



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

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**TESTIMONY OF**

**CHARLES McMILLAN, CIPS, GRI**

**2009 PRESIDENT OF THE**

**NATIONAL ASSOCIATION OF REALTORS®**

**BEFORE THE**

**U.S. HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON FINANCIAL SERVICES**  
**SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND**  
**CONSUMER CREDIT**

**HEARING REGARDING**

**“LENDING REFORM: A COMPREHENSIVE REVIEW**  
**OF THE AMERICAN MORTGAGE SYSTEM.”**

**March 11, 2009**

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## **Introduction**

Chairman Gutierrez, Ranking Member Hensarling, and Members of the Committee, thank you for inviting me to testify today regarding mortgage lending reform.

My name is Charles McMillan, and I am the 2009 President of the National Association of REALTORS®. I have been a REALTOR® for more than 20 years, and am Director of Realty Relations and Broker of Record for Coldwell Banker Residential Brokerage, Dallas-Fort Worth. Along with being a REALTOR®, I have been active in my community, serving as past chairman of the Community Development Council of Fort Worth, the Tarrant County Affordable Housing Task Force, the Housing Subcommittee of Fort Worth, and a past director of the United Way of Tarrant County and of the Fort Worth Chamber of Commerce.

I am here to testify on behalf of more than 1.2 million REALTORS® who are involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors, and others engaged in all aspects of the real estate industry. Members belong to one or more of some 1,400 local associations/boards and 54 state and territory associations of REALTORS®.

We thank the Financial Institutions and Consumer Credit Subcommittee for holding this hearing on an issue that is paramount to the success of the housing market and the U.S. economy,

### **REALTORS® Support Efforts to Encourage Responsible Lending**

Past irresponsible and abusive lending practices are largely responsible for causing the major problems that our nation's housing market and overall economy are currently experiencing. Some lenders abused their role and took advantage of vulnerable borrowers by charging extremely high interest rates and loan fees unrelated to risk, using aggressive sales tactics to steer consumers into unnecessarily expensive or inappropriate loan products, advertising "teaser" interest rates that steeply increased after the first few years of the loan and based their lending on artificially high appraisals. The consequence of these abuses in the housing market are high rates of foreclosures that have led to the loss of families' homes and wealth, increased vacancy rates which, in turn, have caused homes in neighborhoods across our nation to lose value, and a destabilization of our overall economy.

REALTORS® have a strong stake in preventing abusive lending because:

- Abusive lending erodes confidence in the Nation's housing system, and
- Citizens of communities, including real estate professionals, are harmed whenever abusive lending strips equity from homeowners. This is especially the case when irresponsible lenders concentrate their activities in certain neighborhoods and create a downward cycle of economic deterioration.

## NAR's Principles of Good Faith and Fair Dealings for all Mortgage Originators

As abuses in the housing market were becoming evident, NAR adopted a set of "Responsible Lending Principles" in May 2005 that we have updated and shared with the Committee at earlier stages of your deliberations. NAR is a strong advocate of protections for consumers in the mortgage transaction; therefore, REALTORS® support the general principle that all mortgage originators should act in good faith and with fair dealings in a transaction, and treat all parties honestly. Here is a list of NAR's Responsible Lending Principles:

**1. Affordability.** NAR supports strong underwriting standards that require all mortgage originators to verify the borrower's ability to repay the loan based on all its terms, including taxes and insurance, without having to refinance or sell the home.<sup>1</sup> Lenders should consider all relevant facts, including the borrower's income, credit history, future income potential, and other life circumstances. Lenders should not make loans to borrowers that make loss of the home through sale or foreclosure likely if the borrower is unable to refinance the mortgage or sell.

- **Underwriting Subprime Loans with "Teaser Rates."** Some subprime loans were structured with a significant jump in monthly payments often resulting in "payment shock" for the borrower. While these mortgages may be a reasonable choice for borrowers who can afford them, a majority of borrowers do not understand the unique terms and conditions of these risky mortgage products that can result in a significant "payment shock." Therefore, lenders (including mortgage brokers) should exercise more caution when underwriting such loans to subprime borrowers to make sure the borrower is able to afford the mortgage. Examples of these risky mortgage products include loans with a short-term interest "teaser" rate for the first two or three years (known as 2/28s and 3/27s), loans with an initial interest-only period, and mortgages that negatively amortize.<sup>2</sup> For the most part, regulatory guidelines have addressed these concerns.
- **Reasonable Debt-to-Income Ratio.** NAR supports requiring lenders to make subprime loans that have a reasonable debt-to-income ratio. Borrowers should have enough residual income after making their monthly mortgage payment, including taxes and insurance, to meet their needs for food, utilities, clothing, transportation, work-related expenses, and other essentials. Requiring underwriting at a fully amortizing, fully

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<sup>1</sup> The limited exceptions to this general principle would include prime borrowers with sufficient verifiable assets to handle a balloon mortgage or a significant jump in mortgage payment.

<sup>2</sup> Negative amortization ordinarily results if the mortgage permits a borrower to pay less than the interest on the mortgage for a limited time, in which case the difference is added to the total amount of the loan the borrower must repay.

indexed rate is meaningless if the lender uses such high debt-to-income ratios that the family doesn't have enough income remaining to pay for other necessities.

- **Escrow/Reserve for Payment of Taxes and Insurance.** Lenders that make subprime mortgage loans should generally require that the monthly payment include an amount to be held by the mortgage servicer in an escrow/reserve/impound account for the payment of the borrower's periodic payments, such as taxes, insurance, and homeowner/condo fees. Similar to the exception for prime loans in some jurisdictions, borrowers that make at least a 20 percent downpayment should have the option to budget for these payments independently.

**2. Limit Stated Income/Stated Assets Underwriting.** Because mortgages underwritten based on "stated income" and/or "stated assets" (also known as "no income verification" or "no doc" loans) typically have higher rates, lenders making subprime loans should, as a general rule, underwrite loans based on verified income and assets.

**3. Flexibility for Life Circumstances.** NAR believes that a standard for determining a borrower's ability to repay must be flexible to accommodate borrowers with unique circumstances, such as:

- ✓ Borrowers who have demonstrated the ability to make monthly payments, over a long term, that are higher than underwriting standards would otherwise allow. Lenders should consider, for example, the borrower's history of making rent and student loan payments.
- ✓ Borrowers with high assets but low income who, for cash management or other financial planning reasons, elect a mortgage with a monthly payment that their current income is not sufficient to cover.
- ✓ Borrowers who anticipate a jump in income or assets due to life events such as graduation, completion of professional training, completion of payment obligations for student or car loans, another member of the household entering the work force when young children start school, or an inheritance.

**4. Anti-Mortgage Flipping Policy.** NAR supports an anti-mortgage-flipping rule requiring mortgage originators making or arranging for a loan that refinances an existing residential mortgage to verify that the new loan provides a significant benefit to the borrower (one test often proposed is the loan must provide a "reasonable net tangible benefit" to the borrower). The lender should consider the circumstances of the borrower, as discussed above, all terms of the new loan including taxes and insurance, the fees and other costs of refinance, prepayment penalties, and the new interest rate compared to that of the refinanced loan.

**5. Bar Prepayment Penalties.** NAR opposes prepayment penalties for all mortgages. Prepayment penalties often work to trap borrowers in loans they cannot afford by making it too expensive to refinance. If complete prohibition of prepayment penalties is not feasible, NAR supports permitting prepayment penalties for the shortest time and the lowest amount possible. For example, a borrower in a 2/28 mortgage should be able to

refinance by the end of the initial two-year “teaser” rate period without having to pay a prepayment penalty.

**6. Improvements for Assessing Creditworthiness.** Borrowers with little or no credit history, as traditionally measured, usually have lower credit scores and must pay more every month for their mortgage than those with higher scores. NAR supports ongoing efforts to take into account consumer payment history not typically considered, such as rent, utility, telephone, and other regular payments and urges HUD, the regulators, the GSEs, and lenders to work to strengthen these efforts. Use of alternative credit approaches will be especially beneficial for low- and moderate-income first-time homebuyers and borrowers with problematic loans that need to refinance their mortgage to avoid foreclosure.

Another public policy issue associated with credit histories is the failure of furnishers to report good payment histories to the consumer reporting agencies. NAR has heard reports that many problematic subprime lenders purposefully withhold information on timely mortgage payments from the credit bureaus in order to prevent their customer from refinancing with another lender. The result is obvious—the borrowers with no positive payment histories for their subprime loan keep treading the waters of high-interest rates and expensive credit products. NAR supports requiring all institutional mortgage lenders, or the mortgage servicers acting on their behalf, to report payment history of all borrowers to at least the three national credit bureaus on a monthly basis.

**7. Mortgage Choice for Borrowers.** NAR supports requiring mortgage originators to offer borrowers one or more mortgages with interest rates and other fees that appropriately reflect the borrower’s credit risk. It remains the responsibility of borrowers to decide which is the best mortgage for their needs and circumstances, but they may only do so if they understand all the facts so they can make an informed decision. The following are suggested principles for consideration;

- For originators who offer nontraditional mortgage products, the originator should:
  - offer all borrowers a choice of several significantly different mortgage options;
  - include at least one traditional loan product as one of the options for the borrower to consider, if the borrower qualifies for such a product offered by the originator; and
  - before application acceptance, disclose information about the maximum potential payment over the life of the loan and the date the initial payment will increase to a fully amortizing, fully indexed payment amount.
- For subprime borrowers, originators that offer FHA-insured mortgages or VA home loan guaranty mortgages should consider whether these types of mortgages should be offered as an appropriate option.
- If the originator does not offer mortgages with rates and fees appropriate for the borrower’s credit risk, the originator should inform the borrower a lower interest rate may be available from another originator or that the borrower may wish to seek housing counseling, to allow the borrower an opportunity to shop elsewhere or receive

counseling before proceeding. For example, a prime borrower that applies for a loan to a lender that only makes subprime loans should be advised that other options may be available.

- For loans originated by a mortgage broker, the broker should offer mortgage options that are among the lowest-cost products appropriate for the borrower.

**8. Enforcement/Remedies.** NAR supports enactment of strong remedies and penalties for abusive acts by mortgage originators. Among the options for consideration are:

- Criminal penalties similar to those under RESPA.
- Civil penalties similar to those under RESPA.
- Assignee liability that balances the need to protect innocent borrowers with problematic loans against the risk that increasing the liability of innocent holders of mortgages in the secondary market could reduce the availability of mortgage credit.
- Prohibition of mandatory arbitration clauses that bar victims' access to court.

**9. Strengthen Appraiser Independence.** NAR believes that the independence of appraisers should be strengthened to ensure that appraisals are based on sound and fair appraisal principles and are accurate. There are reports that appraisers have been pressured to meet targeted values or risk losing business. Appraisal pressure undermines the integrity of the mortgage lending process if the result is a mortgage loan made based on an inaccurate property valuation. NAR recommends the following measures to strengthen the appraisal process:

- Require lenders to inform each borrower of the method used to value the property in connection with the mortgage application, and give the borrower the right to receive a copy of each appraisal at no additional cost.
- Establish enhanced penalties against those who improperly influence the appraisal process. Those with an interest in the outcome of an appraisal should only request the appraiser to (1) consider additional information about the property; (2) provide further detail, substantiation, or explanation for the appraisal; and (3) correct errors.
- Provide federal assistance to states to strengthen regulatory and enforcement activities related to appraisals.
- Support enhanced education and qualifications for appraisers.

In addition to our Responsible Lending Principles, NAR believes that the following duties should be considered by policy makers when establishing minimum standards of care for all federally and state regulated mortgage originators:

1. A mortgage originator shall act in the borrower's best interest and in good faith toward the borrower.
2. Mortgage originators shall use reasonable care in performing duties.
  - a. Reasonable care includes following strong underwriting standards that require verification of the borrower's ability to repay the loan based on all its terms, including property taxes and insurance, without having to refinance or sell the home.
  - b. Reasonable care also includes giving consideration to the totality of the borrower's circumstances, including income, credit history, future income potential and other life or unique circumstances.
  - c. Reasonable care does not require a mortgage originator to obtain a loan containing terms or conditions not available to the originator in their usual course of business, or to obtain a loan for the borrower from a broker or lender with whom the originator does not have a business relationship.
3. A mortgage originator shall not accept, give, or charge any undisclosed compensation or realize any undisclosed remuneration, either through direct or indirect means, that inures to the benefit of the mortgage originator on an expenditure made for the borrower.
4. Mortgage originators shall carry out all lawful instructions given by borrowers.
5. Mortgage originators shall disclose to borrowers all material facts of which the mortgage broker has knowledge which might reasonably affect the borrower's rights, interests, or ability to receive the borrower's intended benefit from the residential mortgage loan.
6. Mortgage originators shall account to a borrower for all the borrower's money and property received from the borrower.
7. Mortgage originators shall not pressure or improperly influence appraisers to meet targeted values.

Violations of a mortgage originator's duty to act in good faith and with fair dealings should include:

- Making a loan where the loss of the home through sale or foreclosure is likely if the borrower is unable to refinance the mortgage or sell.
- Misrepresenting or concealing material factors, terms or conditions of the transaction.
- Making false statements or promises, fraud, dishonest dealing, negligence, and criminal convictions.
- Failing to disclose all material facts about a loan to a borrower or misrepresenting facts to a lender (such as knowingly misstating a borrower's income) would also be actionable offenses.
- Not acting in the best interest of the borrower.
- Improperly refusing to issue a satisfaction of a mortgage loan.

### **Strengthening the Independence of Appraisers Benefits the Housing Market**

Consistent with NAR's Responsible Lending Principles, NAR believes a strong and independent appraisal industry is vital to restoring faith in the mortgage origination process. H.R. 3915, the "Mortgage Reform and Anti-Predatory Lending Act of 2007," which passed

the House on November 15, 2007, was one attempt to prohibit undue influence on home appraisers. H.R. 3915 would have struck an appropriate balance by strengthening the accountability and oversight of appraisers while also creating new consumer protections such as allowing borrowers to obtain a copy of all appraisals prior to closing.

Recent studies indicated that up to 90 percent of appraisers have been asked to hit a targeted value, while 70 percent of appraisers feared that if they did not meet that target, their business would be harmed. H.R. 3915 would have strengthened the independence of the appraisal process by ensuring appraisers serve as an unbiased arbiter of a property's value for the buyer, seller, lender, investor and other market participants.

The GSEs and New York Attorney General Andrew Cuomo have signed an agreement that, among other things, provides for a Home Valuation Code of Conduct (HVCC). Like H.R. 3915, the HVCC attempts to strengthen appraiser independence. The Code provides examples of coercive activity such as allowing the removal of an appraiser from a list of qualified appraisers without cause, withholding or threatening to withhold payment, or requesting that an appraiser provide an estimated or predetermined valuation. The HVCC also ensures that the borrower is provided a copy of the appraisal report no less than 3 days prior to closing and at no additional cost to the borrower.

Despite its efforts, the HVCC is not without flaws. Implementation of the Code on May 1, 2009, could lead to an over-reliance on automated valuation models (AVMs) by both government sponsored enterprises (GSEs), Fannie Mae and Freddie Mac. While this would appear to address appraiser influence in a transparent way, a deeper look at automated valuations generally reveals they are not able to consider qualitative factors with the same level of reliability that professional licensed and certified appraisers produce. Professional appraisal organizations and licensed and certified appraisers should work closely with the GSEs to ensure the highest quality appraisals remain the preferred method of valuation for residential real estate transactions.

The Code also fails to address the costs of the real estate transaction. Appraisers will now have to consider their obligations to Unified Standards of Professional Appraisal Practice (USPAP) and the Appraisal Foundation with the additional burden of ensuring compliance with the Code. This may also be an issue for lenders. The creation of a new set of standards to follow and a new oversight organization, the Independent Valuation Protection Institute (IVPI), may lead to increasing cost of the real estate transaction. NAR recommends the Independent Valuation Protection Institute be affiliated with an already existing appraisal organization. This will help to ensure that the code is implemented in such a way that it adds value to the appraisal process rather than becoming a duplicative layer of bureaucracy.

The "Mortgage Reform and Anti-Predatory Lending Act of 2007" and the HVCC both work towards a strong and independent appraisal industry yet fail to mention the regulation of appraisal management companies (AMC). In many states these companies operate without oversight from any level of government. In fact, the HVCC was a response to inappropriate activities by an AMC with Fannie Mae and Freddie Mac. NAR will likely support the regulation of AMCs by the states through the Financial Institutions Reform, Recovery and Enforcement Act



(FIRREA). This may include requiring AMCs to maintain a licensed or certified appraiser in the state where the AMC is doing business.

### **Foreclosure Avoidance and Mitigation**

NAR supports legislative, regulatory, and private-sector foreclosure avoidance and mitigation efforts. We urge lenders, especially lenders that have made loans without considering the ability of the borrower to make payments under the loan, to act promptly to help borrowers resolve the problem. Possible steps should include recasting the mortgage, forbearance, favorable refinancing, waiving of prepayment penalties, and other appropriate tools. Prompt action will almost always be in the best interests of the lender, as well. We are encouraged by President Obama's Making Home Affordable program that seeks to prevent the foreclosure of between 7 and 9 million homes through refinancing of GSE loans and modification of GSE and other types of loans.

NAR also supports increased funding for programs that provide financial assistance, counseling, and consumer education to borrowers to help them avoid foreclosure or minimize its impact. We also believe that Congress and the regulators should examine alleged abuses by mortgage servicers, some of whom are engaging in predatory servicing by imposing unjustified high fees on borrowers. These abusive practices can contribute to, or even cause, delinquencies and foreclosures.

Implementation of these core priorities will only go so far if the federal government and the mortgage lending industry do not address additional fundamental operational issues that are beginning to impede the delivery of mortgage credit and increase foreclosures. To successfully facilitate a housing market, the following issues must be acted upon:

- Mortgage lenders and private mortgage insurers should (1) reexamine underwriting standards to determine whether they have over-corrected in response to abuses in the mortgage market, and (2) remove unnecessarily strict underwriting standards (such as (i) requiring excessively high credit scores that result in qualified borrowers being arbitrarily turned down for a loan, and (ii) coupling much tighter investor underwriting criteria with a lower cap on the number of financed properties an investor may own).
- Consumer reporting agencies (credit bureaus) should improve compliance with the Fair Credit Act, including prompt responses to consumers who seek to correct files and prompt correction of errors.
- FHASecure should be reinstated. HUD's FHASecure program successfully helped more than 450,000 families modify their mortgages and stay in their homes. However, this valuable program was allowed to sunset on December 31, 2008. The Hope for Homeowners program, which was expected to take the place of FHASecure, has not yet achieved the same levels of success. We have urged HUD to reinstate FHASecure, so that homeowners have all the tools available to them to avoid foreclosure.

- As families consider buying a foreclosed home, they find that many properties need work in terms of rehabilitation or renovation. FHA's section 203(k) program is a valuable tool that allows homeowners to obtain one insured mortgage to rehabilitate a property in need of repair. However, this program is not available to investors, who may be interested in purchasing these homes and repairing them so they are ready for sale or for conversion to rental units. If the program were made available to them, vacant, dilapidated homes will be renewed and provide safe, comfortable homes for families. Investors will be able to access credit that is unavailable because of the current economic crisis. Finally, neighborhoods will be stabilized and previously vacant homes will contribute to the local property tax base. We have urged HUD to once again open the section 203(k) program to investors, with appropriate safeguards and oversight.

## **Conclusion**

Irresponsible and abusive lending is a disaster not only for the borrower and his or her family, but for the community and the national economy, as well. Problematic loans are often made in concentrated areas and are more likely to result in foreclosures. High foreclosures of single-family homes are a serious threat to neighborhood stability and community well-being. Foreclosures can lead to high vacancy rates which, in turn, can devastate the strength and stability of communities, and ultimately our economy.

REALTORS® help families achieve the dream of homeownership. The National Association of REALTORS® supports responsible lending, based on sound independent appraisals, with increased consumer protections to ensure that the “dream” our members help fulfill does not turn into a family's worst nightmare.

I thank you for this opportunity to present our thoughts on mortgage reform. The National Association of REALTORS® stands ready to work with Congress and our industry partners to reform the mortgage market, facilitate a housing recovery, and bring our nation out of this economic nightmare.