

April 27, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
Washington, D.C., 20515

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, D.C., 20515

Dear Chairman Frank and Ranking Member Bachus:

Thank you for holding the April 23 hearing on H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009, and for encouraging comments about the legislation.

The National Association of State Credit Union Supervisors¹ (NASCUS), the professional association of state credit union regulators, submits our comments concerning preemption of state law and rulemaking authority in H.R. 1728.

H.R. 1728 creates a federal standard for mitigating predatory lending. NASCUS recommends that Congress create the federal standard as a minimum, allowing states to legislate and regulate appropriately for their states' citizens, which in some cases may be more stringent than the federal standard.

If the federal standard is a maximum ceiling, it will act to suppress state law and a state's authority to provide enhanced consumer protections for its citizens. A minimum standard will allow states to build on the federal standard and address evolving predatory practices.

Section 208, Effect on State Laws

Section 208 preempts state common law defenses. 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 assignee, 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) (requirements of a net tangible benefit) of such section 129C."

Section 208 preempts states from enacting laws with specific liabilities that would protect citizens against abusive predatory practices. Often, states are in the first and best position to

¹ NASCUS is the professional association of state credit union regulatory agencies that charter, examine and supervise the nation's 3,300 state-chartered credit unions.

identify current predatory lending trends. This section effectively ties the hands of state legislatures and restricts state regulatory agencies as it concerns liabilities to address predatory lending practices. It establishes a maximum level for federal regulations and prevents states from taking actions they may find useful in fighting abusive practices. We recommend that the legislation be amended so as to not preempt state law.

An example of statutory language that allows state law to be more stringent is the Health Insurance Portability and Accountability Act (HIPAA). Section 1191, Preemption; State flexibility; Construction, states "A regulation promulgated under paragraph (1) shall not supercede a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under the regulation."²

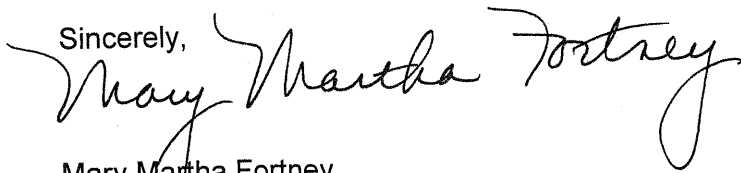
State Enforcement Authority

The legislation provides the authority to write and prescribe regulations to the federal banking agencies, which includes 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. This includes all the members of the Federal Financial Institution Examination Council FFIEC, with the exception of the Chairperson of the State Liaison Committee, a voting representative of the FFIEC, as added by Congress in 2006.

We believe a state perspective and voice are critical for writing and prescribing rules that implement H.R. 1728. We recommend that the Federal Banking Agencies coordinate rule making through the FFIEC, and include the Chairman of the State Liaison Committee to provide the critical state regulatory perspective.

Thank you for your consideration of our comments and the concerns of NASCUS state regulators. We would be pleased to provide additional information in support of these recommendations and to answer any questions the committee may have.

Sincerely,



Mary Martha Fortney
President and CEO

² 29 USC Sec. 1191