



**Statement of John M. Robbins, CMB**

**Chairman of the Mortgage Bankers Association, Washington, D.C.**

**before the**

**Subcommittee on Housing, Transportation, and Community  
Development**

**United States Senate**

**Hearing on**

**"Ending Mortgage Abuse: Safeguarding Homebuyers"**

**June 26, 2007**

Chairman Schumer, Ranking Member Crapo and Members of the Housing, Transportation, and Community Development Subcommittee, my name is John Robbins and I am Chairman of the Mortgage Bankers Association (MBA).<sup>1</sup> I appreciate the opportunity to testify before you today as you review and consider issues related to safeguarding consumers from abuses in the mortgage market. These are issues that are of central concern to the MBA and, with 36 years of mortgage banking experience, I am pleased to share my thoughts in these areas.

Today's hearing is being held during a significant transition affecting the mortgage market and borrowers including subprime borrowers. MBA and its members share the commitment of this subcommittee to assuring protections for consumers against abusive lending and foreclosures and assuring that borrowers continue to have the financing they need to buy and draw needed equity from their homes, and, most importantly, to stay in them.

The real estate finance industry provides many benefits. It is a driving force in establishing communities, creating financial stability and wealth for consumers and fueling the overall economy. Our industry has helped our country reach a near 70 percent homeownership rate. Thus, when abusive lending occurs, it is a stain on the mortgage industry just as it is a burden on our borrowers and communities. Foreclosures, likewise, are harmful and can be ruinous to borrowers and lenders and devastating to communities. We support improved protections for consumers and efforts to stem unnecessary foreclosures.

The challenge for policymakers is to balance consumer protections against the need to assure the availability of credit. This is not a simple equation in a \$3 trillion mortgage market. We think the best approach would result in better educated consumers and honest loan originators, a goal that is impossible to accomplish with legislation alone. As we do legislate, we must do our best to anticipate unintended consequences that may be the inevitable companions of our best intentions. As a matter of prudence, any proposed solutions should address the real problems associated with a small section of the subprime mortgage market and be weighed against their impact on the broader mortgage market.

Going forward, MBA believes that in order to assure the continued availability of mortgage credit, there are three things the government can do to help protect consumers. First, make financial education a priority in this nation, empowering consumers with knowledge and giving them the tools they need to make good decisions

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 500,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the Nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field.

and protect themselves. Second, simplify and make more transparent the mortgage process and the functions and fees of key professionals so that consumers may better understand the details of their transactions and shop more efficiently from mortgage professional to professional. Third, we should achieve a strong and balanced uniform national standard for mortgage lending with increased consumer protections and more accountability for mortgage professionals.

The mortgage market in general has done an outstanding job for consumers and the larger economy. To assure its continued capability, we must guard against any policy that is not based on sound facts and that has the potential to undermine these benefits going forward – particularly for those most in need of credit.

## **I. STRUCTURE OF THE MORTGAGE MARKET AND KEY PLAYERS**

Consumers in today's mortgage market can choose from among a wide array of lenders and mortgage brokers to obtain a mortgage to purchase a home, to refinance and/or to draw on their home's equity. In 2005, 8,848 institutions including 3,034 commercial banks, 974 savings institutions, 2,047 credit unions and 1,923 mortgage companies, reported under requirements of the Home Mortgage Disclosure Act (HMDA). The National Association of Mortgage Brokers reports 53,000 mortgage brokerage companies, as of 2004, employing an estimated 418,700 people at the time.

The delivery channels through which borrowers obtain loans from these institutions vary considerably based on the institutions' particular business models. In many cases, lenders originate mortgages through their own loan officers or correspondents in response to loan applications submitted through the Internet, call centers, by mail or a visit to a lender's office. Others obtain mortgages originated by mortgage brokers. While there is not definitive data on the breakdown of lender and broker originated loans, it has been estimated that mortgage brokers may originate more than 50 percent of all loans and at least 70 percent<sup>2</sup> of subprime mortgages in any given year.

Some borrowers shop effectively among the range of mortgage originators. Others rely on mortgage brokers to shop for them. As noted by former U.S. Senator Paul Sarbanes following a hearing concerning mortgage broker compensation on January 8, 2002, "a borrower's relationship with a mortgage broker is clearly different than with a lender. A borrower views the broker as shopping on the borrower's behalf, which is not the case with a lender."<sup>3</sup>

While a broker's functions are limited to facilitating the origination of a loan and receiving compensation for those services, lenders risks and responsibilities respecting loan transactions are much greater. Lenders design loan products for borrowers, originate loans, frequently service them and seek remedies when they fail. They have brick and mortar investments in communities. Significantly, they bear the risk of

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<sup>2</sup> According to the Office of Thrift Supervision.

<sup>3</sup> Letter dated January 14, 2002 to the Honorable Mel Martinez.

repurchase from the investor if a loan fails and garner significant reputational as well as financial risk in the community if it does.

Loan originators – lenders and mortgage brokers – are compensated through direct front-end fees paid by borrowers. A mortgage broker may also be compensated by a lender based on the loan rate or yield on the loan to which the borrower agrees, with increased compensation resulting from a greater rate.

Since the early 1990s following the advent of mortgage brokers, the U.S. Department of Housing and Urban Development (HUD) has required the disclosure of yield spread premiums (YSPs) to mortgage brokers in table-funded transactions as settlement costs of the borrower. In its 2002 proposed Real Estate Settlement Procedures Act (RESPA) rule, which was withdrawn in 2004, HUD sought to make the disclosure clearer than the current requirements which permit disclosure as a notation on a list of fees as “YSP POC” or yield spread premium paid outside of closing. The existence of a greater YSP can affect the broker’s and the borrower’s choice of a mortgage.<sup>4</sup>

While a lender also may receive compensation based on a loan’s yield by investors in the secondary mortgage market, HUD has not required the disclosure of these payments to lenders.<sup>5</sup> Where lenders receive such payments, they are not obtained at settlement. Moreover, many lenders hold loans in their own portfolio and do not receive such payments on loans. Also, when consumers shop among lenders, they have a clear sense of what their rates and costs are; disclosure of specific back-end fees to the lender is not necessary to protect consumers.

## **II. TODAY’S MORTGAGE MARKET**

Homeownership today is near its highest level in history – nearly 70 percent overall. Homeownership rates rose roughly 3.5 percentage points in the U.S. between 1989 and 2001. Looking at recent years, in 2001, the overall homeownership rate was 67.8 percent. In 2006, it was 68.9 percent. For African-Americans, the rate in 2001 was 47.7 percent, and in 2006 it grew to 48.2 percent (although it was 49.1 percent in 2004). For Hispanics, the rate in 2001 was 47.3 percent and in 2006 it was 49.5 percent. As a result of these increases in homeownership, across all demographics, more Americans are building tremendous wealth by increasing their home equity through their monthly payments and through the impressive rate of home price appreciation seen in recent years.

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<sup>4</sup> Properly used an increased rate can help the consumer defray some or all of his settlement costs.

<sup>5</sup> HUD has established an exemption under RESPA for secondary market transactions. Notwithstanding assertions by mortgage broker organizations of asymmetry of disclosure requirements, HUD has aggressively pursued improvement of mortgage broker disclosures and has not sought disclosure of secondary market payments to lenders. Considering the differing perceptions of borrowers regarding mortgage brokers and lenders, it is evident that HUD regards payments to mortgage brokers by lenders, and not secondary market payments to lenders, as requiring greater borrower understanding.

MBA's data indicate that more than a third of all homeowners own their homes free and clear of any lien. Of the 50 million mortgage holders, or two-thirds of homeowners who do have mortgages, three-quarters have fixed rate mortgages. Only one quarter of these borrowers, or about a sixth of all homeowners, have adjustable rate mortgages (ARMs).

### Homeowning Household Distribution

#### By Mortgage Type

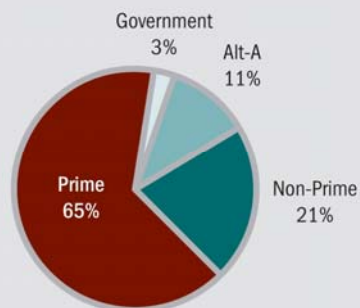
Household Mortgage Type	Percent	Percent of Those with a Mortgage
No Mortgage . . . . .	34.6	
Fixed Rate . . . . .	49.2	75.2
Adjustable Rate . . . . .	16.2	24.8
Jumbo . . . . .	3.9	6.0
Conforming . . . . .	12.3	18.8
<b>Total</b>	<b>100.0</b>	<b>100.0</b>

Source: American Housing Survey; Mortgage Bankers Association

According to MBA's Mortgage Originations Survey, in the first half of 2006, 62 percent of the dollar volumes of loans originated were prime loans, 16 percent were Alt. A, and 19 percent were nonprime, with government loans accounting for the remaining 3 percent.

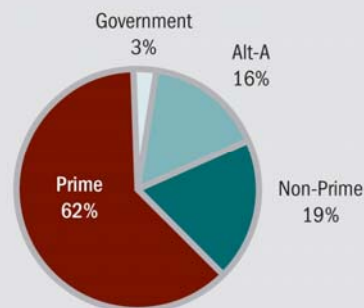
### Mortgage Originations by Loan Type

#### First Half of 2005



By dollar volume

#### First Half of 2006



By dollar volume

Source: MBA's Mortgage Origination Survey

Based on first half 2006 data, nearly half of nonprime borrowers, or 45 percent, used nonprime loans to buy homes. One in four of these purchases was made by a first-time

homebuyer. Also, notably, over the last several years the average difference between the interest rates of prime loans and nonprime loans has decreased markedly.

### III. SUBPRIME MARKET TROUBLES IN PERSPECTIVE

Among current homeowners, 4.9 percent are subprime borrowers with adjustable rate mortgages. Of these subprime ARMs, 10.13 percent are seriously delinquent or in foreclosure. To put this in proper perspective, this is 10 percent of 4.9 percent of homeowners with mortgages or approximately 250,000 homeowners. Importantly, based on experience, fully half of those borrowers will find a solution that avoids a foreclosure sale. In other words, 99.75 percent of homeowners are not at risk of foreclosure. The current foreclosure rate, while important, is not out of line with rates in the past and does not characterize a macroeconomic event for the U.S. economy.

Notably, the problems associated with the subprime market were driven by a number of factors: over-capacity of capital, deceleration or drop in home price appreciation and an increase in unemployment in specific regions in the country.

The issue of over-capacity is being addressed both by market participants who are tightening underwriting standards or have left the market altogether and by federal regulators. For example, today the percentage of banks reporting tighter underwriting standards is the highest in 15 years and those who most abused the system are out of business. In fact, over 40 companies have closed due to being overly aggressive in their underwriting. Regulatory actions such as the recent comprehensive guidance related to nontraditional products and the expected final statement on subprime lending will further tighten underwriting of many mortgage products.

Most importantly, unemployment was and continues to be the main factor in the rise of delinquencies and foreclosures across the nation – not mortgage products. According to Freddie Mac, based on a sample of loans in Workout Prospector<sup>®</sup> from 2006, data demonstrate that delinquencies among all borrowers are a function of a variety of factors including, first and foremost, economic difficulties caused by job losses. The data shows the following chief causes for mortgage delinquency:<sup>6</sup>

<b>Unemployment or Loss of Income</b>	<b>36.3%</b>
<b>Illness in the Family</b>	<b>21.1%</b>
<b>Excessive Obligation</b>	<b>13.6%</b>
<b>Marital Difficulties</b>	<b>6.0%</b>
<b>Death in the Family</b>	<b>3.9%</b>
<b>Property Problems or Casualty Loss</b>	<b>2.8%</b>
<b>Extreme Hardship</b>	<b>0.9%</b>

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<sup>6</sup> Excludes delinquent loans in Louisiana and Mississippi due to the effects of the 2005 hurricanes. Note, Freddie Mac also published a summary of causes for mortgage delinquency based on data from 1999-2005, which essentially tracked these results.

<b>Inability To Sell Or Rent Property</b>	<b>1.4%</b>
<b>Employment transfer or military service</b>	<b>0.6%</b>
<b>All other reasons</b>	<b>13.3%</b>

An examination of MBA's National Delinquency Survey (NDS) for the first quarter of 2007 also confirms the causal relationship between unemployment and delinquencies. For example, the chart below shows the top five states that have the highest delinquencies across all loan categories (including subprime ARM, subprime fixed, FHA, prime ARM and prime fixed) including three that have the highest rates of unemployment – Ohio, Michigan, and Indiana.

### Seriously Delinquent Loans - 2007 Q1

Subprime ARM		Subprime Fixed		FHA		Prime ARM		Prime Fixed		All Loans	
<b>HIGHEST FIVE STATES</b>											
Ohio	19.86	Mississippi	14.06	Michigan	10.01	Mississippi	4.77	Ohio	1.92	Ohio	5.14
Michigan	18.98	Ohio	12.70	Ohio	8.72	Indiana	4.16	Louisiana	1.75	Mississippi	4.52
Louisiana	18.27	Louisiana	11.48	Louisiana	7.82	Ohio	4.10	Indiana	1.67	Indiana	4.51
Mississippi	17.93	Michigan	10.51	Indiana	7.58	Oklahoma	4.01	Mississippi	1.65	Louisiana	4.23
Indiana	17.26	Indiana	9.90	South Carolina	7.14	Louisiana	3.92	Michigan	1.21	Michigan	4.16
<b>US Average</b>	<b>10.13</b>	<b>US Average</b>	<b>5.89</b>	<b>US Average</b>	<b>5.26</b>	<b>US Average</b>	<b>1.66</b>	<b>US Average</b>	<b>0.67</b>	<b>US Average</b>	<b>2.23</b>
California	7.57	California	2.92	California	1.96	California	1.22	California	0.20	California	1.36
<b>LOWEST FIVE STATES</b>											
Idaho	5.40	Utah	2.53	Idaho	1.91	Utah	0.77	California	0.20	Washington	0.88
Washington	4.72	Oregon	2.23	Montana	1.67	Oregon	0.67	Montana	0.19	Montana	0.80
Oregon	4.17	Hawaii	2.16	North Dakota	1.61	Hawaii	0.66	Hawaii	0.13	Oregon	0.79
Arizona	4.10	Arizona	2.07	Alaska	1.35	Washington	0.64	Wyoming	0.13	Hawaii	0.74
Utah	3.99	Alaska	1.38	Wyoming	1.22	Idaho	0.63	North Dakota	0.12	Wyoming	0.74

Seriously delinquent loans are those 90 days or more past due or in foreclosure  
Source: Mortgage Bankers Association National Delinquency Survey

All three of these states have suffered large declines in manufacturing employment. While there has been some pickup in service sector employment in those states, that employment is not often in the areas where job losses occurred and the wages are often lower in the service sector. For example, while we have seen increases in employment in places like Cincinnati, Columbus, Ann Arbor, and Indianapolis, we have seen job losses in Detroit, Flint, Cleveland, Dayton and Muncie.

While Ohio, Indiana and Michigan account for 8.7 percent of the mortgage loans in the country, those three states account for 19.9 percent of the nation's loans in foreclosure and 15 percent of all of the foreclosures started in the country during the first quarter. Without these three states, the percent of loans in foreclosure would be below the national average over the last 10 years, 1.12 percent versus an average of 1.19 percent.

To put these numbers in further perspective, the level of foreclosures and foreclosure starts for those three states has exceeded what occurred in Texas during the oil bust of

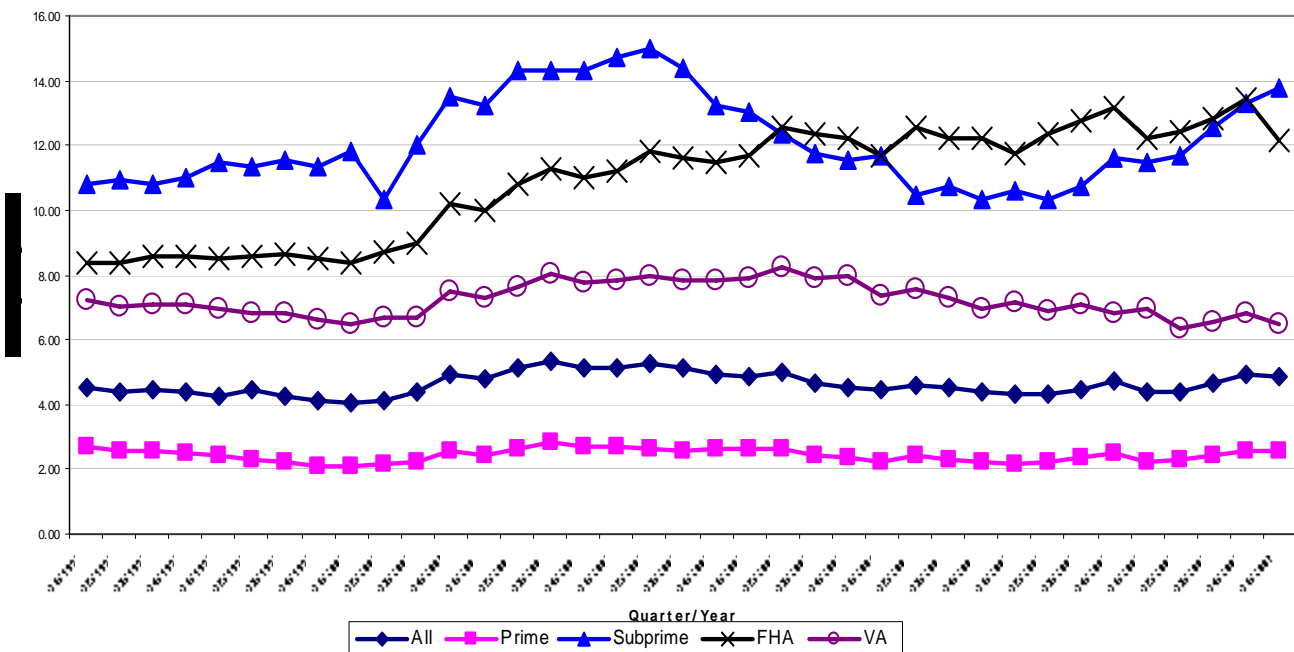
the mid-1980s, and Ohio has the highest level ever seen in the MBA survey for a large state.

In its most recent data, MBA is seeing increases in delinquencies and foreclosures for nonprime loans, particularly nonprime ARMs. Because of technology, induced cost reduction and efficiency gains by the industry as well as the appetites of borrowers for credit, the share of outstanding loans that are nonprime has been increasing for the last several years. The higher average delinquency and foreclosure rates among these loans mean the overall statistics for total outstanding mortgages are unlikely to fall as low as in the past.

It is important to note that nonprime loans have always had higher delinquency and foreclosure rates, and lenders factor in these risks when lending to nonprime borrowers. Given the fact that nonprime borrowers have weaker credit profiles, this is not surprising. Foreclosures also can be accelerated by slow housing markets that limit borrowers' ability to quickly sell in order to cover their losses. MBA data has indicated that over the last several quarters a number of factors, including the aging of the portfolio, increasing short-term interest rates and high energy prices, have been putting upward pressure on delinquency rates.

According to MBA's NDS, delinquencies overall dropped in the first quarter of 2007 from the fourth quarter of 2006. Assertions that delinquency or foreclosure rates are at crisis levels and a greater percentage of borrowers are losing their homes are not supported by data. In fact, delinquency and foreclosure rates have remained relatively low with some increases over the last year. The chart below traces delinquencies from 1998 through the first quarter of 2007. It reveals the fact that delinquencies were higher in

**Chart 1. Total Delinquency Rate by Loan Type**





the subprime market at the end of 2000 as well as during 2002 than they were in the first quarter of 2007.

The delinquency rate for mortgage loans on one-to-four unit residential properties stood at 4.84 percent of all loans outstanding in the first quarter of 2007 on a seasonally adjusted basis, down 11 basis points from the fourth quarter and up 43 basis points from one year ago, according to MBA's NDS. Both prime and subprime ARM loans had higher delinquency rates as compared to the fourth quarter of 2006. Delinquency rates for the fourth quarter increased 30 basis points for prime ARM loans (from 3.39 percent to 3.69 percent) and increased 131 basis points for subprime ARMs (from 14.44 percent to 15.75 percent). The delinquency rate for prime fixed loans decreased 8 basis points (from 2.27 to 2.19 percent), while the rate increased 16 basis points for subprime fixed rate loans (from 10.09 percent to 10.25 percent).<sup>7</sup>

MBA's first quarter 2007 NDS found that the percentage of loans in the foreclosure process was 1.28 percent, an increase of nine basis points from the fourth quarter of 2006, while the seasonally adjusted rate of loans entering the foreclosure process was 0.58 percent, four basis points higher than the previous quarter. The foreclosure inventory rate for subprime loans in the first quarter of 2007 was 5.10 percent, up from 4.53 percent in the fourth quarter of 2006 but still well below historic high points in the early 2000s. The foreclosure inventory rate for prime ARMs went from 0.92 percent in the fourth quarter up to 1.09 percent in the first quarter, for nonprime ARMs from 5.62 percent to 6.46. The foreclosure inventory rate increased for subprime fixed rate mortgage loans it went from 3.19 percent to 3.29 percent.

#### **IV. MBA CONCERNS WITH S. 1299, THE "BORROWER'S PROTECTION ACT OF 2007"**

We applaud the Chairman's and the Subcommittee's commitment to better protecting consumers from predatory lenders. While we agree with the purposes of Senator Schumer's proposed bill, S. 1299 the "Borrower's Protection Act of 2007," the outcomes it would propose to mandate would be frustrated, subverted by litigation and market forces. In fact, quite perversely, the very provisions it proposes to protect people would actually diminish the availability of credit.

MBA joins many on the committee in supporting increased consumer protections and greater transparency in the mortgage process. Improved disclosures, increased professional standards for mortgage brokers, broker accountability and a robust financial literacy campaign would protect consumers and help them lower the costs of their home financing. If Congress undertakes legislative action, we would support uniform national standards that create balanced requirements and bright line compliance standards. Anything beyond this could lead to significant and unnecessary

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<sup>7</sup> These figures are based on MBA data. MBA defines "delinquency" as having one or more payments overdue. The loans in foreclosure are approximately a third of these numbers and the borrowers actually losing their homes are approximately a fourth of that group.

liability exposure that will threaten the availability of mortgage credit and increase its costs. S. 1299, however, amends section 129 of the Truth in Lending Act (TILA) to include several new troubling provisions that would subject lenders to substantial liability that could result in limiting credit and credit options. Most importantly, the approaches in the bill raise the question of whether government intervention of this nature is preferable to allowing the market to correct itself as is occurring today. It is through this lens that we examine some of the most problematic provisions of S. 1299.

## **A. Lender Duty of Care Obligations**

S. 1299 requires that a mortgage originator – lender and broker – “act with reasonable skill, care, and diligence, and act in good faith and with fair dealing in any transaction, practice, or course of business associated with the transaction.” While mortgage lenders work every day to serve their customers fully and fairly, the establishment of such a standard risks unintended consequences. S. 1299 provides no definition of what this standard means and how lenders can comply with it. As a subjective standard, its imposition would risk significant potential liability exposure, adversely affecting the affordability of mortgage credit to consumers and increasing its costs.

MBA is also concerned with language regarding the prohibition against lenders and brokers steering borrowers into loans or loan terms that are not “reasonably advantageous to the consumer, in light of all the circumstances.” While MBA opposes steering and favors informed consumer choice, this type of standard would force loan originators to determine whether a loan is suitable for a borrower. MBA has carefully studied the issue of the potential effects that the imposition of a variety of approaches to suitability would have on the mortgage market. MBA has concluded that imposition of such a standard would not provide benefits that would outweigh the costs to consumers, lenders and other market participants. We respectfully refer the subcommittee to a report on suitability standards published earlier this year by MBA which contains the bases for these conclusions.

MBA is also concerned about the bill’s mandate requiring the lender or broker who cannot recommend or offer a reasonably advantageous loan to a consumer to either:

- Originate or facilitate “a reasonably advantageous home mortgage loan by another creditor to the consumer” or,
- Disclose to the consumer that it does not offer a reasonably advantageous loan but that other creditors may in addition to listing the reasons that the products and services offered by the originator are not available to or reasonably advantageous for the consumer.

MBA believes these provisions in the first instance are unclear because they do not define what is “reasonably advantageous,” again risking significant potential liability and concomitant increases in cost and limitations of credit. Beyond this, the provision unreasonably demands that lending institutions in a free market facilitate originations for

lenders' competitors. It also requires lenders to be aware of and in a position to offer other lenders' products to satisfy this requirement. With thousands of lenders offering many mortgages each with different loan and rate characteristics, lenders are not in a position to intimately know whether competitors' products are advantageous to a consumer and should not be required to do so.

## **B. Rigid Underwriting Standards**

Safe and sound underwriting is the cornerstone of responsible lending. While MBA supports underwriting to assure that the borrower can repay the loan as well as the taxes and insurance, enactment of standards along the lines in S. 1299 will only choke off the availability of affordable credit that has made today's record homeownership rates possible.

Specifically, the bill proposes that originators determine a borrower's ability to repay an adjustable rate mortgage based on the maximum payment that could be due from the borrower during the first seven years of the loan using the maximum interest rate allowable and assuming no default by the borrower and a repayment schedule which achieves full amortization over the life of the loan. It also requires that originators must base a determination of an ability to repay on documentation of income and financial resources and the debt-to-income and residual income of the borrower as determined under federal regulations.

In today's market, lenders carefully consider and evaluate relevant risk factors such as credit reports, credit scores, debt-to-income ratios, type of property and down payment to determine a consumer's ability to make their mortgage payments and they have every incentive to do so. In the event that a loan fails, they can be forced to repurchase it and risk a decision by an investor or investors not to do business with them in the future.

At the same time, however, innovations in the underwriting process have opened the door of homeownership to a much greater percentage of American families than could have dreamed of it a generation ago. Through innovation and computerization, lenders today have a much better understanding of risk factors and have developed much more precise and inclusive risk assessment tools. Enactment of overly rigid standards will only counter these strides.

We would also point out that MBA and its members agree that borrowers of subprime hybrid ARMs should not be underwritten at teaser rates that are substantially below the fully-indexed accrual rate and are in effect for just the first few months of a loan. However, the imposition of overly broad underwriting standards beyond these limits, such as requiring an evaluation of the maximum payment during the first seven years, are ill-founded and will unduly limit credit to borrowers.

When rates have trended downward, the average life of a mortgage has been as low as nine months. Some report recently that 30 months has been the average duration in

the subprime market with slightly greater than four years the average duration in the prime market. In any case, the average length of a mortgage is far shorter than the seven years required for underwriting loans under the bill. Far too prescriptive underwriting approaches like the seven year standard would bar the availability of loans with lower initial rates to those borrowers, such as military personnel, who frequently move, and deny others products that offer them the ability to get into a home and to repair their credit histories on a path to obtain lower rate loans.

Additionally, by effectively barring stated income loans the bill could be detrimental to the ability of immigrants and self-employed borrowers, who sometimes have difficulty documenting their income, to obtain competitive mortgage financing. This is notwithstanding the fact that lenders report that stated income loans, when used appropriately, perform very well. We would caution Congress to advance very carefully in this area as stated income loans have been a meaningful way for important segments of borrowers to get mortgage credit.

Finally, while MBA recognizes and points out in its suitability paper, that hard and fast underwriting standards limit credit, such standards are preferable to subjective standards.<sup>8</sup> For example, while requiring a specific debt-to-income standard will exclude borrowers, a subjective standard such as “reasonableness” risks litigation and raises much broader concerns. While MBA prefers much more flexible approaches to underwriting to facilitate homeownership, it is willing to work with the subcommittee on bright-line standards, which at least have the virtue of making the rules clear.

### **C. Lender and Broker Liability**

MBA is greatly concerned with Section 129A (d)(3) as it would hold the lender liable for any “acts, omissions, and representations” by a broker in delivering a “rate spread mortgage” to the lender. We strongly believe that this provision unfairly makes the lender liable for the acts of an independent mortgage broker over which the mortgage lender has no control and which may have occurred before the lender purchased the mortgage. If Congress wants to create greater broker accountability, a sentiment we support, we strongly urge that better licensing, clear disclosure and the establishment of precise standards applicable to independent brokers are the most effective means to that end.

## **V. STEPS CONGRESS CAN TAKE TO PROTECT CONSUMERS**

There are at least three things Congress can do to help consumers become better informed through the mortgage process, protect themselves and help them make the best choice for themselves.

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<sup>8</sup> MBA Policy paper Series – Policy Paper 2007-1. “Suitability – Don’t Turn Back the Clock on Fair Lending and Homeownership Gains.”

First, considerable resources should be committed to improving borrower education to raise the level of financial literacy, including this important subject into general educational programs and increasing access to transaction-specific borrower counseling. It would be a worthy undertaking to conduct a review of total government efforts in the area of financial literacy to see what is working is what is not. This study could also include the amount of resources expended for this purpose. MBA believes that better financial education would empower all borrowers to shop effectively among the array of competitors in the marketplace.

Second, MBA believes simplification of the mortgage process and all necessary consumer information would make it much easier for an empowered consumer to navigate the market, and such improvements are long overdue. We commend to the Committee the fact that Federal Trade Commission staff just issued a comprehensive study that strongly supports this view.<sup>9</sup> Consumers today face a pile of disclosures when they apply for and close on a mortgage. Efforts at improvement need to streamline the existing mandated disclosures and information, and must be comprehensive and well considered. A successful effort would result in much more effective information on the benefits, costs and features of the loan options presented by lenders. This approach would also go a long way to help borrowers shop for mortgages among loan providers, increasing their ability to make an apples-to-apples comparison.

In particular, MBA believes that many abuses could be prevented and costs lowered if there were much better borrower information on the function and fees of the mortgage broker in each borrower's loan transaction, and if there were stronger licensing and a registry of mortgage brokers and other loan originators. For almost a decade, MBA has advocated a clear disclosure to the consumer concerning the functions and compensation of mortgage brokers that would advise the consumer of whether the broker is or is not the borrower's agent and of the total compensation that the broker receives. Such a disclosure would alert the borrower in cases where the broker is not an agent that the borrower should either shop for himself or risk higher mortgage costs. Moreover, if a mortgage broker holds himself out as an agent, MBA believes it is appropriate to consider him an agent as a legal matter. In MBA's view, disclosures along these lines are a much better approach than imposing an undefined standard or standards on the industry, again increasing liability and greater costs to borrowers.

Notably, MBA does not believe that a disclosure of function and fees is warranted for mortgage lenders. Unlike a broker whose role may be uncertain – agent or loan provider – a lender's role is clear. A lender underwrites, approves and funds the loan. The lender does not hold himself out as an agent of the borrower. While a lender must serve its customers fairly, and the industry has done much to assure high professional standards, a lender owes a duty to its shareholders and investors. A borrower knows a lender offers its own products and does not offer to shop for borrowers. In MBA's view, the fact that the lender may sell the loan into the secondary market and receive

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<sup>9</sup> Improving Consumer Mortgage Disclosures, An Empirical Assessment of Current and Prototype Disclosure Forms, by James M. Lacko and Janis K. Pappalardo of the Federal Trade Commission (June 2007).

compensation for the sale does not change our view that a broker, and not a lender, need disclose its fees. A lender offers a loan to a borrower at a price and rate and points which are fully disclosed and there is no additional payment which a borrower needs to consider in light of the lender's functions.

Also, as has been pointed out, in some states, the standards for licensing a hair dresser are more rigorous than those applicable to mortgage brokers. MBA supports national, uniform regulation of mortgage brokers including a national database of approved brokers. A clear, fair national regulatory standard for mortgage brokers is an essential step to establishing much better mortgage lending protections for borrowers.

Third, uniform lending standards applicable to all originators that are clear and objective, but do not unduly restrict the market, would improve consumer protections to stop lending abuses. These standards must be national in scope to enhance competition in all markets for all borrowers, especially nonprime. Such standards will allow all borrowers to benefit from greater choices, competition and lower prices that a fair and fully functioning market brings. MBA would support the expansion of the types of loans to be covered in a uniform national standard to include purchase money loans and open-ended lines of credit.

## **VI. INDUSTRY EFFORTS TO HELP CONSUMERS**

While working with policymakers to address the transformation in the mortgage market, MBA and its partners are leading the way to help stabilize and preserve the subprime mortgage credit system, provide assistance for homeowners facing foreclosure, and finally, prevent this from ever occurring again.

MBA has met with Fannie Mae and Freddie Mac, with FHA, with our largest servicers, consumer groups and civil rights leaders to search for solutions. We did so both separately and as a participant in a housing summit convened by Senate Banking Committee Chairman Christopher Dodd where an agreement was reached on principles for mortgage lenders and servicers to assist troubled borrowers.

MBA also has partnered with NeighborWorks America, a national nonprofit organization created by Congress, to help troubled borrowers. Specifically, MBA has dedicated financial and staff resources to help promote a free counseling hotline, 888-995-HOPE, which is staffed by the Homeownership Preservation Foundation and provides a helpful place for troubled borrowers to turn. In addition, through the partnership, we hope to establish foreclosure intervention programs in cities with high rates of foreclosure and to conduct a national public education campaign with the National Ad Council to improve contact rates for homeowners in financial distress. The partnership also seeks to improve counseling capacity and provide certified training programs for foreclosure counselors through the NeighborWorks Center for Homeownership Education and Counseling (NCHEC).

MBA is also seeking to arm consumers with good information so that they can make intelligent choices. That's why MBA has launched Project Clarity, an initiative to simplify and demystify the mortgage process. We're working on documents to be given to borrowers upfront that clearly state the pros and cons of the variety of loans available today. And as part of MBA's ongoing financial literacy effort, we have re-tooled and re-launched our consumer Web site,<sup>10</sup> which is also available in Spanish.

## **Conclusion**

MBA members have worked hard to put Americans in homes, facilitating the development of communities, increasing consumer wealth and improving the stability of families across the nation. The transitioning of the subprime mortgage market, and the affect it is having and will likely continue to have on access to mortgage credit, is a challenge for us all. MBA implores Congress not to act hastily but to partner with industry and consumer groups to develop new approaches to assure that borrowers continue to get mortgage credit to fulfill their dreams of homeownership while effectively protecting them against abuse.

MBA has been long committed to fighting predatory lending and we would welcome the opportunity to work with Congress to develop solutions that weed out bad actors and allow the mortgage industry to continue to serve borrowers. Better financial literacy, mortgage simplification and establishment of a uniform national standard are steps that should be taken.

MBA looks forward to continuing to work with this subcommittee and the Congress to address these challenges in the housing market and we stand ready to assist you however we can.

Thank you.

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<sup>10</sup> <http://www.homeloanlearningcenter.com/>