



STATEMENT

of

Robert M. Couch

on

H.R. 3938

**“Expanding Housing Opportunities Through Education and
Counseling Act”**

before the

Subcommittee on Housing and Community Opportunity

Committee on Financial Services

United States House of Representatives

March 18, 2003

Good morning, and thank you Mr. Chairman, for holding this hearing and inviting the Mortgage Bankers Association (MBA)¹ to share its views on H.R. 3938, the “Expanding Housing Opportunities Through Education and Counseling Act,” introduced on March 11, 2004. My name is Rob Couch and I am President and Chief Executive Officer of New South Federal Savings Bank in Birmingham, Alabama and Chairman of the Mortgage Bankers Association.

We believe that it is particularly relevant to be discussing housing counseling today, given the discussion the mortgage industry has been involved in over the past several years concerning predatory lending. While there has been a great focus on laws, regulations, and stepped up enforcement, MBA believes that the absolute best defense against predatory lenders is a knowledgeable and empowered borrower.

MBA supports H.R. 3938, for it signals the importance of homebuyer and homeowner education by elevating and expanding upon the current housing counseling activities of the Department of Housing and Urban Development (HUD). We applaud the efforts of Representatives Ney, Velazquez, and Scott for introducing this bill and highlighting the important role that objective information and homebuyer education can play in combating predatory lending and assisting American families in making wise housing choices.

H.R. 3938 also recognizes the importance of housing counseling for those families who live in rental housing. Renters often have significant housing needs, and the ability to discuss housing options with a competent housing counselor can stabilize families and help them avoid homelessness.

MBA is fully supportive of H.R. 3938’s language that specifically directs HUD to conduct outreach to vulnerable populations. We believe that it is a wholly appropriate role for HUD to position itself as a source of objective and useful housing information for renters and homebuyers alike. Over the past several years, HUD has made housing counseling a priority. This fact is evidenced by the large increase in funding from \$20 million in FY 2002 to \$40 million in FY 2003 and FY 2004. H.R. 3938 proposes to further increase this amount to \$45 million for FY 2005 and beyond. MBA fully supports this increase in funding and will urge Congress to appropriate this amount.

Purchasing a home is the biggest investment that the typical American family makes. It can also be the most complicated transaction they ever undertake. The nexus of these two facts requires that homebuyers be empowered with information about the

¹ MBA is the national association representing the real estate finance industry. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation’s residential and commercial real estate markets; to expand homeownership prospects through increased affordability; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters excellence and technical know-how among real estate finance professionals through a wide range of educational programs and technical publications. Its membership of approximately 2,700 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, life insurance companies and others in the mortgage lending field. For additional information, visit MBA’s website: www.mbaa.org.

homebuying process and that, when needed, they have access to resources to help with their specific situation.

Similarly, owning a home can bring with it great financial and social rewards. Homeowners can build equity while providing a roof over their head. They have pride of ownership and feel a much deeper connection to their neighborhood. Owning a home, though, also brings responsibility. There is no landlord to call when something breaks. Managing one's finances becomes even more important for homeowners: one is not just paying a monthly housing expense, but managing an investment.

Not all homebuyers or homeowners need housing counseling, and MBA would caution against broad mandatory counseling requirements. However, when a person believes that they could benefit from counseling, they should have somewhere to turn to obtain accurate and unbiased information. Additionally, homebuyers or homeowners may wish to speak directly with a counselor to help them make certain decisions.

Through the current toll-free number and proposed website, access to homeownership and rental housing information will be easily accessible throughout the country. Through the funding of HUD-approved counseling agencies, families who require more personal counseling have access to it. There can be no doubt that H.R. 3938, by elevating the role of counseling activities within HUD, is moving the Department in the right direction.

While MBA supports this direction, we would like to take a moment and address some concerns that we have with specific language in H.R. 3938.

First, MBA would suggest revisions to the language that H.R. 3938 proposes to change in Section 4(g)(5) of the U.S Department of Housing and Urban Development Act. H.R. 3938 would require that, whenever a person receives homeownership counseling, that they receive counseling which addresses the "entire process of homeownership," including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home, and the sale or other disposition of a home. MBA believes that counseling on the entire process of homeownership is appropriate for pre-purchase counseling, but not for post-purchase counseling.

Current homeowners, as opposed to prospective homeowners, typically have very specific counseling needs. For instance, senior homeowners who are mandated to receive counseling prior to obtaining a reverse mortgage under FHA's Home Equity Conversion Mortgage, do not need to also receive counseling on the "entire process of homeownership," which would likely only serve to confuse them. Likewise, homeowners receiving foreclosure avoidance counseling do not need counseling on the "entire process of homeownership."

MBA would suggest specifying that only pre-purchase homeownership counseling under the Act is required to address the entire process of homeownership.

Second, MBA cautions that, while software programs can be a great tool for consumers to use during the mortgage process, they can fall short in assisting a specific consumer with a specific transaction. Certain decisions a consumer makes during the mortgage origination process are subjective, such as the choice between an adjustable rate and a fixed rate mortgage, and these decisions have much to do with a borrower's personal risk tolerance or other factors. A software program will not be able to accurately measure such subjective issues. MBA is concerned that language in H.R. 3938 appears to indicate that ultimately consumers could rely solely on software programs in making decisions about mortgage proposals. MBA would encourage conference report language indicating that the software certified or developed by the newly created Office of Housing Counseling should explicitly state that it is not intended to replace the sound advice of a financial or mortgage services professional.

Third, and most significantly, MBA is concerned about the language used in Section 8 of H.R. 3938 that addresses the updating and simplification of the mortgage information booklet (currently referred to as the "special information booklet"). MBA supports updating the booklet, but believes the mandate that the lender provide the booklet "in the version that is most language- and culturally-appropriate for the person receiving it" is not necessary and could be problematic for lenders to implement.

Mandating lenders to determine the most culture- or language- appropriate booklet for a particular borrower is unnecessary because lenders have a strong market incentive to make their lending process as accommodating as possible to borrowers with a variety of language and cultural needs. The mandate is problematic because the terminology is undefined and exposes lenders to litigation risk.

Most lenders take great efforts to accommodate those for whom English is a second language and to accommodate borrowers from a wide diversity of cultural backgrounds. U.S. demographic trends show that the future growth in the mortgage industry will come from immigrants and others who may require certain accommodations to understand and feel comfortable with the mortgage lending process. Mortgage lenders are very cognizant of this fact and therefore have a very sound business reason to make such accommodations. Lenders have implemented a number of initiatives to adequately serve this those with unique language or cultural needs. Some lenders have begun marketing in various languages and to various cultures. Others have hired multi-lingual staff and opened local branches in targeted communities. These efforts are widespread and are a positive response to market incentives.

The term "culturally-appropriate" is far too vague to be used as a reliable compliance standard. It is unclear if a borrower could even self-select their own "culturally appropriate" booklet. MBA cannot specifically define the term, and we do not think that our loan officers and borrowers sitting around a kitchen table going over the details of a loan proposal will know what it means either.

A borrower who receives the booklet in a language other than English may be misled into believing that subsequent documentation or communication will also be available in that language. This is an impossible expectation for lenders to fulfill because all the various parties to a mortgage transaction, from lenders to title companies to county recorders, do not have the capacity or willingness to deliver all documents in any language other than English.

In fact, offering the booklet in a language other than English may trigger certain state law requirements. For example, certain states require loans to be closed and serviced in the same language with which they are negotiated. Thus, if delivering the booklet falls under the definition of “mortgage negotiations” within a certain state, then a lender could be exposed to litigation risk.

The proposed Office of Housing Counseling could do a great service by providing information through its toll-free number and website in as many languages as it deems practical. However, when it comes to the multitude of legal requirements for lenders in a mortgage transaction, MBA believes that a single language is the only way to ensure consistency and compliance. We do not believe lenders should have the liability of determining the most “culturally-appropriate” or language-appropriate booklet for a borrower.

MBA would suggest removing the term “culturally-appropriate” from H.R. 3938, wherever it appears, and would further suggest requiring only that lenders be required to offer booklets in every language in which the Office of Housing Counseling distributes them. We look forward to working with the sponsors and subcommittee on how HUD can provide information in multiple languages, without imposing the distribution requirements on lenders and therefore creating possible litigation risks.

H.R. 3938 would also require lenders to distribute, along with the updated booklet, a list of certified homeownership counselors who are “located in the area of the lender.” MBA believes this requirement should be changed to require lenders to provide borrowers with the toll-free number and website of the Office of Housing Counseling. Borrowers would have access to updated information about counselors located in the area where they’re buying their home, not the area where the lender is located. Borrowers would not receive the most updated information if they relied on hardcopy lists of counselors maintained by lenders. MBA believes borrowers are best served through the toll-free number or website.

H.R. 3938 is a bill that takes HUD in the right direction. HUD’s role as an educator for families in the mortgage process is an important one. We applaud the efforts that HUD has made to date in prioritizing housing counseling and believe it can have an even greater impact under the proposed Office of Housing Counseling.

We also further applaud the efforts of Representatives Ney, Velazquez, and Scott for introducing this bill and emphasizing the importance of housing counseling. We know

that you realize, as does the mortgage industry, that an educated and empowered homebuyer is the best defense against predatory lending.

On behalf of MBA and our over 2,700 member companies, we thank you for the opportunity to testify today and look forward to working with you to deliver quality counseling to homebuyers, homeowners, and renters.

We would be happy to furnish any additional needed information to the committee as it considers this bill.

Thank you.