

loan servicers are generally not true debt collectors even if they may be deemed to be a "debt collector" under the FDCPA with respect to a small percentage of their loans. A separate set of rules in the Real Estate Settlement Procedures Act requires servicers of first lien loans to provide notices related to the borrower's right when servicing is transferred. The special FDCPA notices may convey the misleading impression that the loan has been referred to a traditional, independent debt collector, when, in fact, all that has happened is that the servicing rights have been transferred from one servicer to another—often as part of a larger portfolio of performing loans.

As an alternative to following the special procedural requirements of the FDCPA, some servicers decline to accept any delinquent loans. When an acquiring loan servicer takes this approach, the perverse result may be that the holder of the servicing rights who no longer wishes to service these loans may subject these delinquent loans to more aggressive collection action than would otherwise take place if the acquiring servicer had been willing to accept those loans.

The legislation I am proposing here today is intended to address the problems created when the FDCPA's procedural requirements are applied to residential mortgage loan servicers. The legislation would apply only to first lien residential mortgage loans that are acquired by bona fide loan servicers, not professional debt collectors. It would exempt them only from the "Miranda" notice and the debt validation provisions of the FDCPA.

Importantly, all of the substantive protections under the FDCPA would continue to apply to any loan as to which the servicer is not exempt as a creditor. These provisions will allow residential mortgage loan servicers to treat the few loans subject to the FDCPA in the same way they treat all other loans and will thus reduce unnecessary administrative costs incurred identifying and separately handling these accounts. In addition, once a servicer is considered a "debt collector" under the FDCPA, the borrower would have a right to request a "validation statement"—a statement of the amount necessary to bring the loan current and to pay off the loan in full as of a particular date.

I think it is also important to note that this proposed legislative clarification has the full support of the Federal Trade Commission, the agency with enforcement jurisdiction over the FDCPA. As a matter of fact, the FTC has consistently gone on record in its Annual Report to Congress as supporting legislative clarification in this area. The FTC's 21st Annual Report to Congress provides as follows:

Section 803 (6) of the FDCPA sets forth a number of specific exemptions from the law, one of which is collection activity by a party that "concerns a debt which was not in default at the time it was obtained by such a person." The exemption was designed to avoid application of the FDCPA to mortgage servicing companies, whose business is accepting and recording payments on current debts. (March 19, 1999 Report)

The report then goes on to make specific recommendations to Congress:

The Commission believes that Section 803 (6)(F)(iii) was designed to exempt only businesses whose collection of delinquent debts is secondary to their function of servicing current accounts. . . . Therefore, the Commission

recommends that Congress amend this exemption so that its applicability will depend upon the nature of the overall business conducted by the party to be exempted rather than the status of individual obligations when the party obtained them.

I am pleased that several of my colleagues on the House Banking and Financial Services Committee, namely Reps. JACK METCALF (WA) and WALTER JONES (NC), are also sponsoring what I hope will be bipartisan legislation to clarify the FDCPA as it applies to residential loan servicers. Mr. Speaker, I hope we can move early in the next session to address this issue in both Committee and on the House floor.

IN MEMORY OF WILLIE J. COTTON,
JR.

HON. BOB ETHERIDGE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. ETHERIDGE. Mr. Speaker, I rise today in honor of the grandfather of Bailey Cotton, Seth Cotton, Emma Cotton, Justin Sloan, Matthew Evans and Leslie Evans; the father of Betty Evans, June Sloane and Dwight Cotton and the husband of Iris Lee Cotton. I rise in honor of Mr. Willie J. Cotton, Jr. who passed away on October 27.

Mr. Cotton was a native of Harnett County, North Carolina. He was a past county commissioner and served Harnett County in office for 12 years. Mr. Cotton served our country in World War II and was a lifelong member of Kipling United Methodist Church.

As North Carolina's former Superintendent of public education, I know what a battle it is to build quality schools for our children. Improving schools for our children is my life's work. Mr. Cotton took this battle on as a county commissioner to build better schools in Harnett County. There aren't many times that a person in public service takes a stand for the good of future generations that can cost them their political career. He knew he could lose but he voted anyway, and children in my home county have been in modern facilities since 1975. My own children and the children of Harnett county owe thanks to a man most of them never knew.

That is why, Mr. Speaker, I stand here today: To honor Mr. Cotton and to pay my respects to his family and my debt of gratitude. We have lost a great man, and I am proud to continue his fight for better schools for our children.

THE SMALL BUSINESS FRANCHISE ACT

HON. HOWARD P. "BUCK" McKEON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. McKEON. Mr. Speaker, I am a recent cosponsor of H.R. 3308, the Small Business Franchise Act introduced by Representative HOWARD COBLE. Today, I include for the RECORD testimony from a recent Judiciary Commercial and Administrative Law Subcommittee hearing on this legislation. During

this hearing a constituent of mine, Patrick Leddy, testified about his dealings as a franchise owner. Because of his very moving testimony, I became a cosponsor of this legislation. I wish to thank him for his words and include them in the RECORD today.

STATEMENT OF PATRICK JAMES LEDDY, JR.

My name is Patrick James Leddy Jr. I have owned and operated a Baskin-Robbins 31 Flavors franchise in Newhall, California since August 1, 1986, a total of 13 years. I am also a 26 year veteran firefighter with the Los Angeles City Fire Department. I purchased my franchised business to supplement my income, and to prepare my wife and I for our retirement. In 1996 my wife and I became very discouraged with the manner in which our Franchisor, which is a wholly owned subsidiary of a foreign corporation, was treating its franchisees. After careful consideration and after seeing sales at our fellow franchisee's stores plummet as a result of the placement of new stores and drastic changes to the system which we had originally purchased, we decided to sell our store.

In February of 1997, three months after notifying Baskin-Robbins that we were interested in selling our store, we received a notification that Baskin-Robbins was considering a location for a new store located in a shopping mall, a mere two miles from my store and well within the market from which we draw a large number of our customers.

Later that month my wife and I met with our district manager to discuss our ability to sell our store and the tremendous impact the new store would have on our existing store. To our surprise the representative from Baskin-Robbins agreed with us, and suggested that if Baskin-Robbins were to go forward with this plan, how would we feel if they were to purchase our store, and then sell both our store and the new store as a package to a new buyer? We agreed that this would be acceptable to us. Whereafter, the Baskin-Robbins representative offered us \$40,000 dollars less than what I had paid for this store seven years earlier, and after an additional \$70,000 dollars I paid for improvements which were required by Baskin-Robbins. We were appalled at this offer, but were advised by the Baskin-Robbins representative that we really should consider his offer, because if Baskin-Robbins does elect to place this new store at the proposed location, our store wouldn't even be worth that amount.

Thereafter in April of 1997, and pursuant to an internal policy of Baskin-Robbins, which is not binding on Baskin-Robbins, and which is rarely followed by the company, I submitted to my district manager my response to this Baskin-Robbins proposed new location. He assured me that he would notify me of any developments as they occur, and that we would be notified promptly, once a determination had been made.

In June of 1997, after several unsuccessful attempts to learn whether Baskin-Robbins would proceed with the new store my wife called our district manager and explained to him that we needed immediate information on what the company intends to do about this new site, because we have had several prospective buyers for our store that were disinterested once we disclosed to them Baskin-Robbins plan. The Baskin-Robbins representative advised us not to disclose the information about the new store to our prospective buyers.

In July of 1997, our local neighborhood magazine publications reported that a new Baskin-Robbins would be open two miles from our store. We were shocked. Two days after this news story appeared, and after numerous telephone calls to Baskin-Robbins on our part, we finally received official notification from Baskin-Robbins about the new store.

We later learned that Baskin-Robbins signed the lease for this new store on May 13, 1997.

On August 5, 1997, after the underhandedness that we had felt from Baskin-Robbins, my wife and I decided that in our best interest we should retain legal representation to help us resolve the matter with Baskin-Robbins regarding the encroachment issue and the subsequent issue of our inability to sell our store.

In June of 1998 the new store opened, with their grand opening celebration following in August. As you can see on the enclosed charts, sales at our store have drastically declined as a result, and have effectively terminated our ability to sell the store at a reasonable price.

While attempting to resolve matters through our attorney, Baskin-Robbins has become increasingly hostile towards us. They have begun arbitrarily rating us as "C" franchisees, when in the past, we had always maintained an "A" or "B" rating. In addition, they have brought against us a lawsuit, contending that we were poor operators. One week before the inspection that is the basis for their lawsuit however, a mystery shopper trained and employed by Baskin-Robbins rated our operation superior, as did the LA county Health Inspector.

In closing, I would ask your full support in addressing the obvious imbalance in the relationship between franchisor and franchisee through legislation. I am one Franchisee of many that are so frustrated in the way that we are literally forced to do business. Many franchisees I now that have lost their businesses, are going to lose their businesses, or are just plain hanging in there because there's nothing else they can do. I am extremely fortunate that I have another profession to fall back onto, while others suffer from intimidation, or being afraid to stand up and say anything, for fear that they will be strong-armed into submission, as Baskin-Robbins has attempted to do me. Please give us the tools that we need to survive in this giant corporate world, so that us little guys can continue making those big guys who they are. Thank you.

IN MEMORY OF TIM DONOHUE,
LONG TIME CONGRESSIONAL
STAFFER

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mrs. MALONEY of New York. Mr. Speaker, I rise to pay tribute to Timothy Leo Donohue, a long time employee of the House of Representatives who passed away on November 11, 1999. Tim loved politics, government service and the House of Representatives where he worked for more than twenty years.

Tim was usually in the Speakers Gallery, helping to control access to the Floor. Generally assigned to the Democratic side, Tim understood that just because our work is important does not mean it must be cheerless. Always there with a warm smile and a good word, Tim made us all feel good about ourselves and our work. Tim was the consummate professional. He took his job seriously without taking himself too seriously. When questioned about his ability to recall names and faces, he joked "After you have memorized the faces of 435 white males the rest is easy."

Prior to his service with the Doorkeeper, Tim worked for Congressman Charlie Wilson and Senators LEAHY and Cranston. His last service on the Hill was with Congressman BARNEY FRANK.

Tim was a deeply spiritual person, who had studied for the priesthood before deciding to devote himself to public service. In making this choice, Tim was motivated by the belief that public service was the best way for him to serve God and country.

Tim was also a gay activist who served that community in a number of ways. He devoted countless hours to "Food and Friends" a charitable group dedicated to easing the suffering of those afflicted with AIDS and to gay political groups, especially ActUp.

Tim also encouraged a number of gay writers. Tim is quoted in Michelangelo Signorile's "Queer in America" on the role of gays in Government. While some were arguing about the risk posed by gays in the military, Tim presents images of gays who love their country and choose government service. Without "naming names," Tim helped correct the historic record to point out the important role played by gay staffers in Congress.

As a proud liberal who loved his country, Tim sacrificed a high position as an energy company lobbyist because he questioned Interior Secretary James Watt's statement that America was divided between "liberals and Americans."

Today, we mourn the passing of a loyal and hardworking staffer. Like many others who work in this House, Tim sacrificed high pay and other benefits to serve his country. He appreciated that the worth of a man is not measured in how much he earns but in how much he contributed to the common good. This House and our country suffered a loss when Tim Donohue left this world.

ARTHUR SZYK: ARTIST FOR
FREEDOM

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. LANTOS. Mr. Speaker, Arthur Szyk is considered by many scholars to be the greatest illuminator who worked in the twentieth century in the style of sixteenth-century miniature painters. The Times of London described his Haggadah as "worthy to be placed among the most beautiful of books that the hand of man has produced." He is indeed one of the most remarkable and talented artists of this century. Arthur Szyk's works on George Washington and the American Revolution hung in the White House during the administration of Franklin Delano Roosevelt, and these works are now on display at the Roosevelt Presidential Library at Hyde Park, New York. In recognition of his talent and commitment, the U.S. Congress presented Arthur Szyk the George Washington Bicentennial Medal in 1934.

Mr. Speaker, Arthur Szyk was not just an artist, he was an artist with a point of view, and he used his art to speak out for freedom and democratic values. He was the leading political artist in America during World War II, and he wielded his pen and his brush as a sword in the fight against Nazi Germany and

Imperial Japan. During the war, his caricatures and cartoons appeared on the front covers of many of America's leading magazines—*Colliers*, *Esquire*, *Time*—where his graphic political editorials and brilliant parodies lampooned the Nazi and Axis leaders. His art seethed with mockery and scorn for the Fascist dictators. First Lady Eleanor Roosevelt called Szyk a "one-man army against Hitler." As Szyk himself said, "Art is not my aim, it is my means."

In addition to his art advancing the fight against Germany and Japan, he used his art to attack racism, bigotry and inhumanity at all levels. He sought to close the gaps between Blacks and Whites, between Jews and non-Jews. He defended the rights of the soldier, and he expressed sympathy and compassion for the victims and refugees of war-torn Europe.

Mr. Speaker, Arthur Szyk was born in Lodz Poland in 1894. He came to the United States in 1940 sent here by the Polish government-in-exile and by the government of Great Britain with a mission to bring the face of the war in Europe to the American public. That he did with great skill and vision. He remained in the United States, became an American citizen, and died in New York City in 1951.

Mr. Speaker, I wish to call the attention of my colleagues to an excellent exhibit of the work of Arthur Szyk which will open in just a few days. The exhibit "Arthur Szyk: Artist for Freedom" will be on display in the Swann Gallery of the Jefferson Building of the Library of Congress from December 9, 1999 through May 6, 2000. I urge my colleagues to visit this exhibit, which is literally across the street from this Chamber. Arthur Szyk is one of the great artists of this century, and his art not only reflected and helped to define a critical period in the history of our nation, his art also helped to rally Americans in the fight for freedom and against brutal tyranny during World War II.

TRIBUTE TO RALPH "POP"
STRICKLIN

HON. MARION BERRY

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. BERRY. Mr. Speaker, I rise today to pay tribute to a true friend and truly great Arkansan, Ralph "Pop" Stricklin.

Pop, who celebrated his 80th birthday last month, has helped make Jonesboro, Arkansas, the great place that it is today. When he wasn't working in the electric and refrigeration business, a career he began in 1936, Pop served his country and his community in so many ways. He served his country in the U.S. Army from 1941-46. For 36 years, he served as the Alderman of Jonesboro, working under five mayors. He also worked with the Fair Board for 15 years and was a valued and faithful employee to Arkansas State University for 20 years.

Pop is a VFW life member, DAV life member, a member of the American Legion; the Boy Scouts; Salvation Army Board; the Elks; Kiwanis, where he has had 36 years of perfect attendance; a board member of the First Methodist Church; and a member of the Jaycees "Old Rooster, after 35 age group," to name a few. He has also served on several