Testimony of
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Before

Subcommittee on Financial Institutions and Consumer Credit
U.S. House of Representatives
Committee on Financial Services

"Lending Reform: A Comprehensive Review of the American Mortgage System"

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Mr. Chairman, Ranking Member Hensarling, Members of the Subcommittee, thank you for the opportunity to appear here today. I am Don Lampe, a partner in the Charlotte, North Carolina office of Womble Carlyle Sandridge & Rice, PLLC. I have been involved on behalf of industry trade organizations, mortgage lenders and others, either as a legal consultant or registered lobbyist, in the enactment of state and local mortgage lending laws and regulations over the past ten years, including high-cost home mortgage loan laws and other subprime-related legislation, in Georgia, Kentucky, Tennessee, Oklahoma, New Mexico, Ohio, Rhode Island, Minnesota, North Carolina and Maryland. Because the legislation that the Subcommittee is reconsidering today, i.e., H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, is based on residential mortgage lending laws from various states, I hope to be able to

respond to the Committee's questions regarding our experiences in with similar state laws. In any event, my testimony today will focus on reform of mortgage loan origination practices, while others here have or will speak on other important issues such as mortgage securitization.

Action v. Inaction

Our elected representatives, including many if not all members of this Subcommittee, are hearing from constituents who are facing the devastating loss in foreclosure of their most important asset, the dwelling places of their families, their homes. There is a consensus that the crisis today resulted from an overabundance of consumer mortgage loans being made to borrowers who didn't understand them and ultimately were not able to pay them back. Too many borrowers obtained subprime loans or Alt-A loans that contained built-in risky features such as 100% loan-to-value, low initial teaser rates followed by significant payment increases, prohibitive prepayment penalties and negative amortization. In too many instances, these unfortunate borrowers were put into home loans by mortgage "salesmen," without regard to income or assets of the borrower or basic verifications. This troubles all of us today, and our families, friends and communities. So, any assertion that Congress should not act to reform regulation of consumer mortgage lending is untenable. But then, what should Congress do to protect consumers now and prevent this crisis from ever occurring again?

It would be easy for Congress to consider simply banning "subprime" mortgage loans. Perhaps H.R. 3915 already would do this or should be amended thusly. In a sense, this occurred already, with the enactment of the Home Ownership and Equity Protection Act of 1994 ("HOEPA") and with the passage of approximately 40 state and local laws or regulations that similarly limited "high-cost home loans." It was thought that high-cost home loans could be

inherently "predatory" and that any consumer getting one should be entitled to additional protections and enhanced remedies. In retrospect, these laws did not head off the "subprime crisis" or ameliorate widespread distress among homeowners. These loans effectively were banned, yet this did not head off the housing crisis, which began in earnest in 2007.

Do we need a new definition of "subprime loans"? Perhaps, but under the current legal regime even prohibiting a broader class of home mortgage loans may not achieve the goals of protecting new borrowers today and preventing another housing crisis in the future. Instead, Congress should consider a real overhaul of consumer protection laws and regulations for all consumers, while giving weight to other current efforts to reform the market.

Three Concerns

In the brief time that I have, I would like to make three points that, in my view, bear additional attention by this Subcommittee as you consider further legislation. These points are built around a central theme: first and foremost, it is critically important that any legislation provide strong and effective consumer protections while preserving access for consumers to fairly priced, nondiscriminatory, lawful and appropriate mortgage credit. The three points are as follows.

1. The Federal Reserve Board exercised its authority under HOEPA last year to prohibit a host of unfair or deceptive mortgage lending practices across the board. These amendments to Regulation Z also strengthened regulation of high-cost home loans and created a new category of "higher cost home loans" that are subject to significant new consumer protections. Members of Congress and many observers on all sides of the debate praised Chairman Bernanke for exercising the Fed powers that Congress originally granted in 1994.

Congress at this time should give due regard to the Fed's groundbreaking rules, consider carefully whether these rules already address consumer protection adequately and consider whether these rules form a basis for additional legislation.

2. Reform of consumer mortgage lending laws should be real reform, and not just the adding of additional layers of conduct requirements, disclosures and liabilities to existing laws. There is a real opportunity now for Congress to overhaul what many describe as a "broken" system of regulation of mortgage loan origination.

3. It is widely held that "too much credit" contributed to, if not caused, the current housing crisis. It is all too easy to believe that making less mortgage credit available in the future will prevent a recurrence of today's problems. However, serious, thoughtful and heartfelt consideration needs to be given to current homeowners who wish to refinance (sometimes out of unfavorable, if not unfair, loans) and the new homeowners looking for new loans.

The Fed's Approach

The Federal Reserve Board's amendments to Regulation Z cover much of the same ground as previous proposed legislation, including H.R. 3915. These amendments include, for all residential mortgage loans, comprehensive new requirements for advertising and promotion, prohibitions on coercing or unduly influencing appraisers and new mandates on mortgage servicers. The regulations impose new restrictions on HOEPA loans, in ways similar to H.R. 3915. Importantly, the regulations establish a new category of "higher-priced home loans." These regulations impose similar requirements as those set forth now in Title II of H.R. 3915, albeit tailored to this class of loans. According to the new regulations, all mortgage lenders must determine the borrowers ability to repay, with appropriate verifications. Again, Congress should

attempt to harmonize future legislation with the Fed's carefully-crafted, comprehensive protections.

Overhaul

For years, many commentators, whether from industry, consumer groups or academia, have observed that the disclosure-based system of consumer protection in mortgage transactions is broken. Disclosure-based consumer protection laws took root in the 1960's and have grown by accretion since then. Over the years, as laws have expanded, neither Congress nor the federal regulators have been able to rationalize and harmonize dozens of pages of disclosures and loan documents in the typical loan closing package. Now, the disclosures required by federal laws such as the Truth-in-Lending Act and the Real Estate Settlement Procedures Act (not to mention state laws and FHA guidelines) are nearly incomprehensible to consumers. This is so across-the-board, whether a loan is "subprime," conforming, jumbo or government-insured and regardless of the consumer's level of financial sophistication. In short, what increased disclosures have brought to consumers is more information but drastically less understanding.

So, it becomes difficult to justify more disclosures and additional liabilities related to often technical disclosure violations. At this time, Congress is presented with a unique opportunity to reconsider the overly complex, and at times inconsistent, regime of consumer protection laws. The result could be game-changing, and would go a long way toward ensuring that borrowers understand the terms of credit transactions presented to them, are able to determine if a particular loan is fair, competitively priced and affordable and are otherwise capable of paying the loan back. This outcome, as much as any other, would assure that the mistakes of the past are not repeated.

Fair Lending that is Fair to Everyone

Was it too much credit or too much of the wrong type of credit that brought us to the breakdown in our financial system? After all, widespread availability of credit has benefited minorities and other protected classes of homeowners and homebuyers. At one time in history, too many lenders knowingly discriminated based on the "suitability" of particular home mortgage borrowers, using factors at the time that seemed "reasonable" and "in good faith." Today, such rationalizations in the name of discrimination are totally unacceptable. So, there is a danger in any legislation that appears to mandate subjective determinations based on a list of factors that must be considered to the detriment of other factors that could actually benefit a particular borrower. Listing of mandatory underwriting standards in federal legislation that must be considered in determining a borrower's "ability to repay" may discourage borrowers who do not have "standard" credit histories and W-2 income sources from getting mortgage credit. As to lending practices that led to the subprime debacle, if minorities have been overly marketed-to and disproportionately placed in unfair and unaffordable subprime loans, the situation may not be reversed if even fewer fair, reasonable and affordable credit choices are available to all borrowers in the future. Policymakers must be very careful here, and seriously consider implications of new programs and laws, such as whether government-insured credit such as FHA loans will provide sufficient homeownership opportunities to all Americans.

Again, thank you for having me here today. I am happy to answer any questions.

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:
Donald C. Lampe, Esq.	N/A

3. Business Address and telephone number:
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4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2006, 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, 2006, 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.

7. Signature:

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

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