NAMB
The Association of Mortgage Professionals

Prepared Testimony

of

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Chairman of Government Affairs

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On

"The Impact of Dodd-Frank's Home Mortgage Reforms: Consumer and Market Perspectives"

before the

Subcommittee of Financial Institutions and Consumer Credit

Committee of Financial Services

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I am John Howland Pell Hudson the Chairman for Government Affairs for the National Association of Mortgage Brokers ("NAMB") and the Central and South Texas Area Manager for Premier Nationwide Lending ("PNL"), a division of NTFN, Inc, a privately owned regional mortgage bank headquartered in Flower Mound, TX.

NAMB is the only non-profit national trade association that represents both mortgage brokers as well as mortgage loan originators employed by mortgage banks and depositories. NAMB advocates on behalf of more than 116,000 state licensed mortgage loan originators in all 50 states and the District of Columbia. Since 1973, NAMB has been committed to enhancing consumer protection, industry professionalism, high ethical standards and the preservation and promotion of small business and home ownership in this country.

Over the past three years, PNL has funded over $6 billion between both wholesale and retail origination channels. $3.5b was originated by PNL loan originators directly to consumers while $2.5b was originated by mortgage brokers through its wholesale division. I oversee both retail and wholesale operational areas and was responsible for over $683 million since 2009.

To summarize my testimony, the Dodd-Frank Act was passed in haste and some would say anger at the unknown of what happened during the Wall Street melt down. The creation of a qualified residential mortgage (QRM), qualified mortgage (QM), hard wiring underwriting standards into legislation, capping fees at arbitrary percentages of a mortgage amount, and giving lenders no bright line regarding legal liability will ultimately harm consumers, the very people DFA intended to protect. NAMB is calling for an 18-month extension of all mortgage related regulatory dead-lines in order for Congress to amend sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA or Dodd-Frank Act").

I. Damage to the Mortgage Market from the Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law more than two years ago with the best of intentions. America was attempting to recover from the economic collapse of prior years partially fueled by a housing boom in which players from "Main Street" to "Wall Street" took part. Changes were perceived as necessary to insure that crisis would be avoiding moving forward. The mortgage industry for the most part had identified the problems and was already transforming. Despite the fact that mortgage industry underwriting standards had already tightened, subprime mortgages loans had disappeared from the marketplace, HUD's 2010 Good Faith Estimate insured borrowers would not be up-charged at closing, and non-bank originator licensing required by the SAFE Act[1] were already in place, the Dodd-Frank Act was hastily passed and fraught with unintended consequences effecting the

[1] "Secure and Fair Enforcement for Mortgage Licensing Act" (12 United States Code, Section 5100, *et seq.*), passed by Congress and signed by President G.W. Bush in 2008, required all states to implement a Mortgage Loan Originator (hereafter: "MLO") licensing and registration system by August 1, 2009

housing market which would not be realized for years. In effect, the market (and industry actions) had already solved the problem, but panic had set in where it was accepted the "Congress should do something", and the result was the DFA – fraught with destructive consequences.

II. Qualified Mortgages – The Future of Housing

The Qualified Mortgage ("QM") concept is found in Title XIV of the Dodd-Frank Act states that a creditor may not make a mortgage loan without first determining that the borrower has a reasonable ability to repay the loan. In April of 2011, the Federal Reserve Board issued the original 474 page rule proposal for Regulation Z; Truth in Lending, No. R-1417 and solicited public comments until July 2011 before transferring responsibility to the Consumer Financial Protection Bureau ("CFPB"). In May 2012, the CFPB reopened and extended the comment period for QM's until July 9, 2012 and is expected to have the final rule prepared by mid November 2012. NAMB, industry professionals, and every consumer wanting to participate in homeownership supports common sense underwriting which verifies consumers can repay a loan. However, the QM and a measurement of a consumer's ability to repay from the Dodd-Frank Act and the CFPB must be fair for consumers, originators, and creditors. The Federal Reserve Board has stated "the extraordinarily tight standards that currently prevail reflect, in part, obstacles that limit or prevent lending to creditworthy borrowers. Tight standards can take many forms, including stricter underwriting, higher fees and interest rates, more-stringent documentation requirements, larger required down payments, stricter appraisal standards, and fewer available mortgage products."[2] Considering the current state of the housing market and the Federal Reserve Board's assertion that credit is already too restrictive, the housing market and overall economy will continue to show weakness if the QM is released in its current proposed form.

III. Qualified Mortgages – Measuring Ability to Repay

Pursuant to the Dodd-Frank Act, the proposal from the Federal Reserve Board to the CFPB

[2] FRB White Paper "The US Housing Market: Current Conditions and Policy Considerations" – January 4, 2012

would provided four options for complying with the ability-to repay requirement. However, this testimony has been prepared to address the two most pertinent options surrounding the QM definition.

1. General Ability-to-Repay Standard

A creditor can meet the general ability-to-repay standard by:

- Considering and verifying the following eight underwriting factors:
  - Income or assets relied upon in making the ability-to-repay determination;
  - Current employment status;
  - The monthly payment on the mortgage;
  - The monthly payment on any simultaneous mortgage;
  - The monthly payment for mortgage-related obligations;
  - Current debt obligations;
  - The monthly debt-to-income ratio, or residual income; and
  - Credit history; and
- Underwriting the payment for an adjustable-rate mortgage based on the fully indexed rate.

2. Qualified Mortgage

A creditor can originate a “qualified mortgage,” which provides special protection from liability. Two alternatives have been proposed to meet the standard of the QM:

- Alternative 1 would operate as a legal safe harbor and define a “qualified mortgage” as a mortgage for which:
  - The loan does not contain negative amortization, interest-only payments, or a balloon payment, or a loan term exceeding 30 years;
  - The total points and fees do not exceed 3 percent of the total loan amount;
  - The income or assets relied upon in making the ability-to-repay determination are considered and verified; and
  - The underwriting of the mortgage (1) is based on the maximum interest rate that may apply in the first five years, (2) uses a payment scheduled that fully

amortizes the loan over the loan term, and (3) takes into account any mortgage-related obligations.

- Alternative 2 would provide a rebuttable presumption of compliance and would define a "qualified mortgage" as including the criteria listed under Alternative 1 as well as additional underwriting requirements from the general ability-to-repay standard. Thus, under Alternative 2, the creditor would also have to consider and verify:

    - The consumer's employment status,
    - The monthly payment for any simultaneous mortgage,
    - The consumer's current debt obligations,
    - The monthly debt-to-income ratio or residual income, and
    - The consumer's credit history.

From the outset, the proposals sound very reasonable. Lenders need to make sure consumers actually have the ability to make mortgage payments. The economy and housing market would not be in its current shape were lax underwriting standards mixed with exotic loan programs such as Subprime, Alt-A, Stated Income, No-Doc, Pay Option ARMs been available to every consumer with a desire for such loan programs. Again, once the housing crisis began to unfold, the industry quickly made adjustments, removed such mortgage products and returned to sound underwriting principles. Despite concerns that credit is currently too tight and restrictive, the mortgage loans originated today by both mortgage brokers and mortgage bankers are arguably the safest and best performing because the industry does not want to be in any positions for more foreclosures or "buybacks". The housing bubble came in part from national housing policy. The market corrected the error. Now the problem has been compounded with the Dodd-Frank Act.

IV. Underwriting Standards

Despite the Dodd-Frank Act's intention for the definition of the QM to be broad in order to ensure it was not limiting responsible and affordable credit to consumers, it has become clear the CFPB's intent is to create a narrow scope for QM's based on issues reopened for comment. The

CFPB has requested commentary regarding debt to income ("DTI") ratios, residual income, asset reserves for mortgage payments and all monthly liabilities. In addition, the CFPB has asked for specific commentary regarding the following table based on Federal Housing Finance Agency loan delinquencies when cross referenced with DTI ratios.

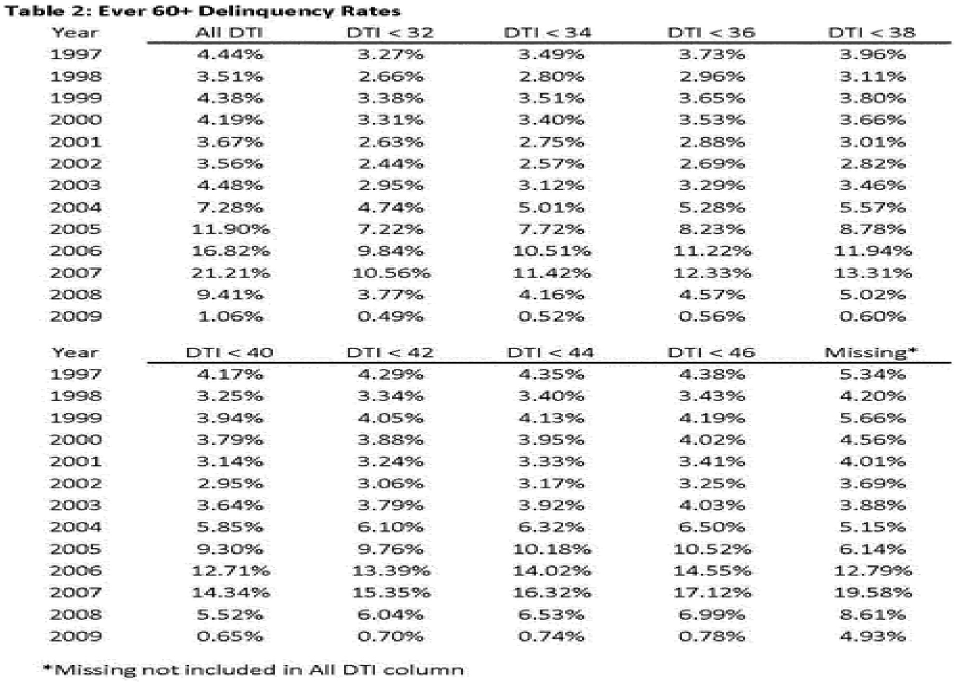


Table 2: Ever 60+ Delinquency Rates

Year	All DTI	DTI < 32	DTI < 34	DTI < 36	DTI < 38
1997	4.44%	3.27%	3.49%	3.73%	3.96%
1998	3.51%	2.66%	2.80%	2.96%	3.11%
1999	4.38%	3.38%	3.51%	3.65%	3.80%
2000	4.19%	3.31%	3.40%	3.53%	3.66%
2001	3.67%	2.63%	2.75%	2.88%	3.01%
2002	3.56%	2.44%	2.57%	2.69%	2.82%
2003	4.48%	2.95%	3.12%	3.29%	3.46%
2004	7.28%	4.74%	5.01%	5.28%	5.57%
2005	11.90%	7.22%	7.72%	8.23%	8.78%
2006	16.82%	9.84%	10.51%	11.22%	11.94%
2007	21.21%	10.56%	11.42%	12.33%	13.31%
2008	9.41%	3.77%	4.16%	4.57%	5.02%
2009	1.06%	0.49%	0.52%	0.56%	0.60%

Year	DTI < 40	DTI < 42	DTI < 44	DTI < 46	Missing*
1997	4.17%	4.29%	4.35%	4.38%	5.34%
1998	3.25%	3.34%	3.40%	3.43%	4.20%
1999	3.94%	4.05%	4.13%	4.19%	5.66%
2000	3.79%	3.88%	3.95%	4.02%	4.56%
2001	3.14%	3.24%	3.33%	3.41%	4.01%
2002	2.95%	3.06%	3.17%	3.25%	3.69%
2003	3.64%	3.79%	3.92%	4.03%	3.88%
2004	5.85%	6.10%	6.32%	6.50%	5.15%
2005	9.30%	9.76%	10.18%	10.52%	6.14%
2006	12.71%	13.39%	14.02%	14.55%	12.79%
2007	14.34%	15.35%	16.32%	17.12%	19.58%
2008	5.52%	6.04%	6.53%	6.99%	8.61%
2009	0.65%	0.70%	0.74%	0.78%	4.93%

*Missing not included in All DTI column

[3]

The data from this table is clear, empirical evidence supporting two positions; one, that DTI ratios alone cannot be used as a sole predictor of delinquency rates, and two, loan performance of FHFA mortgages post collapse yet prior to the passage of the Dodd-Frank Act have improved tremendously. It should also be noted that a consumers "willingness to repay" cannot be measured. The bottom line is that the entire mortgage industry is already adhering to the general ability to repay standards by originating and underwriting fully documented loans and verifying that consumers do have employment, income, assets, etc. It will be unfortunate to both consumers and industry alike should the CFPB create a one size fits all underwriting standard with relation to DTI ratios, assets, employment, etc.

[3] https://federalregister.gov/a/2012-13608, 77 FR 33120, 12 CFR 1026, Docket No. CFPB 2012-0022

V. Points and Fees Caps Will Cause Problems

The 3% limit on points and fees as required by the Dodd-Frank Act does not determine a consumer’s ability to repay a mortgage loan as an underwriting requirement. This statute alone has the largest potential for determining which consumers will have access to mortgage credit as well as which origination channel consumers can obtain mortgage loans. As currently drafted and proposed, the 3% cap on points and fees could include: affiliated title fees, loan originator compensation, credit life insurance, the amount of insurance and taxes held in escrow and much more.

By default, the Dodd-Frank Act in its 3% cap on points and fees provision of the ability to repay standard is biased against non-creditor mortgage loan originators (small business mortgage brokers). This bias applies to all entities “brokering” a loan such as a credit union, small community bank, and lenders not acting in their capacity of a creditor. As the net-worth requirements increase to a projected $10 million, more and more entities will be acting as non-creditors. As the law is currently written, non-creditor mortgage professionals and creditors are treated differently in accordance with the calculation of the points and fees included in the cap. For example:

> Creditor (bank) – a bank only needs to include the cost of the internal loan officer’s compensation in connection with the loan. The bank does not include its internal compensation (gain on sale, service release premium) on the loan
>
> Mortgage Professional (broker) – A mortgage broker must include both the broker and the loan officer’s compensation in connection with the origination of the mortgage loan.

The attached “Points and Fees Illustration” shows that a $150,000 loan with an equal interest rate will cost a borrower the same at closing and throughout the life of the loan. However, the calculation of the broker’s points and fees will be $4,695 and fail the 3% cap, while the calculation of the bank’s points and fees will be $2,445 and under the cap. The calculation of the 3% cap will harm consumers by reducing competition between mortgage brokers and banks, resulting in higher borrowing costs and fewer options for consumers. The modern mortgage broker origination channel is mainly comprised of individuals who have been top performers in their field while working for other origination channels, such as banks or mortgage lenders. These individuals, aspiring to the dream of owning and operating their own business, establish themselves in cities large and small, urban and rural, and generally hire between three and fifty employees, making mortgage broker entities which pride themselves on service a truly valuable small business participant in their communities. Irreparable harm will be forced on thousands of small business owners and employees should this 3% cap include originator compensation. If it is not this Congress's intent to squash small business and support the policy of "too big to fail", then either the law must be changed or the CFPB must use their statutory authority to remove this cap. It is an example of government action, arguably with the best of intentions, destroying the livelihoods of thousands of middle class Americans in the midst of a struggling economy. Please consider this important matter.

In addition to blatantly discriminating against small business, the 3% cap on points and fees discriminates against millions of low to moderate income and minority consumers by limiting access to mortgage credit to only those with the means to afford higher loan amounts. A perfect example of this is the restrictions of home equity loans in the state of Texas. [4] Due to the 3% cap on points and fees which is much less restrictive that that written in the Dodd-Frank Act, consumers are hard pressed to find lenders willing to make home equity loans less than $150,000. (Texas is a high closing cost state[5]) If originator compensation, affiliated title fees and escrows are included in the 3% cap, consumers will have difficulty finding access to loans for less than $250,000. Again, it should be stressed that points and fees paid by a consumer do not substantiate a consumer's ability to repay and no empirical evidence exists to suggest that fully documented loans with points and fees over 3% which include originator compensation, affiliated title fees, and escrows yet still meet required HOEPA[6] thresholds have a higher tendency to default. In fact a GAO study examining the impacts of the Dodd-Frank Act on

[4] Section 50(a)(6), Article XVI of the Texas Constitution allows certain loans to be secured against the equity in your home. Sections 50(a)(6)(e) fees and charges to make the loan may not exceed 3% of the loan amount.

[5] Bankrate.com 2011 closing cost survey reports Texas has the 2nd highest closing costs in the country. http://www.bankrate.com/finance/mortgages/2011-closing-costs/

[6] Home Ownership and Equal Protection Act of 1994 establishes requirements for loans with high rates/fees

consumers found that certain QM criteria would limit mortgage options for consumers[7]. This study did not include data on points and fees. NAMB recommends Congress request the GAO to evaluate the impact on consumers and mortgage markets with all criteria mandated by the Dodd-Frank Act prior to implementation of the QM rule. The alternative to minimum loan amounts would be to place loan level price adjustments forcing consumers with lower loan amounts to pay higher interest rates which will complement the practice seen today for FHFA mortgage loans. In addition to the GAO study, a June 5, 2012 Congressional Research Service study concluded "The restrictions on points and fees along with the change in the definition of a high-cost mortgage loan would reduce the profitability of "risk-based" pricing or the practice of charging riskier borrowers more to offset their greater levels of default risk. Disadvantaged or weaker borrowers, therefore, would face additional difficulties obtaining mortgage credit". [8] In the current environment of 30 year fixed mortgage rates hovering around 4%, a consumer paying 4.5% for a smaller loan amount may not appear to be bad. However, this comes with its own set of consequences. Higher interest rates not only mean less qualified buyers, but the potential for litigation to lenders because the legal term disparate impact could then be applied considering racial and economic demographics when applied to loan amounts and loan terms offered. Recent actions by the Department of Justice have been problematic for the industry with regards to the legal theory of disparate impact.

VI. Safe harbor vs. Rebuttable Presumption

Violations of the Dodd-Frank Acts ability to repay standards will prevent the origination of non-QM mortgage loans. Under the law, consumers are allowed to sue for a violation of ability to repay requirement to recover special statutory damages equal to the sum of all finance charges and fees paid by the consumer. Damages may be in addition to actual damages; up to a prescribed threshold; and court costs and attorney fees available for violations of other TILA provisions. The statute of limitations for violations of TILA Section 129C have been extended to three years from the date of occurance. Also, Section 1413 of the Dodd-Frank Act provides

[7] USGAO July 2011 Report: Mortgage Reform, Potential Impacts of Provisions in the Dodd-Frank Act on Homebuyers and the Mortgage Market. http://www.gao.gov/assets/330/321168.pdf

[8] Congressional Research Service: Ability to Repay, Risk-Retention Standards, and Mortgage Credit Access - Darryl Getter, Specialist in Financial Economics, June 5, 2012 - http://www.fas.org/sgp/crs/misc/R42056.pdf

consumers may assert a TILA violation as a defense to foreclosure by recoupment or set off without time limitations against the lender and assignee of the mortgage. In translation, lenders will not originate non-QM loans.

However, the debate does not end there. Two alternatives exist to originating a QM, alternative 1, a legal safe harbor and alternative 2, a rebuttable presumption of compliance. Under the safe harbor alternative, litigation could only be considered if the standards identified for the QM are not satisfied meaning the originator will be protected from certain liabilities and legal challenges. Under a rebuttable presumption, evidence and arguments may be introduced in court about standards beyond those identified in the definition of QM. Even in cases where a mortgage lender could establish it met the presumption of compliance, a party could still challenge this in court be reference to some other set of facts or evidence. By limiting the legal liability and exposure with a safe harbor, costs to consumers will be limited and more competition will exist in the marketplace. However, under the rebuttable presumption alternative, lenders that choose to remain in the marketplace will be forced to tighten credit standards well within the realm of QM leading to increased costs for consumers, fewer qualified homebuyers, more downward pressure on home prices, and ultimately a further strain on an economy which is currently in a precarious state. The safe harbor alternative (**without the 3% cap on points and fees**) is the only way to help rebuild stability in the mortgage market.

VII. VA Mortgages – An Example of Quality Mortgages

Mortgage loans guaranteed by the Department of Veterans Affairs should be examined as example of how simple underwriting guidelines have managed to protect consumers, homeownership and competition without restrictive Qualified Mortgage definitions.   91% of all VA mortgage loans are originated with 0% down payment by the consumer. In these cases, the consumers are also financing a funding fee up to 3.3% meaning these borrowers are underwater the minute closing occurs. In addition to requiring no money down, VA loans allow for high DTI ratios and have an average fico score lower than FHFA loans. In fact, VA's foreclosure rate at the end of the 4th quarter for 2011 was an astonishingly low 2.37%.[9] The reason for VA's success is simply sound underwriting requirements.   In an environment where legislators and

[9] Mortgage Bankers Association – Quarterly Data Report

regulators are in a hurry to impose restrictive guidelines on originators and consumers, it should be noted that VA loans are also the best performing loans on the market. This is an example of how mortgage markets can function without unnecessary and overly restrictive regulation.

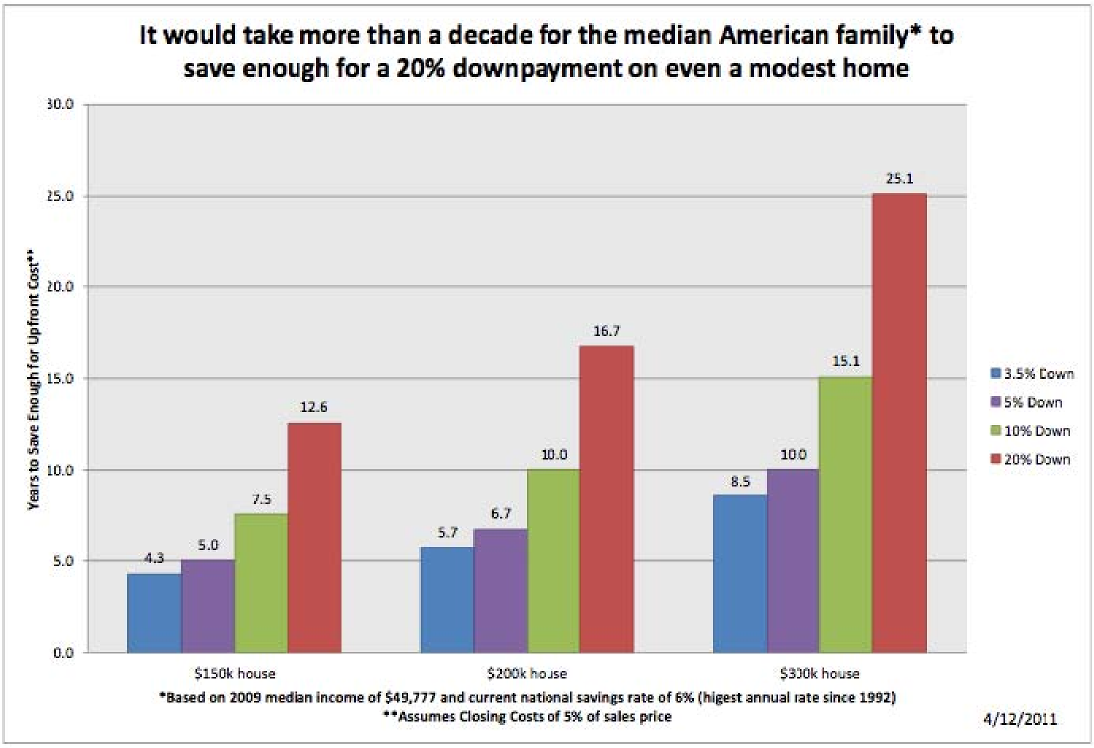
VIII. Other Areas Of Concern With the Dodd-Frank Act

- QRM and Risk Retention

Despite the congressional intent for the Qualified Residential Mortgage under the Dodd-Frank Act to not include hardwired minimum down payment requirements, regulators have chosen to create an extremely narrow definition for the risk retention portion of law. In addition to DTI ratio restrictions of 28%/36%, regulators are also going to mandate down payments of up to 20%. Consumer groups including the Center for Responsible Lending, the National Urban League, the National Community Reinvestment Coalition and many more have joined the mortgage industry to protest these harmful restrictions. In August 2011, the Coalition for Sensible Housing Policy submitted a white paper to regulators detailing that minority and low-income households would be particularly hard hit by too narrow regulations.[10] The charts below

[10] Coalition For Sensible Housing Policy: "Proposed Qualified Residential Mortgage Definition Harms Creditworthy Borrowers While Frustrating Housing Recovery"
http://www.sensiblehousingpolicy.org/uploads/Coalition_for_Sensible_Housing_Policy_-_QRM_White_Paper.pdf

show examples of the impact QRM will have on consumers.


It would take more than a decade for the median American family* to save enough for a 20% downpayment on even a modest home

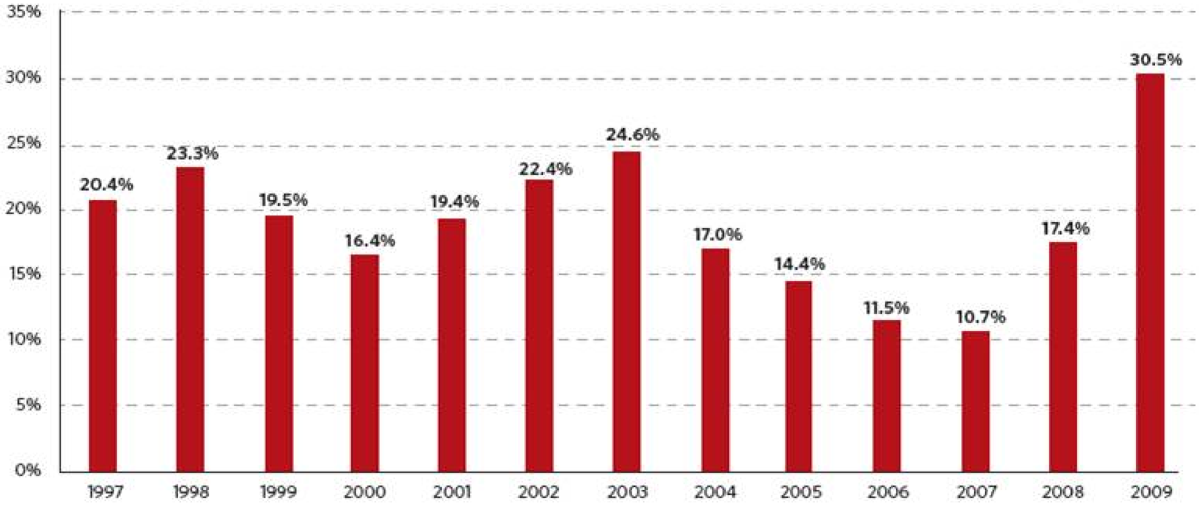
*Based on 2009 median income of $49,777 and current national savings rate of 6% (higest annual rate since 1992)

**Assumes Closing Costs of 5% of sales price

4/12/2011

More than 80 Percent of GSE Business 1997–2009 Would Not Have Been QRM

Percent of all Mortgages that Would Have Met all Requirements under the Proposed QRM Standard, by Year of Origination



Source: FHFA. "Mortgage Market Note 11-02: Qualified Residential Mortgages." April 11, 2011.

(It should be noted that only 30.5% of all mortgage loans originated in 2009, well after the industry had tightened underwriting guidelines, would have met the proposed QRM definition. Congress should carefully consider this staggering statistic and apply this to other industries. What if auto makers lost their ability to finance 70% of their product?)

- CFPB Authority

Congress should be concerned with the powers granted to the CFPB. It has become clear the regulators are using their authority to rewrite the Congressional intent of the Dodd-Frank Act with respect to many aspects regarding mortgage loans. Attached, the committee will find a letter from Representative Barney Frank writing the Federal Reserve Board Chairman Bernanke concerned the regulators went beyond intent and would "unnecessarily interfere with borrowers' ability to obtain loans from mortgage brokers". This letter was regarding the loan originator compensation rule implemented by the Federal Reserve Board and now is dictated by the CFPB. Without proper oversight, regulators will continue to implement rules and regulations with little or no regard from Congressional intent or industry expertise.

- Appraisal Independence Regulations

The Dodd-Frank Act included language directing the Federal Reserve Board to prescribe interim final regulations on appraisal independence to replace the Home Valuation Code of Conduct (HVCC). The Interim Final Regulations, released on October 18, 2010, define acts or practices that violate appraisal independence for all individuals involved in the mortgage process. While the Fed's Rule allows mortgage professionals to order appraisals, FHFA guidelines still prohibit mortgage professionals from ordering appraisals. The Dodd-Frank Act called for the repeal of the HVCC and directed the Federal Reserve Board to prohibit improper influence on appraisers and ensure appraisal independence in its interim regulation. The GSE's promptly issued Guidelines that countermanded the appraisal ordering rules in the DFA. FHFA should follow the law and allow mortgage professionals to order appraisals. The Dodd-Frank Act also included language directing the regulators to come up with standards regarding appraisal portability. Such appraisal portability standards have not yet been promulgated. Regulators should allow for the portability of appraisal reports. Appraisal portability allows an appraisal to be used across lenders, so homebuyers can shop for the best loan without paying for additional appraisals. Regulators should direct lenders to accept appraisals that meet industry standards, even if ordered by another lender.

- Loan Originator Compensation (LO Comp)

The CFPB recently announced an "idea" to propose a flat fee form of originator compensation in order to prevent a statutory "glitch" in the Dodd-Frank Act that will prevent consumers from having the ability to pay any points for fees for a mortgage loan beginning in January 2012. The "idea" is that by fixing loan originator compensation to a flat fee, the CFPB will have prevented the problems associated with instant "no fee" mortgages. However, the Dodd-Frank Act already prohibits mortgage originator compensation that varies based on the terms of the loan (other than the amount of the principal). A flat fee would lead to consequences that would hurt the most vulnerable in our housing system, low to moderate income borrowers purchasing smaller homes. Mortgage originators must have enough flexibility to be responsive to the uniqueness of each transaction.

- Disclosures

NAMB and its members applaud the efforts of the CFPB to simplify mortgage disclosures. However, consumers must still have the ability to truly shop and compare mortgage loan offers. Currently creditors are still allowed to earn revenue on mortgage loans without disclosure to consumers. Meanwhile, mortgage brokers must disclose their total compensation which confuses consumers into believe they are receiving a higher cost mortgage loan. The FTC concluded in 2004 mortgage broker compensation disclosure proposed by the Department of Housing and Urban Development (HUD) is likely to confuse consumers, cause a significant proportion to choose loans that are more expensive than the available alternatives, and create a substantial consumer bias against broker loans, even when the broker loans cost the same or less than direct lender loans.[11] Mortgage loan disclosures must be simple and allow for consumers to truly shop for the best deal.

IX. Conclusion

The Dodd-Frank Act defines five objectives for the CFPB:

- to ensure that consumers have timely and understandable information to make responsible decisions about financial transactions;
- to protect consumers from unfair, deceptive, or abusive acts or practices, and from discrimination;
- to reduce outdated, unnecessary, or unduly burdensome regulations;
- to promote fair competition by consistent enforcement of the consumer protection laws in the Bureau's jurisdiction; and
- to encourage markets for consumer financial products and services that operate transparently and efficiently and to facilitate access and innovation.

These five objectives are truly admirable and NAMB is a supporter of these. However, the interpretation of these objectives and how they are applied leaves much to be desired along with

[11] Federal Trade Commission, Bureau of Economics Staff Report: "The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment" – February 2004

the Congressional intent of the Dodd-Frank Act. CFPB Deputy Director Raj Date has stated a vibrant economy requires a vibrant housing market. In order to achieve this, three things must be present, transparency, free market, and fair competition. Again, interpretation of these items is the dilemma lawmakers, regulators, industry, and consumers face when applied to mortgage loans and the availability of credit to consumers.

Consumers deserve protection from bad actors. However, the unintended consequences from hastily crafted legislation will harm the very people it is meant to protect. Homeownership is still the American Dream and every consumer deserves the opportunity to participate in that dream without the fear of being forced into a permanent class of renters. In today's environment of historically low interest rates, consumers find themselves having difficulty obtaining mortgage financing which is continuing the downward drag on the overall economy. The committee's question "Could Title XIV of the Dodd-Frank Act limit the availability of credit for borrowers?" should be "how quickly consumers will be harmed by Title XIV of the Dodd-Frank Act and what can be done to prevent it?". "What is going to happen to housing affordability and housing prices when interest rates increase?" .

Points and Fees Illustration

When a loan is made, it is sold on the secondary market and generally has a premium paid for the rate secured by the borrower. This premium or price could be 103 or higher depending on the note rate. That premium is not disclosed to the consumer when the consumer obtains a loan from a banking institution. In a Brokered loan, it is. Banks can pay expenses and book profit and not have to disclose those costs and profits to the consumer. The consumer is focused on interest rate and out of pocket costs for the loan. In our comparison, we show the difference when a cosumer obtains a loan through a Broker and a loan through a Bank based on the same note rate (fixed rate term).

Brokered loan	Broker Fee	Lender Fee										
Loan Amount			$75,001	$100,000	$125,000	$150,000	$175,000	$200,000	$225,000	$250,000	$275,000	$300,000
Borrower Paid Origination 0%			0	0	0	0	0	0	0	0	0	0
(Lender paid) Total Origination 2.25% - includes comp to Company and LO	x		$1,687.52	$2,250.00	$2,812.50	$3,375.00	$3,937.50	$4,500.00	$5,062.50	$5,625.00	$6,187.50	$6,750.00
Underwriting		x	$995	$995	$995	$995	$995	$995	$995	$995	$995	$995
Doc Prep		x	$150	$150	$150	$150	$150	$150	$150	$150	$150	$150
Appraisal Review		x	$175	$175	$175	$175	$175	$175	$175	$175	$175	$175
Processing Fee	x											
Admin Fee		x										
Total Points & Fees for QM test			$3,007.52	$3,570.00	$4,132.50	$4,695.00	$5,257.50	$5,820.00	$6,382.50	$6,945.00	$7,507.50	$8,070.00
Maximum Allowed			$2,250.03	$3,000.00	$3,750.00	$4,500.00	$5,250.00	$6,000.00	$6,750.00	$7,500.00	$8,250.00	$9,000.00
Meets 3% Fee Test			***FAIL***	***FAIL***	***FAIL***	***FAIL***	***FAIL***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***
Total loan fees paid by Consumer			**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**

Banks-Retail												
Loan Amount			$75,001	$100,000	$125,000	$150,000	$175,000	$200,000	$225,000	$250,000	$275,000	$300,000
Borrower Paid Origination 0%			0	0	0	0	0	0	0	0	0	0
Loan Officer Compensation (.75%)		x	$562.51	$750.00	$937.50	$1,125.00	$1,312.50	$1,500.00	$1,687.50	$1,875.00	$2,062.50	$2,250.00
Underwriting		x	$995	$995	$995	$995	$995	$995	$995	$995	$995	$995
Doc Prep		x	$150	$150	$150	$150	$150	$150	$150	$150	$150	$150
Appraisal Review		x	$175	$175	$175	$175	$175	$175	$175	$175	$175	$175
Processing Fee		x										
Admin Fee		x										
Total Fees for QM test			$1,882.51	$2,070	$2,258	$2,445	$2,633	$2,820	$3,008	$3,195	$3,383	$3,570
Maximum Allowed			$2,250.03	$3,000.00	$3,750.00	$4,500.00	$5,250.00	$6,000.00	$6,750.00	$7,500.00	$8,250.00	$9,000.00
Meets 3% Fee Test			***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***
Total loan fees paid by Consumer*			**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**	**$1,320.00**

How Banks show no fees, increase rate by .25%												
Loan Officer Compensation (.75%)		x	$562.51	$750.00	$937.50	$1,125.00	$1,312.50	$1,500.00	$1,687.50	$1,875.00	$2,062.50	$2,250.00
Underwriting		x	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Doc Prep		x	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Appraisal Review		x	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Processing Fee		x										
Admin Fee		x										
Total Fees for QM test			$562.51	$750.00	$937.50	$1,125.00	$1,312.50	$1,500.00	$1,687.50	$1,875.00	$2,062.50	$2,250.00
Maximum Allowed			$2,250.03	$3,000.00	$3,750.00	$4,500.00	$5,250.00	$6,000.00	$6,750.00	$7,500.00	$8,250.00	$9,000.00
Meets 3% Fee Test			***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***	***PASS***
Total loan fees paid by Consumer*			**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**
Increased Interest Expense to Consumer			**$2,855.50**	**$3,807.28**	**$4,759.10**	**$5,710.92**	**$6,662.74**	**$7,614.56**	**$8,566.38**	**$9,518.21**	**$10,470.03**	**$11,421.85**

* Total loan fees paid by the consumer are the sum of the underwriting, doc prep, appraisal review, processing, and admin fees.

SPENCER BACHUS, AL, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

BARNEY FRANK, MA, RANKING MEMBER

March 24, 2011

The Honorable Ben S. Bernanke
Chairman
Federal Reserve Board
20th & Constitution Ave. NW
Washington, DC 20551

Federal Reserve Final Rule on Loan Originator Compensation
Regulation Z: Docket No. R-1366, Truth in Lending

Dear Chairman Bernanke:

I am writing to urge that the Federal Reserve take immediate action to make two changes to the rule cited above, which is scheduled to take effect on April 1st.

It is important at this point that the rule take effect, and that the Federal Reserve immediately thereafter amend the rule to make these two changes. I urge these changes both for substantive reasons and to dispel the misperception that all the elements in the rule were called for under the "Wall Street Reform and Consumer Protection Act" (P.L. 110-203) (or as it is sometimes referred to, as the Financial Reform Act).

As the Federal Reserve noted in its September 24th rule publication, much of the rule is consistent with the Financial Reform Act. However, I believe it was a mistake for this rule to go beyond what was required in the Financial Reform Act. The two problems I am citing unnecessarily interfere with borrowers' ability to obtain loans from mortgage brokers and their resolution would not damage the core underlying consumer protections. Therefore, I believe it is important that the rule take effect as scheduled, and that the Federal Reserve take immediate action to correct the two problems created by the rule.

First, the rule appears to prohibit a mortgage brokerage firm that is receiving compensation for a loan from the consumer from paying any compensation related to that loan to an employee of that firm. This is because the rule appears to include language that states that when a loan originator receives compensation from the consumer on a loan, no loan originator at all can receive compensation related to that loan from any source.

This differs from Section 1403 of the Financial Reform Act, which merely states that if a loan originator receives compensation from the consumer, that originator cannot receive compensation from another source. This statutory provision prevents double dipping, while the more restrictive Fed rule prevents the sharing of the consumer-paid compensation by the firm with an employee for that employee's work on the loan. I would note that such sharing of compensation would not involve an increase, directly or indirectly, in the level of fees paid by the consumer. I believe this language should be revised to allow employee compensation in this circumstance. Of course, any such compensation should be subject to the same rule as laid out in the Rule of Construction (A) in Section 1403 of the Financial Reform Act – that such compensation cannot vary based on terms of the loan, other than the amount of principal.

The second issue relates to a common occurrence in which mortgage brokers offer to make small fee reductions at loan closing, to cover shortfalls which sometimes result because of last minute third party fee changes, or to cover the cost of a short extension of a loan lock when the loan failed to close within the window of the original loan lock. I believe this practice should be allowed if the fee reduction is at the request of the borrower and is made within a short period (eg., 24 hours) of the loan closing. I believe that permitting such a practice does not undermine the rule's essential consumer protections. However, I am cognizant of the potential for a loan originator to systematically make use of such a practice with the intent of circumventing the rule's consumer protections. Therefore, it would be appropriate to limit the frequency of such use and to limit either the dollar or percentage amount of the reduction, and to monitor a loan originators' use of this flexibility to ensure that such flexibility is not abused.

I believe that both of these provisions should be revised expeditiously by the Federal Reserve through an appropriate action or proceeding at the earliest possible time.

Thank you for your consideration of these requests.

BARNEY FRANK
Ranking Member