Statement of

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On

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Chairman Frank, Ranking Member Bachus and members of the Committee, my name is John Robbins and I am Chairman of the Mortgage Bankers Association (MBA), the national trade association for the real estate finance industry.[1] I am also Co-head and Special Counsel of Vertice, a division of Wachovia Securities. Previously, I was Chief Executive Officer of American Mortgage Network (AmNet), a San Diego-based wholesale mortgage bank that I co-founded. Wachovia Bank bought AmNet in 2005.

I have been in the mortgage business for 36 years, through the many critical market-shaking events we have all witnessed and the usual boom and bust cycles of real estate. Today's market is the toughest environment I have ever seen. We have two immediate problems: how to help homeowners, particularly resident homeowners, avoid foreclosure and stay in their homes, and how to restore liquidity and stability to the full mortgage market and other credit markets going forward.

We are encouraged by the President's "New Steps to Help Homeowners Avoid Foreclosure," announced on August 31 (the "President's initiative"), and we endorse many of the measures in that initiative in our testimony here. The President's initiative and the Cabinet-level attention it will involve, along with the actions Congress can take, will help to alleviate the painful state of the mortgage market for many consumers, the industry and investors.

Current Market Background

The growing level of mortgage delinquencies, and concerns that credit was not appropriately priced or rated, resulted in a withdrawal by investors from nearly all mortgage securities that were not guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae. While some liquidity has returned to the jumbo market, generally borrowers in the non-conforming world of the jumbo, Alt-A and subprime[2] loans are currently finding it difficult or impossible to get loans.

MBA's recent National Delinquency Survey (NDS) showed an increase during the second quarter of this year in delinquency and foreclosure rates in almost every

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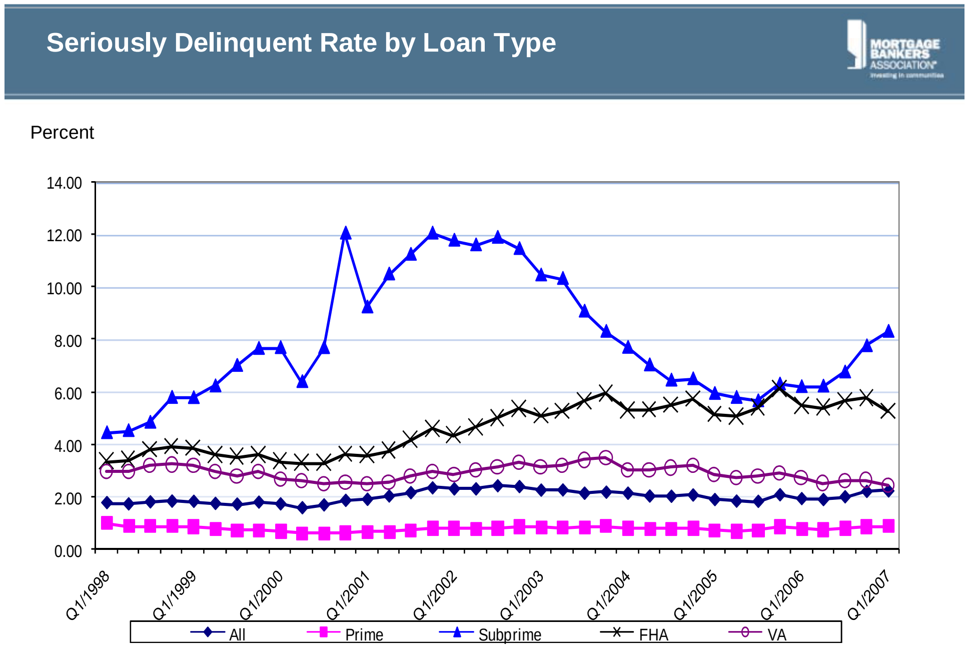
[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 500,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

[2] A jumbo loan is a loan above the current conforming loan limit of $417,000. Jumbo loans cannot be purchased by Fannie Mae or Freddie Mac; as a result, they carry a slightly higher interest rate to attract other investors. Alt-A loans are made to people who are of high credit quality, but for one reason or another they do not qualify for conventional financing. Such a borrower might not document income, for example. A subprime loan is made to a borrower with little or no credit history, blemished credit or other factors that cause the borrower to not qualify for conventional financing.

category we track (see chart below). Less than one percent of prime loans surveyed were in the seriously delinquent category but 9.27 percent of subprime loans were seriously delinquent.



Source: The Mortgage Bankers Association

Of the millions of loans in delinquency, some belong to resident homeowners and some belong to investors. According to data released by the MBA this month, Florida, Nevada, California and Arizona have had much higher shares of mortgage defaults from non-owner occupied loans than the national average. For example, as of the end of June, Nevada had the highest rates of mortgage defaults on non-owner occupied loans for both prime (32 percent) and subprime loans (24 percent). The national rates for prime and subprime non-owner occupied loans were 16 percent and 12 percent, respectively.

MBA anticipates that a high level of delinquencies will continue through 2008 but will stabilize, along with home prices, by the end of next year. We do not believe that the drop in home price appreciation and the high level of delinquencies will, in themselves, result in a nationwide recession. However, to the extent that the poor performance of mortgages has raised investor concerns and acted as a catalyst for a reassessment of credit assumptions across the entire capital markets, we acknowledge the potential for adverse ramifications beyond the mortgage sector and throughout the economy. In addition, the decreased availability of funds for cash-out refinancing will slow the growth of consumer spending.

It will take time to stabilize housing prices and the mortgage market. In the next two years, loans will be refinanced, modified or otherwise worked out wherever there is a way to spare borrowers and investors the pain and loss of foreclosure. But foreclosures will take place, particularly where homeowners have little equity in their homes or they are unable to sustain even a modified mortgage. Even if the liquidity crisis that began last month were alleviated today, there would still be rough waters ahead for some borrowers, lenders and investors.

For today's borrowers, funding for new or refinanced Alt-A and subprime loans is largely unavailable because mortgage products designed for those markets have been eliminated by regulators or the market, and underwriting standards have been tightened. For subprime borrowers trying to refinance their mortgages, home prices have depreciated in some cases below the amounts currently owed. Therefore, some borrowers in trouble on mortgages they planned to refinance are finding that option closed.

While investors are again beginning to purchase prime jumbo loans and mortgage-backed securities (MBS) backed by jumbo loans, jumbo mortgage interest rates are one-half to three-quarters of a percent higher now (relative to conforming mortgage rates) than they have been in recent years, reflecting continued investor concerns about the mortgage market.

Securitization through Fannie Mae and Freddie Mac has increased considerably in recent months. Furthermore, our members report that the GSEs are purchasing conforming mortgages for their portfolios and providing liquidity for some Alt-A mortgages. We are grateful that we have the liquidity facilities of the GSEs but the GSEs are charging fees commensurate with perceived credit risks and are only one part of what needs to be a comprehensive solution.

In the last two years, the GSEs issued less than half of all mortgage-backed securities. The hundreds of billions of dollars of non-GSE, or "non-agency," MBS that are not currently being issued leave an enormous vacuum in funding for the mortgage market, especially for nonprime borrowers. MBA believes it is urgent that we work together with the Administration and Congress to use the facilities of the government housing programs and the GSEs to assist borrowers, investors and the industry to recover as rapidly as possible from the current setbacks.

In my testimony, I discuss MBA's views of the President's initiative and make some suggestions about other ways Congress and the Administration could help.

MBA's Analysis of the President's Proposals to Help Homeowners

MBA supports the direction of the President's recent proposal to assist troubled borrowers. MBA, in fact, has long advocated for many of these changes – such as Federal Housing Administration (FHA) modernization, improving mortgage disclosures, improving financial literacy and RESPA reform – even before the recent troubles in the subprime mortgage market. In addition to the elements in the President's proposal, MBA supports other important measures not addressed by the

President that should be carried out to assist borrowers and to tackle the liquidity issues in the mortgage market.

In the proposal, the President called on Congress to pass pending bills that would modernize the FHA and allow temporary tax relief to borrowers who have had mortgage debt cancelled. Moreover, he announced the launch of a new foreclosure avoidance initiative spearheaded by the Department of Housing and Urban Development (HUD) and the Treasury Department.

The President also noted that federal banking regulators have been working to ensure that lenders provide homeowners with complete, accurate and understandable information about their mortgages and to strengthen mortgage lending standards.

Finally, the President announced that he and his Administration are: (1) working on new proposed rules under the Real Estate Settlement Procedures Act (RESPA) that would promote comparison shopping by consumers, provide clearer disclosures, limit settlement cost increases and require fee disclosures; (2) supporting state-based efforts to create a comprehensive mortgage broker registration system; (3) creating a Presidential Council on Financial Literacy composed of leading private sector individuals who can promote financial literacy and that the President supports the efforts of public and private sector groups that are promoting financial literacy, specifically including the Administration's budget proposal $120 million to go to NeighborWorks; (4) committed to pursuing fraud and wrongdoing in the mortgage industry; and (5) using the President's Working Group on Financial Markets to look at the role of the rating agencies and asset securitization in the liquidity crisis.

MBA hails all of these initiatives which complement MBA's long-standing efforts on behalf of the mortgage industry. MBA profoundly believes that better financial literacy, greater transparency in the mortgage process, better licensing of originators and uniform national lending standards offer the greatest promise to improve the mortgage process while protecting and reducing costs to consumers. MBA looks forward to working with the President and Congress to protect homeowners and improve the mortgage financing system.

FHA Modernization

As this Committee knows, MBA fully supports FHA modernization. We applaud the Committee for passing H.R. 1852, the "Expanding American Homeownership Act of 2007." FHA reform would allow the agency to unleash its full potential, serving a greater number of low- to moderate-income and minority families, in addition to subprime borrowers. It is essential that FHA have the tools and flexibility to adjust its products and programs to meet the evolving needs of borrowers, in addition to having the resources to upgrade its technology and hire the best staff possible.

FHA has recently made significant improvements to its regulations and operations. FHA has streamlined the insurance endorsement process, improved appraisal requirements and removed some unnecessary regulations. With MBA's strong support, FHA has also launched the FHASecure initiative. This new program is helping creditworthy borrowers with no instances of late payments prior to the reset of the rate on their subprime adjustable rate mortgage (ARM) refinance their loan. Although a temporary program, FHASecure will provide homeowners in difficult financial situations with refinancing opportunities while increasing liquidity in the mortgage market. These are all positive changes that have already begun to show real benefits.

FHA has tremendous strides in the past several years, after many years of stagnation. Nonetheless, we recognize that more work lies ahead. FHA and its Commissioner, Brian Montgomery, have shown a commitment to address those issues that are within the agency's statutory mandate. There is much, though, that is beyond FHA's control and needs Congressional action.

Passage of FHA modernization by Congress is critical because it will give FHA and Commissioner Montgomery a full arsenal of tools to further its homeownership mission. Modernization will allow FHA to expand its programs to cover borrowers with higher cost loans, those who may find their loans resetting and will have difficulty paying their mortgage and will otherwise allow the agency to assist borrowers who might be able to qualify for an FHA refinancing program. In short, FHA can play a crucial role in helping otherwise stranded borrowers keep their homes.

Tax Reform to Assist Trouble Borrowers

Current tax law provides that a taxpayer receives ordinary income in the amount of any debt discharged, unless such borrower is insolvent at the time of discharge (or has non-recourse debt). Historically, mortgage companies often faced having to discharge debt upon foreclosure of a mortgage that exceeds the fair market value of the property. Other situations could give rise to discharge of mortgage indebtedness including the creditor's voluntary write-downs of the debt or acceptance of a short sales or deed in lieu of foreclosure. Whether a borrower with recourse debt incurs such a tax liability for this discharge depends on whether the borrower is solvent at the time of discharge.

While we support the President's effort to assist troubled borrowers, any tax code change must be done in a way that preserves incentives for borrowers to work with their lender on loss mitigation options and does not encourage foreclosures. We also caution that loss mitigation activities that result in debt forgiveness should be treated the same under the proposed tax exemption as debt that is discharged as a result of foreclosure, deeds in lieu of foreclosure or short sales.

President's New Foreclosure Prevention Initiative

MBA supports the President's plan to launch a new foreclosure prevention initiative. MBA has long advocated that early detection of and communication with borrowers who are having trouble making payments increases the possibility of loss mitigation and successful loan modifications, which can prevent a foreclosure and keep the family in their home.

No one, from the borrower, community, lender to investor wins in a foreclosure. In fact, a 2003 Federal Reserve study notes that "estimated losses on foreclosures range from 30 percent to 60 percent of the outstanding loan balance because of legal fees, foregone interest, and property expenses." [3] From a pure economic basis alone lenders, servicers and investors do not desire foreclosures.

MBA and its partners have been leading the way to provide assistance for homeowners facing foreclosure and to help stabilize and preserve the subprime mortgage credit system.

For instance, MBA has met with Fannie Mae and Freddie Mac, FHA, our largest servicers, many legislative and executive branch officials, consumer groups and civil rights leaders to discuss solutions. We did so both separately and as a participant in a housing summit convened by Senate Banking Committee Chairman Christopher Dodd where an agreement was reached on principles for mortgage lenders and servicers to assist troubled borrowers.

MBA also has partnered with NeighborWorks America, a national nonprofit organization created by Congress, to help troubled borrowers. Specifically, MBA has dedicated financial and staff resources to help promote a free mortgage counseling hotline, 888-995-HOPE, which is staffed by the Homeownership Preservation Foundation and provides a helpful place for troubled borrowers to turn.

As mentioned previously, MBA believes that early contact is key to avoiding foreclosures. Unfortunately, many borrowers fail to contact their lender or servicer in times of trouble, thereby further worsening an already difficult situation. A 2005 Freddie Mac study determined that, despite ongoing efforts by lenders and servicers, over half of borrowers in foreclosure proceedings have had no contact with their servicer.[4] This lack of contact is one of the biggest challenges servicers face in trying to help borrowers and stop foreclosures. To help address this issue, MBA and NeighborWorks are working to establish foreclosure intervention programs in cities with high rates of foreclosure and we are conducting a national public education campaign with the National Ad Council to improve contact rates for homeowners in financial distress.

The Regulators' Guidance

As the President indicated, the federal financial regulators recently issued guidance concerning regulated institutions' use of nontraditional mortgage products – payment

[3] Foreclosing on Opportunity: State Laws and Mortgage Credit, Karen M. Pence, Board of Governors of the Federal Reserve System, May 13, 2003.

[4] Foreclosure Avoidance Research, Freddie Mac, 2005.

option and interest-only loans. The regulators later issued a Statement on Subprime Mortgage Lending. The guidance and statement had a significant effect on underwriting and drastically curtailed the availability of higher risk loan features.

Following both actions, the Conference of State Bank Supervisors (CSBS) and the American Association of Mortgage Regulators (AARMR) recommended adoption of parallel guidance by state regulators to apply to state regulated lenders. In the short time since the CSBS/AARMR requests, more than 38 states and District of Columbia agencies have adopted the nontraditional guidance and more than 29 agencies have indicated they will adopt the subprime statement. Additionally, as of last week, OFHEO is requiring that mortgages purchased by Fannie Mae and Freddie Mac comply with the guidance.

This federal and state action has had an enormous effect on the market by requiring stronger underwriting, tightening management controls and increased consumer protections. Congress should consider the extent to which the market and regulators have already addressed the key consumer protection questions before crafting any legislative response that might further restrict consumer credit options.

Improved Financial Literacy

MBA welcomes and shares the President's commitment to financial literacy. As financial services and products continue to evolve and expand, it is increasingly important for Americans to receive a solid foundation of financial education. MBA believes this must be a part of school curriculum, particularly at the secondary level. Additionally, resources must continue to be made available to adults to help ensure an ongoing understanding of key credit terms and differences in the costs and use of various types of products.

Aimed at helping current and potential homeowners, MBA maintains a Web site for education about the mortgage process at www.HomeLoanLearningCenter.com. Recently, MBA updated and expanded this site to provide better information on the array of adjustable, payment option and interest-only products available in today's market. For this purpose, MBA commissioned focus group testing to create the Simple Facts®, a new short, readable publication that describes in plain language the risks and rewards of fixed versus adjustable loans as well as other products and product features. MBA also developed a companion tool for the Web site, the Simple Calculator®, that allows borrowers to calculate and compare payments (including interest, principal and escrow) initially and, if they adjust, throughout their mortgage obligation.

MBA stands ready to assist the President and Congress with issues related to the financial education of all Americans.

Improving Disclosures Under the Nontraditional and Subprime Guidance

MBA has been long committed to developing meaningful mortgage disclosures that contain relevant, easily understood information that a consumer can use to shop and compare mortgage loans. To achieve this end, MBA supported the efforts of the banking regulators to improve disclosures for nontraditional and subprime loans.

The regulators' guidance and statement require that mortgage product descriptions and advertisements provide clear, detailed information about all of the costs, terms, features and risks of a mortgage to the borrower. MBA agrees and in its comments emphasized that consumers should be informed of: (1) "payment shock" including how the new payment will be calculated when the fixed payment period expires; (2) prepayment penalties – how they will be calculated and when they will be imposed; (3) balloon payments – the existence of any; (4) any costs of reduced documentation – any pricing premium attached to such a loan; and (5) responsibility for taxes and insurance – the borrower's responsibility to pay them and, if they are not escrowed, the fact that substantial amounts will be needed to pay them.

Later, when a consumer is shopping for a loan, clear and balanced generic information addressing all of the points raised in the Statement should be provided. At the time of application and at closing, borrowers should also be provided clear and balanced loan-specific information on all of the points raised in the Guidance and Statement. There is a tradeoff between how early a disclosure is provided and how reliable it is. Loan-specific information is more reliable at the time of loan application than before application.

RESPA Reform

MBA welcomes the President's commitment to RESPA reform. MBA long has been a supporter of such reform. As currently written, both the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) requirements are confusing to consumers and cumbersome for industry practitioners. Comprehensive reform of RESPA and TILA should improve access to mortgage finance and accommodate technological changes that can benefit consumers, while at the same time quelling essentially fruitless litigation that continues to plague the industry and increase costs to consumers. Moreover, by making the mortgage transaction more transparent to the consumer, reform could also significantly reduce the incidence of abusive lending practices.

Since the Secretary of HUD withdrew the Department's RESPA reform proposal in 2004, MBA has worked closely with a task force of MBA members to develop a range of RESPA reform options to improve the settlement process and reduce costs for the mortgage industry and consumers. MBA's own RESPA initiatives since 2004 have resulted in options including a simplified and comparable good faith estimate (GFE) and HUD-1 that would group charges according to their purposes and recipients so costs can be readily compared among loan providers. These changes could be accompanied by a greater or lesser degree of regulatory changes to limit increases in charges and bring efficiencies to the market to lower consumer costs. MBA has invited ongoing member comment on the proposed forms which may be found at www.mortgagebankers.org/respa.htm.

MBA looks forward to working with HUD on its specific proposals to assure that they achieve their objectives and benefit consumers.

Mortgage Broker Disclosure

For almost a decade, MBA, as well as HUD, has advocated a clear disclosure under RESPA to be provided to the consumer concerning the functions and compensation of mortgage brokers. Such a disclosure would advise the consumer of whether the broker is or is not the borrower's agent and of the total compensation that the broker receives. MBA supports providing such a disclosure to potential borrowers early enough in the transaction to facilitate comparison shopping. Mortgage brokers, unlike lenders, hold themselves out as intermediaries who shop for borrowers. Such a disclosure should alert the consumer to the fact that a broker may receive a higher fee depending on the interest rate of the mortgage and inform the consumer of whether the broker is in deed acting as the consumer's agent. For example, mortgage brokers in California are required to provide such "agency relationship" disclosures.

Moreover, if a mortgage broker holds himself out as an agent, MBA believes it is appropriate for the broker to be treated as an agent under the law. While some have sought to create a fiduciary duty for mortgage brokers in all cases, MBA believes that greater transparency along these lines (including a declaration of agency, or not) is a better approach than imposing an undefined standard or standards on mortgage brokers, which could increase costs to borrowers. In any case, the imposition of a fiduciary duty on mortgage *bankers* to borrowers would not work. Bankers owe such duties to their investors and stockholders and could not bear a countervailing duty.

Comprehensive Reform of the Mortgage Process

MBA regards RESPA reform as a key step in reforming the mortgage process, but by no means the only one needed. Reform to truly simplify and improve the mortgage process will not be accomplished until disclosures under TILA and other federal and state laws are overhauled, greatly simplified and harmonized, so that the disclosures are read, understood and useful to consumers.

One possibility that has been suggested to shorten the process of comprehensive reform is the development of a simple one-page disclosure that would summarize relevant information from the various disclosures including rate, cost and loan feature information. Such a disclosure would help the consumer understand the deal offered and comparison shop—and create better competition to benefit consumers. MBA would support such an approach concomitant with a review of the mortgage process.

A common feature of most allegations of predatory lending is that the borrower was either confused or deliberately misled about key features of the loan. If the borrower receives a clear disclosure or disclosure of these key features early in the transaction, it will be far more difficult for an abusive originator to misrepresent the terms of the loan, and the borrower will have time to seek financing from other sources if the terms are unfavorable.

Instead of having the benefit of a simple disclosure or disclosures, consumers today confront a maze of information when they apply for and close on a mortgage. Sadly, without streamlining, every new layer of disclosure simply increases the likelihood that the consumer will merely initial all of them without even a cursory reading. In effect, predators are given the ability to hide in plain sight. For this reason, disclosures do not need to be added; they need to be combined, streamlined and made much more user friendly.

For these reasons, MBA strongly urges that the President, Congress and regulators work toward a more comprehensive approach to improving the mortgage disclosure process for consumers. Such an approach is the best means of assuring that virtually all consumers receive the same degree of information and that a level playing field of disclosure requirements is established for all industry originators.

Two Federal Trade Commission (FTC) economists recently concluded, after reviewing studies on mortgage disclosures, that "[c]urrent mortgage disclosures fail to convey key mortgage costs to many consumers." These economists also concluded that "[i]t is possible to design better disclosures that significantly improve consumer recognition of mortgage costs."[5] MBA agrees.

Improved Licensing of Loan Originators

MBA shares the President's commitment to improved licensing of mortgage brokers. In fact, MBA believes that all loan originators, mortgage brokers as well as lenders, should be registered and subject to a licensing regime, regardless of the parent company's charter and with licensing exceptions only for those already subject to rigorous regulatory or secondary market requirements, such as FHA-approved Direct Endorsement lenders, Fannie Mae- or Freddie Mac-approved sellers, or those lenders who maintain a net worth equal to or greater than $5,000,000 or total assets equal to or greater than $25,000,000. Ensuring that all loan originators fall under rigorous requirements, whether state or federal, would ensure that all mortgage professionals have the education and professionalism required to serve consumers. A nationwide

[5] James M. Lacko & Janis K. Pappalardo, Bureau of Economics, Federal Trade Commission, *Information Regulation is Tricky: Lessons from Mortgage Disclosure Research*, presentation before the Behavioral Economics and Consumer Conference, Federal Trade Commission, Washington, D.C. (Apr. 20, 2007); *see also* James M. Lacko & Janis K. Pappalardo, *The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment*, Federal Trade Commission Bureau of Economics Staff Report (2004), *available at* http://www.ftc.gov/os/2004/01/0301/030123mortgagefullrpt.pdf.

registry regime would provide a powerful tool, for both regulators and industry participants, to track and bar unscrupulous actors.

MBA also believes all originators should have the financial wherewithal to serve borrowers and lenders and provide them redress if necessary. Currently, FHA requires brokers who wish to offer FHA-insured products to have a net worth of at least $63,000, plus $25,000 for each branch office. MBA supports establishing a nationwide financial net-worth requirement for all mortgage brokers consistent with these requirements. These requirements would provide greater protection for consumers and lenders dealing with mortgage brokers. Additional protection can be provided by a bond against which aggrieved consumers and lenders can make a claim. A number of states already require brokers to maintain a level of bonding. MBA supports requiring brokers to maintain a bond worth $75,000 or an amount equal to ten percent of the broker's annual loan volume, whichever is higher. In many cases, bonding requires a financial audit. Such an audit is not only further assurance of financial wherewithal, but that an originator is operating consistent with existing FHA regulations.

In 2005, the CSBS and AARMR began developing the National Mortgage Licensing System (NMLS). This system will provide a uniform application and annual renewal process for residential mortgage lenders and brokers. Additionally, it will store critical information in a central repository accessible to state and federal mortgage regulators. As of June 2007, 31 states had indicated their intention to participate, and the NMLS is scheduled to be up and running at the beginning of 2008. MBA is actively engaged with CSBS and AARMR in their important work on this project.

The President's Working Group on Financial Markets

The President's initiative includes a mandate for Secretary Paulson to lead a working group of Federal Reserve Chairman Bernanke, Securities and Exchange Commission Chairman Cox and Commodity Futures Trading Commission Acting Chairman Lukken. We are enthusiastic about the prospects for this working group which will examine the role of the credit rating agencies and how asset securitization has changed the mortgage industry and business practices.

MBA believes that the future stability of the financial markets and of our economy rest on the ability of government to develop a regulatory structure that fits the instruments and entities that provide liquidity in today's mortgage market. Approximately two-thirds of mortgages have been securitized in recent years. Only through this mechanism has the mortgage lending industry been able to raise the funds needed for the multi-trillion dollar residential mortgage market.

Electronic engineering and technology have created a financial market in which mortgage principal and interest are manipulated to form deal structures consisting of hundreds of classes of securities, deals that further crunch bits and pieces of earlier deals and derivatives that relatively few of us even understand. The acronyms are baffling and the mathematical explanations used to describe the function of today's more complex financial instruments are increasingly complicated.

A staggering amount of money is tied up in instruments that did not exist 20 years ago in anything like the form they do today and sometimes it is managed by entities that did not exist a generation ago. While regulators have some catching up to do, the fundamental goals are the same as they were when securities laws were written in 1933 and 1934.

At MBA, we support the power of the free market, but we know that some regulation is essential for that market to work well. We believe that the role of the regulator is to: 1) guard the financial system against the risk of instability: 2) provide consumer protection, particularly to retail investors and investors that may lack some of the analytical tools critical to investment decisions today: 3) assure market integrity through transparency and accurate financial disclosure with regard to instruments and entities. These goals are fundamental and do not change even when the market becomes sophisticated.

In order to achieve these goals in a modern financial environment, the President's working group will need to grapple with the fact that the environment of finance has changed radically. Recently developed financial instruments, such as collateralized debt obligations (CDOs), and increasingly powerful entities, such as hedge funds, will be examined.

Other MBA Recommendations

MBA applauds the President's decision to take on the difficult issues currently surrounding the mortgage market and troubled borrowers. Importantly, MBA believes there are other measures that should be undertaken by Congress, federal regulators and executive agencies to augment the President's proposal to protect consumers and increase liquidity in the mortgage market. They include:

- Congress should pass a single consumer protection standard to combat predatory lending; the numerous measures in place and proposed at the state and local levels create confusion in the market and are not as helpful to consumers as would be a single national standard. We are committed to continuing to work with Congress on appropriate standards of liability;
- The GSE portfolio caps should be temporarily increased, subject to the Office of Federal Housing Enterprise Oversight's (OFHEO) approval and to investment parameters that assure that the additional capacity is used to alleviate the problems of borrowers and industry in the current liquidity crisis;
- Congress should complete work on the GSE reform legislation, to provide certainty regarding safety and soundness to the enterprises and their investors and to the housing market about what the rules of the road will be in the longterm;

- While MBA does not have a specific recommendation for legislation related to rating agencies at this time, we believe there is room for improvement in the rating of asset-backed securities and we would welcome the opportunity to discuss this topic with market players and with Congress.
- Make the amount of the Department of Veteran Affairs' (VA) home loan guaranty entitlement consistent between refinances and purchases. Today, purchase money mortgages that exceed $144,000 receive guaranty entitlement of 25 percent of the loan up to the conforming loan limit of $417,000. However, if the borrower wishes to refinance a non-VA loan, the maximum guaranty is limited to $36,000, resulting in a *de facto* $144,000 maximum loan cap;
- Make the loan-to-value (LTV) eligibility the same for both VA home purchases and loan refinances, even if the borrower's current loan is not VA-guaranteed. (NOTE: The refinance of a non-VA loan is limited to 90 percent LTV (plus funding fee), whereas a refinance of (1) a construction loan; (2) a land sales contract; (3) a loan assumed by a veteran that has a higher interest rate than the rate of the proposed loan; and (4) an existing VA that results in an VA-guaranteed interest rate reduction refinance loan is eligible for 100 percent LTV financing, plus funding fee and other enumerated costs. Purchase money VA mortgages are eligible for 100 percent LTV financing, plus funding fee and other enumerated costs);
- Allow USDA Rural Development to refinance borrowers who are eligible for the USDA Section 502 loan program, but do not have a USDA loan currently. Statutorily, Rural Development is not permitted to refinance a borrower that does not already have an existing USDA Section 502 loan;
- Eliminate the restriction on Section 502 Guaranteed loans that refinances must be for interest rate reduction only. This prohibits the financing of home repairs into the debt as part of a refinance; and
- Congress should ensure that all mortgage insurance premiums continue to be deductible from federal income taxes. This tax provision expires at the end of this year.

Balancing Consumer Protections and Credit Availability

While we all share the same goals of stabilizing the market, helping borrowers who are in distress and ensuring that situations like this do not occur in the future, we would caution against a response that would limit consumer borrowing options and cause long-term harm to the housing market.

Assignee liability standards in current law have effectively eliminated certain loans from the market by essentially setting a cap on interest rates, as the experience from the Home Owners Equity Protection Act (HOEPA)[6] demonstrates. Some have suggested that an assignee liability standard could be created that would allow for

[6] HOEPA creates an assignee liability standard for "high cost" mortgages. The vast majority of lenders no longer make such loans; those that do have no purchasers in the secondary market. Lenders who make these loans are forced to hold them in their portfolios. In effect, HOEPA serves as a federal usury ceiling.

the continued offering of credit in a certain “policed” set of loans. Our fear is that the unintended result will be to essentially eliminate secondary market funding for those loans, as MBS issuers and investors instead focus their limited resources in areas that do not bring about any new or untested liabilities, even if those liabilities are limited.

Pushing more loans into HOEPA “high cost” status will also further reduce the financing options available to borrowers. While many who advocate taking this action believe that the impact will be to lower costs on all mortgage borrowers, the actual impact will be to eliminate funding options for some borrowers while raising costs for the market as a whole.

Conclusion

I genuinely appreciate the opportunity to appear before the Committee to discuss the situation in the mortgage market and MBA’s views of the President’s recent proposal to help borrowers avoid foreclosure. As I said, the situation in the market is very serious. It is having severe consequences not only borrowers, but on my industry and the global capital markets. It will take a long time to work through the problems in the market, and it will take the active participation of the regulators, secondary market, mortgage bankers, borrowers and every other part of the real estate finance system.

MBA supports the President’s proposals to assist troubled homeowners and protect borrowers. We urge the Administration, regulators and Congress to implement other policies that can further alleviate the current liquidity crisis, help borrowers avoid foreclosure, and improve the mortgage market moving forward. We commend you for holding this hearing and urge you to hold more, examining discreet parts of this investor confidence situation. Thank you.