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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

HEARING REGARDING

"H.R. 1728: THE MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT OF 2009"

APRIL 23, 2009

Introduction

Chairman Frank, Ranking Member Bachus, and Members of the Committee, thank you for inviting me to testify today regarding H.R. 1728: the "Mortgage Reform and Anti-Predatory Lending Act of 2009."

My name is Charles McMillan, and I am the 2009 President of the National Association of REALTORS® (NAR). 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 House Financial Services Committee for holding this hearing on an issue that is paramount to restoring confidence in the U.S. housing market.

REALTORS® Support Mortgage Lending Reform

At its core, H.R. 1728, the "Mortgage Reform and Anti-Predatory Lending Act of 2009", exhibits the principals that REALTORS® across the nation believe are required to restore consumer confidence in the housing industry. Historically low mortgage interest rates and a significant tax credit for first-time homebuyers have begun to entice consumers to get back into the housing market; however, wholesale reform of the mortgage lending sector to give consumers the protections they need, will, we believe, remove the last impediment preventing a housing recovery.

Congress' efforts to reform mortgage lending are paramount not only to the housing recovery, but to the recovery of the national economy. As I, and many of my REALTOR® colleagues, have mentioned in prior testimony to this and other Congressional committees, housing has always led our economy out of downturns, and it will again -- once the appropriate measures are put in place to prevent recurrence of the past irresponsible and abusive lending practices, which are largely responsible for causing the problems we are experiencing today.

However, as Congress moves towards putting these protections in place, REALTORS® respectfully remind you that an appropriate balance must be struck between safeguarding the consumer and making sure consumers have access to mortgages at a reasonable cost. Undue regulation of the mortgage market that makes the sector unattractive for business participants will be as harmful to the consumer as the lack of regulation that allowed for the level of irresponsibility and abuse we have just experienced.

Items Requiring Additional Clarification for REALTORS®

REALTORS® believe that the intention of H.R. 1728 is properly focused; however, there are some areas that must be addressed or they may yield unintended consequences for real estate professionals and the housing consumers.

Section 101 (5): Definition of Mortgage Originator

NAR is concerned by the broad definition of mortgage originator as detailed in section 101of the bill. According to the bill's definition, mortgage originator includes "any person who—…(iii) assists a consumer in obtaining or applying to obtain a residential mortgage loan." This assistance is defined to include "advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan".

In their daily business activity, REALTORS® prepare consumers for the mortgage origination process by giving them insight into the information that they will likely need in order to apply for a mortgage. Moreover, they may discuss with the consumer prevailing rates that they see in the market place, or products that past clients may have utilized. Finally, some REALTORS® may recommend a number of loan officers for the consumer to contact so that they may begin the mortgage origination process in earnest.

By virtue of our members providing this normal level of service to the housing consumer, they would become subject to the requirements set forth in H.R. 1728 although they do not originate mortgages. For this reason, we respectfully request that language be considered to explicitly exclude real estate professionals from this definition when they provide advice and counsel to their clients as part of their normal real estate activities."

In addition, NAR has concerns about the impact of mortgage reform legislation on those sellers who provide direct financing to lenders. Especially in a housing downturn, seller-financing becomes more popular. In some cases, the only way a property owner can sell his home, or small business property is by providing the financing directly. Legislation that requires individuals who provide financing for a single transaction to register or meet licensing requirements certainly seems beyond the intent of Congress. We would hope the Committee would consider an exception for seller-financing, so owners who need to sell their properties don't have to meet burdensome requirements intended for lending institutions or mortgage brokers.

Section 202: Net Tangible Benefit for Refinancing of Residential Mortgage Loans

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, and that is included in H.R. 1728, is that the loan must provide a "reasonable net tangible benefit" to the borrower). REALTORS® support requiring the lender to consider the circumstances of the borrower, all terms of the new loan including taxes and insurance, the fees and other costs of refinancing, prepayment penalties, and the new interest rate compared to that of the refinanced loan.

Section 203: Safe Harbor and Rebuttable Presumption

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. REALTORS® believe that lenders should consider all relevant facts, including the borrower's income, credit history, future income potential, and other life circumstances.

Although we appreciate the intention of section 203: Safe Harbor and Rebuttable Presumption, NAR believes that the safe harbor criteria are too narrow in scope, and the ability of rescission of the loan by the consumer is potentially extremely broad. It is our recommendation that the rebuttable presumption be strengthened to offer more protection to the mortgage originator, as well as expand the safe harbor to encompass more than just 30-year fixed rate mortgages. Should neither be done, the legislation risks encouraging sound lenders to leave the marketplace, as well as forcing the remaining lenders to reduce their product offerings (i.e. shelve their 25-, 20-, and 15-year fixed rate products, and their traditional 5/1 and 7/1 ARMs). Both actions would prove detrimental to consumers and the housing market.

Section 213: Credit Risk Retention

Over the last several months, many involved in the mortgage reform debate have discussed the need for additional "skin" to be in the game to make loans safer for both consumers and creditors. Section 213 attempts to accomplish this by requiring that lenders originating loans, other than loans that qualify for the safe harbor, retain a portion of the risk on their books so that they have incentive to underwrite carefully to ensure that the product will perform. REALTORS® are generally supportive of providing incentives that result in safer lending.

However, REALTORS® do caution that in this instance, the credit risk retention requirement could be detrimental to the consumer if products that are not covered by the safe harbor (i.e. 15- to 25-year fixed rate mortgages) are no longer offered, thus substantially reducing the amount of mortgage capital available to consumers. REALTORS® are not bankers; therefore, we cannot determine the amount of risk that lenders should hold for "risky" lending products. But we do have a strong interest in what is considered a "risky" lending product. And, as mentioned in our suggestions on expanding products that should be included in the safe harbor provision, 30-year fixed rate mortgages are not the only mortgage products that should be included in the safe harbor.

Title V: Mortgage Services - Escrow or Impound Accounts and Assignee Liability

NAR supports regulations that require lenders that make subprime mortgage loans to generally require that the monthly payment include an amount to be held by the mortgage servicer in an escrow account for the payment of the borrower's periodic payments, such as taxes, insurance, and homeowner/condo fees. However, REALTORS® believe that similar to the exception for prime loans in some jurisdictions, borrowers that make at least a 20 percent down payment should have the option to budget for these payments independently.

Title VI: Appraisal Activities

Finally, NAR believes a strong and independent appraisal industry is vital to restoring faith in the mortgage origination process. The "Mortgage Reform and Anti-Predatory Lending Act of 2008" is an attempt to prohibit undue influence on home appraisers. H.R. 1728 strikes 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. This bill strengthens 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.

NAR's Responsible Lending Policy 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.

- 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.

H.R. 1728 addresses some of these concerns in Title VI, Appraisal Activities. We are pleased the legislation requires lenders to inform the borrower of the method used to value the property by requiring a written appraisal of any property where credit is extended in the form of a mortgage and borrowers are required to provide a free copy of the appraisal to the borrower. The legislation also includes fines and penalties for those who willfully fail to obtain an appraisal as required and for those who attempt to influence appraiser independence.

Conclusion

NAR applauds the Committee's effort to craft comprehensive legislation to reform mortgage lending. This bill is a major step in the right direction; however, we strongly recommend some adjustments to ensure that the legislation exempts real estate professionals who are not acting as lenders, and does not harm consumers by unintentionally removing some traditional mortgage products (i.e. 15- to 25-year fixed rate mortgages and standard 5/1 and 7/1 adjustable rate mortgages) from the market place.

REALTORS® help families achieve the dream of homeownership. The National Association of REALTORS® supports lending reform that protects the consumer but ensures them reasonable access to mortgage capital so that they may attain the American Dream – homeownership.

I thank you for this opportunity to present our thoughts on H.R. 1728 reform. The National Association of REALTORS® is at the call of Congress, and our industry partners, to reform the mortgage market and help facilitate a housing recovery.