NAMB
National Association of Mortgage Brokers

Prepared Testimony of

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On

"H.R. 1728,
The Mortgage Reform and Anti-Predatory Lending Act of 2009"

Before the

Committee on Financial Services

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Good morning Chairman Frank, Ranking Member Bachus, and Members of the Committee. I am Denise Leonard, Chairman of the Government Affairs Committee of the National Association of Mortgage Brokers ("NAMB"). Thank you for inviting NAMB to testify today on "H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009." We appreciate the opportunity to discuss this critical piece of legislation that is of vital importance to our members, to consumers, and to the future of our industry.

NAMB is the only national trade association that represents the mortgage broker industry. NAMB represents the interests of more than 70,000 mortgage broker professionals located in all 50 states and the District of Columbia. NAMB also works with 49 state affiliate associations nationwide. Additionally, NAMB represents the interests of homebuyers, and advocates for public policies that serve the mortgage consumer by promoting competition, facilitating homeownership, and ensuring quality service.

NAMB is committed to promoting the highest degree of professionalism and ethical standards for its members. NAMB requires that its members adhere to a professional code of ethics and best lending practices that fosters integrity, professionalism, and confidentiality when working with consumers. In 2002, NAMB and the nation's mortgage brokers were the first to introduce uniform licensing and testing of all originators, and we are proud that through the actions of this Committee, that concept was adopted and enacted into law as the S.A.F.E. Mortgage Licensing Act of 2008 ("SAFE Act") which encompasses the role of the mortgage originator and enhances consumer protection throughout the mortgage process.

NAMB provides its members with access to professional education opportunities and offers rigorous certification programs to recognize members with the highest levels of professional knowledge and education. NAMB also serves the public directly by sponsoring consumer education programs for current and aspiring homebuyers seeking mortgage loans.

Mortgage brokers work with consumers to help them through the complex mortgage origination process. Mortgage brokers add value to the process for both consumers and lenders by serving areas that are typically underserved by banks and other lending institutions. Mortgage brokers also add value by providing goods, facilities, and services with quantifiable value, including a customer base and goodwill.

I. Introduction

NAMB shares this Committee's ongoing concern over the abusive lending practices that once existed, and in some cases may still exist throughout our mortgage lending system. We believe many of the reforms set-forth in this bill will lay a strong foundation for the recovery and future prosperity of our mortgage lending system. We applaud the uniform approach taken in H.R. 1728, but will suggest minor improvements to the legislation in order to carry out its consumer protections without undue industry confusion.

NAMB will focus this testimony most specifically to the areas we were directed by the Chairman to address today and will subsequently present the broader and more rudimentary characteristics of our elements of concern to this Committee for review.

As we continue to reevaluate the current state of the American mortgage lending system and contemplate reform, NAMB believes it is important to thoroughly explore the true origins of our current market problems and take into consideration the many recent legislative, regulatory, and market changes that have already taken place.

We are confident that a comprehensive and constructive bill addressing the most pressing issues facing industry participants, consumers, and the mortgage market itself can be passed, and NAMB looks forward to working with the members of this committee and others in the House and Senate to effect beneficial and lasting changes where they are needed.

II. Origins of the Current Market Problems

At the very beginning of our current market crisis, it was not uncommon to believe that all of our problems were the result of reckless subprime mortgage lending and aggressive speculation in risky housing markets. However, after witnessing the collapse, or near-collapse, of many of our nation's largest financial institutions, we have come to realize that subprime lending was only one part of a far more extensive problem.

Recent developments in our financial markets have brought to light the sobering reality that the policies, practices, and behaviors which caused this crisis were not isolated in a particular geographic region or a single segment of the industry. Rather, it was a multitude of factors that led us to where we are today.

First, financial innovation reached unprecedented levels over the past decade. Lenders, borrowers, investors, and regulators became increasingly overconfident in the security and effectiveness of new and sometimes exotic financial products that promised to bring wealth and prosperity while allegedly minimizing risk.

At the same time, underwriting standards for mortgage loans were significantly relaxed and greater emphasis was placed on home valuation as opposed to other factors traditionally used to determine a borrower's likelihood of repaying a loan. With home prices steadily rising, borrowers seized upon this opportunity to take out increasingly larger mortgages with little to no down payment required and less stringent qualifying documentation requirements. As a result, millions of Americans obtained loans that many would subsequently be unable to afford due to rate increases, job loss, unexpected additional expenses, and other factors.

Lenders, investors, regulators, and homeowners all took comfort in the belief, however misguided, that property values would continue to rise. Unfortunately, however, that was not the case and the projected perpetual prosperity created a hazardously indulgent environment that quickly came to an end.

Builders and real estate agents were clamoring to sell properties as home values skyrocketed. At the same time, banks and lenders, who were effectively assuming the role of middle-men, further relaxed underwriting standards to maintain and increase production The lenders would then quickly absolve themselves of responsibility for by passing them off to Wall Street investors.

For its part, Wall Street was buying millions of mortgage loans, good and bad, from lenders all across the country and chopping them up in order to repackage them as complex investment securities. Wall Street would then turn around and offer these securities for sale to banks, pension funds, and countless other investors worldwide. Despite the fact that virtually no one understood what these security instruments were made up of or how they were going to behave, rating agencies proceeded to certify them as "AAA," although we do acknowledge the fact that the agencies may not have been given all pertinent information from the lenders in order to properly rate these securities.

As was noted in a New York Times Editorial last month, "the unfolding evidence makes clear that this was a systemic problem, driven by Wall Street's insatiable appetite for mortgage backed securities."[1] Many experts agree, and identify these security instruments, which were created by Wall Street, propped-up by rating agencies, and gobbled-up by investors as being at the heart of our current financial crisis.[2]

Compounding the problem further, Wall Street also began peddling arcane investment vehicles known as "credit default swaps." Credit default swaps are private, largely undisclosed and completely unregulated "insurance" contracts that mortgage investors could enter into in order to protect themselves against losses if their initial investments failed. The additional investment in credit default swaps was aggressively marketed to investors as an essential risk-saving device for anyone nervous about purchasing mortgage-backed securities. This "perceived" safety net eliminated the need for Wall Street and investors to implement their own quality control measures on the mortgages within the risky mortgage-backed securities because they believed they were guaranteed to come out ahead, regardless of performance.

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[1] *Editorial: Common Sense in Lending*, NY Times, March 8, 2009.
[2] *60 Minutes: A Look at Wall Street's Shadow Market* (CBS News television broadcast, October 5, 2008).

Had housing prices continued to rise, we may never have fully realized the risk presented by all of this unchecked financial innovation. However, when the housing bubble finally burst, it set into motion a chain reaction of events that brought our financial system to its knees. Homeowners began defaulting on their mortgages when their interest rates adjusted upward or their overall financial circumstances changed, and the value of their home was no longer sufficient to cover the cost of refinancing. This led to a rise in foreclosures and a glut of homes on the market, which served to further depress housing prices, and in turn led to even more defaults and foreclosures.

The rapidly increasing number of mortgage defaults and foreclosures naturally led to the failure of the high-risk mortgage-backed securities sold on Wall Street, which prompted many investors to try to cover their losses by calling-in credit default swaps they had purchased to protect themselves from precisely this occurrence. However, the large investment banks responsible for creating the mortgage-backed securities and peddling the credit default swaps had never set aside sufficient capital to cover their obligations should those "insurance policies" be called-in. As a result, it became increasingly impossible for these institutions to extend credit to borrowers or shield their tremendous financial losses from regulators and investors.

With depleted cash reserves and assets that had lost tremendous value, financial institutions became unable to make new loans at the pace needed to keep our economy running, and virtually overnight, the problem of insufficient capital at some institutions became a crisis of illiquidity throughout our entire economic system.

Now we are faced with the extremely challenging task of working to improve our mortgage lending system and ensure its future strength and stability, in an environment where overcorrection in some areas has already made the situation worse, and additional overcorrection may serve to further exacerbate and prolong the hardships being felt by consumers across the country and in every segment of the market.

III. Recent Legislative, Regulatory & Market Changes

In addition to the ongoing turmoil in our mortgage and financial markets, a great deal of change has been affected through legislative and regulatory action. Some of this change has been thoughtfully considered and will undoubtedly strengthen and stabilize the mortgage industry for years to come. However, other changes have been more hastily initiated and threaten permanent negative long-term consequences for consumers and market participants if they are not corrected.

(A) S.A.F.E. Mortgage Licensing Act of 2008 ("SAFE Act")

The SAFE Act was signed into law in July 2008 as part of the Housing and Economic Recovery Act of 2008, which also included much needed changes to the government sponsored enterprises. The SAFE Act is comprised of key provisions from H.R. 3915, the Mortgage Reform & Anti-Predatory Lending Act of 2007, and establishes a nationwide licensing and registration system for loan originators. Under this system, all loan originators, regardless of whether they work for depository or non-depository institutions, are required to submit fingerprints to the FBI, and any other governmental agency or entity authorized to receive such information for a state and national criminal background check, and must obtain a unique identifier through the Nationwide Mortgage Licensing System and Registry administered by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators ("CSBS/AARMR"). Additionally, all state-licensed loan originators are required to meet minimum education and testing standards.

The SAFE Act represents a critical step toward achieving uniformity and a higher level of professionalism throughout the mortgage lending industry. NAMB has advocated for such uniformity for many years now and led the nation in urging its passage, over the objections of others. We are pleased to see the advances now being made in that regard. Education and testing of every state-licensed loan originator helps to ensure that consumers will receive accurate and consistent product information, which will allow them to make an informed decision about different loan financing options available in the market. Additionally, mandatory continuing education and professional ethics training helps to ensure that state-licensed originators remain knowledgeable and competent with regard to addressing consumer concerns. State and federal criminal background checks will also prevent unqualified individuals from entering, remaining, or moving within the industry. We continue to advocate that all loan originators, even those at the Federal level, should be covered by these requirements.

Although the SAFE Act represents much needed changes for loan originator licensing standards, we understand that some state legislators are still confused with regard to the implementation of the SAFE Act, particularly as it relates to currently licensed and registered loan originators. We look forward to working with Congress in an effort to address these implementation issues.

(B) Home Ownership & Equity Protection Act Amendments ("HOEPA Rules")

Also in July 2008, the Federal Reserve Board approved amendments to Regulation Z, under the Home Ownership and Equity Protection Act ("HOEPA"), to better protect consumers and facilitate responsible lending. The new HOEPA Rules prohibit unfair, abusive or deceptive home mortgage lending practices and restrict certain other mortgage practices. The rules also establish advertising standards and require certain mortgage disclosures to be given to consumers earlier in the transaction. According to the Federal Reserve Board, the HOEPA Rules are intended to protect consumers from unfair or deceptive acts and practices in mortgage lending, while keeping credit available to qualified borrowers and supporting sustainable homeownership. These new HOEPA Rules are applicable to all mortgage lenders, not just those supervised and examined by the Federal Reserve.

The new Rules promote clarity and professionalism throughout the mortgage industry and help protect consumers by requiring accuracy and balance in advertisements as well as the establishment of escrow accounts for the payment of property taxes and homeowners' insurance on all first-lien loans.

The Rules also set forth an anti-coercion appraisal standard which, much like H.R. 1728, applies equally to all originators. The Rules prohibit all mortgage brokers, mortgage lenders and their affiliates "from coercing, influencing or otherwise encouraging appraisers to misstate or misrepresent the value of a consumer's principal dwelling."

During consideration of the appraisal standards set forth in the Regulation Z final rule, the Board addressed the issue of who orders appraisals and declined to find that "any particular procedure for ordering an appraisal necessarily promotes" fraudulent appraisals. Rather, the Board found that "coercion of appraisers" whether by lenders or brokers "is an unfair practice," and determined that the appraisal provisions in Regulation Z should apply equally to lenders and brokers alike. The Federal Reserve's appraisal standard implementation date is October, 2009. NAMB supports this uniform approach to protecting consumers which is consistent with the appraisal provisions contained in H.R. 1728.

We will work constructively with the Federal Reserve Board to finalize the much needed revisions to the Truth In Lending Act ("TILA") and recommend that the U.S. Department of Housing and Urban Development ("HUD") withdraw its final rule in order to comport to the changes the Federal Reserve Board regulations establish as well as any changes to be passed as part of H.R. 1728.

(C) *Real Estate Settlement Procedures Act Revisions (“RESPA Rule”)*

HUD released its long-awaited RESPA Rule in November 2008. As part of that Rule, HUD is requiring loan originators to provide consumers with a standard Good Faith Estimate (“GFE”) that the agency believes clearly discloses key loan terms and closing costs.

The RESPA Rule requires only mortgage brokers, but no other mortgage provider, to make detailed disclosures regarding their direct and indirect compensation. This asymmetrical disclosure of originator compensation places mortgage brokers at a significant and permanent competitive disadvantage, which impedes competition in the mortgage market and threatens to increase costs for consumers. Moreover, this type of disclosure has been shown through multiple studies to cause consumer confusion and prompt consumers to choose more expensive loan products than they might otherwise select. Lastly, HUD adopted this RESPA Rule in direct contravention of its own stated policy that all loan originators – regardless of the type of financial institution they work for, should be required to make the same types of disclosures.

HUD proposes to make bold changes in the marketplace through implementation of this rule. However, in light of the current market situation – rising home foreclosures, the credit crunch, the day-to-day changes to the marketplace, and rapid Congressional and regulator response, among other factors – NAMB questions the appropriateness of the timing and implementation of the rule and fears the grave unintended consequences it will inflict on the already fragile economy.

Today’s mortgage market is significantly strained and continues to experience turmoil and change. The market has lost over 250 lenders, underwriting standards have tightened, minimum credit scores have significantly increased beyond the national average, and new rules continue to be announced and implemented by both state and federal agencies. In addition, Congress continues to consider sweeping changes to how loans are originated in the United States. Before implementing sweeping changes to the settlement process, a thorough analysis should be undertaken to ensure any changes made to RESPA are done so with a positive impact on consumers.

Additionally, Congress enacted the Mortgage Disclosure Improvement Act last year as part of the Housing and Economic Recovery Act of 2008 amending the timing requirements for TILA disclosures which, in part, will go into effect in July 2009. As the regulators continue to require additional or enhanced disclosures, we stress the importance of providing both uniformity and coordination of approach by both the Federal Reserve Board and HUD so that consumers receive the maximum benefit of any disclosures.

At this time, NAMB believes HUD’s efforts, and the mortgage market in general, may be better served by focusing on the many issues facing homeowners today and providing support for those consumers currently at risk of losing their home to foreclosure. NAMB believes HUD should withdraw the RESPA rule to work in conjunction with the Federal Reserve Board and coordinate its activities. At the very least, HUD should withdraw the portion of the rule that unfairly exacerbates the unequal treatment of mortgage transactions. The all originator construct needs to remain the same, especially in light of the passage of the SAFE Act and the appropriate uniformity of treatment contained therein. As regulators, Congress, and industry focus on the issues at-hand, we must be cautious and ensure that the market has an opportunity to stabilize, accommodate changes, and provide the necessary assistance to borrowers facing foreclosure and in need of help from various refinancing programs administered by HUD.

(D) Home Valuation Code of Conduct ("HVCC")

On March 3, 2008, the Federal Housing Finance Agency ("FHFA") announced that it had entered into agreements with the NY Attorney General and Fannie Mae and Freddie Mac ("Agreements") regarding certain home appraisal requirements. Among other things, the Agreements required the GSEs to adopt a new policy regarding home appraisals, called the "Home Valuation Code of Conduct" ("HVCC").

The HVCC is a substantive rule that amounts to de facto regulation of the entire mortgage industry, and is in direct conflict with existing regulations, policies, and guidelines regarding home appraisal standards. Additionally, the rule was promulgated by the FHFA in violation of the Administrative Procedures Act. The HVCC resulted from an investigation by the NY Attorney General into appraisal fraud between a lending institution and an appraisal management company ("AMC"). However, the HVCC targets industry participants and practices which are entirely unrelated to the investigation that precipitated its enactment. It narrowly targets mortgage brokers and independent appraisers, and forces consumers to rely exclusively on lenders and their AMCs for home appraisals. Consequently, the HVCC places small-business mortgage professionals and independent appraisers at a significant and permanent competitive disadvantage, which will impede competition in the mortgage lending marketplace and inevitably produce higher costs and other negative consequences for consumers. The investigation that started with fraudulent appraisals between a Federal financial institution and Fannie Mae and Freddie Mac has created a new revenue stream for financial institutions and produced a competitive advantage over others in the marketplace; two results that directly harm consumers.

In February 2009, NAMB filed suit against FHFA to block implementation of the HVCC which will inhibit competition among mortgage originators and increase the cost of mortgages to consumers. NAMB's suit asserted that the HVCC constituted a "de facto" rulemaking that did not comply with the requirements of the Administrative Procedures Act (APA), which sets out the procedures a federal agency must follow when issuing a regulation.

In May 2008, the Office of the Comptroller of the Currency ("OCC") stated in a letter to the Director of Office of Federal Housing Enterprise Oversight ("OFHEO"), (now the FHFA) "The OCC has substantial concerns about the unintended adverse consequences of the Agreements and Code…for the cost of mortgage credit to consumers." OCC further stated, "In our opinion, this de facto regulation…will lead to the following unintended and adverse consequences." "We agree with points made in comment letters recently sent to the GSEs that the Agreements and the Code together constitute a 'rule' establishing binding norms of wide applicability, adopted contrary to the rulemaking requirements of the Administrative Procedures Act (APA)."[3]

In April 2008, a joint letter from the American Bankers Association ("ABA"); American Financial Services Association ("AFSA"); Consumer Bankers Association ("CBA"); Consumer Mortgage Coalition ("CMC"); Housing Policy Council, The Financial Services Roundtable; Independent Community Bankers of America ("ICBA"), Mortgage Bankers Association ("MBA") and Real Estate Services Providers Council, Inc. ("RESPRO") was sent to OFHEO asserting that "The Agreement Violates the Administrative Procedure Act". "The Agreement entered into by OFHEO is an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy. The fact that it takes the form of an 'agreement' does not change the need for the agency to conform to statutory requirements." "Because the adoption of the Agreement has grave procedural defects, is inconsistent with the interest of the housing market and other aspects of sound public policy, we urge

[3] Letter: May 27, 2008 from the Office of the Comptroller of the Currency to Director of Office of Federal Housing Enterprise Oversight.

OFHEO to withdraw its assent to the Agreement, to not permit the GSEs to implement the Agreement, and take steps to assure that this type of rulemaking by settlement does not occur in the future."[4]

NAMB has withdrawn its lawsuit against the FHFA, without prejudice. NAMB invoked this strategic maneuver to assess means by which it can refute the FHFA's claim that no court may review their decisions while the GSEs are in conservatorship. NAMB believes the FHFA's claim that there are no legal limits on the arbitrary and unilateral use of their conservatorship power is unprecedented and will prove detrimental to consumers.

NAMB strongly opposes FHFA's position that it does not need to comply with the APA and other laws. NAMB continues to assess various means to challenge FHFA's extraordinary claim. Those options include filing suit again with revised and expanded arguments directed at FHFA's new claim. NAMB believes the findings of this closed investigation by the NY Attorney General of a financial institution and an AMC should be made public and placed into the record by holding hearings on this investigation. Specifically, who had knowledge of the faulty appraisals from an AMC and who had knowledge of these facts before mortgages associated with those appraisals were packaged into securities and sold to investors on Wall Street.

Nevertheless, NAMB remains supportive of legislative efforts to provide for appraisal independence standards like the ones included in H.R. 1728. Unlike the HVCC, these appraisal standards have already been, and continue to be vetted through the legislative process, are the subject of open and public debate, and will ultimately need the approval of a majority of the members of Congress before they may take effect.

(E) *Imposition of Increased GSE Loan Fees*

In 2007, the Government Sponsored Enterprises ("GSEs") announced that they would be imposing adverse market fee delivery charges on all loans the companies purchase. These charges are purportedly based on the overall credit risk of a loan (*i.e.*, consumer credit score, property demographic, LTV, etc.). In August 2008, the FHFA doubled the adverse market fee on all loans purchased by Fannie Mae and Freddie Mac. At a time when our housing market is being hit hardest and consumers are experiencing a severe credit crunch, efforts should be made to drive down mortgage costs for consumers, not increase them.

With the GSEs under federal government conservatorship since last September, what we are essentially seeing is the federal government charging these exorbitant fees to consumers, which are costing consumers thousands of dollars. To date, the FHFA has not provided any reasonable justification for charging such fees to consumers, nor has the FHFA explained the wide range of fees being charged based on consumers' credit scores. Moreover, it remains unclear as to where all the money being collected is going, how it is being used, and what happens if a consumer does not pose the risk the FHFA presumes to exist.

Now, consumers who want to take advantage of lower interest rates and tax credits being offered to first time homebuyers, as well as current homeowners who are facing adjustable-rate mortgage resets or want to take advantage of the same low rates to refinance and decrease their monthly payments (and lessen the

[4] Letter: April 30, 2008 from the American Bankers Association; American Financial Services Association; Consumer Bankers Association; Consumer Mortgage Coalition; Housing Policy Council, The Financial Services Roundtable; Independent Community Bankers of America; Mortgage Bankers Association; and Real Estate Services Providers Council, Inc. to Office of Federal Housing Enterprise Oversight.

likelihood of default), will find it harder or even impossible to get a mortgage, while those who are able to get a mortgage will be hit with even higher rates and fees.

These policies and practices imposed on consumers by the GSEs are not what our mortgage market needs in these turbulent times, and they fly in the face of so many other efforts to help consumers and facilitate an economic recovery. Congress should explicitly call for the reduction of adverse market fees for a defined period of time from enactment and require the GSEs to open up their credit decision engines (automated underwriting systems) to determine whether these increased fees are justified by being based on actual credit risk issues or whether they are being imposed to recover revenue losses from operations.

IV. Title I – Residential Mortgage Loan Origination Standards

NAMB shares this Committee's concerns about responsible lending and, in particular, the need to implement uniform minimum standards applicable to all residential mortgage loan originations. We applaud the uniform approach taken in H.R. 1728 and offer suggestions contained herein.

(A) <u>Federal Duty of Care</u>

Since 2002, NAMB has consistently advocated for more stringent standards for all mortgage originators to protect consumers and curb abusive lending practices throughout industry. We feel strongly that a federal standard of care should be imposed by statute and must be applicable to all originators if it is to have the desired effect. We support the all originator approach taken in H.R. 1728 and we believe the value of such an approach lies in the uniformity of treatment of all competitors in the mortgage industry.

The acts of originating, funding, selling, servicing, and securitizing loans today may all be conducted separately and independently, or may be engaged in collectively under one corporate structure or through affiliated business arrangements. This is why we believe it is important for consumer protections to relate to the function, as opposed to the structure of any entity.

The federal standard of care should properly apply whenever an individual is acting as a loan originator under the definition in the SAFE Act. In the end, consumers deserve the same level of protection regardless of who they choose to work with when obtaining a mortgage loan.

The duty of care in H.R. 1728 requires mortgage originators to include their unique identifier provided by the National Mortgage Licensing System ("NMLS") on all loan documents. While we support the disclosure of originators' NMLS identifier to consumers and the inclusion of the identifier in the consumer's loan documents, we fear that requiring that the identifier be placed on *all* loan documents is unnecessarily onerous and likely to produce a tremendous number of unintentional and mistaken violations of H.R. 1728. NAMB believes that the requirement to include a mortgage originator's unique identifier on consumer loan documents should be clarified and limited to specific documents in the consumer's loan package so that it produces its desired effect and benefit consumers.

(B) <u>Complimentary & Non-Duplicative Disclosures</u>

NAMB believes that consumers who understand the mortgage process are better able to make informed decisions about loan products, features, and pricing options. We also believe that improved and mandatory disclosures will help expose the activities of unscrupulous mortgage originators who try to shield themselves from detection by keeping consumers uninformed.

We appreciate the inclusion of language in H.R. 1728 that directs the federal banking agencies, in conjunction with the Federal Trade Commission ("FTC") and the Department of Housing & Urban

Development ("HUD"), to ensure that required consumer disclosures are complementary and non-duplicative with other disclosures. However, we encourage this Committee to further strengthen the disclosure provision in H.R. 1728 by requiring the aforementioned agencies to jointly develop and prescribe a Standard Universal Residential Mortgage Loan Disclosure form and Good Faith Estimate ("GFE") that supersedes the current GFE and any other current disclosures that would be duplicative if provided in conjunction with the new form.

NAMB believes that a universal residential mortgage loan disclosure form is critical to enhancing consumer understanding of the mortgage process, the role of the mortgage originator in that process, and the features of any loan products being considered by the consumer. We also believe it is imperative that any disclosure be comprehensively consumer-tested and proven effective before being introduced into the marketplace. Finally, we feel a truly uniform and universal disclosure must contain the same information regarding consumer settlement costs regardless of the mortgage originator making the disclosure.

The Standard Universal Residential Mortgage Loan Disclosure form and GFE we are advocating for today must contain the critical information that is most important to consumers without adding superfluous information that is likely to confuse consumers or distract them from the essential elements of the form. The critical information that must be provided on such a form should include: (1) the loan amount, (2) whether the loan is fixed or adjustable-rate, (3) the loan term, (4) the estimated interest rate, (5) the estimated monthly payment (6) the rate lock period, (7) the existence of a balloon payment, (8) the existence of a prepayment penalty, (9) the total estimated settlement charges, and (10) the total estimated cash required at closing.

We urge this committee to further strengthen the consumer protections in H.R. 1728 by expanding the disclosure provision in Title I, Section 102 to require the joint agency development of a new and comprehensive mortgage disclosure form to be used in all residential mortgage transactions.

(C) Prohibition on Steering Incentives

NAMB supports the intent of the language contained in Section 103 which prohibits all mortgage originators from persuading consumers into products based solely on compensation (*i.e.,* steering). The anti-steering provision in H.R. 1728, if interpreted by the regulators correctly, should be an effective means of protecting consumers from being placed into loans solely for reasons of higher compensation without completely prohibiting consumer choice.

We appreciate in particular the all originator approach taken in this section of the bill as it contemplates that consumers must be protected from steering regardless of which loan origination channel they use to purchase a loan as steering can take place throughout the entire process of the loan. We believe that it is important to prohibit loan originators from being incentivized to push specific loan products based solely upon the compensation they are likely to receive. We also strongly believe that any anti-steering provision will only be effective if its reach does not limit or remove financing choices from borrowers. We are hopeful that consumers will not be harmed by any unintended consequences of the anti-steering provision.

An area of concern under Title I, Section 103 of H.R. 1728 states that mortgage originators are prohibited from steering consumers from a "qualified mortgage," as defined in Title II, Section 203 of H.R. 1728, to any loan that is not classified as a "qualified mortgage." Under that definition, any loan other than a 30-year fixed rate loan would not be classified as a "qualified mortgage", and as such, the "steering" provision could be interpreted to mean that a consumer who qualifies for a 30-year fixed rate loan is prohibited from choosing any other product option that is not deemed a "qualified mortgage," regardless of the consumer's goals, circumstances and most importantly, their choice.

We do not believe it is the intention to legislatively restrict consumer choice or direct qualified borrowers into particular loan products or programs that may or may not meet their individual financial needs or objectives. Therefore, we believe the prohibition on steering in Section 103 could be further clarified in order to help preserve and protect consumer choice with regard to loan product options for qualified borrowers.

We also believe that the discretionary regulatory authority of the federal banking agencies must be used cautiously when crafting rules to address troublesome and abusive mortgage terms and practices that may arise in the future so they do not unintentionally restrict the market and expose consumers to greater risk of being arbitrarily rejected for credit or restrict an informed consumer from being able to choose a loan product that fits his/her needs.

V. Title II – Minimum Standards for Mortgages

NAMB believes it is important for creditors and underwriters to make a reasonable assessment of a borrower's ability to repay a mortgage loan at the time such loan is consummated, and we are generally supportive of the ability to repay and net tangible benefit requirements in H.R. 1728. We also support the additional standards and requirements set forth in Title II, Section 206 that prohibit certain prepayment penalties and single-premium credit insurance, and require creditors who offer loan products with prepayment penalties to also offer consumers an option that does not include a prepayment penalty.

NAMB supports the overall intent of Section 206 (l) with regard to tenant protections in the event of foreclosure with the exception of subsection (1)(A) whereby it permits the tenant to occupy the premises "until the remaining term of the lease" without any reasonable limitation on the "remaining term". For example, a borrower (upon notice of intent to foreclose) could sign a lease for a protracted period of time that could effectively sabotage the foreclosure process. In such a case, prospective buyers would be discouraged from purchasing the foreclosed property.

NAMB supports the proposed provisions of Section 216 relating to legal assistance for foreclosure-related issues.

Strong objective parameters must be established when the regulators issue rules to implement this Title, because consumers cannot and will not be served by any standard that allows for a wide range of subjectivity on the part of creditors.

(A) Safe Harbor & Rebuttable Presumption

Under Title II, Section 203 of H.R. 1728, a "qualified mortgage" is defined as a loan that, among other things, has an annual-percentage rate ("APR") – for 1st liens – that does not exceed the Average Prime Offer Rate by 1.5 or more percentage points, *and* is a 30 year fixed rate loan. When read in conjunction with the anti-steering provision in Title I, Section 103, this definition poses a potentially significant problem for both consumers and mortgage originators. If a borrower qualifies for a loan that is deemed a "qualified mortgage" under this definition, then Title I, Section 103 would seem to prohibit that borrower from being able to choose another product that is not deemed to be a "qualified mortgage" (*i.e.*, essentially any variable-rate mortgage).

As a result, we believe that the word "and" at the end of Title II, Section 203(c)(2)(A)(iv) should be changed to "or," thus defining "qualified mortgage as any loan meeting the parameters set forth in Section 203(c)(A)(i – iv), or any 30 year fixed-rate loan. In the absence of such a change, everything other than a 30 year fixed-rate mortgage loan will be deemed to be "non-qualified."

(B) *<u>Creditor & Assignee Liability</u>*

Title II, Section 204 of H.R. 1728 significantly expands creditors' liability and enhances a number of consumer rights with regard to violations of this Act. This section imposes liability on assignees with regard to the ability to repay and net tangible benefit requirements of the Act. Although a safe harbor exists for "qualified mortgages," we are concerned about the effect that this assignee liability may have on the market's recovery. Because the threshold is so low – 1.5% – and captures many jumbo, FHA and GSE mortgages, it seems fair to presume that most investors will only buy "qualified mortgages" in order to take advantage of the safe harbor and limit their liability, thus further diminishing property values and shutting many qualified buyers out of the market.

Additionally, because of the expansive definition of the term "residential mortgage loan" in Title I of H.R. 1728, there is a significant increase in a creditor's exposure to liability for rescission under this legislation. Virtually every consumer credit transaction secured by residential real property is captured in the definition of a residential mortgage loan. NAMB is concerned about the effect on the affordability of consumer credit if TILA is expanded to allow non-owner occupiers to exercise a right of rescission against creditors. We believe the definition of residential mortgage loan in H.R. 1728 requires clarification to reduce the potential unintended consequences that could result from expanded creditor and assignee liability.

(C) *<u>Credit Risk Retention</u>*

Section 213 of Title II requires the federal banking agencies to promulgate regulations requiring creditors to retain an economic interest in a material portion – 5% – of the credit risk for loans the creditor transfers, sells, or conveys to a third party. The 5% credit risk retention only applies to loans other than qualified loans so it is somewhat limited in its application. We are supportive of the concept of credit risk retention by the creditor but have some concerns with 5% risk retention number. While the idea of creditors retaining a financial interest in the credit risk presented by a loan seems initially appealing, in practice such a requirement should weigh other alternatives that protect all investor participants and provide for some flexibility.

The federal banking agencies are in a position to create systemic risk rules that would accomplish these goals without hard-wiring risk retention rules in statute.

VI. Title III – High-Cost Mortgages

While NAMB is largely supportive of the provision in Title I and II of H.R. 1728, particularly the all-originator approach taken throughout the bill, we remain extremely concerned that specific provisions in Title III will further harm many consumers who are currently in the most need of available and affordable credit. Respectfully, NAMB supports significant changes to Title III or its removal in its entirety.

Last year, the Federal Reserve Board promulgated new rules amending Regulation Z, which implements both TILA and the Home Ownership and Equity Protection Act ("HOEPA"). These rules were designed to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices while preserving responsible lending and promoting sustainable homeownership.

NAMB strongly supports the Federal Reserve Board's 2008 TILA and HOEPA amendments. We believe they represent a clear victory for consumers and a definitive step toward increased professionalism and accountability in the mortgage lending industry. Moreover, we feel that these rules adequately address many of issues dealt with in Title III of H.R. 1728.

These Federal Reserve Board rules apply new consumer protections to a class of mortgages defined as "higher-priced mortgage loans." "Higher-priced mortgage loans" are specifically defined as any first-lien mortgages that have an annual percentage rate of 1.5 percentage points or more above the "average prime offer rate" index established by the Federal Reserve Board (or 3.5 percentage points above for subordinate-lien mortgages). This definition is designed to capture virtually all loans in the subprime market, but generally exclude loans originated in the prime market. The Federal Reserve Board will publish the "average prime offer rate," index based on a survey currently published by Freddie Mac.

The HOEPA Rules apply four specific consumer protections to the category of "higher-priced mortgage loans."

(1) Lenders are prohibited from making a loan without regard to the borrower's ability to repay the loan from income and assets other than the home's value.

(2) Creditors are required to verify the income and assets they rely upon to determine repayment ability.

(3) Prepayment penalties are banned if the loan payment can change in the first four years of the loan. For other higher-priced loans, prepayment penalty periods cannot extend beyond two years.

(4) Creditors are required to establish escrow accounts for property taxes and homeowner's insurance for all first-lien mortgage loans.

Even more important than the specific content of these rules is the fact that the new rules apply to all mortgage lenders, not just those supervised and examined by the Federal Reserve. In addition to offering broader protection for consumers, this uniform set of rules serves to level the playing field for industry participants and increase competition in the mortgage market, to the ultimate benefit of consumers.

NAMB strongly supports diligently reviewing and analyzing consumer protection efforts to ensure borrowers are being afforded the highest levels of protection. However, given the current state of our mortgage market, we feel it is imperative that the market be given an opportunity to adjust to the changes already effected by the Federal Reserve Board's TILA and HOEPA Rules, which are set to take effect October 1, 2009.

The Federal Reserve Board carefully considered information obtained from testimony, public hearings, consumer testing, and over 4,500 comment letters before promulgating its final rule. We believe the amendments to TILA and HOEPA are positive and are significant regulatory changes that will ultimately yield benefits to consumers and strengthen and stabilize the mortgage industry.

VII. Title VI – Appraisal Activities

Title VI of H.R. 1728 establishes certain property appraisal requirements designed to improve appraisal quality and promote appraiser independence. NAMB has long-supported policy initiatives that seek to ban coercion of appraisers, and NAMB is very supportive of the appraisal reforms contained in H.R. 1728. However, in light of the 2008 FHFA agreement with the New York Attorney General's Office, Fannie Mae and Freddie Mac, we believe H.R. 1728 needs to be amended to specifically address the numerous deficiencies that exist in the FHFA rule that is the product of this agreement – namely, the Home Valuation Code of Conduct ("HVCC").

The HVCC is a *de facto* rule promulgated by the FHFA and the New York Attorney General's Office, which attempts to regulate the entire residential mortgage lending and home appraisal industry nationwide. This rule is set to take effect May 1, 2009, and it overwhelmingly favors Appraisal Management Companies ("AMC") and lenders of which an investigation thereof caused the creation of the HVCC. Despite being the product of an investigation into appraisal fraud at a lending institution and an AMC, the HVCC specifically targets mortgage brokers and independent appraisers, and forces consumers to rely exclusively on lenders and their AMCs for home appraisals.

In direct contravention to the all-originator approach to regulation taken in H.R. 1728, the HVCC prohibits mortgage brokers from ordering appraisals, but imposes no similar restrictions on lenders, their employees, or their affiliates. This prohibition on broker-ordered appraisals means that mortgage brokers will no longer be able to submit complete loan application packages to lenders, which effectively precludes mortgage brokers from providing their customers with an efficient and cost-effective means of obtaining a mortgage. It also limits the portability of an appraisal thereby increasing the cost every time a consumer or broker works with a new lender.

NAMB believes that there should be increased standards for all mortgage originators when working with appraisers, and that no person or entity should be permitted to coerce or otherwise unduly influence an appraiser to provide a misstated valuation.

Appraisal independence is essential to protecting consumers from fraud and from unscrupulous actors in the real estate, home mortgage, and appraisal industries. To that end, NAMB strongly supports Title VI of H.R. 1728. At the same time, NAMB respectfully urges this Committee to amend the bill and direct the FHFA to either withdraw the HVCC or prohibit its implementation for 12 months in order to ensure that the rule complies with the Administrative Procedures Act process.

In addition, as stated earlier, the Board of Governors of the Federal Reserve System (FRB) on July 14, 2008, amended Regulation Z of the Truth in Lending Act (TILA) adopted under the Home Ownership and Equity Protection Act (HOEPA) which prohibits all mortgage brokers, mortgage lenders and their affiliates "from coercing, influencing or otherwise encouraging appraisers to misstate or misrepresent the value of a consumer's principal dwelling." The implementation of this Rule, which NAMB fully supports, will take place this October. This Rule, which went through the Administrative Procedures Act and the Regulatory Flexibility Act, provides uniformity and protection to consumers regardless of where they get their appraisal.

NAMB would also like to take this opportunity to commend and note our appreciation for the efforts of Representatives Kanjorski and Biggert in continuing to work towards reforming and strengthening the oversight of our appraisal system. We look forward to continuing to work closely with members of this Committee, as well as others in the House and Senate, to improve all aspects of our residential mortgage and home valuation processes.

VIII. Conclusion

NAMB greatly appreciates this opportunity to discuss H.R. 1728, the Mortgage Reform & Anti-Predatory Lending Act. Everyday our members live and go to work in their communities alongside consumers who continually express their desire to simply obtain a mortgage they can afford and will be able to keep.

We strongly believe that consumers need and deserve equal protection no matter where or with whom they choose to get their mortgage. Therefore, NAMB is extremely supportive of many of the overall concepts embodied in H.R. 1728 (with exception to Title III).

NAMB looks forward to continuing to work with this Committee to enhance consumer protection and elevate the standards and professionalism of our industry, while maintaining the availability of affordable credit and preserving a competitive environment for small business owners across the country.

Thank you again for this opportunity to appear before the Committee today and discuss this critical piece of legislation.