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FILED ELECTRONICALLY

RE: COMMENTS: Consumer Credit and Corporations Legislation Amendments (Enhancements) Bill 2011

Dear Honorable Committee Members,

Veritec is writing to comment on the current proposal to reform and amend the Consumer Credit and Corporations statutes as identified above.

Veritec is specifically commenting how effective enforcement at little to no cost to Government can be achieved in order to produce the desired policy positions taken by the Amendment. Veritec maintains databases for over a dozen regulatory bodies with over 100 million short term credit product records. Veritec's work in this area consumer finance is utilized by policy makers in the United States, Canada, and Great Britain to understand the effects on caps on interest rates, restrictions in borrowing amounts, and restrictions in the number of credit contracts a consumer can obtain.

As noted in the Explanatory Memorandum Veritec is specifically commenting concerning the following policy:

"caps on the maximum amount credit providers can charge under both small amount credit contracts, and all other credit contracts, and additional obligations in relation to small amount contracts (namely, restrictions on multiple borrowings and new disclosure requirements);"

Veritec is in a unique position to advise Parliament members what regulators in the United States, Canada and the United Kingdom have implemented or are researching to implement in order to enforce your proposed enhancements.

Following the adoption of similar policies (as indicated in the Amendment) in the U.S., regulators were immediately challenged with how to ensure compliance. Based on the nature and duration of small dollar, short term lending, it is impossible to ensure that consumers are not taking out multiple loans from multiple creditors, and rolling those loans in between creditors. Current sub-prime credit bureaus do not maintain **every transaction**, are not real-time, and provide only risk assessments for creditors. They most certainly do not provide for the enforcement of rates, terms, disclosure and all other statutory aspects of a regulatory structure.

Veritec recommends that the Committee consider a real-time verification system to efficiently and effectively ensure compliance before a covered transaction is entered into with a Australian consumer. These systems are currently in place in the U.S. with over 80 million consumers being protected. Currently, the new federal Consumer Financial Protection Bureau which will oversee consumer protections for over 300 million U.S. consumers will be required to enforce federal consumer protections. The enforcement systems as described below would effectively ensure that **all** aspects of the Amendment are being enforced in real-time, and at **no** cost to Government. U.S. states have

successfully implemented a similar regulatory system that provides an effective means of real-time verification of consumer status and eligibility for high cost credit contracts such as payday loans, installment loans, auto title loans, and predatory mortgages. Two more states have similar programs and over a dozen states have debated and continue to work to implement a real-time enforcement system.

The following comments suggest consideration of this proven approach for a regulatory environment that is “real time” to successfully meet the intent of the Amendment and prevent creditors from asserting that they did not know the disposition of the consumer when they lent monies in violation of the proposed regulatory structure.

Significant experience has been gained through State regulation in the U.S. of short term lending products. As outlined below, the suggested approach would mirror the current state regulatory approach where compliance is seamless with day-to-day business operations. By deploying state-of-the art web-based technology, every loan transaction that is conducted by short term credit companies will be in compliance with Australian law. The proposed system will include the status of a consumer who may or may not be eligible to received credit under the Amendment.

Existing regulatory database programs in the U.S. states have proven the success of this concept in regulating the payday lending and other short term, high cost lending industries. Australian lenders currently utilize a number of Point of Sale systems and several Australian lenders are conducting business in the U.S.. These systems will not be new to Australian creditors. These systems can be easily integrated into a central, real-time system set up by ASIC or the appropriate enforcement body, to ensure compliance **prior to** a transaction being conducted.

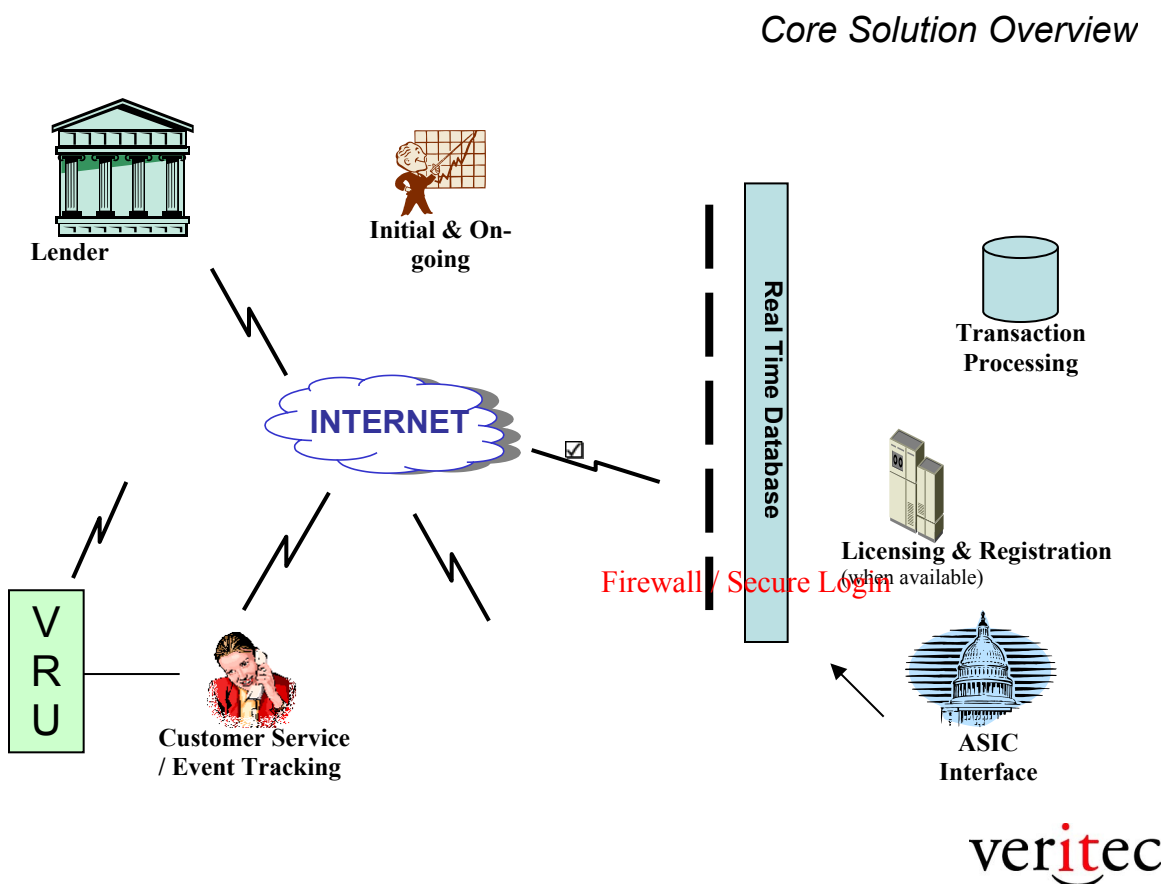
An inquiry to the central system would simply return a “yes” or “no” to the inquirer’s question, “Is this customer eligible for a loan at this time under current federal regulations?”. If the answer is “yes”, the real time enforcement systems would in turn use this information to ensure that the loan is written in compliance with the law. (i.e. rates, terms, notifications, etc... The inquiry will be logged and will provide an audit trail that the lender complied with the regulations. Loans that are not eligible can not be made. The system would provide a unique authorization number. The only loans that can be conducted, collected upon, and serviced are those with an authorization number. Any loan conducted outside the system is unenforceable.

All of the current state environments have similar requirements that can easily be adopted in order for lenders to comply with the proposed changes in the Amendment. The following benefits are achieved:

- ❑ Enable creditors to seamlessly meet the business needs of their retail consumers while maintaining compliance with the Amendment. The key to this seamless environment is integrating with existing retail delivery systems provided by the leading software vendors for these industries.
- ❑ Enable retail consumers to inquire about questions related to the program and resolve disputes with the creditor about their status.

- ☐ Enable the Government and lenders to ensure regulatory compliance throughout the transaction delivery environment nationwide.
- ☐ Provide the most sophisticated real time enforcement technology available.
- ☐ Record the status of compliance by both the regulatory enforcement systems and the creditor's point-of-sale systems.

The following diagram illustrates the core solution overview that could be deployed for the enforcement of the Amendment at no cost to ASIC.



As outlined above, key stakeholders include consumers, lenders, ASIC and policy makers. The real-time state systems are designed to handle millions of real-time inquiries.

Our experience with over 10 years providing real-time enforcement systems have resulted in the following observations:

A. Self-regulatory models are insufficient and ineffective.

Previous experience in payday lending regulation has proven that utilization of a customer affidavit or lender self certification to ensure compliance is ineffective. Payday

lenders have had little incentive to determine a customer's eligibility if the customer provides an affidavit that grants them safe harbor during the transaction. However, as many U.S. states have determined, relying on industry personnel to self regulate even under the penalties contained in the Amendment, will not be effective.

In fact, every U.S. state that has relied on self compliance to enforce regulatory schemes in regards to sub-prime lending has seen unsatisfactory compliance rates of at least 1 in 5 transactions being out of compliance. Reports published by the State of Florida provide information about compliance by affidavit and self certification pursuant to policies that were in place from October 2001 through February 2002. These reports reveal that when lenders were required to validate eligibility by reviewing their own records, request an affidavit of eligibility from the consumer, and utilize other available methods of verification, that over 20 percent of transactions conducted during this time frame were out of compliance with Florida law. Similar statistics have been reported in other states with similar regulatory programs. **In fact, when the State of Kentucky implemented their new system in 2010, prior to the real-time enforcement, one consumer in Kentucky had conducted over 120 payday loan transactions in less than 5 months with over 9 different lenders.**

Prior to implementation of the database in both Florida and Oklahoma, licensed lenders were required to load "historical" transactions to the database including those conducted under the respective statutes that were still outstanding. As noted above, both statutes required an affidavit from the borrower noting the volume of outstanding loans as part of the application process as well as "utilizing" other methods.

Based on this historical information the following was reported:

- Florida – 30.6 percent of historical transactions loaded were held by borrowers with more loans than allowed by the Act. This represented 16.1 percent of the customers holding these historical transactions. NOTE that these customers were required to sign an affidavit noting that they did not have any outstanding loans. Ref. figure below:

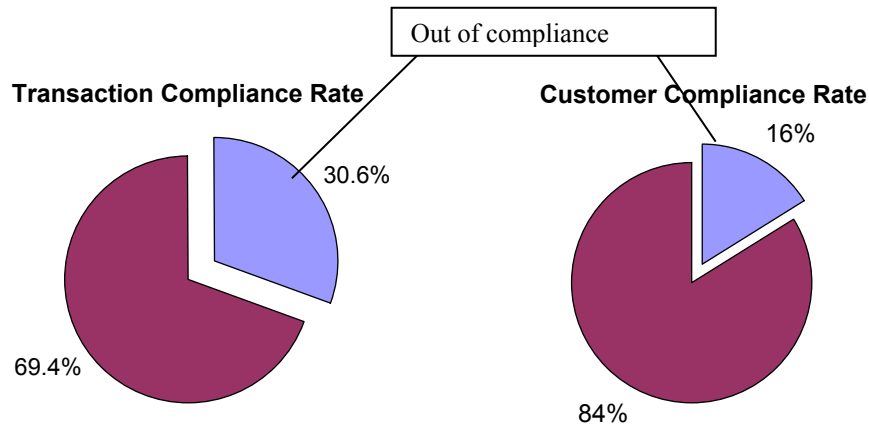


Figure 1 - Florida Historical Data "Pre-Database"

- Oklahoma – 18.2 percent of historical transactions loaded were held by borrowers with more loans than allowed by the Act. The Oklahoma database was implemented on July 1, 2004.

Several factors contribute to the lack of effectiveness associated with a self compliance regulatory model for the payday loan product. The primary reasons for reported out-of-compliance transactions are two-fold. First, consumers either did not understand eligibility requirements, or understood that there was no penalty for falsifying their status in an affidavit. Regulatory statistics from other states that have implemented the Florida database model show that thousands of customers call the state regulatory governing body to determine their eligibility on a monthly basis. Clearly, when a state enacts a regulatory program that directly affects consumer eligibility to obtain a financial product, the state must have a responsive customer service function that can assist the consumer during the process.

Second, and of greater concern, is the lender's own lack of available methods to determine customer eligibility and compliance with regulations. Thousands of loan transactions conducted during the "self compliance period" were in violation of regulations that would have been prevented by a search of the lender's own records. Lenders had no commercially viable method to reliably determine if a customer had loans at other lenders that would cause their loans to be out of compliance with state law.

B. Use of credit bureau information alone is not effective and will not ensure compliance.

While there are certainly short term, high cost credit loan customers who have extensive credit histories and profiles, the customer that utilizes high cost payday, title or other “sub prime” loans would be considered a higher risk customer by mainstream financial institutions. Most, if not all, sub prime short term lending is conducted in a short time frame, utilizing customer supplied information. Lenders do not utilize credit bureau information simply because it provides no real value to their customer base. While several sub prime credit bureaus do exist, the information contained in those databases tends to be negative events rather than positive credit history and are also limited in that their information only reflects subscriber utilization.

Another issue that may affect credit bureau effectiveness is the accuracy of the data and timeliness of update. Since credit bureaus are simply repositories of consumer credit information, data is routinely missing, incorrect, or confusing to many inquiring parties.

C. A real-time verification system is the most effective approach in terms of cost as well as utilization of personnel resources to monitor compliance.

State database programs currently cost less than 1 percent of the total fee charged by a lender to issue a short term, high cost loan. And unlike other regulatory structures, lenders can pass this small fee (cents on the dollar) to the consumer in order to pay for the overall regulatory structure.

In summary, Veritec welcomes any questions about this recommended approach and appreciates the opportunity to provide public comment. Thank you for your time and consideration of these matters. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,
Nathan Groff

Nathan Groff
Chief Government Relations Officer
Veritec Solutions

About Veritec Solutions

Veritec has a proven track record of success over the last ten (10) years with development, operation and management of the ONLY centralized statewide high cost loan database systems and programs. Veritec understands the importance of a reliable, quality-oriented and customer-focused operational environment. The Veritec team has years of experience delivering these capabilities. We believe that the cornerstone of quality service delivery and world-class operations are a clear understanding of the business and customer needs, world-class technical solutions, highly trained and

motivated personnel, effective management processes and proven business continuity processes.

Veritec Solutions is a subsidiary of Intuition Systems of Jacksonville, Florida. Intuition has been a state and federal contractor since its inception in 1977. Intuition is a privately held firm. Intuition owns and manages its own technology and call center infrastructure and does not offshore any company activity.

For more information about Veritec or Intuition, please visit our website at www.veritecs.com.

Sample Statute Enforcement Language

On or before January 1, 2013, the ASIC shall implement a common database with real-time access through an internet connection for small amount credit contract providers, as provided in this subsection. The database must be accessible to the ASIC and the small amount credit contract providers to verify whether any small amount credit contract transactions are outstanding for a particular person and whether the current contract being considered would be in compliance with the regulations. Small amount credit contract providers shall submit such data before entering into each small amount credit contract transaction in such format as the ASIC shall require by rule, including the drawer's name, identification number, address, amount of the transaction, date of transaction, the date that transaction is closed, and such additional information as is required by the ASIC. The ASIC may impose a fee not to exceed \$1 per transaction for data required to be submitted by a small amount credit contract provider. A small amount credit contract provider may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database. The ASIC may adopt rules to administer and enforce the provisions of this section and to assure that the database is used by small amount credit contract providers in accordance with this section.