# SUMMARY AND ANALYSIS
# OF
# KEY PROVISIONS
# OF
# H.R. 4173
# WALL STREET REFORM
# AND CONSUMER PROTECTION
# ACT OF 2009

**Identification and Regulation of Systemically Risky Firms (Title I)**

Summary of the Provision

The Financial Services Oversight Council (chaired by the Secretary of the Treasury) will consult with the Federal Reserve and publicly identify a list of systemically significant financial firms that will be subject to heightened prudential standards. The purpose of the heightened standards for these "too big to fail" (TBTF) firms is to mitigate the systemic risk those firms pose to the economy.

Concerns with the Provision

- The Democrats' premise – that the same regulators that presided over the implosion of the financial system are capable of identifying and containing systemic risk – is dangerously misguided.

- As a practical matter, firms designated by the government for heightened regulatory scrutiny will be perceived by the market as operating under an implied government guarantee that they will not be allowed to fail in a disorderly way, thereby reducing their borrowing costs and affording them significant competitive advantages.

- The result will be a replay of the GSE debacle, where a market perception of government backing for Fannie Mae and Freddie Mac allowed those firms to raise money cheaply in the capital markets, become highly over-leveraged, and operate free of meaningful market discipline, with disastrous consequences for taxpayers.

- As noted in a recent Wall Street Journal editorial: "The very existence of a systemic risk regulator, or council of regulators, will assist the largest and riskiest firms by creating an illusion of stability in a world made less stable by the implicit guarantee that this regulator would convey. It would be an accident waiting to happen, and one made inevitable by the institution created to prevent it." (12/1/09)

- Former Federal Reserve Chairman Paul Volcker, who now serves as the Chairman of the President's Economic Recovery Advisory Board, raised fundamental concerns with this approach in testimony before the Financial Services Committee: "I don't know what systemically important institutions are. But I'm sure that if you picked them out, people will assume they're going to be saved, that they're too big to fail."

Republican Response

- House Republicans have uniformly rejected the notion that any financial firm is too big to fail. If the government establishes a special class of firms, it is in essence picking winners and losers and creating incentives for firms to get so big and so risky that the market will perceive them as "too big to fail."

- The Republican Solution calls for an end of TBTF by creating a new chapter of the bankruptcy code for non-bank financial firms that find themselves in a difficult position. This orderly resolution process takes place without the use of taxpayer dollars.

- Because creditors and counterparties are made aware in advance that the government will not step in with an ad hoc bailout, creditors and counterparties will be forced to realize the inherent risks of dealing with a large firm and will internalize that cost. Market discipline will be restored.

**Enhanced Resolution Authority and Resolution Fund (Title I)**

Summary of the Provision

H.R. 4173 attempts to solve the problem of "too big to fail banks" by substituting intrusive and heavy-handed government regulation for market incentives, and creating a bailout fund that could be used to provide the equivalent of deposit insurance to the creditors of large non-bank financial institutions. The reasoning underlying this approach is that if these creditors are protected against loss, they will not flee the financial system in a time of crisis, giving government regulators and creditors the time to resolve large, failing institutions. In exchange, large, complex financial institutions would be subjected to enhanced supervision and heightened supervisory requirements that the Democrats believe would make failure less likely, and they would be taxed to create a bailout fund.

H.R. 4173 creates a $150 billion bailout fund to be capitalized through assessments levied against the financial industry. The bill confers a bailout authority which permits the FDIC to make loans to a failing firm; purchase the assets of a failing firm; guarantee the obligations of a failing firm to its creditors; take a security interest in the assets of the failing firm; or sell or transfer assets that the FDIC has acquired from the failing firm. Over the past year, actions similar to these were taken by the Federal Reserve, Treasury, and the FDIC to bail out the creditors of firms such as Fannie Mae and Freddie Mac, Bear Stearns, Citigroup, Bank of America, and AIG.

Concerns with the Provision

- H.R. 4173 creates a permanent TARP that can be used by government officials to bail out the creditors of a failing firm. By protecting these creditors from loss, H.R. 4173 is both inefficient and unfair.

- The bill is inefficient because it blunts market discipline through government guarantees which protect creditors against loss. Knowing that they might be protected against loss if government bureaucrats decide that doing so is necessary to avert a systemic crisis, creditors have less incentive to assess risk and are thereby encouraged to allocate capital to firms that the market assumes will be bailed out in a crisis rather than firms that are efficient and successful.

- The bill transfers wealth from prudent firms that effectively managed risk and avoided exposure to poorly-managed firms to those that made poor decisions and extended credit to poorly run firms that gambled on asset bubbles and exotic financial products.

Republican Response

- Rather than continuing the misguided bailout policies that have rewarded failure and caused Americans to lose confidence in both the political and financial systems, House Republicans have offered an enhanced bankruptcy alternative that would control moral hazard by placing the risk of failure squarely on a the creditors of a failed firm.

- Under the Republican alternative, government commits to bankruptcy rather than bailout before a large firm becomes insolvent. As a result, creditors become more careful about extending credit to large firms, knowing that they will bear the costs of failure and limiting their exposure to these firms. Large firms become smaller, given that the credit they obtain is now priced according to their risk of failure, rather than an implicit government guarantee backing a firm that is "too big to fail."

- Failure — when it does happen — will be more easily contained, because the large firm is smaller than it would otherwise have been, and less destabilizing, because individual creditors will have smaller exposures to large firms.

**Powers of the Federal Reserve (Title I)**

Summary of the Provision

H.R. 4173 rewards the Federal Reserve's irresponsible credit policies and its failure to effectively conduct regulatory supervision by drastically expanding its oversight powers. For its mistakes, the Fed has had its powers expanded in at least 19 different ways, including discretion to require a "systemically significant" firm to divest or liquidate pieces of the company, and push firms into a dissolution process.

Concerns with the Provision

- The Fed was unable to or chose not to take actions to reduce the complexity and risk profiles of the "too big to fail" institutions that it already regulates.

- The Fed failed to detect the systemic risks that nearly brought down our markets. Why reward them with new power and a continued responsibility to monitor systemic risk?

Republican Response

- The Democrat proposal curtails Fed powers in one important area with a policy lifted from the Republican regulatory reform legislation (H.R. 3310): Constraining the Fed's unfettered power to intervene in markets provided under the emergency authorities of Section 13(3) of the Federal Reserve Act. Based on the Republican solution, the legislation would require the Treasury Secretary to sign off on any use of Section 13(3) authorities and provide Congress the ability to pass a joint resolution of disapproval to terminate the assistance. Additionally, these powers will no longer be available to the Fed to assist a specific institution (e.g., AIG).

- The Republican alternative did, however, go one step further than H.R. 4173 in establishing accountability: it would require all expenditures made under Section 13(3) to be placed on Treasury's balance sheet. Doing so would ensure that risks to taxpayers from the Fed's various liquidity facilities and credit programs are fully disclosed and accounted for in the Federal budget. The Democrat proposal allows the Federal Reserve to continue to mask risks to taxpayer funds.

**Federal Reserve Transparency (Title I)**

Summary of the Provision

Over Chairman Frank's objections, the Financial Services Committee approved an amendment offered by Rep. Ron Paul to allow the Government Accountability Office (GAO) to conduct an audit of all activities of the Federal Reserve Board and regional Reserve Banks. Such an audit would take place within twelve months of the date of enactment and its results be presented to Congress. The amendment was based on legislation that Dr. Paul introduced earlier in this Congress that now has over 300 cosponsors in the House.

To ensure necessary independence of monetary policy deliberations, the audit will not include unreleased transcripts or minutes of meetings of the Board of Governors or the Federal Open Market Committee. Further, records related to market action shall not be available until 180 days after such actions.

Republican Response

- The Fed has radically expanded its balance sheet to approximately $2 trillion. In the process, the Fed has chosen to aid some institutions, and not aid others, confusing the market. This lack of certainty and transparency does a disservice to the economy and the taxpayers.

- The Federal Reserve's conduct of monetary policy has significant effects on the economy and the lives of the American people. To assume that the monetary policy objectives are always put into place as effectively as possible is to assume that the Fed is perfect, which it is not.

- The black box within which Fed policies are implemented assumes that such a process would not benefit from outside scrutiny and that the Fed's operations cannot be improved. There always is room for improvement, and for Congress not to obtain the sort of information required by the text reported from Committee means that Congress is abdicating its responsibility.

- Greater transparency – applied appropriately in a way that maintains Fed monetary policy independence – would reduce uncertainty that harms financial markets and would provide small businesses and individuals the ability to make more-informed decisions.

- Subjecting Federal Reserve decisions and actions to debate invites valuable input and feedback from the public. Such feedback can only improve policies and outcomes.

- The Fed needs to be held accountable for any mistakes it has made in the past and any it may be making now. To do that, information needs to be available for Congress to carry out its oversight role.

- More than a decade ago, some objected to suggestions that the Fed announce the results of the Federal Open Market Committee decision and release minutes of FOMC meetings. There was no market disruption when those transparency initiatives were put in place, and there won't be when these are, either.

**Credit Risk Retention (Title I)**

Summary of the Provision

Credit risk retention relates to the concept of requiring lenders to retain a percentage of the risk of a loan they originate, including but not limited to mortgages. While there is general consensus that requiring lenders to retain more "skin in the game" is a worthy concept, there remains general *confusion* as to how the execution of that concept will work in practice, particularly for smaller non-bank lenders that do not enjoy the same reliable sources of funding as depository institutions.

H.R. 4173 includes a credit risk retention provision that requires lenders to retain a portion of the credit risk on all loan sale transactions regardless of whether the loan purchaser intends to permanently hold the loan in its own portfolio or resell it into the secondary market. It also requires entities that acquire loans and issue asset-backed securities to retain credit risk on loans they securitize.

Concerns with the Provision

- If the requirements are made applicable to all creditors for residential loans, small community bankers and independent mortgage bankers may be forced out of business because they will not have access to the required capital to meet the credit reserve requirements.

- Funds available for home financing could be reduced by billions of dollars due to the credit risk retention requirement which could significantly constrict the availability of credit and increase its cost to consumers.

- Federally regulated and examined insured depository institutions already have significant risk retention – and the capital to back that risk. Loans sold by insured depositories into the secondary market frequently include recourse agreements, so that if there are underwriting deficiencies or other errors or omissions, the depository institution can be forced to buy the loan back.

Republican Response

During Financial Services Committee consideration of H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, which passed the House on May 7, Republicans accepted a provision requiring a five percent risk retention by creditors for "non qualified mortgages," which are considered to present higher risk to consumers or may invite steering such as those allowing deferral of principal or interest, negative amortization, balloon payments, and higher interest rates. In addition, the provision in H.R. 1728 provides significant discretion on the part of the federal banking agencies in how best to apply the risk retention requirements to securitizers of certain residential mortgages and in determining appropriate exceptions to the retention requirements.

**Corporate and Financial Institution Compensation Fairness Act (Title II)**

Summary of the Provision

Title II of H.R. 4173 mirrors H.R. 3269, "The Corporate and Financial Institution Compensation Fairness Act of 2009," which passed the House on July 31, 2009. Title II requires the overwhelming majority of U.S. financial institutions (including but not limited to banks, credit unions, broker-dealers, and investment advisers with more than $1 billion in assets) to disclose incentive-based compensation arrangements, and authorizes Federal regulators to control and dictate all incentive-based compensation agreements for all employees of those firms.

Title II mandates that all publicly-traded companies registered with the U.S. Securities and Exchange Commission (SEC) allow shareholders to cast a non-binding advisory vote on executive compensation – also known as shareholder "say on pay." The legislation further mandates a separate, non-binding shareholder vote on all "golden parachute" compensation arrangements.

Finally, the legislation directs all public companies to have compensation committees comprised of independent directors and requires the SEC to issue independence standards for compensation consultants to the board of directors.

Concerns with the Provision

- Title II is a major step toward government imposing wage controls on a large segment of American workers and enterprises. It gives federal financial regulators the authority to determine wages for all employees – not just officers – of any financial institution. This means the rank and file employees of any firm the regulators deem to be a "financial institution" could all have their compensation determined by unelected Washington bureaucrats.

- The legislation would empower government bureaucrats to sit in judgment of the "incentive-based" compensation of every employee at thousands of financial institutions across the country.

- Mandating shareholder votes on core operational issues such as compensation undermines a board's ability to exercise independent judgment on behalf of all of the corporation's shareholders.

- The CBO has no idea what this legislation will cost the American taxpayer based on all of the power that it gives to unelected regulators to influence the private sector.

Republican Response

- The Republican substitute would replace annual shareholder "say on pay" vote with a triennial vote on compensation for public companies, which is a forward-looking vote that strengthens shareholder rights.

- Additionally, Republicans would allow shareholders to opt out of the "say on pay" regime, provide for state laws to preempt the bill regarding independent compensation committees, and strike the provision that entrusts unelected bureaucrats with the authority to dictate compensation arrangements.

## Derivatives (Title III)

Summary of the Provision

H.R. 4173 creates a new regulatory structure for the over-the-counter (OTC) derivatives market. Under the bill, all standardized derivatives transactions between dealers and "major swap participants" have to be centrally cleared and traded on an exchange or electronic platform. The CFTC and SEC would determine which derivatives transactions are standardized and, thus, required to be cleared and exchange traded. The bill also mandates capital and margin requirements for market participants, imposes business conduct standards, establishes derivatives position limits, and creates a multitude of new regulatory requirements.

Concerns with the Provision

- Derivatives play a vital role in the U.S. capital markets and economy. Businesses large and small use derivative products to hedge their business risks and insulate themselves from market and price uncertainty.

- The bill empowers the federal government to create a complex and sweeping new regulatory regime to govern a sector of the marketplace that has functioned well and helped most American companies weather the financial crisis.

- This new regulatory structure relies on inefficient joint rulemaking by the SEC and CFTC that will ultimately result in increased marketplace uncertainty.

- The proposal contains overly broad definitions, new capital and margin requirements, and broad authority for regulators to determine which transactions are standardized and subject to mandatory clearing and exchange trading.

- These unnecessary government burdens could impair the usefulness of derivatives as an innovative risk mitigation tool, thereby increasing the risk exposure of the many market participants that have come to depend on them.

- Moreover, CBO estimated that implementing the provisions of this bill would cost $872 million over the 2010-2014 period.

Republican Response

- Republicans believe that a targeted approach addressing actual problems – rather than regulatory overreach – is the more sensible approach to derivatives reform.

- Republicans would require all derivatives trades to be reported to a trade repository that would provide valuable transparency to the entire derivatives market and give regulators the ability to analyze appropriate data for their purposes, as well as provide aggregated data to the broader markets.

- Republicans would further require the regulators to review the data and regularly report back to Congress on whether there are entities that should be more heavily regulated due to their activities in the derivatives markets.

- Republicans would not create broad requirements for mandatory clearing, but would codify clearing commitments that the private sector has already implemented, working responsibly and cooperatively with the appropriate regulators, to engage in ever greater amounts of centralized clearing for derivatives over time.

**Consumer Financial Protection Agency (Title IV)**

Summary of the Provision

H.R. 4173 proposes to create a new bureaucracy to oversee consumer protection in the financial services sector. The Consumer Financial Protection Agency (CFPA) would be one of the largest delegations of authority to a single unelected bureaucrat in our nation's history. The Director of the CFPA would have the authority to promulgate rules without even the requirement to consult with the relevant federal banking regulators.

An amendment by Rep. Waters adopted in Committee would ensure ACORN is eligible to serve on the Oversight Board of the CFPA.

Concerns with the Provision

- As FDIC Chairman Sheila Bair and others have pointed out, this bifurcation of prudential supervision and consumer protection is dangerous and unworkable.

- According to a U.S. Chamber of Commerce study, creation of a CFPA would "likely reduce…credit to small businesses. This induced credit squeeze comes at a time when it is likely that small business credit will be already highly restricted…".

- The jurisdictional reach of the CFPA is broad and almost limitless depending on the definition of "financial activity", a term that can be revised at will by the Director. Retail stores offering in-house credit are covered. Tax preparers are covered. Jewelry and art appraisers are covered.

Republican Response

- Republicans believe that the current regulatory structure has all the necessary tools to protect consumers. What is required is better communication and coordination between agencies, a clear mandate to protect consumers and better consumer disclosure.

- The Republican solution would empower an existing inter-agency group, the Federal Financial Institutions Examination Council, to harmonize and improve the respective consumer protection rules of its members. Disclosures to consumers about the terms of their bank products would be reviewed by the Council on a regular basis using a cost-benefit analysis. Consumer testing of new disclosures would be required.

**Credit Rating Agencies (Title V- Subtitle B)**

Summary of the Provision

H.R. 4173 subjects credit rating agencies, also referred to as Nationally Recognized Statistical Ratings Organizations (NRSROs), to enhanced regulatory scrutiny by the SEC to promote greater transparency and accountability. The bill also addresses concerns about the integrity and reliability of the methodologies used by NRSROs when issuing credit ratings – which are assessments of the risk that a specific debt instrument will default.

Further, the legislation removes references to credit ratings from Federal statutes within the jurisdiction of the Financial Services Committee, and directs the Federal financial regulatory agencies within the Committee's jurisdiction to remove references to ratings from Federal regulations – this would effectively remove the government "Good Housekeeping" seal of approval from credit ratings, increase competition among NRSROs, and lessen the reliance on ratings by investors, promoting the kind of due diligence and market discipline that was sorely lacking during the run-up to the financial crisis.

Concerns with the Provision

- While the legislation passed the Committee on a bi-partisan basis, Republicans have significant concerns regarding the inclusion of an amendment offered by Representative Kilroy (D-OH) during mark-up that would create a new standard of liability for NRSROs by repealing SEC Rule 436(g), which currently exempts NRSROs from liability under sections 7 and 11 of the Securities Act of 1933.

- By repealing this exemption, the legislation would subject NRSROs to unlimited potential civil litigation. Additionally, any inclusion of an amendment offered and withdrawn during mark-up by Representative Sherman, which would impose upon NRSROs a "duty of care" to investors for debt instruments that they rate, would be problematic.

- The Sherman amendment's imposition of a new and undefined "duty of care" would have a chilling effect on the ratings industry to the detriment of investors. The amendment also would not provide NRSROs with any notice as to the number of parties that may make a claim against them. This proposal has the potential to expose NRSROs to unknown civil liability and a virtually unlimited number of claims. It will also serve as a barrier to entry for new firms, thereby further entrenching the rating agency oligopoly that has not served investors well.

Republican Response

- The recent global financial crisis exposed serious deficiencies in the performance of NRSROs, and reform of the industry is needed. However, reform should not be treated as an opportunity to create new, burdensome, and costly liability standards that result in a windfall for the trial bar while doing little to benefit investors.

- Investors must be incentivized to perform their own due diligence and risk assessments rather than placing blind faith in the ratings assigned by the NRSROs.

- Reforms should reduce or eliminate barriers to entry by new market participants, provide the SEC with the regulatory authority it requires to effectively examine and discipline NRSROs, require rating agencies to disclose all relevant information used to create the rating, and ensure that the Federal government does not place a stamp of approval on the rating agencies' work product that undermines market discipline.

**Investor Protection Act (Title V)**

Summary of the Provision

H.R. 4173 gives the Securities and Exchange Commission (SEC) new enforcement, market oversight and administrative powers, and the ability to offer bounty money to whistleblowers, as well as the power to ban securities arbitration agreements, while doubling the SEC's budget over five years.

The bill amends the Sarbanes-Oxley Act of 2002 (SOX) for the first time since the law's enactment by giving the Public Company Accounting Oversight Board authority over all auditors of broker-dealers and the ability to share information with its foreign counterparts; allows the SEC to issue shareholder proxy access rules.

Further, the bill imposes a fiduciary duty on all investment professionals, and makes significant changes to the Securities Investor Protection Act.

Concerns with the Provision

- The bill rewards the SEC's failures by doubling its budget over the next five years, but does nothing to address the agency's internal deficiencies and structural weaknesses exposed by the Madoff scandal and the collapse of two SEC-regulated investment banks, Bear Stearns and Lehman Brothers.

- The bill creates a one-size-fits-all fiduciary standard of care for investment professionals that may reduce investor choices and increase investor costs.

- The bill benefit trial lawyers by allowing the SEC to eliminate securities arbitration agreements, and it interferes with the States' ability to enact laws to oversee corporations.

Republican Response

- Republicans would not eliminate mandatory arbitration agreements – an effective dispute resolution mechanism for investors. Eliminating it only provides a windfall to the trial bar.

- Rather than create new SEC divisions, the agency must reform its outdated, inefficient and siloed structure by eliminating the office that missed the Madoff Ponzi Scheme and restructuring its inspection operations. The SEC should not receive massive budget increases until it demonstrates real reform and improved investor protection.

- Republicans would allow the SEC to focus on its core capital formation, market oversight and investor protection missions and allow the agency to contract with private parties to improve the collection of delinquent judgments.

- Republicans would provide the SEC with enhanced enforcement authorities which promote investor protection, increase civil money penalties in government enforcement actions, maximize restitution to victims of fraud, and improve surveillance of bad actors who exploit gaps in the current regulatory regime.

- Amendments to Sarbanes-Oxley should not occur until after the U.S. Supreme Court decides a challenge to the law's constitutionality early next year.

## Federal Insurance Office (Title VI)

Summary of the Provision

H.R. 4173 establishes a "Federal Insurance Office" ("Office") within the Treasury Department to advise the Secretary on major domestic and international insurance issues. The scope of the new Officie's authority would include all lines of insurance except health insurance. The director would be a career position in the Senior Executive Service appointed by the Treasury Secretary.

The Office would have the authority to collect and request insurance industry data, identify any issues or gaps in insurance regulation that could contribute to a systemic crisis, and recommend insurance companies or affiliates for "heightened regulation" if they pose systemic risks. The Office would be authorized but not required to exclude smaller insurers from data demands on a case-by-case basis, and it would have to comply with cost-burden analysis and public comment period requirements under the Paperwork Reduction Act.

The Office would also coordinate federal efforts and develop U.S. policy on prudential aspects of international insurance matters. Treasury and the U.S. Trade Representative (USTR) would be jointly authorized to negotiate and enter into a covered agreement. The definition of "covered agreement" would encompass written agreements providing for the recognition of prudential insurance measures that provide consumers with protections substantially equivalent to state regulations. FIO and USTR would be required to consult with Congress, and any such agreement would not take effect for 90 days.

There would be significant limitations on the authority of the Office to preempt state insurance measures. The Office would only be able to preempt state insurance laws and regulations that are inconsistent with a covered agreement *and* result in discriminatory treatment of a non-U.S. insurer or reinsurer subject to such an agreement. H.R. 2609 also includes a savings provision that would explicitly reaffirm state supervisory and regulatory authority over the business of insurance.

Republican Response

- This legislation represents an interim step forward in the long-running debate over insurance regulatory modernization. House Republicans (and Democrats) have diverse and conflicting views on the merits of state versus federal regulation of insurance. Some Republicans favor moving directly to an Optional Federal Charter (OFC) to provide more uniform and efficient insurance regulation. Other Republicans are opposed to an OFC approach because they believe it would undermine the current state-based system that provides strong solvency and consumer protections.

- Establishing an Office at the national level to enhance the federal government's insurance expertise and coordinate U.S. policy on international insurance matters would address two priorities on which there is a widespread consensus for action.

**Mortgage Reform and Anti-Predatory Lending (To Be Self-Executed)**

Summary of the Provision

The provisions of H.R. 1728, the Mortgage Reform and Anti Predatory Lending Act, which passed the House on May 7, are expected to be incorporated into H.R. 4173 through a self-executing rule. However, the language will exclude provisions to: instruct HUD and the Federal Reserve to work together on regulations and model disclosure forms that provide borrowers with compatible disclosures at the time of mortgage application and at the time of closing; require five percent risk retention for "non-qualified" mortgages; and provide tenant protections which have been enacted in separate legislation since House passage of H.R. 1728.

According to the Majority, the purpose of the bill is to limit predatory lending practices and restrict lenders from making loans available to consumers who cannot afford them.

Concerns with the Provision

- The bill will impose legal liability on securitizers for loans that violate "ability to pay" and "net tangible benefit" standards. Thus, those who purchased loans that didn't meet these standards-not the loan originators-would be liable for rescission of the mortgage contract. While these provisions are well intended, some Members have raised concerns that applying liability to mortgage purchasers could add further turmoil to the already devastated secondary mortgage market.

- The bill will be a boon to trial attorneys, now able to sue for penalties against any owner of a securitized mortgage that was originally sold in way that violates the bill.

- The bill complicates the implementation of new Federal Reserve regulations that went into effect in October 2009. The Fed regulations focus on underwriting standards and are designed to eliminate the lax mortgage lending practices that set the housing crisis in motion. Even Financial Services Committee Chairman Barney Frank acknowledged that the Fed adopted these new regulations "so that the predatory and deceptive lending practices that led to the subprime crisis will be prohibited."

- The bill limits consumer access to mortgages and raises the costs of home credit in the future. For instance, the legislation narrowly defines "qualified mortgages," which are exempt from liability. The definition steers all mortgage originators towards offering only 30 year fixed rate mortgages to avoid future legal action. By limiting the types of mortgages available now, the legislation could severely hurt consumers who can obtain better rates through other products when the housing market eventually resets.

Republican Response

- Republicans believe that the provisions of H.R. 1728 continue the trend by the Democrats of implementing untested and ill-defined mandates on consumers and businesses. The provisions are overly prescriptive and restrictive and will likely cause further damage to a fragile mortgage market in need of greater certainty.

- Many Republicans supported H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, which passed in the 110th Congress on the ground that it struck the right balance by protecting consumers from unscrupulous originators without constricting the ability of the secondary market to fund suitable loan products for credit-worthy borrowers or increasing the cost of mortgage credit.