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<p style="text-align:center"><b>THE CLINTON-GORE PLAN FOR FINANCIAL PRIVACY AND CONSUMER PROTECTION IN THE 21<sup>st</sup> CENTURY</b> <i>May 03, 1999 -- draft</i> <b>DETAILED PROPOSAL SUMMARY</b></p>
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## INTRODUCTION

Technology and competition in financial services give Americans more complex choices than ever before. Innovations in the financial marketplace offer millions of consumers new, ever increasing choices for investing their savings and obtaining credit. But new products have brought new risks and new abusive practices. We must update our consumer protection laws to give consumers the power, information and protection they need to profit from our 21<sup>st</sup> Century financial system.

Members of Congress, including Ranking Members Sarbanes and LaFalce, have sponsored important legislation to modernize our consumer financial protection laws. We applaud their leadership and look forward to working with Congress on a consumer protection agenda.

Set forth below is a series of actions that the Clinton Administration believes should be part of this agenda. The list is not exhaustive, and we will continue to look for constructive ideas in these and other areas. Among the issues deserving further scrutiny are lending practices such as "pay day" loans (short-term loans which can carry interest rates of 400%) and bank check processing practices that may be designed to maximize bounced check fees. We will work with the states and the FTC wherever possible. Secretary Cuomo is making important efforts to address abusive mortgage lending practices.

## PROTECT FINANCIAL PRIVACY

**Require institutions to inform consumers of plans to share or sell their financial information, and give the consumer the power to stop it.** Although consumers put great value on the privacy of their financial records, our laws have not caught up to technological developments that make it possible and potentially profitable for companies to share financial data in new ways. Current law does provide some important privacy protections: for example, the Fair Credit Reporting Act (FCRA) requires a form of notice and opt-out before certain information about consumers (e.g., information provided on an account application) can be shared. But there are no limits on the sharing of information about consumers' transactions (e.g., account balances, who they write checks to) within a financial conglomerate, or even on the sale of that information to a third party. We support legislation to give consumers control over the use and sharing of all their financial information.

**Impose special restrictions on any sharing of medical information within a financial conglomerate.** Our greatest privacy concerns involve medical information. Yet, cross-industry mergers and consolidation have given banks unprecedented access to consumers' medical records. We support legislation requiring that medical information, such as that gathered from

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life insurance records, not be shared within financial services conglomerates (e.g., between banking and insurance affiliates), except for narrowly defined purposes. Consumers who undergo physical exams to obtain insurance, for example, should not have to fear that the information will be used to lower their credit card limits or deny them mortgages.

**Give bank regulators the authority they need to ensure compliance with existing privacy protections.** Currently, bank regulators may not examine for compliance with existing privacy protections, but must wait for a consumer complaint. Congress should give regulators broader authority to monitor compliance.

**Publicize best practices in the privacy area.** Even in the absence of legislation, many responsible banks have begun posting their privacy practices on the Internet and otherwise informing customers about how their data is handled. The Office of Thrift Supervision has issued guidance in this area. Today, the Office of the Comptroller of the Currency is publishing best practices in this area, so that additional institutions can be encouraged to inform their customers and do so in the most effective way possible.

**Coordinate privacy policy in the financial and other sectors.** We must ensure that a proper balance is struck between information flows and personal privacy, for financial services and more broadly. To coordinate the Administration's privacy policy, we have created the new position of Chief Counselor for Privacy, in the Office of Management and Budget.

## EXPANDING THE CONSUMER'S RIGHT TO KNOW

### Credit Card Disclosures

**Prevent Misleading Credit Card Marketing of "Teaser" Rates.** Consumers frequently complain that they did not understand marketing materials on credit card interest rates and are shocked when rates skyrocket, whether because a "teaser" rate expired or they had a minor late payment. Some consumers are misled by mailings that promote a "low 3.9% initial rate" but fail to disclose as prominently that the rate doubles or triples in six months or with a single late payment. We support legislation requiring "teaser" rates for credit cards to be accompanied by equally prominent disclosure of the expiration date of the initial rate and the eventual APR.

**Require Credit Card Minimum Payment Disclosures.** In recent years, credit cards lenders have lowered minimum payments. Many consumers still assume, however, that, as with a monthly mortgage payment, repeated payment will eventually retire the debt. In reality, low minimum payment requirements and high interest rates often means that borrowers make little, if any, headway. We support legislation requiring clear and conspicuous notice of how long and how costly repayment would be if a consumer makes only the minimum payment.

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**Disclosure of Late Payment Fees.** It can be hard to tell from a credit statement whether and when a late payment fee (in addition to interest on the unpaid balance) will be assessed. We support legislation requiring monthly statements to display prominently the date that payment is due, together with any late payment fee.

**Disclosure of Security Interests.** Increasingly, creditors take security interests in goods purchased on credit. While consumers should expect to lose such goods if they fail to repay, they ought to know if they are granting a lien. For goods with little resale value, such liens may be taken as a collection technique or to encourage reaffirmation of the debt if the consumer goes into bankruptcy. We support legislation requiring effective notice of liens taken.

**Disclosure of Interest Rates and Fees on Credit Advances Through Third-Party Checks.** Credit cards offer some card holders "convenience" checks that allow them to write checks against their credit account in places where credit cards are not honored. But card holders may not understand that rates and charges are typically higher than for their credit card. Currently, these charges are explained only in initial disclosures but not at the time that the checks are sent to the consumer. That law should be changed.

**Apply Disclosure Rules to Internet Credit Card Solicitations.** More and more, credit cards are marketed to consumers on the Internet, but current law does not require the same complete disclosures as apply to direct mail solicitations. We support legislation requiring that all Internet credit card solicitations include clear and conspicuous disclosure of the card's terms and conditions, updated regularly to reflect current terms and costs.

## Bank Disclosures

**Provide Enforcement "Teeth" for Rules on Bank Sale of Non-Deposit Products.** Increasingly, consumers buy securities, mutual funds, annuities, insurance on bank premises. Although none of these non-bank products are insured, studies have shown that many customers believe that these products are FDIC-insured or that the bank would protect them from loss. Under current bank regulator guidelines, banks that sell non-deposit products must disclose that those products are not federally insured and limit their practices to avoid such confusion, for example by selling these products at a space physically separate from where banking transactions occur. However, a violation of these guidelines brings no penalties. We call on the banking regulators to adopt regulations that will be fully enforceable by civil money penalties and other sanctions.

## Rent-to-Own Companies

**Require Disclosure and Other Protection for Rent-to-Own (RTO).** The attraction of obtaining a TV, refrigerator, or living room furniture with little down has spurred the rapid growth of firms offering to rent products with an option to buy. But an RTO firm can sell a customer a used product that looks new, and the consumer can pay many times the value of the

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product. The FTC is nearing completion of a study of the RTO industry. We look forward to its recommendations, and expect to support a legislative response. Adequate consumer protections, including disclosure so consumers can compare the cost of RTO to other alternatives, should be required. In addition, we will work with states to ensure that any federal rules do not interfere with or preempt state consumer protection efforts, including regulation of RTO under state credit sales and usury laws.

## ATMs

**Require ATMs to provide clear and conspicuous disclosures of surcharges on the machine and terminal screen.** When customers use an ATM, the operator of the machine may impose a sizeable surcharge. Accordingly, most consumers shop around to avoid ATM fees or pay less. A conspicuous posting of the amount of any surcharge allows customers to walk past higher priced machines, or at least to begin the transaction with their eyes open. While ATM networks generally require members to post fee notices on the machine, a recent survey shows that nearly 25 percent of machines had either no posting or an inaccurate one. We support legislation requiring ATM owners to post a clear and conspicuous notice on the machine as well as on-screen, and subjecting ATM owners to sanctions for failure to make the mandated disclosures.

## Mortgages

**Require Enhanced Disclosure for Mortgage and Settlement Services and Stem Abusive Practices.** In July 1998, the Federal Reserve Board and the Department of Housing and Urban Development released a Congressionally mandated study of how best to streamline the statutory disclosure requirements for mortgage loans and settlement services, with the goal of simplifying and improving the quality of information provided to consumers to enhance their ability to shop and increase competition. The report calls for a series of statutory reforms to the Real Estate Settlement Procedures Act and the Truth in Lending Act to make the information provided to consumers more reliable, more timely, and more helpful in comparison shopping for all the services required to finance a home. Congress should adopt the report's recommendations. For example, the required annual percentage rate disclosure should include all costs the consumer is required to pay in order to receive credit, instead of the patchwork of costs currently disclosed. Creditors should be required to provide firm and reliable rate, fee, and closing cost information, and disclosures should be made early in the application process, before creditors impose substantial fees. It also is important to make sure that information provided to consumers is readily understandable.

## Other Disclosures

**Expand Truth in Lending Act (TILA) coverage for consumer loans and leases.** TILA protections enacted in 1968 currently apply to all credit transactions secured by home equity and to other non-business consumer loans under \$25,000; the same cap was imposed on lease transactions in 1976. Originally, the \$25,000 limit was sufficiently high to ensure that most

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automobile, credit card, and personal loan transactions would come under TILA protections. Thirty years later, however, this is not the case, particularly for automobile loans. The limit should be raised to \$50,000 to cover most cars and other consumer loans.

## **Require Effective Disclosure of Exchange Rate and Fees for International Money**

**Transfers.** Consumers wiring money abroad often are confused or misled about fees and exchange rates. To prevent this confusion, we would amend the Electronic Funds Transfer Act to require additional disclosures relating to exchange rates for international transfers. Financial institutions or other businesses that initiate international money transfers on behalf of consumers would have to disclose, in both English and the language principally used by the business: (1) the exchange rate used in the transaction; (2) the prevailing exchange rate; and (3) all commissions and fees charged in connection with such transactions. Current law does not require such disclosure.

## **PREVENT FRAUD AND ABUSIVE PRACTICES**

### **Devote Law Enforcement and Agency Resources to Financial Fraud.**

**“Identity Theft” Enforcement Initiative.** Identity theft is the use of another’s individual identifying information to commit an offense -- for example, using another’s social security number to apply for a credit card. ) Once, one had to forge or steal documents to impersonate another, but now one can easily use your identifiers to impersonate you over the phone or Internet. This type of crime is growing rapidly [insert numbers]. Last year, Congress enacted new laws barring the use of another’s identifying information. The Secret Service, in coordination with the Justice Department and regulatory agencies, will launch a vigorous identity theft enforcement and prevention strategy that includes referral of cases among federal, state and local law enforcement; developing a public-private partnership to educate consumers on how to protect themselves; and proposing sentencing enhancements. They will cooperate with the American Bankers Association and others in the banking industry that have worked to combat this problem.

### **Combat Internet Securities Risk and Fraud with Investor Education and Enforcement.**

More and more Americans are investing in the stock market; 5.6 million are now trading on-line. The technology opens up great opportunity, but the rewards are not without risks. Complaints to the SEC were up 330% in one year, and new securities fraud schemes are uncovered each day. SEC Chairman Levitt is launching a stepped-up SEC effort to arm investors with the information they need to understand and manage the risks and protect themselves against fraud. In addition, President Clinton’s budget provided \$11 million in new funds for SEC enforcement; however, the rate of growth in Internet trading and abuse has exceeded expectations. To meet this need, President Clinton will work with Congress and Chairman Levitt to provide an additional \$5.5 million for SEC enforcement, beyond what was requested in the FY 2000 balanced budget. These funds will help the SEC better investigate and prosecute Internet securities fraud. It will specifically help the Commission increase Internet surveillance, enhance the SEC’s Enforcement

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Complaint Center, augment training for law enforcement on how to recognize and prosecute Internet securities fraud and continue its efforts to educate investors about the risk and rewards of investing over the Internet.

**Internet Fraud Initiative:** Federal, state and local law enforcement officials and regulatory agencies are receiving a growing number of complaints from consumers about Internet fraud. Many of the same features of the Internet that make it a powerful tool for legitimate e-commerce (global reach, instant and often anonymous communications, ability to reach millions of consumers) -- also make it attractive for fraud schemes. The Internet Fraud Initiative will crack down on Internet fraud by, for example, stepping up training for federal, state, and local prosecutors and agents; developing information on the nature and scope of Internet fraud; and keeping the public better informed about current fraud schemes and how to handle them. The initiative will also help coordinate the efforts of federal (Department of Justice, the FBI, the U.S. Secret Service, the Postal Inspection Service, the Federal Trade Commission, and the Securities and Exchange Commission), state and local law enforcement agencies.

**Criminalize "Pretext Calling."** There are widespread reports of private investigators and data brokers tricking financial institutions into providing confidential customer information. Along with the banking industry, we support legislation that would criminalize this practice and protect the privacy and security of consumer financial information.

**Fully Implement FTC-HELP and Consumer Sentinel.** The Year 2000 will be the first full year of operation for FTC's toll-free consumer hotline, part of the Commission's Consumer Response Center. The hotline will give consumers fast and easy access to information they need to protect themselves -- from tips about credit and debt collection to advice on how to avoid becoming a victim of fraud. Complaints to the hotline become part of the Consumer Sentinel, the FTC's fraud database, which is shared only with other law enforcers in the U.S. and Canada. By 2000, the Consumer Sentinel database is expected to be a primary tool in the fight against consumer fraud. The President's FY2000 budget funds Consumer Sentinel.

## Improve Consumer Protections Against Fraudulent or Abusive Practices.

**Expand Disclosures for High LTV Mortgages.** Consumers with high credit card debts are frequently offered second mortgages to consolidate their debts, extend the time for repayment, and reduce the interest rate. These mortgages can result in debt levels of 125% to 150% of the home's value. Consumers may not understand the consequences of these refinancings -- especially that the failure to repay these consumer debts could lead to losing their home -- and recent studies show that many such homeowners promptly incur new consumer credit debts. We support legislation requiring lenders on high loan-to-value second mortgages to disclose that: (1) interest payments may not be fully deductible; (2) the consumer may be unable to resell the house unless the loan amount is significantly repaid; and (3) default can result in foreclosure.

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**Increase Civil Liability Limits for the Truth in Lending Act (TILA) Violations.** TILA provides an individual right of action for violations under which a consumer can recover actual damages, additional statutory damages, and court costs. The amount of damages, however, is limited to a range of not less than \$100 nor greater than \$1,000 for non-mortgage loans or leases, and to a range of \$200 to \$2000 for mortgage loans. These damage limits may be too low to deter TILA violations, particularly at unregulated institutions not subject to systematic and regular examinations. We support raising the statutory cap to a level sufficient to deter violations.

**Improved Reporting on Race, Income and Other Data.** Financial institutions are required under the Home Mortgage Disclosure Act (HMDA) to report the race, income and other data about home mortgage borrowers, but a separate Federal Reserve regulation prohibits them from collecting such information for non-mortgage borrowers. Experience suggests that publicizing such data helps to reduce discrimination, increase access for minority borrowers, and foster innovation, and the current prohibition inhibits self-testing under the fair lending laws and makes fair lending enforcement more difficult. The Treasury Department has asked the Federal Reserve to amend the regulation to allow increased reporting.

**Clear Reporting.** HMDA regulations do not require financial institutions to report separately on sub-prime loans, such as for manufactured housing. If these loans were identified separately, banking regulators and enforcement agencies could better analyze the data for potential fair lending problems. In addition, financial institutions should be required to report on the reasons for loan denials. The Treasury Department has asked the Federal Reserve to determine if these regulatory changes can be made.

**Limitations on HMDA.** Institutions, other than banks and thrifts, do not have to report under HMDA if fewer than 10% of their loans are made for home purchase. The effect of this rule is to exclude from reporting some of the largest and fastest growing mortgage providers in the country, whose consumer loan portfolio is also large. We are asking the Federal Reserve to bring such providers under HMDA coverage.

**Prohibit Coercive Sales of Insurance Products.** Borrowers buy credit insurance to ensure repayment of their mortgages in the event of death, injury or job loss. However, the economic value to the consumer of these products is dubious. Moreover, credit insurance is frequently marketed in a way that is either explicitly or implicitly coercive -- that is, consumers are told or left with the impression that their chances of getting the loan or getting it more quickly would improve if they purchased the insurance. Some creditors collect up-front lump-sum insurance premiums for the policy term, so consumers cannot cancel. Required disclosures appear to be ineffective at deterring these practices. We support legislation barring the advance collection of lump-sum insurance premiums, so that consumers can pay for the insurance one month at a time, and so loan termination automatically cancels both coverage and liability for insurance payments. In addition, Congress should bar the solicitation of credit life insurance until the lender has approved the loan application and communicated approval to the borrower.

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**Limit Consumer Liability for Non-PIN Protected Debit Cards.** "Off-line debit cards" allow consumers to pay for products through an electronic transfer at the point of sale. These "check cards" differ from "on-line" ATM cards because there is no PIN or other security feature (other than a signature) to authenticate the transaction. Although credit cards also carry no PIN protection, the consumer is generally only liable for no more than \$50 of unauthorized charges. But with debit cards losses can be much higher unless the customer quickly notices and reports the loss. Thus, consumers can get the worst of both worlds: higher exposure to loss without security protections. Consumer liability for these cards should be limited as it is currently limited for credit cards -- a step that VISA and Mastercard have already taken voluntarily.

**Prohibit Unsolicited Mailing of Loan Checks.** Loan checks are credit products for which the consumer need only sign and cash the check to obtain a loan. Because these unsolicited checks are "live," however, the consumer is also at risk for fraudulent endorsement of the check. For the same reasons that Federal law prohibits unsolicited mailing of credit cards -- protecting consumers from the hassle of contesting liability for stolen card purchases -- we support legislation prohibiting unsolicited mailing of loan checks. Consumers should not feel they have to shred their daily mail.

**Reform Accounting Rules for Consumer Installment Loans.** We support legislation to eliminate the use of the "rule of 78," an outmoded accounting rule that disadvantages borrowers, for all consumer credit transactions. In 1992, Congress barred the rule's use in loans with terms over 61 months; our proposal would finish the task. Creditors would have to use an accounting method at least as favorable to the consumer as the actuarial method.

**Take Action Against "Sub-prime" Lending Abuses.**

**Expand Protections in the Home Equity Market.** The Fed/HUD Report on RESPA and TILA documented continued problems with abusive practices in some segments of the mortgage market, including evasions of the Home Ownership Equity Protection Act (HOEPA), which provides protections for borrowers with high-cost loans. The study recommended targeting abusive practices. For example: to reduce the occurrence of loan flipping -- recurrent refinancings that may make it difficult for a home owner to pay off a loan or to sell her home -- financing fees in high cost loans covered by HOEPA should be regulated; prepayment penalties and balloon payments should be further restricted; and the HOEPA threshold should be lowered. Creditors should be required to provide additional data on HOEPA loans. All amounts paid by a borrower should be counted under the HOEPA trigger. Creditors should be required to inform high-cost-loan applicants of available home counseling programs prior to closing. We will work with Congress to increase protections in this area.

**Expand Enforcement Tools Against Abusive Practices.** Congress should eliminate the requirement for a showing of "pattern or practice" of asset-based lending to establish HOEPA violations. The definition of "creditor" should be expanded to include individuals that control the lending practices of a company to deal with the problem of small, thinly capitalized sub-

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prime lenders who escape HOEPA liability by dissolution or bankruptcy. Finally, Congress should strengthen RESPA enforcement and remedies, consistent with the recommendations in the Fed/HUD Report.

**Improve HMDA Reporting.** There is a current imbalance in reporting requirements and enforcement under HMDA as between regulated depository institutions and other mortgage lenders. Some unregulated lenders do not have to report all their loans, and face no sanctions if they fail to report when required. We support legislation providing HUD with enforcement authority to assure compliance by all lenders with HMDA reporting, unless banking regulators are already enforcing HMDA with respect to such lenders. These legislative changes will help level the playing field on reporting and compliance between regulated and unregulated financial institutions, and will improve disclosure in a growing segment of the mortgage lending market.

**The Banking Regulators Should Continue to Improve Guidance on Sub-prime Lending.** The Federal Financial Institutions Examination Council is improving guidance on fair lending compliance. The FFIEC issued fair lending examination procedures for banking regulators in January 1999 and focused particular attention on the problem of "steering" loan applicants on a prohibited basis to a sub-prime lender within a financial institution's organization. In March, the FFIEC released additional guidance focused on safety and soundness issues and fair lending problems. The OCC recently issued guidance warning of the risks in this area. Today, the President is directing the Office of the Comptroller of the Currency and the Office of Thrift Supervision, in consultation with HUD, the FTC, the Justice Department, and the other banking regulators, to study whether further actions are necessary to halt abusive practices in the sub-prime area.

## EXPAND ACCESS TO FINANCIAL SERVICES

**Provide Low-Cost Banking Services to All Americans.** Too many Americans cannot afford, or do not have access to, basic banking services. The Administration will increase and strengthen its efforts -- working with banks and consumer groups -- to increase access to low-cost banking services to all Americans. As part of this effort, Treasury is finalizing a program to pay set-up costs for low-fee basic banking accounts for federal benefit recipients.

**Provide Individual Development Accounts (IDAs) To Make It Easier for Low-Income Families to Save.** IDAs allow low-income households to save not just for retirement but also for education, emergencies, home ownership, or business investment. Individual contributions can be matched to encourage more savings. (The FY 2000 budget doubles funding for IDAs.)

**Bolster the Community Development Financial Institutions (CDFI) Fund.** Treasury's CDFI Fund provides grants, loans, and equity investments to locally-based, specialized financial institutions and mainstream banks and thrifts serving low and moderate income communities. The CDFI Fund is helping to expand the reach of these institutions to under served communities. The Administration is seeking \$125 million for the Fund in FY 2000 and Fund reauthorization.

## IMPROVE CONSUMER FINANCIAL EDUCATION

**Launch a Campaign to Promote Education on Credit, Savings, and Investment.** One of the best protections for consumers is education. Yet evidence suggests that consumers often find credit and investment opportunities confusing, and are carrying greater levels of debt, filing bankruptcy more often, not saving as much as they would like for retirement, and investing without full comprehension of the risks involved. The President today directed his National Economic Council to convene a high level interagency task force to present him with a plan to raise financial literacy levels, and to expand the Administration's commitment to public and private consumer financial education programs. Elements of this plan will include:

**Identify and Publicize Successful "Best Practices" for High School and Other Financial Education Programs.** Nonprofit groups, such as the National Council on Economic Education and JumpStart, as well as government agencies including the Department of Agriculture and the Department of Defense, have developed educational modules and course materials that not only improve students' understanding of complex financial topics but also have been shown to improve their long-term financial status. Working with the interagency task force, the Department of Education will help publicize proven educational programs, to make it easier for teachers, professors, and other educators to adopt financial education programs that work.

**Promote Effective Financial Planning.** Studies show that families who are able to develop and follow a financial plan are much more successful in achieving major financial goals, such as saving adequately for retirement, their children's education, or a new business venture. A growing number of public, nonprofit, and corporate initiatives have begun to educate Americans about effective financial planning, such as the campaigns sponsored by the American Savings Education Council, the Securities and Exchange Commission, and the Department of Labor. The Administration will participate in joint initiatives with these and other groups to highlight the benefits of personal financial planning and the steps that all Americans can take to make financial planning easier.