

Statement of Ranking Member Spencer Bachus at the Hearing on "The Role of The Secondary Market In Subprime Mortgage Lending"

May 8, 2007

Thank you, Chairwoman Maloney for holding this important hearing today. As we have heard repeatedly in the news media, from witness's testimonials and experts, the growth in the subprime mortgage market over the past decade has been dramatic. Helping to fuel this growth has been the development of a robust secondary market for subprime loans. By selling loans that they originate into the secondary market rather than retaining them for their own portfolios, subprime lenders obtain fresh capital that can be recycled into new mortgage loans, diffusing risk across a broad spectrum of market participants; enhancing liquidity in the subprime market; and expanding the availability of credit to low and moderate income borrowers.

Some have questioned the fairness of imposing liability on secondary market participants for violations that cannot possibly be detected through review of the loan documentation on which their underwriting judgments are based. Credit rating agencies such as Standard & Poor's have simply refused to rate mortgage-backed securities containing subprime loans originated in jurisdictions with particularly vague or open-ended assignee liability standards, leaving legitimate lenders with no way to securitize subprime loans, and significantly curtailing the availability of mortgage credit to low and moderate income borrowers. Georgia is an example of where overly burdensome restrictions caused a credit crisis to occur. The Georgia legislature passed an onerous law with strict assignee liability, and the result was that no one in the state could get a loan until the Georgia legislature fixed the problem by amending the flawed statute.

It is important for all participants in the mortgage process to share responsibility, from the consumer to the lender to the secondary market. However, assignee liability should not be about going after those with "deep pockets". The secondary market's role in the mortgage process, while important, does not compare to the primary role of the mortgage originator. Secondary market participants have no way of knowing what transpired between the consumer and loan originator during the transaction. For this reason, those involved in the origination process should shoulder more of the responsibility.

The assignee liability standard in current law under the Home Ownership Equity Protection Act does not work. HOEPA loans are not being made mainly because of a lack of legal certainty for secondary market participants. As we look for ways to address predatory lending practices, any assignee liability standard must include safe harbor provisions similar to those contained in the New Jersey predatory lending law, a limitation on damages, a prohibition on class action lawsuits, and a clear due diligence standard. This is an important issue and we need to get it right. If Congress doesn't proceed with caution, the end result could be a credit crunch that harms ordinary Americans' ability to finance the purchase of a home, and damages the mortgage lending industry.

Let me conclude by thanking our witnesses for taking the time to be here today. Speaking for the Republican members of the Committee, we are genuinely interested in what each of you has to say.

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