



STATEMENT OF THE NEW YORK BANKERS ASSOCIATION

BEFORE THE ASSEMBLY

STANDING COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION

STANDING COMMITTEE ON JUDICIARY AND

STANDING COMMITTEE ON BANKS

NEW YORK, NEW YORK

MAY 14, 2009

The New York Bankers Association appreciates the opportunity to present this testimony today on the subject of debt collection and debt management. Our Association is comprised of the commercial banks and thrift institutions doing business in New York State. Unlike many non-bank lenders, our members have not ceased their consumer lending and continue to provide the funds for home purchases, automobile loans, home furnishing, vacation and retirement that New Yorkers have come to expect. Our industry contributes to the State's economy in many other ways as well, employing approximately 250,000. In a year when the industry experienced one of the most severe financial setbacks in its history, not a single New York-based bank or thrift failed and the revenues the State received from the Bank Tax, according to the State Tax Department, actually increased more than 20%, exceeding \$1 billion dollars.

Beginning in the third quarter of 2008, the flow of credit throughout the economy was severely restricted. As more and more non-bank lenders failed or exited the consumer credit market, banks and thrifts were called upon to take up the slack. Still today, as evidenced by the spread in interest rates between the rates paid for federal government obligations and that paid for virtually every other category of credit, the availability of credit for consumers and businesses remains significantly below pre-recession levels. Part of the reason for this restraint is the uncertainty that pervades the credit markets – uncertainty caused by a range of factors including doubts about the creditworthiness of borrowers, concern about future economic developments, constraints on the availability of funding in the secondary market and concern about the direction of future interest rates. In addition, adding to this uncertainty are the number and extent of potential and proposed changes in law and regulation.

In New York, banks and thrifts have been working with their borrowers to avoid, if at all possible, defaults that could lead to consumer bankruptcies, blemished credit records or denial of access to credit. Using the tools authorized under existing law, banks seek to

collect legitimate debts while seeking to settle debts that, although reasonable when extended, have become overly burdensome for their customers because of changes in circumstances and the condition of the economy. At some point, however, banks and thrifts need the freedom to determine either that a debt is uncollectible or that it needs to be significantly discounted and sold to a third party for collection. It is our understanding that this hearing is designed to address those circumstances – that is, when a debt is contracted for collection to a non-bank third-party debt collector or is sold either alone or as part of a package for, typically, a fraction of its originally booked value. We believe that it is extremely important, both to preserve the rights of creditors to realize the maximum value for their loans as well as to reduce potential uncertainty in the marketplace for future extensions of credit, that creditor rights be preserved.

The United State government has, in recent months, originated a series of programs – more than twenty at last count – designed to get credit flowing freely in the economy again. These programs, many of them run out of the Federal Reserve Bank of New York, have provided substantial enhancements to the capital and lending strength of New York’s banks and thrifts. Among the most recent of these is the Public-Private Investment Partnership, designed to allow banks and thrifts to sell their legacy loans and investments in a government-supported private secondary market. Removing these legacy loans and investments from the books of banks and thrifts will provide them immediate liquidity and will add clarity and transparency to their balance sheets. Changes in law or regulation that reduce the ability of the parties purchasing these legacy loans and investments to collect on their debts, however, will necessarily reduce the value of these assets when sold, potentially increasing the cost to the U.S. taxpayer of supporting this program and reducing the liquidity and value added to bank and thrift balance sheets, making additional lending by these institutions more difficult and costly. In other words, restricting the ability to collect on legitimate debts will have the perverse effect of increasing the cost and reducing the availability of credit for all other consumers.

In light of these two goals – to continue to allow banks and thrifts to collect their legitimately contracted-for debt and to preserve the taxpayer value and restrict the cost of the programs instituted by the Treasury, Federal Reserve and FDIC designed to enhance the flow of consumer credit, we would like to comment on some of the bills that are the subject of this hearing.

A. 3926-A (Pheffer)/S. 4817 (Monserrate), Requiring that Debt Collection Agencies, including those who buy and sell consumer debt, be licensed by the State

Our Association has no position on this legislation. The bill contains an exemption for lenders and their affiliates when they are collecting debt they themselves extended. We agree with this exemption and believe that creditors should have the right to collect debts they are owed. Moreover, the State’s banks and thrifts are already fully licensed, regulated, supervised and examined by the State Banking Department and the federal bank regulatory agencies to an extent that far exceeds the proscriptions in this legislation. The State’s Fair Debt Collection Practices Law and the federal Fair Debt Collection

Practices Act provide comprehensive protection against a number of troubling practices in the debt collection market. These prohibited practices include harassing delinquent borrowers, misrepresentation, phone calls beyond reasonable hours, threatening legal action when none is planned, and other misleading or fraudulent activities. Currently, these laws are enforced by the New York State Attorney General, by local prosecutors, by the Federal Trade Commission and by the U. S. Department of Justice. The Attorney General recently announced a substantial settlement with a major debt collector and is actively pursuing a number of additional investigations. It is up to the Legislature to judge whether this enforcement effort is sufficient.

A. 7268 (Pheffer), The Uniform Debt Management Services Act

This legislation is intended to regulate entities that offer to serve as intermediaries between creditors and consumers in managing the debt of the consumers. There are an extraordinary number of extremely effective, highly ethical credit counseling services, many of which are funded by our member banks and thrifts, which provide consumer counseling and debt management and which intercede for overburdened consumers with creditors. In fact, the National Federation of Credit Counselors (an organization of, principally, not-for-profit credit counseling services) recently entered into an agreement with ten of the largest credit card issuers in the country to ease the process of debt management for credit card holders who have fallen behind on their payments. We do not believe that these entities, many of them not-for-profit organizations, are in need of additional regulation.

However, recently, a relatively new type of for-profit debt management provider has arisen. We understand that at least some of these providers engage in practices that verge on the fraudulent. Among these practices are charging consumers excessive upfront fees that are never applied to the consumer's debt balance, misrepresenting the services provided as authorized by the creditor, encouraging consumers to stop paying their legitimate debts and accumulating the funds that otherwise would have gone to pay these debts in accounts under the control of the debt management companies, and, in some extreme cases, simply absconding with consumer funds. While we are not convinced that all of the provisions of the Uniform Debt Management Services Act are necessary, we pledge to work with your Committees to develop appropriate legislative remedies for these troubling practices, which benefit neither consumers nor legitimate creditors.

A. 7558 (Weinstein)/S. 4398 (Schneiderman), the Consumer Credit Fairness Act

This legislation is intended to strengthen consumer protections in consumer debt collection proceedings. Unfortunately, it would have the unintended effect of vastly increasing the cost and reducing the availability of credit for New Yorkers. It would also seriously threaten New York's place as the world financial capital.

The bill makes a number of amendments to the Civil Practice Law and Rules, all of which are intended to limit the ability of creditors to bring suit to enforce consumer credit contracts. First, and most seriously, the bill would reduce from six years to two the

statute of limitations for bringing action to enforce a defaulted consumer credit contract. This provision would sharply reduce the value of all consumer debt to which it applies. If a creditor has six years in which to collect on a legitimate debt, it has the luxury of time to work with the consumer to find a schedule that meets the consumer's needs in repaying the debt. Moreover, during a six-year period, consumer circumstances change, placing many consumers in a better position to satisfy their obligations. We understand that many creditors are not in a position to even consider bringing in a third-party debt collector in two years. If a creditor must determine to file suit in less than two years after default, many more suits will be filed and many fewer consumers will be given the opportunity to work out the terms and conditions of a repayment schedule that meets their needs. Moreover, since many consumer defaults result from changes in circumstances such as health problems, job loss, divorce and other personal tragedy, this legislation would deny those victimized by these tragedies the opportunity to clear their credit records before facing consumer credit litigation on top of their other problems.

As we pointed out above, the government is engaged in heroic efforts to get the consumer credit markets freely flowing again at rates consumers can afford. This legislation would directly impede these efforts, restricting the ability of institutions to sell their consumer debt at prices they anticipated when the debts were contracted. The six-year statute of limitations for consumer credit has been part of New York's law for many years. Virtually the entire current system of credit-granting in the State is built upon it. We strongly oppose any reduction of New York statute of limitation for consumer credit.

This legislation also has a number of other troublesome provisions. We urge that this bill not be considered further.

A. 3532 (Gianaris), Establishing a Private Right of Action for Improper Debt Collection

This legislation would create a private right of action for improper debt collection practices. This private right of action would be in addition to remedies already available, and would likely be no more effective in stopping improper practices than remedies currently available. Currently, engaging in prohibited practices under the law could result in criminal penalties or could result in either the Attorney General or a County District Attorney seeking an injunction to prohibit such conduct. It seems to us unlikely that a party engaging in such conduct despite the prospect of a criminal penalty or of action by the Attorney General or a County District Attorney will be deterred by a private right of action. Nevertheless, our Association is working with the bill's sponsors on possible amendments that would allow us to remove our objections. Most important, we believe that banks and thrifts and their affiliates, who are already examined and regulated by agencies of the State and federal government, should be exempt. The Banking Law and applicable federal statutes provide consumer recourse for violations and significant fines and other penalties for misconduct, as well as an enforcement mechanism that is, at least every 18 months, physically present in every regulated entity, examining their books and records and ensuring their compliance.

We believe that it is extremely important that the Committees understand that the vast majority of consumers want to pay their debts in a timely fashion. Were that not so, the consumer credit system in this country would collapse. The small fraction of consumers who are unable to pay because of changes in circumstances should not be further penalized by being shut out of the market for consumer credit because of restrictions on debt collection. However, it is critically important that legitimate efforts to collect consumer debt be allowed to continue. Unpaid debts become a cost of doing business for every legitimate creditor, a cost which unfortunately must be passed on to other consumers who are trying to pay their fair share.

At the same time, our Association continues to work with consumer groups, where appropriate to try to enact legislation beneficial to our customers which does not overly restrict the current system of debt collection. For example, last year we negotiated at length with a number of representatives of consumer groups in devising what became Chapter 575 of the Laws of 2008, providing a new \$2,500 exemption for direct deposit accounts into which any exempt funds had been deposited and codifying the exemption for wages. This law is a recognition of the need to protect consumers from short-term financial hardship.

We appreciate the opportunity to submit this testimony and look forward to working with the Committees to ensure responsible debt collection.