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STATEMENT OF THE

NATIONAL ASSOCIATION OF REALTORS®

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"EXAMINING HOW THE DODD-FRANK ACT HAMPERS HOME OWNERSHIP"

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INTRODUCTION

Madam Chairwoman, Ranking Member Meeks, and members of the Subcommittee, I am Gary Thomas, President of the National Association of REALTORS® (NAR) from Orange County, CA. I have more than 35 years' experience in the real estate business and I am the Broker/Owner of Evergreen Realty in Villa Park, California. In 2001, I served as president of the California Association of REALTORS® and have had the honor of serving on NAR's Real Estate Settlement Procedures Act Presidential Advisory Group for a number of years. I thank you for the opportunity to participate in this hearing on behalf of the 1 million members of the National Association of REALTORS®. NAR represents a wide variety of housing industry professionals committed to the development and preservation of the nation's housing stock and making it available to the widest range of potential homebuyers.

In my testimony today, I will address several key issues regarding the Ability to Repay Qualified Mortgage (QM) rule. The Dodd-Frank Wall Street Reform Act established the QM as the primary means for mortgage lenders to satisfy its "ability to repay" requirements. NAR has been generally supportive of the Consumer Financial Protection Bureau's (CFPB or the Bureau) efforts to craft a QM rule that is not unduly restrictive and provides a safe harbor for lenders making QM loans. NAR has had policy supporting the idea that lenders measure a consumer's ability to repay a loan since 2005.

3% Cap on Fees and Points

However, Dodd-Frank also provides that a Qualified Mortgage (QM) may not have points and fees in excess of 3 percent of the loan amount. As currently defined by Dodd Frank and in the Consumer Financial Protection Agency's (CFPB) final regulation to implement the "ability to repay" requirements, "points and fees" include (among other charges): (i) fees paid to affiliated (but not unaffiliated) title companies, (ii) amounts of homeowner's insurance held in escrow, (iii) loan level price adjustments (LLPAs), and (iv) payments by lenders to correspondent banks and mortgage brokers in wholesale transactions.

As a result of this problematic definition, many loans made by affiliates, particularly those made to low- and moderate-income borrowers, would not qualify as QMs. Consequently, these loans would be unlikely to be made or would only be available at higher rates due to heightened liability risks. Consumers would lose the ability to choose to take advantage of the convenience and market efficiencies offered by one-stop shopping. H.R. 1077, "The Consumer Mortgage Choice Act," has been introduced by Reps. Huizenga (R-MI), Bachus (R-AL), Royce (R-CA), Stivers (R-OH), Scott (D-GA), Meeks (D-NY), Clay (D-MO), and Peters (D-MI) to address the inequitable treatment inherent in the fees and points calculation. Similar legislation (S. 949) has been introduced by Senators Manchin (D-WV) and Johanns (R-NE) in the Senate.

It has been argued that CFPB has the authority to fix this problem. The Bureau has partially addressed some of the original concerns with the counting of loan officer compensation towards the 3% cap. However, as the CFPB noted in their final rule and intimated in recent testimony, they do not believe they have the authority to fix the issue of affiliate charges and do not plan to address

further other matters. For this reason, NAR believes that only Congress can fully rectify the law's discrimination against affiliates, small and mid-size lenders, community banks, and credit unions in the calculation of fees and points.

Key Components of H.R. 1077

The key components of H.R. 1077 include:

- The bill removes affiliate title insurance charges from the calculation of fees and points. The title industry is regulated at the state level and competitive. It does not make sense to discriminate against one type of provider, i.e. affiliates, on the basis of these regulated fees. To do so would only reduce competition and choice in title services and providers to the detriment of consumers. In a recent study of transactions by one real estate firm with affiliate mortgage and title operations, title and related charges were actually found to be $500 less than that of its unaffiliated competitors in the market.

  Furthermore, owners of affiliated businesses can earn no more than a proportionate return on their investment under the Real Estate Settlement Procedures Act (RESPA). RESPA also prohibits referral fees or any compensation at all for the referral of settlement services. As a result, there is no steering incentive possible for individual settlement service providers such as mortgage brokers, loan officers or real estate professionals. Since the Bureau now enforces RESPA and has enhanced authority under the statute, the Bureau has all the power necessary to prosecute kickback situations and other violations of RESPA. Instead of applying a double standard to affiliates, the Bureau should use its RESPA authority to ensure that both affiliated and unaffiliated companies of all sizes comply with RESPA.

- The bill removes a manner of counting fees and points that would unfairly discriminate against Mortgage Banking and Mortgage Brokerage entities by only counting as fees and points monies paid directly by the consumer to the originator, be they a broker or a mortgage bank loan officer. The Bureau partially addressed this issue in a recent rulemaking. However, NAR believes the legislative language remains necessary to ensure now and in the future that certain business models popular with consumers are not unfairly discriminated against in the calculation of fees and points.

- The bill removes from the calculation of fees and points Fannie Mae and Freddie Mac Loan Level Price Adjustments (LLPAs). This money is not revenue accruing to the lender. These adjustments are essentially risk based pricing established by the GSEs, and can sometimes exceed 3 points in and of themselves. Including these LLPAs would limit access to affordable mortgage credit to many borrowers or force borrowers into more costly FHA or non-QM loans unnecessarily.

- The bill removes from the calculation of fees and points escrows held for taxes and insurance. The tax-related language clarifies imprecise language contained in Dodd-Frank. In the case of insurance escrows, these escrows are held to pay homeowners insurance and can be a large amount. They are not retained by an affiliate, and cannot be retained under RESPA, since RESPA requires excess escrows to be refunded. While the CFPB has stated that both taxes and insurance escrows are not to be counted, their guide to the Ability to Repay rule and the language defining fees and points both clearly state that insurance is to be counted when affiliates are involved with the transaction. While we appreciate the Bureau's efforts to address this, NAR believes the legislative fix is the most certain way to avoid future confusion and legal risk.

Ascribing additional charges to the affiliated lender is clearly unfair and may in fact lead to greater costs for consumers or at the very least, increased consumer dissatisfaction and decreased consumer choice. Studies show that consumers see a significant benefit to having their real estate agent and broker at the lead in the transaction and using their affiliated businesses for key services such as mortgage and title insurance. In a 2010 Harris Interactive study conducted after enactment of Dodd-Frank, buyers said that using affiliates saves them money (78%), makes the home buying process more manageable and efficient (75%), prevents things from "falling through the cracks" (73%), and is more convenient (73%) than using separate services. The survey also showed that buyers who used affiliates tended to be more satisfied than those who did not. Finally, more than 50% of home buyers who were aware that a firm offered a full range of services reported that it positively impacted their decision to use a particular real estate agent and the firm (as opposed to no impact or a negative impact.) Without H.R. 1077, many of these buyers would lose that option.

This bill is essential to maintain competition and consumer choice in mortgage origination. Without this legislation, and based on surveys of large real estate firms with affiliates, one-quarter to as much as one-half of loans currently being originated would likely not be eligible for the QM safe harbor. Consequently, these loans would likely not be made or would be concentrated amongst the largest retail lenders whose business models are protected from the fees and point definition discrimination. Therefore, NAR believes that Congress should pass HR 1077 well before the "ability to repay" provisions take effect in January 2014 since lenders are likely to begin adjusting their systems in the fall of 2013.

OTHER AREAS OF CONCERN

43 Percent Debt to Income Limit (DTI)

Another area of concern with regard to the underwriting standards for QM will be jumbo loans with DTI in excess of 43% and other loans, particularly when the exception for GSE loans expires. For lower loan amounts, FHA and other government backed loans will be the only loans that will satisfy the QM safe harbor when DTI exceeds 43%. Even if the GSE exception is maintained, jumbo loans and non-GSE or government backed loans will be subject to the 43% DTI cap making them more costly or less likely to be made.

For jumbo loans in particular, the DTI cap could impose significant restrictions in high cost areas. High income borrowers are more likely to obtain jumbo financing. Because of their higher residual incomes in gross terms, they can afford to have a higher debt to income ratio. NAR fears that if the non-QM market does not emerge or is anemic, credit in high cost areas could be further restrained. Therefore, we support greater flexibility with regard to DTI limits and QM.

QM and Qualified Residential Mortgage (QRM)

NAR believes that, assuming the concerns with fees and points are addressed, the QRM (which does not require risk retention by securitizers) should be constructed to match the QM. Dodd-Frank establishes that the QRM can be no broader than the QM, but it does not say it cannot be substantially the same. NAR has conducted significant research and has determined that further imposition of downpayment requirements and tighter debt-to- income and credit standards will decrease access to credit and increase costs without creating substantial improvements in loan quality.

In addition to cost concerns, NAR believes that for regulatory compliance purposes and to ensure consistent and reliable securitizations, having the two standards mirror each other is advisable. It is simply far easier to apply one test to a loan than two. It would also prevent possible issues with creating another class of loans, i.e. those that are QM but not QRM, that might affect their overall marketability and cost.

For these reasons, Congress should support, and regulators should establish, a QRM that substantially mirrors the QM.

CONCLUSION

NAR supports a broad QM rule that does not discriminate against affiliates, smaller lenders, community banks, or credit unions. Furthermore, NAR supports a QM rule that gives consumers maximum choice in service providers. Finally, NAR supports a QM and QRM rule that does not needlessly cause credit to be more costly or unobtainable.

We are already in a tight credit environment. The QM and other rules effectively ban the types of products and processes that led to the mortgage crisis. Congress and the CFPB should improve the QM rule to ensure that consumers who have the ability to repay their loans will have the access to affordable credit they deserve.

NAR thanks the Subcommittee members for their attention to these issues. We look forward to working with Congress and the Administration on efforts to address the challenges still facing the nation's housing markets.