



November 5, 2007

The Honorable Barney Frank
Chairman, House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Frank:

We are writing on behalf of the members of the American Bankers Association and America's Community Bankers regarding H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, which your Committee is scheduled to consider on Tuesday, November 6, 2007.

H.R. 3915 is far-reaching legislation designed to prevent a recurrence of the problems in the subprime market that have harmed many American homebuyers. As such, it mandates new procedures, additional regulatory scrutiny, and more enforcement, with accompanying sanctions balanced with regulatory flexibility and a recognition that undue burden will harm both consumers and lenders.

We recognize that this legislation seeks to address the source of most of these problems, the loosely regulated and largely unexamined mortgage originators operating outside of the regulatory structure within which federally insured depository institutions function.

However, we remain concerned that this major legislation may have an unintended negative impact on both insured depository institutions and their credit-worthy customers seeking to buy homes. We have raised many issues with you and your staff in earlier discussions.

We greatly appreciate the comprehensive, inclusive consultation that has gone into the drafting process so far, and the desire to avoid unduly restricting credit. We applaud modifications to earlier language that are designed to preserve the efficiency of the marketplace and reduce unnecessary regulatory burden.

We plan to work with you, Mr. Chairman, Ranking Member Spencer Bachus, and other Members of the Committee as the legislation moves forward to clarify additional areas of concern that may become apparent upon further scrutiny. To that end, we offer the following comments.

TITLE I

Title I of the bill requires licensing or registration for all mortgage originators. Our initial concerns with this approach centered on the fact that bank employees are already subject to significant background checks, educational requirements, and examination. We were concerned with the additional regulatory burden that could come with a registration requirement. Banks already face

significant regulatory burden, and additional burden could force many banks, especially community banks, to leave the mortgage lending arena rather than face additional compliance requirements. This would in turn harm consumers who benefit from the protections that come from loans offered by regulated, insured, and examined institutions.

Working with Ranking Member Bachus to adapt provisions from H.R. 3012, the Fair Mortgage Practices Act of 2007, you have significantly revised this section. Title I now requires registration of bank employees through their primary regulators, endeavors to ensure that the registration and background checks utilize already existing procedures and practices, and provides that small banks making few mortgage loans will not be unduly burdened with new requirements.

We also had significant concerns that Title I contained terms which were very subjective and would likely lead to increased litigation. Many of these subjective terms have been removed from Title I, and other terms have been more clearly defined to provide for more clear, objective standards. We will continue to work with you and the Committee to address any additional concerns in this area.

TITLE II

Title II of the bill creates minimum standards for all mortgages. These, generally, are an ability to repay the loan and a net tangible benefit for refinanced loans. While we have some remaining concerns about a net tangible benefit standard, we recognize that the regulators are given guidance to help ensure that this standard is both meaningful and measurable. Title II also creates a safe harbor for prime mortgage loans. These loans would face little or no additional requirements or restrictions. To ensure that new products and services can be introduced to meet credit needs in a changing and vibrant market, the included regulatory flexibility is essential, and we appreciate your efforts to include such flexibility. We hope to continue to work with you to further advance this approach.

Additionally, Title II provides borrowers with remedies if the Act has been violated and revises the existing three year statute of limitations established by the Truth in Lending Act. For adjustable rate loans, the three-year statute of limitations is set at one year past the reset, with a maximum not to exceed six years. Borrowers who find a violation within the statute of limitations may seek a cure, and if no cure is applied, rescission of the loan. As a defense to foreclosure, borrowers may assert a violation of the Act, and if the statute of limitations has run, may still seek actual damages. This approach is far more reasonable than extending the right of rescission for the life of the loan.

These and other modifications have made the legislation much more workable, and we appreciate the accommodation of many of our concerns. However, issues still remain unaddressed, and, as with any work in progress, some new concerns have arisen.

For example, in determining the ability to repay, the lender is required to factor in multiple loans to the same borrower, if the lender knows or has reason to know of the multiple loans. The “reason to know” standard is very subjective and could lead to much litigation. While it is certainly reasonable to require sound underwriting, including factoring in multiple liens against a property, lenders should not be held to an unreasonable standard of knowledge of the borrower’s behavior, but instead should be held to knowledge provided by the borrower or obtained in good faith by the lender.

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TITLE III

Title III of the legislation addresses “high cost mortgage loans,” expanding upon protections already in place under the Homeowner’s Equity Protection Act (HOEPA). This section of the legislation poses a number of potential concerns for the lending industry. Although insured depositories have generally avoided making HOEPA loans, considering the reputational risk to be too high, these loans are legal and do serve a legitimate purpose. Our broad concerns are that Title III will push many more loans into the “high cost” category. Doing so will discourage many legitimate lenders from making loans to qualifying borrowers. While Title III does intend to curtail many “high cost” loans from being made, we are concerned that an unintended consequence may be a greater restriction of credit than is intended, which would harm consumers and lenders alike. We hope to have a continuing dialogue with you and other Members concerning Title III.

TITLE IV

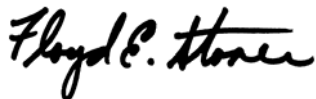
Title IV of the legislation would establish an Office of Housing Counseling within the Department of Housing and Urban Development (HUD). We and our members have long advocated increased counseling opportunities for borrowers. The purchase of a home is the largest financial transaction most borrowers ever make. Ensuring that borrowers are well informed of the rights and responsibilities involved in a home purchase is vital to a healthy mortgage market. The creation of a coordinated office within HUD will surely help to ensure more and better counseling opportunities for borrowers.

In conclusion, this bill is designed to establish a new regulatory structure that will result in more equitable treatment of homebuyers throughout the country in a national mortgage system involving many, disparate participants.

To ensure national equity and greater transparency in an efficient national market, the legislation should establish a clear national standard on which mortgage providers can depend and around which they can develop business plans. The market will adapt, but it can only do so effectively when lenders can rely on more certainty. We look forward to working with the Members of this Committee to further clarify a national standard.

We greatly appreciate the working relationship that has been established between the Members of the Committee and all interested parties, and we shall continue working with the Committee as this legislation moves to the House floor.

Sincerely,



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Cc: Members of the House Financial Services Committee