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MILLIONS TO THE MIDDLE *SERIES*

BORROWER SECURITY ACT

HELPING AMERICANS BUILD ASSETS

POLICY IN FOCUS

BORROWER SECURITY ACT

Enact a set of National Usury Limits that would be floating, indexed to a federal benchmark rate, and potentially tiered based on the credit product, and cap late and penalty fees.

Widely shared middle-class prosperity has made the United States the most hopeful and dynamic country on earth and is a foundation of strong democracy. Yet today, America's middle class is in trouble: the traditional routes into the middle class have become more difficult to travel and security has eroded for those already in the middle class. Major economic and policy changes over the past three decades have widened economic inequality and reduced mobility in ways that go far beyond the impact of the recent recession. Too many people who play by the rules and do everything right find that they cannot climb into the middle class—or stay there. To meet this challenge, Millions to the Middle offers dramatic public policy initiatives to rebuild and grow the nation's middle class.

We aim to accomplish two broad interrelated goals: to ensure that all Americans have a chance to move into the middle class and, second, to ensure greater security for those in the middle class. The 14 policies we offer are rooted in mainstream American values and able to command strong public support over the long term. Together, they go beyond the confines of the current policy debates and are of sufficient scale to firmly establish a middle-class America.

Our policy agenda is based on the three broad pillars of middle-class opportunity and security: investments in human capital and education; support for growth, job creation, and career development; and helping Americans build assets. This policy is part of the **Helping Americans Build Assets.**

POLICY: BORROWER SECURITY ACT

Allow bankruptcy judges to reduce the mortgage principal on a primary residence and to discharge student loan debt.

POLICY RATIONALE

Personal debt can stand as an insurmountable obstacle to Americans wishing to build assets and secure a place in the middle class. In addition to the critical last resort of bankruptcy relief, Americans need fair rules to ensure that lenders – from credit card companies to mortgage lenders to vendors of payday loans – don't impose excessive interest rates, fees, and penalties that make it easier for American to get into serious debt and harder for them to get out.

OPINION SNAPSHOT

- 63 percent of American voters say they want more government oversight of lenders and other financial companies, 77 percent say government should make it harder for lenders to offer loans with risky or confusing features, such as low teaser rates.[2]

Although usury laws are on the books in some states across the country, they are rendered useless by deregulation of the credit industry. Deregulation of the industry began in 1978 with *Marquette National Bank of Minneapolis vs. First Omaha Service Corp.* and continued with *Smiley vs. Citibank* in 1996. Taken together, the two Supreme Court rulings allowed national banks to charge credit card customers the highest interest rate permitted in the bank's home state, with fees defined as interest for the purposes of regulation. As a result, national banks physically moved their credit card operations to states, such as South Dakota and Delaware, that have no usury limits.

The consequences of deregulation have been pervasive usury among credit card companies, with devastating effects on the ability of Americans to accumulate and protect financial assets. And usurious interest rates are not unique to the credit card industry. The entire credit industry is engaging in usurious practices. The payday loan industry charges some of the highest interest rates of any type of creditor, and rates as high as 400 percent annual percentage rate are not uncommon. Through refund anticipation loans (RAL), the tax preparation industry is also engaging in usurious lending behavior.

Recent legislation has helped to rein in some of the worst abuses of the lending industry. The Credit CARD Act of 2009 successfully increased the transparency of rates and fees without pushing rates up.[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 established the Consumer Financial Protection Bureau (CFPB), an agency with tremendous potential for ensuring a fair marketplace for financial products.

POLICY DESIGN

- Enact a set of National Usury Limits that would be floating, indexed to a Federal Rate, and potentially tiered based on the credit product (e.g. student loans, short-term "payday" loans, credit cards). This step would enable lenders to continue using risk-based pricing, but put an end to routine credit card interest rates of 20 and 30% above prime or payday loans at 400%, all of which are unjustifiable by any measure.
- A credit card issuer may not impose any late fee or charge greater than $15 on borrowers who fail to make a payment on or before the due date for payments.

ENDNOTES

1. Joshua M. Frank, "Credit Card Clarity: Card Act Reform Works," Center for Responsible Lending (June 2011). http://www.responsiblelending.org/credit-cards/research-analysis/credit-card-clarity.html
2. Lake Research Partners, "New Poll: Broad Bipartisan Support for Financial Reform and Consumer Protections," Center for Responsible Lending (July 2011). http://www.responsiblelending.org/mortgage-lending/policy-legislation/regulators/new-poll-broad-bipartisan.html

DĒMOS
220 Fifth Avenue, 2nd Floor
New York, New York 10001
Phone: (212) 633-1405
Fax: (212) 633-2015
www.demos.org

DĒMOS MEDIA
Lauren Strayer
Associate Director of Communications
lstrayer@demos.org
(212) 389-1413