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6<sup>th</sup> Congressional District-New York  
House Committee on Financial Services  
Hearing entitled “H.R. 1728: Mortgage Reform and Anti-Predatory Lending Act”  
Statement

Chairman Frank, Ranking Member Bachus, colleagues and testifying witnesses, good morning.

Today, the House Committee on Financial Services will debate H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009, legislation which will redefine the manner in which mortgage financing is done in our Nation.

I want to applaud my friends and colleagues, Representatives Mel Watt and Brad Miller, along with Chairman Barney Frank for their leadership in crafting this important measure. The Mortgage Reform and Anti-Predatory Lending Act of 2009 is a stronger version of the measure that was offered in the 110th Congress, H.R. 3915 Mortgage Reform and Anti-Predatory Lending Act of 2007, which called for overhauling mortgage regulations in an effort to prevent another subprime mortgage crisis. I support that bill which passed the House in 2007 with bipartisan support, but was not considered in the Senate.

The Mortgage Reform and Anti-Predatory Lending Act of 2009 represents an important step toward preventing the predatory and questionable practices that took hold in the mortgage lending industry in the past several years and undoubtedly contributed to our current housing crisis. Mortgage lending reform is a vital piece of the Congressional effort to prevent a future financial services disaster of this scale and I believe that we must move forward in our efforts to ensure that a similar crisis does not occur in the future.

Mortgage delinquencies and foreclosures are at all time highs and my district, New York’s 6th Congressional District, has the highest level of foreclosures in New York and is among the highest in the region. As you may know, 2.4 million Americans risk foreclosure in 2009. That number could rise to 8.1 million over the next 4 years. The foreclosure epidemic is being caused primarily by families borrowing against their homes to pay their bills when something has gone wrong, not because they are buying more house than they can afford. Families are borrowing against their homes because of unexpected job loss, serious & catastrophic illness, and other life crisis. A significant number of these foreclosure victims were preyed upon by unscrupulous lenders.

The Mortgage Reform and Anti-Predatory Lending Act of 2009 will help to address the issue of predatory lending and unfair practices. Among the practices this bill addresses includes strengthening restrictions on compensation paid to mortgage loan originators and brokers that is based on a loan's interest rate and terms, often called yield-spread premiums. Lenders sometimes pay brokers an extra fee for making loans at a higher interest rate than the borrower otherwise could have received.

H.R. 1728 also encourages the market to move towards making 30-year fixed-rate, fully documented loans the standard once again in mortgage lending. While, our the Congress should encourage responsible innovation in our financial markets, the growth of exotic, non-traditional mortgages was a major factor in the current housing and foreclosure crisis. These types of loans have ravaged the 6<sup>th</sup> Congressional District of New York and have impacted nearly every area of our country.

Additionally, the legislation prohibits lenders from underwriting loans that consumers do not have a reasonable ability to repay and prohibits practices that increase the risk of foreclosure for consumers. I applaud this provision and my office has first hand experience with the importance of conducting affordability analysis for homeowners. The Consortium for Worker Education has been helping my constituents who are in delinquency and/or are in foreclosure and conduct a comprehensive analysis of a homeowner before contacting their mortgage servicer to obtain either a work out or a soft landing rental. Had we had this provision in place before the housing boom, untold numbers of Americans may have been spared the nightmare of foreclosure.

Finally, the legislation also protects consumers from being steered into loans that aren't in their best interest, and if they refinance there must be a tangible net benefit to the consumer. The bill will also create greater transparency by ensuring lenders make full disclosure of the terms of the loan at the time of signing.

Again, I believe that H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009 is legislation that is greatly needed and will serve as a major component of our nations overall economic recovery. I look forward to debating this bill with my colleagues and to receiving the testimony of the assembled witnesses. I yield back.

## **Potential Questions:**

### **PANEL ONE**

#### **QUESTION FOR STEVEN L. ANTONAKES-CONFERENCE OF STATE BANK SUPERVISORS**

1. In your testimony, you recommended the Act be amended to require all rule writing by the Federal Banking Agencies be coordinated through the Federal Financial Institutions Examination Council (FFIEC) which includes—as a voting member—the Chairman of the State Liaison Committee. The FFIEC was designed to facilitate consistent federal regulation and supervision and coordination with state regulators. As you are aware, many of our nations smaller community banks and credit unions have remained fairly healthy in the current fiscal environment.

To what extent will having rulemaking coordinated through the FFIEC assure some consideration of state expertise and help our regulators to perhaps think outside of the box to address the unique nature of smaller institutions?

#### **QUESTIONS FOR SAUNDRA BRAUSTEIN-FEDERAL RESERVE**

1. In your testimony, you indicate that one of the goals of the Board’s final rules was “to ensure that mortgage loan advertisements do not contain misleading or deceptive representations... and the rules also prohibit misrepresentations about government endorsement of the loan program and misleading claims of “debt elimination.”

I have personally received advertisements and seen television commercials that utilize the word Federal and am disturbed by the co-opting of government for what are likely nefarious endeavors. To what extent is your agency working with and/or coordinating efforts with the FBI and local authorities, once a deceptive firm is identified, to prosecute these entities?

2. Also in your testimony you stated that the FED supported the goals of Housing and Urban Development’s (HUD) efforts to make the Real Estate Settlement Procedures Act (RESPA) disclosures more accurate and more useful, and we commend HUD for using consumer testing to develop the new RESPA forms, but that, the FED continues to believe that efforts should be made to develop a single form that creditors could use to satisfy the requirements of both Truth In Lending Act and RESPA. Has the FED had any conversations with the new Secretary of HUD Shaun Donovan and/or his staff to help address this issue?

### **PANEL TWO**

#### **QUESTION FOR JOHN TAYLOR-NCRC**

1. In your testimony you stated that “an inadequately regulated marketplace financed large amounts of problematic subprime and non-traditional loans over the last several years, with no regard for the long-term implications for borrowers with unsustainable debt.” Clearly, predatory lending utilized subprime and non-traditional loans to engage in criminal acts. However, such loan products have helped to provide a bridge to homeownership to untold numbers of Americans and helped them to fulfill the American Dream of Homeownership. Has your organization worked in concert with the lending institutions on developing an appropriate set of best practices to ensure that worthy segments of aspiring homeowners, who demonstrate ability to afford a home but may have had some past issues, are not shut out of homeownership altogether?

#### QUESTION FOR MARGARET SAUNDERS-NCLC

1. As you are aware, liability of holders provides a measure of accountability because, under current law, it creates an incentive for buyers of loans to review the loans for compliance with the laws and the standards of the industry governing mortgages. In your testimony, you stated “Assignees need *more* liability to sufficiently animate these incentives, albeit this potential liability should be capped, so that the risk should be measured and priced for.” Further, you state that your organization has “repeatedly proposed that assignee liability for mortgage holders be similar to the liability of assignees of credit sale contracts, as is dictated by the FTC Holder Rule.” Could you provide this committee with the any potential impact to mortgage liquidity and thus availability of mortgages to potential homebuyers? Would there be any adverse impact of such a proposal?

#### QUESTION FOR HILLARY SHELTON-NAACP

1. In your testimony you called for the establishment of a Duty of Care that requires originators to present borrowers with loan options which are appropriate to their financial circumstances. There appears to be a substantial amount of evidence that African-Americans and Latinos with comparable credit scores and down payment amounts were steered into a disproportionate share of expensive non-traditional loans. How much of an impact would your proposed provision address this issue and if lenders were found to be in violation what enforcement actions do you propose?

### **PANEL THREE**

#### QUESTION FOR G. GARY BERNER-ABA

1. In your testimony you stated that the ABA was supportive of the Federal Reserve Board’s expansion of Regulation Z and that “In recent changes to Regulation Z, the Federal Reserve emphasized the need for more prudent and traditional underwriting. ABA supports changes including regulations to strengthen the integrity of appraisals and prohibit deceptive advertising. ABA also supports requirements that mortgage lenders properly consider a borrower’s ability to repay the mortgage, whether it is a fixed or adjustable rate loan.”

Ultimately, the use of these practices throughout the mortgage industry will help to ensure that future lending is done in a prudent and safe manner. You further stated that “The Federal Reserve’s expansion of Regulation Z come with teeth – including limits on terms and conditions for credit and the possibility of expensive individual actions and penalties as well as class action litigation – all of which will have an impact on lending, and reducing available credit for less creditworthy borrowers. The changes also address subprime lending by establishing a new category of “higher-priced” loans. However, the definition is based on a relatively low APR threshold. As a result, this new category is likely to include many prime loans in certain markets, depending on market conditions. This will further dampen credit availability to some creditworthy borrowers.”

Is the industry aggressively working with the FED to address the concerns regarding subprime lending and what suggestions is the ABA offering to ensure that a responsible non-traditional loan market exists moving forward?

2. I’d like to hear your thoughts on the timeframe afforded non-bank originators to comply with the SAFE Mortgage Licensing Act. Given the level of non-bank originations during the boom in a relatively short period of time, is there any concern that such entities may migrate to FHA and continue unhealthy practices?