

May 6, 2009

The Honorable Barney Frank
Chairman
House Financial Services Committee

The Honorable Spencer Bachus
Ranking Member
House Financial Services Committee

RE: H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act

Dear Chairman Frank and Ranking Member Bachus:

We appreciate your commitment to passing mortgage reform and to the intense efforts that have gone into producing H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act. We support the legislation, which we believe will encourage lenders to offer safer mortgage products to consumers. However, several areas still require significant strengthening for the bill to be appropriately effective in addressing the mortgage lending practices that have led to millions of foreclosures and the consequent economic crisis.

The bill includes many protections that we believe are critical to restoring responsible lending. Several provisions also reflect significant progress since the bill's introduction. The most helpful aspects of this bill include the following:

- Coverage of all loans in the mortgage market.
- Exclusion of unsafe mortgages from the qualified mortgage definition, such as "no-doc" loans, nontraditional loans, and loans with balloon payments.
- The safe harbor's rebuttable presumption of ability to repay and net tangible benefit, which provides originators with a set of criteria to follow but also provides homeowners with a way to address abusive loans.
- The prohibition on prepayment penalties for nonqualified loans and for all adjustable rate mortgages.
- The 2% cap on points and fees.
- The restrictions on yield-spread premiums that vary based on the terms of the loan, although we remain concerned about a potential loophole in the rules of construction.
- Special protections for extremely high-cost mortgages.
- Underwriting requirements that include consideration of both a homebuyer's debt-to-income ratio and residual income.
- Greater clarity in the preemption clause, especially that it only preempts remedies against assignees that are greater than those in this bill and that it does not preempt claims based on the assignee's own wrongdoing.
- An improved process for obtaining redress for securitized loans, although that process still remains unnecessarily complicated.
- Strong tenant protections that will greatly assist these victims of the crisis.
- Legal aid funding to help wronged homeowners seek redress.
- The prohibition of mandatory arbitration and single premium credit insurance on any residential mortgage.

We strongly support these substantive provisions, and we urge you to preserve these crucial protections as the bill goes through the legislative process. However, we continue to have serious concerns about some provisions of the bill. We urge you to strengthen the bill in these areas to ensure appropriate reform of the mortgage market.

- ***The bill does not eliminate the perverse incentives that led originators to push risky loan terms and products.*** While the bill imposes some duties on mortgage originators, prohibits steering, and restricts yield spread premiums, most of these provisions are relatively weak and the remedies are extremely limited. The bill needs stronger duties for mortgage brokers, a more powerful anti-steering prohibition, and a tighter ban on yield spread premiums, as well as stronger remedies, to end the reckless and discriminatory lending that has devastated many communities, especially neighborhoods of color.
- ***While the bill establishes an “ability to pay” requirement and a “net tangible benefit” requirement for refinancing, the consequences faced by wrongdoers are minimal, and there may be little incentive to comply with the law.*** The fact that the only real consequence of violating these standards is the need to “cure” violations in the relatively few cases in which the aggrieved homeowner actually pursues a claim. This provides no real deterrent at all. Lenders will simply factor the occasional cure into the cost of doing business. Such a minimal consequence is unlikely to change business practices or provide useful remedies to homeowners. While the bill does include an innovative credit risk retention mechanism to discourage risky lending, this is an untested approach that cannot substitute for effective remedies for violating the bill’s provisions. In fact, many lenders already retain some risk on the loans they originate, either through holding them in portfolio or through recourse arrangements and buy-back requirements, yet the system still has failed. Moreover, the changes made during markup to the credit risk retention provision could provide creditors who sell their loans to Wall Street with even more insulation from any consequences.
- ***The bill does little to realign incentives in order to reduce Wall Street’s appetite for risky loans.*** The bill’s provisions protect the secondary mortgage market from the consequences of ignoring basic underwriting standards in three important ways: by permitting a cure after notice by the homeowner; by prohibiting a homeowner from bringing a claim directly against the holder of the loan unless foreclosure has already been filed; and by banning all class actions, even for willful wrongdoers. Meaningful accountability to those injured by inappropriate behavior is the only way to make Wall Street stop funding abusive loans.
- ***The bill replaces stronger state remedies against assignees with weaker remedies.*** As noted above, the preemption clause in Section 208 has been improved in the markup. However, because the remedies of H.R. 1728 are weak, even preempting assignee liability alone will put many state residents in a worse position to obtain redress of their grievances. A far preferable result would be to eliminate preemption altogether. States should be permitted to provide additional protections to their residents when they deem such protections to be necessary.

Finally, we urge you to reject any amendments introduced on the floor that would weaken the bill, particularly any attempts to weaken the safe harbor, to exclude any category of loan from the bill's purview, or to limit the rights of homeowners to rebut any presumed compliance with those standards the law may provide.

Thank you again for your commitment to crafting a strong and effective mortgage law, and we look forward to continued work with you as the bill moves through Congress.

Sincerely,

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Association of Community Organizations for Reform Now (ACORN)

Black Leadership Forum

Center for Responsible Lending

Consumer Federation of America

International Brotherhood of Teamsters

NAACP

National Black Caucus of Local Elected Officials (NBC-LEO)

National Education Association

Opportunity Finance Network

Service Employees International Union (SEIU)