



FOR THE FIRST TIME IN 20 YEARS, THE U.S. SENATE CONSIDERS RENT-TO-OWN LEGISLATION

# RTO Capitolsteps

BY ED WINN III

PHOTOGRAPHS BY ERNIE LEWALLEN AND BILL KEESE

The Senate Banking Committee recently held a hearing on financial services reform, aka deregulation, which included testimony for and against S 884, the pending "Consumer Rental-Purchase Act of 2003." It is the first time in more than 20 years that the world's greatest deliberative body, the U.S. Senate, has actively considered RTO legislation. The first time the Senate looked at the industry was in 1983. It has taken this long to get RTO back on the table.

#### A HISTORICAL PERSPECTIVE

The first RTO bill in the Senate was sent by the Federal Reserve Board as part of a package to simplify the Consumer Leasing Act, much as the Truth In Lending Act had been simplified by the previous Congress. Senate Bill 1152 was described as a bill “to amend the Consumer Credit Protection Act with respect to consumer leases and rental-purchase agreements.”

At the hearing in 1983, a National Consumer Law Center attorney testified with tales of expensive TVs and consumer abuse in Connecticut, Ohio, Pennsylvania and South Carolina. At the time, whether the industry should have to disclose the total RTO price in the rental agreement was still actively being debated. This disclosure, one of six, was in the bill in 1983. The NCLC wanted the law to prevent “whispered options,” where the written agreement was for a

had read her RTO agreement, she did not understand it. Interestingly, the legal aid attorney testified that RTO agreements have their place in the economy:

“Quite often we have a situation where a consumer will lose a job and there’s no extra money, there’s no savings account to tide them over until they find another job, so in some cases, they might prefer a rental agreement that they would not be obligated for the total of payments that they would be obligated to make under a retail installment contract. It’s an alternative financing method that might be valuable to some.”

At the time, the furniture rental industry dwarfed RTO and representatives from that industry also testified. They explained that furniture rental dealers would not be able to make an accurate cash price or fair market value disclosure in a rental agreement because they literally never made cash sales and

might be new or it might be used. There was no way of knowing at the time the agreement was executed. The furniture rental industry opposed the pending bill as unnecessary and urged Congress not to disrupt “an already smoothly functioning industry.”

Also appearing on the RTO issue in 1983 was a representative from the American Rental Association, which is the trade association for rental yards. The ARA testimony was that the fledgling RTO industry threatened to ruin the good name of “rental” and that the law and everything related to RTO should be changed to “lease.”

After this hearing in the subcommittee on consumer affairs, the full Senate Banking Committee voted the bill out of committee to the full Senate on a straight party-line vote. In the full Senate, the leasing/RTO bill was made part of the Omnibus Bank Deregulation bill, which was passed by the Senate during the waning days of the 98th Congress by a vote of 94-0. The Omnibus bill with the RTO language intact was sent to the House where no action was taken before Congress adjourned and so the bill died.

#### MAKING GAINS

Bits and pieces of the Omnibus bill were reintroduced in subsequent sessions of Congress. Some parts were passed, but the U.S. Senate has paid little official attention to RTO until lately. In 1993, Senator Metzenbaum introduced a companion bill to Representative Gonzalez’s efforts to regulate RTO out of business, but no action was ever taken on the Metzenbaum bill and Gonzalez’s bill died in his own committee.

In the next Congress, in 1994, Senator Shelby introduced a companion bill to Representative LaRocco’s RTO bill, which the industry supported, but once again, both bills died in committee with no action being taken at all in the Senate.

The industry continued to make friends in the Senate and has not been without Senate supporters over the past decade. However, in the absence of any



APRO ATTENDS THE HEARING, JUNE 22: JON ROSE, DOUG WILLS, LYN LEACH, JOHN RAFFAELLI, CYNTHIA BABER STRUNK, SHANNON STRUNK, ERNIE LEWALLEN, ED WINN III, JIM BUTERA, RON WATERS, TONYA SAUNDERS AND CHRIS KORST. PHOTOGRAPH BY BILL KEESE.

rent-to-rent transaction and the purchase option was “whispered” to the consumer. The level of mistrust of industry practices was considerably higher than now.

There were also RTO customer witnesses, two from Miami, appearing with their legal aid attorney, one of whom testified that she paid \$2,109 for a TV set worth \$638 and, further, that while she

did not think that their rental consumers would be interested in such a disclosure. Nor could the industry accurately disclose whether the rental property was new or used. This was because furniture rental customers signed agreements for, usually, apartments full of furniture, 12 to 20 items, which would later be chosen from the merchandise available in a warehouse somewhere. The red sofa



meaningful action in the House on RTO legislation, the Senate has taken a more passive roll on the RTO issue, preferring to get a bill sent over from the House before taking the issue up seriously.

The House finally voted on RTO in 2002, this time as a stand-alone bill. There were contentious hearings, multiple mark-up sessions at the committee level and, finally, a full floor vote in the House and a close one at that. The bill passed 215–201 and was sent to the Senate in the closing days of the 107th Congress. The Congress adjourned before the Senate considered the bill.

#### A NEW ERA OF SUPPORT

In this new Congress, the 108th, the House leadership told RTO industry leaders that there would have to be action in the Senate before the House would reconsider the RTO issue. It was, therefore, with a sense of history and guarded optimism that the industry watched the Senate Banking Committee convene for a hearing on June 22. The title of the hearing was “Consideration of

**THE HEARING WAS A SMOOTH, NON-CONFLICTED AFFAIR. THE WITNESSES TESTIFIED WITH FEW INTERRUPTIONS AND FEW QUESTIONS. SENATOR LANDRIEU WAS THE FIRST WITNESS TO TESTIFY AND HER UNDERSTANDING OF AND SUPPORT FOR THE RTO INDUSTRY AND HER BILL WAS MUCH APPRECIATED BY THE COMMITTEE.**

Regulatory Reform Proposals.” Importantly, the committee did not meet to consider any particular piece of pending legislation. Instead the committee met to hear testimony on a variety of issues of which RTO was one.

In all, 19 witnesses testified and, in general, the testimony was about the relationships among and the powers of the different kinds of financial institutions in the country—large banks, small banks, state banks, federal banks, savings and loans, credit unions and industrial loan companies. The issues before the committee were many and complex. Here is a sampling of those issues:

- whether to allow interest to be earned on business checking accounts;
- whether to allow interest on Federal Reserve Bank depository institution accounts;
- whether to increase the flexibility of the FRB to set reserve accounts for national banks;
- whether to eliminate barriers to de novo branch interstate banking;
- whether to reduce cross-marketing restrictions of depository institutions controlled by one financial holding company;
- whether to extend the bank exemptions from investment adviser and

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- broker-dealer registration requirements and loans;
- whether to allow auto loans by savings and loans;
- whether to expand savings and loans' authority to own credit card savings associations;
- whether to reduce the audit levels of community banks;
- whether to increase the commercial lending limits for savings and loans;
- whether to simplify dividend calculations for national banks;
- whether to enact more efficient reporting requirements under the Bank Secrecy Act and the U.S. Patriot Act;
- whether to expand federal court jurisdiction for suits involving national banks and savings and loans;
- whether to expand the powers of industrial loan companies; and
- whether to recognize and regulate RTO transactions at the federal level.

In 1996, Congress enacted the Economic Growth and Regulatory Paperwork Reduction Act. That statute requires several federal agencies that regulate financial institutions to review all regulations every 10 years to identify "outdated, unnecessary regulatory requirements." The first review period under this law ends in September 2006. Review has already been underway and many of the reforms called for by witnesses during this hearing stem from reviews instigated under this Act.

Of the 19 witnesses called before the committee in June, two were U.S. Senators—one of whom, Senator Landrieu, testified solely in support of the RTO issue and S 884, of which the senator is the primary sponsor—seven were from federal or state government agencies with oversight over financial institutions, eight were from the financial services industry and two witnesses represented consumer interests on behalf of six different consumer organizations.

One of the consumer advocates, the U.S. Public Interest Research Group executive director, mentioned the RTO issue in passing and offered the traditional criticism of the industry—that of too high prices for ownership, with nothing new. The consumer advocates were against nearly every proposal advanced in the name of regulatory relief. Their task to identify and criticize every pro-

posed change with any perceived anti-consumer impact was so daunting that the legal aid witness felt compelled to declare to the committee that just because she did not actively condemn a proposal, her silence was not to be taken as an implied approval by the consumer advocate groups that she represented.

The hearing was a smooth, non-conflicted affair. The witnesses testified with few interruptions and few questions. Landrieu was the first witness to testify and her understanding of and support for the RTO industry and her bill was much appreciated by the committee. The only negative comments about RTO came several hours later when the U.S. PIRG witness gave the issue 30 seconds of his time.

#### THE NEXT CAPITOL STEP

**W**ith the Senate hearing over, the industry will look to the House to take up the RTO issue again. The House can streamline the legislative process if it wants to since the pros and cons of the pending RTO bill were so thoroughly ventilated in the last Congress. And it is a good thing that the House can move swiftly, because in a presidential election year, there are not many days left when Congress is convened for business.

There is always much work awaiting a Congress toward the end of a legislative session, as now. Late night deals get struck and bills move when the pressure to get things done disturbs the natural inertia that is a built-in part of the legislative process.

Rental dealers as citizens have done a Herculean job in recent years heating up the level of congressional attention to the truths of the RTO industry. Passage of a stand-alone RTO bill by the House showed Congress the seriousness and resoluteness of purpose of the supporters of RTO legislation. Now, with action in both the House and the Senate, Congress may be ripe for passage of an RTO statute at long last. It has been long time coming. ■

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