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Legislative Bulletin……………………………………..………November 15, 2007

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H.R. 3915—Mortgage Reform and Anti-Predatory Lending Act

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: Several

Total Cost of Discretionary Authorizations: $330 million over five years

Effect on Revenue: $72 million increase over five years

Total Change in Mandatory Spending: $65 million increase over five years

Total New State & Local Government Mandates: Numerous

Total New Private Sector Mandates: Numerous

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 3915—Mortgage Reform and Anti-Predatory Lending Act (*Miller, D-NC*)

Please note the "Conservative Viewpoints" section starting on page 10.

Order of Business: The bill is scheduled to be considered on Thursday, November 15th, subject to a (likely) structured rule. The RSC will summarize any amendments made in order under the rule, or any self-executed amendment, in a separate document.

Background: The Financial Services Committee notes that the Mortgage Bankers Association (MBA) estimates that more than 286,000 mortgage loans entered the foreclosure process in the second quarter of 2007, which is a record high. The increase in foreclosures and delinquencies can be traced in part to the proliferation of subprime mortgages, especially in refinancing.

"Subprime" refers to a classification of credit applicants with tarnished or limited credit histories and who thus pose a greater risk of foreclosure to lenders. Subprime mortgages are mortgages to such individuals and usually are characterized by higher interest rates, additional fees, shorter terms, or prepayment penalties.

Some people may not qualify for conventional mortgages because of past delinquencies, charge-offs, judgments, and bankruptcies. Other people may not qualify for conventional mortgages because they have failed to produce full income documentation.
http://www.investopedia.com/terms/s/subprime_mortgage.asp

Subprime mortgages have increased significantly in recent years (up from $100 billion in 2001 to $800 billion in 2005, according to the MBA), and there is no dominant theory as to the source of such growth.

Some observers of the mortgage market assert that some borrowers, who would otherwise qualify for conventional mortgages, are "steered" to subprime mortgages in what are known as "predatory practices" because they are often more profitable than conventional mortgages.

Other observers note that subprime mortgages increased at a time when housing prices were soaring. The subprime customers could use the subprime mortgages as a "foot in the door" of homeownership and, because of soaring housing prices, when the subprime mortgages were due to reset in a few years (many subprime mortgages have lower interest rates for a short period at the beginning of the loan, with higher adjustable rates taking effect thereafter), they could use the increased equity in their homes to move in to conventional mortgages (and never pay the higher interest rates). However, as housing prices started to decrease, this situation no longer occurred, subprime borrowers could not as easily move in to conventional mortgages, defaults and foreclosures increased, and those who were holding securities invested in subprime products were stuck holding a financial hot potato that they had difficulty unloading.

Summary: H.R. 3915 is the congressional response to the "subprime mortgage crisis" (i.e. the increasing frequency of mortgage defaults and foreclosures). This response includes a federal registry and licensing of mortgage lenders, new regulations on mortgage lending, new liability subject to lawsuit, and a new federal office aimed at housing counseling. Highlights of the legislation by title are as follows (with provisions of particular concern to some conservatives highlighted in **red-bold**):

Title I—Residential Mortgage Loan Origination

- Creates a Nationwide Mortgage Licensing System and Registry (NMLSR) for the residential mortgage industry to be developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The NMLSR would be a federal system for the state licensing and registration of loan originators (i.e. mortgage lenders).

- Prohibits an individual from engaging in the business of a loan originator without obtaining and maintaining registration as a registered loan originator (for bank employees) or a license and registration as a state-licensed loan originator (for non-bank employees), as well a unique identifier.

- **Requires that all applicants to the NMLSR be fingerprinted for submission to the FBI.**

- Requires that any applicant to any state for licensing and registration as a state-licensed loan originator has to
  --Have not had his loan originator license revoked in the past five years;
  --Have not been convicted of a felony in the past seven years;
  --Demonstrate "financial responsibility" (as defined in the bill);
  --Complete pre-licensing NMLSR-created education; and
  --Pass a written test developed and administered by the NMLSR (and get at least 75% correct answers out of at least 100 questions).

- Allows for license renewal only of the loan originator continues to maintain the minimum standards and takes continuing education credits, as detailed in the bill.

- Requires that, within one year of the bill's enactment, the federal banking agencies (FDIC, Federal Reserve Board, Comptroller of the Currency, etc.) jointly develop and maintain a system for registering the employees of banks and their subsidiaries as registered loan originators with the NMLSR. Registered loan originators would have to furnish to the NMLSR information as above for the non-banking mortgage brokers, **including fingerprints** and personal history and experience.

- Provides that, if a state does not participate in the licensing system above, the Secretary of Housing and Urban Development (HUD) would have to establish a backup licensing system and maintain and administer a system of licensing and registering loan originators operating in such a state as State-licensed loan originators. HUD could give an extension of up to six months to those states making a "good faith effort" (not defined) to meet the minimum standards on its own.

- Provides that HUD step in to fulfill all the elements of this legislation, if the NMLSR is failing to meet its goals. Authorizes HUD to imposes penalties (up to $5,000 a day) on violators.

- Allows the federal banking agencies, the HUD Secretary, and the NMLSR to charge "reasonable" (not defined) fees to cover costs for maintaining and providing access to the NMLSR. Consumers could <u>not</u> be charged fees for accessing registry information.

- Directs the Attorney General to provide access to all criminal history information to states for regulating state-licensed loan originators, to the extent that criminal background checks are required under state law for licensing loan originators.

- Shields the HUD Secretary or any state official, agency, or organization serving as the administrator of the NMLSR or the HUD system, or any officer or employee thereof, from liability for monetary damages for good-faith actions or omissions related to this legislation.

- Requires that **all** mortgage originators (not just federally regulated mortgage brokers) be subject to a "federal duty of care" that requires:
  --licensing and registration under state or federal law;
  --"diligently" working to present the consumer with a range of residential mortgage loan products for which the consumer likely qualifies and are appropriate to the consumer's existing circumstances (i.e., consumer has the "reasonable" ability to repay, consumer receives "net tangible benefit" from the loan, and the loan does not have "predatory" characteristics);
  --making full, complete, and timely disclosures to consumers about each mortgage product discussed and a statement that the loan originator is NO an agent for the consumer;
  --certifying to creditors of the required compliance with mortgage origination requirements under this legislation; and
  --including in all loan documents the unique identifier of the mortgage originator.

- Directs the Executive Branch (HUD, the Federal Trade Commission, the federal banking agencies) to promulgate regulations further clarifying the federal duty of care, as appropriate.

- **Prohibits mortgage originators from receiving, and any person from directly or indirectly paying, any incentive compensation that is based on, or varies with, the terms of such loans (other than amount of principal or timing) for loans that are not prime mortgages.**

- **Directs the federal banking agencies, in consultation with HUD and the Federal Trade Commission (FTC), to jointly prescribe regulations to prohibit:**
  --mortgage originators from steering any consumer to a residential mortgage loan that the consumer lacks a "reasonable" (not defined) ability to repay, does not provide the consumer a "net tangible benefit" (not defined), or that has predatory characteristics or effects ("such as equity stripping excessive fees, or abusive terms");
  --mortgage originators from steering any prime consumer from a prime mortgage to a subprime mortgage; and
  --"abusive or unfair" lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age.

- **Creates a federal cause of action (i.e. allowable lawsuits) for a mortgage originator's failure to comply with this legislation. The maximum liability could not exceed three times the total amount of direct and indirect compensation or gain accruing to the**

mortgage originator in connection with the violation plus the costs to the consumer of the action, including "reasonable" (not defined) attorney's fees.

<u>Title II—Minimum Standards for Mortgages</u>

- Prohibits any creditor from making a residential mortgage loan unless the creditor makes a "reasonable and good faith" determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan (including all applicable taxes, insurance, and assessments), based on such factors as credit history, current income, expected income, current obligations, debt-to-income ratio, employment status, and other financial resources <u>excluding</u> the consumer's equity in the real property securing the loan. The federal banking agencies, in consultation with the FTC, would be tasked with jointly prescribing regulations regarding this standard.

- Prohibits any creditor from <u>refinancing</u> a loan unless the creditor "reasonably and in good faith" determines, at the time the loan is consummated and on the basis of information known by or obtained "in good faith" by the creditor, that the refinancing would provide a "net tangible benefit" to the consumer. A refinanced loan would NOT be considered to provide a "net tangible benefit" if the "costs of the loan, including points, fees, and other charges, exceed the amount of newly advanced principal without any corresponding changes in the terms of the refinanced loan that are advantageous to the consumer." The federal banking agencies would have to jointly prescribe regulations further defining the term "net tangible benefit."

- Allows the assumption that a loan has met the two standards above (reasonable ability to repay and net tangible benefit) to be rebutted against a creditor for certain qualified "safe harbor" loans, as detailed in the legislation.

- **Allows a consumer to bring a federal action (i.e. a lawsuit) against a creditor, an assignee of mortgage securities, or a securitizer, in the amount of the rescission of the loan and the consumer's costs (including "reasonable"—not defined—attorney's fees), for a loan that violates the minimum standards for reasonable ability to repay or net tangible benefits, as set forth by regulation.**

- A creditor, assignee, or securitizer would not be liable for such loan rescission if the creditor provides a "cure" to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer (though an assignee or securitizer could also be relieved of liability by documenting its policy of not buying mortgages that fail to meet the minimum federal standards). A consumer could challenge the adequacy of the cure within six months of its offering.

- Applies the liability of a creditor, assignee, or securitizer for three years after consummation of the loan or, for a variable rate loan or a negative amortization loan, the earlier of one year after the loan resets or six years after consummation of the loan.

Liability would not apply to pools of loans, including the securitization vehicle (corporation or trust holding mortgage-backed securities), or investors in pools of loans.

- **Prohibits prepayment penalties on subprime loans and requires that all remaining prepayment penalties expire three months before a loan resets.**

- **Prohibits mandatory arbitration for resolving controversies and claims arising from mortgage (except reverse mortgage) loans.**

- Requires a servicer of a residential mortgage loan to provide annual notice (or whenever there is change in ownership of the loan) to the consumer of the identity of the creditor or assignee who should be contacted concerning the consumer's loan rights. Negative amortization loans (loans featuring interest payments less than the amounts actually owed—i.e. deferred interest payments) to a first-time borrower would be prohibited unless the creditor makes certain disclosures to the consumer and the consumer has received homeownership counseling from a HUD-certified organization or counselor.

- **Explicitly provides that the liability and remedy provisions of this legislation trump any related provisions in state laws.** State laws against creditors and other state laws not related to this legislation would not be superseded.

- Doubles the amount of certain statutory civil liability penalties currently applicable under the Truth in Lending Act (into which the provisions of H.R. 3915 would be inserted) and extends the statute of limitations from one year to three years.

- Creates a variety of new disclosure requirements for creditors (that would have to be made at the earlier of the extension of credit or three days before the closing), as follows:
  - --the maximum amount of regular payment a consumer has to make on a variable rate or otherwise variable payment mortgage;
  - --the fact that mortgage payments will be increased to cover taxes and insurance and the monthly dollar amount a consumer will pay to cover taxes and insurance in the first year of the mortgage (for a residential mortgage loan with an escrow or impound account for the payment of taxes, insurance, and assessments);
  - -- the amount of initial monthly payment for principal and interest; the amount of initial monthly payment, including the amount deposited in an escrow or impound to pay for taxes, insurance, and assessments; the amount of the fully indexed monthly payment for principal and interest; and the amount of fully indexed monthly payment deposited in an escrow or impound to pay for taxes, insurance, and assessments (for a variable rate residential mortgage with an escrow or impound account);
  - -- the aggregate amount of settlement charges;
  - --the amount of charges included in a mortgage;
  - --the amount of charges a consumer must pay at closing;
  - --the approximate amount of the wholesale rate of funds;
  - --the aggregate amount of other fees or required payments;
  - --the aggregate amount of fees paid to a mortgage originator;

--the amount of fees paid directly by a consumer;
--any additional amounts received by a mortgage originator from a creditor based on the interest rate of the loan;
--a warning that payments will vary based on interest rate changes (for variable rate or variable payment mortgages); and
--that a consumer is not required to consummate a mortgage transaction simply because a consumer received disclosures or signed a loan application.

- Authorizes total additional appropriations to the Attorney General for the FY2008-FY2012 period, as follows:
  --$31.25 million to support the employment of 30 additional FBI agents and two additional dedicated prosecutors to coordinate prosecution of mortgage fraud efforts with the offices of the United States Attorneys;
  --$750,000 to support the operations of interagency task forces of the FBI in the areas with the fifteen highest concentrations of mortgage fraud.

- Provides that the provisions of this title would become effective prospectively, on or after the effective date of the regulations promulgated by the respective executive agencies.

Title III—High-Cost Mortgages

In response to reports of predatory lending practices in home equity lending in the early 1990s, Congress enacted the Home Ownership and Equity Protection Act (HOEPA) in 1994, which covers home equity loans but not purchase-money mortgages (mortgages in which the buyer borrows money from the seller, rather than from a bank). Loans are classified as "high-cost home loans" under HOEPA because of their high annual percentage rates (APRs) or because their points and fees trigger certain prohibitions and/or disclosures. Under HOEPA, the Federal Reserve Board has the authority to prevent "unfair and deceptive" lending by writing regulations governing state and federal lenders.

- Adds purchase-money mortgages and open-end loans (revolving lines of credit that are always open up to a limit) to HOEPA.

- Codifies the current APR trigger at 8% above comparable Treasuries for first mortgages and comparable Treasuries plus 10% for subordinate mortgages.

- Lowers the points-and-fees trigger from 8% to 5% for most loans (except those secured by personal property).

- Creates a third trigger for loans with prepayment penalties that exceed 2% or 36 months duration and expands the definition of points and fees.

- **Prohibits balloon payments (a lump-sum payment due at the end of a mortgage) on HOEPA loans unless the payment schedule is adjusted to the seasonal or irregular income of the consumer.**

- **Prohibits prepayment penalties on HOEPA loans with principal amounts below the Federal Housing Administration loan limit for a given geographical area.**

- Prohibits creditors from extending credit to a consumer under a high-cost mortgage unless a "reasonable" (not defined) creditor would believe at the time the mortgage is closed that the consumer would be able to make the scheduled payments associated with the mortgage, based on a consideration of current and expected income, current obligations, employment status, and other financial resources other than equity in the residence.

- Prohibits creditors from:
  --encouraging that borrowers default on an existing loan when refinancing such existing loan with a high-cost mortgage;
  --charging multiple late fees for a high-cost mortgage on the same delinquent payment;
  --unilaterally accelerating a high-cost mortgage;
  --directly or indirectly financing points and fees for high-cost mortgages;
  --structuring a high-cost mortgage to evade HOEPA protections;
  --modifying or deferring fees unless they can be proven beneficial to the consumer;
  --providing a high-cost mortgage to a consumer unless the creditor has received a certification that the consumer received pre-loan counseling from a HUD-approved entity; and
  --knowingly or intentionally engaging in flipping (refinancing with no tangible net benefit to the consumer) in connection with a high-cost mortgage.

- Allows creditors to correct non-bona fide errors within 30 days of the loan closing and prior to the institution of any action (60 days for bona fide error).

- Directs the Federal Reserve Board to implement regulations under this title within six months of enactment and deems the amendments made by this title effective upon enactment (and applicable to high-cost mortgages consummated on or after that date).

Title IV—Office of Housing Counseling

- Establishes the Office of Housing Counseling under the Office of the HUD Secretary.

- Makes the office responsible for all HUD homeownership and rental housing counseling programs (including matters of refinancing and foreclosure), and for establishing, coordinating, and administering all regulations, requirements, standards, and performance measures under the programs that relate to housing counseling, homeownership counseling, mortgage-related counseling, and rental housing counseling.

- Directs the Secretary to establish standards for materials and forms used by counseling service providers, and provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The certified software programs would be used to supplement, not replace, housing counseling, and only in connection with the assistance of certified housing counselors.

- Authorizes $3 million for each of fiscal years 2008-2010 for the Secretary to develop, implement, and conduct national public service multimedia campaigns to make "potentially vulnerable" consumers (including the elderly, the poor, people who don't know English very well, people facing mortgage foreclosure, and people considering a subprime mortgage) aware of the existence and benefits of homeownership counseling.

- Directs the Secretary to provide advice and technical assistance to states, units of local government, and non-profit organizations on how they can best educate people about mortgages, refinancing, home equity loans, and home repair loans.

- Directs the Secretary to make grants for homeownership or rental counseling to states, units of local government, and non-profit organizations, subject to standards and guidelines for assistance eligibility created by the Secretary.

- **Authorizes $180 million over four years for the operations of the Office of Housing Counseling, homeownership and rental counseling assistance grants, the establishment of materials and forms standards, computer software certification, and the national public service multimedia campaigns required by this title.**

- Instructs the Secretary to prepare a booklet at least once every five years to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services (such as balloon payments, prepayment penalties, variable interest rates, escrow accounts, home inspections, consumer rights, etc.). The booklet would have to be produced "in various languages and cultural styles, as the Secretary determines to be appropriate, so that the booklet is understandable and accessible to homebuyers in different ethnic and cultural backgrounds."

Title V—Mortgage Disclosures under Real Estate Settlement Procedures Act of 1974

- Requires additional disclosures in a good faith estimate (GFE) under the Real Estate Settlement Procedures Act for federally related mortgage loans. A GFE would have to include the loan amount, whether the loan is a fixed or variable rate loan, the loan term, the estimated interest rate(s), the total estimated monthly payment, the rate lock period, any prepayment penalty, any balloon payment, the total estimated settlement charge, the total estimated down payment, and the total estimated cash needed at closing.

- Instructs the HUD Secretary, in consultation with the Secretary of Veterans Affairs, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision, to develop a standard form for GFE disclosures (within certain parameters detailed in the bill) that would have to be used in all transactions in the United States that involve federally related mortgage loans.

RSC Bonus Facts: According to the *Wall Street Journal*, roughly 35% of homeowners have no mortgage debt remaining on their homes. Of those homeowners still paying a mortgage, 95% are paying on time. And even in the risky category of subprime adjustable-rate loans, more than 83% are still paying on time. (NOTE: The Mortgage Bankers Association puts this figure at 85%, instead of 83%.)

Committee Action: On October 22, 2007, the bill was referred to the Financial Services Committee, which, on November 6th, marked up and ordered the bill reported (as amended with a complete substitute) to the full House by voice vote.

Conservative Viewpoints: Many conservatives have expressed concerns about H.R. 3915, while other conservatives have expressed support for the legislation. Highlights of these varying conservative viewpoints are as follows:

Concerns: Some conservatives on the House Financial Services Committee have asserted that H.R. 3915 would hurt, rather than help, the very consumers—those who can only obtain subprime mortgages—for which it is intended to provide relief. As some of these conservatives wrote in the "Dissenting Views" in House Report 110-441, "Never before have we adopted such far-reaching government restrictions and limitations on loan terms and products and underwriting decisions in the private market, that affect the ability of thousands of this country's borrowers to obtain a mortgage loan to finance or refinance their home."

Specifically, the concerns expressed by some conservatives can be summarized as follows:

- Discouragement of Lending and Investing. The bill's numerous and multilayered regulations on mortgage lenders could discourage some lenders from offering anything but the least risky, most secure prime mortgages. Some lenders may not want to take the chance with subprime products and risk being held liable for imperfections in the borrower's financial situation, yet subprime loans are many people's financial foot in the door to a life of homeownership. The bill discounts the notion that businesses and individuals change their behavior when faced with new, burdensome regulations. As Stuart Saft wrote in *The Wall Street Journal* this past weekend, "Capital, like water, seeks its own level. If the people who buy the securitized loans, and the institutions who invest in pools of mortgage loans, are no longer secure in being able to get their money back or the interest paid, they will find other investments, and countries, where they can."

- Fingerprinting Lenders. The bill's FBI-fingerprinting requirement as a condition of offering mortgages would amount to a significant invasion of privacy.

- Intrusion into the Private Market. The bill would prohibit a variety of legitimate private-market business practices for lenders (such as certain incentive-based compensation, arbitration, and certain determinations of creditworthiness) and would thus amount to an unwelcome federal micromanagement of private markets and private lives. Such intrusion could yield *fewer* loan choices for consumers.

- Definitional Uncertainty. The bill would create numerous federal duties and related liabilities for loan originators that are somewhat subjective, yet would leave the bulk of the operational definitions (such as “appropriate,” “ability to repay,” and “net tangible benefit” and their related terms) undefined, vaguely defined, or to be defined by regulators sometime in the future.

- Anti-Market Philosophical Approach. The bill is based on the premise that the subprime mortgage “crisis” is primarily the fault of corporations, Wall Street, and unscrupulous lenders, and that borrowers who default are all innocent, weak-minded victims who had financial decisions thrust upon them without their knowledge or without the ability to say no. This premise overstates the deceptiveness of lenders, understates the deliberateness of borrowers, and discounts the notion that freer markets can bring natural ups and natural downs based on the aggregate choices of people in such markets. According to the Mortgage Bankers Association, National Delinquency Survey for the second quarter of 2007, 85% of current subprime loans are being paid on time, while only 15% are in default or foreclosure.

- Excessive Liability and New Lawsuits. The bill would make creditors liable for compliance with the bill’s numerous requirements. In addition to a liability of three times the total amount of “direct and indirect compensation or gain accruing” in connection with a violation, the bill would create an extended loan-rescission right for up to six years for certain adjustable rate loans.

- Preemption of State Laws. The bill would preempt state laws in several respects. For example, the bill would preempt state foreclosure laws that allow a foreclosing creditor to evict a renter. This provision could greatly disrupt an investor’s ability to transfer a property after foreclosure, possibly yielding higher interest rates, especially on higher risk loans, to compensate for the potential of increased losses in the case of a foreclosure.

- New Restrictions on High-Cost Refinancing Loans. The bill would lower the triggers for HOEPA loans, special, restricted loans that are subject to additional disclosures to borrowers, have assignee liability attached to them, and cannot be securitized (meaning lenders must keep them on their books). As a result, HOEPA loans are very rare in today’s market, with only about 15,000 HOEPA loans made in 2006 out of 10,000,000 total loans made in that year. Generally, under current law the HOEPA Act is triggered when a loan either has an APR that exceeds a set level linked to Treasury securities or has total points and fees that exceed 8% of the total loan amount. This bill would lower the points and fee trigger from 8% to 5% and prohibit the financing of points and fees in the loan. The practical effect of this would be to eliminate this form of loan from the marketplace since lenders would not want the liability exposure or would find the reduced profit margin to be too low for them to offer the loan in the first place.

- Congressional Haste. Some conservatives have stated that this legislation amounts to congressional overreaction to a market-based situation that has not yet been given enough time to correct itself. Some have argued that the market has already corrected itself, with major lenders saying, for example, that they will no longer offer stated income mortgages (loans based on the income as stated by the borrower, rather than as objectively verified by the lender) or zero-down mortgages. Additionally, FDIC Chairman Sheila Bair has proposed that the mortgage companies voluntarily convert subprime loans that are still performing into fixed-rate loans at the lower variable rate (before the loans reset at higher rates and force numerous foreclosures). Countrywide Financial announced last month that it will modify the terms of $16 billion in adjustable-rate mortgages through the end of next year. Furthermore, some observers have noted that there are already laws against fraud and theft. Artificially correcting a problem that is in the process of correcting itself could create more problems than it solves (not unlike how the infamous Smoot-Hawley tariffs exacerbated the Great Depression last century).

Support: Conservative support for H.R. 3915 is best represented by RSC Member and Ranking Member on the Financial Services Committee, Spencer Bachus (R-AL). Rep. Bachus' main points are as follows:

- Tighter Definitions Reflecting Current Industry Practice**.** The standard imposed on loan originators to present consumers with a range of "appropriate" loan products has been modified to tie "appropriate" loans to a consumer's "ability to repay," a standard that federal banking regulators have adopted in their guidance on mortgage lending practices and that the industry has already largely embraced. Other "Duty of Care" language has been revised since the bill as first introduced to more clearly define the standards to which loan originators must adhere.

- Debt-to-Income Ratio More Flexible. As introduced, H.R. 3915 would have essentially provided that no subprime loan could be made to a borrower for whom the ratio of debt to income (DTI) on the loan exceeded 50 percent. The reported bill strikes this fixed percentage and instead leaves it to the discretion of the federal banking regulators to set the percentage at an appropriate level. In addition, DTI has become one of several factors rather than an absolute requirement for a loan to qualify for the "safe harbor" established by the legislation, ensuring that subprime borrowers who may exceed the DTI ratio set by the regulators but are otherwise creditworthy will still have access to loans.

- "Net Tangible Benefit" More Tightly Defined. The reported bill promotes greater flexibility in the underwriting process by expanding the definition of what constitutes a "net tangible benefit" to borrowers who refinance their mortgages, to include a much broader range of terms that are advantageous to consumers.

- True "Steering" Prohibited While Other Incentives Preserved. The bill's "anti-steering" provisions do not reduce "legitimate" incentives paid to honest loan originators. Incentives based on the volume of loans would remain, and restrictions on incentives based on interest rates charged would apply *only* to subprime (not prime) loans. The bill no longer contains the conditions that regulators protect the "consumer's interest" and guarantee them "best terms."

- Nationwide Registry a Benefit to Lenders and Borrowers. A nationwide registry will improve the flow of information between regulators and prevent fraud, by creating a system for tracking unethical mortgage professionals who victimize consumers in one jurisdiction and then move undetected to another area of the country to perpetrate additional frauds. In addition, prospective homebuyers and other consumers will have the ability to access basic information about the employment backgrounds and disciplinary records (if any) of loan originators with whom they are considering doing business.

- Housing Counseling Is a Benefit to the Market. The housing counseling provisions in the bill include federal outreach activities that will help avoid repetition of recent mortgage market problems by improving financial literacy and the capability of borrowers to understand these complex transactions in which many engage only once or twice in a lifetime.

- Uniform National Standard for Assignee Liability. The bill now provides for a uniform national standard for assignee liability, ensuring that national securities markets can continue to provide the liquidity necessary to fund mortgage loans. Such a federal standard would arguably be less stringent than varying state standards. The imposition of varying state and local standards on assignee liability permitted by the bill as introduced would have impaired the functioning of a national secondary mortgage market.

Administration Position: A Statement of Administration Policy (SAP) for H.R. 3915 notes several concerns about the bill, including the bill's specific underwriting standards, assignee liability provisions, and the subjective obligations for mortgage originators. "H.R. 3915…could overly constrict the primary and secondary markets for mortgage finance," the SAP argues. The SAP does NOT include a veto threat of any kind. Read the complete SAP here.

Cost to Taxpayers: CBO estimates that H.R. 3915, as reported from the Financial Services Committee, would authorize appropriations of $74 million in FY2008 and $330 million over the FY2008-FY2012 period. The bill would also increase mandatory spending by $15 million in FY2008 and by $65 million over the FY2008-FY2012 period. Lastly, the bill would increase revenues by $15 million in FY2008 and by $72 million over the FY2008-FY2012 period.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would:
- Create a federal registry and licensing process for mortgage lenders;
- Require mortgage lenders to be fingerprinted;
- Prohibit certain business practices in mortgage lending (such as incentive compensation);
- Preempt certain state laws, as explained below;
- Create a new HUD office; and
- Create a new federal grant program.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, as follows:

Intergovernmental:
- requiring states to ensure that mortgage originators who apply for state licenses or renewals meet minimum standards (which, according to CBO, would likely force states

to license employees of some financial institutions that are not currently required to be licensed under state law); and
- ➢ superseding state laws that allow individuals to seek compensation from entities that issue certain securities

Private-Sector:
- ➢ creating a licensing and registration system for mortgage loan originators (including a fingerprinting requirement for lenders);
- ➢ setting new mortgage origination standards; and
- ➢ establishing requirements for high-cost mortgages.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Financial Services Committee, in House Report 110-441, asserts that, "H.R. 3915 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI."

Constitutional Authority: The Financial Services Committee, in House Report 110-441, cites constitutional authority in Article I, Section 8, Clauses 1 and 3 (the congressional powers to provide for the general welfare and to regulate interstate commerce, respectively).

Outside Organizations: The following positions of key organizations on the bill as reported from committee were available at press time:

Supporting H.R. 3915:
- ➢ National Association of REALTORS; and
- ➢ Conference of State Bank Supervisors (though still expressing some concerns).

Remaining functionally neutral on H.R. 3915:
- ➢ American Bankers Association (though still expressing some concerns);
- ➢ Consumer Data Industry Association;
- ➢ Fannie Mae;
- ➢ Freddie Mac;
- ➢ Independent Community Bankers of America;
- ➢ National Association of Federal Credit Unions (though still expressing some concerns);
- ➢ National Association of Home Builders;
- ➢ National Association of Mortgage Brokers (though still expressing some concerns); and
- ➢ Securities Industry and Financial Markets Association.

Opposing H.R. 3915:
- ➢ American Financial Services Association;
- ➢ Coalition on Urban Renewal and Education;
- ➢ Consumer Mortgage Coalition;
- ➢ Financial Services Roundtable, Housing Policy Council;
- ➢ FreedomWorks (key-voting); and
- ➢ Mortgage Bankers Association (possibly key-voting).

The Heritage Foundation has also expressed opposition to some of the policies embodied in H.R. 3915, arguing that they would impose new burdens and limits on moderate-income borrowers. Desmond Lachman at the American Enterprise Institute (AEI) has expressed opposition to Congress taking a regulatory, over-reactive approach, rather than relying on market forces to resolve the subprime situation.

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