H.R. 1963, THE POSTMARK PROMPT PAYMENT ACT OF 1995

HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE POSTAL SERVICE

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST AND SECOND SESSIONS

ON

H.R. 1963

TO AMEND TITLE 39, UNITED STATES CODE, TO PROVIDE THAT THE PAYMENT OF A BILL, INVOICE, OR STATEMENT OF ACCOUNT DUE, IF MADE BY MAIL, SHALL BE CONSIDERED TO HAVE BEEN MADE ON THE DATE AS OF WHICH THE ENVELOPE WHICH IS USED TO TRANSMIT SUCH PAYMENT IS POSTMARKED

OCTOBER 19, 1995, AND FEBRUARY 28, 1996

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H.R. 1963, THE POSTMARK PROMPT PAYMENT ACT OF 1995

THURSDAY, OCTOBER 19, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2247, Rayburn House Office Building, Hon. John M. McHugh (chairman of the subcommittee) presiding.

Members present: Representatives McHugh, Sanford, McIntosh, Ehrlich, Collins of Michigan, Owens, Green.

Staff present: Dan Blair, staff director; Jane Hatcherson, Robert Taub, Heea Vazirani-Fales, Steve Williams, professional staff members; Jennifer Tracey, clerk; and Denise Wilson, minority professional staff member.

Mr. MCHUGH. I'll begin this subcommittee hearing. I expect that the gentleman from Texas, Mr. Gene Green, is on his way. I just saw him at another postal event.

Let me, before I begin, acknowledge gratefully the vice chairman, Mr. Mark Sanford, who has joined us here today. Thank you, sir.

Let me also welcome all of you here today for this hearing. Let me pay a special tribute to two of my esteemed colleagues, Congressman Sherry Boehlert from my State of New York, a friend and neighbor, and also Congressman Andy Jacobs from Indiana. Both of these gentlemen are here this morning to present testimony.

As we proceed with the subcommittee's hearing on the legislation, H.R. 1963, the Postmark Prompt Payment Act of 1995, we will be hearing as witnesses, as I mentioned, some of the co-sponsors, as well as other individuals who expressed an interest in this legislation.

In addition to my colleagues, I want to especially welcome talk show host Bruce Williams. As I'm sure most, if not all, of you know, Mr. Williams is the host of a nationally syndicated radio show heard on approximately 400 radio stations nationwide.

Mr. Williams' program is heard on Talknet and is the country's longest running national talk radio program, and callers to the program frequently cite their experiences with the payment due problem and the resulting late fees, interest, and credit record problems.

I certainly want to give credit—speaking of credit—where credit is due. Mr. Williams was the originating force behind the idea contained in H.R. 1963. His inspiration for and support of this meas-

ure has been invaluable and undoubtedly will aid H.R. 1963, gathering an even more broad base of support in the future.

For the record, H.R. 1963 currently has 35 co-sponsors, including the chairman of this full committee, Mr. Clinger, the gentleman from Pennsylvania, and indeed enjoys bipartisan support.

[The bill H.R. 1963 follows:]

H.R. 1963

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1995

Mr. MCHUGH (for himself, Mr. ACKERMAN, Mr. BARRETT of Wisconsin, Mr. BOEHLERT, Mr. EHRLICH, Mr. GILMAN, Mr. GENE GREEN of Texas, Mr. JACOBS, Mrs. KELLY, Mrs. KENNELLY, Mr. KLECZKA, Mr. LIVINGSTON, Mr. PARKER, Mr. ROMERO-BARCELÓ, Mr. SERRANO, Mr. SHAYS, Mr. STOCKMAN, Mr. UNDERWOOD, Mr. TOWNS, Mr. WALSH, and Mr. DAVIS) introduced the following bill; which was referred to the Committee on Government Reform and Oversight

A BILL

To amend title 39, United States Code, to provide that the payment of a bill, invoice, or statement of account due, if made by mail, shall be considered to have been made on the date as of which the envelope which is used to transmit such payment is postmarked.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Postmark Prompt Payment Act of 1995".

SEC. 2. DATE OF POSTMARK TO BE TREATED AS DATE OF PAYMENT OF A BILL, INVOICE, OR STATEMENT OF ACCOUNT DUE.

(a) IN GENERAL.—Chapter 26 of title 39, United States Code, is amended by adding at the end the following:

"§ 2602. Date of postmark to be treated as date of payment of a bill, invoice, or statement of account due

"(a) If any payment required to be made on or before a prescribed date is, after such date, delivered by the Postal Service to the payee, such payment shall be deemed received by the payee on the date of the United States postmark stamped on the envelope or other cover in which such payment is mailed.

"(b) Subsection (a) shall not apply with respect to any payment—

"(1) other than a payment on a bill, invoice, or statement of account due;

"(2) which is required, by law, regulation, or contract, to be delivered by any method other than by mail; or

"(3) which is subject to any other provision of Federal law specifying how a postmark date shall be used in determining the date on which such payment shall be deemed to have been delivered or made.

"(c) Subsection (a) shall apply only if—

"(1) the postmark date falls on or before the prescribed date for making the payment; and

"(2) the payment was, on or before such date, deposited in the mail in the United States in an envelope or under other appropriate cover, postage prepaid, properly addressed to the payee.

"(d) Subsection (a) shall not apply in the case of a postmark not made by the Postal Service.

"(e) For purposes of this section—

"(1) the term 'payee', as used with respect to a payment, includes any person duly authorized to receive such payment; and

"(2) the term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(f) Regulations to carry out this section may be prescribed by the Postal Service.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 26 of title 39, United States Code, is amended by adding at the end the following:

"2606. Date of postmark to be treated as date of payment of a bill, invoice, or statement of account due.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to any mailing postmarked after the end of the 3-month period beginning on the date of enactment of this Act.

Mr. MCHUGH. In addition to this distinguished group of witnesses, the subcommittee also welcomes Mark Silbergeld. Mr. Silbergeld will testify on behalf of the Consumers Union and Consumer Federation of America.

Unfortunately, the subcommittee will not be hearing from invited witnesses who had previously made their opposition known to me, personally, as well as to the subcommittee staff. I truly regret that these invited witnesses chose not to testify before the subcommittee during today's proceeding.

I want the record to show that this subcommittee made all efforts to include those interested parties in this legislative process. In an effort to try to be responsive to those individuals' and organizations' concerns, I will order the record on this hearing to be maintained for the next following 7 business days, in which time they may submit written testimony. We have received some testimony already from the American Banking Association.

As we walked in this morning, for those of you who looked, there was what I would describe as a legislative memo being passed out from several credit card companies, Visa and MasterCard, who have expressed concern about, and opposition to, H.R. 1963. If we receive this formally, we will make that part of the written record. If there are representatives from that interest in the room this morning, I would urge you to formally submit your concerns in writing.

Let me say, rather extemporaneously, I have read the testimony by the bankers. Frankly, I think they raise some very legitimate points and, again, I regret that they were either unable or chose not to participate directly. I think, truly, their presence could have added in very important ways to the quality of this hearing.

That having been said, let me say that, in my opinion, H.R. 1963 is sound legislation, aimed at addressing a problem with which most bill-payers can claim experience. Quite often, conscientious people will dutifully pay their bills on a timely basis, only to discover that they were assessed late fees and interest charges when the recording or receipt of their payment is delayed through no fault of their own.

I know many of my colleagues have been approached by constituents relaying their problems with payments that have been mailed in a timely fashion and not delivered by the due date. H.R. 1963 is intended to address this problem.

The bill mandates that the postmark on the envelope containing the payment will be proof of a timely admission. The legislation applies to payments of a bill, invoice, or statement of any account due, and only when made through the mail. It excludes metered mail. Furthermore, the envelope will have to be correctly addressed to the payee and have adequate postage affixed to it.

The use of the postmark has precedence in contract law. For example, the Internal Revenue Service uses the postmark on the en-

velope as proof that a taxpayer mailed their income tax return on or before the April 15 deadline, regardless of when the IRS received payment.

Clearly, the intent behind this legislation is to protect conscientious consumers who pay their bills, invoices, or accounts through the mail in a timely fashion.

Some in the financial community have raised questions regarding H.R. 1963 and possible hardships it might impose on creditors who will be forced to preserve the postmarks on envelopes of late bill payers. I'm confident that these companies share my concerns regarding late fees, penalties, and adverse credit ratings being wrongly assessed against timely bill payers.

Consequently, I would look forward to working with them, as well as the co-sponsors of H.R. 1963, to meet those concerns that might impact the intent of the legislation and, at the same time, reflect the concerns of those industries. Again, I welcome the witnesses here before the subcommittee, and I look forward to their testimony.

At this time, as I had mentioned, I would like to recognize the presence of the gentleman from Texas, Mr. Green, and ask him if he has any opening comments he might wish to make.

Mr. GREEN. Thank you, Mr. Chairman. I do have an opening statement, but in the case of brevity and moving this along, I would like to submit it for the record. But also, I met Bruce Williams in Houston recently, and I'm glad to know that we can respond to not only his listeners but our constituents.

[The prepared statement of Hon. Gene Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

As an original co-sponsor of H.R. 1963, The Postmark Prompt Payment Act of 1995, I believe that this legislation is long overdue. I have heard many accounts of individuals whose credit had been ruined because they had sent their payments in on time for things like mortgage and car payments that did not arrive on time, consequently, they were assessed late fees and interest charges and their credit ratings were negatively affected. This legislation will help those diligent bill payers who pay their bills on time but through no fault of their own have problems with delivery service of their mail. This legislation will require creditors to use the postmark on the envelope containing the payment as proof that the payment was sent in a timely manner. I would like to commend Chairman McHugh for having the foresight to introduce this important piece of legislation that will benefit both the American consumer and the U.S. Postal Service. It will benefit the consumer by requiring the creditors to use the postmark as proof of a timely payment and it will benefit the Postal Service by identifying areas where they may have delivery problems. Again I would like to thank Chairman McHugh for introducing this legislation and holding these hearings.

Mr. MCHUGH. Thank the gentleman. Let me next recognize in the order in which the chair saw them enter the room, the gentleman from New York, Major Owens, for any comments he might have.

Mr. OWENS. Thank you, Mr. Chairman. I have an opening statement, which I shall submit for the record.

[The prepared statement of Hon. Major Owens follows:]

PREPARED STATEMENT OF HON. MAJOR OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I am pleased to be a co-sponsor of this bipartisan effort to empower the American consumer. "The Postmark Prompt Payment Act" (H.R. 1963) would require lenders to accept the postmark date as evidence of a timely payment. This bill represents a victory for the consumer who oftentimes feels intimidated by the giant industry of financial institutions, creditors and lenders.

The "Postmark Prompt Payment Act" is an effective remedy for the frustrating position in which many people find themselves. Many of my constituents and I have all had the unpleasant experience of mailing a payment far in advance of the due date, and later being assessed an additional fee because the payment arrived at the payment center late. Through no fault of the consumer, but for the delay of the Postal Service, consumers are unfairly confronted with situations over which they have no control.

Currently, it is evident that the postmark system of timely payment verification is a workable policy. The Internal Revenue Service requires that all tax payments are deemed on time if the postmark date is on or before April 15. Taxpayers are not charged with the unreasonable task of estimating the time the Postal Service will actually take to deliver the payment. If this system is adequate for the Federal government, then it should be adequate for American businesses too.

Some businesses contend the bill unfairly shifts the cost of delays in the mailing system from the consumer to the creditor. However, consumers reasonably counter that it is unfair that they are expected to bear the burden in the first place. H.R. 1963 empowers consumers who can rest assured that their responsibility and hassles end when they walk to their local post office, and mail their payment.

H.R. 1963 is a logical, fair and simple solution and encourage my colleagues to move this legislation forward.

Mr. MCHUGH. Thank you very much. I would also like to recognize Mr. McIntosh.

Mr. MCINTOSH. I have no opening statement, Mr. Chairman.

Mr. MCHUGH. Also, the gentleman from Maryland, Mr. Ehrlich. No statement.

As I mentioned, we do have a number of Members of Congress who have joined in the co-sponsorship of this legislation. Leading off, because I know he has his own mark-up coming at 10:30, is my good friend, the gentleman from New York, Mr. Boehlert. Sherry, welcome.

STATEMENT OF HON. SHERWOOD BOEHLERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BOEHLERT. Thank you very much, Mr. Chairman. I'm here to speak in favor of H.R. 1963, the Postmark Prompt Payment Act of 1995. I'll be brief because the case for this bill is so self-evident. This measure is very simple, yet very important. Each day, thousands of Americans charge everything from groceries to college tuition on their credit card, and, each month, they send off a check in the mail to pay the bill without a second thought.

While it may be the case that neither snow nor rain nor heat nor gloom of night stay our faithful couriers from the swift accomplishment of their appointed duties, mail has been known on occasion to be late, and the penalties are severe—huge interest payments and the possibility of a bad credit rating. That is very severe.

Especially for younger families just starting out and for elderly people on fixed incomes, interest payments of 10, 15, or even 20 percent are harmful and unnecessary when the check was in the mail on time.

This bill would rectify that situation by allowing the postmark on the envelope to be proof of timely payment. This measure would

apply only to payment of bills, and the envelope must have the correct address and the postage affixed.

The Internal Revenue Service already uses the postmark system, as you have observed, Mr. Chairman, and it works very well. Everybody is familiar with the countdown to the April 15 deadline. It's a winning proposition for consumers and creditors. The arguments and hassles over when the check was mailed will be solved, and those who use the old adage that "the check is in the mail" will have to actually live up to their word.

Mr. Chairman, I want to compliment you for leading the way with this bill. I think it's very important legislation. As a fan of Bruce Williams myself, who often listens to him on Talknet, I must admit I have heard him espouse the merits of this proposal, and I compliment you for taking advantage of his suggestion, and I would urge the subcommittee to have timely action on the bill.

Mr. MCHUGH. Well, I thank the gentleman and, again, appreciate his joining us here this morning and thank him, too, for his co-sponsorship of this legislation.

We all recognize busy schedules, but I will ask the subcommittee members if anyone has a question for our colleague.

[No response.]

Mr. MCHUGH. With that, thank you very much. I have now been handed the correct order in which we notice the Members of Congress who have entered the room. I'm told that the next co-sponsor is the delegate from Puerto Rico, the Honorable Carlos Romero-Barceló.

Mr. ROMERO-BARCELÓ. He was here first.

Mr. MCHUGH. Well, the gentleman is indeed a gentleman, but I go by what the staff said.

STATEMENT OF HON. CARLOS ROMERO-BARCELÓ, A DELEGATE IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman. Mr. Chairman and members of the subcommittee, I appreciate having the opportunity today to voice my support for H.R. 1963, the Postmark Prompt Payment Act of 1995.

Mr. Chairman, you are to be commended for introducing this measure, and I was pleased to join with a number of members of the subcommittee in co-sponsoring your bill. A substantial majority of individuals who work hard to pay their bills in a timely manner suffer from consequences that are not under their control. They receive a bill; they take note of the date that it's due; they write a check, and, at the appropriate time, they mail it. And that should be it.

But unfortunately, despite all of their good intentions and actions and through no fault of their own, numerous bill payers find themselves assessed late fees or interest charges because their payments were not delivered or credited in a timely manner. If this has not happened to each of us at some point, it has certainly happened to someone that we know and some of our constituents.

Once this happens to an individual several times, it begins to have a detrimental impact on one's credit rating. In Puerto Rico,

I must say that if the post office is bad in Washington, DC, Puerto Rico is worse. It's the worst one in the Nation of the post offices.

From that time on, when you have your credit rating affected, and the individual is ready to make a major purchase, such as a home, or buy a car or borrow some money, he is confronted with a major problem, one which the individual had nothing to do with. His credit has been affected, and he probably can't get the loan, or he has been penalized, or it takes much longer than it should have to get the loan.

The best argument in support of this measure is that H.R. 1963 is a narrowly drawn and a very sensible bill. It requires the payment to be properly addressed, carry adequate postage, and to be mailed in advance of the due date. By then allowing the postmark on the envelope containing the payment to serve as proof that the payment was made in a timely manner, we're simply being fair and equitable to consumers.

The measure does not seek to establish a totally new and elaborate system, it merely builds on the well-known, existing IRS practice of recognizing the postmark on the envelope as proof that a taxpayer mailed his return before the April 15 deadline, no matter what or when the IRS received the return. This practice has functioned in a satisfactory manner for a number of years and I believe a similar system for the payment of bills will work equally well.

We are well beyond the days when one settled their accounts in person. This legislation seeks to correct a simple problem, but nevertheless a very real problem, which can have substantial consequences and expenses for the individual involved.

Many times he is at a loss. He has to argue and fight with computers. They say, "The machine says, the record says," and sometimes they don't even have a person to speak to when they call because there's a machine answering the phone calls.

Therefore, I think this is a measure of great justice to our consumers, and I urge the subcommittee to favorably report the needed legislation at an early date. Thank you.

[The prepared statement of Hon. Carlos Romero-Barceló follows:]

PREPARED STATEMENT OF HON. CARLOS ROMERO-BARCELÓ, A DELEGATE IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Mr. Chairman and members of the Subcommittee, I appreciate having this opportunity today to voice my support for H.R. 1963, the Postmark Prompt Payment Act of 1995.

Mr. Chairman, you are to be commended for introducing this measure, and I was pleased to join with a number of members of the Subcommittee in cosponsoring your bill.

A substantial majority of individuals work hard to pay their bills in a timely manner. They receive a bill, they take note of the date it is due, they write a check at the appropriate time and they mail it. And that should be it. Unfortunately, despite their good intentions and actions, and through no fault of their own, numerous bill payers find themselves assessed late fees or interest charges because their payments were not delivered or credited in a timely manner. If this has not happened to each of us at some point, it has certainly happened to a number of our constituents.

Once this happens to an individual several times, it begins to have a detrimental impact on one's credit rating. From that time on, whenever the individual is ready to make a major purchase such as a home or a car or borrow money, he is confronted with a major problem—one which the individual did nothing to cause.

The best argument in support of this measure is that H.R. 1963 is a narrowly-drawn, sensible bill. It requires the payment to be properly addressed, carry adequate postage and be mailed in advance of the due date. By then allowing the post-

mark on the envelope containing the payment to serve as proof that the payment was made in a timely manner, we are simply being fair and equitable to consumers.

The measure does not seek to establish a totally new or elaborate system. It merely builds on the well-known, existing IRS practice of recognizing the postmark on the envelope as proof that a taxpayer mailed his return on or before the April 15th deadline no matter when the IRS receives that return. This practice has functioned in a satisfactory manner for a number of years. I believe a similar system for the payment of bills will work equally well.

We are well beyond the days when one "settled their accounts" in person. This legislation seeks to correct a simple problem, but nevertheless a very real problem which can have substantial consequences and expenses for the individual involved. I urge the Subcommittee to favorably report this needed legislation at an early date.

Thank you.

Mr. MCHUGH. Thank the gentleman. We have a growing number of Members who have come here to give testimony, and I'm very grateful. If we ask a lot of questions, we could be here all morning.

But let me ask you, just very quickly, as delegate from Puerto Rico, you perhaps have a very unique situation, as well. How often do your constituents actually have to mail payment to the States? Or are all your transactions handled on the island of Puerto Rico, itself?

Mr. ROMERO-BARCELÓ. No, some of them have to mail to the States. Sometimes, the main office of the credit card is on the mainland, but it should take no more time from Puerto Rico, than to Alaska or to Hawaii. It's just a matter of the fact, somehow or other, there has never been enough money allotted to the Postal Service in Puerto Rico. That's why the services at home are the worst.

Mr. MCHUGH. It shouldn't be any longer, but usually is?

Mr. ROMERO-BARCELÓ. Yes.

Mr. MCHUGH. And your constituents pay that in late fees.

Mr. ROMERO-BARCELÓ. Sometimes it takes up to 7 days for a letter to be delivered. In those instances, you know, 7 days is a lot of time for a payment letter.

Mr. MCHUGH. Thank you. Any other questions?

[No response.]

Mr. MCHUGH. Well, we thank the gentleman.

Mr. ROMERO-BARCELÓ. Thank you.

Mr. MCHUGH. We appreciate it very much. The next gentleman is an individual who has been in Congress for nearly 30 years, and in that time, he has only gotten better and has been one of the leading advocates of postal reform and issues that involve consumer relations in the Postal Service.

I've worked with him on this initiative and a number of others, and I'm really delighted that he's not only co-sponsoring this bill, but is also with us here this morning. Andy Jacobs, the gentleman from Indiana. Welcome, sir.

STATEMENT OF HON. ANDREW JACOBS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. JACOBS. I thank the chairman, and I return the encomium by saying that, in Washington, advocating common sense can be very hazardous, so I admire your courage, and I hope that in this case it's successful. It's always awkward to argue in favor of the obvious, but sometimes, because of extraneous factors, it is necessary to do so.

In constitutional law, particularly in the case of criminal statutes, the scholars tell us that one of the most important criteria is certainty. That is true of the law of contracts, as well, I think. It is better to be a little off and certain that both parties understand the rules of the game and abide by them.

Think how much litigation can be avoided. As a matter of fact, think how many wars could be avoided if human beings could accomplish certainty in their relations. Misunderstandings—Bill Mauldin did a cartoon once that said, "Wars are impossible unless both sides are right."

I hear it many times. You have a contractual relationship, both sides fervently believing they're right. Take the intersection accident with automobiles. You have two witnesses, one who swears the one person had the green light, the other swears the other had the green light. And both are telling the truth as best they can.

But what if you had a camera there? It would settle the matter. There never is a camera there. What if, in conversation, you agree with somebody else, "Well, we'll do this. We'll meet at this corner"? And then you go to different corners, and then you get a little fuss going. Let's say it was of commercial significance, and you go to court. Now, if there had been a tape recording, and somebody could play back that tape, that would be about it. You would know exactly what happened.

By some strange paradox, for several years, one of the largest banks in my city was my tenant. The rent was due on the first day of the month, and it usually came straggling in around the 15th day of the month. After that happened for about 6 months, I sent a polite note saying that if this continued, I would be forced to assess late charges and penalties. They began paying exactly on time.

But the most important thing of all, as I say, is the certainty of it. The amount of money that can be saved in litigation, I don't know. There may be some interest, some creditor interest, who calculate on their bottom line what they can get from people in penalties. Interest might make sense, but interest and penalties, that might be part of the profit picture. I don't know. It shouldn't be.

What should be is good relations between the borrower—or the charger, whatever it might be—and the creditor, and this bill would straighten out a lot of disagreements, save a lot of litigation, and, as I say, it makes all the common sense in the world. I just hope that that common sense isn't too much of a handicap getting it through Congress.

Thank you, Mr. Chairman.

Mr. MCHUGH. I thank the gentleman. We appreciate his, as always, lucid and commonsensical testimony. Any questions from the subcommittee?

[No response.]

Mr. MCHUGH. None. Thank you. We next have the gentleman from Wisconsin, Mr. Barrett.

STATEMENT OF HON. THOMAS BARRETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. BARRETT. Thank you, Mr. Chairman. As Mr. Jacobs was talking, I thought of my grandfather, who used to say that "Com-

mon sense isn't that common." So I hope that in this case it becomes common.

I want to thank you for the opportunity to appear before you this morning and testify in support of H.R. 1963. Your bill is an exercise in common sense. At a time when we must become more diligent in using Federal laws and regulations that confuse and complicate, this bill would alleviate some of the uncertainty involved in paying bills through the mail.

If the payment of a bill is late, there are basically three possible causes of delay. The consumer could be late; the mails could be late; or the person who receives the bill could be late in processing it.

With improved communication technology in recent years, consumers are more frequently sending their bill payments to addresses in other States. In Milwaukee, we send our phone bill payments to Columbus, OH. Ask 10 people where their credit card bills are sent, and you will likely hear 10 different States.

The amount of time it takes for a piece of mail to travel from a consumer in one State to a business in another varies widely. Distance, weather, and a variety of other factors can slow the process down, resulting in a late arrival, even if the payment was sent several days ahead of time.

By considering the postmark on the bill envelope proof of payment, rather than the day the bill is received, this bill would present consumers' credit ratings from becoming victims of delays by the Postal Service.

The bill would also protect consumers from late penalties due to slow processing of mail by companies receiving payments. Many large telecommunications companies and banks receive hundreds of thousands of payments every month, and if their employees do not record the receipt of payment from consumers in a timely manner, the consumers should not have to pay late fees. Using the postmark for the effective date of payment would shield the consumer from overdue penalties resulting from inefficient processing of incoming mail.

H.R. 1963 does not infringe on the right of fair-minded businesses to charge late fees for interest payments when appropriate. Consumers would still be responsible for paying their bills promptly, and any disputes over whether a payment was sent on time could be answered by simply checking the envelope containing the check.

As you have noted, Mr. Chairman, there is ample precedent for using the postmark date as the date of payment. The IRS requires that income tax returns be postmarked no later than April 15. This method has a proven record of effectiveness, and could be extended to the private sector with great success.

Mr. Chairman, your bill offers a promise of honest and simplified dealings between businesses and consumers. These days, honest consumers who pay their bills on time have enough to worry about while trying to maintain a good credit rating. So let's not miss the opportunity to make things a little easier for the people we represent. Thank you.

Mr. MCHUGH. We thank the gentleman for his testimony and for his common sense in helping to advance this initiative. We appreciate his co-sponsorship. There are no questions.

The gentleman from Texas, Mr. Stockman.

Mr. STOCKMAN. Good morning, Mr. Chairman. How are you?

Mr. MCHUGH. Good morning, Steve. Very well.

STATEMENT OF HON. STEVE STOCKMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. STOCKMAN. Well, I don't have a prepared statement. I'm just going to speak to you from my heart.

I've been a Congressman for only 10 months. Very shortly before that, I was a consumer. During our campaign, we ran up credit card debt. Now, I have to tell you that this legislation is about common sense and individuals, and I'm very proud that you've taken a leadership role in this, because I believe that this sends the signals that we do care about the consumer.

So often, I think, as we're discussing today, on different issues, it looks like we forget where we came from and that we, ourselves, no longer remember. But 11 months ago, I was a consumer, and I, too, experienced personally the situation where you write out your check and they either lose it—in fact, I actually experienced it with my student loan. I hope this applies also to the student loan program—and I was assessed a late fee. This was not my fault, but really, as mentioned earlier, was either the fault of their processing or the fault of late mail.

So this legislation is something, I think, that Congress needs to do, and I don't understand why it hasn't already been in effect. It's long overdue. I appreciate your leadership in this and your accommodating the rest of our Members to speak on behalf of this. H.R. 1963 should have been done in 1963. Thank you very much.

Mr. MCHUGH. Well, we thank you, Steve, for coming, and again, appreciate your help in leading the fight for this piece of legislation. We look forward to working with you.

Mr. STOCKMAN. Thank you very much. And to my good friend who pushed this, we still listen to him late at night on the radio in Houston, TX.

Mr. MCHUGH. Many of us do. Not in Houston, but in other places.

The gentleman from Massachusetts, Mr. Peter Blute.

STATEMENT OF HON. PETER BLUTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. BLUTE. Thank you very much, Mr. Chairman and members of the committee. I would like to commend you and the members of this committee for addressing what I think is a major problem in the area of consumer debt. That is the problem of late payments which may be no fault of the consumer.

As you know, most people in the country have some sort of consumer debt where they pay interest rates of as much as 21 percent on insurance, credit cards, home improvement loans, and auto loans. It is a necessary evil in most people's lives, and hopefully, this year, the Congress will go to great lengths to bring us a bal-

anced budget which, hopefully, will reduce those interest rates on American consumers.

Recently, I leased a new car, which requires me to make a monthly payment for the next 2 years by a date certain. If I fail to make that payment on time, I am charged a penalty. Needless to say, I am very diligent about paying my loan on time to avoid paying more than I already do.

However, a little known practice in the financial services community adds an additional burden to consumers for actions that are often beyond their control. Banks which offer a grace period generally charge interest on a monthly payment if it is not paid on time.

What this means is that if an individual mails a payment with a week to spare, if the payment is delayed by circumstances beyond his or her control, the individual is charged extra. In essence, they could be charged extra due to circumstances that they had nothing to do with.

A quick survey of banks and credit unions in this area and my home State of Massachusetts revealed a consensus. While the terms varied from bank to bank, all charged consumers extra if a monthly payment for a credit card was not received on time. In Massachusetts, one of the largest banks, Bay Bank, charges interest for every day the payment is late.

Closer to home for many people who work in the House of Representatives, the Wright-Patman Federal Credit Union charges interest retroactively. This means that if a payment is just 1 day late, Wright-Patman will charge interest for the days late plus the grace period.

This practice can cost consumers more than money, though. It can also cost them a good credit rating. Late payments are noted on everyone's credit record, whether it is the fault of the individual or not. Enough of these late payments can tip the balance against a family applying for a mortgage, auto loan, or student loan.

Fortunately, though, my good friend from New York and the members of this committee have proposed a solution. This legislation, the Postmark Prompt Payment Act of 1995, would change the status quo in favor of the consumer. It would require that a payment be considered on time if it is postmarked by the due date. This means that the bank, post office, insurance company, or other institution cannot cause an individual's payments to be late and thus cause a charge or black mark on his or her credit rating.

This legislation has been endorsed by companies in my district, who say, "My business depends on the mail being used to carry bills and payments." Furthermore, they call it an important milestone. The American consumers deserve this protection, and indeed, the IRS affords it for the purpose of paying taxes. This precedent should be followed by financial institutions.

As a co-sponsor of H.R. 1963, I want to congratulate the gentleman from New York and the members of this committee for finally addressing this issue and giving the people of America a chance to feel more secure with their financial system. I urge the chairman to speed this bill through the legislative process. Thank you, Mr. Chairman.

[The prepared statement of Hon. Peter Blute follows:]

PREPARED STATEMENT OF HON. PETER BLUTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

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As a cosponsor of H.R. 1963, I congratulate the gentleman from New York for finally addressing this issue and giving the people of America a chance to feel more secure with their financial system. I urge the Chairman to speed this bill through the legislative process.

Mr. MCHUGH. Well, I thank you, Congressman Blute. Let me note for the record that when we reached out for support and cosponsorship, you were one of the very first to indicate your willingness to join this fight, and we appreciate that early and strong indication.

Mr. BLUTE. Thank you, Mr. Chairman.

Mr. MCHUGH. That concludes the Members who have indicated an interest to testify and who are co-sponsors of the legislation. Now we can move to the second phase of our hearings. We will call up first, Mr. Mark Silbergeld, who is co-director of the Washington office of Consumers Union.

Mr. Silbergeld, it may not make a lot of sense, but, under the House rules, Members of Congress who testify before subcommittees are not required to swear an oath, but all others should. Perhaps we should rethink that, as well.

Mr. SILBERGELD. You've sworn me before, Mr. Chairman. I'm happy to do it again.

[Witness sworn.]

Mr. MCHUGH. The record will show that the witness attested in the affirmative to the oath. Mr. Silbergeld, welcome again before this subcommittee. It's good to see you, and we appreciate your being with us.

STATEMENT OF MARK SILBERGELD, CO-DIRECTOR, WASHINGTON OFFICE, CONSUMERS UNION

Mr. SILBERGELD. Thank you, Mr. Chairman. I compliment the chair and the co-sponsors for introducing and promoting this legislation, which I am pleased to endorse on behalf both of Consumers Union of the United States, Inc., which is the nonprofit publisher of Consumer Reports, and also on behalf of Consumer Federation of America, of which I serve as a vice president. CFA is the largest coalition of consumer organizations in the United States.

Mr. Chairman, it's quite clear, and I agree with the Members who testified just before me, that this is a common-sense solution to a very real problem for consumers.

I can't provide the quantity of evidence that Mr. Williams will provide, but my testimony also has some examples of why this legislation is needed and appropriate. I asked via our intra-organizational e-mail for some examples from our own employees and added my own, and those are capsulized in my testimony.

Whether it's the cable operator who posts the bill as paid 2 days after the paid date stamped on the back of the check by the consumer who paid the bill—in that case, that's my own experience—or the person who has a mortgage company in California, lives in New York, and finds that it's potluck from 1 month to the next whether or not mailing on the same day gets it there on time each month—some months that date will get him a late payment, and some months it will get the mail there on time.

Or whether it's the occasional consumer, who says, as one fellow employee told me, "In August 1995, my payments to several credit card and charge card creditors were all posted 10 to 15 working days later than normal. Normally, it has been about 3 days after I mail it." But whether it's any one of the hundreds of consumers who have complained, there is a problem.

I noted today in this morning's Baltimore Sun—and I suspect it's also in the Post—an ad by the U.S. Postal Service, talking about its on-time performance. In my home city of Baltimore, Mr. Chairman, Postmaster General Runyon informs the public in this ad, "Mail is delivered on time 81 percent of the time."

That means that 1 in 5 letters—and I assume that means 1 in 5 bills—is received late, that is to say, not on time, not within the standard time provided by Postal Service standards. That's a lot of late bills, and that's a lot of problems for consumers.

Now, some creditors are going to tell you that there are some problems with this bill. I agree that this is not a free lunch, that there will be some costs and some inconveniences and some changes necessary in the way business is done in order to accommodate the provisions of this bill.

But, given a large bank or Joe Smith—I guess that's not such an unusual name anymore, given the fortunes of Maryland basketball last year—who has to deal with the consequences of the mail taking several days to get across town, or more than the allotted amount of time to cross the country, the question is, who should pay for it?

I think the common-sense answer is that the larger business institution needs to make the adjustments that are necessary, factor it into its costs so that we all pay some tiny share of whatever additional costs there may be—and there will be some, but probably not as much as some of the opponents of the bill will suggest—instead of having those who have the misfortune of living in a poor performance postal area or simply the random chance of dealing with the post office box that isn't emptied for several days—there's a footnote in my testimony that describes such an incident—pay the larger amount involved in additional interest and/or late fees.

And so we're happy to support this solution to the problem. Perhaps one of the external effects of this solution may be that the business community will put more pressure on the Postal Service in their local area to deal with delivery in a more timely manner. That would be a welcome added affect to this legislation.

There are some arguments I'm sure you will hear. I, too, am sorry that the people who object to this chose not to testify today. You will hear some objections. Some will say that creditors already waive late charges if it's well explained.

Well, it seems to me that dealing on the phone with the customer may not be the most efficient or the most equitable way to ensure that everybody who has the problem is dealt with equally, that some charges must be rescinded. Well, yes, if postmarks are received long after the next billing cycle ends and the bill has been printed and sent to the customer, there will have to be some late charges rescinded.

I would point out that as they indicate they're ready to do that on a case-by-case basis now, and they probably do it. But retail creditors do that all the time with defective merchandise and other returns, and there are other ways to deal with rescinded charges, as well.

I know, for instance, that while my American Express Optima card says that it's due on the 27th of the month, when I called this summer to find out how I could make two payments, because I was going to be on vacation for a month, I was told that actually it wasn't posted until the 2nd of the month. So there is some lead time that they've built in.

The May department stores tell the customer not what the due date is, but what the mail-by date is, and leave a cushion there so that one can know the guesstimated lead time that's necessary to get the payments due.

There are a number of options that creditors have to try and minimize the costs that will be the result of this provision. But it seems to me that, given the choice of having some costs and putting those costs on the consumers with the problems or regularizing them as the cost of doing business, that it's more equitable to place that cost on the business rather than the consumer.

I would point out also that this isn't just for consumers. As I read the bill, this applies to businesses, too, so that while I have to pay the person who comes and fixes my plate glass window when my 10-year-old and his friends put a soccer ball through it, that person has to pay the wholesaler of plate glass, and that wholesaler has to pay somebody in Pittsburgh, or wherever, who manufactures plate glass.

Many of them mail their payments by mail, too, and they're going to get the same advantage, and I'm sure that some of them have the same kinds of problem. This is good for consumers. I think that it's only fair that businesses get the advantage of the provision.

I do note several things about the draft of the bill, Mr. Chairman, that I would recommend that you take a look at. I think that it needs to be absolutely clear that the language of the bill that defines coverage applies to fixed loan payment coupons. I think they fit into the language, but it's not absolutely clear. Consumers' loans for automobiles and fixed payment mortgages, especially, typically involve receiving a coupon book at the beginning of the credit transaction and then no notices from the company other than a late charge, if that occurred, throughout the remaining course of the credit relationship. So we want to be sure, I would think, that that's covered.

The date of crediting the account—the bill refers to the date of receipt, but it doesn't refer to the date of crediting. Now, for transactions that are covered by Truth in Lending, there is a provision in the Truth in Lending implementing regulations, Regulation Z, that says that the creditor shall promptly credit the account on the date of receipt unless no late payment occurs.

So this provision, working in tandem with the Truth in Lending Act, would in fact provide the intended effect, but there are many transactions that I read the bill to cover that would not necessarily be Truth in Lending transactions.

My cable bill example, for instance. I don't have the right to pay my cable bill in installments. It's due in full every month. That's not covered by the Truth in Lending Act, and so you would need to reword the bill slightly to assure that the payment is actually credited on the postmark date, rather than simply being deemed received.

Finally, Mr. Chairman, I would suggest that regulation writing authority not be given to the USPS, but rather be given to the Federal Reserve System with instructions that they write the regulations in consultation with the USPS and the Federal Trade Commission. In consulting with those agencies, you may find that the other depository regulatory agencies should also be consulted.

The reason is very simple. USPS has no experience in the consumer credit area, no experience in writing this kind of regulation. Regulations in the consumer credit area have pretty uniformly been given to the Federal Reserve Board. It has that experience. The Federal Reserve Board, the Federal Trade Commission, and the other depository regulators enforce those. Those are the agencies with the experience, and I think that it would be preferable to have the Fed write those regulations.

I would also note, as the chairman well knows, that under the Revenue Forgone Reform Act, there was quite a bit of trouble in getting the USPS to write regulations that reflected the intent of the statutory language. For that reason, as well, I would urge that the Fed be charged with writing these regulations.

Mr. Chairman, I close by once again thanking the chair and the co-sponsors for sponsoring this important piece of legislation. I believe that it will do consumers a great deal of good and urge the subcommittee to move this legislation forward. Thank you.

[The prepared statement of Mr. Silbergeld follows:]

PREPARED STATEMENT OF MARK SILBERGELD, CO-DIRECTOR, WASHINGTON OFFICE, CONSUMERS UNION

Mr. Chairman and Members of the Subcommittee, Consmers Union[1] appreciates your invitation to testify on H.R. 1963, the Postmark Prompt Payment Act of 1995. We congratulate the Chairman for introducing this legislation. We are pleased to offer our support for it and to offer our suggestions to strengthen the bill.

PROVISIONS OF THE BILL

H.R. 1963 would deem all payments of bills, invoices and statements of accounts due, if they are paid by mail, as having been received by the payee on the date of the postmark, provided the payment is deposited in the mails within the U.S., in an envelope or other appropriate cover, postage is prepaid, the cover is appropriately addressed, and the postmark is affixed by the Postal Service (not the sender) and falls on or before the due date.

NEED FOR THE BILL

This simple provision addresses a problem that most of us have experience from time to time—some of us, repeatedly, and some more than others depending in part upon the locations in which we live and work. Due to the inconsistent and often poor on-time performance of the U.S. Postal Service, consumers cannot reliably calculate how much delivery time is required to assure that a payment will be received by a creditor by the due date of a payment. As a result, consumers may incur late fees in addition to their scheduled payments.

In addition, this bill could help to address the issue, difficult to document or quantify, but sometimes alleged, that on occasion some creditors may delay posting of some payments actually received, thereby causing the imposition of late charges on customers who have in fact paid on time.[2]

While I am unaware of any systematic, quantitative analysis of these problems, there is ample anecdotal evidence to support the proposition that this measure is useful and needed. I would start by offering the following anecdotes based on the experiences of myself and some of my colleagues at Consumers Union. These illustrate some of the time-of-receipt problems consumers experience due to Postal Service performance and/or creditor posting practices:

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[1] Consumers Union is a nonprofit, educational 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 approximately 5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[2] In the case of consumer credit transactions as defined under the Truth in Lending provisions of the Consumer Credit Protection Act, 15 USC 1601 et seq., it is already required that "a creditor shall credit a payment to the customer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge. . . ." See the implementing provision, Regulation Z, 12 CFR Section 226.9. However, that Act only applies to true credit transactions, those that involve a finance change or repayment of an obligation in more than four installments, 12 CFR Section 226.2(a)(14) and (17). However, H.R. 1963 would apply to many transactions that do not meet the Trurth in Lending definition of consumer credit. Consumer credit contemplates a "right" to defer the payment of debt. The proposed legislation would cover, as well, transactions in which no such consumer right exists and business-to-business transactions.

• Several times I have mailed a mortgage payment to my bank from Yonkers, and have had a late fee attached, even though I posted it 6 working days before the due date. The last time it happened, I called the mortgage company asking why I was being assessed a late charge. They first asked for the location I mailed it from. When I said Yonkers, the operator immediately waived the late charge, saying something to the effect that "we've had a lot of trouble getting mail from that area of the country lately." I no longer mail time-critical bills from Yonkers. I mail them from my home in Connecticut only.

• In August [1995], my payments to several credit card and charge card customers were ALL posted 10–15 working days later than normal. Normally, it has been about three days after I mail it.

• Until a few years ago, our mortgage was paid to a company based in California. . . . My wife regularly mailed the payment in [from New York] a week ahead of time, but we frequently found a $15.00 late charge added the next month.

• My cable company knowingly added late fees for an invoice which they knew was mishandled/lost by the Postal Service. When I called to say that I never received the previous month's invoice, and that I was not going to pay the late charge, they admitted that there had been a problem with the Post Office the previous month.

• In 1994, my cable service provider posted my payment two days after the "paid" date stamped on the back of my payment check and I was assessed a late payment fee.

• During this past year [1995] on several occasions, I've received a "warning" from my bank, Citibank, that I've not paid my mortgage by the 1st of the month, despite my paying the bill in full before the end of the month at a local branch. The teller explained to me that even though my account was credited at the bank, it would take at least 3 business days before it was "received" by the central Citicorp mortgage department, which I believe is located either in Denver or St. Louis. Apparently my paying the local branch is the same as if I had made the payment by mail.

In addition, Mr. Chairman, I would offer another bit of anecdotal evidence that, while it does not affect the receipt or posting of payments, tends to corroborate that the problem of slow mail delivery can affect these issues. Two mail order book clubs and two mail order record clubs to which I belong have all, within in the past two years, lengthened the time they allow their customers to exercise their "don't send" options and thereby avoid receiving the clubs' automatic selections. They, too, appear to have noted the inconsistency of the Postal Service in serving the needs of both businesses and customers.

Not all of the problems that I have related will or can be solved by H.R. 1963. If the consumer does not get the bill, invoice or statement of account in the first place, this legislation will not help. If the payment is lost in the mails and never received by the creditor, this legislation cannot help to prove timely payment. If the Postal Service fails to postmark promptly payments deposited in the mails, the post mark will not achieve the intended effect.[3] Nonetheless, for the great majority of transactions covered by this bill, consumers will be better off.

INCLUSION OF FIXED LOAN PAYMENT COUPONS

The bill would amend 39 USC Chapter 26. Section 2606(b) as amended would provide that the bill applies only to "a payment on a bill, invoice, or statement of account due . . . ." In many fixed payment credit transactions, the consumer receives a payment coupon book at the beginning of the credit arrangement and may not receive and other form of "bill, invoice or statement of account due." While such a coupon can reasonably be construed to be included in the term "statement of account due", it would be more clear if it were either explicitly included or if the legislative history were to explicitly state the intent to include payment coupons. We assume, and certainly would urge, that the bill cover payments made on such credit transactions. Typically, these include fixed payment mortgages and car loans, which are those most likely to have very large balances due at the beginning of the credit relationship and to result in large charges for late payments.

[3] See "This Time, The Checks Really Were In The Mail", St. Petersburg Times, Tuesday March 29, 1994, p.7. This article relates an incident in which a local post office mix-up resulted in one USPS mail box not being emptied for an unknown but apparently very substantial period of time, until at least six citizens noticed that the box was filled to the top. USPS agreed to send notices to creditors, explaining the incident.

DATE OF CREDITING OF ACCOUNT

While the bill deems a payment to have been received on the postmark date, it does not deem or require the account to be credited as of the date of receipt, even when delayed posting may result in late fees or other resultant charges. This problem is addressed sufficiently by the combined effects of this bill and the Federal Consumer Credit Protection Act (FCCPA), noted above, with respect to transactions subject to that Act. But there is nothing in this bill itself to require prompt crediting of the account based on the postmark. While a payment might be deemed as received on the date of the postmark, nothing in the bill itself would prevent a creditor from delaying the posting of the payment and imposing additional fees. The intent of the legislation, however, is to assure crediting of an account based on the postmark in order to prevent unwarranted additional fees. To achieve this intent, we recommend that the language of the FCCPA be included in this bill as well.

REGULATION-WRITING AUTHORITY

Section 2606(f) as amended would authorize the U.S. Postal Service to prescribe regulations to carry out the purposes of this Act. We would recommend, instead, that this authority be granted to the Board of Governors of the Federal Reserve System in consultation with the Federal Trade Commission and the U.S. Postal Service. The reasons for this recommendation are simple.

Although the problem relates in substantial part to the performance of the Postal Service and the remedy relates to the USPS postmark, the Postal Service has no experience in the area of consumer credit. H.R. 1963 creates a consumer credit right that is similar to those contained in the Truth in Lending Act and the Fair Credit Billing Act, which are implemented by regulations written by the Federal Reserve System. The Fed, the other federal depository institution regulatory agencies and the Federal Trade Commission are familiar with the issues such as dispute settlement procedure and recordkeeping requirements that are likely to be the subject of regulations. We believe that the Fed would be more appropriate than the Postal Service to write implementing regulations.

Second, our inclination to make this recommendation is enhanced by the Postal Service's recent difficulties in writing implementing regulations that reflected the intent of the Congress under the Revenue Forgone Reform Act of 1994.

SUMMARY

In closing, Mr. Chairman, we strongly support H.R. 1963 and urge that the Subcommittee act favorally on it, taking into account our recommendations for change. Again, thank you for your invitation to testify and congratulations on your leadership in proposing this legislation.

Mr. MCHUGH. Thank you very much, Mr. Silbergeld. Let me just note that we have been joined by the distinguished and ranking member of the subcommittee, the gentlelady from Michigan, Miss Barbara-Rose Collins. Welcome. Any opening comment?

Miss COLLINS OF MICHIGAN. Thank you, Mr. Chairman. I'm very pleased to be here this morning, because I believe that H.R. 1963 is a badly needed bill. I'm just sorry I didn't think of it before you did.

Mr. MCHUGH. No, I didn't think of it.

Miss COLLINS OF MICHIGAN. And I think that perhaps we need to take the suggestion Mr. Silbergeld put in his written testimony that not only should a payment be considered received as of the postmark date, but posted, also, on that date, so that late fees don't occur.

I don't think there's hardly anyone in this room who has not had a problem with a bill not being paid on time because of them receiving it late, even though it was postmarked earlier. So I commend you for the bill. Thank you for your testimony.

[The prepared statement of Hon. Barbara-Rose Collins follows:]

PREPARED STATEMENT OF HON. BARBARA-ROSE COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, as the ranking Democrat on this Subcommittee, I am pleased to join you in marking up three postal naming measures and in hosting the hearing on legislation to make the payment of bills mailed via the postal service, and postmarked, as having been received by the payee on the postmarked date.

I like many people, have been in the position of mailing my bills in a timely manner, only to find it has taken 10–15 days to be received and subsequently posted to my account. Many times upon checking, late fees have been waived due to the large volume of mail and problems with delivery. H.R. 1963 comes as a welcome relief to many bill paying consumers, including myself.

Thank you.

Mr. MCHUGH. Well, I thank the gentlelady, and while we're talking about truth in lending, let's have truth in government. I regrettably have to say I didn't think of the bill, but we're all working together. We will hear from, really, the thought-father of the bill in a few moments.

But I appreciate the distinguished ranking member's comments and look forward to working with her and agree that, Mr. Silbergeld, you've made some very helpful suggestions, and we'll have the subcommittee look at the text of the bill to try to see how we might integrate them.

Let me just start off with a couple of questions, and let me restate, I really regret that we weren't able to bring in some of those who have concerns about this bill. I mentioned in my opening statement that the American Bankers Association has prepared written testimony. We will make that a part of the record.

[The prepared statement of the American Bankers Association follows:]

PREPARED STATEMENT OF THE AMERICAN BANKERS ASSOCIATION

The American Bankers Association ("ABA") appreciates the opportunity to submit our statement for the record on H.R. 1963, the "Postmark Prompt Payment Act of 1995."

H.R. 1963 provides that, generally, payments are considered paid based on the U.S. postmark stamp if a payment is received after the date prescribed. ABA strongly opposes this bill because we believe that it is unnecessary, costly, and an inappropriate government intrusion into private contracts. Moreover, treatment of payments made under voluntary private arrangements should not be compared to government mandated taxes collected once a year.

The ABA is the only national trade and professional association serving the entire banking community from small community banks to large bank holding companies. ABA members represent about 90 percent of the commercial banking industry's total assets, and about 94 percent of the ABA members are community banks with assets of less than $500 million.

In essence, H.R. 1963 provides that if a payment is received after the date prescribed under a contractual agreement for credit, but was mailed before or on that date, creditors and other payment recipients must treat the payment has having been made as of the mail date. In practice, this means that accounts must be retroactively credited and that charges such as late payment fees must be rescinded even though the creditor did not receive timely payment. We understand the appeal of the proposal because it appears to shift the consequences of the uncertainty of the mail system's delivery time to the business sector. However, this legislation is not needed because existing industry practices already adequately shield consumers from those uncertainties in the form of grace periods and flexibility when payments do arrive late.

Most banks and other creditors already provide consumers with a generous grace period before payment is due. For example, mortgage payments are typically due on the first of the month, but payment is considered timely so long as it is received by the 14th or 15th. Obviously, 14 or 15 days is sufficient to allow for consumer procrastination, legitimate problems in making the payment, and any mail delays. Similarly, credit card issuers frequently give consumers about three weeks to pay

after receipt of the bill. For many cardholder, this amounts to an interest free loan. In addition, most card issuers unofficially add an extra five days to that period in order to allow for possible mail delays. Credit cards typically do not add a late payment fee until 10 to 15 days after the due date.

In spite of these payment date extensions, payments nevertheless sometimes arrive late. For example, some consumers, rather than using the designated "due date" as the date a mortgage payment must be received, consider the end of the grace period as the due date. By mailing closer to this date, they increase the risk that the payment will arrive late due to Postal Service delays. In other cases, such as credit cards, borrowers gamble and simply wait until close to the last possible day to mail payment, increasing the chances that it will arrive late.

However, if a late payment fee or finance charge is imposed because of this late payment, banks will often waive the penalty or interest if the consumer provides an adequate explanation for the delay. Thus, most banks try to be flexible to ensure that consumers' payments are deemed timely notwithstanding the vagaries of the mail system, customer procrastination, and legitimate problems in making the payment. Handling customer complaints and adjusting accounts is time consuming, labor intensive, and threatens customer relations. Accordingly, banks try to minimize complaints.

Supporters of the bill allege, without documentary evidence, that some unscrupulous creditors deliberately delay crediting an account on the day of payment receipt in order to impose additional charges. However, we should note that under Section 164 of the Truth in Lending Act (Section 226.10 of Regulation Z), credit card issuers must post payments on the date of receipt.

Not only is the proposed bill unnecessary, it will also impose significant costs on creditors and other entities and individuals collecting payments. Furthermore, the bill will promote inefficiency and storage requirements at a time when the industry is moving toward greater automation and reduced paper. These costs will ultimately be reflected in the total cost of borrowing. Thus, all borrowers will end up paying the extra cost the bill would impose. The benefits to a few will be greatly outweighed by the cost to many millions of consumers.

Most credit payment processors today are highly automated and are not designed to process the varying bulk and measurements of envelopes as this bill would require. Machines and processes vary, but as an example of one common processing sequence, machines first cut envelopes. The contents are then removed and the envelope discarded. The remittance statement is then fed into a high speed reader which captures the essential data: the customer's name; account number; amount due; amount paid; due date; etc. by reading the specially encoded remittance statement. The only information which may not be captured automatically is the payment amount if it varies from the scheduled or minimum payment. In this case, the amount paid may have to be entered manually.

However, under the bill, payment collectors would have to capture the postmark by reading the postmark, or retaining the envelope or its image. The postmark would have to be captured for all payments because the "late payment process" is not performed until later in the sequence. With most systems, the envelope and remittance statement would have to remain together or be rejoined somehow. We are not aware of any machines that can process envelopes or read postmarks.

In effect, the bill would render today's expensive equipment virtually obsolete. Processing equipment would have to be invented and built to replace existing machines, or existing ones retrofitted, if feasible, in order to process various sized envelopes and to capture the postmark.

In addition to the initial equipment expense, payment collectors will incur continuing per item costs. Capturing the postmark, whatever the technology, will inevitably increase the cost of processing each payment. Even if the cost per item merely rises by $0.20, the amount is astronomical when multiplied by the billions of payments processed each year.

For example, there are an estimated 200 million active credit cards accounts held by the major credit card associations. Based on $0.20 (this amount does not represent any actual or estimated increase in cost, but is only used for purposes of demonstration), the additional processing costs for the major credit card issuers alone would be $48 million per year—and this represents just the tip of the iceberg. The number increases dramatically when you add the billions of payments made by both individuals and companies each month. These include the estimated 400 to 600 million active credit cards issued by retailers and the millions of mortgages, home equity loans, car loans, car leases, student loans, personal loans, farm equipment loans, mobile home loans, rent payments, health club payments, and utility payments.

Processing costs would also increase because late payments would have to be handled manually to adjust the payment date from the one entered automatically, a very labor intensive task. The expense of replacing or retrofitting existing machines, the continuing added processing expenses, and the expense associated with manual handling will substantially increase the cost of processing. Ultimately, these costs are absorbed by the creditor and the consumer.

In addition, creditors would have to manually adjust interest charges: the bill appears to require that the balance be retroactively credited and finance charges recalculated. This is not only costly, but unfair: the creditor is having to give credit to a customer—not only before the creditor actually receives the funds—but even before it receives the check. Essentially, the government appears to be mandating that creditors give late-paying borrowers interest-free loans.

It should also be noted that the costs and inequities of the bill are not limited to banks and other creditor grantors. The bill applies to any entity or individual collecting a payment. This includes, for example, payments to utility companies, telephone companies, landlords, condominium associations, health clubs and other membership organizations, individuals or companies rendering services, and bill and fee collecting units of state and local governments.

In addition to the unnecessary additional costs, ABA strongly opposes H.R. 1963 because we believe it represents an inappropriate intrusion into private contracts. As discussed, the marketplace has created a system which generally works well with consumers enjoying generous grace periods for legal debts and leniency for late payments. Yet, under this bill, the federal government is dictating the minute legal terms of private contracts—not just for creditors but for anyone collecting a legal payment.

All creditors, but banks particularly, are already burdened by mountains of federal and state regulations. This means banks must spend valuable resources to know and research laws and to implement, audit, and prove compliance. In addition, these copious regulations inspire lawyers to search for technical violations to provide the basis of potentially expensive lawsuits. Both the banks and consumers ultimately pay for these compliance costs. We object to any new basis for compliance traps and frivolous lawsuits.

Finally, proponents of H.R. 1963 suggest that creditors should accept a postmark as the date of receipt because the IRS does. First, we should note that the IRS manually checks the postmark. Second, unlike creditors, the IRS deals with a single payment date and one annual payment. This makes processing based on the postmark considerably more manageable. Obviously, tax returns received before April 15 need not be reviewed at all. Only those received within a certain time frame after April 15 must be checked. Creditors, in contrast, usually handle millions of monthly payments with 365 different due dates. Manual and automated processing obviously becomes more of a challenge in this case.

We also believe that there is a difference between tax returns, which are not optional, and a payment made pursuant to a contract the consumer voluntarily agreed to. In the case of a tax return, the consumer has no choice about paying taxes. Perhaps then, the taxpayer is entitled to a little more leeway where it is operationally feasible. With loans and other payment arrangements, however, the consumer has the choice of entering into a contract and agrees to the terms of repayment. Also, unlike the IRS, creditors typically give a grace period.

Moreover, it may be more appropriate that the Postal Service postmark be considered the date of receipt for a tax return since the item due one government agency, the IRS, is delivered by another government agency, the Postal Service. Essentially, the Postal Service is to the IRS as a bank teller is to the bank. The Postal Service is simply stamping the postmark as proof of the date of receipt for the IRS, just as a bank teller would stamp a loan payment personally delivered to the bank.

In summary, the ABA strongly opposes H.R. 1963. We believe that it is unnecessary given the widespread availability of grace periods and due date extensions. The bill will impose unnecessary and wasteful operational costs on creditors and other entities receiving payments. Finally, we believe that the bill represents an unwarranted interference in legitimate private sector matters.

We appreciate the opportunity to submit our statement for the record. We will be happy to provide additional information and answer questions.

Mr. MCHUGH. Frankly, they make some excellent points, and we're losing an opportunity, in my view, to discuss that with them in this forum. But nevertheless, let me just pose two of the issues that they raise, for your comment.

They say, No. 1, that in most instances, insofar as they are concerned, you already have a billing grace period. Take for example, a mortgage payment. All of us, on our fixed payment coupons that you mentioned, see a due date—say, the first of the month—and then a late date after which the late payment is assessed—let's say the 15th, whatever it may be.

They claim that is a grace period provided outside the conditions of the contract, and if this bill were put into place, it would necessarily follow that they and others would have to eliminate the grace period. They would say to the detriment of the consumer. How would you respond to this claim?

Mr. SILBERGELD. Well, I don't necessarily read the bill that way, but that could easily be fixed. There is a footnote in my testimony that cites the Regulation Z provision, which does apply to them, by the way. So I don't see why that and this bill would have a different effect.

It says that it "shall be deemed received" on the date of the postmark unless no late payment is imposed. So if they choose not to impose the late payment or if they are required not to impose the late payment, then I don't see why that has any effect whatever on the grace period.

I do not read this bill as telling them they must charge a late charge if that postmark is after the due date or, legally, the contractual date. The bill can very simply be revised to allow them to do that.

Mr. MCHUGH. I think what they're saying—again, because they chose not to appear, or couldn't, perhaps, in the short period of time that they were provided—is they're not so concerned that the technical language of the bill would prohibit them from doing that currently, but rather they are concerned about the impact of the bill. They contend that they could no longer provide, or would no longer provide, that voluntary 2-week, roughly, float period from the time the payment is actually due to the time beyond that point in which they begin to assess a late charge.

In other words, that 2-week period that most of us see on our mortgage payment coupon would disappear, and they would say that would be to the detriment of the consumer. Therefore, we're really implementing this and seizing what Congressman Andy Jacobs called "certainty" which I think is important. By seizing that, we would actually be harming the consumer.

Mr. SILBERGELD. Well, we would actually, in order to do any quantitative measurement, have to look not only at those creditors, but everyone else to whom consumers typically pay their obligations by mail, and see what the total cost is, because those banks are not the only creditors—I'm using creditor in the broader sense, not in the Truth in Lending sense—with whom consumers have this problem.

There may be some losses. My snap judgment is that there are larger off-setting gains. I'm also not certain that we consumers, as a whole, have a 2-week float with anybody and everybody to whom we pay our mortgage payments.

Mr. MCHUGH. Right. So you would say, then, for the record, that the question of certainty, knowing as a consumer that you post

your payment in a timely fashion, is worth whatever theoretical loss of float may occur?

Mr. SILBERGELD. Unless I see some quantitative measures to the contrary, I would say that would be the solution I would accept.

Mr. MCHUGH. Let me ask you something else in your position as an expert. We've also received from other folks the concern that there is really little basis for this in contract law and that, indeed, what we have in this bill is an unnecessary intrusion of government into what are, essentially and in fact, private contracts between two willing, voluntarily entering adults.

As someone who is part of the 104th Congress that wants to get Government out of people's lives, how might you respond to that statement of concern?

Mr. SILBERGELD. Well, that's sort of an argument for a free-for-all marketplace, Mr. Chairman, and I don't think that, whether one believes in more regulation or less regulation, that most of us believe in no regulation whatsoever.

I note, for instance, that the Congress is in the process of revising the Truth in Lending Act, and after a number of battles in both Banking Committees, a compromise has been reached that is far short of repeal.

I believe that it took Paul Douglas, the original sponsor of the Truth in Lending Act, 20 years to overcome the opposition of creditors to such things as having everybody calculate and disclose the annual percentage rate the same way, and I don't think there's a Member of Congress now who would want to change that provision and go back to the jungle of noncomparable credit rate disclosures.

Any provision can be argued as the last straw, the one too many, but I think this one is common sense, and I don't think it's that—it is not that last straw regulation.

Mr. MCHUGH. I thank you. I don't want to dominate this. I would yield to the gentlelady from Michigan. Are there any questions or comments?

Miss COLLINS OF MICHIGAN. No.

Mr. MCHUGH. The vice chairman, Mr. Sanford of South Carolina.

Mr. SANFORD. Nothing.

Mr. MCHUGH. The gentleman from Texas, Mr. Green.

Mr. GREEN. No questions.

Mr. MCHUGH. The gentleman from New York, Major Owens.

Mr. OWENS. No questions.

Mr. MCHUGH. You've said it all.

Mr. SILBERGELD. Thank you, Mr. Chairman.

Mr. MCHUGH. Thank you very much, Mr. Silbergeld.

I mentioned earlier we would soon hear from the individual who really, more than any other, is responsible for the genesis of this legislation, and I'm pleased to call forward to the witness table Mr. Bruce Williams.

[Witness sworn.]

Mr. MCHUGH. Thank you, sir. The record will show that the witness responded affirmatively to the oath.

Let me again welcome you, Mr. Williams. I feel a little formal, because everyone—around here, if you say the word, "Newt," everyone knows who you're talking about.

Mr. WILLIAMS. Yes, indeed.

Mr. MCHUGH. And for those of us that drive after the sun goes down in our cars over large chunks of territory in our districts, the word, "Bruce," conjures up that same familiarity. I feel as though I've known you for years and years.

Let me, as a fan, say thank you for the hundreds and hundreds of hours of common sense that you bring to the airwaves and for helping people. We appreciate that, and I think we have, in this legislation that you have brought to our attention, the latest example of that exercise of common sense.

We appreciate particularly your coming up from the sunny climate of Florida to the Nation's Capital to present your views on this, and we welcome you and now give you the forum and the dais for any comments you would like to make.

STATEMENT OF BRUCE WILLIAMS, TALKNET RADIO

Mr. WILLIAMS. Thank you for your generosity and the generosity of your remarks. It's appreciated. I will spare you the introduction, in that you've introduced me—and why? I don't think there's any reason to go through my bona fides again. I'm in the radio business. I'm an entertainer. It's simple as that.

Mr. Chairman, I would commend you for introducing H.R. 1963, and I express my sincere appreciation for having the opportunity to appear here. You and the 35 co-sponsors of the bill have shown the American people your resolve to remedy a problem that I believe plagues millions of Americans.

At a point in history when so many Americans question the commitment of their government, you and the co-sponsors of H.R. 1963 are sending a message, a message that democracy does work for the people. The legislation is truly a grass-roots initiative. It worked its way into the legislative process. It's not a product of any special interest group. No highly paid lobbyist is promoting this legislation.

The bill had its genesis where much good legislation does, in the public. H.R. 1963 addresses a concern reflected in my conversations with many people over the last few years. During the course of a week, I do have the opportunity to speak to some several millions of people.

Now, not so many years ago, if you borrowed the money for an automobile, took out a mortgage or some other type of consumer loan, the overwhelming likelihood is you did it in your own neighborhood, and when it came time for the monthly payment, you strolled down to the bank, the loan office, or whatever. You dropped off your check. That was the end of it. That's the way it was.

Today, you can take out a mortgage on Tuesday, and by Thursday afternoon, the mortgage is sold to a company 2,000, 3,000 miles away. Now, the company has no personal knowledge of you, and understandably, they wish to be paid. The problem is getting the payment to them on a specified due date.

Now, under most current contracts, the obligation is not considered met in a timely fashion until the check is in the lender's hands. Now, while that was appropriate when you could drop it off at the office or depend on the U.S. mail to deliver it the following day, neither is the case today. In the first instance, your loan may

be payable across the Nation; the second, the post office, to say the least, is less efficient than it once was.

Let's follow the Federal model currently in place. When we pay our income tax, the postmark on the envelope is demonstration of timely payment, hence the rush on the 15th of April.

If it works for the U.S. Government, as well as some States—my home State of Florida accepts taxes paid by the postmark, not by when they receive it—why not do the same thing? Metered mail, of course, would not be accepted, for obvious reasons. If the sender so desires, FedEx, United Parcel, and similar services should be accepted as payment on time if put in their hands on time.

You see, under the current system, if the check is delayed in the mail, the debtor is penalized with late charges and, as noted before, his credit record could be damaged through absolutely no fault of his or her own. He or she may have posted the letter a week, 10 days early, but for whatever reasons, the letter gets there a couple of days late.

Not only are they penalized with late charges, but on top of this, their credit reputation may be damaged. Of course, this is a lever that many companies will use to extract the late charges, i.e., "We will damage your credit." And we all know, many folks would rather sacrifice their first-born child than have a poor credit record.

In addition, there is a temptation for some lenders not to pick up their mail on the last day. Again, if the mail only reaches them on the following day, they're in a position to extract late charges from their customers, charges that are unwarranted.

I can't begin to tell you how many complaints I've listened to about this. Clearly, if a creditor makes a sufficient fuss and reaches a sympathetic officer, at times, the charges can and will be waived. But this places a premium on persistence and negotiating abilities. Or, put another way, the less gifted are then penalized.

I am suggesting legislation that will require the lenders across our country to uniformly accept the postmark as the appropriate payment on time. Now, it could be argued that sending the letter certified mail would work, but it doesn't. That only proves the letter got mailed. There is nothing binding about the postmark.

The suggestion is simple. In order for the lender to be entitled to a late charge, he would be required to provide a photocopy of the payment envelope.

I would like to go a little bit away from my prepared remarks. I note, in the American Bankers Association petition—for lack of a better term—they address this. And while they do make, as you've pointed out, some interesting points, I'm embarrassed, because I am a part of institutions that belong to the agency, that they make comments such as they have made here without a little more thought in depth.

As an example, they say there is no way they could sort these things out, and whatever. Well, most of the obligations that I have—and perhaps that you fellows have—they put an envelope in, a return mail envelope. Well, if the envelope is provided to you, it would be a simple matter to put a bar code in for the different dates the thing is due. It would be spit right out by their automatic sorting machine, or it could be color coded or some other way identified. It would not be a hard thing to overcome, technologically.

Further, they go on to say, "Supporters of the bill allege, without documentary evidence, that, unscrupulous creditors deliberately delay crediting an account on the" payment date in order to receive charges. Then they went on to note that, under Section 164 of the Truth in Lending Act, so on and so forth, they "must post payments on the date of receipt."

Well, that answers the question. I apologize. All you have to do is pass a regulation. I have to believe, in every one of those towns where these banks are located, they have a law that says you can't rob a bank. So we can get rid of all the security people in those banks. We have a regulation against that. I mean that's nonsense to say there's a regulation, therefore, the problem is cured. I will talk about that in just a moment. I think that's just such a specious argument, it's embarrassing that an institution would make.

I have mentioned this idea in my program. I've invited listeners to comment, and the evidence is—well, my goodness, somebody highjacked my postcards. Oh, OK. There are several thousand postcards here. I don't know how many. I think the last time they told me, it was something like 4,000 or 5,000.

I think every section of the country—certainly all 50 States, Guam, Puerto Rico, the Virgins—all are included, because this is the area where my show goes—and that was just with a few mentions on the show. I think if we really wanted to stir things up, more people would respond.

To get people to respond to a positive action is far more difficult—and I'm sure you fellows and gals have found that in your legislative lives. People respond to the negative far more easily than the positive. Now, there could be some objections, clearly, and let me anticipate a couple.

The first, the additional paperwork involved. Well, the alternative is to liberalize their policy and not to attempt a late fee or, alternatively, accept the inconvenience. A second argument that could be put forward was the loss of the float.

Now, it should be noted that no lender, to my knowledge, gives credit when you make a payment early. If you're going on vacation, you send your check in 3 weeks early. I've never received a check from them or a credit saying, "Well, we got your money early, so we're going to forgive the interest for that 3 weeks." The next time that happens will be the first time.

Put another way, if they're entitled to a fee when payment is made late, why shouldn't the creditor receive the same amount of interest if the payment is received early? And interestingly, it has been brought to my attention by bankers that when they send interest payments out, rather than crediting to account—for example, on a certificate of deposit—it is mailed on the day the interest is finished earning.

And if you ask them, "Well, gee, it took a week to get here,"—"Well, that's not our problem. We postmarked it on time." And you can test that theory. That is the way the banks operate in today's business climate. It seems to me the old goose and gander thing would apply here.

Now, some of my critics have said something to the effect that "You guys in the media are anti-business." Now, I can talk in theoretical terms, but let me note the following. I have an active inter-

est in a Visa/MasterCard program where I promote the use of a particular institution's credit cards. I am paid on the basis of profitability and interchange. I get a piece of the action. Clearly, if I felt this was to the bank's detriment, I would think about this again.

Additionally, I have what for me is a fairly large investment, in six figures, in the stock of a relatively small bank, and further, I have pledged an additional six-figure investment in a bank that's currently organizing. Clearly, I am not anti-bank.

Further, I have been in the radio business for 30 years, but I have been an entrepreneur all of my adult life, and I operate businesses in, I think, about six States. It might be five. I have looked at that. I'm not sure if it's five or six, but at least five.

The legislation, if adopted, will simply level the playing field and clearly spell out the ground rules, and right now, the ground rules are about whatever any institution decides they should be.

Finally, if the Federal model is a poor one, then it occurs to me, two things should be happening very quickly now that this has been brought to the attention of the Congress. First, public-spirited organizations, like the Bankers Association, like Visa and MasterCard, should spend at least part of their resources petitioning you to change the Federal model, change the Internal Revenue system, because if it's a bad business, clearly it's their responsibility to point that out.

And second, if a legislator feels this is bad business, I certainly think he or she should go on record as endorsing the Federal model change. Now, clearly, my tongue is clearly in my cheek, because I believe this is good business. It's good for everyone involved.

In 14 years on the network—with the exception of, I do an IRS special every year, and that's on a weekend—I have never had a guest. I have turned down a great many Congress people, Senators and Representatives, and a couple of seated Presidents, and Bob Hope. No guests on my show. I don't want the camel to get his nose under my tent. It's just me and the audience; that's it. No guests. I will take, clearly, telephone calls.

So I'm inviting—and I will invite on the air and by mail—the folks that didn't come here today—I would like to meet them—who were opposed to this. I will give them a special telephone number so they can get right through. They don't have to sort through our screening process, and I will allow them to present their views on the air, however many, 15 million people, whatever the number is.

Now, that will get their point of view out. Now, I suspect that some of their customers might not be real happy with that, but we're going to find out. But I always give people a shot at me. If I criticize someone, I have never, on any occasion, denied them the right to shoot back on my show, and I think that's necessary here.

So I'm issuing a public invitation now, and I will do so this evening on the program. And further, I'm going to read extracts of their presentations on the air, because I said when I mentioned this on the show, both sides should be allowed to comment. I think that's appropriate. Nobody's perfect. But I would like to face them. I really would enjoy that.

I thank you very, very much for your graciousness in allowing me to appear this evening.

[The prepared statement of Mr. Williams follows:]

PREPARED STATEMENT OF BRUCE WILLIAMS, TALKNET RADIO

Mr. Chairman, and members of the Subcommittee, I am Bruce Williams. My program is heard on approximately 400 radio stations in all 50 states, Guam, the U.S. Virgin Islands, and Puerto Rico. I will soon be starting my 15th year in talk radio. My program is the longest running national talk show in the country, and I am told is the most listened to nighttime long form show in the nation, and the second most listened to telephone talk show overall. Unlike many other talk show presentations, it is almost entirely non-political. I deal with the everyday problems that folks have with their lives and, hopefully, in some way help people solve them.

Mr. Chairman, I want to commend you for introducing H.R. 1963, the Postmark Prompt Payment Act of 1995, and express my sincere appreciation for having the opportunity to appear before you today to testify in support of this bill. You and the 35 cosponsors of the bill have shown the American people your resolve to remedy a problem that plagues millions of Americans. At a point in our history when so many Americans question the commitment of their government, you and the cosponsors of H.R. 1963 are sending a clear message that our representative democracy is working for the people. This legislation is truly a grass roots initiative that has worked its way into the legislative process. H.R. 1963 is not the product of any special interest group or any highly paid lobbyist promoting a special interest.

The bill had its genesis where so much good legislation does—from the public at large. H.R. 1963 addresses a concern reflected by my conversations with many people over the last few years. During the course of a week, I have the opportunity to speak to millions of people.

Not so many years ago, if you borrowed money for an automobile, took out a mortgage or some other type of consumer loan, the overwhelming likelihood is that you would do it in your own neighborhood. When it came time for the monthly payments you could stroll down to the bank, loan office, or whatever and drop off your check. That was the end of it. That's the way it used to be. Today, you can take out a mortgage on Tuesday, and on Thursday afternoon the mortgage is sold to a company two or three thousand miles away. This company has no personal knowledge of you. Understandably, they wish to be paid. The problem is getting the payment to them on a specified due date.

Under most current contracts, the obligation is not considered met in a timely fashion until the check is in the lender's hands. While that was appropriate when you could drop it off at the office or depend upon the U.S. Mail to deliver it the following day, neither is the case today. In the first instance, your loan may be payable across the nation; the second, the Post Office, to say the least is less efficient than it once was. Let us follow the Federal model currently in place. When we pay our income tax, the postmark on the envelope is demonstration of timely payment, hence the rush on April 15th. It works for the U.S. Government and some state governments as well. Why not require that all lenders accept as timely payment, the postmark date rather than the date they ostensibly received the payment by mail? (Metered mail would not be acceptable for obvious reasons.) If the sender so desires, Federal Express, United Parcel Services or similar services, should be accepted as well as payment on time if put in their hands on or before the due date.

Under the current system, if the check is "delayed" in the mail, the debtor is then penalized with late charges and his credit record can be damaged through absolutely no fault of his/her own. He or she may have posted the letter a week or ten days early but, for whatever reasons the letter gets there a couple of days late, not only are they penalized with late charges, but on top of this their credit reputation may be damaged. Of course, that is a lever that many companies will use to extract the late charges, i.e., "we will damage your credit". Many folks would rather sacrifice their first born child than have a poor credit record. In addition, there is a temptation for some lenders to not pick up their mail on the last due day. Again, if the mail only "reaches" them the following day, they are in a position to extract late charges from their customers, charges that are not warranted. I cannot tell you how many complaints I have had about this. Clearly, if a creditor makes a sufficient fuss and reaches a sympathetic officer, at times the charges would be waived. This of course places a premium on persistence and negotiating abilities, and the less gifted are then penalized.

I am suggesting legislation that would require the lenders across the country to uniformly accept the postmark as the appropriate payment on time. It could be argued that sending them a letter Certified Mail may do, but that doesn't help either. If the Certified letter is received the day after the "due date", a late charge is none-

theless assessed. All this ensures is that there is a receipt for the check having been delivered.

My suggestion is simple, that the postmark date would obtain. In order for the lender to be entitled to a late charge, the lender would be required to provide a photo copy of the payment envelope showing a postmark beyond the stated grace period. Simple, reasonable, benefiting everyone, non-political and bipartisan. For what more could you ask?

I have mentioned this idea on my program and invited listeners to comment. To date, I have received many thousands of postcards supporting this idea and only a handful of criticisms, mostly from those people who perceive that their businesses will be adversely affected or, alternatively, have to expend extra effort. It is understandable that they would have concerns, but the overall benefit to the public certainly outweighs any inconvenience to these companies. While clearly, it is difficult to anticipate all of such objections, let me anticipate one or two.

The first will be the additional paper work involved in keeping the envelopes on payments that were posted late. The alternative there is to liberalize their policies and not attempt to collect a late fee or, alternatively, accept the additional inconvenience.

A second argument that could be put forward would be a loss of some float. It should be noted that no lender, to my knowledge, gives credit when a payment is made early. Put another way, if they are entitled to a fee when a payment is made late, why then should not the creditor receive the same amount of interest if a payment is received two, three or four days early? It has been brought to my attention that when many banks forward interest to the depositor, as contrasted with crediting the accounts, they mail out the interest check at the end of the agreed upon period. While the depositor may not receive the check for several days, the banks position was that it was paid on time since the dividend check was postmarked on the appropriate day.

One or two of my critics have said something to the effect that you people in the media are anti-business. Rather than talk in theoretical terms, I would note the following: I have an active interest in a Visa/Mastercard program where I promote the use of a particular institution's credit cards and I am paid on the basis of its profitability and interchange. Clearly, if I felt this was very much to the bank's detriment, I'd have second thoughts about this whole proposition. Additionally, I have what is for me, a fairly large investment (some six figures) in the stock of a relatively small bank (under 30 offices) and further have pledged an additional six figure investment in a bank that is currently organizing. Obviously, I am not anti-bank. Further, while I have been in the radio business for 20 years, I have been an entrepreneur for all of my adult life and currently operate several businesses in half-a-dozen states.

This legislation, if adopted, will level the playing field and clearly spell out the ground rules which are currently a matter of what any individual institution or agency decides they will be. Further, it will eliminate the temptations to manipulate the receipt of payments to the detriment of the debtor and finally, correct an anomaly which was nothing more than a product of the changing business climate, i.e., the multi-state activity by banks, credit card issuers and other extenders of credit.

Finally, if the Federal model is a poor one, then it occurs to me that two things should be happening very quickly now that this has been brought to the attention of the Congress.

First, public spirited organizations who may object to this proposal should at least invest part of their resources petitioning the government to change the Internal Revenue Code and eliminate the Federal model to which I have alluded to.

Secondly, if a legislator feels my proposal is a bad business practice, then it certainly should be eliminated from the Federal model because no legislator would go on record as endorsing a poor business practice for the government. Obviously, I suggest the latter with my tongue firmly in my cheek. The Federal model does work. It is beneficial to everyone concerned and if the Internal Revenue Service, who certainly receives in volume as much mail as any individual corporation can handle, I can envision no reasonable objection.

Mr. Chairman and Members of the Subcommittee thank you for this opportunity and your consideration of this legislation.

Mr. MCHUGH. Well, Mr. Williams, thank you for being here. All of the buzzers that you've heard and the beepers going off mean that we have been called for a series of votes, and given your busy schedule, I think when we leave for the vote, we will not come back because it will be such a long period of time.

I do want to say that with the unanimous consent, without objection, we have statements from Congressman King, Representatives Walsh and Davis, to be included in the record. As I said, we will keep the record open until the close of business on October 27, but let me know.

[The prepared statements of Hon. Peter T. King, Hon. James T. Walsh, and Hon. Thomas M. Davis follow:]

PREPARED STATEMENT OF HON. PETER T. KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

I greatly appreciate the opportunity to testify before the Subcommittee on the Postal Service in support of the Postmark Prompt Payment Act of 1995 (HR 1963). I would like to thank and congratulate the Chairman of the Subcommittee, my good friend and colleague from the great State of New York, Rep. John McHugh, for holding this important hearing. Chairman McHugh has taken the lead by introducing this long-overdue legislation and by holding this informative hearing to seek a solution to the "payment due problem" faced by millions of American families.

As an original cosponsor of HR 1963, I am proud to be taking an active role in trying to relieve the burden that is inflicted upon honest citizens who pay their bills on time, but through no fault of their own, are unfairly penalized with late fees when their payments are not received on time as a result of the delays of others.

Throughout my years in Congress, I have been contacted countless times by constituents who have had difficulties as a result of payments they mailed, but were not delivered on time. It is unfortunate that the credit ratings of conscientious citizens can be affected as a result of this unfair situation.

I believe that approving this long-overdue legislation is the least we can do to help our constituents who value their good credit history and do not want to see it tarnished as a result of this inequity. The passage of this legislation would ensure that the American consumer can take comfort in the fact that once the check is in the mail, the bill has been paid.

PREPARED STATEMENT OF HON. JAMES T. WALSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman: I'd like to thank you for the opportunity to submit this brief statement for the record on H.R. 1963, the Postmark Prompt Payment Act of 1995, which I was proud to cosponsor. This is sound bi-partisan legislation designed to solve a long-standing problem in our country. This measure should be passed.

As citizens and taxpayers, we know that the Internal Revenue Service (IRS) accepts the postmark date as proof of timely payment of our annual income taxes. The U.S. Postal Service in our local communities makes special arrangements each year, in cooperation with the IRS, for people mailing their taxes just before the April 15th deadline so that the postmark on the envelope will indicate prompt payment. The IRS first formulated this procedure to assist U.S. taxpayers. It was a good idea. I submit to you that if this concept is good enough for the IRS, it is good enough for the people of my congressional district for payment of their bills and invoices.

Our constituents' good credit ratings are hard-earned through a continuing conscious effort to do the right thing and pay their bills on time. These ratings should not be unfairly damaged. And citizens should not have to be responsible for late payment fees because the bill or invoice, properly addressed with proper postage, arrives late at the credit card company or bank through no fault of their own. When this occurs—and it happens all too frequently—people are slapped with unnecessary, unfair high interest charges.

Mr. Chairman, the 104th Congress has committed to the people of our country that they can feel confident we are promoting their welfare, not penalizing them. This legislation reaches that goal. I urge prompt passage of H.R. 1963 for the simple peace of mind of the hard-earned good credit of all our constituents.

Thank you.

PREPARED STATEMENT OF HON. THOMAS M. DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, thank you for giving me the opportunity to speak in support of this important legislation I think I speak for many of my colleagues when I ask who

has not placed payment for a bill in the mail on time, only to find that the bill was a few days late in arriving at its destination. Hopefully, this legislation will lead to a solution with which all sides of this issue can agree.

As a representative in local government for fifteen years, I experienced first hand how the federal government sometimes passed laws that were well intentioned; but, once applied, actually did more harm than good to citizens. Legislation of this type follows what I refer to as the "Law of Unintended Consequences." In order to combat this phenomena, I am proud to be an original cosponsor of the Postmark Prompt Payment Act, H.R. 1963, which I believe will have the opposite effect on citizens. Instead of burdening people with government regulations that could tie their hands, this legislation will free people from the worry that payments may not reach their creditors on time.

H.R. 1963 will require the postmark on the outside of an envelope to serve as proof of timely payment of bills, invoices, and statements of account due. The citizens of this nation should be able to rely on consistency in the dating of their financial transactions. They have the right to know that when their bill is mailed on time, their payment will be considered on time. This "mail box" rule is applied to most civil contracts corporations enter into and should now be applied to the mortgage and credit card payments of the average American citizen. A properly addressed postmarked envelope with adequate postage serves as proof of timely payment for the Internal Revenue Service, so why can it not for banks and credit card companies as well?

The plain truth is that financial institutions resist this plan because it prevents them from charging interest on payments citizens place in the mail in a timely manner. However, this legislation does not place a burden on financial institutions; creditors retain the option of moving a bill's due date to compensate for this policy. The question we must answer is who should pay for a piece of mail that was delayed? The small debtor is the party least equipped to handle this situation. Lost mail is not always the fault of the Postal Service; but, the risk of lost, delayed, or misplaced mail should not fall on the small debtor who relies on the prompt delivery of mail. This legislation will properly reallocate the risks of delays in the postal service, and better aid the average citizen.

Again, thank you Mr. Chairnan. I hope my colleagues will join with me in support of this sensible proposal.

Mr. MCHUGH. If there is any doubt about the very responsible attitude of the good people who wrote Mr. Williams, flushing through the letters and postcards, we found a penny postcard, on which this particular person expressed his interest in this bill.

It's interesting to note that the penny postcard was used in the United States from 1873 to 1917 and has not been in use since then, and this person kept this postcard and properly posted it to mail to you. So you've got some very frugal and, evidently, some very healthy and long-living listeners out there.

Mr. WILLIAMS. A testimony to the demographics of my program.

Mr. MCHUGH. Well, I think that's only partly it. Until October 27, the record will be kept open.

We do appreciate your being here. I will note that the majority of members of the subcommittee have joined in co-sponsorship of this legislation, which I think shows my colleagues' dedication to this issue. And I know you heard, as the Members came in, in rather significant numbers, to testify in support of this, there is widespread and bipartisan interest. And we look forward to working with you in pursuing this very important legislation.

I would like to know if any of my colleagues have further comments or quick questions.

Mr. GREEN. Mr. Chairman, just again to welcome Bruce, and also, that constituent, or your listener, who said that lowered the value of that postcard by mailing it in the U.S. mail, since it was so old, but I'm glad they're dedicated.

Mr. WILLIAMS. Indeed. Thank you, sir.

Mr. MCHUGH. Well, we thank you, and we will be working with you, and again, all of us appreciate your support and effort.

Mr. WILLIAMS. Thank you very much, Mr. Chairman.

Mr. MCHUGH. With that, we will adjourn.

[Whereupon, at 11:10 a.m., the subcommittee meeting was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF BENJAMIN A. GILMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I thank you for calling this hearing to discuss H.R. 1963, the Postmark Prompt Payment Act of 1995, a measure which I have enthusiastically cosponsored. This legislation is a common sense proposal to protect conscientious consumers who attempt to pay their bills in a timely fashion. H.R. 1963 provides that the postmark on envelopes carrying payments be considered proof that the payment had been within the time period required. The use of the postmark to prove timely action has precedence in contract law and is present in Internal Revenue Service regulations pertaining to timely filing of income tax returns. I cannot overstate my support for this proposal to protect consumers who do their best to honor their financial commitments.

I welcome my distinguished colleagues, Mr. Boehlert, Mr. Jacobs, Mr. Stockman, Mr. Barrett, Mr. Blute and Mr. Romero-Barceló to our subcommittee, as well as, Mr. Bruce Williams, the host of Talknet and Mr. Mark Silbergeld, from the Consumers Union. I look forward to hearing their testimony. Thank you Mr. Chairman.

PREPARED STATEMENT OF HON. RICK LAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, there is nothing more disheartening than to be penalized for doing nothing wrong. Many citizen's and businesses are, however, punished in just such instances. They send in timely payments to pay for goods and services, only to learn that because of circumstances outside of their control, the payment was received late. Even the U.S. Postal Service advertises that nearly 20% of letters are not delivered on time.

One of our nation's most cherished principles is the belief that every citizen is innocent until proven guilty beyond a reasonable doubt. Unfortunately, that doctrine has not extended to disputes with creditors over late payments, and all too often, hard working men and women have been subjected to excessive inconvenience and high legal fees in an attempt to prove that they did nothing wrong. They mailed the check in a timely fashion, but it failed to arrive on time.

We have the opportunity, and an obligation to the American people to correct this injustice. If Uncle Sam can use the postmark on the envelope as proof of timely payment, why can't creditors? I am proud to be a co-sponsor of H.R. 1963, which will do just that. H.R. 1963 would recognize the postmark as proof of timely payment of a bill, invoice or statement of account due, made through the mail, provided that the envelope was correctly addressed to the payee, and the adequate postage was affixed.

Credit issuers impose fees and higher interest charges for those who make even a few late payments, while late-payment data remain on credit records for several years, jeopardizing that future car loan or mortage application.

Congress is working to define a new path for America's future; Trying to move people toward self-sufficiency and personal responsibility, but this may be difficult without leveling the paying field.

It is difficult enough for people to acquire and live out the American Dream, without the additional burdens imposed on hard-working citizen's who are penalized because the mail was slow.

H.R. 1963 is a good step in resolving the payment due problem, and I look forward to working with you in passing the Postmark Prompt Payment Act.

PREPARED STATEMENT OF THE COUNTRYWIDE FUNDING CORPORATION

Countrywide Funding Corporation appreciates the opportunity to submit our statement for the record on H.R. 1963, the "Postmark Prompt Payment Act of 1995."

Countrywide Funding Corporation, headquartered in Pasadena, California, is the nation's largest mortgage lender and servicer. Countrywide primarily originates and services single-family home loans, which have been sold to the secondary market. Countrywide's parent corporation, Countrywide Credit Industries, is a publicly traded entity on the New York Stock Exchange ("CCR").

H.R. 1963 amends title 39 of the United States Code "to provide that payment of a bill, invoice or statement of account due, if made by mail, shall be considered to have been made on the date as of which the envelope which is used to transmit such payment is postmarked." Although we understand the sentiment underlying the legislation, and can sympathize with customers who have paid late charges due to slow or unreliable mail service, Countrywide strongly opposes this bill because it is burdensome and costly, disruptive to the secondary mortgage market, and unnecessary. The minimal beneficial effects gained by a few consumers will be outweighed by the overall increase in the cost of credit which will be passed on to all consumers as a result of this policy.

H.R. 1963 imposes an overwhelming burden upon all creditors as processing costs will skyrocket. For example, Countrywide collects payments from over 1.1 million families each month. Currently, payment processing is highly automated with use of envelope cutters, computer-read remittance slips and machine facilitated check routing. H.R. 1963 effectively renders our sophisticated payment processing operations obsolete. In essence, passage of this bill would mandate the return to the use of manual processing and account revision which is slow and costly with increased possibility of human error. Requiring envelopes of all shapes and sizes to be processed, photocopied, and stored with the postmark recorded will impose further technology costs and loss of efficiency. Moreover, a certain percentage of postmarks are unreadable even by the human eye, making this an extremely difficult requirement with which to comply.

Moreover, the provisions of H.R. 1963 have unintended consequences with negative macroeconomic effects. When a payment is late, it impedes Countrywide ability to fulfill its contractual agreements with the secondary market. Countrywide, like many mortgage companies, sells most of our mortgages to government sponsored enterprises such as Fannie Mae and Freddie Mac who in turn create financial instruments which are sold to secondary market investors. This market, which is comprised of millions of mortgage loans worth literally trillions of dollars of principal amount, has been built on a foundation of standardized documents and payment time frames. This market cycle enables capital to flow continuously and at minimal cost to the consumer. When a consumer is tardy with his or her payment beyond the 15-day grace period, and this "lateness" is sanctioned by the government as H.R. 1963 dictates, the flow of monies is disrupted and results in an increased cost of credit for homeowners and all consumers. Not only does H.R. 1963 improperly intrude into the voluntary contractual agreements between Countrywide and our borrowers, but it disrupts our contractual agreement with the secondary market with greater, more harmful macroeconomic consequences.

H.R. 1963 shifts the consequences of unreliable postal delivery to the business sector. Yet this is unnecessary as Countrywide, like most creditors, has already provided the consumer with a grace period to allow for slow mail delivery. At Countrywide, all payments are due on the first of the month and the contractual agreement states the payment must arrive by the fifteenth to avoid a late fee. In almost every case, 15 days is more than adequate to allow for slow delivery or other problems. In the event a payment is lost in the mail for more than 15 days and late charges are assessed, Countrywide extends both flexibility and understanding in that we will waive the fees provided the consumer has a reasonable excuse. We understand that poor postal service can be the root cause in certain instances that are neither the fault of the consumer nor the corporation, and we believe we sufficiently accommodate consumers in such circumstances. Countrywide also offers electronic payment options (at no additional cost to the customer) to reduce customer reliance on the mail for their payments.

Imposing more paperwork burdens and regulatory constraints is hardly in the spirit of the 104th Congress. Countrywide strongly opposes H.R. 1963 as an unnecessary intrusion into voluntary contractual agreements. The bill wreaks havoc in the secondary capital markets and imposes immediate and expensive technology and efficiency costs. And, H.R. 1963 does all of this to address a problem which has already been solved. The consumer does not benefit whatsoever from this legislation. Instead, the consumer pays even more as these costs are passed on.

PREPARED STATEMENT OF JAMES C. DROZANOWSKI, PRESIDENT, CHASE MANHATTAN BANK (USA)

The Chase Manhattan Bank USA ("Chase") desires to place on record its views regarding H.R. 1963. Because Chase believes that the Congress and the Federel Reserve Board have already sufficiently addressed the interests of consumers in this area in the current versions of the Truth-in-Lending Act (15 USC 1601 *et seq.*) and Regulation Z (12 CFR 226), Chase opposes the adoption of H.R. 1963.

Chase is the creditor on several million credit card and other consumer revolving revolving credit accounts. Consumers holding such accounts are entitled to a statement each month during which a debit or credit to the account has occurred.[1] Chase, like many creditors, offers a period of time during which payment in full may be made to avoid additional finance charges. Under these circumstances, the statement must be sent to consumers at least 14 days before the date such a payment is due.[2] This advance notice provides consumers with ample time, even considering a delay in mail delivery, to both review the statement and remit payment before any adverse consequences may occur.

Moreover, Chase and all other creditors on consumer open-end accounts are required to credit payments received from consumers to those consumers' accounts on the day on which such payments are received, provided consumers follow the instructions which must accompany each and every bill sent to them and which must be reasonable.[3] This requirement applies despite the fact that the vast majority of payments are tendered in the form of checks or other negotiable instruments for which the creditor will not receive collected funds (and for which the consumers' accounts will not be debited) for three or more business days. Consumers are therefore already benefiting from a cessation of interest accrual even though no deduction from their accounts has been made. While no figures are available, Chase believes it reasonable to quantify this benefit to consumers as millions of dollars per year. Chase does not believe that any further benefit consumers is warranted.

On the other hand enactment of H.R. 1963, would impose substantial additional financial burdens on Chase and other creditors of open-end accounts. First, the technology necessary to scan in-coming mail to determine the date of its postmark does not presently exist in a commercially usable form. As performing this task manually would involve prohibitive cost, Chase and other creditors would be faced with the oppressive task of either developing it in-house or commissioning its development. Furthermore, because of the requirements for timely crediting of payments discussed above, Chase has expended significant sums to purchase machinery which opens and discards the envelopes containing payments so that their contents can be promptly processed. This process is likely to be incompatible with scanning postmarks. Accordingly, enactment of H.R. 1963 would not only require an investment in new technology but a replacement of existing technology which presently functions quite adequately.

Second, enactment of H.R. 1963 would further burden Chase by effectively increasing the float made available to consumers. By definition, a postmark reflects the date the Postal Service receives a piece of mail. This is almost always prior to the date on which that piece of mail is delivered to the addressee. If the posting of a payment on the date of the postmark is required, Chase would be required to cease accruing interest on accounts even before Chase has received that payment, much less had the opportunity to begin the collection the actual funds represented by the check or other instrument. While it may be argued that crediting payments on the day they are received is an appropriate consumer benefit, H.R. 1963 would result in nothing short of a consumer windfall to be financed by creditors.

I trust you will find these comments helpful in your considerations. Please feel free to contact me should you need further information or discussion.

PREPARED STATEMENT OF THE CONSUMER BANKERS ASSOCIATION

The Consumers Bankers Association ("CBA")[1] thanks the Subcommittee on Postal Service for the opportunity to submit a statement for the record on H.R 1963, the "Postmark Prompt Payment Act of 1995."

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[1] 12 CFR 226.5(b)(2)(i).
[2] 12 CFR 226.5(b)(2)(ii).
[3] 12 CFR 226.10
[1] CBA was founded in 1919 to represent retail banks nationwide. Today it represents approximately 750 federally insured bank holding companies, banks and thrift institutions that hold nearly 80 percent of all consumer deposits and more than 70 percent of all consumer credit held

Continued

H.R. 1963 would mandate that bills be considered paid on the date that the payment is postmarked by the U.S. Postal Service, rather than the day payment reached the recipient. This legislation, if adopted, would create a myriad of technical and logistical difficulties for the banking industry. Ultimately, consumers nationwide could be forced to pay more for their banking services due to the new technology and additional processing that H.R. 1963 would impose upon the industry. In addition, sufficient industry safeguards already exist to protect consumers from the uncertainty of postal delivery. CBA believes that passage of this bill would hurt banks and their consumers, and therefore strongly opposes H.R. 1963.

It is important to recognize that automated equipment currently performs virtually all of the steps involved in payment by mail, ensuring speedy processing and crediting for bank customers. The efficiency of today's electronic processing would be compromised by the passage of H.R. 1963, resulting in increased cost to the customer. Crediting payments according to postmark date would add two new steps to payment processing; electronic reading of the postmark on the envelope, and electronic transfer of the date of the postmark onto the check. The development and implementation of this technology would be costly to banks, and therefore to their customers. Many institutions that process payments electronically do not use machinery that can backdate payments, a situation that would have to be corrected by installing new, expensive systems. Replacement of technology would constitute an enormous one-time cost, but the extra processing steps required by H.R. 1963 would be a continuing expense, these costs would ultimately be absorbed by consumers.

The efficiency of any future technology of this type is doubtful in light of the common irregularities in postmarks. Postmarks are often illegible due to multiple postmarks, misapplication, and the wear and tear of delivery. Correct electronic recognition would probably be impossible or flawed in cases like these, resulting in delays and confusion. Any technology developed to meet the new processing demands of H.R. 1963 would be useless unless it could deal with these problems.

Although the provisions of H.R. 1963 may seem similar to the Internal Revenue Service's policy of accepting returns postmarked by the April 15 deadline, the situations are not comparable. Since there is one annual deadline for these income tax returns, the I.R.S. handles most returns within a time window of a few weeks. Those returns that arrive after April 15 can be processed by hand during those few days. On the other hand, the billing cycles of private businesses vary widely by type of account and by individual customer, therefore, it would be impossible to establish a limited time window within which all payments can be processed according to postmark. H.R. 1963 would require banks to engage in extra processing steps on all payments at all times, although only a small percentage of those payments would be affected by the date of postmark. Processing would be complicated and protracted for all banking customers, not only those who pay at the billing deadline.

In addition, it should be noted that the I.R.S. does not offer any flexibility in its payment schedule, as banks typically do. Most financial institutions have official grace periods of two to three weeks to allow their customers sufficient time to make payments. Sufficient safeguards are therefore already in place to provide consumers with enough time to make payments, and to protect them from the possibility of late delivery. Safeguards like these make H.R. 1963 an unnecessary intrusion into the banking industry, and into private business in general.

Laws also exist to prohibit any intentional payment processing delay by creditors in order to reap late fees or interest. Under Section 164 of the Truth in Lending Act (Section 226.10 of Regulation Z), credit card issuers are required to post payments on the date of receipt. The fact that this issue is already covered under the Truth in Lending Act, as well as the extended grace periods that many banks offer, render H.R. 1963 unnecessary and unwise. The bill, if approved, will lead to more expensive and less efficient processing of payments, ultimately, consumer confusion and higher charges for banking service, are the likely results of this legislation. CBA strongly opposes H.R. 1963 as an unwarranted intrusion into the banking industry, and one that will ultimately hurt the consumers it seeks to protect.

CBA appreciates the opportunity to submit this statement for the record.

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by federally insured depository institutions. CBA's focus is on retail issues, including deposit, investment, and lending products and services. Its membership includes bank holding companies, regional, super-regional, and money center banks, thrifts, and credit unions.

PREPARED STATEMENT OF THE MORTGAGE BANKERS ASSOCIATION OF AMERICA

The Mortgage Bankers Association of America (MBA)[1] appreciates the opportunity to submit this statement for the record on HR 1963, the "Postmark Prompt Payment Act of 1995." At such time as the Subcommittee holds another hearing, MBA would like to request to testify.

On June 29, 1995, Representative McHugh (R–NY), Chairman of the House Postal Service Subcommittee of the Government Reform and Oversight Committee, introduced HR 1963, which would provide that payment of any bill, invoice, or statement of account due, shall be treated as having been made on the date of the postmark if the payment is made by mail. This legislation, which amends the Postal Service Code, would affect most types of payments that are sent by mail. MBA would like to express deep concerns about this legislation for the following reasons:

- A generous grace period already exists for virtually all mortgages.
- There are significant technological and logistical difficulties that would be presented by the requirement to read envelopes and log in payments as of the postmark date.
- The proposal imposes regulatory burdens on mortgage servicers that will increase costs due to the delay in receiving funds owed as well as compliance costs.
- Mortgage servicers are presently subject to investor requirements to credit payments promptly upon receipt.

GENEROUS GRACE PERIODS ALREADY EXIST FOR MORTGAGES

The contractual language of standardized industry mortgage documents provides that mortgage payments are due on or before the first day of the month. But a grace period of as much as two weeks is generally allowed under the language of most standard mortgage documents and in many instances is required by state law. Mortgage lenders cannot retroactively change this grace period in their mortgage contracts. If state law stipulates the length of the grace period, mortgage lenders are subject to that provision unless the law is changed. Late charges are never imposed until after this grace period elapses. By changing the definition of the date of receipt to the date that a payment is postmarked, this legislation would further lengthen the already generous grace period accorded to mortgage borrowers.

Borrowers are not generally charged additional interest on their payments during this grace period, except for simple interest loans, which are not prevalent in the industry. In essence, on the bulk of mortgage loans, borrowers are already receiving an interest-free loan for the up to two weeks represented by the standard grace period. If all borrowers took advantage of the provisions of HR 1963, it would add at least three days (which is the U.S. Postal Service delivery goal for mail to another city) delay in receiving payments. This three-day delay translates into a potential loss of $1.5 billion annually for the mortgage servicing industry.

Furthermore, delaying the receipt of funds would directly impose substantial losses on lenders who are required to make payments to investors on a specified date. As part of the security holder agreements for any mortgages that are held in mortgage backed securities, the lender must send the payment to the investor by an agreed upon date at mid-month. The lender is obligated to send the payment, even if it has not yet been received from the borrower.

Ultimately, lenders would have to pass the increased cost of making payments on behalf of delinquent borrowers along to all borrowers. Thus, future borrowers, many of whom pay their obligations when due at the beginning of the month, will have to pay higher interest rates to cover increased costs incurred on behalf of dilatory borrowers, if this proposal is implemented.

SUBSTANTIAL INVESTMENTS IN AUTOMATED SERVICING TECHNOLOGY WOULD BE REQUIRED

Lenders have reduced the cost of servicing loans substantially by maximizing technology. In the last three years, direct expenses on a per loan basis have declined

[1] The Mortgage Bankers Association of America is a nationwide organization devoted exclusively to the field of residential and commercial real estate finance. MBA's membership comprises nearly 2,700 mortgage originators and servicers, as well as investors, and a wide variety of mortgage industry-related firms. Mortgage banking firms, which make up the largest portion of the total membership, engage directly in originating, selling, and servicing real estate investment portfolios.

Members of MBA include: Mortgage Banking Companies, Commercial Banks, Mutual Savings Banks, Savings and Loan Associations, Mortgage Insurance Companies, Life Insurance Companies, Mortgage Brokers, Title Companies, State Housing Agencies, Investment Bankers, and Real Estate Investment Trusts.

from $123 in 1992, to $112 in 1993 and further down to $95 in 1994.[2] The economies of scale show up even more dramatically in large volume servicers, who employ the most sophisticated forms of technology. Servicers handling 100,000 loans or more had average per loan servicing expenses of $118, $94, and $83 in the same three years of 1992–94. Because servicing represents a major profit center for the industry, keeping the cost of servicing as low as possible is key to ensuring affordable mortgage interest rates for borrowers.

Mortgage servicers would encounter significant logistical problems and expense to purchase automated equipment in order to comply with the requirements of HR 1963. Each month 47 million payments are processed by the mortgage servicing industry for an annual total of 564 million payments.

If the postmark date is to be used, rather than the actual date of receipt of funds, mortgage payments received after the grace period has expired would have to be processed differently. Special equipment would have to be purchased to read postmarks, or payments received after a certain date would have to be hand processed. Additionally, servicers would have to store envelopes to prove the date of postmark for any loan payment where a late fee was charged. Currently, lock boxes are used and the financial institution records the receipt of payment.

COMPLIANCE COSTS WOULD INCREASE SUBSTANTIALLY

Reducing burdensome paper retention requirements, where possible, is another way that mortgage servicers have sought to cut costs. The "paperless" mortgage, where most documents are stored electronically, promises to reduce costs further for mortgage servicers. Even where there are statutory requirements for maintaining records for a period of time, many of these laws recognize electronic storage medium and allow servicers to retrieve documents electronically whenever required.

The industry standard presently is to provide borrowers with a booklet of payment coupons once a year, rather than to bill borrowers on a monthly basis. Generally, envelopes are not provided with the payment coupons. If HR 1963 is adopted, in order to automate payment processing, servicers would have to provide borrowers with standardized envelopes and hope that the borrowers retain and use those envelopes for the full year. Otherwise, servicers will be forced to hand-process payments received in non-conforming envelopes.

Given the low visual quality of most postmarks, which will be difficult to photocopy or store electronically, mortgage servicers will have to incur the expense to store the actual envelopes themselves as proof of postmark. If there is no return address the mortgage servicer will have to affix identifying information on the envelope. They would also have to develop systems for indexing by loan number and retrieving envelopes when asked to by auditors or consumers.

These increased compliance costs will be passed along to borrowers. While the borrowers who are tardy in making payments may benefit from this proposal, those borrowers who are conscientious and make their payments when due will suffer because they will also have to shoulder these higher compliance costs.

PROTECTIONS CURRENTLY EXIST TO ENSURE THAT PAYMENTS ARE PROMPTLY CREDITED

Mortgage servicers have incorporated consumer protections in their procedures for payment receipts. Generally, payments are sent directly to a lock box system at a financial institution, which logs in the receipt of the payment. The date of receipt is, therefore, verifiable and subject to audit. Investor requirements mandate that payments be processed in a timely fashion. Fannie Mae and Freddie Mac, as part of their seller/servicer guidelines, require that payments be posted on the same day as received.

SUMMARY

There is no demonstration of systemic processing delays in handling mortgage payments that would warrant the significant governmental encroachment into private contracts represented by HR 1963. This legislation would directly impose significant costs on the mortgage servicing industry, as well as reduce profitability by delaying receipt of payments. Mortgage borrowers are already protected by the grace periods that have been built into standardized mortgage documents.

MBA would like to thank the Subcommittee for this opportunity to present our views on HR 1963. We would be pleased to provide further information, as necessary, for the record.

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[2] Source: "1994 Cost Study: Income and Cost for Origination and Servicing of 1- to 4-Unit Residential Loans." Operations Report No. 17, prepared by the Economics Division of the MBA.

PREPARED STATEMENT OF GE CAPITAL MORTGAGE SERVICES, INC.

I. INTRODUCTION

Mr. Chairman. GE Capital Mortgage Services, Inc. appreciates this opportunity to submit a statement for inclusion in the hearing record of the Subcommittee's October 19th hearing on H.R 1963, the "Postmark Prompt Payment Act of 1995." As one of the nation's largest servicers of residential mortgage loans (and processor of related monthly mortgage payments), we have an immediate interest in this legislation. While we appreciate the Subcommittee's well-intentioned concern over issues relating to H.R. 1963, we believe that the Subcommittee's proper focus, and that of any related legislation, should be on the operations of the United States Postal Service. For the reasons outlined below, we believe that the mechanisms contemplated by H.R. 1963, while potentially having some popular appeal, will in the end have serious adverse consequences for industry and consumers.

In order to better understand our position, we thought it is worthwhile to describe some of the more recent developments in the mortgage finance industry. Ultimately, while a mortgage borrower may obtain its loan from the local bank, the efficiencies of our nation's housing finance system have led to the development of mortgage servicers. This facilitates the sale of mortgage loans into the secondary market (in what are known as mortgage-backed securities) which has developed since the mid-1980's and this makes more capital available for further mortgage loans to individual borrowers. One servicer may track payments for millions of loans on behalf of the secondary market investors. These investors include large pensions funds and other institutions that depend on reliable handling of mortgage payments to safeguard the return on the investment of pension funds or other assets. There are very detailed contracts between servicers and investors that establish the amount, manner and timing for passing through mortgage payments to investors. H.R. 1963 would seriously put at risk the economic assumptions underlying these existing contracts and could have a very negative impact on the efficiencies of the system.

Mortgage servicers have aligned their operations to benefit from the efficiencies afforded by batch processing of the tremendous number of payments received each day from the Postal Service. To require a manual review of postmarks will destroy the efficiencies currently existing and add new and unjustifiable costs. In the end, all of this will be reflected in the cost of mortgage capital.

The Subcommittee on the Postal Service can better address its concerns by focusing on the efficiency of Postal Service delivery systems. The vast majority of existing mortgage contracts require that a borrower's payment be received on the first of each month. These mortgage contracts also provide a fifteen day grace period, however, before any late charge is assessed. By addressing the root cause of the concerns of borrowers (that is, confidence that they can rely on the Postal Service to get their payment to the creditor on a timely basis rather than go to the expense of say, private overnight delivery services), the Subcommittee can accomplish its objectives without causing unintended adverse consequences.

As described below, H.R. 1963 would require operational procedures that would destroy the economic efficiencies afforded by today's mortgage servicers and would undermine the expectations of the parties to existing mortgage contracts and mortgage-backed securities agreements. Now is not the time for creation of a new federal regulation that would impose extraordinary and expensive burdens on industry (at the ultimate cost of consumers in the form of higher interest rates on home mortgages to pay for the costs this legislation would create). Insertion of the federal government into the realm, of existing private contracts is equally inappropriate. In addition, recent experience has shown that this type of technical regulation invariably leads to litigation, most often prompted not by borrowers but by trial lawyers. There is little doubt that the Postal Service itself will get dragged into this type of litigation. A more detailed description of these issues is provided below.

II. COST OF IMPLEMENTING WOULD FAR EXCEED THE ILL-DEFINED BENEFITS

The costs of any regulation are justifiable up until the point they exceed the benefits derived. The substance of H.R. 1963 would unfortunately have the effect of imposing costs that from the outset exceed any benefits. In such a case, the legislation is simply not justifiable. The costs of servicing a mortgage loan are paid for by the investor out of the interest payments on the loan and accordingly any increased costs must ultimately be reflected in higher mortgage loan interest rates. In the absence of compelling governmental interests, additional burden, on industry and consumers are not supportable. The costs created by H.R 1963 in the mortgage services industry would include:

Inefficiencies Imposed on Mechanized Payment Handling Systems

Most mortgage servicers utilize lock box operations and batch processes to receive and handle payments. This is a very mechanized and cost efficient process. We estimate that the additional cost of a manual process to verify postmark dates would be at least $1 per item. We handle payments on approximately 1.1 million individual mortgage loans a month. Because almost all loans give borrowers a 15 day grace period after the due date before a late charge is imposed, the concerns over receipt of payment revolve primarily around those people who choose to pay immediately before or even after the late charge date at the end of the grace period. This represents over 25% of our portfolio. Even assuming conservatively that the legislation would necessitate tracking envelopes for only people who pay at the end of the grace period, this would still cost around one-quarter of a million dollars per month for our portfolio alone.

Impact on Secondary Market and Operational Changes

H.R. 1963 would require massive reprogramming and maintenance of two "payment received" dates, one for purposes of law and one for purposes of reporting and remitting to investors under mortgage-backed securities agreements. Generally, we are required to move funds to investor accounts within 24 hours of "receipt". In addition, we have specified investor cut-offs and have to report payments "received" by these dates to investors within 2–3 business days. It would not be feasible to use dates required for purposes of law for the "date received" reported, etc. to investors. Some investors have daily cut-offs. The FHLMC has a 15th day of the month cut-off. All of this will require fundamental changes to reporting and remittance procedures at sigmficant cost. Moreover, it may create additional shortfalls in interest payments for loan payoffs that have been "received" from borrowers that must be passed along to investors and this burden would fall unfairly on the mortgage servicer contrary to economic expectations under existing investor conracts.

Certain mortgage loans (also often owned by institutional investors) are simple interest loans which means that interest on outstanding principal accrues until payment is "received" by the servicer. H.R. 1963 would not permit a servicer to charge interest up until the date the payment is received (but rather the postmark date) yet under existing investor contracts institutional investors would be entitled to that interest and this burden would also fall unfairly on a servicer.

Storage Costs

Given the existence of a federal regulation, prudence would dictate that we store and somehow index envelopes for retrieval in case of disputes with borrowers. Storage and indexing of 11 million pieces of paper a month would lead to extraordinary costs. Even viewing this from a conservative posture, we would have to store envelopes for every simple interest loan and envelopes received after the late charge date on standard first mortgages, or at least 300,000 envelopes a month.

Damaged Mail and Illegible Postmarks

H.R. 1963 assumes that every piece of mail arrives in pristine condition. As everyone knows, this is regrettably far from the case. An illegible post mark or destroyed envelope will require inefficient manual investigation at tremendous expense. Moreover, some envelopes would not have the return address so we would have to mark them with identifiers which would also increase processing costs.

III. EFFECT OF LEGISLATION WOULD BE TO ALTER CONTRACTUAL RELATIONSHIPS

Any consumer concern over unnecessary late charges for delayed delivery of payments is well safeguarded by the 15 day grace period following the payment due date. The standard first mortgage note provides, "I will make my monthly payments on the 1st day of each month beginning on *X*. . . . I will make my monthly payments at *X* or at a different place if required by the mortgate holder. . . . If note holder has not received the final amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a date charge to the note holder." In any case, the effect of H.R. 1963 would be to alter the contractual agreement between the borrower and lender (e.g., substitute any US post office as the address for receipt of payments). The long tradition of contract law and the actual contracts themselves provide that payments are applied when received and H.R. 1963 flies directly in the face of these contractual expectations of private parties. In the absence of the compelling interests of the federal government to the contrary, legislation should not be used to affect private contract rights.

Not only are individual mortgage contracts affected but the economic expectations underlying the rights and obligations of servicers and investors under mortgage-backed securities contracts will be altered by H.R. 1963. The economics of existing

contracts will be seriously undermined and for future transactions the costs of mortgage capital will likely be driven up. These unintended effects of H.R. 1963 would have a serious negative impact on both industry and consumers alike.

CONCLUSION

For all the reasons outlined above, we believe H.R. 1963 will increase costs to all consumers (ultimately to be reflected in mortgage interest rates from which servicing costs are paid). Any perceived problems under current commercial practices are more properly addressed by examining the delivery standards of the United States Postal Service. If those operations are run effectively, borrowers can maintain realistic expectations of when they need to mail their payments in order to be received when due. In any case, with the vast majority of mortgage contracts, borrowers are afforded a fifteen day grace period from the due date before any late charge will be assessed. Once again, we appreciate the opportunity afforded by the Subcommittee to address this important matter.

PREPARED STATEMENT OF VISA U.S.A. INC. AND MASTERCARD INTERNATIONAL INCORPORATED

MasterCard International Incorporated ("MasterCard")[1] and VISA U.S.A. Inc. ("VISA")[2] appreciate the opportunity to submit this joint statement to the Postal Service Subcommittee of the House Committee on Government Reform and Oversight for the hearing record on H.R. 1963, the Postmark Prompt Payment Act of 1995.

VISA and MasterCard strongly oppose H.R. 1963. Simply put, H.R. 1963 would undermine the effectiveness and efficiencies of today's highly automated payments processing systems which are used by tens of thousands of creditors, retailers, utilities and other providers of consumer goods and services throughout the country. Higher prices would result and consumers would be the ultimate losers.

H.R. 1963 is a profound infringement on the way that America does business. It provides that a payment must be treated as received on the postmark date regardless of when the payment actually is received and regardless of the consequences that may be caused by the delay. The bill also would override hundreds of millions of contractual agreements between U.S. businesses and consumers which already specify when payments are timely. Such federal government interference in the fundamental payment arrangements between businesses and consumers is entirely inappropriate under any circumstances, and particularly in a free market economy such as ours.

In addition, H.R. 1963 would create enormous operational difficulties for the credit card industry and for all other companies that use automated payments processing. The processing of consumer payments has become almost entirely automated using specialized machinery to open envelopes and then scan, sort and process payment stubs and checks. The bill would require that payment processing systems be modified to identify the postmark date on every payment envelope to determine the timeliness of the payment. Because there is no equipment on the market that can electronically read postmark dates, the bill would actually require that each and every one of the millions of payment envelopes which are mailed daily be manually examined to determine the postmark date. The process of manually examining each payment envelope would be extraordinarily expensive. Moreover, in many cases, the process would be entirely useless because postmarks often are illegible or simply do not appear on the envelope at all.

In addition, H.R. 1963 is entirely unwarranted. Modern payments processing systems are extraordinarily successful in ensuring that payments are posted quickly when they are received. In fact, under Regulation Z, which implements the federal Truth in Lending Act, creditors must post payments on the date of receipt. 12 C.F.R. § 226.10 (1994). While isolated payment problems may occur, they simply cannot justify the enormous costs, difficulties and inefficiencies this bill would create. Further, while delays in payments being posted are far more likely to be the result of postal inefficiencies than of creditor mishandling, H.R. 1963 does nothing to address

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[1] MasterCard is a membership organization comprised of financial institutions which are licensed to use the MasterCard service marks in connection with payment systems, including credit cards.

[2] VISA is a membership association comprised of financial institutions in the United States which are licensed to use the VISA service marks in connection with payment systems, including credit cards.

postal problems. Instead, the bill shifts all of the costs and burdens of postal inefficiency onto creditors, utilities and any others who receive payments by mail.

Ultimately, H.R. 1963 would do the most harm to consumers. The enormous compliance costs created by the bill would be passed on to consumers through higher prices for utilities, retail goods, credit and the products and services of every other company that receives large numbers of payments by mail. Moreover, those consumers who pay their bills in a timely fashion would pay higher costs created by other consumers who deliberately waited until the payment due date to have their payment postmarked knowing that it would be impossible for the payment to be received on time. Many creditors and others faced with complying with the bill would seek alternatives such as eliminating grace periods altogether, or requiring that payments be made through electronic methods, or in person, rather than through the U.S. Mail, effectively making the U.S. Mail a second-class delivery system. Consumers who chose to pay by mail could actually be required to pay a fee to do so to help offset the costs that would be caused by this bill.

In order to avoid creating such significant and unwarranted problems for businesses and consumers alike, MasterCard and VISA urge the Postal Service Subcommittee to reject H.R. 1963. Once again, VISA and MasterCard appreciate the opportunity to present our views concerning H.R. 1963.

PREPARED STATEMENT OF USAA

USAA appreciates the opportunity to comment on H.R. 1963, the Postmark Prompt Payment Act of 1995. We particularly thank you for your willingness to hear from those organizations with concerns about the implications of this legislation.

By way of introduction, USAA is a worldwide insurance and diversified financial services association headquartered in San Antonio, Texas. The 1995 Fortune 500 ranks USAA 189th among the largest U.S. corporations in terms of assets. The USAA family of companies provides insurance and other financial products to include property and casualty insurance, life and health insurance, annuities, no-load mutual funds, and a discount brokerage service. The USAA Federal Savings Bank offers both VISA and Mastercard credit cards, consumer loans, mortgage loans and home equity loans. USAA members—primarily present and former military officers and their dependents—insure one another and share in any profits realized by USAA.

While the Association conducts most of its business by mail or telephone from its San Antonio home office, USAA is at the forefront of insurance and financial services organizations due to its emphasis on quality service and information technology. It is a pioneer in the use of computers, telecommunications, image processing, and other information management tools that have significantly increased the productivity of 16,500 employees worldwide and provided superior service to USAA members. The United States government and companies around the world have studied USAA's success in using technology to provide superior customer service and cost-effective products.

These advances in our technology capabilities and the resulting benefits to our customers are at the very heart of our concerns regarding H.R. 1963.

Currently, USAA receives and processes over four million payments per month across all business lines. In most cases, through use of high-speed mail extractors and state-of-the-art computer equipment, no human intervention is necessary to process these payments. This streamlined approach to payment processing results in greater efficiency which ultimately leads to lower operating costs and greater shared profits with our members.

Under H.R. 1963, however, the complex paper trail and human intervention necessary to comply with the postmark capture and verification requirements would hobble the great strides USAA has made towards becoming a paperless office—and, perhaps more devastatingly, would nullify most of the efficiencies USAA has in place to compensate for occasional U.S. mail delays.

Some witnesses at the October 19 hearing on H.R. 1963 commented that this legislation would encourage businesses to use their leverage within the community to improve U.S. Postal Service (USPS) processes. USAA has, in fact, already established such a cooperative relationship with the USPS, as a result of existing incentives to improve our incoming and outgoing mail procedures.

In the interest of furthering the dialogue on this legislation between the Subcommittee and the business community, I would like to invite you and your staff to tour USAA's Communication Center in San Antonio at a time convenient to you. I believe this would give you an opportunity to view the devastating implications

of this legislation for modern business processes, as well as to learn about several proactive initiatives of the USPS and the business community to achieve timely mail deliveries.

In fact, expanding the USPS' ability to offer incentives to its business customers to undertake initiatives to speed mail deliveries may be an attractive alternative solution for the Subcommittee to consider in resolving problems incurred by delays in the U.S. mail.

Again, USAA appreciates the opportunity to comment on H.R. 1963 and respectfully encourages you to consider our offer to visit the USAA Communications Center.

PREPARED STATEMENT OF THE NATIONAL RETAIL FEDERATION

The National Retail Federation appreciates the opportunity to submit this statement for the record on H.R. 1963, the "Postmark Prompt Payment Act of 1965."

By way of background the National Retail Federation is the world's largest retail trade association with membership that includes the leading department, specialty, discount, mass merchandise and independent stores, as well as 32 national and 60 state associations. NRF members represent an industry that encompasses over 1.4 million U.S. retail establishments, employs nearly 20 million people, 1 in 5 American workers, and registered 1994 sales of more than $2.2 trillion. NRF's international members operate stores in more than 50 nations. Collectively, the companies we represent extend retail credit to hundreds of millions of consumers. The proposal advanced in this bill, however well intentioned, would have a serious adverse effect on those retailers' ability to continue to extend that credit in an effficient, cost effective manner. Unfortunately, the Subcommittee's expeditious schedule prevented industry expert representatives for NRF from being able to testify in person at this proceeding.

H.R. 1963 would provide that the U.S. Postal Service postmark stamp date would be the presumed date of receipt whenever a mailed payment actually was delivered after the time established for payment. This proposal will create difficulties and unfairness for businesses and for consumers.

The genesis for this proposal appears to be the use of the April 15 postmark to establish the timely filing of individuals' income tax returns with the federal government. H.R. 1963 seriously overextends that analogy. Virtually all individual tax returns are due on the same date. Those received within a relatively short, several day window after April 15 can be hand sifted for timeliness without the Internal Revenue Service incurring an expensive on-going obligation. Furthermore, the U.S. Postal Service (and its predecessor the Post Office) is, in all respects, the federal government's agent for the receipt of tax returns. Delivery to one arm of the government is tantamount to delivery to the other, just as delivery of a cash payment at a utility company's service window is presumptive of payment to its back office financial operations. The speed with which the payment is actually delivered is a matter under the principal's direction, whether it be the government or the utility company. None of these is true in the case of mailed retail credit card payments.

Rather than a single date, credit card accounts are on billing cycles with different due dates for different consumers throughout the month. This spreads the workload burden more evenly and allows consumers' credit card payment to be processed more efficiently. However, it precludes the establishment of a limited time window within which all payments must be received. H.R. 1963 would require credit grantors to be continually on the lookout for payments that would be late, but for an early postmark.

The slowing in the processing of consumers' payments that this legislation could entail is directly contrary to retail credit grantors' efforts to speed up their receipt of customers' payments. Retailers want the checks they receive to clear as soon as possible. Many arrange for expedited delivery of their mail from the destination post office and make as many as five trips per day to pick up payments. Federal law requires that those credit card payments be credited on the day received. Automation facilitates this process.

To reduce the cost of credit, with rare exceptions, customer payments are not manually processed. Automated equipment does virtually everything. However, under H.R. 1963, absent manual sorting of every letter, a credit grantor would not know that a payment was "late" until after it had opened the envelope, removed its contents, and sent the payment and statement through its automated processing equipment. The envelope would have long before been disposed. Thus H.R. 1963 would require industry to create and credit grantors to buy new systems that would read the postmarked envelope and link that information with the payment data so

that it could be used in the event the payment were determined to be late. This would be an extraordinarily costly burden to impose on consumer credit.

Expensive as the creation and purchase of new equipment would be, manual processing would be an even worse alternative. Some of NRF's members process more than one half million customer payments every business day. The vast majority of those payments are timely. To slow those operations in order to manually sort for postmark data on those consumers who pay their bills at the eleventh hour would penalize the millions of consumers who pay their bills on time by hindering the processing of everyone's accounts.

Ironically, despite the extra costs it would impose upon the system, and thus on timely payors, H.R. 1963 effectively would reward those consumers who pay late by guaranteeing them the financial "float" without risk for their delay. This could actually encourage individuals to pay late. Congressional endorsement of this delay is particularly troubling in view of the efforts many retailers make to provide a postal grace period between their payment due date and the date on which the customers' next statements are prepared. For example, if a customer's statement is prepared on the first of each month, the customer might be given a "due date" of the three or four days earlier. That allows time for the delivery and processing of the payment prior to the customers' next statement date.

However, if the payment is not received by the first of the month, H.R. 1963 would leave the credit grantor with a dilemma. Suppose the customer has a $1,000 line of credit of which $200 has been used. The retail credit grantor would like the customer to have the maximum purchasing ability commensurate with his or her ability to pay. Should the credit grantor issue a billing statement that assumes the retailer will receive the customer's payment? And how much should it assume the customer plans to pay? How much credit should it tell the customer he or she has available? Would the customer's next finance charge-free grace period be shortened or would their billing cycle have to be changed each time they were "late." At what point could the creditor begin collection activities or report a nonpayment to a consumer reporting agency?

Retailers bear the cost of carrying financing for the goods they sell and, in many instances, those who offer credit have already provided customers with an extended grace period before their first payment is due. For the Subcommittee to extend this period even further and to require retail credit grantors to invest millions of dollars in not yet developed equipment ostensibly to benefit the small percentage of consumers who pay late, is counterproductive. The likely result of the Subcommittee's action is to dampen credit availability, to raise the cost of credit and to encourage the replacement of retail credit cards with third party cards, debit cards and checks.

Members of the Subcommittee should not overlook two significant advantages of the current system—customers are given a long period in which to arrange for timely mailing of their bills and the delivery of those payments is an "event certain" for processing purposes.

Of course the actual target of H.R. 1963 may be the nation's mail delivery system. But the U.S. Postal Service is not the agent of the credit grantor. Retail credit grantors cannot force the Service to provide a faster delivery. Despite its claim to quasi-independent status, the U.S. Postal Service is ultimately beholden to the federal government. The government appoints its Board of Governors, scrutinizes its costs, regulates its operations and has oversight of its successes and failures. If the Subcommittee wishes to encourage faster delivery of the mail, it should do so directly. Retailer credit grantors should not be held hostage as the putative means to an end they cannot control.

In closing, there are numerous other practical and complex technological difficulties with this proposal that we have not addressed. The fact that many postmarks are unreadable and thus would make the bill unworkable for millions of consumer transactions is just one of the former. We note moreover, that retail credit grantors have many operational and legal issues in common with other financial institutions, such as banks. The written Statement for the Record of the American Banking Association before this Subcommittee addresses a number of those issues and we endorse it.

We appreciate the opportunity to express the views of the National Retail Federation. We ask that the Subcommittee make them a part of your deliberations and of the record in this proceeding. Thank you.

H.R. 1963, POSTMARK PROMPT PAYMENT ACT

WEDNESDAY, FEBRUARY 28, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2247, Rayburn House Office Building, Hon. John M. McHugh (chairman of the subcommittee) presiding.

Present: Representatives McHugh, Sanford, Ehrlich, Owens, Green, and Meek.

Staff present: Dan Blair, staff director; Jane Hatcherson, Robert Taub, Heea Vazirani-Fales, Steve Williams, professional staff; Jennifer Tracey, clerk; Denise Wilson, minority professional staff; and Jean Gosa, minority staff assistant.

Mr. MCHUGH. If we could have the hearing come to order. Let me apologize for our lateness in starting, but as happens at any time in the Congress of the United States, particularly when we are back for the first time, people are trying to catch up with other parts of their agenda.

I want to welcome my colleague, the gentleman from Texas, Gene Green, who has joined us.

Gene, always nice to see you.

Let me also welcome our witnesses here today to present testimony on the subcommittee's second hearing on H.R. 1963, the Postmark Prompt Payment Act. This bill was introduced last year in response to concerns regarding the alleged unfairly assessed fees and interest charges for bill payments received after the due date, even though it was again alleged the billpayer may have made his or her payment on a timely basis. This bill is intended to remedy that situation by providing that the postmark on the envelope of the payment stands as proof of timely payment.

Last October, the subcommittee heard from a variety of the legislation's supporters. Those testifying included a bipartisan panel of six House members, Mark Silbergeld, director of the Washington office for Consumers Union, and Bruce Williams, who is, as perhaps most of you know, host of a nationally syndicated radio talk show. In addition, four of my colleagues submitted statements for the hearing record in support of 1963. Currently, the bill enjoys the bipartisan support of 33 co-sponsors.

This morning, our first panel will be comprised of witnesses who represent credit and financial service organizations. I want to welcome you gentlemen here this morning. On behalf of the subcommittee, let me thank you for taking time out of your schedules

to join us and to present your views to us, and we certainly look forward to your testimony.

Subsequent to the October hearing, the subcommittee heard from a number of representatives of the financial and lending community who voiced concerns regarding 1963. At that time, I promised that there would be an opportunity to air those views, as well, because they are important to the subcommittee, certainly. Today's hearing is intended to place those concerns formally on the record and hopefully provide the subcommittee with constructive comments regarding the legislation.

I particularly look forward to today's witnesses addressing the intent predicated in H.R. 1963, namely, protecting innocent citizens who submit their payments in a timely manner, but who, through no fault of their own, may be assessed late fees and interest charges because those payments are received or processed late.

I cannot imagine any well-intentioned party taking issue with the intent inherent in 1963. Consequently, I would urge our witnesses to present the subcommittee with any proposals that they might envision to ameliorate any excessive burden imposed by H.R. 1963, while perhaps still advancing the interests of billpayers from the unfair imposition of late fees and interest charges.

Our second panel of witnesses today represent leading high-tech manufacturers of mail processing equipment. I want to, in advance, welcome these witnesses and note, of course, that the subcommittee looks forward to their testimony regarding the present and future availability of the equipment necessary to preserve and/or record the postmark on billpayers' envelopes.

Opponents of the legislation have cited the lack of such technology as one reason to oppose 1963, and I certainly look forward to this panel providing the subcommittee with a status report on the availability of such state-of-the-art equipment that creditors may utilize presently or in the future.

In summary, the purpose behind today's hearing is to more fully assess all of these issues. Again, I appreciate both of our panels taking the time to be with us and presenting their views to the subcommittee.

[The prepared statement of Hon. John M. McHugh follows:]

PREPARED STATEMENT OF HON. JOHN M. MCHUGH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Good morning. The Subcommittee will come to order. I want to welcome all our witnesses here today for the Subcommittee's second hearing on H.R. 1963, the Postmark Prompt Payment Act. I introduced H.R. 1963 last year in response to concerns regarding creditors unfairly assessing late fees and interest charges for bill payments received after the due date, even though the bill payer may have mailed his or her payment on a timely basis. Our legislation is intended to remedy this situation by providing that the postmark on the envelope of payment stands as proof of timely payment.

Last October, the Subcommittee heard from a variety of the legislation's supporters. Those testifying included a bipartisan panel of six House Members; Mark Silbergeld, Director of the Washington Office for Consumers Union, and Bruce Williams, host of a nationally syndicated radio talk show. In addition, four of my colleagues submitted statements for the hearing record in support of H.R. 1963. Currently, the bill enjoys the bipartisan support of 33 cosponsors.

This morning, our first panel will be comprised of witnesses who represent credit and financial services organizations. I want to welcome these witnesses here today and the Subcommittee looks forward to your testimony.

Subsequent to the October hearing, the Subcommittee heard from a number of representatives of the financial and lending community who voiced concerns regarding H.R.1963. At that time I promised that there would be an opportunity to air those views, as well. Today's hearing is intended to place those concerns formally on the record and hopefully provide the Subcommittee with constructive comments regarding the legislation.

I particularly look forward to today's witnesses addressing the intent predicated in H.R.1963, namely protecting innocent citizens who submit their payments in a timely manner, but who through no fault of their own, are assessed late fees and interest charges because those payments are received or processed late. I cannot imagine any well-intentioned party taking issue with the intent inherent in H.R.1963. Consequently, I would urge our witnesses to present the Subcommittee with proposals that might serve to ameliorate any excessive burden imposed by H.R.1963 while still advancing the interests of bill payers from the unfair imposition of late fees and interest charges.

Our second panel of witnesses today represents leading high tech manufacturers of mail processing equipment. I want to welcome these witnesses as well and note that the Subcommittee looks forward to their testimony regarding the present and future availability of the equipment necessary to preserve and or record the postmark on bill payers' envelopes. Opponents of the legislation have cited the lack of such technology as reason to oppose H.R. 1963. I look forward to this panel providing the Subcommittee with a status report on the availability of such "state-of-the-art-equipment" for creditors to utilize.

In summary, the purpose behind today's hearing is to more fully assess all these issues. Again, I appreciate both our panels for taking the time to bring their views before the Subcommittee and I look forward to hearing from our witnesses this morning.

Mr. MCHUGH. I welcomed the gentleman from Texas. Let me also welcome the gentleman from South Carolina, the vice chair of the committee, Mr. Sanford.

Mark, thank you for being with us.

I would yield to the gentleman from Texas for any opening comments he may have at this time.

Mr. GREEN. Thank you, Mr. Chairman.

I have a prepared statement I would like to present on the Postmark Prompt Payment Act. I congratulate the chairman for introducing it, and I am a co-sponsor of it. I have had numerous complaints from my own constituents about the problem where they have had their credit ruined as a result of late payments and also late fees and interest charges.

Let me relate—it's not in my prepared remarks, Mr. Chairman—an experience I had just this last weekend. Like a lot of Members of Congress, often times we don't look at our weekly bills until late on Sunday night. I received, for the second time, an AT&T Universal Card late fee. The fee was more than the bill that I owed.

So I apologized to the clerk, whoever he was, for hearing from me at 10:30 or 11 on Sunday night, from Houston, saying, "This is the second month that I know we mailed it, and yet you assessed a $15 charge. I have a letter here showing a $20 charge. So there's some confusion, it seems." And he said, "Well, would you like us to cancel the account?" I said, "No, you don't have to do that. I'll pay it and send the cards back to you."

We can do that, as Members of Congress, but a lot of our constituents can't do that, because they have much more in charges that they have. So that's why the need for, if it's not 1963, then some type of legislation to structuralize it because of the problems that are presented, obviously, not only in Houston where I represent, but obviously in upstate New York, Mr. Chairman.

I look forward to the hearing today because, again, I'm a co-sponsor of 1963 and, like the chairman, we recognize the problem, and hopefully we have other solutions from our panel today that we can hear from.

Thank you.

Mr. MCHUGH. I thank the gentleman. Without objection, his full statement will be placed in the hearing record.

[The prepared statement of Hon. Gene Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

As an original co-sponsor of H.R. 1963, The Postmark Prompt Payment Act of 1995, I am glad to see that we are continuing these hearings. This legislation is long overdue. I have heard numerous accounts from many of my constituents whose credit has been ruined as a result of payments not being received on time through no fault of their own. As a result they were assessed late fees and interest charges and their credit ratings were negatively affected. I have also had my own personal experience with sending in payments on time and being assessed late fees. This legislation is important because it will help those diligent consumers who pay their bills on time, but through no fault of their own have encountered problems with their mail being received in a timely manner. I would like to commend Chairman McHugh for taking the initiative to introduce this important piece of legislation. Again, I would like to thank Chairman McHugh for holding these hearings and I look forward to hearing the testimony from todays witnesses.

Mr. MCHUGH. I would next yield to the gentleman from South Carolina, Mr. Sanford, for any comments.

Mr. SANFORD. I have no statement.

Mr. MCHUGH. Yielding back his time.

With that, let us move to our first panel. According to the rules of the full committee, I would ask, first, that the panel members please rise and repeat after me for the oath that is required.

[Witnesses sworn.]

Mr. MCHUGH. Thank you. The record will show that all witnesses responded in the affirmative.

Our first panel, as I mentioned, represents a wide range of interests that have stated, over the course of the past several months, concerns about H.R. 1963, and we are very much appreciative of their willingness to come forward and to publicly discuss those concerns with us. I will introduce them as we have them listed on the page, which will not in any way correspond to how the gentlemen are seated.

We have the pleasure of being joined by Mr. Casimir Sewruk, chief executive officer of the Nest Egg Federal Credit Union, on behalf of the Credit Union National Association. I should note, although it doesn't say it here, that that Nest Egg Federal Credit Union is in beautiful Fulton, NY, which is in my district.

We are also joined by Mr. Joseph Bracewell, chairman and CEO of Century National Bank. Mr. Bracewell is filling in for Mr. Lee Stenehjem, who was scheduled to join us this morning but was unable to because of, I understand, a snowstorm in the northern part of the United States.

Also, Mr. Mallory Duncan, who is vice president and general counsel for the National Retail Federation; Mr. Paul Reid, president of the Mortgage Bankers Association; and, last, Mr. Thomas Hughes, president and CEO of the Navy Federal Credit Union, on behalf of the National Association of Federal Credit Unions.

So gentlemen, again, thank you for being here. Having introduced you in that order, perhaps, out of fairness, we will also ask you to speak in that order, if that's agreeable to everyone there. I would now yield to Mr. Sewruk for the comments that he may wish to make.

STATEMENT OF CASIMIR SEWRUK, CHIEF EXECUTIVE OFFICER, NEST EGG FEDERAL CREDIT UNION, ON BEHALF OF THE CREDIT UNION NATIONAL ASSOCIATION; JOSEPH BRACEWELL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CENTURY NATIONAL BANK; MALLORY B. DUNCAN, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL RETAIL FEDERATION; PAUL S. REID, PRESIDENT, MORTGAGE BANKERS ASSOCIATION; AND THOMAS J. HUGHES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NAVY FEDERAL CREDIT UNION, ON BEHALF OF THE NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS

Mr. SEWRUK. Mr. Chairman and members of the subcommittee, thank you for the opportunity for the Credit Union National Association, CUNA, to testify this morning on H.R. 1963, the Postmark Prompt Payment Act of 1995.

As earlier mentioned, I am Casimir Sewruk, chief executive officer of the Nest Egg Federal Credit Union, in Fulton, NY. We serve approximately 6,000 members nationwide, and our total assets are just over $26 million. CUNA, which represents about 12,000 credit unions through its 52 State leagues, is pleased to comment on the ramifications of the legislation which would affect the ability of credit unions to provide low credit and good rates on loans and other financial services, by raising operational costs.

I will summarize my testimony this morning and ask that my full written statement be included in the record.

H.R. 1963 should not be passed, because it attempts to solve a problem that credit union borrowers rarely encounter. CUNA strongly opposes this bill because it would saddle credit unions with many additional compliance costs, both up front and ongoing. These include data processing costs, personnel costs, record storage and retrieval costs, low interest income, and fairly significant opportunity costs arising from the inability to invest funds that might otherwise be available for this purpose.

According to CUNA's recently completed 1996 Credit Union Fee Account Structure Survey, most credit unions do not charge late payment fees on their loans. About two-thirds of offering credit unions do not charge any late fees on most consumer installment loans. This means that most credit union borrowers whose payments are delayed by the Postal Service are not faced with any fee.

Furthermore, credit unions that charge fees for late payments tend to have extremely liberal grace periods. More than 96 percent of fee-charging credit unions give their members 7 or more days to pay before imposing fees, and more than 87 percent allow 10 or more days prior to imposing late fees. On average, credit unions allow their members' loan payments to be more than 14 days late before imposing fees. Thus, even members who belong to credit unions that charge late payment fees are unlikely to be charged when the U.S. mail service slows the receipt of payment.

As members of this subcommittee are well aware, credit unions are not-for-profit, consumer-owned financial cooperatives. Because of this relationship, credit unions consistently score high marks in service quality surveys. This suggests that most credit union borrowers wronged by slow postal service are likely to be accommodated by their credit union. Our philosophy is that each credit union belongs to its members. It would be counterproductive, bad business, and contrary to its nature for credit unions to impose numerous and/or excessive fees upon its members.

Many of our State leagues collected specific examples from their member credit unions detailing how H.R. 1963 would adversely impact credit union operations. If I might read some examples.

First Federal Credit Union, Tempe, AZ, $153 million in assets, representing 45,000 members: "We are a relatively small credit union with less than 100 employees, and we project two additional employees plus a slower posting time for current employees, which will cause an annual cost increase in the thousands."

Fairwinds Federal Credit Union, Orlando, FL, $250 million in assets, representing 67,000 members: "This credit union would suffer loss of approximately $73,000 per year, based upon a loss of an average of 3 days interest, at an average rate of 9 percent, on an average of $100,000 in payments processed during a 1-year period. This extra paperwork would require much more time to process, and the added processing cost would be added to the cost of the transaction, and obviously passed on to the consumer."

Federal Employees Credit Union, Kansas City, MO, $120 million in assets, 44,000 members: "We would need to add one-half of an employee, with a yearly payroll expense of approximately $7,500, plus benefits. Posting mail by hand not only increases costs, it increases the chance for errors. Also, what happens when an envelope is received that has no postmark or the postmark is unreadable?"

United Credit Union, Mexico, MO, $31 million in assets, 10,000 members: "We give our members a 15-day grace period to protect them from delays in the mail, and their credit report is not affected until they are over 30 days past due."

Malheur Federal Credit Union, Ontario, OR, $13 million in assets, 5,000 members: "Since we have designed and maintained our own data processing system, I estimate an expense of between $5,000 and $6,000 just to modify the program. We would also have to begin storing all envelopes in some manner in order to prove when an item was postmarked, in the event of a dispute."

Big Spring T&P Federal Credit Union, Big Spring, TX, $6 million in assets, 1,100 members: "If we have to credit the payment of these loans as of the postmark date rather than the actual date of receipt, we could see a reduction in interest income for the credit union of as much as $1,500 per month. The only way that we could afford this type of loss would be a reduction in our dividend rate to savers or a large increase in the interest rate we charge to the borrowers."

Eddy Paper Employees, White Pigeon, MI, $545,000 in assets, 212 members: "We are a small credit union with one employee, open 2 days per week, in which time we try to pack a week's worth of service, loans, mail, cleaning, et cetera. This legislation would

make it almost impossible for us to comply. We are unable to comment regarding fees because in no way can we afford to pay more hours. We would have to cut our service to our members in other ways."

The common theme running through these examples is increased cost. The unique structure of credit unions, with members as equal owners and no intervening stockholders to absorb the costs, means that these costs would have to be passed on to all members of the credit union. Further, some credit union systems may not have the capacity or ability to make an automated system adjustment and would have to rely on manual calculations which, obviously, presents the opportunity for possible human error.

To illustrate how the costs might increase, we assume that all member borrowers will begin to pay on the due date to take maximum advantage of the proposed law's provision. The CUNA survey indicates that 32 percent of credit union members use payroll deduction at their credit unions. This means that approximately 68 percent of member borrowers, holding about $24.8 million in loans, might engage in this behavior.

Credit unions would incur several financing related costs. First, they would lose several days' interest on the first late payment because interest charges would have to be calculated through the postmark date rather than the date of receipt. Second, since all payments would be several days late, they would lose the opportunity to invest each and every receipt of principal and interest for several days.

Data from the National Credit Union Administration indicates that the size of the average outstanding credit union loan is approximately $4,500. For illustrative purposes, we assume that the average loan has a 3-year term and an average interest rate of 8.79 percent, and that all loan payments are postmarked on the due date and received 5 days after the postmark date.

Given these assumptions, we find that the bill would cause credit unions to lose about $14 in interest income and forego invest income over the life of each loan of approximately $4.67 per year for each loan. This translates to a total annual loss of about $116 million in lost investment income.

Of course, credit unions will need to cover the costs they incur to comply with the proposed bill. The increased costs that H.R. 1963 would create for credit unions, regardless of size, would be passed on to the credit union members. One could argue that the most equitable way to cover costs would be to institute or increase loan origination fees and/or late fees. If this happens, then H.R. 1963 would not save members of credit unions, or consumers in general, money; rather, it would increase their cost of borrowing.

The American Heritage Federal Credit Union in Philadelphia determined that this legislation would cost them about $80,000 to $100,000 per year. This institution serves approximately 70,000 members. Thus, H.R. 1963 would add an extra dollar per year for each account at that credit union. Extrapolating from these findings, it would mean that every credit union member in the United States, approximately 70 million, would incur an extra cost of $1. Thus, H.R. 1963 would cost the credit union movement about $70 million in compliance costs.

When investment costs and compliance costs are combined, the potential impact on credit unions would be approximately $186 million per year, and these costs would have to be passed on to credit union members in the form of higher loan rates and/or lower dividends.

One final cost consideration involves the space needed to store envelopes. Additional time and cost of storage would be needed to either store or microfilm envelopes to verify when each payment was postmarked. At the very least, a part-time employee would be required to handle storage and retrieval of the filed envelopes. The envelopes would have to be stored in the event a member questions the date of entry. This would necessitate extra storage boxes and space.

At the Nest Egg Federal Credit Union, we have four different storage facilities which are geographically dispersed, and the cost of storage varies among each location. The increased cost of H.R. 1963 could easily be illustrated using the smallest storage compartment, approximately 5x5, for all locations. The prices would range from $25 per month to $50 per month. That translates into annual costs ranging from $300 to $600 per location, or potentially $1,200 to $2,400 more annually. If stored for 5 years, $6,000 to $12,000 more.

Just as an example, if I might interject here, I brought a sampling of just a couple weeks of mail that we receive, just for payments, and this is roughly 350 to 450 pieces of mail that we would have to handle, in addition, daily.

Mr. MCHUGH. Have you processed those yet? Because I wouldn't want them to be late.

[Laughter.]

Mr. SEWRUK. No, we're holding those. We'll post the due date.

These projected costs do not include the additional incidental costs of more materials used—for example, staples, storage boxes, envelopes, et cetera.

In summary, CUNA strongly opposes H.R. 1963. We believe that it is unnecessary for credit unions, because most credit unions already provide some kind of grace period for late bills.

Further, this measure would slow the processing of payments and add significant expense to credit unions and other financial institutions. This Congress has stated its commitment to reducing excessive and burdensome regulations on America's business. However, this legislation is pushing the envelope, if you will, in the wrong direction.

C.U.N.A. thanks the subcommittee for its opportunity to provide our views on the provisions of H.R. 1963 and additional matters.

I will be happy to answer any questions, and I personally thank you very much.

[The prepared statement of Mr. Sewruk follows:]

TESTIMONY OF THE CREDIT UNION NATIONAL ASSOCIATION ON THE POSTMARK PROMPT PAYMENT ACT OF 1995 (H.R. 1963) TO THE SUBCOMMITTEE ON THE POSTAL SERVICE OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

FEBRUARY 28, 1996

Mr. Chairman and members of the Subcommittee, thank you for the opportunity for the Credit Union National Association (CUNA) to testify this morning on H.R. 1963, the Postmark Prompt Payment Act of 1995. I am Casey Sewruk, Chief Executive Officer of the Nest Egg Federal Credit Union (previously known as the Nestle's Employees FCU) in Fulton, New York. We serve 6,000 members, and our total assets are just over $26 million. CUNA, which represents about 12,000 credit unions through its 52 state leagues, is pleased to comment on the ramifications of the legislation which would affect the ability of credit unions and other financial institutions to provide low cost credit and good rates on loans and other financial services by raising operational costs.

H.R. 1963 should not be passed because it attempts to solve a problem that credit union borrowers rarely encounter. CUNA strongly opposes this bill because it would saddle credit unions with many additional compliance costs -- both up-front and ongoing. These include data processing costs, personnel costs, record storage and retrieval costs, lost interest income, and fairly significant opportunity costs arising from the inability to invest funds that otherwise would be available for this purpose.

According to CUNA's recently completed 1996 Credit Union Fee and Account Structure Survey, most credit unions do not charge late-payment fees on their loans. As shown in the table below, about two-thirds of offering credit unions do not charge *any* late fees on most consumer installment loans.

Loan type	% of CUs that offer	Percent of offering CUs that don't charge fees for late payments
New vehicle	91.0	64%
Used vehicle	90.1%	64%
Other loans	87.9	64%
Other unsecured	94.2	63%
Other real estate	45.3	50%
1st mortgage	41.9	41%
Credit card	39.9	26%

This means that most credit union borrowers whose payments are delayed by the postal service are not faced with fees.

Furthermore, credit unions that charge fees for late payments tend to have extremely liberal grace

periods, otherwise known as late day allowances (these late day allowances essentially provide members with an "amnesty" period in which late payers are not charged fees.) **More than 96% of fee-charging credit unions give their members seven or more days to pay before imposing fees and more than 87% allow ten or more days prior to imposing late fees.** On average, credit unions allow their members' loan payments to be more than 14 days late before imposing fees.

	LATE-FEE-CHARGING CREDIT UNIONS		
Loan type	Average late day allowance	% of late fee-charging CUs with 7+ days late allowance	% of late fee charging CUs with 10+ days late allowance
Credit card*	16.0	N/A	88%
1st mortgage	15.0	99%	99%
Other real estate	14.8	98%	94%
Other unsecured	14.7	97%	90%
Used vehicle	14.7	97%	91%
New vehicle	14.4	97%	91%
Other loans	14.4	97%	90%

*7-day statistic not available for credit cards

Thus, even members who belong to credit unions that charge late-payment fees are unlikely to be charged when the U.S. mail service slows the receipt of payment.

As members of this Subcommittee are well aware, credit unions are not-for-profit, consumer-owned, financial cooperatives. Because of this relationship, credit unions consistently score high marks in service quality surveys. This suggests that most credit union borrowers "wronged" by slow postal service are likely to be accommodated by their credit union. Our philosophy is that each credit union belongs to its members, and it would be counterproductive, bad business, and contrary to its nature for a credit union to impose numerous and/or excessive fees upon its members.

Many of our state leagues collected specific examples from their member credit unions detailing how H.R. 1963 would adversely impact credit union operations:

- First Federal Credit Union, Tempe, Arizona

"Currently, we open payment envelopes with an electronic opener, an employee removes the contents, discards the envelope in the trash, posts the transaction, and stamps the received check "For Deposit Only." With a regulation like the one proposed, we would not use an electronic opener for fear of destroying the postmark, we would have to record the payor's name and account number on the envelope, we would have to either bundle it with the daily work or run copy on an optical disk for future reference, and we would have to attempt to read the postmark for the "proper" date of posting. Also, we would not be able to charge interest for the days the post office has the check, reducing our income....We are a relatively small credit union with less than 100 employees and we

project 2 additional employees plus a slower posting time for the current employees will cause an annual cost increase in the thousands."

- Fairwinds Federal Credit Union, Orlando, Florida

"The paperwork required would be monumental, not only in the time necessary to post a payment, but, the paperwork required by having to keep the envelope that hopefully would have a clear and readable postmark. As an example, a credit union our size forced to give the member credit for payment as of the postmark versus the date of actual receipt, this credit union would suffer a loss of approximately $73,000 per year based upon the loss of an average of three (3) days interest at an average of 9% on an average of $100,000 in payments processed during a one year period. This extra paperwork would require much more time to process and the added processing cost would be added to the cost of the transaction and passed on to the consumer."

- Federal Employees Credit Union, Kansas City, Missouri

"Our Credit Union's main office processes an average of 11,252 transactions (loan payments, deposits, etc.) via the mail each month. This accounts for approximately 10.3% of our total transactions. We have worked, over the past three years, to automate the processing of mail as much as possible. This has included the Credit Union purchasing loan coupon books for our members to use. The average cost of these books is $1.86 for a 48-month loan. What the coupons allow us to do is to separate incoming mail into two stacks -- one checks and the other coupons. Separate totals are calculated on each stack and balanced to each other. A machine then reads the preprinted information from the coupon to post to the members' account. This process takes approximately one tenth the time as posting transactions by hand. If we were required to post mail from the date of postmark, we would need to sort mail by postmark, then separate the coupons and checks and then post each batch separately, by hand. (The machine and program are not equipped to read postmarks, nor could they be.) Comparing a sampling of current process to what would happen under the proposed Act, we would need to add a half-time employee with yearly payroll expenses of $7,500 plus benefits. Posting mail by hand, not only increases costs, it also increases the chance for errors. Also, what happens when an envelope is received that has no postmark or the postmark is unreadable?"

- United Credit Union, Mexico, Missouri

"We give our members a 15-day grace period to protect them from delays in the mail and their credit report is not effected until they are over 30 days past due."

- Malheur Federal Credit Union, Ontario, Oregon

"I can foresee a tremendous amount of extra expense for us to comply with this Act. Our entire data processing system would have to be modified to allow for "effective dating" of payments. This would include receipt and transfer programs, data bases that store historical information, and statement information to name a few. Since we have designed and maintain our own system I estimate an expense of between $5,000 and $6,000 just to modify the programs. We would also have to begin storing all envelopes in some manner in order to prove when an item was postmarked in the event of a dispute. This would create additional time and expense."

- Big Spring T&P Federal Credit Union, Big Spring, Texas

"...[W]e have a total of 830 loans with an outstanding balance of $4,585,000. Of these loans over 300 are cash payments (not payroll deduction). Using an average we have estimated that the balance of these cash pay loans is approximately $1,835,000. If we have to credit the payment of these loans as of the postmark date rather than the actual date of receipt we could see a reduction in interest income for the credit union of as much as $1500.00 per month. The only way we could afford this type of lost income would be a reduction in our dividend rate to savers or a large increase in our interest rate we charge to the borrower's. Neither of the choices would be productive to the credit union nor the members of the credit union."

- Eddy Paper Employees, White Pigeon, Michigan

"We are a small credit union, with one employee, and open two days per week, in which we try to pack a weeks worth of service, loans, mail, cleaning, etc. This legislation would make it almost impossible for us to comply. We are unable to comment regarding fees because in no way can we afford to pay more hours. We would have to cut our service to our members in other ways."

A common theme running through these examples is increased costs. The unique structure of credit unions with members as equal owners, and no intervening stockholders to absorb costs, means that these costs would have to be passed on to *all* the members of a credit union.

To illustrate how the costs might increase, we assume that all member-borrowers will begin to pay on the due date (i.e., get their payment postmarked on the due date) to take maximum advantage of the proposed law's provisions. The CUNA Survey indicates that 32% of credit union members use payroll deduction at their credit unions. This means that approximately 68% of member-borrowers, holding about 24.8 million loans, might engage in this behavior. Credit unions would incur several financing-related costs. First, they would lose several days interest on the first "late" payment because interest charges would have to be calculated through the postmark date rather than the date of receipt. Second, since all payments would be several days "late," they would lose the opportunity to invest each and every receipt of principal and interest for several days.

Data from the National Credit Union Administration indicates that the size of the average outstanding credit union loan is $4,540. For illustrative purposes we assume the average loan has a three-year term at an average interest rate of 8.79% (i.e., the approximate rate on automobile loans), and that all loan payments are postmarked on the due date and received five days after the postmark date.

Given these assumptions, we find that the bill would cause credit unions to lose about $14.00 in interest income and foregone investment income over the life of each loan -- $4.67 per year for each loan. This translates to a total annual loss of about $116 million (i.e., $4.67 x 24,000,000 loans) in investment income (in an industry with only $310 billion in total assets).

Of course, credit unions will need to cover the costs they incur to comply with this proposed law. The increased costs that H.R. 1963 would create for credit unions, regardless of size, would be

passed on to the credit union members. One could argue that the most equitable way to cover costs would be to institute or increase loan origination fees and/or late fees. If this happens then H.R. 1963 would not save members of credit unions, or consumers in general, money. Rather, it would increase their costs of borrowing.

The American Heritage Federal Credit Union in Philadelphia determined that this legislation could cost them about $80,000 to $100,000 per year. This institution serves approximately 70,000 members; thus H.R. 1963 would add an extra dollar per year for each account at that credit union. Extrapolating from these findings would mean that every credit union member in the U.S., approximately 70 million, would incur an extra cost of $1. Thus, H.R. 1963 would cost the credit union movement about $70 million in compliance costs.

When investment costs and compliance costs are combined, the potential impact on credit unions would be $186 million ($70M + $116M), and these costs would be passed on to credit union members in the form of higher loan rates and lower dividends.

One final cost consideration involves the space needed to store envelopes. Additional time and cost of storage would be needed to either store or microfilm envelopes to verify when each payment was postmarked. At the very least a part-time employee would be required to handle storage and retrieval of the filed envelopes. The envelopes would have to be stored in the event a member questions the date of entry. This would necessitate extra storage boxes and space. The Federal Employees Credit Union in Kansas City stated, "Space requirements to house the envelopes would run, conservatively $15 per square foot."

At the Nest Egg Federal Credit Union, we have four different storage facilities which are geographically dispersed, and the cost of storage varies among each location. The increased costs of H.R. 1963 can be easily illustrated -- using the smallest storage compartments (approximately 5x5) for all locations, the prices would range from $25 per month to $50 per month. That translates into annual costs ranging from $300 to $600 per location or potentially $1200 to $2400 more annually. If stored for five years -- $6,000 to $12,000. We would certainly consider microfilming and/or additional insurance coverage for those locations (added expenses). These projected costs do not include the additional incidental costs of more materials used -- i.e., staples, storage boxes, envelopes, etc.

In summary, CUNA strongly opposes H.R. 1963. We believe that it is unnecessary for credit unions because most credit unions already provide some kind of grace period for late bills. Further, this measure would slow the processing of payments and add significant expense to credit unions and other financial institutions.

CUNA thanks the Subcommittee for this opportunity to provide our views on the provisions of H.R. 1963 and additional matters. We will be happy to provide further information and answer questions.

Mr. MCHUGH. We thank you for your timely comments.

Let me, before we go to our next presenter, acknowledge the presence of two more distinguished members of the subcommittee. We have been joined by another gentleman from New York, Major Owens.

Congressman, are there any opening comments you would like to make?

Mr. OWENS. No.

Mr. MCHUGH. And also the gentlelady from Florida, Carrie Meek.

Mrs. Meek.

Mrs. MEEK. Thank you, Mr. Chairman. I'm glad that you filed this bill, and I'm here to listen to comments and take both sides of the question.

Mr. MCHUGH. Thank you. I appreciate the gentlelady's interest, as always.

Next we have Mr. Joseph Bracewell, who, as I noted earlier, is chairman and CEO of Century National Bank. He is subbing, and we are happy he was able to join with us.

Mr. Bracewell, our attention is yours.

Mr. GREEN. Mr. Chairman.

Mr. MCHUGH. Yes.

Mr. GREEN. Before Mr. Bracewell starts, I have known not only Joseph, but his family, and his dad, Serce, for many years. Serce, his dad, was a former State senator in Texas years ago and literally a legend. So welcome to Washington.

Thank you.

Mr. BRACEWELL. Thank you, Congressman.

Mr. Chairman and members of the committee, I appreciate the opportunity to testify today and would like to just introduce myself again for the record.

I am Joe Bracewell, chairman of Century National Bank here in Washington, and also vice chairman of West University Bank in Houston. Both banks have less than $100 million in assets and have fewer than 50 employees. I am a board member of the Independent Bankers Association of America and a member of its Bank Operations Committee. As the chairman mentioned, I am subbing today for Lee Stenehjem, Jr., our president-elect, who is from North Dakota, and is snowed in there and couldn't attend because of a blizzard.

I am testifying this morning on behalf of a coalition of financial services organizations, including not only the IBAA but also the American Bankers Association, America's Community Bankers, the American Financial Services Association, the Consumer Bankers Association, Master Card International, and Visa USA. I would like to submit written testimony for the record and take just a few minutes to hit some high points, and, of course, would be happy to answer any questions.

Mr. MCHUGH. Without objection, the full statement will be submitted for the record.

Mr. BRACEWELL. Thank you very much.

Mr. Chairman, we, in the financial services industry, share the subcommittee's frustration with mail delays. However, H.R. 1963 is not the answer to the problem. This bill attempts to shift the bur-

den of creating an efficient mail system from the Postal Service to the marketplace. A more appropriate legislative response would focus on the Postal Service's basic processes and deficiencies.

We believe that the private sector already provides a significant amount of flexibility to deal with this issue and that a partnership of a legislative response dealing with the Postal Service and a free market response dealing with the flexibility and competition for individual customers is the best way to deal with this problem.

Proponents see this bill as helping consumers, and indeed it makes for good consumer rhetoric. However, consumer safeguards are already in place to protect consumers against uncontrollable delays. Equally important, costs to comply with the proposed legislation would be enormous, and these costs would be passed on to the consumer, as the previous witness described.

Most creditors already provide consumers with a generous grace period before late payment fees are assessed. For example, mortgage payments are typically due on the 1st of the month, but payment is considered timely as long as it is received by the 10th or 15th of the month. Most creditors try to be flexible to ensure that consumers' payments are deemed timely.

At my bank, we give a 10-day grace period for commercial and consumer loans and a 25-day grace period for credit card customers. Even then, we don't actually assess a late charge until 10 days later. If this bill were to be enacted, these policies would have to be reassessed and grace periods might be seriously curtailed.

Supporters of the bill allege that some unethical creditors deliberately delay crediting an account in order to impose additional charges. However, the Truth in Lending Act requires that payments be posted on the date of receipt. Failure to comply with this law, which is already on the books, could result in significant penalties.

Additionally, irregularities in postmarks would make compliance with H.R. 1963 very difficult. Postmarks are often illegible, and sometimes there is no postmark at all. It would be difficult or impossible to capture an accurate postmark in a large percentage of cases with today's scanning systems. Even if such systems were technically feasible, one must question whether mandating an increased investment in this technology is appropriate in light of the trend away from paper processing toward electronic payments.

The costs associated with this bill are enormous. The bill would mandate new storage requirements at a time when the industry is moving toward greater automation and reduced paper. When you add the additional employees and equipment cost, estimates climb to the tens of millions of dollars annually to comply with the proposed legislation. And all borrowers, not just the late payers, will end up paying the extra costs this bill will impose.

Mr. Chairman, H.R. 1963 would render today's expensive processing equipment virtually obsolete. Processing equipment would have to be invented and built to replace existing machines to process various sized envelopes and capture the postmark, at tremendous expense. Even without capital costs, the price of this legislation would be prohibitive. A recent survey of IBAA leadership bankers revealed that the additional cost for a community bank to process payments as required by this bill could range as high as

$120,000 per year. And this estimate does not include the cost of replacement technology.

In addition, creditors would have to adjust interest charges or late fees added to a consumer's account because of late payment. In most instances, these changes would have to be made manually. The bill appears to require that the balance be retroactively credited and finance charges recalculated. This is not only costly but unfair, because the money remains in the payer's account, possibly earning interest, until the payment is actually processed by the creditor.

Proponents of H.R. 1963 argue that the IRS already uses the postmark for the date of payment, so I would like to address that comment briefly. Although the provisions of H.R. 1963 may seem similar to the IRS's policy of accepting returns postmarked by the April 15 deadline, the situations are not comparable.

Since there is one annual deadline for filing tax returns, the IRS handles most returns within a time window of a few weeks. On the other hand, the billing cycles of private firms vary widely by the type of account and the individual customer. It would be impossible to establish a limited timeframe within which all payments can be processed according to postmark.

Moreover, the IRS processes about 115 million tax returns per year, whereas the financial services industry—just the financial services industry—processes more than 1 billion payments per month. In addition, it should be noted that the IRS does not offer any flexibility in its payment schedule, as creditors typically do.

In conclusion, Mr. Chairman and members of the committee, while we recognize that there is an appeal to H.R. 1963 because of its simplicity, there are unintended consequences and expenses, especially for consumers, that are masked by this simplicity. We believe this legislation is not needed, because existing industry practices already adequately shield consumers from the uncertainty of payment deliveries, in the form of grace periods and flexibility when payments do arrive late.

In conclusion, I would like to thank you, Mr. Chairman and members of the committee, for the opportunity to present the comments of the financial services industry on H.R. 1963. As I stated previously, I would be happy to answer any questions you might have.

[The prepared statement of Mr. Stenehjem follows:]

PREPARED STATEMENT OF LELAND M. STENEHJEM, JR., PRESIDENT, FIRST INTERNATIONAL BANK AND TRUST, FARGO, ND, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION, AMERICA'S COMMUNITY BANKERS, AMERICAN FINANCIAL SERVICES ASSOCIATION, CONSUMER BANKERS ASSOCIATION, INDEPENDENT BANKERS ASSOCIATION OF AMERICA, MASTERCARD INTERNATIONAL INCORPORATED, AND VISA U.S.A. INC.

Good morning, Mr. Chairman and Members of the Committee. I am Lee Stenehjem, Jr., President of the First International Bank & Trust, a $219 million community bank located in Fargo, North Dakota. I am also the President-elect of the Independent Bankers Association of America (IBAA). On behalf of the IBAA[1], the American Bankers Association (ABA), America's Community Bankers (ACB), the American Financial Services Association (AFSA), the Consumer Bankers Association (CBA), MasterCard International Incorporated, Visa U.S.A. Inc., and all of our members, I am pleased to present these comments on the Postmark Prompt Payment Act of 1995 (H.R. 1963).

Legislative Focus Misplaced

H.R. 1963 would mandate that late arriving bills be considered paid on the date that the payment is postmarked by the U.S. Postal Service, rather than the day payment is actually received. H.R. 1963 reflects a frustration with mail delivery delays, in particular with the late delivery of payments where late payment fees are imposed. In essence, the bill attempts to shift the burden of creating an efficient mail system from the Postal Service to the marketplace. This is almost impossible task because the Post Office has a monopoly on First-Class mail and only Congress has the ability to make substantial changes in its operations.

The financial service industry has diligently worked with the Postal Service to improve the postal system. ABA, for example, has representatives on the Postal Service's Mailers Technical Advisory Committee and has been represented on many ad hoc groups formed by the Postal Service to address efficiency issues. Nevertheless, mail delivery delays continue to be a problem. For example, the GAO reports that First-Class on-time delivery ratings based on the Postal Service's standards, have ranged from 79 percent to 84 percent during 1991 and 1994 (See Attachment A). This means that during those years, between 16 and 21 percent of our customer's payments were delivered late by the Postal Service standards.

We share the Subcommittee's frustration with mail delays. However, while we will continue to work with the Postal Service, any legislative response should focus on the Postal Service's basic process and deficiencies.

H.R. 1963, if adopted, would create a myriad of technical and logistical difficulties for the financial services industry. Proponents contend that this bill will help consumers. However, consumer safeguards are already in place to protect consumers against uncontrollable delays, which will be discussed later in the testimony. More importantly, costs to comply with the proposed legislation would be enormous and these costs would be ultimately be passed on to the consumer. Thus, enactment of H.R. 1963 would be expensive, anti-consumer, anti-productive, and create an unnecessary regulatory burden in the financial services industry.

Existing Grace Periods Address Mail Delays

Most creditors already provide consumers with a generous grace period before late payment fees are assessed. For example, mortgage payments are typically due on the first of the month, but payment is considered timely so long as it is received by the 14th or the 15th. Obviously, 14 or 15 days is sufficient to allow for consumer delays, legitimate problems in making the payment, and any problems with mail delivery.

At my bank, we have a ten day grace period for commercial and consumer loans and a 25 day grace period for credit card consumers. Even then, we don't actually assess a late charge until ten days later, making the effective grace period for credit cards, for example, 35 days. For many cardholders, this amounts to an interest free loan. If this bill were to be enacted, these policies would have to be reassessed and grace periods might be seriously curtailed.

Most creditors try to be flexible to ensure that consumers' payments are deemed timely, notwithstanding the vagaries of the mail system, customer delays, and legitimate problems in making the payment. Thus, creditors will often waive the penalty or interest if the consumer provides an adequate explanation for the delay.

Because creditors accommodate the occasional delays caused by the Postal Service by waiving late payment fees and making other appropriate adjustments, H.R. 1963 is largely not necessary for those instances. The bill will benefit those consumers whose payments arrive late because they wait until the last moment to send payment.

However, the benefit to this group of late payers is at the expense of the majority who mail payments on a timely basis. The majority of consumers will share the cost of the new payment processing systems in the form of higher fees and possible reduced or eliminated grace periods.

Supporters of the bill allege that some unscrupulous creditors deliberately delay crediting an account on the day of payment receipt in order to impose additional charges. However, under Section 164 of the Truth in Lending Act (Section 226.10 of Regulation Z), credit card issuers must post payment on the date of receipt. If creditors violate the Truth in Lending Act, significant penalties apply. In addition, there has not been any documented evidence to indicate that the financial services industry is guilty as charged.

Postmark Would Undermine Compliance

Irregularities in postmarks would make compliance with H.R. 1963 even more doubtful. Postmarks are often illegible due to multiple postmarks, misapplication, and the wear and tear of

delivery. In some cases, there is simply no postmark. Accordingly, it would be difficult or impossible to capture an accurate postmark in a large percentage of the cases under today's system

Metered mail presents additional obstacles. Although metered mail is exempt from the bill, some processing solutions envision capturing postmarks from all payments through imaging. However, metered mail postmarks are typically red--and red ink copies very badly if at all.

Accordingly, the bank would not be able to know the postmark date or whether it was metered mail. Clearly, unless the Postal Service develops a machine-readable postmark, H.R. 1963 will necessitate the reintroduction of expensive manual processing. Furthermore, there is the issue of payments mailed from outside the United States. Most foreign countries either do not postmark their mail, or do it in a different manner than the U.S. Postal Service.

Bill Would Impose Processing Problems

The costs associated with the bill are enormous. H.R. 1963 would impose significant costs on creditors and other entities and individuals collecting payments. The bill would promote inefficiency and mandate new storage requirements at a time when the industry is moving toward greater automation and reduced paper. When you add to the equation additional employees and equipment, the cost estimates are tens of millions of dollars annually to comply with the proposed legislation. All borrowers will end up paying the extra cost this bill would impose.

Most creditors use some kind of automated system for part or all of the process, although my bank does partially processes payments manually. Automated equipment performs many of the steps, ensuring speedy processing and crediting for bank customers as well as reduced processing costs. H.R. 1963 would compromise the efficiency of today's as well as the future's automated payment processing systems.

The extra processing steps required by H.R. 1963 would be a continuing expense. At this time, Mr. Chairman, I would like to walk you through a step by step example of a common processing procedure. First the envelope is manually opened (larger financial institutions machines cut open the envelopes). The contents are then removed (larger financial institutions actually have machines that vacuum out the contents) and the envelope is discarded. The remittance statement is then fed into a high speed reader that captures the essential data--the customer's name, account number, amount due, amount paid, a due date, etc.--by reading the specially encoded remittance statement. The only information that may not be captured automatically is the payment amount if it varies from the scheduled or minimum payment. In this case, the amount paid may have to be entered manually.

Under the proposed bill, payment collectors would have to capture the postmark by reading the postmark, or retaining the envelope or its image. The postmark would have to be captured for all payments because the "late payment process" is not performed until later in the sequence. With most systems, the envelope and remittance statement would have to remain together or somehow be rejoined. We are not aware of any machines at this time that can process envelopes or read postmarks in this way.

In addition, creditors would have to adjust interest charges or late fees added to a consumers account because of late payment. In most instances these changes would have to be made manually. The bill appears to require that the balance be retroactively credited and finance charges recalculated. This is not only costly, but unfair: the creditor would be required to give credit to a customer--not only before the creditor receives the funds, but even before it receives the check. The bill would create a government mandate forcing creditors to give late-paying borrowers interest free loans.

Legislation Would Make Equipment Obsolete

In the alternative, processors could hire people to open each payment, compare dates on the postmark and the invoice, then separate late payments and process them manually. Obviously this solution renders most automated equipment (e.g. envelope openers, etc.) obsolete. In addition, the creditors incur substantial costs to cover new employees.

Mr. Chairman, the bill would render today's expensive processing equipment virtually obsolete. Processing equipment would have to be invented and built to replace existing machines, or retrofit existing ones, if feasible, in order to process various sized envelopes and to capture the postmark.

For example a recent survey of the IBAA leadership (approximately 200 community bankers) showed the cost estimates for processing payments as required by this bill ranging up to $120,000 per year. This estimate does not include the cost of the replacement technology. There is also an estimated 510 billion active payments mailed per year for consumer loans, consumer insurance, and utilities.[1] Based on $0.20 (this amount does not represent any actual or estimated increase in cost, but is only used for purposes of demonstration) the additional processing costs for these consumer payments alone is over $10 billion per year -- and this represents just the tip of the iceberg. The number increases dramatically when you add up the billions of payments made by both individuals and companies each month such as rent payments, commercial loans, condominium fees, and health club payments.

[1] Based on studies completed for the U.S. Postal Service estimating the distribution of annual household payments by method of delivery.

Legislation Would Have Negative Effects on Student Loans

H.R. 1963 would also affect federally-supported student loans, making the servicing of such loans more complicated and expensive. Under the principal federally-supported student loan program, the Federal Education Loan Program, or FELP, over six million loans are made each year to students and their families. Well over two million loans go into repayment each year.

FELP loans are heavily regulated by the Department of Education in terms of how interest is charged to the borrower and how lenders and other holders charge the Department for interest subsidies paid on behalf of borrowers. H.R. 1963 would insert a new, largely unnecessary wrinkle in both of these areas, adding an expensive new verification process to servicing of student loans.

The significant problem of deciphering postmarks and handling the inevitable borrower inquiries would drive up servicing costs at a time when Congress is attempting to hold back the cost of student loans to borrowers and taxpayers. Importantly, because the maximum borrower interest rate on student loans is specified by statute, lenders and holders would not have the option to pass increased costs on to the borrowers. The net effect will be to further tighten yields on student loans, possibly leading to additional lender to withdraw from the program.

The problem of smeared, unreadable postmarks and responding to borrower inquiries will also affect the Federal Direct Student Loan Program, under which the government funds student loans. These so-called Direct Loans are serviced by some of the same private-sector companies most active in the private-sector based FEL program.

IRS Processing Differs Greatly

Proponents of H.R. 1963 argue that the Internal Revenue Service (IRS) already relies on the postmark for date of payment. Although the provisions of H.R. 1963 may seem similar to the IRS's policy of accepting returns postmarked by the due date, the situations are not comparable. Since there is a single deadline for most tax returns, April 15, the IRS handles most returns within a time frame of a few weeks. Those returns that arrive after April 15 can be processed by hand during within a few days. On the other hand, the billing cycles of private businesses vary widely by type of account and by individual customer. It would be impossible to establish a limited time window within which all payments can be processed according to postmark. Moreover, the IRS processes about 115 million returns per year. The financial services industry and similar entities process payments in excess of one billion transactions per month.

Impact on Securities Firms

The presumption that payments are received on the date they were postmarked would appear to create a number problems for firms engaged in the securities brokerage business.

Securities broker-dealers are subject to statutory and regulatory requirements establishing transaction time frames that are inconsistent with the presumption of receipt established under H.R. 1963.

Pursuant to the Securities Exchange Act of 1934, the Board of Governors of the Federal Reserve System has established requirements for extensions of credit to customers through margin accounts. Under Regulation T (12 C.F.R. Section 220.1 et seq.), a deficiency in a margin account must ordinarily be satisfied within 3 business days after the deficiency was created (e.g., by a securities purchase order) by "receipt of funds or securities." If the deficiency is not satisfied within this period, the broker dealer is required to liquidate securities in the customer's account to cover the amount of the deficiency, and thereby to reduce the amount of credit that is extended to the customer.

H.R. 1963, by deeming that a payment is received on its postmark date, not on the date that the funds or securities are received, would establish an inconsistent requirement that is particularly worrisome in an environment when the value of the payment itself continually fluctuates. While the customer's payment on a securities transaction may not be received for several days after a transaction was executed, the Act would deem the payment to have been made on the date it was postmarked, creating uncertainty as to the value which must be credited to the customer's account. A change from receipt date to postmark would also affect the customer's responsibility for late payment fees which are currently imposed on the basis of the payment receipt date, not its posting date.

Finally, the use of payment postmark dates would affect securities firms' ability to comply with the requirement that they obtain permission from the Federal Reserve Board to extend credit for an additional period of time if they have not received settlement on transactions within 7 days. While payments that are in the mail may be deemed to have been received under H.R. 1963, the firm does not in fact have them or know that they have been mailed, and would therefore be required to seek permission to continue extending credit to the customer.
The new accounting and record keeping requirements that would be engendered by this requirement would be costly.

We are aware of no evidence that existing practices of securities firms with regard to payments sent through the mail are harmful to consumers. These practices have been established in accordance with requirements established by, and monitored by, the Securities and Exchange Commission, The Federal Reserve Board, state securities regulators and industry self-regulatory organizations. Transactions subject to these requirements should not be subject to inconsistent standards established by the Postal Service.

Conclusion

There is an appeal to H.R. 1963 because of its simplicity. However, the unintended consequences and expenses -- and ultimate burden for consumers -- is masked by this simplicity. We believe this legislation is not needed because existing industry practices already adequately shield consumers from those uncertainties in the form of grace periods and flexibility when payments do arrive late.

On behalf of the IBAA, ABA, ACB, AFSA, CBA, Visa U.S.A., and MasterCard International Incorporated, I would like to thank Chairman McHugh and the Committee for the opportunity to present our comments on H.R. 1963.

I would be happy to answer any questions you might have.

1. These organizations are represented in the testimony are:

The Independent Bankers Association of America is the only national trade association that exclusively represents the nations community banks. The IBAA is an organization of independent banks, locally owned and operated, dedicated to meeting the financial needs of their communities. Its membership includes approximately 5,500 financial institutions in all fifty states and the District of Columbia.

The American Bankers Association is the only national trade and professional association serving the entire banking community from small community banks to large bank holding companies. ABA members represent about 90 percent of the commercial banking industry's total assets, and about 94 percent of the ABA members are community banks with assets less than $500 million.

America's Community Bankers is the national trade association for 2,000 savings and community financial institutions and related business firms. The industry has more than $1 trillion in assets, 253,000 employees and 14,500 offices. ACB members have diverse business strategies based on consumer financial services, housing finance and community development.

The American Financial Services Association is the trade association for a wide variety of market-funded providers of financial services to consumers and small business. AFSA members are important sources of credit to the American consumer, providing approximately 15 percent of all consumer credit.

Consumer Bankers Association was founded in 1919 to represent retail banks nationwide Today, it represents approximately 750 federally insured bank holding companies, banks, and thrift institutions that hold nearly 80 percent of all consumer deposits and more than 70 percent of all consumer credit held by federally insured depository institutions. CBA's focus is on retail issues, including deposits, investment, lending products and services. Its membership includes bank holding companies, regional, super-regional, and money center banks, and community banks and thrifts.

Visa U.S.A. Inc. is a membership association comprised of financial institutions in the United States which are licensed to use the VISA service marks in connection with payment systems, including credit cards.

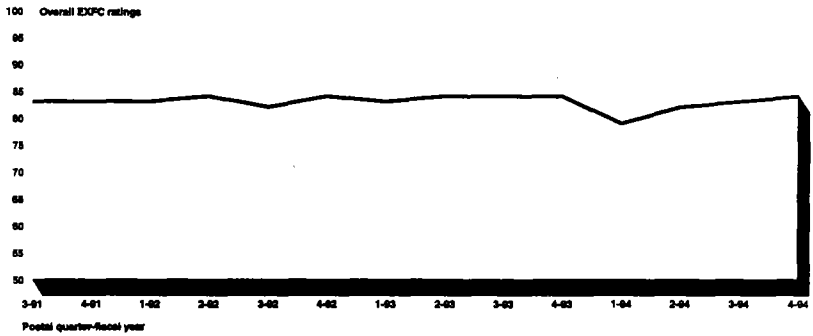
MasterCard International Incorporated is a membership organization comprised of financial institutions which are licensed to use the MasterCard service marks in connection with payment systems, including credit cards.

Exhibit 14

than residential customers and if business customer satisfaction has improved since it was first measured in early 1994.

EXFC data show that the national rating for on-time delivery has yet to exceed 90 percent, even though the Service's goal is to deliver all First-Class mail on time 95 percent of the time. As indicated in figure 3.2, EXFC ratings have ranged from 79 to 84 percent nationally for the 14 quarters ended September 1994, with a rating of 83 percent reported for postal quarter 4, 1994.

Figure 3.2: External First-Class On-Time Delivery Ratings Have Ranged From 79 to 84 Percent During 1991 Through 1994



Source: EXFC System, U.S. Postal Service

The national EXFC rating was 87 percent for postal quarter 4, 1995, ending in May 1995. This was the highest national EXFC rating ever reported by the Postal Service.

We also reviewed CSI and EXFC data to determine the number of metropolitan areas that had higher and lower ratings during postal quarter

Responses to questions
regarding H.R. 1963 from
John M. McHugh, Chair
Subcommittee on the Postal Services
from
Mr. Joseph Bracewell,
Chairman and CEO
Century National Bank

1. Assuming a bill payer has timely mailed his or her payment, how should a consumer protect himself from incorrectly assessed late fees and penalties?

Bill payers today have more than adequate time to mail payments so that they arrive on time. Consumers are informed well in advance of payment due dates, and, in addition, are given extra time beyond the due date in the form of grace periods. Creditors provide grace periods as a customer courtesy and to allow time for mail delivery. The grace periods, usually between 10 and 30 days in length, are more than long enough to allow for average mail delivery times to ensure timely delivery to the creditor. Thus, consumers who mail in a "timely" fashion, i.e., in sufficient time to allow for normal mail delivery times, generally will not incur a late payment fee. Nevertheless, even if a consumer fails to allow enough days for postal delivery, most creditors will forgive late payments if the consumer explains the reason for the late arrival.

If a consumer believes that a late payment fee or any other fee has been imposed incorrectly, pursuant to the Truth in Lending Act, the consumer may dispute the charge and have the fee removed or refunded.

A. Is the consumer notified in his bill regarding the assessment of such fees or penalties? Does such notification contain any explanation as to their recourse to dispute these charges? Under what circumstances will a creditor waive the penalty or interest if the consumer provides an adequate explanation for the delay?

Late payment penalties are included in the periodic statements of open-end credit plans during any month a fee is assessed. Most closed-end loans include a notice of the amount of a late payment penalty with the coupon. In addition, consumers must be advised of late payment penalties at the time they open the account. These disclosures must be in writing and in a form that the consumer can keep.

For open-end credit such as credit cards, a statement explaining the consumers right to dispute charges and other billing rights must be provided

annually, or in the alternative, on each periodic statement. Most credit card plans provide the notice on each periodic statement.

Because of competitive pressures and customer relations considerations, creditors usually waive late payment fees as a matter of policy if the consumer provides an adequate explanation for the delay. Decisions may also be based on the length of the lateness and the frequency of the individual borrower's tardiness.

2. Do the members of the associations you represent offer customers a grace period? Please provide for the Subcommittee the length of time for such grace periods and the circumstances under which they are offered, and can be modified. Have any of your members eliminated or reduced the length of time provided under those grace periods in the last year?

Most creditors permit grace periods for both open and closed end credit. For open-end credit such as credit cards, the usual grace period is 25 to 30 days. Typical mortgage plans permit 15 days grace period. Other consumer loans allow 10 days. Overall, creditors have not reduced grace periods in the last year. Due dates may be modified at the consumers' request to a date most suitable for them.

A. Should H.R. 1963 exempt from its coverage those creditors which offer their customers grace periods?

Exempting creditors offering grace periods from H.R. 1963 coverage is not a solution. First, customers will be confused about which bills are subject to the mail date rule and which are not. Second, this approach does not solve the problem the Subcommittee is seeking to correct: late payments due to mail delays. Even with a grace period, customers will still depend on the postal service to deliver the payment in a timely fashion, that is, before the date the creditor considers it to be late and subject to a late payment charge. Moreover, most late payments today are by individuals who mail at the last minute. Whether there is a grace period or not, they will continue to mail without allowing sufficient time for mail delivery.

B. In an average month, what percentage of accounts incur late fees or penalties? How do your members structure the imposition of late fees or penalties? For example, are fees assessed as percentage of payment or balance due, or are such assessed fees a fixed dollar amount?

The percentage of accounts that incur late fees or penalties varies depending on the institution, loan type, region, and economic conditions. Penalty fees are based on a percentage of the loan or a fixed amount, depending on the state, creditor, and loan type. The amount of any late payment fee or how it is calculated is disclosed to consumers at the time the account is opened.

3. Do creditors incur any additional costs in handling late payments? If so, could you please provide the Subcommittee the nature of those additional costs. Is the collection of assessed late fees or penalties a profit source for your members? What percentage of total revenues does the collection of late fees and penalties?

Creditors do incur additional costs in handling late payments: personnel costs for manual handling and reviewing accounts and other costs. Late fees help to offset other costs associated with delinquent payments including the cost of collection efforts and losses from unpaid loans. Only about five percent of total bank revenues are derived from service fees, such as late penalty fees. Late penalty fees make up a very small portion of this five percent.

4. Of the payments received late, what is the pattern of late payments in terms of number of days late? If a standardized grace period were imposed, how long should it be in order to avoid the imposition of late fees and penalties?

We do not have industry figures for the average period payments are late. Grace periods should not be mandated as such a mandate will have no affect on late payments and late payment fees. Whether grace periods are voluntary or mandatory, payments mailed too close to the end of the grace period or delayed by the Postal Service will still arrive late. Late payments are typically only a problem for those who risk mailing late i.e., they mail too close to the end of the grace period. These borrowers will continue to mail late, whether the grace period is legislatively mandated or voluntarily provided as it is today. The other cause of late payment is mail delivery delays. They will also continue to be a problem regardless of whether grace periods are mandatory or voluntary; payments will still arrive after the date payments must be received to avoid a late payment fee.

5. Some have argued that H.R. 1963 would encourage bill payers to wait until the date the bill is due before posting it. Would this consumer behavior cost your membership? If so, how much and in what ways?

We expect that there would be some customers who would wait until the due date to mail payments. Creditors would forfeit some interest in this case, but would probably offset it with shorter grace periods.

6. Some creditors will receive payments in person at a retail site; however, the consumer's account is not credited until the bill is received at the processing site. Do your members engage in this practice? Why shouldn't consumer accounts be promptly credited when paid at the retail site?

Most financial institutions require payments to be mailed to a specified address, usually a processing center which may be internal or an external outsourced destination. However, if payments are accepted at the branch or retail location, they are generally posted upon receipt at that location. Using processing centers is far more efficient and drastically reduces payment processing costs, especially for small institutions that otherwise lack economies of scale. Requiring that creditors accept payments at any branch or retail location would in many cases create confusion, delays, and additional costs, to the detriment of consumers.

7. To what extent do your members currently process their payments manually?

Most institutions use automated systems for at least part of their payment processing. Some of the largest institutions are fully automated though many institutions are only partially automated. Some small institutions continue to use manual systems, though they are moving toward automation.

8. How do you address discrepancies between the amount owed and the amount paid in the bill?

Creditors post the amount paid. If the amount paid is less than the minimum amount due, they notify the customer of the discrepancy and request the balance due.

Mr. MCHUGH. Thank you very much, Mr. Bracewell, for your comments.

Moving next to Mr. Mallory Duncan, vice president and general counsel for the National Retail Federation. Welcome.

Mr. DUNCAN. Good morning, Mr. Chairman and members of the committee. The NRF appreciates the opportunity to appear before the subcommittee to present the retail industry's views on H.R. 1963. I will summarize our written testimony. We also ask that the full text of our remarks be included in the record of this proceeding.

Mr. MCHUGH. Without objection, so ordered.

Mr. DUNCAN. By way of background, the National Retail Federation is the world's largest retail trade association, with membership that includes the leading department, specialty, discount, mass merchandise and independent stores, as well as 32 national and 50 State associations. Many of our members issue store label or retail credit cards. Collectively, the companies we represent extend retail credit to tens of millions of consumers.

H.R. 1963, however well-intentioned, would have a serious adverse effect on credit card issuers' ability to continue to extend credit in an efficient, cost-effective manner. This proposal will create difficulties and unfairness for businesses and for consumers.

The genesis of this proposal is talk-show host Bruce Williams. In his testimony before the subcommittee in October, Mr. Williams implied some credit grantors might be intentionally delaying posting of payments to customers' accounts in order to collect additional charges, but he mentioned no examples, nor did he indicate that retailers engage in this practice. But his proposed solution, embodied in H.R. 1963, would harm us, nonetheless.

I would like to make four points: First of all, this legislation puts the cart before the horse. We are here today talking about a solution to a problem for which no one has determined the cause. Now, Mr. Williams has often referred to the use of the April 15 postmark by the IRS.

Mr. MCHUGH. Excuse me, Mr. Duncan, may I interrupt you?

Mr. DUNCAN. Certainly.

Mr. MCHUGH. I apologize. I've never done this. But are you summarizing the testimony that you submitted to the subcommittee?

Mr. DUNCAN. Yes, I am.

Mr. MCHUGH. I don't find what you're saying anywhere in here, and I didn't find it last night when I read it. Yes, sir.

Mr. DUNCAN. I think the very next comment was taken literally from that testimony, if I may continue.

Mr. MCHUGH. Well, the problem is, we don't have the testimony.

Mr. DUNCAN. Rather than repeating the testimony verbatim, I'm trying to summarize it for you. If you'd like, I'll read my testimony directly.

Mr. MCHUGH. No, that's not necessary. As I said, I'm just trying to follow and understand where we are in the presentation. But please continue.

Mr. DUNCAN. Mr. Williams, as I was saying, has often referred to the use of the April 15 postmark by the IRS to establish the timely filing of individuals' tax returns with the Federal Government. That example seriously overextends the analogy. Virtually

all individual tax returns are due on the same date. Those received within a relatively short window after April 15 can be hand-sifted for timeliness without the IRS incurring an expensive ongoing obligation.

The same is not true for retailers. Rather than a single or a few yearly dates, credit card accounts are on billing cycles with different due dates for different consumers throughout every month. This spreads the workload burden more evenly and allows consumers' credit card payments to be processed more efficiently. Indeed, in some cases, as a service, customers are allowed to choose their payment date.

These processes preclude the establishment of a limited time window within which all payments must be received. This bill would require credit grantors to be continually on the lookout for payments that would be late but for an early postmark.

Second, we are not holding up checks. Retailers want the checks they receive to clear as soon as possible. Many arrange for expedited delivery of their mail from the destination post office and make as many as five trips per day to pick up payments. To speed the process and to reduce costs, retailers minimize the manual handling of payments. Automated equipment does virtually everything.

However, under this bill, absent manual sorting of every letter, a retail card issuer would not know that a payment was late until after the retailer's equipment had opened the envelope, removed the contents, and sent the payment and statement through its automated processing and billing systems. By that time, the envelope would be long gone.

Thus, the bill would require the creation and purchase of new systems that would read the postmarked envelope and link that information with the payment data so that it could be used in the event the payment was delivered late. This would be an extraordinarily costly burden to impose on consumer credit, even if the equipment were immediately available.

But as expensive as the creation and purchase of new equipment would be, manual processing would be even worse. Some of NRF's members process more than half a million customer payments every business day. The vast majority of those payments are timely. To slow those operations, in order to manually sort for postmark data on those consumers who pay their bills at the eleventh hour, would penalize the millions of consumers who pay their bills on time, by raising the costs and hindering the processing of everyone's account.

Mr. Chairman, members of the subcommittee, if I may digress for just one moment, consider what manual processing would involve. You simply do not process 30,000 payments an hour by picking each one up, opening it, and trying to extract the payment inside, the check, comparing that with the date, the postmark date on the envelope, and make a judgment as to its timeliness, at least not without hiring hordes of people or creating unconscionable delays.

Third, the bill is counterproductive. Ironically, it could actually encourage individuals to pay late by guaranteeing them the financial float without risk for that delay. Congressional endorsement of

this delay is particularly troubling in view of the efforts many retailers make to provide a postal grace period between their payment due date and the date on which the customers' next statements are prepared.

Retailers bear the cost of carrying financing for goods they sell and, in many instances, already provide customers with an extended grace period before their first payment is actually due. For the subcommittee to extend this period even further and to require retail credit grantors to invest millions of dollars in not-yet-developed equipment, ostensibly as a benefit to a small percentage of consumers who pay late, is, as I said, counterproductive.

The likely result of the subcommittee's action will be to dampen credit availability, to raise the cost of credit, to raise the cost of merchandise, and to shorten or eliminate grace periods.

Fourth, regulating retailers is not the solution to mail delays. The actual target of H.R. 1963 may be the Nation's mail delivery system, but the U.S. Postal Service is not the agent of the retail card issuer. Retail credit grantors cannot force the Service to provide faster delivery.

Despite its claimed quasi-independent status, the U.S. Postal Service is ultimately beholden to the Federal Government. The Government appoints its Board of Governors, scrutinizes its costs, regulates its operations, and has oversight of its successes and failures. If the Federal Government wants to speed up the mail, it should do so directly. Retail card issuers should not be held hostage as the putative means to an end they cannot control.

In conclusion, there are numerous practical and complex technological difficulties with this proposal. For example, the fact that large numbers of postmarks are unreadable, because they are faint, obliterated, or nonexistent, would make the bill literally unworkable for all those transactions.

Just one final observation: A tray of mail from the Postal Service contains 1,300 envelopes. It took us 33 minutes just to manually sort it by postmark. More than 1 percent of the postmarks were nonexistent. A moderate-sized retail credit processing operation regularly receives 40-plus trays of mail a day. Thus, it would take an individual 20-some hours of nonstop sorting just to read the postmarks in 1 day's mail, and there would still be half a tray of unreadable mail at the conclusion. A large retailer would have ten times as much. H.R. 1963 is not the right approach.

We appreciate the opportunity to express the views of the National Retail Federation. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Duncan follows:]

NATIONAL RETAIL FEDERATION

Testimony of
Mallory B. Duncan
Vice President, General Counsel
National Retail Federation

on

H.R. 1963, Postmark Prompt Payment Act of 1995

The Subcommittee on the Postal Service
of the Committee on Government Reform and Oversight
February 28, 1996

The National Retail Federation appreciates the opportunity to appear before the Subcommittee to present the retail industry's views on H.R. 1963, the "Postmark Prompt Payment Act of 1995."

By way of background the National Retail Federation is the world's largest retail trade association with membership that includes the leading department, specialty, discount, mass merchandise and independent stores, as well as 32 national and 50 state associations. NRF members represent an industry that encompasses over 1.4 million U.S. retail establishments, employs nearly 20 million people, 1 in 5 American workers, and registered 1995 sales of more than $2.2 trillion. NRF's international members operate stores in more than 50 nations.

The World's Largest Retail Trade Association
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Many of our members issue store label (or "retail") credit cards. Collectively, the companies we represent extend retail credit to tens of millions of consumers.

H.R. 1963 would provide that the U.S. Postal Service postmark stamp date would be the presumed date of receipt whenever a mailed payment actually was delivered after the time prescribed for payment. The proposal advanced in this bill, however well intentioned, would have a serious adverse effect on credit granting retailers' ability to continue to extend that credit in an efficient, cost effective manner. This proposal will create difficulties and unfairness for businesses and for consumers.

The genesis for this proposal appears to be the use of the April 15 postmark to establish the timely filing of individuals' income tax returns with the federal government. H.R. 1963 seriously overextends that analogy. Virtually all individual tax returns are due on the same date. Those received within a relatively short, several day window after April 15 can be hand sifted for timeliness without the Internal Revenue Service incurring an expensive on-going obligation. Furthermore, the U.S. Postal Service (and its predecessor the Post Office) is, in all respects, the federal government's agent for the receipt of tax returns. Delivery to one arm of the government is tantamount to delivery to the other, just as delivery of a cash payment at a utility company's service window is presumptive of payment to its back office financial operations. The speed with which the payment is actually delivered is a matter under the principal's direction, whether it be the government

or the utility company. This is not true in the case of mailed retail credit card payments.

Rather than a single date, credit card accounts are on billing cycles with different due dates for different consumers throughout the month. This spreads the workload burden more evenly and allows consumers' credit card payments to be processed more efficiently. Indeed, in some cases customers are allowed to choose their payment due date. However, this precludes the establishment of a limited time window within which all payments must be received. H.R. 1963 would require credit grantors to be continually on the lookout for payments that would be late, but for an early postmark.

The slowing in the processing of consumers' payments that this legislation could entail is directly contrary to retailers' efforts to speed up their receipt of customers' payments. Retailers want the checks they receive to clear as soon as possible. Many arrange for expedited delivery of their mail from the destination post office and make as many as five trips per day to pick up payments. Federal law requires that those credit card payments be credited on the day received. Automation facilitates this process.

To reduce the cost of credit, with rare exceptions, the manual handling of customer payments is minimized. Automated equipment does virtually everything. However, under H.R. 1963, absent manual sorting of every letter, a retail card issuer would not know that a payment was "late" until after its equipment had

opened the envelope, removed its contents, and sent the payment and statement through its automated processing system. The envelope would have long before been disposed. Thus H.R. 1963 would require industry to create, and card issuers to buy, new systems that would read the postmarked envelope and link that information with the payment data so that it could be used in the event the payment were determined to be late. This would be an extraordinarily costly burden to impose on consumer credit.

Expensive as the creation and purchase of new equipment would be, manual processing would be an even worse alternative. Some of NRF's members process more than one half million customer payments every business day. The vast majority of those payments are timely. To slow those operations in order to manually sort for postmark data on those consumers who pay their bills at the eleventh hour would penalize the millions of consumers who pay their bills on time by raising the cost and hindering the processing of everyone's accounts.

Ironically, despite the extra costs it would impose upon the system, and thus on timely payers, H.R.1963 effectively would reward those consumers who pay late by guaranteeing them the financial "float" without risk for their delay. This could actually encourage individuals to pay late. Congressional endorsement of this delay is particularly troubling in view of the efforts many retailers make to provide a postal grace period between their payment due date and the date on which the customers' next statements are prepared. For example, if a customer's statement is

prepared on the first of each month, the customer might be given a "due date" of a few days before the end of the prior month. That allows additional time for any delays in postal delivery and for the processing of the payment prior to the customer's next statement date.

However, if the payment is not received by the first of the month, H.R. 1963 would leave the retail card issuer with a dilemma. How could it accurately assess and convey the status of the customer's account? Customers who timely pay their bill in full each month are not assessed a finance charge. A charge is assessed for payments received after the due date and any additional grace period the card issuer provides. By encouraging customers to pay at the last moment, H.R. 1963 would further complicate payment processing by requiring issuers to retroactively credit late payments as if they had been received on time.[1]

Retailers bear the cost of carrying financing for the goods they sell and, in many instances, those who offer credit have already provided customers with an extended grace period before their first payment is due. For the Subcommittee to extend this period even further and to require retail credit grantors to invest millions of dollars in not-yet-developed equipment ostensibly to benefit the small

[1] In addition, suppose a customer has a $1,000 line of credit of which $200 has been used. The retail card issuer would like the customer to have the maximum purchasing ability commensurate with his or her ability to pay. Should the credit grantor issue a billing statement that assumes the retailer will receive the customer's payment? And how much should it assume the customer plans to pay? How much credit should it tell the customer he or she has available? Would the customer's next finance charge-free grace period be shortened or would her billing cycle have to be changed each time she was "late." At what point could the creditor begin collection activities or report a nonpayment to a consumer reporting agency?

percentage of consumers who pay late, is counterproductive. The likely results of the Subcommittee's action will be to dampen credit availability, to raise the cost of credit, to raise the cost of merchandise, to shorten grace periods and/or to encourage the replacement of retail credit cards with third party cards, debit cards and checks.

Members of the Subcommittee should not overlook two significant advantages of the current system - customers are given a long period in which to arrange for timely mailing of their bills and the delivery of those payments is an "event certain" for processing purposes.

Of course the actual target of H.R. 1963 may be the nation's mail delivery system. But the U.S. Postal Service is not the agent of the retail card issuer. Retail credit grantors cannot force the Service to provide faster delivery. Despite its claim to quasi-independent status, the U.S. Postal Service is ultimately beholden to the federal government. The government appoints its Board of Governors, scrutinizes its costs, regulates its operations and has oversight of its successes and failures. If the federal government wishes to encourage faster delivery of the mail, it should do so directly. Retailer card issuers should not be held hostage as the putative means to an end they cannot control.

Clearly, there are numerous practical and complex technological difficulties with this proposal, many that we have not addressed. The fact that large numbers of postmarks are unreadable, because they are faint, because they are obliterated

by the stamp, or because they are completely non-existent, and thus would make the bill unworkable for millions of consumer transactions is just one example.

We appreciate the opportunity to express the views of the National Retail Federation. I would be happy to answer any questions you might have. Thank you.

Responses to questions in writing regarding H.R. 1963
by John M. McHugh, Chairman
Subcommittee on the Postal Service from
Mallory Duncan, Vice President and General Counsel
National Retail Federation

1. ASSUMING A BILL PAYER HAS TIMELY MAILED HIS OR HER PAYMENT, HOW SHOULD A CONSUMER PROTECT HIMSELF OR HERSELF FROM INCORRECTLY ASSESSED LATE FEES AND PENALTIES?

Answer: If a consumer has mailed his or her payment so that it is timely received by the retail credit grantor and a late fee for that payment is nevertheless incorrectly assessed, then a billing error has occurred. That same statement on which the consumer is billed for the erroneous late fee will also contain the cardholder's billing rights summary. This summary explains the cardholder's recourse, under the Fair Credit Billing Act, to dispute erroneous fees. The cardholder should write to the address provided with an explanation as to why the fee is unwarranted. In many cases the dispute may also be addressed by telephoning the card issuer's customer service center.

1A. IS THE CUSTOMER NOTIFIED IN HIS BILL REGARDING THE ASSESSMENT OF SUCH FEES OR PENALTIES? DOES SUCH NOTIFICATION CONTAIN ANY EXPLANATION AS TO THEIR RECOURSE TO DISPUTE THESE CHARGES? UNDER WHAT CIRCUMSTANCES WILL A CREDITOR WAIVE THE PENALTY OR INTEREST IF THE CONSUMER PROVIDES AN ADEQUATE EXPLANATION FOR THE DELAY?

Answer: As was mentioned above, the assessment appears on the monthly statement along with an explanation as to recourse. If the late fee was not assessed in error, but rather was assessed as a consequence of delayed mailing of the customer's payment, then the determination as to whether fees will be waived depends upon the explanation of the delay and other factors relating to the customer's circumstances. For example, if there has not been a history of late payments on the account, many retail credit grantors will remove the fees immediately upon request. Some credit grantors will routinely halt late fee assessments when unusual weather-related delays (hurricanes, blizzards, floods and so forth) are known to have adversely affected the ability of customers to obtain timely mailings. In general, retailers are very responsive to their charge card customers' requests.

RESPONSES TO WRITTEN QUESTIONS REGARDING H.R. 1963
BY MALLORY DUNCAN, NATIONAL RETAIL FEDERATION

2. DO THE MEMBERS OF THE ASSOCIATIONS YOU REPRESENT OFFER CUSTOMERS A GRACE PERIOD? PLEASE PROVIDE FOR THE SUBCOMMITTEE THE LENGTH OF TIME FOR SUCH GRACE PERIODS AND THE CIRCUMSTANCES UNDER WHICH THEY ARE OFFERED, AND CAN BE MODIFIED. HAVE ANY OF YOUR MEMBERS ELIMINATED OR REDUCED THE LENGTH OF TIME PROVIDED UNDER THOSE GRACE PERIODS IN THE LAST YEAR?

Answer: Retail credit grantors operate differently than some other credit grantors. The phrase "grace period" can refer to a number of different intervals. For example, a customer with no outstanding balance on his or her charge card may purchase merchandise in early July for which no billing statement is received until August. If the customer pays his or her bill in full by the late August due date, the customer will owe no finance charges on the purchase even though the customer has been extended credit and may have had the use of the merchandise for more than a month. This finance charge free interval between billing and the due date is often referred to as a "grace period." Many retail credit grantors also have what is in effect an additional *postal* grace period between the due date and the date on which the account is actually next billed. This "grace period," typically between two and four days, accommodates mail delays sometimes encountered by customers who have sent their payments a reasonable period in advance of the due date. Some retail credit grantors backdate payments by a day (the overstuff date) creating what is in effect another grace period. Finally, there may be an additional period between the statement date (i.e. the end of the postal grace period) and the date that a late charge is assessed. This *late fee* grace period, typically ten days -- although it may be as few as one or as many as sixty days depending upon competition, company policy and state law -- effectively provides yet another cushion for customers who do not mail their payments on time. Under federal credit laws, changes in the terms of a customer's account must be disclosed in advance. We have no industry-wide statistics, but we understand that some of our members have reduced at least one of these grace periods within the past year while others have not.

2A. SHOULD H.R. 1963 EXEMPT FROM ITS COVERAGE THOSE CREDITORS WHICH OFFER THEIR CUSTOMERS GRACE PERIODS?

Answer: For the reasons set forth in our testimony at the February 28 hearing, we do not believe that H.R. 1963 is either responsive to the actual problem or workable. Amending the bill to provide a exemption for certain grace periods will not change the underlying problems of the legislation.

2B. IN AN AVERAGE MONTH, WHAT PERCENTAGE OF ACCOUNTS INCUR LATE FEES OR PENALTIES? HOW DO YOUR MEMBERS STRUCTURE THE IMPOSITION OF LATE FEES OR PENALTIES. FOR EXAMPLE, ARE FEES ASSESSED AS A PERCENTAGE OF PAYMENT OR BALANCE DUE, OR ARE SUCH ASSESSED FEES A FIXED DOLLAR AMOUNT?

Answer: We do not have industry-wide figures, however anecdotal evidence suggests that the percentage is in the low single digit percentage range. Typically, the structure and permissible amount of late fees varies by state law. A common late fee is $10 or 5% of the payment due.

3. DO CREDITORS INCUR ANY ADDITIONAL COSTS IN HANDLING LATE PAYMENTS? IF SO, COULD YOU PLEASE PROVIDE THE SUBCOMMITTEE THE NATURE OF THOSE ADDITIONAL COSTS. IS THE COLLECTION OF ASSESSED LATE FEES OR PENALTIES A PROFIT SOURCE FOR YOUR MEMBERS? WHAT PERCENTAGE OF TOTAL REVENUES DOES THE COLLECTION OF LATE FEES AND PENALTIES REPRESENT?

Answer: Retail credit grantors incur additional costs in collecting late payments. The costs are those associated with collection activities conducted by mail and by telephone. Additional expenditures for postage, payroll, employee benefits, supplies, telephone toll charges as well as outside collection agencies and other more serious efforts are all part of the cost of collecting delinquent payments. Late fees also are imposed for the salutary effect of encouraging individuals to pay on time. We are aware of no industry-wide figures indicating the effect of late fees on companies' profitability or the fees' percentage of revenues. It is proprietary information. Discussions with individuals involved in the industry reveal that in some cases, the fees do not cover the costs of collection while in other instances they provide a small positive contribution to total revenues.

4. OF THE PAYMENTS RECEIVED LATE, WHAT IS THE PATTERN OF LATE PAYMENTS IN TERMS OF NUMBER OF DAYS LATE? IF A STANDARDIZED GRACE PERIOD WAS IMPOSED, HOW LONG SHOULD IT BE IN ORDER TO AVOID THE IMPOSITION OF LATE FEES AND PENALTIES?

Answer: This information is not available. To the best of our knowledge, those retailers who track delinquency data do so by monthly billing cycle rather than on a daily basis. For the reasons set forth in our testimony and the response to question 2A, a standardized grace period should not be imposed.

5. SOME HAVE ARGUED THAT H.R. 1963 WOULD ENCOURAGE BILL PAYERS TO WAIT UNTIL THE DATE THE BILL IS DUE BEFORE POSITING IT. WOULD THE CONSUMER BEHAVIOR COST YOUR MEMBERSHIP? IF SO, HOW MUCH AND IN WHAT WAYS?

Answer: We believe that one of the adverse effects of H.R. 1963 would be to cause greater numbers of consumers to pay their bills at the last possible moment, just as the IRS' April 15 tax filing deadline causes so many millions of individuals to do the same. Retail credit grantors would be required to treat as timely the hundreds of millions of payments that actually would be received late. The collective lost finance charge revenue is incalculable. In addition, there would be the costs of manually processing those payments until such time that machine readable postmarks and postmark reading equipment were developed. Once developed, the cost of purchasing, installing and training individuals to use that expensive new equipment would become an additional cost.

6. SOME CREDITORS WILL RECEIVE PAYMENTS IN PERSON AT A RETAIL SITE; HOWEVER, THE CONSUMER'S ACCOUNT IS NOT CREDITED UNTIL THE BILL IS RECEIVED AT THE PROCESSING SITE. DO YOUR MEMBERS ENGAGE IN THIS PRACTICE? WHY SHOULDN'T CONSUMER ACCOUNTS BE PROMPTLY CREDITED WHEN PAID AT THE RETAIL SITE?

Answer: Not all retail charge card accounts are issued directly by the retailer. For example, in a number of instances a bank issues the card, in the retailer's name, to customers in accordance with mutually acceptable creditworthiness guidelines. The bank will not enter a deposit on an instrument it has not received. Payment on those accounts must be made directly to the party who extends the credit: the issuing bank at the address on the remittance envelope. Therefore, in a number of such cases payment cannot be made at the retail facility. However, as a convenience for customers, others of such retailers will accept customer payments at the store and forward them to the bank where they are credited to the customer's account on the date received by the bank. At the other end of the spectrum is the retailer with sophisticated computerized operations that directly issues its own charge card and posts payments to customers' accounts within moments after receipt at the store. This variation in sophistication and means of extending credit explains why not all accounts can be processed in the same manner.

7. TO WHAT EXTENT DO YOUR MEMBERS CURRENTLY PROCESS THEIR PAYMENTS MANUALLY?

Answer: It is difficult to answer this question in a meaningful fashion. The payment processing function consists of a complicated series of steps, some or all of which are automated. However, during the course of automated handling some nonstandard or problematic items will be rejected by the equipment, resulting in at least partial manual handling. For example, if the equipment determines that the customer has stapled his or her payment check to the statement, the contents of the envelope automatically will be routed to a human operator for manual separation. On the other hand, if the automated equipment is unable to "read" the customer's handwriting, an electronic image of that writing will be routed to a human operator for decoding even though the statement and the check never leave the automated processing stream. It is unclear whether the Committee would consider the latter to be manual processing. Among larger retail credit grantors approximately 3% of payments receive what might be considered predominately manual handling.

8. HOW DO YOU ADDRESS DISCREPANCIES BETWEEN THE AMOUNT OWED AND THE AMOUNT PAID IN THE BILL?

Answer: In general, retail charge card customers may remit any amount with their statement. So long as they make their required minimum monthly payment, no late charges will be assessed. Customers who pay the total balance or more will not be assessed a finance charge for merchandise billed to their next statement for which they make a timely full payment, and they will carry a temporary credit balance for the amount of any overpayment. Customers who pay an amount between these extremes will reduce the balance on which finance charges are calculated and possibly reduce their subsequent required minimum monthly payment.

Mr. MCHUGH. Thank you, Mr. Duncan.

Next is Mr. Paul Reid, who is president of the Mortgage Bankers Association.

Mr. Reid, good morning. Thank you for being with us.

Mr. REID. Mr. Chairman and members of the subcommittee, thank you very much for the opportunity to testify this morning.

For the record, I am Paul Reid, president and CEO of American Home Funding, a full service mortgage banking firm headquartered in Richmond, VA, and my company is a wholly owned subsidiary of Rochester Community Savings Bank of Rochester, New York. I am also currently serving as president of the Mortgage Bankers Association of America. I might add that MBA's membership currently services 4 out of every 10 first mortgage loans in this country.

We appreciate the opportunity to testify on H.R. 1963. MBA recognizes the chairman's efforts to protect consumers from late payment charges that are assessed due to unforeseen and uncontrollable circumstances. However, the Mortgage Bankers Association has serious reservations concerning the impact of the proposal on mortgage lending and servicing, and the costs it would impose on lenders, other credit providers, and finally on consumers.

M.B.A. would like to express deep concerns about this legislation, for the following reasons: First, the cost of compliance with H.R. 1963 would be substantial, and these costs would ultimately be borne, we believe, by consumers. Second, adequate consumer protections already exist in the mortgage process. Third, a generous grace period already exists for most mortgages by virtue of specific language in the contract between lender and borrower.

Let me be specific. Each month, an estimated 47 million mortgage payments are processed by the mortgage servicing industry. This equates to some 564 million payments per year. If the postmark date is to be used, mortgage payments received after the expiration of the prescribed due date would be processed differently.

Although loan processing technology is highly automated, it is not designed to read postmarks. Either special equipment would have to be purchased to read postmarks, or payments received after the prescribed date would have to be hand processed. Neither option is an operationally or financially viable alternative in a heavily competitive and economic environment.

Lenders are able to reduce the cost of servicing loans by maximizing technology and reducing burdensome paper retention requirements. This bill would impose significant additional expenses on mortgage servicers. In fact, we tried to estimate the overall cost of compliance, and we've come up with a number of $1.5 billion annually.

Again, the subcommittee must bear in mind that these increased compliance costs will ultimately, I believe, be passed along to borrowers, either in the form of higher interest rates or fees. With such a potential, the disadvantages of the bill seem to far outweigh the perceived benefits.

Concern has also been raised regarding the crediting of mortgage payments in a timely manner. Mortgage servicers have incorporated reliable consumer protections in their procedures for payment receipts. Generally, a lockbox system handles the posting of

payments. Under this system, the date of receipt is completely verifiable and is subject to audit.

Consumers are also protected under investor requirements. Such requirements mandate that payments be processed in a timely fashion. Further, Fannie Mae and Freddie Mac, as part of their seller/servicer guidelines, require that payments be posted on the same day as received. Such protections ensure that consumer payments are credited when received.

Finally, let me address the issue of contractual grace periods for mortgage loans. The contractual language of standardized mortgage documents provides that mortgage payments are due on the first day of the month. However, lenders understand that payments are sometimes delayed in the mail and that many delays are justifiable. In order to compensate for such problems, a grace period of as long as 2 weeks is allowed under the language of most standard mortgage documents. Late charges are therefore only assessed when the grace period lapses.

Quite frankly, I've seen in practice that mortgage servicers have consistently exhibited flexibility in the assessment of late charges in instances where borrowers have experienced meaningful and uncontrollable circumstances, such as the recent blizzard in the Northeast, the furlough of Federal employees, and the hurricane that hit southern Florida several years ago.

In addition, H.R. 1963 may preempt State law. Nearly one-third of the States require mortgage lenders to provide a specific grace period prior to assessing a late charge. At a time when Congress is delegating more authority to the States, it would appear that this legislation perhaps is headed completely in the opposite direction.

In sum, it is difficult to discern what benefits borrowers would receive under implementation of H.R. 1963. There has been no demonstration of systematic processing delays in handling mortgage payments that would warrant the significant governmental encroachment into private contracts that this bill represents. This legislation would directly impose significant costs on the mortgage servicing industry and a significantly higher paperwork burden on the servicing of loans. Personally, I am convinced that the additional costs would have to be passed on to borrowers.

M.B.A. believes mortgage borrowers are already protected by the contractual grace periods incorporated into standardized mortgage documents as well as by accurate and reliable payment receipt procedures. For the foregoing reasons, the Mortgage Bankers Association believes that H.R. 1963 is unduly burdensome and unnecessary.

M.B.A. would like to thank you, Mr. Chairman, and the subcommittee, for the opportunity to testify. I will be available to answer any questions you may have.

[The prepared statement of Mr. Reid follows:]

PREPARED STATEMENT OF PAUL S. REID, PRESIDENT, MORTGAGE BANKERS ASSOCIATION

Mr. Chairman and Members of the Subcommittee, I am Paul Reid, President and CEO of American Home Funding, Inc., a wholly-owned subsidiary of Rochester Community Savings Bank, headquartered in Richmond, Virginia. I am currently serving also as President of the Mortgage Bankers Association of America (MBA).[1] With me are Michael J. Ferrell, Senior Staff Vice President and Legislative Counsel, and Karen B. Kapen, Associate Director and Counsel.

MBA appreciates the opportunity to testify on HR 1963, the "Postmark Prompt Payment Act of 1995." MBA recognizes the Chairman's efforts to protect consumers from late payment charges that are assessed due to unforeseen and uncontrollable circumstances. However, MBA has serious reservations concerning the impact of the proposal on mortgage lending and servicing and the costs it would impose on both lenders, other credit providers, and consumers.

OVERVIEW

On June 29, 1995, Representative McHugh (R-NY), Chairman of the House Postal Service Subcommittee of the Government Reform and Oversight Committee, introduced HR 1963, which would provide that payment of any bill, invoice, or statement of account due is deemed received as of the date of the postmark if the payment was: 1) deposited in the mail; 2) in an envelope; 3) with adequate postage; 4) properly addressed; 5) postmarked by the postal service; 6) postmarked on or before the prescribed due date; and 7) received by the payee after the prescribed due date. The legislation is intended to protect consumers from late payment charges that are assessed as a result of delays in the mail process. Such delays are viewed as circumstances beyond the control of consumers and, thus, finance charges applied as a result of such events are seen as punitive.

HR 1963, which amends the Postal Service Code, would affect most types of payments that are sent by mail. As such, lenders and other credit providers are united in strong opposition to the legislation. If enacted, HR 1963 would require the mortgage and financial services industries to outlay significant sums of money to comply with the new law. New equipment, processing techniques, and storage requirements would have the effect of dramatically increasing the cost of credit to consumers. In all likelihood, borrowers and debtors would see an increase in interest rates and fees. There is no doubt that HR 1963 would be unduly burdensome to lenders and credit providers and deleterious to consumers. As a result, MBA would like to express deep concerns about this legislation for the following reasons:

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[1]MBA is the national association representing exclusively the real estate finance industry. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership prospects through increased affordability; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters excellence and technical know-how among real estate finance professionals through a wide range of educational programs and technical publications. Its membership of approximately 2,477 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, life insurance companies and others in the mortgage lending field.

- The cost of compliance with HR 1963 would be substantial, and these costs would ultimately be borne by consumers.

- Adequate consumer protections already exist in the mortgage process.

- A generous grace period already exists for most mortgages, by virtue of specific language in the contract between lender and borrower.

IMPACT ON MORTGAGE LENDERS

THE INCREASE IN THE COST OF COMPLIANCE WOULD BE BORNE BY CONSUMERS

Currently, lenders are able to reduce the costs of servicing loans by maximizing technology and reducing burdensome paper retention requirements.[2] The "paperless" mortgage, in which most documents are stored electronically, promises to reduce costs for mortgage servicers even further. In the last three years, direct expenses on a per loan basis have declined from $123 in 1992, to $112 in 1993, and further down to $95 in 1994.[3] The economies of scale show up even more dramatically among large volume mortgage servicers, who employ the most sophisticated forms of technology. Servicers handling 100,000 loans or more had average per loan servicing expenses of $118, $94, and $83 in the same three years of 1992-94.

In order to comply with the requirements of HR 1963, mortgage servicers would incur significant expenses. In fact, the total cost of compliance would be approximately $1.5 billion.[4] The legislation would increase costs by requiring servicers either to make substantial financial outlays to purchase new equipment or by requiring manual processing and massive paper retention. Such prospects hardly seem appropriate as the mortgage lending industry approaches the 21st century.

Each month, an estimated 47 million payments are processed by the mortgage servicing industry. This equates to some 564 million payments per year. If the postmark date is to be used, rather than the actual date of receipt of funds, mortgage payments received after the

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[2] An example of the new wave of technology sweeping the mortgage servicing industry is American Home Funding's "Quick Collect" program. This program allows mortgage payments to be made at any Western Union office. When payment is made, Western Union credits its account and sends a check electronically to American Home Funding. In addition, many lenders have instituted automatic payment programs in which borrowers' accounts are debited each month on a specified day. These types of programs demonstrate the increased use of technology in the industry.

[3] Source: "*1994 Cost Study: Income and Cost for Origination and Servicing of 1- to 4-Unit Residential Loans.*" Operations Report No. 17, prepared by the Economics Department of the MBA.

[4] Total costs include: the cost of acquisition and installation of postmark reading hardware and software; the cost of storage facilities and procedures for documentation of postmarks; the loss of interest earned on funds deposited later; the cost of funds advanced to investors on loans which have been securitized; the loss of late fees; and the cost of envelopes sent with coupon books to standardize responses.

expiration of the prescribed due date would have to be processed differently. Although loan processing technology is highly automated, it is not designed to read postmarks. Either special equipment would have to be purchased to read postmarks, or payments received after the prescribed date would have to be hand processed. Neither option is an operationally or financially viable alternative to servicers who are trying to reduce costs.

The postmark requirement would also create additional problems for servicers. The prevailing industry practice is to provide borrowers with a booklet of payment coupons once a year, rather than to bill borrowers on a monthly basis. Envelopes are not usually provided with the payment coupons. If HR 1963 is adopted, servicers would have to provide borrowers with standardized envelopes, in order to automate payment processing, and hope that the borrowers retain and use those envelopes for the full year. Not only is this an additional expense, but servicers will be forced to hand-process payments received in non-conforming envelopes. Considering the number of payments that are received daily by servicers and their agents, hand processing would be unduly burdensome and time consuming.

Additionally, HR 1963 creates significant logistical problems that would contribute to increased costs. Under the bill, servicers would have to store envelopes to prove the date of postmark for any loan payment where a late fee was charged. Given the low visual quality of most postmarks, servicers would encounter difficulty photocopying or electronically storing such data. If there is no return address, the mortgage servicer will have to affix identifying information on the envelope. They would also have to develop systems for indexing by loan number and retrieving envelopes when requested to do so by auditors or consumers.

Again, the Subcommittee must bear in mind that these increased compliance costs will ultimately be passed along to borrowers in the form of higher interest rates or fees. While the borrowers who are tardy in making payments may benefit from this proposal, those borrowers who are conscientious and make their payments when due will suffer because they will also have to shoulder the burden of lenders' higher compliance costs. Thus, the disadvantages of HR 1963 far outweigh the perceived benefits.

PROTECTIONS CURRENTLY EXIST TO ENSURE THAT PAYMENTS ARE PROMPTLY CREDITED

Some concern has been raised regarding the crediting of mortgage payments in a timely manner. However, mortgage servicers have incorporated reliable consumer protections in their procedures for payment receipts. Such precautions should allay concerns that the Subcommittee may have regarding the prompt posting of payments.

Generally, a lock box system handles the posting of payments. In order to ensure payments are posted in a timely manner, lock box systems operate 24 hours per day. Payments are sent directly to a lender's post office box. This box is specifically designated for mortgage payments. The payments are picked up several times during the course of the day and night by a lock box courier who delivers them to the lock box facility. Once the payments are received at the facility, the payments are sorted, the checks are deposited, and the payments are posted. The information is then electronically transmitted to the mortgage servicer. This highly automated system enables servicers to process the payments within 24 hours of being received. Under this regime, the date of receipt is verifiable and subject to audit. It is worth noting that servicers are interested in receiving their funds as quickly as possible. It is highly doubtful that they would purposefully delay posting of payments in order to assess late fees, as some have

stated. It does not make economic sense for them to do so. Further, consumers are protected under investor requirements. Such requirements mandate that payments be processed in a timely fashion. Also, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) as part of their seller/servicer guidelines require that payments be posted on the same day as received. Such protections have proven to ensure that consumer payments are credited when received.

GENEROUS GRACE PERIODS ALREADY EXIST FOR MORTGAGES.

The contractual language of standardized industry mortgage documents provides that mortgage payments are due on or before the first day of the month.[5] However, lenders understand that payments are sometimes delayed in the mail and that many delays are justifiable.[6] In order to compensate for such problems, a grace period of as much as two weeks is allowed under the language of most standard mortgage documents. In the majority of cases, late charges are only assessed when the grace period lapses.[7]

The grace period granted to borrowers is very generous. As such, MBA believes that HR 1963 is redundant and fails to grant borrowers greater protection than the contractual grace period included in most mortgages. Indeed, HR 1963 could be construed in a manner that actually shortens the grace period from the date of postmark to the actual date of receipt by the payee. Consequently, a majority of consumers would end up being penalized.

In addition, HR 1963 would preempt state law. Nearly one-third of the states require mortgage lenders to provide a specific grace period prior to assessing a late charge.[8] If a state statute stipulates the length of the grace period, only the state legislature is able to change such a provision. In these states, mortgage lenders have absolutely no ability to reduce the grace period below the statutory minimum. Borrowers, in such states, are protected not only by contract law but by state law as well. At a time when Congress is delegating more authority to the states, it would appear that this legislation is headed in the opposite direction.

Depending upon the interpretation of key provisions of HR 1963, additional problems could be posed for borrowers and lenders. By effectively changing the definition of the "date of receipt" to the "date of postmark" in the mortgage contract, the legislation could have two possible adverse effects depending upon what date is considered the "prescribed date."

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[5] The standard first mortgage note states that" I will make my monthly payments on the 1st day of each month beginning on _____...I will make my monthly payments at ___ or at a different place if required by the note holder...If the not holder has not *received* the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the note holder."

[6] An example of a justifiable delay is the recent blizzard that hit Washington, DC and the eastern seaboard in January. Many lenders, such as American Home Funding, Inc., delayed assessing late fees due to the disruption in mail service, as well as the understanding that many borrowers were unable to leave their homes either to make their payments or to mail them.

[7] The one exception to this rule is simple interest loans. However, such mortgages are not prevalent in the industry.

[8] See Appendix A for a list and summary of state laws requiring grace periods prior to assessment of late charges for residential mortgage loans.

According to HR 1963, payments are only covered if they are "required to be made on or before a *prescribed date*" and are "after such date, delivered...to the payee," and if "the postmark date falls on or before the *prescribed date* for making the payment." Thus, under the language of the bill, there are two possible "prescribed dates": 1) the contractual due date, or 2) the last day of the grace period.

If the prescribed date is interpreted to mean the contractual due date, borrowers would be adversely affected. HR 1963 would only apply to those borrowers who deposit their mortgage payments into the mail on or before the first of the month. Currently, only 25 percent of borrowers pay their mortgage on or before the 1st of the month. This leaves 75 percent--the majority of borrowers--who pay after the 1st of the month. If this is the case, HR 1963 loses its appeal as a consumer-beneficial bill because few borrowers would qualify for the bill's protected status. Thus, the intent of the legislation would be defeated.

If the prescribed date is interpreted to mean the last day of the grace period, lenders and those who service mortgages would be adversely affected. As long as borrowers have their mortgages postmarked by the 15th day of the month, HR 1963 would apply. This, of course, covers most borrowers. Only 6 percent of borrowers actually have late payments.[9] However, such an interpretation would further lengthen the generous grace period already accorded to borrowers. This is patently unfair to lenders and mortgage servicers.

Under this interpretation, the law could have the unintentional consequence of encouraging changes in a borrower's payment pattern that could result in substantial financial losses for the mortgage service industry. For example, it is quite conceivable that borrowers will no longer take into account the lag in the mail service and will wait until the last possible moment to send in their payments, knowing that the postmark will now determine whether or not their payment is late. If borrowers took advantage of the provisions of HR 1963 in such a manner, lenders would experience an additional delay in receiving payments of at least three days.[10] Under the standard security holder agreements for any mortgages that are held in mortgage-backed securities, lenders must forward the payments to the investors, generally by the 16th day of each month, regardless of whether such payments have been received from borrowers. If the grace period were lengthened, lenders would not be receiving payments in a timely manner but would, nonetheless, remain obligated to outlay funds that they have not received. Ultimately, lenders would have to pass the increased cost of making payments on behalf of delinquent borrowers along to all borrowers. This would occur in the form of higher interest rates.

SUMMARY

It is difficult to discern what, if any, benefits borrowers would receive under implementation of HR 1963. There has been no demonstration of systemic processing delays in handling mortgage payments that would warrant the significant governmental encroachment into

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[9] Late payments are defined as those received by the payee on the 16th, 17th, and 18th of the month in which they are due. 9 percent of borrowers are delinquent. Of that 9 percent, 4 percent are delinquent by 30 days or more.

[10] Three days is the U.S. Postal Service delivery goal for mail to another city.

private contracts that would result upon enactment of HR 1963. This legislation would directly impose significant costs on the mortgage servicing industry and a significantly higher paperwork burden on the servicing of loans. This, in turn, would result in higher mortgage costs for borrowers. Mortgage borrowers are sufficiently protected by the contractual grace periods incorporated into standardized mortgage documents as well as by accurate and reliable payment receipt procedures.

MBA would like to thank the Subcommittee for this opportunity to testify on HR 1963. We would be pleased to answer any questions you may have or to provide further information, as necessary, for the record.

Appendix A

Summary of State Laws Regarding Late Payment Charges on Residential Mortgage Loans

ALABAMA

Alabama Code § 5-19-4(a): When a payment is in default 10 days or more, the creditor may charge and collect a late charge. Only one late charge may be collected on any scheduled payment, regardless of the period during which it remains in default.

CALIFORNIA

California Civil Code §§ 2954.4, 2954.5: A payment (on a loan secured by a mortgage) is considered late when not received at least ten days after it is due. Provisions of this section apply to loans made by all lenders. Before a default, delinquency or late charge may be assessed and before a borrower becomes obligated to pay a late charge, the borrower must either: 1) be notified in writing and given at least ten days from the mailing of such notice in which to cure the delinquency, or 2) be informed, by billing notice, of the date after which a late charge will be assessed.

COLORADO

Rev. Stat. §5-3-105; 5-3-203: With respect to a refinancing, a late charge may be assessed if the installment is not paid within 10 days of its scheduled due date. The late charge must be assessed within 30 days of the scheduled date.

DISTRICT OF COLUMBIA

Code Ann. §28-3310(b): No delinquent or late charge may be contracted for or received unless the delinquency has continued for at least 10 calendar days.

IDAHO

Code §28-42-301(2): The parties to a regulated consumer loan secured by a security interest in real property that is the residence of the debtor may contract for a delinquency charge on any installment not paid in full within 15 days after its scheduled due date.

KENTUCKY

KY Rev. Stat. §294.110(4): Delinquency charges may be made for each installment more than 10 days in arrears.

MARYLAND

Comm. Law Code Ann. §12-105: If the loan contract provides for them, the following fees and charges may be collected: a delinquent or late charge if the delinquency has continued for at least 15 calendar days.

MASSACHUSETTS

Gen. Laws Ch. 183 §59: A mortgagee, assignee or holder of a mortgage note secured by a first lien is authorized to charge a penalty or late charge for any payment made 15 days after the payment due date.

MISSISSIPPI

Miss Code Ann. §75-17-27: A late payment charge, if contracted for in writing, is permissible when a delinquency is more that 15 days past due.

NEW YORK

Real Prop. Law §254-b: Lenders are permitted to collect a late charge of not more than two percent on any installment which is not paid within 15 days of its due date.

NORTH CAROLINA

NC Gen. Sta. §24-10.1(b): Lenders may charge a party to a mortgage a late payment charge as agreed upon by the parties in the loan contract as long as the payment is at least 15 days past due.

OREGON

Or. Rev. Stat. §§86.160-185: Lenders may impose a late charge when a scheduled payment is not received within

15 days after the due date of the installment. If the 15 day period ends on a Saturday, Sunday, or legal holiday, the 15 day period is extended to the next business day.

VIRGINIA

Code Ann. §6.1-330.80: Any lender may impose a late charge for failure to make timely payment of any installment due. Timely payment is defined as one made by the date fixed for payment or within a period of seven days thereafter.

WEST VIRGINIA

W VA Code §46A-3-113: Parties may contract for a delinquency charge on any installment not paid in full within 10 days of the scheduled due date.

WISCONSIN

Stat. Ann. §138.052(6): Parties may agree to a late payment charge on any installment not paid on or before the 15 day after it is due.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN M. MCHUGH TO PAUL S. REID

1. It is unnecessary for borrowers to take additional steps to protect themselves from incorrectly assessed late charges. This is due to the fact that borrowers are already adequately protected by the contractual language of standardized mortgage documents. These documents state that mortgage payments are due on the 1st day of each month. A standard note states that the borrower will make "monthly payments on the 1st day of each month." However, lenders understand that payments are sometimes delayed in the mail and that many delays are justifiable. In order to compensate for such problems, a grace period of as much as two weeks is allowed under the contractual language of most mortgage documents. The note further states that: "If the note holder has not received the full amount of any monthly payment by the end of the 15 calendar days after the date it is due, I will pay a late charge to the note holder." This is an exceedingly generous grace period. Such a grace period gives borrowers ample opportunity to pay their obligations timely and avoid late charges.

   Due to the explicitness of the contractual language, borrowers are sufficiently protected from delays in mail service and should never be in doubt as to when the late charge will be assessed, where the payment is due, and how much will be assessed. As a result, borrowers do not need additional safeguards to protect against incorrectly assessed late charges.

   A. A borrower is notified on the payment coupon regarding the assessment of a late charge. Typically, the late charge amount and the date it will be assessed are included on the borrower's monthly payment coupon. In the case of American Home Funding (AHF), letters are distributed notifying the borrower: 1) that the payment is late; 2) that a late charge will be assessed; and 3) stating the total amount due. The monthly coupon does not contain any explanation as to the borrower's recourse to dispute a late charge. However, lenders often waive late charges upon request of the borrower. Of course, each lender will have its own criteria for determining when a late charge may be waived. At AHF, the borrower's payment history and any outstanding circumstances are seriously considered when making a waiver determination. In many instances, if the borrower has a good payment history and makes a late payment, the late charge is waived for the first occurrence.

2. Mortgage bankers typically offer borrowers a 15-day grace period following the due date to make payment. The grace period is specified in either the mortgage note or deed of trust. For conventional loans (non-government) and Veteran's Administration (VA) loans, the grace period is specified in the mortgage note. For Federal Housing Administration (FHA) loans, it can be specified in either document. In Virginia, there are some housing finance agency loans which have grace periods of 10 days.

As for modification of grace periods, it can be somewhat difficult. Grace periods that are specified in the mortgage documents can only be changed by consent of all interested parties. Further, loan modification is limited by a variety of factors, including investor requirements, such as those of the secondary market participants, Fannie Mae and Freddie Mac, and state law. In some states the ability to modify a loan is limited only if the loans are held in portfolio by the lender. Regardless, changing a specified grace period is exceedingly difficult and rarely done. To modify an existing grace period, all parties would have to agree and/or permission would have to be obtained from the affected agencies and the investors. In fact, I know of no instance in which a grace period was eliminated or reduced. It has not been done at AHF.

A. HR 1963 should exempt creditors who offer their customers grace periods. However, in its current form, it is difficult to discern what benefits borrowers would receive under implementation of HR 1963. The bill represents an unnecessary government encroachment into private contracts, would impose significant costs on the mortgage servicing industry, and would result in higher interest rates for borrowers. Mortgage borrowers are sufficiently protected by contractual grace periods included in standardized mortgage documents, as well as by reliable payment receipt procedures. MBA is opposed to HR 1963 in its current form, and only a total exemption of creditors who offer grace periods is an acceptable solution.

B. In an average month at AHF, 9 ¾ percent of accounts incur late charges. The late charge is calculated from a specific percent of principal and interest (P&I) or of principal, interest, taxes, and insurance (PITI). Thus, the late charge is a percent of the payment and not a fixed dollar amount. The structure of the late charge will also depend upon state law and investor requirements.

3. Lenders incur significant costs in handling late payments. It is estimated that lenders incur several million dollars per month in excess expenses as a result of handling late payments. This is due to a variety of factors. First, late payments have to be processed manually. The lock box system cannot be efficiently used with late payments. Mortgage servicers shoulder additional personnel expenses as a result of manual processing. Second, if the mortgages are in mortgage-backed securities, lenders are required to pass through payments to investors whether the servicer receives them or not. In such a case, lenders must advance their own corporate funds to cover these investor obligations. Such funds could be collecting interest if they stayed on deposit.

Although the collection of assessed late charges is a source of profits for our members, the numerous expenses incurred in the processing of late fees offset, to some extent, the increased revenue. Therefore, the profits received from such collections are not pure profits. They are eroded by significant processing outlays.

4. Mortgage payments are due on the first day of the month and are late on the second day of the month. Due to generous grace periods afforded to borrowers, the definition of late payments has been defined as those payments received by the lender on or after the 16th of the month in which they are due. 9 ¾ percent of payments received by AHF are late, and 4 to 5 percent of these late payments are received at the end of the month or later. The lateness of payments varies between conventional mortgages and government mortgages (FHA and VA). 2 to 3 percent of conventional mortgages are received at the end of the month, whereas 7 to 8 percent of government mortgages are received at that late date. On average, AHF receives the majority of its payments on the 8th day of the month.

   If a standardized grace period is to be imposed, it should be 15 days long--the current industry standard.

5. Depending upon interpretation, HR 1963 may encourage borrowers to wait until the due date before posting their payments. If the "prescribed due date" is interpreted to mean the last day of the grace period, lenders and servicers would be adversely affected. Such changes in borrower's payment patterns could result in substantial financial losses for the mortgage servicing industry. If borrowers wait until the last moment to send in their payments, lenders would experience an additional delay in receiving payments, possibly up to three days. Under the standard security holder agreements for mortgages that are in mortgage-backed securities, lenders must forward the payments to investors, usually by the 15th or the 20th day of each month, regardless of whether such payments have been received from borrowers. If the grace period were lengthened, lenders would not be receiving payments in a timely manner, but would remain obligated to outlay funds that they have not received. Eventually, lenders would have to pass along the increased cost of making payments on behalf of delinquent borrowers to all borrowers. This would probably result in the form of higher interest rates or fees.

6. It is stated that some lenders receive payments at retail sites, but fail to credit borrowers' accounts until payments are received at the processing sites. It is unknown whether this practice is widespread among mortgage bankers. However, such a practice is more likely to occur in companies with national and regional branches, as well as in bank- and thrift-owned mortgage subsidiaries. In almost all cases, the standard first mortgage note specifies the location at which a borrower should make his/her payments. The note states that the borrower will make "monthly payments at *(a stated location)* or at a different place if required by the note holder." This is due to the fact that servicing is performed at central locations and many retail mortgage banking sites are technologically unequipped to accept payments. Borrowers are under an obligation to make their payments in a timely manner at a certain location. If they fail to do so, the lender may be unable to post a payment when it is received at the retail site. Therefore, borrowers should not assume that payment at just any retail site will result in instantaneous crediting of accounts.

7. Because each individual mortgage company is different, it is difficult to determine the extent of MBA members who process their payments manually. At AHF, however, approximately 14 percent of our payments per month must be processed manually. Such manual processing is the result of late payments, "exception" payments, such as payments that include extra principal, and payments made with incomplete checks.

8. Every company has standards in place to address discrepancies between the amount owed and the amount paid to the lender. Investors, however, establish these tolerance limits. Therefore, investors determine what level of a discrepancy (less than or more than $X amount) will be acceptable and what level will trigger a certain response by the lender. In the case of additional monthly payments without specific instructions, AHF sends letters informing borrowers how their money was allotted. This is a fairly typical response.

Mr. MCHUGH. Thank you very much, Mr. Reid. I appreciate that.

I was negligent in my duties in not taking the opportunity to acknowledge the presence of another member of this subcommittee, the gentleman from Maryland, Mr. Ehrlich.

Robert, welcome. I would yield to you, if you have any opening comments you may wish to make.

Hearing none, I appreciate, again, his being here.

The last presenter for the first panel this morning is Mr. Thomas Hughes, who is president and CEO of the Navy Federal Credit Union, who is speaking, as well, on behalf of the National Association of Federal Credit Unions. I should note for the record that my next-door neighbor in the Cannon House Office Building, and a resident of the region represented by Mr. Hughes, Congressman Davis, has spoken highly of you, sir, and I always believe what the gentleman from Virginia tells me.

I would also note that he has entered a statement for the record which will be contained in its entirety, without objection, and kind comments of introduction, too. So I wanted you to know that the gentleman was very much aware of your presence here this morning and sends his regards.

[The prepared statement of Hon. Thomas M. Davis follows:]

PREPARED STATEMENT OF HON. THOMAS M. DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, I would like to thank you for granting me the opportunity to welcome Vice Admiral Thomas Hughes, the President and CEO of the Navy Federal Credit Union (NFCU) based in Vienna, Virginia, to Capitol Hill this morning. I have personally had the opportunity to visit the NFCU facility in the Eleventh District of Virginia and I am honored that Adm. Hughes is able to testify today.

Adm. Hughes became President and CEO of the NFCU on August 1, 1987 after completing more than 43 years of distinguished active duty service in the United States Navy. Today, NFCU is the nation's largest credit union with 1.5 million members worldwide and assets of $8.4 billion. As a member of the Credit Union National Association's (CUNA) "Renewal Project" Steering Committee, Adm. Hughes is working to "reinvent" the credit union movement. He has also served as a member of CUNA's Regulatory and Insurance Structure Commission, Reserves Study Commission. the Regulatory FOCUS Task Force, and the Filene Research Institute's Research Council. Adm. Hughes also serves on the Board of Directors of the National Association of Federal Credit Unions (NAFCU).

As the President of the largest credit union in the United States, and based on his past experience, Adm. Hughes is expertly qualified to inform the Subcommittee of the effects that H.R. 1963, if enacted, would have on credit unions in particular and other businesses dependent on the postal remittance of bills and financial statements. Mr. Chairman, I thank you again for the opportunity to welcome Adm. Hughes and thank you for holding these important hearings today.

Mr. HUGHES. Thank you very much, Mr. Chairman. He has expressed to me a mutual admiration for you and the position that you hold, and the way you conduct your business. So thank you for the comment.

Good morning to both the chairman and the members of the subcommittee. I am Tom Hughes, a member of the board of directors of the National Association of Federal Credit Unions, and I am president and CEO of the Navy Federal Credit Union. I appreciate this opportunity to appear before you today and to express our position regarding H.R. 1963, the Postmark Prompt Payment Act.

The National Association of Federal Credit Unions, or NAFCU, as we refer to it, is the only trade association exclusively dedicated to and representing the interests of our Nation's federally char-

tered credit unions. Navy Federal Credit Union is the Nation's largest credit union, with more than 1.5 million members and assets of over $8.7 billion. Navy Federal's membership is comprised primarily of Navy and Marine Corps military and civilian personnel and their families.

I have a short opening statement and a longer written one which I request be inserted into the record.

Mr. MCHUGH. Without objection, so ordered.

Mr. HUGHES. Thank you very much, sir.

H.R. 1963 would mandate that all payments for bills and invoices mailed with postage stamps would be considered paid on the date the envelopes containing the payments are postmarks. This bill intends to address two perceived problems: one being the alleged poor on-time performance of the United States Postal Service; and the second being the unscrupulous practices of some businesses in holding payments past the due date in order to collect late charges.

While I recognize and appreciate the consumer advocacy intent of this proposed legislation, I am deeply concerned that it represents a knee-jerk reaction to several relatively small issues.

In response to the first issue, if there is a problem, it makes far more sense for Congress to demand that the Postal Service improve its performance and reliability, and impose penalties or sanctions on them if they fail to do so, rather than cause credit unions to suffer significant losses and administrative costs for a problem they did not cause, over which they have no control, and that they cannot resolve.

As for the second issue, while we have all heard anecdotal tales of various problems with late payments, to my knowledge there are no statistics or quantitative analyses to support the radical fix contained in this legislation.

In preparation for this hearing, NAFCU contacted the offices of the National Credit Union Administration, NCUA, which is a government regulator, to determine if this is a problem with credit unions overall. NCUA's findings were absolutely astounding. Out of 7,500 federally chartered credit unions, with more than 41 million members, the NCUA received less than 20 complaints concerning payment processing delays during the past year. This is not a bad track record for an industry that processes hundreds of millions of payments a year.

When you add to this such regulatory safeguards as Truth in Lending, which mandates that all open-end consumer credit transactions must be posted by credit unions on the date of receipt, the need for legislation seems highly questionable.

Supporters of H.R. 1963 would require that businesses abide by the same processing standard as the Internal Revenue Service. Yet while the IRS has essentially one annual due date, the 15th of April, for most income taxes, credit unions and other businesses have hundreds of due dates throughout the year, greatly complicating the process of capturing and recording the postmarks.

Due to the geographic dispersion of Navy Federal's membership, the postal system represents an important means of conducting business. During the 1995 calendar year, over 7 million incoming pieces of mail were processed by Navy Federal Credit Union, of

which over 5.7 million were consumer, mortgage and equity loan, and credit card payments.

This volume of mail requires an automated process, both equipment and systems-wise, to ensure accurate and timely receipt processing and posting of members' accounts. Enactment of this legislation would render these equipment and systems virtually useless. Payment processing would revert to manual sorting and data entry, or possibly new technology.

There are additional costs that are too lengthy to enumerate, but it is safe to say that accommodating the changes required by the proposed legislation would cost Navy Federal, singly, well over $1.2 million a year, primarily for additional personnel to replace our current automated payment processing system with a manual effort. Clearly, a step backwards. In addition to the dollar cost, we can also expect significantly slower payment processing times and more errors in manually posting accounts.

While it may be tempting to dismiss evidence about a single credit union, NAFCU has conducted a survey of its membership to estimate the cost of implementing H.R. 1963. Credit unions with assets of less than $2 million would annually spend an additional $810 each to meet the new processing standards mandated by H.R. 1963.

For credit unions with assets of $10 million to $50 million, the additional cost would average $18,000 per credit union. While larger credit unions, over $100 million in assets, would annually spend an additional $198,000 to comply with these standards. These seem to be awfully high prices to pay for an industry which generates less than 20 payment processing delay complaints, nationwide.

Every credit union is a member-owned, not-for-profit cooperative financial institution. Members are the heart of the credit union. They own the organization. They pool their savings and they lend them to one another without question. The cost of accommodating the proposed Postmark Prompt Payment legislation would result in lower dividends on savings and higher loan rates for these credit union members, the very consumers the proposal is intended to protect.

In summary, Mr. Chairman, I strongly encourage you to recognize the potential costs of enactment of this legislation, costs ultimately to be paid by the consumer. Clearly, this is a case in which the impact of the proposed solution is far worse than the perceived problem. On behalf of the members of the Federal credit unions, in general, and Navy Federal, in particular, I request that you reconsider this proposed legislation.

Congressman McHugh, I thank you and the subcommittee for the opportunity to appear today, and I would be happy to answer any questions.

[The prepared statement of Mr. Hughes follows:]

PREPARED STATEMENT OF THOMAS J. HUGHES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NAVY FEDERAL CREDIT UNION, ON BEHALF OF THE NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS

Chairman McHugh and members of the subcommittee, I am Tom Hughes, member of the board of the National Association of Federal Credit Unions and President/CEO of Navy Federal Credit Union. I thank you for the opportunity to appear before your subcommittee to express our position regarding H.R. 1963, the "Postmark Prompt Payment Act."

The National Association of Federal Credit Unions is the only national organization exclusively representing the interests of our nation's federally chartered credit unions. NAFCU is comprised of more than 850 credit unions -- member-owned, nonprofit, financial cooperatives throughout the nation -- that collectively hold approximately 66 percent of total federal credit union assets and represent the interests of nearly 21 million individual credit union members. Navy Federal is the nation's largest credit union, with more than 1.5 million members and assets of over $8.7 billion. Navy Federal's membership is comprised primarily of Navy and Marine Corps military and civilian personnel, and their families. Credit unions are known for their personalized service and, as cooperative institutions, exist solely to serve their member-owners (i.e. consumers). As consumer-oriented institutions, credit unions share the opinion of the author of this legislation, Congressman McHugh, that timely and conscientious bill payers should be protected from unwarranted late fees. However, after a thorough examination of H.R. 1963, it seems clear to our membership that this legislation would actually

lessen consumer benefits by greatly increasing credit costs and the existing regulatory burden credit unions already face.

H.R. 1963 would mandate that all bills and invoices mailed with postage stamps would be considered to have been paid on the date these letters are postmarked, rather than when these payments are actually received. This bill intends to address two perceived problems: the first is the alleged poor on-time performance of the United States Postal Service (USPS); and, the second being the unscrupulous practice of some businesses in holding payments past the due date in order to collect late charges. Addressing these issues is a laudable goal, but we are deeply concerned that this legislation may represent an over reaction to several relatively small problems.

The legislation attempts to combat the unethical practice of some businesses that reportedly delay posting of payments actually received in order to impose late fees. Although supporters of H.R. 1963 claim that this is a widespread problem, we have not heard or seen any documentary evidence to suggest that this practice is common. Indeed, in preparation for this hearing, NAFCU contacted the offices of the National Credit Union Administration (NCUA), which regulates all federally-chartered credit unions, to determine whether or not this is a problem within the credit union community, and if so to what extent. NCUA's findings were astounding. Out of nearly 7,500 federally-chartered credit unions with a total membership of

over 41 million that NCUA oversees, the six regional NCUA offices responsible for fielding consumer complaints received less than 20 complaints, nationwide, during the past year concerning payment processing delays. Although, admittedly, this number should be zero in a perfect world, less than 20 complaints annually is not a bad track record for an industry that processes hundreds of millions of payments a year. When you add to this such regulatory safeguards as the Truth in Lending Act, which mandates that all open-end consumer credit transactions must be posted by credit unions on the date of receipt (12 USC Section 226.10), the need for this legislation seems -- at least as far as its applicability to credit unions is concerned -- highly questionable.

Not only would the "Postmark Prompt Payment Act" fail to correct the cause of the overwhelming majority of late payments, but its many supporters oftentimes rely on a faulty analogy to justify its passage. H.R. 1963, supporters say, would merely require that businesses abide by the same processing standards as the largest bill collector of them all -- the Internal Revenue Service (IRS). Since the IRS accepts a dated postmark on an envelope as *prima facie* evidence of timely payment, if the envelope is postmarked on or before the date a payment is due, the private sector should be able to comply with these new standards easily, the argument concludes. Such an argument is highly flawed. While the IRS has one annual due date -- April 15 -- for most income taxes, credit unions and other businesses have hundreds of due dates throughout the year, greatly complicating

the process of capturing and recording postmarks. Moreover, while the IRS processes approximately 135 million returns a year, according to its *Statistics of Income Bulletin*, with a substantial majority of these payments collected on one day (April 15), credit unions and other businesses process billions of payments per month. Finally, because people make "down-payments" on their tax bills throughout the year through withholding, their total bill is not due on April 15. Credit unions, however, do not have the security of these automatic "down-payments" and would suffer severe cash flow problems if the processing system was significantly delayed. These facts alone cry out for a reevaluation of this legislation.

Another fact about the IRS' collection system that deserves notice, and has been touched on by other groups speaking before the subcommittee, is the fact that the USPS is the government's (IRS') agent for the collection of tax returns. Receipt of payment by the USPS is equivalent to receipt of payment by the IRS. This relationship, of course, does not exist between the USPS and credit unions. Unless the USPS finds a way to instantaneously deliver mail to credit unions and other private sector institutions, a timely payment to a post office is in no way, shape, or form a timely payment to such an institution. To demand otherwise, as H.R. 1963 seems to do, is neither fair nor justified.

While these facts reveal a few of the problems posed by this legislation, there are several additional *compliance* problems that would dramatically raise

operating costs for credit unions if H.R. 1963 were enacted into law. Like other financial institutions, many credit unions rely heavily on highly sophisticated automated equipment and systems. Enactment of H.R. 1963 will significantly reduce the effectiveness of these systems, perhaps rendering these expensive systems obsolete. Absent new systems that could effectively and affordably read postmarks, all credit unions -- like all other creditors -- would be forced to revert to manual sorting and data entry. While this would raise equipment and labor costs for all credit unions, such costs would skyrocket for those credit unions that conduct a heavy volume of member service by mail. Navy Federal Credit Union, for example, serves over 1.5 million members in duty stations around the world, as mentioned earlier. Based in nearby Merrifield, Virginia, Navy Federal is *the* financial institution for transient members of the United States Navy and United States Marine Corps, with over eighty branches around the globe and members on every continent. Due to the geographic dispersal of Navy Federal's membership, the postal system represents an important means of conducting business. During the 1995 calendar year, 7,182,192 incoming pieces of mail were processed by Navy Federal, of which 5,714, 584 were consumer, mortgage and equity loan and credit card payments. This volume of mail requires an automated process, both equipment and systems, to ensure accurate and timely receipt processing and posting of members' accounts. Enactment of this legislation would render current equipment and systems virtually useless. Payment processing would revert to manual sorting and data entry.

Additional costs would also be incurred since the envelopes bearing the postmark would have to be retained to resolve potential disputes. Each envelope would have to be annotated with member information in order to provide some capability for archival storage and retrieval. Moreover, how Navy Federal would handle the roughly 20 percent of the envelopes on which the postmark cannot be read has yet to be determined. Accommodating the changes required by this proposed legislation would cost Navy Federal well over $1.2 million a year, primarily for additional personnel to replace their current automated payment processing system with a manual effort -- clearly a step backwards. In addition to the dollar cost, they can also expect significantly slower payment processing times and more errors in manually posted accounts.

While it may be tempting to dismiss evidence about one particular credit union, NAFCU has conducted a survey of its entire membership to estimate the costs associated with adoption and implementation of H.R. 1963. These costs include additional labor costs and costs associated with manually adjusting interest charges, but do not account for the costs incurred by the purchase of new equipment or modification of existing equipment. Based on the data we obtained from our members, NAFCU found that H.R. 1963, if enacted, would increase annual credit union operating expenses by an average of 2.3 percent across the entire asset spectrum. While this figure may not initially seem to be particularly high,

when this figure is translated into true cost figures -- real dollars and cents -- the costs are very significant for credit unions and their members. Extremely small credit unions with assets of less than $2 million would be required to spend an additional $810 annually to meet the new processing standards mandated by H.R. 1963. For credit unions with assets in the $10-50 million range, additional costs would average $18,200 per credit union; while larger credit unions (those with assets over $100 million) would spend an additional $198,000 annually to comply with these standards. These seem to be excessively high prices for our nation's member-owned cooperative credit unions to pay -- particularly since they are the source of less than 20 complaints nationwide annually about processing delays.

Although new automated equipment could reduce some of these costs, the fact remains that payment envelopes would still need to be retained in some manner to resolve potential disputes and account numbers would still have to be "tied" to these envelopes, adding numerous steps to the payment processing function and unnecessarily increasing the need for additional staff.

The mechanics of how to implement H.R. 1963 are also plagued with difficulties, some insurmountable. For example, how would a credit union handle those envelopes whose postmarks are missing or illegible? This is not an academic issue; it is a real problem. One NAFCU-member credit union based in Ohio randomly selected 20 percent of their credit card payment envelopes out of one

day's mail in order to examine their postmarks. Out of this total, nearly 15 percent of the envelopes had no postmark at all or had an illegible postmark. What policy would apply in these instances?

Under the protocol that would be imposed if the "Postmark Prompt Payment Act" became law, increased costs would continue to mount even after a credit union had received and recorded a payment. Interest charges would have to be retroactively recalculated and credited. Inherent delays in the mail system would allow customers paying on or just before the due date to receive interest-free loans -- imposing an additional cost or financial burden on those who pay on time and thus discouraging anyone from paying their bills on time. Consider the problems that could arise if a credit union member makes out a check for a loan payment and places it in the mail at their local post office on, for example, Thursday -- the day the payment is due. The local post office places a Thursday postmark on the envelope. The payment is received at the credit union the following Monday. The credit union processes the payment immediately (backdating the payment to the previous Thursday) and then sends the check through the clearinghouse system for collection. If the check is "non-local" the earliest the credit union would receive settlement would be Wednesday -- a full week beyond the original due date. Not having access to those payment funds for one full week could, potentially, cause severe cash flow problems, especially for small credit unions.

The legal liability implications of H.R. 1963 are no less troublesome. Would a credit union have any recourse against the USPS if a loss occurs due to delays caused by the USPS? This might happen if a payment is "lost" in the mail and is not received until weeks, months or even years after it is mailed. In this scenario, the credit union may have already reported the account as past due to a credit bureau or exercised its right of setoff and transferred funds on deposit in the member's share draft account to cover the past due payment. In both of these cases, the member's payment would not be able to be considered "late," and because the credit union treated the account as if it were delinquent, there could be serious legal repercussions.

As is hopefully made clear by NAFCU's testimony, credit unions would have to surmount a myriad of technical and operational problems to meet the requirements of this bill. Indeed, if there was ever a need for a detailed cost/benefit analysis of a particular piece of legislation, H.R. 1963 is that legislation. But what about the other side of the equation? What are the consumer benefits to be derived from passage of H.R. 1963? Do these outweigh the enormous costs this legislation would impose on credit unions and their member-owners?

Although NAFCU does not speak for the customers of other types of financial institutions and businesses, the nation's 70 million credit union members would clearly be seriously affected by this legislation. Because of the cooperative nature

of credit unions, all additional processing costs, along with the costs of retroactively crediting interest charges and the costs to store the postmarks electronically would necessarily have to be passed on to credit union member-owners in the form of lower dividend rates on savings and higher interest rates on loans. Furthermore, this legislation would likely lead to a drastic reduction, if not total elimination, of the generous grace periods that credit unions generally extend to their members today. These grace periods have for years more than compensated for slow mail delivery, as well as the possibility that members at one time or another will simply forget to mail their payments on time -- effectively protecting both conscientious timely bill-payers and untimely bill-payers. For all these reasons, H.R. 1963 will likely have the unintended consequence of eliminating benefits currently enjoyed by consumers, instead of enhancing them.

In summation, the National Association of Federal Credit Unions strongly opposes H.R. 1963. We believe that this legislation will impose enormous unwarranted costs on credit unions and other creditors. We also believe that this bill will actually harm consumers in the form of lower dividend rates on savings, higher interest rates on loans and shortened grace periods. Moreover, at a time when technological innovation is being encouraged in the private sector and many members of Congress have their own World Wide Web sites -- a term that would have been mere gibberish ten years ago -- this legislation would send payment processing back to the Stone Age.

On behalf of the members of NAFCU, we appreciate this opportunity to submit testimony and contribute to the debate on H.R. 1963. We are confident you will consider our comments carefully. Finally, should any members of the subcommittee have questions regarding the issues we have addressed or any other matter affecting their credit union constituents, we hope you will contact us.

Mr. MCHUGH. Thank you very much. I would receive demerits from my other position on the House National Security Committee if I did not note that, in addition to his other duties, Thomas Hughes is a retired vice admiral, U.S. Navy. We thank you for your contributions and sacrifices in that regard, as well, Admiral. Welcome.

Mr. HUGHES. Thank you very much.

Mr. MCHUGH. Let me just say, one of the reasons, when I got lost on Mr. Duncan's testimony, through no fault of his, through mine, is that I tried to read, over the last 2 days, all of your testimony very carefully, because I think it is important. We have tried to glean from your presentations as much information as possible to help us to understand the more complete impact of this bill. And you have all done that in a very real way.

Because of what we have learned, we are going to have to, at a minimum, take a second look at many parts of this bill as it affects business-to-business contracts and transactions—that was never our intention—as it affects some of the securities industry's transactions that was mentioned in more than one of your testimonies, as it affects some of the insurance industry transactions, and so forth. So we are trying to take this very seriously, and I want to restate that for the record and again express our appreciation for your efforts.

I think, when we talk about impacts, we have to be very honest. Let me preface my next comment by saying I take a great deal of pride in being a capitalist. Maybe some of you good folks are questioning that right now, but I want to assure you that I am. My press secretary is a little upset with me this morning because I didn't make it to the presentation of the Spirit of Enterprise Award by the U.S. Chamber of Commerce that I'm very proud to have won for my votes last year in support of the businesses of this country. And I certainly want to receive more in the future.

So when I ask the next question, I do not mean it, in any way, in a pejorative sense. It is very important to know how much this is going to cost people. And you all have spent a great deal of time suggesting that the implementation, whether you have to hire people, if indeed the technology is available, what that will cost, and those are important aspects.

But I noted, for example, Mr. Sewruk, you spoke about lost interest. Do we understand, industry-wide, what we're talking about here in lost interest? Mr. Sewruk, you mentioned several credit unions across the Nation, the Fairwinds Federal Credit Union, that would lose $73,000 per year based on a calculation that they made. I want to make sure I understand what you're telling the subcommittee.

Are you saying that that $73,000 in lost interest is the approximate amount, in their judgment, that is being paid by customers with loans who, under the text of the bill, are making those payments or putting those payments in the mail stream in a timely fashion, yet are received beyond the due date?

Mr. SEWRUK. Again, I'm not familiar with the specifics of their calculations, but based on some numbers that we estimated, by example, if the due date, as an example, was the 1st, and the payment was received on the 4th or the 5th—and I have some other

information—a $1,000 loan at 8 percent has a daily rate factor of approximately 22 cents. So if you calculate that over a number of days period and you multiply that times tens of thousands of dollars worth of loans or million dollars worth of loans, then obviously the accumulation of those numbers, I presume, that's where they came up with theirs.

Our numbers, while they may not be as significant, we have approximately $15 million worth of loans outstanding. And one of the other individuals mentioned, this, in fact, does encourage individuals to make late payments. If I'm a smart consumer, I'm going to open up an account in California and pay by a check drawn on an Alaska bank, and wait for the due date posted on that date and get 10 days float.

So if I get the payment, we, as the institution, get the payment on the 5th, not only do we have to credit back to the 1st, so we've lost the interest on those 5 days, but we've also lost the incremental interest on the higher principal balance. So it may be fractional, but if you multiply that times a billion dollars worth of loans, and so forth, obviously they accumulate.

One of the other questions—and this is just an aside—how do you address payments on delinquent loans? If I have a loan that's 4 months delinquent, and I receive a payment on any date, do I have to go back 4 months and make that loan current? Now, that certainly would distort the credit report that's going to be put out to the credit industry. So that's not reflecting accurate information in either regard.

Mr. MCHUGH. Well, correct me if I'm wrong, I'm assuming you didn't personally do all of this calculation.

Mr. SEWRUK. Not there.

Mr. MCHUGH. As I read these figures, I know where they are coming from. Because the assumptions you have made—and why I asked about $73,000—the assumptions they have made on the total impact is to take every outstanding loan in existence for the American credit unions and calculate that they would be late.

I mean, automatically, every loan payment is going to be made in an untimely fashion, by a certain number of days, therefore the impact is $150-some million. I think that puts a new meaning on the phrase "worst-case scenario," but I guess we have to start somewhere.

What is the percentage of your late payments now?

Mr. SEWRUK. Again, we don't calculate. We don't assess any late payment fees. We don't track late payments. You know, individuals, they make a payment after the due date, we don't have any specific clause or operations that penalizes or identifies those individuals. So I really don't have those numbers available.

But based on individual—just doing some manual surveys over the past few weeks, if we have 2 out of 100 individuals that send payments after the prescribed due date, that really is probably a norm.

Mr. MCHUGH. So you don't assess any of this?

Mr. SEWRUK. No.

Mr. MCHUGH. And that's the Nest Egg Credit Union in Fulton, NY, for those out there who may wish to join.

Mr. SEWRUK. Yes, sir.

Mr. MCHUGH. Let me turn to the Admiral, because he was speaking more from the industry perspective. Are you aware, Admiral Hughes, what the average of your total accounts is that arrive in a delinquent fashion? Is it 20 percent, 10 percent?

Mr. HUGHES. Our overall delinquency, which is much beyond—we don't list one as delinquent until 30 days after it's not received. In other words, it's not related to the late payment process. But our delinquency, overall, is about .76 percent for credit cards and for regular consumer loans, and very close to it—the mortgage loans, are on the order of about .35 percent.

Mr. MCHUGH. So less than a percentage point.

Mr. HUGHES. Pardon me?

Mr. MCHUGH. Less than a full percentage point on both of those.

Mr. HUGHES. Yes, sir, less than a percent.

Mr. MCHUGH. Mr. Reid, how about for national mortgagors, is there a national average?

Mr. REID. Mr. Chairman, in the written testimony.

Mr. MCHUGH. Six percent?

Mr. REID. Six percent of the people pay on the 16th, 17th, or 18th. There's an additional 3 percent that truly are seriously delinquent, where they are not making it within the 30-day period. In my own company, it runs a little over the 9 percent level.

But I might also add, if I might, Mr. Chairman, that the payments are due on the 1st, but with this 15-day grace period—in my company, we process over 100,000 loans per month, and the average date that it's received is the 8th.

Mr. MCHUGH. That leads us to another question. One of you mentioned in your testimony—I believe it was Mr. Duncan—I'm not trying to append it to anybody; I thought it was a very apt observation.

I think the behavior of most consumers today—and I will speak for myself on my mortgage, because that's something I look at every month, and it's always the same. I rip the coupon out, and it says the payment is due on or before the 1st, and clearly, then, late payment is due after—I believe it's the 18th, in my case. I certainly tend to treat the 18th more as the due date than the 1st. I mean, I worry more about getting toward the 18th than I worry about getting toward the 1st, in normal circumstances.

The testimony pointed out that there may, in fact, be a negative effect on consumers because the law would probably say that you have to have this postmarked prior to the 1st rather than prior to the 18th, because the due date is the 1st. That being the case, at the risk of sounding flippant, I would say, "What are you worried about? Wouldn't that accelerate your collections?"

Go ahead, Admiral Hughes.

Mr. HUGHES. But it's not fair to the consumer.

Mr. MCHUGH. Well, I'm worried about you. Let's forget about the consumer for a second. How would you feel about it, your organization?

Mr. HUGHES. Our business is members and having a good relationship and satisfying their requirements, not ripping them off. And, you know, we want to give them as much leeway as we can. As a matter of fact, we don't charge—we have a late charge for a

mortgage on the 16th of the month, and, for a first hit, we ignore the charge.

Mr. MCHUGH. OK. Well, obviously, credit unions are claiming to be a little different.

Mr. HUGHES. We're driven by a different mechanism.

Mr. MCHUGH. OK. So let me move down to Mr. Reid.

Mr. REID. Well, I think then I would worry about the consumer, believe it or not.

Mr. MCHUGH. Well, I don't mean to say you won't, but what I'm suggesting is, let's focus—because your testimony said, you know, "It's going to cost us money. It's going to encourage late payments."

Mr. REID. Yes.

Mr. MCHUGH. And I really—for all the merits that may or may not exist in this bill—don't think it will encourage late payments; I think it will encourage more timely payments. And that's really the point of my question.

Mr. REID. Right. Depending on how it became interpreted, Mr. Chairman, you could make a case that this thing could force the payment date back, in a practical sense, so we would get the money sooner, and that would assist us. But an awful lot of payments now, today, in our business, are done through ACH, where you draft the borrower's checking account, and it's correlated to when they get their paycheck. I think that's why the 8th is the average date that I was suggesting, and we offer people the 5th, 7th, or 10th day of the month to draft.

Mr. MCHUGH. For the record please define "ACH."

Mr. REID. OK. It's automated clearing of the checks, in which you can actually draft the borrowers' checking accounts directly from their banks, so they never have to write a check, or put it in the mail, or anything like that.

Mr. MCHUGH. That's like electronic transfer.

Mr. REID. Exactly.

Mr. MCHUGH. Something that probably your industry would like to see implemented.

Mr. REID. Absolutely. It drives down cost measurably.

Mr. MCHUGH. Go ahead, Mr. Duncan.

Mr. DUNCAN. Mr. Chairman, we handle collections somewhat differently with retail credit cards. As I mentioned in the testimony, there can be a number of different due dates during the course of the month, depending upon the cycle of the customer's account.

What we find, in general, is that customers tend to pay in four bumps, as it were. They will tend to pay when they first receive their bill; a number of people pay on the 1st or the 15th of the month, roughly, because that's when they receive paychecks; and the remainder pay just shortly before the due date.

In terms of the number that occur after that due date, I don't have specific industry-wide figures, but anecdotal information from our members indicates it's just a few percentage points that come after that date.

Mr. MCHUGH. Yes, sir, Mr. Bracewell.

Mr. BRACEWELL. I would like to just mention, on the issue of the cost that you were talking about before, that while the horror stories in this area may relate to payments not being received by the due date, our understanding of the bill is that it requires every

payment, even a timely payment or an early payment, to be backdated to the date it was postmarked. So the lost money comes from having, basically, to credit the loan on a backdated basis, even if there's a timely payment.

Mr. MCHUGH. You're making an important point. I would ask you to restate it so that I know. Run that by me again.

Mr. BRACEWELL. OK. Let's say you have a $10,000 loan and you have a $1,000 payment due. We accrue interest on that $10,000 loan until we receive the $1,000 payment. Then it becomes a $9,000 loan, and the very next day we accrue interest on $9,000. If we had to backdate your $1,000 payment by 3 days, then we would lose 3 days' interest on a $1,000 payment. It doesn't matter whether the payment was late, early, or whatever; basically, we have given up the interest.

So I think this calculation that you were taking issue with and saying that that might reflect the cost associated with people not paying by the due date doesn't just apply to lateness and timeliness; it applies to backdating payments of all sorts back to the date when they were postmarked. So it applies to every payment, late, on time, or whatever.

Mr. MCHUGH. You're making it all payments where we're just dealing with interest, not late charges.

Mr. BRACEWELL. That's correct. I think the big money is in interest, not late charges.

Mr. MCHUGH. OK. Well, then, let's go where the big money is, interest. You're making a good point. And I'm not sure I agree with you on the intent of the bill. However, I appreciate the fact that you've said it raises a flag.

Let me expand on Mr. Duncan's mention of Bruce Williams. Mr. Williams got onto that theme in his presentation and said, "You know, if I make my payment 5 days early, I receive no extra credit, even though the institution, whether it's retail or a bank or whomever, has that money for an additional 5 days and receives that float." How would you respond to that?

Mr. BRACEWELL. I think there are two ways that financial institutions calculate interest. The way I described to you is a daily interest accrual; that is, we credit your payment the day that we receive the money, and you start to pay a lower amount of interest the very next day.

Another type of payment schedule is an amortization schedule, which is more typical in the home mortgage business, where you would run out a payment schedule over a 30-year life of a loan, and it would tell you, if you made the payment exactly on the first day of every month, how much would be interest and how much would be principal. And then the financial institution basically takes a plus or minus, gives a grace period, for example, and treats the payment as though it were made on the due date.

So there are two different ways that interest is calculated. But I think, if it's calculated on a daily accrual basis, which I would venture—I don't have any figures on that—I would venture to say the vast majority of debts in this country are calculated on a daily accrual basis. Home mortgages would be the exception to that. But I think, in the commercial arena, and so forth, that's the most common way.

Mr. MCHUGH. OK. Mr. Duncan, you wanted to comment.

Mr. DUNCAN. Yes, Mr. Chairman. In the case of retail charge cards, revolving credit, frankly, if the customer pays their bill in full—say they receive the bill on the 1st of the month, payment is due on the 25th, for merchandise they purchased the prior month—if they pay their bill in full by the end of the month, they pay no finance charge. So, in a sense, it's an interest-free loan to the consumer, which could be up to 30 days in length.

If, in fact, however, they decide to revolve the payment, then, at the date the payment is received, finance charges are only assessed for that number of days. So if they pay earlier, they pay less finance charges.

Mr. MCHUGH. Mr. Reid.

Mr. REID. Thank you, Mr. Chairman. I wanted to add that, you know, it is due on the 1st; however, if someone really is that interested in the float, there are other alternatives. Western Union, with its technology, as we put in our written statement, has come up with a way. You can go to any Western Union office and instantaneously wire funds to the lender. So if you really want to get the full float on that money you've got for your mortgage payment, you can do that.

I mean, I see many people—now, they live in Richmond, so they can get to our office, but they literally drive the payment over. That's another way that it's done. I think there are alternatives that can be used. But, once again, it is due on the 1st.

Mr. MCHUGH. You can get a bank account in Alaska; is that what you said?

Mr. SEWRUK. Checking account.

Mr. MCHUGH. Checking account.

I'm going to ask my colleagues for their patience, even more than they have already expressed, and I want to yield to them, but let me ask one more question. As I look over this field and begin to understand the complexity of it, one of the things that strikes me, among several, is the lack of uniformity, in terms of grace periods.

Now, I'm very happy to have been a part of a lot of what the 104th Congress has done with respect to devolution of power and giving back to the States that which should be theirs, but I'm beginning to wonder, where we have a circumstance—as we heard in testimony today, a third of the States have mandated, through their various financial laws, grace periods, meaning two-thirds have not.

When I think of the reality that, more likely than not, your mortgage is going to be sold to someone in the secondary market, as recently happened to me—I mean, it's a way of business—and while you may have chosen a local bank, as I did, to begin with, chances are you're not going to end up there, and you're going to have to make bills payable to somewhere in another part of the country.

Maybe it's time to consider, through this Congress, a standardized, uniform—to be totally redundant about it—grace period, rather than having, one was mentioned, a 35-day grace period, another 7, another 10. Maybe we ought to just pick 2 weeks and go from there. How would you react and respond to that?

Mr. Sewruk wants to jump right in. Go ahead.

Mr. SEWRUK. If I might use an example, sir. You indicated that your mortgage payment is due, generally, on the 18th.

Mr. MCHUGH. No, it's due on the 1st; I pay it on the 18th.

Mr. SEWRUK. There you go. I guess that's enough said. So now the vast majority would now use that 2-week due date grace period as the new due date. I think if you introduce a grace period across the board, then you just change the due date to the grace period date.

Mr. MCHUGH. Well, with all due respect, you can't have it both ways. You can't come before the panel and say, "Don't touch us because we're giving grace periods," and then, when we talk about grace periods, say, "But you can't give grace periods." I mean, that's what you just told me.

Mr. SEWRUK. No, sir. What I'm saying is, you indicate that your payment is due on the 1st, but the grace period, if you will, date is the 18th. So, traditionally, you use that as the target date, and you try to have your payment in before the 18th.

Mr. MCHUGH. Well, if I don't want to pay late payments. I know, given what the State of New York has done—I'm not maligning my mortgage payment.

Mr. SEWRUK. You don't consider your due date the 1st.

Mr. MCHUGH. Legally, I'm supposed to know this stuff. I consider my due date the 1st. But being very honest, obviously, I look toward that grace period as something that, if it's necessary, I can utilize.

Mr. SEWRUK. And I'm suggesting that, if you, in fact, implement a grace period across the board similar to that, a 14-day grace period, then consumers will, traditionally, try and have all their payments in before the 14th as opposed to the 1st due date.

Mr. MCHUGH. OK. Yes, sir, Mr. Bracewell.

Mr. BRACEWELL. I would just like to add, in the interest of consumers, I think, as a capitalist proponent, the ability for financial institutions and other credit providers to compete with one another in various ways is certainly something that ought to be fostered rather than restricted.

We all hear ads for retailers that offer, "If you buy this, you have no interest charge for 6 months, 7 months." Using your example of a mortgage loan, if you were going to refinance your loan, all other things being equal, you might prefer a grace period that went to the 18th instead of one that went to the 15th, for example. I mean, it's a mechanism whereby financial service providers can compete.

Mr. MCHUGH. So being a good politician, I would interpret your comments to say that we shouldn't limit people if they want to extend the grace period beyond the minimum.

Mr. BRACEWELL. I didn't understand that.

Mr. MCHUGH. I'm saying, you could allow competition; you could allow commercial or retail establishments to compete by offering grace periods beyond a mandated minimum. I mean, competition could occur; you're just ensuring a certain window of uniformity. You would like to compete in that window, below that, I understand.

Mr. BRACEWELL. Well, not necessarily.

Mr. MCHUGH. Do you provide a grace period?

Mr. BRACEWELL. Yes, we do.

Mr. MCHUGH. Are you required, under Texas State law, to do that?

Mr. BRACEWELL. Actually, the bank I'm most familiar with, where I work on a day-to-day basis, is one here in Washington, DC, which requires a 10-day grace period.

Mr. MCHUGH. 10-day. OK. Thank you.

Did you want to comment, Mr. Duncan?

Mr. DUNCAN. Just briefly, to say that there are grace periods and there are grace periods. There's the period, of course, before your bill is due. There's the additional days, generally not disclosed, that most retailers allow a customer in case there happens to be a mail delay. And then, in some cases, other retailers allow a few additional days. They call it sort of an "overstuff period."

The problem is, retailers compete with these grace periods the way they compete with anything else, the way they compete with return policies. Obviously, there's only so much in the pie when you're charging for merchandise, and you can shift that money around to attract a particular customer. You take Nordstrom and compare it, say, with—well, pick Woody's here recently in the District.

Mr. MCHUGH. Good example.

Mr. DUNCAN. They provide different levels of customer service, different costs. And one of them may choose to have a more generous refund policy but perhaps at the expense of a couple of days in that grace period. It really shouldn't be Congress's function to change those parameters.

Mr. MCHUGH. Woody's went out of business; right?

Mr. DUNCAN. That's right. That's why I chose that example.

Mr. MCHUGH. OK. I thought wisely so, too.

Did you want to comment, Mr. Reid?

Mr. REID. Well, ours is somewhat standardized, "ours" being mortgage bankers. The majority of our loans, as you know, Mr. Chairman, are put into mortgage-backed securities through the GSE's—Fannie Mae, Freddie Mac—and 15 days is what they go with.

But I think, for the record, I would also note that when we put these loans in securities, we have to pass through, "we," the servicer, have got to pass through the timely payment of principal and interest, whether we receive the payment or not. So an extended grace period for us would cause even greater cash-flows and extensions of money out there until we got the money in from the consumer.

Mr. MCHUGH. What is your industry standard, 10 days?

Mr. REID. 15 days.

Mr. MCHUGH. 15 days.

Mr. REID. Right.

Mr. MCHUGH. Yes, Admiral.

Mr. HUGHES. Without really addressing the immediate point that you make of "should we standardize," I think that there's another thing that we ought to be looking at, and that is your problem, and what can you do for the system. I've looked at that pretty hard, and, first of all, I don't think there's a large problem, which I have stated in my statement. There's a problem of cost versus benefit.

It's going to cost more to solve this small problem than the benefit that's received, in my opinion.

What we're driving toward very hard is to get out of the mail business as much as we can and not run into this. People still will have the choice of using the mail, but we're trying to go more and more into electronic banking, and technology is pushing us that way.

I had 4 million calls last month on what we call "Touch Tone Teller," where people at home can just hit the thing and say, "Transfer *X* dollars to pay my bill," or they can have a standard agreement with us to automatically, on the 1st, 15th, whatever day they want, transfer and clear my account and Visa with my savings account. Also, along that line, we encourage direct deposit of people and allow them to make the distribution of their funds, so that they will pay standard bills that come every month.

I think that is more of a benefit to the consumer, overall, to give him as much of that option as possible. Adding more money to the present system in order just to meet the mail thing I think is better spent in putting in other ways, and that's to avoid the problem that you're addressing.

Mr. MCHUGH. Indeed, some financial institutions are now paying you to, such as Citibank, establish that. It's interesting.

I appreciate your patience. In the order in which you have appeared, I believe the gentleman from New York was first.

Mrs. MEEK. Plus, I have seniority over him.

Mr. MCHUGH. Well, I could never tell from here.

Mr. Owens.

Mr. OWENS. I will be brief, and you can go on to the real questions. I would like to note that this has been quite an eye-opener, because your views are very different from the previous panels'. It's an enormously popular idea that we're dealing with here. People who have few transactions and very little money find it just as popular as those who have a lot of transactions and are dealing with a lot of payments.

Just a few questions, most of which have been covered by the chairman in one way or another, but I think this one hasn't. With all of your figures, you must have some estimates on the number of people who pay in advance of deadlines. What percentage of people pay in advance? Say it's due on the 1st, but you have a grace period up to the 5th, so how many people pay in advance of the 5th, the deadline where the penalty starts rolling? In some cases, it's the 5th; in some cases, it's the 14th. Do you have some figures on that?

Mr. HUGHES. About 2 percent of our people where we charge a fee, and that's only on a small set of loans. About 2 percent.

Mr. OWENS. Only about 2 percent pay in advance.

Mr. HUGHES. Two percent hit the mark where they owe a fee. In other words, 98 percent pay within the demanded time.

Mr. OWENS. So there would be no advantage in offering some kind of incentive for people to pay in advance or pay on time, as part of this whole problem of trying to get at the problem that a lot of us feel is very real, in terms of being penalized for payments that do arrive late.

I've got a certain department store that I won't name, that, of course, moved their payment office outside of New York City, as most of them have. So I buy the merchandise in New York City, but I'm sending the payment somewhere else. And I've been trying to avoid that which I think is an exorbitant $15 late payment penalty. No matter how much the payment is, it's 15 bucks.

I'm trying to catch them, but they seem to have the upper hand. Every time I rush to make the payment ahead of time, there's a snow in New York, or out in South Dakota where their office is located there's a snow. So they aren't blamed for late delivery of the mail. The myth that the mail goes through rain or shine is just not true. Of course, they didn't even bother to deliver mail for a couple days in New York when the big storm hit. They admitted they weren't going to deliver it.

So, you know, I just wondered if there's some way to offset the disadvantage so many feel with advantage. You know, I'm not anti-capitalist; make as much money as you can. But you've got an advantage on the float. You're always floating in your direction. Why can't you float in the direction of the consumer? Is that a possibility of helping the situation, offer bonuses to early payers and incentives?

Technology is such that it would be no problem for you to have a sliding scale, those who get there earliest get a certain bonus, right down the line, you reach midpoint and the penalty sets in. It's to their disadvantage, those who come after the 14th or the 15th, but those who come ahead sort of have some slight advantage. Is that possible, with the technology that you have, and what do you think of it?

Mr. DUNCAN. Representative Owens, speaking for the retailers—and I'm glad you didn't name that particular one—as I suggested earlier, if payments are received in full, there is no finance charge if it's received by the due date.

Mr. OWENS. I'm not talking about a finance charge; I'm talking a late payment charge.

Mr. DUNCAN. A late payment charge typically is assessed if a payment is received several days after the due date.

Mr. OWENS. "Several" being an ambiguous term.

Mr. DUNCAN. "Several" being 10 days, perhaps, a fairly standard number.

Mr. OWENS. In this case, it's five.

Mr. DUNCAN. It's a fairly standard number. However, most of the retailers that I have spoken with say that, if a customer calls and believes there was a snow delay or a problem such as that in the local area, they will, in fact, waive those fees at the request of the consumer.

Mr. OWENS. I'll put that on my schedule to make those calls.

Another question is, with technology being what it is today, is it possible that the post office could help resolve some of the problems that you all indicate, how difficult it is to determine when the date of payment was? Is it possible that some bar code keyed into the dates that the post office stamps on every letter, which is more distinct than the present postmark, which I think is antiquated and obsolete, the whole procedure, could easily allow you, on the other end, to have some machines that could identify what date is on it?

Is that possible that we might call upon the post office to solve that problem for you?

Mr. HUGHES. I think that most of us are on what we call "cycle billing." You can't peak and do all the billing as of a given date, but you would rather spread it out.

Mr. OWENS. But you at least know what date it was postmarked without having to examine it closely. The bar code on it clearly tells you what date the postmark indicates.

Mr. HUGHES. I thought you meant when the payment was due. I apologize.

Mr. BRACEWELL. May I?

Mr. OWENS. Yes.

Mr. BRACEWELL. I would just say two things about that. As to whether the investment in that kind of technology is wise and appropriate, first of all, for the Postal Service, it would seem like, to the extent that Congress is trying to address this problem with the Postal Service, the investment should be made in making more timely mail delivery, which is where most of this problem seems to come from.

And on the financial services side, the investment really needs to be made in the direction of the trends that are going on in the industry right now, which is away from paper processing and in the direction of electronic.

So while that investment could be technologically feasible, one would question whether it's properly placed, in terms of the government interest.

Mr. OWENS. Well, the two interests coincide. The example you gave is not a good one to make your point. Timely delivery is a problem with the post office, I assure you. If they had better ways to indicate exactly when it's postmarked, we would have a better reading of when the timely delivery takes place, also. So one thing does not cancel out another. It's a fairly easy adjustment, it seems to me, with today's technology.

Mr. SEWRUK. If I might.

Mr. OWENS. Yes.

Mr. SEWRUK. If I just might add, when the postmark, whether it's a postmark or bar code, is imprinted, is not necessarily even close to the date that we receive it, No. 1.

Mr. OWENS. The issue here is postmark. The issue here is that consumers want to indicate when they put it in the mail and have it postmarked. That's the issue.

Mr. SEWRUK. Then someone, again, at our end, would have to track it. Now, if it's a manual review of the postmark versus an automated reader-sorter on the bar code, we're paying for it one way or the other. We're either paying for electronic equipment to do that reading and sorting for us, and then still manual intervention.

Mr. OWENS. Electronic equipment probably would be negligible. Over a long period of time, there would be very little cost, would you not admit?

Mr. SEWRUK. Well, unless you're multiplying to multiple locations versus usage.

Mr. OWENS. Thank you very much.

Mr. DUNCAN. Representative.

Mr. OWENS. I'm sorry. Mr. Duncan.

Mr. DUNCAN. There are also a couple of technological problems. I suspect the next panel may be able to answer this better. But you couldn't just have the postmark on the envelope. If we're going to be able to process it by automated equipment, it would actually have to be on the statement.

That means, likely, you'd have to have a cut-out window on the front of the envelope that it would be sprayed onto, so that when we pull the statement out—because the envelope is long since destroyed—so when we pull the statement out, the machine, the new technology we would have to buy, would have to be able to read that sprayed-on bar code.

Now, there's a problem there, because if you increase the number of windows on the envelope, then you make it more likely that the envelopes will get jammed up as they go through the Postal Service's own processing machine. Corners of envelopes become stuck in those windows. So while it's an interesting suggestion, you may, in fact, slow the mail even further by trying to put these extra windows into the envelopes.

Mr. OWENS. Thank you.

Mr. MCHUGH. I thank the gentleman.

As a note, we will hear from people who are involved on the technology side, and perhaps they will be in a position to comment upon some of the efforts that the Postal Service is making in the regard the gentleman from New York was talking about.

The gentlelady from Florida, Mrs. Meek.

Mrs. MEEK. Thank you, Mr. Chairman.

I've listened intently to much of the testimony here. I'm a little ambivalent on this bill. I think it's deliberately helpful to the consumer, and usually I am on the consumer's side. But I have some problems, because, in listening to the industry, it appears that this is going to be a nightmare for the industry. As much as we would like to do these noble things, many times it's almost prohibited by the hard time in trying to implement it. So I'm looking very closely at it, and that's what I see.

I also feel that we really need to look at the overregulation of many of our industries. One of the things I've learned from the Congress, particularly since the Republicans have come in—and I appreciate their approach to it, because the Democrats had regulated you out of the world—but when the Republicans came in—I hate to be partisan—they did cut out some of those regulations and try to make things a little bit easier.

So that's one part of my ambivalence, that, No. 1, the reforms here in Washington, many of them are very good. There are many that I don't agree with. But the one about overregulation of industry is one that I do agree with, because I feel that it would be cost-prohibitive in much of this.

I was just wondering if there have been any impact studies to determine the overall cost of this bill. I'm sure it will happen when the Chairman submits it and it goes through the people in other committees. But, hopefully, it is one that doesn't have such an overwhelming fiscal impact that industry could not survive from it. But, in my opinion, it's very diverse in its application, and naturally there will be a big critical path when this is carried through,

because there will be many mistakes made and even more comments, more critical comments.

I'm just wondering if there will be any real savings for consumers. I missed the panel on the consumers, the proponents of the bill. I was not here. So I realize that I've listened very intently to this panel, and I read the comments from the other one. But I have that ambivalence.

The second thing is, you told us that you stand to lose financially, but you did not say, really—you talked about fees and interest payments, but you didn't really give us a composite as to what would be the total cost to the industry. And I know that may be hard to do, but that would be helpful to me.

My second question is, my staff has talked to some of the people on the technology panel this afternoon, and we learned—and I think I heard Mr. Hughes, is it, talk about that—they say that there's a date which normally coincides with the postmark date, that goes through the post office, and it already appears on a machine, which is in a readable form on many of the remittance envelopes that the industry uses, and that the question of technical feasibility for implementation of this proposed bill is not at all difficult, as many of you have suggested.

How would you respond to that? I think Mr. Duncan mentioned it with the Retail Federation. How would you respond to the fact that there's already a bar code on the mail when it comes from the post office, and it will not create the big problem that many of you have described? Would you please put a spin on that for me?

Mr. DUNCAN. I'm not familiar with the specifics of the comments that you received from the next panel; however, there is a bar code on the envelope. The bar code is an address code, generally, and it directs the mail to the credit grantor. There is not, to my knowledge, a bar code on the envelope that indicates the date of mailing or the postmark.

Mrs. MEEK. That's what the person said to whom we talked. He said that bar code normally coincides with the postmark date, which already appears in a machine readable form on many remittance envelopes. Now, I don't know the source of that bar code, whether it comes from the industry or whether it's put on by the post office, that I don't know. I'm just asking for your clarification of that point, unless staff has it. It comes from the post office, yes.

Mr. SEWRUK. If I might, Mrs. Meek.

Mrs. MEEK. Yes.

Mr. SEWRUK. I have a number of samples, and there are a number of envelopes that have no bar code whatsoever.

Mrs. MEEK. Those are those that were not sent by the industry.

Mr. SEWRUK. Well, they were sent through the post office, through the Postal Service. They have a postmark but certainly have no bar codes, as evidenced by the others.

Mrs. MEEK. Yes. And I'm sure that misconception is due to the fact that when the industry—many of them that I owe, and I owe everybody—on it is a bar code. When they send me the return envelope, there's a bar code on that envelope. But that's from organized industries, you know, that send it. The mortgage company sends it, and the banks send it, as well. And the Retail Federation, that's really going to be a nightmare for them.

But all I can say is, these are questions that I want to have a good feel about. We certainly don't want to put a burden on anybody, but we don't want the consumers to be constantly harassed by these late interest fees. So that's why I wanted to explain the fact that I am ambivalent on it.

I do hope you can answer the question about the late fees and all of that, according to your industry, in terms of the bottom line. Then I can certainly be in a better position to help the chairman and the rest of the committee on this bill. Thank you.

Thank you, Mr. Chairman.

Mr. MCHUGH. I thank the gentlelady for her comments.

The gentleman from Maryland, Mr. Ehrlich.

Mr. EHRLICH. Thank you, Mr. Chairman.

First of all, I want to thank the panel for their testimony. Also, I want to thank the gentlelady. As a freshman Republican, I appreciate your comments very much.

Mrs. MEEK. I just deal with the truth, that's all.

Mr. EHRLICH. I appreciate that very much.

Mrs. MEEK. I think that will always stand up.

Mr. EHRLICH. I appreciate it very, very much.

Thanks for being here today. We appreciate your testimony. I have listened very intently to the chairman, as well. I guess I derive from what I've heard today a couple conclusions. One is, does a problem exist? Not really. Second, to the extent any problem does exist, it's the fault of the post office. And these are just what I'm hearing.

If you humor us for just 1 second and begin from the premise that there is a problem, maybe anecdotal evidence to be sure, but there is a problem out there. Tom, you were talking about innovative ways to use new technology to combat this problem, to the extent it does exist. You mentioned getting out of the mail business—a number of you mentioned getting out of the mail business altogether, use of the phone, direct deposit.

What other innovations do you know of or are ready to come on line, that you are interested in, and want to make us aware of that are out there. And, to some extent, even provide a remedy for the anecdotal problems that have been brought to our attention, with respect to your industries?

Mr. HUGHES. The whole scheme of electronic payments, you know, is extending. The wire business was spoken to. I've spoken to direct deposit and making a menu of disbursing of the payments directly within the organization by some agreed-to arrangement. The electronic phones we talked about.

But I think the general direction of the finance industry is in the direction of home banking. And a lot of the people, the technologists, some of which you will hear today probably—but there is a lot of sabre rattling going on. It's a very expensive process, and pushing you too early into that is bad. We need to take our time and put a lot of resources into determining which way we should go on all of this home banking.

Not that it's not technologically feasible, it's a matter you can go the wrong way. The same thing with—you know, I've gone to image and spent a lot of money. I haven't gotten full benefit for the cost; it's probably one of the bigger mistakes I've made in my career. I

went into it too early, and I'm paying for it a little bit right now. So you have to be careful of those things, but I think support for going into directions that avoid things like paper and the mailing system, et cetera, is really the way to go.

I think, on the other issue, other than just late fees and everything, the claim of people cheating on the system, I think you ought to make that into a criminal act, you know. It's in the legislation right now, in Reg Z, I guess, coming from the legislation, but you ought to make that a criminal act and put force on it for willful violations. Make the examiners look into it, and, if they come across it, make it a criminal act and slap people with it. I think you're going about it in a very indirect way in the process you're following right now.

Mr. EHRLICH. Mr. Reid.

Mr. REID. Mr. Congressman, even if you had the technology today that allowed you to say, "Well, it was in fact put in the mail on the 15th," we still would probably not get that money until the 17th or 18th. As I was stating previously in my testimony, if you have your loans in mortgage-backed securities, you've got to pass that through to Wall Street.

Right now, my company, for instance, we pass $3 million to $5 million a month through that we don't actually have the receipts from the customers yet. Now, by the end of the month, most of that money is in, but that's a big loss of float. So we're talking about days here on millions of dollars.

Mr. EHRLICH. I understand. Anyone else on the panel like to address that?

Mr. SEWRUK. Just maybe an extension of what Mr. Hughes stated earlier. Where the industry, I think, is trying to move toward electronic bill payments, this bill, to some extent, stifles that and encourages consumers to stay with paper checks. It encourages them to take advantage of that opportunity. So now I should probably discontinue payroll deduction. I should discontinue direct deposit through my employer and send the checks. And I think that's counterproductive.

One other item, I think, that hasn't arisen here is the question of disputes. And I think that, ultimately—well, I'm not sure who's going to have the ultimate final say in the matter of disputes, a consumer arguing when the postmark—and payment, and so forth—but, invariably, all it does is create ill will. I mean, no one will be the winner. We'll always be the bad guy, and it's just going to create problems for us. For us, a member relationship is critical to our survival.

Mr. BRACEWELL. I just wanted to say one comment based on your paraphrasing of our position, that there's no problem, or, if there is a problem, it's because of the Postal Service. I would just like to say that I think, if we look back in history, there is a due date on a loan. As the chairman said, his due date is the 1st; his grace period is the 18th.

The grace period came about as a private industry response to this very problem we're dealing with right now. The payment is due on the 1st. And I don't think we hear very many horror stories about people who put their payment in the mail in time to arrive on the 1st and it not arriving by the time of the grace period. I

think the phenomenon we've got is people believing that the grace period somehow moves the payment date back, when it was really put there in the first place to allow for these very problems we're dealing with.

So the Postal Service may exacerbate the problem, in the sense that people have an expectation that it only takes 2 days for the mail to get there, and they've got a 10-day grace period, so they can use 8 days, for example, for their own use of their money. But I think it's important to put some historical perspective on that.

Mr. EHRLICH. I think you raise a good point there.

Thank you, Mr. Chairman.

Mr. MCHUGH. Before I yield to the gentleman from Texas, I think you make a good point. I go back to what Mr. Sewruk just suggested, that this bill would encourage people to pay late. Did I hear you right?

Mr. SEWRUK. Yes.

Mr. MCHUGH. Yes. I don't agree with that. I go back to the fact that if I were seated where you—and I'm not trying to suggest what tack you should take—are, and it was contained in one bit of testimony, I think the most troubling part, from the consumer's side of this, is that, under the terms of the bill, you would have to have that in the mail stream by the due date, by the 1st, not by the end of the grace period.

Now, what I heard here this morning is, by your own testimony, and I think it's logical, most people play off that due date. So I think this bill would, if anything, require people to pay more timely than less timely.

Mr. SEWRUK. If I might.

Mr. MCHUGH. Sure.

Mr. SEWRUK. In clarification of "late," and by "late" I use it as payment due date based on initial contract, loan contract, we don't have grace periods.

Mr. MCHUGH. Because you don't have late payments.

Mr. SEWRUK. Thank you. Because we're a credit union. If you made your payment on this particular date for this number of months, then your interest would be *X,* and you paid the date of—and so forth. So when I say the "late" payment, I'm just using "late" payment as it refers to the due date of the loan.

Mr. MCHUGH. OK. And I accept that as correct.

Mr. SEWRUK. But, now, if I might.

Mr. MCHUGH. But a big "but."

Mr. SEWRUK. If I might. If the payment is due on the 1st and the payment is received on the 5th, I have to credit back the individual to the 1st. So we, as the institution, have lost the interest for those 5 days. The loan now, going forward to maturity, will receive the interest that was projected, but, in fact, the consumer has, in fact, received the benefit of not paying all that interest that they had the use of those funds.

Mr. MCHUGH. Well, we had a discussion earlier today about the application of the bill against the retroactive assessment of interest, and that's a point that has to be addressed. The thing I'm trying to clarify is, in the jargon of most people in this room who look at this industry, this bill would encourage more timely not less timely payments.

Mr. SEWRUK. I guess I would have to disagree, sir.

Mr. MCHUGH. We will agree to disagree.

Mr. DUNCAN. Mr. Chairman.

Mr. MCHUGH. Yes, sir, Mr, Duncan.

Mr. DUNCAN. You raise an interesting point; however, I feel it important to distinguish revolving credit from the example that you raised. In the case of revolving credit, there is a set due date, and we hope customers will pay a week before, or whatever, so that the payment is there on time. In that case, it actually would encourage consumers to pay late. Witness the lines we see in front of the Postal Service for the IRS on the 15th and the 14th, as people try to get their bills in at the last possible second.

Mr. MCHUGH. However, if your due date on your credit card is—pick a date.

Mr. DUNCAN. The 25th of the month.

Mr. MCHUGH. The 25th. Your late payment assessment, as most credit card companies levy, comes 10, 15 days beyond that 25th.

Mr. DUNCAN. In many cases, that's right.

Mr. MCHUGH. But under this bill, if that payment were postmarked on or before the 25th, the late payment would be assessed immediately. I still think, even in that case, people are going to start looking at the 25th as the real due date, as is, in fact, the intent of the law as it exists under the contract, rather than, as most of us do, myself included, kind of look at that end of the grace period.

Mr. DUNCAN. But if they know they will be considered timely as long as it's postmarked by the 25th, the 25th is when it's due at the creditor, people will be putting it in the mail on the 24th or the 25th, and relying on the postmark to say, "I'm on time."

Mr. SEWRUK. And you'll be having grace periods on postmarks before long.

Mr. MCHUGH. But my point is, what most people do now is look at the 25th and think, "That has nothing to do with me. What has something to do with me is the end of the grace period," whatever that may be.

Mr. DUNCAN. Not for retail credit, because your statement typically is pulled a few days after that due date. After all, you received your bill on, say, the 3rd or 4th of the month.

Mr. MCHUGH. Hopefully. Which is something we haven't discussed yet. You're concerned about getting yours in a timely fashion and not being held responsible for the Postal Service. The customer who is waiting for your bill is subject to the same vagaries, and they are getting hit twice.

Mr. BRACEWELL. Your bill should be due when you mail it out.

Mr. MCHUGH. Go ahead.

Mr. DUNCAN. But, typically, the customer receives the bill early in the month, and the payment is due within 2 weeks, say, thereafter, 2 weeks or more, maybe the 25th of the month. That's the due date, and we would expect the customer to put the bill in the mail in a timely fashion so we would receive it by the 25th. After all, we will be pulling their statement again a few days later.

Mr. MCHUGH. Well, you expect that, but does it happen?

Mr. DUNCAN. Yes, in fact, as I think everyone here on the panel has mentioned, the overwhelming majority of payments are received by that due date.

Mr. MCHUGH. Now, what I heard the overwhelming majority say is that they are not received past the grace period.

Mr. DUNCAN. Well—and I'll speak for us.

Mr. MCHUGH. Well, big difference.

Mr. DUNCAN. I'll speak for us.

Mr. MCHUGH. OK.

Mr. DUNCAN. In our case, the overwhelming majority of payments are received by the due date, in a revolving credit situation.

Mr. MCHUGH. Am I misspeaking your earlier stated position, Mr. Bracewell or Mr. Reid, when you comment as to your delinquent accounts, those are past the grace period; is that true?

Mr. REID. Mr. Chairman, you're correct. Ours are due and payable on the 1st. The grace period is to the 15th. The average mortgage payment is received on the 8th.

Mr. MCHUGH. OK. But an important point as to the differences in these accounts.

Thank you for your patience, Mr. Green. The gentleman from Texas.

Mr. GREEN. Thank you, Mr. Chairman. Before I lose my time, I will yield a minute to my colleague from Florida.

You heard in my opening remarks the frustration that, if you have a due date of the 25th, and so often—maybe at credit unions you have a grace period—but the consumer is subjected to whenever they receive it, like the chairman said—and you want it on the 25th, and all the bill says is that, you know, it's shown as due.

One of the suggestions I have thought about is—and I'll throw this out before I yield to my colleague—each of you said you have some type of liberal grace period, 14, 15 days, as much as 25 days.

What if this bill were amended where you could literally write yourself out of the bill and that, say, if you have that kind of grace period, that, you know—because my experience with mine was that if it showed up a day late, then you were assessed a $20 charge on a $12 bill. And to make sure your credit was not, you know, impacted, you sent them 40-some dollars, 30-something dollars, $32 or something. And that's the frustration.

But if there was a grace period, you wouldn't have to worry about saving the envelopes, or anything else, you know, after that. If you have a 15-day grace period, then you could literally, by your business practices, write yourself out of the postmark bill.

And I don't know if the problem is with credit unions, or with a lot of businesses, at least the ones who are testifying here today, because each of you say you have a grace period. But if you don't, and it comes in a day late, for whatever the reason, the post office, the postmark, whatever, then that may be a way that we could still address the problem, have some kind of standardization, and yet still have good business practices where each of you could utilize that.

With that, Mr. Chairman, I will yield whatever time I have left to my colleague from Florida.

Mrs. MEEK. You're giving me all of your time?

Mr. GREEN. Whatever I have left.

Mrs. MEEK. Thank you. I thank the gentleman.

I did not get an answer to my question about the late fees and interest costs. I wanted to know what was the bottom line to your industry, in terms of how much money are you taking in, how much revenue are you getting from your late fees, and how much are you getting from your interest fees?

And that may be a question that maybe is unanswerable at this time, but that's something I would like to know, in that each of you has testified—and you're in the marketplace; I realize you're supposed to make money. I just want to see what the bottom line is to your particular industry, in terms of the late fees and all of that.

Then I'm sure the committee could make some kind ascertainment as to, "Well, the industry, it isn't really hurting them that much. They won't even lose that much." Each of you has a very viable argument, but you did not tell that. And I think you should tell us, on your own, what you're going to do. Because our good chairman brought this bill to this committee, what are you going to do in the industry to try to improve the industry, even before the bill passes? Because it's going to pass.

[Laughter.]

Mrs. MEEK. I'm sorry.

Mr. MCHUGH. Well, from your lips to God's ears!

Mrs. MEEK. The first thing I learned when I got into politics, you never vote against the chairman. OK. So you need to face the real world here today.

Mr. MCHUGH. We really appreciate the gentlelady's comments this morning, on all levels, but we're trying to work this out, too. As I mentioned, we try not to do anything that's disastrous to the flow of commerce in this country, and I think the gentlelady asks a very important question.

What I'm assuming she would like, and if she's not asking for this, let me put in my two cents' worth regarding the possibility of having a breakdown of the various projected costs of the implementation of the legislation. It probably is impossible to do it on the technology, because, as we're about to hear, that's evolving, but you can put a man hours cost to it.

Mr. Duncan, I think you made some very pertinent points about the practicality of that, but as a way to calculate costs of the implementation, the lost revenues that you would suggest would ultimately be transmitted as a increased cost to your consumer, or to the person taking out the mortgage, or the loan, whatever it may be.

I wouldn't imagine you're in a position to share the information with us right now, but it would be very useful to the committee to get a better handle on exactly the total implications of this, from the industry's side.

Mrs. MEEK. Thank you, Mr. Chairman.

Mr. MCHUGH. Thank you.

The good admiral made an interesting suggestion as to putting criminal sanctions in Reg Z. How would the rest of you respond to that? Any volunteers?

Mr. DUNCAN. I suppose there's a great deal of reluctance to criminalize the statute for the reason I mentioned at the very beginning of my extemporaneous comments, and that is, we don't

really know what the cause of the problem is at this point. We don't know whether it's a problem in the Postal Service. We don't know whether there might, in fact, be some bad actors out there. And it's probably not a good idea to criminalize something when there's not necessarily a problem there.

Mr. MCHUGH. Do you agree or disagree, Mr. Bracewell?

Mr. BRACEWELL. I would agree. I think that the financial institutions, at least that are represented here, are examined periodically, and we're examined for compliance with consumer regulations, and it's a very thorough exam. There are certainly statutory and common law remedies for holding payments that have been received by the institution and not posting them on a timely basis. And financial institutions live and die by their reputation for fairness and soundness, and so forth.

So whether it would actually add anything to the degree of the magnitude of fear, if you will, of criminalizing some behavior, I would question seriously.

Mr. MCHUGH. Let me followup with you, Mr. Bracewell, because I seem to recall you mentioned there are significant penalties. You cited Reg Z as an example of how the industry is already under certain procedural requirements, legal requirements, as to posting of an account on the day it's received. And I believe it was either you or Mr. Reid who noted that this is an auditable function.

How does that work? For those of us who don't involve ourselves in the financial industry, it seems at least possible that when a payment is received it could be lost in the shuffle, and that there's no intent, malicious intent here, no intent to bilk the consumer, but it's sitting over here and isn't really received.

How does the lockbox system, if it does indeed, ensure that those accounts are posted and are in a form that is auditable?

Mr. BRACEWELL. Our bank doesn't use a lockbox. Maybe Mr. Duncan or Mr. Reid could respond.

Mr. MCHUGH. Well, then, before I get to Mr. Reid, how do you do it?

Mr. BRACEWELL. We do it the old-fashioned way. We go to the post office, use one of these letter openers, like Mr. Duncan demonstrated, and manually post it into a computer terminal. Is there a potential that it could be lost or delayed or get under someone's desk blotter, I suppose so. That could happen. But I think, when we're talking about criminalizing behavior, we're talking about something more orchestrated than that.

Mr. MCHUGH. I understand. But I'm saying that there is, in your procedure, and I would assume in some of the smaller institutions, a way by which things happen. For whatever reason, it doesn't get posted. I'm not accusing you of anything. I'm not asking you to admit it.

Mr. BRACEWELL. Right. I understand.

Mr. MCHUGH. But, it's not a fail-safe system.

Mr. BRACEWELL. Right. We date-stamp our mail when it's delivered. All these are manual processes, so every one lends itself to what happens if that person is sick that day, or what happens if they forget to turn the date stamp, et cetera, so it's not a fail-safe mechanism by any means. And I think, for most community banks,

of which there are thousands that are smaller than ours, there's always the possibility of human error.

Mr. MCHUGH. How are you audited, then? You don't keep the envelope that has been date-stamped; true? Or do you date-stamp whatever the remittance is?

Mr. BRACEWELL. I don't believe we save the envelopes indefinitely. Whether we save them for a period of time, I really—I'll have to get back to you on that. I can't tell you exactly.

Mr. MCHUGH. OK. I would appreciate it.

Mr. Reid, you were going to tell us on the lockbox.

Mr. REID. Yes, Mr. Chairman. The industry is becoming more and more automated and using technology, and it's outstanding. It's really helping us. I've mentioned a couple of ways that you can make your payment today, from driving up to a window to using Western Union. But the bulk of collections today in mortgage banking are received through the lockbox.

And how does that work? Well, it's a central location where those coupon books, like yours, go to that central lockbox. If we receive payments, say, starting at midnight, every hour that box is examined to see what has come in. By 5 in the morning, that is all totally automated into my company in Richmond, VA. By 5 in the afternoon of the next day, we've got all that logged in. It's highly automated. It cuts out a great deal of any error that can occur.

Now, you still do have some people that want to make their payment in the regular old envelope, and they put it in there and put their loan number at the bottom. But that's becoming less and less the situation. So technology is continuing to help us cut out the margin of error that would exist.

Mr. MCHUGH. You gentlemen have been enormously generous with your time, and I appreciate it. We do have another panel, and we have to move along. But let me just ask you a few questions that relate to some of the things that were placed on the record in the prior hearing, and I think, out of fairness, you should have an opportunity to respond.

It was noted that if I were to go to a branch office of the National Bank of Federal Savings to make—and they are headquartered in Alaska—and I make my mortgage payment, that is not considered received and credited until the branch conveys that, in whatever fashion, to the back office or to the central office. Is that true? I'm getting a no over here.

Mr. Bracewell.

Mr. BRACEWELL. It wouldn't be true in our bank, or I would think any bank. If it's payable at our bank and it's at our bank, it's paid that day, provided it's there by 2 o'clock.

Mr. MCHUGH. Mr. Reid.

Mr. REID. Mr. Chairman, it depends on the particular bank. Some banks have the automation there that allows them to credit it right there; others, smaller, don't have the technology. It's the same as if you brought it to the post office. It's still got to be transported to wherever the central location is. But when the borrower would have closed his loan, he would have been told where the payments need to be brought.

Mr. MCHUGH. Is that transaction covered under Reg Z?

Mr. REID. I would have to get an interpretation on that.

Mr. MCHUGH. OK. Well, let's assume that it's not, and let's assume—and I would suspect that you're in the business of being a community bank, and you've got to kind of make up for certain lack of economies of scale by better service, and you're right there—but in some of the larger institutions, let us assume that it is not credited until it's actually received and it isn't covered under Reg Z, would you have a problem if we extended those requirements to that kind of payment? So if someone made a payment at a branch, they could at least expect that that's being credited when that payment is taken by the clerk at that branch.

There are some people in the back of the room shaking their heads no. I don't know who they are, but they should have gotten on the list.

Mr. REID. Well, Mr. Chairman, I would have difficulty with that, because we don't have the money. We have advances we have to make against mortgage-backed securities. It's something that would cause a great difficulty for a member that didn't have the technology in place, because they don't have the money.

Mr. MCHUGH. OK. Well, I appreciate your response.

With that, let me again thank you. I would ask, with your indulgence, that the subcommittee would keep the record open for the next 7 days for the submission of any additional testimony. Also, for those who are shaking their heads in various ways, if you want to submit testimony, we would welcome it. And I assure you, as we've tried to do with the testimony presented here formally, we will consider it all very carefully.

Also, gentlemen, I would ask your indulgence, if the subcommittee would develop some written questions, as follow-up, that we could submit to you, and, at your reasonable convenience—we won't charge you a late fee if you don't get right back to us—but if you could kind of fill in for those, because we do have a number of other questions that I think are going to be helpful and important to us as we continue this process.

So, with that, let me again, on behalf of the subcommittee, thank you. You have been very helpful. And we hope—and I mean this in all sincerity—to continue to work with you so that we can dispose of this matter in a way is right and proper and beneficial to, if not all, at least most. So thank you.

Mr. HUGHES. Mr. Chairman.

Mr. MCHUGH. Yes, Admiral.

Mr. HUGHES. If I may, I would like to reiterate an invitation to any of the members of the subcommittee. We're right here in town, and in an hour's time, easily, I could take them through a processing which I just refreshed myself with yesterday in preparation for coming here. But it may give a better feeling for the problem we have and the way you are looking at it.

Mr. MCHUGH. Give free samples of money? Oh, we can't take that anymore. Oh, well. Thank you, Admiral, we appreciate that.

I know there are some people who are leaving, and such, and we hate to see you go, but we do have another panel. And if we could have those who are going to stay with us please find their seats, I would call forth the members of the second panel, and while we're getting settled, I would introduce them. If we might have a little order, please.

We have with us this afternoon for the second panel, Mr. Al Stevens, who is president of the Opex Corporation, and he will be accompanied by Mr. Mark Stevens, who is vice president of marketing, and Mr. Bob Dewitt, who is vice president of engineering; Mr. Ben Bruce, who is director of imaging systems, ElectroCom Automation, L.P.; and Mr. Tod Mongan, senior vice president and general counsel of BancTec, Inc., who will be accompanied by Mr. Nolan Klier, director of product marketing.

Gentlemen, thank you, first of all, for your patience in waiting for this rather lengthy first panel to be concluded. As you saw, the testimony was of great interest to the subcommittee members. We thank you for sticking with us. Also, let me thank you and welcome you here today.

As you can, I'm sure, deduce from what has gone before, this is a legislative proposal that has generated a lot of interest and not a little controversy. As I'm certain you also heard, one of the major questions as to its successful implementation is simply the technological capabilities and the ability of firms like those that you represent to either provide or to somehow develop that technology over a period of time. So we appreciate your agreeing to join us here today and to share your very unique and expert perspectives with us.

So with that, I would call on Mr. Ben Bruce of ElectroCom. Oh, that's right, I forgot. We have to swear you in, gentlemen. If you would rise, please.

[Witnesses sworn.]

Mr. MCHUGH. Thank you. Be seated. The record will show that all of the presenters responded to the oath in the affirmative.

So, again, Mr. Ben Bruce of ElectroCom. Thank you for being with us, sir. The attention of the subcommittee and its able staff is yours.

STATEMENT OF BEN F. BRUCE, DIRECTOR OF IMAGING SYSTEMS, ELECTROCOM AUTOMATION, L.P.; ALBERT F. STEVENS, PRESIDENT, OPEX CORPORATION, ACCOMPANIED BY MARK A. STEVENS, VICE PRESIDENT OF MARKETING, AND ROBERT DEWITT, VICE PRESIDENT OF ENGINEERING; AND TOD MONGAN, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, BANCTEC, INC., ACCOMPANIED BY NOLAN KLIER, DIRECTOR OF PRODUCT MARKETING

Mr. BRUCE. Mr. Chairman, members of the subcommittee, my name is Ben F. Bruce. I am the director of imaging systems for ElectroCom Automation, L.P., of Arlington, TX. ElectroCom is a major supplier of automation equipment to the U.S. Postal Service, having manufactured and delivered over 6,000 automated optical character reading and sorting systems over the past 20 years. My background is software and hardware engineering and program management, and I have been involved with postal automation systems for a number of years.

We have provided a written statement separate from this testimony. We would appreciate it if that was entered into the record.

Mr. MCHUGH. Without objection, so ordered.

Mr. BRUCE. As we understand it, the intent of the proposed prompt payment act now before the subcommittee is to require that

payments made by mail on bills, invoices, or accounts due be considered paid as of their postmark date. ECA neither favors nor opposes this legislation, but we have examined the feasibility of the proposed legislation from a technical and implementation perspective.

The principal technical issue we see with this bill is an information question—that is, how can the postmark date be captured and associated with the remittance transaction. The charts we have prepared show the face and reverse sides of a typical remittance envelope as it is received by a payment processor. Information presently found on most remittance envelopes can include a postmark and up to three bar codes. A fourth bar code, called a "Planet Code," will be available in the near future.

The postmark is applied primarily to canceled stamps and is present only on stamped mail, which includes most remittances. The Facing Identification Mark, or FIM code, provides general information used by the USPS to process the mail piece. The Postnet Code is a bar code representation of the destination ZIP Code and is present on most remittance mail.

The foregoing marks appear on the face of the envelope. The ID Tag is generated for internal processing purposes by the USPS and is printed on the reverse side of the envelope using a fluorescent ink. The Planet Code is a code which, in the near future, can be applied by postal customers in support of new services to be provided by the U.S. Postal Services.

Of these various pieces of information, the postmark was not designed to be machine-readable, and in most cases it is not, especially at normal automation speeds. It should be noted, however, that the ID Tag contains a date code which normally coincides with the postmark date and already appears in machine-readable form on many remittance envelopes.

Thus, the issue of technical feasibility for implementation of the proposed bill it not, in our opinion, in question. Rather, the question is the feasibility of developing a practical scheme which meets the intent of the bill without imposing undue cost or burdens on payer, payment processor, or the postal system.

ElectroCom has come up with three potential schemes for implementation, representing significantly different concepts. We are confident that, given more time, additional schemes could be developed which are just as technically feasible but might differ in flexibility, cost, and who bears the burden of implementation.

Although ElectroCom does not wish to propose or favor a specific scheme, we submit these concepts as a way of illustrating at least some of the potential means available for implementation. For the sake of time, I'm going to summarize our suggested implementation schemes. For a more extensive explanation, please refer to the written testimony we've provided, or I will be happy to answer any questions you might have.

Under the first scheme, Scheme A, this would have the payment processor preprint identifying data on the remittance return envelope. When the remittance is received, the envelope would be automatically scanned for the preprinted data and for the existing ID Tag. This data would then be associated and correlated and made available to subsequent existing computer processing of the remit-

tance. The scheme requires the payment processor to create a new process, employing equipment capable of reading the preprinted data and the fluorescent ID Tag.

Under Scheme B, the USPS would modify its fleet of automatic facer/canceler systems, through which many but not all remittance envelopes must pass. The modifications would enable these systems to imprint the Julian postmark date, using proven ink jet printer technology in both bar code and Arabic numeral formats, in a precisely prescribed location on the mail piece.

The payment processor could implement the legislation by either manually referring to the IJP-printed Julian date in Arabic numerals, or, optionally, can design the return envelope and enclosed remittance document such that the Julian date is printed through an open area, a window without glassine, directly onto the remittance document. In this case, the envelope can be discarded after its contents are removed and the remittance document processed directly.

Under Scheme C, this would utilize and expand upon a service called "CONFIRM," which is currently under consideration by the U.S. Postal Service. In this scheme, the USPS would specify a format, such as the Planet Code, for the payment processor to print a transaction tag number on the remittance envelope. In its automated processing stream, the USPS would scan the code, associate the tag number with the postmark date of the envelope, taken from the ID Tag, and this data would then be forwarded to each participating payment processor as a paid service.

It should be noted that any scheme which is proposed will be imperfect. For example, there will always be some bar codes which are unreadable, or it may not be feasible for the USPS to process some mail pieces in an operation in which a code or date might be applied or customer data captured. Only an assurance that some percentage of the remittances will be correctly processed is likely to be possible.

Again, ElectroCom does not propose any particular scheme for implementation, nor does it offer any opinion on the merits of this proposed legislation. We do recommend additional investigation and consultation with the affected parties in order to determine the detailed impact and cost of any implementation scheme under consideration. In our informed opinion, however, the legislation is technically feasible and can probably be implemented in a variety of ways with significant flexibility available to remittance processors.

This concludes our testimony. I would be happy to answer any questions.

[The prepared statement of Mr. Bruce follows:]

PREPARED STATEMENT OF BEN F. BRUCE, DIRECTOR OF IMAGING SYSTEMS, ELECTROCOM AUTOMATION, L.P.

My name is Ben F. Bruce, Program Director of Imaging Systems for ElectroCom Automation, L.P., a subsidiary of AEG ElectroCom International (AEI). AEI is a U.S. Corporation which is wholly owned by Daimler Benz, AG of Germany. ElectroCom Automation, L.P. (ECA) is a major supplier of automation equipment to the U.S. Postal Service, having manufactured and installed over 6,000 automated optical character reading and sorting systems over the past 20 years. My background is software/hardware engineering and program management and I have been involved with postal automation systems for a number of years.

The intent of the proposed Prompt Payment Act now before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight as we understand it is to require that payments made by mail on bills, invoices, or accounts due be considered paid as of their postmark date. ECA has accepted an invitation to testify on the technical feasibility of implementing this bill.

ECA neither favors nor opposes this legislation. We have examined the feasibility of the proposed legislation from a technical and implementation perspective.

The principal technical issue we see with this bill is an information question: that is, how can the postmark

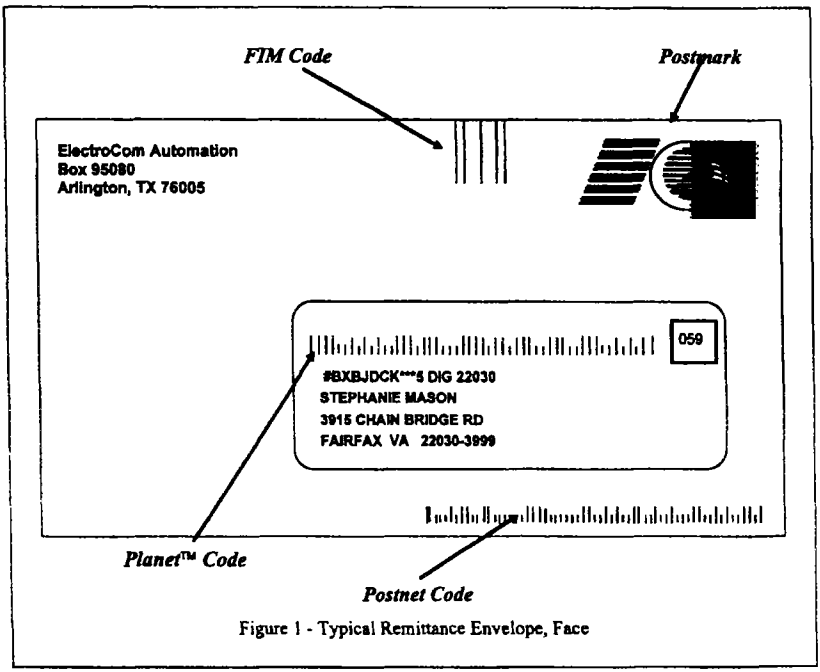


Figure 1 - Typical Remittance Envelope, Face

date be captured and associated with the remittance transaction. To address this issue, we have prepared some illustrative examples which we hope will indicate a range of possibilities. We begin with a discussion of the information currently imprinted on an envelope.

Figures 1 and 2 show the face and reverse sides of a typical remittance envelope as it is received by a

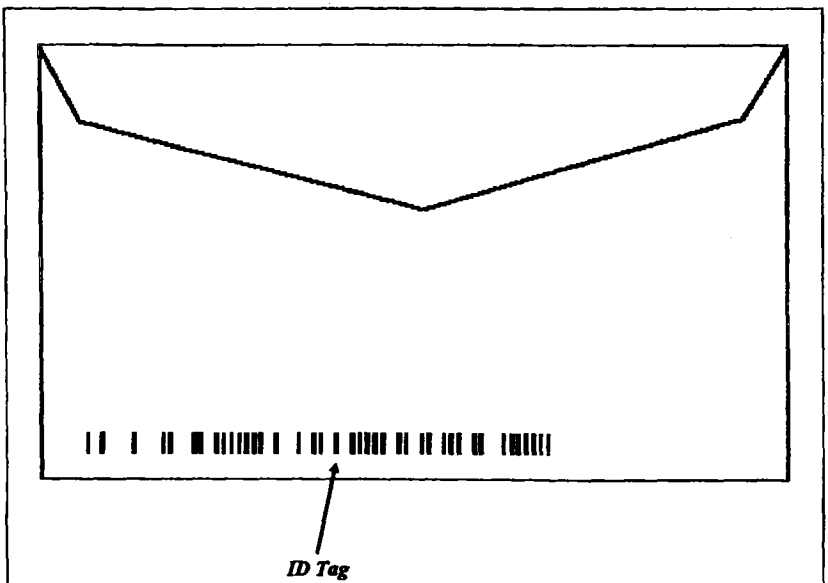


Figure 2 - Typical Remittance Envelope, Reverse Side

payment processor. Information presently found on most remittance envelopes as received by the addressee can include a postmark (applied via a rotating die) and up to three bar codes. A fourth bar code, called a Planet Code[1] will be available to support a new service in the near future. The postmark is applied primarily to cancel stamps and is present only on stamped mail - which includes most remittances. The Facing Identification Mark (FIM) code is optionally preprinted on the envelope by the payment processor and provides general information used by the USPS to process the mailpiece. The Postnet Code is a bar

[1] Planet Code is a Trademark of the U.S. Postal Service.

code representation of the destination ZIP code and can be either preprinted or applied via an ink jet printer (IJP) by the USPS. It is present on most remittance mail. The foregoing marks appear on the face of the envelope. The ID Tag is generated for internal processing purposes by the USPS and is printed on the reverse side of the envelope using a fluorescent ink. It is utilized in automated mail processing and is not currently intended as an official time/date indicator.[2] The Planet Code is a code which in the near future can be applied by postal customers in support of new services to be provided by the U.S. Postal Service (USPS). Figure 3 indicates the data contained in each of these imprints.

Postmark (if stamped)
- Date (Month and Day)
- City or Metropolitan Area of Origin

FIM Code (Four code values currently in use, additional values possible):
- Pre-Bar Coded and Requires Postage
- Pre-Bar Coded and No Postage Required
- No Bar Code and Requires Postage
- No Bar Code and No Postage Required

Postnet Code (ZIP Code of destination to city, block face, or delivery point)
- 5-digit ZIP or 9-digit ZIP or 11-digit Delivery Point Code

ID Tag:
- *Mail Class (1st or 3rd)*
- *Machine Number (1-3999)*
- ***Day of Month (1-31)***
- *Time (in 30 min. intervals, 0-47)*
- *Serial Number (1-25000)*

Planet Code:
- *This code will be pre-printed by mailers and will carry information relating to the sender, the recipient, and/or the enclosed transaction.*

Figure 3 - Data Content of Envelope Imprints

Of these various pieces of information, the postmark was not designed to be, and certainly is *not* machine readable. Note however that, although appearing in a code used for internal processing purposes, a date (which normally coincides with the postmark date) already appears in machine readable form on many remittance envelopes. Thus the question of technical feasibility for implementation of the proposed bill is not, in our opinion, in question. In fact, a machine readable date - part of the ID Tag data - is already on many remittance envelopes. Rather, the question is the technical feasibility of developing a practical

[2] At present the ID Tag is printed on remittance mail which is not pre-bar coded. On completion of the USPS' Remote Bar Code program (currently in progress), most remittance mail will have this bar code. However, under present plans, some collection mail - including remittance mail - will be processed in ways which do not include printing this code.

scheme which meets the intent of the bill without imposing undue costs or other burdens on payer, payment processor, or the postal system.

ECA has, in the brief period available to us to consider this question, come up with three potential schemes for implementation representing significantly different concepts. We are confident that, given more time, additional schemes could be developed which are just as technically feasible, but might differ in flexibility, cost, and who bears the burden of implementation. Although ECA does not wish to propose or favor a specific scheme; we submit those concepts we have been able to generate as a way of illustrating at least some of the potential means available for implementation.

Scheme A

This scheme places the full responsibility of implementation on the payment processor, but for large volume payment processors provides a means for automated capture of the postmark date. It requires no change to current USPS mail processing technology.

The small volume payment processor will implement the legislation by manually referring to the existing postmark date. (However, because the die impression in current use is not always legible, consideration should be given to how this circumstance should be handled.) Additional costs borne by these payment processors will consist of (for each remittance) the handling required to treat the envelope as an additional remittance document, and, depending upon the system implemented, possibly the cost of key entering the postmark date, perhaps 2-5 seconds of key entry time.

The large volume payment processor whose net costs would be improved thereby, would have the option to preprint identifying data on the remittance return envelope. (The content, format, and location of this data would be determined by the payment processor). When the remittance is received, each envelope is automatically scanned for the preprinted data and for the existing USPS ID Tag. This data is then associated and automatically made available to subsequent (existing) computer processing of the remittance. This option requires the payment processor who implements it to pre-print transaction-specific data on the remittance document of return envelope and to create a new process employing new equipment capable of reading the pre-printed data and the fluorescent ID Tag. It does not, however, require any manual examination of individual envelopes, or manual decisions regarding timeliness except as needed to handle read errors, missing codes, and so forth. For some payment processors, there may be additional cost offsetting benefits to the added process; e.g. the ability to segregate or prioritize remittances before the contents are processed.

In our view, Scheme A requires no additional investment by the USPS and therefore has no possibility of cost impact on the general postal patron.

Scheme B

This scheme provides means for a potentially lower cost, automated capture of the postmark date for large volume payment processors and provides a reliably legible postmark date for the use of smaller payment processors. It is implemented partly through changes in USPS processing technology.

In scheme B, the USPS would modify its fleet of Automatic Facer/Cancellers (AFCS machines) through which many - but not all - remittance envelopes must pass. The modifications would enable these systems to imprint the Julian postmark date using proven IJP technology in both bar code and Arabic numeral formats in a precisely prescribed location on the mail piece. Printing of the IJP fields except when a remittance is indicated by a printed mark or code on the envelope could be suppressed so as to have no impact on other mail.

The small volume payment processor could implement the legislation by manually referring to the IJP printed Julian date (in Arabic numerals) in lieu of the postmark proper. This will provide a more reliably legible source for the date, but additional costs borne by these payment processors will be essentially the same as those in Scheme A. Optionally, the payment processor can design the return envelope and enclosed remittance document such that the Julian date is printed by the AFCS through an open area (window without glassine) directly onto the enclosure. In this case, the envelope can be discarded after its contents are removed, with no special handling required.

The large volume payment processor whose net costs would be improved thereby could adopt any of several options, including the option to set up a new envelope scan process as in Scheme A, but using the bar coded Julian date (bar coded using black ink) rather than the ID Tag. In addition, these payment processors would have the option to design the return envelope and enclosed remittance document such that the Julian date (probably in both numeral and bar code format) is printed directly onto the enclosure, eliminating any need to associate the envelope and the remittance document. In this case the processor would incur the costs of modifying software and possibly scanning hardware to ensure capture, interpretation, and utilization of the bar code. However, once the conversion of the system, envelopes, and forms had been accomplished, additional per-remittance costs would depend on the type of system in use. If a fully automatic scanning and reading system is used, per-remittance costs would be very low. If direct or remote key entry is employed, the per-remittance cost would consist primarily of key entry time for the Julian date. In either case, exception processing for read errors, missing codes, etc. would also be required.

Scheme B requires an additional investment by the USPS as required to modify AFCS machines. However, it should be possible to avoid any cost impact on the general postal patron since each instance of utilization of the enhanced capability could be identified, and costs potentially confined to remittance payers and/or payment processors.

Scheme C

This scheme utilizes and expands upon a service called CONFIRM[3] currently under consideration by the U.S. Postal Service. It solves the problem of associating the postmark date and remittance transaction inside the USPS, which would then sell the derived data as a service to payment processors.

In Scheme C, the USPS would specify a format, such as the Planet Code, for the payment processor to print a transaction tag number on the remittance envelope. In its automated processing stream, the USPS would then scan the code and associate that tag number with the postmark date of the

[3] CONFIRM is a Trademark of the U.S. Postal Service.

envelope taken from the ID Tag bar code. This data would then be forwarded daily, either electronically (or possibly via some compatible physical medium) to each participating payment processor as a paid service. The CONFIRM system, now in its early stages of implementation already contemplates capturing data from a pre-printed Planet Code and making it available electronically to a subscriber to the service. Scheme C expands the CONFIRM concept to include the *association* of Planet Code data with ID Tag data taken from the same envelope and might also require the marking of envelopes in some way so the payment processor can distinguish unmarked envelopes as requiring special handling.

While the smallest volume payment processors might implement the legislation as in Scheme A, this scheme might open the door to a smaller per-remittance cost for medium volume payment processors by making automated association of the postmark date and remittance transaction available at a lower entry cost. In addition to the per-remittance fee payable to the USPS, the payment processor utilizing this service would need to modify forms and/or envelopes to pre-print the transaction tag (encoded as a Planet Code) as well as to make modifications to or replace payment processor remittance processing systems (primarily software) so as to accept data from the USPS and associate it with transaction processing. Of course, exception processing for remittances with no 'match data' from the USPS would still be required.

Scheme C requires some additional investment by the USPS as required to deal with specific design requirements and added data handling volume attributable to this service. However, the full cost to the USPS of implementation could be directly charged to those payment processors using the service in proportion to the volume processed by each.

It should be noted that any scheme we are able to envision will be imperfect. I.e. there may be some bar codes which are unreadable, or it may not be feasible for the USPS to process some mail pieces in the operation in which a code or date might be applied or customer data captured. Only an assurance that some percentage of remittances will be correctly processed is likely to be possible.

Again, ECA does not wish to propose any particular scheme for implementation, nor does it offer any opinion on the merits of this proposed legislation. We recommend additional investigation and consultation with the affected parties in order to determine the detailed impact and costs of any implementation scheme under consideration. In our informed opinion, however, the legislation is - subject to the constraints noted - technically feasible and can probably be implemented in a variety of ways, with substantial flexibility available to remittance processors. We would emphasize, however, that while implementation costs can be minimized and targeted, they will not be zero. Although we are not in a position to quantify them, we expect that the more significant costs will be: per-remittance labor costs for smaller payment processors, capital and forms costs for larger, automated payment processors, and possibly - depending upon the implementation scheme - capital costs for the U.S. Postal Service.

ElectroCom Automation L.P.

Vice President

June 6, 1996

Honorable John M. McHugh
Chairman, Subcommittee on the Postal Service
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear [redacted] McHugh:

ElectroCom is pleased to offer additional information regarding the CONFIRM$_{TM}$ system being developed by the Postal Service. The CONFIRM$_{TM}$ system is the first application being implemented utilizing the Postal Service developed PLANET$_{TM}$ Code. The PLANET$_{TM}$ Code is readable utilizing existing Wide Area Bar Code Readers (WABCRs) which are already deployed on the majority of the Postal Service's automated mail processing equipment. Retrofit programs are currently planned or underway to install these WABCRs on the remainder of the automated mail processing equipment fleet. This technology, combined with the information network being deployed to support the Identification Code Tracking (IDCT) program, will allow the Postal Service to collect, correlate, track and report information related to the movement of specific mail pieces within the automated mail stream. These programs provide the basis for the required infrastructure necessary to support the implementation of the COMFIRM$_{TM}$ system. It is anticipated that this infrastructure will be fully deployed and operational by the end of 1997. It is ElectroCom's understanding that the CONFIRM$_{TM}$ system is currently undergoing trial testing utilizing MCI as the telecommunications network provider. Should these tests prove successful, it would not be unreasonable to believe that the CONFIRM$_{TM}$ system would be available for commercial use by the end of 1997.

Assuming that the CONFIRM$_{TM}$ system is commercially available at the end of 1997, the most likely market will consist of mailers who are mailing time sensitive materials and wish to know that the mail pieces are in the final stage prior to actual delivery, and financial institutions who wish to know when payments or other financial instruments have actually been introduced into the mail stream. This would allow the one to know with certainty that the delivery of their materials is imminent and would allow the other to plan their cash flow more efficiently and minimize the "float" inherent in the system by being prepared to handle the item prior to it's actual delivery. Specific candidates for needing this type of information might include banks, savings & loans, mortgage lenders, stock brokers, real estate brokers,

In the event that legislation is considered which would contemplate utilizing a system such as CONFIRM$_{TM}$ as a basis for compliance, it would be prudent to re-examine the status and availability of the system prior to enacting the actual legislation. Specific information pertaining to the current status of the CONFIRM$_{TM}$ system may be obtained from the Postal Service Engineering, Research and Development Center, Merrifield, Virginia. For your convenience, I have included a Postal Service information sheet on the CONFIRM$_{TM}$ system.

If you have any questions or comments, or require further information, please contact me at (817) 695-5588.

Sincerely yours,

Ben Bruce
USA Postal Products

Enclosure

Mr. MCHUGH. I thank you, Mr. Bruce. As you may have just heard, the two buzzers, two bells, means we have a vote on the House floor. I would propose to briefly adjourn the committee while I run over and vote. I don't run as quickly as I used to, but I will try to run back. I hope you will be able to stay with us. I will try to make this as short as possible.

With that, the committee will stand in recess, actually, until we return after this vote. Thank you. I apologize.

[Recess.]

Mr. MCHUGH. I would say to the audience, you have great patience and I appreciate that. Again, my apologies. Of course, what happened was, we had two consecutive votes rather than one. But I am assured we have some time now, so I trust we won't have any further interruptions.

Our second presenter is Mr. Al Stevens of Opex.

Mr. Stevens, welcome, sir.

Mr. ALBERT STEVENS. Thank you, Mr. Chairman, and members of the Postal Service Subcommittee.

On behalf of Opex Corporation and as company president, I would like to thank the members very much for allowing us the opportunity to discuss H.R. 1963. During my testimony today, I would like to offer a condensed version of the written materials previously submitted to the subcommittee. I would respectfully request, however, that our written testimony be entered into the record in its entirety.

Mr. MCHUGH. Without objection, so ordered.

Mr. ALBERT STEVENS. Thank you, Mr. Chairman.

I am pleased to have two other gentlemen accompanying me today: my son, Mark Stevens, who is the vice president of marketing, and Bob Dewitt, who is our vice president of engineering. Mark has almost 20 years' experience in the incoming mail industry, and Bob holds numerous patents in the field of mail and check processing.

A bill such as H.R. 1963, hereinafter referred to as "the bill," could greatly benefit a company like Opex, since we have much of the technical expertise required to ultimately accomplish its objectives. New equipment sales could potentially bring a windfall to Opex. Nevertheless, based on our experience, we believe that there are important ramifications for the entire payment processing industry if the bill is enacted as currently written.

While it is certainly possible that existing technologies could be harnessed to meet the posting requirements imposed by the bill, there is no equipment package currently available that easily enables payees to credit their customers in the manner prescribed by the proposed legislation.

In this testimony, we will assess changes and developments required in our industry to make this bill technically feasible. Opex equipment is enjoying tremendous acceptance in the payment marketplace, as the following statistics will illustrate. In any given month, Opex machines open more than a half billion envelopes. Fourteen out of 15 of the largest credit card companies in the United States use Opex equipment. More than 50 percent of all remittance processing equipment users also use Opex machines.

The Opex product line now encompasses automated mail extracting machines, incoming mail sorters, and document sorting machines that accomplish two basic activities: first, sorting and routing incoming mail; and, second, providing a means for efficiently removing and handling envelope contents.

Payment processing runs the gamut from fully automated, high-volume shops processing millions of payments per month, to low-end, small enterprises opening and processing payments by hand. There are three basic payment processing methodologies used today: manual, semiautomated, and fully automated. Mail handling in the semiautomated or fully automated processing modes falls under a broader category of machine-processed mail.

The total amount of mail processed in the manual mode is unknown, but it is certainly the largest processing category. Two-thirds of all machine-processed payment mail is processed in the semiautomated mode, and one-third of the machine-processed payment mail is in the fully automated mode. In manual processing, as the name implies, payment envelopes are received by the payee and opened and processed by hand. This method, along with semiautomated processing, comprises the bulk of payment envelope processing.

In semiautomated processing, payments are generally processed on single work stations like the Model 50 Rapid Extraction Desk. The envelopes are picked up by the machine from its feed conveyor, opened on the top and on one or two sides, and moved down a transport track. The operator removes the contents, and the next envelope cycles into position for processing. An operator working at an extraction desk can process an average of 1,300 envelopes per hour.

The goal of fully automated processing is to touch the envelope and its contents as little as possible prior of the posting of the transaction to customer's account. This is accomplished with a machine like the unique Opex System 150, which embraces state-of-the-art technology and automatically, in one continuous operation, qualifies, extracts, sorts, orients, and presents checks and documents for quick remittance processing, at a rate of 8,250 extracted pairs per hour.

Some of the technologies used on the System 150 could be harnessed to assist payees in meeting the requirements of the bill, although not without some difficulty. As an example, the System 150 can be equipped with up to four image cameras which capture information about the envelope and the extracted contents.

Incoming mail sorters offer benefits apart from simply identifying exception items that cannot be processed on high-speed extraction machines. They also sort envelopes based on very specific sorting criteria. This ability to identify specific envelope characteristics is important in the context of developing technology that addresses the bill.

Regardless of the payment processing methodology used, relatively little emphasis is placed on storing and retrieving envelopes. This makes sense, since payees only receive credit when they extract what's in the envelope. They can't take empty envelopes to the bank. Even if the envelope is sorted by unique characteristics,

it is usually then discarded once the extraction process has been completed.

In high-speed, fully automated environments, the envelope is always discarded immediately after successful extraction. This fact is important in light of the bill, which requires postmarks to become the basis for crediting customer accounts when payments are received after the due date. The language of the bill, as currently written, is very broad. Any business that receives payments in any amount would be affected.

In manual processing, since payments are already being processed by hand, the bill may have fewer clerical ramifications. The envelope can be saved, and the postmark can be examined on the day that the payment is received. The payment can somehow—and the "somehow" is very uncertain—be credited as of the postmark date. At best, manual processing is highly labor-intensive. When compared to semiautomated or fully automated payment processing, this method yields the lowest productivity and the highest cost per transaction.

The additional sorting and recordkeeping requirements imposed by the bill would only serve to further decrease productivity and increase labor and processing costs. In either the manual or semiautomated payment processing modes, the person extracting the envelope contents will have to stop long enough to examine the payment due date, and, if the envelope is received after this due date, the postmark.

While this may seem like a minor inconvenience, the impact on productivity would be substantial. We estimate that extraction desk processing rates would drop by at least as much as one-third, from the average of 1,300 envelopes per hour to an average of no more than 900 envelopes per hour. If the bill were implemented immediately, the impact would be most severe on the one-third percent of the payment processing market that uses high-speed, automated extraction equipment.

Short of returning to manual processing, there is no work flow available today that allows payments to be accounted for by postmark. As stated earlier, all of today's high-speed extracting equipment discards the envelope immediately upon extracting its contents. Even if it were possible to account for envelopes in the high-speed environments, there is still a myriad of problems associated with reading a postmark. Postmarks are frequently illegible. They are often difficult for humans to read, much less machines.

Some envelopes are never postmarked; for various reasons, the postmark is skipped during processing. The postmark on some envelopes is placed directly over the stamp, and the stamp comes off during transit; the postmark disappears. Therefore, the ramifications of the bill to fully automated payment processing reach far more deeply than simply saying, "Keep the envelope and read the postmark."

The Opex System 150 could be equipped with an image camera. Why not use that to capture and store an image of the past due envelopes? However, still capturing an image of the envelope does not adequately address the requirements of the bill. In order to correlate receipt of envelopes with the crediting of payment, the envelope must contain something that identifies as being a part of that

transaction; i.e., something definitive like the customer's return address or account number. Therein lies the problem. Millions of envelopes do not have a return address on them, and capturing the image would therefore prove nothing.

It is fairly obvious that none of the current processing environments is particularly well-suited to implement the bill. There is nothing to suggest that any facet of this legislation could be implemented cheaply or easily in today's high-speed shops. However, it is not impossible to develop technology capable of implementing the bill. Given a time for development, there are technological possibilities.

While some solutions could be implemented more easily than others, all of the technological possibilities are wrought with unknown research and development costs. Further, no package currently exists containing all of the elements to make the bill a reality. Further, payees would have to make substantial changes to their payment processing operations in order to implement the required technology. Special equipment would have to be purchased at considerable expense, and the post office would have to play a major role, as yet undetermined.

Under the best of circumstances, it would require a lengthy period of time to implement the bill. Much of the technical difficulty in implementing the bill concerns the envelope itself. Postmarks are often illegible or missing; return addresses are nonexistent.

By changing the envelope design it might be possible to eliminate some of these problems to meet the demands imposed by the bill. For example, a new envelope could be developed which is called, for lack of a better name, the "postmark credit date envelope." Customers of payees wishing to avail themselves of the benefits of the bill would use this envelope.

This postmark credit date envelope would have a special window on it, similar to today's style of window envelopes. A special postmark bar code could be sprayed through the window directly onto the remittance document. By affixing the postmark in this manner, the remittance documents and the payments would arrive with the postmark information readily available. Machines capable of reading bar code could utilize this information.

Consumers not choosing this method for sending their payments would simply not be able to claim the benefit of the postmark date, since the envelope and its accompanying postmark would be discarded, as usual, immediately after extraction.

When a payment is processed, the posting date could be based upon a postmark bar code. This would require changes in remittance processing machines, and these changes would not be trivial. This method would work best in fully automated, high-speed environments. However, because the postmark would continue to be printed with an alphanumeric character, even semiautomated or manual processing shops could identify the postmark and thus use these envelopes.

Consumers would need to be sold on the idea of using these new envelopes. Those who did not use the envelope, regardless of the reason, would feel that they had been treated unfairly when compared to those that had used the envelope.

A bar code technique would have to be developed by the post office to spray the bar code on every envelope processed. Every location receiving and postmarking mail, no matter how small, would require this bar coding capability. This could be expensive, and it would necessitate a long implementation phase. However, using the postmark by itself to determine mailing dates is impractical, due to poor quality and other problems touched on previously.

Encrypting the postmark in some yet undeveloped machine-readable fashion other than bar code may also work, and there may be some other far-out ideas that would need to be researched. At present, we do not see an easy, cheap, or efficient way to implement the bill. We estimate, to properly develop the technological capabilities required to make this bill a reality, it might take between 2 to 5 years.

As mentioned, the post office would have to change its mail-handling techniques dramatically and would have to develop, buy, and implement new equipment at every postal site in the country. This would take time, and it would be costly.

I would like to thank you, Mr. Chairman and members of the committee, for your time. We look forward to addressing any further questions that you may have.

[The prepared statement of Mr. Stevens follows:]

PREPARED STATEMENT OF ALBERT F. STEVENS, PRESIDENT, OPEX CORPORATION

I. Introduction

Mr. Chairman, and Members of the Postal Service Subcommittee:

On behalf of Opex Corporation, and as company President, I would like to thank the Members very much for allowing us the opportunity to discuss H.R. 1963, the Postmark Prompt Payment Act of 1995. I would also like to thank Mark Stevens, Opex's Vice President of Marketing, and Bob DeWitt, Opex's Vice President of Engineering, for their valuable insights into the technological aspects of this bill.

Incorporated in 1973, Opex is a leading manufacturer of incoming mail processing equipment. Our Home Office is located in Moorestown, New Jersey. We also have a Division called Omation which operates out of Mountain View, California. Opex manufactures incoming mail sorters, mail openers, mail extraction desks, and fully-automated equipment that extracts envelope contents, properly orients checks, and stacks checks and documents for later remittance processing. Opex machines can be found in all 50 states, Canada, Europe, and Asia.

I have personally been involved in the incoming mail processing industry for more than 23 years at Opex, and an additional 12 years at Columbia House. During this time, payment processing has evolved dramatically from the days when every envelope was opened by hand to today's line of fully-automated equipment. Opex has consistently been at the forefront of developing innovative systems for opening and processing incoming mail. In many remittance processing shops, Opex machines begin the process of putting bill payments into the collection and crediting streams; envelopes containing payments are often taken directly from the Post Office and put on Opex sorting and opening equipment. A bill such as H.R. 1963 would, therefore, directly affect us, and we would shoulder a great deal of responsibility for devising the technology necessary to implement its provisions.

Based upon our experience, we believe there are important ramifications for the entire payment processing industry if H.R. 1963 is enacted as currently written. While it is certainly *possible* that existing technologies could be harnessed to meet the posting requirements imposed by H.R. 1963, there is no equipment "package" currently available that easily enables payees to credit their customers in the manner described by this proposed legislation.

In this testimony, we will focus on the existing technologies for opening and sorting envelopes, and use this as our basis for assessing changes and developments required in the industry to make this bill technically feasible. To the extent we can predict the future, we will try to estimate a reasonable timeframe, from our perspective, for developing and implementing the necessary technology, and also try to assess the cost-impact associated with this.

In order to better understand where Opex fits in the larger picture of payment processing, it is important to understand a little of the history of mail extraction equipment, and Opex's part in the development of this industry. The Section that follows briefly discusses Opex Corporation, both in terms of its past, as well as where it currently functions in the remittance processing marketplace.

II. Opex Corporation: Past, Present, and Products

A. Opex's Past

Originally a small mail-processing division of a conglomerate known as Kenco, Opex gained its first technical expertise in the early 1970's. Dollars and engineering expertise were added to the mix, and the first two Opex mail opening Systems were delivered to the Columbia Record Club in 1972.

Simultaneous with the development of the Opex machine, a marketing trend emerged in which companies found success using direct mail campaigns, courtesy of the United States Postal System. Remittance was made through the mail, and an industry was born.

One such company was Columbia Records of Terre Haute, Indiana, whose daily volume of mail in 1971 weighed more than a ton. Over 200 employees were required to manually process the day's mail. A study was initiated by the company to determine what equipment could be purchased to improve the speed and profitability of the mailroom operation. For Al Stevens, then Assistant to the VP of Operations at Columbia Records, this was a difficult assignment; mail extraction equipment at the time was not readily available.

Alerted by a small article in the Wall Street Journal regarding an extraction machine being developed by a relatively obscure company in Cherry Hill, New Jersey, Stevens formed a relationship which ultimately resulted in the development and production of the first multiple station mail processing machine, the Opex 4.0. Using a conveyor system, it fed opened envelopes with exposed contents to operators seated at work stations along the conveyor.

Columbia Records bought two systems for $50,000 each, and Stevens (now the company President) and his wife, Joanna, bought Opex. Later, the Stevens' sons, Mark and David, were brought into the buisness.

There were immediate problems, not the least of which was survival. Although the early 70's saw sales growth, the first large order for System 4.0 didn't materialize until 1975.

In the meantime, Opex allocated meager resources for the development of an inexpensive single operator work station for low volume customers. Named the Rapid Extraction Desk, the first RED Model 30 sold for $2,995 without the optional $500 slitter. Almost all customers bought a slitter for their machines, and this envelope-opening slitter function was designed into later models. The machine was designed to present 1,200 envelopes per hour to the operator.

This concept for labor improvement via a workstation proved simple, but effective. The machine completely and efficiently handled the envelope: It picked the envelope

up, slit it open and, using suction cups, pulled the envelope open for extraction of the contents by the operator. Once empty, the envelope was discarded.

The single station concept was an instant success, but sales volume didn't provide Opex with the cash flow required for effective marketing, so sales for the REDs were confined to the east coast. The company had not yet turned the corner toward profitability.

The catalyst which would revolutionize the industry and launch Opex into industry leadership was a simple idea: *"Why not let the machine respond to the operator rather than forcing the operator to respond to the machine?"*

With this premise in mind, Opex created and patented a process called Content Activation, a cycling technique for the RED which feeds full envelopes based on the operator's demand or speed in emptying envelopes, rather than a mechanical timer which forces the operator to perform at a given rate or fall behind. This departure from tradition turned the company around. A national sales force was added, and Service was expanded as sales grew.

With a steady annual growth rate, Opex continues to invest in research and development. Succeeding generations of faster REDs rich with additional features, and a series of new patents, continue to flow from Opex's corporate headquarters in Moorestown, New Jersey.

B. Opex's Present

Opex equipment is enjoying tremendous acceptance in the payment processing marketplace, as the following statistics illustrate:

- ***In any given month, Opex machines open more than 1/2 billion envelopes***
- ***14 out of the 15 largest credit card companies in the U.S. use Opex equipment***
- ***More than 50% of all remittance processing equipment users also use Opex machines***

As indicated by the product descriptions below, Opex has expanded the scope of its business to include more than just Rapid Extraction Desks and letter openers. The Opex product line now encompasses incoming mail sorters and document sorting machines. By offering a wider array of products, Opex has steadily moved into more and more remittance processing shops.

C. Opex's Products

In the broadest sense, Opex's product line performs two basic activities:

- Sorting and routing incoming mail; and
- Providing a means for efficiently removing and handling envelope contents.

Opex has developed a complete line of incoming mail processing products to accomplish these two tasks:

1.) **MPS-30 Mail Sorter:** The MPS-30 is a high-speed incoming mail sorter. At a rated speed of 30,000 envelopes per hour, the MPS-30 accepts first class mail directly from the Post Office.

2.) **Model 50 Rapid Extraction Desk:** The Model 50 is a "desk" that automatically opens envelopes. The operator then removes and sorts the contents and the machine checks to make sure the envelope is empty before it is discarded.

3.) **MPE 5.0:** The MPE 5.0 is a multi-purpose, automated extractor for smaller-volume shops. It is similar in many respects (on a smaller scale) to the System 150.

4.) **System 150:** The System 150 is the only high-speed automated extraction machine in the world. With an output of 8,250 extracted "pairs" (meaning check and document) per hour, this machine properly orients checks, identifies changes of address, and stacks checks and documents for later remittance processing.

5.) **IQ Sort:** The I.Q. Sort helps operators sort stacks of batched documents. It displays images which an operator can use to identify full or partial payments, changes-of-address, check dates, check signatures, or virtually any other visual sort parameter, thus allowing paper documents to be sorted into distinct groups.

In environments where payment processing has been automated, machines like these perform the functions of sorting the envelopes, opening the envelopes, extracting the envelope contents, and preparing the contents (check and document) for application of the payment to a customer's account.

However, even though automation is readily available to handle the initial stages of remittance processing, many shops still choose to open and sort envelopes by hand. The Sections that follow present an overview of these diverse methods of handling incoming mail, and how H.R. 1963 would impact these methodologies.

III. Existing Payment Processing Methodologies

A. Overview

Payment processing runs the gamut from fully-automated, high-volume shops processing millions of payments per month to low-volume, small enterprises opening and processing payments by hand. The choice of whether or not to automate is usually driven by other goals within a company, and sometimes by the nature of the payments themselves, i.e. the transactions being processed are extremely complex, the mail volume is too low to justify automation, etc. The seemingly broad language of H.R. 1963 affects all of these shops, regardless of payment volume or processing method.

There are three basic payment processing methodologies used today: Manual, Semi-Automated, and Fully-Automated. Each of these is discussed in further detail below. Mail handled in the Semi-Automated or Fully-Automated processing modes falls under the broader category of Machine-Processed mail.

For reference, it is helpful to note the approximate percentage of payment envelopes handled by the various methodologies:

- **The total amount of mail processed in the Manual Mode is unknown, but it is certainly the largest processing category**
- **2/3 of all Machine-Processed payment mail is processed in the Semi-Automated Mode**
- **1/3 of all Machine-Processed payment mail is processed in the Fully-Automated Mode**

B. Manual Processing

In Manual processing, as the name implies, payment envelopes are received by the payee and opened and processed by hand. Since Opex manufactures machines that automate the process of opening incoming mail, it is difficult for us to determine the true size and scope of Manual processing. It is safe to say, however, that this method, along with Semi-Automated processing, comprises the bulk of payment envelope processing.

Further, because Manual processing encompasses so many styles of doing business, it cannot be stated with certainty what happens to the payment once it is removed from the envelope. The payment may go into some type of computerized system; or, in the case of businesses receiving only a few payments per month, the entire transaction may be received, posted and processed by hand without any mechanical intervention.

C. Semi-Automated Processing

In this environment, payments are generally processed on single workstations like the Model 50 Rapid Extraction Desk. The mail comes directly from the Post Office and is fed into a unit that looks a lot like a standard office desk. An operator sits at the Desk. The envelopes are picked up by the machine from its feed conveyor, opened on the top and one or two sides (depending on the brand of workstation) and moved down a transport track. Once the envelope is positioned in front of the operator, the sides of the envelope are pulled away from the envelope contents by the Desk (which usually utilizes suction cups for this purpose). The operator removes the contents, and the next envelope cycles into position for processing.

As the empty envelope continues down the transport path, machine candlers electronically examine the inside of the envelope to see if the operator accidentally failed to extract a check or document. If the envelope is not empty, the machine alerts the operator and will not cycle until all of the envelope's contents have been removed.

This method is semi-automated because it does require operator intervention; the operator must still handle the envelope contents. Once the operator has removed the contents, he or she must manually sort the contents prior to forwarding the payments to remittance processing machines.

For instance, if the envelope contains multiple payments (with one payment being late and the other "on time"), or if it contains correspondence, or if a check or payment stub is missing, special accounting must be made of that particular transaction. So-called "clean transactions" (i.e. those envelopes properly containing one check and one document) must also be separated by the operator, since these are the easiest to process. Also, all checks and documents must be correctly oriented for further processing; they must all face the same direction.

An operator working at an Extraction Desk can process an ***average*** of 1,300 envelopes per hour. Production ranges on the Extraction Desks vary from approximately 450 - 3,000 envelopes per hour, depending upon the complexity of the transactions being processed, the document format, clerical demands for reviewing documents in preparation for later processing, etc. This figure is also highly-dependent on other factors such as the quality of the mail, work rules, and the like.

Semi-Automated processing works most efficiently when the envelopes are uniform, and the mail generally "clean." The envelopes and statements supplied by payees to pay utility bills are a good example of "clean" mail. Extraction Desks like the Model 50 can also handle non-standard, non-uniform envelopes called "white mail," although processing rates are hampered because of the non-uniformity of the envelopes. "White mail" is generally received when the payee does not supply an envelope in which to return payment. Fully-automated, high-speed extraction machines cannot currently handle "white mail."

Once the mail is received and opened on the Extraction Desks, and once the operator has removed and sorted envelope contents, the checks and documents are

sent to remittance processing machines that actually post the payment to the customer's account. This process is illustrated below:

D. Fully-Automated Processing

The goal of this processing methodology is to touch the envelope and the envelope contents as little as possible prior to posting the transaction to the customer's account. To accomplish this goal, Opex has developed unique equipment to automate the sorting and extracting processes. By using the Opex System 150 automated extractor, MPE 5.0 extractor, and/or the MPS-30 incoming mail sorter, it is possible to efficiently handle almost all payment envelopes with minimum operator intervention and maximum productivity.

1. High-Speed Automated Extraction

The Opex System 150 embraces state-of-the-art technology to automatically qualify, extract, sort, orient and present checks and documents for quick remittance processing, all in one continuous operation at a rate of 8,250 extracted pairs per hour. This is the basic workflow description of the System 150:

- The System 150 accepts mail directly from the mail tray / feed area.
- The sort module identifies and outsorts "exceptions" (mail not meeting a pre-determined specification) based upon thickness (folded or incorrect number of documents) and metal detection (paper clips, staples, coins, etc.), and outsorts these envelopes unopened to dedicated bins for later processing on Extraction Desks.
- The cutter area opens the leading edge, the top and the bottom of the envelope in preparation for extracting the contents. The envelope itself is unfolded into one long piece of paper and separated from the contents at the extractor.
- The machine verifies whether a successful extraction has been performed. If the extraction was not successful (because of tape, excess glue on the envelope, etc.) the envelope and contents are reunited in an outsort bin for manual processing by the operator.
- Once separated from its contents, each envelope is directed to a removable under-counter trash receptacle.

- Checks and documents are separated, then properly oriented and sequenced.

- Stacker bins receive finished output in the condition required for remittance processing.

As described above, there are still occasions when Extraction Desks are necessary: If the envelope is an "exception item," or if a customer sends in "white mail," those envelopes must still be processed in the Semi-Automated or Manual modes. In this regard, the term "Fully-Automated" is a bit of a misnomer.

It is possible to customize the System 150 with various options designed to meet specific payment processing objectives. As discussed later, some of the technologies used on the System 150 could be harnessed to assist payees in meeting the requirements of H.R. 1963, although not without some difficulty. As an example, the System 150 can be equipped with:

Image Camera(s) Up to four cameras may be fitted to the System 150 to capture information about the envelope and extracted contents. Image Camera options are as follows:

- **Windowless Capability**: Machine can extract and orient contents from windowless envelopes.

- **Job ID**: Allows the machine to run two different jobs intermixed by electronically identifying unique characteristics of an envelope.

- **Postnet Barcode Read**: As an adjunct to Job ID, Postnet Barcode Read provides a high level of quality in job identification.

- **Damage Detect**: This option examines envelopes for damage (bent corners, etc.) and outsorts them unopened.

- **Mark Sense**: Searches up to five fields (total) in any combination on either or both sides of the document.

- **Change of Address**: These may be detected either on the envelope or on the document.

Reorder Module: Gives the machine the ability to change the sequence of (re-order) the document and check in the paper path without a decrease in productivity. This feature is used in processing the contents of non-windowed envelopes.

As mentioned above, "exception" envelopes must be handled separately. While it is possible to feed "exception" items into the high-speed extractor, these items must nevertheless be outsorted; this slows down the Fully-Automated payment process. Therefore, many payees choose to identify these envelopes prior to loading the mail into their high-speed extraction equipment. This is done on high-speed incoming mail sorters such as the Opex MPS-30.

2. High-Speed Incoming Mail Sorters

Incoming mail sorters offer other benefits apart from simply identifying "exception" items; they can also sort envelopes based upon very specific sorting criteria. This ability to identify specific envelope characteristics is important in the context of developing technology that addresses H.R. 1963.

As an example of some of the sorts that can be done with envelopes, please note the following possibilities available on the Opex MPS-30 incoming mail sorter:

- **Gross Thickness / Height Outsort**

  The MPS-30 is designed to run First Class mail as defined by the United States Post Office. Envelopes which are too thick, too tall or too long to be processed through the automated extracting machine will be outsorted.

- **Envelope Length Sort Criteria**

  Envelopes may be sorted into any stacker bin based upon differences in length. The machine "reads" the length of the envelope electronically.

- **UMD Sort Criteria (UMD - Universal Mark Detector)**

  Universal Mark Detection reads an external mark (or marks) printed on the envelope. The MPS-30 UMD "reads" the code, and interprets it according to parameters determined by the user. The envelope is sorted into a stacker bin according to job program. 31 marking combinations are possible.

- **Postnet Barcode**

  Two Postnet Barcode read products are available on the MPS-30:

  (a) Fixed position Postnet Barcode sort capability: The barcode may be printed on the envelope or on the document through a window, but must be in a fixed position.

  (b) Wide Area Postnet Barcode sort capability: The barcode may appear anywhere on the envelope that the USPS allows. The barcode may be printed on the document and can be read through a window. USPS requirements must be met.

- **Change Of Address Sort Criteria (Indicated In Check Box On The Exterior Of The Envelope)**

As the envelope passes this module, the Change-of-Address area on the envelope is scanned. If any writing or check-mark appears in the scanned image, the envelope will be directed to a specified bin or bins.

- **Fine Thickness Sort Criteria**

As the envelope passes between two rollers, one is displaced, causing a variation in an electrical current. This variation is measured by an electro-mechanical device called the LVDT, and translated into envelope thickness. This device has a resolution of 1/4 of the thickness of a normal sheet of paper.

- **Metal Detection Sort Criteria**

As envelopes pass through a magnetic field, paper clips, staples, coins, etc. generate an electrical anomaly which is read by the machine, and the envelope containing metal is sorted into a pre-programmed bin or bins.

- **Remittance Detection Sort Criteria**

This function will determine the presence of a check in the envelope based on the MICR ink line.

- **Coded Document Detection Sort Criteria**

This module detects a code printed in MICR ink on a document in the envelope.

- **Proper Check Orientation Sort Criteria (MICR Through The Envelope)**

Designed for payment applications, this module will determine the orientation of the check in a windowed envelope.

- **Combination Sort Groups**

Any sort criteria may be combined with any other sort criteria to create a "custom" sort group. For instance, a length sort criteria may be combined with a remittance detection sort criteria, and all envelopes of a given length with a check in the envelope will be directed to a specific bin or bins.

3. Other Automated Extraction Techniques

Automated payment processing and sorting can also be accomplished with other extraction equipment like the Opex MPE 5.0. The MPE 5.0 may be purchased for use in conjunction with an incoming mail sorter, or it may be purchased with its own optional in-line Sorter Module. In either case, "exception" envelopes containing folded checks, multiple transactions, metal, correspondence, etc. are outsorted unopened.

Windowed envelopes which have been pre-qualified to contain only a return stub and an unfolded check are extracted. The contents are sent downline, while the

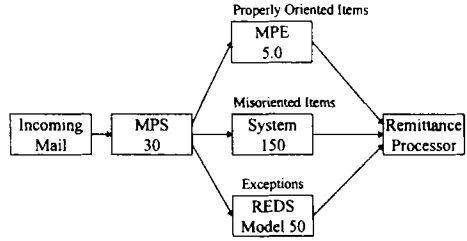
envelope is examined along its full length to insure that it is completely empty before being discarded. In the event of an unsuccessful extraction (where the check, for instance, may have stuck to a bit of glue in the end-seam of an envelope) the contents of the envelope are reunited with the envelope and placed in a "reunite bin."

The MPE 5.0 comes standard with one stacker unit, and can be configured with an additional stacker unit. Transactions containing properly oriented checks can be separated from those containing misoriented checks, and directed to "stacker pockets" based upon orientation. The Remittance Processor operator or a "runner" delivers extracted and stacked work to the Remittance Processing workstation for processing.

4. Mail Handling in the Context of Fully-Automated Processing

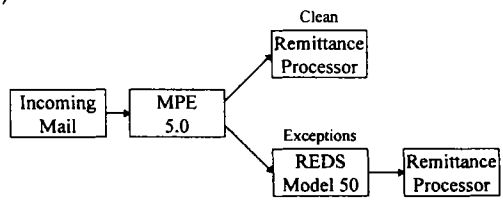
It is possible, using the equipment previously identified, to utilize various high-speed, Fully-Automated machine configurations to quickly accomplish payment processing. The possibilities are limited only by the specific needs of the equipment user. To illustrate how mail is processed in many Fully-Automated shops, some of the combinations are diagrammed below:

a.)



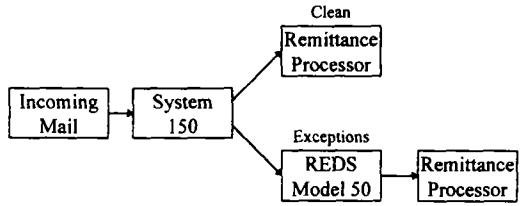
In this illustration, the mail goes directly from the Post Office to the MPS-30. The orientation of the envelope's contents is determined first. Properly oriented items go directly to the MPE 5.0; misoriented items go to the System 150, since that machine can automatically orient these. Exception items are processed on the Extraction Desks. Once properly sorted and oriented, all items go to the Remittance Processor for further processing and posting to the customer's account. Once the contents have been removed from the envelope at each point of the extraction process, the envelopes are discarded.

b.)



In this illustration, the mail goes directly from the Post Office to an MPE 5.0 equipped with a sort module. "Clean" mail (one check, one document, properly oriented) is opened, extracted, and sent directly to Remittance Processors. All other mail is diverted to Extraction Desks where it is processed prior to going to the Remittance Processors. Once the contents have been removed from the envelope at each point of the extraction process, the envelopes are discarded.

c.)



In this illustration, the mail goes directly from the Post Office to a System 150. The envelopes are opened and the contents of the "clean" envelopes are extracted, oriented, and stacked. "Exception" items are processed on the Extraction Desks. Once properly sorted and oriented, all items go to the Remittance Processor for further processing and posting to the customer's account. Once the contents have been removed from the envelope at each point of the extraction process, the envelopes are discarded.

E. Summary

Regardless of the payment processing methodology used, relatively little emphasis is placed on storing or retrieving the envelopes -- this makes sense since payees only receive credit when they extract what's *in* the envelope; they can't take empty envelopes to the bank. Even if the envelope is sorted by unique characteristics, it is usually then discarded once the extraction process has been completed.

A rare exception to this general rule occurs in the Semi-Automated mode, when an Extraction Desk is equipped with a stacker module to receive and store empty envelopes; the stacker replaces the trash bin normally included with the workstation. The handling costs and storage problems associated with using a stacker module make this an unusual and unpopular choice for handling the envelopes. In high-speed, Fully-Automated environments, the envelope is **always** discarded immediately after successful extraction.

Current high-speed extraction and incoming sorter technology allows equipment to determine if there are special "marks" on an envelope, or to determine the presence

of certain characteristics such as a change of address; it does not allow for the storage of the actual information itself, e.g. what the new address is.

This fact is important in light of H.R. 1963, which requires postmarks to become the basis for crediting customer accounts when payments are received after the due date. Since the postmarks are currently on the envelope, *payees will have to alter their current payment processing methods to account for envelopes and their postmarks.* It will not be enough merely to know that a postmark exists on the envelope; the actual *date* of the postmark will have to be determined. The ramifications of this requirement on existing payment processing methodologies are discussed in the Section that follows.

IV. Ramifications of H.R. 1963 for Existing Payment Processing Methodologies

The language of H.R. 1963 as currently written is very broad. Any business that receives payments in any amount would be affected. Every transaction, regardless of how simple or complex, and regardless of the method used to process the payment, would be impacted by this new accounting process. Payee organizations would have to implement new record-keeping procedures. Multiple datastreams would be required to address the following questions:

- "When did we receive the payment?"
- "When did we post the payment?"
- "How long did we keep the payment before we posted it?"
- "As of what date do we have to credit the customer?"

In today's payment processing environment, these are difficult questions to answer. The language of H.R. 1963 would, however, force payees to provide accurate answers. Finding the answers would also produce wide-ranging ramifications for current payment processing techniques:

A. Manual Processing

Since the payments are already being processed by hand, H.R. 1963 may have fewer clerical ramifications. The envelope can be saved and the postmark can be examined on the day the payment is received. The payment can somehow (and the "somehow" is very uncertain) be credited as of the postmark date.

Even in this Manual environment, there are still practical problems created by the bill: Do you save all of the late-payment envelopes for future reference? Do you create the space necessary to archive them? Do you store an image of the envelopes or an image of the postmarks? It would seem that the labor, storage media, and required storage space would be too overwhelming for many Manual processing shops, especially since these are usually the smaller, lower-volume payees to begin with.

Further, it is important to note that the inefficiency of Manual processing helped fuel the development of automated processing in the first place. At best, Manual processing is highly labor-intensive. When compared to Semi-Automated or Fully-Automated payment processing, this method yields the lowest productivity and the highest cost per transaction. The additional sorting and record-keeping requirements imposed by H.R. 1963 would only serve to further decrease productivity, and increase labor and processing costs. If this bill drives payees away from more efficient automation, the additional payment processing costs would almost certainly be borne by consumers.

B. Semi-Automated Processing

In either the Manual or Semi-Automated payment processing modes, the person extracting the envelope contents will have to stop long enough to examine the payment due date, and, if the envelope is received after this due date, the postmark. While this may seem like a minor inconvenience, the impact on productivity could be substantial.

Consider, for example, the multiple-payment envelopes described earlier. An envelope could contain two or more payments, each of which must be accounted for by the operator; one could be "on time" based upon the postmark date while another could be truly late. Further, since the envelope must be retained to verify proof of mailing, the operator would have to somehow devise a method to make this particular envelope's audit trail tie into two or more transactions. It is unknown how this could be done, exactly, but performing this additional task would further erode productivity.

1. Impact of H.R. 1963 if the Intent is Only to Determine "On Time" Payments for Purposes of Applying Late Fees

The severity of the productivity loss is largely a function of how the language of H.R. 1963 is interpreted. If the intent of this bill is simply not to impose late charges on customers who mail their payments "on time," then the workstation operator needs to make only one determination: Was the postmark made on or before the due date, or after the payment due date? The payments containing a truly late postmark could then be processed separately from those that are considered as being "on time." If the postmark was made prior to the due date, the payment system would have to be modified to adjust any accrued late fee charges.

Under this scenario, payees may choose to ignore the postmark altogether, and simply operate under an arbitrary presumption. For instance, a payee may choose to assume that if a payment is received no more than three days after a due date, it was mailed "on time." Thus, if a batch of payments is due on the 15th of a month, every payment received through the 18th may be presumed to have been mailed by the 15th. Payments received after the 18th could be treated as being presumptively late (and the payee would take his chances); or, each of those envelopes could be examined in depth to determine the actual date of mailing. In either case, the negative impact on productivity would be minimized.

However, very few payees operate with a single cut-off date each month. Since there are multiple payment due dates, the approach described in the above paragraph would hardly be viable.

2. Impact of H.R. 1963 if the Intent is to Actually Credit Accounts Based Upon the Postmark Date

If, on the other hand, the language of H.R. 1963 is interpreted to mean that the payment is actually *credited* as of the postmark date, then the operator must make several different sorts accounting for each possible day an envelope could have been mailed. This is extremely cumbersome.

It would not be an exaggeration to suggest that Extraction Desk processing rates could drop by at least as much as 30%, from an average of 1,300 envelopes per hour to an average of no more than 900 envelopes per hour. Obviously, since it would take longer to process payments, and since payees would be giving "back credit" for payments mailed several days before receipt, the cost per transaction would rise, and payees would no doubt be required to pass some of these increased costs along to consumers.

Further, not all Extraction Desks allow the envelope to be examined easily. On the Opex Model 50 RED, the envelope is stopped at various points on the transport track, and these stoppages allow the envelope to be retrieved and examined, if necessary. Not all workstations are designed in this manner.

Many utilize a continuously flowing conveyor to move the envelopes along. On these workstations, the envelope is opened on three sides and the conveyor carries the envelope past the operator in a production-line fashion, with the operator extracting the contents while the envelope is moving past. While it is possible to stop these machines during processing, it would be impractical and highly unproductive to stop them after every envelope passes, which in essence would have to be done to comply with this interpretation of the bill.

C. Fully-Automated Processing

If H.R. 1963 were implemented immediately, the impact would be most severe on the 33% of the payment processing market that uses high-speed automated extraction equipment. Short of returning to Manual processing, there is no workflow available today that allows payments to be accounted for by postmark. As stated earlier, all of today's high-speed extraction equipment discards the envelope immediately upon extracting its contents.

1. Problems with Postmarks

Even if it were possible to account for envelopes in high-speed environments, there are still myriad problems associated with reading a postmark. Postmarks are frequently illegible; they're often difficult for humans to read, much less machines. Some envelopes are never postmarked -- for various reasons, the postmark is skipped during processing. The postmark on some envelopes is placed directly over the stamp, and the stamp comes off during transit; the postmark disappears. Therefore, the ramifications of H.R. 1963 to Fully-Automated payment processing reach far more deeply than simply saying, "Keep the envelope and read the postmark."

2. Problems with Return Addresses

There are those who might be tempted to ask, "The Opex System 150 can be equipped with an image camera. Why not use that to capture and store an image of past-due envelopes?"

As mentioned earlier, it is true that the image camera can perform many functions in the context of high-speed extraction, such as examining postnet barcodes and determining changes of address. However, simply capturing an image of the envelope does not adequately address the requirements of H.R. 1963. In order to correlate receipt of envelope with the crediting of a payment, the envelope must contain something that identifies it as being related to a transaction, i.e. something definitive like the customer's return address. Therein lies the problem: Millions of envelopes do not have a return address on them, and the captured image of them would therefore prove nothing.

3. Problems with Storage

Another problem involves the sheer number of envelopes and payments affected by this bill. As mentioned previously, *there are almost one billion payments processed each month.* High-Speed extraction users can easily process in excess of 40,000 envelopes per shift. At that pace, incredible amounts of storage space would be required to house the actual envelopes. Even if an image of the envelopes or postmarks was stored, it would not take long for this to become burdensome.

4. Presumption of "On Time"

Similar to Semi-Automated processing, companies may choose to ignore the postmark and envelope altogether, and simply operate under an arbitrary presumption as described above, i.e. that envelopes are received "on time" unless a certain number of days have passed since the due date. Operating under this presumption, and assuming the postmark (or some variation thereof) could be automatically read with a high-degree of accuracy (a *very big* assumption), high-speed incoming sorting machines could be programmed to presume that postmarks more than three days past the due date, for example, are late. These envelopes could be sorted into a special "late pocket" on the machine, where they would be examined later and credited according to the actual postmark date.

Rather than go to the expense and trouble of keeping all envelopes, the payee might only keep the envelopes that made their way into the "late pocket," since these are the ones most likely to become the source of customer disputes. It is equally possible, however, that in the event a customer complained to a payee about the date a payment was credited, the payee would simply give in, credit the payment as having been received "on time," and dismiss any forfeited late charge or penalty as a "cost of doing business." Even though there is tremendous potential for abuse under this scenario, it may ultimately be cheaper for the payee to handle H.R. 1963 in this manner than to store millions of envelopes and attempt to account for every postmark.

D. Summary

It is fairly obvious that none of the current processing environments is particularly well-suited to implement H.R. 1963. The Manual and Semi-Automated modes are probably best equipped, but even they would find productivity adversely affected. The Fully-Automated, high-speed processor is least equipped to deal with this bill. There is nothing to suggest that any facet of this legislation could be implemented cheaply or easily in today's high-speed shops.

However, while completely *impractical*, it is not *impossible* to develop technology capable of implementing H.R. 1963. If given enough time for development, there are technological possibilities. The complexity of these possible solutions is directly related to how H.R. 1963 is interpreted: If the goal of this legislation is simply to separate late payments from "on time" payments using the postmark date (and therefore determine which customers should get a late charge and which should not), then the solutions are easier. If the intent of this bill is to treat each transaction as being received as of the postmark date, the solutions are far more complicated, since each payment has to be examined and posted by it own postmark date.

Possible solutions to meet these challenges are explored in the next Section.

V. Possible Solutions for Implementing H.R. 1963

It must be remembered that any solution proposed here is only hypothetical. While some solutions could be implemented more easily than others, all of the technological possibilities are wrought with unknown research and development costs. Further, while parts of the technology are already available, no package currently exists containing all of the elements necessary to make H.R. 1963 a reality.

Further, even if the technology were readily available, payees would have to make substantial changes to their payment processing operations in order to implement the required technology. Special equipment would have to be purchased at considerable expense, and the Post Office would have to play a major, as yet undetermined, role. Under the best of circumstances, it would require a lengthy period of time to implement H.R. 1963.

A. Changes in Envelope Designs

Much of the technical difficulty in implementing H.R. 1963 concerns the envelope itself. As stated earlier, postmarks are often illegible or missing, return addresses are non-existent, etc. By changing the envelope design, it might be possible to eliminate some of these problems and meet the demands imposed by the bill.

For example, a new envelope could be developed which is called (for lack of a better name), the "Postmark Credit Date Envelope." Customers of payees who wish to avail themselves to the benefits of H.R. 1963 would use this envelope; traditional envelope styles could still remain for general business use, personal correspondence and the like.

This "Postmark Credit Date Envelope" would have a special window on it similar to today's style of windowed envelopes. A special "postmark barcode" could be sprayed through the window directly onto a remittance document. The barcode would contain essential date information. In addition to this special barcode, the postmark could be printed underneath in standard alpha-numeric format, so that everyone could see the date without having to interpret the barcode. Since the window would be in a uniform location (perhaps to the left of the current stamp area), customers choosing not to use the special envelope could still have a postmark; it would be sprayed directly onto the envelope in the area where the window would normally be found.

By affixing the postmark in this manner, the remittance documents and payments would arrive with the postmark information (and any other customer information included in the barcode) readily available. Machines capable of reading barcode could utilize this information. Consumers not choosing this method for sending in their payments would simply not be able to claim the benefit of the postmark date, since the envelope (and its accompanying postmark) would be discarded as usual immediately after extraction.

When the payment is processed, the posting date could be based upon the postmark barcode. This would require changes in remittance processing machines, **and these changes would not be trivial.**

Payees could even sort the mail in advance on a high-speed incoming mail sorter by date or by a range of dates. By adapting the barcode reading capability of a high-speed extractor like the System 150, check and document pairs could be extracted automatically and sorted into designated sort bins by date. This would assist payees in crediting customer accounts properly.

This method would work best in Fully-Automated, high-speed environments. However, because the postmark would continue to be printed with alpha-numeric characters, even Semi-Automated or Manual processing shops could identify the postmark date and thus use these envelopes.

While all of this sounds like a very simple idea, it is far from foolproof. First, consumers would need to be sold on the idea of using new envelopes. As indicated by the number of people who still refuse to use Zip Codes, this is not an easy task. Further, those who did not use the new envelope, regardless of reason, would feel that they have been treated unfairly when compared to those who used the envelope.

Second, envelope manufacturers would have to be convinced to make this new envelope; its styling would have to be prescribed by statute, and carefully crafted envelope standards would have to be created. It would probably take an edict requiring bills to be paid in this manner to make this a reality.

Third, barcode reading, despite its accuracy, is still not invincible. The quality of barcode readers and sprayers would need to improve considerably in order to assure payees that their customers are being properly credited. Also, a barcoding technique would have to be developed by the Post Office to spray the barcode on every envelope processed. Every location receiving and postmarking mail, no matter how small, would need this barcoding capability. This would be expensive, and it would necessitate a long implementation phase.

Fourth, in this kind of barcode spraying environment, what happens to the postage stamp? How is it canceled? Does part of the barcode spray simply cover the stamp so that it cannot be used again? Will the stamp go directly on the remittance document, thereby potentially interfering with the barcode reading? Also, the addition of another window on the envelope may degrade the Post Office's service, since mail processing equipment tends to jam more frequently when processing windowed envelopes.

These, and many other questions, require an answer. Certainly, it would not be a quick process to develop new envelope standards and equip everyone with the ability to spray and read barcodes. It would also be very expensive to design and implement the equipment required to make this process feasible.

B. Change the Method of Affixing a Postmark

The idea discussed in "A" above really involves changing the concept of the traditional postmark. Using barcode to replace or supplement the current postmark is certainly one of the more intriguing ways to address H.R. 1963. However, using the current postmark by itself to determine mailing dates is impractical due to poor quality and the other problems touched on previously. In light of this, it may make more sense to change the postmark itself.

How would this be done? No one knows, for certain, and most of the ideas seem almost like Buck Rodgers in concept.

One idea is to punch some sort of identifying mark through the envelope. It could be a series of pinholes punched through the envelope and remittance document, or it could be a pre-defined series of holes punched only into the envelope. Depending upon the sequence, the holes, or "punches," could be read by a special machine which would interpret the date and sort accordingly. This method would require everyone to implement automated equipment to read the "punches." The "punches" would replace the traditional postmark.

Another idea involves using a laser. While at first blush this may seem somewhat absurd, more and more applications are being developed for the laser. A laser could put pinholes into envelopes and documents for later reading as described above. Or, a laser could somehow burn special date and account information into an envelope or document designed for this purpose. It is unknown exactly how a laser could be used, but in exploring the realm of the "what if's," this concept cannot be left out. This laser-generated "postmark" would replace the mark as we currently know it.

Again, these concepts are on the outside edge of possibilities. However, since the language of H.R. 1963 is so broad, and since its impact on traditional payment processing methods is so broad, one cannot dismiss radical ideas to implement the directives of this bill.

C. Change the Method of Sorting Envelopes

The ability of high-speed incoming mail sorters to identify and separate envelopes by specific characteristics could be utilized by payees as they seek to meet the posting requirements of H.R. 1963. Again using barcode, envelopes could be sorted by a postmark date sprayed directly on the envelope. This concept is similar to that discussed in "A" above, but it would not require the adoption of new envelopes. However, the same problems discussed above would apply, i.e. the overwhelming cost and logistical burden placed on the Post Office and payees to implement this system.

Rather than spraying barcodes directly on the remittance document, the barcodes could be sprayed on the envelopes themselves. The envelopes could then be sorted by date on high-speed incoming mail sorters, such as the MPS-30. This would still be somewhat impractical given the wide range of dates on which an envelope could

possibly be sent. Perhaps the barcode information could be used in a simpler fashion, i.e. determine by barcode whether an envelope is "late" or "not late" rather than determine the specific postmark date on the envelope. Then, a payee could process by hand all of those envelopes deemed to be "late," and properly credit them by postmark.

Implementing this system would not be easy, and it would take its toll on productivity and cost-efficiency. The technology to perform this type of sorting does not currently exist, and it would take time to develop the proper sorting techniques. It would also be expensive, both for the Post Office and for those requiring the sorting equipment.

In the end, barcoding may not prove to be the answer at all. Encrypting the postmark in some (as yet undeveloped) machine-readable fashion other than barcode may work better. Envelopes would be sorted using this encrypted postmark.

But regardless of whether or not barcode or some other encryption device is used, the entire payment processing system would have to be automated. This could only be done at tremendous cost to the payment processing industry.

VI. Conclusions

A. Understanding Payees

Because of Opex's position in the mailrooms of many of America's largest payees, we see firsthand how payees handle the millions and millions of payments they receive each month. It is safe to say that these payees work as quickly as possible to process their customers' payments. After all, it is in their best interests to open the envelopes and deposit the payments. Time is indeed money, and every day lost means a considerable amount of money lost by payees -- ***and this is not money that can be replaced simply by collecting late fees.***

There is a perception on the part of many that payees conspire to hold their customers' payments until they are late, just so they can collect these late fees. However, our experience shows just the opposite. The ill-will and increased labor costs associated with collecting such fees in large numbers would threaten the existence of companies who made this a common practice.

Further, consider how many advertising dollars are spent today attracting and retaining creditworthy consumers. By tailoring special credit card offers, for example, companies attempt to gain the loyalty of new customers -- customers with whom they would like to establish a long-term relationship. Holding payments just to collect additional interest or late fees directly betrays a company's efforts to increase its customer base, and in fact would drive its customers straight to the competition.

B. Understanding Consumers

Almost every consumer has been faced with the situation where they mail a payment four days before due, only to have it received two weeks after the deadline. This is certainly a problem, but is the solution to make payees responsible for correcting something over which they have no control? If the payees could manipulate postal service and deliveries, that would be one thing; but the reality is that payees are at the mercy of the United States Postal Service.

Forcing payees to pretend they have had money they never really received (i.e. pretending they had the payment on the day of the postmark) does nothing to improve the quality of mail service consumers have a right to expect. There is no incentive for the Post Office to improve its procedures. There is no penalty imposed on them for not delivering the payment for several days; the cost is borne entirely by the payees and their customers.

Service by the Post Office could actually *worsen* under this bill. Consumers who previously implored the Post Office to deliver "on time" could now be silent on the issue, since, as long as the envelope was postmarked "on time," it wouldn't matter when the payment was actually delivered. In fact, they would be better off with a delayed delivery,

since that would keep the money allocated for the payment in their bank accounts longer.

Many consumers mail their payment the moment a bill is received. Many wait a week or so, depending on individual paydays. Some wait until the very last minute to make the payment. H.R. 1963 would encourage everyone to wait on mailing their payment until the day it is due. In fact, since the language of H.R. 1963 seems to suggest that the benefit of the postmark date is *only realized if the payment is received after it is due,* there is actually an incentive to wait until the due date to make the payment. This could create dramatic peaks and valleys in mail volume that would tend to slow service.

C. Understanding the IRS

The IRS is an agency that currently credits payments as being "on time" as long as the postmark falls on or before a certain date (April 15th). Opex is not in a position to testify on how the IRS conducts its business; testimony in this regard is best solicited directly from the IRS. However, a general comparison of IRS processing techniques to other businesses in the payment industry can be made, and it is quite enlightening.

The IRS has a concentrated workload beginning in January, peaking in April, and then tapering off again. According to the December, 1995 Checks and Checking Industry Newsletter, the IRS processes fifty million 1040's once a year. While this is certainly a lot, **it must be remembered that the payment industry processes a *billion* payments every month.**

For the most part, the IRS processes its 1040's in a Semi-Automated fashion on single station extractors. This makes sense since 1040's, unlike many other remittance documents, are unique forms requiring, in many instances, special handling and special examination. This workflow is one step removed from manual extraction, and is relatively labor intensive.

As noted many times previously, many high-volume payment processors use automated machines which extract envelopes at the rate of 8,000+ per hour, reducing the amount of labor used to complete the job by a factor of 8 to 1. The machines separate the envelopes from their contents, and discard the envelopes. To make these payees operate in the same manner as the IRS would be equivalent to making these payees take at least 8 steps backwards. Payment processing efficiency would decrease, while labor and the cost per transaction would certainly increase. This would not benefit consumers, and the corresponding cost to payees could ultimately force some out of business.

D. Understanding Opex

A bill such as H.R. 1963 could benefit a company like Opex. Opex manufactures equipment that stands at the front line in payment processing. Further, Opex has much of the technical expertise that would ultimately be required to implement the provisions of this bill. Specialized mail sorting, barcode reading, and extracting equipment would be in immediate demand if this bill passes.

But Opex, or any other company like Opex, could only meet this demand if the technology were developed and available for immediate use. It is not, and it is not trivial to develop it.

At best, we estimate that to properly develop the technological capabilities required to make this bill a cost-efficient reality, it might take between 2 - 5 years; and this is only if all other research and development efforts were halted in favor of developing this technology. This is not something that we, or any other company like us of which we are aware, could afford to do.

Further, while our internal efforts may take 2 - 5 years, this does not take into account other outside events that would have to occur in order for this bill to work. As mentioned, the Post Office would have to change its mail handling techniques dramatically. It would have to develop, buy, and implement new equipment at every postal site in the country. New standards would have to be developed. This would take considerable time and would cost an enormous amount of money.

Payees would either have to automate with new, expensive capital equipment, or be forced to discard their current high-speed (and extremely efficient) methodologies in favor of more manual processing. This would take time and could cost millions or even *billions* of dollars. Consumers would pay the price either in less efficiency or higher costs.

At present we do not see a reasonable, easy, cheap or efficient way to implement H.R. 1963. In today's world we can never say that it would be *impossible* to develop the requisite technology. However, in our opinion, spending considerable time and engineering resources to make this bill feasible is not the best way to create the gains desired by consumers.

Further, we can say with certainty that the need for a bill like H.R. 1963 (if indeed there is even a need) is *prohibitively* outweighed by the cost to those involved in terms of the time, money, and resources required to accomplish its stated objectives. In the long run, consumers would probably not realize the benefit they expected, but payees would realize increased costs and decreased efficiency in payment processing.

Written Response to Questions Regarding H.R. 1963:

Asked by John M. McHugh, Chairman, Postal Service Subcommittee

Committee on Government Reform and Oversight

1. **Question:** Do you feel that the type of technology mentioned by ElectroCom in their testimony and being developed at the Postal Service to allow a customer to know when a payment is in the mail stream and on its way, would be beneficial to your financial and business customers?

1. **Response:** My knowledge of the system under development at the Postal Service is limited, especially as it relates to its background and origin. With that in mind, I shall give my response. In an effort to expand my base of information, I consulted with several major credit card operations as well as a major utility company expert. In short, they see no reason to spend money to install the proposed system from the Post Office. A summary of some of the reasons may be helpful:

A. The operations center that prepares and stuffs the invoices/statements would be required to print the return envelope with a code based on information contained on the customer document. Therefore, a scanner that reads the document while it is on the enclosing machine would have to be in sync with a printer that would print or spray that customer's reply envelope. This would require all bill stuffing machines to be upgraded through replacement or retrofit. I am not an expert on this aspect of the industry and do not know if such equipment exists and if it does, at what cost.

B. The current payment systems would require alterations in hardware, work flow, and software to integrate the new Postal information data. If the primary thrust of the Postal data was to allow the customer to reduce late fees, account for late payment statements, or guard against unwarranted disconnection of power or service, then the modified system would have to place those accounts into a suspense category pending receipt of the actual payment. The suspension of company activity (collection, service shut-off, etc.) would have to be limited in duration, say 4 or 5 days, after which the normal policies of the company would be invoked. Consider the limitations of the Postal notification:

(1) The envelope may not contain a check;

(2) The actual check amount is unknown until it is received and applied to the account;

(3) The envelope may not belong to the payer; and/or

(4) The envelope may not be the current or most recent return envelope and therefore send erroneous data to the processor.

2. **Question:** You discuss on page 23 of your prepared statement the idea of designing an entirely new envelope to which a date could be sprayed onto the payment coupon and caution that this change "would not be trivial." Can you give us an idea of what type of equipment retrofitting and cost are involved with this possible approach?

2. **Response:** In addition to responding to the type of equipment that would require retrofitting, I will include the advantages and disadvantages with size of customer taken into account. Our idea of modifying the envelope with an open window through which a barcoded date and Julian date could be sprayed on the document was similar to an idea advanced at the hearings by ElectroCom. I am not prepared to provide an actual estimate of equipment costs for this approach and I would hate to speculate. Preparing an estimate would involve an investment of staff hours that I have not yet committed to this project. It is hoped that the discussion that follows will be beneficial in directing the need for further study.

A. **Factors favoring this approach:**

(1) Both machine-readable and human-readable dates are on the document and not the envelope. This conforms more closely to today's payment systems that discard the envelope in the first step of the paper flow process. It is also more compatible with the feed and transport design capabilities of the various processing systems in use today than other systems proposed at the hearing.

B. **Factors arguing against this approach:**

(1) The USPS would have to invest in replacing or retrofitting all of the AFCS to incorporate the equipment designed to print the new postmark. As pointed out in the ElectroCom testimony, "many -- but not *all* -- remittance envelopes" pass through the AFCS, which therefore results in a less than 100% solution for complying with HR 1963. In the exception identified here, compliance requirements would thus have to be relaxed in order to meet the guidelines of HR 1963.

(2) The design of the modified AFCS machine would require, among other things, the ability to print on the document through the window to machine-readable specifications without snagging or tearing the window through which the postmark is located -- and do all of this while still canceling the stamp to validate its use. To the extent that the normal barcode print quality and read rates are less than 100%, the requirements of the bill would need to be relaxed to take into account these exceptions.

(3) Systems at the customer's operations center would require modification to provide for an interest or late fee credit. Smaller and less sophisticated systems that are less expensive and designed for the smaller user may not be as flexible in incorporating the hardware/software required for this task. Those customers may be forced to completely replace their systems or discontinue using the USPS as a carrier for payment delivery.

Large users would be faced with designing a system that would meet the bill's requirements while at the same time minimizing the cost impact. On the surface, it would seem simple to implement HR 1963. However, when processors receive payments from their customers, they would have to pause and verify whether or not the customer is due an interest credit based on the date the payment was mailed, prior to depositing the check in the bank. Large users have very complex systems, and while some have similarities, few (if any) are actually alike.

Therefore, it is a complex task to respond to the question of how much it would cost to implement this system. It is not simply a matter of calculating the added time and expense involved in added key strokes or additional sort passes. For illustration purposes, I have hypothesized a solution below that will, in broad brush terms, outline some of the larger areas of impact:

One method would include printing a machine-readable code on the invoice/statement that would be viewable through the return envelope's window. The outgoing document would have to be designed to accommodate the printing of the code and the print programs would have to be revised accordingly. The payment would be returned in an envelope supplied by the customer containing a special window for the new cancellation barcode. With the aid of high speed sorters, the envelopes would be grouped into one of three payment classifications:

(a) Not past due;

(b) Past due, but "on time" based on postmark; or

(c) Past due and late based on the postmark date

Under this scheme, the three sort classifications would be superimposed on top of current incoming sort plans (if any are used), thereby slowing mail flow, increasing handling costs, and making the

use of the postal system less attractive for delivering payments. The customer would be faced with investing in high speed sorting systems.

The next major decision would involve modifying the payment system to properly process the three types of payment mail. Several approaches exist and the best solution would be influenced by the configuration currently in use. The system may be modified to run three different jobs, one for each type of payment classification as described above.

The next major decision would require the establishment of a policy for dealing with customer claims of "on time" payment. This policy will help drive the decision of how best to retain documents, as well as the associated retrieval system.

The question of how best to implement the changes will require major users to assign systems analysts to develop the proper solution. The entire system would have to be uniquely designed, beginning with the generation of the invoice/statement through each step of the process of payment application, record storage and retrieval. Purchasing, programmers and policy-makers will have significant assignments in the next phases of solution development.

The penetration of the changes in the systems are deep and complex. I hope that I have supplied enough detail to provide a sufficient level of understanding without unnecessarily complicating my response.

3. **Question:** To what extent, if at all, do you see the credit industry moving away from hard copy payments and moving to electronic payments?

3. **Response:** That's an important question and one that we study on an ongoing basis because our core business is directly affected. In recent years, we have seen the credit industry increase its use of direct-mail marketing. While electronic payments have increased, they have not kept pace with the overall base percentage of customers who pay by mail, especially in the credit industry. The marketing and promotional opportunities associated with sending a customer's invoice/statement are reason enough for corporate marketing departments to keep sending mailings to their customers. On the other end of the payment processing flow is the Federal Reserve, which has a desire to move to electronic check presentment.

In my own judgment, the next change to the payment system that consumers will accept involves truncation of checks. The largest threat to the current system falls into two areas: 1.) The cost of services purchased from the USPS; and 2.) The quality of service from the USPS, including delivery time and accuracy of mail receipts. It is my opinion that these two areas should be the focus of attention and improvement by the USPS. I am concerned because there is a direct correlation between the success of the USPS and the long-term success and viability of our business.

4. **Question:** Based on your experience in this area, to what degree has technology changed the methods by which payments are processed compared with ten years ago and what technological initiatives do you see that will be the next transitory step in the processing of bill payments?

4. **Response:** In the area of mail extraction, the past decade has seen great changes in automating the extraction of "clean single" payment mail. In large volume payment shops, we have improved the quality of work performance as well as the work environment by reducing manual intervention. Also, mail processing workstations now incorporate in their designs several "user friendly" factors. Processing speeds have increased in the payment processing systems through the use of faster computer processors. The use of image processing has produced a major shift in the processing methods of large volume payment shops.

As stated in my response to question # 3, I see the next major shift to be towards a system that still starts with the customer writing a check and mailing it in along with the invoice. The actual check will not be returned and the transaction will become electronic at the point of first deposit. I expect that this shift will evolve over the next decade.

4.A. **Question:** Without giving away any proprietary information what are some of the ideas your research and development departments are working on that will impact this part of your business?

4.A. **Response:** We recently created a solution for several of our customers, and we are confident this solution will be helpful and valuable to non-customers, as well. It is a low cost addition to our existing high speed sorter. We set up a barcode that is non-standard and therefore not recognized as valid in the postal system. The customer can create their own scheme for imbedding useful information on the return document as a barcode. Upon receipt, the mail can be sorted based on customers' needs as defined by the barcode. This may displace some of the benefits that might be realized from the USPS' developmental work.

We have other projects that may be of interest to you, but at the present time these are proprietary. We will be able to discuss some of them in the next 3 to 4 months.

I trust this information, and these responses, are helpful to you as you continue to evaluate the ramifications of HR 1963. Thank you for the opportunity to answer these questions.

Mr. MCHUGH. Thank you, Mr. Stevens.

Last, Mr. Tod Mongan of BancTec?

Mr. MONGAN. BancTec, yes.

Mr. MCHUGH. BancTec. We appreciate your being here, sir.

Mr. MONGAN. Thank you, Mr. Chairman. On behalf of myself and Mr. Klier, who accompanied me here today, we thank the Chair for allowing us to testify.

I also ask that the testimony that will be submitted in written form be admitted.

Mr. MCHUGH. Without objection, so ordered.

Mr. MONGAN. BancTec is a leading provider of hardware, software, and systems solutions for payment processing applications. We are a Dallas-based company, with approximately $500 million in annual revenues. We have been specialists in check and payment processing operations for over 25 years.

Banks, telephone companies, utilities, retailers, credit card processors, insurance companies, government agencies, and companies in other industries use our products to efficiently read relevant information from checks and payment stubs. We encode and sort payment checks, and forward updated information to their host computers.

Today, most companies' payment processing operations are highly automated, utilizing advanced optical character recognition technology to read and process their customers' payments. Some companies with lower payment volume use automated work stations at which operators manually feed the payment stubs and checks into the work station and key the payment amount for each transaction.

Many higher volume processors have further automated their operations by using high-speed document transports, many of which include image-based processing systems. These image-based systems create electronic images of paper documents, enabling companies to do much of their processing work by viewing electronic document images on computer screens rather than by handling the actual paper documents.

We offer both types of systems, but the trend in the industry for the past few years has clearly been toward use of image processing to maximize processing efficiency and reduce document storage and handling costs.

Whether a company uses lower-speed work stations, work station oriented technology, or higher speed image-based technology, there is one clear goal, to get all of the company's customers' payments posted and deposited as soon as possible. This is the measure of their success and is the reason why companies spend millions of dollars on automated equipment with companies like BancTec.

The automated systems developed, installed, and maintained by BancTec enable companies to efficiently process several hundred thousand payment transactions per day. I brought a video that shows a typical day's processing operation at a large telephone company processing center. With your permission, I would like to show about a 5-minute tape.

Mr. MCHUGH. Please.

Mr. MONGAN. Before we start that, let me just say one thing. The first part of the tape shows what we are calling a "work station process," where there is an operator sitting at the station, feeding

documents manually and keying the information. The other is the very high-speed processing system.

Mr. MCHUGH. Maybe if we could dim the lights, it may improve our mood, if nothing else. A little volume.

[Videotape shown.]

Mr. MONGAN. As you can see from the video, payment processing today is a very fast-paced, highly efficient operation. The key for the processors is really to get the payments posted to the accounts and deposit the checks in the bank.

If H.R. 1963 is passed in its current form, this highly efficient method of processing would no longer be used—or could no longer be used. Under the proposed legislation, the payment due date cannot be retrieved from the scan line in the payment stub, as it is today. The payment due date would have to be retrieved from the postmark date on the payment envelope, resulting in major problems for document processors, system vendors, and consumers.

As we see it, the legislation gives rise to two problems: the problem of matching postmark dates with specific payment transactions. Today envelopes are not part of the information retrieval process. After document extraction, payment envelopes are candled to ensure that all the contents are removed, and recycled or destroyed. They don't remain with the process.

Under the proposed legislation, postmark information would have to be manually keyed in by the operators working with the actual envelope in a work station format, as shown on the tape, or payment processing would revert to being a much slower, more manually administered process, increasing the time span between receipt and final processing.

The second problem would be automatically reading the postmark date. Using today's recognition technology, BancTec's payment systems could not successfully read and interpret the date information on stamped postmarks. Under the proposed legislation, in order to get the postmark date into the data stream, human operators would have to key in the postmark date as each envelope is opened, or a high-speed payment processing system would have to use some kind of character recognition or bar code technology to automatically read the postmark date.

Using human operators to key in information from postmarks for each payment, rather than using a machine to read the information in the stub document scan line, will result in significantly increased error rates and substantially increased labor costs. This could lead to problems with late payments due to data errors or could lead to higher product production prices; again, defeating the bill's purpose.

Adding bar code to each envelope would alleviate the problem with reading smeared or illegible postmarks and keystroke errors, but it would not solve the problem of how to get the bar code postmark date information into the data stream and match it with the account number, amount due, and other information from the check and stub.

BancTec sees a couple of possible solutions. The first solution would involve the use of human operators to presort all the envelopes by postmark date prior to the beginning of the payment processing operation. The limitation we see in that is, envelope

presorting would be labor-intensive and, again, would considerably slow down the process. This method would also require a large number of production runs, some with a relatively small amount of documents, further reducing the efficiency.

This solution would defeat the purpose of the bill by lengthening the payment processing time and increasing labor and other processing costs, which would be passed on to the customers. There would still be opportunities for errors when human operators fail to put payments in the proper postmark date batches.

The second possible solution would be to use the payment processing operator and/or a system to automatically read the postmark date from the envelope. The limitations with that, as BancTec sees them, are keying at the work station would again slow down the operation considerably.

Operators would have to handle and view an entirely new document, a presplit envelope. They would have to find the postmark date, try again to determine exactly what it is, key in the date twice, to ensure accuracy, before disposing of the envelope. They would then look at the check amount and key in the amount paid twice, again, to ensure accuracy. That would double the document handling requirements and the amount of data to be keyed in every transaction.

In a high-speed environment, the question is, can current technology be used to read the postmark stamps? The answer to that question is no; the technology does not now exist. Postmarks, in addition to not containing a standard OCR-recognizable print font, are often smeared, partially printed, on the back of the envelope, or at times not present at all.

Automated systems would have to be added to the postal facilities that could add bar codes, put the postmark date on envelopes prior to turning envelopes over to payment processors. The addition of bar coding requirements at the postal facilities would add substantial cost to the mail/postal process. If the bar code or other readers were placed on mail opening equipment, the question would arise as to how to get the postmark date information from the mail opening system to the payment processing system.

BancTec does not manufacture or market mail opening devices, nor do mail opening device vendors currently manufacture payment processing equipment. Most companies' payment processing equipment purchase decisions are independent from their mail opening equipment purchase decisions. Today, there is no method of reading postmark date information from a mail opening device, passing that information to a payment processing device, and matching the postmark date information to the specific payment stubs and checks.

In order to provide a document processing system with today's functionality, speed and ease of use, which could read and transmit postmark date or bar code information, systems developers like BancTec would have to develop new document transport mechanisms that could process envelopes at high speeds, read the bar code information, which would be attached to the envelope at the post office, and place the interpreted postmark date into that data stream. This would require a multimillion-dollar investment by

BancTec, or other companies, in the development and testing of new hardware and software.

In summary, vendors and companies that send and process bills have worked together over the past decade to develop a highly efficient method of processing payments. Among our customers, a great majority of payments are processed the same day they are received from the postal facilities. In some cases, volume surges, late postal deliveries, equipment problems could cause payment processing to be delayed by a day or more.

The task to develop new systems that would enable document processors to transport and read information from envelopes and efficiently place that information into a data stream would require significant development expenditures.

Since much of the industry data that we have seen states that an increasing percentage of payments will be made electronically in the years ahead, we would have to seriously consider the viability of entering into such a development project.

The only option would be for companies to revert back to a much more labor-intensive form of payment processing, thereby increasing cost, possibly error rates, and reducing the efficiency of the process.

We thank you for the opportunity to testify here and welcome any questions.

[The prepared statement of Mr. Mongan follows:]

PREPARED STATEMENT OF TOD MONGAN, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, BANCTEC, INC.

Statement For The Record

BancTec, Inc. on HR 1963, the Postmark Prompt Payment Act of 1995

Submitted to the Subcommittee On The Postal Service Of The Committee On Governmental Reform and Oversight

February 28, 1996

BancTec, Inc. thanks the Subcommittee on The Postal Service for the opportunity to submit a statement for the record on H.R. 1963, the "Postmark Prompt Payment Act".

BancTec is a leading provider of hardware, software and systems solutions for payment processing applications. We are a Dallas-based company with approximately $500 million in annual revenues. We have been specialists in check and payment processing operations for over 25 years. Banks, telephone companies, utilities, retailers, credit card processors, insurance companies, government agencies and companies in other industries use our products to efficiently read relevant information from checks and payment stubs, encode and sort payment checks, and forward updated payment information to their host computer.

Today, most companies' payment processing operations are highly automated, utilizing advanced optical character recognition technology to read and process their customers' payments. Some companies with lower payment volumes use automated workstations, at which operators manually feed the payment stubs and checks into the workstation and key in the payment amount for each transaction. Many higher volume payment processors have further automated their operations by using high speed document transports, many of which include image-based processing systems. These image-based systems create electronic images of paper documents, enabling companies to do much of their processing work by viewing electronic document images on computer screens rather than by handling the actual paper documents. We offer both types of systems, but the trend in the industry for the past few years has clearly been toward the use of image processing to maximize processing efficiency and reduce document storage and handling costs. Whether a company uses lower speed workstation-oriented technology or higher speed image based technology, there is one clear goal - to get all of the company's customer payments posted and deposited as soon as possible. This is the measure of success in most payment processing operations centers and is the reason companies like General Telephone, Sears, Citibank, AT&T Universal Card, USAA Insurance, Pacific Gas & Electric, MBNA, General Electric Capital Corporation, and Ameritech spend millions of dollars on automated equipment with companies like BancTec. The automated systems developed, installed and maintained by BancTec enable companies to efficiently process several hundred thousand payment transactions per day. I have brought a video that shows a typical day's processing operations at a large telephone payment processing center. With your permission, I would like to now show about five minutes of footage from the video.

As you can see from the video, payment processing today is a fast-paced, highly efficient operation. One key point that needs to be restated is that currently the payment due date is embedded in the "scan line" of a payment stub. This scan line is encoded in a special standardized font called OCR-A that is easily read by automated systems. With current

technology, automated payment processing systems can read due dates, account information and related data far more efficiently and accurately than humans can. In a typical transaction, an envelope is opened and documents extracted by a separate mail opening device, such as the Opex 100 model shown in the video. The envelope is then separated from the check and payment stub. After opening and extraction, the stub and check are sent together - along with thousands of other document pairs - down the document transport device, which automatically reads the scan line to determine the payment due date, the full dollar amount due, the minimum dollar amount due, the customer account number and other essential information. The system can either scan the handwritten amount on the customer's check to determine the amount paid - or can present electronic images of the check to operators who view the image on a PC and immediately key in the amount paid. When all of the information is collected and balanced, the transaction is considered completed, the data is forwarded to the payment processor's host computer, and the customer's account is updated. The check payment amount is then encoded with magnetic ink at the bottom right hand side of the check, and all checks are sorted and readied for bank deposit. This typical payment transaction would be included in a batch of 200-300 documents that would take less than an hour to scan, balance and process. If processed by itself on a high speed system, the payment, consisting of a stub and check, could be totally processed in less than one minute.

If HR 1963 is passed in its current form, this highly efficient method of processing could no longer be used. Under the proposed legislation, the payment due date could not be retrieved from the scan line in the payment stub as it is today. The payment due date would have to be retrieved from the postmark date on the payment envelope, resulting in major problems for document processors, systems vendors, and consumers. The legislation gives rise to two problems:

o **1. Problems with matching postmarks with specific payment transactions.** Today, after document extraction, payment envelopes are "candled" to ensure that all all contents were extracted and are then recycled or destroyed. Envelopes are not now part of the information retrieval process in payment processing. Under this proposed legislation, postmark information would have to be manually keyed in by operators working with the actual paper envelope. Payment processing would revert to being a much slower, more manually administered process, increasing the time span between receipt and final processing - defeating the purpose of the bill.

o **2. Problems with automatically reading postmark data.** Using today's recognition technology, BancTec's payment processing systems could not successfully read and interpret the date information from stamped postmarks. As you know, postmarks are often smeared, illegible, double stamped, stamped on the back of the envelope, or nonexistent. Also, the color red used on some postmarks is one of the most difficult colors for imaging systems to read and interpret.

Under the proposed legislation, in order to get the postmark date in the data stream, human operators would have to key in the postmark date as each individual envelope was opened - or a high-speed payment processing system would have to use some type of character recognition or bar code technology to automatically read the postmark date. Using human operators to key in information from postmarks for each payment rather than using a machine to read the information in the stub document scan line will result in significantly increased

error rates and substantially increased labor costs . This could lead to problems with late payments due to data entry errors and could lead to higher product prices - again defeating the purpose of the bill.

Adding bar coding to each envelope would alleviate the problem with reading smeared and illegible postmarks and keystroke errors, but it would not solve the problem of how to get the bar coded post mark date information into the data stream and match it with the account number, amount due and other information from the check and stub.

POSSIBLE SOLUTIONS:

1. Use human operators to presort all envelopes by postmark date prior to beginning the payment processing operation.

Each group of documents would be presorted by postmark date and processed as a separate batch. The postmark date information would be inserted into the data record during the payment processing cycle.

Limitations:
Envelope presorting would be labor intensive and again, would considerably slow down the process. This method would also require a large number of production runs, some with a relatively small amount of documents, further reducing efficiency. This solution would defeat the purpose of the bill by lengthening payment processing time and by increasing labor and other processing costs - which could be passed on to customers. There would still be opportunities for errors when human operators fail to put payments in the proper "postmark date" batches.

2. Use the payment processing operator and/or system to automatically read the postmark date from the envelope.

This could theoretically be done in one of two ways. In a lower speed workstation environment, a human operator could view each envelope and key in the postmark date as he or she keys in the payment amount. In a high speed environment, the system could attempt to read and interpret the postmark date directly from the envelope.

Limitations:
Keying at the workstation would again slow down the operation considerably. Operators would have to handle and view an entirely new document, a pre-split envelope. They would then have to find the postmark date, try to determine exactly what it is, and key in the date - twice - to ensure accuracy before disposing of the envelope. They would then look at the check amount and key in the paid amount - twice - to ensure accuracy. That would double document handling requirements and the amount of data to be keyed in on every transaction.

In a high speed environment, the immediate question is "can current technology be used to read postmark stamps". The answer to that question is no, the technology does not now exist. Postmarks, in addition to not containing a standard OCR recognizable print font, are often smeared, partially printed, on the back of an envelope, or at times, not present at all. Automated systems would have to be added at Postal Facilities that could add bar codes

with the postmark date on all envelopes prior to turning the envelopes over to the payment processor. The addition of bar coding requirements at the Postal Facilities would add substantial costs to the mail postal process. If bar code or other readers were placed on mail opening equipment, the question would arise as to how to get the postmark date information from the mail opening system to the payment processing system. BancTec does not manufacture or market mail opening devices nor do mail opening device vendors currently manufacture payment processing equipment. Most companies' payment processing equipment purchase decisions are independent from their mail opening equipment purchase decision. Today, there is no method of reading postmark date information from a mail opening device, passing that information to a payment processing device and matching postmark date information to specific payment stubs and checks.

Requirements For New Technology

In order to provide a document processing system with today's functionality, speed and ease of use which could read and transmit postmark stamp or bar code information, systems developers like BancTec would have to develop new document transport mechanisms that could process envelopes at high speeds, read the bar coded information (which would be attached to the envelope at the post office), and place the interpreted postmark date into data stream.

This would require a multi-million dollar investment by our Company in the development and testing of new hardware and software. The development schedule would span several years. During the next decade a far greater percentage of payments will be made electronically - through PCs, across the internet, thorough direct credit, etc. Vendors like BancTec will have very little incentive to enter into multi-million dollar development projects on totally new transport technologies when the requirements for processing paper documents will likely decline in the near future.

SUMMARY:

Vendors and companies that send and process bills have worked together over the past decade to develop highly efficient methods of processing payments. Among our customers, a great majority of payments are processed the same day they are received from the Postal facility. In some cases, volume surges, late postal deliveries, or equipment problems could cause payment processing to be delayed by one day.

The task to develop new systems that would enable document processors to transport and read information from envelopes and efficiently place that information into a data stream would require significant development expenditures. Since much of the industry data that we've seen states that an increasing percentage of payments will be made electronically in the years ahead, we would have to seriously consider the viability of entering into such a development project. The only option would be for companies to revert back to a much more labor intensive form of payment processing, thereby increasing costs and error rates and reducing processing efficiency.

BANCTEC

4435 Spring Valley Road
Dallas, TX 75244
(214) 450-7700

May 23, 1996

The Honorable John M. McHugh, Chairman
Subcommittee on the Postal Service
Committee on Government Reform and Oversight
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

RE: H.R. 1963 and Your Letter Dated March 26, 1996

Dear Mr. McHugh:

Following are my responses to your questions posed in the above-referenced letter:

1. **Do you feel that the type of technology mentioned by ElectroCom in their testimony and being developed at the Postal Service to allow a customer to know when a payment is in the mailstream and on its way, would be beneficial to your financial and business customers?**

In general, we believe that the technology mentioned by ElectroCom could help implement the intent of H. R. 1963 to have the post mark date be the date of payment. These changes would only add cost to the business of our customers, the payment processors, as they are forced to purchase new technology for processing payments in the new form. These costs, in our opinion, would be passed on to the consumer.

2. **You seem to be saying in your prepared statement that electronic payment technology via computers and other methods will soon usurp the remittance of paper payment transactions and will eventually make the subject of today's hearing moot. As the Chairman of this Subcommittee, with oversight of the Postal Service, I am curious as to what your research tells you about where we are on that time scale and when you anticipate this transfer from paper to electronic processing to be accomplished?**

Based on our research, payments by check still dominate; however, the trend is

definitely toward electronic payments. A new research report from Synergistics Research Corp., Atlanta, suggests that although electronic payments have supplanted some ch[redacted]onsumers still write an average of about 20 checks a month. [redacted] been tracking consumer check-writing activity since 1988, when it [redacted] consumer wrote 28.4 checks a month. That average dropped to 24 checks a month in 1990 and remained at that level until late last year, when it dipped to 19.6 checks a month. Bill payments account for a mean of 53.7 percent with point of sale purchases accounting for 21 percent of all checks written, Synergistics says. A series of consumer focus group discussions conducted by the National Automated Clearing House Association earlier this year found consumers receptive to the idea of checks being truncated at the point of sale or by a remittance processor, provided they are given the choice of whether or not to participate. Those consumers most apt to embrace truncation have already adopted other forms of electronic banking, NACHA reports. We feel these trends indicate a willingness of consumers to accept electronic forms of payment and we believe this trend will continue to accelerate. The full impact of the growth of electronic payment will be driven by the level of penetration of home PC's, the availability of home banking services from banks, which is now in its infancy, and the ability of the banking infrastructure to support electronic payments from a physical and economic viewpoint. Our forecast is that a significant penetration of electronic payments, say greater than 60 percent, will occur no earlier than within the next ten years.

3. **To what extent, if at all, do you see the credit industry moving away from hard copy payments and moving to electronic payment processing?**

In our view, the credit industry, in regards to electronic payments, is not significantly different than any industry that processes payments from consumers where payments for products and services are due. The one exception is that credit industry payment processors are generally banks and will have ready access to provide electronic payments for credit debt when home banking proliferates. Therefore, we feel our views stated in our response to question number 2 apply equally to all payment processors, including the credit industry, with the credit industry possibly being the quickest to convert to electronic payments by a few years for the reason stated.

4. **Based on your experience in this area, to what degree has technology changed the methods by which payments are processed compared with ten years ago and what technological initiatives do you see that will be the next transitory step in the processing of bill payments?**

A. Without giving away any proprietary information what are some of the ideas your research and development departments are working on that will impact this part of your business?

[redacted] a significant change in the methods by which payments are processed over the last ten years. Most notable is the growth of computer price performance, image technology and software, which have allowed payment processors to maintain efficiencies and quality while experiencing high volume growth rates. We see the same technology initiatives continuing in the next decade; but spreading to the automation of the back offices of remittance processors, which will allow them to achieve cost savings in those departments which are still manual and error prone. This trend will also spawn initiatives of enhanced post payment customer service offerings due to technological enhancements. One example of this trend is the migration to image archival/retrieval of checks and payment coupons to replace microfilm. BancTec provides such a product and has seen an increasing demand from our existing customers and the United States Federal Reserve, which is aggressively moving towards check truncation as the banking system accepts electronic processing. BancTec intends to impact this part of our business by continuing to invest in image technology and software products which will allow us to participate in this trend. We also plan to form alliances with other vendors who we believe will be key players in the electronic banking world of the future.

Very truly yours,

Tod V. Mongan
Senior Vice President
and General Counsel

Mr. MCHUGH. Thank you. We appreciate it.

Mr. Mongan, let me start with you, while it's still fresh in my mind. As I looked at the tape, I didn't see how that system works to process payments that are considered late now. How does that operate?

Mr. MONGAN. Well, whether or not the payment's late, the system uses the current day's date, the processing date or the day that they are running the process. So be it February 28th, today, you're running the process, that date is entered into the system. The due date for the payment is usually taken off of the scan line of the stub that you submit with your remittance payment.

Those two are then compared, and if the due date is prior to the current processing date, after the payment would be considered not made on time and any grace period—then the processor would probably assess a late fee or an interest payment.

Mr. MCHUGH. But how does that happen? Where there is a conflict, where the machine is reading a due date or the end of the grace period, however it may work, that is prior to the—excuse me—that is after the current date, that is late, does it kick it out? Does it automatically assess it?

Mr. MONGAN. No, no, no, no, no. The system you see, and what we do, is really the front-end processing of the payment processing system. I mean, we just capture the data off the documents. We do some checking of correctness; that we've read the information correctly. There are scan lines built in—excuse me—what we call "check digits," and run them through routines to check whether or not the scan line was properly read.

That information is just stored. And, as you saw at the very end where we said we put it on a tape, that's the communication that goes to the processor's host system. So we develop a data record for that payment, put it on a tape, and send it to the host computer. That host computer's system is the one that actually determines what they are going to do with the payment, as to whether or not it's late or on time; if you assess a late fee, how much is the late fee, or how much is the interest payment.

So our system merely captures the document. It doesn't care what the date is. It just puts it into the record and sends it to the processing host computer.

Mr. MCHUGH. So then they take your computer tapes, and they are all sequentially listed on that tape, and presumably the main computer for, in this instance, New York Tel, as it is processing the tape you've provided, it will assess a late charge to those that come through as indicated being late.

Mr. MONGAN. I would assume. Nolan knows a little more about the New York Tel system. That's normally the way it would work. They make the decision in the final processing, when the accounts are posted.

Mr. MCHUGH. Am I correct, Mr. Klier?

Mr. KLIER. That's correct. In this case, New York Telephone's host computer programs would determine if any fees or—well, there would be no interest in a telephone company payment—but if any late fees would be imposed, that would be determined by their computer programs, after the payment had been processed and they had read the tape into their system. And then notification

of those fees would be generated by their host computer and sent out to the customers.

It works much the same in all of the systems that are out there.

Mr. MCHUGH. Right. So there is no, at that point, actual human intervention that you're aware of? I mean, it's machine-generated.

Mr. MONGAN. Correct.

Mr. KLIER. Correct.

Mr. MCHUGH. Well, I'm curious, then, based on what we heard this morning, that companies most often don't even assess it. We're getting the feeling, and it may be absolutely true, that late fees are an exception. And even if they are beyond the grace period, usually a day or 2 or 3 or 4 or 5 after that—according to Congressman Owens, 5 days—there's no fee.

How does that work?

Mr. KLIER. Well, I can't speak for specifically how they process their work, but I know, in many banking institutions, there are hard copy reports printed, and managers assess those, and then they either waive or implement the fees.

Mr. MCHUGH. So there is human intervention.

Mr. KLIER. There can be human intervention, yes, which can make decisions to waive or implement certain policies.

Mr. MCHUGH. I appreciate your inability to comment across the board for everyone, but what I'm trying to determine is, if there is human intervention, even in these highly automated systems, to determine whether or not there should be a fee, based on whatever guidelines they internally construct, the addition of another requirement on those only that are adjudged late doesn't seem to me to be particularly onerous. But if it's all done by computer, you have a different animal.

There's a problem of converging here some of the testimony that suggests there are all kinds of consideration given with other testimony that this is all done mechanically, and anything you put in as a requirement places an incredible challenge to the technology. Be that as it may.

Mr. Mongan, were you aware, when Mr. Bruce made his presentation, of what is happening on the top, with the new bar coding system, not universally yet in application, as I understand it, by the Postal Service, but being developed, apparently, relatively aggressively?

Mr. MONGAN. Not until the testimony. Well, you could say before the testimony, when I scanned over the written documents.

Mr. MCHUGH. So, when you prepared your testimony, you were not aware of it?

Mr. MONGAN. No.

Mr. MCHUGH. Well, now that you've heard him—obviously, you're not an expert on it, as I don't think any of us are—does that solve some of the very real problems that you pointed out in developing a way by which this might work?

Mr. MONGAN. Well, the biggest problem, from our standpoint, would be—and I mentioned, I think, in our testimony—is, how do we match up the payment document and check with the envelope? And then what do we do with those people who don't use the standard envelope that the processor gave them?

I mean, most of your large companies could probably conform to this, you know, your AT&T's and that, Citibank, Nynex could do that. But the vast majority of your payments—I think that's a little bit of the dichotomy that you're getting in the testimony today, too. The earlier panel had a lot of credit unions. Well, those are—I mean, they can't afford to even buy a work station to process. They don't have enough payments to do that. So those people aren't going to be able to afford to print this kind of information, or, if they did, it would be useless to them unless you put it in readable form, human readable form.

Mr. MCHUGH. Yes, because, obviously, by the existing bar codes on the front of the envelopes, a lot of companies are already reading envelopes; true?

Mr. MONGAN. Yes. Sure.

Mr. MCHUGH. OK.

Mr. MONGAN. Yes. It's just a matter of trying to match up that envelope, because, as you saw with the Opex machine, I mean, that envelope, once the document is split away from the envelope, the envelope is gone, you know. There's no way to keep the two together. That's the most difficult, from my viewpoint, technology hurdle that we have to get over.

Mr. MCHUGH. Mr. Stevens, you mentioned in your breakdown of manual, semiautomated, and automated that you can't tell precisely, but in your opinion the manual mode was by far the largest done.

Mr. ALBERT STEVENS. Yes.

Mr. MCHUGH. I read your comments, and I understood the English language that you used to say you can't guess, but can't you really? Can you give us some kind of rough estimate as to—50 percent? Obviously, you think it's at least a third.

Mr. ALBERT STEVENS. Well, I guess it's potential business, but it's difficult to know, since there are operations that we would not visit. So it's difficult to have a handle on it.

Mr. MCHUGH. Would it be your opinion that those who are currently manual are there because their volume is so low that it just doesn't make economic sense?

Mr. ALBERT STEVENS. That's, I would say, primarily the case. It's not a matter of choice that they want to spend more labor dollars. Because the unit price to handle manually is significantly greater. For example, if I had a tray of mail and I were opening it by hand and processing it, I might be able to do 100 items an hour. On our extracting desk, it's significantly more than that. So you get a great labor savings by using semiautomated equipment as opposed to manual.

When the volumes are real small, the envelope sizes tend to be quite varied, and the condition of the mail tends to be worse because it's rubber banded and kind of tossed around as opposed to put in nice, neat trays for delivery.

Mr. MCHUGH. Do you have a sales department?

Mr. MARK STEVENS. Yes.

Mr. ALBERT STEVENS. Right there.

Mr. MCHUGH. You're it?

Mr. MARK STEVENS. This is it.

Mr. MCHUGH. A good-looking department you are, too.

You must have—I used to sell insurance, obviously not well, or I'd still be doing it—but, I mean, we have ways by which we screen clients. Some are more likely consumers of our product than others. I would assume that you look at a client and make a prejudgment on their volume, as to who needs your product and who can benefit from it, and who doesn't. What's your rule of thumb cutoff? Who are you going to talk to first? I mean, at what point does their volume suggest they need your product? Not that everybody doesn't need your product; I think they do, but, you know.

Mr. MARK STEVENS. Because Congress needs a few pieces of equipment, probably.

Mr. MCHUGH. Go talk to Bill Thomas from California.

Mr. MARK STEVENS. In general, we look for people who receive incoming mail volumes anywhere over 1,000 pieces of mail a day. That tends to be sort of a magical cutoff for us. Anyone who would have volumes under that really is relegated to a manual process. So, as we go out knocking on the doors, doing some cold-calling in our spare time, what you find is many, many, many accounts that receive 400, 500 pieces of mail a day, they can't cost-justify the semiautomated piece of equipment.

Mr. MCHUGH. OK. Who might be 1,000 pieces a day? Would it be a retail store that's just special to a neighborhood, a mom and pop kind of operation?

Mr. MARK STEVENS. Generally, anybody that would mail you a bill.

Mr. MCHUGH. A florist? Would a florist? Do good-sized florists?

Mr. MARK STEVENS. No, they would not be big enough to do that. They would have to have a very significant client base. If you think about 1,000 payments a day, that's 20,000 payments that they are mailing out in a given month. That's a huge base of operations. Most florists, for example, or shoe stores, those sorts of folks just don't have that kind of client base to be able to justify that. Even small, local insurance companies really wouldn't have that kind of clientele unless they centralize their billing to a given site.

Mr. MCHUGH. OK. Would all of you gentlemen more agree or more disagree with Mr. Bruce's comment when he noted—it was on page three—that the question of the technical feasibility for implementation of the proposed bill is not in question, he felt; rather, it was, given time?

Let me ask you, Mr. Bruce, how much time?

Mr. BRUCE. The end of 1997.

Mr. MCHUGH. Is this the direction that we're probably headed toward anyway? Let me just tell you, as I watched this tape, as my gray hair suggests, I can remember walking in to the local department store when they had the vacuum tubes and you would pay at the counter, and they would put the tubes in, and it would shoot over to the accountant sitting up in a wire basket up above the floor.

When you think about how, because of the innovation and the aggressiveness—and I mean that in a positive way—of corporations and companies like yours, how far we've come in this technology, it's a little hard for me to understand why this may be such a difficult thing to achieve. I understand it may not be there right now, but, we ought to be able to do this.

Mr. BRUCE. The reason that I say the end of 1997, sir, is that we are currently deploying phase three of the RBCS system, the remote bar coding system, which is what puts this ID Tag on the back of the envelope. We have currently deployed 112 out of 250 systems. We will finish our portion of that deployment in June 1997. Unfortunately, we are not deploying all parts of the RBCS system. The Postal Service saw fit to contract out some portions of that to other vendors, and they will not finish their deployment until sometime around the end of 1997.

At that point, it can legitimately be said that the vast majority of the remittance mail, which is collection mail, will be coming in through AFCS ISS systems, and they will be bar coded in this fashion.

Mr. MCHUGH. Any other gentlemen have a comment?

Mr. DEWITT. If you don't mind.

Mr. MCHUGH. Please.

Mr. DEWITT. I would like to add that only solves the problem for automated processors. As we've testified, the vast majority of even our customers are not automated. Work station is a manual process. The extraction machine just aids in moving and cutting the mail. So the bigger problem is, what do you do with those people?

Mr. MCHUGH. OK. Fair comment. Let me ask you, under a current work station, standard work station that you might place on the market, how do they process a late payment? How does it go, "Aha," or something go, "Aha, this is late"?

Mr. ALBERT STEVENS. In almost all of the payment shops, they ignore the due date, because that's something that is really managed within the software in the payment system. So they just simply process. Now, the only exception I can think of is in life insurance or automobile insurance policies, where you may have an accident and your policy is past due, so you, real quick, try to get a payment mailed in so that it's not out of force.

So the insurance industry has certain payments that they look at manually on our work station. As they pull the payment out, they look at the payment due date. If it's past due, they physically set that aside, and they physically save the envelope. Some are trying to achieve other methods to handle that. But in comparison to traditional payment processing, it's extremely slow.

Mr. MCHUGH. What other kinds of methods in the insurance industry are they trying to develop?

Mr. ALBERT STEVENS. Well, I think they are trying to get a way, and some have been able to identify the date that the mail has come in. And that's carefully controlled and usually cleaned up every day. And by using the incoming receipt date and adding the average number of days that it takes in transit, they can really key off of that. I think they have been—some have used that technique.

Mr. MCHUGH. You heard, in my discussion with Mr. Klier, there may or may not be human intervention in the fully automated system. Is there human intervention in the semiautomated system when something is late? You feed it down onto tapes, but when there is a late fee being assessed, is it kicked out and reviewed by human hand?

Mr. ALBERT STEVENS. Normally, no. Normally, that is prepared, other than as I mentioned, in the insurance industry, in some

cases. It's just processed through the system, and usually someone in the accounting stream, either doing the posting or else, in the case of an automated posting system, it's a part of the software that handles it.

Mr. MCHUGH. I believe it was Mr. Stevens who estimated those that are fully automated as about a third?

Mr. ALBERT STEVENS. About a third of those customers that use our equipment are fully automated, the high-speed machines that take the contents out of the envelope and throw the envelope away.

Mr. MCHUGH. Would the rest of you agree that's pretty close to industry standard?

Mr. DEWITT. I would like to add, that's by mail volume, not by customer count; right? We did that by mail volume?

Mr. ALBERT STEVENS. Oh, that's by volume.

Mr. DEWITT. So 30 percent of the volume that's processed on our equipment is done on the fully automated machines. We didn't break it down by customer.

Mr. ALBERT STEVENS. It's not by customer.

Mr. MCHUGH. OK. That's an important distinction.

Mr. ALBERT STEVENS. Yes, it is.

Mr. MCHUGH. Mr. Bruce, any idea?

Mr. BRUCE. We don't do internal.

Mr. MCHUGH. You don't do internal. OK.

Well, you have—particularly Opex has provided a voluminous amount of information, and we deeply appreciate that. I have imposed upon all of your time, much more than reason would suggest. I want to note for the record and to state my personal appreciation that you all traveled here on your own expense and at no cost to the taxpayers of this Nation, and we appreciate that, as well.

As you may have heard me suggest to the first panel, as we try to reconcile some of the comments we heard this morning from them with the testimony that you have presented, if we could impose upon your generosity again and perhaps submit some written questions for your responses. As I'm sure you appreciate, we are not of the expertise that you good folks are, and we would very much appreciate the chance to call upon you for that.

Also, you may have an opportunity to rethink some of the comments or some of the things you heard, and, if that is the case, we would greatly appreciate anything you may wish to volunteer to us, too.

This, obviously, is a very complex situation. As I tried to make clear in my opening comments this morning, it is not our intention, in any way, to unduly burden the flow of commerce in this country, but rather to try to strike some kind of balance between the legitimate interests of the business community with those responsible consumers who, through no fault of their own, find themselves subjected to various fees and penalties that perhaps are not fair, given the scheme of things.

So with the best of intentions, we will call this hearing to a close, and with our appreciation to all of you. We will stand in adjournment. Thank you.

[Whereupon, at 1:50 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

The Institute of Real Estate Management
of the NATIONAL ASSOCIATION OF REALTORS®

Comments on H.R. 1963
Postmark Prompt Payment Act

The Institute of Real Estate Management (IREM) appreciates this opportunity to comment on H.R. 1963, the Postmark Prompt Payment Act of 1995. We agree with the intent of the legislation that conscientious bill payers who pay creditors in a timely fashion should be protected from penalties for mail delays which are no fault of their own. The goal of averting unfair late fees, adverse credit ratings, and other consumer penalties is laudable. However, we foresee unintended adverse consequences for consumers associated with the bill. Owners and managers of multifamily rental properties are concerned about the impact on the operation of properties as a result of the bill's requirement that rent checks received in the mail would be determined paid on time if they were postmarked by the due date. These concerns may force owners and managers to eliminate practices, such as grace periods, currently in place which benefit tenants. In the case of rental payments, we believe adequate collection systems exist which protect the tenants, property owners and managers. Therefore, we are opposed to H.R. 1963.

IREM, an affiliate organization of the NATIONAL ASSOCIATION OF REALTORS®, is a professional association of over 9,500 members engaged in the management of all types of income-producing real estate. IREM members have achieved the CERTIFIED PROPERTY MANAGER® (CPM®) designation, completed a rigorous education and training program, possess significant experience, and are held to a strict Code of Professional Ethics. The Institute also recognizes achievement by management firms and site managers. The ACCREDITED MANAGEMENT ORGANIZATION (AMO®) designation is awarded to firms engaged in property management which have met IREM's high standards in the areas of training, experience, integrity, and financial stability. The ACCREDITED RESIDENTIAL MANAGER® (ARM®) recognition award may be earned by site managers who demonstrate proven experience, education, and ethical conduct. The collective experience of IREM members relating to rent collection practices has been called upon to shape the concerns we have with H.R. 1963.

H.R. 1963, the Postmark Prompt Payment Act of 1995, provides that the payment of a "bill, invoice, or statement of account due," if made by mail, shall be considered made on the date on which the envelope is postmarked, not the date on which it is received by the creditor. We believe that if this proposal becomes law, property owners and managers will be forced to alter widely accepted industry rent collection practices to a degree that could ultimately harm tenants and other consumers.

We believe it is legally unclear whether the lease provisions regarding the tenant's obligation to make rental payments is accurately described as a "bill, invoice, or statement of account due." However, for the purposes of our argument, we will assume rental payments are intended to be covered by the legislation.

Rental payments are determined by the terms and conditions of a lease agreement entered into by a property owner or manager (lessor) and a tenant (lessee). Lease agreements are generally for a period of time. The lease agreement is a legally binding contract. The amount of payment and the dates on which the payments are due is agreed to in advance and is included in the contract. Rental payments are typically due on the first of each month. Tenants clearly understand their obligation to make rental payments in the stated amount by the stated date. Tenants are responsible for ensuring that rental payments arrive to the property owner by the due date. In fact, they have a contractual obligation to do so.

Property owners and managers are cognizant of the fact that rental payments are sometimes delayed in the mail. While mail delivery is generally timely and accurate, we are all aware of documented instances of abysmal on-time delivery performance in certain parts of the country. Despite this record, many property owners and managers allow for rental payments to be made by mail so long as they are received by the due date. If tenants insist on using the mail as the preferred method of delivery of rental payment, registered or certified mail could be used to increase the likelihood that it will arrive to the property owner on time.

Many apartment complexes provide rental payment drop boxes on the premises or in the management office. This allows for timely rent collection and provides convenience for the tenant. If H.R. 1963 is enacted, tenants may be encouraged to mail rental payments on the due date, as opposed to dropping it off at the rental office, with the knowledge that the payment would not be received by the owner for several days. This would ensure a delay in cashing rent checks and would free up money in the account for other purposes. A disincentive would be created for those who pay their rent on time and in person. The cost to the owner would be the lost value of money for several days. This cost could be substantial in large properties where large sums of money are collected each month. As a result, owners may prohibit use of the mail as a delivery method for rental payments and require that all payments be made in person.

Under current practice, many property managers establish a formal due date for receipt of payment -- usually the first of the month -- but allow a grace period to accommodate postal delays and other minor lapses by tenants. H.R. 1963 would, in effect, indefinitely and uncontrollably extend grace periods. The resulting uncertainty could force property owners and managers to altogether end the practice of allowing grace periods, a practice which generally benefits both parties.

The practical and administrative burdens associated with H.R. 1963 would result in increased costs to property owners and managers. The Act would essentially make the U.S. Postal Service a partner with the property owner and manager in the rent collection process. While practices vary depending on local ordinances and industry norms, property owners and managers generally allow for a five day grace period for receipt of rental payment (originally due on the first of the month). If rental payment is not received by the end of the grace period, legal eviction proceedings may be initiated. If an owner were to begin an eviction process and the payment arrived a week later postmarked by the due date, that action would have to be canceled. However, the legal fees for preparation and filing would already have been incurred. We are certain the U.S. Postal Service will not be held liable for such losses.

In many instances property owners and managers attempt to contact the tenant to inquire about unpaid rent. Tenants may claim that the "check is in the mail." Owners may request that payment be delivered immediately via an alternative method. The rental payment that is currently "in the mail" would be returned or destroyed upon receipt by the owner. If the tenant failed to provide the alternative payment, would owners be required to wait until the payment arrived via mail to determine if it was paid on time? What if the payment was never delivered? At what point would it be appropriate to commence eviction proceedings?

The bill would significantly impact property owner and managers' ability to implement unlawful detainer actions. States like California allow for a three day "Notice to Pay Rent or Quit." As currently implemented, tenants have three days to make payment before an unlawful detainer is initiated, if served personally. But courts allow an extra five days if the notice is served by mail. Under the Act, owners and managers would be required to wait an undetermined period of time to make certain the payment was not postmarked within the three day period. If the courts continue to allow an extra five days if filed by mail, the three day period would become an eight day period. The eight day period would become a thirteen day period before the court action can be filed. Since most non-payers do not open their doors to property owners and managers, when their rent is delinquent, the majority of notices are mailed. Therefore, owners and managers would lose an extra week of economic rent under the Act. If H.R. 1963 were enacted, many owners and managers would eliminate grace periods so that legal action could be initiated earlier to avert additional lost revenue and control costs. In addition, increased costs would be passed on to tenants in the form of higher rents.

The bill introduces the possibility of fraud. Many tenants have access to postmark meters used by private businesses and commercial tenants. The postmark dates posted on letters is not limited to the actual postmark date. It would be easy for postmarks on letters to be backdated in order to avoid late payments. Backdating of postmarks may be even more prevalent with commercial rental payments. This practice would undermine the intent of the H.R. 1963.

Real estate professionals and their staff responsible for administering payments received in the mail would be forced to closely examine postmarks on envelopes in which rental payments arrive to determine their payment dates. As a practical matter, postmarks are often missing or illegible rendering this task nearly impossible. Owners of multiple apartments and large management companies would incur increased costs with the addition of staff dedicated to the processing and examination of postmarks on rental payment envelopes. Expensive equipment capable of reading postmark dates would need to be purchased. Canceled envelopes would need to be retained creating additional recordkeeping requirements. Again, these increased costs would be passed along to tenants.

We appreciate this opportunity to comment on H.R. 1963. We hope our comments have clarified our concerns about the bill's effect on the property management industry.

PREPARED STATEMENT OF MARY E. (BETTY) WYSOCKI, CHAIR, GOVERNMENT AFFAIRS COMMITTEE, NATIONAL ASSOCIATION OF CREDIT MANAGEMENT

Mr. Chairman and members of the Committee. I am Mary E. (Betty) Wysocki, Corporate Credit Manager for Huttig Sash & Door Company, which is headquartered in Chesterfield, Missouri. My company distributes and manufactures windows, doors and millwork products which are used by the building construction industry. I want to thank you for the opportunity to offer this testimony regarding the effects that H.R. 1963, the Postmark Prompt Payment Act of 1995, will have on the Huttig Sash and Door and other companies around the country.

Today, I am presenting this testimony in my capacity as the Chair of Government Affairs Committee of the National Association of Credit Management (NACM). The NACM represents the corporate credit interests of some 33,000 member companies whose credit management practices operate in a manner similar to the way that Hutting Sash and Door procedures are establish.

By way of background, the NACM is celebrating its 100th Anniversary this year. Founded in 1896 and representing American business credit executives from all 50 states and in over 26 countries around the world, the NACM's mission is the constant improvement and enhancement of the business trade profession. The NACM membership is comprised of American businesses of all kinds -- manufacturers, wholesalers, service industries, and financial institutions. Our members range from the smallest businesses to a majority of the Fortune 500. The daily decisions by our members regarding the extension of unsecured trade credit from one company to another allows the U.S. economic model to run smoothly and profitably.

It is important to distinguish the type of credit we extend from credit that is extended to American consumers. Business and trade credit refers to the extension of products and services from one company to another company. Business and trade credit does not include consumer credit cards nor any transactions with credit unions. Rather, it is unsecured credit in which one business provides goods or services to another business with the expectation of payment for those goods in a specified period of time.

Because of our experience in dealing with the extension of business credit on a daily basis, the NACM certainly understands and appreciates the difficulties that many consumers face in incurring late payment charges for payments mailed on time. The damage to an individual's credit ratings can oftentimes take years to rectify. In these cases, our members believe that greater certainty of a payment date can be beneficial to consumers.

However, by extending the requirement that the postmark on the envelope to be proof of timely payment to non-consumer transactions, the consequences on American business practices could be extremely debilitating. It would be our hope that the committee could apply the use of a postmark for payment consideration only to consumer

transactions and exempt transactions among businesses. Such an exclusion would recognize the fundamental differences between the way that consumer transactions are managed and the methods by which American businesses pay their invoices.

Unlike most consumer transactions, business payment practices are characterized more by incentives for companies to pay their bills early or on time rather than by penalties for paying late. Many companies offer discount terms for the payment of bills within a specific (and shortened) period of time. The purpose of such discount periods is to enhance the cash position of the selling companies.

In fact, for those trade creditors who do not offer discount terms, the majority do not access "late penalties" even when contractually allowed. The assessment and rigid enforcement of any "late penalty" places the vendor at a competitive disadvantage in his market. Most business trade grantors would rather ensure that a cooperative relationship exists between the buyer and seller than to assess some financial penalties to the buyer that could compromise this relationship.

Additionally, as opposed to consumer transactions, there is rarely a fixed payment date in a high percentage of trade credit transactions. A business to business relationship may have multiple transactions on a daily basis. Charge-backs and crediting against a multitude of orders reflect the on-going nature of the relationship among business credit transactions rather than monthly or installment payments of consumer transactions.

The NACM welcomes this opportunity to offer testimony to the House Postal Service Committee. We feel strongly about this issue because of the potential impact it could have on the American business community. The tens of thousands of credit managers who comprise our membership feel that the potential cost to American businesses to comply with the language of H.R. 1963 as it has been introduced could be extraordinarily steep.

The costs of such compliance would obviously have to be passed on to the manufacturers, retailers and sole proprietors to whom our members sell their goods and services. Those costs will ultimately have to be recaptured from the American consumer. It is for these reasons that the NACM believes that the American business community, in the form of business and trade creditors should be exempt from the scope of H.R. 1963

We have also taken the liberty of offering language that would create the limitation of the scope of H.R. 1963 to only consumer payments. We have included the proposed language as an amendment to H.R. 1963 that adequately addresses the problem for the business credit industry.

On behalf of the members of the NACM, we appreciate your interest in our issue and look forward to working closely with you on this legislation. I would be happy to respond to any questions you may have.

PROPOSED LANGUAGE TO AMEND H.R. 1963

(Proposed language is indicated by bold italics)

With regard to H.R. 1963, the "Postmark Prompt Payment Act of 1995"--
Section 2. (a) Chapter 26 of title 39, United States Code, is amended by adding at the end the following:

Section 2606:(b) Subsection (a) shall not apply with respect to any payment --

(4) for transactions between merchants for goods and services.

(e) For purposes of this section --

(3) the term "Merchant", as defined in Article 2, Section 2-102 of the Uniform Commercial Code, means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment or an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(4) the terms "between merchants", as defined in defined in Article 2, Section 2-102 of the Uniform Commercial Code, mean in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

PREPARED STATEMENT OF THE COALITION OF HIGHER EDUCATION ASSISTANCE ORGANIZATIONS

The Coalition of Higher Education Assistance Organizations (COHEAO) represents more than 300 colleges, universities, and commercial entities involved in the processing and servicing of federally supported student loans. The coalition is deeply committed to maximizing student repayment of loans supported by the U.S. Department of Education and the Department of Health and Human Services including Federal Perkins Loans, Federal Family Education Loans, Federal Direct Student Loans, Health Education Assistance Loans, and health profession student loans.

COHEAO is genuinely sympathetic with the intent of H.R. 1963, the Postmark Prompt Payment Act of 1995, to assure that payments on debts made by borrowers are promptly posted to accounts, thereby minimizing the accrual of additional interest. We believe that the legislation in its present form, however, is not workable. As student loan professionals with extensive experience processing student loan repayments, COHEAO members believe that the manual processing required by this legislation would greatly hinder automation of payment applications; slow down payment posting; and increase processing costs.

COHEAO members further believe that the problem of deciphering postmarks and handling borrower inquiries regarding the postmark used to post a payment on an account will significantly increase administrative costs and lead to confusion on the part of student borrowers.

Today's highly automated payment processing systems send out millions of bills per month for student, loan and general receivables. At the University of Illinois at Chicago alone, over 40,000 bills are sent monthly to students. The majority of these payments are through automated systems. These systems would have to be dramatically altered and perhaps even replaced by a time-consuming manual process to verify postmarks as stipulated by the legislation.

Additional concerns raised by COHEAO members include:

- This bill will promote inefficiency of systems and increased storage requirements at a time when institutions are making significant strides toward greater automation and reduced paper. The additional costs that would accompany such changes will be ultimately reflected in the total cost of borrowing for students.

- The postmark is often missing or illegible on many pieces of mail. Deciphering postmarks and handling the inevitable borrower inquiries regarding postmarks will significantly increase administrative costs, and lead to confusion on the part of student borrowers.

- Most institutions try to be flexible to ensure that the majority of students' payments are deemed timely despite the inefficiencies of the mail system, customer procrastination and other legitimate problems. Schools currently have incentive to do this since handling customer complaints and having to adjust accounts is time consuming, labor intensive, and threatens customer relations.

- Since the postmark would override any system due dates, institutions would have to make manual adjustments to payments received past the due date but having appropriate postmarks. Retroactive balance adjustments would have to be made for any interest assessed and finance charges would have to be recalculated. Making this a standard practice would be not only costly, but also unfair to the institution since it is having to waive late charges before any funds are received.

- Significant changes to current systems would be required to accommodate the recording of the postmark. In some instances, storage of envelopes would be necessary, especially in instances where the postmark may be hard to read.

- Significant employee time would be spent to research student complaints about "postmarks".

- Under the arrangements of the bill, some students could be enticed to mail their payments later than they do currently. This could result in many more payments arriving after the due date than do currently.

- Cash flow would be adversely affected if more students waited until the last day their balance was due to submit payments. Even students who pay in person could possibly stop this practice when they realize that they now have a float working to their advantage by submitting payments via mail at the last minute. This would slow down payment posting and hinder automation of the payment application. And perhaps inevitably, schools would have no choice but to tighten the repayment period if cash flow is significantly affected.

As stated earlier, COHEAO shares your desire to treat debt payments fairly. We believe, however, that H.R. 1963 is the wrong solution for student loan payments. We do not receive significant complaints from students regarding postmarks, as this program is highly regulated and borrowers are well informed about payment responsibilities.

COHEAO thanks you for your interest in and attention to our concerns. We would appreciate an opportunity to meet with you or testify before this committee as your deliberations on H.R. 1963 proceed.

JOINT PREPARED STATEMENT OF ALLIANCE OF AMERICAN INSURERS, AMERICAN COUNCIL OF LIFE INSURANCE, AMERICAN INSURANCE ASSOCIATION, THE COUNCIL OF INSURANCE AGENTS AND BROKERS, HEALTH INSURANCE ASSOCIATION OF AMERICA, INDEPENDENT INSURANCE AGENTS OF AMERICA, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, NATIONAL ASSOCIATION OF INSURANCE BROKERS, NATIONAL ASSOCIATION OF LIFE UNDERWRITERS, NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES, AND NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS

This Statement is submitted in opposition to H.R. 1963 by national trade associations representing the insurance industry whose members use the mail to collect payments for products and services. Some of our concerns are similar to other business opponents of the measure. Others are more specific to the business of insurance. Our Statement will highlight those areas where the proposed legislation creates unique problems for insurers.

The insurance industry is a state regulated industry. As such we are subject to cancellation and non-renewal statutes in all 50 states. These statutes are modeled on the National Association of Insurance Commissioners (NAIC) model act. Each of these individual state laws require a grace period for virtually all types of policies before they can be cancelled for any reason, including non-payment of the premium. If an insured misses a payment, or it is late, they have a grace period before the insurer can even begin a cancellation process. Therefore, H.R. 1963 is unnecessary as it applies to the insurance industry and would preempt long-standing and effective state regulation in this area.

If enacted, H.R. 1963 would substantially increase the cost of processing payments and create additional uncertainty for all businesses, and especially for insurers. The legislation is not necessary to protect consumers since grace periods are routinely provided by contract, and by state law in the case of insurers. The legislation would work against those consumers who pay their accounts promptly by creating a costly and inefficient system which would seem to only benefit those few consumers who do not pay on time. The legislation would result in additional

governmental interference in private contractual matters and in the state regulation of the business of insurance.

Insurers process many millions of payments each month. All but the very smallest insurers use an automated system to keep costs down and to make sure that payments are promptly credited to a customer's account or policy. These payments are spread over the entire year. H.R. 1963 would require manual checking of each of these bill payments and millions of postmarks. This would add greatly to company and, ultimately, consumer costs. Automated processes, if and when they become available, would be very expensive.

Additionally, insurers would have to develop a procedure to archive envelopes, particularly in those situations in which policies are canceled. For liability policies, which include auto, homeowners, several different types of commercial liability and workers' compensation, the existence or non-existence of coverage could become an issue, even after the policy period itself is over. Payment envelopes would have to be maintained at least for a period equivalent to the state statute of limitations. Another problem, particularly for insurers with many rural policyholders, is that some envelopes are not stamped with a legible postmark, or in some cases, any at all. For insurance transactions, this could lead to additional litigation.

Unlike the IRS situation, where tax payment timing and terms are dictated by federal law, most business payment terms are set by private contracts. For insurers, notice of cancellation requirements are set by state law. While the Truth-in Lending Act gives the federal government

some authority in the bill payment area, H.R. 1963 would result in a major intrusion of government into areas which are currently regulated by state law or governed by private contract. Further, it is an intervention which would be contrary to the interest of business and most consumers.

In summary, H.R. 1963, the Postmark Prompt Payment Act of 1995, would cause an administrative nightmare for account processors for businesses using the mails, significantly increase the costs incurred by those businesses in handling customer payments, and result in unnecessary cost increases for consumers of affected products and services everywhere. For all these reasons, the insurance industry urges the subcommittee not to approve H.R. 1963.

# # #

CITIZENS PROTECTING YOUR RIGHTS
P.O. BOX 2413
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FAX: 708 879-3393

February 27, 1996

Rep. John McHugh
Postal Subcommittee
B-349 C
Rayburn House Office Building
Subcommittee of the Postal Service
Washington, D. C. 20515

Dear Mr. McHugh:

I understand you are the sponsor of the Postmark Prompt Payment Act and that testimony will be heard before the Postal Subcommittee of the House Government Reform and Oversight Committee on February 28, 1996. It is also my understanding that this bill, if passed, would consider bills paid as of the date of the postal mark, rather than the date of the receipt.

I support this bill and numerous consumers who are inundated with late payment fees due to unfair billing practices by credit card companies, mortgage companies and the like also would welcome relief from the loan shark tactics of these groups.

In brief, I would like you to understand that the reason I support this bill is simply because nearly all the credit providers have been violating FAIR BUSINESS PRACTICES by sending bills postmarked from 4-9 days after the closing date of the statement. Considering that it takes, on the average of, 4-6 days for a bill to arrive to the debtor's destination, this does not allow any time for a payment to be made on time. Additionally, the trend has been to add a $10 to $15 late payment fee on ordinary credit card bills. Most recently, Mortgage Companies have started the same practices. They don't even postmark the bill until 5 or 6 days after the statement date and then it arrives with less than four days to turn it around and send it back to the company without a $55 or more late charge. (Mortgage companies charge a percentage rather than a set late charge).

I believe you should understand that your efforts may be futile in that the wording of your bill says absolutely nothing about the date the bills are mailed. If current practices continue, the Credit Companies and Mortgage Companies will simply start sending bills out later and later after the statement date and it will be totally impossible for a consumer to return the payment before the bill is due. I have been collecting payment envelopes and bills for a number of years and I have complained about this problem to the companies as well as to the LAW. I would be very happy to bring them

into Congress and your Committee so you could see how widespread the problem is.

Another way out for the Credit Companies is already being practiced by some of the largest companies. The company simply takes out a FIRST CLASS PERMIT. That means the envelope is NEVER POSTMARKED. It is simply printed out with a FIRST CLASS PERMIT EMBLEM in the upper right hand corner of the envelope along with the permit number. To add insult to injury, the FIRST CLASS PERMIT gives the big company a reduced rate for postage, while we, the consumers, pay through the nose for postage. In discussing FIRST CLASS PERMITS with the postal service, I found that they do not have to deliver permit mail immediately. The postal services says permit mail will get out within up to seven days of its arrival at the post office. Without postmark and considering the practices currently used by the Credit Companies on the consumer, I would say your bill will have ABSOLUTELY NO TEETH. Additionally, there is no indication of the penalty for violation or recourse instructions. (And now you'll tell me that's the Justice Department's duty.)

It doesn't seem to matter what the companies do -- they rule. They rule because, no matter what the consumer does, he loses. He cannot fight back -- he has no resources. If he fights back anyway, he goes bankrupt and loses his job because of lost time from work to be in court.

As with any problem, I generally try to determine how widespread the problem is, why it occurs, and what the underlying motivation is.

My conclusion is that GREED takes a large chunk of the blame. Additionally, I believe the practice is designed to blackmail the consumer/debtor into using what the banks generally call ACH transfers. This is where payments are automatically withdrawn from our checking account each month. Underlying this is the ability to control our finances in minute detail. That means we would have even less freedom than we have today (which is darned little as it is).

In addition, I have had the occasion to intervene for people who have been trying to stop an ACH transfer for months and they cannot get them stopped. Once they do get them stopped, it is nearly impossible for them to get their money back. It seems the Consumers' only alternative is to take the company to Court, but then again, the ability to shift the blame is so great that the Consumer/Debtor is left out in the cold. Additionally, electronic funds are at the mercy of computer hackers. I vividly remember the First National Bank of Chicago problem here in Illinois, wherein hundreds of thousands of dollars were embezzled via the lightening speed of computer transactions. As I recall, none of that money was recovered. Hundreds of thousands of dollars were embezzled in Elgin, Illinois by an official of the government.

Please read the enclosed newsletter. I will be publishing an addendum to that newsletter that will detail unfair credit practices perpetrated upon the consumer by the largest Credit Issuers.

Could you please have this presentation read to the Subcommittee on the 28th and/or incorporated in the form of testimony in favor of your bill? I would very much appreciate your help in this matter.

Sincerely

Yvonne Dinwiddie, President
Citizens Protecting Your Rights.

cc: Bill Clinton, President of the United States
Dennis Hastert, U. S. Congressman, Illinois
Carol Moseley Braun, U. S. Senator, Illinois
Robert Dole, Senator and Majority Leader of the Senate
Lamar Alexander, candidate for President of the United States
Pat Buchanan, candidate for President of the United States
Steve Forbes, candidate for President of the United States

North America's Oldest
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Established 1895

CLLA.
COMMERCIAL LAW LEAGUE OF AMERICA ●

STATEMENT FOR THE RECORD
FROM THE COMMERCIAL LAW LEAGUE OF AMERICA
ON H.R. 1963
THE POSTMARK PROMPT PAYMENT ACT OF 1995
SUBMITTED TO
THE SUBCOMMITTEE ON THE POSTAL SERVICE
OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
February 28, 1996

The Commercial Law League of America ("CLLA" or "the League") appreciates the opportunity to submit its statement for the record on H.R. 1963, the "Postage Prompt Payment Act of 1995."

The CLLA is North America's oldest creditors' rights organization and is currently celebrating its 100th anniversary. Its opinion has been sought regularly and frequently by members and committees of Congress on a variety of issues relating to the collection of debts as well as bankruptcy matters. It is the publisher of the award winning Commercial Law Journal and is accredited by the American Bar Association to certify attorneys as specialists in the fields of creditors' rights and business bankruptcy.

H.R. 1963 would provide that the date of the postmark used by the U.S. Postal Service to cancel a stamp would be the date a payment is considered to have been made regardless of when that payment is actually received by the intended recipient of the payment.

The CLLA strongly opposes enactment of this legislation.

One of the arguments made by the proponents of this bill is that consumers should not be penalized because of the vagaries of mail service in the United States. We agree wholeheartedly. However, we also note that most major grantors of consumer debt provide nearly two weeks as a "grace period" to account for the problems with mail delivery.

Most mortgage contracts state that the due date for payment is the first of the month. Yet, virtually every mortgage document further provides that late penalties will not be added unless the payment is received after the 15th of the month. It is a rare occurrence for a payment mailed prior to the true contractual due date of the first of a month to be delivered so late that it isn't received until after the 15th of the month.

Rather, the more typical situation is that payments are mailed by the consumer much closer to the end of the "grace period" with the hope that the payment will be received by the 15th. The reasons for this might be the mistaken belief that while the contractual due date is the first of the

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month, he or she, by his or her own custom, really has until the 15th. Effectively this proposed legislation would create, in all likelihood, an extension of the contractual due date to the 15th of the month.

Thus one of the fundamental flaws with this legislation is that it has the potential effect of changing the contractual due date of the first to the end of the "grace period".

If this were the only flaw, then arguably the credit granting industry could simply enforce the true, contractual due date and there would be no need for any "grace period" by recognizing the postmark for the purpose of determining the actual payment date of the bill. The irony of course is that many of the consumers who have been using the "grace period" to delay paying their bills and thus playing the "float" would be worse off than they currently are if the true contractual due date were enforced and the postmark were the governing factor.

However there are other fundamental flaws that make the proposed legislation completely unworkable. The flaws go beyond the fact that millions of dollars would need be to spent by the credit granting and payment processing industry to be able to electronically read the postmark, retain the envelope and be able to retrieve it as needed.

One of the underlying concepts behind this legislation is that if the Internal Revenue Service can use postmarks for determining payment date for income tax returns, then the credit granting industry could do so as well. What makes the postmark work for the IRS on income tax returns is that they are due on a single date.

Contrast this to the typical situation for the consumer and for the credit grantor. Virtually every day can be a due date for a different batch of consumers or a different batch of transactions. The due date may be a function of when the purchase was made, when the credit card was approved, a date selected by the consumer for his or her own convenience or even some other seemingly arbitrary date.

Interestingly enough, the IRS has a similar situation with some of its own required filings. The date that deposits for trust fund taxes must be made varies from employer to employer depending upon a variety of factors. Much like consumer debt, these funds could be due on almost any given day of the week. Like consumer debt it is a moving target. How does the IRS handle this type of similar situation? The postmark on a payment is not controlling. In fact, it is irrelevant to the IRS.

Rather, it is the date of actual receipt as evidenced by either the IRS itself or a depository bank. That is how the IRS and the federal government handles the "moving target"
(REF: LEGISLATION; HR1963.POS.PPR) 2

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type due date for debt. Postmarks don't work for that type of debt and the IRS recognizes that fact. To try to apply an approach that works for a single fixed due date to a "moving target" due date won't work and is fundamentally flawed.

The fallout from using the postmark to determine payment date would make a shambles out of the retail collection efforts and upon enactment would effectively make every debt collector potentially in violation of the Fair Debt Collection Practices Act (FDCPA) on every single attempt to collect a debt.

The outstanding balance that a consumer owes at any given time would itself become a "moving target" and a demand for payment could be made for an incorrect amount if a payment had been postmarked but not received. Under the FDCPA, making a demand for an improper amount (see 15 U.S.C. 1692(e)) subjects the debt collector to a potential $1,000 civil damages, plus several additional thousands of dollars in attorneys fees payable to the debtor's counsel, regardless of any actual damages proven by the consumer.

The FDCPA has been held by the courts to be a strict liability statute, and even technical violations are subject to what many consider to be extortion by plaintiffs' counsel. The result in a significant number of these cases is a minimum payment to the consumer and thousands of dollars in attorney's fees to the consumer's lawyer. The "no harm, no foul" rule just doesn't apply when dealing with the FDCPA.

With the postmark as the date, no one could be certain what the outstanding balance was on a debt at any point in time. Thus, any demand letter, even one with disclaimers, would be a potential hand grenade ready to explode in the hand of the collector. The chilling impact is beyond belief.

The CLLA strongly opposes enactment of H.R. 1963 and any similar legislation that would make the postmark the controlling date for determining when payment is received.

Thank you for considering this position paper and if we can provide any additional information, please contact us.

(REF: LEGISLATION; HR1963.POS.PPR) 3

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Statement for the Record from the

American Financial Services Association

on H.R. 1963, the "Postmark Prompt Payment Act of 1995"

submitted to

The Subcommittee on the Postal Service

of the Committee on Government Reform and Oversight

February 28, 1995

The American Financial Services Association ("AFSA"), organized in 1916, is the national trade association for the consumer financial services industry, representing a diverse group of providers from small independently-owned finance companies to some of the nation's largest diversified financial services companies. Our members provide all forms of consumer financial services, including credit card loans, first and second mortgages and home equity loans, automobile, mobile home and automobile financing, unsecured personal loans, and insurance.

AFSA member companies are major users of mail. Because mail payments represent the principal payment mechanism for consumers, our members and their customers are directly impacted by the provisions of H.R. 1963.

AFSA believes the Postmark Prompt Payment Act should not be enacted. It would impose an unnecessary financial burden on financial services providers in the form of increased payment processing costs, billing dispute costs and other expenses. Rather than encouraging solutions to mail delays that would benefit business and consumers alike, the Act would penalize businesses which receive payment mail late due to Postal Service delays — a problem business owners are powerless to address.

The Act would also appear to have a negative impact on the Postal Service, creating strong incentives for businesses to encourage their customers to move from the mail to electronic payment technologies.

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The Delayed Delivery Problem

Delayed delivery of payments by the Postal Service is a problem that affects consumers and businesses alike. While some consumers may prefer to mail payments at the last minute in order to receive a few days' "float" while the payment moves through the mail, most prefer knowing that payments will reach their addressees shortly after they are deposited in the mail, avoiding late charges.

Businesses would recognize significant benefits if mail moved more rapidly, since such payments cannot be put to work by businesses until they are received. Indeed, large-volume mailers frequently arrange to pick up their incoming payments at the local Post Office, rather than wait until it is delivered, so that the payments can be processed more rapidly, and have worked with the Postal Service on other ways of expediting mail delivery, such as the use of machine readable envelopes and more detailed postal codes.[1]

While H.R. 1963 creates a presumption that mail is delivered on the day it is postmarked, same day delivery of the mail is a rare occurrence. (Indeed, the Postal Service, for a very substantial fee, offers next day delivery through its Priority Mail service). Our members' experience indicates that most first class mail is delivered 3-4 days after it is mailed.

With regard to the payments which arrive late, we are aware of no reliable information which indicates that postal delays, as opposed to late mailing, are to blame. Nevertheless, businesses and consumers have long learned to anticipate the time that mail takes to move to its addressees by mailing early. By simply mailing payments a few days before they are due, the vast majority of consumers are able to make payments on a timely basis. In addition, most major creditors provide an additional "grace period" (of varying duration) beyond the payment date stated on the customer's statement. This additional time period takes into account the possibility that a payment arrived late due to a delay in the mail which the consumer could not have anticipated. Allowing this extra time period avoids the ill will that might result if payments that arrived shortly after the due date consistently resulted in extra finance charges or late payment fees.

H.R. 1963 addresses a "problem" which most consumers never experience, and which is avoidable in all but the rarest cases. Unfortunately, as is discussed in more detail below, the bill's solution to this problem would have a detrimental and costly impact on all business users.

Requirements for Credit Card Account Payments

The Truth in Lending Act (15 U.S.C. Section 101 et seq.) establishes the standards for crediting payments to open end consumer credit accounts and for providing periodic statements to consumers who hold such accounts. Section 164 of the Act requires payments on such

[1] Such initiatives underscore the reality that businesses are supportive of measures to expedite mail delivery. In order to put payments to work, businesses must process incoming mail promptly. They cannot be indifferent to mail delays or allow payments to sit around unopened in the hope that the delays will generate additional late fee income on a small percentage of payments.

accounts to be credited to the account upon receipt. This requirement is implemented by Section 226.10(a) of Federal Reserve Board's Regulation Z, which states that payments to an account shall be credited "as of the date of receipt, except when a delay in crediting does not result in a finance or other charge ...."

Regulation Z also establishes the responsibility of credit grantors in cases where a payment is received on a timely basis, but after a billing statement reflecting a finance or service charge has been sent to the customer. In this situation, the customer's account must be adjusted during the next billing cycle to remove such charge(s). This requirement removes any incentive a creditor might have to delay processing a payment once it is received. Of course, creditors have another incentive to process payments promptly: incoming payments must be processed rapidly so they can be deposited to the creditor's account.

The presumption established by H.R. 1963 that payments sent through the mail are received when postmarked, whether or not actually received by the addressee on that date, would have a severe impact on consumer credit providers which process millions of statements and payments each month. It would impose substantial operational expenses, by requiring creditors to discern postmark dates and retain evidence of when a payment was postmarked (by filing envelopes or retaining photo images of payment envelopes). It would also reduce creditors' ability to cover the costs of offering credit, and their ability to allocate the costs attributable to late payments to those customers who fail to make their payments on time.

Operational Impact

Large credit card issuers process millions of incoming payments monthly. Individual employees in a large processing center typically handle 2000 or more payments each day, using high speed mail equipment and computer data entry. Each payment envelope must be opened and its contents (the customer's payment check and, in most cases, the return portion of the billing statement) quickly reviewed to assure that the payment will be credited to the proper account and in the proper amount. Information such as the payment date, amount and account number are automatically recorded by scanning equipment, while clerical personnel confirm that the payment information conforms to the amount on the check which accompanied the billing statement. A photo image of the customer's payment check is made and automatically filed (for retrieval in the event of a subsequent inquiry by the consumer), and the original forwarded for deposit. The envelope containing the payment is discarded.

The entire process of recording incoming payments is completed in a matter of seconds per payment. Prompt handling, and the recording of only the essential information for each account, is essential to minimize the cost of processing and thereby to keep the cost of credit affordable.

H.R. 1963 would increase the amount of time needed to process account payments by requiring creditors to interpret, record and retain information about the postmark on the payment envelope. Often, however, envelopes do not bear a readable postmark date. (Our members

estimate that more than 10% of remittance mail falls into this category). Others contain postmarks that require careful examination in order to discern the date.

Illegible Postmarks will Increase Processing Costs

The bill does not indicate how unreadable postmarks would be treated — an issue that would have to be resolved to avoid misunderstanding and billing error disputes.

Since H.R. 1963 would link a consumer's responsibility for finance charges and late payment fees to a payment's postmark date, creditors would be required to find some way to retain and retrieve payment envelopes (or photo images of them). This would require the acquisition of equipment capable of high-volume processing and employee training in its use, adding new and considerable costs. The additional time required to read, retain and copy millions of envelopes per month would translate into further costs: a delay of even a few seconds per payment results in a multi-million dollar additional expense for a large creditor.

Dispute Resolution Costs will Increase

One of the consequences of H.R. 1963 will be increased consumer uncertainty about the crediting of payments and a higher volume of disputed billing statements. Today, customers who believe that a creditor failed to post a payment promptly have in their possession an easy means of checking on the creditor: a copy of the payment check bearing the date on which the creditor deposited it for payment. If, for example, the check reveals that the creditor deposited the payment on the date payment was due, but failed to post the payment on or before that date, the customer has clear evidence of the error which will assure a prompt crediting of the payment (and the removal of finance charges and late fees) in the subsequent billing cycle. On the other hand, if the consumer's check bears a deposit date several days after the payment date, it may refresh the recollection of the consumer as to when the payment was mailed, and satisfy him or her that a delayed posting date was the result of late mailing date, not creditor error.

H.R. 1963 makes the cancellation date on the customer's check irrelevant, since in many cases payments will have be credited as of a date which precedes the receipt and depositing of the payment check. Under H.R. 1963, only the creditor, but not the consumer, will have the information needed to determine if a payment was properly credited on the postmark date.

Rarely, if ever, does a consumer know the postmark date of a payment which has been deposited in the mail, or retain documentation of it. Depending on how the payment was mailed (e.g., taken to a post office, deposited in a mail box on the street or in an office building, left in the customer's letter box for posting by the letter carrier) a postmark may not be placed on the envelope until one or several days after the consumer "mailed" it.

Nevertheless, the inevitable result of the enactment of H.R. 1963 will be to create the understanding among consumers that payments should be credited on the day they are "mailed."[2] When consumers discover payments that are not posted on the mailing date, they may assume that a billing error has occurred, and request a correction. Creditors will be required to retrieve, and mail to the customer, a copy of the envelope in which the payment arrived to demonstrate to the consumer that the payment was credited on the postmark date. In some cases, a microfilm copy of an envelope will not resolve the customer's concern, since customers often mail payments in envelopes which bear no return address. Such customers may not be satisfied that the copy which is sent to them is of the envelope they used in making the payment.

The regime established by H.R. 1963 will result in a significant increase in the number of consumer inquiries which will be made about alleged errors in crediting payments. While most will prove to be unfounded, the cost of investigating and responding to them is likely to be enormous.

Finance Charges and Late Fees

The principal impact of H.R. 1963 will be to prevent creditors from collecting finance charges, and (in many cases) late fees, on payments which are received after the date on which the customer agreed to make a payment, when the payments are postmarked on or before the due date. Finance charges and fees are not simply arbitrary means of generating revenues for lenders, or a way of taking advantage of Postal Service inefficiencies. They are the means by which creditors are reimbursed for the considerable expenses they incur in extending credit — expenses which range from the cost of obtaining the funds that were loaned to the consumer, to the expenses of billing and collecting accounts and writing-off uncollectible accounts as bad debts. These costs cannot be offset until payment is received, regardless of when postmarked.

Consumers who use credit have had access to the creditor's funds for weeks (and sometimes for months) and have used the funds to acquire goods or services. Consumers understand that their cost of credit depends on how they use their credit accounts. When credit card payments are made in full before a "grace period" has expired, the consumer may pay nothing at all for the use of these funds. Consumers who pay their account on a timely basis, but in an amount less than the balance due, will incur a finance charge on the unpaid balance. Those who make no payment, or pay late, will generally also incur a late fee. H.R. 1963 would, of course, prohibit the recovery of some of these costs by preventing the collection of finance charges and late fees on debts which have not been repaid, but which would be deemed to have been received.

If creditors are compelled by H.R. 1963 to finance credit extensions which remain unpaid (even for a few days), but are prohibited from imposing finance charges for this period, they will

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[2] *The Washington Post*'s report on the Subcommittee's hearings on H.R. 1963, headlined "Giving New Meaning to 'Check's in the Mail'" (October 20, 1995), illustrates the ease of confusion between the mailing date and the postmark date of a payment.

incur considerable costs which will have to be recovered in some way.[3] Whether this takes the form of higher finance charge rates or annual card fees, reductions in payment grace periods, or changes in credit standards to reduce bad debt losses by restricting credit to more affluent individuals, the consumer will ultimately bear the cost of the supposed benefit conferred on some by H.R. 1963. Moreover, while the law currently allows the cost of late payments to be borne by those whose payments are in fact not made on time, H.R. 1963 would require all consumers to absorb this cost.

Impact on Securities Firms

The presumption that payments are received on the date they were postmarked would appear to create a number problems for firms engaged in the securities brokerage business. Securities broker-dealers are subject to statutory and regulatory requirements establishing transaction time frames which are inconsistent with the presumption of receipt established under H.R. 1963.

Pursuant to the Securities Exchange Act of 1934, the Board of Governors of the Federal Reserve System has established requirements for extensions of credit to customers through margin accounts. Under Regulation T (12 C.F.R. Section 220.1 et seq.), a deficiency in a margin account must ordinarily be satisfied within 3 business days after the deficiency was created (e.g., by a securities purchase order) by "receipt of funds or securities" (emphasis added). If the deficiency is not satisfied within this period, the broker dealer is required to liquidate securities in the customer's account to cover the amount of the deficiency, and thereby to reduce the amount of credit that is extended to the customer.

H.R. 1963, by deeming that a payment is received on its postmark date, not on the date that the funds or securities are received, would establish an inconsistent requirement which is particularly worrisome in an environment when the value of the payment itself continually fluctuates. While the customer's payment on a securities transaction may not be received for several days after a transaction was executed, the Act would deem the payment to have been made on the date it was postmarked, creating uncertainty as to the value which must be credited to the customer's account. A change from receipt date to postmark would also affect the customer's responsibility for late payment fees which are currently imposed on the basis of the payment receipt date, not its posting date.

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[3] The Internal Revenue Service's use of postmark dates for crediting tax payments has been offered as evidence that method would work in the private sector, but no mention has been made of the considerable cost of this practice. By encouraging taxpayers to delay mailing their payments until the due date (without incurring the penalties or interest that would be due if the IRS charged them on returns not received by the due date), this practice clearly reduces government revenues and increases the Federal budget deficit. The additional costs are paid by all taxpayers, including on-time and early filers, rather than by those pay late. There may be public policy reasons for allowing the IRS to forego revenues and shift costs in this manner each April (although none come to mind), but they do not justify imposing a similar requirement on private businesses every month.

Finally, the use of payment postmark dates would affect securities firms' ability to comply with the requirement that they obtain permission from the Federal Reserve Board to extend credit to margin account customers for an additional period of time if settlements on transactions are not received on time. While payments which are in the mail may be deemed to have been received under H.R. 1963, the firm does not in fact have them or know that they have been mailed, and would therefore be required to seek permission to continue extending credit to the customer. The new accounting and recordkeeping requirements that would be engendered by this requirement would be costly.

We are aware of no evidence that existing practices of securities firms with regard to payments sent through the mail are harmful to consumers. These practices have been established in accordance with requirements established by, and monitored by, the Securities and Exchange Commission, the Federal Reserve Board, state securities regulators and industry self-regulatory organizations. Transactions subject to these requirements should not be subject to inconsistent standards established by the Postal Service.

Expedited Delivery and Crediting of Payments

Rather than enacting a presumption that payments which arrive late were received on the date they were postmarked, Congress should consider measures that would expedite the delivery of mail containing payments, and the prompt crediting of payments once they are received.

The Postal Service should be directed to implement procedures to reduce delays in delivery for payments which can be achieved without increasing mailing costs. For example, the Postal Service could establish procedures to give payments priority over other types of First-Class mail. This could entail the use of payment envelopes which are specially coded, colored, or machine readable, so that they could be processed and delivered on an expedited basis. The Postal Service could also establish special mail collection procedures (e.g., specially marked mailboxes) for payment mail which would allow such mail to be processed separately from other First-Class mail. Finally, to reduce uncertainty as to when payments have actually been received, the Postal Service could be directed to postmark payment mail on the date it is actually delivered, rather than (or in addition to) the date a consumer places it in the mail.

Concerns that some businesses may not post payments promptly upon receipt could also be addressed by less drastic means than the provisions of H.R. 1963. As noted above, consumer credit providers are already required to post payments as of the date they are received, and may not collect interest or late fees on a payment that was received on or before its due date. If there is evidence that other businesses are not processing payments in the same manner, Congress should explore imposing a similar requirement on such businesses.

Unfunded Federal Mandate

The Postmark Prompt Payment Act would impose significant payment processing costs on state, county and municipal governments. These entities, like private businesses, utilize the mail to collect income and property taxes, payments for a wide variety of services (e.g., college tuition, automobile registration, water service, trash collection), and penalties for parking tickets, littering and other offenses. The Act would appear to cover all such payments (to the extent the government entity seeking payment provides an invoice, bill, or statement to the customer), and would require these entities to change systems that are currently credit payments on the date of receipt to comply with the date-of-postmark requirement of the Act. The cost of complying with this new federal requirement, and the need for federal support for these mandated costs should be explored.

Conclusion

H.R. 1963 raises serious questions which should be carefully considered before further action is taken on this legislation.

There is a need for reliable information on the dimension of the perceived problem, and the extent to which late payments are attributable to Postal Service delays and consumer procrastination, as opposed to business delays in crediting payments. Business should not be punished for delays over which they have no control.

The interplay of the Postmark Prompt Payment Act with accounting principles and with the requirements of banking, securities and consumer protection laws should be considered. Businesses should not be required to change established systems for crediting and accounting for payments merely because some payments arrive late due to Postal Service or customer delays. Exemptions from the Act for payments subject to Truth in Lending or other legal requirements may be needed.

The Act's impact on the profitability and employment in the financial services sector and on the Postal Service should be explored.

The operational and revenue impact on state, local and municipal governments, and the need to provide federal funding for such costs should be reviewed.

The real solution to delayed payment crediting is improved Postal Service delivery of payment mail. The Subcommittee should explore the extent to which changes in Postal Service practices could expedite the handling of payment mail.

Testimony

TESTIMONY OF

MARC E. LACKRITZ

PRESIDENT

SECURITIES INDUSTRY ASSOCIATION

HEARING BEFORE THE

SUBCOMMITTEE ON THE POSTAL SERVICE

HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

FEBRUARY 28, 1996

Chairman McHugh, Representative Collins, Members of the Subcommittee, the Securities Industry Association ("SIA")[1] appreciates the opportunity to submit its views on H.R. 1963, the *Postmark Prompt Payment Act of 1995*. This legislation would give new meaning to the old excuse "the check is in the mail" by making the U.S. Postal Service postmark stamp date the presumed date of receipt regardless of when a payment actually was received. We understand the purpose of the bill is to protect consumers who are punished for late payments through no fault of their own. This bill has tremendous emotional appeal on the surface; however, a careful examination of its consequences leads us to conclude it would cause more harm than good for investors and consumers. Not only would H.R. 1963 conflict with many of the securities industry's clearance and

1 The Securities Industry Association is the trade association representing the business interests of more than 700 securities firms in North America. Its members are securities organizations of virtually all types -- including investment banks, brokers, dealers and mutual fund companies. SIA members are active in all phases of corporate and public finance. Collectively, they provide investors with a full spectrum of securities and investment services and account for about 90% of the securities revenue in the United States.

Securities Industry Association

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settlement procedures which would increase both systemic and investor risk, it would also require securities firms to violate existing federal law regarding the sale of securities. For these reasons, SIA is opposed to H.R. 1963 in its current form.

To understand why we are opposed to such ostensibly consumer-oriented legislation, it is useful to include some background about the securities industry and its regulatory system. The U.S. securities industry has helped create the world's most efficient capital markets through its vitality, innovation, creativity, and resourcefulness. Even in economic downturns, the industry has an unparalleled record of raising capital to fund corporate growth and public improvements. The strength of the industry reflects directly on the economic vigor of the United States, making our markets the envy of the world.

The strength and integrity of our industry and markets, however, depends on a balanced regulatory system that emphasizes full and fair disclosure of information and investor protection. The securities regulatory system is multi-faceted -- not only do we have oversight at the federal and state level, but we are also subject to a considerable degree of self-regulation through self-regulatory organizations ("SROs") and the compliance departments of individual firms. Our regulatory system was created in the 1930s as a reaction to the excesses which led to the stock market crash of 1929. It has changed relatively little over the last 60 years -- mainly because it works so well, as demonstrated by a high degree of investor confidence and record levels of growth in the markets.

Congress has amended the regulatory system only at times when it has viewed the system as insufficiently flexible to address new problems as they have developed. For

example, in the aftermath of the stock market crash of 1987, Congress passed the *Market Reform Act* to give the SEC and SROs the tools necessary to respond to excessive market volatility. Since that time, the SEC and the securities industry have worked extensively to curb harmful volatility and further reduce risks by improving the clearance and settlement process. As a result of these efforts, the time frames within which securities transactions must settle are extensively regulated by the SEC and SROs. H.R. 1963 is inconsistent with this carefully designed system.

Upon executing a trade, a broker-dealer sends the customer a confirmation statement, which literally confirms the details of the trade. This statement includes the settlement date, the price of the security, and the amount of money due from the customer. By no later than the settlement date -- typically three business days after the date of the trade -- the customer must pay for the securities. In cash accounts, clients pay the full purchase price of the securities with cash or by check. In margin accounts, however, customers can finance their purchase by borrowing part of the purchase price from the broker-dealer. The balance of the purchase price in excess of the amount that may be financed by margining, however, must be paid no later than settlement date.

The Securities Exchange Act of 1934 gives the Federal Reserve Board ("Fed") authority to establish requirements "with respect to the amount of credit that may be initially extended and subsequently maintained" for the purchase of securities.[2] The Fed adopted Regulation T[3] to govern credit extended by broker-dealers for securities

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2 Section 7. Such restrictions on credit were deemed necessary to prevent brokerage firms from lending too much money on stocks and also to protect customers from borrowing on too thin a margin, thereby preventing a repeat of the market crash.

3 12 C.F.R. Section 220.1, *et seq.*

purchased in both cash and margin accounts.[4] Regardless of the type of account, Reg T requires customer to make "prompt" payment for all securities transactions for the protection of both the customer and the broker-dealer. The Fed has consistently defined "prompt" to mean that the payment must be received by the settlement date.

In June 1995, the industry moved to a three day settlement cycle -- "T+3" -- which means that customers generally have three business days from the date of the trade to remit funds to their broker-dealer.[5] The primary reasons for decreasing the settlement cycle from five days to three days were to curb market volatility and reduce risk in the clearance and settlement system. H.R. 1963 directly contradicts this policy -- by deeming a payment is received on the date it is postmarked, the bill would force broker-dealers to hold trades open for an undetermined period while they wait for the mail.

In addition to requiring payment to be made by the settlement date, Reg T also specifies that if payment has not been received after five business days, a broker-dealer must liquidate the customer's position or obtain an extension from the firm's SRO.[6] Failure to do so constitutes an unlawful credit extension, regardless of whether the check is in the mail by the fifth day. Deeming that payment is received on its postmark date and not on the date that the funds or securities are received would force broker-dealers to choose between alienating a customer by liquidating his or her position or suffering losses if the value of the shares declined during the time the check is in the mail. In addition,

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4 In general, the required margin for each security held in a margin account is 50 percent of current market value of the security, as calculated according to a formula in the rule. *See* 12 C.F.R. Section 220.3(g).

5 17 C.F.R. 240.15c6-1.

6 12 C.F.R. Section 220.8(b). In addition, Reg T also requires that a margin call must be satisfied within five business days after a margin deficiency is created or increased. 12 C.F.R. Section 220.4(c)(3).

broker-dealers would incur tremendous liability if they liquidated transactions for non-payment, only to discover that the customer's payment was postmarked prior to the liquidation date. Any possible benefit a customer might gain from H.R. 1963 would be outweighed by market volatility, an increase in disputes that go to arbitration, and litigation between clients and their brokers.

H.R. 1963 raises many other issues: Would a firm be liable for interest on credit balances in client accounts from the postmark date? What would the bill's impact be on the hold period for clearing checks? Would the firm have to rebate margin interest charges to clients based on the postmark date? These are only some of the questions that the legislation does not address.

Given the importance of efficient clearing and settlement mechanisms to our financial system, SIA urges you to consider carefully the impact of any proposed change prior to its adoption. H.R. 1963 would require an extensive overhaul of some of the most important components of our financial system if it were enacted. In our view, the uncertainty in the market produced by such an effort would far outweigh any expected benefits.

Mr. Chairman, we are aware of your strong desire to enact legislation and SIA wants to play a constructive role in this process. We would respectfully suggest examining a more targeted approach that addresses the problem of unreliable mail delivery service, and the subsequent unfair late fees. We caution the subcommittee against adopting legislation that inadvertently harms consumers and investors, the very group you are trying to help. We look forward to working with you in the months ahead and thank you for this opportunity to submit our views.