Statement by Allen Fishbein
April 12, 2007
Joint News Conference on Fixing the Bankruptcy Laws

Good morning. My name is Allen Fishbein, and I am the Director of Housing and Credit Policy for the Consumer Federation of America (CFA). We are pleased to be here today to discuss the growing foreclosure Tsunami that is engulfing many homeowners and to join with National Association of Consumer Bankruptcy Attorneys (NACBA) and the Center for Responsible Lending in offering some sensible solutions to help keep families in their homes.

CFA is a national federation of some 300 pro-consumer organizations established in 1968 to engage in research, public education and advocacy in support of the interests of consumers. The goal of advancing sustainable homeownership is an important one for CFA and its members. Unfortunately, the proliferation of irresponsible and negligent lending practices have threatened to turn the dream of homeownership into a nightmare for many.

Homeownership can have many benefits, not the least of which is the opportunity it provides to build personal wealth. But these advantages are eroded when through the widespread use of exploding payment mortgage products to many for whom they are not appropriate. What these risky loan products have in common is that they trade lower initial monthly payments for higher payments later that can escalate dramatically making loans unaffordable for unsuspecting borrowers. The abandonment in recent years by many mortgage originators of prudent underwriting based on the borrowers' ability to repay is leading to rapidly escalating delinquencies and defaults. The increasing reliance on an assortment of additional risk layering practices, such as using stated income rather than documented income to qualify borrowers, have compounded the problem and resulted in higher than usual early defaults on these mortgages.

Of particular concern are the hybrid adjustable rate mortgages (ARMs), or 2/28 loans as they are known, which have dominated the subprime market in recent years. Between 2001 and 2006 subprime mortgages nearly quadrupled from 5.4 % of originations to over 20%. Through the second quarter of 2006, hybrid ARMs made up 81% of the subprime loans that were packaged as investment securities (up from 64% in 2002).

The 2/28 subprime loan effectively operates as a two-year "balloon" loan. This ARM comes with an initial fixed teaser rate for two years, followed by rate adjustments in six month increments for the remainder of the term of the loan. 2/28 borrowers typically face 30% or greater payment increase during the third year of the loan, even if interest rates stay exactly the same. Most borrowers will be unable to afford an increase of this magnitude.

Until about a year ago, rising home prices and relatively low interest rates made it possible for borrowers to refinance or sell their homes after the initial period ended or if they ran into trouble making payments. This served to mask the fact that many lenders were qualifying borrowers based on the loan's start rate and not on their ability to afford the loan after this brief period ends. When home price appreciation leveled off last year delinquencies and defaults for these loans took off, rising to the highest levels in a decade. Delinquencies usually rise when the housing market slumps because borrowers are more likely to encounter difficulties in selling their homes. Falling home prices mean that homeowners find themselves with mortgages that are larger than the current value of their homes. As a result, these borrowers now find themselves without the necessary equity to refinance into a more affordable loan.

Which is a key reason why home loans entering foreclosure were at their highest rate in 37 years, according the Mortgage Bankers Association statistics. A study done by the Center for Responsible Lending estimates more than 2 million families with subprime loans have already lost or will lose their homes at an estimated cost of $164 billion in lost home equity. That translates into foreclosures on one in five subprime loans (19.4%) originated in recent years. Lehman Brothers Equity Research puts the number even higher, at 30%. A report issued yesterday by the Joint Economic Committee forecasts that subprime foreclosures will continue to rise over the next two years, as 1.8 million hybrid ARMs reset.

And that does not appear to be the end of it. There are increasing signs that defaults are rising for other segments of the mortgage industry as well.

Relief is urgently needed for the hundreds of thousands of households at risk of losing their homes after being hit with payment shocks built into their mortgages. A comprehensive set of measures involving all the stakeholders

– government, all the segments of the mortgage industry, government housing sponsored enterprises, FHA and non-profit housing and consumer organizations -- will be needed. However, for many families bankruptcy may be the only viable option to save their home. Yet this lifeline will be available only if the Bankruptcy Code is revised to eliminate or limit the provisions that exclude home loans from bankruptcy protection. We urge the Congress to act.

Thank you.