NATIONAL ASSOCIATION OF REALTORS®

REALTOR®

The Voice For Real Estate®

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April 24, 2009

The Honorable Melvin Watt
United States House of Representatives
2304 Rayburn House Office Building
Washington, DC 20515

Dear Representative Watt:

Thank you for your question at yesterday's hearing regarding the exclusion of real estate professionals and seller financers from the current definition of 'mortgage originator' as it is outlined in section 101 of H.R. 1728, "The Mortgage Reform and Anti-Predatory Lending Act of 2009". REALTORS® are acutely aware that there is a need for mortgage reform. However, as mentioned in my testimony before the House Financial Services Committee (HFSC) on April 23rd, REALTORS® respectfully remind Congress that an appropriate balance must be struck between safeguarding the consumer and making sure consumers have access to mortgages at a reasonable cost.

The National Association of REALTORS® (NAR) is trying to accomplish exactly that by ensuring that consumers have access to as much information and expertise about the entire home buying process, as well as access to a diverse set of products when they buy a home.

Real Estate Professional Exclusion

NAR is seeking the same exclusion of real estate professionals from the definition of 'mortgage originator' in H.R. 1728 that currently exists in section 1503(3)(A)(iii) of the SAFE Act, Public Law 110-289 [Title V of HERA] (see below).

> Amend the definition of mortgage originator section 103(cc)(3) of TILA, as added by section 101 of H.R. 1728, by adding the following new subparagraph on page 5 after line 5:
>
> "(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator."

Under the terms of this new section, licensed real estate professionals would be only excluded if they **do not** receive compensation for their actions from a lender or mortgage broker. REALTORS® support being subject to the same regulation as mortgage originators if they are acting as lenders. However, if a real estate professional is only discussing current mortgage practices with consumers and advising them on how to find a fair and affordable loan, and not actively participating in the loan origination process, then subjecting them to H.R. 1728's guidelines would force many REALTORS® to stop providing consumers with crucial information that they will need to navigate the home buying process.

<u>Exclusion for Seller-Financing</u>

Similarly, REALTORS® believe that, on a limited basis, sellers should be able to finance transactions of their own real property in order to facilitate a sale. This option is not widely used; however, during periods of economic distress, when credit becomes less available, some consumers offer financing to purchasers to facilitate the sale of their property. REALTORS® are not interested in allowing large investors or businesses to participate in this space, but we do believe it is necessary to allow this option for the benefit of consumers. Therefore, below is language that NAR has crafted to protect this option for consumers:

> Amend the definition of mortgage originator section 103(cc)(3) of TILA, as added by section 101 of H.R. 1728, by inserting the following new subparagraph after the amendment made by the new subparagraph (D), above:
>
> "(E) does not include a person or entity that provides mortgage financing for the sale of 5 or fewer properties in any 12 month period, provided that the loan is fully amortizing, the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan, the mortgage has a fixed rate or is adjustable after 5 or more years subject to reasonable annual and lifetime limitations on interest rate increases, and the loan meets any other criteria the Federal banking agencies may prescribe."

As you can see, we have attempted to ensure that the language adheres to the intent of H.R. 1728 in terms of protecting the consumer from any predatory practice. It is not, and never has been, our intention to create a loop-hole that would allow businesses (i.e. home builders or other entities) an avenue to circumvent mortgage reform. On the contrary, it is, and always will be, our intention to ensure that the consumers are protected, and that laws and regulations implemented positively affect consumer confidence.

Again, I greatly appreciate your question, and I look forward to collaborating with you to enact comprehensive and effective mortgage reform legislation.

Sincerely,

Charles McMillan

Charles McMillan, CIPS, GRI
2009 President, National Association of REALTORS®