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Good morning Chairman Gutierrez, Ranking Member Hensarling, and Members of the Committee. I am Marc Savitt, President of the National Association of Mortgage Brokers ("NAMB"). Thank you for inviting NAMB to testify today on "Mortgage Lending Reform: A Comprehensive Review of the American Mortgage System." We appreciate this opportunity to discuss an issue that is 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. 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.

Although parties acting as mortgage brokers defy simple characterization, in today's market it can generally be said that a real estate financing professional or entity acts in a mortgage broker capacity when the professional or entity works with both borrowers and lenders, though representing neither, to obtain a mortgage loan.

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. The Mortgage Reform & Anti-Predatory Lending Act of 2007 ("H.R. 3915")

H.R. 3915 was a comprehensive piece of legislation aimed at reining-in abusive lending practices that contributed to the mortgage and housing crisis in this country. H.R. 3915 included provisions to establish national standards for mortgage loans and mortgage loan originators, and addressed certain aspects of high-cost mortgage lending. H.R. 3915 also contained provisions concerning required disclosures under the Real Estate Settlement Procedures Act ("RESPA") and established property appraisal and escrow requirements.

While NAMB shares many of the concerns that H.R. 3915 was drafted to address, we were unfortunately unable to support the bill in its entirety due to provisions relative to Title III in the bill. Nevertheless, NAMB was extremely supportive of many aspects of this legislation, particularly the uniform, all-originator approach to regulating our industry's activities and participants. This balanced and even approach ensures that every mortgage originator who will sit down with a consumer and help them through the loan application and origination process will be held to the same standards. In the end, H.R. 3915 represented a tremendous step forward in the effort to increase the standards and professionalism in our industry.

As we reevaluate the current state of the American mortgage lending system and contemplate additional reform, 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. Taking into consideration the many legislative, regulatory, and market changes that have already occurred since the passage of H.R. 3915, we are confident that a comprehensive and constructive bill can be put forth addressing the most pressing issues facing industry participants, consumers, and the mortgage market itself.

II. Changes in the Market Since the Passage of H.R. 3915

Nearly sixteen months have passed since the U.S. House of Representatives approved H.R. 3915. In this time, our mortgage, housing, and financial markets have endured tremendous turmoil and significant changes.

To begin with, we have seen a fundamental shift in our understanding of what lies at the heart of the crisis we find ourselves still mired in today. At the very beginning of this 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.

A. *The Calm Before the Storm*

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 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 downpayment 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 only rise, and a good number of people were able to get rich relatively quickly. Unfortunately, however, this only made everyone involved hungry for more.

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 and incentivized loan officers and brokers to originate more loans, which 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," and Wall Street firms made billions of dollars from their sale to domestic and international investors clamoring for their share of profits from the booming U.S. real estate market.

As was noted in a New York Times Editorial this past Sunday, "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]

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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).

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 went south. 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.

B. The Bubble Burst: First on Main Street, then on Wall Street

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.

C. Legislative & Regulatory Changes Since the Passage of H.R. 3915

In addition to the recent turmoil in our mortgage and financial markets, a great deal of change has also 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.

i. 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 and establishes a nationwide licensing and registration system for loan originators. Under this system, all loan originators, regardless of whether they are state or federally-regulated, 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 in loan originator licensing for many years now and is pleased to see it come to fruition. Education and testing of every 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 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.

Although the SAFE Act represents much needed changes for loan originator licensing standards, there continues to be a problem with the implementation of the SAFE Act by state regulators particularly as it relates to current state loan originator licensees.

ii. 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 HOEPA 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 first-lien loans. The final rules do not contain an originally proposed provision affecting the disclosure of yield spread premium ("YSP"), because the Federal Reserve relied on what it considered to be "compelling evidence from consumer testing" that such a disclosure would create confusion among borrowers and cause many consumers to choose more expensive loan products.

In its final rule, the Board stated it is "concerned that the proposed agreement and disclosures would confuse consumers and undermine their decision-making rather than improve it."[3] The Board recognized that the disclosure of the YSP, as proposed, would not serve in the consumers' interest, and in fact would further confuse the consumer.

The Board stated that they will "continue to explore available options to address potential unfairness associated with originator compensation arrangements such as YSP. As the Board comprehensively

[3] 73 Fed. Reg. at 44,563.

reviews Regulation Z, it will continue to consider whether disclosures or other approaches could effectively remedy this potential unfairness without imposing unintended consequences."[4] We do believe, however, that in order to provide the most useful and clear information to consumers without further confusion, the Federal Reserve Board should work in conjunction with the U.S. Department of Housing and Urban Development ("HUD") in producing disclosures that are straightforward and effective. Since disclosures required under both the Real Estate Settlement Procedures Act ("RESPA") and the Truth In Lending Act ("TILA") are to be presented to the consumer at application and again at closing, such disclosures should work in tandem with each other so that they reach the desired benefit of providing clarity and information to the consumer during these two important times of the home buying process.

iii. Real Estate Settlement Procedures Act Revisions ("RESPA Rule")

HUD released its long-awaited RESPA Rule in November 2008. 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 mortgage brokers, but no other loan originators, to make detailed disclosures regarding their 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 – mortgage brokers and lenders alike – 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.

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 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.

HUD's Proposed Rule stated, "As HUD moves forward to finalize this rule, it will continue to work with the Board to make the respective rules consistent, comprehensive, and complementary."[5] Merely noting this intention, however, is of no real consequence. Just as the Proposed Rule must explain how it relates to existing law, it must explain how it relates to the Board's amendments to Regulation Z. The Administrative Procedures Act (APA) requires as much, as does sound rulemaking.

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

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[4] 73 Fed. Reg. at 44,565.
[5] 73 Fed. Reg. at 14,034.

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 continue to move forward in its RESPA reform process, but should do so in conjunction with the Federal Reserve Board in its ongoing review of Regulation Z. 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.

iv. 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."

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. Moreover, the HVCC targets industry participants and practices which are entirely unrelated to the investigation that precipitated its enactment, and the rule was promulgated by the FHFA in violation of the Administrative Procedures Act. Despite being the product of an investigation into appraisal fraud at a lending institution and its affiliated appraisal management company ("AMC"), the HVCC targets mortgage brokers and independent appraisers, and forces consumers to rely exclusively on lenders and their AMCs for home appraisals. 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.

Nevertheless, NAMB remains supportive of legislative efforts to provide for appraisal independence standards like the ones included in HR 3915. Unlike the HVCC, these appraisal standards have gone through the legislative process, were subject to open and public debate, and were ultimately approved by a majority of the House of Representatives. Representatives Kanjorski and Biggert, as well as Senators Casey and Martinez, are responsible for leading the legislative effort on this very important issue.

v. 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 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.

III. Revisions Required to H.R. 3915 in Light of Recent Changes in the Market

With these and other significant changes throughout our mortgage lending industry, there are a number of key revisions to H.R. 3915 that should be considered.

A. Facilitate State Implementation of the SAFE Act

The SAFE Act was signed into law on July 30, 2008. Under the provisions of the SAFE Act, states are charged with the task of enacting licensing standards that meet the requirements of the Act before a July 31, 2009 deadline. However, the overall responsibility for interpreting, implementing, and ensuring states comply with the SAFE Act rests with HUD.

To assist states in meeting their July 31, 2009 compliance deadline, the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR") drafted model legislation that states could use to ensure they meet the minimum requirements of the SAFE Act. While these organizations should be commended for their efforts, the CSBS/AARMR model state legislation exceeds the minimum requirements and lacks critical components important to legislators, regulators, loan originators, and consumers in many states. Moreover, these organizations are not governmental entities, they are trade associations charged primarily with promoting the interests of their respective members. In the end, it is the right and responsibility of each state, not CSBS and AARMR, to create a licensing and registration system that meets or exceeds the minimum requirements of the SAFE Act.

With the deadline for compliance with the SAFE Act rapidly approaching, many states, despite their best efforts, are struggling to implement the new licensing and registration requirements. We believe Congress should step-in to help facilitate states' transition into the new nationwide licensing and registration regime. There are three specific steps that we believe are necessary to ensure a smooth transition into this system for state regulators, loan originators and the consumers they serve.

i. Extend the July 31, 2009 Compliance Deadline by 24 Months

Given current market conditions and the severe economic hardship being felt by so many states, we believe additional time should be given for the states to enact new mortgage licensing legislation. When enacting SAFE Act legislation, it is imperative that states take adequate time to thoughtfully consider all possible alternatives to ensure the requirements of the Act are satisfied, the interests of consumers are sufficiently protected, and mortgage origination within the state is not unnecessarily disrupted.

Because of the complexity involved with amending state law to implement these new requirements, and the other serious economic challenges facing state lawmakers today, we believe a twenty-four (24) month extension of the July 31, 2009 compliance deadline is necessary and appropriate. Such an extension will afford states ample time to contemplate and implement a licensing system that will best serve the long-term interests of both licensees and consumers in their state.

This extension will also allow states to focus more attention on larger and more immediate economic concerns like managing budget shortfalls, stabilizing their economies, and helping homeowners avoid foreclosure and remain in their homes.

ii. Direct HUD to Promptly Issue Any Necessary Regulations Relating to the SAFE Act

In addition to extending the compliance deadline, we also encourage Congress to direct HUD to issue any regulations relating to implementation of the SAFE Act as quickly as possible. Although states are charged with enacting licensing standards that meet the requirements of the SAFE Act, the responsibility for interpreting, implementing, and ensuring state compliance with the SAFE Act rests with HUD.

Any implementing regulations that HUD can issue prior to states opening up and revising their statutes as required will help ensure a smoother transition and significantly reduce the likelihood that court or Congressional intervention will be sought in the future thereby disrupting the spirit of the law.

iii. Provide Clarification on States' Ability to Interpret Silent or Ambiguous Provisions in the SAFE Act

Lastly, because there are issues important to many states where the language of the SAFE Act is vague or silent, and there are requirements in the SAFE Act that are ambiguously defined, we believe that each state must be permitted to exercise independent judgment in interpreting silent or ambiguous provisions in the SAFE Act and ultimately implement legislation that is in the best interests of the citizens of that state, consistent with the intent of the law.

One issue that many states are currently struggling with is the integration of current licensees into the new system prescribed in the SAFE Act. The SAFE Act encourages states to establish minimum standards for licensing and registration and requires all mortgage loan originators to hold a valid license and registration in the state or states where they operate. However, the SAFE Act offers no direction to the states regarding the integration of current licensees into the new system.

Because nothing in the language of the SAFE Act evidences a Congressional intent to prohibit states from exercising independent judgment on issues where the Act is silent, we believe it must be left to the individual states to determine the treatment of pre-existing licensees in the new system, provided the letter and spirit of the law are not compromised. Specifically, we believe that state legislators must be permitted to determine whether phasing in of existing licensees is a necessary and appropriate component of their state's SAFE Act legislation.

Many states have licensed mortgage brokers and loan officers for years and have required licensees to undergo extensive education and training. To preserve the efficient functioning of the mortgage markets in these states and to ease the administrative burden of relicensing every originator within the state, we believe states should be allowed to phase in current licensees into the new system, provided those licensees immediately submit fingerprints to the Nationwide Mortgage Licensing System and Registry for submission to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state and national criminal background check, and satisfy all requirements for license renewal prior to the expiration of their current license, including completing a minimum of 8 hours of continuing education courses. Loan originators that have never been subjected to state licensing standards due to the absence of any such state requirement must still be required to comply with all of the minimum standards set forth in the SAFE Act, including fingerprint submission for background checks, pre-licensing education and testing.

Since the language of the SAFE Act is silent on the issue of phasing in, and there is an absence of any implementing regulations, we feel that states would benefit from a clarification of their right and ability to interpret silent or ambiguous provisions in the SAFE Act and legislate accordingly.

B. Create a Federal Standard of Care for All Loan Originators

Mortgage markets have evolved rapidly in recent years, as have the roles of mortgage professionals and the entities with whom they are employed. Today, it is not uncommon for these individuals or entities to work in multiple capacities or to assume different roles, even within a single mortgage transaction.

Historically, mortgage brokers and mortgage lenders could be readily distinguished. Brokers did not lend money, and lenders did not serve as portals for competing providers of funds. However, in recent years, the lines between distribution channels have blurred, as the "originate to distribute" model of mortgage financing (where lenders promptly repackage and sell the loans they originate) has become commonplace.

Additionally, dramatic advances in technology have served to accelerate this convergence of the roles of mortgage originators. The introduction of automated underwriting, web-enabled credit scoring, and the ubiquity of computers have helped blur the distinctions between historically different functions. In fact, originators today tend to use the same software regardless of whether they are acting as broker or funding the loans they originate. The distinctions that still exist between mortgage originators are largely being determined by the click of a mouse.

To the consumer, none of this is readily apparent. Because consumers are largely unaware of, and indifferent to, the technical distinctions drawn between the originators with whom they are dealing, it is imperative that consumers be given the same information about the mortgage transaction and that the originator be held to the same standards, regardless of the type of originator or entity involved.

Since 2002, NAMB has advocated for more stringent standards for all loan originators to protect consumers and curb abusive lending practices in the mortgage 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.

Such a federal standard should apply whenever a person is acting as a loan originator under the definition in the SAFE Act, and should be comprehensive enough to operate as a ceiling, not a floor, in establishing a loan originator's responsibilities when working with consumers.

Because the acts of originating, funding, selling, servicing, and securitizing mortgage loans may all be conducted separately and independently, or may be engaged in collectively under one corporate structure or through affiliated business arrangements, it is important for consumer protections to relate to the function, as opposed to the structure of entities. In the end, consumers deserve the same level of protection no matter where they choose to obtain a mortgage loan.

i. The Federal Standard of Care Should be "Good Faith & Fair Dealing"

Any person required to be licensed or registered as a loan originator under the SAFE Act should have a federal statutory duty to exercise good faith and fair dealing in all communications and transactions with consumers. All loan originators should be held to the same standard of conduct toward consumers so that all consumers are shielded from bad acts and bad actors, regardless of whether they are working with a federally-chartered bank, state-chartered lender, credit union, or mortgage broker.

The federal standard of care should not be construed to require a loan originator to obtain any loan containing terms or conditions not available in the loan originator's usual course of business, or to obtain a loan for the borrower from a third party with whom the loan originator does not have an existing business relationship.

Specifically, NAMB believes a federal standard of care should consist of:

- The duty to make reasonable inquiry into the borrower's current and prospective income, existing debts, and other obligations, as well as any other information known to the loan originator to be helpful in making, brokering, or otherwise originating a mortgage loan for the borrower.

- The duty to use reasonable efforts to make, broker, or otherwise originate a mortgage loan that takes into consideration all of the information submitted to the mortgage loan originator by the borrower.

- The duty to use reasonable efforts to make, broker, or otherwise originate a mortgage loan that is reasonably advantageous to the borrower, considering all circumstances, including rate, charges, repayment terms, and the loan options offered by the originator for which the borrower qualifies.

- The duty to act with reasonable skill, care, and diligence at all times and in all transactions with a borrower or prospective borrower.

- The duty to safeguard and account for any money or property handled on behalf of the borrower.

- The duty to follow all reasonable and lawful instructions from the borrower.

- The duty to timely and clearly disclose all material information to the borrower that is reasonably accessible to the loan originator and may reasonably be expected to influence the borrower's decision, including, but not limited to the total compensation the loan originator expects to receive from any and all sources in connection with each loan option presented to the borrower.

- The duty to use reasonable means to provide borrowers with prompt credit decisions on loan applications where the loan originator has the ability to make credit decisions; and, where credit is denied, to comply fully with all applicable federal and state notification requirements.

- The duty to provide applicants to who credit has been denied an opportunity to correct or explain adverse or inadequate information, or to provide additional information.

In addition to any activities prohibited under other provisions of state or federal law, NAMB also believes the federal standard of care should prohibit loan originators from:

- Recommending or inducing a borrower to enter into a transaction that is not reasonably beneficial to the borrower, considering all of the circumstances, including, but not limited to the terms of the loan, the cost of the loan, and the borrower's circumstances.

- Misrepresenting or concealing any material facts, or making false promises likely to influence, persuade, or induce an applicant for a mortgage loan to take such mortgage loan.

- Failing to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by the borrower for a real estate appraisal or a credit report, which the loan originator is not entitled to retain under the circumstances.

- Paying, receiving, or collecting in whole or in part any commission, fee, or other compensation for making, brokering, or otherwise originating a mortgage loan in violation of the provisions of the SAFE Act.

- Engaging in unfair, misleading, or deceptive advertising related to a solicitation for a mortgage loan.

- Engaging in a practice or course of business related to the making, brokering, origination, purchase, or sale of any mortgage loan that amounts to a fraud upon any person or is conducted in the absence of good faith and fair dealing.

- Failing promptly to pay, when due, reasonable fees to a licensed appraiser for appraisal services.

- Improperly influencing or attempting to influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.

Ongoing events in the mortgage market provide clear examples of why all mortgage originators should be subject to uniform minimum standards. The mortgage market of the 21^{st} century has evolved in conjunction with the burgeoning growth of the secondary market for mortgages, but the laws, regulations and oversight of this market have lagged behind to the severe detriment of consumers.

We do not deny that differences exist between depository and non-depository institutions, both in terms of their business models and how they are regulated, however, when it comes to the origination of mortgage loans, these entities are virtually indistinguishable, particularly in the eyes of consumers, and should be held to a singular federal standard.

ii. The Yield Spread Premium

Yield Spread Premium ("YSP") is a financial planning tool for consumers and provides consumers with a choice of when and how they would like to spend their money. YSP gives consumers the choice of paying for their mortgage origination fees and costs in cash up front or paying a portion or all of those fees and costs each month over the life of the loan through the interest rate. YSP is not a kickback. YSP is not a bonus. YSP is how mortgage originators get paid for their services when a consumer does not want to pay some or all of the fees upfront and instead elects to finance those fees through the rate.

YSP has existed from the time loan origination services expanded out of the S&Ls and the banking industry moved away from holding its loans in portfolio. Today, every originator that does not hold loans in portfolio receives compensation through YSP or its equivalent (SRP or Gain on Sale). SRP or gain on sale is what a lender, banker, or wholesaler receives as payment from their investor or the secondary market—again, for costs absorbed, services performed, the financing of any closing costs, and/or the value of the loan. In today's market, the real difference that exists between SRP, gain on sale and YSP is that only YSP is disclosed. SRP and gain on sale are not disclosed anywhere, anytime—this is back-end compensation that remains undetected and therefore, has escaped scrutiny.

Regardless of the name, YSP, SRP or gain on sale is very beneficial for many consumers who are ready to own a home but have to overcome the high hurdle of significant closing costs, as well as those consumers who choose to allocate their cash to other investments or expenditures. At the same time, YSP, SRP or gain on sale may not be beneficial if a borrower reasonably believes he or she is not going to sell the home or refinance the mortgage during the 30 year term of the loan. Under these circumstances, the borrower may wish to make a one time upfront cash payment to cover all of the closing costs, fees, and originator compensation in exchange for a lower monthly payment for the life of the loan. In any case, YSP provides consumers with greater choice and additional options for financing the purchase of their home.

Any efforts to ban YSP would eliminate choices for consumers and effectively destroy the small business mortgage broker industry that has helped many consumers achieve and retain homeownership, which would have additional negative consequences for consumers. As was recently reported on CNNMoney.com, "some big banks have cut back on doing business with mortgage brokers - and if the trend continues, many mortgage brokers could close down. That may be bad news for consumers because fewer brokers could lead to a less competitive marketplace and more expensive home loans resulting from consumers not being able to easily comparison shop rates."[6]

NAMB has always been supportive of prohibiting the steering of consumers into loans based simply on a loan originator's compensation. However, it is inaccurate to assume that steering has taken place simply because a loan originator is compensated through YSP, SRP or gain on sale. We cannot support efforts to prohibit loan originators from simply getting paid for their work; for helping consumers and for providing consumers with greater choice. This is an important distinction to be made and considered when moving forward on any legislative mortgage reform efforts.

C. *Retain the Anti-Steering Provision from H.R. 3915*

As was mentioned above, NAMB believes that it is important to prohibit loan originators from being incentivized to push specific loan products based solely upon the compensation they or their employer are likely to receive (*i.e.,* steering). However, we strongly believe that an anti-steering provision will only be effective if its reach does not limit or remove financing choices from borrowers.

NAMB was very supportive of the final anti-steering provision included in the version of H.R. 3915 that passed the House of Representatives, and we appreciate that Congress recognized the importance of ensuring that the reach of the anti-steering provision in H.R. 3915 did not limit or remove financing choices from consumers. The language in H.R. 3915 ensured that borrowers would continue to have the ability to finance their origination fees and closing costs as they deem appropriate for their individual circumstances, which in turn allows consumers to continue to enjoy the benefits derived from having various financing options and choosing a zero-point or no-cost loan by financing the fees and/or costs through the rate or loan amount.

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[6] *CNN Money: Lenders Drop Mortgage Brokers*, Les Christie (February 12, 2009).

NAMB appreciates the importance of ensuring that loan originators are not incentivized to steer borrowers into particular loan products purely for personal gain, and we believe that a strong anti-steering provision, like the one included in H.R. 3915, should be a component of any comprehensive mortgage reform legislation. The anti-steering provision in H.R. 3915 provides an excellent model for effectively protecting consumers from being steered into loans for the purpose of higher originator compensation without eliminating consumer financing options.

D. Ensure any Standards Articulated for Mortgage Loans Compliment the Federal Reserve Board's 2008 HOEPA Amendments

Titles II and III of H.R. 3915 endeavored to amend the Truth-in-Lending Act ("TILA") to establish certain minimum standard for mortgage loans and address specific issues relating to high-cost mortgage loans under HOEPA. While NAMB was generally supportive of the provisions outlined in Title II of H.R. 3915, we were extremely concerned that specific provisions in Title III would only result in further harm to many consumers who were (and likely still are) most in need of available and affordable credit.

However, since the passage of H.R. 3915, the Federal Reserve Board has promulgated new rules amending Regulation Z, which implements both TILA and HOEPA ("HOEPA Rules"). 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 is a strong supporter of the HOEPA Rules, and believes they represent a clear victory for consumers and a definitive step toward increased professionalism and accountability in the mortgage lending industry. Moreover, NAMB believes that these HOEPA Rules strike at the heart of a number of concerns originally addressed in H.R. 3915.

Among other things, the HOEPA Rules prohibit creditors and mortgage brokers from coercing real estate appraisers to misstate a home's value, and require creditors to provide consumers with transaction-specific mortgage loan disclosures within three business days after application and before they pay any fee except for a reasonable fee to review their credit history. The rules also establish standards for advertising designed to eliminate misleading or deceptive representations and facilitate the communication of more balanced information to consumers. The advertising rules ban several deceptive or misleading advertising practices, including making representations that a rate or payment is "fixed" when it can change.

Additionally, the HOEPA 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 HOEPA Rules, which are set to take effect October 1, 2009. We are concerned that any additional restrictions which may be placed on the availability of mortgage credit could harm consumers and potentially exacerbate the current market problems we are experiencing.

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

If it is determined that legislative action is needed to supplement the HOEPA rules, we strongly encourage Congress to work with the Federal Reserve Board and industry participants to ensure any proposed requirements complement and enhance the foundation for regulatory reform that was laid with these amendments.

E. Direct Federal Agencies to work together to Establish a Universal Residential Mortgage Loan Disclosure Form and Good Faith Estimate

Title V of H.R. 3915 instructed the Secretary of HUD to work in consultation with the Secretary of Veterans Affairs, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision to develop and prescribe a Standard Universal Residential Mortgage Loan Disclosure form and Good Faith Estimate ("GFE"). NAMB strongly supports the interagency development of a universal mortgage disclosure and GFE like the one prescribed in H.R. 3915. However, NAMB believes it is imperative for any such disclosure to be consumer-tested and proven effective, and contain the same information regarding consumer settlement costs regardless of the originator making the disclosure.

Although H.R. 3915 did not become law, the Secretary of HUD seemingly responded to the challenge set-forth in the bill to establish and prescribe a uniform GFE for all federally-regulated mortgage loans. On November 17, 2008, the Secretary promulgated a "Final Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs" under RESPA. Among other provisions in this long-awaited rule were revisions to the GFE disclosure requirements and the inclusion of a standardized GFE form that would be required for all mortgage loans covered by RESPA.

Despite HUD's clear commitment to protecting consumers from unnecessarily high settlement costs and the agency's laudable goals in prescribing a new universal mortgage disclosure form, the final RESPA

Rule issued in 2008 falls far short of what was envisioned in H.R. 3915 and what is needed in the mortgage marketplace.

H.R. 3915 properly identifies the critical information that is most important to consumers and should be required on the GFE, including: (1) loan amount, (2) whether the loan is fixed or adjustable-rate, (3) loan term, (4) estimate interest rate, (5) estimated monthly payment (6) rate lock period, (7) existence of a balloon payment, (8) existence of a prepayment penalty, (9) total estimated settlement charges, and (10) total estimated cash required at closing. In contrast, HUD's standardized GFE extends for three pages and contains complex and superfluous information that not only fails to help consumers understand their mortgage options, but has been shown to sufficiently confuse consumers into selecting higher priced loans. Although HUD identifies consumer protection and the simplification of mortgage disclosures as primary policy goals for the 2008 RESPA Rule, the agency failed to consult with other regulatory agencies as directed in H.R. 3915 and neglected to give proper consideration to the conclusions and recommendations put forth by multiple public and private entities, which suggest that consumers are more confused and more likely to choose a higher-cost loan when presented with certain misleading information contained on the new GFE.

NAMB strongly believes that the 2008 RESPA Rule will impede competition and dramatically increase consumer costs because of the baseless imposition of dramatically different regulatory burdens on certain mortgage originators and the inclusion of complex and confusing disclosures on the new GFE.

Today, we urge Congress to step-in and direct the Secretary of HUD to promulgate a new rule and GFE disclosure form that is more in line with RESPA's stated purpose of providing consumers with effective disclosures and protecting consumers from unnecessarily high settlement costs. In crafting such a rule, it is imperative that the Secretary work in concert with other federal agencies, including the Federal Trade Commission and the Federal Reserve Board, to help ensure the end result is a truly universal mortgage disclosure form that compliments and may be used together with other disclosures (*i.e.,* TILA) to help consumers shop for and ultimately understand the mortgage product they choose.

F. Establish Uniform Appraisal Standards which are Overseen by an Independent Regulator & Encourage the FHFA to Withdraw the HVCC

Title VII of H.R. 3915 endeavored to establish certain property appraisal requirements designed to improve appraisal quality and promote appraiser independence. NAMB strongly supports policy initiatives that seek to ban coercion of appraisers, and NAMB was very supportive of the appraisal reforms in H.R. 3915.

NAMB believes that there should be increased standards for loan 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. However, NAMB also believes that no mortgage or real estate professional should be prohibited from lawfully and ethically challenging an appraiser's valuation of a particular property or engaging an appraiser in meaningful discussion regarding the methods or manner in which a value determination was made.

Just over one year ago, the HVCC was announced by FHFA Director Lockhart and billed as a means of combating appraisal misconduct and promoting appraiser independence in the mortgage lending industry. The HVCC is actually the product of a 2007 New York Attorney General's Office ("NY AG") investigation into fraudulent appraisals associated with Washington Mutual ("WaMu") – at that time the largest savings and loan in the United States and a key player in the subprime lending market – and its affiliated Appraisal Management Company ("AMC"), eAppraiseIT.

In conjunction with its investigation and subsequent lawsuit against WaMu, the NY AG sent a letter to Fannie Mae and Freddie Mac informing the GSEs that the NY AG was "expanding its investigation to determine the extent of Fannie Mae's and Freddie Mac's knowledge of, and actions regarding, [appraisal] problems as they relate to past mortgage purchases and securitizations" by the GSEs. The NY AG also issued subpoenas to Fannie Mae and Freddie Mac requesting information regarding mortgage loans purchased by the GSEs from any bank, as well as the due diligence practices of the GSEs and their policies and procedures regarding valuations and appraisals by originating lenders and the GSEs themselves. Following receipt of this letter and the accompanying subpoenas, FHFA Director Lockhart met with the NY AG to discuss the expansion of the investigation into the GSEs.

On March 3, 2008, FHFA announced that it had entered into agreements with the NY AG and Fannie Mae and Freddie Mac ("Agreements"). Among other things, these Agreements required the GSEs to adopt a new policy regarding home appraisals, called the "Home Valuation Code of Conduct," and to stop purchasing loans originated by lenders who fail to comply with the HVCC by January 1, 2009 (this date has since been pushed-back to May 1, 2009). In turn, the NY AG agreed to terminate its investigation of Fannie Mae and Freddie Mac, and the GSEs agreed to cooperate with the NY AG's continued investigation of the mortgage industry.

It was not until some time after the March 3, 2008 announcement of the Agreements and impending implementation of new appraisal standards that Fannie Mae and Freddie Mac decided to seek industry comments regarding the HVCC. This comment period ran from March 14, 2008 to April 30, 2008. During this comment period, the GSEs collected comments from industry participants and forwarded everything they received to the FHFA and the NY AG. Following the close of this comment period, the FHFA and the NY AG did engage in closed-door negotiations with various mortgage lenders regarding the HVCC, however, mortgage brokers, appraisers, and other interested parties were excluded from this process.

As it stands today, the HVCC is set to take effect May 1, 2009, and this rule overwhelmingly favors lending institutions to the detriment of mortgage brokers, appraisers, and consumers. Despite being the product of an investigation into appraisal fraud at a lending institution and its affiliated AMC, the HVCC targets mortgage brokers and independent appraisers, and forces consumers to rely exclusively on lenders and their AMCs for home appraisals.

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.

Although NAMB strongly supports policy initiatives that seek to ban coercion of appraisers, on February 23, 2009 we felt it was necessary to initiate legal proceedings against FHFA Director Lockhart to prevent the HVCC from taking effect. We believe the HVCC will impact mortgage brokers, independent appraisers, and consumers in a profoundly negative way. The HVCC places small-business mortgage professionals and 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. Additionally, we believe the FHFA was required to utilize notice and comment rulemaking proceedings under the Administrative Procedures Act when promulgating the HVCC, but the agency failed to do so. Because the HVCC is a substantive rule that *de facto* regulates the entire mortgage industry and the FHFA failed to follow proper rulemaking procedures, we believe the HVCC is void, invalid, and unenforceable.

Appraisal independence is essential to protecting consumers from fraud and from unscrupulous actors. To that end, legislation was introduced last year to prohibit interference with an independent appraisal and to prohibit dishonest originators and appraisers from artificially inflating the value of properties, while retaining legitimate investors' ability to improve properties for resale.

NAMB commends and appreciates Representatives Kanjorski and Biggert for their work towards reforming and strengthening oversight of our appraisal system, and urges Congress to once again take-up this legislation to establish new uniform appraisal independence standards. Our only recommendation for changing the language originally proposed would be to amend the Equal Credit Opportunity Act ("ECOA") in addition to amending TILA to reflect the appraisal independence standard and to provide for copies of such appraisals to applicants. At the same time, we ask Congress to encourage the FHFA to withdraw the HVCC in its entirety and allow these new federal appraisal standards to take effect.

IV. Conclusion

NAMB greatly appreciates this opportunity to share its views on reforming the American mortgage lending system. Everyday our members live and go to work in their communities alongside consumers who continually relay to us that what is most important to consumers is simply being able to get a mortgage they can afford and one that they 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. NAMB was extremely supportive of the broad and even approach to regulation taken in H.R. 3915 (with exception to Title III) and we believe a similar approach is critical to the effectiveness of any future consumer protection legislation.

As we touched on in our testimony today, consumers, industry participants, and the market for mortgages generally have all suffered tremendously from the greed and unchecked financial innovation of the previous decade. However, we have turned a corner. Since the passage of H.R. 3915, we have seen significant and positive changes effected through both legislation and regulation that have laid a solid foundation upon which we hope to rebuild our industry.

Even though there are significant challenges that lay ahead, it is important to think carefully and act deliberately when contemplating additional legislative or regulatory reforms in our industry. In an already fragile economic environment, we must be especially mindful of the harmful unintended effects that an overcorrection in any area could have on consumers and our market's recovery. The positive changes that were affected through legislation and agency regulation over the past year must be given an opportunity to take effect while we turn our attention to the inefficiencies and excesses that remain in other segments of our industry.

NAMB looks forward to continuing to work with this committee, and other House members, 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 businesses across the country.

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