Dissenting Views on H.R. 3915, "Mortgage Reform and Anti-Predatory Lending Act of 2007"

H.R. 3915 is a bill that, in an attempt to improve conditions in the housing market, will end up making it more difficult and more expensive for hard-working Americans to obtain a mortgage. I am afraid that if this bill is adopted into law, its effects would be as severe in the housing market as Sarbanes-Oxley was in the financial industry. Like Sarbanes-Oxley, this is a rushed response to a financial crisis.

I object to the scapegoating of mortgage brokers and lenders that typifies the current legislative response to the subprime housing crisis. The root of this crisis, as with other financial and economic crises, results from the federal government intervention into monetary policy and the housing market, not the actions of market participants. Yet, Congress has failed to identify the causes of the crisis, and instead aims to solve the crisis with more intervention.

The introduction of mandatory fingerprinting and background checks for loan originators is a grave misstep and sets a dangerous precedent. Mandatory background checks and fingerprinting are not a panacea, will not eliminate mortgage fraud, and are an affront to a free and open labor market. Furthermore, by introducing a national mortgage licensing system and registry, Congress would restrict the number of people able to work in the mortgage industry. According to the laws of economics, when the supply of mortgage providers decreases, the cost of retaining those services will increase.

H.R. 3915 also makes restrictions on the types of mortgages which can be offered, utilizing language which is vague enough that its definition will likely be finally determined in time-consuming federal court cases. By restricting the number of people licensed to work in the mortgage industry and the types of mortgages that can be offered, the availability of mortgages would decrease and the cost would increase. H.R. 3915, which has as its purported aim the protection of American homebuyers, would have the perverse effect of keeping more Americans from being able to purchase homes.

The collapse of the housing market has served as a catalyst for much of the recent turbulence in the financial markets, and it appears as though the worst is yet to come. For years the federal government has made it one of its prime aims to encourage homeownership among people who otherwise would not be able to afford homes. Various federal mortgage programs through the FHA, Fannie Mae, and Freddie Mac have distorted the normal workings of the housing market.

The implicit government backing of Fannie Mae and Freddie Mac provides investors an incentive to provide funds to Fannie and Freddie that otherwise would have been put to use in other, more productive sectors of the economy. This flood of investor capital helped to fuel the housing bubble, which as it implodes is causing concern among both homeowners and investors.

Previous legislation passed by this committee made it possible for people who could not afford down payments on houses to receive assistance from the federal government, or even to pay no down payment at all, courtesy of the taxpayers. The requirement of a down payment has always helped to ascertain the ability of a buyer to pay off a mortgage. It requires the buyer to show hard work and thrift, the ability to delay present consumption in order to make a larger acquisition in the future.

When this requirement is minimized or eliminated, you introduce a new class of homebuyers, people who are unable to budget and save for the purchase of a home, or who should wait for a few years until they have saved enough to purchase a home. Federal policies have encouraged investors, lenders, and brokers to cater to these people, so it is no surprise that market actors came up with ever more sophisticated means of bringing these people into the real estate market. The implicit backing of Fannie Mae and Freddie Mac attracted unsavory characters, much as any other federal gravy train. This does not reflect badly on the market, but rather on the government policies which incentivize such behavior. Ironically, today Congress is attacking brokers for providing mortgages to people who arguably could not afford them, when these brokers were merely following the lead of Congress.

Finally, legislative solutions to the housing crisis fail to take into account that fact that the Federal Reserve's loose monetary policy and lowering of interest rates were a major spur to the housing boom. Low interest rates influence marginal buyers, those who are sitting on the fence, and encourage them to take on a mortgage that they otherwise would not. Even when interest rates are raised, no one expects them to stay high for long, as there is always pressure from politicians and investors to keep rates low, as no one wants the cheap credit to end.

Thinking that interest rates will cycle from low to higher, back to low, lenders begin to offer adjustable rate mortgages and other sophisticated mechanisms that may trap many unsavvy buyers. Buyers hope for low interest rates, lenders hope for higher rates, and many homebuyers, lenders, and investors have been harmed as a result of their attempts to foresee the Fed's cyclical policy. Some people might frown on these types of mortgages as excessively risky or even predatory. Risk, however, is endemic to every action in the marketplace, and no amount of legislation will change that fact.

In conclusion, it is time for the federal government to get out of legislating and regulating the housing and mortgage industry. Through interventionist federal legislation we laid the groundwork for the housing bubble, and any attempts at reform that fail to address the causes of our current problem will only exacerbate the problem. H.R. 3915 is no exception, and will only serve to add additional unnecessary complexity to an already over-regulated industry.

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