

TESTIMONY OF

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MARYLAND COMMISSIONER OF FINANCIAL REGULATION

On

“FEDERAL AND STATE ENFORCEMENT OF
FINANCIAL CONSUMER AND INVESTOR PROTECTION LAWS”

Before the

COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

March 20, 2009, 10:00 a.m.

Room 2128 Rayburn House Office Building

Introduction

Good morning, Chairman Frank, Ranking Member Bachus, and distinguished members of the Committee. My name is Sarah Bloom Raskin, and I serve as the Commissioner of the Maryland Office of Financial Regulation. I also serve as the Chairman of the Legislative Committee of the Conference of State Bank Supervisors (CSBS). I am pleased to be here today to share my perspective as a state regulator and as a member of CSBS.

In addition to regulating banks, most state banking departments also supervise the residential mortgage industry. As the mortgage industry has evolved over the past two decades, CSBS has expanded its mission beyond traditional commercial bank supervision and has been working closely with the American Association of Residential Mortgage Regulators (AARMR)¹ to enhance supervision of the mortgage industry. States currently have regulatory oversight of over 77,000 mortgage company licenses, 50,000 branch licenses, and 410,000 loan officer licenses.

The states, the federal financial regulatory agencies, the Obama Administration, and Congress have all been very active in trying to restore confidence in the financial system. I commend you Chairman Frank, Ranking Member Bachus, and members of the Committee for your dedication to protecting consumers and for promoting the principles of responsible lending.

Let there be no doubt that fraud in financial services is a significant problem. Currently, there exists what could be called a “fraud spectrum” in the financial market place. At the less egregious end of the spectrum are compliance failures or “white lies”

¹ AARMR is the organization of state officials responsible for the administration and regulation of residential mortgage lending, servicing, and brokering. <http://www.aarmr.org/>.

that although absent malice, nevertheless result in harm to the consumer or the institution. At the other end of the spectrum are intentional fraud and criminal acts deserving of the most serious punishment our legal system can deliver. In between lays a vast array of acts that vary in both intent and ultimate harm, but are generally considered to be of an extremely serious nature.

State regulators address these incidents on a daily basis. As state regulators, we work in close proximity to the market, consumers, and troublesome practices. In particular, the mortgage industry is local in nature and has a tremendous impact upon local communities. The states, through CSBS and AARMR, have undertaken an array of initiatives to enhance supervision of the residential mortgage industry and have brought thousands of enforcement actions against mortgage loan originators to protect consumers.

At the same time, the financial structure underpinning the mortgage industry is national in scope. Securitization, wholesale funding, servicing, and other such functions are highly consolidated. Unfortunately, as a state regulator, my reach into these critical areas has been prohibited. My fellow state supervisors and I can only address part of the problem. We are largely unable to impact the underlying incentives that have contributed to the current economic crisis.

Given the structure of the financial industry, I submit the states play a critical role in regulation. The states are vital to restoring and promoting consumer confidence. The challenge Congress faces is to access the expertise and local knowledge of state supervisors and to leverage these resources to create a network of state-federal supervision that meets the needs of an industry that is both local and national.

Mr. Chairman, in my testimony I will discuss these state successes and initiatives to enhance supervision and enforcement of the financial system, particularly the mortgage

industry. I will also identify events or conditions that have hindered state actions. The states have made tremendous progress, but Congress must act to encourage more state and federal cooperation. Ultimately, Congress must facilitate a network of supervision, consumer protection, and enforcement that draws upon the resources and expertise at every level of government, ranging from local to national jurisdictions. Finally, I will offer the Committee suggestions for regulatory changes that should be considered as Congress debates reform of financial regulation, including offering our support for the Congressional Oversight Panel's recommendation to eliminate federal preemption of state consumer protection laws.

State Successes and the Future of State Supervision and Enforcement

States have long been recognized as leaders in the arena of effective, innovative, and comprehensive consumer protection. It is important to note the initiatives outlined in my testimony were either fully in practice or well under way prior to the most recent collapse of our markets. The significant enforcement cases I will outline in my testimony should have resulted in a dialogue between state and federal authorities about the extent of the problems in the mortgage market and the best way to address the problem. Unfortunately, that did not happen.

From the state perspective, it has been unclear for many years exactly who was setting the risk boundaries for the market. What is clear, however, is that the nation's largest and most influential financial institutions have been major contributing factors in our regulatory system's failure to respond to this crisis. The states have sometimes perceived an environment at the federal level that was skewed toward facilitating the business models and viability of our largest financial institutions rather than promoting the strength of the consumer or our diverse economy.

It was the states that attempted to check the unhealthy evolution of the mortgage market and apply needed consumer protections to subprime lending by passing state consumer protection laws and bringing enforcement actions against predatory lenders. Rather than thwarting or banning such protections, the regulatory system must incorporate the early warning signs and interventions that state laws and regulations provide.

States are leading the fight to reign in abusive lending through predatory lending laws, licensing and supervision of mortgage lenders and brokers, and through enforcement of consumer protection laws and standards of safety and soundness. In Maryland, for example, we have imposed a duty of good faith and fair dealing on the mortgage industry—refinancings must deliver a tangible net benefit to the borrower before they can be executed. Licensed entities now have a duty to report fraud to my office.

My fellow state supervisors and I welcome coordination with our federal counterparts to promote responsible lending across the residential mortgage industry, as well as the regulation of other types of financial institutions. Similar protections are in play at the national level as well. Last year, AARMR began developing national standards on a borrower's ability to repay; a crucial element of underwriting abandoned by the subprime lending market when it was needed most. In many instances, federal regulators are working closely with state authorities through the Federal Financial Institutions Examination Council (FFIEC) to develop processes and guidelines to protect consumers and prohibit certain acts or practices that are either systemically unsafe or harmful to consumers. These initiatives will begin to bear fruit in the coming months.

Broadly speaking, state efforts to enhance financial supervision are focused in two areas--contributing to the creation of an evolving network of financial regulation, or as addressing abuses through legislative and enforcement actions.

Evolving Network of Financial Regulation

- *CSBS-AARMR Nationwide Mortgage Licensing System.* In 2003, CSBS and AARMR began a very bold initiative to identify and track mortgage entities and originators through a national database of licensing and registration known as the Nationwide Mortgage Licensing System (NMLS). In January 2008, NMLS was successfully launched with seven inaugural participating states. Only 15 months later, 23 states are using NMLS and by January 2010—just two years after its launch—CSBS expects 40 states to be using NMLS.

The hard work and dedication of the states was recognized by Congress as they enacted the Housing and Economic Recovery Act of 2008 (HERA). I commend Chairman Frank and members of the Committee for introducing and passing through the House the Mortgage Reform and Anti-Predatory Lending Act in the 110th Congress. A significant portion of the Mortgage Reform and Anti-Predatory Lending Act was eventually incorporated in HERA as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act). Special recognition must go to Ranking Member Bachus, who developed the S.A.F.E. Act and its state-federal model for regulation and supervision. The purposes of the S.A.F.E. Act are to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud by requiring all mortgage loan originators to be licensed or registered through NMLS. Our best estimates today are that we will have licensed and registered 48,000 non-depository mortgage companies and 268,000 mortgage loan originators within the next 18 months.

As you well know, the law requires states to pass legislation to meet the minimum requirements established by the S.A.F.E. Act by July 31, 2009. While the implementation of the S.A.F.E. Act within the time period required is a monumental task, the states have

risen to your challenge and have unified under a Model State Law of implementing language and procedures.

Moving forward, regulators and the public will eventually have the opportunity to exploit the power of a vast data network designed to thoroughly screen mortgage companies and professionals. The system will:

1. Assist regulators in determining whether companies and individuals have the character and fitness to conduct business with consumers;
2. Establish a system of professional testing and education;
3. Assign a unique identifier for truly nationwide accountability; and
4. House consumer complaints, regulatory violations, and regulatory enforcement actions.

I cannot stress how important both the S.A.F.E. Act and NMLS are to the protection of consumers and in the battle against harmful business practices. Combined, these two initiatives create a system of accountability, interconnectedness, control, and tracking that has long been absent in the supervision of the mortgage market. By registering every loan originator with a unique identifier and requiring that identifier to be incorporated with loan origination documents, we have created the ability to associate the loan documents and business practices with the individual and company that negotiated the transaction. Further, NMLS is designed to track complaints and enforcement actions against companies and individuals. When combined with the required registration of loan originators operating within insured financial institutions, we have created an almost seamless connection that begins with practices and products and culminates with any record of consumer harm.

- *Nationwide Cooperative Protocol and Agreement for Mortgage Supervision.* In December 2007, CSBS and AARMR launched the Nationwide Cooperative Protocol and Agreement for Mortgage Supervision to assist state mortgage regulators by outlining a basic framework for the coordination and supervision of Multi-State Mortgage Entities (MMEs). The goals of this initiative are to protect consumers; ensure the safety and soundness of MMEs; identify and prevent mortgage fraud; supervise and examine in a seamless, flexible and risk-focused manner; minimize regulatory burden and expense; and foster consistency, coordination and communication among the state regulators.

To date, 48 states plus the District of Columbia and Puerto Rico have signed the Protocol and Agreement. In April, the first multi-state examinations will begin based upon examination procedures and methods redesigned to provide broader institution coverage, while focusing examiner resources where problems are most likely to reside.

- *Mortgage Examinations with Federal Regulatory Agencies.* Beginning in late 2007, the states, in partnership with the Federal Reserve System (Fed), the Federal Trade Commission (FTC), and the Office of Thrift Supervision (OTS) engaged in a pilot program to examine the mortgage industry. Under this program, state examiners worked with examiners from the Fed and OTS to examine mortgage businesses over which both state and federal agencies had regulatory jurisdiction. The FTC also participated in its capacity as a law enforcement agency. In addition, the states separately examined a mortgage business over which only the states had jurisdiction. This pilot is truly the model for coordinated state-federal supervision.

- *State Examination Programs.* Beyond investigations and enforcement actions, states regularly exercise our authority to investigate or examine mortgage companies for

compliance not only with state law, but with federal law as well. Unheralded in their everyday routine, examinations identify weaknesses that, if undetected, might be devastating to the company and its customers. State examinations act as a check on financial problems and sales practices gone astray. Examinations also stop a supervised entity from engaging in misleading, predatory, or fraudulent practices. In addition, examinations often result in the early detection of emerging harmful practices or trends.

Approximately 2,500 state financial institution examiners conduct thousands of on-site examinations each year of depository institutions, mortgage companies, consumer finance companies, payday lenders and other financial services providers. In Maryland, my agency alone will complete over 1,200 examinations this year. Taken as a whole, this system of state regulators is one of the largest financial institution regulatory bodies in the United States. This supervision mirrors the diffused industry it oversees. States are working in the same spirit that governs NMLS—a cooperative system that leverages local expertise and authority through joint examinations within the state system and with our federal regulatory counterparts.

To ensure our examiners are well-prepared, examiner training is an integral part of the state regulatory system. States have made a significant commitment in examiner skill sets that is continually broadened and improved to match the complexities of today's financial markets. For example, in 2007 state banking departments alone spent nearly \$8 million on training for its examination staff.

Since 1984, CSBS has maintained a state banking department accreditation program to enhance the professionalism of departments and their personnel. In 2008, CSBS established the mortgage accreditation program to encourage state mortgage

regulatory agencies to enhance their capability to promote excellence in mortgage supervision.

- *Consumer Complaint Processing.* In financial supervision, regulator proximity to consumers, the entities they oversee, and the communities they serve matters. Nowhere is this more evident than with collecting and acting upon consumer complaints. State regulatory agencies are responsible for receiving, processing and resolving tens of thousands of complaints filed by consumers against financial institutions each year. My office in Maryland receives over 2,500 complaints per year. In 2008, the states of Connecticut, Pennsylvania, New Jersey, North Carolina, and Virginia alone processed over 9,000 complaints resulting in consumer refunds of over \$7 million; an average return of \$777 per household. States have developed policies and procedures to collect complaints, and are working with our federal counterparts through the FFIEC to ensure the complaints are channeled to the correct regulator in order to pursue further action if necessary. Complaint resolution will always be a primary function of state supervisors because the consumers are in some cases literally our neighbors and friends. We have focused our efforts in ensuring a high level of cooperation between state and federal regulators to develop a network of supervision and consumer protection to prevent abusive practices or fraudulent behavior from falling through the cracks.

- *Proactive Regulatory Guidance and Requirements.* Proximity to our supervised entities, examinations, and consumer complaints all help the states identify emerging threats, risks, and troubling products or practices. Our network of supervision must build upon this early-detection system and facilitate the development of supervisory tools that are proactive. State-federal coordination on regulatory policy has not always been

permitted or supported. An example of this disconnect is the development of the 2006 *Guidance on Nontraditional Mortgage Product Risks*. State officials were barred from contributing to the development of these guidelines, but then publicly chided for failing to have similar guidelines in place. The states did quickly develop parallel guidelines, and also developed AARMR/CSBS Model Examination Guidelines (MEGs) to facilitate implementation of the guidance. The process did improve by when Congress gave the states a voting seat on the FFIEC. This allowed us to participate in the development of the 2007 *Statement on Subprime Mortgage Lending*.

In an effort to stay ahead of market practices and innovation, and to ensure we are providing comprehensive consumer protection, state and federal authorities must strive toward developing coordinated guidelines and examination procedures. Through state involvement with the FFIEC, coordination between the states and our federal counterparts has greatly improved in the past two years, and continues to do so. As FDIC Chairman Sheila Bair recently told the states' Attorneys General, "if ever there were a time for the states and the feds to work together, that time is right here, right now. The last thing we need is to preempt each other."²

In early 2008, state regulators identified the reverse mortgage lending market as one of future concern and potential problems, not only to consumers, but to the safety and soundness of financial institutions as well. Despite the relatively small size of the market for reverse mortgage lending today, the states believe that it holds the potential, much like subprime lending, for explosive growth in the coming years. CSBS and AARMR held the first ever regulatory training school on reverse mortgages. By the end of 2008 we had

² Speech before the National Association of Attorneys General, March 3, 2009: <http://www.fdic.gov/news/news/speeches/chairman/spmar0309.html>.

developed and released a comprehensive set of Reverse Mortgage Examination Guidelines (RMEGs) at least two years prior to our projections of growth in the market.

The clarity provided by the MEGs and the RMEGs will greatly enhance industry compliance with regulatory guidelines. By providing the industry with clear expectations, regulators will be able to hold institutions accountable for compliance failures and monitor more precisely any unsound practices.

- *Regulatory Reporting.* Another CSBS/AARMR initiative underway prior to the passage of the S.A.F.E. Act is a system of mortgage data reporting similar to the Call Reports for depository institutions. Inadequate data means inadequate supervision. This is one more area where I would like to thank this Committee for having the insight to help us bring this initiative to the level of a national standard. In time, we will be collecting data and developing a much better understanding of the shape of the mortgage market as it returns to healthy and viable levels of business.

- *Technology and New Examination Methods.* Beginning in 2007, the states, through CSBS, began a year-long process of investigating available technology and in 2008 entered a public/private venture to bring the best of the available technologies to the examination process.

By extracting loan file data electronically for every loan originated or funded by the institution and running the data through specialized software built upon regulations and guidelines, we are able to conduct a pre-examination offsite review before the examiner ever leaves his or her desk. The idea is to identify apparent violations and problems before the examination begins, and then direct the examination resources exactly where they are needed the most. The use of technology eliminates the previous reliance upon random

sampling and educated guessing and replaces these with skilled resources focused where the problems are most likely to be found.

Legislative and Enforcement Actions

- *State Predatory Lending Laws.* Currently, 35 states—including Maryland—and the District of Columbia have enacted subprime and predatory mortgage lending laws.³ The innovative actions taken by state legislatures have prompted significant changes in industry practices, as the largest multi-state lenders were forced to adjust their practices to comply with the strongest state laws. All too often, however, states are frustrated in our efforts to protect consumers by the federal preemption of state consumer protection laws. Preemption should not be used as a method to circumvent stringent consumer protection requirements.

I supported the Mortgage Reform and Anti-Predatory Lending Act in the last Congress, and I continue to support the creation of a federal minimum predatory lending standard that allows the states to address these predatory practices as they evolve. The federal standard must be a floor for all lenders that does not stifle a state's authority to protect its citizens through state legislation that builds on the federal standard. States should also be clearly allowed to enforce—in cooperation with federal regulators—both state and federal predatory lending laws over institutions that act within their state.

- *State Enforcement of Consumer Protection Laws.* State attorneys general and state regulators have cooperatively pursued unfair and deceptive practices in the mortgage market. Through several settlements, state regulators have returned nearly one billion dollars to consumers. In 2002, a settlement with Household Financial resulted in \$484 million paid in restitution; a settlement with Ameriquest Mortgage Company four years

³ Source: National Conference of State Legislatures. <http://www.ncsl.org/>.

later resulted in \$295 million paid in restitution; and a settlement with First Alliance Mortgage Company resulted in \$60 million paid in restitution. These landmark settlements included significant injunctive relief and monitoring programs setting new standards for fairness and further contributing to changes in industry lending practices.

While these cases have received most of the recognition, success is sometimes better measured by those actions that never receive media attention. Attached as Exhibit A is a chart of enforcement actions taken by state regulatory agencies against mortgage providers. In 2007 alone, states took almost 6,000 enforcement actions against mortgage lenders and brokers. But these cases do not include the unrecorded investigations and referrals for criminally punishable fraud and other crimes. To keep pace, state agency investments in resources combating serious crimes are a significant and growing portion of state agency budgets. Please refer to Exhibit B for a more detailed list of state-specific initiatives.

Challenges to State Supervision and Enforcement

Preemption

Foremost among the challenges to state supervision is the battle over federal preemption of a state's right to protect its citizens. Repeatedly states have stepped forward to implement new protections, investigate practices, or intervene with enforcement regardless of the chartering authority or institutional claims of federal protection. All too often, our efforts have been repelled by what Chairman Frank has referred to as "wildly over-pre-empted state law."⁴

Imagine if those who supported and continue to support the architecture of our origination and secondary market systems were held accountable in the manner of

⁴ Source: Chairman Frank press briefing, March 5, 2009.

Household and Ameriquest, instead of enjoying preemptive policies that allowed them to operate outside of state law. I remind the Committee that the restitution dollars and fines in both these cases were only the penalty phase of the state enforcement. The injunctive relief and monitoring going forward is what caused a wake of positive lending reforms embraced by state chartered institutions, but disregarded by those under national authority.

Cloaked in preemption and unfettered by limitations on prepayment penalties, net tangible benefit or suitability requirements, extremely large institutions continued to originate, fund, and sell loans in a way that Household learned in 2002 would no longer be an acceptable practice under the mantle of state supervision. I ask you to re-imagine the current crisis in a world where the largest lending institutions would have been notified of unacceptable practices.

Resources Needed to Pursue Investigations

Investigating and prosecuting sales practice, fraud, and white collar crime cases—whether at the administrative, civil or criminal level—has always been a daunting and significant undertaking. A single case can dominate a large portion of a state agency's legal resources for an extended period of time. Simply put, these cases are difficult to make, requiring the will of the agency to engage in an elongated battle, a staff skilled with industry knowledge and investigative training, and the financial and legal resources to put it all together.

Investigations can literally take years to come to fruitful conclusion. Even landmark victories, such as the case against Household, are exhaustive and draining to every agency involved. Engagement in even the smallest of cases results in an enormous challenge and a significant distraction to core regulatory activities. Despite these challenges, states have achieved significant enforcement successes in recent years and we

continue to commit additional resources to pursue additional enforcement actions. These past successes and future initiatives have only been possible through a coordinated system of state agencies acting in unison. By necessity, states are nimble and innovative, and often able to react quicker and more aggressively than our federal counterparts. The states, through CSBS and AARMR, are working in concert to modernize supervision and enforcement and have taken the lead in many areas of regulatory development. More often than not it is the states who are setting the precedent and tone for verification and accountability through initiatives such as NMLS, MEGs for nontraditional and subprime mortgages, RMEGs, cross-agency examinations, multi-state examinations, and the use of advanced technology to detect and investigate what we have been unable to see through traditional methods and tools of supervision.

Insufficient Data

According to the Department of Treasury's Financial Crimes Enforcement Network (FINCEN), financial institutions filed 62,084 suspicious activity reports (SARs) reporting mortgage loan fraud in the one-year period ending June 30, 2008. This figure constituted nine percent of all SAR submissions for the period and a 44 percent increase over the preceding year. Mortgage loan fraud was the third most reported activity during this period. But these are only reports of suspicious activity made by depository institutions. Since such a large segment of the mortgage lending industry is not subject to these reporting requirements, I agree with the FBI that "the true level of mortgage fraud is largely unknown."

Therefore, we should explore the requirement to file SARs for transactions initiated by mortgage brokers and lenders. There are obviously benefits and challenges to doing so, but it is worth initiating a dialogue with FinCEN and the FBI.

Some statistics estimate the amount of annual loss related to mortgage fraud at \$4 to \$6 billion.⁵ In 2008, the FBI conducted 560 indictments for mortgage fraud and achieved 338 convictions. But SARs and fraud serious enough to warrant criminal prosecution only tells part of the story. In the pursuit of improving industry information, data from the FBI's Criminal Justice Information Service, FinCEN's database, and the FTC's Consumer Sentinel database should be coordinated with NMLS and available to all regulators.

Recommendations and Suggested Congressional Action

The states are working to ensure legitimate lending practices, provide adequate consumer protection, and once again instill both consumer and investor confidence in the housing market and the economy as a whole. Enhanced supervision and enforcement tools can successfully weed out the bad actors and address bad assumptions that were made by the architects of our modern mortgage finance system. While much is being done to this end, more progress must be made towards the development of a coordinated and cooperative system of state-federal supervision and enforcement of comprehensive consumer protection provisions.

Forge a New Era of Federalism

The state system of chartering and regulating has always been a key check on the concentration of financial power, as well as a mechanism to ensure that our finance system remains responsive to local economies' needs and held accountable to consumers.

Consolidation of the financial industry, supervision, and preemption of applicable state consumer protection laws does not address the cause of our current economic crisis, and has in fact exacerbated the problem. Consumer confidence is dangerously low because

⁵ Source: The Prieston Group.

the public feels largely cheated by financial service providers. The flurry of state predatory lending laws and new state regulatory structures for lenders and mortgage brokers were designed to protect consumers and preserve confidence. It would be incongruous to eliminate through preemption or regulatory restructuring not only these protections, but the early warning signs provided by state authorities. Just as checks and balances are a vital part of our democratic government, they serve an equally important role in our financial regulatory structure.

Most importantly, however, it serves the consumer interest that the states continue to have a significant role in financial supervision. State regulators must remain active participants in supervision because of our knowledge of local economies and our ability to react quickly and decisively to protect consumers.

Eliminate Preemption of State Consumer Protection Laws

Therefore, I urge Congress to implement a recommendation made by the Congressional Oversight Panel in their “Special Report on Regulatory Reform” to eliminate federal preemption of the application of state consumer protection laws to national banks. In its report, the Panel recommends Congress “amend the National Banking Act to provide clearly that state consumer protection laws can apply to national banks and to reverse the holding that state consumer protection laws of a national bank’s state of incorporation govern that bank’s operation through the nation.”⁶ I believe the same policy should apply to the OTS. To preserve a responsive system, states must be able to continue to produce innovative solutions and regulations to provide consumer protection.

⁶ The Congressional Oversight Panel’s “Special Report on Regulatory Reform” can be viewed at <http://cop.senate.gov>.

The federal government would better serve our economy and our consumers by advancing a new era of cooperative federalism. The S.A.F.E. Act enacted by Congress requiring licensure and registration of mortgage loan originators through NMLS provides a model for achieving systemic goals of high regulatory standards and a nationwide regulatory roadmap and network, while preserving state authority for innovation and enforcement. The S.A.F.E. Act sets expectations for greater state-to-state and state-to-federal regulatory coordination to prevent abusive lenders from falling through the cracks of supervision.

Establish Nationwide Predatory Lending Law

Congress should complete this process by enacting a federal predatory lending standard. A federal standard should allow for further state refinements in lending standards and be enforceable by state and federal regulators. Additionally, a federal lending standard should clarify expectations of the obligations of securitizers.

Information Sharing and Networking

The markets we regulate are a complex web of relationships and electronic connections. Supervision should be based upon an equally complex network of relationships, connected by a simplified means of communication and information sharing. But currently there is no efficient or formal mechanism for this type of information sharing. Congress should establish a mechanism among the financial regulators for identifying and responding to emerging consumer issues. This mechanism, perhaps through the FFIEC, should include active state regulator and law enforcement participation and should work to develop coordinated responses.

For too long, government at all levels has suffered from an insular type of confidentiality. The willingness to share information is often limited to an agency's inner circle, which results in simultaneous, but partially blind investigations.

Grass roots coalitions exist across the country, as do law enforcement task forces, state regulatory and attorneys general alliances, and federal agencies working in tandem with a variety of groups. My recommendation to Congress is to facilitate the linking of the information sources with the enforcement sources and the various enforcement sources with one another

Linking Information and Tracking Databases

Good enforcement begins with good information. The better the information, the easier the case to investigate, and the more likely it is to launch a successful prosecution. As designed, NMLS will be the principal source of data for mortgage companies and professionals. Under the S.A.F.E. Act Congress has encouraged state authorities to connect NMLS with the FBI's Criminal Justice Information Service by serving as a channeling agent to the states for criminal conviction records. Other significant data sources exist with FinCEN, the FTC's Consumer Sentinel database, the National White Collar Crime Center's Internet Crime Complaint Center, and information maintained by the federal banking authorities. At the state and local levels there is a myriad of data sources that are disconnected and inefficient to access. In today's world of technology, mortgage fraud cases are still investigated by a laborious and time-consuming process that fails to take full advantage of technological advancements.

Each of these databases should not only be connected to one another, but readily accessible to law enforcement officials. Where necessary, funding should be provided for the modernization and standardization of data formats with linking of the sources

facilitated at the federal level. Further, data should be upgraded and gaps must be closed. For example, felony conviction information currently exists in local jurisdictions that have failed to reach the FBI Criminal Justice Information Service. This means that NMLS—relying on the FBI for conviction data as required by the S.A.F.E. Act—could unintentionally allow the approval and registration of a convicted felon.

My recommendation to this Committee is to give enforcement officials the best available tools by upgrading the data and linking the sources.

Examination and Investigation Technology

I strongly believe that the use of technology is the only way to gain ground with the industries I regulate and to supervise them in an efficient and effective manner.

Through technology, specialized examination procedures and the information sharing I mentioned previously, regulators will begin to identify problems as they arise and even sometimes before the institution knows they have occurred.

The states are field-testing these new technologies now. But as you know, we are only part of the regulatory equation. I invite Congress to monitor our success and encourage you to consider our models when forging a new regulatory landscape.

Conclusion

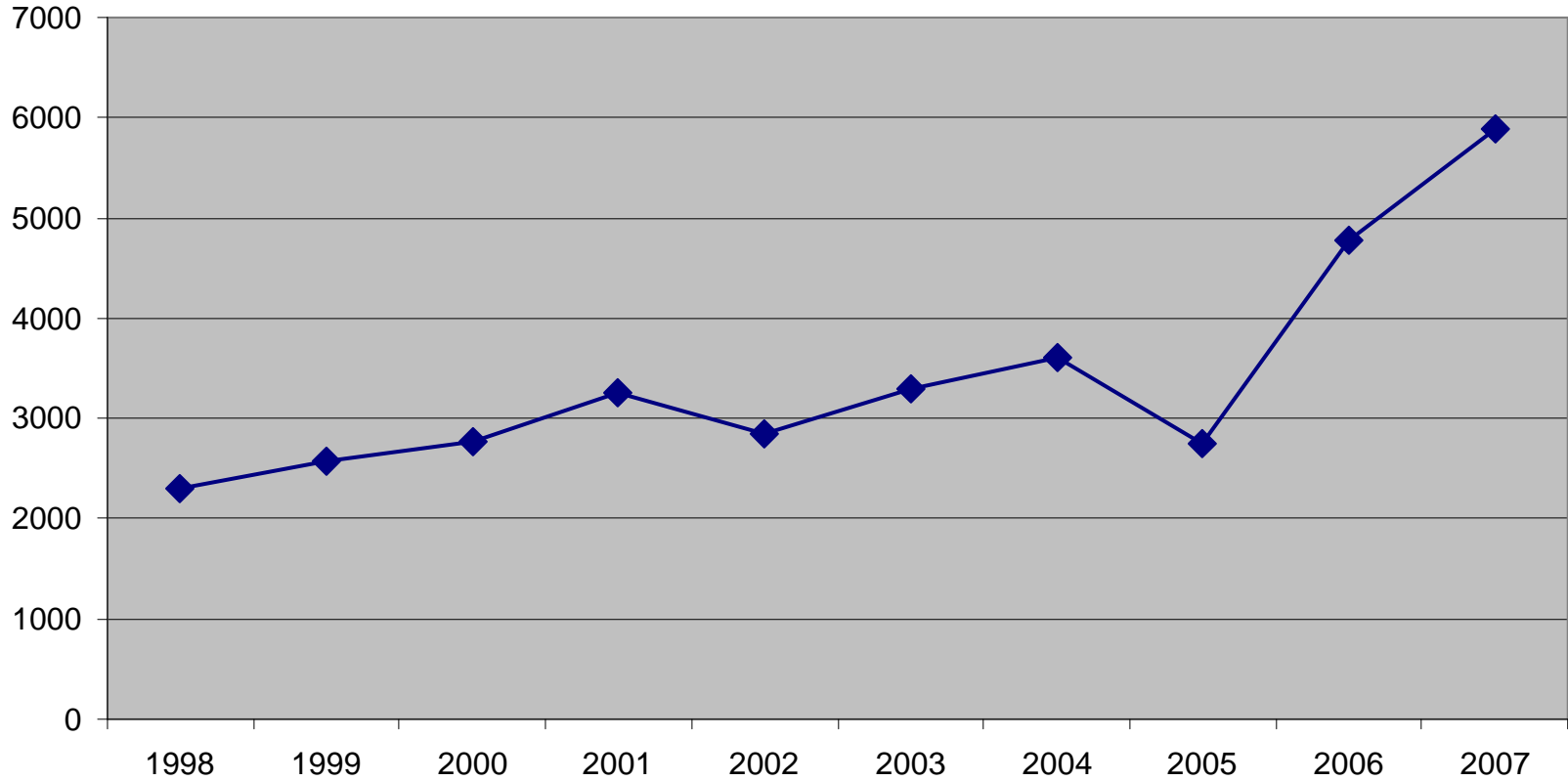
Chairman Frank, Ranking Member Bachus, and members of the Committee, I commend your work to protect consumers and the financial system. States have undertaken a number of initiatives to enhance supervision, protect consumers, and take action against predatory lenders. I urge you to work towards facilitation of a supervisory network that builds upon the strengths, resources, and expertise of state and federal regulators to effectively identify and react to emerging trends, develop comprehensive

consumer protection, and when necessary to take enforcement action that would deter future repetition of fraudulent actions.

Again, thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Exhibit A: State Enforcement Actions Against Mortgage Providers

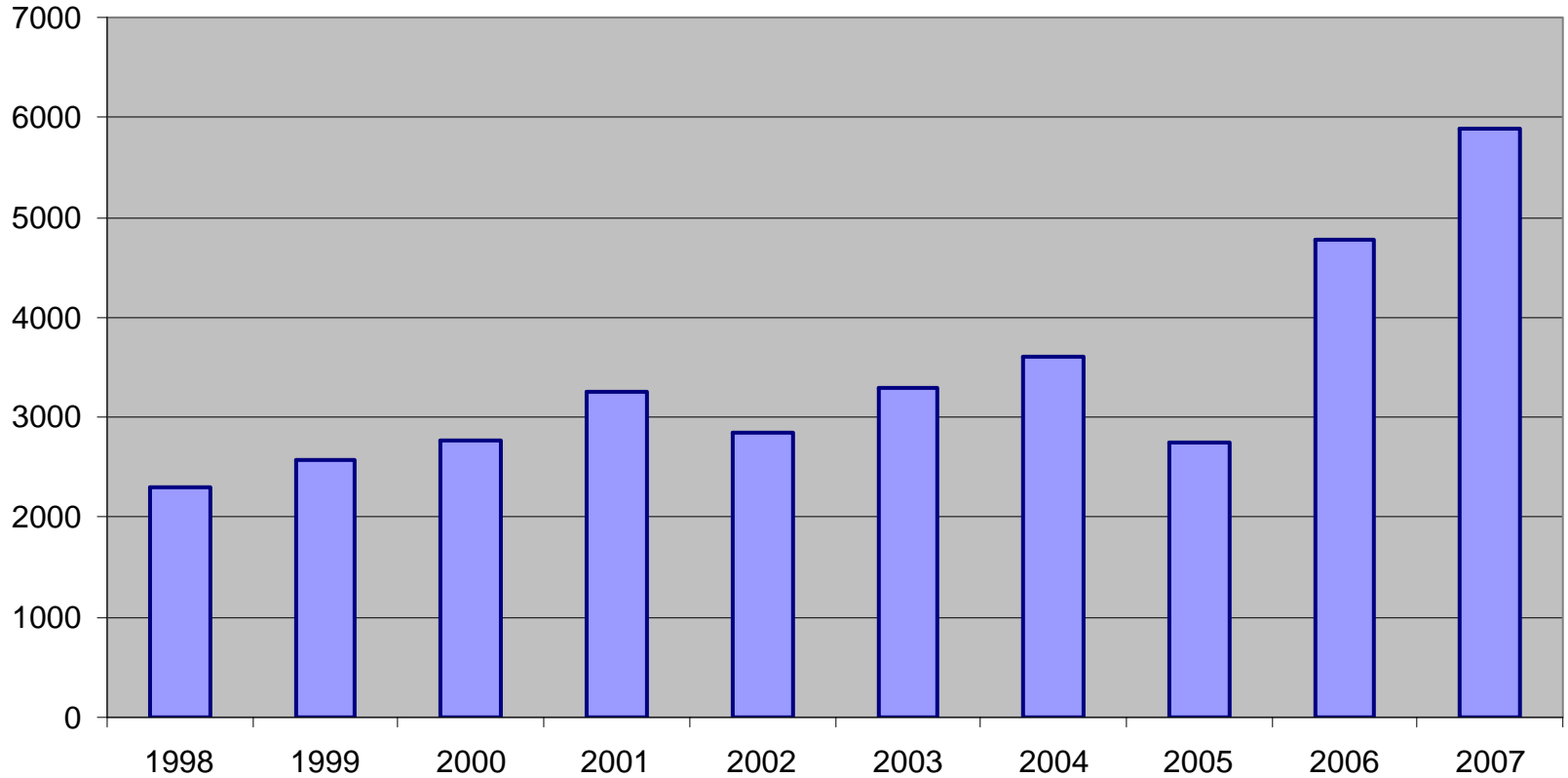
**State Mortgage Enforcement Actions
from 1998 - 2007**



Source: Mortgage Asset Research Institute (MARI), A LexisNexis Service

Exhibit A: State Enforcement Actions Against Mortgage Providers

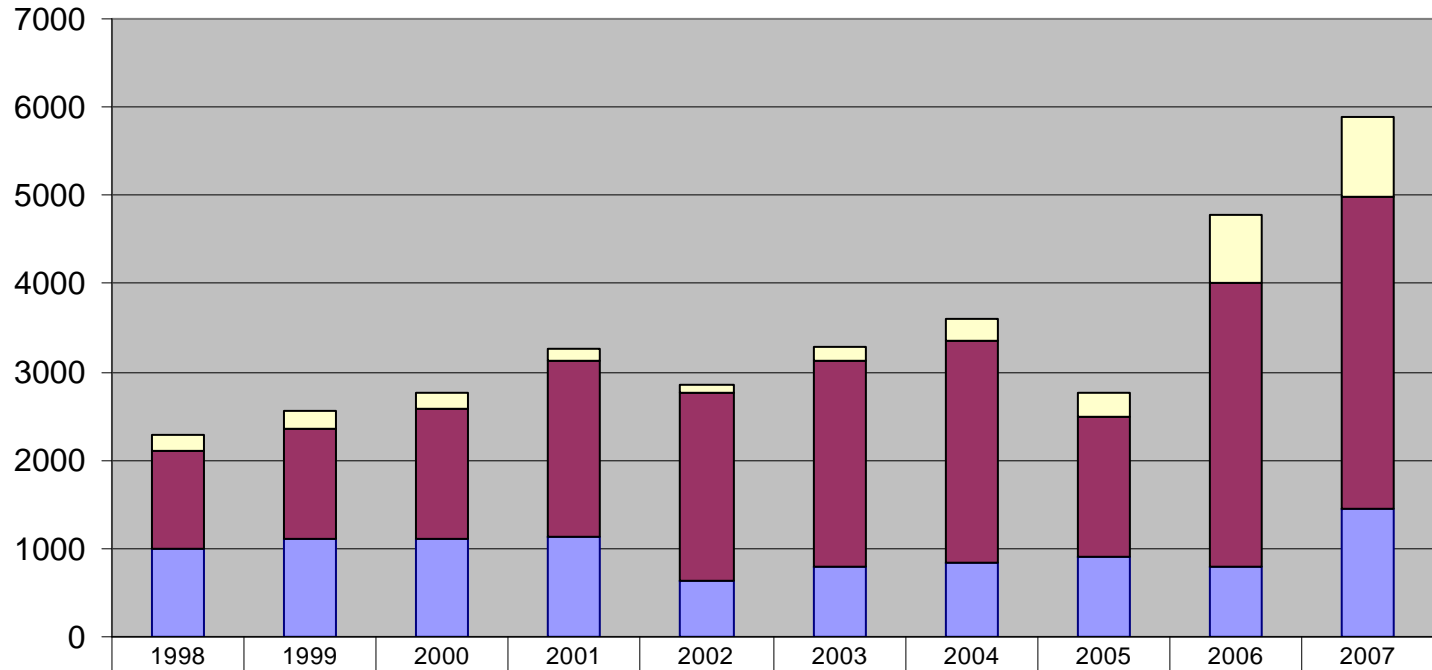
**State Mortgage Enforcement Actions
from 1998 - 2007**



Source: Mortgage Asset Research Institute (MARI), A LexisNexis Service

Exhibit A: State Enforcement Actions Against Mortgage Providers

**State Mortgage Enforcement Actions
from 1998 - 2007**



□ Disciplinary / Fines	185	212	180	133	93	171	249	260	761	912
■ Cease & Desist	1121	1242	1480	2002	2117	2343	2534	1595	3227	3527
■ Criminal / Revocation	992	1116	1106	1126	638	782	829	904	788	1457

Source: Mortgage Asset Research Institute (MARI), A LexisNexis Service

Exhibit B: State-Specific Enforcement Efforts

In my state of Maryland we have moved aggressively to enhance statutory authority to address abusive practices. In 2008, the legislature passed the Maryland Mortgage Fraud Act, for the first time enumerating mortgage fraud as a specific crime. This statute addresses the responsibilities of all parties to a mortgage transaction and includes comprehensive penalties of incarceration and fines. Among other things, the Fraud Act provides for forfeiture and enhanced penalties for vulnerable victims. As Commissioner, I have also promulgated a regulation requiring mortgage brokers, lenders, originators and all other persons under my authority to report instances of fraud, theft, or forgery. We have already established a common form and begun to receive such referrals.

In addition, Maryland strengthened protections last year to address foreclosure rescue scams. Historically, these transactions have involved inducing homeowners to transfer title in an effort to save their homes. Instead, whatever remaining equity existed was stripped by the perpetrator. Maryland now prohibits transfer of title for these purposes and certain enforcement authority has been extended from the Attorney General to include the Office of Financial Regulation. Our Maryland investigators launched the investigation that uncovered one of the largest foreclosure rescue schemes in history – a \$35 million scam involving the Metropolitan Money Store. Our team ultimately called in federal authorities and United States Attorney Rod Rosenstein issued a 25-count indictment last July.

The new statute expressly prohibits so-called foreclosure consultants from charging up-front fees for assisting borrowers as foreclosure consultants, which in many instances includes loss mitigation services. With vulnerable homeowners no longer having equity in their properties, these fee-based schemes have spread rapidly. To date, we have been

successful in recovering thousands of dollars for Maryland borrowers. President Obama's housing plan will incorporate work done at the state and federal levels to address potential abuses that will surely arise. Among other things, we have advocated extensive public outreach to inform borrowers that they do not need to pay these fees, support for additional counseling resources such as those already offered by the State of Maryland, and enhanced disclosure that identifies any third parties involved in the transaction. I understand that legislation similar to that in Maryland that bans up front fees has been introduced in Congress.

We are also working to coordinate our efforts at all levels. With limited resources, it is critical that we operate efficiently and cooperatively. Earlier this year, our agency took the lead in forming a Maryland mortgage fraud task force to concentrate its efforts on mortgage fraud cases not under the scrutiny of the federal authorities. The state task force consists of state regulatory agencies, the Office the Maryland Attorney General, local prosecutors, and investigators from the local police departments. The idea behind the state task force is to ensure that no cases of mortgage fraud will fall between the cracks.

At the same time, the Office of the United States Attorney for Maryland, in conjunction with the Federal Bureau of Investigation (FBI), recently formed a Federal / State mortgage fraud task force of which the Office of Financial Regulation is a member agency. Other agencies participating include representatives of all levels of federal law enforcement, other state regulatory agencies, representatives from the Maryland Attorney General's Office and local prosecutors. One of the goals of this task force is to provide a venue for information sharing so that each agency is aware of another agency's activities in order to allow for a coordinated, joint effort in conducting some investigations or for parallel investigations to proceed where appropriate.

Other states have reported similar successful efforts as well.

Arizona

Nov 17, 2008 - Cactus Cash Inc. and Rick Thomas McCullough. Charged with operating a residential mortgage scam. Sentenced to 3 ½ years in prison with 7 years probation plus \$343,811 in restitution to victims. Additionally barred from employment with any financial institution or company regulated by the AZ DFI for making multiple misrepresentations, false promises, concealed material facts, disclosure violations, failure to maintain records, engaged in illegal or improper business practices and failed to comply with multiple federal requirements in conducting mortgage broker business activity.

Massachusetts

September 24, 2008 – American Advisors Group, Irvine, California. Commissioner issued a Temporary Order to Cease and Desist based upon information reflected in a consumer solicitation regarding reverse mortgage loans received by Massachusetts consumers from American Advisors which contained language that had the tendency to be false or misleading, that could collectively create the appearance that the solicitation was issued by a government agency.

Michigan

October 6, 2008 - Countrywide Financial - Settlement that must offer to refinance thousands of Michigan mortgages, provide millions in financial assistance and stop questionable loan practices. Those lending practices included misleading marketing techniques and incentives for selling loans with risky features, which may have contributed to the national increase in foreclosures. Must pay more than \$9.8 million to assist Michigan homeowners who lost their homes to foreclosure. The funds will also be used for borrower education programs and neighborhood rehabilitation efforts.

Ohio

Sept 30, 2008 - APEX Mortgage Service, LLC – Revoked Mortgage Broker

Certificate of registration and assessed \$50,000 fine.

Washington

From 2007 through 2008, Washington State Department of Financial Institutions (DFI) made 32 criminal referrals for mortgage fraud under the state's successful Mortgage Lending Fraud Prosecution Account law passed in 2003. Creation of this unique piece of legislation has helped solve the dilemma of insufficient investigative and prosecution resources. Funds for the Account are generated by a \$1 surcharge, assessed at the recording of a deed of trust. DFI can use these funds to reimburse county prosecutors for a variety of costs related to the investigation and prosecution of mortgage fraud cases. Reimbursable items include expenses related to investigation and litigation and may even include training costs for investigators and prosecutors. As a result of the credit crisis and the drop in home sales, the average amount of revenue raised by this fund per month has gone from \$70,000 in 2006 to \$44,000 per month in 2008. Nevertheless, this is over a half million dollars of prosecution resources solely dedicated to fighting mortgage fraud in one state alone.

Like my agency, Washington DFI participates in the state's Mortgage Fraud Working Group, which meets quarterly and involves the FBI, the King County Prosecutor, the King County Sheriff's Office, the Bellevue Police Department, the Kirkland Police Department, the U.S. Department of Housing and Urban Development (HUD), the Internal Revenue Service, the WA Department of Licensing, the WA Attorney General, and the U.S. Attorney General. Through this group the agency is working a number of large cases with the U.S. Attorney General and the FBI, as joint State/Federal prosecutions.

As with other states, administrative actions dominate the enforcement landscape for Washington DFI. Some recent examples of administrative enforcement include:

1. Countrywide Home Loans, Inc. dba America's Wholesale Lender. Charges include \$1 million in fines, consumer restitution and a 5 year ban from the industry for lending discrimination, Home Mortgage Disclosure Act violations, disclosure failings and other administrative issues.
2. NovaStar Mortgage, Inc. Charges include \$350,000 in fines, consumer restitution and a 5-year ban from the industry for disclosure violations, unauthorized fees, unlicensed activity and illegal prepayment penalties.
3. Paramount Equity Mortgage, Inc., Hayden D. "Hayes" Barnard, Matthew J. "Matt" Dawson, and John J. "Jason" Walker. Charges include fines of \$500,000, restitution to consumers and a 5-year ban from the industry for unearned fees, bogus rate buy downs, deceptive disclosures and bait and switch advertising.
4. Dana Capital Group, Inc. and Dana H. Smith. Charges include a combined fine of \$740,000, consumer restitution, corporate license revocation, and a 20-year ban from the industry for unearned fees, disclosure violations, unlicensed activity and failure to maintain records and make reports.
5. A+ Mortgage, Inc. and Gregory J. Nick. Charges include \$250,000 in fines, \$160,000 in consumer restitution and a 5-year ban from the industry for falsification of documents, unlawful fees, disclosure violations and conversion of borrower funds.

6. WCS Loans, Inc., d/b/a Advance Til Payday, and Loren C. Gill. Charges include \$900,000 in fines, consumer restitution and a lifetime ban from the industry for illegal payday lending in Washington.