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Statement of Hon. Mark Shurtleff, Utah Attorney General on H.R. 6139, the “Consumer Credit Access, Innovation and Modernization Act,” to the Subcommittee on Financial Institutions and Consumer Credit of the House Financial Services Committee

Chairwoman Capito and Members of the Subcommittee, I am pleased to present this testimony on H.R. 6139, the “Consumer Credit Access, Innovation and Modernization Act.” This bipartisan bill, recently introduced by Congressmen Luetkemeyer and Baca, would provide for the issuance of a federal operating charter by OCC for qualified nonbank lenders which focus their lending activities on providing loans and other financial products and services to underserved consumers who generally cannot obtain the credit they often desperately need from traditional banking institutions. These new lenders also would be allowed to provide additional credit to small businesses with less than 500 employees.

Let me begin by noting a simple, irrefutable and very troubling truth: we have a shockingly large number of Americans----tens of millions of consumers, reportedly perhaps as high as half of all American families----who have ongoing needs for small-dollar credit extensions and these consumers typically are unable to obtain the loans they need from depository institutions. Experience has shown that it is extremely difficult, if not impossible, for most banks to make a commercially viable profit on such small loans. Banks have relatively high operating costs on small loans and, perhaps more significantly, as federally insured depositories, necessarily high credit standards to guard against credit losses. Underserved consumers typically have less than perfect credit histories and pose higher credit risks. Most could not qualify under banks’ credit requirements even if these depository institutions offered more small loans. Banks therefore cannot be expected to be able to serve this market segment on a widespread basis anytime soon.

Underserved consumers are left with seeking to meet their pressing credit needs by relying largely on loans and other financial services from nondepository lenders such as finance companies, title and payday lenders, and pawn shops, and on family and friends, as well as “loan sharks” and unfortunately increasingly on rogue offshore Internet lenders who disregard federal and state consumer protection laws and often charge exorbitant prices. This last group is especially concerning to me and other Attorneys General.

I applaud the intent of H.R. 6139 in seeking to provide underserved consumers, as well as small businesses, with far more credit alternatives, and choices that are innovative, more affordable and better suited to their needs. From my perspective as Utah’s top law enforcement official I want to focus my comments on how I believe this legislation addresses consumer protection. First, I believe that having these new Consumer Credit Corporations should greatly increase competition in the underserved segment of the marketplace. Competition will lead to more innovation and lower prices for consumers, and it will help weed out many of the bad actors. In that regard, if enacted, this bill would go a long way towards overcoming the growing problem we now have with unregulated offshore Internet lenders.

Consumers are likely to shift to well-regulated domestic Internet and storefront lenders operating as Consumer Credit Corporations which should be able to offer them better priced, more suitable financial products.

Let me add a word on the importance of promoting competition as opposed to protecting competitors. I am sure that you will have some nonbank lenders strongly oppose this bill because they fear competition from these new federally chartered lenders. This is not surprising, especially since many nonbank lenders essentially have been granted very profitable credit monopolies under various state laws to offer limited types of high cost, high profit credit products. I urge you from a public policy perspective to have your decisions on this legislation guided by the principle of promoting competition, not protecting competitors.

Now, my other main concern with this legislation is whether it provides for adequate consumer protections and for a strong role for State Attorneys General or other state regulators as the “cop on the street” to enforce those protections. As this legislation was being drafted, I conveyed these concerns to its sponsors and am very pleased that they have addressed them in H.R. 6139 as introduced. Specifically, the bill provides that all federal financial consumer protection laws apply to these new Consumer Credit Corporations, just as they do to other creditors, be they depository or nondepository lenders. In that regard, in addition to OCC enforcement of this bill’s provisions, the Consumer Financial Protection Bureau (CFPB) would have full enforcement authority under those federal laws to regulate Consumer Credit Corporations. Most importantly from the perspective of a State Attorney General, H.R. 6139 provides that State Attorneys General, or comparable State regulators, would have full authority to investigate violations and enforce the provisions of this legislation without specific OCC authorization, and all of these State officials’ existing enforcement authorities under the Dodd-Frank Act and various federal laws and regulations are preserved. I strongly endorse these provisions and urge that Congress adopt them.

In closing, I want to comment on the bill’s preemption provision, which is based on the workable concepts that Congress passed in the Dodd-Frank Act. While I believe that federal legislators should be judicious in applying federal preemption, I recognize that in some cases it is appropriate, and I think this is one of them. Simply put, we have a credit crisis for millions of Americans in literally every state. Congress must act to provide far better credit access to these underserved consumers who cannot obtain adequate credit from traditional banking institutions. The current patchwork of widely differing, often conflicting and outdated state laws clearly does limit innovation and product offerings by nonbank lenders who now serve this market and high lender compliance costs raise consumers’ costs. What other way is there to cut through this regulatory morass than to provide at least an optional federal approach for nonbank lenders to be able to offer consumers many more credit choices? Frankly, I see none.

Given that this legislation provides state regulators with full enforcement authority of all applicable federal laws, I am comfortable with applying preemption in this instance. These federal laws and implementing regulations provide very strong and quite adequate consumer protections, and I and other state regulators will have no impediment to enforcing them to protect the consumers in our respective states.

I commend H.R. 6139’s sponsors for their thoughtful approach to addressing our nation’s consumer credit crisis and for their responsiveness to the concerns I and other state regulators have raised, and I urge this Subcommittee to move H.R. 6139 forward toward enactment.