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on

"Legislative Solutions to Abusive Mortgage Lending Practices"

before the

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Good morning Chairman Ney, Chairman Bachus, and members of this committee, I am Jim Nabors, President-Elect of the National Association of Mortgage Brokers (NAMB). Thank you for inviting NAMB to testify today on legislative solutions to address abusive lending practices, preserving access to consumer credit, and protecting homeowners in America. In particular, we appreciate the opportunity to address the role of the residential mortgage community and specifically, mortgage brokers, in abating abusive lending practices.

NAMB is the only national trade association exclusively devoted to representing the mortgage brokerage industry. As the voice of the mortgage brokers, NAMB speaks on behalf of more than 26,000 members in all 50 states and the District of Columbia. NAMB offers educational courses and certification programs to mortgage professionals to maintain their expertise. By adhering to a strict code of ethics and best lending practices, NAMB members guide consumers through the mortgage loan origination process.

America enjoys an all-time record rate of homeownership today. Mortgage brokers have contributed to this achievement as we work with a large array of homebuyers and capital sources to originate the majority of residential loans in the United States. NAMB is committed to ensuring that abusive lending practices do not destroy the dream of homeownership for American families. NAMB recognizes that there are families that have suffered because of abusive lending practices, and we deplore these practices. NAMB supports efforts to expose and combat abusive lending tactics provided that these efforts do not inadvertently diminish consumer access to affordable credit or inhibit the ability of mortgage finance professionals to work closely with consumers throughout the homebuying process.

Before discussing the particular efforts we feel are necessary to combat abusive lending practices effectively, NAMB would like to applaud this committee for its leadership and for providing a forum to discuss and propose solutions to address the issues relative to abusive lending. In particular, we commend the bipartisan effort of Representatives Ney and Kanjorski for their introduction of the Responsible Lending Act of 2005 (H.R. 1295). NAMB believes that the Responsible Lending Act of 2005 is a critical step in the right direction. We look forward to working closely with this committee in further refining the bill to appropriately address the multitude of issues surrounding abusive lending, including providing uniform protection to consumers.

NAMB believes there are three critical components to curbing abusive lending practices successfully: first, preventing abusive lending tactics without unduly restricting equal access to affordable credit for borrowers; second, promoting industry self-regulation and strengthening industry professional standards, while simultaneously relieving the regulatory burden imposed by the current patchwork of state and local laws; and third, providing and enhancing consumer education because informed consumers are less likely to fall prey to abusive lending tactics. These three key components form the foundation of our following comments.

Yield Spread Premiums

Much debate has occurred concerning the disclosure and payment of yield spread premiums (YSPs) over the years. Before discussing the benefits that YSPs provide to consumers, and clarifying the misconceptions many hold about them, we feel it is imperative first to understand precisely what constitutes a YSP.

YSPs can be defined as indirect compensation received from a lender to a broker in the form of a payment that represents the difference between the mortgage interest rate and the par interest rate. This difference can be fairly characterized as the lenders wholesale rate of funds. Virtually *all originators,* whether a bank, lender or mortgage broker, receive compensation upon the sale of the mortgage in terms of the spread above the wholesale rate of funds. The YSP represents a component of the broker or lender's compensation that is either not included, part of, or all of the compensation received.

Moreover, many lenders act as if they are brokers in the sense that prior to the mortgage loan closing, the lender knows the loan will be or has been committed to be purchased by an investor as most loans are rapidly sold into the secondary market to reduce the interest rate risk to the originator. As a result, most banks and other lenders not only receive compensation that is tantamount to YSPs, but also receive service release premiums, or

SRPs, upon sale of the loan into the secondary market. The key difference is that the mortgage broker YSP compensation is disclosed to the consumer but similar lender compensation, whether it is the YSP or SRP, is not. With this definition of YSPs in mind, we will first address the benefits of YSPs for consumers and then explain why YSPs should not be included in the points and fees triggers under HOEPA.

YSPs Benefit Consumers
Consumers of all income levels may find themselves in a situation that prevents them from qualifying for the lowest available mortgage rates and fees. Mortgage credit is the least expensive source of credit for those in need of money to purchase or improve their home, finance their children's education, or even start a business. They need to have the widest possible range of choices when they are buying a home or need a second mortgage. Congress must be careful to avoid measures that will prohibit consumers from selecting among the variety of finance choices that exist and using the tools they need to manage and improve their financial situation.

A YSP is a tool that allows a consumer with little or no-cash, and/or impaired credit the option of a low-cost or no-cost home loan because the closing costs and broker and lender compensation are included in the interest rate, which is paid by the consumer over time. Without low-cost or no-cost home loans, many consumers, many of them first-time homeowners, would be unable to purchase a home because of insufficient cash reserves to cover upfront closing costs.

YSPs Should Be Expressly Excluded From HOEPA Points and Fees Trigger
An issue that has surfaced when discussing proposals to address abusive lending is whether YSPs should be included in the points and fees threshold under the Home Ownership and Equity Protection Act of 1994 (HOEPA). NAMB believes it is imperative that any legislation directly and expressly exclude YSPs from the calculation of points and fees. There are two principal reasons for our stated position.

First, a loan under HOEPA is covered if one of two thresholds is met: 1) the APR exceeds the Treasury securities by 8% for first liens, and 10% for second liens; or 2) the total points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or a set dollar amount ($510 for 2005), adjusted annually for inflation. The YSP is *already captured* in the APR threshold. Including the YSP in the points and fees threshold, as some have proposed, will artificially cause loans originated by mortgage brokers to be considered high-cost, while excluding other identical loans that cost consumers the same in terms of points and fees. NAMB believes that all distribution channels should be treated in a uniform manner. Consumers should receive the same protections provided for in HOEPA regardless of who originates the loan.

Second, including YSPs in the HOEPA points and fees trigger will cause market reporting anomalies because it will appear that mortgage brokers are issuing more high-cost loans than lenders or banks when that is not the market reality. Regulators, particularly those responsible for interpreting data submitted in accordance with the Home Mortgage Disclosure Act (HMDA), will be misled by the reported data, as will consumers. Moreover, regulatory agencies that issue rules and opinions regarding high-cost loans will have inconsistencies resulting in both HMDA-reporting and audit implications. Mortgage loans with high YSPs that exceed the APR threshold are already covered under HOEPA and provide consumers the protections intended by and outlined in HOEPA. NAMB believes that YSPs should not be included in the HOEPA points and fees trigger so as to ensure that the option of low-cost or no-cost loans are not taken away from the consumer, either purposefully or inadvertently.

National, Uniform Licensing Standards and Nationwide Database of Mortgage Originators

NAMB seeks legislation that will implement uniform national lending standards to address abusive lending practices effectively, preserve access to affordable credit, and improve the overall expertise of the mortgage origination industry. As part of this effort, NAMB has been, and continues to be, a leader in advocating and participating actively in forums that will create strong, uniform national licensing and education standards and a nationwide registry for all mortgage originators. Specifically, NAMB supports measures that seek to protect consumers from abusive lending practices including formal licensing, pre-licensure education, and continuing education requirements. However, we believe that to be truly effective such measures should apply not just to mortgage brokers, but all mortgage originators. To this end, NAMB also supports a nationwide registry of all mortgage originators.

NAMB also is increasingly concerned about the proliferation of state and local initiatives that purport to address abusive lending. Mortgage lending has become largely a nationwide industry, with a number of lenders operating in all 50 states. It is incredibly burdensome and confusing to brokers and lenders to comply with 50 different state and local lending restrictions—a chaotic existence from which consumers ultimately suffer. Overreaching state and local laws will only disrupt the mortgage market, preventing lenders from offering borrowers legitimate nonprime products, and increasing loans costs for consumers.

We believe the record levels of homeownership in the United States can be attributed to the vibrant and competitive mortgage market we see today in both the prime and subprime arenas. The importance of preemption is demonstrated by the state law exemptions granted by federal financial regulators to federally chartered depository institutions and their operating subsidiaries. In addition, certain state-chartered depositories are exempt through states' parity laws. Proposed legislation should ensure that a level playing field exists where all market participants abide by the same set of rules. All consumers should receive equally effective protections regardless of where they live or who originates their loan. We believe that a national licensing standard helps to accomplish these objectives in addition to uniform national lending standards. Moreover, a level playing field for all participants is necessary to keep the flow of capital to the mortgage market, enabling competition to keep market players and rates in check and allowing consumers to have continued access to affordable credit regardless of whether consumers use a bank, lender or mortgage broker to obtain their mortgage.

NAMB supports a national, uniform licensing standard for all mortgage originators, in conjunction with a federal registry of all mortgage originators. We believe a nationwide registry will give mortgage industry professionals an avenue to report unscrupulous actions by other mortgage professionals, and help police itself and eliminate bad actors from its ranks. Some may argue that only brokers should be subject to a registry, along with national uniform lending standards. However, including one subset of mortgage originators does nothing more than confuse and mislead the consumer. The framework for debate here is not one of regulation, but rather one of consumer ability to make a well-informed decision. Consumers should be able to access and evaluate information about any mortgage originator—be it a mortgage broker or a loan officer operating for a large mortgage finance company—so as to make an informed decision about which one they will work with during the mortgage application process. The need for a nationwide registry of all mortgage originators who are all subject to the same national, uniform lending standard ensures that a consumer is able to evaluate each mortgage originator fairly.

Affordability and Availability of Mortgage Credit

Congress must create a balance to protect consumers from abusive lending practices, while at the same time, not restrict their choices of loan products and terms or reduce their access to affordable credit. Outright prohibitions of some practices intended to help consumers, such as financing of certain fees, could unduly limit credit availability and actually increase the cost of credit to the very same consumers that we are trying to protect.

For example, significantly lowering the HOEPA triggers to cover all loans, except for reverse mortgages, expands the universe of what is considered a high-cost mortgage and poses a serious threat to the availability of affordable credit. Today, many lenders already do not make or fund high-cost loans because of the attendant risks and legal liabilities associated with such loans. Also the financing of points and fees should not be completely constrained. It is critical to understand such a limitation means that higher cost borrowers will have restricted access to affordable mortgage credit and fewer options. Consumers may be forced to not get a loan, pay a higher interest rate on a loan, or secure a secondary loan to finance the costs, *i.e.* consumer finance loan. In practice, this prohibition would essentially eliminate the high cost mortgage market because the majority of high cost borrowers finance their points and fees. A limitation on financing points and fees, along with a reduction of the trigger threshold that will apply to more loans, could shrink the pool of lenders willing to offer these types of loans—less competition will result in higher cost loans. With fewer options available, higher risk borrowers will be driven to accept more costly consumer finance loans.

Restrictions on specific loan features do not necessarily advance the fight against abusive lending practices. On their own, these loan features are not abusive and in fact, can help consumers. For example, the prepayment penalty feature is a useful device that enables consumers to obtain a lower interest rate and hence, lower monthly payments that make affordable homeownership a real possibility. The same can be said for other loan terms or conditions. Rather, these loan features individually, or collectively, afford consumers the ability to purchase a home and provide options that fit with the consumers' own, unique circumstances.

Any efforts to legislate steering must be clear and not restrain a consumers' ability to shop for the loan product that best suits their financial situation. Steering proposals should not shift the burden of comparison shopping and the ability to choose the best product from the consumer to the lender or broker. A broad and vague steering provision will make compliance difficult, if not impossible, and carries with it too high a level of risk of penalty and increased litigation. Efforts to address steering should not have the effect of reducing the number of lenders willing to make high cost loans, which in turn will result in higher cost financing for the consumer.

Enforcement

We underscore the point that Congress should avoid draconian measures that ban or restrict viable loan products and features that do nothing to prevent abusive lending practices, but which limit consumer choice and prevent everyday consumers from becoming and remaining successful homeowners. Rather, NAMB strongly believes that in addition to a uniform national licensing framework, existing laws should be better enforced by state and federal regulators to eliminate abusive lending practices effectively. Federal fair lending and consumer protection laws, such as the Fair Housing Act, the Equal Credit Opportunity Act, the Truth in Lending Act, as amended by HOEPA, and the Real Estate Settlement Procedures Act all provide substantive protective measures to borrowers. These laws provide disclosure requirements, define high cost loans, and contain anti-discrimination provisions. Many of the abusive lending practices that are taking place often involve outright fraud, in addition to misleading and deceptive sales and marketing practices, which are already illegal. Although the mortgage lending industry is heavily regulated through these laws, perpetrators often ignore these laws and go unpunished for their violations. It is the serious lack of enforcement of these laws that allow an environment whereby abusive lenders continue to cultivate, and from which consumers will suffer the consequences.

Consumer Education and Financial Literacy

A key component in deterring the occurrence of abusive lending is through consumer education and financial literacy. Few, if any, could argue that a major tool to combat abusive lending practices is to improve consumer awareness through education. Informed consumers are in a better position to protect themselves from abusive lending practices and are not only more likely to become homeowners, but also remain successful homeowners. Certainly, it is important that the industry reach out to the people most frequently targeted by predatory lenders—low and moderate-income households, the elderly and underserved communities in urban and rural areas.

Mortgage brokers are in a unique position to educate consumers through the mortgage origination process – a role NAMB takes very seriously. NAMB works closely with the financial services industry as part of its on-going commitment to consumer education and has a long history of promoting consumer financial literacy. For example, last year, NAMB initiated a pilot consumer credit education program using Freddie Mac's CreditSmart® and CreditSmart® Español financial literacy curricula. The pilot is currently being managed by NAMB state affiliates in California, Florida and Texas. NAMB also partnered with United Guaranty to create a consumer information presentation – "Are You Prepared to Head Down the Road to Homeownership?®" – to help educate minorities, immigrants and low-to-moderate income households on the home-buying process. The presentation covers common home mortgage terminology, important steps in the home-buying process, fair housing laws, credit reports and more. NAMB has even taken its education efforts to your doorstep. Earlier this year, NAMB sponsored a Mortgage Broker 101 seminar where NAMB met with Hill staff to discuss the many facets of the mortgage process and the role of a mortgage broker in that process. NAMB also sponsored a Credit Scoring 101 seminar for Hill staff to explain the issues relative to credit scoring, including the major role a credit score has in determining mortgage eligibility.

Furthermore, in an effort to improve consumer financial literacy, NAMB has assembled a Consumer Protection Committee with the stated objective of preventing abusive lending practices through homebuyer education.

Because NAMB feels strongly that financial education is essential to protecting oneself against fraud or abusive lending tactics, NAMB believes that the education process should begin at a young age, with some target curriculum in our high schools. To this end, NAMB supported the bipartisan resolution passed by the U.S. House of Representatives designating April as "Financial Literacy Month." In particular, NAMB commends Representatives Judy Biggert (R-IL) and Rubén Hinojosa (D-TX) for introducing a resolution that calls for the federal government, states, local governments, schools, businesses and other groups to observe Financial Literacy Month and for their efforts towards consumer financial literacy.

Conclusion

NAMB believes that any legislation designed to curb abusive lending practices should create a uniform standard regardless of the distribution channel—broker, banker, lender—chosen by the consumer, and promote growth in homeownership by ensuring continued credit availability, competition and choice for consumers. This principle should guide this committee as it considers legislation to address abusive lending practices.

We appreciate the opportunity to offer our views. I am happy to answer any questions this committee may have.