

4-23-09, Bachus Statement During Mortgage Reform Hearing

April 23, 2009

WASHINGTON - Congressman Spencer Bachus (R-AL), the top Financial Services Committee Republican, gave the following statement during a full committee hearing today on proposed mortgage reform legislation:

Mr. Chairman, thank you for calling today's hearing. The subject of today's hearing is H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act. Before I go in detail about my specific concerns with H.R. 1728 I would like to discuss how the bill before us differs from H.R. 3915, a comprehensive, bi-partisan mortgage reform bill which I supported in the 110th Congress.

The goal of mortgage origination legislation is to protect consumers from predatory loans without constricting the ability of the lending industry to provide appropriate loan products to worthy borrowers or increasing the cost of mortgage credit for millions of Americans. H.R. 3915 achieved this goal by establishing a clear standard for mortgages which recognized loans with lower rates require less regulatory intervention than those with higher rates. Also in that bill we put in place an ability to repay standard for all loans and mandated income verification for higher cost loans. We developed a qualified safe harbor mortgage standard to limit costly law suits and to ensure that the mortgage market would continue to offer worthy borrowers a range of appropriate loan products. Unfortunately, H.R. 1728 fails to meet benchmarks for a successful mortgage origination law. Instead, H.R. 1728 creates new standards which are narrow, vague and will ultimately restrict access to and raise the cost of mortgages for years to come.

In my opinion H.R. 1728 effectively relegates any home loan which is not a 30-year fixed rate mortgage into the category of a subprime mortgage. Even loans backed by the Federal Housing Administration, Veterans Affairs Administration and Rural Housing Service would be considered subprime and assumed to be predatory if they do not conform to the narrow definition of a 'qualified mortgage' set forth in H.R. 1728. The narrow definition of a 'qualified mortgage' also limits safe harbor protections from litigation for lenders and securitizers and expands assignee liability. Lenders and secondary market participants will be discouraged from making non-'qualified' loans for fear of being sued. The mortgage market will ultimately pass the price of litigation to consumers.

There are many portions of this bill which set forth untested standards. Most notable is the credit risk retention requirement. Along with many commentators I agree that the 'originate to distribute' model led to tremendous excesses. Originators need to have 'skin in the game.' However, the requirement to retain a portion of an origination portfolio will impact the capital requirements of financial institutions and may limit the successful functioning of the secondary mortgage market. We do not want H.R. 1728 to create an unworkable standard like last year's Hope for

Homeowners program. I urge my colleagues to carefully deliberate this issue and gauge the impact this provision will have on all the relevant stakeholders before we move forward.

Other aspects of H.R. 1728 that are deeply troubling include the authorization of \$140 million for "legal assistance" grant funds to legal organizations. Key taxpayer protection provisions restricting eligible uses for legal assistance funds included in the Housing and Economic Recovery Act of 2008 have been stripped out of H.R. 1728. Instead this bill uses taxpayer funds to finance civil lawsuits from home owners and tenants. Groups engaged in federal election fraud like ACORN will be eligible for receiving legal assistance grants. However, the bill has no requirement that HUD-approved housing counseling organizations provide any oversight of the legal assistance grant program.

Finally, as introduced H.R. 1728 permanently alters contract law by requiring participation in the Section 8 program for all new owners of foreclosed properties with Section 8 tenants. By discouraging purchases this provision will disrupt the market for multi-family properties when foreclosure inventories are mounting. This provision may also discourage participation in the Section 8 program overall.

Mr. Chairman, as we move forward with debate I would like to remind the Committee of laws and regulations already in effect which address problems we agree plagued mortgage origination. In 2007 I saw the need for origination reform and I introduced legislation to create a national licensing and registration database for all mortgage originators which became law as a part of the Housing and Economic Recovery Act of 2008. The creation of a national licensing and registration system brings greater accountability and professionalism for mortgage originators. Fifteen states have already adopted this standard, and several dozen more are currently considering legislation. Last July the Federal Reserve issued regulations under the Home Ownership Equity Protection Act (HOEPA), which implemented many of the provisions in the predatory lending legislation I supported last Congress. The Fed rules address predatory practices and products; strengthen underwriting standards, address prepayment penalties and escrowing of taxes and insurance. It is important to let these rules work before we begin to layer restrictions on all but the most traditional mortgages.

Mr. Chairman, this is the first hearing focused on the legislation. Even though several of the provisions lack details and have not been fully vetted by all relevant stake holders, the Committee will mark up the legislation early next week. The legislation constitutes significant changes to our financial markets. We must fully consider all the ramifications of this bill and its impact on both the mortgage market and the greater economic recovery before voting on a finished product.

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