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**TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE INTERSTATE COMMERCE, TRADE, AND TOURISM SUBCOMMITTEE
OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
APRIL 29, 2008**

I appreciate the opportunity to speak on the timely topic of "Improving Consumer Protections in Subprime Lending."

The steadily worsening housing crisis threatens millions of families from rural, urban and suburban neighborhoods, undermining communities across the nation. In Connecticut alone, there were more than 3500 foreclosure actions in just one month, putting our state in the top ten.

The ongoing, deepening crisis creates an opportunity -- indeed an obligation -- for a new, aggressive, innovative effort to fight fraud and protect consumers. The bill before you exemplifies the more vigorous and vigilant spirit that is necessary -- uniting federal and state governments against abusive anti consumer practices.

There must be a new federal/state consumer protection partnership -- really a renewed and reinvigorated alliance and enforcement paradigm. States have been shackled and subverted by federal preemption -- an arrogant assumption of exclusive power that all too commonly replaces state enforcement with federal inaction. A new partnership would allow states to enact consumer protection measures concurrently and cooperatively with federal authorities, provide federal regulation based on the best state safeguards, and establish federal/state collaborative enforcement of these consumer protections.

This paradigm has sound precedent. A model would be antitrust enforcement with separate but parallel federal and state laws and joint enforcement. Others involve Medicaid fraud and deceptive product advertising.

For too long, we have been at odds. Federal and state enforcers and regulators have been in conflict, rather than collaboration. Our message to an inert, inattentive federal government has been: join us, or get out of the way. An enduring historical truth is how well we do when we work together.

The federal role should be reconstituted and reconfigured. States should be enabled and encouraged to do what they do best: efficiently and effectively protect consumers from constantly evolving financial schemes. The federal government should review these laws,

enacting into federal regulation the best state consumer protections, applying them across the country as federal law. A formal joint federal and state strike force on financial services consumerism would combine the strengths of both -- the resources and national scope of the federal government with the nimble responsiveness of state government -- to help consumers combat fraudulent and deceptive industry practices.

As states like Connecticut are now doing, the federal government should specifically ban prepayment penalties, prohibit inflated appraisals, require clear disclosure of key mortgage terms including estimates of taxes and insurance and reasonable projections of future monthly payments for adjustable rate loans. It should compel mortgage companies to demonstrate that borrowers can afford their loans, and require disclosure of concealed fees or charges. It should ban advertising and promotions that are deceptive or misleading.

Lax and lackadaisical federal enforcement must end. States should be empowered as full partners to enforce consumer protection laws.

At present, rather than encouraging or enabling effective state enforcement, federal agencies have been an impediment and obstacle. The Office of Comptroller of the Currency (OCC) has continually -- and successfully -- scuttled state consumer protection laws as applied to national banks. Yet, the OCC has been AWOL during the recent mortgage crisis. The federal pattern has been to claim sole authority, and then fail or refuse to exercise it.

The federal government must stand up and speak out as an aggressive partner with the states in fighting deceptive lending practices, especially affecting subprime loans. The Federal Reserve Board and the Office of Comptroller of the Currency have focused almost entirely on sustaining and preserving the lending industry, rather than fighting serious illegal activities that harm consumers.

The combination of federal power grab and Bush administration hostility toward consumer rights created a perfect storm allowing predatory lending to flourish.

As law enforcement officials, state attorneys general have acted where we could. In 2002, Connecticut and 18 other states compelled subprime lender Household Finance to pay consumers almost \$500 million for predatory lending practices. In 2006, Connecticut and 48 other states forced Ameriquest to pay \$325 million for anti-consumer actions.

But these victories are built on sand as long as we face the huge loophole provided by inadequate federal regulation and preemption of state law. We were only able to win these settlements because Household Finance and Ameriquest were state licensed, giving the states jurisdiction. Had they been federally chartered, the states couldn't have won a penny for consumers, no matter how gargantuan and glaring their violations of the law.

Indeed, our settlement with Household Finance would be impossible today because the company has since obtained a federal charter.

I strongly support -- as a good first step -- the proposed initiative to empower the Federal Trade Commission (FTC) to regulate the marketing of subprime loans and to make the states an effective enforcer of these regulations, along with the FTC. Any such regulations should preserve the authority of states to enact even stronger protections for consumers.

Here, Federal preemption should be explicitly eschewed.

I also urge the Subcommittee to provide immediate concurrent state attorney general enforcement authority over the FTC regulations. States should not have to wait 60 days -- as required under the proposed language -- to file a lawsuit alleging violations of the FTC regulations. The proposal provides for an exception if the sixty day period is not "feasible." But the meaning of feasible is ambiguous at best. Notice to the FTC of state litigation is appropriate but often states will seek immediate injunctive relief to protect consumers from further harm. Such relief should not be delayed two months for notice to the FTC. The proposal should either eliminate the sixty day notice period or provide for broad exception where waiting the sixty days would jeopardize consumers.

States have been at the forefront for many years in combating abusive and deceptive practices pervading the mortgage lending industry -- fighting housing loan fraud well before the subprime debacle became a public spectacle.

In our investigations of Household Finance and Ameriquest, we uncovered extensive abusive practices, including inflated appraisals, fabricated income statements, misrepresentations about prepayment penalties and other loan terms, and illegal or deceptive fees and interest rates. Our settlements returned almost \$1 billion dollars in restitution to consumers nationwide. Importantly, both companies agreed to follow strict procedures and disclosure requirements, ensuring fairness to borrowers.

In Connecticut, my office's numerous active and ongoing investigations and legal actions have revealed and pursued clearly deceptive and predatory practices:

- "One stop shopping" predatory lending schemes in which mortgage brokers, real estate agents and other co-conspirators combine to sell rehabilitated distressed houses with structural flaws, cosmetically repaired. They typically target non-English-speaking first-time homebuyers with impaired credit. To obtain loans for their victims, they concoct and submit false income information, inflate appraisals, and conceal the actual terms of the mortgage loans from buyers.
- Inflated appraisals resulting from mortgage brokers pressuring appraisers to exaggerate property values by threatening explicitly or implicitly to deny them business.
- Misrepresentation and non-disclosure of loan terms and interest rates and bait-and-switch tactics at closings -- typically targeting first-time homebuyers who rely on false assurances from their brokers.

- Abusive foreclosure practices including deceptive and illegal fees -- a practice that often impairs the ability of distressed borrowers to reach an arrangement with the lender or mortgage servicer to avoid losing their homes.

States like Connecticut are also taking the lead in developing a comprehensive, hard-hitting, proactive response to this crisis, even in the face of disconcerting and discouraging threats of federal preemption. Working with key legislative leaders in Connecticut like State Senator Bob Duff and State Representative Ryan Barry, we are crafting legislation to establish a pool of funds that would assist homeowners to stay in their homes by replacing crushing high-cost mortgages with more affordable loans. The legislation will also impose greater responsibility and specific obligations on the lending industry to ensure that borrowers can afford mortgages -- even when the interest rates are adjusted. Finally, the legislation will slow the foreclosure process to provide mortgage companies and homeowners with time to reach reasonable solutions that help keep families in homes.

State leadership through proactive homeowner protection can promote a federal and state cooperative effort with a national enforcement footprint and impact. Federal/state enforcement partnerships are hardly new or novel. Currently, states work in conjunction with federal agencies on a broad spectrum of cases including Medicaid fraud, antitrust, and deceptive or misleading consumer advertisements. Federal and state law enforcement agencies hold regular regional meetings, exchange investigative information and engage in other cooperative projects. Because many of the companies that have engaged in deceptive lending practices or predatory lending conduct their business in many different states, federal regulations will assist national enforcement efforts among states and between the federal government and the states.

Federal regulations regarding deceptive practices should constitute a floor not a ceiling. States should have the authority to provide stricter and stronger consumer protections. Such an approach has been successfully implemented in other similar federal laws -- from do-not-call regulations to the Truth in Lending Act.

I urge the committee to favorably consider the proposed legislation to facilitate a renewed federal and state alliance in this area of significant national and local concern.