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Congress Should Prevent “Predatory Lending” Abuses By Mandating Uniform National Standards For Nonprime Lending

The Coalition for Fair and Affordable Lending (“CFAL”) supports the passage of new federal legislation to provide fair and effective uniform national standards for nonprime mortgage lending.

The federal Home Ownership and Equity Protection Act of 1994 (“HOEPA”) requires special protections and disclosures for higher cost loans offered to higher risk borrowers in the nonprime segment of the mortgage market. Congress has not updated HOEPA to address certain abusive practices that are not adequately restricted under current law.

A number of states and localities are seeking to fill the perceived pressing legislative gap in this area, but unfortunately their well-intended legislative efforts often result in harmful unintended consequences. Borrowers in some areas are finding their access to affordable mortgage credit being severely curtailed. In other cases where nonprime credit remains available, many already economically hard-pressed consumers have to pay significantly more than they should because of poorly drafted state or local requirements. And, although a patchwork of often ill-defined and unworkable laws is developing, most Americans still are left without any special protections other than the outdated federal HOEPA law.

Congress should promptly amend HOEPA so as to provide clear and effective nationwide rules that protect nonprime mortgage borrowers from abusive practices, while preserving borrowers’ choices and access to affordable credit. Congress has the experience, expertise and national perspective needed to craft fair, balanced rules that can protect all Americans. And, the States’ Attorneys General can play a key role in helping federal regulators enforce the new nationwide protections.

CFAL urges Congress to promptly pass such new legislation updating HOEPA and other relevant federal laws as may be appropriate. CFAL believes that Congress should include, among other things, specific provisions targeted to higher cost mortgages that:

➤ **Prohibit**

- ✓ Loan “flipping” (frequent loan refinancing with no meaningful benefit to the borrower);
- ✓ Lending without regard to the borrower’s repayment ability;
- ✓ Profiting from foreclosures;
- ✓ Selling single premium credit life insurance;
- ✓ Short-term balloon payments;

- ✓ Unfair arbitration requirements;
- ✓ Prepayment penalties without borrower choice and reasonable limitations on the amount and time duration of the penalty;
- ✓ Refinancing special below-market, low interest rate loans;
- ✓ Negative amortization;
- ✓ Call or debt acceleration provisions;
- ✓ Increasing interest rates upon default;
- ✓ Advance payments;
- ✓ Encouraging Default;
- ✓ Unreasonable modification or deferral fees;
- ✓ Bad faith structuring of loan transactions to avoid legal protections;
- ✓ Failing to regularly report borrowers' payment histories to credit bureaus; and
- ✓ Home improvement lending without making checks payable jointly to the borrower and contractor and making full payment without confirmation of work completion.

➤ **Require**

- ✓ Additional disclosures and cautionary warnings to higher risk borrowers;
- ✓ Recommending borrowers consider credit counseling and providing information to facilitate making contact with counselors;
- ✓ Regular reporting of borrowers' payment histories to credit bureaus; and
- ✓ Minimum licensing standards for mortgage brokers.

➤ **Mandate**

- ✓ Tough, but proportional penalties for violations;
- ✓ Reasonable opportunities for voluntary corrections of unintentional errors;
- ✓ Uniform, fair national standards applicable to all nonprime mortgage lenders with strong federal and state enforcement; and
- ✓ Substantially increased opportunities for consumer credit counseling and financial literacy programs.

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CFAL, launched January of 2003, was formed to advocate national, uniform fair legislative standards for nonprime mortgage lending. CFAL currently represents over one-third of the nonprime mortgage lending industry. For further information, please contact CFAL's Executive Director, Wright H. Andrews, at 202-742-4245, or view CFAL's webpage at www.FairLendingNow.org

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