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**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.