doing on overdraft loan fees in the face of this information? Of course not. And that means the regulators are missing out on critical consumer input. The reality is that consumers will not waste their time when the consistent message from the regulators is, "We cannot or we will not help you."

And although most complaint centers describe themselves as neutral arbiters, consumers can be forgiven for thinking the deck is stacked against them. When they bother to file a formal complaint, they are going to, more often than not, receive a "tough-luck" letter. Consumers deserve a regulator that serves as their advocate, not their adversary.

Finally, we would urge a single technical platform for the agencies with a uniform complaint coding system, so that we can facilitate information sharing of trends regarding the types of complaints. And the coding system should be granular, so we know exactly what consumers are complaining about, not just the broad categories that we hear about in the OCC Ombudsman Report.

Finally, the complaint system must be more transparent to policymakers and the public. Right now, it is not. We receive general information. We don't even know, unless we do the math ourselves, how many complaints the agencies are receiving.

So, with that, Madam Chairwoman, thank you very much.

[The prepared statement of Ms. Kenney can be found on page 42 of the appendix.]

Chairwoman MALONEY. Thank you very much for your testimony.

Mr. Edmund Mierzwinski.

**STATEMENT OF EDMUND MIERZWINSKI, CONSUMER PROGRAM DIRECTOR, U.S. PUBLIC INTEREST RESEARCH GROUP**

Mr. MIERZWINSKI. Thank you, Chairwoman Maloney, and members of the committee. I am pleased to testify in support of your legislation to establish a joint hotline among the several Federal bank regulators, and also the requirement that there be a study done of a joint Web site for the regulators, as well.

We support, in addition, a number of other suggestions and changes to improve the legislation, and some other changes that may go beyond the intent or the scope of the legislation, but that we think would be important for the subcommittee to consider in future legislation.

The great science fiction writer and futurist, Arthur C. Clarke, once said that any sufficiently advanced technology is indistinguishable from magic.

Unfortunately, there is nothing magical about dealing with a Federal bank regulator. Consumers who complain to us are very

frustrated with their interactions with the banks. We believe, however, that your legislation will go a long way toward creating a seamless interaction.

The first recommendation we would have—and we concur with Consumers Union and the CFA on this, of course—is to establish one-stop consumer complaint shopping, no matter what the point of entry is, whether it is phone, Web, e-mail, fax, snail mail, or perhaps even a walk in.

Consumers should have one Web form, one complaint form, and they shouldn't have to deal with figuring out anything. The Web site or the bank telephone numbers should figure out, "Okay, here is a complaint. We have taken it in, we will figure out who to send it to, we are not going to ask the consumer to decide is it a national bank or is it a State bank, is it a national bank or is it an operating subsidiary."

The OCC's Web site currently requires this sort of forensic examination by a consumer through a set of drill-down menus. The consumer should not have to deal with anything like that.

We believe that this intake system, this centralized source, should also be in both English and Spanish, to start, and perhaps in other languages in the future.

Also, and I believe some of the bank regulators even may have supported this concept, which surprised me—is that we believe there should be advertising at point-of-sale in the banks.

We suggest something like a complaint busters logo, modeled after the Ghost Busters, "Who are you going to call," or Mr. Yuck at the Poison Control Center, something easy to remember, something easy to identify, something that consumers will see and say, "Look, if I have a problem with my bank, I see the poster on the wall, or I see the link on the Web site, and I will contact this number." Something like that would greatly aid in pushing this out into the public's eye.

And even if we can't get legislation enacted that requires it to be posted in every bank, it should certainly be promoted by the regulators in some way.

Much of the problem that consumers face is that the problem isn't finding a bank regulator, it is getting a bank regulator to do something about their problem. The most recent studies of the GAO on the bank complaint handling process at the regulators suggest that the number one recommendation of the regulators is, "Sorry, we cannot help you, it is a contractual matter." "Go to court," or something like that, but "Sorry, we cannot help you, go away." And the least common response of the bank regulators to a complaint is that, "The bank made an error."

In our view, the bank regulators aren't even balanced in the middle. They are, essentially, on the side of the banks. So we would suggest that you take some of the money that the regulators receive in the form of fees—and they mostly are outside the Federal budget process, they mostly get their money from fees from regulated institutions—and put that money into the centralized source, and make the centralized source into an advocate for consumers.

We already have a model in about 40 States that have a national association of State utility consumer advocates. They take a portion

of utility fees, and they create a regulator who simply acts on behalf of consumers.

To go even further, you could establish something that consumer groups have been supporting for years, and then-Congressman Schumer supported 20 years ago, which was the establishment of a financial consumers association that is chartered by the government, but run by consumers and paid for by dues, that has an opportunity to raise money by putting inserts in bank account statements.

Again, I think Mr. Neiman strongly supported a lot of this—we need to require accountability of complaint systems. We need to have data more easily available to you, the policymakers, to me, to the public, to academics, and to others. What if the top 10 banks were ranked on the basis of their per capita level of complaints? What if the 10 worst banks appeared on a Web site? This would be very interesting, to have the regulators posting this kind of information, which would help the market work.

But, at a minimum, we really need to look at getting more information about these complaints out there without having to file FOIAs and receive data full of redactions months or years later, which is the current situation of dealing with the bank regulators.

We need to address the toxic regulatory culture. As I indicated, the regulators just aren't on the side of consumers. I do not have time to go into this today, but in our joint testimony, of all the consumer groups presented by Travis Plunkett of the CFA at your hearing this summer, we presented a number of the issues, a number of the problems.

For example, the Federal Reserve, the only agency not to fully support your legislation today, has tremendous legal authority today to ban some of the most unfair bank practices, which it simply chooses not to use.

Next, we really believe you need to reinstate State attorney general enforcement authority over Federal banks and other Federal institutions. Again, it is a long-standing concern of the consumer groups that the OCC's preemption determinations, as upheld by the courts, are unfair. We need more consumer cops on the beat. We need the competition between State and Federal regulators to come up with the best public policies.

And, finally, as I indicated earlier, the major response that the bank regulators make to consumers, according to GAO reports to the Congress is, "Go away, your complaint is contractual." Well, the consumer can't take that complaint to court, because mandatory arbitration provisions in their bank contracts prevent them from going to court.

So, we support Representative Hank Johnson's legislation, The Arbitration Fairness Act, that would eliminate binding mandatory arbitration as a requirement in all consumer contracts. Thank you very much.

[The prepared statement of Mr. Mierzwinski can be found on page 61 of the appendix.]

Chairwoman MALONEY. Well, I would like to thank both of you for your testimony.

But as you heard from the first panel, the Federal Reserve says that this legislation is not necessary to encourage the banking agencies to develop a consumer response program such as hotlines.

What is your view of this? Is the Fed doing enough on its own, or do we need this legislation?

Ms. KENNEY. Well, I imagine that Ed and I are not in disagreement on this.

Certainly, we are pleased that the interagency working group is moving forward on this. But, frankly, it is long overdue. And there is nothing duplicative about legislation that holds the regulators' feet to the fire, and ensures that they do what they should have done a very long time ago.

Mr. MIERZWINSKI. We would agree. I was pleased, when I looked on the Fed's Web site, when I was preparing my testimony. They now have consumers on the homepage, and that is good. But they need to do more. They need to support this legislation.

And, even if they don't, go forward without them.

Chairwoman MALONEY. I would like you to comment on the suggestions by Superintendent Neiman for additions to the bill.

Do you agree that adding a requirement for tracking trends and case numbers could help with congressional oversight, and provide a factual basis for seeing if legislation on a particular issue is needed, for example?

I would also like to respond to your testimony that we need to track whether or not consumers are satisfied with the answers. It is one thing to be able to lodge a complaint, but have they gotten an answer that allows them to correct the situation, or improve the situation?

Ms. KENNEY. We would certainly agree, and I think indicate in our written testimony, that a really fundamental function of a complaint system is tracking consumer attitudes, not just formal violations of law. And that is an opportunity that the current system, because it is stovepiped, and because it discourages those types of comments, really misses out on.

So, absolutely. I mean, it is a little bit shocking if tracking is not happening now, I think. And, certainly, all of these agencies need to do a better job in tracking consumer satisfaction with the resolution. We hear from consumers who are not just frustrated because they can't figure out where to complain, but who are really unhappy with the outcome that simply says this outrageous practice was disclosed in a contract you saw 4 years ago, and so, take it up with your bank or go talk to a lawyer.

Mr. MIERZWINSKI. We agree.

Chairwoman MALONEY. Okay. And finally, to what extent are statistics currently available to you, as advocates for bank customers?

You mentioned the overdraft challenge. Is there a way that you can track how many consumers are disturbed about this practice? To what extent are statistics there for you to track trends that are extremely burdensome to consumers?

Ms. KENNEY. Well, Madam Chairwoman, we do have the data that is sort of reported in bulk by the agencies, which the OCC now reports in the Ombudsman Report, which gives you very broad cat-

egories of complaints by product, and then within each individual product.

But frankly, it is very difficult for us to know without—as Ed mentioned, you know—doing a FOIA request, how many people, for example, are complaining about overdrafts. And, even within the overdraft category, what specifically they are annoyed about. The size of the fees? The number of fees? The order of processing? Check hold times? And so forth.

Mr. MIERZWINSKI. Yes. We would certainly agree that it is very difficult to obtain information, other than the summary data that they provide, unless you file a very specific FOIA request.

I would also take this opportunity to say that the other place that the consumer groups find inadequate data availability is in the call reports. When we want to compare different banks, and figure out how much money they are making on all their new fees, the call reports are extremely inadequate.

I know there are some government GAO studies of call reports going on now, but it would greatly aid us if we could get all of this information without having to file FOIAs, without having to jump through hoops.

Chairwoman MALONEY. Well, my time has expired. I now recognize Congressman Green for 5 minutes. Thank you.

Mr. GREEN. Thank you, Madam Chairwoman. Madam Chairwoman, if I had any doubt prior to hearing these two witnesses, it has been completely eliminated. I again commend you for the simplicity of the idea that will deal with what appears to be a very complex set of circumstances.

As indicated, the system appears to be Byzantine. In a polyglot society, that makes for an unusual set of circumstances.

So, Ms. Kenney, let me ask you the question, given that we are a polyglot society, should we have multiple languages available to persons who call in?

Ms. KENNEY. Absolutely. And certainly starting with the most frequently spoken non-English languages on the Web site, as well as on the hotline. I know that does create some resource issues, but we certainly need to be responsive to all types of consumers who are aggrieved by their bank, and particularly those who have fewer resources available to them.

Mr. GREEN. Thank you. And because I have really enjoyed hearing your testimony, not because you have a melodious voice—although you do sound good—but because of the substance that you presented. It was overwhelming, to a certain extent.

So, permit me to ask this, so as to enhance your level of acceptance among a diverse group of folk who will have to pass judgement on what we are doing. How are you funded? Let us start with Ms. Kenney. How is your organization funded?

What I am trying to get to is this: Do you have an axe to grind? Is there some reason for you to come to Congress and present the kind of testimony that you presented? And I think you spoke well. Is there some reason that you would have to do this, other than that you want to see the right thing done?

So, tell us, how are you funded, if you do not mind?

Ms. KENNEY. Thank you, Congressman Green, for your kind words. Consumers Union is a nonprofit organization fully funded

by consumer subscriptions to our print magazine, to our online Web site, as well as to some of our other print products, such as our health and financial newsletters. And we receive some charitable contributions from foundations. But we receive no corporate support, and accept no advertising, whatsoever.

Our goal is to protect consumers and to inform them.

Mr. GREEN. And when you arrive at the positions that you espouse, do you—how do you synthesize these positions? You do not just wake up one morning and say, “You know what? I think this is a good idea.” Is there some process that you go through to arrive at the position that you have arrived at?

Ms. KENNEY. Yes. Certainly one of the advantages that we have is we work across a wide range of substantive areas, and we can see difficulties facing consumers across those areas in some of the same categories.

And, certainly, the banking agencies are not alone in the difficulties of the complaint procedures and the unsatisfactory results that they yield. So, certainly, we look at a wide range of issues and analyze them. We have been looking at the banking complaint procedure for some time now, and we will be writing about it in an upcoming issue of our magazine, *Consumer Reports*, as well.

Mr. GREEN. All right. Let me pass to—and sir, I will not embarrass myself by—

Mr. MIERZWINSKI. That is okay. It is “Mierzwinski.” Simple.

Mr. GREEN. Thank you.

Mr. MIERZWINSKI. Congressman Green, we are an independent, nonprofit organization. We serve as the federation of State public interest research groups, and we are funded solely by individual donations. About half of the State PIRGs have college chapters, and all of the State PIRGs have individual citizen members.

We knocked on doors—over four million, five million doors—this summer, asking people to join our organizations. And we also accept some charitable contributions from independent foundations. We accept no corporate money, whatsoever, and we accept no government grants, either.

We come upon our positions based on taking a hard look at what is the right public policy solution to a problem. We conduct our own research, we do our own surveys. We have done a number of studies, for example, of bank fees called *The Big Banks Big Fees* studies, and we have done this in a number of other areas that we participate in, as well as banking.

Mr. GREEN. Thank you. I yield back the balance of my time.

Chairwoman MALONEY. Thank you so much. Congressman Hodes, for 5 minutes.

Mr. HODES. Thank you, Madam Chairwoman. Thank you both for your testimony. I am struck, as a new Member of Congress, now having been here a year, by the complexity of the regulatory schemes facing consumers, and the clear testimony that comes across that the regulators are not attuned to protecting consumers, that the culture that we are faced with is one that has, in fact, set up barriers to consumers, and in which consumers are given short shrift.

According to Mr. Mierzwinski, what you saw on the Web site with the Federal Reserve was, for the first time, you said you saw

the word “consumer” on there. But it does not sound like it is very prominently displayed.

Now, some of your suggestions, Mr. Mierzwinski, for amendments or additions or considerations in the bill, sound like you are advocating that there be a consumer ombudsman office associated with this 800 number. Am I getting that right?

Mr. MIERZWINSKI. I think that is absolutely the case. And the situation we have today is that the bank regulators have a dual responsibility. They supervise the banks and they also promote the banks. They are required to do a job that makes them too cozy with the banks.

Consumers do not have an ombudsman. I realize there is an ombudsman at the OCC, but the legal responsibility of that ombudsman is not to protect consumers. There are 40 State officials known as utility councils, or people’s council, who bring cases on behalf of consumers in the State utility arenas.

There could be a model like that here. Why don’t we make the centralized source, the centralized complaint handling system, an advocate for consumers, rather than simply a pipeline to the existing agencies, which, again, in our view, have a culture that is pro-bank, not even unbiased, but literally pro-bank.

Mr. HODES. And whether or not this legislation is the right vehicle for that idea, and whether or not—it certainly sounds like it is important for this committee to address the kind of cultural disconnect that you have raised in your testimony between the regulators’ obligation to their institutions and the need for help for consumers. So I appreciate your thinking on that.

I also take it that it sounds like you share my thought about the prominence with which the 800 number and communication about it needs to happen in today’s talk show/deficit disorder culture, in order to reach consumers in as clear and simple a way as we would like it to happen with this 800 number.

Mr. MIERZWINSKI. I think, without a doubt, if you don’t do that, then the system will fail. And I would strongly recommend you don’t call it the FFIEC hotline, for example.

Mr. HODES. All right. All right. Follow the KISS principle?

Mr. MIERZWINSKI. Right, exactly.

Mr. HODES. Do you also think that Congress needs to go so far as—let us assume that we have this legislation about the 800 number—requiring the regulatory agencies to display information about it on their Web sites and in their information in a particular way, with particular prominence, in a particular style, or is that something that we simply leave up to them?

Mr. MIERZWINSKI. Well, that is exactly my view, is it should be something like “Ghost Busters” or “Mr. Yuck.” It should be something that they all have that is the same, so that people know that, hey, it is easier to go here. And that, ideally, would go into a bank.

So, if I walk into a national bank, I see Mr. Yuck or Ghost Busters. If I walk into a State bank or an operating subsidiary, no matter where I go, I see the same logo. Right now, the only logo that goes across all the depository institutions is the FDIC logo, because they insure them all, except for the credit unions, which are insured by the credit union share fund.

So, that is the only non-confusing logo that is out there. And we need something like that, so people understand that when they really want help with their bank, there is a one-stop shopping central source, complaint-busters site.

Mr. HODES. Thank you very much. I appreciate it. I yield back with great appreciation, Madam Chairwoman.

Chairwoman MALONEY. Thank you. And thank you for your attendance and questions. I would like to note that without objection, your written testimony, in its entirety, will be made a part of the record, and that the record will remain open for 30 days, so that members will have an opportunity to submit written questions to you, and to place your responses in the record. I thank you very much for your time and your testimony today, and for all of your hard work. Thank you.

The hearing is now adjourned.

[Whereupon, at 11:43 a.m., the hearing was adjourned.]

# **A P P E N D I X**

December 12, 2007

For release on delivery  
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December 12, 2007

Statement of  
Sandra F. Braunstein  
Director, Division of Consumer and Community Affairs  
Board of Governors of the Federal Reserve System  
before the  
Subcommittee on Financial Institutions and Consumer Credit  
Committee on Financial Services  
U.S. House of Representatives

December 12, 2007

Chairwoman Maloney, Ranking Member Biggert, and members of the Subcommittee, thank you for the opportunity to discuss the recently introduced “Financial Consumer Hotline Act of 2007.” I am the Director of the Federal Reserve Board’s Division of Consumer and Community Affairs. In addition to its responsibilities for rulewriting and enforcing many federal consumer financial protection laws, the Federal Reserve administers a nationwide consumer complaint and inquiry program with respect to the banks we supervise and general consumer financial issues. My division has responsibility for that program. My testimony today will comment on the proposed legislation, and discuss recent Federal Financial Institutions Examination Council (FFIEC)<sup>1</sup> and Federal Reserve initiatives that address the purpose of the proposed legislation.

The Financial Consumer Hotline Act of 2007 would amend the Federal Financial Institutions Examination Council Act by requiring the FFIEC to establish a single telephone number that consumers with complaints and inquiries concerning financial institutions or issues could call and be routed to the appropriate federal supervisory agency or state bank supervisor for assistance. Under the legislation, transfers of calls to state bank supervisors would be subject to the state’s capacity to receive calls and its satisfaction of any conditions established by the FFIEC. The legislation would also require the federal financial institution regulatory agencies to submit a report to the Congress on efforts to establish a public interagency website for directing and referring consumer complaints and inquiries to appropriate agencies, and to establish a

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<sup>1</sup> The FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and to make recommendations to promote uniformity in the supervision of financial institutions. In 2006, the State Liaison Committee (SLC) was added to the FFIEC as a voting member. The SLC includes representatives from the Conference of State Bank Supervisors, the American Council of State Savings Supervisors, and the National Association of State Credit Union Supervisors.

system for expediting the routing of misdirected consumer complaint or inquiry documents between appropriate agencies.

The Federal Reserve concurs with the intent of the proposed bill and strongly supports the current efforts by the FFIEC agencies to improve the consumer's experience with getting complaints involving banking services and transactions addressed promptly and accurately. However, given that the FFIEC agencies are collaborating and cooperating on how to facilitate the consumer complaint handling and resolution process in ways that are consistent with the proposed bill, and the considerable progress being made already on both an interagency basis as well as through our own efforts, legislation does not appear to be needed to ensure continued momentum. Additionally, it is important that the agencies maintain flexibility so they may benefit from recommendations that will result from the current FFIEC initiatives and future technological advances.

***Interagency Initiatives***

Before highlighting current interagency initiatives, it is important to mention that the FFIEC agencies have been coordinating on consumer complaint processing since the 1970s. For example, the agencies have had fully operational procedures in place for decades to promptly refer misdirected consumer telephone calls and misdirected consumer complaints and inquiries to the appropriate federal or state regulator. Recently, the agencies have started using new technology to further speed-up and improve the referral process, including the use of encrypted email and electronic scanning of complaints, which has significantly reduced the paper flow between other FFIEC agencies and the Federal Reserve.

Moreover, the agencies meet periodically to share complaint data and to discuss emerging issues identified through the complaint process. Most recently, the federal banking

agencies held national conferences in April 2006 and October 2007 to share information about trends and issues evident in consumer complaint processing, and to share best practices in investigating and analyzing complaints. The agencies also discussed ways to improve their service and potential ways complaint data might be used to aid in the development of consumer education materials. Another interagency conference, which will be sponsored by the Federal Reserve, is scheduled for April 2009 at our central consumer help site located at the Federal Reserve Bank of Kansas City.

To build upon the efforts of the agencies to enhance their ability to investigate and respond to consumer complaints, in September of this year the FFIEC formed an interagency working group to identify ways to collectively improve the consumer complaint programs of the agencies with the goal of making those programs even more consumer-friendly. This working group also includes representatives from the Conference of State Bank Supervisors.

The group met several times to identify appropriate best practices and areas of common approach related to the consumer complaint process; and, determine whether the use of a third party vendor would be appropriate to assist in this effort, and if so, to determine the scope of the vendor's engagement. A number of promising initiatives that would enhance consumers' experience with the agencies' complaint processes surfaced during these discussions, including:

- Marketing and publicity campaigns to increase consumers' awareness of each agency's complaint program;
- An interagency website or portal that would serve as a gateway for directing complaints and inquiries to the appropriate agency;
- A process for routing consumer calls, letters, and emails to the appropriate agency; and,

- A search tool on the interagency website to make it easier for consumers to identify the regulator with responsibility for their financial institution.

The group also put forth some ideas that might leverage agency resources, including unified complaint coding to facilitate the sharing of information between the agencies about emerging trends and issues identified from consumer complaints, an electronic process for forwarding complaints to the appropriate agency, and a uniform case management system.

These initiatives have much in common with those identified in the proposed legislation. The FFIEC working group recommended to the FFIEC that a third party vendor be engaged to address the ideas for enhancing the consumers' experience in dealing with the agencies and to explore the feasibility of pursuing the initiatives related to leveraging the agencies' resources. The group further recommended that the vendor use consumer focus groups to identify consumers' preferences for filing complaints and contacting a regulator about their banking problems. On December 4, 2007, the FFIEC approved the working group's recommendations and is beginning the process of hiring a vendor, which includes developing a statement of work, soliciting bids from interested parties, and selecting a vendor. We believe the vendor's work will provide the FFIEC with insight needed to develop a comprehensive strategy to further enhance the consumer complaint process and consumers' overall satisfaction with the process.

***Federal Reserve Initiatives***

Through the Federal Reserve's consumer complaint program, which was established in 1976, we address complaints about the banks under our supervision (state-chartered banks that are members of the Federal Reserve System and certain foreign banking organizations) and promptly refer complaints we receive regarding other financial services firms to the appropriate federal or state agency, including the Federal Trade Commission.

The Board has uniform policies and procedures for investigating and responding to consumer complaints, which are implemented by specially trained analysts at the twelve Federal Reserve Banks. Board staff oversees the implementation of these policies by the Federal Reserve Banks. In each of the last two calendar years, the Federal Reserve System has received about 1,900 complaints concerning the roughly 900 state member banks for which we have supervisory responsibility. The Board maintains a database that enables us to track each complaint and how it is resolved.

Consistent with the intent of the proposed legislation and the Federal Reserve's long-standing consumer protection program, we recently announced additional enhancements to our own consumer complaint handling procedures that show great promise for improving consumers' experience in dealing with our program and in streamlining our processes.

On November 19, we launched "*Federal Reserve Consumer Help*," which is a new centralized resource that consolidates and streamlines the Federal Reserve's consumer complaint and inquiry program. Trained customer service professionals are available to answer questions and assist with a wide range of issues relating to financial products and services, and consumer protection laws. Simply put, it serves as a one-stop complaint and inquiry site where consumers can go to get help from the Federal Reserve.

Consumers calling our new toll-free number (888-851-1920) between the weekday hours of 8 a.m. and 6 p.m. Central Time can speak directly to a customer service professional. After hours, callers may leave a message and *Federal Reserve Consumer Help* staff will return their calls the next business day. The website, [www.federalreserveconsumerhelp.gov](http://www.federalreserveconsumerhelp.gov) was designed for easy access allowing consumers to submit a complaint or inquiry electronically.

The website provides answers to commonly asked banking questions and links to many consumer protection materials and resources. Consumers will also find an updated version of the brochure "*How to File a Consumer Complaint Against a Bank*" on the website. This brochure explains, step-by-step, the Federal Reserve's complaint process and tells consumers what to expect during a complaint investigation. An electronic complaint form is also provided.

Consumers do not have to know which federal bank regulator supervises the bank or financial institution that they are concerned about in order to file a complaint or inquiry, or to get assistance from the Federal Reserve. Further, consumers are not limited in how they can contact the Federal Reserve for help--complaints and inquiries can be filed with us by mail, fax, telephone, or email. When a complaint or inquiry is filed with us, our customer service representatives query a national database maintained by the Federal Reserve Board in order to determine the appropriate regulator responsible for the financial institution that is the subject of the complaint or inquiry. *Federal Reserve Consumer Help* then directs the complaint or inquiry to the appropriate regulator. For example, with regard to complaints and inquiries filed by telephone, we have arrangements with several other banking regulators to transfer callers directly to a representative at the appropriate agency. Any misdirected written or electronically submitted complaints or inquiries are forwarded to the appropriate agency, and for agencies with the capability, these complaints and inquiries are passed on to them electronically.

#### ***Conclusion***

We are keenly aware of the congressional interest in the administration of the agencies' consumer complaint and inquiry programs, and are moving ahead with the implementation of both interagency and Federal Reserve System measures to address the needs of consumers and improve these programs. As underscored by recent enhancements to our consumer complaint

program, and our support for interagency initiatives, the Federal Reserve remains strongly committed to ensuring that issues consumers have with their financial institutions are handled promptly, courteously, and thoroughly, and that consumers have access to an effective and efficient means for resolving complaints. Moreover, the Federal Reserve believes the consumer should not be burdened with having to know the regulator to file a complaint or make an inquiry. As such, the Federal Reserve provides the same level of commitment and service to all consumers and uses highly trained, professional staff and customized tools to direct consumers or send misdirected complaints to the appropriate regulator or agency.

I would be pleased to answer any questions you may have about the Federal Reserve's consumer complaint program, our recent initiatives, or ongoing interagency efforts to enhance consumer complaint handling and resolution.



Consumer Federation of America

Testimony of

**Jeannine Kenney**  
Senior Policy Analyst  
Consumers Union

on behalf of  
Consumers Union  
Consumer Federation of America

regarding

**Financial Consumer Hotline Act of 2007: Providing Consumers with Easy  
Access to the Appropriate Banking Regulator**

before the

**Subcommittee on Financial Institutions and Consumer Credit  
Committee on Financial Services  
United States House of Representatives**

**December 12, 2007**

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Testimony of  
Jeannine Kenney  
Senior Policy Analyst  
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December 12, 2007  
Subcommittee on Financial Institutions

Chairwoman Maloney and members of the subcommittees, on behalf of Consumers Union<sup>1</sup> the non-profit, independent publisher of *Consumer Reports*,<sup>®</sup> and the Consumer Federation of America,<sup>2</sup> thank you for this opportunity to testify on the need to streamline the process by which consumers may inquire of, and complain to, financial regulators. Our testimony today offers support for the Financial Consumer Hotline Act of 2007 and provides additional suggestions for improving the existing complaint system. Of course, no complaint system is capable of offering consumers satisfaction when the underlying regulations lend their imprimatur to the abusive and unfair banking and credit practices complained about. To that end, we encourage Congress to follow-up on the work this Subcommittee has done to shed light on some abusive practices, including unfair credit card terms, excessive overdraft "loans" and manipulative debit processing, and to address other abuses such as lengthy check hold times and use of demand drafts that impose unnecessary costs and burdens on consumers, by adopting reforms to remedy the deficiencies in current law that drive many consumer complaints.

We wholeheartedly agree with the concept of establishing a single toll-free number which consumers can call to complain about their bank. Doing so will eliminate unnecessary consumer confusion created by the fragmented regulatory system for financial services that consumers do not, and should not have to understand to get satisfaction. There are five different federal agencies that regulate banks, savings and loans, or credit unions. And so far, there is no single web site, toll free number, or even paper form that consumers can use to complain to any of these agencies regardless of where they do their banking. Consumers should not need to know whether their financial institution is a federally chartered bank, a state-chartered bank, a thrift, or a credit union. They should not need to know that national banks and their operating subsidiaries are regulated by the Office of the Comptroller of the Currency, that savings banks and associations are regulated by the Office of Thrift Supervision, that credit unions are regulated by the National Credit Union Administration, that state-chartered banks are regulated by their state regulator, supervised by the Federal Reserve Board and insured by the Federal Depository Insurance Corporation. To most consumers, a bank is a bank, regardless of how and by whom it is regulated. The regulatory maze creates not only confusion for consumers, but it promotes unnecessary duplication and costs and reduces the utility of the information that regulators can glean from the complaint and inquiry process.

While establishing a single, initial point of telephone contact for consumers is a strong first step, we urge consideration by Congress and regulators of the following principles we believe should guide reform of the consumer complaint system for financial institutions.

Consumer complaint systems should:

1. Be easy to access and use;
2. Be effective for the individual consumer; and
3. Provide transparent and meaningful results to regulators, policy makers and the public.

Although these principles may seem self-apparent, the current fragmented and opaque complaint system falls short of meeting them. We welcome the Financial Consumer Hotline Act, improvements that the regulators have made to their complaints systems, and the proposals by Comptroller Dugan to improve the complaint system across all regulatory entities. And we offer the following additional recommendations for improvement.

#### **IMPROVE EASE OF ACCESS AND USE**

The first step in ensuring ease of access and use is to ensure that artificial barriers are not erected to potential complaints. Such barriers include procedural barriers, such as the process of initiating a complaint and the formalities of the complaint process itself, as well as structural barriers that discourage complaints regardless of the ease of the process.

##### **Procedural barriers**

First, consumers must know where to complain. Right now, that's not easy. The current system places the burden on them to determine that. Understandable confusion about which agency to contact can deter consumers from complaining in the first instance. The low number of complaints that federal banking regulators receive relative to the size of the banked population suggests that many consumers don't get through this regulatory maze. Four of the five federal banking regulatory agencies reported nearly 43,000 consumer complaints (excluding inquiries) in 2006, the most recent year for which numbers are available.<sup>3</sup> To be sure, OCC's new Helpwithmybank.gov website helps address consumer confusion by first inquiring of the consumer whether their bank is a national bank and giving consumers the means to answer that question. But when the answer is "no," the consumer is then told to travel to up to four additional regulator websites to determine to which agency he or she should complain.<sup>4</sup> Once at these sites, and after having determined that the agency is the appropriate regulator, consumers must still search out the complaint form and determine how to complain. For example, after arriving at the NCUA consumer page, consumers are asked to determine whether their credit union is state- or nationally chartered.<sup>5</sup> The Federal Reserve Board advises that consumers may complain to them if they have complaints relating to violations of the Truth-in-Lending Act, Equal Credit Opportunity Act, or Fair Credit Reporting Act—laws few consumers likely understand.<sup>6</sup> OTS's complaint form advises consumers to send their complaint not to the federal headquarters but to the appropriate regional office.<sup>7</sup> And although OCC and other regulators will generally accept inquiries about entities they don't regulate and reroute them to the appropriate agency, consumers aren't told that. Faced with the regulatory complaint maze, they may simply give up. When it is too hard to complain, consumers don't get the help they need and the regulatory agencies don't get enough information about what is going wrong for consumers in the marketplace.

Thus, establishing a single complaint telephone hotline will go far in assisting consumers who attempt to navigate the Byzantine regulatory system. However, a single hotline is only a first step. Regulators should establish a single, seamless complaint process using a clearinghouse website, a single complaint form, a single fax number, and a single snail mail address for all complaints and all regulated entities. Doing so would further reduce the procedural barriers created by the fragmented regulatory and complaint system. It would lift the burden on consumers to navigate the maze and leave it to the regulators to determine how to structure the system on the back-end to meet the needs of the different agencies. Consumers would not need to know what type of institution their bank is or even that different agencies regulate this sector. Once an inquiry is sent to such a clearinghouse, it can be appropriately directed to the proper agency. Implicit in the concept

of a clearinghouse is use of a *single* complaint form used uniformly by all the agencies and hosted on the clearinghouse website. While we applaud the recently announced initiative of the regulators to create a working group to create a more streamlined complaint process,<sup>8</sup> the question the working group should ask is not *whether* to create a single, unified complaint system, but *how* to do so. The working group should establish firm deadlines for their work and a strict timeline for implementation of a unified system.

Second, currently consumers must take extraordinary steps to file a complaint. Regulators will accept *inquiries and comments* via e-mail and phone, but for most agencies, to initiate a formal complaint, consumers must either download a complaint form or have one sent to them, fill it out, sign it and mail or fax it back to the agency.<sup>9</sup> Use of a written, signed complaint form creates both time delays and a hassle-factor that can deter the filing of complaints and delay their resolution. Formal complaints should be accepted via phone when the consumer has sufficient information or online using a secure Internet connection over which consumers can transmit sensitive personal information such as account numbers. While consumers may ultimately need to mail in documents supporting their complaint, they should be able to initiate the formal complaint process via phone or secure electronic means while those documents are in transit.

Third, complaint forms and website content that are overly complicated or legalistic discourage complaints. For the complaint process to be truly accessible, the complaint form itself should be less legalistic and more user friendly. To be certain, improvements in these forms have been made, but more can be done. For example, the OCC's complaint form unnecessarily refers to an "OMB Control Number" instructing the consumer that they do not need to file a form that lacks an OMB control number.<sup>10</sup> Should the consumer know or care what a control number is? The form also refers to the "complainant," a term rarely used by anyone but attorneys. An accessible form is simple to understand, easy to complete, and convenient to file.

Finally, the importance of hours of service and multi-lingual capacity of call centers cannot be overstated and should be self-evident. While the agencies have expanded their hours of service beyond traditional office hours, consideration should be given to ensuring at least some availability on the weekends.

We urge Congress and the regulators to move quickly to establish a single, unified complaint system that provides convenient, user-friendly one-stop shopping for consumers aggrieved by their banks and a procedurally friendly complaint system.

### **Structural Barriers**

To ensure that accessibility, the structural barriers inherent in the regulatory agencies' current approach to complaints must be eliminated. As a threshold matter, an effective consumer complaint system should not discourage consumers from complaining about a practice. Unfortunately, the advice provided on the agencies' websites and consumer tips implicitly tell consumers they may be wasting their time by complaining. A reasonable consumer would be justified in determining that their complaint would be futile.

First, consumers are routinely advised to try to work out the dispute with their bank as a first step and to contact the agency only if the result was unsatisfactory.<sup>11</sup> Any consumer who takes the trouble to look for a federal agency has probably already exhausted all hope of getting the bank to solve the problem. When OCC advises an inquiring consumer to first contact their bank and doesn't later receive a formal complaint, it assumes the complaint is resolved and deems the complaint

withdrawn.<sup>12</sup> Second, consumers are advised that after their complaint is received, the agency will contact the bank and get back to the consumer with their response.<sup>13</sup> Consumers aggrieved by their bank, and having received no satisfaction from it, are unlikely to be encouraged by a process which suggests that their bank will have the last word.

Finally, although OCC's new website provides substantial information about banking practices on its new website [helpwithmybank.gov](http://helpwithmybank.gov), the information on the "Get Answers" page of that site itself may discourage complaints. In joint testimony before the Financial Services Committee earlier this year, consumer groups outlined how information on "Get Answers" suggest to consumers that some of their most serious concerns are not worth complaining about because, as the site advises, they are perfectly legal.<sup>14</sup> The testimony identifies answers to questions about check processing order, overdraft loan fees, and check hold times that give rise to overdraft fees that would reasonably discourage consumers from complaining about what they perceive to be abusive practices. Worse, responses not only inform consumers that the bank was within their rights, but often fail to inform consumers that they may be able to prevent the problem in the future. For example, in the overdraft section of [Helpwithmybank.gov](http://Helpwithmybank.gov), OCC never informs consumers about options they may have for avoiding future overdraft fees, such as opting out of the "service" by calling the bank or selecting an alternative, less costly overdraft protection service. As this Subcommittee learned earlier this year, overdraft loan fees cost consumers \$17.5 billion annually and most consumers want both to be warned before the fees are imposed and to be given the option to have transactions denied rather than pay the fee.<sup>15</sup>

Questions and answers about credit card abuses, such as trailing interest, penalty interest rates and other frequently complained about practices generally advise consumers to refer to their account agreement — a document written in legalistic terms that provides little guidance. And as with the overdraft advice, consumers are not advised that they may be able to independently negotiate a lower interest rate with the card issuer. Particularly problematic is advice provided that appears inaccurate. For example, under federal law, there are three separate rights for consumers to dispute credit card charges: billing error disputes under Fair Credit Billing Act;<sup>16</sup> protections against liability for unauthorized use under the Truth in Lending Act;<sup>17</sup> and the right to withhold payment for claims against a merchant.<sup>18</sup> Yet the website discusses only one of these rights—the Fair Credit Billing Act, which requires the consumer to send a written notice within 60 days of their monthly bill. It does not inform consumers of their right to withhold payment for claims against a merchant, for example, over shoddy goods. Even worse, when [helpwithmybank.gov](http://helpwithmybank.gov) discusses protections against unauthorized use charges, it incorrectly tells consumers they must dispute such charges in writing and within 60 days of receiving their statement on which the charge first appeared.<sup>19</sup> In fact, consumers can report unauthorized use either in writing or over the telephone and they are not required to do so within 60 days of their bill.<sup>20</sup>

OCC advises consumers to contact the Consumer Assistance Group if they "cannot find the answer online" and suggests that OCC's assistance will be limited to determining whether the bank violated any laws or regulations. A consumer aggrieved by a practice after learning that the practice is legal, is unlikely to further contact CAG with a comment or inquiry, let alone file a formal complaint. The agencies should make clear that consumers may use the process to complain about general practices without filing a formal complaint and make it easy to do so. While the agencies allow such inquiries, the emphasis on the websites more often invites formal and specific complaints, not general complaints about practices.

By discouraging complaints about currently legal practices that consumers perceive to be unfair and providing information that is of questionable value or incorrect, regulators deny

themselves important information about consumers' interactions with their banks that may flag "tip-of-the-iceberg" abuses and widespread consumer dissatisfaction, counsel in favor of future regulatory guidance and rules, and otherwise inform the agency. Thus, in addition to improving the substantive advice to consumers that goes beyond explaining the letter of the law, regulators should not discourage consumers from complaining about a bank practice even though it may be legal and should clearly and conspicuously inform consumers that they may use the inquiry system to do so.

#### EFFECTIVE FOR THE CONSUMER

It is clear that the regulatory agencies' complaint procedures produce positive results for some consumers who overcome these barriers and complain.<sup>21</sup> Yet, for the vast majority of inquiries and complaints, consumers appear to receive little satisfaction. As noted above, the OCC Consumer Assistance Center's first step is to send the complaint to the bank and ask for a response. Thus, the agencies appear to primarily function as a channel for funneling consumer complaints to the institutions, rather than act as a neutral arbiter. More transparency is needed to understand how and under what conditions the agencies will do more than simply accept the bank's response.

Moreover, the regulatory agencies resolve most complaints by simply providing the consumer with more information.<sup>22</sup> Whether the consumers' concerns in these cases are actually "resolved" is unclear. Given that much of OCC's web-based advice counsels consumers more about the bank's rights than their own, it is likely that many consumers having their complaints thus "resolved" leave with the view that there is simply nothing they can do. In addition, OCC deems complaints withdrawn when the consumer is advised to contact their bank and the agency does not hear back or when the consumer fails to send in a formal complaint form.<sup>23</sup> In such cases, complaints withdrawn provide no indication that the consumer received any relief from the bank. Finally, of the few complaints pursued by the agencies, most are resolved in favor of the financial institution.<sup>24</sup>

In addition, consumers are advised that when the dispute is over a question of fact, the agency will be unable to resolve the complaint and the consumer should seek legal counsel.<sup>25</sup> The Government Accountability Office recounted OCC's handling of a complaint where the consumer claimed the bank provided inadequate notice about an increase in a credit card interest rate. The bank responded that notice had been provided and the consumer was advised that because the situation involved a question of fact, the agency could not resolve the question. The consumer was told to consider legal action.<sup>26</sup> Notwithstanding the fact that most credit card contracts include mandatory binding arbitration clauses, such advice is impractical given that such claims generally involve sums too insignificant to be worth a consumer's while (or any attorney's effort) to pursue individual legal complaints. Where arbitration clauses can be overcome, such negative value claims can generally be pursued only through class litigation. Thus, such advice can hardly be considered to produce effective results for consumers. Indeed, it more likely leaves them without realistic recourse.

While OCC has recently undertaken efforts to evaluate consumer satisfaction with their procedures,<sup>27</sup> we urge OCC and all regulators to conduct a thorough evaluation of the effectiveness of their complaint procedures. As a threshold matter, the agencies should evaluate abandonment rates through focus group and other means of testing. If consumers are able to find their way to a website to begin the complaint process, how many abandon the effort, foregoing even initial inquiry to the agency, and why? In addition to abandonment rates, other issues the regulators should evaluate are:

- How many places did the consumer have to go before reaching the proper channel?

- How much time did the consumer spend finding the proper channel?
- Where the bank was *not* in error, was the consumer given information to avoid the same problem in the future?
- When consumers are told to go directly to the bank, did the bank voluntarily resolve the problem to the consumers' satisfaction? If so, how long did the resolution take and how much time did the consumer devote to resolving it?
- When consumers begin with an initial inquiry but fail to follow up with a formal complaint, why do they fail to do so?
- What percentage of consumers contacting the consumer assistance centers have their concerns *actually*, rather than hypothetically, resolved?
- When consumers are advised that their complaint constitutes a dispute over questions of facts that the agency cannot resolve or is a matter of state law, how frequently do consumers pursue legal action? If consumers are required to pursue legal action through arbitration, how often is the dispute resolved in their favor?

## TRANSPARENCY & MEANINGFUL RESULTS

### Meaningful Results

An effective complaint system should provide not just meaningful redress for consumers, but also meaningful results for regulators and the Congress by identifying and tracking abusive practices that may demand further regulatory action. Despite the similarities in the complaints each agency receives and the questions they are asked, each agency apparently uses different technologies for coding and tracking systems.<sup>28</sup> The existing fragmented complaint systems set up barriers to using complaint data to track abusive practices and identify areas needing regulatory intervention across all agencies. A uniform platform using consistent tracking and coding systems may allow the agencies to better track and identify existing and emerging abuses. We applaud Comptroller Dugan for recognizing the importance of using a common database to track trends in consumer complaints. Any such database must track inquiries as well as complaints. Inquiries can paint a stark picture of the most important issues facing consumers. Moreover coding of both consumer complaints and inquiries should be specific enough to identify the nature of the complaint. That is, an inquiry about overdraft loans should reflect the specific nature of the inquiry such as: the bank's right to charge the fee; limits on the number of fees that can be charged; whether fees can be charged when a deposit is pending; checkhold times that give rise to overdraft fees; order of processing debits; lack of explicit notice that overdraft fees would be charged, et cetera. Coding complaints at that level of granularity gives regulators far more information than coding that merely identifies that a complaint or inquiry related to overdraft loan fees. Data may currently be collected and coded in this manner, but that level of specificity is not reported to the public.

And while the agencies use information collected from consumer complaints against specific banks in preparation for compliance exams, it does not appear that complaint data are necessarily used to analyze the overall pattern of complaints against varying institutions nor used to develop new regulatory guidance or issue new rules for financial institutions.<sup>29</sup> The intrinsic value of an effective complaint system is in helping regulators reevaluate whether practices now deemed acceptable should be limited or proscribed.

### Transparency

Any effective complaint system should provide transparent results not only for regulators but also for the public and Congress. Regular, consistent and detailed reporting about the specific

nature of complaints and inquiries and the institutions most complained about provide key information to public interest groups and to policy makers.

While the agencies may indeed collect such detailed information, it is not made available to the public. Instead, only general, categorical data is made available. OCC's recent Ombudsman Report noted the percentage of complaints by product and by major category within each product.<sup>30</sup> For example, credit cards led products complained about, generating 40% of complaints. Within that product category, complaints received related to TILA, customer service, the Fair Debt Collection Practices Act, Regulation B, and the Fair Credit Reporting Act. But the specific nature of complaints within those categories, which may be valuable for policy makers, is not publicly disclosed. For example, TILA covers disclosure requirements for a broad range of credit card practices, such as interest rates, fees and conditions. A high number of complaints about fees may signal not just that more disclosure is needed, but that the practices themselves may need to be reined in. In addition, the agencies should disclose which institutions receive the greatest number of complaints and inquiries relative to their assets, deposits or credit outstanding. That information is relevant not only for bank examination, but also to consumers and policy makers as well.

## CONCLUSION

We urge Congress to enact the Financial Consumer Hotline Act and urge the financial regulators to take immediate steps to institute a unified complaint system that is convenient and effective for consumers and provides meaningful, transparent results to the public, policy makers and regulators.

But federal regulators must do more than improve the complaint system: They must also take steps to limit or prevent the most egregious but currently legal banking practices that consumers complain about. Even the best consumer complaint and reporting system won't provide consumers with redress. It won't stop excessive check hold times, egregious overdraft loan fees, and unfair credit card rates and terms. To make real progress in protecting consumers from the most grievous harms, financial regulators must abandon the proposition that more and better disclosure can solve the problems caused by complex financial products and adopt more stringent regulations to prevent them. And where they lack authority to do so, regulators should recommend to Congress new federal laws needed to protect consumers.

<sup>1</sup> Consumers Union is a non-profit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than four million paid circulation and 3 million online subscribers, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

<sup>2</sup> Consumer Federation of America (CFA) is a non-profit association of 300 consumer groups, with a combined membership of more than 50 million people. CFA was founded in 1968 to advance the consumer's interest through advocacy and education.

<sup>3</sup> The Office of Thrift Supervision received 5,255 consumer complaints in 2006. *Improving Federal Consumer Protection in Financial Services Before the H. Comm. on Fin. Serv.*, 110th Congress (2007) (hereinafter *Improving Consumer Protection Hearing*) (statement of Scott M. Polakoff, Senior Deputy Director, Office of Thrift Supervision, at 7) available at <http://financialservices.house.gov/htpolakoff061307.pdf>. The Federal Reserve Board receives 1,900 complaints about state-chartered banks annually. *Id.*, (statement of Randall S. Kroszner, Member, Board of Governors, Federal Reserve System at 15–16), available at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/htkroszner061307.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/htkroszner061307.pdf). The Office of the Comptroller of the Currency received 31,827 complaints in 2006. 2006 ANNUAL REPORT, OCC, at 81, available at <http://www.occ.treas.gov/annrpt/2006/AnRptFinal.pdf>. The Federal Deposit Insurance Corporation received 3,831 complaints in 2006 and redirected 5,604. *Improving Consumer Protection Hearing* (statement of Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation, at 13) available at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/htbair061307.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/htbair061307.pdf). 2006 data for NCUA was unavailable.

<sup>4</sup> [http://www.helpwithmybank.gov/national\\_banks/index.html](http://www.helpwithmybank.gov/national_banks/index.html)

<sup>5</sup> See, Consumer Complaints, National Credit Union Administration, <http://www.ncua.gov/ConsumerInformation/Consumer%20Complaints/complaintmain.htm>. Once arriving at NCUA's consumer complaint webpage, consumers are given the following dizzying array of options.

"Please choose one of the following options:

- [My complaint concerns a federal credit union](#) (a credit union with the word "federal" contained in its name or any credit union in Delaware, South Dakota, Wyoming or Washington, DC) -- NCUA is the regulator.
- [My complaint concerns a state-chartered credit union](#) (a credit union without the word "federal" as part of its name and not located in Delaware, South Dakota, Wyoming or Washington, DC) -- The state supervisory authority where the credit union's main branch is located will usually be the regulator.
- I'm not certain whether my complaint concerns a federal credit union or a state-chartered credit union. Use [the Find a Credit Union \(link\)](#) to search by name and look up the credit union's charter number. Federal credit unions have charter numbers under 60000, state-chartered credit unions have charter numbers greater than 60000.
- [My complaint concerns a federal savings and loan \(S&L\) or a federally-chartered savings bank \(F.S.B.\)](#) -- Office of Thrift Supervision is the regulator.
- [My complaint concerns a national bank](#) (a bank with a name containing the word "national" or the initials "N.A.") -- Office of the Comptroller of the Currency is the regulator.
- [My complaint concerns a state bank reporting to the Federal Reserve Board](#) (the easiest way to determine this is to call your bank and ask for the name of its regulator) -- Federal Reserve Board is the regulator.
- [My complaint concerns a state bank not reporting to the Federal Reserve Board](#) -- FDIC is the regulator.
- [My complaint concerns a credit reporting agency or lender other than a credit union, bank or savings and loan](#) -- Federal Trade Commission is the regulator [sic].

<sup>6</sup> Federal Reserve Consumer Help, Can I File a Complaint, <http://www.federalreserveconsumerhelp.gov/complaintinfo.cfm?info=8>.

<sup>7</sup> How to Resolve a Consumer Complaint, Office of Thrift Supervision, available at <http://www.ots.treas.gov/docs/4/480924.pdf>.

<sup>8</sup> John Dugan, Comptroller of the Currency, Speech before the Interagency Consumer Complaint Conference, Oct. 15, 2007, available at <http://www.occ.gov/ftp/release/2007-111a.pdf>.

<sup>9</sup> See, e.g., Customer Complaint Form, Office of the Comptroller of the Currency (OCC Complaint Form), available at <http://www.helpwithmybank.gov/complaints/complaint.pdf> (instructing consumers that complaint forms must be signed and mailed or faxed to OCC); How to Resolve a Consumer Complaint, *supra* note 7 (advising consumers that they must send a written, signed letter to their regional OTS office).

<sup>10</sup> OCC Complaint Form, *supra* note 9.

<sup>11</sup> Federal Credit Union Complaints, NCUA, <http://www.ncua.gov/ConsumerInformation/Consumer%20Complaints/fcucomplaints.htm>; How to Resolve a Consumer Complaint, *supra* note 7; Assistance for Customers of National Banks, OCC, at 2, <http://www.helpwithmybank.gov/information/customer.pdf>.

<sup>12</sup> "OCC Consumer Assistance: Process Is Similar to That of Other Regulators but Could Be Improved by Enhanced Outreach," Government Accountability Office, GAO-06-293 (2006) at 18.

<sup>13</sup> See, e.g., Assistance for Customers of National Banks, *supra* note 11 at 5; How to Resolve a Consumer Complaint, *supra* note 7.

<sup>14</sup> *Improving Federal Consumer Protections in Financial Services — Consumer and Industry Perspectives Before the H. Comm. on Fin. Serv.*, 110th Congress (2007) (statement of Travis Plunkett, Consumer Federation of America, on behalf of CFA, CU, CRL, NCLC and USPIRG, at 12) (noting that OCC advises that banks are free to post the largest checks first, triggering more overdraft penalties than if they had been posted smallest to largest; that banks are not required to notify consumers when they have insufficient funds; that banks may post withdrawals before deposits and may delay posting deposits made on Friday until the following Tuesday; and that overdraft fees may be charged when there is a deposit pending).

<sup>15</sup> *Overdraft Protection: Fair Practices for Consumers Before the Subcomm. on Fin. Inst. and Consumer Credit*, 110th Cong. (2007) (statement of Eric Halperin, Center for Responsible Lending at 1, 11 n.13).

<sup>16</sup> 15 U.S.C. § 1666.

<sup>17</sup> 15 U.S.C. § 1643.

<sup>18</sup> 15 U.S.C. § 1666i.

<sup>19</sup> [http://www.helpwithmybank.gov/faqs/credit\\_unauthorized\\_charge.html](http://www.helpwithmybank.gov/faqs/credit_unauthorized_charge.html). The web page advises: "For any charges that you believe are in error, notify your bank in writing. Use the billing error instructions that appear on the back of the periodic credit card statement. . . . The credit card company must receive your letter within 60 days of its sending you the first statement on which you noticed the billing error."

<sup>20</sup> 12 C.F.R. § 226.12(b)(3) (notification can be by writing or telephone). More specifically, the Official Staff Commentary to that section states: "The liability protections afforded to cardholders in section 226.12 [unauthorized use protections] do not depend upon the cardholder's following the error resolution procedures in section 226.13 [billing error procedures]. For example, the written notification and time limit requirements of section 226.13 do not affect the section 226.12 protections." Official Staff Commentary § 226.12(b)(3)-3.

<sup>21</sup> See generally Report of the Ombudsman, OCC, Nov. 2007 (recounting compensation resulting from successful complaint resolution and other success stories), available at <http://www.occ.gov/Ombudsman/2006OmbudsmanReport.pdf>

<sup>22</sup> See GAO, *supra* note 12, at 13 – 15.

<sup>23</sup> See *id.* at 17.

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<sup>24</sup> *See id.* at 15, fig. 2. OCC pursued only 20% of complaints. Only 7% of complaints resulted in a finding that the bank erred. With the exception of OTS, where 21% of complaints resulted in a finding of error by the thrift, other agencies produced comparable results.

<sup>25</sup> In answer to the question of whether OCC will be able to resolve consumer complaints, the OCC responds: "Not always. Sometimes a complaint relates to a factual or contractual dispute that only a court of law can resolve. Many complaints involve issues covered by the bank's internal policies. Such bank policies might not be governed by federal laws or regulations." Assistance for Customers of National Banks, *supra* note 11.

NCUA advises:

"[M]any complaints stem from factual or contractual disputes between the federal credit union and the member. If you and the credit union are unable to reach a mutually agreeable settlement in such a situation, only a court of law can impose a remedy and award damages. We recommend you consult an attorney for guidance if you want to consider pursuing a legal remedy." Federal Credit Union Complaints, *supra* note 11.

<sup>26</sup> GAO, *supra* note 12 at 16.

<sup>27</sup> *See* OCC Ombudsman Report, *supra* note 21 at 18 (noting that OCC launched its first customer survey in 2006)

<sup>28</sup> *See* Dugan, *supra* note 8, at 3 – 4.

<sup>29</sup> *See* Plunkett statement, *supra* note 14, at 11.

<sup>30</sup> OCC Ombudsman Report, *supra* note 21, at 23 – 25.

Embargoed until  
December 12, 2007, at 10:00 am



Statement of

*Cassandra McConnell*  
*Montrice Godard Yakimov*

~~Managing Director, Compliance and Consumer Protection~~ *Consumer*  
Office of Thrift Supervision *and Community*  
*affairs,*

concerning the

**Financial Consumer Hotline Act of 2007**

before the

Subcommittee on Financial Institutions and Consumer Credit  
of the  
Committee on Financial Services

December 12, 2007

Office of Thrift Supervision  
Department of the Treasury

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Statement required by 12 U.S.C. 250: The views expressed herein are those of the  
Office of Thrift Supervision and do not necessarily represent those of the President.



**Testimony on the Financial Consumer Hotline Act of 2007  
before the Subcommittee on Financial Institutions and Consumer Credit  
of the Committee on Financial Services  
December 12, 2007**

**Montrice Godard Yakimov,  
Managing Director, Compliance and Consumer Protection,  
Office of Thrift Supervision**

**I. Introduction**

Good morning, Chairwoman Maloney, Ranking Member Price, and Members of the Subcommittee. Thank you for the opportunity to present the views of the Office of Thrift Supervision (OTS) on Chairwoman Maloney's pending legislation, the Financial Consumer Hotline Act of 2007.

In your invitation letter, Madame Chair, you ask us to testify about the establishment by the Federal Financial Institutions Examination Council (FFIEC) of a single, toll-free telephone number for consumers to call if they have a problem or inquiry regarding an institution regulated by one of the FFIEC agencies. The system would establish a mechanism within the FFIEC for routing consumer complaints and inquiries to the appropriate agency with jurisdiction of the institution that is the subject of the complaint or inquiry:

In particular, you ask us to address the following questions in our testimony:

- What mechanisms do consumers currently have to register complaints or inquiries with banking regulators?
- What impediments currently exist for consumers in identifying the appropriate banking regulator to register a complaint or inquiry?
- What is the current process for identifying and redirecting consumer complaints and inquires to the appropriate regulator?
- How would the establishment of a single, toll free telephone number assist consumers seeking to register a complaint or inquiry with banking regulators?
- How would the establishment of a single, toll free number assist banking regulators in compiling and acting on consumer complaints and inquiries?
- How would the establishment of a single, toll free number help raise the profile of banking regulators as a consumer resource for registering complaints and inquiries?



The consumer complaint process is an important link and means of communication between an institution's regulator and its customers. The federal banking agencies process thousands of consumer complaints annually. The process is extremely important for a number of reasons. First, the consumer complaint process enables the banking agencies to help consumers to address and resolve consumer concerns at regulated institutions. Second, it helps the federal banking agencies identify potential areas of risk at an institution for follow up during an examination. Third, the process helps the agencies identify potential trends on products or practices within the industry that may warrant future guidance. Finally, it also informs the agencies on areas where consumer education may be beneficial.

A strong consumer complaint program is also a valuable regulatory tool that strengthens the examination function. At the OTS, consumer complaints have revealed important information about weaknesses in internal controls at particular institutions, violations of federal consumer protection laws, and potential unfair acts or practices.

The OTS shares your concerns that consumers be able easily to identify the appropriate place to file a complaint or concern about a regulated institution. This not only helps the consumer, but it helps us to do our job more effectively and more efficiently. The establishment of a single, toll-free consumer hotline is an idea that has been discussed for some time, and its implementation is long overdue. We applaud your leadership on this issue, Madame Chair. You have laid strong groundwork in your legislation to move us forward within the framework of the FFIEC to implement a program to establish a single, toll-free consumer hotline for federal and state depository institution regulators. Our only question at this stage is the expediency with which legislation could be enacted and the extent to which a bill could restrict rather than provide the FFIEC flexibility to implement a program that provides maximum benefit to consumers.

Before addressing the issues raised in the Subcommittee's invitation letter, we will briefly discuss the OTS's current consumer complaint resolution process, as well as OTS involvement in FFIEC efforts to enhance the ability of consumers to reach the appropriate regulator to address an issue or inquiry involving a depository institution.

## **II. The OTS Consumer Affairs Program**

The OTS is committed to fair access to financial services for all consumers and the fair treatment of customers at the institutions and companies we regulate and oversee. In addition to fair access to financial services for thrift customers, one of the primary goals set forth in the OTS 2007 Strategic Plan is fair treatment of thrift institution customers. This requires that we consider fairness whenever we receive a consumer complaint regarding an institution we regulate.



OTS staff in our regional offices and Washington headquarters work directly with consumers to address their questions and inquiries; investigate allegations and complaints; and ensure thrift institutions are in compliance with all applicable consumer protection laws and regulations. So far in 2007, the OTS has addressed over 5,500 consumer complaints and 9,600 inquiries involving the institutions we regulate.

In addition to addressing issues raised by consumers and providing information to consumers on the institutions we regulate, our regional offices use consumer complaint data in the examination process to identify higher risk practices at particular institutions for follow-up by our examiners during regularly scheduled examinations. Where circumstances warrant, we may also initiate specialized, targeted investigations of particular institutions based on information provided to the agency by consumers. Finally, our regional offices routinely use complaint data to scope examinations, including fair lending reviews, and identify particular issues for on-site review.

The OTS has a performance benchmark of 60 days for complaint resolution, and our Consumer Affairs analysts consistently meet that benchmark. OTS Consumer Affairs staff members work closely with consumers and our regulated institutions to address concerns and ensure that institutions are responsive to the issues raised by their customers. We may even intervene, as appropriate, to attempt to broker a resolution between a consumer and an institution in instances where there is no apparent violation of consumer protection laws or regulations.

The OTS accepts written consumer complaints at each of our regional offices and at our Washington headquarters. Upon receipt of a consumer complaint about a particular institution, the complaint is recorded and centralized through our Washington office, and OTS regional staff commence an investigation of the matter, including a review of any similar complaints involving the institution (or similar matters at other institutions). Complaints are reviewed to ensure compliance with federal consumer protection laws and regulations, including anti-discrimination laws, and are also evaluated based on the overall safety and soundness of the consumer practices at the institution.

OTS has also negotiated a model Memorandum of Understanding (MOU) with the Conference of State Bank Supervisors (CSBS) to share consumer complaint data with state banking departments. Through the model agreement, the OTS and participating state banking departments will exchange information about the number of complaints, the resolution of complaints, and related data for institutions under our respective supervisory jurisdiction. The objective is to achieve prompt and effective resolution and redress of consumer complaints relating to the financial institutions and the financial affiliates for which OTS and state banking agencies, respectively, have supervisory responsibility. We are working with CSBS to facilitate this effort, and have begun the outreach process to enter into specific agreements with state banking departments.



In order to facilitate consumer access to agency resources in addressing a complaint involving an institution we regulate, we provide a wide range of consumer information and resources on our website. This includes information on how to file a consumer complaint involving an OTS-regulated institution, a directory of institutions regulated by the OTS, and other relevant consumer information.

Pursuant to longstanding OTS policy, when we receive a complaint involving an institution that is not subject to our jurisdiction, OTS staff researches the appropriate regulatory agency with jurisdiction of the institution or matter and forwards the consumer complaint to that agency/regulator. At the time that this occurs, the OTS also informs the consumer of the transfer of the complaint to the appropriate regulator.

We are also working proactively to strengthen further the OTS consumer complaint function. For example, we recently established monthly conference calls with our regional Consumer Complaint managers to share information on emerging issues and best practices. In addition, we developed a brochure for institutions to provide to their customers on how to resolve a consumer complaint against an OTS-supervised institution.

We also recently assessed our consumer complaint database and tracking system and identified specific improvements that will make it easier for our Consumer Affairs analysts to use consumer complaint data. This effort includes identifying additional standardized reports that will assist in consumer protection and compliance oversight at our regulated institutions. We are currently working toward an IT solution for this latter program.

Finally, we established an OTS working group several months ago to simplify our consumer complaint coding process. We found that the nature of our coding system made assessments of common or growing complaint areas challenging. Our internal working group developed an approach to reduce the number of codes, cutting them roughly in half. Results of this streamlining effort will significantly enhance our ability to track consumer complaint trends efficiently and effectively at particular institutions and within the industry.

### **III. The FFIEC Effort**

On December 4, 2007, the FFIEC approved the development of a "statement of work" created by the FFIEC Interagency Consumer Complaints Working Group for contracting with an outside vendor to identify ways to improve the interagency consumer complaint process. The thrust of this effort is threefold: simplify the process for identifying the appropriate regulator; create easier complaint filing procedures; and improve complaint resolution timeframes. The goal is to identify opportunities for enhancing the consumer experience and leveraging agency resources to ensure that



consumers reach the appropriate regulator of their financial institution. Among the items addressed by the proposal are:

- A website and/or portal to route consumers to the appropriate regulator;
- A call routing process to direct consumers to the appropriate regulator;
- A consumer friendly institution look-up tool;
- An electronic process that automatically forwards consumer complaints to the appropriate agency;
- A complaint code mapping process for identifying trends and emerging issues;
- Development of a marketing and publicity campaign to increase consumer awareness of the availability of and how to contact financial institution regulators; and
- Exploring a uniform agency complaint and inquiry database and case management system.

The FFIEC intends to use this process to identify and implement the best solutions to ensure that consumers have the widest available access to financial institution regulators.

As I noted at the outset, Madame Chair, your legislative efforts have spurred the FFIEC and its agencies to take action in order to identify the best way to establish a comprehensive, user-friendly, and efficient national consumer complaint system. We believe that the FFIEC effort is squarely within the framework of your proposed legislation.

#### **IV. Consumer Complaint System Procedural Questions**

You have asked us to address a number of questions regarding existing OTS procedures and issues that arise in our consumer complaint process. As highlighted above, the OTS consumer complaint program has a number of purposes and provides invaluable regulatory and supervisory information to the agency. At its core, however, the primary focus of our program is addressing consumer complaints and inquiries. The questions you have asked us to address provide good insights into this process.

- What mechanisms do consumers currently have to register complaints or inquiries with banking regulators? Consumers with complaints or questions about OTS-regulated institutions, their subsidiaries and their holding companies, may register a complaint by mail or fax to any OTS regional office or at our Washington headquarters. Mail and fax are currently the preferred methods because of our requirement to have a signed copy of a complaint for authentication and privacy protection purposes when we contact an institution on behalf of a consumer.



- What impediments currently exist for consumers identifying the appropriate banking regulator to register a complaint or inquiry? When a consumer mistakenly contacts the OTS to address a complaint or matter involving an institution or entity that we do not regulate or supervise, OTS staff forwards the complaint to the appropriate regulator and informs the consumer of this action. This generally happens within a day or two of receipt of such correspondence so the consumer's complaint is not delayed.
- What is the current process for identifying and redirecting consumer complaints and inquires to the appropriate regulator? Upon receipt of a misdirected complaint, it is standard procedure among the banking agencies to forward the complaint to the appropriate regulator for investigation and review. Through FFIEC, the agencies are currently working to improve and enhance this process. This process is conducted automatically to avoid unnecessary delays of a consumer's request/inquiry.
- How would the establishment of a single, toll free telephone number assist consumers seeking to register a complaint or inquiry with banking regulators? For consumers confused about who regulates their financial institution, a single 1-800 number would automatically direct the consumer to the appropriate regulator of their institution. It is important to note, however, that this referral process is already informally in place among the regulators.
- How would the establishment of a single, toll free number assist banking regulators in compiling and acting on consumer complaints and inquiries? A single 1-800 number would assist the banking regulators by reducing the number of misdirected inquiries that each receives. By minimizing consumer confusion, it would also enhance the efficiency and effectiveness of the regulators, who could avoid time-consuming efforts needed to direct a misdirected consumer to the appropriate regulatory agency. From a monitoring and safety and soundness standpoint, however, a single number would not provide any additional benefit since the OTS, like each regulator, has a unique database system to capture consumer complaint and inquiry data. This data is used by the OTS to identify consumer trends, scoping for thrift supervisory examinations and identifying emerging and evolving consumer issues. We want to be certain that our ability to maintain this system going forward is not compromised by a centralized interagency complaint system.
- How would the establishment of a single, toll free number help raise the profile of banking regulators as a consumer resource for registering complaints and inquiries? A single 1-800 number would increase the accessibility of the federal banking agencies to consumers and, thereby, improve the overall financial services system. Consumer access and accountability will increase confidence in our banking system and enfranchise more consumers to "buy in" and participate in our system. The OTS frequently participates in public



outreach activities to inform the public about filing a consumer complaint with a thrift institution. These activities include participation at national conferences such as AARP and distribution of OTS brochures on how to resolve a consumer complaint. A single hotline number will remove one more barrier that many consumers may experience at times in attempting to resolve an issue with their banking institution.

#### **V. The Financial Consumer Hotline Act of 2007**

The OTS is supportive of enhancing consumer access to federal and state regulators. And we are working closely with the other FFIEC agencies to implement the initiatives set forth in the Financial Consumer Hotline Act as well as a number of similar items that will improve consumer access and confidence in our financial system. The proposals outlined in the bill are among the highest priorities of the FFIEC, as described above. Given the work currently being conducted by the FFIEC, our only concern with the legislation is the extent that it could be viewed as limiting the ability of the FFIEC to craft consumer solutions not currently anticipated with the legislation, or delay development of a FFIEC-sponsored proposal because of uncertainty surrounding the final framework of the legislation.

#### **VI. Conclusion**

Your bill, Madame Chair, the Financial Consumer Hotline Act sets forth a number of sound consumer protection initiatives that should be incorporated in our banking system. These will improve the accessibility and confidence of consumers in our banking system by providing a clear mechanism for filing consumer complaints or inquiries about all regulated financial institutions. Given that the FFIEC is working hard to address these issues and other similar initiatives, we ask that you consider allowing the FFIEC agencies the ability to move forward on their work unfettered by a legislative overlay. While we understand and appreciate your desire to address these issues expeditiously, particularly given that these are long overdue, we believe the FFIEC process will do so while minimizing disruptions to existing agency consumer protection programs.

Thank you for your leadership on this issue, Chairwoman Maloney, and for the time and efforts of all of the Members of the Subcommittee. With or without legislation, we will work closely with you as we move forward to implement a single, toll-free hotline number for consumers to contact whenever they have a complaint or concern about a financial institution or financial services firm.

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Testimony of the  
U.S. Public Interest Research Group

Edmund Mierzwinski  
Consumer Program Director

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Financial Consumer Hotline Act of 2007:  
Providing Consumers with Easy Access to the Appropriate  
Banking Regulator

before the

Subcommittee on Financial Institutions and Consumer Credit  
Honorable Carolyn Maloney, Chair

Committee on Financial Services  
United States House of Representatives

December 12, 2007

Madame Chair Maloney, members of the committee: I am Edmund Mierzwinski, Consumer Program Director of U.S. PIRG. As you know, U.S. PIRG serves as the federation of and national lobbying office for state Public Interest Research Groups. PIRGs are non-profit, non-partisan public interest advocacy organizations with offices around the country.

Thank you for the opportunity to offer U.S. PIRG's views at this hearing on "Providing Consumers with Easy Access to the Appropriate Banking Regulator." We commend you for having this timely hearing and we urge passage of your proposed bill: The Financial Consumer Hotline Act of 2007.

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#### SUMMARY:

We commend you for having this timely hearing and we urge passage of your proposed bill: The Financial Consumer Hotline Act of 2007. We support the hotline as a necessary first step in improving consumer financial services complaint handling. We also believe that consumers need a centralized, non-biased one-stop federal source for complaint-handling and finding unbiased information about bank laws. We support the proposed study of a centralized website. We recommend further, however, that consumers need a "Complaint-busters" centralized source for any sort of complaint, whether by phone, web, mail, fax or email. Ideally, it should be an advocate on their behalf and be independent of the bank-friendly culture that permeates OCC and the other bank regulators. In this testimony, we recommend these and other suggested improvements to current law.

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#### DISCUSSION

We support your proposal to establish a centralized one-call hotline and call for a study of a centralized website. In addition to the hotline, we recommend that the committee consider other changes to current bank complaint handling. The additional changes are designed to make the hotline more effective, reduce the friction caused by the cozy relationship regulators have with banks and balance the scales more favorably toward victims of unfair bank practices.

The great science fiction writer and futurist Arthur C. Clarke once said that "any sufficiently advanced technology is indistinguishable from magic." The analog here would be that any sufficiently pro-consumer complaint handling system should be widely-available, simple and easy-to-use and transparent.

Unfortunately, there is nothing magical about dealing with mistakes or law violations by your bank. Federal bank regulators have a cozy relationship with banks. This culture impedes their ability to understand their role as public servants.

First, based on complaints to our offices, most consumers have never heard of any bank regulator, except perhaps the FDIC because its name is sticker-ed on bank windows. Second, no bank regulator serves as an advocate for consumers. Although their somewhat opaque complaint-handling processes purport neutrality, the systems appear to favor the banks. According to the GAO:

"Bank Made an Error" was the least common outcome for complaints resolved by OCC and FDIC and next-to-least common for the other two regulators.<sup>1</sup>

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Third, in our view, no bank regulator views its primary, secondary or even tertiary role as helping consumers. Even the OCC's ballyhooed new website, [helpwithmybank.gov](http://helpwithmybank.gov), largely offers regulator-colored views of the law and does not even include full explanations of consumer rights.<sup>2</sup>

Fourth, the insistence by bank regulators in spending time explaining their own differences, rather than their similarities, is unnecessary and confusing. For example, the OCC's [helpwithmybank.gov](http://helpwithmybank.gov) is largely promotional of the OCC's own "National Banks" to the point of obfuscating the site's well-intentioned general consumer mission:

Helpwithmybank.gov helps you find answers to your **National Banking** questions... Assistance for **National Bank** Customers... Have you checked our Get Answers section for information about **National Bank** regulations and your rights as a bank customer? [emphasis added]

Several of the recommendations we make below could be incorporated as amendments to your bill. Others might be subjects for future hearings on improving the rights and representation of consumers in the financial system.

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**ADDITIONAL AMENDMENTS**

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**1) Establish one-stop complaint shopping through a central source:** We recommend further that you amend the bill to require a centralized source for all points of entry -- phone, web, mail, fax or email -- for complaints. Your bill would commendably require a report to Congress on establishing a central website. Yet, whether a consumer complains by phone, web, mail, fax or email, he or she should have one-stop complaint shopping. While this centralized source would be nominally similar to the manner in which the 2003 Fair and Accurate Credit Transactions Act amendments to the Fair Credit Reporting Act<sup>3</sup> required the three national credit bureaus to provide free credit reports -- whether requested by phone, mail or website -- through a centralized source, it must be better than the FACTA system, which is little more than a conduit.

Unlike the FACTA centralized source, which transfers requests to each credit bureau and its own different Byzantine systems, the Bank Complaint Central Source should be truly centralized, where a consumer -- whether a national bank consumer or a state non-member bank consumer or an operating subsidiary consumer, simply complains to the central source and uses one complaint form. The system itself should later figure out how and where to direct the complaint.

It should be indistinguishable from magic. No consumer should need to worry about drilling down into web pages to figure out what kind of entity he or she has an account or a hassle with.

This entire system should be multi-lingual; to start, it should be in at least English and Spanish.

As an example of the problem consumers now face, the OCC's [helpwithmybank.gov](http://helpwithmybank.gov) spends too much time urging consumers to figure out whether they're correctly in the "National Bank" place to the point of obfuscating the site's general consumer mission. Once a consumer figures out how to file a complaint (but is discouraged first from doing so until exhausting all efforts with the bank itself) the site requires consumers to undertake a forensic institution-finding exercise through a decision-tree:

- Check the National Bank List. A national bank is a financial institution chartered and regulated by the Office of the Comptroller of the Currency. National banks typically have the words "national" or "national association" in their titles, or the letters "N.A." or "NT&SA" in their names. {NEXT}
- Check the List of National Bank Operating Subsidiaries.

What consumer cares or has the patience? More importantly, why is this forensic exercise the consumer's job?

**2) Require a Complaint-busters icon and logo:** We further recommend that the committee require that all regulated banks and other entities include a memorable express statutory and graphical complaint icon and logo – think “Ghostbusters, who ya gonna call?” or “Mr. Yuck, the Poison Control Center guy,” – on their websites and account statements and on brochures available at bank branches, promoting and directing consumers to the new shared centralized complaint resource.

Since we recognize that this requirement on the banks may not quickly make it through the legislative process, the committee should at a minimum require that the regulators use such an icon and logo on their home pages, and also advertise the centralized source, on television and radio as well as on their websites. Consumer groups could also download the Complaint-busters icon and link from their websites to the centralized source.

**3) As a further step, make the Complaint-busters central source an independent funded advocate for consumers:** Most of the bank regulators have built their various fiefs largely through the stability of guaranteed fee income from regulated entities. This independence from the traditional Congressional budget process has in many cases bred an arrogant disregard for and misunderstanding of their role as public servants; instead, they perform as bank cheerleaders. The inherent conflict of interest posed by their weighing their role as public servants against the risk to the flows in the fee pipeline contributes to their demonstrable lack of interest in either solving complaints or vigorously enforcing the consumer laws.

Absent complete reform of that fee system, which is not the subject of today's hearing, Congress should mandate that a portion of these fees from several regulators should be pooled to fund a beefed-up version of the central source for complaint-handling. It should also be an independent consumer bank advocate that advocates on behalf of consumers of all bank products. The template already exists at the state level, where at least 40 states use a portion of utility company regulatory fees to fund an independent utility consumer advocate or counsel.<sup>4</sup>

**4) As a next step, establish an independent Financial Consumers Association (FCA) to represent consumers in bank regulatory arenas:** Over twenty years ago, then-Representative Chuck Schumer (NY) first proposed legislation establishing an FCA. The organization's role is explained by banking expert Jonathan Brown:

One way to establish a collective information system would be for the national government to (1) charter a financial consumers association<sup>5</sup>, (2) prescribe democratic rules of governance for the association, (3) provide the association with direct access to price and term information for various financial service products, (4) provide the association with a

modest level of support, and (5) subject the association to a special obligation to serve the financial service information needs of low and moderate income persons.<sup>6</sup>

**5) Require accountability of complaint systems:** For accountability and transparency, we recommend that statistics on complaint handling should be easily available to the public without the need to first file FOIA requests and then challenge redactions. The Congress, the media and the public should all receive regular, consistent and detailed reporting about the specific nature of complaints and inquiries and the institutions most complained about. Data should be posted in downloadable database formats for additional analysis by academics and public policy groups. The availability of this transparent information will also help consumers make deposit and loan application decisions, aiding the marketplace to operate in a truly competitive manner.

**6) Additional solutions to a toxic regulatory culture are also needed:** In our recent joint testimony<sup>7</sup> presented by Travis Plunkett of the Consumer Federation of America last July, we also discussed in detail the manifold failures by the regulators, caused partly by the toxic regulatory culture created by the funding conflicts most have, as well the regulators' lack of will to use existing authority to modify unfair regulations. Key highlights from that testimony:

In order to improve federal consumer protection efforts, serious underlying problems with this regulatory culture must be addressed, including a focus on safety and soundness regulation to the exclusion of consumer protection, the huge conflict-of-interest that some agencies have because they receive significant funding from industry sources, the balkanization of regulatory authority between agencies that often results in either very weak or extraordinarily sluggish regulation (or both) and a regulatory process that lacks transparency and accountability.

The key to addressing these root problems is to make the regulatory process more independent of the financial institutions that are regulated. This means allowing the Federal Trade Commission (FTC) to bring enforcement actions against national banks and thrifts for unfair and deceptive practices and to initiate regulation of these entities. It also means granting consumers the right to privately enforce federal laws. Finally, Congress should act to rein in lending abuses where agencies have shown an unwillingness to act vigorously, such as credit card lending, sub-prime mortgage lending and the use of deceptive and high-cost "overdraft" loans by national banks.

That testimony goes on to explain a variety of areas where regulators have failed to act to protect consumers and makes a number of additional suggestions which we incorporate by reference.

**7) The committee should also reinstate the authority of state attorneys general to enforce consumer laws:** Although states have aggressively sought to enforce unfair and deceptive practices and other laws against banks, credit card companies and bank subsidiaries, the states have been limited in their enforcement by the growing use of preemption theory to restrict their regulation of the industry.

Most recently, the Second Circuit has supported the OCC view that state attorneys general and regulators do not have authority to enforce state laws that it itself concedes are themselves not preempted.<sup>8</sup> The case builds on the Supreme Court's 2007 ruling in *Watters vs. Wachovia Bank*,<sup>9</sup> which upheld a regulation by OCC that permits operating subsidiaries of national banks to violate state laws with impunity. This prevents states from using their historical authority to protect

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consumers and communities in large parts of the financial services arena and leaves a huge consumer protection gap that federal regulators have not shown an inclination or an ability to fill. The Wachovia ruling and the second circuit decision encourage national banks and their subsidiaries to ignore even the most reasonable of state consumer laws.

In 2004, the OCC had imposed two onerous administrative rules restricting states from enactment or enforcement against national banks and their state-licensed operating subsidiaries<sup>10</sup> which has resulted in further court decisions upholding the rules, which the courts have unfortunately upheld.

These decisions and actions have aided and abetted the anti-consumer practices of this industry and deserve careful scrutiny by the committee. We remain disappointed that, at a minimum, the committee has not reined in the over-reaching OCC rules, although it did in 2004 condemn the OCC<sup>11</sup> when it passed a bipartisan budget resolution<sup>12</sup> on a vote of 34-28, stating that the OCC action “may represent an unprecedented expansion of Federal preemption authority” and “comes without congressional authorization, and without a corresponding increase in budget resources for the agency.” The committee also pointed out that without a budget increase, the OCC cannot really expect its modest staff of forty consumer-complaint specialists to both continue their own work and also take over much of the work of an estimated 700 state consumer enforcers and examiners. “In the area of abusive mortgage lending practices alone, State bank supervisory agencies initiated 20,332 investigations in 2003 in response to consumer complaints, which resulted in 4,035 enforcement actions.”

While the OCC has since beefed up complaint handling mechanisms and attempted to negotiate various memoranda of understanding with state officials, many states still investigate their own consumer complaints, rather than referring consumer to the “OCC’s black hole in Houston.”<sup>13</sup> As has been well-documented by consumer groups and academics, concentration of the financial services industry has resulted in a system where the largest and most powerful players act with impunity while federal regulators conduct little oversight.

Further, we explained the most common unfair credit card company practices in testimony before this subcommittee in June. These range from misleading teaser rates to the use of universal default schemes to ratchet up high-cost debt servitude. That testimony also explains in detail a number of past state Attorney General enforcement actions.<sup>14</sup>

Further, as Professor Art Wilmarth<sup>15</sup> testified before this subcommittee in April 2007:

The OCC’s record is similarly undistinguished with respect to consumer enforcement actions taken against national banks for violations of consumer protection laws. Since January 1, 1995, the OCC has taken only thirteen public enforcement actions against national banks for violations of consumer lending laws. With two exceptions, all of those actions were taken against small national banks... Since January 1, 1995, the OCC has not issued a public enforcement order against any of the eight largest national banks for violating consumer lending laws. In contrast to this absence of public enforcement action by the OCC against major national banks, state officials and other federal agencies have issued numerous enforcement orders against leading national banks or their affiliates – including Bank of America, Bank One, Citigroup, Fleet, JP Morgan Chase, and US Bancorp – for a wide variety of abusive practices over the past decade, such as predatory lending, privacy violations, telemarketing scams, biased investment analysis, manipulative

initial public offerings, and allowing hedge funds to engage in late trading and market timing in bank-sponsored mutual funds. [Citations omitted.]

Consumers need more consumer cops on the beat. If the committee is not going to completely revisit the OCC rules, it should at a minimum reinstate state Attorney General authority over national banks and their operating subsidiaries. Such an action will serve the public policy marketplace well.

**8) Eliminate mandatory arbitration on consumer banking contracts:** According to a recent GAO study of OCC complaint-handling procedures:<sup>16</sup>

OCC, like the other federal bank regulators, resolves most complaints it receives by providing information to consumers. This can include clarifying consumers' misunderstandings, referring consumers to other regulators, or advising the consumers to seek legal counsel when their complaint concerns a factual dispute that only a court can resolve. Less frequently, regulators determine that specific errors or wrongdoings have occurred.

So, most of the time, the consumer is told by the federal regulators to go to court. But if this is a right, it is one without a remedy, since most consumer banking contracts provide only for mandatory arbitration. Congress should enact legislation, the Arbitration Fairness Act, HR 3010, proposed by Rep. Hank Johnson (D-GA), to eliminate pre-dispute binding mandatory arbitration in all consumer contracts, including bank and credit card contracts. The legislation would also assist small farmers, franchisees and employees without collective bargaining agreements who are also forced to accept mandatory arbitration as a one-sided contract of adhesion that eliminates their right to go to court.

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## CONCLUSION

We thank you for holding this important hearing and for your leadership on a variety of consumer issues, including the imposition of unfair overdraft fees. We have attempted to describe a failed enforcement climate that has led to a pattern of sharp industry practices. Those practices result in consumer complaints. Often, a consumer may not know where to complain or worse, finds her complaint ignored by an unsympathetic bureaucrat. Your proposed hotline will go a long way toward solving the problem. By expanding the hotline into a Complaint-busters centralized source for all complaints, we believe we can improve the situation even more. We also make additional suggestions to improve the toxic regulatory climate. We look forward to working with you and your staff on the proposed legislation.

## ENDNOTES

<sup>1</sup> OCC Consumer Assistance: Process Is Similar to That of Other Regulators but Could Be Improved by Enhanced Outreach, February 2006, Government Accounting Office Report to the Subcommittee on Oversight and Investigations, Committee on Financial Services, House of Representatives, GAO 06-293.

<sup>2</sup> See testimony of Travis Plunkett, Consumer Federation of America, on behalf of CFA, CU, CRL, NCLC and USPIRG at the hearing: Improving Federal Consumer Protections in Financial Services — Consumer and Industry Perspectives Before the House Committee on Financial Services. 25 July 2007, available at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/plunkett.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/plunkett.pdf). For example, beginning at 12, the testimony goes into a detailed explanation of limitations and flaws in the OCC's advice that banks are free to post the largest checks first, triggering more overdraft penalties than if they had been posted smallest to largest; that banks are not

**Testimony of U.S. PIRG Before U.S. House Subcommittee on Financial Institutions and Consumer  
Credit on Financial Consumer Hotline Act of 2007** **12 December 2007, Page 7**

required to notify consumers when they have insufficient funds; that banks may post withdrawals before deposits and may delay posting deposits made on Friday until the following Tuesday; and that overdraft fees may be charged when there is a deposit pending and further, at page 14, the testimony points out that the OCC website fails to describe all consumer billing rights under the Truth In Lending Act:

“Consumers, advocates and state regulators have long noticed that card issuers are either themselves ignorant of, or do not honor, special rights that consumers have when they have a dispute with a merchant over goods or services purchased with a credit card. This right allows consumers to assert the claims and defenses arising out of a credit card purchase of goods or services against the card issuer. The rules for asserting these claims are different than the standard “billing error” rights. We were unable to find any reference at all to this important consumer right in the portion of the “Help With My Bank” section labeled “credit cards dispute.”

<sup>3</sup> 15 USC 1681 et. seq as amended by Section 211(c) of the Fair and Accurate Credit Transactions Act, Public Law 108-159, enacted 4 December 2003. See <http://www.ftc.gov/os/statutes/ftcradoc.pdf> Also visit the centralized source at [www.annualcreditreport.com](http://www.annualcreditreport.com)

<sup>4</sup> For more information, see the website of the National Association of State Utility Consumer Advocates (NASUCA) at <http://www.nasuca.org/about/>

<sup>5</sup> For a sample Financial Consumers Association statute, see <http://www.csrl.org/modellaws/fca.html>

<sup>6</sup> See Financial Deregulation: the Need for Safeguards, undated, Jonathan Brown, director, Banking Information project, Essential Information, available at <http://www.public-gis.org/reports/amexnew.html>

<sup>7</sup> See testimony of Travis Plunkett, Consumer Federation of America, on behalf of CFA, CU, CRL, NCLC and USPIRG at the hearing: Improving Federal Consumer Protections in Financial Services — Consumer and Industry Perspectives Before the House Committee on Financial Services. 25 July 2007, available at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/plunkett.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/plunkett.pdf).

<sup>8</sup> On 4 December 2007, the 2<sup>nd</sup> Circuit, U.S. Court of Appeals largely upheld district court decisions restricting state attorney general investigations of national banks and their subsidiaries for violating state laws not preempted by the OCC. See *The Clearing House Association v. Cuomo*, 05-5996-cv, and *Office of the Comptroller of the Currency v. Cuomo*, 05-6001-cv available at <http://www.ca2.uscourts.gov/opinions.htm>

<sup>9</sup> *Watters v. Wachovia Bank, N.A.*, 127 S.Ct. 1559 (2007) See <http://www.supremecourtus.gov/opinions/06pdf/05-1342.pdf>

<sup>10</sup> See the PIRG OCCWatch website for detailed information on the OCC’s anti-consumer actions, including links to its rules, <http://www.pirg.org/ocwatch> Also see “Preemption Of State Consumer Laws: Federal Interference Is A Market Failure,” by U.S. PIRG’s Edmund Mierzwinski, which appeared in the Spring 2004 (Vol. 6, No. 1, pgs. 6-12) issue of the *Government, Law and Policy Journal of the New York State Bar Association*. The article includes a major section on the OCC rules, available at <http://www.pirg.org/consumer/pdfs/mierzwinskiarticlefinalnysba.pdf>

<sup>11</sup> News story on committee vote available here: <http://www.housingchoice.org/news%20stories/2004/02272004.htm>

<sup>12</sup> See Comm. On Fin. Serv., 108th Cong., *Views And Estimates Of The Committee On Financial Services On Matters To Be Set Forth In The Concurrent Resolution On The Budget For Fiscal Year 2005*, At 15-16 (Comm. Print 2004).

<sup>13</sup> Personal communication with a senior state assistant attorney general, 5 December 2007.

<sup>14</sup> See testimony of Edmund Mierzwinski, U.S. PIRG before the Subcommittee on Financial Institutions and Consumer Credit Hearing on Improving Credit Card Consumer Protection: Recent Industry and Regulatory Initiatives, 7 June 2007, available at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/htmierzwinski060707.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/htmierzwinski060707.pdf)

<sup>15</sup> See testimony of Professor Art Wilmarth, 26 April 2007, before Financial Institutions and Consumer Credit Subcommittee, available at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/htwilmarth042607.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/htwilmarth042607.pdf)

<sup>16</sup> OCC Consumer Assistance: Process Is Similar to That of Other Regulators but Could Be Improved by Enhanced Outreach, February 2006, Government Accounting Office Report to the Subcommittee on Oversight and Investigations, Committee on Financial Services, House of Representatives, 23 February 2006, GAO 06-293 .

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TESTIMONY OF

RICHARD H. NEIMAN  
SUPERINTENDENT OF BANKS

On behalf of  
THE CONFERENCE OF STATE BANK SUPERVISORS  
and the  
NEW YORK STATE BANKING DEPARTMENT

On  
“THE FINANCIAL CONSUMER HOTLINE ACT OF 2007: PROVIDING  
CONSUMERS WITH EASY ACCESS TO THE APPROPRIATE BANKING  
REGULATOR”

Before the  
FINANCIAL SERVICES COMMITTEE,  
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

THE U.S. HOUSE OF REPRESENTATIVES

December 12, 2007, 10:00 a.m.

Good morning, Madam Chair, Ranking Member Price, and distinguished members of the Subcommittee. On behalf of the Conference of State Bank Supervisors (CSBS) and the New York State Banking Department, I appreciate this opportunity to speak with you today and to share our perspective on the proposal to establish a national call number and centralized intake process for consumer inquiries directed to financial regulators.

CSBS is the professional association of state officials responsible for chartering, supervising, and regulating the nation's 6,146 state-chartered commercial and savings banks, and 400 state-licensed foreign banking offices nationwide. CSBS represents the bank regulators of the 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands. For more than a century, CSBS has given state regulators a national forum to coordinate, communicate, advocate and educate on behalf of state financial regulation.

The New York State Banking Department is the nation's oldest bank regulatory agency, responsible for the licensing, regulation and supervision of domestic state-chartered banks; foreign agencies, branches and representative offices; savings institutions, trust companies, credit unions and other financial institutions operating within New York, including mortgage bankers and brokers, check cashers, money transmitters and licensed lenders. In total, the New York State Banking Department regulates nearly \$1.8 trillion in assets.

This year marks the tenth anniversary of nationwide branch banking. While both state and federal regulators have dedicated much energy and many resources to creating a system that facilitates interstate banking business models, it has become evident that we also need to create a more coordinated regulatory interface with the consumer.

Nationwide branching was intended to make banking more convenient for both consumers and financial institutions, and it has largely achieved this goal. For consumers, however, it has sometimes created confusion about how to seek redress for problems with their bank on the corner when the headquarters is on the other side of the country. Add to that the confusion of chartering authorities, holding company affiliates and operating subsidiaries and we have a Byzantine system for the consumer to navigate.

**The Importance of Enhanced Complaint-sharing**

We believe that a centralized system that routes calls to the respective state agencies when appropriate would expedite the process of matching borrowers with the form of public or private assistance that best meets their needs. Consumers with a variety of concerns, whether related to credit cards, payment billing, funds availability or other issues, would benefit from enhanced inter-agency information sharing.

In the context of the present turmoil in the mortgage market, an expedited approach to handling consumer inquiries would be especially useful in outreach to borrowers facing a mortgage hardship. The goal is to connect with these homeowners early in the delinquency process, before their credit history is damaged or they lose their homes to foreclosure.

With our complex financial services system, however, borrowers who want to be proactive may be confused -- and understandably so -- when trying to identify the correct government agency to contact. A consumer shouldn't need to know whether their financial institution is a subsidiary of national bank, a state-chartered bank, or a holding company affiliate in order to receive assistance.

As you may be aware, the Federal Financial Institutions Examination Council (FFIEC) recently voted for a vendor to review ways to improve a consumer's ability to file a

complaint with a financial regulatory agency. The vendor would review the feasibility of the following:

- A web portal for consumers to submit complaints and inquiries;
- A process for routing consumer calls, letters, and emails to the appropriate agency; and
- A consumer friendly institution look-up tool.

The vendor will also review best practices, including:

- A secure, electronic process for forwarding complaints to the appropriate agency;
- A complaint code mapping process for identification of trends/emerging issues; and
- Exploring the possibility of a uniform agency complaint and inquiry database and case management system.

While no recommendations have yet been issued, the FFIEC is reviewing the very concerns that your proposed legislation seeks to address. Also, as a result of the Financial Services Regulatory Relief Act of 2006, the Chairman of the State Liaison Committee (SLC) is now a voting member of the FFIEC. The states strongly support the FFIEC initiative to review complaint filing practices by the regulatory agencies and improve the ability of a consumer to not only file a complaint, but also receive a timely response.

State bank regulators strongly believe that any national hotline number linking the federal regulatory agencies includes the capability to refer consumer inquiries to the states, and I am pleased that your proposal provides for this feature. Resolution of the underlying issues that prompted the consumer complaint often requires local assistance. This is especially true in the case of mortgage lending which, due to the nature of the collateral, is unavoidably local.

**Coordinated Call Center Initiatives in New York**

In New York, we have already taken steps to ensure that complaints that relate to federally-supervised institutions are referred to the appropriate agency. The Banking Department has partnered with both the Office of the Comptroller of the Currency (OCC) and with a major nonprofit organization to link consumer call center functions and increase community outreach. In addition, the New York City government has also created a successful hotline to link calls related to all city services.

At the state level, our first initiative involved a Memorandum of Understanding (MOU) with the OCC, signed in November 2006. This agreement facilitates the transfer of complaints, as well as providing mechanisms for follow-up on the case status and resolution.

The second initiative, with the national nonprofit NeighborWorks America, is an outgrowth of New York Governor Eliot Spitzer's HALT Task Force to "Halt Abusive Lending Transactions." The foundation was laid in March 2007, when Governor Spitzer created this Task Force that I chair, which is composed of the state agencies and departments that relate to the mortgage market. The purpose is to unite the resources at the state level to provide an integrated response to the subprime problem. As part of its outreach mission, the HALT Task Force has partnered with NeighborWorks America and this cooperation includes promotion of the centralized HOPE hotline.

The HOPE hotline is featured in a public service ad campaign and refers calls to service providers, including the Banking Department's Consumer Help Unit. This form of coordinated outreach with a major nonprofit has expanded public access and maximized the impact of the Consumer Help Unit, as well as the call centers of the other participating state agencies.

**The Role of CSBS in Promoting Consistency in the Collection of Complaint Information**

Once a consumer makes contact with the hotline or central call number, however, the receiving agency has the additional responsibility of recording sufficient information in a consistent manner. CSBS has taken a lead role in developing model forms and best practices recommendations to help ensure that calls are adequately recorded, to facilitate speedy resolution.

The first step was the creation of a model complaint form by the state working group. This form is a template, and while not every state will be able to use this document, it serves as an example of the type of information that all agencies should be collecting. Provisions include a signature page with a Privacy Act Statement, and a series of concise intake questions. The form could be completed on-line by the consumer or over the phone during an interview with an agency staffer. I have attached a copy of the model form with my testimony for reference. In addition to the model form, CSBS has been developing a list of best practices recommendations for complaint processing.

While the recommendations are still taking their final form, I can share with you a preliminary list of these ten principles:

1. **Number one** is simply having written procedures for handling complaints. CSBS expects its member agencies to have written policies and procedures in place for handling consumer disputes.
2. **Second**, use of the model complaint form will make sure that every staff person who takes a complaint from a consumer will have the information necessary for the appropriate agency to take steps to address the complaint.
3. **Third**, we must offer easy access for consumers, with a variety of contact points: telephone, Internet, mail, and physical offices where needed.

4. **Fourth**, each agency needs a case management process for screening and referral to the agency that has jurisdiction over the complaint, whether that agency is in another state, a federal banking agency, the FTC, or elsewhere in state or federal government.
5. **Fifth**, agencies must have the legal authority to require their regulated entities to respond, and to assess whether the institution's response and resolution are reasonable.
6. **Sixth**, agencies should have management systems in place to track complaints and resolutions on a timely basis.
7. **Seventh**, agencies should – either separately or together – maintain a database to track trends and identify potential supervisory matters. Consumer complaints, as we all know, are often an early warning sign of more serious internal controls or safety and soundness issues; an institution that is sloppy about customer service or compliance is likely to have problems in other areas as well.
8. **Eighth**, agencies should have data retention policies in place. At the state level, we pride ourselves on personalized service and local knowledge, but we cannot allow institutional knowledge to disappear when a key staffer retires.
9. **Ninth**, agencies should commit staff and training to handling consumer complaints, and not treat this area as an “extra” or a sideline to their primary mission. The mission is protecting the financial well-being of our citizens and our communities.
10. **And tenth**, agencies should sign the information-sharing agreements with other agencies in order to provide consumers with the best possible service across state and agency lines.

**Suggestions for Amending the Current Proposed Legislation**

We offer these best practices recommendations as models, and I would like to conclude by offering three suggestions to further enhance the current version of the Financial Consumer Hotline Act of 2007:

1. **Referral from the states to the federal regulators.** First, while the proposed legislation addresses the federal-to-state referral mechanism, the current draft does not directly address the reverse ability to refer state-to-federal. We would suggest making this two-way process more explicit, as there could be a significant flow of referrals in this direction. Troubled consumers tend to look locally first when seeking help and, with many citizens unaware of the chartering authority for their financial institution, state agencies regularly receive local inquiries related to institutions that are federally supervised.
2. **Trend and case monitoring.** Second, the database connected to a centralized intake system would be a source for vital statistics about trends in consumer complaints. This information could also be used to identify institutions generating a high volume of complaints that might warrant a target examination or other form of enhanced supervision. The same system could also be used to track case resolution status and response times. We recommend expanding the proposed legislation to mandate the FFIEC to produce such monitoring reports, to maximize the value of the system.
3. **Model forms and intake processes.** And third, consideration should be given to the development of model forms and intake processes, as described above, to ensure that all participating agencies collect sufficient and consistent information. Operating guidelines will also be necessary to support the type of centralized intake process envisioned in the proposed legislation.

**Conclusion**

The states welcome the opportunity to share our perspective on the approaches to complaint case management that we have tried and found effective. The New York State Banking Department has been one of the first state regulators to enter into a complaint sharing agreement with the OCC, and we offer our positive experience with this partnership in support of the concept of a nationwide hotline. I thank you for your time this morning, and would be glad to answer any questions you may have.



STATEMENT

OF

J. LEONARD SKILES, EXECUTIVE DIRECTOR  
NATIONAL CREDIT UNION ADMINISTRATION

“FINANCIAL CONSUMER HOTLINE ACT OF 2007:  
PROVIDING CONSUMERS WITH EASY ACCESS TO THE  
APPROPRIATE BANKING REGULATOR”

DECEMBER 12, 2007

## I. Introduction

The National Credit Union Administration's (NCUA) primary mission is to ensure safety and soundness, as well as compliance with applicable federal regulations for federally insured credit unions. It performs this important public function by examining all federally chartered credit unions (FCUs), participating in the supervision of federally insured state-chartered credit unions in coordination with state regulators, and insuring credit union member accounts. In its statutory role as the administrator for the National Credit Union Share Insurance Fund (NCUSIF), NCUA provides oversight and supervision to approximately 8,163 federally insured credit unions, representing 98 percent of all credit unions and approximately 87 million members.<sup>1</sup>

The NCUA regulates and insures all FCUs and insures most state-chartered credit unions. Under this framework, NCUA is responsible for enforcing regulations in FCUs and for evaluating safety and soundness in all federally insured credit unions. NCUA is responsible for monitoring and enforcing compliance with most federal consumer laws and regulations in FCUs. In state-chartered credit unions, the appropriate state supervisory authority has regulatory oversight and enforces state consumer laws and regulations.

Consistent with NCUA's longstanding support for measures that enhance the knowledge and understanding that credit union members have about their rights as owners of their institution, NCUA supports this legislation. NCUA supports the establishment of a call routing system that will assist members in resolving their complaints. Unlike other types of financial institutions, however, federally insured credit unions are cooperatives, owned by their members. As such, the first avenue for the resolution of disputes is within the institution itself. In the case of all FCUs, a supervisory committee, comprised of individuals chosen from the membership, provides members with an efficient and direct resource for the investigation and resolution of complaints. NCUA's concern is that the establishment and implementation of a call routing system not undermine this process. It is essential that any new procedures established to assist a consumer work in conjunction with the system already in place that has historically been effective in the credit union community. It is critical that the NCUA retain its direct oversight authority to handle complaints due to the uniqueness of the credit union system.

## II. Overview of Credit Union Industry

As of September 30, 2007, the NCUA was overseeing either as the primary regulator or in coordination with the state regulator, 8,163 federally insured credit unions. This total

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<sup>1</sup> Approximately 170 state-chartered credit unions are privately insured and are not subject to NCUA oversight.

includes 5,068 FCUs regulated by NCUA and 3,095 state-chartered credit unions insured by the NCUSIF.

From the standpoint of both financial health and regulatory compliance, the credit union industry is strong and vibrant. The statistics from September 30, 2007 indicate that federally insured credit unions collectively have healthy capital levels, with over 98 percent having net worth ratios exceeding 7 percent.

Other financial trends demonstrate that during 2007 federally insured credit unions experienced robust share (deposit) growth, increased net worth dollar levels, and stable delinquency and charged-off loan ratios.

Overall, federally insured credit unions remain a safe and sound component of the financial system. Approximately 80 percent of federally insured credit unions have CAMEL composite ratings of 2 or higher.<sup>2</sup> But more importantly, only 2.5 percent of federally insured credit unions have CAMEL composite ratings of 4 or worse. These credit unions represent less than one percent of assets in all federally insured credit unions.

### **III. Overview of NCUA's Member Complaint Process**

NCUA's policy on and procedures for processing member complaints and reporting violations of consumer compliance laws and regulations is described in NCUA Instruction 12400.05, Processing Complaints Against Credit Unions and Documenting Complaint Violations, last modified on April 23, 2004.<sup>3</sup>

#### Member Complaint Process

NCUA has a process in place to receive and act on a complaint or inquiry initiated by a member of a FCU at any time. While most complaints are in the form of a letter, individuals also have access to a toll-free number to contact NCUA. In addition, NCUA's Office of Inspector General maintains a toll-free number originally established for whistleblower reports that actually receives consumer complaints and inquiries. Consumers may also contact the NCUA Ombudsman and use NCUA's internet site ([www.NCUA.gov](http://www.NCUA.gov)) to submit a complaint or inquiry via email.

For members of federally insured state-chartered credit unions, agency staff responds to inquiries as appropriate, and coordinates with the appropriate state supervisory

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<sup>2</sup> NCUA uses the CAMEL rating system as an internal tool to measure risk at individual credit unions and allocate resources for supervision purposes. Under the CAMEL rating system, examiners assign a rating between 1 (strongest) and 5 (weakest) after assessing a credit union's Capital Adequacy, Asset Quality, Management, Earnings, and Asset/Liability Management.

<sup>3</sup> NCUA Instructions are internal documents outlining agency policy on specific matters.

authority for all complaints. Each state supervisory authority has its own method of investigating and resolving complaints from members of state-chartered credit unions.

NCUA's complaint process first encourages members to work with the credit union. Typically, NCUA initially directs the FCU to investigate the complaint and provide the member a response with a copy to NCUA. NCUA reviews the FCU's response, and if necessary, will further investigate the complaint. NCUA reviews all complaints for regulatory and consumer compliance violations. When a violation occurs, the violation is logged in NCUA's Consumer Regulation Violation Log (CRVL).<sup>4</sup> NCUA reports this violation data annually to the Federal Reserve Board in summary form.

NCUA's central and regional offices have systems to track incoming complaints, inquiries, and responses provided to credit union members, and, on occasion, nonmembers. Each NCUA regional office has trained staff that review and evaluate consumer complaints and inquiries. For all inquiries, NCUA staff will research the inquiry and respond directly to the consumer. For complaints regarding state-chartered credit unions, NCUA will coordinate with the appropriate state regulator. For complaints regarding FCUs, NCUA first refers the complaint to the supervisory committee. Uniquely, FCUs have supervisory committees comprised of credit union members whose primary duties include member protection and oversight of internal audit functions.<sup>5</sup>

The Federal Credit Union Act requires FCU boards of directors to appoint not less than three members or more than five members to serve as members of the supervisory committee.<sup>6</sup> Once appointed, the supervisory committee independently selects the chairperson and secretary. Supervisory committee members must be members of the credit union and bondable by the credit union's surety bond, which provides insurance protection against fraud and dishonesty.

The purpose of the supervisory committee is to ensure independent oversight of the board of directors and management and to advocate the best interests of the members. This includes the statutory authority, by unanimous vote, to suspend any board member, executive officer, or credit committee member.<sup>7</sup> As noted by NCUA in the preamble to its final rule incorporating the standard FCU Bylaws into its regulations, one of the supervisory committee's roles is to review member complaints, including disputes relating to the bylaws. The preamble notes that the supervisory committee has substantial experience in investigating and resolving member complaints.<sup>8</sup>

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<sup>4</sup> Examiners also report consumer compliance violations noted during contacts on the CRVL.

<sup>5</sup> State-chartered credit unions have comparable oversight committees.

<sup>6</sup> 12 U.S.C. §1761b.

<sup>7</sup> 12 U.S.C. §1761d.

<sup>8</sup> 72 FR 61495, 61497 (October 31, 2007).

All supervisory committee members are volunteers. To preserve independence, only one member of the supervisory committee may be a member of the credit union's board of directors. Moreover, employees and credit committee members are not eligible for membership on the supervisory committee as outlined in the FCU Bylaws. Sound internal controls also preclude FCU loan officers, membership officers, treasurers, assistant treasurers, presidents, vice presidents, and secretaries from being members of the supervisory committee.

As the members' advocate, supervisory committees are responsible for investigating member complaints. Complaints cover a broad spectrum of areas, including annual meeting procedures, dividend rates and terms, and credit union services. Regardless of the nature of the complaint, NCUA requires supervisory committees to conduct a full and complete investigation.

When addressing member complaints, supervisory committees will determine the appropriate course of action after thoroughly reviewing the unique circumstances surrounding each complaint.<sup>9</sup> Typically, supervisory committees will interview the complainant in private to fully understand his or her concerns. Then, as necessary, the supervisory committee will:

- a) Review the member's file;
- b) Review pertinent written credit union policies and procedures, and determine their compliance with applicable credit union laws and regulations;
- c) Interview appropriate credit union officials and/or employees;
- d) Determine the actual practices of the credit union and how they relate to the complaint;
- e) Determine the validity of the complaint;
- f) Work with the officials to develop plans to correct any improper, unfair, or discriminatory practices, if applicable, or make appropriate recommendations;
- g) Obtain agreements from appropriate credit union officials and/or employees to implement corrective action within a specified time;
- h) Provide the member with an appropriate response; and
- i) Maintain appropriate records for actions taken on complaints. NCUA has the authority to review the supervisory committee's records and actions at anytime.

The supervisory committee investigates referred complaints and provides an explanation of the circumstances to NCUA. The NCUA also provides guidance to supervisory committee members in technical aspects of how to ensure compliance with the appropriate rules and regulations. NCUA encourages the voluntary resolution of complaints, but is authorized and prepared to take formal action to ensure appropriate resolution, which may include invoking administrative action authority, if necessary, to achieve a proper outcome. Regional Directors are responsible for making

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<sup>9</sup> Supervisory Committee Guide, Chapter 4, Publication 4017/8023 Revised December 1999.

determinations about necessary action on a case-by-case basis and coordinate responses with NCUA's central office.<sup>10</sup>

Based on NCUA's experience and review of responses to member complaints, supervisory committees are meeting their statutory mandates. In the limited number of cases where there is a continuing issue, NCUA formally intervenes. In these cases, NCUA would follow through by assigning an examiner to investigate the facts at the field level and work with management in developing an appropriate solution. If management fails to correct violations, NCUA can invoke administrative remedies that can range from Letters of Understanding and Agreement,<sup>11</sup> Cease and Desist Orders, and Civil Money Penalties.

The overwhelming majority of member complaints stem from either the member's misunderstanding of the FCU's policies or poor initial communication between the credit union and the member. As a result, virtually all complaints are resolved after NCUA directs the FCU to address the complaint with its member. Following final review, NCUA sends the member a letter that summarizes the results of the review and advises the member in writing of its understanding that the complaint is resolved.

For the unusual cases where a credit union cannot resolve a complaint or the member is not satisfied with NCUA's recommended resolution, the member can also request assistance from NCUA's Ombudsman. The Ombudsman assists in resolving problems by helping the complainant to identify available options and by recommending actions to the parties involved, but the Ombudsman cannot at any time decide on matters in dispute or advocate the position of the complainant, NCUA, or other parties. The Ombudsman reports to the NCUA Board and is independent from operational programs. The Ombudsman handles an average of eight member complaints per month.

#### Member Complaint Statistics

The established process NCUA uses to respond to member complaints is sufficient to handle the volume received each year. NCUA has five regional offices and each regional office processes complaints for the credit unions within their respective region. Each regional office has approximately one full-time equivalent (FTE) position dedicated to processing member complaints.

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<sup>10</sup> NCUA Instruction No. 12400.05, dated April 23, 2004.

<sup>11</sup> Letters of Understanding and Agreement (LUAs) are supervisory tools used by NCUA. An LUA is essentially a contract between NCUA and a credit union and/or its officials, in which the credit union or officials agree to take, or not take, certain specified actions. Normally, LUAs are negotiated when credit unions have not adequately responded to less severe measures.

Year	2003	2004	2005	2006
Total number of Consumer Complaints Received by NCUA <sup>12</sup>	1,092	1,224	1,470	1,463

#### IV. Analysis and Evaluation of Proposed Legislation

The proposed legislation would require the several federal financial institution regulators, acting through the FFIEC, to establish a single, toll-free telephone number through which consumers may present complaints or make inquiries about financial institutions. The system would also need to be able to route each call directly to the regulatory agency having primary responsibility for the financial institution involved in the complaint or inquiry. The system would have to be developed in a way that would enable qualifying state regulatory agencies wanting to participate to receive transfers of calls that involve institutions primarily regulated by that state agency.

The legislation would also require the federal agencies to report to Congress within six months after enactment concerning progress they have made in establishing a public, interagency website for directing and referring consumers who have submitted a complaint or inquiry via the internet to the appropriate federal agency with responsibility for overseeing the institution involved in the complaint or inquiry. The report to Congress must also address how the system developed by the agencies handles the expedited routing of misdirected consumer complaint or inquiry documents among the agencies, with prompt referral of complaints and inquiries to the appropriate federal agency or participating state agency.

NCUA supports this proposed legislation, which will better alleviate consumer confusion and better ensure expeditious processing of complaints and inquiries. Given the dual banking system in the U.S., along with the sometimes confusing array of federal banking regulators, each with its own niche, it is no surprise that consumers may have confusion about which agency has primary oversight responsibility for their institution. This confusion can be compounded where an institution is part of a multi-institution financial services holding company and offers products and services other than or in addition to those traditionally related to banking. For example, a consumer with an account at a federally chartered savings bank, insured by the Federal Deposit Insurance Corporation and part of a multi-institution holding company overseen by the Federal Reserve Board, may not know that any complaints or inquiries should be submitted to the Office of Thrift Supervision.

This understandable confusion is not, however, a characteristic of credit unions, which are democratically controlled, member-owned cooperatives, with volunteer boards of

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<sup>12</sup> This table represents the number of complaints with NCUA involvement. It may not include member complaints submitted directly to federally insured credit unions by consumers and resolved without NCUA assistance.

directors. FCUs can never be owned or controlled by a holding company, and can never be affiliated through common ownership with another depository financial institution. NCUA is the sole, exclusive regulator of FCUs, as well as the sole insurer of member savings. By regulation, FCUs must display the NCUA logo in all advertisements and promotional materials. Rules pertaining to insurance coverage on accounts require prominent notice of NCUA's insurance be provided to all members concerning the existence and scope of insurance coverage. NCUA's name and address must be included in any adverse action notice provided to an applicant for credit, as required by the Federal Reserve's Regulation B. NCUA rules also require any FCU engaged in real estate lending to display a nondiscrimination notice containing NCUA's name and address.

In short, there is minimal likelihood that individual credit union members will be unaware of the unique organization and structure of their institution, or that it is different from a commercial bank. Similarly, confusion as to the identity of its regulator is minimal as well.

NCUA is concerned that the proposed legislation may have the unintended result for FCUs of blurring their unique structure and creating confusion where practically none exists. While there is benefit in offering consumers a centralized point of contact to pursue complaints when they are confused as to appropriate course of action, the legislation should preserve the agency's current complaint resolution investigation process. The unintended result to be avoided is that consumers might go to the centralized number as a first resort, when direct contact to the obvious regulator would be more efficient.

As discussed more fully in Section III above, NCUA is confident that its current system of responding to consumer complaints, with its focus on de-centralization and on the unique role played by the credit union's supervisory committee, works very well. NCUA is well-versed in and sensitive to the differences that make credit unions unique. This specialization may become diluted in a centralized routing system.

NCUA notes, in this respect, that it has express subject matter enforcement authority over most of the federal consumer protection regulations, such as Regulation Z, that apply to FCUs. Accordingly, NCUA anticipates and expects that the language in current sections (a)(1) and (b)(1) of the bill, referring to the otherwise appropriate agency to address the subject of the complaint or inquiry, will have minimal impact on matters that involve credit unions. NCUA should retain its current authority for all complaints and inquiries for FCUs.

As with the banking sector, there is a thriving dual chartering system in the credit union sector as well. All but four U.S. states and the District of Columbia have credit unions chartered at that level in addition to FCUs. In the majority of cases, NCUA provides member savings insurance for these institutions. While some confusion may arise on the part of a state credit union member as to where a complaint or inquiry should be submitted, such confusion is readily addressed. NCUA enjoys a very close working

relationship with the National Association of State Credit Union Supervisors, and on an individual basis, each state supervisory authority. Any inquiries or complaints brought to NCUA's attention that should be considered by a state supervisory authority are immediately forwarded to the appropriate agency for consideration and action. Similarly, state regulators refer complaints to NCUA. Although these relationships are already in place, NCUA anticipates the proposed legislation will support and complement these arrangements and should prove beneficial.

## **V. Conclusion**

In summary, NCUA views this proposed legislation as beneficial to the extent that it results in the creation of a call routing system to assure that consumer complaints and inquiries are forwarded to and considered by the appropriate regulatory authority on a timely basis. However, NCUA stresses the critical importance of retaining its direct authority to handle complaints due to the cooperative structure of the credit union system. In addition, FCUs also have a strong consumer oriented advocate in the supervisory committee, which is required by statute. The NCUA's process of utilizing the supervisory committee and regional staff has proven to be an effective and efficient method to address consumer complaints and inquiries.

**EMBARGOED UNTIL DELIVERY**

**STATEMENT OF**

**SANDRA L. THOMPSON  
DIRECTOR  
DIVISION OF SUPERVISION AND CONSUMER PROTECTION  
FEDERAL DEPOSIT INSURANCE CORPORATION**

**on**

**THE FINANCIAL CONSUMER HOTLINE ACT OF 2007: PROVIDING  
CONSUMERS WITH EASY ACCESS TO THE APPROPRIATE BANKING  
REGULATOR**

**before the**

**SUBCOMMITTEE ON FINANCIAL INSTITUTIONS  
AND CONSUMER CREDIT**

**of the**

**FINANCIAL SERVICES COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES**

**December 12, 2007**

**2128 Rayburn House Office Building**

Chair Maloney, Ranking Member Biggert and members of the Subcommittee, I appreciate the opportunity to testify on behalf of the Federal Deposit Insurance Corporation (FDIC) regarding proposed initiatives to make it easier for consumers to contact regulatory agencies with complaints or inquiries about financial institutions.

The FDIC recognizes the importance of ensuring consumers have an effective method for raising complaints about financial institutions and inquiries about other banking matters. In addition to the need for consumers to have their concerns promptly and thoroughly addressed, from the regulator standpoint, consumer complaints and inquiries often provide insight into problems in individual insured financial institutions and developing industry issues. Thus, it is to everyone's benefit that we make it as easy as possible for consumers to contact the FDIC.

My testimony will describe the important role consumer complaints and inquiries play in the FDIC's compliance examination process and the way consumer complaints and inquiries are processed. I also will discuss current interagency efforts to improve coordination of complaints among the federal banking agencies and the proposed Financial Consumer Hotline Act of 2007.

### **The Importance of Consumer Complaints and Inquiries**

Consumer complaints and inquiries play an important role in the development of strong public and supervisory policy. Assessing and resolving these matters helps the

FDIC:

- Identify trends or problems that may affect consumer rights;
- Understand the public perception of consumer protection issues;
- Formulate policy that aids consumers; and
- Foster confidence in the banking system by educating consumers about the protection that they receive under certain consumer protection laws and regulations.

Consumer complaints also play an important role in the FDIC's compliance examination function. The FDIC is responsible for enforcing compliance with federal consumer protection laws by the institutions it supervises. How a bank handles and responds to consumer complaints is a key component of a well-managed compliance program.

A review of consumer complaints is part of the FDIC's pre-examination process for every compliance examination we undertake. Complaints about particular practices indicate areas to target for review. Consumer complaints may signal management or structural deficiencies in financial institutions that are indicative of more systemic problems within an institution. For these reasons, every FDIC compliance examination of a financial institution includes a review of complaints against the institution and the resolution of those complaints.

The FDIC consumer contact process contributes to other aspects of the FDIC mission beyond consumer complaints. For example, following Hurricane Katrina, the FDIC Call Center handled thousands of inquiries from consumers seeking information about their banks and ways to access their bank accounts. We immediately established a 24-hour consumer hotline to answer questions about contacting financial institutions, including questions about accessing accounts, replacing lost records, obtaining replacement ATM cards and processing direct deposit payments. The FDIC also updated its website with information about financial institutions operating in the affected areas along with customer service and branch contact information. The FDIC consistently emphasized that deposit insurance remained in force, financial institution customers' money was safe, cash was available, and consumers should be vigilant about the potential for theft and scams. By serving as a clearinghouse for bank information, the FDIC assisted thousands of consumers.

The consumer contact process also is vital in the event of a bank failure. The FDIC provides a toll-free number and institution-specific information as a resource for customers of failed banks seeking information about the insured status of their deposits and any other issues that arise from the bank's failure. Depending on the size of the bank, the FDIC can receive thousands of inquiries in the days following a bank closing.

**Complaint Resolution and Inquiry Response**

The FDIC receives consumer complaints and inquiries through several channels, including constituent referrals from congressional offices. Consumers can contact the FDIC through our website ([www.fdic.gov](http://www.fdic.gov)) as well as through our toll-free phone number (1-877-ASK FDIC), which is answered by our Call Center staff. Serving as the FDIC's primary telephone point of contact for general questions from the banking community and the public, the Call Center has received over 133,000 calls in 2007, exceeding the 111,000 received in 2006.

The Call Center reviews all routine questions about deposit insurance and other consumer issues and concerns, as well as questions about FDIC programs and activities. When the Call Center receives a consumer complaint about an FDIC-supervised institution or a consumer protection inquiry requiring subject matter expertise, the caller is connected to the FDIC's Consumer Response Center (CRC). The CRC, staffed by consumer affairs specialists, investigates each complaint with the financial institution involved. As part of the investigation of complaints, CRC staff informs consumers of their rights under federal consumer protection laws and regulations and reviews the bank's actions to assess its compliance with such rules. The CRC is part of the FDIC's consumer affairs program, which has been in place for over three decades.

The FDIC website also serves as a valuable resource for consumers with complaints or questions. For example, the FDIC's website features *Bank Find*, which

assists consumers in identifying the appropriate regulator of their financial institution. By entering the name of a bank, a consumer can immediately access information on the bank, including financial data, insured status and primary federal regulator. From *Bank Find*, consumers may choose to link directly to the websites of other financial institution regulatory agencies if the institution involved in their complaint is not supervised by the FDIC.

In addition, to *Bank Find*, the FDIC website offers an online complaint form that consumers may use to file a complaint or inquiry. The information consumers provide on this form helps the CRC begin an investigation, respond to an inquiry, or promptly refer the matter to the appropriate regulatory agency.

The FDIC has established standards for responding to consumer complaints and inquiries. We are able to respond right away to complaints and inquiries not requiring any research or legal consultation, but for those that do, our policy is a maximum of 15 days to respond. Where we have to gather information from the institution in question, our policy is a maximum of 60 days for response. Some consumer complaints, such as fair lending related complaints, may involve complex legal issues and on-site investigation, and may require a bit more time. As of September 30, the FDIC had responded to 94 percent of consumer complaints and 99 percent of consumer inquiries in 2007 within the established timeframes.

Approximately 52 percent of the 13,042 written complaints and inquiries received by the FDIC in 2007 to date related to institutions supervised by other federal and state regulators. When concerns are received about institutions for which the FDIC is not the primary federal regulator, the complaint is referred promptly and directly to the agency that is the primary regulator.

The tables below show the volume of complaints and inquiries regarding consumer protection that the CRC has received over the past five years, as well as information about the number of referrals to and from the other agencies. As the tables indicate, the FDIC receives a significant number of complaints and inquiries that are referred to other agencies. This is probably due to the fact that the FDIC insurance logo is visibly displayed in every federally insured financial institution and commonly recognized by the public. For 2007, the CRC responded to 8,664 written and verbal consumer complaints and inquiries.

	2003	2004	2005	2006	2007*
<b>Total Volume Written Complaints</b>	8,028	8,779	8,915	9,665	9,735
Total Complaints Handled by FDIC	4,258	4,306	3,856	4,023	4,037
Total Complaints Referred Outside FDIC	3,770	4,473	5,059	5,642	5,698

	2003	2004	2005	2006	2007*
<b>Total Volume Written Inquiries</b>	3,668	5,250	4,123	4,043	3,307
Total Inquiries Handled by FDIC	2,542	4,019	2,842	2,686	2,217
Total Inquiries Referred Outside FDIC	1,126	1,231	1,281	1,357	1,090

<i>Received Directly from Consumer or Referred from Other Agencies</i>					
	2003	2004	2005	2006	2007*
<b>Total Volume Written Complaints &amp; Inquiries</b>	11,696	14,029	13,038	13,708	13,042
Received from Consumer	10,494	12,612	11,809	12,272	11,431
Referred from Comptroller of the Currency	368	520	439	605	710
Referred from Federal Reserve Board	209	167	58	60	55
Referred from Federal Trade Commission	5	3	2	1	40
Referred from Housing and Urban Development	4	5	2	3	1
Referred from National Credit Union Administration	2	2	7	15	7
Referred from Office of Thrift Supervision	45	31	37	39	47
Referred from Others	350	482	394	437	491
Referred from State Banking Department	219	207	290	276	260

<i>Referrals by FDIC</i>					
	2003	2004	2005	2006	2007*
<b>Total Referred Outside FDIC</b>	4,896	5,704	6,340	6,999	6,788
Referred to Bank	966	650	317	294	268
Referred to Comptroller of the Currency	1,777	2,312	2,760	3,119	3,071
Referred to Credit Bureau	16	22	28	25	15
Referred to Federal Reserve Board	575	742	782	920	838
Referred to Federal Trade Commission	537	547	658	713	669
Referred to Housing and Urban Development	5	12	5	9	10
Referred to National Credit Union Administration	123	198	230	229	199
Referred to Office of Thrift Supervision	733	969	1,253	1,216	1,280
Referred to Others	94	141	169	225	175
Referred to Securities and Exchange Commission	5	28	29	27	20
Referred to State Banking Department	59	76	103	211	238
Referred to Treasury Department	6	7	6	11	5

\*Based on correspondence received through October 31, 2007

As mentioned earlier, the CRC responds to calls referred by the Call Center or received directly from consumers. The chart below shows the volume of calls received by the CRC and the number referred outside of FDIC for handling.

	2003	2004	2005	2006	2007*	Total
Total Volume Telephone Complaints and Inquiries	5,347	4,816	5,607	3,960	2,874	22,604
Total Handled by FDIC	4,381	3,827	4,769	3,192	2,410	18,579
Total Referred Outside FDIC	966	989	838	768	464	4,025

\* Data for 2007 is from January 1 - October 31.

**Interagency Cooperation**

Effective interagency cooperation in the handling of consumer complaints and inquiries relieves the consumer of the burden of determining which regulator is appropriate to handle the consumer's particular problem. Because of the interagency cooperation in place, access to any regulator essentially provides the consumer with access to the correct regulator for the prompt handling of their complaint.

The FDIC works on an ongoing basis with our colleagues at the other federal and state banking agencies to improve and streamline the process for referring complaints between the agencies. Earlier this year, the FDIC worked with the other agencies to develop a consumer complaint form with common data fields. The common fields ensure that each agency is collecting the same data in the same format, which in turn increases the effectiveness of interagency complaint communications and referrals.

The FDIC also has long supported efforts to utilize secure electronic means to refer consumer correspondence and emails to the appropriate regulatory agencies. Consumer correspondence often necessarily contains confidential personally identifiable information such as account numbers and other financial information about the consumer. The implementation of secure e-mail between the federal agencies, which protects the privacy and confidentiality of the information being transmitted, now makes this process a feasible alternative to regular mail.

For the last several years, the federal financial regulatory agencies have met periodically to discuss issues of mutual interest, such as staff training needs and the exchange of complaint data to assist in the identification of trends and emerging issues. As a result of these meetings, the agencies have begun hosting, on a rotating basis at approximately 18 month intervals, joint consumer compliance training conferences for the agencies. These conferences supplement the ongoing training each agency provides its own staff. The FDIC sponsored the first interagency conference in April 2006, and the OCC hosted a second such conference in October 2007. The next conference is scheduled to be sponsored by the Federal Reserve in April 2009. Both the agencies' periodic meetings and the joint training conferences have proven to be an excellent opportunity for the agencies to discuss best practices and ways to enhance the complaint handling operations of their respective agencies, as well as the complaint referral process among the agencies.

Last week, the agencies that are members of the Federal Financial Institutions Examination Council (FFIEC)<sup>1</sup> initiated a process to explore the feasibility and technical requirements of additional improvements to the interagency referral process. Based on the recommendations of an FFIEC Working Group on Consumer Complaints established

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<sup>1</sup> The FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the FDIC, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and to make recommendations to promote uniformity in the supervision of financial institutions. In 2006, the State Liaison Committee (SLC) was added to the Council as a voting member. The SLC includes representatives from the Conference of State Bank Supervisors, the American Council of State Savings Supervisors, and the National Association of State Credit Union Supervisors.

in September, the FFIEC directed the Working Group to draft a Statement of Work to initiate a study to evaluate and recommend the best ways to enhance responsiveness to consumers, while leveraging the agencies' existing consumer assistance resources. The goal of the FFIEC is to ensure that future enhancements to the agencies' processes are both technically feasible and cost effective.

#### **The Financial Consumer Hotline Act of 2007**

H.R. 4332, the Financial Consumer Hotline Act of 2007 would require the FFIEC agencies, coordinating through the Council, to establish a single toll-free number for consumer complaints and inquiries, as well as a system for routing calls to the primary federal and state supervisory agencies. In addition, within six months of enactment, the agencies would be required to report to Congress regarding their efforts to establish a public interagency website for routing Internet inquiries to the appropriate agencies, as well as an internal system for efficiently routing misdirected consumer complaint documents between agencies.

The FDIC supports the intent of the proposed legislation. The bill is consistent with the approaches that the FFIEC has committed to study, as previously discussed. Although conceptually simple, the creation of single toll-free numbers and websites for interagency activities can be technically challenging, which is why the FFIEC is moving deliberately to ensure that any improvements the agencies undertake actually can achieve efficiencies that will benefit consumers and are cost effective.

In addition, it is vital that any new information sharing system have sufficient controls to protect the privacy of consumers. As discussed above, complaint information sharing raises information security challenges. Any new system mandated by the bill must be designed to maintain strict security over sensitive consumer information which may be part of a complaint or inquiry.

The FDIC recommends that either the statutory language or legislative history reflect that the bill's requirement of a single toll-free number and interagency website are intended to supplement rather than replace existing systems. The FDIC consumer complaint system and database have provided effective assistance to consumers for many years, including referring complaints to the appropriate supervisory agency in a timely manner. It is difficult to see how consumers would benefit from the abandonment of this system. Further, many inquiries handled by the FDIC, such as deposit insurance questions and issues regarding bank failures, are unique to the Corporation and consumers with questions in these areas should be able to submit them directly to us without an additional layer of screening. It is important to ensure that no additional layers of bureaucracy slow the response time for responding to consumers.

### **Conclusion**

The FDIC supports the intent of the legislation to facilitate the efforts of consumers to contact the appropriate federal agency about a consumer complaint or

inquiry involving a supervised institution. The agencies, through the FFIEC, are already in the process of studying the issues and initiatives raised by the legislation. Much work, however, still needs to be done to gather the necessary information to determine the benefits, feasibility and security of these proposed initiatives. In the meantime, the FDIC is committed to continue to investigate or refer, as appropriate, consumer complaints and to do so in a timely and thorough manner.

This concludes my testimony. I would be happy to address any questions the Subcommittee might have.

For Release Upon Delivery  
10:00 a.m., December 12, 2007

**TESTIMONY OF  
JOHN G. WALSH  
CHIEF OF STAFF AND PUBLIC AFFAIRS  
OFFICE OF THE COMPTROLLER OF THE CURRENCY  
BEFORE THE  
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
OF THE  
U.S. HOUSE OF REPRESENTATIVES  
DECEMBER 12, 2007**

Statement Required by 12 U.S.C. § 250:

The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

**INTRODUCTION**

Subcommittee Chair Maloney, Ranking Member Biggert, and members of the Subcommittee, on behalf of Comptroller John Dugan and the Office of the Comptroller of the Currency (OCC), I thank you for this opportunity to discuss H.R. 4332, which would direct the federal banking agencies to establish a single, toll-free number to help consumers reach the right banking agency for assistance with their complaint or inquiry.

While the financial services industry in this country offers a wide variety of consumer services through banks, thrifts institutions, credit unions, securities firms, insurers, and other providers, the focus of this hearing and my testimony is consumers of banking services and the role of the federal banking agencies in assisting them. Banks come in a variety of sizes, with both state and federal charters, and while this variety can offer choice and diversity to consumers, it also can present a complex maze for consumers to navigate when they have a problem with their bank and need help from its regulator. When direct contact with the bank does not resolve an issue, figuring out where to turn next may be very challenging.

The OCC believes this burden should not fall upon the consumer and supports the goals of this legislation to develop simpler means for consumers to find their way to us by phone or internet, and for banking agencies to expedite the routing of misdirected consumer complaints. It is incumbent upon the federal banking agencies to make improvements in these areas to better serve consumers.

**I. GOALS OF THE PROPOSED LEGISLATION**

Today, the consumer with a complaint or inquiry must sort through a variety of banking agencies, which present the consumer with dozens of phone numbers, Web sites, and addresses.

In addition to the issue of numbers, few bank regulators are household names and most are unfamiliar to consumers. The result is that consumers with a complaint against a bank may reach the wrong regulator. This year the OCC received nearly 11,000 referrals of misdirected complaints and inquiries from other agencies and referred 10,000 misdirected complaints and inquiries to other federal and state regulators. These referrals represent a significant portion of the 70,000 total cases opened by the OCC each year, which is consistent with previous years and suggests that a large percentage of people who have questions or concerns about their financial service provider do not know where to turn for help.

Development of a single, toll-free number, in coordination with the Federal Financial Institutions Examination Council (FFIEC), would make it easier for consumers to register a complaint or inquiry with the appropriate banking regulator. It would eliminate the burden of searching through dozens of phone numbers, the frustration consumers experience when being referred to another agency, and most delays that result from misdirected calls. An initiative in this area would be enhanced by a public awareness campaign that would educate consumers about the availability of help and the single place to turn to reach the right regulator.

A single, toll-free number would also help federal banking agencies compile and act on consumer complaints and inquiries more efficiently. Eliminating the burden associated with rerouting misdirected calls would make existing agency complaint-handling processes more efficient and free up resources for use in responding to consumer concerns.

A second objective of the proposed legislation, on which the federal regulators would be required to report back to Congress in six months, is establishment of a “public Interagency Web site for directing and referring Internet consumer complaints and inquiries,” and “a system to expedite the prompt effective rerouting of any misdirected consumer complaint or inquiry

documents.”<sup>1</sup> The OCC is currently working with other members of the FFIEC to study options in this area. Just as a single, toll-free number would cut through the complexity and clutter of our regulatory system for the consumer dialing in for help, a mechanism for routing electronic inquiries and complaints would provide similar advantages to consumers using the Internet.

I would now like to describe in greater detail ongoing OCC and interagency efforts that would be complemented by this legislation.

## **II. OCC EFFORTS TO IMPROVE CONSUMER COMPLAINT PROCESSES**

By way of background, the OCC has taken several steps to reduce the obstacles that consumers may face in registering complaints and to improve the service consumers receive when they reach our Customer Assistance Group (CAG). The OCC has expanded the CAG’s capabilities through a number of investments and upgrades in the last several years.

When consumers are unable to satisfy a complaint or inquiry through direct contact with their bank, they can reach the CAG by calling a toll-free number (1-800-613-6743) from 8 a.m. to 8 p.m. Eastern time, Monday through Friday; by faxing complaints; by sending e-mail; by writing to us at our Houston address;<sup>2</sup> or by visiting us online at our new Web site just for consumers, [www.HelpWithMyBank.gov](http://www.HelpWithMyBank.gov).<sup>3</sup>

CAG professionals have backgrounds in consumer law, compliance, and bank supervision, and can process written complaints and telephone calls in both English and Spanish. OCC customer assistance specialists facilitate communication between consumers and banks in

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<sup>1</sup> See H.R. 4332 co-sponsored by Congressman Frank.

<sup>2</sup> Fax: 713-336-4301 Address: Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010. E-mail: [Customer.Assistance@occ.treas.gov](mailto:Customer.Assistance@occ.treas.gov).

<sup>3</sup> Since its launch in July, about 100,000 people have visited [www.HelpWithMyBank.gov](http://www.HelpWithMyBank.gov). As part of the launch, the OCC conducted a public awareness campaign that resulted in more than 200 print articles and 1,900 30-second radio spots in 39 states, which reached a potential audience of more than 370 million people.

order to resolve matters appropriately. Over the last five years, CAG has assisted in the return of almost \$32 million in fees and other charges to national bank customers, as well as other relief such as suspended foreclosure proceedings, corrected credit bureau reports, and reduced interest rates.<sup>4</sup>

The OCC is working on a Web-based complaint referral system to reduce the burden and inefficiencies associated with forwarding the thousands of pages of material associated with misdirected complaints and inquiries between agencies. The current process, which relies upon fax transmissions and mail, for referring such documents is cumbersome and time-consuming. The system under development will transmit complaint-related documents via the Web to authorized users while ensuring the security of that information and the privacy of those involved. The OCC already uses a Web-based system, called CAGNet, to securely exchange complaint documents and information between the agency and our banks in order to facilitate an appropriate resolution of issues for consumers.

Comptroller Dugan described how the OCC's complaint handling process works<sup>5</sup> as well as how it integrates with our bank supervisory processes in recent testimony before the Committee on Financial Services.<sup>6</sup>

The OCC is also working with the Conference of State Bank Supervisors (CSBS) and State regulators on a number of initiatives to expedite the referral of misdirected questions and complaints. In November 2006, the OCC and CSBS agreed on a model Memorandum of Understanding (MOU) to improve referrals and information sharing regarding misdirected

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<sup>4</sup> See 2005-2006 Report of the Ombudsman, Office of the Comptroller of the Currency, for a more complete review of recent OCC customer assistance programs. (<http://www.occ.gov/Ombudsman/Ombudsman.htm>)

<sup>5</sup> See "Remarks by John C. Dugan, Comptroller of the Currency, before the Exchequer Club and Women in Housing and Finance," January 17, 2007. (<http://www.occ.gov/ftp/release/2007-4a.pdf>)

<sup>6</sup> See "Testimony of John C. Dugan, Comptroller of the Currency, before the Committee on Financial Services, of the U.S. House of Representatives, June 13, 2007." (<http://www.occ.gov/ftp/release/2007-57b.pdf>)

consumer complaints and to provide the needed assurance of confidentiality for sharing that information.<sup>7</sup> To date, 30 states and Puerto Rico have entered into the MOU with the OCC. To complement this effort, the OCC is working with CSBS to develop a common complaint form to further standardize that process.

While OCC's effort to improve its internal complaint-handling capabilities and cooperation with other regulators helps improve the handling of misdirected complaints, it does not fully resolve the issues addressed by H.R. 4332.

### **III. FFIEC EFFORTS TO IMPROVE CONSUMER COMPLAINT PROCESSES**

At the most recent FFIEC meeting on December 4, the Council, including the State Liaison Chairman, approved a study to evaluate how best to enhance the consumer experience during the complaint process. The study will examine how we might leverage existing agency resources to simplify the process for identifying the appropriate regulator, create easier complaint filing procedures, and improve complaint resolution timeframes.

The study will include focus groups to determine consumer needs when filing a complaint or contacting a regulator and will evaluate the feasibility of:

- Conducting an educational publicity campaign to inform consumers on how to reach the right regulator in order to seek assistance with a complaint or inquiry;
- Implementing a single portal Web site to funnel consumer complaints and inquiries;
- Establishing a process for routing consumer calls, letters, and e-mails to the appropriate agency; and

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<sup>7</sup> See OCC News Release 2006-126, "OCC, CSBS Agree on Consumer Complaint Information-Sharing Plan." (<http://www.occ.gov/toolkit/newsrelease.aspx?Doc=D39TFJ65.xml&JNR=1>)

- Creating a consumer-friendly tool for consumers to easily look up the regulator of their institution.

The study will also evaluate the feasibility of creating an electronic process for forwarding complaints to the appropriate agency, developing a common process for categorizing and coding complaints to help agencies identify trends and emerging issues, and for using a uniform complaint and inquiry database while retaining the complaint-handling business processes that are unique to each agency.

The FFIEC's decision is the result of several months of discussion. Comptroller Dugan called for this effort during his testimony before the Committee on Financial Services on June 13<sup>8</sup> and solicited the support of other agency heads in a July letter to his peers, which asked the agencies to "pool our resources in a joint undertaking."<sup>9</sup>

## CONCLUSION

The OCC is fully supportive of the goals of H.R. 4332: creation of a single, toll-free phone number and call-routing system, and a companion routing system for Internet-based inquiries and complaints. Improvements in these areas will promote appropriate, timely assistance for consumers. The FFIEC agencies have agreed to study these very issues, and we look forward to a report and recommendations by the end of 2008.

I thank the Subcommittee for this opportunity to testify and appreciate Chair Maloney's leadership in this important area.

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<sup>8</sup> See "Testimony of John C. Dugan, Comptroller of the Currency, Before the Committee on Financial Services, of the U.S. House of Representatives, June 13, 2007." (<http://www.occ.gov/ftp/release/2007-57b.pdf>).

<sup>9</sup> Letters sent to the heads of each of FFIEC member agencies from Comptroller Dugan, July 16, 2007.