

October 24, 2005

The Honorable Richard Shelby
Chairman
Senate Committee on Banking,
Housing, and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Paul Sarbanes
Ranking Member
Senate Committee on Banking
Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member:

As you begin the process of evaluating the nominee to replace Federal Reserve Board Chairman Alan Greenspan, we wanted to highlight some of the many ways in which the decisions of the Board of Governors of the Federal Reserve Board, and the leadership and views of its Chairperson, influence consumers' well-being in the financial marketplace. We urge you to ask the nominee for Chairperson of the Board of Governors of the Federal Reserve Board about the following issues:

(1) The need to shorten check hold times.

Under both the new Check 21 Law and the fast-spreading practice of converting paper checks to electronic payments, the checks consumers write can clear much faster, but financial institutions do not have to give consumers quicker access to their deposits. The mismatch between checks clearing faster and the continued delays on check deposits increases the risk of bouncing a check, which comes with high consumer fees. The Federal Reserve Board has the authority to reduce check hold periods by regulation as check clearing speed increases. Please ask the nominee to promise Congress to give prompt and thorough attention to reducing check holds times faced by consumers as much as is feasible; and to encourage the financial institutions under the Federal Reserve Board's jurisdiction not to apply the full check hold period allowed by law when it is not necessary to do so.

(2) Protection for workers who receive payroll cards and similar cards holding significant household funds.

A payroll card is a type of stored value card which is offered to low- or moderate-income employees without traditional bank accounts (the "unbanked") as an alternative to a paper paycheck. These cards may also be used to deliver partial compensation, such as commission or bonus payments, for employees with bank accounts. Recently, this type of card was used for a short time to distribute federal emergency relief payments. Payroll cards save money for employers and can bring benefits to the workers who can avoid check-cashing fees and gain a small foothold in the banking system. However, there is a serious need for the Federal Reserve Board to extend to all holders of payroll cards and similar cards holding significant household funds the protections of the Electronic Fund Transfer Act (EFTA). The most important of these protections is the limit on loss of funds from unauthorized transactions.

The Federal Reserve Board issued a proposed rule in August 2004 to apply EFTA protections to payroll cards. Although the public comment period closed in November 2004, the Board still has not issued the final rule. Please ask the nominee to commit to completing a final rule extending the protections of the EFTA to payroll cards and to similar cards holding significant household funds, no later than the end of the first quarter of the new Chairperson's term.

(3) Protection for credit card holders.

Consumers face a variety of unfair and deceptive practices in the credit card marketplace, including cards that suddenly increase in price with little or no notice, high late fees when payments were mailed on time, and sharp increases in interest rates when the consumer has never missed a payment on that card. Credit card issuers also regularly encourage consumers to incur more debt than they can afford. While some of these issues can be addressed only by Congress, the Federal Reserve Board has regulatory power with respect to some credit card practices. Please ask the nominee what the Federal Reserve Board should do through rulemaking and other regulatory powers about practices such as universal default clauses in credit cards, the lack of effective information provided to consumers about the impact of making only the minimum payment; issuance of credit limits that outstrip consumers' ability to pay, particularly for young consumers; and practices that trigger unnecessary fees, such as short grace periods and failing to count a payment from the date of the postmark.

(4) More effective regulation of overdraft policies and practices.

Bounce protection loans are a relatively new form of overdraft protection that some banks are using to boost their non-interest revenue. These plans are an extraordinarily expensive credit product. For example, a \$100 overdraft will incur at least a \$20 fee. If the consumer pays the overdraft back in 14 days, the APR is 520%. Bounce loan fees can be triggered for overdrafts of just a few dollars, especially for debit card point-of-sale overdrafts, making the APR even higher. The Federal Reserve Board's decision to treat this expensive product as governed by the Truth in Savings Act, instead of the Truth in Lending Act, allows financial institutions to avoid giving consumers the Annual Percentage Interest rate disclosures that must be provided on other forms of long term and short term credit. Please ask the nominee to reopen the issue of cost of credit disclosures for consumers on bounce loans, with a goal of providing consumers with timely, accurate information about the true cost of these loans before the consumer incurs the fees.

(5) Plan proactively to protect consumers from future disasters.

While many banks and other creditors announced forbearance programs after Hurricane Katrina, displaced consumers who did not know to contact their creditors may not have received the benefit of some of these programs. Through an extraordinary effort, another federal agency, the FDIC, staffed a 24 hour hotline for consumer questions. However, there was no central federal site where consumers, service agencies, and the news media could go to learn information such as which financial institutions are offering payment deferral or other types of forbearance, the characteristics of each forbearance program by financial institution and by product type, eligibility criteria for each program, and subsequent repayment terms for deferred payments. In addition, the federal financial institution regulators did not provide financial institutions with a model response program.

Please ask the nominee if he will commit that the Federal Reserve Board, either directly or through the Federal Financial Institutions Examination Council, will take two steps to prepare the U.S. financial system better serve consumers in this disaster, and in future natural or man-made disasters. The first step is to develop a comprehensive set of best practices for financial institution response to a major disaster, including forbearance for consumer debt; nonreporting to consumer credit reporting agencies for a specific period of time, such as twelve months; and eligibility and

repayment rules for such programs. The best practices should include certain steps being automatic, instead of waiting for a customer request. The second step is to monitor and make public information on how federally chartered and federally insured financial institutions' disaster programs compare to the best practices and to one another. The federal best practices and comparative website should be maintained on an ongoing basis as a resource to the public and to maximize readiness for future disasters.

(6) Prohibit unfair or deceptive acts or practices in connection with mortgage lending.

One in five subprime refinance loans end up in foreclosure, a rate which is ten times the rate for prime mortgages. These subprime foreclosure statistics come from the University of North Carolina at Chapel Hill Center for Community Capitalism and The Reinvestment Fund of Philadelphia. While federal and state law both address some abuses by mortgage lenders and their agents, the Federal Reserve Board also has a vital role to play in addressing abusive mortgage lending practices. Prior work of the Federal Reserve Board in this area includes its July 1998 report to Congress on revising Truth in Lending and its issuance of key provisions, including Regulation Z and Regulation C.

In 1994, Congress added 15 U.S.C. § 1639 to the Truth in Lending Act, which empowers the Board to define certain mortgage lending abuses as unfair or deceptive, or as being not in the interest of the borrower. The Board could further its role in addressing abusive practices by delineating certain practices under this section. For example, the Board could create standards for the manner and timing in which the rate on an adjustable rate mortgage can increase. Please ask the nominee to commit to use the power of the Federal Reserve Board to define certain mortgage lending abuses as unfair or deceptive practices as a tool to help to police the marketplace for subprime loans.

(7) Recognition of the role and value of state consumer protection law and law enforcement in consumer financial services.

There is a significant debate raging across the U.S. about the valuable role of state legislatures in developing new consumer protection laws, and the value of state Attorneys General in enforcing both federal and state consumer protection laws with respect to federally chartered financial institutions. While the Federal Reserve Board has not been the key agency in this debate, we ask you to question the nominee about the value, diversity and strength of state consumer protection law, and law state-level law enforcement, as applied to federally chartered financial institutions.

Thank you for your time and consideration.

Sincerely,

Gail Hillebrand
Consumers Union

Alys Cohen
National Consumer Law Center

Travis Plunkett
Consumer Federation of America

Ed Mierzwinski
U.S. PIRG

Ken McEldowney
Consumer Action

cc: Members of the Senate Banking, Housing, and Urban Affairs Committee