

April 7, 2009

Honorable Barney Frank  
Chairman  
House Committee on Financial Services  
United States House of Representatives  
2252 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Frank:

The undersigned civil rights, labor and consumer organizations join in offering our thanks for your continued interest in improving the mortgage market represented by the introduction of H.R. 1728. A number of us recently held a productive meeting with House Financial Services Committee staff. We hope this letter serves to share and underscore some of the discussion that took place at that meeting.

As you know, the background environment has changed dramatically since a similar bill (H.R. 3915) passed the House in November 2007. Since that time, the mortgage market has essentially collapsed. The subprime market has disappeared, and the foreclosure crisis has spread well into prime and Alt-A loans. As the nation has struggled to respond to the downward spiral of foreclosures that is dragging down the economy, we have all learned much more about the role of Wall Street in creating the crisis and about the many ways in which brokers misled and defrauded customers, especially borrowers and communities of color, who have seen their equity stripped and neighborhoods devastated by targeted, predatory lending practices. We have also seen that states can move much more quickly to respond to housing and lending crises than the federal government can.

In very important ways, Titles I and II of H.R. 1728 (the core mortgage reform standards) reflect significant improvements over those titles in H.R. 3915. The elimination of the irrebuttable presumption and the strengthened definition of “qualified mortgages” entitled to the safe harbor presumption is a crucial change. We particularly welcome what we understand from the Committee’s summary is the bill’s intent to exclude from the qualified mortgage definition any loans that are not 30-year fixed rate mortgages. The strong tenant protection rules in this bill will greatly assist these innocent victims of the crisis, and the addition of legal aid funding will help wronged homeowners enormously.

However, in examining any proposal for reform, the basic criterion for evaluation must be whether, if this law had been in place five years ago, it would have helped avert the crisis. On balance, we fear this bill does not meaningfully repair the misalignment of incentives running through the entire mortgage origination and securitization chain, and we therefore have some suggestions for improving it. We see the following issues as the most important:

- ***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 broker duties, 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 neighborhoods of color. One of the most effective steps the bill could take to realign incentives would be to ban prepayment penalties entirely throughout the market, thereby enabling any consumer to refinance immediately if they discover they can get a better mortgage elsewhere.
- ***While the bill establishes an “ability to pay” requirement and a “net tangible benefit” requirement for refinancing, the consequences faced by wrongdoers are so minimal that there will be little incentive to comply with the law.*** Even with strong standards, the fact that the only real downside for violating these standards is the need to cure the mortgage provides no real deterrent to violating the standards – rather, lenders can just 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 meaningful accountability. In fact, many lenders already did retain some risk on these loans, and risk was also retained through recourse arrangements and buy-back requirements, yet the system still failed.
- ***The bill does little to realign incentives in order to reduce Wall Street’s appetite for risky loans.*** The bill continues to protect the secondary mortgage market from the consequences of ignoring basic underwriting standards by eliminating any due diligence requirement, banning class actions, and prohibiting homeowners from reaching the holders of the loan unless foreclosure has already been filed – and the language regarding foreclosure defense is unclear enough that it is not certain even homeowners in foreclosure will have recourse. Direct and meaningful accountability to those injured by inappropriate behavior is the only way to make victims whole and discourage risky behavior; homeowners must be able to communicate with the people who own the note or those who can act for them. During economic hard times, making consumers default in order to vindicate their rights does no one any good – not homeowners, not their neighbors, not the lenders, and not the economy as a whole.
- ***The bill would threaten the use of the most important tools being used at the state level to fight predatory lending abuses.*** The preemption provision in the bill removes the strongest existing claims that homeowners are using now to save their homes. In this significant respect, it would be a step backward for consumer protection. The bill’s weak secondary market liability provisions would replace all state law on that topic. Worse, however, is that because the way the bill is

written, many of the state laws now used to reach those originators and subsequent purchasers that engaged in unfair, deceptive, and unconscionable acts would become entirely unusable. Since the 50 states have far more enforcement power as a whole than the federal government does, this provision would further reduce the chance that those breaking this new law would ever face consequences.

These are the most fundamental problems which we believe must be resolved in order for this legislation to fix the broken mortgage market. We are happy to supply your offices with more detailed, concrete suggestions, and we stand ready to work with you in making this proposal both strong and effective.

Sincerely,

Americans for Fairness in Lending (AFFIL)  
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)  
Association of Community Organizations for Reform Now (ACORN)  
Black Leadership Forum  
Brazilian Women's Group  
Center for Responsible Lending  
Change to Win  
Charles Hamilton Houston Institute for Race & Justice  
Communication Workers of America  
Consumer Action  
Consumer Federation of America  
Consumers Union  
Dominican Development Center  
Ecumenical Social Action Committee, Inc. (ESAC)  
Greater Boston Legal Services (on behalf of the Massachusetts Alliance Against Predatory Lending)  
Hip Hop Caucus  
International Brotherhood of Teamsters  
Leadership Conference on Civil Rights  
NAACP  
National Association of Consumer Advocates  
National Black Caucus of Local Elected Officials (NBC-LEO)  
National Community Reinvestment Coalition  
National Consumer Law Center (on behalf of its low-income clients)  
National Council of La Raza  
National Education Association  
National Fair Housing Alliance  
National Housing Law Project  
National Law Center on Homelessness & Poverty  
National People's Action  
North Carolina ACORN  
North Carolina Housing Coalition  
North Carolina Justice Center

North Carolina State AFL-CIO  
North Carolina State Conference of the NAACP  
Public Citizen  
U.S. Public Interest Research Group

Cc: Honorable Brad Miller  
Honorable Paul E. Kanjorski  
Honorable Luis V. Gutierrez  
Honorable Melvin L. Watt  
Honorable Melissa L. Bean  
Honorable Walter Minnick