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On

"Mortgage Origination: The Impact of Recent Changes on Homeowners and Businesses"

Before the

Committee on Financial Services,
Subcommittee on Insurance, Housing and Community Opportunity

United States House of Representatives

Wednesday, July 13, 2011

Good afternoon Chairwoman Biggert, Ranking Member Gutierrez, and Members of the Committee. I am Marc Savitt, President of the National Association of Independent Housing Professionals. Thank you for inviting NAIHP here today to testify on "Mortgage Origination: The Impact of Recent Changes on Homeowners and Businesses."

Chairwoman Biggert, we applaud you for providing this opportunity to testify about this important issue, which is critical to our housing recovery and the overall economic health of our country.

NAIHP represents independent, small business housing professionals in all 50 states and the District of Columbia. Our grassroots membership consists of mortgage brokers, loan originators, residential appraisers, real estate agents, settlement agents, small banks and consumers. Our members are Main Street USA, who assist consumers through the difficult maze of purchasing or refinancing residential real estate. We also provide jobs and contribute financially to our local economy.

For the past four years, two Administrations and Congress have sought the right solution to re-energize the housing industry. Despite the most affordable home prices and lowest interest rates in a generation, tax credits, and other incentives, our nation's housing market continues to underperform. Many speculate consumer confidence is the missing component to any housing recovery. While this is an important element, it is not a cure-all. Although unemployment also remains an obstacle, my testimony today pertains in part to the difficulties employed borrowers face in obtaining mortgage financing.

As a 30 year veteran of the mortgage financing industry, I can say without hesitation that the failure of the housing market to recover is the result of three main factors: Over-regulation, GSE guidelines and unnecessarily strict underwriting.

Overreaction to the housing crisis has resulted in over-regulation. Congress and the agencies have responded to the events of the last five plus years with harmful and often misguided regulations. Under the guise of consumer protection, these regulations were promulgated, despite overwhelming evidence of the dangers of unintended consequences. Many regulations call for restrictions on traditional mortgage products, such as conventional or government loans, which were never the problem.

Federal Reserve Board Rule on Mortgage Loan Originator Compensation

In one particularly onerous action by the Federal Reserve Board, the Central Bank finalized a rule on originator compensation, citing a certain practice by mortgage brokers to be unfair and deceptive. Regardless of the fact their study failed to substantiate their actions, the FRB still moved forward with the rule. The end result was massive job loss in the small business mortgage sector and elimination of consumer loan options.

As an active participant in meetings with the FRB during the comment period, it was evident the FRB was unwilling to listen to small business. Moreover, they ignored credible, independent studies from respected universities, which contradicted the findings of the FRB's limited study and outside survey.

The Federal Reserve Board based this anti-competitive rule on a "study" by MACRO International, which tested a total of 35 people in 4 cities. Furthermore, only 9 people of the 35 were tested on mortgage broker disclosures. In addition, the FRB also based this rule on a survey conducted by AARP. Just over one thousand people, aged 65 or older were called and asked questions about their mortgages. AARP admitted they never examined any loan documents from the survey. The entire compensation structure of the mortgage origination industry, which was based on competition, was changed to an anti-competitive, severely restricted industry, based on the opinions of 9 confused people.

The FRB chose to ignore two credible studies. The first was conducted by Georgetown University's Professor Gregory Elliehausen, titled "The Pricing of Subprime Mortgages by Mortgage Brokers and Lenders." This study included the examination of over one million subprime loans. The study concluded that consumers using a mortgage broker for home financing would save an average of 1.13% on their annual percent rate (APR). The study also dispelled the myth that mortgage brokers overcharged or took advantage of minorities. According to the findings of the study, minorities saved up to a full 2% on their APR. Ironically, Professor Elliehausen is now employed as an economist by the Federal Reserve Board.

The second study was performed by Harvard University, titled "Understanding the Boom and Bust in Nonprime Mortgage Lending." This study clearly examined the causes which lead to the housing crisis. The study found several contributing factors, including "relaxed underwriting" and "regulatory and market failures." It also specifically stated it was not caused by mortgage brokers and/or mortgage bankers.

Despite the research and findings of these extensive studies, the FRB chose to validate a study and survey that best matched the Central Banks desired outcome.

It should also be noted, according to the SBA's Office of Advocacy, the FRB failed to follow proper procedures in finalizing this rule, specifically the lack of a compliance guide that meets Advocacy standards. A compliance guide was eventually submitted, which consisted of a four page "cut and paste" out of the rule itself. By comparison, HUD submitted a 571 page compliance guide for RESPA Reform and currently has over 300 FAQ's. The FRB has no FAQ's.

The Office of Advocacy requested the FRB postpone implementation of the rule to allow small business to absorb the current "onslaught of regulations." The FRB ignored Advocacy's request.

The FRB also acknowledged the compensation rule would have a "significant economic impact on small entities." Despite having no idea how "significant" that impact would be, the rule was still implemented.

On March 7, 2011, NAIHP filed suit against the FRB in U.S. District Court in Washington, D.C. to stop the rule from being implemented on April 1, 2011. NAIHP's position was that the FRB lacked the authority to promulgate the rule, more specifically restrict compensation on traditional mortgages and that their testing was so flawed it was almost nonexistent. The court eventually deferred to the FRB on the authority issue because they claimed Congress's intent in Section 129(l) of TILA was unclear. Section 129 (l) refers to high cost mortgages only.

To be fair, the FRB held an on-line webinar on March 17, 2011, for the purpose of clarifying this confusing rule. However, all of the slides used by the FRB in the webinar contained a disclaimer which read, "The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions, of nor binding on the Board of Governors of the Federal Reserve System."

This rule has left state regulators so confused, most refuse to enforce it. The FRB has also ignored repeated attempts by state regulators for clarification.

State Housing Finance Agencies, providers of low cost Mortgage Revenue Bonds (MRB) for first time homebuyers, are also adversely affected by this rule. The confusion over how to comply has lead to the termination of many wholesale relationships with mortgage brokers. Fewer originators of MRB's have caused the HFA's to lose substantial market share. Some HFA's are considering closing their doors. Consumers lose too with fewer originators in the market. Larger creditors often elect not to offer MRB's.

Most confusing of all was the FRB's acknowledgement in their answer to NAIHP's lawsuit that bank or creditor indirect compensation (YSP) was no different than broker yield spread premiums (YSP). The FRB stated both controlled the YSP and used it in the exact same manner. To reiterate, the FRB finalized this rule, because they believed broker YSP was an unfair and deceptive practice. NAIHP is puzzled by the FRB's logic, as they have made creditors exempt from this rule, despite their admission in a District Court filing, confessing that creditor (bank) and non-creditor (broker) yield spread premiums were identical. This admission is important for another reason, in that creditors most often deny receiving YSP or its equivalent, Service Release Premiums (SRP).

The FRB also claims this rule applies to creditors as well. In truth, the rule applies to creditor or bank originators, but not the creditors themselves. Banks are free to continue receiving both consumer and YSP compensation.

According to the FRB, this rule was enacted for consumer protection. However, in almost all cases the consumer still pays the same or a greater amount in settlement costs. Originator compensation has been reduced substantially with the reduction being retained by the creditor. This rule has no benefit to consumers.

Because the unintended consequences of this rule are so harmful to consumers and small business, NAIHP urges Congress to take the appropriate action to reverse it.

As the committee is aware, NAIHP submitted a proposed amendment to clarify the definition of a high cost mortgage and the intent of Congress under 129(l) of TILA, thereby clearing up any misunderstandings or ambiguity. This action would then limit the Originator Compensation Rule to only high cost mortgages, where it belongs.

RESPA Reform

In 2002, HUD began an initiative to "simplify and improve" the process for obtaining a home mortgage and reduce settlement costs for consumers. The centerpiece of that reform was a major revision of the Good Faith Estimate of Settlement Costs. During the comment period, HUD received over 45,000 comments, mostly in opposition to the changes. To be clear, industry agreed with HUD that changes were necessary to make the process easier for consumers to understand, thereby enabling them to make better and less expensive choices. However, the changes under the proposed rule actually made the process more complicated and confusing. After a two year debate, the proposed rule was withdrawn by HUD in March of 2004.

In 2005, HUD revisited the process of RESPA Reform by holding a series of seven roundtables throughout the country. The proposal was almost identical to the 2002 version. After numerous Congressional hearings and the required comment period, HUD finalized the rule, which was implemented on January 1, 2010.

The new GFE 2010, consisting of 3 pages, replaced a one page, totally itemized Good Faith Estimate. Instead of simplifying the process, HUD created a more confusing document, which amongst other things, fails to disclose a borrower's total housing payment, including taxes and insurance and the funds a borrower needs to bring to settlement. It also lacks a provision for a borrower's signature. To help remove the confusion, originators often use the old GFE, now called a "worksheet," as it clearly provides a complete picture of the costs involved with the borrower's transaction. While we applaud HUD for recognizing the need for true simplification, the GFE 2010 fell short of achieving that goal.

The CFPB apparently understands the problem and is in the process of developing a new combined Good Faith Estimate and Truth in Lending disclosure.

RESPA Reform also included a revision to the section concerning Controlled Business Arrangements (CBA's), sometimes called Affiliated Business Arrangements (AfBA's). The revision further clarified the prohibition on tying arrangements. HUD recognized the growing problems with these arrangements, specifically where buyers were required to use the services of the builder's affiliated companies in order to receive discounts and incentives. These requirements prevent consumers from shopping for a home loan best suited for them. Builders and lenders in a joint venture relationship routinely offer discounts and incentives to home buyers, provided the consumer uses the services of the builder's chosen settlement service provider. In other words, if the buyer uses an outside mortgage lender and/or settlement agent, they forfeit the discounts and incentives.

These so-called “one stop shops,” have not only proven to be harmful to consumers by way of higher settlement costs, but have shown to be a major cause of foreclosures.

Buyers were regularly promised closing cost assistance, upgraded kitchens, swimming pools and other incentives. Although buyers received closing cost estimates from the builder’s affiliate with low interest rates, those rates usually disappeared when the consumer was able to lock in their interest rate. In many cases, rate variations of more than one full percent were experienced. If the consumers elected to forfeit the incentives and use a less expensive, outside service provider, builders required immediate payment of all “free” upgrades, or warned contracts would be terminated for breach and deposits lost. Consumers were locked into a bad deal with no way out.

These arrangements are harmful to both consumers and small business. Local small business professionals are frozen out of the new home industry, in favor of the large national banks.

Prior to implementation of this specific section of RESPA Reform, numerous home builders successfully sued HUD, winning a stay. HUD later withdrew the provision and promised to revisit it in the near future.

The GSE Guidelines

For many years, the GSE’s set the underwriting standards for the majority of the mortgage financing industry. Their standards were conservative, with the goal of protecting both industry and borrowers. However, early in the last decade they began taking unnecessary risks in order to regain lost market share. Some of those risks included the lowering of prudent underwriting standards and implementation of non-prime lending programs.

Although relaxing their guidelines opened the door to home ownership for more borrowers, many of those borrowers proved to be unqualified. We’re all experiencing the end result of those failures by the GSE’s.

Today, the GSE’s are overcompensating for their mistakes of the past. Underwriting standards and conditions have reached the level of absurd. Moreover, the GSE’s are penalizing new borrowers with predatory fees to recoup losses related to their previous practices. Borrowers are assessed fees for adverse market, credit scores below 740, loan to values, ratios and much more. In some cases, GSE fees add up to between 5-6% of the loan amount. If a mortgage broker or banker charged these kinds of fees, they would face regulatory action.

Industry concurs, if the GSE guidelines were revised to reflect a more common sense approach, while still being prudent, more qualified borrowers would be eligible for home financing. Reduction, if not removal of the predatory fees charges by the GSE’s, would also make financing more affordable.

The GSE's and the Home Valuation Code of Conduct

The Home Valuation Code of Conduct (HVCC) was an agreement between the N.Y. Attorney General, Fannie Mae, Freddie Mac and their regulator FHFA.

HVCC was born from an investigation of a federally chartered bank and an unregulated appraisal management company. The investigation revealed conflicts of interest and the influencing of appraisers to fraudulently inflate the value of real estate.

The following paragraph is an exact quote from former N.Y. Attorney General Andrew Cuomo's own website.

"In 2007 Cuomo also announced an investigation into widespread appraisal fraud within the mortgage industry, examining practices used by some of the country's largest banks of pressuring appraisers to artificially inflate the value of homes. As a result of these investigations, Fannie Mae and Freddie Mac, the largest purchasers of home loans, agreed to abide by new appraisal guidelines defined by the Attorney General and to fund an Independent Valuation Protection Institute to implement and monitor those guidelines."

In March of 2008, the original (proposed) HVCC agreement prohibited banks and lenders from having more than a 20% interest in appraisal management companies (AMC). Moreover, mortgage brokers were prohibited from ordering or having any contact with the appraisal process. When the final version of HVCC was released in December of 2008, the banks 20% ownership cap was removed, allowing banks and lenders to own an unlimited percentage of interest in AMC's.

After numerous meetings with Mr. Cuomo's staff, NAIHP was informed the revisions were made at the insistence of the FHFA, regulator for the GSE's. NAIHP questions why Mr. Cuomo would allow the banks and lenders back into the exact situation that first caused him to initiate his investigation. The very banks and AMC's from his investigation were now in control of the residential valuation system in this country. Despite the fact mortgage brokers were NOT the subject of his investigation, the December 2008 final agreement required their removal from the appraisal process.

Since HVCC went into effect on May 1, 2009, consumers have incurred substantial additional expenses when purchasing or refinancing residential properties. It is conservatively estimated those costs exceed 2.8 Billion dollars a year. Most importantly, HVCC has done nothing to reduce fraud and/or conflicts of interest. In fact, statistics have shown valuation fraud increased

46% in the 3rd quarter of 2009, as compared to the same time in 2008. In the spring of 2010 and 2011, the Mortgage Asset Research Institute (MARI), reported valuation fraud had increased over 50%, year over year. This substantial increase occurred despite HVCC.

The agreement between the N.Y. Attorney General and the GSE's has sunset. However, the exact same provisions within HVCC are now embedded in the GSE guidelines and the Dodd-Frank Wall Street Reform and Consumer Protection Act. Now known as "Appraiser Independence", it can be found under Section 1472.

In addition to valuation fraud increasing at alarming rates, appraiser independence (AP) has also caused thousands of appraisers to go out of business. Local small business appraisers have lost their independence to unregulated AMC's. Appraisers can no longer set their fees. Fees are dictated by the AMC's and often end up being between 40%-60% less than what is customary and reasonable for a specific geographic area. Sometimes, appraisal assignments are put up for bid. It is important to understand consumer costs have not been reduced along with appraiser compensation. In fact, the cost of an appraisal has increased on average $150.00. The increase, along with the "haircut" taken by appraisers, has gone into the pockets of AMC's and their partners, the big banks.

The long term outlook for the appraisal industry is even worse. Because appraiser compensation has been drastically reduced, they can no longer afford to hire an apprentice. An apprentice needs a minimum of 2000 hours working under a licensed appraiser before they can be licensed. The average age of an appraiser is 56, which means within 8-10 years the appraisal industry will be a fraction of what it is today.

Under the current system of hiring the least expensive appraiser, including those unfamiliar with the subject property's geographic area, quality and accurate workmanship are often sacrificed.

Dodd-Frank

The Consumer Financial Protection Bureau (CFPB) is currently in the testing stage of a new, combined Good Faith Estate of Settlement Costs and Truth in Lending Statement. The CFPB should be applauded for not only taking on this much needed disclosure reform, but also for the process. The housing industry and consumers have been involved since the earliest stages of development and have been asked for their input every step of the way. Unlike other agencies, CFPB actually used this input to make changes and corrections to early drafts. This kind of cooperation reduces the chances of unintended consequence, after implementation.

The name, The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA), is misleading at best. While promoted as a vehicle to prevent systemic risk and prevent further bailouts of those who are "too big to fail," it appears to have left Wall Street and big bank practices virtually intact, all at the expense of small business and consumers. As with many laws designed to protect consumers, they end up having the opposite effect. In the case of the DFA, a rush to judgment and an intense lobbying campaign by big banks has all but eliminated competition. Consumers now have less choice and/or options.

Late in the evening, during the Senate debate of the DFA, Senators Jeff Merkley and Amy Klobuchar introduced an amendment pertaining to loan originator compensation and a borrower's ability to repay a loan. While NAIHP completely agrees that borrowers must be able to afford their home loan financing, we take exception with the originator compensation issue, in particular the way this amendment was introduced. After its introduction that evening, it was quickly voted on the next morning. Small business mortgage brokers were not given the opportunity to discuss the amendment prior to introduction or voting. Had brokers and originators been given the opportunity, we would have identified several areas of concern pertaining to both consumer and small business harm.

For example, brokers are prohibited from receiving compensation from both the wholesale lender and the consumer. Arguments have been made by consumer groups, legislators and others that this practice increases consumer costs and is a kickback to brokers. Brokers have been fighting this illusionary issue on yield spread premiums for years. What opponents of YSP fail to admit is this form of compensation is legal, legitimate and necessary to help qualified borrowers. Moreover, as recently acknowledged by the Federal Reserve Board, creditors (banks), receive the exact same type of compensation. The only difference is brokers disclose all their compensation to consumers. Banks have no such requirement.

DFA and Restoring Appraiser Independence

Appraiser independence requirements were established under the DFA to ensure that residential real estate appraisals are based on an appraiser's independent professional judgment, free of any influence, pressure or coercion from parties who have an interest in the transaction. The requirements under the interim rule established by the Federal Reserve Board also seek to ensure that appraisers are paid "Customary and Reasonable fees."

Unfortunately, like its predecessor HVCC, appraiser independence has already proven to be a failure. Appraisers are still being pressured and blacklisted with no mechanism in place to report offenses. Moreover, Appraisal Management Companies (AMC's), have found a "workaround" enabling them to set factious "Customary and Reasonable fees," that are anything but customary and reasonable. In fact, appraisers are now being paid less than under HVCC.

Although, specific language is not clear in the interim rule, the FRB has verbally confirmed mortgage brokers are NOT prohibited from ordering residential real estate appraisals. NAIHP believes Congress should confirm this with the FRB.

During the DFA conference committee, a bipartisan amendment was offered by Rep. Gary Miller of CA and Rep. Travis Childers of MS. This amendment would have restored the appraisal ordering process to mortgage brokers and loan originators. The amendment was accepted by the House, but specifically singled out and rejected by Senator Dodd.

Restoring the right of mortgage brokers and loan originators to order appraisals and converse with appraisers is paramount to restoring true appraiser independence in our valuation system. Like the larger housing crisis itself, mortgage brokers were painted as the villains of appraiser pressure and coercion. However, under the equivalent guidelines of HVCC, brokers were proven NOT to be the "bad actors." Though some brokers were involved, as an industry, they were scapegoats. Since May 1, 2009, brokers have been prohibited from any involvement with appraisers, including ordering appraisals. During this same time frame, appraisal fraud increased over 50%. This clearly vindicates brokers, because they were out of the process.

Brokers were excluded from the process because it was said that they benefited financially from the transactions. While this is true, almost every case prosecuted for influence, pressure and/or fraud has been against banks and those who have joint venture relationships with AMC's.

Another reason to allow mortgage brokers and their loan originators back into the appraisal system is they are now licensed under the SAFE Act. In addition to this rigid approval process, every document handled by a licensed broker or originator has their NLMS number displayed. If a licensed individual were to engage in a pattern of practice of committing any offense, regulators would easily be able to identify the originator and take appropriate action.

Qualified Residential Mortgages (QRM)

Once again, regulators fail to see the unintended consequences of their actions. Instead of conducting an independent GAO study to determine need, regulators appear to be engaged in overkill regulation.

Requiring a 20% down payment will preclude most first time, low and moderate income buyers from ever having a home of their own. Saving for this large of a down payment is difficult at best for most buyers and impossible for others. Moreover, the down payment was never the problem with qualified buyers. In fact, the two best performing loan programs are the Veterans Administration (VA) and the USDA Rural Housing Program. Both offer 100% financing to qualified borrowers.

Loose underwriting standards, including no documentation loans for average wage and hour employees, were a major contributing factor to the housing crisis.

NAIHP is concerned that if the 20% down payment requirement is finalized, the ripple effect from a further weakened housing industry will cause home prices to plummet, while unemployment and foreclosures rise sharply.

Mortgage Brokers and Loan Originators

From the very moment mainstream media first used the words “mortgage meltdown,” mortgage brokers were labeled as the group that inflicted the predatory practices that gave rise to record foreclosures. As a result, mortgage brokers have been subjected to intense scrutiny and, consequently, anti-competitive rules and regulations.

Brokers have been blamed for putting consumers into predatory loan programs. In reality, mortgage brokers never developed one single loan product or program. However, many lenders and banks did, aided by Fannie Mae, Freddie Mac and Wall Street. These same institutions set the guidelines for such programs, without any broker input. Most importantly, mortgage brokers did not underwrite or approve any of these loans. The responsibility for approving loans was that of the banks and lenders. Therefore, if brokers didn’t develop the programs, set the guidelines or approve loans, how could this be their fault?

Ironically, many of the rules and regulations promulgated against mortgage brokers, under the guise of consumer protection, have resulted in further consumer harm and job loss in the small business housing sector. Reduced competition has increased costs for consumers, along with a substantial rise in fraud.

Numerous independent studies have provided empirical evidence, establishing the true facts of what caused the mortgage meltdown and housing crisis. Agency rules and regulations were written based on flawed, or no testing and anecdotal evidence, often provided by consumer groups and banks with ulterior motives.

As a result of the SAFE Act, mortgage brokers and their loan originators are now some of the most highly regulated and educated mortgage professionals in the industry. NAIHP believes any mortgage professional engaged in the practice of originating residential mortgages should be required to meet the same licensing standards.

NAIHP looks forward to continuing to work with this committee, and other House members, to improve our housing industry.

Thank you for the opportunity to appear before the committee and discuss these important issues.

United States House of Representatives

Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Marc S. Savitt	National Association of Independent Housing Professionals

3. Business Address and telephone number:

[redacted]

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☒ No	☐ Yes ☒ No

6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

N/A

7. Signature: Marc S. Savitt 7/11/11

Please attach a copy of this form to your written testimony.