

May 5, 2009

The Honorable Barney Frank
Chairman
House Financial Services Committee
Washington, DC

The Honorable Spencer Bachus
Ranking Member
House Financial Service Committee
Washington, DC

Dear Chairman Frank and Ranking Member Bachus:

We appreciate your continued efforts to pass legislation designed to stop the abuses in the mortgage market. We have seen how diligently you have worked to craft a solution to the difficult problems caused by deregulation of mortgage-related transactions. *H.R. 1728 reflects important steps forward from H.R. 3915 on several key issues, and the version that passed out of Committee contains several substantial improvements to the language as introduced, however we regrettably are unable to support the bill without further improvements because it will not create sufficient incentives to make sustainable home loans, nor will it provide homeowners with adequate recourse when they receive an abusive loan.*

Titles I and II reflect important and beneficial improvements over H.R. 3915, including coverage of all loans in the market, a stronger definition of qualified mortgage with a rebuttable presumption of compliance, and a stronger rule on prepayment penalties. Now that adjustable rate mortgages clearly are included in the qualified mortgage definition, inclusion of a residual income analysis and underwriting for the maximum payment under the loan are helpful. Moreover, we are very grateful for the proposed funding for legal services work, which will significantly supplement the work that advocates around the country already are doing, as well as the strong tenant protections and the prohibitions on binding mandatory arbitration and single premium credit insurance. The servicing provisions also are helpful as homeowners face huge challenges in making their mortgage payments during this economic crisis. We appreciate the Committee's attempt to preserve some important state claims that borrowers use to save their homes from abusive loans and to provide greater duties to parties who are able to provide remedies to homeowners.

Our major concern with the bill, however, is that important new protections still are accompanied by a convoluted, untested scheme for remedies. Homeowners who have suffered the harms protected against in the bill in most cases will not have direct access to the parties who can provide relief. While the bill seeks to spur innovation by shielding the ultimate mortgage holders from full responsibility, this approach may create significant hurdles for consumers already stressed by unsustainable home payments. Moreover, such an approach does not reflect the events of recent months, in which it only has become more evident that abusive loans were made to satisfy Wall Street's insatiable demand for profit at the expense of communities. Because it provides direct access to the holder of the loan only for borrowers in foreclosure, the bill punishes homeowners who struggle and manage to make their home payments but who simultaneously seek reasonable relief by sending them through an inexcusable, industry-created maze. The cure scheme in the bill allows liable parties to avoid any cost to violating the law by simply repairing the few loans for borrowers who have the resources to complain.

It also is essential that certain other of the bill's provisions are strengthened. In particular, the bill needs to create affirmative duties for brokers and lenders making loans and more clearly address racial steering and yield spread premiums—practices that have been at the core of abusive lending in communities of color. In addition, any bill seeking to address servicing inefficiencies and abuses must require servicers to provide reasonable loss mitigation prior to foreclosure.

Finally, full removal of preemption from the bill would provide greater accountability and allow states to protect their citizens as they see fit.

Again, we recognize your commitment to reforming the mortgage market and hope you will consider further changes to H.R. 1728 as the bill moves forward.

Thank you for your time and consideration.

Sincerely,

Communications Workers of America
Consumer Action
DEMOS
National Consumer Law Center on behalf of its low-income clients
National Association of Consumer Advocates
Public Citizen
U.S. Public Interest Research Group

Center for California Homeowner Association Law of Oakland, California
Housing and Economic Rights Advocates of Oakland, CA
Public Counsel of Los Angeles, California
Connecticut Fair Housing Center of Hartford, Connecticut
Jacksonville Area Legal Aid, Inc. of Jacksonville, Florida
Central Illinois Organizing Project of Springfield, IL
Civil Justice, Inc. of Baltimore, Maryland
Massachusetts Law Reform Institute of Boston, Massachusetts
WilmerHale Legal Services Center of Harvard Law School of Jamaica Plain, Massachusetts
Capitol Services/Michigan Advocacy Project of Lansing, Michigan
Mid Minnesota Legal Assistance of Minneapolis, Minnesota
Beyond Housing of St. Louis, Missouri
Gateway Legal Services, Inc. of St. Louis, Missouri
Metropolitan St. Louis Equal Housing Opportunity Council of Saint Louis, Missouri
Legal Services of New Jersey of Edison, New Jersey
Better Neighborhoods, Inc. (BNI) of Schenectady, New York
Capital District Women's Bar Association Legal Project, Inc./The Legal Project of Albany, New York
Empire Justice Center of Rochester, New York
Fair Housing Council of Central New York, Inc. Syracuse, New York
MFY Legal Services, Inc./Foreclosure Prevention Project of New York, New York
Neighborhood Economic Development Advocacy Project (NEDAP) of New York, New York
The Legal Aid Society in the City of NY/Law Reform Unit of New York, New York
Western New York Law Center of Buffalo, New York
Financial Protection Law Center of Wilmington, North Carolina
Legal Services of Southern Piedmont of Charlotte, North Carolina
North Carolina Justice Center of Raleigh, North Carolina
Advocates for Basic Legal Equality of Dayton, Ohio on behalf of Edgemont Neighborhood Coalition
Northeast Ohio Legal Services of Youngstown, Ohio

ACTION Housing, Inc. of Pittsburgh, Pennsylvania
Greater Philadelphia Urban Affairs
Coalition/Campaign for Working Families of Philadelphia, PA
Community Action2 Committee of the Lehigh Valley of Bethlehem, Pennsylvania
Community Legal Services of Philadelphia, Pennsylvania
Consumer Credit Counseling Service of Delaware Valley of Philadelphia, Pennsylvania
Philadelphia Unemployment Project of Philadelphia, Pennsylvania
Philadelphia VIP of Philadelphia, Pennsylvania
South Carolina Appleseed Legal Justice Center of Columbia, South Carolina
Virginia Poverty Law Center of Richmond, Virginia
Vermont Legal Aid, Inc. of Montpelier, VT
Columbia Legal Services of Olympia, Washington
Mountain State Justice, Inc. of Charleston, West Virginia
Legal Aid Society of Milwaukee, Inc. of Milwaukee, Wisconsin
Wisconsin Consumers League of Milwaukee, Wisconsin