National Association of Mortgage Brokers

Prepared Testimony

of

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National Association of Mortgage Brokers

on

Mortgage Fraud &
The Dodd-Frank Wall Street Reform and Consumer Protection Act

before the

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Good morning Judge Saris and members of the Commission. I am Mike Anderson, a Certified Residential Mortgage Specialist ("CRMS"), and licensed mortgage broker in the State of Louisiana with over thirty (30) years of experience working in the industry. I am also a Director and the Government Affairs Chairman for the National Association of Mortgage Brokers ("NAMB"). Thank you for giving me this opportunity to testify today on the important subject of mortgage fraud and The Dodd-Frank Wall Street Reform & Consumer Protection Act.

I. Introduction

NAMB is the voice of mortgage professionals nationwide. NAMB advocates on behalf of more than 70,000 mortgage professionals located in all 50 states and the District of Columbia. Additionally, NAMB represents the interests of homebuyers, and advocates for public policies that serve mortgage consumers by promoting competition, facilitating homeownership, and ensuring quality service.

NAMB is committed to enhancing consumer protection and promoting the highest degree of professionalism and ethical standards for the mortgage industry. NAMB first demonstrated its leadership in this area more than a decade ago by requiring its members to adhere to a professional code of ethics and best lending practices that fosters integrity, professionalism, and confidentiality when working with consumers. NAMB also continually provides its members with access to professional education opportunities and offers rigorous certification programs, including the CRMS, to recognize members with the highest levels of industry knowledge and education. Finally, NAMB serves the public directly by sponsoring consumer education programs for current and aspiring homebuyers seeking mortgage loans.

II. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act[1] ("Act") directs the Commission to "review and, if appropriate, amend" the guidelines and policy statements applicable to "persons convicted of fraud offenses relating to financial institutions or federally related mortgage loans and any other similar provisions of law, to reflect the intent of Congress that the penalties for the offenses under the guidelines and policy statements ensure appropriate terms of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions." This directive also requires the Commission to ensure that the guidelines reflect (i) the serious nature of the offenses, (ii) the need for deterrence, punishment, and prevention, and (iii) the effectiveness of incarceration in furthering those objectives.

The Commission has specifically requested comment regarding whether the Guidelines Manual provides penalties that appropriately account for the potential and actual harm to the public and the financial markets and ensure appropriate terms of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions and, if not, what changes to the Guidelines Manual would be appropriate.

III. Federally-Related Mortgage Loan Fraud

There are two basic categories of mortgage fraud: (1) Fraud for Property, and (2) Fraud for Profit. Fraud for Property is typically a crime perpetrated by an individual or individuals who make relatively minor misrepresentations on mortgage applications and related documents in an effort to purchase a home. Often this type of fraud will involve falsification of income and asset documentation, such as manufactured pay stubs, W-2 forms, tax returns and/or bank statements. The perpetrators of this type of fraud are generally seeking the home for use as a primary residence and almost always intend to repay the loan they fraudulently obtain in full.

In contrast, Fraud for Profit is almost always a much more complex criminal enterprise, typically involving multiple loans and elaborate schemes orchestrated over a period of time by more than one individual with financial gain as the exclusive goal. The perpetrators of a Fraud for Profit scheme will make, or cause to be made, gross misrepresentations affecting appraisals and loan documents. What's worse, the individuals involved in this type of fraud are very often insiders themselves, such as loan originators, processors, underwriters or appraisers; or they occupy positions of trust within a community or a financial institution, like attorneys, or corporate officers or directors.

Although recent studies have shown that instances of mortgage fraud are down as much as twenty-five percent (25%) from the peak numbers seen during the subprime and exotic loan boom between 2005 and 2007, a cloud continues to hang over our industry. Industry self-policing and policy changes, such as enhanced employment verification at closing, additional credit report requirements, and authenticated IRS tax transcripts, have served as an effective deterrent and detection mechanism for many types of fraud. However, with the historically high number of homeowners across the country who are in trouble with their mortgages, we have witnessed significant increases in fraudulent activity surrounding short sales, foreclosure rescue schemes, and some loan modification programs. Additionally, instances of appraisal fraud have more than doubled (from 16% of all fraud cases in 2006 to 33% of all cases since 2009) after

[1] Pub. L.111–203

implementation of the still-highly controversial Home Valuation Code of Conduct ("HVCC"). Although the HVCC was designed to reduce the instances of fraud occurring in the appraisal process, it instead sparked significant turmoil, decreased competition in the appraisal industry, and eliminated virtually all checks and balances historically associated with home appraisals.

Mortgage and financial services fraud is jeopardizing the recovery of our housing market, causing countless problems for financial institutions, and raising costs and limiting opportunities for consumers. Moreover, because mortgage fraud is a crime that is often not vigorously investigated or prosecuted unless significant sums of money or large numbers of individuals are involved, the Guidelines need to properly account for the potential and actual harm to the public and the mortgage market by serving as a serious deterrent to future perpetrators of such frauds.

While NAMB believes that strict enforcement and rigorous prosecution are the key ingredients to preventing future instances of fraud in mortgage transactions, we are confident that this Commission can also independently take substantial steps toward curtailing mortgage and financial services fraud.

Mortgage fraud is a serious offense and should be treated as such in the Guidelines. However, as we have touched on in this testimony, not all mortgage fraud is created equal. NAMB believes that the Guidelines should be amended to accurately account for and reflect the difference in the nature of the crime and the criminal involved in Mortgage Fraud for Property as opposed to Mortgage Fraud for Profit.

The perpetrators of a Fraud for Profit scheme pose a very significant risk to financial institutions, honest consumers, and our mortgage and housing markets as a whole. Additionally, the nature of this particular type of fraud generally demonstrates wanton disregard for the law and for the property of others, and many times a breach of trust as well. Therefore NAMB believes the Guidelines should be amended to reflect the very serious nature of this type of fraud, and serve as a profound deterrent to and punishment for engaging in such activity. However, NAMB does not believe that the perpetrators of a Fraud for Property pose the same, or even a substantially similar risk of harm to the public or to financial institutions as those engaged in Fraud for Profit schemes. Therefore, we believe the Guidelines should reflect the notable differences between these offenses, which are factually the same crime, but generally perpetrated under significantly different circumstances and with vastly different end goals and effects.

IV. Conclusion

NAMB and the mortgage professionals we represent are very interested in strengthening our industry, securing our financial institutions, and protecting our consumers from the countless adverse effects of mortgage fraud. We appreciate all of the work this Commission does, and we are particularly grateful for this opportunity to share our thoughts with you on an issue that is of great concern and importance to all of us. Thank you for inviting NAMB to testify today. We will be happy to answer any questions you may have or elaborate on any issues raised in our testimony.