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EXAMINING RENTAL PURCHASE AGREEMENTS AND THE POTENTIAL ROLE FOR FEDERAL REGULATION

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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EXAMINING RENTAL PURCHASE AGREEMENTS AND THE POTENTIAL ROLE FOR FEDERAL REGULATION

Tuesday, July 26, 2011

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

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito, Renacci, Manzullo, Jones, Luetkemeyer, Huizenga, Duffy, Canseco, Grimm, Fincher; Maloney, Watt, Baca, Miller of North Carolina, Scott, Meeks, and Carney.

Also present: Representative Clay.

Chairwoman CAPITO. This hearing will come to order. I would like to remind members to observe the 5 minutes provided for questions and remain within their allotted time for opening statements.

I know that we have many members on the subcommittee who are interested in this issue, and in Mr. Canseco's legislation. The best way to assure we accommodate all the members is to limit our statements and questions to the allotted time.

The subject of today's legislative hearing is an examination of rental purchase agreements and the potential need for Federal regulation of this industry.

Mr. Canseco has put forth one proposal for Federal legislation, H.R. 1588, the Consumer Rental Purchase Agreement Act. This legislation defines rent-to-own transactions, mandates plain language disclosures, and provides for Federal regulation of rental purchase agreements.

This hearing will provide an opportunity for members of the subcommittee to better understand the industry and determine the need for Federal regulation. The rent-to-own transaction represents just one of many options for consumers when deciding whether they are financially able to purchase a large appliance or furniture.

Rather than purchasing a television, refrigerator, dishwasher, computer, or other appliance, the consumer enters into an agreement where they make weekly or monthly payments with the option of purchasing the goods outright.

Today's hearing will shed light on the need for Federal regulation for this industry. The States currently provide a varying de-

gree of regulation of rent-to-own transactions. Regardless of the outcome of this hearing of potential future Federal regulation, we must strive to ensure that consumers have access to different options when choosing the best way to obtain goods and services.

Rent-to-own transactions represent just one of many options, and I look forward to learning more from our witnesses today.

Mr. Canseco is to be commended for his leadership in introducing this legislation, and I would like to thank him for his hard work on this issue.

I would like to now recognize the ranking minority member, the gentlelady from New York, Mrs. Maloney, for the purpose of making an opening statement.

Mrs. MALONEY. Thank you, Madam Chairwoman, and I welcome the witnesses today.

This issue and this bill has been before this committee in previous Congresses, and this year, it is sponsored by my good friends and colleagues, Mr. Canseco and Mr. Clay.

There is no doubt that millions of Americans use rent-to-own to secure all types of property including televisions, home furnishings, computers, and other products for their homes and small businesses and offices.

In Ms. Vivian Saunders' prepared testimony, she wrote that rent-to-own allowed her to secure things for her home that she would not have been able to purchase outright from a department store.

I don't think anyone questions that these businesses are important for our economy, especially in times of economic downturn and tightening credit standards, but as with any financial transaction, these must be done with an eye towards consumer protections.

We must ensure proper disclosure of prices and terms and conditions so that consumers know what kind of deal they are getting so they can decide what is best for them.

I know that the industry would like to see a uniform Federal standard, but I also want to make sure that a Federal standard doesn't preempt a State's ability to pass and enforce their own laws. I have gotten several letters from members of the city council and the State legislature of New York already staking out a desire to be able to have their own laws to protect consumers.

While I think in this case, a Federal standard could be set as a floor, I want to make sure we aren't inadvertently setting a ceiling and prohibiting States from enacting their own laws or stronger laws.

Now that we have the Consumer Financial Protection Bureau up and running, I understand there is a question as to how much jurisdiction the FTC will retain, or whether it is possible that the CFPB could inherit some of the responsibilities from the FTC.

So I hope we can explore that, Mr. Harwood, today in your testimony. I know that the FTC and the CFPB will be sharing jurisdiction over several consumer loans.

I look forward to hearing your testimony. Thank you for coming, and thank you, Madam Chairwoman, for calling the hearing.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Manzullo for 1½ minutes for the purpose of making an opening statement.

Mr. MANZULLO. Thank you, Madam Chairwoman, for calling this important hearing on the rent-to-own industry. I want to speak in support of Mr. Canseco and Mr. Clay's bill, the Consumer Rental Purchase Agreement Act. This bill, which has wide bipartisan support, simply defines a rent-to-own agreement as a short-term lease with a purchase option, not as a sale of goods on credit or installment. The bill would create uniform national disclosure standards for rent-to-own businesses.

It also would allow for simple disclosures to provide clear cost information to consumers considering rental purchase agreements. Those disclosures would be required to be clearly included in the rental purchase agreement. And while this legislation creates uniform Federal regulations, it still leaves intact the rights of States to regulate the industry in the ways that they see fit.

Each year, millions of Americans enter rental purchase agreements. Characterizing these agreements as leases is consistent with transactional features that distinguish them from credit sales. The bill will work to maintain conformity with the current Federal treatment of rent-to-own agreements as well as existing State rent-to-own statutes.

Madam Chairwoman, unfortunately, I have to leave the hearing at this point. I hope to come back, but I have a hearing going on in the manufacturing caucus at the same time, so I yield back the balance of my time.

Thank you.

Chairwoman CAPITO. The gentleman yields back. Thank you.

I would like to recognize Mr. Scott of Georgia for 4 minutes for the purpose of an opening statement.

Mr. SCOTT. Thank you very much, Madam Chairwoman. I certainly appreciate you holding this hearing today on rental purchase agreements, specifically, the Consumer Rental Purchase Agreement Act, of which I am a cosponsor along with a number of my colleagues.

I would like to just take a moment, if we could go through the basic points in the bill to make sure that we understand how valuable this bill is and how much it is needed at this time.

First of all, H.R. 1588 would define rent-to-own as a lease instead of a purchase, and it would protect consumers nationwide by mandating minimum disclosures. The situation is this now: Currently, 47 States, including my home State of Georgia, have now enacted laws redefining rent-to-own.

So it is, indeed, necessary that Congress act to define it as well. It is important to note that the legislation would not, and I repeat, would not preclude States from adopting stronger consumer protections than are contained in the Federal safety net.

Whichever protection is deemed stronger, that is the one that would prevail. Thus, if a State's law were considered to be less stringent than a Federal standard in this bill, than the Federal law would prevail. However, if the State law were deemed stronger, the State law would prevail.

With this legislation, competition will be advanced, thus improving service and payment options for the more than 3.2 million customers of rent-to-own companies.

Our bill will provide the rent-to-own industry and its more than 50,000 employees with job security, and even allow for expansion, thereby creating more jobs.

Some have argued that the rent-to-own unfairly targets the poor and minority communities when, in fact, rent-to-own allows customers the ability to rent or purchase goods based upon their own personal economic situation.

Short-term rental agreements have gained in popularity over the years based on the quality of the products offered and the needs of the consumer and flexibility of the transaction. Rent-to-own transactions provide millions of customers the option of acquiring such items as furniture, electronics and other important and needed items in a flexible manner.

Americans who choose to utilize the rent-to-own services may return products at any time and with no penalty. This is especially important in our current economic climate when many Americans are suffering from lengthy unemployment or job insecurity.

So, I am pleased to offer my support for this legislation once again in this Congress. I have supported it before. I urge my colleagues to support it as well, and I hope we are able to swiftly move this beneficial legislation to the House Floor for a vital vote.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Luetkemeyer for 1½ minutes for the purpose of an opening statement.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

I am a proud cosponsor of H.R. 1588, and I want to thank the gentleman from Texas and the other gentleman from Missouri for their leadership on this issue.

In Missouri alone, there are approximately 260 rent-to-own stores. Collectively, this industry employs more than 1,500 workers, provides $56 million in annual wages, pays $8.6 million in annual payroll taxes, and generates $196 million in annual revenue just in our State alone.

Sixty out of 62 rent-to-own companies in Missouri are owned and operated by small businessmen and women. These family business people need a certainty of a definition of the rental purchase transaction as a terminable lease to ensure that they can continue to serve their customers and grow their businesses.

Now more than ever, we should be focused on providing certainty to small businesses that are able to create jobs. H.R. 1588 specifies that these agreements are leases and not credit sales. Customers rent products on a weekly or monthly basis and are under no obligation to acquire ownership and may return the goods without penalty at any time.

This is important. This bill provides a floor of consumer protections to families who rely on rental purchase for access to household necessities like refrigerators, air conditioning units, and washers and dryers.

This bill is bipartisan. It is a commonsense solution to the uncertainty that rental purchase dealers and their customers currently face. I urge my colleagues to join me in support of this legislation.

I thank the witnesses for appearing today, and I yield back the balance of my time, Madam Chairwoman.

Thank you.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Clay for 3 minutes for an opening statement.

Mr. CLAY. Thank you, Madam Chairwoman, and good morning. As a cosponsor of H.R. 1588, along with my colleague, Mr. Canseco, I am especially grateful to you for holding this hearing.

This bill enjoyed broad bipartisan support during the last session, in the subcommittee as well as the full committee, and according to the U.S. Census Bureau and the FDIC, millions of Americans, particularly lower-income persons, are unbanked or underbanked.

In a recent report, the FDIC notes that many low- to moderate-income households do not have access to mainstream financial products such as bank accounts and low-cost loans. This lack of access to credit falls particularly hard on minorities.

So, it is critical that low-income consumers have access to alternative products and services such as rent-to-own. The rent-to-own industry offers high-quality household and durable goods such as appliances, furniture, electronics, and computers for rent on a weekly or monthly basis.

Rental companies do not check the credit of their customers and do not require downpayments or security deposits. This is a transaction easy for the consumer to enter and also easy for the consumer to exit.

It gives working-class families opportunities to obtain decent household items without incurring the burden of debt, while at the same time allowing the consumer to build upon a history of credit payments. That is important to establish a credit history.

H.R. 1588 will, for the first time, provide Federal consumer protections in the rent-to-own industry. These new Federal consumer protections create a strong foundation that will afford States ample flexibility to adopt additional standards of their own.

State law will not be preempted. The only Federal limitation applies to the definition of the rent-to-own transaction. They are lease transactions not sales transactions, and States will have the ability to regulate them accordingly if they choose to do so.

For instance, if a State wished to outlaw them completely, this legislation would not preclude that. The legislation also provides for comprehensive disclosure of key financial terms in advertising and on price cards on merchandise displayed in all rent-to-own stores.

And I see that my time has expired, Madam Chairwoman, so I will yield back.

Chairwoman CAPITO. I thank the gentleman.

I would like to recognize Mr. Canseco for 2½ minutes for the purpose of an opening statement.

Mr. CANSECO. Thank you, Madam Chairwoman, and I appreciate very much your holding this hearing. I am also very grateful to my friend and my colleague from St. Louis, Mr. Clay, for working with me on this bill.

For 4 decades, the rent-to-own industry has provided consumers with a vital option for obtaining everyday household goods such as furniture, electronics, and appliances.

Rent-to-own transactions are unique in that they give the customer the option of either returning a product after a short period with no penalty or taking ownership of the product after a number of successive payments have been made.

This makes a rent-to-own transaction especially attractive to individuals who have an immediate need for a consumer product but don't have available funds necessary to make a purchase and don't have the credit to take out a loan.

The popularity of this industry among consumers has grown exponentially throughout the years. Today, there are close to 8,200 rent-to-own stores in the United States, and the industry serves an estimated 6 million customers every year.

But, unfortunately for the industry and the consumers it serves, confusing and conflicting regulations from State to State have led to a great degree of uncertainty. That has undoubtedly hurt job creation.

By removing this uncertainty, not only will it lead to new jobs, but we could see more stores opening that would help give underserved consumers an opportunity they are currently missing.

To help achieve this outcome, Mr. Clay of Missouri and I have introduced H.R. 1588, the Consumer Rental Purchase Agreement Act, a bipartisan bill that includes 11 cosponsors from this subcommittee.

Our bill would create a Federal definition of rent-to-own transactions and provide for a number of consumer protections and disclosures to be made at the consummation of a transaction.

H.R. 1588 recognizes that rent-to-own transactions are consumer leases, not credit sales, and gives the FTC authority to regulate these transactions as such.

This bill does not change or null State law, yet it does create a floor for consumer protection standards, and if a certain State has higher consumer protection standards than those offered by this bill, that State's laws would prevail.

These are important protections and help to provide a degree of regulatory certainty for the industry and its consumers. I look forward to today's testimony, and I thank our witnesses who are here to testify.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Fincher for 1½ minutes for the purpose of an opening statement.

Mr. FINCHER. Thank you, Madam Chairwoman.

I represent the largest number of rent-to-own businesses in the State of Tennessee. Of the 290 rent-to-own stores in the State that employ a total of 1,740 people, 51 stores are located in my district, employing 306 people and serving more than 28,000 customers.

This is an industry of independent small businesses, which are part of the economic backbone of our Nation and create the most jobs. Just as our community banks are facing burdensome regulations because of Dodd-Frank, the rent-to-own industry is facing a potentially burdensome regulatory environment from the Consumer Financial Protection Bureau.

Like most industries, rent-to-own businesses depend on long-term planning to make decisions such as hiring new employees, ex-

panding store locations, and investing in new merchandise. That is why I am a cosponsor of the Consumer Rental Purchase Agreement Act to bring some regulatory clarity and certainty to this industry by more clearly defining the rent-to-own transaction and providing meaningful consumer protections.

I look forward to today's testimony and to further discussing this bill.

Madam Chairwoman, I yield back.

Chairwoman CAPITO. Thank you.

I think that all opening statements have concluded, so I would like to welcome our first witness for the purpose of giving a 5-minute opening statement.

Mr. Charles Harwood is the Deputy Director of the Bureau of Consumer Protection at the Federal Trade Commission.

Welcome, Mr. Harwood.

STATEMENT OF CHARLES HARWOOD, DEPUTY DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. HARWOOD. Thank you, and good morning, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee.

I am Charles Harwood, a Deputy Consumer Protection Director at the Federal Trade Commission. I would ask that my written statement, which was approved by the Federal Trade Commission, be included in the record. The following summary of that written statement, together with my responses to questions, are my views and not necessarily the views of the Commission.

As part of its mandate to protect consumers, the Federal Trade Commission enforces the FTC Act, which broadly prohibits unfair or deceptive acts or practices in or affecting commerce.

The Commission also enforces a number of laws specifically governing lending and leasing practices, including the Truth in Lending Act and the Consumer Leasing Act.

These two Acts require disclosures and establish certain substantive requirements in connection with consumer credit or lease transactions respectively. Under these laws, the Commission has jurisdiction over most non-bank lenders.

The rent-to-own, or RTO, industry consists of dealers that rent household goods and other items to consumers, usually on a weekly or monthly basis. RTO agreements typically do not require any downpayment or credit check, as has already been noted, thus providing consumers with immediate access to household goods.

Generally, consumers are under no obligation to continue making payments beyond the current weekly or monthly period, though if they do, the RTO agreement renews automatically.

RTO agreements provide consumers with the option to purchase the goods in most cases by either continuing to pay rent for a specified period of time, or by making early payment of some specified proportion of the remaining payments.

Ten years ago, then-FTC Consumer Protection Director Howard Beals testified before this same subcommittee. He described a seminal report on the RTO industry prepared by the Commission's Bureau of Economics and released in 2000.

The report, which is described more fully in my written testimony, included the following findings: First, based on RTO customers identified through a general survey of the population, the report found that 70 percent of the merchandise rented was ultimately purchased by these customers.

Second, of these RTO customers, 31 percent were African American, and 59 percent had annual household incomes less than $25,000. At the time, the average annual median income was about $41,000 or $42,000.

Third, 75 percent of these RTO customers stated they were satisfied with their experience, while 19 percent said they were dissatisfied, with most citing high prices as the reason.

Several industry and other studies using industry-supplied store reporting data have been published since 2001. These studies generally concluded that the purchase rates for RTO transactions were lower than the rate found in the FTC Bureau of Economics Report. The discrepancies in the purchase rate findings may be attributable to differences in the study methodologies or other factors.

Turning to consumer protection issues, there are several Federal consumer protection laws that may apply to RTOs depending on the circumstances, including the aforementioned Truth in Lending Act, the Consumer Leasing Act, and the Federal Trade Commission Act.

None of these laws, however, has provisions that specifically reference RTO transactions. However, 47 States and the District of Columbia have laws that do specifically govern RTO transactions. These laws require a variety of disclosures and impose other requirements and prohibitions.

The bill before the subcommittee, H.R. 1588, which amends the Consumer Credit Protection Act to specifically cover RTO transactions, includes a provision that would require disclosures to consumers of certain payment terms in RTO agreements and in advertisements and at the point of rental.

As noted in my written testimony, the Commission has not taken a position on the bill. In general, however, the FTC believes that effective disclosures of the key terms of a transaction are central to protecting consumers by giving them any information they need to make choices, in fact, good choices.

The watchword here is "effective." Designing disclosures that successfully convey accurate and useful information can be challenging. Often, the success in this regard depends on the context, the information that is to be communicated, and the specific manner in which the disclosures are made.

Indeed, the fact that there are different disclosure schemes in the various State RTO laws suggests that there may be no single right way to make disclosures effectively.

However, Commission staff would be happy to provide technical assistance to the subcommittee in designing effective disclosure requirements. That concludes my statement. I would be pleased to answer questions.

[The prepared statement of Mr. Harwood can be found on page 45 of the appendix.]

Chairwoman CAPITO. Thank you, Mr. Harwood.

I would like to begin by asking—and some folks made reference to this in their opening statements—whether or not these transactions would fall within the realm of the CFPB, and if you view the CFPB as a suitable fit for oversight of the rent-to-own transaction.

Mr. HARWOOD. Sure. First of all, let me note that that we haven't specifically consulted with the CFPB about this specific issue, so any answer I give you will be speculative, at least in part.

But I do know that as far as we have heard, the CFPB has no intention, so far, of attempting to regulate in this area. As you know, under the current regime, the CFPB, which came into being on July 21st, has in many ways dual enforcement authority with the FTC with regard to many financial service areas.

And, in addition, the CFPB has the primary regulatory authority over many of these areas including rules the FTC previously wrote. The CFPB is now responsible for writing those rules.

With respect to whether the CFPB should be involved specifically in this, my understanding is that with respect to some of that authority, it is somewhat limited and, in fact, they might not currently have the authority they would need to regulate in this area.

But beyond that, I really can't comment further who should do it. Certainly, the FTC has experience in this area, and experience with this industry.

Chairwoman CAPITO. Let me ask you a clarifying question that might be a little bit off topic there, but you said the FTC and the CFPB have dual enforcement authority in certain areas. What areas are those?

Mr. HARWOOD. As far as the consumer financial services, the FTC and the CFPB are both responsible for enforcing laws involving mortgage scams, debt settlement schemes, a variety of scams in those areas, both agencies can bring law enforcement actions.

Chairwoman CAPITO. Okay. Consumer advocates argue that the rent-to-own merchants should be required to disclose to consumers an annual percentage rate of interest on the transactions even if the loan is for a shorter time, and the rent-to-own area is not the only area that I think has this issue.

Industry reps contend that such disclosures could be misleading. We have already learned that a lot of the contracts are a week, a month—a short period of time. What was the average? Four months or something of that nature. Do you have a view on whether that would be considered full disclosure if you put the annual percentage rate of interest?

Mr. HARWOOD. In its testimony, the FTC takes no position on whether APR is the right way to make these disclosures versus some other means. I would note, though, that these transactions are a bit unique and that they are hybrid transactions.

They have some elements of a rental and some elements of the purchase arrangement, possibly making it difficult to know what kind of scheme should actually be applied.

In the report that the FTC did in 2000, we did note that it would be important to consumers to have the total purchase price disclosed to them.

But we also noted that it might be problematic to try to apply an APR rate depending on a variety of issues. For example, to

apply APR, you have to begin by determining what the cost of the item was, and at least in some instances, we were concerned that: first, it would be difficult to determine the cost of the item; and second, the APR itself could be skewed based on what the merchant chose to set the cost at if you left it to the merchant to set the cost of the item.

So, in fact, in some instances, we were concerned the APR might not communicate adequate information.

Chairwoman CAPITO. The last question from me is that 47 States have disclosure laws and other laws over rent-to-own, and you do consumer protection in the FTC. This is probably in your report, so pardon me if I didn't catch it when I read the report, but what are the top two abuses by the rent-to-own businesses of consumers, in your opinion?

Mr. HARWOOD. Let me first note that the FTC receives a small number of complaints about the rent-to-own industry. I believe it was only a couple of hundred over the past year out of over 1.1 million complaints total that the FTC received.

So the information I am relying on is a very small part of the complaints, but the kinds of complaints we received involved problems, for example, with returning merchandise; problems with broken items that weren't being serviced adequately. I am not sure those are the top two, but those are two examples in looking at the few complaints we did receive.

Chairwoman CAPITO. I think it is interesting that there were so few complaints, and that basically, probably if you went industry-wide on any industry that rents or sells anything, we will probably have those same types of complaints—not working correctly, or those kinds of things.

I thank you very much.

And I would like to go to the ranking member for her questions.

Mrs. MALONEY. Thank you, and thank you for your testimony.

In your testimony, you state that the FTC does not support preemption of State laws that are more protective of consumers in this area, and that States should continue to be the laboratories of democracy.

So, can I take from that comment that you do not believe the Federal Government—either Congress or the FTC—should be regulating the rent-to-own industry?

Mr. HARWOOD. Thank you, Representative Maloney. I think you are referring to the footnote at the end of the testimony. That footnote reflects the views of two of our five Commission members—Commissioner Brill and Chairman Leibowitz—who felt it was important to convey the views in the footnote. The other three members of the Commission took no position on the issue of preemption.

Let me note, though, that with regard to preemption, there are a variety of factors that go into any consideration about whether you should preempt State laws with Federal law. Those factors include whether two regulatory regimes can coexist—a Federal and a State regulatory regime. They also include whether there is currently an effective State law enforcement initiative or program in place. They also include how burdensome two regulatory regimes would be on business. And also, whether there are effective Federal law enforcement alternatives if the States are preempted.

These are just some of the factors that, taken together, tend to guide policymakers in deciding whether you should preempt State law with Federal law.

As I said, two of the Commissioners expressed concern about this preemption. The other three Commissioners took no specific position on it.

Mrs. MALONEY. What is the role of the FTC now in regulating them, and what do you view as the FTC's role?

Mr. HARWOOD. We receive over 1.1 million complaints, including several hundred on the rent-to-own industry. That is only about three-one hundredths of 1 percent of all the complaints we received last year.

Nevertheless, if we were to see complaints that suggested that there was a pattern of deception by a member of this industry, significant problems with deceptive debt collection practices, or other kinds of consumer abuses, the FTC believes it has the authority under the FTC Act to file lawsuits against the companies engaged in such deceptive or unlawful practices.

Mrs. MALONEY. Have you filed any lawsuits for deceptive—

Mr. HARWOOD. Not against the rent-to-own industry, no.

Mrs. MALONEY. Not in what, 1 year or 2 years or ever?

Mr. HARWOOD. As far as I know, not in the last 10 years, which is as far back as I looked.

Mrs. MALONEY. With an overwhelming number of States already enacting laws on rent-to-own transactions, and the fact that the industry—of course, it is a factor of the economy, possibly—has continued to grow, despite having to contend with requirements that are different across State lines, is there a compelling need for Federal legislation over rent-to-own transactions?

Mr. HARWOOD. As I indicated, I think that requires assessing a variety of factors, for some of which you might need to develop a more extensive record, and I think part of that record can be obtained by talking to the industry and by talking with consumers.

Certainly, we haven't seen a significant number of complaints about this industry filed with the FTC. On the other hand, I also can't assess how much burden two regulatory schemes or the separate State schemes have posed on the industry.

Mrs. MALONEY. But you already have the power right now, and for 10 years, you haven't acted on any of the complaints?

Mr. HARWOOD. Those are both correct statements, yes.

Mrs. MALONEY. Pardon me?

Mr. HARWOOD. Yes, that is correct. And as I had indicated, two members of our Commission felt strongly that there was no need to preempt. The other three didn't take a position on it.

Mrs. MALONEY. Do you call the States and ask them to do something, or do you just ignore it?

Mr. HARWOOD. We are aware of State law enforcement actions. For example, Washington State filed a law enforcement action in 2009 involving the rent-to-own industry.

So we talk with the States about their law enforcement, and we track their law enforcement efforts.

Mrs. MALONEY. And how does a rent-to-own customer accurately compare the prices of rent-to-own merchandise to products available at the traditional retail stores now?

One of the things we have been working on is fairness, access, transparency, consumers getting the best price because they have fewer dollars—they are struggling, entrepreneurs especially, small businesses are struggling, access to credit is difficult.

In the current framework, is there a way to compare prices so that our entrepreneurs can get the best price as they struggle with their businesses?

Mr. HARWOOD. We share your concern for consumers who are facing financial problems. The FTC has devoted significant resources to combating scams and frauds that target consumers who are facing financial difficulty—we call these frauds last dollar frauds.

We have also been engaged in a variety of law enforcement efforts to protect small businesses, many of whom are also targeted by scams and fraudulent activities.

With regard to comparing prices, this is exactly the sort of thing that our study looked at in 2000. We wanted to make sure consumers can adequately compare the total purchase cost of something they may choose to purchase through a rental transaction with the total purchase cost of something they may choose to purchase from a retailer. This is why we argue it is important to have the total purchase cost disclosed to consumers at the time they enter into a rental purchase arrangement.

Chairwoman CAPITO. The gentlelady's time has expired.

Mr. Renacci for 5 minutes?

Mr. RENACCI. Thank you, Madam Chairwoman.

I am still confused. I am going to follow up on the ranking member's question. I am a big advocate of rent-to-own, and I think it is a great industry. I think it helps those who sometimes cannot afford to purchase.

But I keep hearing you say that you haven't had that many complaints, and I am trying to determine your opinion—and I don't think you answered it—in your opinion, do you believe there is a compelling reason to have a Federal rent-to-own standard?

Mr. HARWOOD. As I have indicated, there are very few complaints, and for the Commission and for the Commission staff, including me, it comes down to, where do we put our limited resources?

In the past 5 or 6 years, the Commission has filed numerous cases involving loan scams, involving debt relief scams, involving credit debt collection scams. Those were areas where we believed it was important to put our resources, because of the literally thousands of complaints we receive concerning those areas.

We simply don't have the resources to deal with every single consumer complaint we receive, as much as we might like to. So it really comes down, Representative Renacci, to how we use our limited resources.

Mr. RENACCI. It also appears if there were a large number of complaints, and you were starting to see a trend, that this would be something that would go up on the radar screen and not be down on the lower part of the radar screen.

Mr. HARWOOD. That is correct. If we were to see a pattern of fraud or deception or consumer injury with regard to the conduct

of rent-to-own industry members, we would likely choose to focus more of our resources on the industry.

Mr. RENACCI. Has anybody ever done a comparison of State-by-State disclosures, what the States are requiring and how similar they are, and how similar the State disclosures are to what this bill is actually going to require as disclosures to determine whether the States are already asking for adequate disclosures?

Mr. HARWOOD. My understanding is that most of the State laws have some similar provisions, but they are not identical by any means. They all mandate some cost disclosures; they prohibit some unreasonable fees; they prohibit imposition of mandatory property loss insurance—a requirement that was more common in the past; and they give customers who miss payments, in most cases, the right to restate their rental under certain circumstances.

But beyond that, there are quite a few differences including differences as to what they require to be disclosed.

Mr. RENACCI. But do you think they meet the minimum disclosures based on your review?

Mr. HARWOOD. Again, the disclosures vary widely. I think some States come relatively close to meeting the total cost disclosure—the kind of disclosure that the FTC said would be helpful. In other cases, I suspect, the disclosures are not as helpful as they could be.

Mr. RENACCI. It is interesting, the IRS and basically they have a standard for lease versus purchase, and I wonder if the total disclosures would justify—there are four standards. If you are leasing something for 75 percent of the useful life, if there is a transfer of ownership, if there is an option to purchase at bargain price, and if there is a present value of the lease payments exceeds 90 percent—that is what I am used to, because I am from—being a CPA—a standard of whether you are leasing or purchasing.

I wonder if those disclosures, if significant enough, wouldn't actually transfer some of these into consideration of being a purchase versus a lease. If the lease payment is—I will give you an example: If you buy a refrigerator, and it is a $1,000 refrigerator, and you are paying $100 a month for 15 months, you are literally paying $1,500 for a $1,000 refrigerator, and I am using extreme—that becomes, in many cases, by an IRS standard, a purchase in the business world versus the consumer world.

I am just trying to get a feel for where the Federal Government would step in on those kind of transactions and determine whether it really was a lease or a purchase.

Mr. HARWOOD. I think the Federal Government currently would not step in. In the consumer protection arena, not in the IRS arena, but in the consumer protection arena, the Federal Government would not step in and determine whether it is a lease or a purchase.

In my opinion, interpretation would rely on the language in the contract or in the rental agreement that presumably would specify what kind of a transaction the consumer entered into. For example, does the consumer have the right to return the product? How is the consumer paying for it? Who retains ownership of the product during the time that it is being leased or purchased? Those sorts of considerations.

Mr. RENACCI. Okay. I yield back.

Chairwoman CAPITO. Thank you. The gentleman yields back.

Mr. Watt, for 5 minutes for questions?

Mr. WATT. Thank you, Madam Chairwoman, and I thank the Chair for convening the hearing. I think it is important for us to understand this bill.

Let me say at the outset, I am neither an advocate for nor an adversary of the rent-to-own business industry. I do have pretty strong feelings sometimes to the right of my Tea Party colleagues about what is appropriately under Federal jurisdiction and what is appropriately under State jurisdiction, and it has always been that concern that I have expressed about this bill in its prior forms and which I continue to have concerns about in its current form, because it seems to me that the exception in section 1018 of this proposed bill, to the preemption, eats up the rule.

So let me ask you, Mr. Harwood, did your study that you referred to determine what percent of rent-to-own transactions were in interstate commerce—that is, I am a customer, and I go into another State and enter into an agreement, as opposed to what percent of the transactions were in intrastate commerce?

Mr. HARWOOD. Actually, the study did not look at that specific issue. I suspect—

Mr. WATT. Okay.

Mr. HARWOOD. —most of the transactions are actually local between the consumer and the rental shop owner.

Mr. WATT. Okay. I thought that might be the case. This strikes me as pretty much the same debate I have in this committee and in the Judiciary Committee with my colleagues who feel like we ought to have a Federal standard for medical negligence.

I have never seen an operation or a medical procedure take place across a State line. It generally takes place inside a particular State, and my experience with rent-to-own transactions is that is also the case.

I am not sure how some of my colleagues who say that they want to downsize the role of the Federal Government—how they reconcile that with giving the Federal Government more and more and more jurisdiction over more and more and more things.

But I will let them—I won't ask you that question, Mr. Harwood, I am sure you couldn't reconcile that. I haven't been able to get them to reconcile it in the 19 or 20 years I have been here in Congress.

Have you looked closely, Mr. Harwood, at the exception to what is preempted under section 1018(b) of the proposed legislation? Did you have a chance to look at that, or should I just wait and ask the second panel? I am sure there are people on the second panel who looked pretty closely at that definition?

Mr. HARWOOD. I have it front of me now, though I don't claim any particular expertise with regard to what the language means.

Mr. WATT. So if I am a customer, and I walk into a rent-to-own store in North Carolina—I am in North Carolina—I walk into a North Carolina store, do you think it would be reasonable for the Federal law to tell me how to regulate—whether to regulate this as a rental purchase agreement, as a security interest, a credit sale, a retail installment sale, a conditional sale, or other form of consumer credit?

Why should the Federal Government be telling me what form of consumer credit this is if this whole transaction is within the State?

Mr. HARWOOD. I am not sure I can really answer that question. I will note that there are Federal laws that currently apply to things like credit disclosures and lease disclosures even at the level of consumer to business transaction. So, it is not an unprecedented concept.

Whether that should be extended to this kind of thing is harder for me to answer.

Mr. WATT. I yield back, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

Mr. WATT. I think I have made the point I want to make.

Chairwoman CAPITO. I would like to recognize Mr. Luetkemeyer for 5 minutes for questions.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Mr. Harwood? Just from the testimony this morning and reading some of the information with regards to this industry, it would appear that—and having been around the financial services industry for many years and looking at their complaints to transaction ratio, this would be an outstanding complaint-to-transaction ratio when you received 200 complaints for 1.2 million transactions.

That is phenomenal. It would tell me that, I guess, the industry has been around for so many years that they have worked out the problems. The States have been regulating it to the point where they have the industry to a point where it provides the service in a way that consumers can operate with it in a fair fashion, get good service, get good product for the dollar, good value for the dollar, and the bad players are apparently out of the industry. Would that be a fair statement?

Mr. HARWOOD. I hope that is accurate, Representative.

Mr. LUETKEMEYER. It would seem with 200 complaints out of 1.2 million transactions, that would be a pretty good assumption from the standpoint of looking at other industries that are not necessarily similar to it, but in the financial services industry, anyway, this would be a phenomenal ratio.

Mr. HARWOOD. It may also reflect that complaints are primarily going to the States, which have more enforcement in this area, but probably a little of each, to be honest.

Mr. LUETKEMEYER. Okay. Very good. Fair enough. Would you characterize this bill as—because of that then, the industry would appear to be pretty satisfied with what is going on within its industry with the State regulation. Would you characterize this bill as a preemptive move to protect the industry from Federal oversight and regulation?

Mr. HARWOOD. I wouldn't try to characterize it, to be honest. My understanding is that it tracks many of the current State laws. Most of the State laws that currently exist, it is similar to them. So whether that constitutes an effort to take over the area, I really couldn't say.

Mr. LUETKEMEYER. I would think that if you look at the regulatory scene today—and when I talk to consumers, the first question is always about jobs, the economy, and the debt and every-

thing that is going on, and the second question is always about the regulatory environment.

So it would seem to me that they are concerned with the sticky fingers of government trying to get in their industry and trying to regulate in perhaps a negative way. And this may be a preemptive way of being able to get themselves into a position to protect your industry as well as improve it from a standpoint of Federal regulation. Would that be a fair statement?

Mr. HARWOOD. My understanding is that the legislation is intended to accomplish the goal of protecting consumers by providing adequate disclosures and providing them on a national basis.

Mr. LUETKEMEYER. Okay. In previous testimony, you have made the statement with regard to the annual percentage rate, that it does not necessarily fit in this rent-to-own transaction since consumers can stop the transaction at any time.

And in my discussion with some of my rent-to-own business folks, they indicated that—at least one of them did, and it is probably—I assume it is probably industry-wide—maybe off a little bit, but that the average product is returned 3 times before it is actually purchased.

So, I think they make a very good case that it is not something that is a true ownership type of scenario where I am going to purchase it over time—a time sensitive contract of some sort. Whenever you have that kind of return on those products, it would certainly not lend itself to an APR transaction. Do you still agree with that?

Mr. HARWOOD. I don't have the data you have about the average product being returned 3 times, but when you have used and new products, and you are renting them both, that does raise questions about how you set the purchase price of the product, which is part of what has to go into calculating APR, and demonstrates why it may be challenging to determine and compare APRs in this area.

Mr. LUETKEMEYER. What is the average length of the transactions? Do you know offhand?

Mr. HARWOOD. I am afraid I don't know that.

Mr. LUETKEMEYER. Okay. If you were looking at this piece of legislation, what do you see in it that would raise concerns for you?

Mr. HARWOOD. As I had indicated, for the FTC, a main concern for us is how you go about disclosing, in a meaningful way, the information you want consumers to have.

You need the disclosure to be effective. You need to make sure they are getting all the information they need.

Mr. LUETKEMEYER. Are they not getting it now?

Mr. HARWOOD. The legislation leaves open how disclosures are to be done. I think it gives the Federal Reserve Board the authority to promulgate regulations for disclosures.

Our concern would be that disclosures need to be effective and meaningful to consumers.

Mr. LUETKEMEYER. The States have—are they pretty well in line with a lot of disclosure requirements?

Mr. HARWOOD. I think some of the disclosure requirements that are included in the legislation are currently being made in the States. I think in some instances States have different disclosure requirements. Some are more extensive, some are less extensive.

Mr. LUETKEMEYER. Okay, I see my time is up. Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Clay for 5 minutes for questions.

Mr. CLAY. Thank you, Madam Chairwoman.

Mr. Harwood, the FTC's most recent rent-to-own survey is more than a decade old, and we have experienced significant turmoil in the financial industry during the last few years. Do you think a more recent examination into the experiences of rent-to-own customers, and wider rent-to-own industry is warranted before Federal regulation or rent-to-own transactions should be considered?

Mr. HARWOOD. Representative, I actually asked our economists who worked on the 2000 study what their view was of it, and they tell me they stand by the results of the 2000 study, and continue to believe it is—the findings are valid and useful findings.

I should note that the economic disruptions that you are describing and problems you are describing are exactly the same economic disruptions that the FTC has been focusing on. Those kinds of issues have caused us to feel like we need to focus our resources on those issues rather than conducting additional studies in areas such as rent-to-own.

I will note that, third, when we did this study in 2000, it was done at a time when there was a great deal of concern, not just about the disclosure regime associated with rent-to-own, but also there were complaints about debt collection issues and other issues associated with the rent-to-own industry.

The study found those problems did not seem to be as substantial or as widespread as was thought at the time. We did the study suggesting that at least in that area, there was little that needed to be further studied.

Mr. CLAY. Thank you for that response. If there is well-settled law regarding rent-to-own transactions in most, if not all, States, is there a need to expand any consumer protections to rent-to-own transactions or should the States continue to decide how to treat these transactions?

Mr. HARWOOD. The complaints and the law enforcement actions I am aware of have all involved State actions. The ones I have looked at recently involved a variety of deceptive and abusive practices in the rent-to-own industry, and from what I can tell, the States effectively and aggressively took care of the problems.

Mr. CLAY. Thank you for that response. In accordance with FTC recommendations, we have provided additional protection for consumers through H.R. 1588, and that will include a new price tag requirement, new tag information must disclose whether an item is new or used, the case price for the item, the amount of each rental payment, the total number of payments required to obtain the property, and the full rental purchase price.

Do you think these new additions are sufficient to satisfy FTC recommendations?

Mr. HARWOOD. The kinds of disclosures that are required in 1588 are the kind that the FTC urged be considered in our 2000 report in this area. All of those disclosures go to helping consumers understand the components of what they are purchasing—the price components of what they are purchasing.

They make the pricing information more transparent and easier for the consumers to understand. Whether those are all of the provisions—all of the things you would want to see disclosed or whether there might be additional disclosures that would be helpful, it is hard for me to get into specifics, but all of those things are important to consumers.

Mr. CLAY. Thank you so much for your response.

And, Madam Chairwoman, I yield back the balance of my time.

Chairwoman CAPITO. Thank you.

I would like to recognize Mr. Canseco for 5 minutes for questions.

Mr. CANSECO. Thank you, Madam Chairwoman.

Mr. Harwood? In order to follow up on what Mr. Clay was asking with regard to the 2001 hearing that was held, shortly thereafter, a year after, a bill similar to H.R. 1588 was passed in the House.

A focus of that hearing was the 2000 FTC survey of the industry you described. Has the view or perception of the FTC towards the industry materially changed since then?

Mr. HARWOOD. Recognizing that we have different Commissioners now than the Commissioners at the time of the 2001 hearing and different senior management, there hasn't been any significant change in the way the FTC has perceived the industry.

We haven't been involved in law enforcement actions concerning the industry since then.

Mr. CANSECO. So would your answer be—

Mr. HARWOOD. I think the answer would be the views are relatively similar, if not identical, to the—

Mr. CANSECO. Okay, thank you. How well do the protections of H.R. 1588 address some of the FTC's concerns over consumer protection, in your opinion?

Mr. HARWOOD. As I had indicated, the disclosures that are required under H.R. 1588 are of the kind that we urged consumers should receive in our 2000 study. They help make the pricing more transparent for consumers. They help them understand the total purchase price of these items, and it allows them to compare the purchase price through the rental process or leasing process with just buying an item off the store shelf.

We believe those things are helpful to consumers. Whether all of the disclosures are necessary or whether there might be additional disclosures, we haven't analyzed the bill that closely.

Mr. CANSECO. And does the FTC view the bill as providing a floor for consumer protections in relation to State laws?

Mr. HARWOOD. My understanding is that it varies depending on which part of the bill we are talking about.

In many parts of the bill, as I understand it, for example under section 1018(a) it makes clear that the bill allows consistent laws and even laws that provide greater consumer protection to coexist. Under 1018(b), there is a provision that preempts laws that require APR disclosure.

So the answer is yes, in some ways it does—

Mr. CANSECO. Okay. So in your opinion, the bill could enhance consumer protection in a number of States whose laws regarding rent-to-own could be viewed as inadequate?

Mr. HARWOOD. Yes, and I am confident there are undoubtedly States in which it would provide greater consumer protections then currently exist.

Mr. CANSECO. And thus serve as an example to those States that have inadequate laws in order to rectify those inadequacies?

Mr. HARWOOD. I would think that the bill gives the FTC and the States the authority to enforce this law if it is enacted. So in those States, the State consumer protection authority would also have the authority to enforce this law.

Mr. CANSECO. Right. To follow up on Mrs. Maloney's inference to that, the FTC has chosen not to act. H.R. 1588 gives them specific authority to pursue penalties.

If a merchant is found to be in continual violation of the provisions of Title X, the Federal Trade Commission or a relevant State Attorney General can issue an order to cease and desist or pursue a civil penalty. Is that correct?

Mr. HARWOOD. Yes, that is correct. That is my understanding of the legislation as well.

Mr. CANSECO. Okay. Thank you—just to clarify that. And you mentioned, at the end of your testimony, that the rent-to-own market would only function properly if its business practices are transparent, fair and honest. Does the FTC believe that H.R. 1588 goes a long way towards meeting these criteria?

Mr. HARWOOD. The FTC believes that the goals of 1588, in fact, would help consumers better understand the purchase transactions and would provide the kind of transparency we are urging.

Mr. CANSECO. And in your testimony, you say that the FTC is not aware of a determination by the CFPB regarding their authority over rent-to-own transactions, but in your opinion, does the Dodd-Frank statute even give the CFPB authority over the rent-to-own business?

Mr. HARWOOD. I am told that at least one provision in Dodd-Frank raises questions as to whether the CFPB would have jurisdiction. But my expertise concerning Dodd-Frank is somewhat limited.

Mr. CANSECO. Thank you for your candor.

The rent-to-own industry predates the Truth in Lending Act and the Consumer Leasing Act. Are you of the belief that the industry's omission from those Acts was intentional?

Mr. HARWOOD. I honestly don't know the answer to that, Representative Canseco. I presume the Congress knew the industries were out there at the time they passed that legislation, but beyond that, I can't say.

Mr. CANSECO. Okay. My time has expired. I thank you, very much, for your candor.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you, Mr. Canseco.

And with no further questioners, I dismiss the first panel and thank Mr. Harwood for his answering the questions and his conciseness in answering them too. I appreciate that.

I will now call up the second panel.

Thank you. At this time, I would like to call up our second panel of witnesses. Thank you all for coming. I will introduce them individually.

Mr. Canseco will be introducing Mr. Soto after we hear from Mr. Hawkins, if that is alright.

And our first witness is Mr. Jim Hawkins who is assistant professor of law at the University of Houston Law Center.

Welcome, Mr. Hawkins.

STATEMENT OF JIM HAWKINS, ASSISTANT PROFESSOR OF LAW, UNIVERSITY OF HOUSTON LAW CENTER

Mr. HAWKINS. Thank you so much for inviting me to testify on this important bill.

I want to be clear from the start that my statements are only my own. I am not here on behalf of any consumer groups or industry groups or my employer, and I would ask that you would include my written statement in the record.

Chairwoman CAPITO. Without objection, it is so ordered.

Mr. HAWKINS. I want to make two quick points today. First, I want to talk about how this bill will protect consumers in many different States in important ways. And second, I want to talk about its relationship to State law.

First, I think this bill has the potential to provide a baseline of important consumer protection provisions for consumers in many States that have laws that are less strict. And I want to talk about two important ways that it protects consumers.

The first is by requiring that the disclosures of important terms are segregated at the start of the contract as opposed to being later in the contract or not all in one place. The reason this is important is because we all know that people don't always read their full contracts.

So, it is important that we get the essential terms upfront where it is most recognizable for people. And if you look at the State rent-to-own laws, I haven't found a single State that has this requirement that fees and information be segregated at the start of the agreement.

I am not saying there are no States with this requirement, but I haven't seen them yet. And so, I think this is a real way that the Federal bill under discussion could add consumer protections.

More importantly, however, is the second item I wanted to mention, and that is the reinstatement rights that this bill gives consumers. The thing that I think is very concerning about rent-to-own is that you could have a customer pay week after week and then, after paying for 70 weeks on a 78-week contract, run into car trouble, not be able to pay their rental payment, and lose the good and not be able to purchase it after all.

This bill provides protection for all consumers to allow them to reinstate and, depending on how long they have paid into the contract, gives them different lengths of period. So the people I am most concerned about are people who have paid in for more than 50 percent of the rental payments.

For those people, if you have returned the goods and paid half the contract, you have 120 days to reinstate the agreement if you have to return the goods. And again, I haven't seen other States with this protective of laws.

Some States, like Massachusetts, don't have any reinstatement rights whatsoever. So in Massachusetts, you could literally pay for

77 weeks and miss one payment and not be able to obtain that good you have invested in. And so, I think this law for these provisions and other reasons can help consumers.

I wanted to talk briefly about its relationship to State laws. Like other Federal consumer protection laws, this bill really does provide just the base, so if States think that there should be greater restrictions on rent-to-own, they are free to introduce those.

The only two things that they are not allowed to do under the Act are to treat rent-to-own transactions as credit and to require APR disclosures. For me, neither of these really protects consumers in States, in my view.

I think it is a poor regulatory strategy to try to pigeonhole this product into existing credit laws, because it is different. I can't think of another credit product that you can walk away from as soon as you don't want to pay any more on it. And, yet, that is what rent-to-own allows you to do.

The other consumer protection provision of APRs also provides minimal protection to consumers. And I want to clarify—my written statement said that Vermont, by statute, requires APR, and it is actually just by rule from the attorney general. So, I apologize for the inaccuracy.

But I don't think that this is an important disclosure for people to have. The most important reason for my conclusion is that it is inaccurate for almost everyone. As the FTC survey said, 30 percent of the people who use rent-to-own don't actually purchase the agreement. So, an implied APR has no meaning to those people.

And to create the implied APR, you would have to compare the total cost of renting versus the cash price. But almost no one acquiring ownership through rent-to-own makes the total payments. The FTC survey found that 47 percent of people purchase their good within a year.

So, they didn't pay the total payments. They, sometime within that year, paid a discounted amount off of the total price. People in the industry say that only 2 percent of people make the total payments. So for everyone except those 2 percent, APR is misleading.

I thank you and look forward to your questions.

[The prepared statement of Professor Hawkins can be found on page 57 of the appendix.]

Chairwoman CAPITO. Thank you.

Mr. Canseco?

Mr. CANSECO. Thank you, Madam Chairwoman. I would like to welcome to the hearing today, Mr. Roy Soto from San Antonio. While working for a large rent-to-own chain, Mr. Soto and his two business partners, 10 years ago decided to take a risk and open their own store, Premier Rental Purchases in San Antonio, Texas.

Today, their business has expanded to 5 stores, and they employ 40 people while providing a valuable option to residents of San Antonio, Texas. His is a true success story, and I am very pleased he is here to testify today.

Thank you, Mr. Soto, for being here.

Chairwoman CAPITO. Thank you.

Mr. Soto is recognized for 5 minutes.

STATEMENT OF ROY RICHARD SOTO, OWNER, PREMIER RENTAL PURCHASE

Mr. SOTO. Madam Chairwoman and members of the subcommittee, thank you for inviting me to testify today in support of H.R. 1588. My name is Roy Richard Soto.

I would ask that the Chair put my written statement in its entirety in the record.

Our company operates five rental stores in San Antonio, Texas. I have two equal partners, Trinidad Rubio and Brian Clussman. Our business name is Premier Rental Purchase.

My partners and I have been in the rental business for 20 years. Early on, we knew that we wanted to own and run our own stores. We each had a vision for our own company, in a business culture, we could create drawing from all of our experience and knowledge of the business.

In 2001, we came up with a business plan for our own rent-to-own business. Over the course of the next 4 years, we showed the business plan to 12 different banks, explaining our vision and how the rent-to-own business works. All 12 listened politely and then turned our loan application down flat. We were finally able to get an SBA loan as a franchise in the Premier organization, and we opened our first store.

Today, our four Premier stores in San Antonio, as was previously mentioned, employ 40 employees with an annual payroll of $1.2 million. At Premier, we rent high-end quality TVs, computers, furniture and appliances—the convenience of modern 21st Century life—to consumers on a weekly, bi-weekly, semi-monthly, and monthly basis.

The customer chooses the product he or she wants—perhaps a washer and dryer to avoid carting children and laundry to the aundromat every Saturday. A customer is never obligated to make the next payment. The customer never goes into debt.

Ours is a no-obligation rental transaction. If the customer completes the full term of the agreement or exercises an early purchase option, ownership transfers along with any unexpired manufacturer's warranty.

We also provide free delivery and installation of our products, a 90-day same-as-cash option, and full service including repair or replacement of the product during the entire rental term. We provide the use of a loaner item if we have to pick up the item and bring it back to the store for repairs.

Our company also offers lifetime reinstatement. That means that if some unexpected financial emergency arises, customers can simply return the unit to us. If their situation changes in a week, 6 weeks, a year, or 6 years, they can come back into the store and pick up the agreement right where it left off.

We will redeliver the same unit if we still have it, or we will deliver a unit with comparable quality and condition. Rent-to-own is an attractive choice for a wide variety of consumers, because the customer never goes into debt with us, and we do not run a credit check on our customers before we rent to them.

If a customer tells us the truth about who they are and where they live and where they work, we are happy to do business with them without ever having to delve into their financial history. Fur-

thermore, we do not report our customers to credit reporting agencies.

Rent-to-own is attractive to young people who are new to the marketplace and may not have established a credit history. The transaction is attractive to many Americans who have blemished credit. Rent-to-own is also attractive to those who want to try it before they buy it.

And, lastly, rent-to-own is attractive to many of our military service folks, because they often are in transition with their residence, and we often are able to serve them.

We call it rent-to-own or rental purchase even though in our company, the percentage of customers who complete their chosen rental term or exercise the early purchase option averages about 35 percent. Our customers often do not purchase the goods that they are renting because their plans change, their tastes change, their needs change, financial emergencies arise, or people move.

And because there is no obligation ever to make that next payment, people just change their minds. This is the business we are in.

That means we make a lot of deliveries out of our stores to our customers' homes. We also spend a lot of time picking up merchandise when customers choose to end their rental agreements. Then, we have to refurbish that unit if it comes back in rentable condition—and occasionally it does not—and then find another rental customer and make another delivery.

We lower the rental rate on previously rented items. A piece of rental inventory might get rented 3 or 4 times before anyone owns it or we have to take disposition steps to move the product from inventory.

Chairwoman CAPITO. Mr. Soto? If you could wrap up on your statement. Sorry. Your 5 minutes—give us a conclusion quickly, and—

Mr. SOTO. I will be happy to answer any of your questions.

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

Chairwoman CAPITO. Thank you.

Our third witness is Ms. Vivian Saunders, a rent-to-own customer from Lewiston Woodville—did I get that right?—North Carolina. That is a long name for a town. Welcome.

STATEMENT OF VIVIAN SAUNDERS, RENT-TO-OWN CUSTOMER FROM LEWISTON WOODVILLE, NORTH CAROLINA

Ms. VIVIAN SAUNDERS. Thank you, and good morning, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee. Thank you for inviting me to speak this morning.

My name is Vivian Saunders, and I am a longtime and proud rent-to-own customer from Lewiston Woodville, North Carolina. I first used rent-to-own in 1991 when my son was a toddler.

He was allergic to disposable diapers, so we had to use cloth diapers, and we had to clean those cloth diapers. It seemed like if I wasn't sitting at the laundromat, I was driving to and from the laundromat. It was time-consuming and expensive.

I couldn't afford my own washer and dryer, and none of the local stores would give me credit. Then, a neighbor told me I could rent-

to-own a washer and dryer. Before long, I was doing laundry at home, saving on gas, and spending more time with my family. And I wasn't tossing change into a washing machine I would never own.

The rent-to-own folks didn't care about my credit status. They worked with me and had faith in my intentions to pay. When we had trouble paying, they gave us the time we needed. No other store in my community would do that.

Over time, through rent-to-own, we made our house a home. Just as we were proud to have our own washer and dryer, we took pleasure in the nice furniture we added to our home. Our kids didn't have to feel embarrassed, as they grew up, to bring people to our home. Later, in the 1990s when we hit financial hard times when my husband lost his job, we were able to return a microwave we were renting. That helped us get through those times by lowering our bills.

Because it was a rent-to-own agreement, we could stop paying without causing negative repercussions like a default on our already bad credit. On another occasion, I rented a big screen television for a short time because a community group I was working with needed it to view videos related to our cause.

When we were done, we returned it with no obligation to pay anymore. I liked the television so much that later, I got it for myself. Rent-to-own gives people a way to improve their lives even if they don't have much to start with.

You see, our family lives in one of the poorest counties in America, North Carolina's Bertie County. Day in and day out, I see firsthand how kids are picked on and demoralized because of their living situation. They are outcasts for being poor.

Having a home with nice furniture and a nice refrigerator empowers people. Rent-to-own empowers them by giving them the ability to furnish their homes with things most people take for granted day-to-day. And I know a little bit about how self-worth impacts people.

I used to run an alternative school and now run an afterschool program for some of the poorest kids in our county. The student enrollment in this program is 6th to 12th grade boys. They have been expelled from the public school system and few believe that investing in these boys' future would yield any positive outcome.

We brought technology, computers, and challenging curriculum to what many refer to as discarded boys. But the best computers and latest technology mean little without respect for these students and the belief that they can achieve anything.

It is that powerful combination that is helping these students to improve their educational outcomes and grow into caring young men who also want to help others in their community.

It was not simply owning things like new furniture and a refrigerator but the fact that I felt worthy of ownership, felt valued as a customer. What I have learned living and working in Bertie County is the best way to get things accomplished is to be honest and respectful.

If this experience has taught me anything, it is the value of dignity and self-esteem in the lives of today's kids. I have also learned that out of practical day-to-day lives, you need to have plenty of refrigerators and freezers on hand to prepare meals for these kids.

And today, I am fortunate to be in a position to have donated some of my old refrigerators and freezers, which I acquired through rent-to-own, to the schools that I run.

I am also fortunate to have been unharmed in a string of tornadoes which tore apart my community on April 17th. Ten families I know lost their entire homes. Others I know had to move because of damage to their homes. While their homes were being repaired and rebuilt, those families needed ways to manage their day-to-day lives.

So they went to local rent-to-own stores and rented beds and furniture to tide them over until they could move back into their homes. Rent-to-own has helped me in so many ways for so many years, and helps others in my community. Their help goes beyond just getting nice things for my home.

The pride it gave me to be able to provide for my family has played at least a small part in helping me get where I am today, to be able to help others. I am proud to say I am a rent-to-own customer. I hope my testimony has given some perspective on why rent-to-own works well for so many people, including my son, whose diapers introduced me to rent-to-own 20 years ago.

We are just two of the millions of customers who have relied upon and appreciated rent-to-own over the years.

Thank you for allowing me to give my testimony.

[The prepared statement of Ms. Vivian Saunders can be found on page 74 of the appendix.]

Chairwoman CAPITO. Thank you. Very good. I appreciate it.

And our final witness is Ms. Margo Freeman Saunders, of counsel, National Consumer Law Center. Welcome.

STATEMENT OF MARGOT FREEMAN SAUNDERS, OF COUNSEL, NATIONAL CONSUMER LAW CENTER

Ms. MARGOT SAUNDERS. Thank you, Madam Chairwoman, Ranking Member Maloney, and members of the subcommittee.

The National Consumer Law Center thanks you for inviting me to testify today. I offer my testimony on behalf of our low-income clients as well as the Consumer Federation of America Consumer's Union and the U.S. Public Interest Research Group.

On behalf of the millions of consumers that we collectively represent, we urge you to reject H.R. 1588. This bill will not help consumers. It will only hurt them.

Consumers need protections from the exorbitant prices that rent-to-own dealers often charge consumers. They need protections from the high fees. They need assurances that they can reinstate their contracts with reasonable fees and under reasonable conditions after they have spent considerable sums trying to purchase the items.

While we believe that even the most precise disclosures would not adequately protect consumers in these transactions, the disclosures required by this bill provide misleading and deceptive information. The topic today is whether there is a potential role for Federal regulation of rent-to-own transactions, and we think there is. Unfortunately, this bill does not provide it.

The intention of this bill is to preempt the laws of four States: Minnesota; Wisconsin; New Jersey; and Vermont. In those States,

the courts have held that the rent-to-own transactions are consumer credit sales, and thus are governed by the interest rate caps required of consumer credit sales.

As we know, most rent-to-own consumers enter transactions with the expectation of buying, and most contracts do not result in the purchase, but most from the FTC and the APRO, the Association of Progressive Rental Organizations information we also know that most consumers who intended to buy succeed in buying over several contracts.

So, the rental cost on a periodic basis is the critical factor to those customers. I have reviewed every State law, and I can tell you that most of the information required in the contract disclosures that is in H.R. 1588 is already required in most State laws.

Almost all, but not Massachusetts—Mr. Hawkins is correct—State laws do already require reinstatement rights. But this bill is new in that it does require disclosures of cash price. What the FTC had recommended were price tag disclosures. The FTC recommended disclosures on the item itself. This bill does not require price tag disclosures. It simply requires information to be somewhere in a catalog on the floor.

Moreover, when you look at the information that is required on those price tag disclosures—if you look at page seven of my testimony, I have done an analysis of the information that would be required on the point of rental or price tag disclosures, and the actual cost to purchase the items, you will see that there is a significant difference.

The price tag disclosures would show that the rental purchase price is $37 for this sample television, but the actual cost would be closer to $45. The price tag disclosure would show the total rental purchase price would be $3,900, whereas the total cost would be over almost $4,700.

The information in the disclosures would not be helpful if they are deceptive. Moreover, unlike every other Federal consumer protection law, like the Truth in Lending or Electronic Funds Transfer Acts, the Board is not provided with adjustment authority.

The Board would not have the authority to adapt the disclosures and make them appropriate. There are no meaningful penalties in this bill, and the penalties in this bill are identical to the penalties in almost every State law.

And there is no assignee liability for anything other than violations that are apparent on the face of the document. So we do believe that there are disclosure and substantive protections that Federal law could provide to this industry.

We agree that people like my seat mate, Mrs. Saunders, have benefited from this industry. We are not trying to shut down the industry. But we think there are substantial ways that the disclosures and the substantive provisions could be improved.

I would be happy to answer any questions.

[The prepared statement of Ms. Margot Saunders can be found on page 64 of the appendix.]

Chairwoman CAPITO. Thank you.

I want to begin by thanking you all for your statements, and asking Ms. Vivian Saunders, you have heard Ms. Margot Saunders

state that in her research showing that some of the disclosures were—she disputes some of the disclosures.

When you first went for the washer and dryer, did you feel as though you were presented with information that accurately portrayed what your obligation was going to be, what your purchase price could be, and how do you feel about the first transaction that you made?

I understand it gave you a way to do something that was extremely important to you as a family.

Ms. VIVIAN SAUNDERS. Yes, ma'am. When I first went to rent-to-own, it was completely—they go through the contract that you are in step-by-step. They let you know that you have a choice. It is a conscious decision whether you want to make that choice to go through with that contract or not.

They were very transparent with what they told me I would have to do. They were very transparent with my obligations, and they also told me that if I ran into difficult times to let them know—don't avoid the store, just call them, because they had measures in place that would help me, and if I couldn't follow through on the payment, that I could return it at any time.

Chairwoman CAPITO. Did you return those—the washer and dryer?

Ms. VIVIAN SAUNDERS. No, ma'am. I never returned the washer and dryer.

Chairwoman CAPITO. So, you ended up fulfilling your payment agreement and they became yours?

Ms. VIVIAN SAUNDERS. Yes, ma'am. I fulfilled my payment agreement—

Chairwoman CAPITO. Okay.

Ms. VIVIAN SAUNDERS. —with the washer and dryer.

Chairwoman CAPITO. Mr. Soto? I have learned that in these agreements, there are no credit checks.

Mr. SOTO. Yes, ma'am.

Chairwoman CAPITO. What kind of a—we have heard so many different arenas here before the committee where everybody has a credit score and you meet certain obligations and credit card, mortgages, etc., etc.

Obviously, this is a business model that works for your industry. What has been your—I guess, you don't have a—do you have a default rate, or people who just walk away or—can you tell me how not doing any kind of credit check or anything is good for your business?

Mr. SOTO. If we did a credit check, we probably would find that the folks who are coming into our stores wouldn't qualify.

Chairwoman CAPITO. Right.

Mr. SOTO. So that is not even part of our program. What we look at is we have them fill out an agreement that asks for information on their residence, information on their employment. We ask for a few references, and based on that, we will rent to an individual.

So it is very, very simple. If the information you have given is true, then we will do business with you.

Chairwoman CAPITO. Thank you for that. In terms of the information, Ms. Saunders of the National Consumer Law Center, your

opposition is that there could be better disclosures, more upfront disclosures.

In light of what you have heard from the two witnesses—I am sure you have heard this before—and then our previous witness saying that there have been a very small amount of consumer complaints concerning this industry. Does that change your opinion at all or reform it or?

Ms. MARGOT SAUNDERS. At the National Consumer Law Center, we receive a lot of complaints about rent-to-own from the lawyers around the country who represent these clients.

Chairwoman CAPITO. Generally, what are the top two complaints?

Ms. MARGOT SAUNDERS. Pardon me? I didn't—

Chairwoman CAPITO. The general top two complaints—that it doesn't work or they feel like they are getting ripped off or—

Ms. MARGOT SAUNDERS. Price and the refusal to reinstate. Most consumers of rent-to-own would be more likely to complain, if they are going to complain to anyone, to a local legal services or to an attorney general.

These are among the most unsophisticated and least financially proficient consumers in the country, and they are unlikely to think to complain to the FTC.

But I do have to congratulate the industry that in the last 20 years, we have seen a substantial reduction in the types of repossession and unfair tactics that we used to see. And I myself rented-to-own from a dealer in West Virginia and was very satisfied.

I think this industry is very successful in the way that it treats its customers. I think they treat their customers very well, and our complaint with the bill is not, again, that we want to get rid of the industry, but to mandate on a Federal level more appropriate and less deceptive disclosures and actually deal with the price, which is the real problem that we have with the industry.

Chairwoman CAPITO. Thank you.

And quickly, Mr. Soto, I am curious, has your business changed at all over the last 2 or 3 years in light of the financial situation in the country and the higher unemployment? You have to be brief, though, so I don't violate my time.

Mr. SOTO. I am sorry, with regard to—

Chairwoman CAPITO. With regard to more people coming in. Is your business bigger, better? Are you seeing people renting more utilitarian items as opposed to fluff items—what would be considered fluff items?

Mr. SOTO. I can tell you that our business is doing well. And certainly, when the economy changes, there are different groups of people who will come into this type of transaction.

So we are not only finding the consumer who we place in that category of being the less—the one that is less financially prepared, but we find folks of all means coming in and doing business with us.

Chairwoman CAPITO. Thank you.

Mrs. Maloney for 5 minutes?

Mrs. MALONEY. I thank all of the panelists for your testimony today, and I would like to first ask Ms. Margot Saunders, as many people testified that most States, including my State, New York,

treat rent-to-own contracts as leases as this bill would do—the Federal proposed bill would do. Why then shouldn't we just adopt the standards that most States have set?

Why, in your opinion, is it better to treat these as credit sales?

Ms. MARGOT SAUNDERS. Mrs. Maloney, I have been fighting rent-to-own legislation for almost 30 years, and I did, indeed, start out pushing for these transactions to be dealt with as credit sales, but we are no longer taking that position.

We recognize that rent-to-own transactions are different than credit sales. We are simply—in this testimony—defending the rights of four States to treat these transactions as credit sales as those States have chosen.

And in those States, the transactions are much—the costs of the transactions are required to be much lower, and that seems to me to be a matter of States' rights protecting consumers that it is my job to defend. But if I were to write a Federal bill that dealt with rent-to-own, I wouldn't insist that they be treated as credit sales.

Mrs. MALONEY. One of the items that they pointed out in testimony is that the consumer will be able to return the merchandise at absolutely any time. Does that change your mind a bit that the consumer will have this new right under the bill?

Ms. MARGOT SAUNDERS. The consumer has that right under every State law that governs rent-to-own, and in the five States which are slightly different, including North Carolina, and Vermont, they have that right.

In New Jersey, Minnesota, and Wisconsin, which has no rent-to-own applicable legislation, nobody is stopping them from returning it. So, I don't think this bill adds that aspect in any way to—it doesn't protect consumers in that way.

Mrs. MALONEY. I think, Professor Hawkins testified, in a sense, that this was a new protection, but—

Ms. MARGOT SAUNDERS. The right of reinstatement in this bill is new and would apply to Massachusetts alone. Every other State, so far as I am aware, that has a rent-to-own transaction bill, already has a right of reinstatement.

Mrs. MALONEY. And in his prepared testimony, he cites protections that he believes that the bill will provide in terms of disclosures, the right to reinstate, as I said, and other protections.

Do you think that these protections are sufficient that he testified to?

Ms. MARGOT SAUNDERS. No, ma'am. I think the problem, as I described in my written testimony and my oral testimony, is that the disclosures required in this bill are downright deceptive, and that the board—if they were the regulatory authority under the bill wouldn't even have the authority to fix those disclosures, unlike every other Federal consumer protection law.

Mrs. MALONEY. But I believe he testified that it would not preempt any of the State laws that exist.

Ms. MARGOT SAUNDERS. It would preempt five State laws, actually—four State laws, specifically, and also have a preemptive effect on North Carolina with no real downside there.

Mrs. MALONEY. Only the States that defined it as credit, correct?

Ms. MARGOT SAUNDERS. Yes.

Mrs. MALONEY. Okay. In your view, does the law create a true Federal floor for consumer protections for these transactions?

Ms. MARGOT SAUNDERS. To the extent that the four States—New Jersey, Minnesota, Wisconsin and Vermont—State laws would be preempted, and those State laws are better than this law. This is not a floor. It is a ceiling.

Mrs. MALONEY. Oh, you see it as a ceiling. He testified it was a floor, and he also testified, I believe, that it would not in any way weaken State laws, and you—

Ms. MARGOT SAUNDERS. Mrs. Maloney, I have been a consumer law lawyer for over 30 years. I have published numerous books. I have testified before this committee and the Senate Banking Committee over 30 times. I have published numerous law review articles, and I am here today to tell you that I disagree with Mr. Hawkins.

Mrs. MALONEY. And would you testify on how the rent-to-own customer can compare costs with others, say merchandise that is available, possibly traditional—my time has expired.

Chairwoman CAPITO. Thank you, Mrs. Maloney.

Mr. Luetkemeyer for 5 minutes for questions?

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Ms. Vivian Saunders?

Thank you very much for your testimony today. It was very well done. I think one of the key points in your testimony that you didn't say—you skipped over—is that by being able to go to the rent-to-own store, you were able then to establish a credit history.

Ms. VIVIAN SAUNDERS. Yes, sir.

Mr. LUETKEMEYER. And as a result, you were then able to purchase other things later on as a result of the credit history you established. I think it is a really key point that it allows people who may have no credit history at all or a bad credit history to be able to go back and start over and establish adequate credit history.

And one of the—I think, it is a key point that I appreciate that you made in your testimony today.

Ms. Margot Saunders?

You were talking about the disclosure being deceptive. Can you explain why it is deceptive?

Ms. MARGOT SAUNDERS. Yes, sir. If you take a look at the definition of rental payment in section 1001, subsection 12, you will see—and that is the definition—that is the information that has to be included in the point of rental disclosures as required in section 1010, and you compare that to the periodic payment that is in section 1001, subsection 10, which—

Mr. LUETKEMEYER. I am talking about—you said there is something deceptive in the disclosure to the consumer? You are talking about the bill.

Ms. MARGOT SAUNDERS. There is something—the bill would require disclosures that would actually be deceptive, because the point of rental disclosures that would be required were actually different than the real cost.

In other words, the rent-to-own merchant would be required under this bill to disclose $37, for example, as a point of rental disclosure. So the catalog or the disclosures hanging from the tele-

vision would say $37, when actually the consumer would have to make a weekly payment of $44.

Mr. LUETKEMEYER. Okay.

Mr. Hawkins?

Would you like to elaborate on that a little bit? What do you think about that?

Mr. HAWKINS. I think we have read the law differently in two important ways. In one way, just about whether or not you have to disclose things on the price tag.

Ms. Saunders said that you don't. You could just do it in a catalog. But I read 1010(b)(1) differently. That is the one that says a merchant can make the disclosure in a catalog. It says, "If the merchandise is not displayed on the merchant showroom or if displaying a card tag would be impractical due to the size of the merchandise."

So I think it is in—I think—from the way I have read the law, it is inaccurate to say that you could just put it in a catalog. You could only do that if you didn't actually have that good on the floor. And I have no idea what it means that it is impractical due to the size of the merchandise. I don't know if that means merchandise is really, really huge or really, really small, but it is hard for me to imagine a situation where that could occur.

So I don't think it is deceptive for that reason. And in terms of the total cost, even the price tag disclosures require you put the rental purchase cost, which is in section 101(15), which that rental purchase cost is very similar to a finance charge in the Truth in Lending Act, in 15 U.S.C. 1605.

The same sorts of fees that are not included, like life insurance that you don't have to take and you signed away saying, I don't have to take this life insurance. That is not included when you calculate a finance charge under the Truth in Lending Act.

And I think that the example that Ms. Saunders uses of someone having to pay a delivery fee and that not being a fee that is disclosed under this rental purchase cost is simply inaccurate.

I haven't talked to every single rent-to-own firm in America, but most and the biggest don't charge for deliveries as Mr. Soto testified himself. And so, to me, adding that as a cost is a bit of a red herring in saying that it is deceptive for that reason, but it could be that we are just—I have read the law wrong, but that is how I interpret the provisions.

Mr. LUETKEMEYER. Okay. I see my time is about up, so I will just yield back.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. The gentleman yields back.

Mr. Watt for 5 minutes?

Mr. WATT. Thank you, Madam Chairwoman.

Let me start by welcoming my friend, Ms. Vivian Saunders, and my friend, Ms. Margot Saunders, both of whom have spent a substantial amount of time in North Carolina or are residents of North Carolina. I am always happy to have folks here from North Carolina, even if they seem to be on opposite sides of this issue. I am not sure they are, to be honest with you.

So let me make sure that I am clear about whether they are or not.

Ms. Vivian Saunders?

I assume that whatever dealings you had were all within the State of North Carolina?

Ms. VIVIAN SAUNDERS. Yes, sir.

Mr. WATT. Okay. So none of it was across any State lines or anything?

Mr. Soto?

Mr. SOTO. Yes, sir.

Mr. WATT. What percent of your business is in the State of Texas as opposed to with customers who can take your—first of all, what percent of your business is—what percent of the contracts are actually entered in the State of Texas?

Mr. SOTO. One hundred percent.

Mr. WATT. Okay. And if somebody takes one of your televisions across a State line, what rules apply?

Mr. SOTO. We typically try to find a solution that makes sense for the consumer and for us. If the consumer wants to keep the product, we will work out an arrangement.

Mr. WATT. But your assumption is that your deal is going to be inside the State of Texas. Isn't that right?

Mr. SOTO. That is typically how it works.

Mr. WATT. Okay.

Mr. SOTO. We do service a certain community, and most of our customers are from within a 3- to 5-mile radius.

Mr. WATT. And Ms. Vivian Saunders, again, even you referred to your rent-to-own store as your local rent-to-own store. I noted that.

Now, the question I have is, I guess you don't really have any complaint or dog in the fight, lets—as we would say in North Carolina—about whether we are raising or lowering the standards for the State of Vermont, or do you have any opinion about what we ought to be doing about Minnesota, Wisconsin, New Jersey, and Vermont?

Ms. VIVIAN SAUNDERS. I feel like if the Federal—if it is approved by you guys that it will be across-the-board, you know.

Mr. WATT. But even if it is lowering the standard in those States, or changing the standard—your State is a local—your transactions are local. Why would you think the Federal Government ought to be dictating the standards in this case?

Ms. VIVIAN SAUNDERS. I think, without—and this is just my opinion as Vivian—without even the intervention of anybody, this industry has improved so much—

Mr. WATT. I think we all have conceded that.

Ms. VIVIAN SAUNDERS. But I think also that if you guys being the body that governs everybody in the United States, if you intervene that, out of respect, for your body, you are stepping in, it makes a statement to everyone.

Mr. WATT. You would preempt all the State laws under that theory. That is a fair way to look at things.

Ms. VIVIAN SAUNDERS. Yes, sir.

Mr. WATT. But these transactions don't—as Mr. Soto has indicated—take place across State lines. And I can't figure out why even my most—I just can't figure out why somebody wants to apply Federal law to something that, historically, has been taken care of

within the States, and even Ms. Saunders—Vivian Saunders, that is—in your experience, all of your experiences have been good.

That is why I started my original questions of the prior panelist by saying I am neither an advocate for, nor an adversary of, the rent-to-own industry. The question is, where should they be regulated?

And that is the question I still haven't quite figured out. I have figured it out for my own purposes. I can't figure out why some of my colleagues, who tend to be States' rights advocates on most issues, feel like all of a sudden, this ought to be a Federal issue.

But I am still trying to figure that out. And I am going to keep working at it. I appreciate you all being here, and—

Mr. SOTO. Mr. Watts? May I respond to that?

Mr. WATT. Yes, sir. You may if the chairwoman will allow you to.

Chairwoman CAPITO. We will give you 30 seconds to respond, Mr. Soto.

Mr. WATT. I am fine with it, but I am out of time.

Mr. SOTO. I just wanted to mention that when we were looking to secure a loan to open our business, we were dealing with many national banks, and we found that, because there was uncertainty in the definition of rent-to-own, it made it difficult for us to be able to secure a loan.

We visited 12 banks, and each one of them turned us down. So it—

Chairwoman CAPITO. Thank you.

Mr. SOTO. Thank you, ma'am.

Chairwoman CAPITO. Mr. Canseco for 5 minutes for questions?

Mr. CANSECO. Thank you, Madam Chairwoman.

Mr. Hawkins?

Let me ask you something. Ms. Margot Saunders stated that this bill does not provide a floor, that it provides a ceiling. Do you find that to be true?

Mr. HAWKINS. I do not. It is like every other Federal consumer protection law—like the Fair Debt Collection Practices Act that says if States provide greater consumer rights, which courts uniformly read as a one-way ratchet. If they restrict businesses, then they are not inconsistent.

There are only two distinct ways that it prevents States from acting, and I don't think those are things that actually protect consumers, one of which—Ms. Saunders has said that she no longer thinks it is important to treat it as a credit sale. So really, APR is the only possible restriction this is making on the States that seems to matter.

Mr. CANSECO. So, in other words, if the State has a more stringent rule or regulation on its books, it defaults to the State.

Mr. HAWKINS. Right.

Mr. CANSECO. Okay. But all it does is just provide a floor of minimum standards for any State that is under that floor?

Mr. HAWKINS. That is my understanding.

Mr. CANSECO. Thank you, sir.

Mr. Soto, please describe the typical customer who walks into your store: age; income level; family status.

Mr. SOTO. We are finding that is changing with the economic situation being what it is. We typically find, I guess, that our customer will range anywhere from early 20s to late 40s and 50s. We find that individuals are renting for different reasons. Some come in wanting to rent-to-own. Some come in to rent just for a specific period of time.

Some want to try it; they are not sure whether they want to own it. Sometimes, there is a loss of income in the household and they are uncertain about their creditworthiness. They are not comfortable with entering into additional credit, so they want to do something that if they have to exit out of it quickly, they can.

So it is an ever-changing customer.

Mr. CANSECO. What would they do if these customers did not have the option of a rent-to-own industry?

Mr. SOTO. If they didn't have an option?

Mr. CANSECO. Yes.

Mr. SOTO. The other options that are available to them are things like craigslist online, maybe furniture stores that sell used product, maybe pawn shops. But what you find in those environments are products that have pretty much lived their life. You find that people are selling items after they have had them for, maybe 10 years.

Within our system, the product will typically liquidate inside of 2 years. So, customers know if they are getting something that has been previously rented, obviously, that merchandise is reduced down based on perceived value.

The customer knows that they are getting a true value. And not just the product, but they also are getting many other benefits that come with it.

Mr. CANSECO. Like a guarantee.

Mr. SOTO. Absolutely.

Mr. CANSECO. And repair.

Mr. SOTO. I can tell you that our customers have a money-back guarantee, the satisfaction guarantee. I can tell you we have lifetime reinstatement. I can tell you that we service our product 100 percent. We provide a loaner if we have to bring their product in. So, there are numerous benefits that we offer.

A customer doesn't have to pay extra for deliveries. We set it up. There is a lot of value that is built into a rental agreement.

Mr. CANSECO. You have recently expanded your business to a total of five stores within the San Antonio area.

Mr. SOTO. Yes, sir.

Mr. CANSECO. Do you have an estimate as to how many people you have employed in these stores over the past years?

Mr. SOTO. How many people we have employed?

Mr. CANSECO. You have employed, yes.

Mr. SOTO. I can tell you that we—each time that we open a new location, we are employing six, seven, eight individuals, depending on the growth of the store.

And each year, we have been adding a new store. So, we are excited about the opportunities to expand, but again, that uncertainty of the definition of our transaction—it makes it difficult when you are talking to bankers who don't always understand the transaction.

Mr. CANSECO. One final question before my time is up. Would the bill that Mr. Clay and I are introducing provide certainty to the industry and, in turn, boost store owners' ability to expand and create more jobs?

Mr. SOTO. Absolutely. And, again, it is balanced in that it provides that safety net for the consumer, and it also provides that certainty for us so that individuals—so that everyone knows the difference between a lease and sale. And that is basically what this is. It is just defining who we are and how we operate.

I can tell you that we exceed everything that is in that bill. Those are not things that shouldn't exist out there. And for it to be consistent throughout the country, that would strengthen the industry.

Mr. CANSECO. Thank you, Mr. Soto.

And thank you, all panel members, for coming here today. My time has expired.

Chairwoman CAPITO. Thank you.

Mr. Meeks for 5 minutes for questions?

Mr. MEEKS. Thank you. One of the things of being close to last is all the questions have been asked. They just haven't been asked by me. So first, to Ms. Vivian Saunders, let me just also—as well as all the panelists, thank you for your testimony.

And I can relate to what you have testified to, Ms. Saunders, because I did the same thing. I can recall when I grew up in public housing, and when I went to college—in fact, here in Washington, D.C.,—my dad came down, and he didn't have much money left, and he saw that I was sleeping on a beach chair, because I couldn't afford anything else.

And he said, I can't have you sleeping on a beach chair—I was going to law school at the time—we have to get something for you to sleep on. And, going to the stores, we couldn't afford it.

So the choice was sleeping on a beach chair, or we went to a Rent-A-Center and I was able to rent furniture for the apartment that we were in so that I could sleep on a bed and—a lot of folks don't understand, sometimes when you don't have a lot of money—when your option is something or nothing.

And times when—if you go to a Sears or some other department store, and if you don't have the good credit, you can't get it, so your option would be nothing. Or even there, you find that, in trying to buy it, the interest rates are 30 percent, 29 percent, 28 percent anyway, and you don't have the right to return it when you are done with it if you need to return it. So, it is only a temporary piece.

I could really relate to your testimony before us today. And I have been fortunate enough to also have had the opportunity to see that point of view but also now understand Mr. Soto's point of view as a business owner and why that is important for you to be able to expand and have businesses in the community.

It is good business for you. We want you to do that, and we want you to make some money, because if you are making some money, that will also create some jobs for local individuals in the community, because in my district where we have Rent-A-Centers—and I walk in there, I see that they have hired individuals who live in

the community who otherwise would have been without a job and income.

And that helps them. So it is from both ends of the spectrum that I see that this is good, and from the testimony that I hear, even from Ms. Margot Saunders that she has had the opportunity that she had to rent. So I think that she wants to preserve the industry and, though, there are issues and questions that we all want to tighten up and try to make sure that we work it.

So with that, my quick question, I guess, first, to Professor Hawkins is, do you think that the CFPB will have the authority or not have the authority to regulate rental-to-purchase agreements?

Mr. HAWKINS. I think it is very unlikely under the Dodd-Frank Act that they have that authority, because they are given the authority over financial products or services, and there is a long list of things that qualify for that, none of which seem to match the rent-to-own transaction.

The definition of "credit" involves deferring debt or deferring payment to purchase, and neither of those, as you have heard today, are involved in a rent-to-own transaction, and the CFPB can regulate leases but only if they are for greater than 90 days.

There are no rent-to-own leases that I know of that are longer than 90 days. So I think it is very unlikely that, even if they wanted to regulate the industry, they would legally have the power to do so.

Mr. MEEKS. Ms. Saunders?

Do you agree?

Ms. MARGOT SAUNDERS. Yes, I do.

Mr. MEEKS. Okay.

Mr. Hawkins?

Do you believe rent-to-own customers are better off with or without the point of rental disclosure in section 1010 of H.R. 1588?

Mr. HAWKINS. I think they are better off with them. And I wanted to just make a point. Earlier, Ms. Saunders had mentioned that she had looked at every rent-to-own law and said that the disclosures in those laws were all better. And I just wanted to clarify, I was not disputing that fact at all. What I am disputing is that I don't think there are any existing rent-to-own laws that require you to segregate all of that important information and put it at the front of the contract.

Because, as everyone in here knows, most of us don't read all 10 pages. We just read that first page. And so, to me, that is the major advance that this bill provides, not that it provides better definitions of rental costs or requiring you to say this is a used or new good.

Mr. MEEKS. Thank you, and I think I am out of time.

Chairwoman CAPITO. I would like to thank the gentleman.

And, Mr. Jones, for 5 minutes?

Mr. JONES. Madam Chairwoman, thank you very much. And I sit here in great appreciation. I think this bill started maybe in the 105th Congress, and I introduced it in the 107th Congress with a cosponsor from the Democratic side, and we actually got it to the House Floor and through the House, and it died in the Senate.

But I believe sincerely that—and Ms. Vivian Saunders, I want to thank you. You have done so much wonderful work with young

people who would never have had a chance in life if it had not been for your love, and I know God has blessed you in many, many ways.

And, Margot Saunders, I believe we had some legislative issues when we were in the general assembly, and you were there at that time. It is good to see you again, as well.

Ms. MARGOT SAUNDERS. Thank you.

Mr. JONES. And, I guess, my interest in this—I have three military bases in my district—Camp Lejeune, Cherry Point Marine Air Station, and the Seymour Johnson Air Force Base—and I think about the young soldiers, the young marines, who many times are married—too soon, but they are married. And I realize something that Ms. Vivian Saunders said that is so true, and that is, not everybody is as fortunate as other people who are fortunate.

And if it were not for rent-to-own businesses, I don't think that a lot of young people, as was mentioned earlier, as well as young families, would have that opportunity. And in this very difficult economy, if there is any time that I think that legislation light has been introduced to create a floor for consumers and give them an opportunity to have something nice that is reasonable, I think now is the time.

I don't think this country is going to get any better economically in the near future at all. And that is why I very much support this legislation and think that the need is greater now than maybe it was when I introduced the bill in 2007 and the Congress before that, that the time has come for Federal legislation that will protect the consumer and create a better understanding of the contract.

And, Ms. Saunders, that is where I would go back to you—Margot Saunders and then maybe let Ms. Vivian Saunders answer as well—you have distinguished yourself in working for the consumer, and I again want to compliment you on that, but if I understood from your statement that, maybe if the disclosures part of this bill was a little stronger, that—you didn't say you would support it, let me make that clear, but it might be a better piece of legislation for the consumer.

If you had to make one suggestion, and I know that is difficult, but one suggestion to improve the disclosure section of this bill, what would it be?

Ms. MARGOT SAUNDERS. Within those very limited constraints, I would make the point of sale disclosures tighter and more consistent with the actual cost to be required of the consumer.

I would like to make a few other changes to the bill as well, but you didn't ask about that.

Mr. JONES. Professor, what would be your reaction to what Ms. Saunders just said as acceptable or not acceptable and, if not, why?

Mr. HAWKINS. Obviously, I have expressed disagreement with some of how she has read the law, but I definitely think you can always work to make the language clearer, and so—her objections to the disclosures don't seem to be things to me that would—if you could work them to make the disclosures more accurate, I think that would be an important move.

Mr. SOTO. Mr. Jones?

Mr. JONES. Yes, sir?

Mr. SOTO. When it speaks to pricing in a catalog, I think what it means is that you have limited space in a showroom. So if a customer wants an item that you currently do not have, you still can provide the prices for that. And if your showroom floor is only so big, you might have product in the backroom that is being staged to replace the product that is in your showroom.

So, again, it is very difficult for you to set up a stand, possibly, with the pricing. But I believe that is what that means. But it certainly is calling for full disclosure on each item that is being displayed that a customer would like.

Mr. JONES. Madam Chairwoman, thank you. And I do, again, support this legislation. Thank you.

Chairwoman CAPITO. Thank you, Mr. Jones.

Mr. Miller has said that he does not have any further questions, so I will go to Mr. Clay for questioning for 5 minutes.

Mr. CLAY. Thank you, Madam Chairwoman, and I will be as brief as possible.

Let me ask Ms. Margot Saunders, what type of reinstatement provisions would provide both adequate repossession rights for the rent-to-own merchant while at the same time ensuring sufficient ownership rights for the rent-to-own consumer?

Ms. MARGOT SAUNDERS. Mr. Clay, I am in the uncomfortable position of not being able to give you an answer that I feel very comfortable with.

I like what Mr. Soto provides, which he says is a lifetime reinstatement provision—promise, and if the bill were to have that, I think that would be wonderful. I am uncomfortable saying that is what we would require, because I need to hear whether that is—just how unlikely and how unreasonable that is, but if Mr. Soto can provide it, I don't know why we wouldn't require it of everyone.

That would be a very valuable consumer protection that you would actually raise the floor for consumers around the country. That is a real concern of people who—notice that in the reinstatement rights in the bill, it is only 7 days that you have to reinstate, and a lot of people are not sure that—they may not have been able to act appropriately within 7 days.

Mr. CLAY. I see. Thank you for that response. How does a rent-to-own customer accurately compare the prices of rent-to-own merchandise to products available at traditional retail stores now, and how can Federal legislation improve the capacity of rent-to-own customers to compare the cost of purchasing rent-to-own merchandise over buying the merchandise with cash or credit?

Ms. MARGOT SAUNDERS. Is that for me?

Mr. CLAY. That is for you, yes, ma'am.

Ms. MARGOT SAUNDERS. I think that there are imperfect solutions, but what the FTC witness was referring to as a difficulty with providing with an APR, he was saying—he was describing, I think, the problem with the starting price.

An annual percentage rate is the comparison of the financing based on the original cost and the total cost. So the problem with rent-to-own transactions is that the original cost is often much greater in rent-to-own dealers, the cash price cost is much greater than it is at an equivalent merchant so that the APR that you get is not even truly reflective. That is one problem.

Another problem is that, as Mrs. Capito pointed out, most contracts don't go through to fruition—through termination—through the end of the contract so that the cash price—so that the annual percentage rate may be actually too low, because they haven't completed the purchase in one term.

But the APR remains, probably, the best measurement that we have, as imperfect as it is, and there are ways of providing that information that may not be as objectionable to the industry. Mr. Gonzalez, many years ago, the chairman of the House committee, had introduced a bill which had a comparison that was not based on APR but looked somewhat like APR that allowed that comparison.

Mr. CLAY. Okay.

Ms. MARGOT SAUNDERS. And there are still some other options.

Mr. CLAY. Thank you so much for that response.

Ms. Vivian Saunders?

Over the last couple of years of introducing this legislation, a lot of consumer advocates have decided that this arrangement is not good for consumers. Some of us have taken criticism for being advocates of this legislation. In your own words, can you explain what would a consumer like you or people that you know would have experienced had their not been the option of other—the rent-to-own industry?

Ms. VIVIAN SAUNDERS. In my opinion, it is giving people an option so many times, and now, people like to take the options from impoverished people. They try to tell us when to eat, where to live, what we have to do, but we are getting tired of folks taking our options away.

If you have bad credit, you don't have too many options. They are giving us a chance to have our children and our homes be as equal and a level playing field. When you empower young folks, and you give them respect, and they have respect in where they live, it gives them the mindset that they can do anything.

We don't have a lot of options in a poor community. So, this gives us an option.

Mr. CLAY. Thank you, Madam Chairwoman, and I yield back.

Chairwoman CAPITO. Thank you.

Mr. HAWKINS. Madam Chairwoman? May I add something to Congressman Clay's question about reinstatement, briefly?

Chairwoman CAPITO. Yes. I will give you 20 seconds.

Mr. HAWKINS. Twenty seconds, okay. I think that, again, Ms. Saunders and I have read the bill differently. I read the bill as giving people 120 days if they have paid more than 50 percent of the rental payments. And to me, that is a significant improvement over many States' laws.

Many States only give those people 21 days. So if on day 24, they have enough money, in many States they would be excluded from reinstating, but the Federal bill would allow them.

Chairwoman CAPITO. I want to thank the members, and I want to thank the panel for their insightful testimony.

The Chair notes that some members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days

for members to submit written questions to these witnesses and to place their responses in the record.

This hearing is adjourned.

[Whereupon, at 12:12 p.m., the hearing was adjourned.]

A P P E N D I X

July 26, 2011

OPENING REMARKS OF THE HONORABLE RUBEN HINOJOSA
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
HEARING ON RENT TO OWN INDUSTRY
JULY 26, 2011

Chairman Capito, thank you for calling this hearing today to discuss issues impacting the Rent to Own (RTO) industry and its potential treatment under the Wall Street Reform and Consumer Protection Act.

I am a co-sponsor of H.R. 1588, "the Consumer Rental Purchase Agreement Act" introduced by Congressman Canseco and Congressman Clay.

Consumers and businesses will be better served if we resolve finally the question of whether the RTO transaction is a lease or a sale and provide consumer protections that fit the terminable nature of the agreement.

Consumers need options, including rent-to-own. Credit may work for some people, but for consumers with limited cash and limited access to credit, the ability to terminate the transaction and then later reinstate is a great advantage. This could not be more true than in my district along the Texas-Mexico border in which a considerable percentage of my constituents operate in a cash society, especially those who reside in what are known as "colonias" -- unincorporated areas that tend to have no running water, no sewage treatment, no electricity, and dirt roads. They are in desperate need of assistance, especially access to mainstream jobs that ultimately will allow them to establish their own credit record and purchase goods using their own credit, instead of having to rely on the RTO industry. In the interim, the RTO industry fills a void and provides a necessary service to these individuals and to low- and middle-income Americans.

Surveys have found a relatively high level of customer satisfaction with rental-purchase transactions, suggesting that the rent-to-own industry does provide a service that meets the needs of certain consumers. The Federal Trade Commission (FTC) has indicated that it has received few complaints about the RTO industry over the past ten years, thereby indicating that there is little fraud and/or dissatisfaction with the RTO products.

Enacting a uniform federal standard on RTO services would provide certainty to the RTO industry, thereby increasing economic and job growth and promoting competition in the industry.

H.R. 1588 would not preempt most state RTO regulations, and would increase consumer protections and disclosures in a number of states.

For these reasons and more, I encourage my colleagues to co-sponsor the legislation and work with this Subcommittee and today's witnesses to ensure the end product both helps the RTO industry, protects consumers, and is treated appropriately if deemed to fall under the purview of the Consumer Financial Protection Bureau.

I yield back the remainder of my time.

Opening Statement – The Honorable Lynn Westmoreland (GA)
Hearing entitled – "Examining Rental Purchase Agreements and the Potential Role for Federal Regulation"
Subcommittee on Financial Institutions and Consumer Credit
July 26, 2011

As a cosponsor of this important legislation (H.R. 1588) over the last several Congresses, I am pleased the Financial Institutions and Consumer Credit Subcommittee is holding a hearing on this important legislation.

The "rent-to-own" industry provides household goods including furniture, appliances, and electronic products to a growing segment of the American population by way of flexible short-term leases as an alternative to cash purchases or debt financing. As everyone knows, the excessive use of credit has been one of the main causes of our recent economic problems. Often, these products are leased to individuals who may not qualify for traditional financing.

These transactions are unique in that consumers have the voluntary option to change their rental agreement to make payments on ownership. Unfortunately, in today's uncertain regulatory environment there is a great deal of legal ambiguity surrounding regulation of these contracts. Since its inception, the rent-to-own industry has had robust State regulation. With the passage of Dodd-Frank last year, there is ambiguity regarding jurisdiction of federal regulation for this industry. Specifically, the CFPB's broad-ranging and untested authority could preempt existing state regulation that has been working, even during the recession.

H.R. 1588 does two things. First, H.R. 1588 adopts the common sense and long-standing approach of the Federal Reserve Board, the FTC and the IRS that the rental agreements of the rent-to-own business are leases. Forty-six states have already enacted laws distinguishing these transactions as separate from credit or installment loans, and this H.R. 1588 takes the final step to make this distinction with respect to federal regulations. It is important to note that this legislation would not infringe upon any stronger state laws regulating rent-to-own agreements. Secondly, the bill includes, for the first time, specific federal consumer protections for this type of transaction, while allowing those states with additional consumer safeguards to retain those protections as well. These consumer safeguards ensure transparent and fair transactions and protect both the lessee and the merchant.

I want to thank the Chairman Capito for moving forward on H.R. 1588 and look forward to further Committee action on this important legislation.

PREPARED STATEMENT OF THE
FEDERAL TRADE COMMISSION

on

Rent-to-Own Transactions

before the

HOUSE FINANCIAL SERVICES COMMITTEE

FINANCIAL INSTITUTIONS AND CONSUMER CREDIT SUBCOMMITTEE

July 26, 2011

I. INTRODUCTION

Mr. Chairman and members of the Committee: I am Charles Harwood, Deputy Director of the Federal Trade Commission's Bureau of Consumer Protection.[1] I appreciate the opportunity to appear before you today on behalf of the Commission to discuss the rent-to-own (RTO) industry.

This testimony today begins by briefly summarizing the Commission's role in enforcing laws that bear on financial issues relevant to the RTO industry. It then discusses the RTO industry itself. The testimony subsequently describes a report prepared by the Commission's Bureau of Economics and released by the Commission in 2000 and a related study prepared by the authors of the Bureau of Economics report. Finally, the testimony offers some general observations about consumer protection issues and regulation in this area.

II. THE FTC'S LEGAL AUTHORITY OVER THE RENT-TO-OWN INDUSTRY

As part of its mandate to protect consumers, the Commission enforces the Federal Trade Commission Act, which broadly prohibits unfair or deceptive acts or practices in or affecting commerce.[2] The Commission also enforces a number of laws specifically governing lending and leasing practices, including the Truth in Lending Act ("TILA")[3] and the Consumer Leasing Act ("CLA"),[4] which require disclosures and establish certain substantive requirements in connection

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[1] The views expressed in this statement represent the views of the Commission. My oral statement and responses to questions you may have are my own and are not necessarily those of the Commission or any Commissioner.

[2] See 15 U.S.C. § 45(a).

[3] See 15 U.S.C. §§ 1601-1666j.

[4] See 15 U.S.C. §§ 1667-1667f. The CLA is an amendment to the TILA.

with consumer credit or lease transactions, respectively.[5] Under these laws, the Commission has jurisdiction over most non-bank lenders.[6] In addition to its law enforcement duties, the Commission also responds to requests for information about consumer financial issues from consumers, industry representatives, state law enforcement agencies, and the media, and disseminates educational materials to businesses and consumers.

As part of its enforcement efforts, the Commission collects over one million complaints annually about companies and a wide variety of business practices. These complaints can help the Commission detect patterns of wrongdoing and lead to investigations. The Commission enters all complaints it receives into the Consumer Sentinel Network, a secure online database that is used by thousands of civil and criminal law enforcement authorities worldwide. In 2010, a few hundred of the 1.1 million complaints that the Commission received and entered into Consumer Sentinel related to RTO transactions.

On July 21 of this year, the new Consumer Financial Protection Bureau (CFPB) formally began operations. In general, the FTC and CFPB share authority to enforce financial consumer protection laws.[7] Rulemaking authority under those laws for most credit and lease transactions has transferred to the CFPB. The Commission is not aware of any determination on the part of

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[5] The Commission also enforces various other financial statutes, including the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, which, inter alia, prohibits discrimination against applicants for credit on the basis of age, race, sex, or other prohibited factors; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x, which, inter alia, governs the use of consumer credit reports, and the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p, which, inter alia, prohibits certain abusive collection practices by debt collectors.

[6] See, e.g., 15 U.S.C. § 45(a); 15 U.S.C. § 1607.

[7] Under the FTC Act, the FTC has no jurisdiction over most depository institutions. 15 U.S.C. § 45(a)(2).

the CFPB about its authority with respect to RTO transactions.

III. THE RENT-TO-OWN INDUSTRY

The RTO industry consists of dealers that rent consumer products with an option to buy. These products have traditionally included furniture, appliances, home electronics, jewelry, and computers. Some dealers may specialize in offering other particular types of products, such as musical instruments, tires and wheels, or automobiles.

In recent years, the RTO industry has gradually expanded its offerings to encompass a broader range of products. The Association of Progressive Rental Organizations ("APRO"), an RTO industry trade association representing many RTO stores, reports that the RTO model is being adapted to other product lines outside the traditional ones, including homes, fine art, bicycles, storage sheds, and riding lawnmowers.[8]

RTO agreements typically do not require any down payment or credit check, thus providing consumers with immediate access to household goods for a weekly or monthly payment. Generally, RTO agreements are self-renewing on a weekly or monthly basis, and consumers are under no obligation to continue making payments beyond the current weekly or monthly period. RTO transactions may be attractive to consumers who cannot afford a cash purchase, may be unable to qualify for traditional credit, or are unable or unwilling to wait until they can save enough money for a purchase.

RTO agreements provide consumers with the option to purchase the goods, in most cases either by continuing to make payments for a specified period of time, usually 12 to 24 months, or by making an early payment of some specified proportion of the remaining payments. APRO

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[8] See APRO, About Rent-to-Own - Get to Know the Rent to Own Industry, www.rtohq.org/apro-rto-industry-overview.html (last visited July 8, 2011).

reports that some RTO stores have begun to offer more payment options to consumers for purchasing merchandise, including the option to purchase goods within three to six months instead of the typical period of 12 to 24 months.[9] APRO estimates that in 2009 there were approximately 8,600 RTO stores in the United States and Canada, serving more than four million customers, and producing $7 billion in annual revenues.[10]

IV. KEY FINDINGS OF THE BUREAU OF ECONOMICS REPORT

The Commission frequently conducts economic analyses of different markets and industries. This research, which generally is performed by the agency's Bureau of Economics, helps inform FTC policies and priorities and in some cases may provide the basis for recommendations for changes to law or industry practices. Thus, these analyses are important to the overall competition and consumer protection missions of the Commission.

In 2000, the Commission released a seminal report on the RTO industry prepared by the Commission's Bureau of Economics.[11] Subsequently, the authors of the Bureau of Economics report separately published additional analysis of the data collected for the original report,[12] and other research has been made public. This testimony discusses some of the key findings from

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[9] Id.

[10] Id.

[11] James M. Lacko, Signe-Mary McKernan & Manoj Hastak, Survey of Rent-to-Own Customers: Federal Trade Commission Bureau of Economics Staff Report (April 2000), available at http://www.ftc.gov/reports/renttoown/renttoownr.pdf.

[12] Signe-Mary McKernan, James M. Lacko & Manoj Hastak, Empirical Evidence on the Determinants of Rent-to-Own Use and Purchase Behavior, 17 Econ. Dev. Q. 33 (2003), available at http://edq.sagepub.com/content/17/1/33.abstract.

those studies.

The Bureau of Economics initiated its RTO study following a decade or more of considerable debate about the RTO industry, to better understand the nature of the industry and allegations of consumer protection problems that had been raised. The Bureau of Economics report was the first independent, systematic examination of RTO transactions and was based on the findings of a nationwide survey of RTO customers.[13] The survey had three primary goals: (1) to examine which consumers used RTO transactions and how they differed from consumers who did not; (2) to determine whether RTO transactions typically resulted in the purchase of the rented merchandise; and (3) to determine whether abusive collection practices were widespread in the industry.

Some key findings from the survey include:

Characteristics of a Rent-to-Own Transaction

- Customers ultimately purchased 70% of the merchandise they obtained through RTO transactions. The purchase rate was consistently high (at least 60%) across most demographic groups.
- Sixty-seven percent of customers intended to purchase the merchandise when they began the RTO transaction.
- Actual purchases were consistent with customer purchase intentions. Eighty-seven percent of the customers who intended to purchase the rent-to-own merchandise actually did purchase it. Similarly, 90% of the customers who intended to rent temporarily and return the merchandise actually did return it. Customers who were unsure of their intentions when they began renting divided fairly evenly, with 47% purchasing the merchandise and 44% returning it.
- Thirty-eight percent of rented items were home electronics products, 36% were items of

[13] See supra note 12. The Bureau of Economics telephone survey contacted over 12,000 randomly-selected U.S. households from December 1998 to February 1999. From this sample, 532 households that had engaged in RTO transactions within the previous five years were identified and interviewed with respect to their RTO experiences. See id. at 17-23.

furniture, and 25% were appliances. The most commonly rented items were televisions, sofas, washers, VCRs, and stereos, which together accounted for over half of all rented merchandise.

- Merchandise purchased through an RTO transaction was rented for an average of 14 months before purchase. Forty-seven percent of the purchases took place in the first year. Merchandise not purchased by consumers was rented for an average of five months before it was returned. Eighty-one percent of returns took place within six months.

Demographics

- Thirty-one percent of RTO customers in the survey were African American, 79% were 18 to 44 years old, 73% had a high school education or less, and 59% had household incomes of less than $25,000.

Customer Satisfaction

- According to the survey findings, 75% of RTO customers were satisfied with their experience with RTO transactions. Satisfied customers gave a wide variety of reasons for their satisfaction, favorably noting many aspects of the transaction, the merchandise and services, and the treatment they received from store employees. Nineteen percent of all RTO customers interviewed were dissatisfied with their experience, and most cited high prices as the reason. Complaints about high prices were made by 27% of all RTO customers, including nearly 70% of dissatisfied customers. Fewer customers complained about problems with the merchandise or repair service, the treatment received from store employees, the imposition of hidden or added costs, or other issues.

- Nearly half of all RTO customers had made at least one late payment. Sixty-four percent of customers who made late payments reported that the treatment they received from the store when they were late was either "very good" or "good," and another 20% reported that the treatment was "fair." Fifteen percent of late customers reported being treated poorly when they were late, including 11% who indicated possibly abusive collection practices.

In 2003, the authors of the Bureau of Economics report published a follow-up study in the Economic Development Quarterly (the 2003 study) to contribute further research on how consumers use RTO transactions.[14] One goal of this follow-up study was to explore the distinctions between consumers who use RTO transactions to purchase merchandise and those

[14] See supra note 13.

who rent temporarily instead. The 2003 study included further analysis of the data collected for the earlier Bureau of Economics report and presented additional findings.[15] For example, the 2003 study found some evidence that state laws requiring disclosure of the total purchase cost on product labels of RTO products were associated with lower levels of consumers who intended to purchase RTO merchandise and higher levels of those who intended only to rent temporarily. The 2003 study made preliminary findings that consumers living in states that required disclosure of the total purchase costs on product labels were 30 percent less likely to use RTO transactions with the intent to purchase than consumers living in other states. According to the 2003 study, these results would be consistent with a conclusion that some customers underestimate the cost of RTO transactions in the absence of the total cost disclosures (perhaps focusing instead on the low payments and immediate access) and that the disclosures more fully inform these consumers, leading some to make different decisions.[16] The new analysis further found that the characteristics of customers entering RTO transactions with the intent to purchase differed significantly from those intending a temporary rental, suggesting that the RTO industry serves two separate and distinct markets. According to the 2003 study, for example, individuals with lower incomes or less education were substantially more likely to enter RTO transactions with the intent to purchase. Of those intending to purchase, however, lower-income customers were significantly less likely to complete a purchase than moderate-income customers,

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[15] Id.

[16] Id. The 2003 study also found an association between purchase outcomes and reinstatement rights, which require that consumers who are late in making payments be reinstated in the rental agreement with full credit for past payment, as long as overdue amounts are paid within a specified period of time. The association between purchase outcomes and reinstatement rights suggests that customers in states with reinstatement laws were more likely than customers in other states to ultimately purchase the merchandise.

suggesting that these customers may not have had sufficient income to make the purchase.[17]

Several industry and other studies using industry-supplied store reporting data also have been published since 2001. These studies generally concluded that the purchase rate for RTO transactions was lower (less than 40 percent) than the rate found in the Bureau of Economics report (70 percent).[18] The discrepancy in the purchase rate findings might be attributed to differences in the study methodologies.

V. CONSUMER PROTECTION ISSUES

The Bureau of Economics report referred to a number of potential consumer protection concerns raised by consumer advocates and others about the RTO industry, including the prices charged by the industry for purchasing the merchandise (which can be two to three times higher than retail prices), the treatment of customers during the collection of overdue rental payments, the repossession of merchandise after customers have paid substantial amounts towards ownership, the adequacy of information provided to customers about the transaction, and the disclosure of whether merchandise was new or used. Consumer advocates also have argued that

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[17] Id.

[18] See, e.g., Michael H. Anderson & Raymond Jackson, Rent-To-Own Agreements: Purchases or Rentals?, 20 J. of Applied Bus. Res. (2004) (finding that customers purchase in 39% of agreements); Michael H. Anderson & Sanjiv Jaggia, Rent-to-Own Agreements: Customer Characteristics and Contract Outcomes, 61 J. Econ. & Bus. 51 (2009) (finding that 72.88% of completed RTO transaction agreements resulted in merchandise being returned to the store); Michael Anderson & Sanjiv Jaggia, Return, Purchase, or Skip? Outcome, Duration, and Consumer Behavior in the Rent-to-Own Market, Empirical Econ. (2011) available at http://www.springerlink.com/content/42n382414415wjh1/ (finding a 23.6% purchase rate); APRO, About Rent-To-Own - Rent-to-own Prices, http://www.rtohq.org/apro-rent-to-own-prices.html (last visited July 21, 2011) (identifying purchase rate as 25%); APRO, About Rent-to-Own - RTO: Rent-to-Own Changing With the Times, http://www.rtohq.org/apro-rto-change-with-times.html (last visited July 21, 2011) (identifying purchase rate as 25%).

RTO transactions are really credit sales, not leases, and should be subject to federal and state consumer credit laws.[19]

Currently, RTO transactions are not specifically covered by federal laws that govern credit or lease transactions, namely, the TILA and the CLA, and there is no specific statute that applies to RTO transactions. Federal legislation that would specifically regulate RTO transactions has been proposed many times in the past. Some of these proposals would have applied federal and state credit laws to the RTO industry, while other proposals would have regulated RTO transactions as leases.

Today, forty-seven states and the District of Columbia have laws regulating RTO transactions in a manner similar to leases. These laws vary from state to state, requiring a variety of disclosures and imposing other requirements and prohibitions, such as setting caps on fees that can be charged over and above a baseline cost of the product (for example, the wholesale cost to the store or the price charged to a consumer to purchase the product outright).

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[19] See, e.g., U.S. Public Interest Research Group, Preemption Alert, 4 (Mar. 2006), http://www.uspirg.org/html/preemptionalert/march06.pdf (Federal rent-to-own legislation supported by the industry would prohibit states from "enforcing stronger, more pro-consumer lending laws, such as usury ceilings, interest rate disclosures, or other loan protections against rent-to-own stores"); AARP New Jersey, Testimony by Patricia Kelmar Before the NJ Assembly Consumer Affairs Committee (June 5, 2006), available at http://www.clnj.org/rto_aarp_testimony_a695.pdf (urging enforcement of the "Retail Installment Sales laws in rent to own situations"); see also Consideration of Regulatory Relief Proposals, Before the Senate Comm. on Banking, Housing and Urban Affairs, 109th Cong. 2d Sess. (Mar. 1, 2006), available at http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=8686a52a-58ef-40fc-bdb4-d500d9615b49 ((Joint testimony of Consumer Federation of America, National Consumer Law Center, and U.S. Public Interest Research Group, ACORN, Center for Responsible Lending, Consumers Union, National Community Reinvestment Coalition, opposing S.603 "The Consumer Rental-Purchase Agreement Act of 2005").

Although these state laws regulate RTO transactions as lease sales,[20] courts in several states, most notably Wisconsin, Minnesota, and New Jersey, have ruled that RTO transactions are credit sales and subject to state laws governing credit sales.[21] Vermont does not regulate RTO transactions as credit sales,[22] but does require disclosure of the "effective APR."

An important factual issue in the debate over whether RTO transactions are sales or leases continues to be the extent to which RTO customers purchase the rented merchandise. As described earlier, the Bureau of Economics report found that 70 percent of RTO merchandise is purchased by the customer. In contrast, other studies have found that, based on store reporting data, less than 40 percent of RTO merchandise ultimately is purchased, and that the rest is returned to the dealer after a relatively short rental duration.

Having found a high purchase rate, the Bureau of Economics recommended in its report that the basic terms of the RTO transaction, in particular the total cost of purchase, should be fully disclosed to consumers before they enter into the agreement. Information regarding the total cost of purchase, including all mandatory fees and charges,[23] would allow consumers to compare the cost of an RTO transaction to alternatives and would be most useful if it were available while the customer was shopping.

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[20] See supra note 12 at 7.

[21] Id.

[22] See Vermont Rule CF 115 (1997); 9 V.S.A. § 41b (2011); see also TILA, 15 U.S.C. §§ 1601-1666j.

[23] Commissioner Brill believes disclosures of effective interest rates are successfully being employed in states where they are required, and can be useful to the consumer in comparing the cost of a RTO transaction to other payment options. In addition, Commissioner Brill believes treating RTO transactions as credit sales may trigger other important consumer protections.

A bill to amend the Consumer Credit Protection Act to cover RTO transactions is currently before the Subcommittee. The bill includes provisions that would require disclosures to consumers of certain payment terms in RTO agreements and advertisements and at the point of rental. The bill also would prohibit RTO stores from engaging in certain repossession and collection activities. The Commission does not take a position on the legislation.[24] In general, the Commission supports efforts to improve disclosures by making them clear, conspicuous, understandable, and useful for consumers when they shop for and compare products and services. Commission staff would be happy to provide technical assistance to the Subcommittee generally with respect to effective disclosures.

VI. CONCLUSION

The availability of RTO products may fill an important need for some consumers. But the market will function properly only if the practices of RTO businesses are transparent, fair, and honest. The Commission will continue to work with Congress to ensure that consumers are protected when they enter into RTO transactions.

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[24] Commissioner Brill, joined by Chairman Leibowitz, notes that the full Commission has not taken a position on H.R. 1588 as a whole or the preemption provisions contained therein. Over 40 states already have laws that generally provide the protections contained in the bill. Four states – Minnesota, New Jersey, Vermont and Wisconsin – have laws that are more protective of consumers in that they require disclosures of effective interest rates or treat RTO transactions as credit transactions. H. R. 1588 would preempt the laws in these four states. Commissioner Brill and Chairman Leibowitz do not support preemption of state laws that are more protective of consumers engaged in rent-to-own transactions, and believe that Congress should continue to allow states to be "laboratories of democracy" in this area.

STATEMENT OF JIM HAWKINS
ASSISTANT PROFESSOR
UNIVERSITY OF HOUSTON LAW CENTER

"Examining Rental Purchase Agreements and the Potential Role for Federal Regulation"
U.S. House Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

July 26, 2011

Chair Capito, Ranking Member Maloney, and Distinguished Members of this Subcommittee:

Thank you for inviting me to testify about the role the federal government could play in the rent-to-own industry. My name is Jim Hawkins, and I am an Assistant Professor of Law at the University of Houston Law Center, where I teach Contracts, Consumer Protection Law, and Bankruptcy. I earned my JD (with highest honors) from the University of Texas School of Law. Prior to my academic appointment at the University of Houston, I was a litigation associate at Fulbright and Jaworski, LLP and a law clerk for the Honorable Jerry E. Smith on the Fifth Circuit Court of Appeals. In my academic research, I have spent the past five years studying and writing about alternative financial services such as rent-to-own, payday lending, and auto title lending.[1]

I believe HR 1588 offers an opportunity for federal law to help the rent-to-own market operate efficiently. First, this bill ensures that all rent-to-own customers will have clear disclosures so that they can make informed financial decisions. Second, it provides a level of certainty to rent-to-own firms so that they can operate without the fear that a rogue judicial decision or legislative act will undermine their business in a state. Finally, while providing a baseline of consumer protection for customers in every state, the bill also allows states to have laws that further restrict or even ban rental-purchase agreements.

My statement today (1) briefly introduces the rent-to-own industry, (2) describes some of the important consumer protection measures present in HR 1588, and (3) explains the relationship between HR 1588 and state law.

I. An Introduction to the Rent-to-Own Industry

Rent-to-own companies offer consumers the opportunity to acquire ownership of durable goods by making weekly or monthly rental payments. The company delivers the good to the customer's residence, and the customer decides each week or month whether to keep the good and make a payment or to return the good. Customers have no long-term obligation to keep the good, but if they complete the required payments on the contract or exercise an option to

[1] The views I present here are solely my own. This testimony draws heavily, sometimes verbatim, from my published articles that discuss rent-to-own, which are *Renting the Good Life*, 49 WM. & MARY L. REV. 2041 (2008); *Regulating on the Fringe: Reexamining the Link Between Fringe Banking and Financial Distress*, 86 IND. L.J. 1361 (2011); *The Federal Government in the Fringe Economy*, 15 CHAP. L. REV. 23 (2011).

purchase the goods before the contract is up, the company gives the title to the good to the customer.

Typically, people who turn to rent-to-own have limited access to mainstream financial services, either because of low or sporadic income or because of poor or nonexistent credit histories. The Federal Trade Commission's survey ten years ago of rent-to-own customers, however, found that 84% of these customers had a car or truck, virtually the same percentage as the general public.[2] Rent-to-own customers also have more access to credit than one might assume: 44% of customers had credit cards, compared to 88% in the general population; 64% had a checking account, compared to 87% in the general population; and 49% had a savings account, compared to 56% in the general population.[3]

In general, I believe people use rent-to-own companies to acquire goods that enhance the quality of their lives, not to obtain items necessary for their lives. A few years ago, I compiled information about the types of goods that people rent.

Table 1: Rent-to-Own Merchandise as a Percentage of Store Revenue

	Rent-A-Center[4]	**Aaron's Rents[5]**	**Rent-Way[6]**	**FTC Survey[7]**
Electronics	33%	33%	35%	36%
Appliances	16%	15%	16%	25%
Furniture	37%	33%	30%	36%
Computers	14%	15%	17%	2%
Other		4%		2%
Jewelry			2%	

Even goods in this table that are considered necessities for life really serve to enhance the quality of rent-to-own consumer's lives because firms provide top-quality, name-brand merchandise, in contrast to the same types of merchandise of lower quality available at second-hand stores.

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[2] FEDERAL TRADE COMMISSION, SURVEY OF RENT-TO-OWN CUSTOMERS ES-1 (2000).

[3] James M. Lacko et al., *Customer Experience with Rent-to-Own Transactions*, 21 J. OF PUB. POLICY & MKTG. 126, 130 (2002). Economist John Caskey's research found similar results: He found that 36.7% of customers carry general use credit cards and 65.3% had some type of deposit account. JOHN P. CASKEY, LOWER INCOME AMERICANS, HIGHER COST FINANCIAL SERVICES 29 Table 8 (1997).

[4] Rent-A-Center, Inc, Annual Report (Form 10-K), at 5-6 (Feb. 23, 2007).

[5] Aaron Rents, Inc., Annual Report (Form 10-K), at 14 (Feb. 22, 2007).

[6] Rent-Way, Inc., Annual Report (Form 10-K), at 3 (Dec. 29, 2005) (figures rounded to the nearest whole number).

[7] FEDERAL TRADE COMMISSION , SURVEY OF RENT-TO-OWN CUSTOMERS 51 (2000) (figures rounded to the nearest whole number and presented as a percentage of consumer's reported behavior).

The rent-to-own marketplace is occupied by two large, publicly-held companies, Rent-A-Center and Aaron Rents, and many smaller firms. The industry is competitive, as evidenced by the fact that multiple rent-to-own stores are often placed in the same location. And, because almost all rent-to-own customers have vehicles and can drive to find lower prices, all of the stores in a metropolitan area compete with each other.

Purchasing goods through rental-purchase agreements is expensive, but it is not outrageous given consumers' other options. For instance, credit cards with annual percentage rates around 20% appear to be a less expensive alternative than rent-to-own. However, if a customer with such a credit card charges $450 to purchase a television from a retailer, it will take the customer 81 months to pay off the debt if the customer makes only the minimum payment each month (assuming that payment is 2.5% of the total debt). The interest charged over those 81 months would be $364.60, bringing to total cost of the television to $814.60. Paying with a credit card would approximate the cost of acquiring the television from a rent-to-own dealer, but the consumer would take around four and a half times the length of time to pay off the debt. More disturbingly, if the consumer ran into financial problems in the middle of repaying the credit card debt, the consumer would be obligated to keep the goods and pay the debt, whereas in a rent-to-own transaction, the consumer would have the flexibility to walk away.

II. Baseline Consumer Protection Measures

HR 1588 is an important consumer protection law because it offers all rent-to-own customers a baseline of protections from unfair and misleading practices. In this section, I want to point out five of these protections and demonstrate how HR 1588 offers consumers protection that is superior to the protection provided by some existing state laws.

(1) Section 1004(b) requires some pertinent pricing information to be set off at the start of the rental purchase agreement under the title "important rental-purchase disclosures." Emphasizing this information is important for consumers who do not read every word of the contract but still need to know the basic terms of the transaction. This provision is very common in other consumer financial transactions, mirroring the Schumer box in credit card agreements, but it is absent from state rent-to-own laws.[8] Customers will benefit from having clear

[8] Every state law I examined to see if it had a requirement like section 1004(b) lacked any rule requiring that key terms be segregated at the start of the contract. See, for instance, Texas Business & Commerce Code §§ 92.051 – 92.053 (not stating any rule about how information must be presented); Montana Code § 30-19-109 (stating some information must be before the customer's signature but not set off with a specific title or at the start of the agreement); Official Code of Georgia § 10-1-682(b) (requiring that key information be placed together in the agreement but not at the start of the agreement); Florida Statutes § 559.9233(6) (requiring that disclosures "be stated in a clear and coherent manner" but not all at the same time or at the start of the agreement); Revised Statutes of Missouri § 407.662 (requiring disclosures but not specifying that the disclosures be at the front of the agreement or grouped together); Baldwin's Ohio Revised Code § 1351.02 (requiring that disclosures "be stated in a clear and coherent manner" but not all at the same time or at the start of the agreement).

information about the most important terms of their agreement stated in a place where they are most likely to see it.

(2) Section 1007(9) limits the number of late fees that consumers can accumulate by forbidding rental-purchase agreements that require "the consumer to pay more than 1 late fee or charge for an unpaid or delinquent periodic payment." This provision is important because consumers may not factor in the cost of late fees when they decide to rent a good. Some current state rent-to-own laws, such as those in Georgia and Missouri, lack this protection, allowing companies to charge multiple late fees for a single delinquent payment.[9]

(3) Section 1005(a)(4) gives all consumers the right to reinstate their rental purchase agreements and to continue the process of obtaining ownership, with the time frame for reinstatement dependent on the percentage of total payments they have made. For instance, if consumers have paid 50% of the rental payments towards ownership and return the property when they stop making payments, then they have 120 days to reinstate the agreement. This right is important because some consumers might make substantial progress towards purchasing a good and then run into trouble making the final few payments. This section ensures that those customers will be able to purchase the goods if they can resume payments. Most states offer less protection to these customers who have made substantial payments towards ownership,[10] demonstrating the significance of HR 1588.

(4) Section 1007(3) prevents the situation made famous in the case *Williams v. Walker-Thomas Furniture Co.*,[11] which is taught to virtually all law students. In that case, a company made all the different goods that a consumer was acquiring from it collateral for all the different loans that the consumer had with the company. Defaulting on any one loan meant that all the goods were repossessed. Section 1007(3) forbids this practice in the rent-to-own context by prohibiting "a security interest or any other claim of a property interest in any goods, except those goods the use of which is provided by the merchant pursuant to the agreement." State rent-to-own laws, such as those in Texas, Florida, Missouri, and Georgia, for instance, do not forbid these cross-collateralization clauses,[12] leaving consumers vulnerable. In a hearing on a federal rent-to-own bill in 2001, a Representative stated that the modern rent-to-own industry was

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[9] Official Code of Georgia § 10-1-686.; Revised Statutes of Missouri § 407.660 et seq.

[10] Montana Code § 30-19-112 (giving customers 45 days to reinstate the agreement if they have paid 2/3 of the rental payments and have returned the goods); Texas Business & Commerce Code § 92.053 & § 92.103 (giving customers who have returned goods 37 days to reinstate the agreement); Official Code of Georgia § 10-1-686 (giving customers who pay weekly 21 days to reinstate the agreement); Revised Statutes of Missouri § 407.664.1 (giving customers who pay weekly 21 days to reinstate the agreement); Baldwin's Ohio Revised Code 1351.05 . (giving customers who pay weekly 21 days to reinstate the agreement); Florida Statutes § 559.9235(1) (giving customers who return the goods 60 days to reinstate the agreement).

[11] 350 F.2d 445 (D.C. Cir. 1965).

[12] Texas Business & Commerce Code § 92.054; Florida Statutes § 559.9234; Revised Statutes of Missouri § 407.662; Official Code of Georgia § 10-1-684.

replaying the horrible facts of *Williams v. Walker-Thomas Furniture Co.* across the country.[13] HR 1588 would ensure that that practice would be illegal in every state.

(5) Finally, even the sections of HR 1588 that duplicate state laws are important because a federal rent-to-own law would be enforced by the Federal Trade Commission under section 1016(a). For example, if the FTC observed companies breaching the peace when repossessing goods, the FTC could enforce section 1007(7) to stop this conduct. While section 1007(7) is repetitive of Article 2A of the Uniform Commercial Code,[14] without HR 1588, the FTC is very unlikely to intervene to protect consumers.

III. The Relationship Between HR 1588 and State Law

Like other federal consumer protection statutes, such as the Fair Debt Collection Practices Act, HR 1588 does not prevent states from adopting laws that offer consumers greater protections than HR 1588.[15] Thus, if a state does not think HR 1588 goes far enough, it can take a wide variety of actions, from limiting the prices that rent-to-own companies can charge to banning the transaction from the state entirely.

The bill does, however, restrict states in two ways. It precludes states from regulating rental-purchase agreements as credit agreements, and it prevents states from requiring companies to disclose price information as an annual percentage rate (APR). In my opinion, neither of these restrictions are adverse to consumers' interests, but they both serve a beneficial function of ensuring that rent-to-own companies will be able to operate with reasonable levels of certainty about how courts will treat rental-purchase agreements.

First, restricting states from treating rental-purchase arrangements as credit recognizes the true nature of the rent-to-own transaction. Rent-to-own is not a credit arrangement primarily because consumers are not obligated to continue renting goods for any set amount of time. The obligation to pay back the entire amount that someone has borrowed is central to the definition of credit, but it is completely absent from the rent-to-own transaction. The ability to stop paying without consequences is important because consumers literally cannot experience financial distress or be driven into bankruptcy directly because of a rent-to-own agreement. They never take on any obligations to pay for a set period, so they cannot breach that agreement.

That rental-purchase agreements are not credit arrangements is further demonstrated by the fact that rent-to-own will not be regulated by the Consumer Financial Protection Bureau under the Dodd-Frank Act. Under the Act, the Bureau regulates "financial products and services," and the most expansive category in the definition of this phrase is "extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of

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[13] Statement of Rep. Maxine Waters, Hearing Before the Subcommittee on Financial Institutions and Consumer Credit on HR 1701—The Consumer Rental Purchase Agreement Act 4 (July 12, 2001).

[14] For Texas' version of this law, see Texas Business & Commerce Code § 2A.525(c).

[15] See HR 1588 § 1018.

credit."[16] Under the Act, "credit" means (1) "the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment" or (2) "the right granted by a person to . . . purchase property or services and defer payment for such purchase."[17] Rent-to-own agreements fall outside both of these parts of the definition. The statute does not define "debt," but debt is commonly defined as an obligation to pay money arising out of a transaction.[18] Rent to-own-agreements do not involve taking on debt because the rental agreements obligate consumers to pay for rental periods at the start of the rental period, not the end, so the consumer generally does not owe money because of the agreement.[19] Additionally, rent-to-own agreements do not involve deferring payment for a purchase because payments for renting are due before the rental period begins.

But more than arguments about the nature of the rent-to-own transaction, any legal protections that consumers obtain when states treat rent-to-own transactions as credit could still be enacted by states under HR 1588. For instance, if a state wants its usury laws to affect rental-purchase agreements, it can enact price controls on rent-to-own agreements. The only thing states cannot do is govern the transaction through a slight of hand that transforms a rental arrangement into a credit arrangement.

Second, preventing states from mandating that stores disclose annual percentage rates is a reasonable provision. APR disclosures are very difficult for most consumers to understand because people generally think in terms of actual dollar amounts, not abstract percentages. Furthermore, for many rent-to-own customers, the APR is not a relevant figure. At least 30% of customers do not ultimately purchase the goods that they have rented.[20] More to the point, some people in the industry estimate that only 2% of customers acquire ownership by paying the weekly fees through the life of the agreement. Most who acquire ownership do so by paying something less than the "total cost" under the contract by purchasing the goods part way through the agreement. For everyone except the 2% that pay the total cost, the APR is inaccurate. If rent-to-own stores are required to disclose largely irrelevant or inaccurate information to consumers, it obscures the information that consumers really need to know.

Also, it is important to note that in the rent-to-own context, requiring APR disclosures drives most—and the biggest—rent-to-own companies from the jurisdiction, limiting or eliminating consumer choice in those states. When I gathered information in 2007, I found that in Vermont, where APR disclosures are mandated by statute, only 16 stores operate, and in

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[16] Dodd-Frank Act §1002(15)(A)(i).

[17] *Id.* §1002(7).

[18] *See, e.g.*, 15 U.S.C. 1692a(5) (reporting the Fair Debt Collection Practices Act's definition of debt).

[19] Even cases finding rent-to-own agreements are credit sales state that rent-to-own does not entail accumulating debt. *Miller v. Colortyme, Inc.*, 518 N.W.2d 544, 549 (Minn. 1994).

[20] FEDERAL TRADE COMMISSION , SURVEY OF RENT-TO-OWN CUSTOMERS ES-1 (2000).

Minnesota, which has an APR requirement, there are only 11 stores. It is estimated that rent-to-own companies would open somewhere between 150[21] and 300[22] more rent-to-own stores if Wisconsin changed its requirements, but there are around 60 rent-to-own stores operating there currently. APR disclosure requirements severely limit competition and consumer choice in states that enact them.

The real effect of these two restrictions on state law is that rent-to-own firms can operate without the risk that a court will suddenly decide that a whole new body of law applies to the transaction. In 2006, this is exactly what happened in the New Jersey Supreme Court's decision in *Perez v. Rent-A-Center, Inc.*[23] The court concluded that rent-to-own products were really credit sales subject to harsher regulation, but it did so without the evidence-based, deliberative process that legislatures use to write laws. As a result, the court made several critical, erroneous empirical assumptions about the rent-to-own industry: that customers always intend to obtain ownership of rent-to-own goods,[24] that customers do not value the ability to cancel their rental-agreements,[25] and that the goods that rent-to-own stores rent are necessities for life.[26] If the state of New Jersey had to engage in the deliberative process of passing a law, it is unlikely that these same factual mistakes would be made.

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[21] Paul Gores, *Will Legislators Buy Rent-to-Own Bill?*, THE MILWAUKEE J. SENTINEL, Oct. 10, 2005.

[22] Jeremy Janes, *Rent-to-Own Industry up to Old Tricks*, WISCONSIN STATE J., Aug. 10, 2005, at A6.

[23] 892 A.2d 1255 (N.J. 2006).

[24] *Id.* at 1258. In reality, the FTC survey found that 33 percent of customers did not intend to purchase the goods they rented. FEDERAL TRADE COMMISSION , SURVEY OF RENT-TO-OWN CUSTOMERS ES-2 (2000).

[25] 892 A.2d at 1269 n.14. Another survey found that the ability to cancel a rent-to-own agreement was one of the most important reasons people chose to rent-to-own. Brian J. Zikmund-Fisher & Andrew M. Parker, *Demand for Rent-to-Own Contracts: A Behavioral Economic Explanation*, 38 J. OF ECON. BEHAVIOR & ORG. 199 (1999).

[26] 892 A.2d at 1264-65. See Table 1 above for evidence that rent-to-own customers do not rent necessities.

Testimony before the

COMMITTEE ON FINANCIAL SERVICES

Subcommittee on Financial Institutions & Consumer Credit

regarding

"Examining Rental Purchase Agreements and the Potential Role for Federal Regulation"

July 26, 2011

Testimony written and presented by:

Margot Freeman Saunders
Of Counsel
National Consumer Law Center
1001 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 452-6252

on behalf of its low income clients
and

Consumer Federation of America
Consumers Union
U.S. Public Interest Research Group

Testimony before the
Subcommittee on Financial Institutions & Consumer Credit

"Examining Rental Purchase Agreements and the Potential Role for Federal Regulation"
July 26, 2011

Madam Chairman and Members of the Committee, the **National Consumer Law Center**[1] thanks you for inviting us to testify today regarding rent to own contracts and whether H.R. 1588 is the appropriate vehicle for federal regulation. We offer our testimony here today on behalf of our low income clients, as well as the **Consumer Federation of America,**[2] **Consumers Union,**[3] and the **U.S. Public Interest Research Group.**[4]

On behalf of the millions of low and moderate income consumers that these groups collectively represent, we urge you to unequivocally reject H.R. 1588. **The bill will not help consumers, it will only hurt them**. Consumers need protections from the exorbitant prices charged to purchase items through rent to own dealers; they need protections from high fees; and they need assurances that they can reinstate their contracts with reasonable fees and under reasonable conditions after they have spent considerable sums trying to purchase the items. While we believe that even the most precise disclosures would not adequately protect consumers in these transactions, the disclosures required by H.R. 1588 provide misleading and deceptive information.

The topic of this hearing is whether there is a potential role for federal regulation of rent to own transactions. We think there is. There is much that could be done to protect consumers who enter into rent to own transactions from the worst practices of this industry.

However, H.R, 1588 does not add any meaningful protections for consumers in rent-to-own transactions. Every state except four– Minnesota, Wisconsin, New Jersey and Vermont – already has

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[1]The **National Consumer Law Center** is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen examples of predatory practices against low-income people in almost every state in the union. It is from this vantage point – many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities – that we supply these comments. We publish and annually supplement eighteen practice treatises which describe the law currently applicable to all types of consumer transactions.

[2]The **Consumer Federation of America** is a nonprofit association of over 280 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education.

[3]**Consumers Union** is the publisher of Consumer Reports.

[4]The **U.S. Public Interest Research Group** is the national lobbying office for state PIRGs, which are non-profit, non-partisan consumer advocacy groups with half a million citizen members around the country.

many of the minimal substantive provisions and disclosures required by H.R.1588. In these four states consumers are provided *many more* valuable protections from the overreaching practices and exorbitant prices of RTO dealers than H.R. 1588 provides. **Indeed the real purpose of H.R. 1588 is captured in § 1018 (b) – which preempts the more protective laws of these four states.**

Enlisted members of the military of are typical users of rent to own transactions. In fact, rent to own dealers are rampant in the areas directly surrounding most military bases in the United States.[5]

Background on Rent To Own Transactions

Rent to own ("RTO") businesses are essentially appliance, electronics, and furniture retailers which arrange lease agreements rather than typical installment sales contracts for those customers who cannot purchase goods with cash or who are unsophisticated about money management. These lease agreements contain several special features. First, the lease agreements contain purchase options which typically enable the lessees to obtain title to the goods in question by making a nominal payment at the end of a stated period, such as eighteen months. Second, the leases are short term, so that "rental payments" are due weekly or monthly. Third, the leases are "at will." In other words, the leases theoretically need not be renewed at the end of each weekly or monthly term. The RTO industry aims its marketing efforts at low income consumers by advertising in minority media, on buses, and in public housing projects, and by suggesting it has many features attractive to low-income consumers: quick delivery, weekly payments, no or small down payments, quick repair service, no credit checks, and no harm to one's credit rating if the transaction is canceled.[6]

Most RTO customers enter into these transactions with the expectation of buying an appliance and are seldom interested in the rental aspect of the contract.[7] This attitude is encouraged by RTO dealers who emphasize the purchase option in their marketing even while they are minimizing its importance in the written contract. Of course, if and when a transaction is challenged

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[5] For example, there are ten Rent A Center stores within seven miles of Fort Hamilton in Brooklyn, NY; there are seven within eight miles of Fort Bragg in North Carolina; and there is even one in the remote area of Del Rio Texas serving Laughlin Air Force Base.

[6] The Federal Trade Commission conducted a survey of 532 RTC customers and found that 79% of those customers who used RTO in the previous year had incomes under $40,000. James M. Lacko, Signe-Mary McKernan & Manoj Hastak, Federal Trade Commission, Survey of Rent-to-Own Customers (Apr. 2000), *available at* www.ftc.gov/reports/index.htm.

[7] A telephone survey of RTO customers found that 90% of customers intended to own the product they were renting, but only 40% managed to keep the product. Ed Winn, *The RTO Customer Survey See-Saw*, Progressive Rentals, May–June 2004. The RTO industry claims on its website that less than one-quarter of its customers rent long enough to own the "rented" goods. *See* www.rtohq.org/apro-rto-industry-overview.html. The FTC' survey of RTO customers found that 70% of RTO merchandise was purchased by the customer. Furthermore, 90% of the merchandise on which customers had made substantial payments (of six months or more) was purchased. James M. Lacko, Signe-Mary McKernan & Manoj Hastak, Federal Trade Commission, Survey of Rent-to-Own Customers (Apr. 2000), *available at* www.ftc.gov/reports/index.htm.

in court, a RTO dealer will point to the rental provisions of the contract and claim that statutes which control traditional retail installment sales are irrelevant to RTO agreements.

The chief problem with RTO contracts is not only that these supposed leases are used to mask installment sales, but also that these sales are made at astronomic and undisclosed effective interest rates. Under most RTO contracts, the customer will pay between $1,000 and $2,400 for a television, stereo, or other major appliance worth as little as $200 retail, if used, and seldom more than $600 retail, if new. This means that a low-income RTO customer may pay 1 1/2 to 12 times what a cash customer would pay in a traditional retail store for the same appliance.

The finance charge and interest rate or annual percentage rate (APR) of an RTO contract depend on the retail cash value of the appliance (especially whether new or used) and the timing, amount, and number of payments. The following chart illustrates the APR computations:

	52 Weeks			78 Weeks		104 Weeks	
Amount Financed	Weekly Payment	Finance Charge	APR	Finance Charge	APR	Finance Charge	APR
$200	$16	$632	408%	$1,048	415%	$1,464	416%
$500	$16	$332	111%	$ 748	148%	$1,164	159%
$700	$18	$236	60%	$ 704	106%	$1,172	122%

RTO dealers usually charge the same periodic payment whether the item is used or new, but adjust the total *number* of payments required to be paid to achieve ownership of the used item. This means that the rental consumers are paying is the same for used goods as for new. A consumer who does not succeed in making all the payments to acquire ownership of the item ends up paying a new-goods rental amount for lower-value used goodscosting the unsuccessful consumers far more for the rental of lower value goods.

Industry-Friendly RTO Legislation

For the past thirty years, the RTO industry aggressively (and successfully in most cases) lobbied state legislatures and the Congress for a statutory exemption from consumer protection statutes, from annual percentage rate disclosure requirements, and from usury rate limitations. In nearly every state there are now RTO statutes which were carefully drafted by the industry to insulate dealers from claims of consumer abuse.[8] The RTO industry has continued to seek a "federal

[8] Ala. Code §§ 8-25-1 to 8-25-6; Alaska Stat. §§ 45.35.010 to 45.35.099; Ariz. Rev. Stat. Ann. §§ 44-6801 to 44-6814; Ark. Code Ann. §§ 4-92-101 to 4-92-107; Cal. Civ. Code §§ 1812.620 to 1812.649 (West); Colo. Rev. Stat. §§ 5-10-101 to 5-10-1001; Conn. Gen. Stat. §§ 42-240 to 42-253; 49 D.C. Code Mun. Regs. 1000 (Weil); Del. Code Ann. tit. 6, §§ 7601 to 7616; Fla. Stat. §§ 559.9231 to 559.9241; Ga. Code Ann. §§ 10-1-680 to 10-1-689; Haw. Rev. Stat. §§ 481M-1 to 481M-18; Idaho Code Ann. §§ 28-36-101 to 28-36-111; 815 Ill. Comp. Stat. §§ 655/0.01 to 655/5; Ind. Code §§ 24-7-1-1 to 24-7-9-7; Iowa Code §§ 537.3601 to 537.3624; Kan. Stat. Ann. §§ 50-680 to 560-690; Ky. Rev. Stat. Ann. §§ 367.976 to 367.990 (West); La. Rev. Stat. Ann. §§ 9:3351 to 9:3362; Me. Rev. Stat. Ann. tit. 9-A, §§ 11-101 to 11-122; Md. Code Ann., Com. Law, §§ 12-1101 to 12-1112; Mass. Gen. Laws ch. 93 §§ 90 to 94; Mich. Comp. Laws §§ 445.951 to 445.970; Minn. Stat. §§ 325F.84 to 325F.97; Miss. Code Ann. §§ 75-24-151 to 75-24-175; Mo. Rev. Stat. §§ 407.660 to 407.665;

fix" as well.[9] All of these state laws provide that RTO transactions are not "credit sales" and not subject to other state and federal consumer protection laws.

Although there are variations, nearly all state RTO statutes require disclosures in the contract including: the number and timing of the payments necessary to acquire ownership of the property; a statement declaring that the consumer will not own the property until the total payments necessary to acquire ownership have been made; the cash price of the property (most commonly defined as whatever price the dealer sets); and a statement as to whether the property is new or used.

Real consumer protections in four states would be preempted by H.R. 1588

The exception to the above analysis applies in four states: Minnesota,[10] Wisconsin,[11] New Jersey,[12] and Vermont.[13] Most recently, the Supreme Court of New Jersey affirmed that rent-to-own

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Mont. Code Ann. §§ 30-19-101 to 30-19-116; Neb. Rev. Stat. §§ 69-2101 to 69-2119; Nev. Rev. Stat. §§ 597.010 to 597.110; N.H. Rev. Stat. Ann. §§ 358-P:1 to 358-P:12; N.M. Stat. §§ 57-26-1 to 57-26-12; N.Y. Pers. Prop. Law §§ 500 to 507 (McKinney); N.D. Cent. Code §§ 47-15.1-01 to 47-15.1-08; Ohio Rev. Code Ann. §§ 1351.01 to 1351.09 (West); Okla. Stat. tit. 59, §§ 1950 to 1957; Or. Rev. Stat. §§ 646A.120 to 646A.134; 42 Pa. Cons. Stat. §§ 6901 to 6911; P.R. Laws Ann. tit. 10, §§ 2451 to 2466; R.I. Gen. Laws §§ 6-44-1 to 6-44-10; S.C. Code Ann. §§ 37-2-701 to 37-2-714; S.D. Codified Laws §§ 54-6A-1 to 54-6A-10; Tenn. Code Ann. §§ 47-18-601 to 47-18-614; Tex. Bus. & Com. Code Ann. §§ 35.71 to 35.74 (Vernon); Utah Code Ann. §§ 15-8-1 to 15-8-12; Vt. Stat. Ann. tit. 9, § 41b; 06 031 015 Vt. Code R. §§ 115.01 to 115.10; Va. Code Ann. §§ 59.1-207.17 to 59.1-207.27; Wash. Rev. Code §§ 63.19.010 to 63.19.901; W.Va. Code §§ 46B-1-1 to 46B-1-5; Wyo. Stat. Ann. §§ 40-19-101 to 40-19-120.

[9] *See, e.g.*, 111th Cong. S. 738 (2009); H.R. 996, 108th Cong. (2003); S. 2947, 108th Cong. (2003); H.R. 2803, 103d Cong. 1st Sess. (1993); H.R. 2820, 104th Cong., 1st Sess. (1995); H.R. 2019, 105th Cong. 1st Sess. (1997). Many of these bills are virtually identical.

[10] The Minnesota cases include *Starks v. Rent-A-Center*, Clearinghouse No. 45,215 (Minn. Dist. Ct. 1990), which involved a statute that included terminable leases within the definition of credit sale in certain circumstances. This statute was superseded by Minn. Stat. §§ 325F.82 to 325F.95, which in turn was interpreted in *Miller v. Colortyme, Inc.*, 518 N.W.2d 544 (Minn. 1994) and *Fogie v. Rent-A-Center, Inc.*, 1995 WL 649575 (D.Minn. 1995) (RTO contracts are credit sales for all purposes; thus are subject to general contract usury ceiling), *aff'd sub nom. Fogie v. Thorn Americas, Inc.*, 95 F.3d 645 (8th Cir. 1996), *subsequent appeal on different grounds*, 190 F.3d 889 (8th Cir.1999) (RICO claim dismissed).

[11] The Wisconsin cases include *Rent-A-Center, Inc. v. Hall*, 510 N.W.2d 789 (Wis. Ct. App. 1993). In addition, the Wisconsin Attorney General reached settlements with several RTO companies over their failure to make finance charge and rate disclosures. Press Release, Wisconsin Attorney General's Office, State Reaches Major Settlement with Rent-to-Own Company (Nov. 12, 2002) (noting this was the Wisconsin Attorney General's fifth settlement with an RTO company over violations of the Wisconsin Consumer Act).

[12] The New Jersey cases successfully challenging RTO practices include: Perez v. Rent-A-Center, Inc., 892 A.2d 1255 (N.J. 2006); Robinson v. Thorn Americas, Inc., Clearinghouse No. 52,047, #L-003697-94 (N.J. Super. Ct. Dec. 19, 1997) (after plaintiffs won summary judgment on the merits, the damage portion of the case (and two other related suits) was settled for almost $60 million); Green v. Continental Rentals, 678 A.2d 759 (N.J. Super. Ct. Law. Div. 1994).

[13] A Vermont court upheld a state attorney general rule requiring RTO companies to disclose the effective annual percentage rate of their RTO transactions. Thorn Americas, Inc. v. Vermont Attorney General, Clearinghouse No. 51,957 (Vt. Super. Ct. Mar. 7, 1997).

contracts as structured were closer to sales and violated that state's Retail Installment Sales Act.[14] In Wisconsin, Minnesota and New Jersey the courts have said that the state laws on credit sales apply – with the applicable interest limits those laws require. In New Jersey that limit would be 30% per year, rather than the 60% to 400% that is customarily charged in RTO transactions.

The preemption of the consumer protection laws in these four states is the real reason for H.R. 1588. The consumer protections that appear to be in the bill are generally already in state law, so are illusory at best. The required disclosures are misleading or deceptive; to the extent that there are any new substantive consumer protections not typical in state RTO, the protections have no meaningful enforcement.

Consumer protections in H.R. 1588 are illusory or worse

Despite the optics of this bill, consumers will not be provided protections of any real import. In most states, state law requirements require the same – and quite often substantially better – protections from the overreaching practices and exorbitant prices of RTO dealers than H.R.1588 provides. The real purpose of HR 1588 is captured in § 1018 (b), which preempts the more protective laws of Minnesota, Wisconsin, New Jersey and Vermont. However, any argument that consumers in other states will be better off with H.R. 1588 is belied by a close evaluation of the sham consumer protections.

1. The disclosures required by the bill are seriously misleading to consumers.

§ 1010 requires information about the "rental payments" and the "rental-purchase" cost to be displayed on tags attached to the items in the store. Yet, the definition of rental payments (in § 1001(12)) excludes all fees, taxes and charges for optional and mandatory services. In retail purchases only taxes, and possibly a service contract, are added to the retail cost. In contrast, in RTO transactions, the addition of delivery fees, set-up fees, loss-waiver fees, and other charges often causes the real costs of rental payments to be inflated by as 25% or more.

Consider the significant differences between the disclosures required by § 1010 – the point of rental disclosures and the actual cost of the purchase through the rent to own contract:

[14] Perez v. Rent-A-Center, Inc., 892 A.2d 1255 (N.J. 2006).

Point of Rental Disclosures		Contract Disclosures	
Cash Price	$1,890	Cash Price[15]	$1,890
Rental Payment	**$37.03**[16]	**Periodic Payment**[17]	**$44.99**
		Initial Payment[18]	$129.99
Total # of Rental Payments	104	Total # of Rental Payments	104
Rental Purchase Cost[19]	**$3,958.92**	**Total Cost**[20]	**$4,763.96**[21]

As this table shows – assuming the consumer saw the "Point of Rental Disclosures" – she would think that payment of $3,958.92 would be sufficient for ownership. Instead, the real costs of ownership would be over $800 more – or $4,763.96.

Also, these point of rental disclosures need not even be attached to the item on the showroom floor. Under the provisions in H.R.. 1588, this requirement could be met by including the prices in a catalogue somewhere in the merchant's showroom.[22]

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[15] "Cash Price" is itself a misleading disclosure in this bill as – unlike the laws in many states – it only requires the price the merchant offers the item for sale for cash in the ordinary course of business. Many states, including, e.g. California (Cal. Civ. Code §§1812.644, 1812.631); New York (N.Y. Pers. Prop. Law §§ 500, 501, 503.); West Virginia (W. Va. Code §§ 46B-1-1 to 46B-1-5); and Vermont (Vt. Stat. Ann. tit. 9, § 41b and Rule C.F. § 115.04) require much tighter definitions of cash price.

[16] "Rental Payments" is defined in § 1001(12) to include only the rent required to be paid by a consumer for the rental period. The definition excludes taxes and other fees and charges.

[17] "Periodic Payment" is defined in § 1001(10) to include the rental payment, plus mandatory fees, as well as optional fees, paid by the consumer. Typically consumers pay an additional $5 periodic fee for a waiver of liability. In this example, we are assuming the consumer will pay this fee, as most consumers do pay it.

[18] "Initial Payment" is defined in § 1001(7) to include the amount required to be paid at consummation of the agreement, including security deposit, delivery fees, administrative fees, mandatory fees and optional fees. In this example, we are assuming the following fees:

Rental Payment	-- $37.73
Tax (at 6%)	-- 2.26
Administrative fee--	-- 20.00
Credit Report fee	-- 15.00
Delivery fee	-- 50.00
Waiver of liability fee	-- 5.00
Total	-- **$129.99**

[19] "Rental Purchase Cost" as defined in §1001(15) only includes the sum of all rental payments and mandatory fees. It does not include optional fees. In this example, it would include all the rental payment of $37.73, but not the taxes or the optional waiver of liability fee. It would include the administrative fee and the credit report fee, but not the delivery fee. $37.73 x 104 = $3,923.92 + $20 +$15 = $3,958.92.

[20] The "total Cost" as defined in § 1001(17) includes the sum of the initial payment and all periodic payments (which includes all mandatory and optional fees) to be paid by the consumer to achieve ownership.

[21] The actual APR for this transaction would be 116.89%

[22] H.R. 1588 §1010(b)(1).

2. There are no meaningful penalties even if there were to be a violation of these minimal rules. The liability for violating the provisions (in § 1012) only requires the payment of 25% of the lease payment or $100 (pursuant to the existing provision applicable to leases in the Truth in Lending Act). This tiny amount will not be sufficient to provide incentives for compliance. Moreover, there is no liability against assignees – pursuant to § 1014 – unless the violation is apparent on the face of the document. How would the RTO dealer's failure to honor a consumer's right of reinstatement under §1005(a)(4) be apparent on the face of the rental-purchase contract? It would not, and thus a dealer could ignore the limited protections required by this bill with complete impunity if the contract were assigned to another.

3. No agency adjustment authority. Unlike other federal consumer protection laws (such as the Truth in Lending Act and the Electronic Funds Transfer Act), the agency charged with writing regulations to ensure compliance with this bill will have no discretion to make adjustments or exceptions to ensure that the provisions actually protect consumers.

Real consumer protections are critically needed in RTO transactions

As both the RTO industry and the FTC statistics show, the customer base for RTO transactions is among the poorest Americans – and quite often young military personnel. *The FTC statistics also show that the vast majority of these customers enter into these transactions as a method of purchasing goods.* While the industry attempts to claim that the majority of these transactions are rentals, this is belied by the information provided to the IRS and in litigation. On average the RTO stores dispose of rental units within two years of their purchase of inventory and dispose of about 90% of all rental units with 3 ½ years of purchase. *In other words, everything is sold to the RTO customer base in two to three years.*[23]

The interesting distinction is between the FTC statistics and the industry statistics on this point. The FTC says that seventy percent of RTO merchandise is purchased.[24] The industry indicates in its promotional materials for this bill that "only 25 percent to 30 percent of rental-purchase customers actually pursue the ownership option." The difference between these statistics is that the FTC is counting *people* and the industry is counting *contracts.*

The reason for the difference in the numbers is that RTO customers frequently "refinance" their RTO contracts and continue making payments. Ultimately customers end up owning RTO goods. The 25% rate of initial contracts being completed all the way to purchase is more an indication of the industry's collection practices than it is an indication of customer intent to purchase. The income levels of most RTO customers create ample opportunity for bumps in the customer's economic road that will adversely affect the ability of the customer to consistently continue to pay $19.99 a week to a RTO dealer over a period of 18 to 21 months. This is why the

[23] *ABC Rentals v. IRS*, 142 F.3d 1200, 1202 (10th Cir. 1998).

[24] Federal Trade Commission, Bureau of Economics Staff Report, *Survey of Rent-to-Own Customers*, Executive Summary.

reinstatement protections in the governing law are so crucial to the customer. When a customer has defaulted on an RTO contract, some credit for weeks of past payments must be applied toward the purchase of the item. As the industry statistics show, the ultimate purchase will frequently not occur until the customer has entered into two or three RTO contracts for the same or a similar item.

What does this low-income customer base most need to protect them from an industry which preys upon their lack of perceived options? These consumers need protection from high costs and unfair practices. Although we believe that the best way to achieve these protections is to treat these transactions as what they really are, disguised credit sales, *we also believe that adequate federal regulation can be provided in the RTO context.*

There are numerous ways in which RTO legislation can be improved. RTO consumers need, at the least, the following protections:

- Limitations on the total of payments that a consumer should be required to pay for the purchase of the item. Some states (such as West Virginia,[25] Ohio,[26] Connecticut,[27] Iowa,[28] Maine,[29] New York,[30] Pennsylvania,[31] South Carolina[32]) have these limits. Others do not. A federal law could truly protect the consumers by adopting real limitations on the cost of RTO transactions as these states have done.

- Limits on "fees" such as late fees, insurance fees, home pick-up fees, reinstatement fees, etc. Some states have limits already, many do not.

- Reinstatement rights that clearly allow the consumer to have payments made on previous contracts applied to new contracts for the same types of items. H.R. 1588 has a minimal provision on this point (Sec. 1005(a)(4)), but it provides little protection to consumers, and there is no enforcement mechanism.

- Meaningful and correct price tag disclosures, as well as contract disclosures. By the time the customer gets the contract, the decision to proceed with the transaction has often been made. Yet, as explained above, the "point of sale" disclosures in H.R. 1588 are downright deceptive, rather than being helpful.

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[25] W. Va. Code Ann. § 46B-1-1 – 46B-8-3.

[26] Ohio Rev. Code Ann. § 1351.01 – 1351.09.

[27] Conn. Gen. Stat. Ann. § 42-240 – 42-259.

[28] Iowa Code Ann. § 537.3601 – 537.3624.

[29] Me. Rev. Stat. Ann. tit. 9-A, § 11-101-122.

[30] NY Pers. Prop. § 500-508.

[31] 42 Pa. Cons. Stat. Ann. § 6901-6911.

[32] S.C. Code Ann. § 37-2-701 – 37-2-714.

- Meaningful penalties for dealers who violate the provisions of the RTO statute. As the maximum penalty to be assessed against a dealer who violates the minimal disclosure requirements of this bill is merely 25% of one month's rental payment, there is virtually no incentive for dealers to comply.

- A disclosure like the annual percentage rate (APR) to show the consumer the true cost of renting to own, to allow comparison with other methods of purchasing personal items. This bill would preempt Vermont's law, which requires such a disclosure.

- Limits on maximum RTO interest rates, as New Jersey requires. Recently, the New Jersey Supreme Court upheld these limits on rent-to-own interest rates. The industry's petition to the U.S. Supreme Court for review has been rejected. That is the primary reason they are here in the Congress: to get relief from strong state laws.

Conclusion

HR 1588 is a dangerous anti-consumer bill, designed entirely and solely to protect the RTO industry from the more protective consumer protection laws of some states. Passage of this bill will harm not only the consumers in Minnesota, Wisconsin, Vermont and New Jersey, but consumers in the rest of the nation as well: no state will ever be able to pass the more protective provisions currently in place in these four states.

Testimony of Vivian Saunders Before the
COMMITTEE ON FINANCIAL SERVICES
Subcommittee on Financial Institutions and Consumer Protection
Regarding H.R. 1588
July 26, 2011

Good morning Chairwoman Capito, Ranking Member Maloney and members of the Subcommittee. Thank you for inviting me to speak this morning.

My name is Vivian Saunders and I'm a longtime and proud rent-to-own customer from Lewiston Woodville, NC.

I first used rent-to-own in 1991 when my son was a toddler. He was allergic to disposable diapers, so we had to use cloth diapers—and we had to **clean** those cloth diapers. It seemed like if I wasn't sitting at the Laundromat, I was driving to and from the Laundromat. It was time consuming and expensive. I couldn't afford my own washer and dryer and none of the local stores would give me credit.

Then a neighbor told me I could rent-to-own a washer and dryer. Before long, I was doing laundry at home, saving on gas and spending more time with my family. And I wasn't tossing change into a washing machine I would never own.

The rent-to-own folks didn't care about my credit status. They worked with me and had faith in my intention to pay. When we had trouble paying, they gave us the time we needed. No other store in my community would do that.

Over time, through rent-to-own, we made our house a home. Just as we were proud to have our own washer and dryer, we took pleasure in the nice furniture we added to our home. Our kids didn't have to feel embarrassed to bring their friends over.

Later in the 1990's we hit financial hard-times when my husband lost his job. We were able to return a microwave we were renting. That helped us get through those times by lowering our bills. Because it was a rent-to-own agreement we

could stop paying without causing negative repercussions—like a default on our credit report.

On another occasion, I rented a big screen television for a short time because a community group I was working with needed it to view videos related to our cause. When we were done, we returned it with no obligation to pay anymore. I liked the television so much though I later got one for myself.

Rent-to-own gives people a way to improve their lives even if they don't have much to start with. You see, our family lives in one the poorest counties in America – North Carolina's Bertie County. Day in and day out, I see firsthand how kids are picked on and demoralized because of their living situation. They're outcast for being poor. Having a home with nice furniture and a nice refrigerator empowers them. Rent-to-own empowers them by giving them the ability to furnish their homes with things most people take for granted. That ability makes them feel they are a part of the community. It gives them a greater sense of self-worth.

And I know something about how self-worth impacts people. I used to run an alternative school and now run an after school program for some of the poorest kids in our community. The students enrolled in this program, boys in the 6 to 12th grade, had been expelled from the public school system and few believed that investing in these boys' future would yield any positive outcomes. We brought technology, computers and a challenging curriculum to what many referred to as the discarded boys.

But the best computers and latest technology mean little, without respect for these students and the belief they can achieve great things. It is that powerful combination that is helping these students improve their educational outcomes and grow into caring young men who also want to help others in their communities.

It was not simply owning things like new furniture and a refrigerator, but the fact that I felt worthy of ownership and felt valued as a customer. What I have learned living and working in Bertie County is that the best way to get things accomplished is to be honest and respectful. If this experience has taught me anything, it's the value of dignity and self-esteem in the lives of today's kids.

I've also learned that in our practical, day-to-day lives, you need to have plenty of refrigerators and freezers on hand to prepare meals for these kids. And today I'm fortunate to be in a position to have donated some of my old refrigerators and freezers, which I acquired through rent-to-own, to the school I run.

I'm also fortunate to have been unharmed in the string of tornados which tore apart my community on April 17th. Ten families I know lost their entire homes. Others I know had to move because of the damage to their homes.

While their homes were being repaired or rebuilt, those families needed ways to manage their day-to-day lives. So they went to local rent-to-own stores and rented beds and furniture to tide them over until they could move back into their homes.

The rent-to-own stores delivered the furniture to the houses and when the families didn't need the furniture any longer, the rent-to-own stores picked it up.

There were no other stores in our community that would have done the same. The rent-to-own folks helped all of these families establish temporary homes to recover from one of the worst disasters our community has ever seen.

I am fortune to now be able to use credit as well. Not long ago, we purchased furniture on credit from a local furniture store. But I still use rent-to-own and I'm glad it is available to me. In this uncertain economy you don't always want to take on additional credit.

Rent-to-own has helped me in so many ways for so many years as it has helped others in my community. That help goes beyond just getting nice things for my home. The pride it gave me to be able to provide for my family has played at least a small part in helping me get where I am today and be able to help others learn to succeed.

I am proud to say I am a rent-to-own customer and I hope my testimony has given you some perspective on why rent-to-own works well for so many people, including my son, whose diapers introduced me to rent-to-own 20 years ago.

We're just two of the millions of customers who've relied upon and appreciated rent-to-own over the years.

Thank you.

Written and Oral Testimony of Roy Richard Soto Before the

COMMITTEE ON FINANCIAL SERVICES

Subcommittee on Financial Institutions and Consumer Protection

Regarding H.R. 1588

July 26, 2011

Madame Chairwoman and members of the subcommittee:

Thank you for inviting me to testify today in support of H.R. 1588. My name is Roy Richard Soto. Our company operates five rental purchase stores in San Antonio, Texas. I have two equal partners in the business, Trinidad Rubio and Brian Clussman. Our business name is Premier Rental Purchase. The partners divide between them the responsibilities for store operations, human resources, payroll, accounting and finance in our company. I am in charge of marketing, advertising, training, and purchasing in the company. Today I am here representing not only myself and my company, but the Association of Progressive Rental Organizations and its 4,000 plus members.

My partners and I have each been in the rent-to-own business for over 20 years. We all started out working for Rent-A-Center, a large publicly-traded RTO company. We learned all aspects of business working for that company. Early on, we knew that we wanted to own and run our own stores. We each had a vision for our own company and a business culture we could create, drawing from all of our experience and knowledge of the business.

In 2001, we came up with a business plan for our own RTO business and began looking for financing in San Antonio to open a store. Over the course of the next four years, we showed our business plan to 12 different banks, explaining our vision and how the RTO business works. All 12 banks listened politely and then turned our loan application down flat.

We were finally able to get an SBA loan as a franchisee in the Premier organization, and we opened our first franchise store in 2005. Today our five Premier stores in San Antonio have collectively 40 employees and an annual payroll of $1.2 million.

Quickly, let me explain my business to those of you who may not be familiar with rent to own. We rent high end quality TV's, computers, furniture and appliances—the conveniences of modern 21st century life—to consumers on a weekly, biweekly, semi-monthly, or monthly basis. The customer chooses the products he or she wants—perhaps a washer and dryer to avoid carting children and laundry to the laundromat every Saturday. The customer chooses a payment cycle such as weekly or monthly, and how long to rent. A customer is never obligated to make the next payment. The customer never goes into debt. Ours is a no-obligation rental transaction. If the customer completes a set number of the chosen rental terms or exercises the early purchase option, ownership transfers along with any unexpired manufacturer's warranty.

We also provide free delivery and installation of our products, an early purchase option, a 90-days-same-as-cash option, and full service including repair and replacement of the product on the property during the entire rental term. We provide the use of a "loaner" item if we have to pick up the unit and take it back to the store for repairs. Our company also offers "lifetime

reinstatement." That means that if some unexpected financial emergency arises, customers can simply return the unit to us, then, if their situation changes , in a week, or 6 weeks, or a year, or 6 years, they can come back into the store and pick up the agreement right where it left off. If the customer had paid 8 months on an 18-month rental plan, for example, we will reinstate that plan without the customer losing any of the pervious rental payments made toward ownership. We will redeliver the same unit if we still have it; otherwise we will deliver a unit of comparable quality and condition.

RTO is an attractive choice for a wide variety of consumers. Because the customer never goes into debt with us and there is no "credit" in the transacton, we do not run credit checks on our customers before we rent to them. If a customer tells us the truth about who they are, where they live and where they work, we are happy to do business with them without having to delve into their financial histories. Furthermore we do not report our customers to credit reporting agencies. RTO is attractive to young people who are new to the marketplace and may not have an established a credit history. The transaction is attractive to the many Americans who have blemished credit. RTO is also attractive to those who want to "try it before they buy it," and lastly, RTO is attractive to those who want an item immediately and can afford modest payments, but who do not have savings or a lump sum to purchase.

We call it rent-to-own or rental purchase, even though in our company, the percentage of customers who complete their chosen rental term or exercise the early purchase option averages about 35%. Our customers often do not purchase the goods they are renting because their plans change; their tastes change; their needs change, financial emergencies arise; people

move; and because there is no obligation ever to make that next payment, people just change their minds. RTO accommodates all such fluctuations that occur in life. That is the business we are in.

That means we make a lot of deliveries out of our stores to our customers' homes. We also spend a lot of time picking up merchandise when customers choose to end their rental agreements. Then, we have to refurbish that unit, if it comes back in rentable condition (and occasionally it does not), and then find another rental customer and make another delivery. We lower the rental rate on previously rented items. A piece of rental inventory might get rented 3 or 4 times before someone owns it or we have to take disposition steps To remove the product from inventory

Our customers have a lot of choices besides RTO. There is Craigslist on the Internet; there are used furniture stores or even yard sales. There is guidance from *Consumer Reports* which urges consumers to do without until they have saved up enough money to pay cash. That is an alternative and consumers can find all of the same things that we rent through these and other channels, but they would have to pay cash up front or incur fixed-term debt obligation. Moreover, they will not get the product delivered and installed immediately; they will not get free service or a replacement product if the item breaks; and they surely cannot change their minds and give it back if they decide that they do not like it, cannot afford it, or do not really need it after all.

H.R. 1588 is good for my business and is good for my customers. The bill would improve the image of the RTO industry by setting a floor of industry best practices, requiring all of my

RTO competitors to comply with certain disclosures and other consumer protections that are not in place everywhere today.

APRO believes bill would enhance consumer reinstatement rights in over 30 states. In addition, It would require all RTO dealers in states such as Texas where I do business to have clear price tags on their merchandise showing the rental rate—how much per week, per month, or other term,—the rental term—how long before ownership—the cash price and the total price if the item is rented to term. These kinds of price disclosures are not required in all states, and that absence could allow for some confusion until the customer sits down to sign the rental agreement. The Federal Trade Commission thinks this is too late in the transaction for consumers to be getting this information and so do I. Consumers should have this information while they are shopping. H.R. 1588 would require it.

I have a very personal interest in the passage of H.R. 1588. My partners and I would like to grow to 15 or 20 stores, which would increase our employment by another 120 or so employees. I believe that one of the chief impediments to better financing for my company is the lack of certainty regarding the regulatory treatment of my industry. Such certainty of treatment is critical to any industry, including the rent-to-own industry. My industry is supportive of the effort to provide a federal safety net of consumer protections, and it is asking that when this net is established that the Congress provide that the industry's transactions be properly characterized.

By their nature, these transactions are clearly leases, not sales. After all, a consumer can return the item and is under no obligation to pay for the item as the consumer is under a sales transaction. Thus, all the industry is asking is that the transaction be treated for what they are -- leases, not credit sales.

But I want to make one thing perfectly clear. This legislation would NOT preclude a state from adopting what it might consider to be stronger consumer protections than contained in this proposed federal safety net – whichever protection is deemed stronger would prevail. Thus, if a state's laws were considered less stringent than the federal standard in this bill, the federal standard would prevail. However, if the state law were deemed stronger, the state law would prevail. The only requirement on the states would be that whatever protections they might adopt could not mischaracterize the transaction as a sale rather than a lease. A state could in fact outlaw the entire transaction. However, it couldn't mischaracterize the transaction as something which it patently is not, namely a credit sale.

The industry, on the other hand, would gain certainty that its transactions would not be mischaracterized. Whatever states decided to do would be permitted under this bill, but the states would have to do it in the context of properly characterizing the transactions.

If H.R. 1588 were enacted, I believe that we can obtain new, additional financing beyond our SBA loans and at better rates. Then, instead of having 40 employees, we could quickly grow our business to 140 employees. This would help our company, our employees,, their families,

and, we beleive, the San Antonio economy. Market demand and the quality of our product and service should determine our growth, not legal uncertainty, litigation, and its adverse consequences for our business.

The RTO industry to which I have devoted most of my working life, my investment capital and much of my spare time for the past 20 years, has been working on both federal and state legislation for many years with a view toward modernizing and improving our ability to serve the growing number of consumers who rely on our business. We want to thank Representative Canseco, Representative Clay, Representative Jones and the other 80 legislators who have cosponsored the bill in this Congress.

Thank you for allowing me to appear today in support of this bill. I would be happy to answer your questions.

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