FULL COMMITTEE HEARING ON THE STATE OF THE NATION'S HOUSING SECTOR: AN EXAMINATION OF THE FIRST TIME BUYER'S CREDIT AND FUTURE POLICIES TO SUSTAIN A RECOVERY

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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FULL COMMITTEE HEARING ON THE STATE OF THE NATION'S HOUSING SECTOR: AN EXAMINATION OF THE FIRST TIME BUYER'S CREDIT AND FUTURE POLICIES TO SUSTAIN A RECOVERY

Wednesday, October 7, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 2:10 p.m., in Room 2360, Rayburn House Office Building, Hon. Nydia M. Velázquez [Chair of the Committee] presiding.

Present: Representatives Velázquez, Moore, Dahlkemper, Clarke, Graves, Westmoreland, Fallin, Luetkemeyer, and Thompson.

Chairwoman VELÁZQUEZ. I call this hearing of the House Small Business Committee to order.

In the last few years, it has become increasingly clear that the health of our economy hinges on the state of the housing market. That is why Congress has placed such an emphasis on recovery in that sector. Already, we are seeing promising results, but our momentum remains fragile and we need to be sure it is allowed to continue, not just for the sake of homeowners but for the sake of our economy and the small businesses that sustain it.

Housing is a small business driven industry. In fact, most mortgage brokers, realtors, home builders, home inspectors and architectural design firms are small ventures. For these businesses recent business upticks have gone a long way in restoring confidence and boosting the bottom line. In August, pending home sales rose 6.4 percent, marking 7 straight months of improvement. Meanwhile, July home values climbed at their highest rate in almost 4 years. But this progress is no pretext for complacency. Home values are still way below what they were 3 years ago and industry businesses continue to face challenges, like tightened credit and slowed consumer spending.

One year after the real estate bubble burst, the housing market is at something of a crossroads. While we have seen encouraging bright spots, small businesses in this industry are still struggling. This afternoon we have an opportunity to evaluate the state of the housing sector and the role that small firms are playing in its recovery. In doing so, we hope to pinpoint which policies are working and where we still have work left to be done.

Even today, you don't need to look very far to see the impact of the housing crisis. In neighborhoods across the country, thousands of houses still sit empty. This glut in the market has dealt a heavy blow to virtually every firm in the industry, including small banks and lending institutions. For these businesses, measures like the First-Time Home Buyer's Credit have been a lifeline. That $8,000 incentive has galvanized consumers, sparking an increase in home purchases. Some experts predict it will generate an additional 350,000 sales before December and are calling for its extension.

Increased home sales will be a key component in the housing recovery, but it will not be the only means for revival. Entrepreneurs, like electricians and efficiency contractors, are already benefiting from measures that encourage green building. In a recent survey by the Air Conditioning Contractors of America, 75 percent of respondents said they had enjoyed improved sales as a result of Recovery Act tax credits. Increased incentives for green building could go a long way in continuing that growth and are worth considering.

For the first time in years we have seen stabilization in the housing market. In order to build on this emerging recovery, economists have suggested extension for our most effective measures, some of which will soon expire. It is important that we have a chance to examine these incentives and determine their value moving forward. Meanwhile, we need to be certain that small firms have the capital they need to stay afloat. Loans to small businesses in the housing sector are down on most accounts. Efforts to get credit flowing again to both builders and buyers will mark an important step in addressing that issue.

While it is clear that the housing market has come a long way, we are not out of the woods just yet. Entrepreneurs, ranging from realtors and appraisers and home builders and architects, are still facing challenges. These are the men and women who not only comprise the foundation of American real estate, but also of our economy. They will play a vital role in our Nation's recovery efforts and it is critical that they have all the tools they need to incite a rebound.

I would like to thank all of the witnesses for being here and I know that we were supposed to start our hearing at 1 o'clock, but I want to take this opportunity really to thank you for helping us come to terms to see what are the measures that are working in terms of the Recovery Act, and how can we be helpful to make sure that those tools are still here for months to come.

And I will now will yield to Ranking Member Graves for his opening statement.

Mr. GRAVES. Thank you, Madam Chair, and I would like to thank you for holding this hearing on the state of the Nation's housing sector and how temporary tax provisions have affected our Nation's ailing housing market. I also want to thank all of our witnesses for being here today. I know that you have come a long ways in many cases to be with us.

Recent statistics point to a slight improvement in America's housing market. Buyers appear to be slowly reentering the market and housing prices seem to be stabilizing. However, the housing market is in no way robust and the current health of the housing market is still a great concern. Foreclosures remain close to record levels, with one in every 357 houses in the United States receiving a foreclosure notice in August. The aftershock of the market's downfall continues to be felt by all sectors of the economy.

Across the country small lumber mills, contractors, electrical manufacturers, realtors, and others in the housing industry have been forced to shrink their workforce, cut workers' pay and employ a variety of creative methods just to stay in business. The First-Time Home Buyer's Tax Credit, signed into law in the summer of 2008, was intended to provide a jolt to the sluggish housing market, providing those would be first-time home buyers an incentive to make that first purchase.

Many have attributed the slight uptick in the housing market in August to the First-Time Home Buyer's Tax Credit, which was increased and extended in the American Recovery and Reinvestment Act of 2009. The credit is set to expire on November 30th. With this date looming, we must now evaluate the success of this credit versus the cost of extending it and its long-term impact on the deficit. This hearing will provide an opportunity to hear from those effected directly by the housing market and examine how this credit and other incentives have impacted them.

Again, thank you, Madam Chair, for holding this hearing and I thank the witnesses and I look forward to hearing the testimony.

Chairwoman VELÁZQUEZ. Thank you. Our first witness is Mr. Mitch Jacob, the Managing Principal of Urban Studio Architects in Tampa, Florida. Urban Studio Architects was founded in 1989 as an architectural space planning and interior design practice. Mr. Jacob is testifying on behalf of the American Institute of Architects. The Institute has more than 83,000 licensed architects and associate professionals. Welcome. You will have 5 minutes to make your presentation.

STATEMENT OF MICKEY JACOB

Mr. JACOB. Madam Chairwoman Velázquez, Ranking Member Graves, and members of the Committee, I am Mickey Jacob, FAIA Managing Principal of Urban Studio Architects, a seven-person architectural and interior design firm located in Tampa, Florida, and I want to thank you for giving me the opportunity to testify today on behalf of my firm and the American Institute of Architects.

As the global financial crisis continues to threaten the livelihood of American business, the American Institute of Architects, the AIA, strongly supports the Committee in its efforts to pursue policies that will allow small business to prosper in these times of economic crisis.

A large majority of AIA's 85,000 members own or work for small firms. America's architects, like millions of small businesses around the country, have been particularly hard hit by the recent economic downturn. The tightening of credit markets has put the financing of construction projects at risk, resulting in reduced work for architects and in many cases the outright cancelation of ongoing projects.

The AIA's Architecture Billings Index forecasts a significant reduction in activity within our sector over at least the next 12 months. Firms with a single family residential specialization have been reporting increased scores since mid-spring due in part to the

$8,000 First-Time Home Buyer's Tax Credit. However, on the whole the architecture profession is reeling.

As the building sector is responsible for 1 of every $10 of the United States GDP, a large portion of which is directly created by small business, continued stagnation within the economy will only further magnify the financial hardship and increasing job loss. As a small business owner I would like to share with you my firm's experiences in this economic climate as they are emblematic of the larger challenges we all face.

Urban Studio Architects celebrated its 20th year in business this past August. Our business model of slow and steady growth during the first 18 years focused on projects in the commercial, institutional and residential sectors. The residential side of our practice represented about 65 percent of our total revenue. By 2007, we had a vibrant staff of 33 people, creating an average of $300,000 a month in billings. However, in early 2008 our two largest residential projects, worth over a million dollars in fees to us, were suddenly put on hold due to the inability to acquire financing.

The continuing decline in the real estate market has seriously affected our firm by making it almost impossible for our clients, most having a successful track record in development, to acquire financing and build. Additionally, the collapse of the housing market in Florida has put on indefinite hold all residential projects in our firm. Our revenue has gone from averaging $300,000 a month to $30,000 a month.

The result of this real estate economic downturn is that our firm has laid off 25 people in the last 20 months, representing 75 percent of our workforce. We have slashed our overhead, renegotiated the terms of our lease and asked our employees to take three different pay cuts, the last of which reduced salaries to half what they were earning just 15 months ago.

Our financial situation has left with us with only two choices: Merge with another firm to stay open and save jobs, or close our business.

Sadly, our firm's story is not unique. Small design firms across the country are facing the same severe challenges and difficult choices. But America's architects believe that this economic crisis presents an opportunity not only to build but to build better. The AIA is launching a new campaign to bring about both short- and long-term recovery to our communities with programs that invest in our infrastructure and the built environment.

Our plan, which is available at AIA.org/rebuildandrenew, focuses on five key areas: Making financing available for design and construction project; providing needed financial relief and access to affordable short-term credit to small businesses; making tax policy work for recovery and beyond; improving our Nation's infrastructure and built environment; developing incentive for a new sustainable economy that will save jobs.

With these incentives the AIA is proposing a number of policy ideas that, if pursued by Congress, will assist architects, their small business firms, and the Nation as a whole to rebound from this economic crisis.

In conclusion, small business does not want a bailout. We want access to low-interest or no-interest loans to bridge the economic downturn to help fund operational costs. We want relief from the skyrocketing premium increases of health insurance. We want tax incentives for people to build, buy, and renovate their homes and businesses. We want Congress to hold accountable the recipients of billions of dollars of stimulus money to ensure it reaches the local marketplace as it was intended to do.

These ″wants″ by small business are not a stimulus package. They are an investment in the economic foundation of the country. My fellow architects and I are happy to utilize our knowledge and experience to work with you in creating realistic and attainable solutions to help small business recover and prosper. It is vital to the healthy future of our profession, our people, the healthy future of my firm, and the economy.

So I thank you for the opportunity to participate today and tell you a story about our firm. Thank you.

[The statement of Mr. Jacob is included in the appendix.]

Chairwoman VELÁZQUEZ. Thank you, Mr. Jacob.

Our next witness, Mr. Joe Robson, is the President of the Robson Companies, a builder of residential and commercial properties in Broken Arrow, Oklahoma. Mr. Robson is testifying on behalf of the National Association of Home Builders. The National Association of Home Builders has represented more than 800 State and local home builder associations since its founding in 1972.

Welcome, sir.

STATEMENT OF JOE ROBSON

Mr. ROBSON. Great. Thank you, Chairman Velázquez, Ranking Member Graves, and members of the Committee.

The current housing recession is the worst since World War II. Housing starts are down 80 percent since January of 2006, and virtually every housing indicator reached an all-time low in the last 2 quarters. And while there are glimmers of hope that the 3-year decline in housing may have stabilized, there remain significant obstacles to recovery, including excess inventory, foreclosures feeding this inventory, continued downward pressure on home prices, constricted mortgage lending and low appraisals, and difficult financing terms and limited availability for acquisition development and construction loans.

I am pleased to report that the First-Time Home Buyer Tax Credit is having a demonstrably positive effect on housing demand. NAHB estimates that 200,000 additional home sales are attributable to the tax credit and resulted in an increase of 187,000 jobs. And as the November 30th deadline for the program approaches, NAHB urges extending and enhancing the tax credit.

In particular, NAHB recommends extending the sunset date until December 1, 2010, and expanding the eligible buyer definition to include all purchasers of a principal residence. We estimate that these enhancements would increase home purchases by 383,000 in the next year, increase housing starts by 82,000, and create more than 347,000 jobs.

On the topic of appraisals, there are increasing complaints of real estate appraisers using foreclosures and other distressed sales as comparables in determining values of single family homes without properly adjusting the comparable property values to reflect the relative condition of the properties. Further appraisal problems have been exacerbated due to the unintended consequences that resulted from the implementation of the Home Valuation Code of Conduct, which has called into question the experience and qualifications of appraisers. NAHB strongly supports the intent of the HVCC. However, we also strongly believe that additional clarifications and reforms are needed in order for the HVCC to work effectively.

Further, Federal agencies and those that establish appraisal requirements for home mortgages should require appraisers to obtain sufficient information and make appropriate adjustments in the prices of comparable sales.

Another persistent problem for home builders is the availability of credit for acquisition, development, and construction, or AD&C loans. Banks increasingly refuse to extend new AD&C credit or to modify outstanding AD&C loans in order to provide builders more time to complete their projects and pay off these loans. As a result more builders are being required to put up additional equity or collateral due to reappraisal of collateral or reevaluation of the loan. Since most home building companies are small businesses and do not have the capacity to meet significant equity calls, the result is often foreclosure on a loan that had been performing. This places more foreclosed properties on the market, blunting the housing recovery. NAHB is urging Members of Congress to tell the Federal banking regulators to put a halt to these short-sighted practices.

Lastly, I want to raise a recent development having to do with the Small Business Administration's ARC program. As you know, NAHB testified in support of this program in front of this Committee this past summer and at that time we were hopeful that ARC would help many of NAHB's members to stay afloat. Unfortunately, home builders are being told by bankers and SBA field staff that their businesses are not eligible for this assistance. We urge the Committee to encourage the SBA to revisit the way it views home builders and to reconsider the eligibility requirements for ARC program loans.

Thank you. I look forward to answering questions.

[The statement of Mr. Robson is included in the appendix.]

Chairwoman VELÁZQUEZ. Thank you.

Our next witness, Mr. Michael B. Pryor, is the President and CEO of Lenders Title Company in Little Rock, Arkansas. Mr. Pryor is also the President of the Board of Governors of the American Land Title Association. ATLA was founded in 1907 and is the national trade association of the abstract and title insurance industry.

Welcome.

STATEMENT OF MICHAEL B. PRYOR

Mr. PRYOR. Thank you, Chairwoman Velázquez, Ranking Member Graves, and members of this Committee. I operate a title insurance and settlement agency in Little Rock, Arkansas. I entered the title business over 20 years ago operating with just myself and two employees. We truly began as a small business.

I am currently honored to be President of the American Land Title Association, and it is on behalf of our many small businesses that I am pleased to be with you today.

At the outset, I wish to thank the chairwoman and so many members of this Committee for your support of America's small businesses. I could call the roster of this Committee and recollect your individual and Dear Colleague letters of support through many of our most difficult times, and we thank you.

Nowhere in the world is the creation and transfer of interest in real property accomplished more efficiently and securely than in the United States. Economic success in America is entirely rooted in a clear system of property rights. Individual claims of property interest are transparently placed in the public records and daily reviewed by members of the land title industry whose active diligence alerts public officials and interested parties of recording errors, title defects, and attempts to fraudulently cloud or impair legitimate property rights. It is precisely this work by our industry that allows a family to sit at a closing table to buy or sell a home.

No matter how many simplification rules we pass, transferring real estate is and always will be a complex process. In my experience, there is no such thing as a normal closing or title issue. Every property, every buyer, and every seller add uniqueness to every transaction. It is a credit to the superb job of title professionals that anyone might even think the closing process is routine.

But we regularly face well-intended regulators who, seeing the hammer in their hand, consider every problem to be a nail. Many of the frustrations of our small business members come as a result of unintended consequences of simplification.

New RESPA regulations by the Department of Housing and Urban Development have created serious new costs. Implementation of the new regulations is frantically under way and will be fully required less than 90 days from now. While we still have issues with the new RESPA rules, we have forged a productive relationship with HUD and hope to continue a constructive and consumer beneficial dialogue.

Last year, this Congress provided badly needed assistance to the real estate economy with the passage of the First-Time Home Buyer Tax Credit. I would be reluctant to declare its effect a boom, but I can tell you without that action many in our industry would have closed their doors. Unfortunately, the threat of closure still exists. In fact, unless Congress acts quickly, I believe it will be a very long winter for many of us.

As you know, the real estate economy is both cyclical and seasonal. We know the cycle is down, and recovering slowly. But the summer season, absent the tax credit stimulus, essentially did not happen. The lack of summer reserves, coupled with exhausted or unavailable credit, has left too many of our members struggling for their economic lives.

The proposal for a new regulator, such as the Consumer Financial Protection Agency, could not come at a worst time. We simply cannot absorb or even effectively engage in a new regulatory regime at this time, especially one with such a vague and overreaching mission. America's small business owners do not have HR and IT departments. They do not have in-house general counsels or government compliance divisions. Those hats are all worn by the same small business owner/manager who is struggling to comply with existing regulations in a difficult economic time. The CFPA is simply ill-timed and ill-conceived.

From my experience I know that optimism and hope are required traits for small business survival, and I can also say that right now neither is in great supply for America's small businesses. I ask this Congress for three things:

First, raise the Fannie Mae and Freddie Mac conventional loan limits from the current $417,000 to $625,000. This will provide badly needed credit availability to the move-up buyers, thereby creating a velocity throughout the real estate column.

Second, extend and expand the home buyer tax credit to include all buyers of principal residences.

And third, to provide better consumer awareness enact a borrower's right of inspection, giving buyer borrowers a mandatory inspection period prior to settlement to review their completed closing statement.

Again, I am deeply grateful for your time, your attention and the opportunity to be here. Thank you.

[The statement of Mr. Pryor is included in the appendix.]

Chairwoman VELÁZQUEZ. Thank you, Mr. Pryor.

Our next witness, Mr. Joseph Canfora, is the owner of Century 21 Selmar Realty, located in East Islip, New York. Mr. Canfora is testifying on behalf of the National Association of Realtors. Founded in 1908, the National Association of Realtors is the Nation's largest trade association with over 1.2 million members.

Welcome.

STATEMENT OF JOSEPH CANFORA

Mr. CANFORA. Madam Chairwoman and Ranking Member Graves, I am Joseph L. Canfora, broker and owner of Century 21 Selmar Realty in East Islip, New York. I am pleased to appear here today on behalf of the National Association of Realtors. I serve as an elected volunteer officer of the organization as the Regional Vice President of New York and New Jersey and Pennsylvania.

Our oral testimony will focus on the First-Time Home Buyer Tax Credit and the challenges our members and consumers alike are facing as new appraisal standards are being put into place. Our written statement will also include discussion of challenges in Federal Housing Administration, FHA, programs. We ask that the written statement be entered into the record.

Chairwoman VELÁZQUEZ. Without objection.

Mr. CANFORA. The tax credit has been a tremendous success. Over 70 percent of the purchasers coming into my company have been due to the tax credit, compared to 40 percent last year for first-time home buyers. So we have seen a tremendous increase. The demand to purchase and close by the tax cutoff date of November 30th is the prime reason buyers are entering the market. Properties that title cannot be delivered by November 30th are not even being considered for viewing.

Right now in our area the tax credit is virtually shut off. And the reason I say that is because if we purchase a house today it takes normally 60 to 90 days to close. So we are into October already so we have seen a tremendous—we have seen a decline of people coming into the office. Nobody is going after the tax credit anymore because in their mind it is over. So it has to be addressed.

I spoke with many of our closing attorneys who all virtually gave the same scenario. At closing buyers are asked what prompted them to move forward and 90 percent of the time it was because of the tax credit being offered.

I make a point to question realtors throughout the Long Island area and the Pennsylvania and New Jersey area, and the buyer activity is due only to the tax credit. So this is important.

Personally I would like to see the tax credit to be given to all buyers. The tax credit must be entered into the—must be extended to the end of 2010.

I would like to talk about appraisal situations. It is a very stressful situation when people are selling and buying. Most often home sellers need every dollar from the equity in their home to be able to purchase their new home. They could be moving to a retirement community or they could be moving their families to either a smaller or larger property. Many of our sellers, due to the increase in the cost of ownership, come to a point where they have to sell their homes.

Buyers are also in a very stressful situation where every dollar counts. When we have an appraisal come in and the appraisal is not accurate, then there goes the sale for both parties. I would like to give an example. I see that time is coming on me.

We just had a veteran purchaser come into the office to purchase. The veteran offers 100 percent financing. The house went to contract for $335,000. It appraised for $315,000. The veteran purchaser was turned away from purchasing the house. The house was truly worth every penny of the $335,000. The appraiser did not come from the area. The comparables used were wrong.

And we had another situation, very similar situation, that happened in Massapequa, where the appraiser came from the Brooklyn area, and we are in Long Island. And like we wouldn't know the Brooklyn area, they would not know Long Island as well. The appraisal was just the opposite. We sold the property for 260- and the appraiser brought it in—and it was worth 260- and 270-, and it was brought in for a very high amount. You can say, gee, why am I saying that it was a high amount? What is wrong with that? Well, the problem is that it is not accurate and the appraisal should be correct and each appraisal is important.

I would like to ask Congress to pass language imposing 18 months mandatory on the HVCC. Thank you.

[The statement of Mr. Canfora is included in the appendix.]

Chairwoman VELÁZQUEZ. Thank you, Mr. Canfora.

Next witness is Ms. Pamela Volm, the owner of Annapolis Contracting, located in Annapolis, Maryland. Annapolis Contracting provides residential and commercial framing in the Baltimore and D.C. area. The firm works with national home builders as well as local contractors.

Welcome.

STATEMENT OF PAMELA VOLM

Ms. VOLM. Thank you, Chairwoman Velázquez, Ranking Member Graves, and members of the Committee for giving me the opportunity to be here today. It is a privilege to help provide you with a firsthand perspective on the housing market that goes beyond the statistics as we as a Nation struggle to recover from the worst economic crisis since the Great Depression.

My name is Pamela Volm, and I am the owner of Annapolis Contracting. I am just located up the road. It was a short trip for me from Annapolis. I have been in the construction business since 1992. I founded my company in 2003, and we specialized in framing multifamily housing in the Maryland area until the downturn.

Our small company started out with 31 employees and at our peak we grew to 37. We all worked together on numerous job sites each year. Approximately 95 percent of our workload was residential construction. The remaining consisted of light commercial. Our employees include foremen, carpenters, carpenter helpers, laborers, estimator, office manager, and a safety director. We also employed numerous framing crews.

When the bottom fell out of the housing market in 2006, Annapolis Contracting went into survival mode. The multifamily work that had grown the company was hardly available. We began to build single family homes. We reached out to the commercial general contractors we were currently working for in search of replacement work. In 2007 our residential framing as a percentage of our business had dropped from 95 percent to 85 percent. In 2008, it dropped to 73 percent. And this year we are at about 68 percent and we will do about 50 percent of the work that we did in 2005.

Our jobs dried up in the residential market. We lost about 20 employees. The framing crews that we once employed went from 12 to 16 men crews to 4 to 5 men. Clients canceled jobs, condensed their subcontractor base. Banks pulled funding, and the small but successful firm that we had built over the past 6 years faced the critical question of whether we could survive.

We were forced to lay off another 17 employees and by the time 2008 came to a close many small businesses like mine were fearful that they would not make it through 2009. While we started this year fearing for our livelihoods, in March the First-Time Home Buyer Tax Credit gave oxygen to our ailing residential marketplace. The passage of the tax credit represented the proverbial light in the darkness as it jump-started the market, pulling buyers off the sidelines and getting capital flowing in this critical segment of our economy.

We started to see more housing starts from our home builders. It was really a welcome sign. It is by no means a full recovery for our company, but it is a sign that things are starting to turn around. I feel and my employees feel, even our customers feel, a certain momentum driving us back to a more stable economic footing.

As of today, it seems like the worst may be behind us. But as those of us who work in the construction business know, winter is the toughest of times. I cannot imagine a worst time for the ending of the $8,000 tax credit.

We are rebuilding and the growth of our small company does look possible again. My story is not unique. There are thousands of small businesses over all the country from builders, retailers, manufacturers, to landscapers, who are finally starting to feel that same momentum as the wheels of their company start turning again.

We know we are not out of the woods, but the First-Time Home Buyer's Tax Credit gave us all a glimpse of economic security. We hope that anecdotal stories like mine help you to see beyond the facts and figures. But it should also be noted that our anecdotal experience is supported by those same studies and reports released from the housing market that will likely provide you evidence for the path ahead.

Last week, Dr. Kenneth Rosen of the Haas School of Business at Berkeley released a study providing quantifiably that the tax credit was successful in jump-starting the industry. He found that the tax credit has accomplished one of the most important tasks in getting the market moving again: Reducing the supply of homes that are for sale. The inventory of for-sale homes priced less than $300,000 has decreased by 26 percent, meaning not only is the supply moving again but given the price of the homes that are being sold, America's working families are using that tax credit.

Thank you for the time.

[The statement of Ms. Volm is included in the appendix.]

Chairwoman VELÁZQUEZ. Thank you, Ms. Volm. I would like to address my first question to all the panelists.

Recently there have been some encouraging signs in the housing market. In fact, home prices have been increasing on a month-to-month basis. Do you believe the recent price increases can be attributed to the first-time tax credit, Mr. Jacob? Or if you believe that there are some other factors that should be factored in.

Mr. JACOB. I think that that has somewhat of a factor in it. I don't think it is "the" factor. I think it is giving an opportunity to young people—and I hire a lot of young people out of school—to have an opportunity to go and buy a home. And we are also looking at, in terms of what we are doing in Tampa, the urban environment where it is more high density urban living and those kinds of people are being given an opportunity to be in that environment as a first-time buyer with a condominium or a townhouse in an urban environment. So I think it is spurring it on along with other factors, but I think it is generating some optimism, which I think is very important.

Chairwoman VELÁZQUEZ. Mr. Robson.

Mr. ROBSON. I don't think it is any coincidence that the timing of home sales and stabilization of home prices occurred at the same time that the $8,000 tax credit came into being. I think it is a primary driver. And actually if you look at some of the recent data—maybe it hadn't been published yet for September and that sort of thing—but you will see a leveling off of sales. Because like the other panelists have said, you cannot sign a contract today and take advantage of the $8,000 tax credit. The housing recovery is very, very fragile, and I am afraid without the $8,000 tax credit we could slip back very quickly.

Mr. PRYOR. I am not familiar with the statistic and its genesis, so I can only relate my personal experience in response to your question. And that is that I don't see the price increasing going on. This is a very narrow range of—in our marketplace it is a very narrow range of stimulus that has taken place and we haven't really see it move throughout the column as it needs to because of credit availability in the upper ends of the market.

I do think that coupled with the opportunity to increase the conforming loan limits, it is a very important step to increase and extend the tax credit and provide that credit availability through Fannie and Freddie to all home buyers.

Mr. CANFORA. The tax credit—when the tax credit went into effect, we saw immediate increase in activity. It was night and day that was the difference. And now we see it turned off. As far as prices are concerned, what we didn't see was continuing declining of prices. Had there not been that tax credit put in place, I don't know where we would be. Prices still would be constantly falling.

Ms. VOLM. I called numerous of our contractors that we build for, builders—national builders as well as the local builders that we build for, and in the communities that we have that are the first-time home builder communities we have seen a great increase in starts in those communities since the tax credit was started.

I had several of them call me because I had asked for statistics or numbers and they said that—these were communities that we were building that had really kind of leveled off, there wasn't a lot of activity. And they actually see movement in these. We have a lot more starts in those first-time home buyer communities.

Chairwoman VELÁZQUEZ. Mr. Canfora, the percentage of home loans in foreclosure has been rising rapidly since 2006. How do foreclosed properties affect a local real estate market? And have the recent measures taken by the administration helped slow foreclosure rates?

Mr. CANFORA. Yes, I feel they have. Whenever you have foreclosures and short sales in any geographical area, it does have a negative impact on house prices. People look to buy the cheapest possible house they can get.

But here again the tax credit—without the tax credit being in place, I think it would have been worse. I really do. And we really need to see it brought back and extended to 2010.

Chairwoman VELÁZQUEZ. Ms. Volm, we have conducted a lot of hearings here since we have been dealing with the Recovery Act, when we were drafting it, regarding the tightening of credit and the lack of access to credit for small businesses. And while so many industries have been faced with the credit crunch, the real estate sector particularly have been hit hard. Has your business found it difficult to obtain credit?

Ms. VOLM. We haven't had a need to obtain credit. We have been positioned very well, so—and had planned for and have worked through this downturn so far, but I know firsthand that we have had numerous jobs that we have contracted for ready to start and the credit for the jobs or the financing for the jobs has fallen out. To the point, Madam Chairman, where we had moved equipment to the job site and were informed that it wasn't going to start.

Chairwoman VELÁZQUEZ. Would any of the other witnesses like to comment on the question about obtaining credit in your industry?

Mr. ROBSON. I would be happy to. It is virtually nonexistent as far as construction loans are concerned. The reality is in what, late 2007, coming into this downturn, the regulators implemented the commercial real estate concentration guidelines. That has exacerbated the ability to borrow money at this point where we are trying to recover.

We have builders that are ready to build and they can't get financing. They have development loans. They have sold all of their inventory but they can't replace their inventory because they can't get a construction loan to replace the inventory that have already sold.

Chairwoman VELÁZQUEZ. What strategies have you employed to cope with this crisis?

Mr. ROBSON. We have gone and begged to the regulators and we are pleading with Congress maybe to help us out, because we are not going to see a recovery, especially from small business, because they rely on credit, especially from the banks around the country.

Chairwoman VELÁZQUEZ. Thank you. Mr. Graves?

Mr. GRAVES. Thank you, Madam Chair. I have got—there are a lot of questions back up on this side. If it is all right, I will reserve my time and pass to Mr. Thompson.

Chairwoman VELÁZQUEZ. Mr. Thompson.

Mr. THOMPSON. Thank you, Madam Chairwoman, Ranking Member.

Mr. Jacob, could you please—you talked about the impact of the stimulus. Could you elaborate further on what could have been done to make the stimulus more effective for smaller firms?

Mr. JACOB. Yes, I can give you an example. We are going after a stimulus project right now, a GSA project in Gainesville, Georgia, a small courthouse renovation project. One of the problems is that the money that has been set aside they have not been able to figure out the exact amount yet or how to budget it with what they want to do with the project. So we were technically awarded this project 3 months ago, but we were told it is probably going to be 6 or 7 months before they finally get it under way.

So the issue is not so much as the money coming down; it is how quickly we can get it acting the way it should be into the marketplace. And that is an example of what we are personally experiencing. If we had that project right now, it would certainly give some relief to us financially and we could have kept a few people working. It was a nice project for a firm our size.

Mr. JACOB. But that is a good example of what we need. What I would like to see done is just how can we get that money quicker into the marketplace? And it has been coming.

Mr. THOMPSON. Kind of following up with that personal experience you just had, or maybe others, what type of paperwork, what kind of reporting requirements has that been, and has that been easy to comply with? Is it a fairly easy process to cut through?

Mr. JACOB. It is not a hard process, it is an arduous process. I mean, it takes time to do it. So you have to look at that, at what it does to your profitability on a project as you are doing time management on a project. It is more paperwork, but it is not hard paperwork, it is just more. And you have to make sure that you have all your numbers correct, from our side, of what we are doing with the contract portion of the stimulus money. But it is a time issue.

Mr. THOMPSON. Okay. Thank you.

Mr. Robson, in your testimony you stated that the sale of an additional 200,000 homes is attributed to first-time homebuyers' credit. Is it possible to estimate how many of these buyers accelerated their purchase to receive their credit or would not have purchased at all without it?

Mr. ROBSON. I think those estimates are additional that would not have. I think those are the additional sales that would have happened without the tax credit

Mr. THOMPSON. Okay, very good.

Now, you expressed support for monetizing the credit. Would you explain why this, and why you feel it is important?

Mr. ROBSON. I think any time you can help, especially with the mortgage criteria the way it is now, obviously for first-time homebuyers, the down payment is the most difficult, you know. But monetization allows them to do it. There have been several States that have done it, and they have actually seenan increase in sales because of it. I think it is proven. FHA has certainly come out and helped create that. But it is a proven stimulus to help people come up with the down payment in order to buy a home.

Mr. THOMPSON. Okay, thank you.

Mr. Pryor, how would the borrower right of inspection, that you made reference to, protect consumers and provide better consumer awareness? And how does this help the housing sector?

Mr. PRYOR. The transparency of it is enormous. A family coming to a closing table that has not had advance notice of what their closing costs are going to be, or even how much money they are going to have to bring to the table, because of some delay in receiving closing instructions and the last-minute preparation of the settlement statement, it creates confusion in the marketplace and dissatisfaction as people leave. So the confidence factor is impaired in an enormous way. That is an outstanding and very important way for consumers to regain confidence in the process, and once they do that, stability will ensue.

Mr. THOMPSON. Thank you.

Mr. Canfora, what is the average amount of time a closing is delayed since the inception of the Home Valuation Code of Conduct?

Mr. CANFORA. Well, it can be delayed—to canceled completely. We are having appraisals come in inaccurate. We have to then go out and question them. So the question is just absorbed. I would say anywhere from the transaction falling apart to at least 4, 4 weeks, you know, as far as delay is concerned.

But remember, when somebody gets an appraisal that is not correct, it is a negative feeling on the house that they are buying. So with that, they are tarnished. And that is what we are seeing; we are seeing transactions falling apart.

Mr. THOMPSON. Thank you. I yield back, Madam Chairwoman.

Chairwoman VELÁZQUEZ. Ms. Clark.

Ms. CLARKE. Thank you, Madam Chairwoman, Ranking Member Graves, and thank you to our panelists for coming to discuss this very important issue with us. I am pleased that we are discussing expanding this important first-time homebuyers' tax credit.

It is no secret that the housing sector's continued weakness is causing a great deal of pain out there. With 9.8 percent unemployment and rising, we need to explore all options available that will stimulate economic activity to put our people back to work.

I believe it is important to be supportive of small businesses that benefit from the resurgent housing sector. The increased demand that will result from an extension of this credit will have positive effects on economic activity across many sectors. There are a slew of options on the table to strengthen this credit, and we will be studying all of them very closely.

At a minimum, I think we should give deep consideration to extending the credit for at least another full year, and also to increasing the credit's value. Those that would criticize increasing the credit's value because of the revenue cost to Treasury would do well to remember that increased activity in the housing market will result in increased activities elsewhere, increasing government revenues ultimately.

Perhaps we might explore a credit to incentivize purchases in areas most affected by high foreclosure levels and take a look at adjusting the income eligibility for the credit.

As I said, there are a number of options available to us. Let me be clear; whatever we choose, we should study these options and make our decisions in an expedited fashion. People are hurting out there, and the extension of this credit would really be helpful.

I look forward to working with my colleagues to act on this extension so that we can provide a shot in the arm to our economy. I want to thank you, Madam Chair.

I have a question for you, Mr. Jacob. In your statement you say that the crisis is deeper and more profound than either you or your peers can remember, and it will take more than just a stimulus to help bring small businesses like yours back from this challenging place.

I personally think we need to wait for the rest of the 60 percent of the stimulus dollars to come down the pipeline. But generally, do you feel that the Federal Government needs to be more active in helping small businesses? And do you think more Federal Government resources can be devoted directly to supporting small businesses?

Mr. JACOB. Yes, I do. I think there are a couple of things. One, as I discussed earlier about trying to get the stimulus money faster into the marketplace so it will affect more people. Secondly, I would like to look at how the Small Business Administration can provide short-term bridge loans at very low interest rates that can be paid back at a later date, a pushback date, so that businesses like mine can have enough money to make our expenses and get through this. And thirdly, it is getting the lending industry, the people who receive stimulus dollars, to lend that money back into the private sector so we can stimulate projects going on.

Chairwoman VELÁZQUEZ. Will the gentlelady yield?

Ms. CLARKE. Yes, Madam Chair.

Chairwoman VELÁZQUEZ. Mr. Jacob, when you mention the Small Business Administration providing bridge loans, do you have an average number of the size of the loan that will be helpful?

Mr. JACOB. I could probably tell you that—I can tell you what my firm would need. My firm probably needs between $25- and $35,000 a month right now in a bridge loan for expenses, based on the revenues we have, to keep paying our people. I want to keep salaries as high as you possibly can without having to cut more people. But that would be an example of what you would have. And as we see movement in the economy, I am hopeful that there is going to be more revenue coming into our firm. But at this point, that would be the number.

Chairwoman VELÁZQUEZ. Would the gentlelady continue to yield?

Ms. CLARKE. Yes.

Chairwoman VELÁZQUEZ. So the Small Business Administration has a loan program that will provide a $35,000 interest-free loan, and the person will have up to 5 years to start paying it. Did you hear about that program?

Mr. JACOB. I think one of the things that we haven't done a good job on is getting that information into the marketplace for those of us who don't utilize those resources as small business. And how do we get that information out would be my question; better communication in that regard.

Chairwoman VELÁZQUEZ. Thank you.

Ms. CLARKE. Just very quickly, my question is to Ms. Volm. I believe that the construction sector is one of the most dynamic and effective for small business and job creation. Do you think that the Federal Government can do more to be supportive of firms in the construction sector? And what are your observations in that regard?

Ms. VOLM. I think that the government has done a lot to support us. In Maryland, we have some programs that are available for women-owned businesses like mine, or minority-owned businesses, that have helped in the construction industry.

I am not quite sure what else they could do. We are seeing so many of my friends, so many companies that have folded and gone out of business and have lost employees. When you look at this tax credit, this $8,000 tax credit, and you realize the value of the housing industry, you know, it is such a mover of this economy. The people that it affects, from architects, designers, carpenter contractors, HVAC, plumbing, all the manufacturing, it is such a mover of our economy. What would help is let's extend this tax credit. Let's get people out here buying houses. Let's get people moving in this market. This is something that makes a huge difference to all of us.

Trucking. We have to get these things to the houses, to the developments. We need that.

Chairwoman VELÁZQUEZ. Time has expired.

Ms. CLARKE. Thank you, Madam Chairman.

Chairwoman VELÁZQUEZ. Mr. Luetkemeyer.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Mr. Robson, during your testimony you talked about the number of homes that are in inventory out there, that you have been able to bring them down as a result of the tax credit. Can you give me an idea of how many excess homes we have in America right now that we need to get rid of?

Mr. ROBSON. Specifically, I have heard anywhere 2- to 3 million. The problem is the pipeline kind of keeps filling.

Mr. LUETKEMEYER. What is the normal amount of inventory, let's say, over the last 10 years? What was the average inventory on something like that?

Mr. ROBSON. The average inventory is around 6 months; so probably around 1 million.

Mr. LUETKEMEYER. So we are two to three times what we normally have; is that correct?

Mr. ROBSON. Right.

Mr. LUETKEMEYER. If we don't extend the tax credit, how long will it take to get rid of that excess?

Mr. ROBSON. I don't know. It is going to be a very, very slow recovery.

Mr. LUETKEMEYER. If we implement the tax credit, how long will it take to get rid of the inventory?

Mr. ROBSON. It will certainly speed it up by 2 to 3 years; a couple of years, I would think. And it depends on whether you are just extending it or expanding it. If you expand it, it is going to shorten the time frame.

Mr. LUETKEMEYER. That was my next question. I was also getting to it looks to me like we don't need to go out and build any more. We have this excess. And because of this excess, we are holding prices down; is that a fair statement?

Mr. ROBSON. Well, it is kind of hard to—it is a very broad brush. Certainly in specific markets and in specific segments of markets, we probably don't need to build any more. In Oklahoma, we need houses. So it depends on the market.

I mean, real estate is very, very local in nature. And frankly, we are looking at low starts not seen since 1940. So essentially we are building no houses. And if you look at the new home inventory, it is down substantially. It is the foreclosures of existing inventory that is really swamping the market. It is not because of new construction, though new construction is where the jobs are.

Mr. LUETKEMEYER. Okay. Thank you.

Mr. ROBSON. One other thing on the expansion, what we are seeing—and I think some of the other panelists have said—you are seeing the most activity in the entry-level market. We are not seeing the ripple effect up that we normally see. I think probably the reason for that is people are underwater on their home. They are going to sell their house, they have no money left.

Mr. LUETKEMEYER. Let me have a follow-up question on that. One of the suggestions was made here that we need to raise the Fannie and Freddie loan limits from 417 to 625. At what point do you no longer have an incentive to purchase a home? If somebody is going to buy a $1 million house, $8,000 is not going to be an incentive to buy that house. At what point is enough? Is the value of the home more than—and people that buy that level of house, is it no longer attractive? Is this 417 to 465, is that where we need to be?

Mr. ROBSON. I don't know where it needs to be. Certainly, I would be supportive of that. The problem is when you get past the conforming loan limits and into the jumbo market, there is no money. If you look at where the market is right now, FHA has 33 percent of the market, and Fannie and Freddie have the rest.

There is no other private mortgage money which normally would fund those mortgages on the higher end.

Mr. LUETKEMEYER. Okay. My time is about out here, but I have one other question.

Mr. Pryor, you mentioned something about title folks are regulated. Can you tell us how you are regulated?

Mr. ROBSON. Yes, sir. Most States regulate their title industry because of the locality of the State loss with regard to property rights; you have to know how property is transferred in a particular State, and you have State insurance departments that regulate those. In addition, at the Federal level, we have HUD under the Real Estate Settlement Procedures Act, that regulates the closing process.

Mr. LUETKEMEYER. Are there still discounted premiums going on?

Mr. ROBSON. Premiums are not regulated in every State in the same manner. Some States do allow some discounting of premiums, other States require the premium to be at the published rate that the Department sets.

Mr. LUETKEMEYER. Because I know in the past, that is where some of the problems have been with title insurance folks is the fact that there is discounting going on; they are trying to go out and buy the business; as a result, that entity goes under because it prices itself right out of the marketplace.

Mr. PRYOR. That clearly is an issue that is and has been addressed. And it is localized in certain marketplaces where the State regulation is not as encompassing, shall we say, as it is perhaps in some other States.

Mr. LUETKEMEYER. What is the enforcement on something like that?

Mr. PRYOR. Well, it depends from State to State in that particular environment. Now, the Real Estate Settlement Procedures Act does take a look at the purpose behind the discounting, if there were a thing of value being given as an inducement—as you were calling—for the referral of business. So that is a Federal enforcement action.

Mr. LUETKEMEYER. Thank you, Madam Chair, appreciate your indulgence.

Chairwoman VELÁZQUEZ. Mrs. Dahlkemper.

Mrs. DAHLKEMPER. My husband and I own a landscape, design, build business, so obviously selling of houses and building of homes is something that we are very connected with. We work a lot with architects, we work a lot with home builders and we work a lot with realtors.

I have a couple of questions. And I guess I want to go back a little bit to the supply and demand thing, but I want to talk about something that is a little bit off the subject. I am from western Pennsylvania, and we have a lot of older communities. And what I see as I drive around through a lot of these older communities is there are a lot of empty homes and empty lots within these smaller communities that really are great communities, but people have kind of moved out.

And as I said, this question is quite a bit off from what we are talking about, but if we are looking at somehow incentivizing people to buy new homes or build new homes, is there anything that we can do to actually try to infill rather than going further and further and further out, but trying to actually rebuild our cities while we are doing this, or rebuild our small communities? So take a crack at that.

Mr. CANFORA. You know, we talk about incentives. There are no two ways about it, the tax credit was an incentive and it worked and it is working very well. But it just stops it here. If we continue the incentive maybe to allow people who are purchasing homes for $600,000, or whatever the case may be, that will bring more people in the market.

It has been very slow in the higher-priced as well. I know there was a question that somebody said concerning that. We have to take a look at incentives to help all people in all price ranges.

Ms. DAHLKEMPER. Anybody else have an opinion on that?

Mr. ROBSON. Yes. I think it is a wonderful idea. There are programs out there on a local level. I think Bowling Green, Kentucky has a great program.

Ms. DAHLKEMPER. What is their program?

Mr. ROBSON. It is community-based. But they have been able, where there are blighted homes or empty lots, the city has gone in and bought them, turned them over, maybe to Habitat for Humanity or some other thing, or for market houses. So infill is certainly important, and I think we ought to look at that.

Ms. DAHLKEMPER. I have seen some of that on the local level in my area, too. But I am just wondering if there is anything that you think we can do here on the Federal level as we are doing these incentives and trying to get more people to look at purchasing their first home. A lot of those homes might be those infill homes in those older neighborhoods or in those communities.

Mr. PRYOR. Congresswoman, this is still a credit availability issue, fundamentally, because if you are going to infill and remodel, there has to be credit availability in order to carry forward that purpose. And that, again, is where we come back to the expansion of the homebuyer credit and the raising of the credit limits to allow for those things to happen on a conventional basis.

Ms. DAHLKEMPER. Mr. Jacob, did you want to say something about this?

Mr. JACOB. Yes. We are big believers in that you have got to reinvest in the infrastructure of what you have, whether it is transportation infrastructure or your building infrastructure. And that is a perfect example of how to do it.

We have proposed in the past looking at how do you give incentives through tax credits to people that would take an infill project like that on a transportation system, and if they give up traveling by an automobile, how can we incentivize them for using public transportation and invest in that public transportation so we can more effectively move people around the country and into communities like yours and not have to rely on the automobile. That, I think, is the key to the success of getting greater density and a better urban population, and those projects will happen because of that.

Ms. DAHLKEMPER. I have just one other question.

Mr. Jacob, I know that some small businesses have expressed concern about the paperwork and reporting requirements associated with the Recovery Act contracts. And I apologize I was not here for all your testimony, I have another markup hearing that I am kind of running in between, but what has been your experience in dealing with the administrative burdens associated with those contracts?

Mr. JACOB. We spoke about that earlier; but very quickly, it is more. It is not so much it is a difficult process, it is just that there is a lot more paperwork that we have to do in the accounting.

Ms. DAHLKEMPER. Is there a way to reduce those burdens?

Mr. JACOB. Go back to the way we normally did projects previously. The accounting of a project from my end on a contract, our normal process is sufficient and has been in the past with Federal projects that we have done several years ago. To put this on now just increases time, it increases our profitability.

Ms. DAHLKEMPER. How much time would you say?

Mr. JACOB. I would say it is probably 10 to 15 percent more time with my project manager on the project; not my production people, but my project manager.

Ms. DAHLKEMPER. Thank you very much, I yield back.

Chairwoman VELÁZQUEZ. Mr. Westmoreland.

Mr. WESTMORELAND. Thank you, Madam Chair. I want to thank you for having this hearing.

I am a builder by trade, so I appreciate—I feel your pain, all of you. I have been in the framing business also.

Let me say this. And, Madam Chair, you asked a question. There are builders out there right now that have qualified buyers, presale contracts that cannot get any loans to build a house. And so Ms. Volm was talking about going out on a job. Her builder may have told her that he had a presale, they are expecting to frame it, and then he can't get the construction loan. And this is a qualified buyer.

And, Mr. Canfora, I know from a real estate standpoint, when you sell a house and are expecting to get a commission and the builder can't even get a loan to build it, it is quite bad.

Let me say this. I hope that we will continue the tax credit of $8,000, but I hope we will expand it to an anytime buyer. When we did Cash for Clunkers, it was $4,500, and I think the maximum a car could cost was $45,000, which was a 10 percent tax credit or really go toward a purchase. An $8,000 tax credit on an $80,000 house—and there are just not that many $80,000 houses out there—I don't know what the average sales price is for a house, but if it is $160,000, let's say, which is probably low, you can see that there is just not the same percentage there that there is for somebody in the Cash for Clunkers. So I think it needs to be to an anytime homebuyer. But that is only a small part to me that needs to be helped.

It is a credit issue that we have right now. Even if the tax credit was $20,000 to anybody, we are not sure what it would do to help, because the builder might not be able to get the money to do it.

So while I appreciate what Mr. Robson said about the inventory—and that sounds about the numbers that I have heard too—even if we got all those houses off the market with some type of tax credit, we are not sure that the real estate business or the construction business would still be cranked up, because if credit is still frozen, it is not going to start back.

I would like to ask Mr. Canfora another statement about the RESPA and the HVCC and the TILA. These are more regulations that are going into effect that are possibly going to slow down the home building business in itself. And these are just government regulations that are going into effect. Could you comment on those?

Mr. CANFORA. Yes. And again, I see the need for that, and the discussion to revise RESPA has been going on for how many years? Forever. But I don't think that this is the right time; all it can do is just slow down things. It certainly can't expedite the selling process.

Mr. WESTMORELAND. Well, I believe that we need to have consumer protection. But I have been to many real estate closings where the attorney hands the purchaser a piece of paper and says, here is the security deed. I have yet to have anybody read all the paperwork. So having additional paperwork there for somebody to sign, to me is not real consumer protection. Some of the programs HUD and others offer where they can go to a pre-buying session is much better than some of the additional paperwork that they are adding.

And one other quick comment. On the HVCC, I notice you mention a part of that that concerned me—I think you or Mr. Robson, one did—the fact that the lender had an ownership position in that appraisal business.That is definitely not the way to go.

Mr. CANFORA. Yes. And that is exactly how we see it. There should not be a lender having any process in the AMC at all. And we also feel that there should be a State regulation as we move forward. States should start regulating the AMCs of their State because there is a big difference between each State. It is not the same, and it does need State supervision. So we certainly would like to see that moved in that direction.

Mr. WESTMORELAND. Well, I am trying to put together a piece of legislation now that will address some of the lending as it comes to the acquisition, development and construction of some of the community banks where we are having the most problem. And so I would welcome the input of any of your organizations into what we are trying to do. And any member, Madam Chairman, that is on this committee that would be interested in doing that—because I honestly believe until we get that addressed, this first-time homebuyer credit will be good, but it will be a very, very small part.

With that, Madam Chair, I yield back.

Chairwoman VELÁZQUEZ. Ms. Fallin.

Ms. FALLIN. Thank you, Madam Chair. I would like to welcome our Oklahoma gentleman, Mr. Robson, for his testimony today. And all of you, thank you for attending this important hearing. It is very enlightening to hear your testimony from the industries that you represent.

I have a question. We have been talking a lot about freeing up credit and how to get the home building business and all the different industries associated with that jump-started and back on its feet. And we can extend the tax credit and do some things that would encourage the continuation of purchase of homes, yet we talked about credit not being available.

So a lot of you have mentioned about how the Feds have tied up the credit, and some of the standards and regulations and threshold levels that they put in place are hurting the credit market. So what would you recommend that the Feds do? What are they doing right? What are they doing wrong that is hurting the availability of credit? What would you like to see them do?

Mr. ROBSON. Well, I think there are a couple of things. One, with the existing credit, they have got to help work out a loan; right now they are not. They are making reappraisals every 6 months, if not sooner, on loans.

I will give you an example, a development loan in Tulsa, Oklahoma. Prices have not decreased in Tulsa, Oklahoma; we have actually had appreciation through this whole downturn—not much, but appreciation. Because of the slowing of the economy, the loan was revalued, and with the net present value, they went to the developers to say we want more money. Even though they are selling lots and the price per lot has never diminished, they are calling it a nonperforming loan. But you go through the whole country, and if you have problems in places that maybe aren't as good as, say, in Oklahoma, it is even worse; homes that are ready to be built that you can't build them.

So there has got to be an easing of some credit somewhere. You have got to be able to look at the value of something and not look at other income. I mean, that is basically what a small business and home builder does, is they borrow the money. It is not that they have a CD that is going to go towards a construction loan. They just don't have it, and that is what you need in order to do it. So there has got to be a loosening of the credit in order to move things along, and they have got to work out some sort of system in order to work out existing construction loans.

Ms. FALLIN. Okay, Mr. Canfora.

Mr. CANFORA. As far as commercial is concerned, it is an issue. Commercial properties, commercial homeowners, commercial people who own properties, a lot of their tenants are disappearing due to the recession. Their rent roll is not what it used to be.

Traditionally, a commercial loan would be a loan that every 5 years is called in, and it wouldn't be a fixed-rate loan like residential loans are. And these commercial loans now are going to start hitting the market, and we are very fearful that you are going to see a lot of people go into foreclosure, a lot of buildings, a lot of property owners not being able to afford the properties anymore. And we have to address this, we have to do something.

As far as the residential side, FHA has been wonderful—and it really has been wonderful, and we would like to see it increased. Fannie and Freddie products, we have to start bringing some of those Fannie and Freddie products back, because sometimes FHA doesn't handle for everybody. And unless the financing is in place, there is no home sale, there won't be a home sale. And we are kind of pushing people away that would want to enter the market, that would want to buy, but because the financing isn't there, they are not.

Ms. FALLIN. Mr. Pryor.

Mr. PRYOR. Congresswoman, I think everyone here that operates a business would tell you that they can design models based upon interest rates. Tell us what the interest rate is going to be for home credit and we can tell you approximately how our businesses will correspond to that.

Without the government being involved in those expanded levels of conventional loans, the market right now is not supporting rates in a way that planning can be done. And that means that experienced framers or experienced title people or people that have experience, I can't keep those people. They can't keep their jobs because I can't plan long enough ahead. Credit rates and availability.

Ms. FALLIN. Thank you, Madam Chairman. I think my time is expired.

Chairwoman VELÁZQUEZ. Any other member who wishes to ask questions from this side?

Well, let me take this opportunity. I think that the time couldn't be better. Since there are discussions regarding extenders that will expire now on December 31, we will have an opportunity to share with the Democratic leadership, at least from my side, as to those extenders that should be extended or expanded in a way that could continue to help small businesses, especially in the housing industry.

I want to take this opportunity to thank all of you for being here. You shed some light into the challenges and obstacles that are still there.

So with that, I ask unanimous consent that members will have 5 days to submit a statement and supportive materials for the record. Without objection, so ordered.

Chairwoman VELÁZQUEZ. This hearing is now adjourned.

[Whereupon, at 3:30 p.m., the committee was adjourned.]

NYDIA M. VELAZQUEZ, NEW YORK
CHAIRWOMAN

SAM GRAVES, MISSOURI
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
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STATEMENT
of the
Honorable Nydia Velazquez, Chairwoman
House Committee on Small Business
"The State of the Nation's Housing Sector: An Examination of the First Time Buyer's Credit and Future Policies to Sustain a Recovery"
Wednesday, October 7, 2009, 1 p.m.

In the last few years, it has become increasingly clear that the health of our economy hinges on the state of the housing market. That's why Congress has placed such an emphasis on recovery in that sector. Already, we're seeing promising results. But our momentum remains fragile, and we need to be sure it is allowed to continue-- not just for the sake of homeowners, but for the sake of our economy and the small businesses that sustain it.

Housing is a small business driven industry. In fact, most mortgage brokers, realtors, home builders, home inspectors and architectural design firms are small ventures. For these businesses, recent industry upticks have gone a long way in restoring confidence and boosting the bottom line. In August, pending home sales rose 6.4%, marking seven straight months of improvement. Meanwhile, July home values climbed at their highest rate in almost four years. But this progress is no pretext for complacency. Home values are still well below what they were three years ago, and industry businesses continue to face challenges like tightened credit and slowed consumer spending.

One year after the real estate bubble burst, the housing market is at something of a crossroads. While we've seen encouraging bright spots, small businesses in this industry are still struggling. This afternoon, we have an opportunity to evaluate the state of the housing sector, and the role that small firms are playing in its recovery. In doing so, we hope to pinpoint which policies are working, and where we still have work left to do.

Even today, you don't need to look very far to see the impact of the housing crisis. In neighborhoods across the country, thousands of houses still sit empty. This glut in the market has dealt a heavy blow to virtually every firm in the industry, including small banks and lending institutions. For these businesses, measures like the First-Time Home Buyer's Credit have been a lifeline. That $8,000 incentive has galvanized consumers, sparking an increase in home purchases. Some experts predict it will generate an additional 350,000 sales before December, and are calling for its extension.

///more///

Increased home sales will be a key component in the housing recovery. But it won't be the only means for revival. Entrepreneurs like electricians and efficiency contractors are already benefitting from measures that encourage green building. In a recent survey by the Air Conditioning Contractors of America, 75% of respondents said they had enjoyed improved sales as a result of Recovery Act tax credits. Increased incentives for "green" building could go a long way in continuing that growth, and are worth considering.

For the first time in years, we are seeing stabilization in the housing market. In order to build on this emerging recovery, economists have suggested extensions for our most effective measures, some of which will soon expire. It's important that we have a chance to examine these incentives, and determine their value moving forward. Meanwhile, we need to be certain that small firms have the capital they need to stay afloat. Loans to small businesses in the housing sector are down on most accounts. Efforts to get credit flowing again-- to both builders and buyers-- would mark an important step in addressing that issue.

While it's clear that the housing market has come a long way, we're not out of the woods just yet. Entrepreneurs ranging from realtors and appraisers to home builders and architects are still facing challenges. These are the men and women who not only comprise the foundation of American real estate, but also of our economy. They will play a vital role in our nation's recovery efforts, and it is critical that they have all the tools they need to incite a rebound.

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U.S. HOUSE OF REPRESENTATIVES
SMALL BUSINESS COMMITTEE REPUBLICANS
REPRESENTATIVE SAM GRAVES, RANKING MEMBER

Opening Statement of Ranking Member Sam Graves
House Committee on Small Business
Hearing on *"The State of the Nation's Housing Sector: An Examination of the First Time Buyer's Credit and Future Policies to Sustain Recovery"*
October 7, 2009

I would like to thank the Chairwoman for holding this hearing on the state of the nation's housing sector and how temporary tax provisions have affected our nation's ailing housing market. I also would like to thank the witnesses for attending today. I know many of you have traveled long distances to be with us.

Recent statistics point to a slight improvement in America's housing market. Buyers appear to be slowly reentering the market, and housing prices seem to be stabilizing. However, the housing market is in no way robust and the current health of the housing market is still of great concern. Foreclosures remain close to record levels, with 1 in every 357 houses in the United States receiving a foreclosure notice in August. The aftershock of the market's downfall continues to be felt by all sectors of the economy. Across the country, small lumber mills, contractors, electrical manufacturers, realtors, and others in the housing industry have been forced to shrink their workforce, cut workers' pay, and employ a variety of creative methods just to stay in business.

The First Time Homebuyers Tax Credit, signed into law in the summer of 2008, was intended to provide a jolt to the sluggish housing market by providing those "would-be" first time home buyers an incentive to make their first purchase. Many have attributed the slight uptick in the housing market in August to the First Time Homebuyers Tax Credit which was increased and extended in the American Recovery and Reinvestment Act of 2009. This credit is set to expire on November 30th. With this date looming, we must now evaluate the success of this credit versus the cost of extending it and assess its long term impact on the deficit. This hearing will provide an opportunity to hear from those directly affected by the housing market and to examine how this credit and other incentives have impacted them.

Once again, I thank the Chairwoman for holding this hearing and all of the witnesses for taking time out of their schedules to be with us today. I look forward to hearing your testimony. I yield back.

AIA

THE AMERICAN INSTITUTE OF ARCHITECTS

"Rebuilding and Renewing America's Communities"

Statement of Mickey Jacob, FAIA

United States House of Representatives
Committee on Small Business

October 7, 2009

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Introduction

Madam Chairwoman Velazquez, Ranking Member Graves, and members of the Committee, I am Mickey Jacob, FAIA, Managing Principal of Urban Studio Architects, a 7 person Architectural and Interior design firm located in Tampa, Florida and I want to thank you for giving me the opportunity to testify today on behalf of my firm and the American Institute of Architects.

As the global financial crisis continues to threaten the livelihood of American businesses and workers, the American Institute of Architects (AIA) strongly urges Congress to support polices that will stimulate and restore confidence in the United States economy. Given that small businesses are the lifeblood of the American economy and act as the primary source for domestic job creation, the AIA strongly supports the Committee in its efforts to pursue policies that will allow small businesses to prosper in these times of economic uncertainty.

A large majority of the AIA's 85,000 members own or work for small firms; America's architects, like the millions of small businesses around the country, have been particularly hard-hit by the recent economic downturn. Architecture firms in general and especially small firms rely heavily on short-term lines of credit to finance their operations. As banks have restricted lending, it has become increasingly difficult for firms to continue to make payroll and fulfill benefit obligations for their employees, let alone expand and pursue new projects. Further, the tightening of credit markets has put the financing behind many construction projects at risk, both residential and commercial, resulting in reduced work for architects and in some cases, the outright cancellation of ongoing projects.

The AIA's Architecture Billings Index, a leading economic indicator of the building industry, forecasts a significant reduction in activity for industries within the building sector over at least the next 12 months.[1] Conditions at firms are better now than they were last winter, but a recovery is still far away. However, architecture firms continue to

[1] http://info.aia.org/aiarchitect/thisweek09/0925/0925b_otb.cfm

report that clients are shopping projects around, meaning that firms are seeing many inquiries but few are translating into actual billable work. Firms with a residential specialization have been reporting increasingly higher scores since mid-spring, due in part to the $8,000 first time home buyers tax credit. Fewer firms in both the residential and commercial sectors are now reporting declining billings than they did last winter when their all-time lowest scores were recorded. Business conditions remain weakest at firms with an institutional specialization, with little recovery anticipated in the near future.

As the building sector is responsible for about one of every ten dollars of United States GDP, continued stagnation within the building industry will only further magnify the overall struggles of our economy. The slowdown in building could not come at a worse time – when America's infrastructure is deteriorating, with clogged highways stifling commerce, transit systems overwhelmed and underfunded, and energy prices on the rise.

Urban Studio Architects: One Firm's Struggles

I want to take this opportunity to discuss my firm's experiences in this economic climate, as they are emblematic of the larger challenges we all face. ...

As noted before, I am the Managing Principal of Urban Studio Architects, a 7-person Architectural and Interior design firm located in Tampa, Florida. Along with my partners, Richard Zingale, AIA and Brian Hammond, AIA, we celebrated our 20th year as a firm this past August. We formed the firm in 1989, working out of our homes as young entrepreneurs who wanted to generate excellence in architecture and serve the community both from a business standpoint and in a volunteer basis. Our business model was slow and steady growth in markets we had knowledge and expertise in. Over the years we added talented staff, moved to larger office space, won design awards and remained active and committed to the community.

We developed a strong business base in corporate interiors, office buildings and restaurants. Additionally, we became experts in residential projects including high rise multi-family residential, garden apartments, affordable housing, community based housing and custom single family homes. The residential side of our practice represented about 65% of our total revenue. At the end of 2007 we had a staff of 33 people and were generating an average of $300,000 per month in billings. The first signs of the real estate economic downturn came in January of 2008. Our two largest residential projects under contract that would have over $1,000,000 in fee revenue for us were suddenly put on hold due to the inability to acquire financing. With no means to replace that level of revenue quickly we were forced to lay off 10 people in April 2008. The decline in the real estate market has made it almost impossible for clients, most of whom have a track record of successful projects, to finance and build projects. Although we work hard to be aggressive in responding to proposals and RFP's our revenue stream has continued to decrease.

Interestingly, all areas of our practice were being affected. The corporate Interiors portion of our business and the restaurant studio ground to a virtual halt. People are not investing in projects or office space due to a combination of the economic downturn affecting their business and the non-existent availability of credit from banking institutions. Additionally, the collapse of the housing market in Florida has stopped all residential projects in our office. Our revenue has gone from an average of $300,000 per month to an average of $30,000 per month.

We currently have over $2.5 million dollars in proposals on our books that we consider realistic opportunities – none of which has turned into contracts. Our revenues have not been able to keep up with expenses for several months – a math equation that does not work. We have cut our expenses, renegotiated the terms of our lease, asked our employees to take 3 different pay cuts, the last of which reduced salaries to 50% of what they were earning just 15 months ago while the three partners receive no salary. Several of our employees have cashed in their 401K account in order to pay the monthly bills. It is a dire situation in the small business community.

Our firm is taking the measures that most small businesses are coping with in order to keep operating. In fact we have even resorted to selling excess furniture systems from our office to find additional revenue. Just yesterday we engaged in an agreement to merge with another architecture firm in order to survive and save the jobs of our employees. Our financial situation left us with no choice other than to exercise this option or close our business.

This downturn has a trickledown effect in our industry. Construction jobs have been lost, our product suppliers can't sell their materials, we don't do nearly the business we used to with our printing company, we are not investing in technology we desperately need as a small business to stay competitive and our employees are not spending money in their local businesses. The result of this real estate economic downturn is that our firm has laid off 25 people in the last 20 months representing 75% of our workforce. Most of those people have been unable to find work in the design industry due to the substantial job loss in the architecture profession and the still stagnant economy. Our health insurance costs have increased by 19% in 2009 and we are now required to pay 65% of the COBRA premium for those former employees who elect that coverage that comes out of our cash flow. Small businesses do not have the financial capacity to carry these kinds of cost burdens until tax credits are available. I am fortunate that my bank is working with us. However a colleague of mine in the architecture business just closed his firm of 64 years putting over 120 people out of work because a bank, that was a recipient of stimulus money, called in their line of credit. All small businesses live in fear of this situation.

I feel that the stimulus package developed by Congress is noble in gesture but its impact on the smallest firms is extremely limited. Small business is the backbone of the United States economy. In fact over 80% of the 85,000 members of the American Institute of Architects qualify as a small business. The stimulus package brings billions of dollars to specific industries to "create jobs" however it has yet to find its way sufficiently into the small business arena. Our firm was recently awarded a GSA Federal Courthouse Renovation project in Gainesville Georgia funded by stimulus dollars. The project is on indefinite hold due to the administrative process of trying to figure out how to get the money, how much they really have to spend, budget it for the project and tie it to contracts. So we wait.

Sadly, my firm's story is not unique. Small design firms across the country are facing the same severe challenges.

Although the American Recovery and Reinvestment Act (ARRA) has provided some assistance, with as much as $130 billion available in the recovery package for building-related projects, it is just a start. The crisis is deeper and more profound than any that my peers and I can remember. It will take more than just one piece of legislation, no matter how important as ARRA, to help us recover.

Principles for Economic Recovery

America's architects believe that this economic crisis presents an opportunity not only to build, but to build better—greener buildings, vibrant communities, and a 21st century transportation network that is good for both the environment and the economy. But in order to allow our nation's architects to rebuild America, Congress must take a number of critical steps to help bring us out of this economic downturn.

I am pleased to report that today the AIA is launching a new campaign to bring about both short- and long-term recovery to our nation's economy and communities by investing in our infrastructure and helping our critical economic sector lead the way. Our plan, which is available at www.aia.org/rebuildandrenew focuses on five key areas:

-Making financing available for design and construction projects;
-Providing needed relief to small businesses;
-Making tax policy work for recovery
-Helping to rebuild our nation's infrastructure;
-Building a new, green economy.

To achieve the aforementioned goals, the AIA has developed a number of policy ideas that, if pursued by Congress, will set the playing field for architects, their firms, and the nation as a whole, to rebound from the worst economic marketplace since the great depression.

In particular, I want to note policy recommendations related to making financing available for design and construction projects and providing relief to small businesses:

Make Financing Available for Design and Construction Projects

Extend the Term Asset Backed Securities Loan Facility (TALF) through 2010.
Congress should extend TALF, which is scheduled to expire in December 2009, for at least one more year. This will promote design and construction activity by allowing the time needed for commercial mortgage backed securities to assemble TALF-eligible transactions.

Allow Public Private Investment Programs to Finance Sound Construction Projects.
Congress should expand the Public Private Investment Program's (PPIP) authority to provide for funding of new commercial real estate loans for worthy, solidly underwritten projects that will create jobs and revitalize communities.

Eliminate Disincentives on Global Investments in U.S. Commercial Real Estate.
In order to stimulate new investments in commercial real estate, Congress should amend the Foreign Investment in Real Property Tax Act to eliminate provisions that punish global investments in U.S. commercial real estate compared to the tax treatment of other forms of international investments in the U.S.

Encourage the Use of SBA Lending Authority to Help Small Owners Address Equity Issues
Many small businesses and homeowners who otherwise would be able to take out loans for retrofits are unable to because lenders have tightened equity requirements. The SBA can help increase the number of smaller design and construction projects – helping both small owners and small design and construction firms – by encouraging lending to homeowners and small business owners to improve their equity position.

Extend the First –Time Home Buyer Credit.

The $8000 first-time home buyer credit, which is set to expire in November 2009, is helping to encourage new housing construction, while boosting home sales that provided needed state and local tax revenue. Extending the credit for at least an additional 12 months will encourage more residential construction and job creation in the design and construction industry.

Provide Relief to Small Businesses

Allow Sole Practitioners to Claim the Deduction for Qualified Architectural and Engineering Firms.

In 2004 Congress created a new deduction (Sec. 199) which allows architects and engineering firms deduct up to 9 percent of their qualified receipts. However, due to an unfair and inconsistent limitation within the code, some of the smallest design firms in the country – sole practitioners - are not allowed to claim this deduction. Congress should amend Sec. 199 to allow these firms to claim this deduction

Streamline Onerous Recovery Act Paperwork and Reporting Burdens on Small Businesses.

Congress should analyze and streamline paperwork and reporting requirements in the American Recovery and Reinvestment Act (ARRA) that, while well-intentioned, have created undue burdens on small businesses and have potentially exposed some small businesses to additional legal liability.

Repeal the Three-Percent Withholding Requirement.

Starting in 2012, federal, state and most local government agencies are required to levy a three-percent withholding on all government contracts, grants and other payments, coming into effect around the time that many economists believe that the economy will begin to recover. Congress delayed the withholding for a year as part of ARRA. They should now eliminate it completely.

Eliminate Retainage Rules on Architects and Engineers.

The AIA supports the elimination of a federal procurement regulation that allows federal agencies to withhold up to 10 percent of an architect's or engineer's fees until the end of a design project. This retainage places an unnecessary burden on small design firms trying to take part in the federal procurement process.

Hire Unemployed Design and Construction Professionals to Help Speed Recovery Act Implementation

Despite the best efforts of many agencies, billions of dollars of Recovery Act funding has not been obligated because of the sheer size of the program. Worsening the problem is the fact that many agency contracting officers do not have specialized understanding of design and construction. Congress should encourage agencies to contract, on a temporary basis, with design professionals currently out of work to help ensure that Recovery Act funding for infrastructure projects is distributed expeditiously and effectively.

Conclusion

To bring our nation out of the recession, the government and media continue to talk about creating jobs. We need to focus on measures that save jobs and allow small business to continue to operate and employ people, who pay taxes, spend money in the community and save for the future. I want to grow my business, hire young talented architects and designers and pay them an adequate salary. I want to stop the flow of money out of our economy to "offshore" companies providing services as a cheap alternative that eliminates jobs here in the US.

Small business does not want a bailout. We want access to low interest or no interest loans to bridge the economic downturn to help fund operational costs. These loans can be paid off over a long period of time or through pro bono services in the community to assist those out of work. We want relief from the premium costs of health insurance and the personal cost of deductibles used for preventive care. We want effective tort reform that eliminates frivolous lawsuits and liability insurance costs. We want the availability of small business grants that assist in the acquisition and implementation of new technologies to keep small business competitive in the world wide marketplace. We want Congress to hold the recipients of billions of dollars of stimulus money accountable for insuring it reaches down into the local marketplace as it was intended to do. We want faster implementation of stimulus investment in government and infrastructure projects earmarked for small businesses. These "wants" by small business is not a stimulus package. It is an investment of the future of the country.

My fellow architects and I are happy to invest our time to create realistic and attainable solutions to this problem. I thank you for the opportunity to participate today in the democratic process of voicing my opinions and thoughts to you my elected representatives. As a small business owner I am confident we can all work together to overcome the challenges of this economy and prosper as business and citizens.

Statement of the National Association of Home Builders

"The State of the Nation's Housing Sector: An Examination of the First Time Buyer's Credit and Future Policies to Sustain a Recovery"

House Small Business Committee
October 7, 2009

The National Association of Home Builders (NAHB) appreciates the opportunity to submit this statement to the House Small Business Committee on the current state of the nation's housing sector, the impact of the first time home buyer's credit established as part of the American Recovery and Reinvestment Act (ARRA) and other measures to continue a recovery in real estate markets. Home building is an industry dominated by small businesses. Approximately sixty percent of NAHB's 200,000 members build less than 25 homes per year and eighty percent of them have less than $5 million in annual receipts. These small businesses are at the leading edge of the housing downturn.

Home Builders Ineligible for ARC Loans

Before addressing the primary issues of concern for this hearing, we want to raise a recent development having to do with the Small Business Administration's (SBA) America's Recovery Capital (ARC) Program, established as part of the ARRA legislation.

As you know, the ARC program guarantees interest free, deferred payment loans of up to $35,000 from participating lenders to help existing small businesses meet their current obligations. When the ARC program was rolled out on June 15, we were hopeful that this program would help many of NAHB's members to stay afloat through these tough economic times. Unfortunately, our hopes have been dampened as we received feedback from members who are being told by their bankers and SBA field staff that their businesses are apparently not eligible for this assistance.

SBA has long held the position that the business of home building is *always* speculative; however, NAHB disagrees. During times of strong home sales, many home builders constructed homes speculatively so they would have homes available on short notice to satisfy the demands of prospective home buyers. Few home builders have engaged in speculative activities since the beginning of the current economic downturn. Unfortunately, because of changing conditions in the mortgage markets, some homes that were originally being built under contract became "spec" homes when the purchasers discovered they no longer qualified for a mortgage. In these situations, the builders have been stuck with the responsibility to pay their subcontractors and suppliers.

SBA's Standard Operating Procedures[1] separate home builders' activities into 1) building of a speculative nature, and 2) building under contract with an identified purchaser. These descriptions of the nature of home builders' activities are greatly oversimplified and fail to recognize the costs that are associated with keeping a company – any company – afloat, such as

[1] Small Business Administration SOP 50 10 5(A), Subpart 2, Chapter 2 (III)(D)(s)(2)(e), page 110

the need to pay utilities and other overhead necessary to maintain an office or vehicles or to safeguard tools and inventories of materials that are used in the normal course of business. These are the types of expenses that home builders, the vast majority of whom operate small businesses, could offset if ARC loans were readily available.

We urge the committee to encourage the SBA to revisit that way it views home builders and to reconsider the eligibility requirements for ARC program loans.

Housing Conditions and Outlook

The current housing recession is the worst since World War II. Total starts fell 80 percent from their peak in January 2006-- from 2.3 million starts to a low point of 479,000 starts in April. Virtually every housing indicator (starts, permits and sales) reached all time record lows within the past two quarters. The drop in single-family construction alone has resulted in more than 3 million lost jobs in construction and the related industries supplying materials and goods to housing construction.

Glimmers of hope, however, suggest that the three plus year decline in housing may have stabilized. Existing and new home sales appear to have bottomed. Existing single-family home sales hit a low of 4.05 million in January 2009 improved to 4.61 million sales at a seasonally adjusted, annual rate in July, but slipped down to 4.48 million in August. Meanwhile, new home sales bottomed in January 2009 at 329,000 and have since shown a modest recovery to 429,000 in August.

The inventory of unsold new homes continues to fall from a peak of 572,000 in July 2006 to 262,000 in August 2009. The decline has reduced the month's supply of unsold homes, but not as dramatically because sales continue at a very slow pace. The NAHB Housing Market Index (HMI) languished at a single digit rate for five straight months from late 2008 through the first quarter 2009, but has since picked up to 19 at the latest reading in September. Single-family housing starts have shown strength recently, likely in response to the first-time home buyer tax credit enacted as part of the economic stimulus legislation enacted in February 2009. Multifamily starts have been very weak and will likely continue to fall in the face of a large overhang of apartments and single-family homes on the market. Also, obtaining financing for multifamily projects has become virtually impossible.

These "buds" of growth notwithstanding, a number of housing specific headwinds will continue to buffet any significant housing recovery:

- A large inventory of vacant homes and apartments on the market
- A pipeline of foreclosures feeding the inventory
- Continuous downward price pressures from too much supply and not enough demand
- Tight mortgage underwriting and low appraisals making it difficult for a willing buyer to complete the sale
- Extremely difficult financing terms and availability for builder AD&C credit

All of this suggests that residential construction is now bouncing along a bottom. We forecast that housing starts face a long, slow recovery that will take several years. NAHB forecasts 568,000 housing starts for 2009 and 716,000 for 2010.

The First Time Home Buyer Tax Credit

The ARRA legislation improved the home buyer tax incentive enacted in 2008 by establishing a refundable tax credit for 10 percent of the purchase price of a home, up to $8,000 for first-time buyers of a principal residence in 2009. The law defines a first-time home buyer as a buyer who has not held an ownership stake in a principal residence in the three years prior to the sale. To claim the tax credit, the taxpayer must complete the sale of the home before December 1, 2009. The credit is subject to an income phase-out that begins at $75,000 modified adjusted gross income for single taxpayers and $150,000 for married taxpayers. Partial credits are available for some taxpayers with incomes above those amounts.

The tax credit is having a demonstrable positive effect on housing demand. NAHB estimates conservatively that approximately 200,000 additional home sales are attributable to the tax credit. Of these, 121,000 are first-time buyers induced to buy homes because the credit makes the purchase more affordable. As well, 71,000 are a ripple effect of repeat buyers who were able to sell their existing homes because of the credit. NAHB further estimates that the increase in sales stimulated by the credit has resulted in the absorption of about 50,000 vacant and rental units. Recent data from the National Association of Realtors indicates that 40 to 50 percent of recent home sales are due to first-time buyers, and this increase in demand is in part responsible for recent declines in housing inventories.

The positive impact of the credit is also seen in the job market. NAHB calculates that the credit has resulted in a net increase of 187,000 jobs, measured in full-time equivalents. Some of the jobs are attributable to existing home sales; some are attributable to new construction; and some are the result of extra consumption spending by first-time home buyers with extra after-tax income as a result of the credit.

An important element to maximizing the economic impact of the home buyer tax credit is the ability to apply the proceeds of the tax incentive to the actual purchase of the home; that is, to monetize the tax credit. At NAHB's urging, the ARRA legislation removed certain tax law obstacles that prevented almost all monetization programs. As a result, and with the blessing of the Federal Housing Administration, more than 18 state housing agencies have established tax credit loan or grant programs that monetize the tax credit for home buyers needing the tax credit to fund a down payment on the purchase of a home.

However, as the deadline for the tax credit program approaches, NAHB supports extending and enhancing this important housing demand stimulus program. In particular, NAHB recommends extending the sunset date until December 1, 2010, and expanding the eligible buyer definition to include all purchasers of a principal residence. We estimate that these enhancements would increase home purchases by 383,000 in the next year; increase housing starts by 82,000; create more than 347,000 jobs; generate $16.1 billion in wages and salaries; $12.1 billion in business income and tax income of $8.4 billion for the federal government; and $3.2 billion for state and local governments.

The increased home purchase generated by the above proposal will help soak up the excees supply and push house prices back in a positive direction. The economic stimulus created by established households moving into new homes and the added construction necessary to answer demand where there is no excess supply generates jobs, wages, salaries, business income and tax revenues. As well, these economic impact estimates do not include the larger macroeconomic benefits that would result from the stabilization of housing prices and the housing market in general.

Real Estate Appraisals

There are increasing complaints of real estate appraisers using foreclosure or other distressed sales as comparables in determining values of single family homes without properly adjusting the comparable property values to reflect the relative condition of the properties. If foreclosed and/or distressed property sales are used as comparables, appropriate adjustments must be made to reflect the condition of such properties as compared to the subject property. Improper or insufficient adjustments to the comparable values of foreclosed and/or distressed homes results in the undervaluation of new sales transactions. Such practices contribute to a continuing downward spiral in home prices and forestall economic recovery.

Often, properties that have been subject to foreclosure or distressed sales have issues relating to deferred maintenance or internal damage that an external inspection simply cannot reveal. A prospective purchaser would most assuredly recognize the differences in the value proposition between a well-kept home and a distressed property that is damaged or not properly maintained and the same should be true of an appraiser.

The Federal Housing Administration and Fannie Mae and Freddie Mac, which are regulated by the Federal Housing Finance Agency and the federal financial institution regulators, establish appraisal requirements for most of the home mortgages written in today's marketplace. NAHB is proposing that members of Congress urge these agencies and organizations to issue and enforce guidance that instructs appraisers on the proper procedures for the use of distressed and/or foreclosed properties as comparables. Any such guidance should encourage appraisers to expand the area and/or the time frame from which comparable properties are selected if a sufficient number of properties that have not been subject to foreclosure or distressed sales are not available in the area of the subject property. In addition, the guidance should emphasize that an appraiser should further investigate and consider the overall condition of a property and the specific factors related to a foreclosure or distressed property sale in determining value when a foreclosed property is used as a comparable.

NAHB believes the federal agencies and organizations that establish appraisal requirements for home mortgages should immediately issue and enforce guidance requiring appraisers to obtain sufficient information and make appropriate adjustments in the prices of comparable sales ("comps") in order to bring those comps to the level that represents a reasonable alternative to the home they are appraising.

Further, NAHB recommends the establishment of a required appeals process for Fannie Mae, Freddie Mac, and the Federal Housing Administration similar to that used for appeals of appraisals that are performed with the Department of Veterans Affairs (VA) Loan Guaranty Program. The VA instituted a policy in 2003 to reduce the number of requests for reconsideration of property values by facilitating improved communication between appraisers and lenders before appraisal assignments are completed.

In situations where an appraiser believes an appraisal would result in a value less than the sale price of a property, VA instructs the appraiser to contact the lender and allow two working days for the lender to provide additional information. In addition, the lender can specify another point of contact for the appraiser, such as a builder or Realtor, at the time the appraisal is ordered. By specifying a third party as a point of contact, a lender can reduce delays in getting additional information to the appraiser.

Appraisal problems have been exacerbated due to unintended consequences that resulted from the implementation of the Home Valuation Code of Conduct (HVCC) earlier this year. The HVCC was put in place by Fannie Mae and Freddie Mac, as the result of a settlement with New York State Attorney General Andrew Cuomo, to insulate appraisers from inappropriate influence from parties at interest in a home sales transaction.

Two immediate problems were confusion over what degree of communication is allowed between home sellers/lenders and the appraiser, and an increase in the use of out-of-area appraisers not familiar with the market. Fannie Mae and Freddie Mac, along with their regulator, the Federal Housing Finance Agency, attempted to address these issues through publication of a Frequently Asked Questions (FAQ) document on the HVCC. The FAQ makes clear that it is appropriate for sellers and other parties to the transaction to contact the appraiser to provide relevant information. The FAQ also states that sellers can insist on use of an appraiser that is familiar with the market under evaluation. Hopefully, these clarifications will be broadly disseminated and accepted so that the current confusion on these questions is eliminated.

However, NAHB's members are reporting other problems related to implementation of the HVCC. These issues are related to the experience and qualifications of appraisers and the time allowed for completion of appraisals. With the implementation of the HVCC, many lenders have begun using appraisal management companies (AMCs) to ensure they are meeting the requirement for appraiser independence. We are hearing that appraisal management companies are tending to reduce compensation for appraisers and are allowing only two days or less for completion of an appraisal. While such actions obviously reduce AMC costs and increase their profit margins, we feel they are having an adverse impact on the quality of appraisals.

This is a major problem in markets where a high portion of sales activity is made up of foreclosure or other distressed sales. A widespread failure to appropriately adjust the value of distressed sales used as comps is not surprising if less qualified appraisers are doing the work and appraisers are not given sufficient time to collect information on the condition of the homes used as comparable sales.

NAHB strongly supports the intent of the Home Valuation Code of Conduct and we are not among the groups calling for a repeal or suspension of the HVCC. However, NAHB also strongly believes that additional clarifications and implementation reforms are needed in order for the HVCC to work effectively without causing serious market disruptions. NAHB recently convened an Appraisal Summit involving representatives of major housing and financial institution stakeholders, appraisal organizations, and federal housing and banking regulators to discuss appraisal problems and solutions. There was strong sentiment at the Summit that clearer information on what the HVCC allows, requires and prohibits should be widely disseminated. There were also calls for reforms to establish a system where participants can be confident that appraisers have the training and experience needed to make valuations in complex markets and that appraisers are required (and are given enough time) to collect the information needed to make the appropriate adjustments to distressed sales used as comparables. NAHB urges members of Congress to reinforce the need for such changes.

Availability of Credit for Acquisition, Development and Construction Loans

Another persistent problem in the home building industry that is blunting the recovery of the housing market is the available of credit for Acquisition, Development and Construction (AD&C) loans. Banks are increasingly refusing to extend new AD&C credit or to modify outstanding AD&C loans in order to provide builders more time to complete their projects and pay off these loans. Often this is being forced by examiners demanding that banks shrink their AD&C loan portfolios. On outstanding loans, examiners are requiring banks to obtain new appraisals on properties for fully performing loans, which can result in the banks having to downgrade those loans, turning them into troubled "non-performing performing loans." Once a loan is classified as such, the institution must hold more capital against the loan. As a result, an increasing number of builders are being required to put up additional equity or collateral due to reappraisal of collateral or revaluation of their loan.

Since most home building companies are small businesses and do not have the capacity to meet significant equity calls, the result is often foreclosure on a loan that had been performing. NAHB is proposing that members of Congress urge the federal banking regulators to put a halt to these shortsighted practices that are adversely affecting the financial condition of the banking industry as well as having devastating impacts on home building companies. Instead, financial institutions should be encouraged to fund viable new projects and to take steps to avoid foreclosure on AD&C loans by accommodating loan modifications and workouts. This would provide relief for a major sector of the economy that has suffered because of regulatory overkill and the inability of banks to provide the necessary funding and flexibility that would otherwise keep loans performing as scheduled.

Banks that have received funds from the Troubled Asset Relief Program (TARP) should be required to account for how these funds are being used in financing and / or working out loans on acquisition, development and construction (AD&C) projects. In many instances, banks that have received TARP funds are letting projects fail rather than pursuing workouts with the original developer and builders. This questionable action, which imposes serious hardship on home builders, often putting them out of business, should not be condoned or subsidized by the federal government.

Congress should direct the banking regulators to require banks that have received TARP funds to account for how these funds are being used in lending on new projects. Further, they must demonstrate how the institution is working out the restructuring of existing loans and providing more flexible terms to facilitate continued funding and eventual repayment of performing AD&C loans.

Green Building and the Incentives for Energy Efficiency in New Home Construction

According to the most recent NAHB/Wells Fargo Housing Market Index survey, energy efficiency is significantly more atop the minds of customers interested in building a new home. When asked if their buyers were willing to pay extra for green amenities, fifty-six percent responded that at least some of them were willing. However, cost and maximizing value for the dollar are critical drivers of potential buyers' decision-making, especially in the current economic downturn. Most consumers are not willing to pay extra for a more efficient home unless they are likely to see the benefit of their investment within a reasonable length of time. If we can maximize the cost/benefit for consumers in this area, we can enable substantial growth in this sector of the market with significant positive economic impacts for the nation.

On the supply side, programs like the Energy Star New Home Certification Program continue to gain ground. According to estimates by the Department of Energy and the Environmental Protection Agency, who together administer this program, as many as 25 percent of the homes built in 2009 will be Energy Star compliant. The difficulty for homebuilders, however, is that the current depressed housing market makes it difficult to recoup the costs of Energy Star certification in the final price of a home. This undermines the incentives to pursue this certification and increases the importance of federal programs for increasing energy efficiency in the built environment; discussed later in this statement.

In 2005, NAHB published the National Green Home Building Guidelines (the Guidelines) as the first step towards creating a consensus on residential green building that could be implemented nationally on a voluntary basis. The use of the Guidelines flourished, along with the burgeoning green movement, and its success led to even greater calls for a national consensus standard that could offset growing attempts to mandate privately-developed rating systems. Thus, in 2007, NAHB partnered with the International Code Council (ICC) and the NAHB Research Center (as Secretariat) to convene a consensus group of 42 industry, environmental, and government stakeholders to develop the National Green Building Standard™. After two years, thousands of public comments, and countless input from technical experts, the National Green Building Standard™ was approved by the American National Standards Institute (ANSI) on January 29, 2009, as the *first and only* ANSI-approved national green building standard.

NAHB is working hard to promote green building within the Congress and the Obama Administration. The ability to offer an ANSI-approved green building standard as an alternative to private programs is an important first step. The new standard, along with NAHB's multi-million dollar national green building program, confirms the home building industry's commitment to promoting green building for every aspect of residential construction – single family, multifamily, remodeling, and site development.

Congress must avoid green building mandates, especially for private rating systems, while better alternatives are available for affordable green building. Many state and local programs are having great success with green building and these strides should not be sidelined by overly aggressive federal action. The industry voluntarily initiated the effort to create the first national green building standard and invested time, money and expertise to ensure its integrity and its ability to be constantly improved going forward. Mandating a privately-developed program would have stifled such innovation and Congress must allow for further advancement in green.

In 2005, the *Energy Policy Act* was passed creating several critical energy efficiency incentives in the tax code to do this, including the section 45L, New Energy Efficient Home Tax Credit (New Homes Credit). This credit provides a $2,000 credit to builder of new home that is 50 percent above 2003 International Energy Conservation Code with supplements. The credit is presently subject to basis adjustment and the Alternative Minimum Tax (AMT) and expires December 31, 2009.

All tax incentives like the 45L credit play a unique and critical role in the marketplace for increased energy efficiency. The New Homes Credit is of particular interest to many NAHB members and has seen a three-fold increase in usage since its creation in 2005. It stands alone as the only incentive in the tax code for energy efficiency in single family home construction. This incentive will help to insure that new homes built today and going forward are highly energy efficient and carry that efficiency for their full usable life.

NAHB believes there are several ways to substantially enhance the impact of the New Homes Credit. They include increasing credit amount to $5,000 and making it permanent, allowing internal components of a house (heating, ventilation and/or air conditioning equipment), in addition to building envelope, to be eligible for reaching the 50 percent efficiency threshold, make the credit permanent, eliminate the basis reduction that comes with the credit and allow it to be used against AMT. This last recommendation is especially important because most home builders pay their taxes under the individual tax system and frequently get caught up in the AMT which limits their ability, and incentive, to use the New Homes Credit.

NAHB strongly urges the Congress to make 45L credit permanent. Having to be continually extended blunts its take-up in the market, which needs as much certainty as possible in making investment decisions along these lines. Efforts are underway now in the Senate to expand and extend these energy efficiency tax incentives. In particular, NAHB applauds the work of Senators Olympia Snowe (R-ME), Jeff Bingaman (D-NM) and Diane Feinstein (D-CA) for introducing S. 1637, the *Expanding Building Efficiency Incentives Act*. We urge the House to follow a similar course to ensure the continued availability of these critical programs.

Conclusion

NAHB appreciates the opportunity to share our views on the current state of the nation's housing sector, the impact of the first time home buyer's credit established as part of ARRA and other measures to continue a recovery in real estate markets. We are ready to work with the Committee and the Congress on ways to restore the housing market and hasten the overall economic recovery.

AMERICAN
LAND TITLE
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TESTIMONY OF MIKE PRYOR
ON BEHALF OF
THE AMERICAN LAND TITLE ASSOCIATION

"The State of the Nation's Housing Sector: An Examination of the First Time Buyer's Credit and Future Policies to Sustain a Recovery."

BEFORE THE
HOUSE SMALL BUSINESS COMMITTEE

WEDNESDAY OCTOBER 7, 2009
1:00 PM

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Introduction

My name is Mike Pryor, and I am the President and Chief Executive Officer of Lenders Title Company, headquartered in Little Rock, Arkansas, with offices in Arkansas and Louisiana. I am both a licensed abstracter and licensed title agent in the state of Arkansas and a Past President of the Arkansas Land Title Association.

I am the 2009 President of the American Land Title Association (ALTA), which I am here today to represent. ALTA is the national association for the land title industry, representing nearly 3,000 member companies, including title insurers, title insurance agents, abstracters and attorneys – the majority of which are small businesses. Our members operate in every state and county throughout the country. Over 60 percent of title insurance premium revenue is derived from small businesses.

On behalf of ALTA, I appreciate the opportunity to appear before you today to discuss (1) the title industry's role in the nation's housing sector; (2) the current state of the housing sector and the title industry (3) the impact of additional federal regulation on the small businesses I represent and (4) additional thoughts on steps that can be taken to encourage a recovery in real estate markets. The title industry is critical to the stability of real estate in this country.

The title industry's role in the nation's housing sector

Nowhere else in the world is the creation and transfer of interests in real property accomplished more efficiently and securely than in the United States. Economic success in America grows out of a clear system of property rights. Because all of our citizens can own and sell property, there is available collateral to secure the lending necessary for a vibrant economy. This system was created during the times of the American frontier and remains the basis for entrepreneurship and the creation of wealth and capital in our country. Our property recording and title insurance system, served by local public officials and the land title industry, provides our economy with the legal underpinning that fosters the trust necessary for mortgage credit to flow which makes homeownership possible.

When an individual sits at a closing table to buy or sell a home or refinance their mortgage, the main reason such a complex real estate transfer can be quickly accomplished is because an independent, third party title professional has already scoured the public record (including property records, tax records, and court records) to ensure legal ownership of the property being sold. Before a transaction can occur, a title professional corrects any title or public record defects, accounts for and transfers all of the money intended to change hands, and insures the entire transaction against any known or unknown fraud, risk or defect. As a practical matter, this means that homes and property can be bought and sold with confidence and with reduced financial risk.

There are two concerns which must be addressed in any real estate transaction. First a consumer's primary concern, whether they are a buyer or seller should be that they will ultimately transfer ownership of a property that is subject only to liens or encumbrances that they know about and are willing to accept.

Second, before providing financing for a transaction, a mortgage lender should be certain that the buyer will own the property and that the lender will obtain a valid and enforceable claim to the property as collateral for payment. Likewise, the lender should also be certain that the property is not subject to any other lien or claim that could adversely affect its investment. As a result, secondary financial markets can invest in Mortgage-Backed Securities without risk of losing the underlying asset (or property) as collateral for payment.

There are two types of title insurance: an Owner's Policy which protects the buyer's interests and a Loan Policy which protects the lender's interest. An Owner's Policy is typically issued in the amount of the real estate purchase price, and remains in effect for as long as the owner or their heirs retain an interest in the property. The Owner's Policy will pay valid claims and all defense costs against claims on the title. A Loan Policy assures the lender of the validity, priority and enforceability of its lien (or mortgage), is issued in the amount of the loan, and its liability decreases with each payment until it is exhausted when the mortgage is paid off by the borrower.

Title companies and their agents are involved in completing all aspects of the closing process, from preparation of documents and recording instruments, to preparation of closing forms, and collecting and disbursing funds. Before a transaction is completed, a title search of the records is made in an effort to locate potential problems so that they can be corrected and the transfer of ownership may proceed. Liens, easements, rights-of-way, life estates, air and subsurface rights, and future interests are also discovered in a title search and covered by a title insurance policy.

Because the history and current status of each parcel of property is unique, title insurance policies cannot be issued on a "casualty" basis – by making an actuarial judgment or determination of risk. Rather, title insurance policies should be issued on the basis of thorough underwriting, through a search and examination of the relevant public records pertaining to the ownership of each particular property to be insured according to the property laws in the jurisdiction in which the property is located.

This title search and exam is critical to reduce risk of loss, identify matters of public record and determine whether any action needs to be taken to eliminate possible defects in the public record.

The title industry has been so effective over time in identifying and correcting title that the integrity of the public records is so sound that it is extraordinarily rare for a property's title to be so defective as to be uninsurable or unmarketable. This fact keeps U.S. real estate markets exceptionally liquid.

The title search and examination provides additional benefits to the public as well. In fact, a 2008 ALTA study found that because of the industry's work:

- At no cost to taxpayers, the title industry collects $1.75 billion per year in back income taxes.

- At no cost to taxpayers, the title industry collects $3 billion per year in delinquent real estate taxes.

- At no cost to taxpayers, the title industry collects $325 million per year in delinquent child support payments.

- The title industry spends $225 million per year to correct errors in the public property records that otherwise would lead to serious impairment of the property rights of millions of Americans.

- The title industry is an important source of revenue for local governments, paying $170 million per year to purchase copies of recorded documents.

In addition, a study by Association Research[1] found that if problems were not eliminated prior to closing, one in three consumers and their lenders would be subject to a claim due to an error in the public record. These claims cost time, money and great anxiety for consumers who otherwise would risk the loss of their homes and lenders who otherwise would risk loss of their investment.

The current state of the housing sector and the title industry

A vibrant and growing small business sector is critical to creating jobs in a dynamic economy. Across all sectors, small businesses employ half of the work force, produce 52 percent of private sector output, and provide significant ownership opportunities for women, minorities, and immigrants. Providers of settlement services ancillary to real estate transactions, such as title agents, abstracters, escrow officers, attorneys, and appraisers generally tend to be small businesses.

The title insurance industry is extraordinarily local and as a result there are small title agents in every county across the country. The majority of these businesses are Subchapter S corporations with 2 to 15 employees. There are approximately 50,000 of these brick and mortar small title businesses in the U.S., and each one has been impacted directly by the housing sector's collapse. Although there are signs of stabilization, the title industry is excessively pro-cyclical, which means that when times are tough for the housing sector, times are *very* tough for the small businesses that make up the industry.

[1] "2005 Abstracter and Title Agent Operations Survey," Association Research, Inc. (April 2006)

It is important to note that although small independent title agents did not cause the housing crisis, they have been severely impacted by the sector's downturn.

The title insurance industry is on the frontlines of the housing crisis every day. Declines in home values and increasing foreclosures have left consumers with shaken confidence in the real estate market, and the current recession has further discouraged consumer confidence in the housing sector.

Sales of new and existing homes, after reaching rock bottom in January, are slowly recovering, according to several reports. In July, for the fourth consecutive month, new home sales and existing home sales both increased. Since a bottom in January, new home sales are up approximately 32 percent and total existing home sales are up approximately 17 percent.

While this is good news, rising home sales are only half of the picture since title insurance premiums are directly tied to the sales price of a home. Unfortunately rising home sales are offset by continued declines in prices. This means that for small title insurance agencies revenue continues to decline as well. In July, the median price for new homes was down 11.5 percent from a year ago and the median price home for total existing homes fell 15.1 percent from a year ago. For the title industry this means that if even volumes were consistent, the same home sold today provides 15.1 percent less revenue for the small title agent than it would if the property were sold last year. It is important to note that revenue is a function of volume and price, therefore revenue is significantly less as a result of decreased volume.

All of this is occurring at a time when claims are spiking as a result of increased foreclosures, which generate less revenue, but often also require additional search and curative work and create an even greater likelihood of a title insurance claim on the property resulting in a loss for the industry. Foreclosures also bring higher instances of title defects and mortgage fraud. The title industry plays an even more important role in the mortgage transaction process when foreclosures flood the market by detecting and eliminating fraud and curing title defects to ensure the integrity of the transfer of property.

The statistics from a Midwestern title agency based in the Chicago suburbs demonstrate the drop-off in residential transaction activity between 2006 and 2008. The number of initial requests for title insurance policies fell 31 percent in those three years, with the most dramatic fall-off, 23.75 percent, occurring from 2007 to 2008. These figures reflect a high percentage of refinances. Purchase policies render much higher average revenue per order. However, since the housing market crashed, home purchases have been few and far between.

Due to the lack of liquidity, marginal costs are increasing at a time when orders are being placed for title insurance but deals are not closing. It has become common for a request or order for title insurance to be withdrawn by the consumer because the deal falls through. For the most part, the title industry can only charge for its services when a closing occurs or a deal actually goes through, therefore title agents must cover the cost of the work completed without receiving payment. Over the same period of time at the suburban Chicago agency, the number of actual closings performed declined by 44.75 percent – an even faster rate of decline than the number of orders received.

To demonstrate further, the number of orders for title insurance at the agency that closed in 2006 was about 70 percent, and the work completed on the remaining 30 percent of transactions was funded by revenue generated when other deals closed. However, in 2008, only 55 percent of title insurance orders actually closed, which means this title agency was earning revenue on only about half of the transactions on which work was performed. Finally, while the average cost of providing title insurance services for a transaction has increased 27 percent, the average revenue generated per transaction has decreased 9 percent. The revenue generated per transaction has been calculated based on the number of orders received as opposed to orders closed which allows us to see the effect of order cancellations on revenue.

In addition, the agency's employment picture shows that between 2006 and 2008, the number of FTE's dropped from 46 to 37.5, an employment decrease of 19 percent. It should also be noted that these figures do not point only to the Chicago agency's specific performance. During this time, neither that title agency's market share nor comparative ranking changed, indicating that its entire market is experiencing similar challenges.

One title agency based in Indiana is typical of many across the country. It has gone from six full time employees before the real estate bust to one full time and two part time employees – a two-thirds drop in its Full-Time Equivalent (FTE) workforce. Real estate transactions for both sales and refinances have fallen to about 35 percent of what they were in 2006 driven by high unemployment and lack of credit availability. As the title agency's owner puts it, "There is simply very little business." In addition, the agency reports that home values are dramatically lower due to the number of foreclosure properties for sale.

In 2008, the title insurance industry generated $10 billion or 40 percent less premium revenue than the $16.9 billion generated in 2005 due to the real estate downturn. This revenue drop precipitates even further industry consolidation as companies react to lower returns and higher costs. While title insurance agencies continue to be the source of over 60 percent of premium revenue, they are writing policies for fewer companies.

According to ALTA's Quarterly Market Share and Financial Report, the second quarter of 2009 marked the 13th consecutive quarter in which title premiums declined from the prior year's equivalent quarter. While losses are moderating as a result of the significant rise in refinance activity, it is important to note that a refinance transaction produces much less revenue for the title agency per transaction than does a purchase transaction.

Year to year comparison of total premium revenue demonstrates this fact. Title insurance premiums generated during the first half of 2009 were $4.53 billion, compared to $5.42 billion during the first half of 2008. Despite an increase in refinance activity and the continued reduction of operating expenses, the title insurance industry posted an operating loss of $68.8 million during the second quarter of 2009. While this contrasts favorably with an operating loss of $264.4 million for the corresponding 2008 second quarter and an operating loss of $711.9 million for the full year 2008, much of this cost savings is due to layoffs.

There are some bright spots depending upon where your small business is located. During the first half of 2009, according to industry-wide results, 10 states actually showed increases in title insurance premium revenues from the first half of 2008 with the highest being North Dakota up 29.1 percent; Alaska up 22.8 percent; Kansas up 14.7 percent; Oregon up 13.9 percent and Wisconsin up 9.6 percent.

Unfortunately, chances are that you are more likely to be the owner of a small business in one of the five largest states for premium revenue. If you operate in one of these states, you are faced with a very different operating environment. During the first half of 2009, according to the same industry-wide results, these states showed a starkly different results with California essentially unchanged; Texas down 26.7 percent; Florida down 35.3 percent; New York down 33.9 percent; and Pennsylvania down 9.2 percent.

We hope that the decline in title insurance premium revenue, which appears to be leveling off in 2009, demonstrates the market has begun a slow march to recovery. Leading indicators point to gradual recovery in several housing market projections. In August, the National Association of Home Builders' (NAHB) Housing Market Index rose one point to 18, more than double its record low in January. New permits for single-family homes, a leading indicator of single-family housing activity, rose for the fourth consecutive month in July up 5.8 percent. In addition, pending home sales have increased for seven straight months according to the National Association of Realtors (NAR) Pending Home Sales Index.

The impact of additional federal regulation on small businesses

Unlike many other small businesses, title insurance agencies cannot easily pass additional costs onto customers because rates and charges for title related services are regulated by state insurance departments. In addition to state regulation, the title industry is also regulated by the federal government through the Real Estate Settlement Procedures Act (RESPA).

Industry analysts believe regulatory limitations make the title insurance industry more susceptible to housing market volatility because title agents and insurers are often unable to increase revenue by means other than by increasing their market share. First, a title insurance policy is issued for a one-time premium. There are no recurring premiums which can be collected and increased to boost revenue. Simply raising rates cannot make up for losses. Second, title insurance's status as a monoline product limits opportunities for growth into other types of insurance products, as it prohibits the provider from offering any line of insurance other than title.

Title insurance's monoline restriction was adopted following the collapse of the title insurance industry in New York during the Great Depression because title insurers had been allowed to issue mortgage guaranty insurance. During the Great Depression, extraordinary unemployment led to a collapse in home prices and a spike in foreclosures. The holders of mortgage guaranty insurance filed claims wiping out reserves and making the firms insolvent. Monoline restrictions were imposed in order to prevent this kind of disaster in the future and as a means of ensuring the safety and solvency of title insurers and protection for policyholders where policies remain in effect for indefinite periods of time, and they performed well during this economic crisis.

These thoughtful state regulations strike an appropriate balance between the need to protect consumers and the need to allow small businesses to innovate responsibly. Unfortunately, new regulatory proposals provide no such balance for the title industry and do not consider the ability of the regulated – especially small businesses – to comply much less be able to know if or when new rules require them to change their practices.

The proposed Consumer Financial Protection Agency (CFPA) would impose a third layer of regulation and an additional federal bureaucracy onto the title insurance and settlement services industry. This industry, which is already adequately regulated on the federal level through RESPA as well as by state insurance regulators, will face an additional federal regulator with broad powers to write new regulations.

This kind of structure, with a federal regulator overseeing small businesses operating in every county in the country will require the smallest of agencies – one and two person operations – to shift the focus of their time and resources in order to get into the habit of reading the Federal Register to check for new rulemaking intended for major bank and non-bank financial institutions, but which also applies to their work in searching local courthouse records. Today, our small business members are spending hours educating themselves to ensure they comply with new mandates required by HUD's new RESPA guidelines. RESPA intends to ensure consumers are fairly protected in local real estate transactions – exactly the work that we do. CFPA has no such focus, but will sweep small businesses into its purview.

Like many other small businesses which have been exempted from the CFPA, the title industry was not the cause of the problems that led to the push for the agency. Like many other small businesses which have been exempted from the bill, extending CFPA regulatory authority to the title industry has no measurable benefit in achieving the bill's purposes, but would add to it essentially needless regulation at a cost to small business owners.

Although some recent studies have looked at the impact of regulations on the relationship between government and private business in general, less attention has been directed toward understanding precisely how government regulations have affected *small* businesses. There is good reason to believe that size matters. Precisely because of their smaller size, small businesses are likely to be less diversified and less able to leverage economies of scale or to access capital markets. As a result, small businesses might be more risk-averse and less able to react to unexpected events compared to larger businesses.

In addition, the cost of complying with a particular regulation may be roughly the same for smaller and larger firms, thus placing a disproportionate burden on the smaller firm. According to a 2001 study funded by the Small Business Administration's Office of Advocacy, small businesses spend $6,975 each year per employee just to comply with current federal regulations and mandates.

New RESPA rules, which come into effect on January 1, 2010, as well as revisions to the Truth In Lending Act (TILA) drive up costs for title agencies even further and place additional stress on these small businesses' already strained resources.

The requirements imposed in the new RESPA rule will add an additional burden on title agents who perform real estate settlements. Along with the new requirements come new procedures, major software changes and training expenses for all title agents who perform closings, the expense of which was calculated by HUD for the title industry as a whole to be $62 million for software expenses and training ($46 million of which will be borne by small businesses), and $37 million for legal consultation ($18 million of which will be borne by small businesses).

While ALTA applauds the efforts of HUD to make the home buying and financing process clearer and more transparent for consumers, the responsibilities and liabilities placed on the title industry come at a great cost when our industry is already struggling. However, we will continue to work with HUD and stakeholders to implement the rule successfully.

Additional steps

Beyond an awareness of and sensitivity to the implications of federal regulatory burdens on small businesses, additional common sense steps can be taken to strengthen stability and even encourage a recovery in real estate markets. While none of us are particularly thrilled about increased government outlays, incentives to buy a home are key to purchase transactions.

The extension and expansion of the first-time homebuyer tax credit is the single greatest step Congress can take to stimulate the housing market. Making this tax credit available to all homebuyers, without restrictions on income or their status as a first-time homebuyer will continue to bring consumers back to the market, reduce inventories of unsold homes, and stabilize home prices.

ALTA members have already reported an increase in purchase transactions directly correlating to the $8,000 tax credit enacted earlier this year. According to an ALTA survey conducted in June, 46 percent of land title professionals reported seeing an increase in purchase transactions associated with first-time homebuyers.

NAHB analysis indicates that extending the homebuyer tax credit a full year, through November 30, 2010, and expanding the credit to all buyers of principal residences would:

- Increase home purchases by 383,000 homes;
- Increase housing starts by 82,000 homes;
- Create more than 347,000 jobs;
- Generate $16.1 billion in wages and salaries and $12.1 billion in business income; and,
- Yield tax revenues of $8.4 billion for the federal government and $3.2 billion for state and local governments.

While a homebuyer tax credit with reduced barriers can help, it alone cannot reduce the excess housing inventory and stabilize home prices. The homebuyer tax credit has spurred some movement in the first-time homebuyer market but the move-up buyer is still hesitant to incur additional debt. First-time homebuyer transactions alone are not enough to clear the excessive amount of housing on the market.

The federal government continues to be the single largest source of mortgage credit, and as credit has become less available, borrowers continue to find it harder to qualify for loans. This is exacerbated by high unemployment, which is a major drain on the housing industry. Jobs are key to this industry's recovery. We also cannot assume interest rates will remain below historical averages indefinitely.

Other steps

Other steps can be taken to remove barriers to homeownership. First, Fannie Mae's charter was amended by the Housing and Economic Recovery Act of 2008 to expand the definition of a "conforming" loan. General conforming loan limits, and high-cost area conforming loan limits are now provided for first single-family mortgages. The standard conforming loan limit for single-family properties should be increased from $417,000 to $625,500 and high-cost area conforming loan limits should remain at 125 percent of the median home price for high-cost areas up to $729,750. Permanently increasing the conforming loan limit would help spur recovery in real estate markets and increase lending to consumers, especially in jumbo markets where credit remains extraordinarily tight.

Second, in December 2008, Fannie Mae and Freddie Mac increased the presale eligibility requirement for new condominiums from 51 percent to 70 percent. This means Fannie Mae and Freddie Mac require at least 70 percent of the units in a multifamily project to be sold before they will back a loan. With the federal government serving as the largest source of mortgage credit, unless the developer has already sold 70 percent of the units, virtually no units are being removed from inventory.

Although the motivation to reduce potential loss exposure and combat mortgage fraud cited by Fannie Mae and Freddie Mac are valid, the consequences are crippling. Borrowers face extraordinary hurdles to purchase condo units in newer buildings. Condo markets in cities like Chicago have nearly come to a halt and many buildings remain vacant. A reduction in the presale requirement would give buyers additional options and help the recovery of condo markets across the country. The 70 percent presale eligibility requirement should be reworked.

Finally, when our real estate markets are restored to healthy levels, Congress will want to have taken steps necessary to prevent a collapse similar to the one which we have experienced. Too many homebuyers did not know what they were getting into when they signed their mortgage documents. Congress can confer significant benefits to consumers by requiring that borrowers be given their closing documents prior to closing to prevent confusion when borrowers are presented with myriad complex forms and are pressured to sign documents that may be incorrect or against their best interests – a consumer protection measure which is strongly supported by HUD.

Under current law, consumers currently have the right to request and review closing documents 24 hours before the closing. Few of us know or make use of this option, nor is there a corresponding requirement that the documents provided be complete. In many cases documentation is still being faxed to the closing agent while the borrower is seated at the closing table.

A Borrower Right of Inspection would remedy the plight that borrowers face at settlement and strengthen the remedial disclosure provision of RESPA by giving borrowers time to review their HUD-1 Settlement Statement, the promissory note, mortgage or deed of trust, and the final TILA disclosure which would be complete and finalized by their lender and settlement agent.

The consumer benefit conferred by the proposal is enormous: borrowers would be able to review the key documents, ask questions, obtain third party counseling and renegotiate terms during this period before the scheduled settlement. This would facilitate their understanding of the closing process and help to ensure that they do not enter to an unsuitable loan transaction that leads to non-performance down the road.

Conclusion

A fragile stability exists within the housing industry, but this stability is even weaker within the title industry, especially on small businesses. Incentives like low interest rates and a limited, first-time homebuyer tax credit ensure that revenue and employment losses are not as bad as they could be. Congress should take simple, common sense steps to remove barriers to growth in the title industry and prevent additional barriers from being created. ALTA appreciates this opportunity to share the economic perspective of small businesses in the title industry and looks forward to a swift, stable and strong economic recovery.

I thank you for the opportunity to serve as a resource about the current state of the nation's housing sector.

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HEARING BEFORE THE

UNITED STATE HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

ENTITLED

"THE STATE OF THE NATION'S HOUSING SECTOR: AN EXAMINATION OF THE FIRST TIME BUYER'S CREDIT AND FUTURE POLICIES TO SUSTAIN A RECOVERY"

WRITTEN TESTIMONY OF

MR. JOSEPH CANFORA

ON BEHALF OF

THE NATIONAL ASSOCIATION OF REALTORS®

OCTOBER 7, 2009

Madame Chairwoman and Ranking Member Graves: I am Joseph L Canfora, broker and owner of Century 21 Selmar Realty in East Islip, New York. I am pleased to appear here today on behalf of the National Association of REALTORS®. I serve as an elected volunteer officer of the organization as the Regional Vice President for New York, New Jersey and Pennsylvania.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®. NAR has approximately 30,000 appraiser members from across the country and approximately 750 have earned our Residential Accredited Appraiser (RAA) and General Accredited Appraiser (GAA) designations.

Our oral testimony will focus on the first-time homebuyer tax credit and the challenges our members and consumers alike are facing as new appraisal standards are being put into place. Our written statement will also include discussion of challenges in Federal Housing Administration (FHA) programs.

FIRST TIME HOMEBUYER TAX CREDIT

Congress did a good thing when it enacted the $8000 first-time homebuyer tax credit earlier this year. The program brought prospective purchasers off the sidelines and gave them an incentive to take the plunge and become homeowners. By now, most members of Congress are familiar with the statistics: Between 1.1 and 1.4 million home sales this year have been to first-time homebuyers, many of whom were eligible for the credit. Of those first-time buyer transactions, about 355,000 to 400,000 transactions were directly attributable to the credit.

The buyers who qualified for the $8000 credit entered the market at a time when housing was more affordable than it's been in decades. That's been a good thing for buyers and for our national economy. The credit has provided a huge indirect benefit to local governments, as well. Home purchases have shored up the property tax bases for particularly hard-hit areas. In these hard times, that's good for everyone.

When NAR's members embraced the idea of a first-time homebuyer credit, they anticipated that it would provide the most direct incentive to generate purchasing activity. In early 2008, many communities were paralyzed as home prices kept dropping. The credit was viewed as a tool that would generate activity that could help stabilize prices while at the same time taking some of the fear out of the marketplace. The credit has met those objectives.

During 2007 and 2008, the inventory of houses available for sale skyrocketed. Early in the housing crisis, those increases in inventory were a direct result of the subprime mortgage fiasco. While in most respects the subprime crisis is behind us, there remain a significant number of adjustable rate mortgages that will reset this quarter. These resets will impose hardship on many owners.

Another ominous threat lies ahead. In some states, lenders were subject to either formal or self-imposed moratoria on foreclosures. In most states that imposed formal moratoria, those mandatory forbearance periods will soon expire and financial institutions will bring their inventories of foreclosed properties to market. Similarly, the financial institutions had self-imposed moratoria may see that prices in their communities have stabilized and they, too, will bring more properties to market.

Finally, many prudent homeowners who followed the rules and paid their mortgages will lose their homes because of job loss during these times of increasing unemployment. If foreclosure rates do spike again, inventories could become bloated again. Thus, incentives are still needed to keep the market moving.

We remain fearful that another wave of foreclosures looms. This, in turn, will send inventories up to the high rates of the recent past. In a "normal" market, the optimal inventory is about six to seven months. That is, it would take six to seven months to sell all the houses that are available. In an unsustainable boom market such as we had in 2003 – 2006, inventories are three months or less.

In August 2008, a ten-month supply of inventory was available. By November 2008, the inventory peaked at 10.6 months supply. When the current $8000 tax credit was enacted in February, the inventory of homes for sale was 9.1 months. By April, it was up to 9.5 months. Since April, however, the inventory has declined each month. The most recent data (August 2009) shows an inventory level of 8.2 months: closer to "normal" than at any time since 2007.

To sustain these improvements in a still-fragile market, it is essential that Congress extend the $8000 tax credit. The threats of more foreclosed property coming to market, combined with the mortgage rate resets and growing unemployment are simply too great to take a wait and see approach.

The best available tool for sustaining the gains that have been made will soon expire as of December 1, 2009. In reality, the credit will be out of reach for most people in our market well before its expiration date. The reason: between now and November 30, a purchaser must find a home, enter into a contract, satisfy any conditions of that contract, secure financing and get to closing. In most markets, that process is taking 45 – 60 days, even for the most straightforward deals. October has already arrived, so not much time is left.

In a friendlier world, we could not only extend the credit but also expand its application through some combination of increasing the amount of the credit, increasing the income limits and/or making the credit available for all purchases of a principal residence. We recognize that today's fiscal environment would make all those changes difficult. We do not doubt, however, that the more robust the credit and the greater its duration, the greater the chance that the housing market can perform its traditional role of helping the economy move out of a recession.

APPRAISAL: THE HOME VALUATION CODE OF CONDUCT

The tax credit is a good thing, but a major stumbling block for consumers and for practitioners is the current operation of the property appraisal process. In fact, current appraisal practices threaten to undermine the efficacy of the tax credit.

NAR supports the independence of appraisers and the integrity of the appraisal process. We commend Attorney General Cuomo and both government sponsored enterprises (GSE), Fannie Mae and Freddie Mac, for their efforts to address appraisal fraud in the mortgage industry. We wish, however, to express concerns about the Home Valuation Code of Conduct (HVCC or the Code) they have issued. We support its intent to address appraisal fraud, but we have serious concerns about the implementation and adverse unintended consequences it has had on the real estate industry.

The HVCC has been in effect for five months. The Code is causing delays in closings and even canceled sales, which lead to artificially low existing home sales. While our monthly index of pending home sales shown steady growth in potential home sales for seven straight months, NAR's Chief Economist, Lawrence Yun, notes that not all of these contracts are turning into closed sales. He notes that "The rise in pending home sales shows buyers are returning to the market and signing contracts, but deals are not necessarily closing because of long delays related to short sales, and issues regarding complex new appraisal rules.

In response to a recent survey, our members report that appraisal problems are hampering the housing market's recovery. Almost 40 percent of Realtors® have lost at least one sale since May 1, 2009.[1]

[1] NAR's Research Department conducted the random sample survey in June 2009. Results were made available in July 2009. More information can be found at http://www.realtors.org/research.

Twenty percent of respondents report losing more than one sale. Each sale that is not completed costs the economy $63,000 in related sales and goods. Lost sales also mean a delay in the housing recovery, which will cause a further decline in home prices. Declining home prices in turn, will hamper the overall economic recovery and lead to a greater number of foreclosures. Problems arising from the implementation of HVCC may reverse positive momentum at a time when the real estate industry is just starting to show signs of a rebound in many markets.

We have previously raised our concerns about HVCC with the Federal Housing Finance Administration (FHFA), the NY Attorney General's Office, Fannie Mae and Freddie Mac. NAR President Charles McMillan has met with these stakeholders requesting a moratorium to address the unintended consequences of the HVCC. At the request of Mr. McMillan, the GSEs updated their frequently asked questions documents and FHFA put out some additional guidance. We believe this is a positive first step but more must be done.

HVCC May be Increasing Costs to Consumers

The HVCC agreement reached between the Attorney General Cuomo and the GSEs, and approved by Director Lockhart, does not address the costs of the real estate transaction. Appraisers now must consider their obligations under the Uniform Standards of Professional Appraisal Practice (USPAP) and the Appraisal Foundation and the additional burden of complying with the HVCC. Higher costs may also be an issue for lenders. The creation of a new set of standards to follow and a new oversight organization may lead to increasing the cost of the real estate transaction. ***According to NAR survey data, the cost of the appraisal has increased by as much as $100 for consumers.***

Maintain a Single Frequently Asked Question Standard

Both Fannie Mae and Freddie Mac have issued separate frequently asked questions (FAQ) documents. NAR appreciates this guidance but we believe there should be one FAQ document for both GSEs and the Federal Housing Administration (FHA). This document must be codified and incorporated into existing appraisal policy to ensure proper information is available to the real estate industry. FHA Commissioner David H. Stevens has asked his staff to begin discussions with the GSEs to further explore this recommendation.

AMC Regulation Improving at State Level

Because the HVCC requires mortgage brokers to arrange for appraisals through third party organizations, AMCs now have an increased role in the real estate appraisal process. In fact, the number of our appraiser members obtaining more than half of their assignments from AMCs increased from 13 percent to 40 percent after May 1, 2009. These AMCs are giving appraisers assignments in areas where they lack geographic competency. For a variety of reasons, appraisers may feel compelled to take these assignments. More than 70 percent of REALTORS® responding to our June survey report appraisers lacking geographic competency for their assignments. Recently, Fannie Mae, Freddie Mac, the FHFA, and FHA have all reaffirmed the existing geographic competency rule found in the Uniform Standards of Professional Appraisal Practice (USPAP). While the geographic competence problem existed prior to the implementation of the HVCC, the problem is exacerbated by the increasing prominence of AMCs since May 1, 2009.

NAR believes there is a critical need for regulation at the state level. Aside from geographic competency, our survey found that appraisers have less time to complete an appraisal report and the quality of appraisals is deteriorating. Perhaps most importantly, both REALTORS® and appraisers report that overall fees to appraisers are declining, so the cost of an appraisal is increasing for the consumer.

Many state legislatures are in the process of enacting laws to regulate AMCs. In 2009 at least 10 states introduced measures to regulate AMCs. Other states are considering measures in their upcoming legislative sessions. Since AMCs now have a larger role in the real estate transaction, a moratorium on HVCC will give states more time to enact legislation and promulgate regulations on the AMC industry.

Lender-Owned AMCs Cause Conflicts of Interest

The proposed HVCC would have barred lenders and affiliates of lenders from relying on an appraisal report obtained by, or through, an appraisal management company (AMC) that is more than 20 percent owned by the lender or affiliate of the lender. The final Code does not limit lender ownership of AMCs. We disagree with this result. NAR believes that lenders should be *prohibited* from using an appraisal report from an AMC where the lender or the lender's affiliate maintains *any* ownership stake. Allowing lenders to obtain appraisal reports from AMCs where the lender has a stake in ownership does not meet the goal of the HVCC to assure the independence of the appraisal process.

Implement the Independent Valuation Protection Institute

The Independent Valuation Protection Institute (IVPI) was announced as an integral part of the HVCC. The purpose of the IVPI is to receive complaints from appraisers and users of appraisal services on the improper influence or attempted improper influence of appraisers. To date, the IVPI has not been implemented. FHFA recently stated that the IVPI will be implemented by year's end – a full eight months after the HVCC went into effect. No interim process has been announced by the GSEs or FHFA. A moratorium will give FHFA and the GSEs more time to implement this critical element of the HVCC.

Enhancing Appraisal Policy Without Causing Harm to the Industry

On September 18, 2009, FHA Commissioner Stevens announced plans to implement credit policy changes that will enhance the agency's risk management functions. The announcement reaffirms existing appraisal policy and enhances appraisals in many ways. Further, it implements components of the HVCC while taking into consideration the unintended consequences that burdened the GSEs. FHA was able to address these consequences by consulting with the real estate industry, including REALTORS® and lenders, prior to implementing the new rules.

As a part of these changes, FHA issued two mortgagee letters focusing on appraisals. Commissioner Stevens said "given the size and scope of the FHA and its importance to today's market, these risk management and credit policy changes are important steps in strengthening the FHA fund, by ensuring that lenders have proper and sufficient protections." The new policies will be effective January 1, 2010. FHA reaffirms existing policy on appraiser independence and geographic competence. Mortgage brokers and commission based lender staff will be prohibited from ordering appraisals. FHA's appraisal validity period will be reduced from six months to four.

In a statement by President Charles McMillan, NAR applauds the recommended policy changes. Mr. McMillan said "The Federal Housing Administration is very important to the housing market". With this announcement, "FHA has taken some timely steps to protect taxpayer money." The following is a summary of FHA Mortgagee Letters released subsequent to the Credit Risk Policy announcement.

Appraisal Management Companies (ML 2009-28)

FHA does not endorse or oppose the use of appraisal management companies (AMC). If the lender orders an appraisal through an AMC or another third party organization the lender must ensure that:

- FHA appraisers are not prohibited from recording the fee paid to the appraiser in the appraisal report;
- FHA appraisers are compensated at a rate that is customary and reasonable for the market where the property is being appraised;
- The Fee for the completion of the appraisal may not include a fee for the management of the appraisal process or any activity other than the completion of the appraisal;
- Management or other fees charged by an AMC or other third party must be for actual services related to ordering, processing, or reviewing appraisals for FHA financing; and
- AMC or other third party fees may not exceed what is customary and reasonable for the market area where the property is being appraised.

Portability (ML 2009-29)

This ML provides guidance when a borrower switches from one FHA-approved lender to another after the appraisal was ordered by the first lender. A second appraisal may be ordered by the second lender in the following circumstances: 1) the first appraisal contains material deficiencies, 2) the appraiser from the firs lender is on the second lender's exclusionary list of appraisers, and 3) failure of the first lender to provide a copy of the appraisal report to the second lender in a timely manner that would result in a delay in closing or other potential harm to the borrower. In cases where the borrower switches lenders, FHA does not require that the client name be changed on the appraisal. The lender is not permitted to request that the appraiser change the name of the client unless it is a new assignment.

Affirming Existing Policy - Improper Influence on Appraisers (ML 2009-28)

Consistent with ML 1996-26, no members of a lender's loan production staff or any person (i) who is compensated on a commission basis upon the successful completion of a loan or (ii) who reports, ultimately, to any officer of the lender not independent of the loan production staff and process, shall have substantive communications with an appraiser relating to or having an impact on valuation, including ordering or managing an appraisal assignment. Prudent safeguards must be in place who cannot achieve absolute lines of independence because of small or limited staff size.

Affirming Existing Policy - Appraiser Independence Safeguards (ML 2009-28)

Consistent with ML 1994-54, ML 1996-26, and ML 1997-45, FHA reaffirms requirements of appraiser independence. Mortgagees are prohibited from:

- Withholding or threatening to withhold timely payment or partial payment for an appraisal report;
- Withholding or threatening to withhold future business for an appraiser, or demoting or terminating or threatening to demote or terminate an appraiser;
- Expressly or impliedly promising future business, promotions or increased compensation for an appraiser;
- Conditioning the ordering of an appraisal report or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached, or on a preliminary value estimate requested from an appraiser;
- Requesting that an appraiser provide an estimated, predetermined or desired valuation in an appraisal report prior to the completion of the appraisal report, or requesting that an appraiser provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal report;

- Providing to the appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase must be provided;
- Providing to the appraiser, appraisal company, appraisal management company or any entity or person related to the appraiser, appraisal company or management company, stock or other financial or non-financial benefits;
- Allowing the removal of an appraiser from a list of qualified appraisers or the addition of an appraiser to an exclusionary list of qualified appraisers, used by any entity, without prompt written notice to such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice (USPAP) or state licensing standards, improper or unprofessional behavior or other substantive reason for removal;
- Ordering, obtaining, using, or paying for a second or subsequent appraisal or automated valuation model(AVM) in connection with a mortgage financing transaction unless: (i) there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such appraisal is clearly and appropriately noted in the loan file, or (ii) unless such appraisal or automated valuation model is done pursuant to written, pre-established bona fide pre- or post-funding appraisal review or quality control process or underwriting guidelines, and so long as the lender adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value; or
- Any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality or violates law or regulation, including, but not limited to: the Truth in Lending Act (TILA) and Regulation Z and USPAP.

Affirming Existing Policy - Geographic Competency (ML 2009-28)

The lender is responsible for determining whether an appraiser's qualifications are sufficient to enable the appraiser to competently perform appraisals before assigning an appraisal to them. Appraisers are reminded that USPAP applies to all appraisals performed for properties that are security for FHA, including the Competency Rule. Lenders and appraisers are both responsible for the quality and accuracy of the appraisal if the lender knew or should have known there were problems with the integrity, accuracy, or thoroughness of an appraisal report.

FHA Strength/Solvency

FHA has announced that their 2009 audit will demonstrate that their capital reserve fund has fallen below the Congressionally-mandated 2 percent ratio. The capital reserve ratio reflects the reserves available (after paying expected claims and expenses) as a percentage of the current portfolio, to address unexpected losses. This is not FHA's only reserve fund – FHA also has a cash reserve's account separate from the capital reserves. FHA actual total reserves are higher than they have ever been – with combined assets of $30.4 billion. In fact, the audit is also expected to confirm that FHA has "positive" reserves – meaning they have adequate resources to cover all claims and expenses from their portfolio. In addition, the audit will show that if FHA makes no changes to the way they do business today, the reserves will go back above 2 percent in the next several years.

The reason the cap reserves have fallen below 2 percent actually has nothing to do with FHA's current business activities. It simply is a reflection of falling housing values in their portfolio. The economic forecaster that FHA uses to conduct their audit dramatically revised their projection of home prices (from an expected increase of 2.4 percent to a loss of 10.2 percent). This significant change in home price values and depreciation directly impacts the economic value of the fund. There has not been a significant increase in defaults on the part of borrowers, or underwriting problems on behalf of FHA and its lenders. Instead, the decrease in the capital reserve account is a direct effect of the state of our economy and our housing markets.

Given the devastating impact home price declines have had on banks, lenders, and even the government sponsored enterprises (GSEs) Freddie Mac and Fannie Mae, FHA has performed remarkably through this crisis. Why? FHA has never strayed from the sound underwriting and appropriate appraisals that have traditionally backed up their loans. FHA meets it mission of serving low and moderate income homebuyers, but has never resorted to abusive loans, improper or nonexistent underwriting, or other bad practices. As a participant in the home mortgage process, FHA cannot be immune to the pitfalls of the housing crisis. But solid policies and practices have protected them from the biggest failures.

Today, FHA borrowers have never been stronger. The Federal Reserve report shows that *FHA is not the new subprime. FICO scores have increased, and its LTVs decreased.* The average credit score for FHA's current customer has grown to 693, and only 7.5 percent of their purchase borrowers this year had FICO scores below 620. Borrowers have more equity, as the percentage of FHA's Loan-to-Value (LTV) ratios above 95% fell from 72 percent in 2007 to 62 percent in 2008. FHA's cash reserves are strong, and sufficient to pay claims. We believe FHA is taking the necessary steps to assure it remains a critical source of mortgage insurance for America's homebuyers at all times – good and bad.

FHA's New and Proposed Changes

FHA is not required to do anything when the reserves fall below 2 percent, other than work to get them above 2 percent. The audit will show the even if FHA does nothing, the reserves are expected to rise back to that level within a few years. But FHA is appropriately taking some steps to improve their position. First, they are hiring a Chief Risk Officer to oversee FHA's efforts to mitigate risk. We applaud the leadership of FHA Commissioner Dave Stevens for making this decision so quickly after taking office. A Chief Risk Officer will have the primary responsibility for overseeing risk management across all FHA programs. We believe FHA has taken strong measures to mitigate risk, but assigning one senior staff member with the responsibility for coordinating FHA's risk management activities makes good sense.

FHA has also announced that it will modify its procedures for streamlined refinancing. For those borrowers who apply for a simple refinance loan, with no cash out, FHA will now require a short seasoning period for the original loan (6 payments), the lender to demonstrate a net benefit to the consumer, and the borrower to exhibit an acceptable payment history. We do not think any of these changes are onerous on consumers, and strongly admire FHA for including the "net benefit" requirement to assure consumers aren't bearing the costs of refinancing, without receiving any benefit. In addition, lenders must verify that the borrower is employed and has income at the time of the refinance. While we understand the logic of this requirement, we question what will occur in the case where a borrower has lost employment, is still making their mortgage payments, and the refinance would make it easier for them to make those payments (net tangible benefit). Would those borrowers – whose risk is already borne by FHA – be ineligible for a refinance? Where the borrower will take cash out of the transaction, we support FHA's changes to require additional underwriting and property appraisals.

Conclusion

We urge Congress to extend the first-time homebuyer tax credit through 2010 and look forward to working with members to assure that happens. In the interim, we are pleased with the progress that has been made so far in sorting out appropriate appraisal requirements and practices. We are particularly pleased that the FHA has clarified its intent in coordinating the application of myriad new rules as we move forward in strengthening FHA, assuring that all parties to a transaction have clear ethical responsibilities that are also practical and easily accommodated.

We look forward to the time that the housing market can again lead the economy out of recession. Extending the tax credit and standardizing rational appraisal and FHA rules will contribute substantially to that goal.

Statement of Pamela Volm
President, Annapolis Contracting

U.S. House of Representatives
Committee on Small Business

October 7, 2009

Statement of Pamela Volm,
Annapolis Contracting

Chairwoman Velazquez, Ranking Member Graves, and Members of the Committee, thank you for the opportunity to appear before you today. It is a privilege to help provide you with a first-hand perspective on the housing market that goes beyond the statistics, as we as a nation struggle to recover from the worst economic crisis since the Great Depression.

My name is Pamela Volm and I am the President of Annapolis Contracting, based just up the road in Annapolis. I have been in the construction business since 1992. I founded my company in 2003, we specialized in the framing of multi family housing in the Maryland area until the downturn.

Our small company started out with 31 employees and grew to 37 at our peak. We all worked together on numerous jobsites each year. Approximately 95% of our workload was residential construction; the remaining consisted of light commercial. Our employees included foremen, carpenters, carpenter helpers, laborers, an estimator, a safety director, and office manager. We also employed numerous framing crews.

When the bottom fell out of the housing market in 2006, Annapolis Contracting went into survival mode. The multi family work that had grown the company was hardly available. We began to build single family homes. We reached out to the commercial general contractors we were currently working for in search of replacement work. In 2007 our residential framing as a % of our business had dropped to 85%, 73%in 2008 and we are currently at 68%.

Our jobs dried up in the residential market, we dropped to 20 employees, the framing crews we had employed went from 12-16 men crews were now 4-5. Clients cancelled jobs, condensed their subcontractor base, banks pulled funding, and the small – but successful – firm we had built over the past 6 years faced the critical question of whether we could even survive. We were forced to lay-off 17 of our employees, and by the time 2008 came to a close, many small businesses like mine were fearful that they would not make it through 2009.

While we started this year fearing for our livelihoods, in March, the first-time homebuyer tax credit gave oxygen to our ailing residential marketplace. The passage of the tax credit represented the proverbial light in the darkness, as it jump-started the market, pulling buyers off of the sidelines and getting capital flowing in this critical segment of our economy. We started to see more housing starts from our homebuilders, a welcome sign.

It's by no means a full recovery for our company, but it is a sign that things are starting to turn around. I feel; my employees feel; even our customers feel; a certain momentum driving us back to a more stable economic footing.

As of today, it seems like the worst may be behind us, but as those of us that work in the construction business know, winter is the toughest of times. I cannot imagine worse timing for the end of the $8,000 tax credit.

We are rebuilding and the growth of our small company does look possible again. My story is not unique. There are thousands of small businesses all over the country – from builders, to retailers, to manufacturers, to landscapers – who are finally starting to feel that same momentum, as the wheels of their companies start turning again.

We know we're not out of the woods, but the first-time homebuyer tax credit gave all of us a glimpse of a return to economic security.

We hope that anecdotal stories like mine help you to see beyond the facts and figures, but it should also be noted that our anecdotal experience is supported by those same studies and reports released about the housing market, that will likely provide you evidence for the path ahead.

Last week, Dr. Kenneth Rosen of the Haas School of Business at Berkeley, released a study proving quantifiably that the tax credit was effective in jump-starting the housing market.

He found that the tax credit has accomplished one of the most important tasks in getting the market moving again – reducing the supply of homes for sale.

The inventory of for-sale homes priced less than $300,000 has decreased by 25.9% - meaning not only is the supply finally moving again, but given the price of the homes that are being sold, America's working families – using the tax credit –are able to recognize the dream of homeownership.

This reduction in housing inventories is also helping to stabilize home prices which will, over the long-term, increase consumer confidence and bring more buyers back into the market.

But Dr. Rosen also found that the momentum in the market that he quantified – and the momentum that my employees and I feel – could quickly go away if the first-time homebuyer tax credit is not temporarily extended.

In the next 12 to 24 months, the housing market will likely continue to be challenged by more foreclosures, continued unemployment, and weak consumer confidence.

In fact, recently consumer concern over the tax credit's expiration has already begun to slow momentum, as first-time buyers fear their home purchases might not be complete by the November 30 deadline, causing home sales to start to drop yet again.

As a hard-working member of this very fragile industry, I am here to make clear that letting the first-time homebuyer tax credit expire would be disastrous.

The market is by no means recovered yet, and in fact, it is the first-time homebuyer tax credit that is the only thing driving us all towards stabilization. We also know that a healthy housing industry drives our economy. The homebuilding industry had been in park and has finally started to move forward, what a shame it would be to put the brakes on now.

Critics of the tax credit have tried to say that the people who took advantage of this opportunity would have purchased a home anyway. In my first-hand experience, that is absolutely not the case. Most of the buyers with whom we interact talk about how they were nervous and apprehensive about getting into the housing market, and how the credit made it feel safe and possible. I have a niece that purchased her first home this year and was able to take advantage of this credit as well as a nephew who will settle on his home this week.

I am also a proud member of the Fix Housing First Coalition – a group of over 25,000 housing stakeholders – builders, retailers, homebuyers, manufacturers, designers, etc... - dedicated to getting the housing market back on its feet, to lead our economy back into recovery.

The Coalition hears everyday from people around the country who would have stayed out of the housing market, were it not for the credit.

Unlike any other major purchase, buying a home triggers significant and ongoing spending activity for the maintenance, upkeep and design of that home, virtually from the moment you sign the papers.

New buyers purchasing homes would mean millions upon millions of dollars injected into local businesses and the communities in which they are located. That means more jobs, more economic stability, and even more tax revenue for local governments to get back on healthy financial footing.

I'm not an economist – but as a hard-working small business person – that sounds like exactly the kind of economic stimulus our country sorely needs right now.

However, without that temporary extension, small businesses like mine and the communities we serve could face a devastating backslide – halting the momentum of our housing recovery and limiting the economy's recovery overall.

I hope to never have to live through another time like the past couple of years.

But without a temporary extension of the tax credit, we could easily face more layoffs and more construction companies going out of business.

And in fact, now that we have begun to see signs of recovery and felt that possible stability coming back into our grasp, a slide back into that same economically devastating situation could have even worse effects on our long-term ability to recover.

On behalf of the millions of businesses all around our nation just beginning to feel the momentum towards a stabilized housing market and a secure economy, I urge this Committee and Congress to extend the tax credit rather than risk undoing all the good it has achieved.

I am happy to answer any questions the Committee may have.

YVETTE D. CLARKE
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EDUCATION AND LABOR COMMITTEE

HOMELAND SECURITY COMMITTEE

SMALL BUSINESS COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-3211

HEALTH, EMPLOYMENT, LABOR, AND PENSIONS SUBCOMMITTEE

HEALTHY FAMILIES AND COMMUNITIES SUBCOMMITTEE

CHAIRWOMAN: EMERGING THREATS, CYBERSECURITY, AND SCIENCE AND TECHNOLOGY SUBCOMMITTEE

INTELLIGENCE, INFORMATION SHARING AND TERRORISM RISK ASSESSMENT SUBCOMMITTEE

CONTRACTING AND TECHNOLOGY SUBCOMMITTEE

RURAL DEVELOPMENT ENTREPRENEURSHIP AND TRADE SUBCOMMITTEE

Rep. Yvette Clarke
October 7, 2009
House Committee on Small Business
The State of the Nation's Housing Sector

COMMENTS

- Thank you Madame Chair, and thank you to our panelists for coming to discuss this important issue with us.
- I am pleased that we are discussing expanding this important first time homebuyer tax credit.
- It is no secret that the housing sector's continued weakness is causing a great deal of pain.
- With 9.8% unemployment and rising, we need to be exploring ALL options available that will stimulate economic activity to put people back to work.
- I want to be supportive of small businesses that benefit from a resurgent housing sector.
- The increased demand that will result from an extension of this credit will have positive effects on economic activity across many sectors.
- There are a slew of options on the table to strengthen this credit and we will be studying all of them closely.
- At a minimum we should give deep consideration to extending the credit for at least another full year and also to increasing the credit's value.
    - Those that would criticize increasing the credit's value because of the revenue costs to treasury would do well to remember that increased activity in the housing market would result in increased activity elsewhere, increasing government revenues ultimately
- In addition we might explore sweetening the credit to incentivize purchases in areas most affected by high foreclosure levels, and taking a look at adjusting the income eligibility for the credit.
- As I said, there are a number of options available to us. Let me be clear, whatever we choose, we should study these options and make our decisions in an expedited fashion. People are hurting out there, and the extension of this credit will really be helpful.
- I look forward to working with my colleagues to act on this extension so that we can provide a shot in the arm to our economy.
- Thank you Madame Chair.

Appraisal Institute® Professionals Providing Real Estate Solutions

American Society of Appraisers ASA The International Society of Professional Valuers

Property Economics Professionals ASFMRA

NAIFA

October 14, 2009

The Honorable Nydia Velazquez
Chairwoman
House Small Business Committee
United States House of Representatives
2466 Rayburn House Office Building
Washington, DC 20515

The Honorable Sam Graves
Ranking Member
House Small Business Committee
United States House of Representatives
1415 Longworth House Office Building
Washington, DC 20515

Dear Chairwoman Velazquez and Ranking Member Graves:

On behalf of the 35,000 members of our respective professional organizations, we would like to comment on and clarify several issues relating to the valuation of distressed residential properties highlighted during your **Committee's hearing on Wednesday, October 7th, titled "*The State of the Nation's Housing Sector: An*** *Examination of the First Time* ***Buyer's Credit and Future Policies to Sustain a Recovery.*" We respectfully request** that this letter be considered as part of the hearing record.

Testimony was presented to the Committee critical of residential real estate appraisers alleging the improper use **of foreclosed properties and properties from distressed sales as "comparables" for determining the value of single** family homes where no adjustment had been made to reflect the relative condition of the properties. Further, it was suggested that a high number of new home sales have fallen through because the appraisal reflects a value below the contract sales price for the property.[1] Additionally, your Committee regarding the Home Valuation Code of Conduct that requires clarification.[2]

It is important for the Committee to understand that appraisers do not create value in the housing market; they report on what is occurring in the market. Real estate appraisers utilize recognized techniques and methodologies to develop an opinion of the market value. Appraisals are not performed to confirm the sales price, but instead are performed to establish whether the market value of property collateralizing a mortgage is commensurate with the amount of the loan and to protect the lender against loss in the case of a default. Moreover, the appraisal serves

[1] Testimony of Joe Robson, President of the National Association of Home Builders, before the House Committee on Small Business, October 7, 2009. Available at http://www.house.gov/smbiz/hearings/hearing-10-7-09-homebuyers-credit/Robson.pdf

[2] Testimony of Joseph Canfora, Regional Vice President of the National Association of REALTORS®, before the House Committee on Small Business, October 7, 2009. Available at http://www.house.gov/smbiz/hearings/hearing-10-7-09-homebuyers-credit/Canfora.pdf.

as an important consumer protection by providing home buyers with an independent opinion of value. The fact that some home sales have failed to close is largely the result of the housing market we are in today. All properties, including new construction, have to compete against high inventory levels and flat or declining home values in many parts of the country. Accordingly, we urge caution in connection with those who would prefer to "shoot **the messenger" rather than face the realities of today's distressed market.**

Professional appraisers fully understand and agree that if foreclosure and/or distressed property sales are used as comparables, they must be treated carefully. Appropriate adjustments must be made by a qualified appraiser to reflect the physical condition of such properties as compared to the subject property. This is common practice. **Further, consideration must be given to adjusting for the "conditions of sale,"** taking into consideration any undue **stimulus involved in the transaction. It is the professional real estate appraiser's responsibility to** be aware of these conditions and analyze the market, considering all relevant data and applying proven techniques and methods. Simply put, ignoring pertinent data can actually **jeopardize the appraiser's license.**

The Uniform Standards of Professional Appraisal Practice (USPAP), which appraisers must adhere to in accordance with federal and state law, generally requires the consideration of all relevant transactions that have occurred in the market area and a determination as to which of those transactions should be used in the analysis to arrive at a *credible value opinion* for the subject property. An appraiser cannot ignore foreclosure sales and short sales if consideration of such sales is necessary to develop a credible value opinion. As is always the case in selecting sales to use as comparables, the appraiser must investigate the circumstances of each transaction, including whether atypical motivations or sales concessions were involved, or whether the property condition was compromised. For example, a short sale or a sale of a property that occurred prior to a foreclosure might have involved atypical seller motivations (e.g., a highly motivated seller) and so might not be an ideal comparable. On the other hand, a sale of a bank-owned property might have involved typical motivations, so the fact that it was a foreclosed property would not render it necessarily ineligible as a comparable. Further, some foreclosed properties are in inferior condition, so an adjustment for condition may be needed.

Given the complexity of this issue in **today's market**, the competency and qualifications of the real estate appraiser is of critical importance in our system of real estate financing. Making proper adjustments to comparables involves essential methodologies that are part of the foundation of appraisal education offered by **professional organizations such as ours. Appraisals of real property that involve "atypical market conditions" are often "complex" appraisal assignments, and require analysis by highly qualified real estate appraisers. Lenders** or their agents – including appraisal management companies – would be well served by retaining the services of highly qualified appraisers where such conditions exist. Further, lenders and appraisal management companies must have robust review procedures in place to ensure that proper analysis and adjustments are made.

To the extent that some appraisers inappropriately may use foreclosure or distressed sales as comparables without making appropriate adjustments, we believe that these matters speak to the competency and qualifications of the appraiser and call for enforcement including referral to the appropriate state licensing board or professional appraisal organization. We firmly believe that existing appraiser licensing laws, which require demonstrated knowledge and understanding of the sales comparison approach, including proper adjustment procedures, are entirely sufficient, as long as qualified and competent appraisers are being engaged by lenders and there is effective enforcement in place. In this regard, we strongly encourage lenders, home builders, real estate agents, appraisers, and others to demand that the lending community utilize the services of highly qualified **appraisers in today's market and report instances of inappropriate adjustments to the state** appraiser licensing authority or professional appraisal organization for review and proper disciplinary action.

Competent and qualified appraisers are skilled in applying the methodology required to make necessary adjustments on comparable properties. Accordingly, there is no need whatsoever for government or agency guidance on this issue. However, it may be beneficial for Fannie Mae, Freddie Mac, and the Federal Housing Administration to further publicize their expectations of lenders relative to obtaining reliable real estate appraisals in current markets. Such guidance could remind lenders and financial institutions to do the following:

- Seek out the services of highly qualified appraisers in complex appraisal assignments, including those who have earned professional appraisal designations from a nationally recognized professional appraisal organization
- Recognize that conditions of sale (sales concessions) are equally as important as the condition of a property to the credibility and reliability of the real estate appraisal. This requires that the appraiser be fully apprised of any non-real property items included in the contract sales price including cash, homeowners or golf community fees, automobiles, or other personal property
- Provide sufficient time for the real estate appraiser to conduct the proper analysis of the subject property and comparables used, and prohibit unreasonable turnaround times or turnaround times that compromise the quality of the appraisal
- Promote communication between appraisers, builders, and real estate agents. Appraisers are finding it increasingly difficult to confirm builder sales (which are not reported in Multiple Listing Services), and to confirm a sales transaction with real estate agents.

There are several items related to the Home Valuation Code of Conduct (HVCC) that we wish to clarify, as well. Your Committee received testimony indicating that the cost of appraisals has increased by approximately $100 since the implementation of the HVCC. Further, it was stated that appraisers now must consider their obligations under the Uniform Standards of Professional Appraisal Practice (USPAP) and the additional burden of complying with the HVCC. Further, similar to the complaint above regarding the use of foreclosure or distressed sales as comparables, the HVCC has been blamed for scuttling new home sales.

Our research indicates that a vast majority of appraisers working for appraisal management companies are facing severe "cramdowns" in fees by as much as 60 percent. This is causing many appraisal firms, the vast majority of which are small businesses, to consider leaving the appraisal profession.

This is due to a combination of factors, including the loss of major clientele (mortgage brokers recently represented 60 percent of appraisal orders, but now represent less than 10 percent), but also the business model employed by many appraisal management companies. This model typically funds itself on the backs of **appraisers, forcing reductions in market rate fees for acceptance on "approved appraiser panels."**

Under traditional models, banks and mortgage lenders had an internal appraisal management and review function that administered appraisal management for the institution. The process has not changed except that it has been outsourced by some with savings to the lender. This was an overhead expense that was typically paid for through loan processing fees or interest rate charges. When appraisal management companies are used to broker appraisal services, institutions are passing through those costs through the appraisal line of the HUD-1 statement, rather than charging them separately from appraisal costs. This gives the appearance that appraisal fees may have increased, but what is really occurring is that the cost of an additional function (appraisal management) is being moved from loan processing to the appraisal.

Further, it is important to point out that the HVCC imposes no obligations on appraisers. Instead, the HVCC is a set of rules for ***lenders*** who wish to sell loans to Fannie Mae and Freddie Mac. While USPAP compliance has been required of appraisers for 20 years, the HVCC imposes no additional burden on appraisers.

Lastly, while we share many of the concerns expressed about the HVCC – most importantly, continuing concerns regarding appraisal quality and consumer disclosure of appraisal and administration fees -- we do not believe it is fair to blame the HVCC for scuttling new homes sales. As stated above, the appraisal is reflective of occurrences within the market, and many markets are facing severe economic transitions today. While the appraisal is a critical safety and soundness component, there are several other factors that contribute to lost sales, not the least of which is stricter underwriting standards by lenders. Appraisals, like supervisory loan-to-value ratio and underwriting requirements exist to help lenders make safe and sound loans.

As the largest professional organizations of real estate appraisers in the United States, we would be pleased to meet with you or your staff to discuss these issues further. According to recent census data, 98 percent of real estate appraisal firms are small businesses, and they, like many others, face challenges in today's economy. To arrange a meeting or if you have any questions or concerns, please call Bill Garber, Director of Government Affairs, Appraisal Institute, at 202-298-5586, (bgarber@appraisalinstitute.org), or Peter Barash, Government Relations Consultant to the American Society of Appraisers at 202-466-2221 (peter@barashassociates.com).

Sincerely,

Appraisal Institute
American Society of Appraisers
American Society of Farm Managers and Rural Appraisers
National Association of Independent Fee Appraisers

International Council of Shopping Centers

ICSC Statement Submitted in Connection with Hearing on: "Expiring Tax Incentives: Examining their Importance for Small Businesses on the Road to an Economic Recovery"

The International Council of Shopping Centers (ICSC) submits this statement in support of Congress approving a timely extension of business provisions expiring at the end of 2009, or "tax extenders." Expiring tax provisions of particular concern to ICSC are the 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant improvements, and certain improvements to retail space, as well as the election to expense "brownfield" environmental remediation costs, and energy tax incentives.

Founded in 1957, ICSC is the premier global trade association for the shopping center industry. Our more than 60,000 members in over 90 countries include shopping center owners, developers, managers, marketing specialists, investors, lenders, retailers and other professionals as well as academics and public officials. Tax incentives are a key element in the success of many projects and businesses, and allowing key provisions to expire could have negative repercussions, especially in the current economic environment.

I. Leasehold Depreciation

The *American Jobs Creation Act of 2004* provided for a temporary reduction in the depreciation period for leasehold improvements from 39 years to 15 years to more accurately reflect the actual life of such improvements. ICSC believes that 15 years is a reasonable schedule for the depreciation of leasehold improvements and should be made permanent or, at the very least, extended beyond 2009.

One of the most important obligations of shopping center owners is providing modern, efficient and environmentally sound retail space for their tenants and the public. Owners must periodically (usually every 5 to 10 years) refurbish and replace many components of their buildings, including internal walls, partitions, lighting, plumbing, flooring and communication outlets, in order to meet the specific needs of their tenants and to comply with ever-changing government regulations.

The 15-year depreciation period for such leasehold improvements more closely reflects the actual life of these improvements in light of market practices. Returning to a longer recovery period that does not reflect market conditions is, in effect, a tax penalty.

II. Brownfields Remediation Expensing
ICSC is also concerned about contaminated property cleanup and brownfields remediation programs, and believes Section 179 expensing of brownfields remediation sites should be extended as soon as possible.

It is often a very expensive endeavor to clean-up a brownfield site, and a small real estate business has to raise or contribute those funds upfront. A larger company may have the cash flow to float the investment, but a smaller company frequently does not. Being able to deduct legitimate business expenses each year is vital to small businesses with – by definition – small capitalization. This expensing provision is key to the economic decision making of small businesses working with brownfield development locations, which are typically located in urban or in-fill areas.

The Section 179 brownfields remediation expensing provision allows property developers to deduct the expenses of brownfield sustainable rather than require them to be treated as a capital improvement. We feel it is inappropriate for the expenses associated with the mandated cleanup of previously contaminated real property to be charged as capital improvement costs and strongly believe that expensing of brownfields cleanup costs should be made permanent.

Until this provision can be made permanent, ICSC will continue to push for the temporary extension of brownfields remediation expensing as a key component to brownfields cleanup across the country.

III. New Markets Tax Credit (NMTC)
The NMTC provides a tax credit to encourage private capital investment in eligible low-income communities. Thus, the credit encourages private investment in community development. Indeed, the credit encourages new investment in the underserved areas that would not occur in the absence of these credits.

The NMTC plays an important role in redeveloping and revitalizing economically distressed communities. Therefore, it is imperative that the credit be extended, as these communities are already experiencing the impact of the recent economic downturn. Without an extension, these communities with the greatest need for redevelopment and revitalization will suffer the greatest harm.

IV. Energy Tax Incentives
Various energy tax incentives require extension before they expire at the end of 2009 in order to fund investment in environmentally conscious facilities. ICSC is closely

watching for the energy tax credit for solar energy, the commercial building tax deduction and the new investment tax credit for combined heat and power systems.

In most cases, current technologies for onsite power generation are generally not economically suitable for retail installation without Federal and state incentives. These incentives will lead to greater production of renewable power generating equipment (such as solar panels) and the higher production will lower the unit price over time. The cost for renewable energy may eventually become competitive with coal-fired utility-provided electricity and obviate the need for incentives. However, that day has not come and the existing incentives are absolutely necessary.

The Commercial Building Tax Deduction ("CBTD"), created in the *Energy Policy Act of 2005*, also must be extended prior to its expiration December 31, 2009. The CBTD encourages the use of energy-efficient equipment and design techniques in new and existing buildings. However, the current provisions are complex and set unrealistically high hurdles for retail real estate to overcome before a building owner can qualify for CBTD. To receive the maximum deduction, the CBTD requires rather extreme increases in energy efficiencies to "push the envelope" on economics and technology.

Although we strongly believe in an incentive-based approach to energy efficiency, if Congress is truly interested in creating incentives for a rapid and more broadly implemented energy efficiency initiative it should lower the targeted percentage of efficiency gains so that more small businesses can take advantage of them.

V. Carried Interest

Finally, ICSC is concerned about a proposal that could possibly be used as revenue offset for a tax extenders package. Changing the taxation of capital gains for partnerships, commonly referred to as "carried interest," would be significantly detrimental to many small real estate businesses. While the stated intent of taxing carried interest as ordinary income rather than capital gains is to address the perceived tax rate inequity applied to profits being realized by private equity and hedge fund managers, this proposal will directly and disproportionately impact the real estate industry because most small real estate ventures are organized and taxed as partnerships.

In 2005, the Internal Revenue Service reported that 2.8 million partnership tax returns were filed. Of those filings, 1.3 million were for real estate partnerships, representing 46% of the partnership tax returns.

Unlike some private equity or hedge fund firms, the "carried interest" for the general partner in a real estate endeavor is not guaranteed income. Most real estate partnerships are small businesses and they must exceed a significant contractual "hurdle," allowing the limited partner or investor to realize the return on investment before the general partner sees the first dollar of gain and usually only after a significant amount of time has passed.

By undercutting the economic incentive to build a project or redevelop an under-utilized property, this change could significantly drive away investment from the commercial real estate sector and truly impact small businesses that are focused on investments that come with inherent risk, such as investment in underserved markets or those associated with a significant environmental cleanup effort.

ICSC believes that the proposed increase on the taxation of carried interest should be of particular interest to this committee because small businesses of all types utilize the partnership model. This is true in real estate, as well. Often, once a real estate business has grown to a considerable size, the owners will turn to the public equity markets and create a Real Estate Investment Trust (REIT). This proposed tax would truly target our small businesses and could create a "barrier to entry."

Please consider the impacts of the tax extenders and the necessary offsets when you consider the tax needs of small businesses.

Thank you.

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