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Senate Banking Committee Continues Examination of Housing Finance Reform

Yesterday, the Senate Banking Committee continued its examination of housing finance reform with a hearing entitled "*Essentials of a Functioning Housing Finance System for Consumers.*" The witnesses were: Mr. Eric Stein, Senior Vice President, Center for Responsible Lending; Mr. Rohit Gupta, President, Genworth Financial, Inc.; Mr. Gary Thomas, President, National Association of Realtors (NAR); Mr. Laurence E. Platt, Partner, K&L Gates; Ms. Alys Cohen, Staff Attorney, National Consumer Law Center; Mr. Lautaro Diaz, Vice President, Housing and Community Development, National Council of La Raza.

Chairman Tim Johnson's (D-SD) opening statement expressed his concerns about the impact of stricter underwriting standards on the ability of creditworthy borrowers to obtain mortgages (especially in rural and underserved markets). He emphasized the need to ensure that the mortgage market is accessible to all responsible borrowers. In contrast, Ranking Member Mike Crapo (R-ID) pointed out that one of the major causes of the financial crisis was a significant deterioration in underwriting standards. Based on this experience, he argued that if the federal government provides a guarantee for mortgages, it should be conditioned on strong underwriting standards to protect taxpayers. He also stressed that if Congress takes actions that call into question the validity of mortgage contracts, future homeowners could end up paying significantly higher rates.

Mr. Stein provided several recommendations on how to structure a reformed housing finance system, including recommending that secondary market entities: (1) have a mutual ownership structure (similar to that of the Federal Home Loan Banks); (2) perform both issuer and guarantor functions; (3) be required to serve all eligible lenders across the country; and (4) have the ability to hold distressed-then-modified loans, along with a government backstop to support this loan portfolio in times of economic stress. In addition, he advocated preserving small lenders' direct access to the secondary markets without having to go through an aggregator and prohibiting structured securities from accessing government reinsurance. Finally, Mr. Stein recommended against including specific underwriting criteria (particularly down payment requirements) in any reform legislation because it would restrict access to credit.

Although he applauded the Corker-Warner legislation (S. 1217) for laying the foundation for housing finance reform, Mr. Thomas highlighted several concerns NAR members have with the bill. He recommended that: (1) the 5 percent down payment requirement be removed; (2) the conforming loan limit not be lowered; (3) the 10 percent first-loss position for private investors in government guaranteed mortgage-back securities be eliminated; (4) the legislation include a competitive cash window for small lenders; (5) the portfolios of the GSEs be preserved; and (6) Fair Value Accounting not be used to determine the cost of any mortgage insurance fund.

Mr. Platt addressed whether any reform legislation should impose stringent loss mitigation standards on servicers and owners of securitized residential mortgage loans. In his view, the Consumer Financial Protection Bureau's newly enacted servicing regulations are sufficient and no new law is required. Mr. Gupta discussed the role of mortgage insurance in housing finance and expressed strong support for the mortgage insurance provisions in the Corker-Warner legislation.

In her testimony, Ms. Cohen recommended that housing reform focus on access and affordability. To achieve this goal, she recommended requiring lenders to serve all population segments, housing types, and geographical locations, but noted that any reform legislation should not mandate specific underwriting requirements. Ms. Cohen also advocated for: (1) requiring servicers to provide loan modifications that benefit both investors and homeowners; (2) prohibiting the "dual-tracking" of foreclosures and loss mitigations; (3) authorizing the new mortgage insurer to directly purchase force-placed insurance; and (4) the creation of a federal electronic registry for housing finance to track servicing rights as well as the ownership of mortgages, deeds, and promissory notes.

Finally, Mr. Diaz's testimony focused on the role of housing counseling in helping to increase access to credit for hard-to-serve markets. He recommended that housing reform improve the effectiveness of HUD-approved housing counseling agencies by integrating housing counseling into any entity that replaces Fannie Mae and Freddie Mac. He advocated for: (1) requiring servicers to work with housing counseling agencies; (2) providing homeowners with access to all mitigation options; and (3) prohibiting dual-track servicing. He also stated that strong affordability requirements are paramount and should be made explicit.

During the questioning, Chairman Johnson inquired about the impact of a minimum down payment requirement, to which Mr. Thomas responded that it would shut out first-time homebuyers and stall the housing market. In her questioning, Senator Elizabeth Warren (D-MA) stressed the need to prevent the largest banks from dominating the secondary market. Senator Sherwood Brown (D-OH) inquired whether mortgage servicing should be included in any reform legislation, while Senator Robert Menendez (D-NJ) argued against increasing the conforming loan limit.

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