TESTIMONY OF

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On behalf of the

CONFERENCE OF STATE BANK SUPERVISORS

On

H.R. 1728, THE MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT OF 2009

Before the

FINANCIAL SERVICES COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

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Introduction

Good morning, Chairman Frank, Ranking Member Bachus, and distinguished members of the Committee. My name is Steven L. Antonakes, and I serve as the Commissioner of Banks for the Commonwealth of Massachusetts. It is my pleasure to testify today on behalf of the Conference of State Bank Supervisors (CSBS).

CSBS is the professional association of state officials responsible for chartering, supervising, and regulating the nation's over 6,000 state-chartered commercial and savings banks. For more than a century, CSBS has given state banking supervisors a national forum to coordinate supervision of their regulated entities, develop regulatory policy, provide training to state officials, and represent state officials before Congress and the federal financial regulatory agencies.

In more recent years, as states responded to the growth of mortgage lending and origination outside of regulated banks, state banking regulators have assumed new responsibilities for nonbank mortgage supervision. To address the need for expanded and enhanced mortgage supervision, state regulators have engaged in unprecedented coordination. Through CSBS, working closely with the American Association of Residential Mortgage Regulators (AARMR)[1], a new network of mortgage originator and lender regulation has taken shape. Presently, the states are applying this new framework to a universe of 77,000 mortgage companies, 50,000 branches, and 410,000 loan officers.

The states, the federal financial regulatory agencies and the Obama administration are actively working to restore confidence in the mortgage market. I commend you, Chairman Frank, Representative Miller and Representative Watt for your legislative efforts

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[1] AARMR is the organization of state officials responsible for the administration and regulation of residential mortgage lending, servicing, and brokering. http://www.aarmr.org/.

and dedication to protecting consumers and for promoting the principles of responsible lending.

Regulatory oversight of the residential mortgage market is undergoing significant reforms to address many of the shortcomings of the current system. Presently, we are making tremendous progress toward a more coordinated state/federal system of supervision to address the ongoing challenges presented by the evolving mortgage market and to ensure that no market participants fall through gaps in financial supervision. High minimum standards for the conduct of mortgage professionals and protection of consumers must be the hallmark of a reformed system. The most effective reform is not one of federalization, but a more coordinated system that draws on the strengths of state and federal supervision. A more coordinated network of state and federal regulation and state and federal law will be much more flexible, responsive and comprehensive in providing high standards and meaningful regulation. Congress can do much to create both a framework as well as incentives that will lead to a more coordinated regulatory framework.

Mr. Chairman, in my testimony I will discuss the progress already being made toward developing this coordinated network of supervision, led by the CSBS-AARMR Nationwide Mortgage Licensing System and the recently enacted S.A.F.E. Act. I will also offer the Committee suggestions for regulatory enhancements to strengthen our system of supervision. Finally, I will discuss H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act (referred to herein as H.R. 1728, or the Act). CSBS supports the principles of H.R. 1728, but we have some concerns with specific provisions of the bill.

Ultimately, the legislative response to our housing crisis must facilitate a new era of cooperative federalism and break down barriers to communication and cooperation that currently exist between state and federal regulators.

A New Era of Cooperative Federalism

The states have long been recognized as leaders in responding to consumer protection issues with innovative solutions. It is important to note the initiatives outlined in my testimony were either fully in practice or well under way prior to the most recent collapse of our markets. States have been leading the fight to reign in abusive lending through predatory lending laws, licensing and supervision of mortgage lenders and brokers, and through enforcement of consumer protection laws and standards of safety and soundness. Rather than thwarting or banning such protections, the Committee and Congress should incorporate the early warning signs and interventions that state laws and regulations provide in your legislation.

My fellow state supervisors and I welcome coordination with our federal counterparts to promote responsible lending across the residential mortgage industry, as well as the regulation of other types of financial institutions. Since Congress added full state representation to the Federal Financial Institutions Examination Council (FFIEC) in 2006, federal regulators are working more closely with state authorities to develop processes and guidelines to protect consumers and prohibit certain acts or practices that are either systemically unsafe or harmful to consumers. The FFIEC should also be a vital tool to improve state and federal cooperation and coordination and to promote more seamless and comprehensive supervision of the mortgage market.

<u>CSBS-AARMR Nationwide Mortgage Licensing System and the S.A.F.E. Act</u>

Undoubtedly, the model for cooperative federalism among state and federal authorities is the CSBS-AARMR Nationwide Mortgage Licensing System (NMLS) and the S.A.F.E. Act enacted last year. In 2003, CSBS and AARMR began a very bold initiative to identify and track mortgage entities and originators through a database of licensing and registration. States have been working diligently to develop and implement NMLS. For the past three years, as a member of the NMLS oversight board, I personally have participated in weekly meetings with fellow regulators to engage in the critical decisions needed to develop a robust and meaningful new regulatory framework. In January 2008, NMLS was successfully launched with seven inaugural participating states, including my home state of Massachusetts. Today, just 16 months after its launch, 24 states and Puerto Rico are using NMLS. By January 2010 CSBS expects 43 states, the District of Columbia, and Puerto Rico to be using NMLS. I have attached, as Exhibit A, a map indicating when states will begin using NMLS.

The hard work and dedication of the states was recognized by Congress as you enacted the Housing and Economic Recovery Act of 2008 (HERA). As you are well aware, a significant portion of last session's Mortgage Reform and Anti-Predatory Lending Act was eventually incorporated in HERA as the S.A.F.E. Act. Special recognition must go to Ranking Member Bachus, who first developed the S.A.F.E. Act and its state/federal model for regulation and supervision. The purposes of the S.A.F.E. Act are to increase loan originator professionalism and accountability, enhance consumer protection, and reduce fraud by requiring all mortgage loan originators to be licensed or registered through NMLS.

The law requires states to pass legislation to meet the minimum requirements established by the S.A.F.E. Act by July 31, 2009. While the implementation of the S.A.F.E. Act within the time period required is a monumental task, the states have risen to the challenge and have unified under a Model State Law of implementing language and procedures.

Within weeks after passage of the S.A.F.E. Act, a working group of state regulators developed a Model State Law to assist states in making legislative changes to comply with the Act. On January 5th, the U.S. Department of Housing and Urban Development (HUD) published an interpretive piece on their website indicating that the CSBS/AARMR Model State Law was compliant with the S.A.F.E. Act.

As of today, just three months into most state legislative sessions, 20 states have passed legislation to bring them into compliance with the S.A.F.E. Act. An additional 27 states have legislation introduced. To date, no state legislature has adjourned without passing S.A.F.E. legislation.

Moving forward, regulators and the public will eventually have the opportunity to benefit from the power of a vast data network designed to thoroughly screen mortgage companies and professionals. The system will:

1. Assist regulators in determining whether companies and individuals have the character and fitness to conduct business with consumers;
2. Establish a system of professional testing and continuing education;
3. Assign a unique identifier for truly nationwide accountability; and
4. Facilitate consumer complaints, regulatory violations, and regulatory enforcement actions.

I cannot stress how important both the S.A.F.E. Act and NMLS are to the protection of consumers and in the battle against harmful business practices. Combined, these two initiatives create a system of accountability, interconnectedness, control, and tracking that has long been absent in the supervision of the mortgage market. By registering every loan originator with a unique identifier and requiring that identifier to be incorporated with loan origination documents, we have created the ability to associate the loan documents and business practices with the individual and company that negotiated the transaction. Further, NMLS will be a central repository for enforcement actions against companies and individuals. This is a powerful tool to ensure that bad actors cannot hide from their past bad actions. When combined with the required registration of loan originators operating within insured financial institutions, we have created an almost seamless connection that begins with practices and products and culminates with any record of consumer harm.

I have included a comprehensive list of state and federal coordinated initiatives to enhance supervision of the residential mortgage market as Exhibit B in the Appendix.

H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act

CSBS supports the principles of H.R. 1728 and recognize the need to establish a federal standard. However, the problems in the residential mortgage market are constantly evolving and shifting. A static legislative solution will simply not be able to keep pace of the market. Therefore, we urge the Committee and Congress to ensure that any new federal legislation support and enhance existing state and federal efforts to improve supervision and enhance consumer protection by contributing to the development of a coordinated system of supervision.

CSBS continues to support the creation of a federal minimum predatory lending standard that allows the states to address these predatory practices as they evolve. Therefore, the federal standard must be a floor for all lenders that does not stifle a state's authority to protect its citizens through state legislation that builds upon the federal standard. States should also be clearly allowed to enforce—in cooperation with federal regulators—both state and federal predatory lending laws for institutions that act within their state.

There are several provisions in H.R. 1728 that are new from last session's proposed bill. While CSBS is still reviewing and developing policy on some of these provisions, I would like to express our thinking to date on these new provisions.

State Participation in Rule Writing Authority

Throughout H.R. 1728, the authority to write and prescribe regulations are granted to the "Federal Banking Agencies," meaning the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. These are all the members of the FFIEC, except the voting state representative.

As previously described, better state/federal coordination and effective lending standards—applicable to all lenders—is needed if we are to establish rules that are appropriately written to and applied to all mortgage market participants. While the biggest lenders are federally chartered and subject to federal bank regulation, the vast majority of financial institutions in the United States are chartered and supervised by the states, making the states essential to ensure effective implementation of federal legislation. Also, the states have a breadth of experience in regulating the entire mortgage industry, not just banks. Unlike my federal counterparts, my state supervisory colleagues and I oversee all financial service providers, which include banks, thrifts, credit unions, mortgage banks, and mortgage brokers.

Therefore, CSBS recommends the Act be amended to require all rule writing by the Federal Banking Agencies be coordinated through the FFIEC which includes—as a voting member—the Chairman of the State Liaison Committee. The FFIEC was designed to facilitate consistent federal regulation and supervision and coordination with state regulators. Having rulemaking coordinated through the FFIEC assure some consideration of state expertise.

Section 101. Definitions.

In an effort to clarify definitions provided by the S.A.F.E. Act and H.R. 1728, CSBS encourages the Committee to amend the definition of “mortgage originator” in H.R. 1728. As a minimum licensing standard, the S.A.F.E. Act definition of “mortgage originator” requires that an individual meet both tests of “taking an application” and “offer[ing] or negotiate[ing] terms,” created a regulatory loophole and unraveled existing licensing standards. The states have fixed this problem in our Model State Law to adopt the S.A.F.E. Act and fortunately, H.R. 1728 attempts to correct this problematic definition by replacing “and” with “or.” However, this definition as written may be broader than intended. The problem occurs in allowing “for direct or indirect compensation or gain” to modify only the phrase “offers or negotiates terms” rather than the entire definition.

CSBS suggests that the definition we developed for state adoption of the S.A.F.E. Act could serve as a model.

Further, the states have made considerable efforts over the last year to identify risks associated with reverse mortgage loans and to establish supervisory mechanisms to deal with these risks. The exclusion of reverse mortgage loans from the definition of “residential mortgage loan”—and thereby all of the associated protections within H.R. 1728—is detrimental to consumer protection. In addition, the definition excludes open-end credit plans, including those known to be used in practices found to be harmful by the states.

By defining differently a term previously defined in the S.A.F.E. Act, Congress may inadvertently confuse the definition of “residential mortgage loan” applied to the licensing of individuals. CSBS encourages Congress to reconsider the H.R. 1728 definition and any unintended consequences related to consumer protection and consistency with licensing laws.

Section 103. Prohibition on Steering Incentives.

We believe this section of the bill establishes appropriate minimum standards. In hindsight, we all recognize that the originate-to-distribute model of mortgage lending too often focused on finding the originator, lender, and secondary market the best return rather than finding the borrower the best product. There are countless stories of lender incentives paid for the delivery of what we now call nontraditional mortgage products. These loans were designed to give the initial appearance of affordability, but carried the short-term harm of equity absorption and the long-term harm of unaffordable payments.

Section 103 of the Act carries substantive prohibitions on steering incentives that will help change the landscape of loan sales from one in which borrowers consume what they are told to, to one in which they consume only what they need. This section considers ability to repay, net tangible benefit and abusive sales practices. The Act also contains a prohibition on appalling practices seen in so many of the large predatory lending cases brought by state authorities. For example, the predatory practice of steering a borrower who qualifies for a conventional loan into a nontraditional loan—the result of which only served to enrich the originator and the lender—would be prohibited by Section 103.

Section 105. Regulations. (e) Discretionary Regulatory Authority.

As previously mentioned, we suggest that states have input into the rulemaking process by using the FFIEC to facilitate rulemaking. Section 105(e) of the Act grants discretionary authority to the federal banking agencies to draft regulations dealing with terms, acts or practices that are abusive, unfair, deceptive, predatory, or inconsistent with reasonable underwriting standards. While H.R. 1728 was modeled after the North Carolina predatory lending law first enacted almost a decade ago in 1999, the majority of the Act excludes the states from contributing to development of the laws and regulations that will ultimately govern prohibited practice. The states have vast experience in investigating and remedying these troubling practices and have taken thousands of enforcement actions against mortgage providers. State examiners in the field identify and examine these practices and state authorities prosecute cases against those that would exploit borrowers.

Section 203. Safe Harbor and Rebuttable Presumption.

CSBS supports establishing assignee liability in H.R. 1728 and believes that it is reasonable to draw the line at the securitizer. As a result, it is understandable to try and establish a safe harbor for certain mortgage loans. So while CSBS supports safe harbor for certain loans, we are concerned about the scope of the safe harbor. One may assume a "qualified mortgage" in Section 203 would refer to a 30-year, fixed-rate mortgage. In our interpretation, however, we believe the safe harbor would be granted to a much broader set of mortgage loans. If Congress is to establish a safe harbor, federal and state regulators must have the ability to refine the safe harbor as unanticipated abuses may occur within the confines of the defined safe harbor. While we can not foresee all problems with the safe harbor as presently defined, we do see some areas that may be inconsistent with the intent of this section:

1. The allowance on annual percentage rates exceeding the average prime offer rate by 1.5% for first lien mortgages and 3.5% for subordinate lien mortgages seems excessive. For example, if the average prime offer rate calculated on a $100,000 first lien mortgage equals 5.5%, then a loan made with an APR only

1.5% above this rate could carry nearly $14,000 more in loan fees than the comparable average prime offer rate loan. Clearly, a $14,000 differential in loan fees, all other things being equal, would put subprime loans in the category of qualified mortgages allowing a safe harbor.

2. The limitation on loan repayment periods less than 30 years makes little sense to us. Provided that the borrower is able to afford the higher monthly payment amount, 15 year or 20 year mortgages offer the opportunity to save tens of thousands of dollars in interest and an accelerated growth in real equity.

CSBS would recommend qualified mortgage limits of .5% and 1.5% respectively for APRs exceeding the average prime offer rate and consideration of the consumer benefits possible with loan terms less than 30 years.

Section 208. Effect on State Laws.

In Section 208 of the Act, state law is specifically preempted. As the Act states, "the Truth in Lending Act (as added by section 204) shall supersede any State law or application thereof that provides additional remedies against any assignee, securitizer, or securitization vehicle, and the remedies described in such section shall constitute the sole remedies against any as signee, securitizer, or securitization vehicle, for a violation of subsection (a) or (b) of section 129C of such Act or any other State law the terms of which address the specific subject matter of subsection (a) (determination of ability to repay) or (b) (requirement of a net tangible benefit) of such section129C."

The states have been, and continue to be, the frontline guardians of consumer protection and at the forefront in the battle against predatory lending. In fact, many aspects of H.R. 1728 draw directly from a decade of state legislative, regulatory and enforcement experience. It is interesting to note that the Truth in Lending Act (TILA) was passed in the Commonwealth of Massachusetts two years before it was enacted at the federal level. TILA serves as one more example of states implementing legislation that is later used as a model for federal action.

Therefore, CSBS urges the Committee and Congress to eliminate federal preemption of state consumer protection laws. Because of our proximity to and knowledge of the communities we serve, state authorities are often best poised to identify emerging trends and practices that are harmful to consumers. Further, we are often able to react more swiftly and severely to impose enforcement actions upon those entities that engage in fraudulent or abusive practices.

We believe that liability can be an effective means of addressing abusive practices in lending. At the same time we understand the reasoning for placing limits on liability in order to encourage sound lending practices that have historically not been associated with consumer harms. While we generally support the concept of a safe harbor for qualified mortgages, we are concerned that too broad of a definition combined with limits on both the state's and the consumer's ability to utilize existing remedies against all parties to the transaction will create an environment void of the intended consumer protections. Once the limits of liability are drawn at the securitizer line, circumvention via the statutory definition is a likely consequence. In other words, if the bar for safe harbor is set too low and equitable remedies are simultaneously eliminated, consumers may once again find themselves in a situation where harmful practices are virtually irreversible.

Of course, looking back is always easier than looking forward and what appeared as healthy may ultimately be revealed as harmful. Section 208 unintentionally establishes a federal ceiling of regulation that exposes consumers to even greater potential risk than exists today.

CSBS has worked closely with AARMR in identifying and combating these risks. Attached as Exhibit C are suggestions developed by AARMR concerning the ability to repay and net tangible benefit standards established in H.R. 1728 and the potentially harmful limits imposed by Section 208. We encourage Congress to amend the federal preemptions in this section and empower the states to join the federal agencies in determining the appropriate mechanisms to avoid any evasion of the Act's intent.

Section 213. Credit Risk Retention.

Section 213 proposes regulations to require any creditor that makes a residential mortgage loan that is not a qualified mortgage to retain an economic interest in a material portion of the credit risk for any such loan that the creditor transfers, sells or conveys to a third party. As we have no experience with such a requirement, we do not know what the impact will be, but it is not unreasonable to imagine such a requirement could reshape the mortgage industry and have a significant impact upon credit availability.

In our experience, corporate risk alone may not alter our outcomes. Both bank and nonbank lenders who seemingly had "skin in the game" made risk decisions that resulted in their failure. And more would have failed if not for government intervention. It is possible that risk retention could have the opposite of the desired effect. It could result in an industry consolidation that creates more banks that are considered too big to fail that pose even greater and seemingly intractable risks to our financial system and economy. Additionally, from our state perspective it is not difficult to imagine an industry so consolidated and systemic that it is seemingly unaccountable to consumers.

If the goal of Congress is to reduce the future numbers of non-qualified mortgages, using credit risk retention may very well have this effect. However, if the goal is to encourage sound underwriting and good origination practices there may be better and more holistic ways to revision the current system of originations. One possible idea would be to limit an originator's upfront earnings potential by spreading a future income stream out over the life of the loan. Our belief is that the transparency provided by unique identifiers applicable to the entire industry of originators also provides important incentives and checks on poor lending standards and abusive practices.

Section 216. Legal Assistance for Foreclosure-Related Issues.

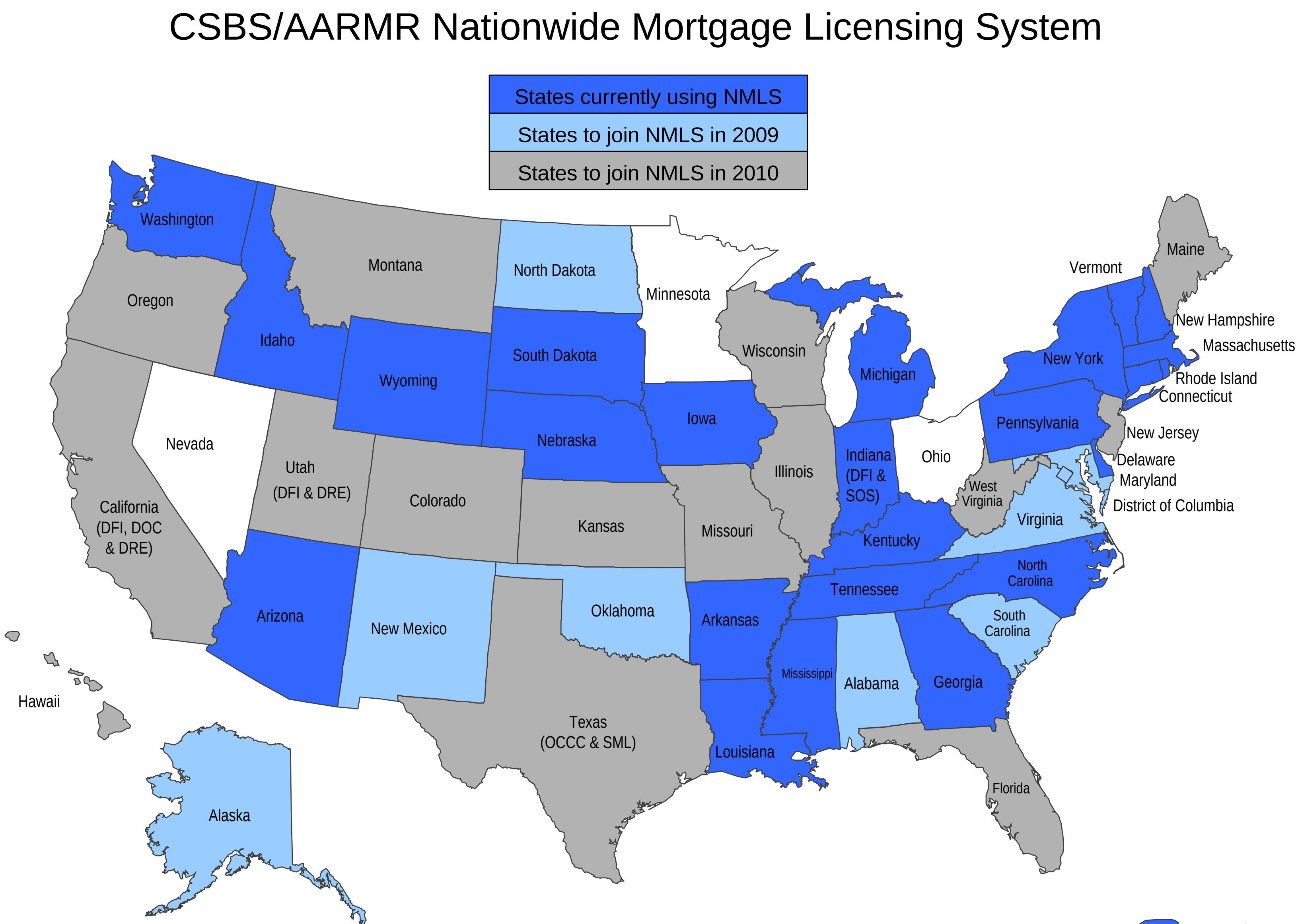
I am personally encouraged to see a provision for legal assistance to borrowers facing foreclosure-related issues and the allocation of $35 million a year to support this provision. In Massachusetts for example, the Division of Banks has provided $3 million in grants to fund regional foreclosure education centers, statewide foreclosure prevention efforts, and first-time homebuyer programs. All funding for this program comes from fees paid by licensed mortgage originators. We welcome the addition of legal assistance funding to these types of ongoing state efforts.

Conclusion

I commend the work of this Committee to protect consumers and the financial system. States have undertaken a number of initiatives to enhance supervision, protect consumers, and take action against predatory lenders. I urge you to develop legislation that builds upon—and does not inhibit—the work done by state and federal authorities toward this end.

Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Exhibit A: NMLS Implementation Map



State Regulatory Registry LLC, February 2009

Exhibit B: State Initiatives to Enhance Supervision

Nationwide Cooperative Protocol and Agreement for Mortgage Supervision

In December 2007, CSBS and AARMR initiated the Nationwide Cooperative Protocol and Agreement for Mortgage Supervision to assist state mortgage regulators by outlining a basic framework to coordinate supervision of Multi-State Mortgage Entities (MMEs). The goals of this initiative are to protect consumers; ensure the safety and soundness of MMEs; identify and prevent mortgage fraud; supervise and examine in a seamless, flexible and risk-focused manner; minimize regulatory burden and expense; and foster consistency, coordination and communication among the state regulators.

To date, 48 states, the District of Columbia and Puerto Rico have signed the Protocol and Agreement. This month, the first multi-state examinations are scheduled to begin based upon examination procedures and methods redesigned to provide broader institution coverage, while focusing examiner resources where problems are most likely to reside.

Mortgage Examinations with Federal Agencies

Beginning in late 2007, the states, in partnership with the Federal Reserve System (Fed), the Federal Trade Commission (FTC), and the Office of Thrift Supervision (OTS) engaged in a pilot program to examine the mortgage industry. Under this program, state examiners worked with examiners from the Fed and OTS to examine mortgage businesses over which both state and federal agencies had regulatory jurisdiction. The FTC also participated in its capacity as a law enforcement agency. In addition, the states separately examined a mortgage business over which only the states had jurisdiction.

State Examination Programs

Beyond investigations and enforcement actions, states regularly exercise our authority to investigate or examine mortgage companies for compliance not only with state law, but with federal law as well. Unheralded in their everyday routine, examinations identify weaknesses that, if undetected, might be devastating to the company and its customers. State examinations act as a check on financial problems and sales practices gone astray. Examinations also stop a supervised entity from engaging in misleading, predatory, or fraudulent practices. In addition, examinations often result in the early detection of emerging harmful practices or trends.

State financial institution examiners conduct thousands of on-site examinations each year of depository institutions, mortgage companies, consumer finance companies, payday lenders and other financial services providers. Taken as a whole, this system of state regulators is one of the largest financial regulatory bodies in the United States. This supervision mirrors the diffused industry it oversees. States are working in the same spirit that governs NMLS—a cooperative system that leverages local expertise and authority through joint examinations within the state system and with our federal regulatory counterparts.

To ensure state examiners are well-prepared, examiner training is an integral part of the state regulatory system. States have made a significant commitment in examiner skill sets that is continually broadened and improved to match the complexities of today's financial markets. For example, in 2007 state banking departments alone spent nearly $8 million on training for its examination staff.

Since 1984, CSBS has maintained a state banking department accreditation program to enhance the professionalism of departments and their personnel, making 2009 its 25th year in operation. In 2008, CSBS established the mortgage accreditation program to encourage state mortgage regulatory agencies to enhance their capability to promote excellence in mortgage supervision.

Proactive Regulatory Guidance and Requirements

Proximity to our supervised entities, examinations, and consumer complaints all help the states identify emerging threats, risks and troubling products or practices. Our network of supervision must build upon this early-detection system and facilitate the development of supervisory tools that are proactive. State/federal coordination on regulatory policy has not always been successful. An example of this disconnect is the development of the 2006 *Guidance on Nontraditional Mortgage Product Risks*. State officials were barred from contributing to the development of these guidelines, but then publicly chided for failing to have similar guidelines in place. The states did quickly develop parallel guidelines, and also developed AARMR/CSBS Model Examination Guidelines (MEGs) to facilitate implementation of the guidance. The process did improve when Congress gave the states a voting seat on the FFIEC. This allowed us to participate in the development of the 2007 *Statement on Subprime Mortgage Lending*.

In an effort to stay ahead of market practices and innovation, and to ensure we are providing comprehensive consumer protection, state and federal authorities must strive toward developing coordinated guidelines, examination procedures, and regulations. Through our involvement with the FFIEC, coordination between the states and our federal counterparts has greatly improved in the last two years and continues to do so.

In early 2008, state regulators identified the reverse mortgage lending market as one of future concern and potential problems—not only to consumers, but to the safety and soundness of financial institutions as well. Despite the relatively small size of the market for reverse mortgage lending today, the states believe it holds the potential, much like subprime lending, for explosive growth in coming years, particularly as the "Baby Boomer" generation retires with depleted retirement accounts as a result of today's recession. Therefore, CSBS and AARMR held the first ever regulatory training school on reverse mortgages. By the end of 2008 we had developed and released a comprehensive set of Reverse Mortgage Examination Guidelines (RMEGs) at least two years prior to our projections of growth in the market.

The clarity provided by the MEGs and the RMEGs will greatly enhance industry compliance with regulatory guidelines. By providing the industry with clear expectations, regulators will be able to hold institutions accountable for compliance failures and monitor more precisely any unsound practices.

Regulatory Reporting

Another CSBS/AARMR initiative underway prior to the passage of the S.A.F.E. Act is a system of mortgage data reporting similar to the Call Reports for depository institutions. Inadequate data means inadequate supervision. This is one more area where I would like to thank this Committee for having the insight to help us bring this initiative to the level of a national standard. In time, we will be collecting data and developing a much better understanding of the shape of the mortgage market as it returns to healthy and viable levels of business.

Technology and New Examination Methods

Beginning in 2007, the states—through CSBS—began a year-long process of investigating available technology and in 2008 entered a public/private venture to bring the best of the available technologies to the examination process.

By extracting loan file data electronically for every loan originated or funded by the institution and running the data through specialized software built upon regulations and guidelines, we are able to conduct a pre-examination offsite review before the examiner ever leaves his or her desk. The idea is to identify apparent violations and problems before the examination begins, and then direct the examination resources exactly where they are needed the most. The use of technology eliminates the previous reliance upon random sampling and educated guessing and replaces these with skilled resources focused where the problems are most likely to be found.

State Predatory Lending Laws

Currently, 35 states—including Massachusetts—and the District of Columbia have enacted subprime and predatory mortgage lending laws.[1] The innovative actions taken by state legislatures have prompted significant changes in industry practices, as the largest multi-state lenders were forced to adjust their practices to comply with the strongest state laws. All too often, however, states are frustrated in our efforts to protect consumers by the federal preemption of state consumer protection laws. Preemption should not be used as a method to circumvent stringent consumer protection requirements.

As mentioned above, CSBS supported the Mortgage Reform and Anti-Predatory Lending Act in the last Congress, and we continue to support the creation of a federal minimum predatory lending standard that allows the states to address these predatory practices as they evolve. However, we would once again like to stress the federal standard must be a floor for all lenders that does not stifle a state's authority to protect its citizens through state legislation that builds on the federal standard. States should also be clearly allowed to enforce—in cooperation with federal regulators—both state and federal predatory lending laws over institutions that act within their state.

State Enforcement of Consumer Protection Laws

[1] Source: National Conference of State Legislatures. http://www.ncsl.org/.

State attorneys general and state regulators have cooperatively pursued unfair and deceptive practices in the mortgage market. Through several settlements, state regulators have returned nearly one billion dollars to consumers. In 2002, the settlement with Household resulted in $484 million paid in restitution; a settlement with Ameriquest four years later resulted in $295 million paid in restitution; and a settlement with First Alliance Mortgage Company resulted in $60 million paid in restitution. These landmark settlements included significant injunctive relief and monitoring programs setting new standards for fairness and further contributing to changes in industry lending practices.

While these cases have received most of the recognition, success is sometimes better measured by those actions that never receive media attention. Attached as Exhibit D is a chart of enforcement actions taken by state regulatory agencies against mortgage providers. In 2007 alone, states took almost 6,000 enforcement actions against mortgage lenders and brokers. But these cases do not include the unrecorded investigations and referrals for criminally punishable fraud and other crimes. To keep pace, state agency investments in resources combating serious crimes are a significant and growing portion of state agency budgets.

<u>State-Specific Initiatives</u>

Like many states, Massachusetts has taken a proactive approach to dealing with the foreclosure crisis and the devastating effect foreclosures have on our local communities. Below are some of the initiatives undertaken in Massachusetts—including passage of a comprehensive foreclosure prevention law signed by Governor Deval Patrick in November 2007—to address these issues and to prevent their recurrence:

- *Extending Community Reinvestment Act-like obligations to non-bank mortgage lenders.* Under a new law in Massachusetts, licensed mortgage lenders making

50 or more loans in a year in the state will be subject to requirements that are substantially similar to both the state and federal Community Reinvestment Act (CRA). After issuing proposed regulations and holding a public hearing last summer, the new regulations became final on September 5, 2008. These "Mortgage Lender Community Investment" regulations include a Lending Test and a Service Test. Unlike the federal CRA for banks, these mortgage lender regulations include a review of the availability of mortgage products that are suitable for low- and moderate-income individuals. They also consider loans and services to assist delinquent borrowers to remain in their homes, including loan modifications. The Massachusetts Division of Banks posted the first schedule of examinations to be conducted on mortgage lenders under the new regulations, and are currently underway.

- *Requiring mandatory counseling for first time homebuyers who choose to take out a subprime adjustable rate-mortgage.* Massachusetts law now prohibits a lender from making a subprime adjustable-rate loan to a first-time homebuyer unless they affirmatively opt-out of a fixed rate or prime loan product and receive counseling from an approved counselor.
- *Providing grant funds.* The Division of Banks has provided $3 million in grants to fund regional foreclosure education centers, statewide foreclosure prevention efforts, and first-time homebuyer programs. $2 million in grants was provided in fiscal year 2008 and $1 million has been provided thus far in 2009 to fund non-profit organizations providing assistance to areas hardest hit by foreclosures. All funding for this program comes from fees paid by licensed mortgage originators.
- *Database of foreclosure notices.* Launching a web-based database of foreclosure notices will allow my office to study trends and better focus examination efforts. In addition, we have also built in functionality to track the entities responsible for maintaining vacant foreclosed properties. The Division has partnered with local health and public safety officials to ensure that vacant properties do not become a threat to the neighborhood.

- *Seeking voluntary foreclosure stays.* For homeowners facing imminent foreclosure, at the Governor's direction we have worked to secure voluntary 30 to 60 day stays in the foreclosure process from mortgage loan servicing companies. Our goal is to provide a short amount of time for homeowners to connect with reputable homeownership counseling firms and encourage mortgage lenders to work with homeowners who are unable to make their mortgage payments to see if a solution short of foreclosure is attainable. Since 2007, the Division has been able to obtain nearly 1,100 voluntary stays for homeowners who were facing foreclosure in Massachusetts.
- *Establish a 90 day Right to Cure.* Homeowners are now entitled to a 90 day "Right to Cure" before a mortgage holder can initiate foreclosure proceedings. As part of this requirement, the lender or servicer must allow the homeowner 90 days to cure the default and must provide an accounting of how much must be paid during that time to bring the mortgage current. During that period, the mortgage holder can not charge legal or other fees other than principal and interest under the mortgage.
- *Stabilizing neighborhoods.* To combat foreclosure trends in some of the hardest hit communities in Massachusetts, the state Department of Housing and Community Development (DHCD) launched neighborhood stabilization pilot programs in Lawrence, Boston, Brockton, New Bedford, Springfield and Worcester neighborhoods. DHCD has partnered with lenders and non-profits to reclaim pre-foreclosure and foreclosed properties in these communities. The properties will be sold to qualified first-time homebuyers with the goal of returning them to fully-occupied status as quickly as possible.

Around the nation, states are engaging in an array of efforts and initiatives to prevent foreclosure and protect consumers. The National Governors Association has developed a report that provides a comprehensive overview of state efforts in this area. The report is available online at

http://www.nga.org/Files/pdf/0902FORECLOSUREREPORT.PDF.

Exhibit C: AARMR Suggestions

American Association of Residential Mortgage Regulators

AARMR SUGGESTIONS
ON
THE ABILITY TO REPAY AND NET TANGIBLE BENEFIT STANDARDS
IN
H.R. 1728

April 22, 2009

H.R. 1728 proposes federal "ability to repay" (ATR) and "net tangible benefit" (NTB) standards that build on more than ten years of state laws and regulations in dealing with consumer protection in mortgage lending. The American Association of Residential Mortgage Regulators (AARMR), representing state mortgage regulators, supports this effort to implement a federal minimum standard in these areas to supplement existing state law protections. While this standard clearly improves federal law, AARMR has the following suggestions for consideration:

1. **Congress should include State regulators in developing rules to implement HR 1728 through FFIEC and through consultation with AARMR.** Several states have implemented ATR and NTB standards. AARMR has recently issued guidance to state regulators and our licensees on ATR. State experience in fine-tuning and enforcing these standards offers an important perspective that would augment federal regulatory expertise. State regulators have worked cooperatively with our federal counterparts on non-traditional mortgage loan guidance and the subprime lending statement, and should be included in any rule-making. For example, ATR/NTB rulemaking will need to consider issues such as:
   - application of debt-to-income ratios to borrowers with different levels of debt and income;
   - application of ATR standards for loans with balloon payments;
   - items included in definition of "total monthly debt";
   - when expectation of future income should be considered in ATR;
   - exceptions for certain types of mortgage loan products, such as reverse mortgage loans, if certain conditions are met.

   Therefore, H.R. 1728 should be amended to specifically require federal regulators to consult with state regulators through AARMR and CSBS when developing applicable regulations.

2. **Congress should not preempt state laws or create safe harbors for creditors or holders of residential mortgage laws**. In some states, homeowners may have common law or statutory claims they may be able to assert against holders for the conduct of creditors. AARMR is concerned that the preemptive language in H.R. 1728 would eliminate these types of consumer defenses and make it more difficult to avoid foreclosure on securitized loans. State lawmakers and regulators have responded to the evolution of the "originate to distribute" model of mortgage lending by extending regulatory oversight and application of state laws to activities beyond mortgage origination. Similarly, AARMR is concerned that H.R. 1728 may preempt state ATR laws that provide greater consumer protection than the ATR regulations promulgated under the current proposal. Providing a

new preemptive safe harbor creates an unnecessary federal barrier to state and private enforcement of state law claims. H.R. 1728 should be amended to include language that explicitly protects from preemption all state laws used by consumers as defenses against foreclosure and state regulators to police the mortgage industry including ATR laws. In addition, H.R. 1728 should be amended to authorize state mortgage regulators to enforce H.R. 1728.

3. **Congress should explicitly apply ATR and NTB standards to mortgage brokers**. Mortgage brokers frequently have primary contact with borrowers and may have the best understanding of the borrower's financial situation. Mortgage brokers should not avoid responsibility for selling products that do not consider a borrower's ability to repay or that do not have a net tangible benefit to the borrower.

4. **Congress should ensure homeowners have an adequate remedy for violations of ATR and NTB requirements**. Current proposed language in H.R. 1728 does not adequately ensure compliance with ATR or NTB as creditors can avoid any liability simply by "curing" the violation after notice by the borrower. To effectively deter improper conduct, Congress should give the borrower the option of rescission or requiring a creditor to cure the violation.

Exhibit D: State Enforcement Actions Against Mortgage Providers

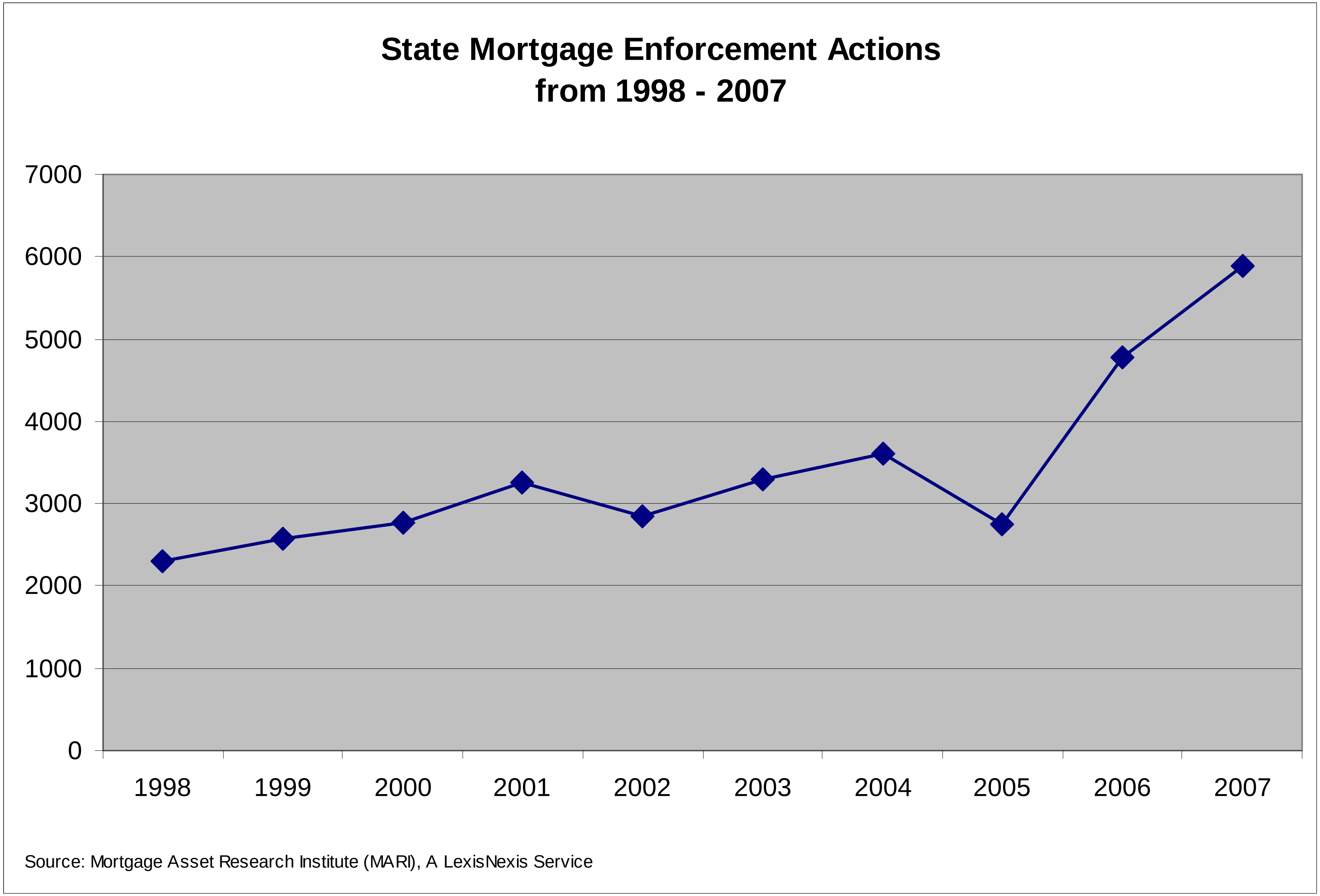


Exhibit D: State Enforcement Actions Against Mortgage Providers

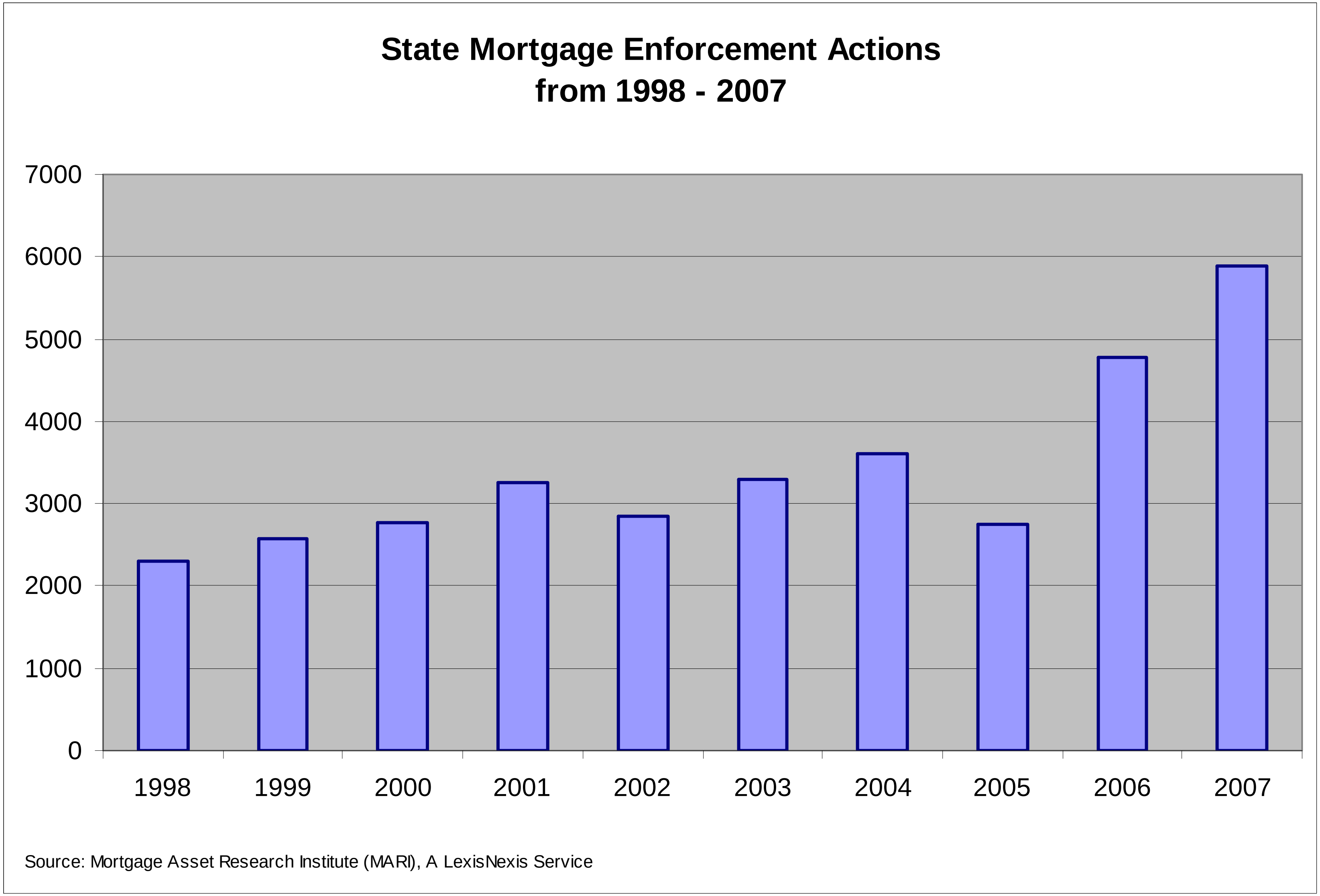
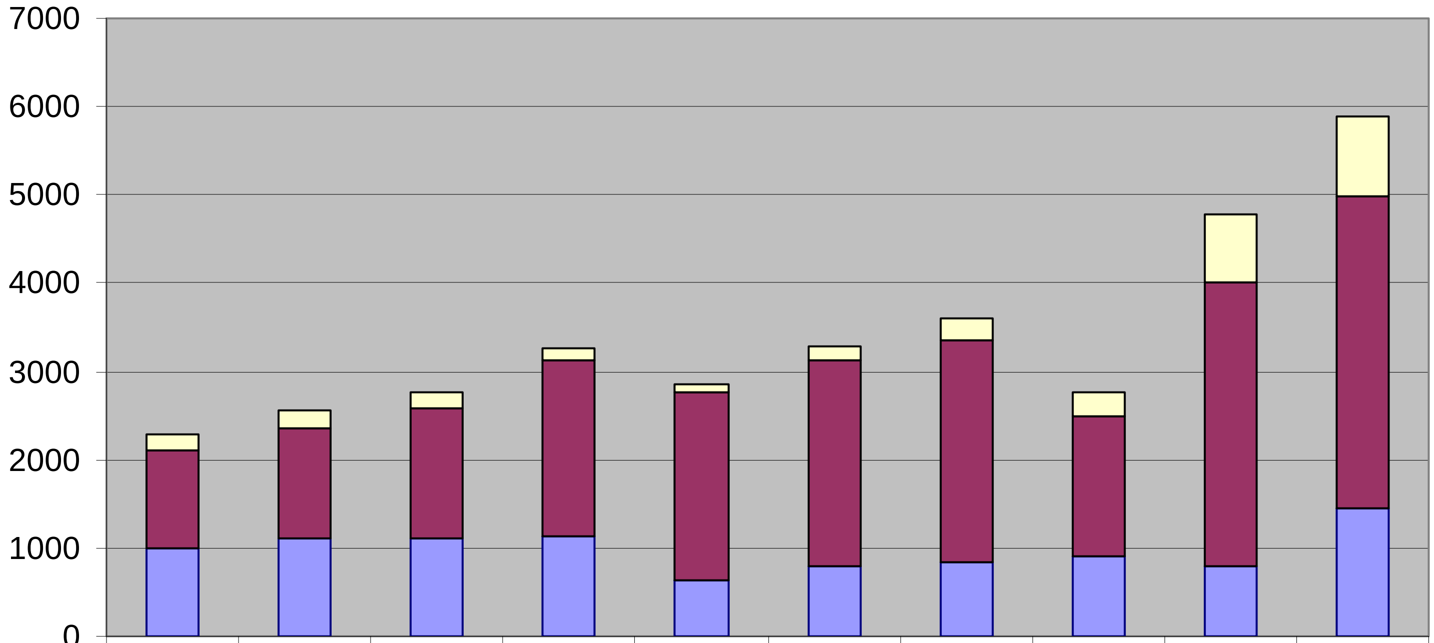


Exhibit D: State Enforcement Actions Against Mortgage Providers

State Mortgage Enforcement Actions from 1998 - 2007



	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Disciplinary / Fines	185	212	180	133	93	171	249	260	761	912
Cease & Desist	1121	1242	1480	2002	2117	2343	2534	1595	3227	3527
Criminal / Revocation	992	1116	1106	1126	638	782	829	904	788	1457

Source: Mortgage Asset Research Institute (MARI), A LexisNexis Service