

TESTIMONY
of
Al Mansell, President
On behalf of the
NATIONAL ASSOCIATION OF REALTORS®
Before the
Senate Banking, Housing and Urban Affairs Committee
On
Proposals for Reforming the Regulation of the Government-Sponsored Enterprises

United States Senate
Washington, DC
April 19th, 2005

Chairman Shelby, Senator Sarbanes and Members of the Committee, thank you for inviting me to testify today. My name is Al Mansell, and I am the 2005 President of the National Association of REALTORS®. I also am Chief Executive Officer of Coldwell Banker Residential Brokerage (formerly Mansell & Associates) in Midvale, Utah – a full-service realty firm specializing in residential sales and brokerage.

I am here today, representing the National Association of Realtors® and our more than one million members. NAR represents real estate professionals involved in all aspects of the real estate industry. Fannie Mae and Freddie Mac are partners in the housing industry. As such, I am pleased to present testimony to the Committee on the issues involved in strengthening the regulation of the housing government-sponsored enterprises (GSEs) and the Federal Home Loan Banks.

The discovery of improper accounting practices at both Freddie Mac and Fannie Mae in recent years has brought to light the need for stronger internal controls at both GSEs and more stringent regulatory oversight.

Two years ago, REALTORS® testified before this Committee in support of creating a new regulatory framework for Fannie Mae and Freddie Mac. When we first testified on this issue, the subject was still new; various issues had yet to be considered or debated; and some ideas that had been discussed were quite controversial.

Last year's revised Committee Print addressed several REALTOR® concerns. Moreover, recent events have both quieted the debate over the need for such reform and increased the urgency for regulatory reform legislation. As we testify today, we are more confident that the Committee is on the verge of adopting legislation that will provide housing enterprises with a "world-class" regulator.

There is now broad agreement on the basic shape of a new regulatory structure. A consensus strongly suggests that the current regulatory responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board should be transferred to a single, independent safety and soundness regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. This new housing enterprises regulator should have the authority to set capital standards; liquidate a financially unstable enterprise through a conservator or receiver; and approve new programs and products. The Federal Home Loan Banks should be regulated under the same framework, with due concern for cooperative ownership by member financial institutions. There is also general agreement that Fannie Mae and Freddie Mac affordable housing goals should be refined.

NAR supports strengthening financial soundness regulation for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks through an independent regulatory agency. Having independent, expert financial oversight will enhance confidence in the nation's housing finance system. This new regulator should have appropriate authority and resources to oversee safety and soundness of the GSEs. The regulator also should understand and support the GSEs' vital housing finance mission and the role that housing plays in the nation's economy and public policy.

However, REALTORS® also believe very strongly that any legislation must do no harm to the housing mission, charters, or status of the GSEs. Targeted reform strengthens our housing finance system; it should not be seen as an opportunity to reinvent or reinterpret the GSEs' housing mission.

Housing Mission and the Secondary Mortgage Market

Congress chartered Fannie Mae and Freddie Mac with advantages unavailable to commercial banks and other financial institutions. These advantages were part of the GSEs' public policy mission. Fannie Mae and Freddie Mac enjoy lower funding costs, the ability to operate with less capital, and lower direct costs. The advantages of GSE status have helped the secondary mortgage market grow and dramatically shaped our nation's housing finance system.

Very simply, Congress created Fannie Mae and Freddie Mac to do what no fully private company could or was willing to attempt. Unlike private secondary market investors, Fannie Mae and Freddie Mac remain in housing markets during downturns, using their federal ties to fulfill their public purpose obligation to facilitate mortgage finance and support homeownership opportunity.

In their own way, the housing enterprises have used their federal charter advantages to meet their missions. The “mechanism that widens the circle of ownership,” as one observer recently defined the secondary mortgage market, is dynamic, robust and continually evolving – all to the benefit of mortgage originators, home buyers, and other industry participants.

The broad expansion of homeownership, the mortgage markets, and the related rapid growth and of the GSEs has also had another effect. Financial services providers, many of which compete with Fannie Mae and Freddie Mac, have begun to question the GSEs' activities, function, and the continuing need for government-chartered status. These financial companies argue that Fannie Mae and Freddie Mac have an unfair advantage because of their federal charter ties. Yet these same lenders' parent banking companies have their own federal subsidies that come in the form of deposit insurance and other benefits derived from the nation's banking and financial system safety net.

REALTORS® believe that the GSEs' housing mission, and the benefits that come with it, play a vital role in the continued success of our nation's housing system. We believe several current proposals regarding GSE regulatory reform could reach beyond safety and soundness regulation and diminish the housing mission of the GSEs. We oppose such proposals; allowing them to pass would undermine the continued evolution of this robust market. REALTORS® urge you to moderate these provisions.

New Program Approval

Specifically, authority to approve programs and activities or establish new regulatory requirements should not unduly delay or prevent the GSEs from developing new programs and products that support their missions.

For example, such authority should not undermine secondary market innovations based on Fannie Mae and Freddie Mac credit risk management technologies. These innovations assure a smooth supply of reasonably priced mortgage credit and allow homebuyers to manage their interest rate risk when locking loans rates and terms before closing.

Last year's revised Committee Print took a measured approach regarding new programs and products. The GSEs should be required to provide notice to the regulator of new programs so that adequate safety, soundness, and mission review can be accomplished. Written notice to the regulator of a new business product or activity would provide the regulator with the opportunity to determine whether that product or activity rises to the level of a new program or safety and soundness concern. The regulator could then inform the enterprise that they would consider it under new program standards.

In addition, the regulator should determine that the program is in the public interest. The standards for approval should be those contained in the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act. We would suggest that the time limits on decision-making by the regulator should be shorter, perhaps 30 days, with a 15 day extension if the regulator asks for additional information from the enterprise.

This flexible approach will promote innovation in the market while ensuring appropriate limits on the GSEs' programs and activities.

“Bright Line” Separation of Mortgage Origination and Secondary Market

REALTORS[®] recognize and support the role that program, business and activity approval may have on the financial safety and soundness of the GSEs. However, not every new activity of the GSEs should be subject to an extended regulatory public comment process. This could directly damage the GSEs' housing mission, and stifle innovation and programs that help Americans achieve the dream of homeownership.

Supporters of a “bright line” regulation seek to distinguish mortgage origination from GSE secondary market activities and other restrictions on Fannie Mae and Freddie Mac mission-related activities. Under proposed “bright line” regulation, the housing enterprises cannot “directly or indirectly” participate in mortgage origination. “No activity or investment” would be presumed permissible “because it occurred or was occurring” when the Hagel bill was enacted, i.e., no grandfathering of current activities.

The true danger of this “bright line” proposal is the overly broad approach. It would instantaneously preclude many of the GSEs' existing products and activities that were designed solely to increase access to mortgage credit, lower the costs of homeownership, and foster innovations in home financing.

For example, the “bright line” provision would seriously hinder (and probably prohibit) the array of mission-related, consumer outreach activities by lenders and housing counselors that are supported by the GSEs. The GSE-designed counseling and education programs that help

lenders, mortgage brokers, Realtors[®], and housing counseling agencies help consumers determine their financial readiness for homeownership are technically on the “wrong side” of the “bright line” and would be prohibited.

This is just one example of the negative impact such a test would have on critical components of the housing market. REALTORS[®] urge you to reject the rigidity and arbitrariness of a “bright line” test.

Portfolio Limits

REALTORS[®] also oppose rigid statutory limits on the GSEs’ portfolio size.

Federal Reserve Board Chairman Alan Greenspan recently proposed limiting retained mortgage portfolio holdings in statute to a range between \$100 billion to \$200 billion. In testimony before this Committee, Treasury Secretary John Snow agreed with the Fed chairman about the potential risks that the enterprises’ portfolio may present. However, Secretary Snow argued for “regulatory guidance” rather than statutory limits on portfolio size.

Significantly, those advocating retained portfolio limitation do not identify any immediate systemic financial risk. Viewed strictly from a systemic risk perspective, GSE retained portfolios, like any other financial institutions’ portfolios, are vulnerable to interest rate changes and could pose a risk to taxpayers should the enterprise or the bank become insolvent or improperly hedge risk.

Portfolio limits also reduce the GSEs’ profits. This makes them less attractive to investors and could reduce funding to support affordable housing and modified affordable housing goals, should Congress create a set-aside or trust fund using pre-tax profits, similar to last year’s proposal.

REALTORS[®] believe sufficiently strong regulatory authority over capital would limit portfolio risk and may also moderate portfolio growth, when appropriate. This affect was evident under current law, when the Office of Federal Housing Enterprise Oversight (OFHEO) used its authority to supervise the capital position of Fannie Mae in the wake of that enterprise’s accounting misstatements. OFHEO’s determination regarding Fannie Mae’s undercapitalization has resulted in the company shrinking its portfolio significantly in the interest of financial soundness.

The safety and soundness implications of GSE portfolio size and the associated risks should not be ignored. We also should not ignore the advantages that portfolio holdings and size have on mission-related activities and housing markets.

Simply stated, Realtors[®] oppose portfolio limits for the sake of shrinking the GSE mission. Portfolio limits should not be prescribed in statute. Portfolio holdings should be regulated from a risk perspective, and the regulator should determine if the GSE retained portfolio affects safety and soundness.

Conclusion

The National Association of Realtors® shares the belief that Fannie Mae, Freddie Mac and the FHLBank System are integral components of this nation's highly acclaimed housing finance system. Realtors® depend on the secondary mortgage market to supply funding for single-family and multifamily housing.

We believe credible safety and soundness regulation should protect the GSEs' ability to accomplish their housing mission and support housing finance. Realtors® urge this Committee to adopt legislation this year that principally is focused on safety and soundness regulation and maintains the housing mission.

In a recent letter to Chairman Shelby and Ranking Member Sarbanes, Realtors® joined other organizations representing home builders, mortgage brokers, independent community bankers, independent mortgage brokers, and community reinvestment advocates in broad support of an independent regulator with sufficient expertise, powers and authority to ensure that the GSEs operate in a safe and sound manner and furthers their congressionally mandated mission.

We hope that Congress can reach a consensus on this important issue soon, so that all in the housing industry can focus our efforts squarely on meeting President Bush's challenge to increase America's homeownership rate, especially among minorities and other underserved populations.

The National Association of Realtors® pledges to work with this Committee to move the GSE regulatory reform debate forward in a way that protects the vibrancy, liquidity and evolution of the housing finance system.

Oral Statement of Al Mansell
2005 NAR President
Before the U.S. Senate Banking Committee
April 19, 2005

Introduction

Chairman Shelby, Senator Sarbanes, Members of the Committee, thank you for inviting me to testify on the important issue of Government Sponsored Enterprise (GSE) regulatory reform.

My name is Al Mansell. As the 2005 President of the National Association of REALTORS[®], I am testifying today on behalf of our more than one million members, who work in all fields of commercial and residential real estate. Fannie Mae and Freddie Mac are our partners in the housing industry. As such, I appreciate the opportunity to share our views on their regulation.

NAR Supports Reform Efforts

Mr. Chairman, REALTORS[®] support your efforts to enact legislation to reform the financial soundness regulation of the GSEs. We support a strong, independent safety and soundness regulator. Such a regulator will enhance confidence in America's housing finance system and ensure that the GSEs can continue to make important contributions to our nation's record homeownership rate.

Two years ago, REALTORS[®] testified before this Committee in support of a new regulator for Fannie Mae and Freddie Mac. At that time, many potential issues had yet to develop, and many other ideas were quite controversial. Since that time, thanks to the diligent efforts of this Committee's Senators and many others, much of the controversy surrounding GSE regulatory reform has quieted. Several concerns we had expressed previously also have been addressed.

Today, America's REALTORS[®] are confident that we can work with you to enact legislation that will provide the housing finance market with a "world-class" regulator.

REALTORS[®] agree that any new regulator should be in the form of an independent agency, not subject to the political will of any individual department. We believe the agency should be funded through assessments on the regulated entities, free from the congressional appropriations process. The new regulator should have the authority to wind down the operations of a financially unstable enterprise through a conservator or receiver. We also believe the regulator should have the authority to set capital levels, to approve new programs and products, and to refine affordable housing goals as needed.

Concerns

Within this general agreement, we have several remaining concerns that we would like to address today.

Specifically, we believe a number of proposals introduced in bills before the Senate and House could reach beyond safety and soundness regulation and diminish the housing mission of the GSEs. REALTORS® oppose this overreaching, and urge you to moderate these provisions.

Program, Business and Activity Approval Process

First, we oppose legislation that would subject every new GSE activity to an extended regulatory public comment process.

REALTORS® recognize the role that program, business and activity approval have on the financial safety and soundness of the GSEs. However, we believe a measured approach to program and product approval is needed to protect the innovation and programs that help more Americans achieve the dream of homeownership.

Mr. Chairman, we support your Committee draft from the last Congress. We agree that the GSEs should be required to provide notice to the regulator of new programs, so that an adequate review of safety, soundness, and mission relevance can be conducted.

Written notice of a new business product or activity would provide the regulator with the opportunity to determine whether that product or activity rises to the level of a new program and/or creates a safety and soundness concern. The regulator could then inform the enterprise if the product or activity is to be considered under new program standards.

The regulator should also determine whether the program is in the public interest. Standards for approval should be those contained in the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act.

REALTORS® suggest that the time limits on the regulator's decision-making should be shorter, perhaps 30 days, with a 15 day extension, if the regulator asks for additional information from the enterprise.

We believe such a flexible approach will promote innovation, while ensuring appropriate limits on the GSEs' programs and activities.

Bright Line Test

Mr. Chairman and Members of the Committee, REALTORS® also strongly oppose proposals that would stifle the continued evolution of this market in other ways.

The secondary mortgage market is dynamic, robust and continually evolving, all of which benefit mortgage originators, homebuyers, and other industry participants.

There is no need, from a safety and soundness perspective, to create a "bright-line" test or definition of the mortgage market. This arbitrary hard line would impair the ability of the regulator and market players to adapt to changing markets.

For example, we believe provisions contained in bills currently before the Senate and House could immediately limit automated-underwriting programs, affordable-housing initiatives, and consumer-education and outreach efforts.

Market dynamics should be defined by the market, not by statute. Current law clearly defines the proper role for the GSEs in mortgage finance. REALTORS® believe there is adequate guidance in existing law for the regulator to determine acceptable programs for GSE participation.

Simply stated, the housing finance system itself is not broken. The current attempts to change it would weaken the housing mission of the GSEs, with no benefit to the market.

Capital Levels and Portfolio Limits

Finally, REALTORS® believe the authority to regulate the GSEs' portfolios should be governed by true safety and soundness principles.

Specifically, we support granting a new regulator both the strong authority and the flexibility needed to oversee the GSEs' safety and soundness. However, we would oppose creating a statutory limit on portfolios.

In recent years, we have witnessed actions by regulators that have strayed far beyond what we would consider prudent regulatory oversight. . Examples of such moves are the OCC preemption of state real estate related lending laws and regulation, and the recent petition to the FDIC to issue regulations that could allow state banks to export their activity authority, including real estate brokerage authority, to other states. These proceedings seem more motivated by politics and charter competition, than by sound regulatory oversight.

We ask that you add safeguards to ensure that the regulatory authority will be appropriate and not weaken the GSEs housing mission.

Conclusion

As we did two years ago, REALTORS® applaud the Committee's current efforts to build a more robust GSE regulatory structure. Targeted reform should strengthen our housing finance system, benefiting all who participate in it.

REALTORS® believe very strongly that any consideration of regulatory reform proposals should not become a reason or justification for rewriting the GSEs' housing mission or weakening the housing finance system. The first priority of any legislation should be to do no harm to the housing mission, charter, or status of the GSEs.

REALTORS® look forward to working with Congress to enact meaningful GSE legislation.

Now, I am happy to answer any questions you may have.

