

May 11, 2011

To: Members of the House Financial Services Committee

From: Floyd Stoner, Executive Vice President, Congressional Relations & Public Policy

Re: ABA views on H.R. 1121, the Responsible Consumer Financial Protection Regulations Act of 2011; H.R. 1315, the Consumer Financial Protection Safety and Soundness Improvement Act of 2011; H.R. 1667, the Bureau of Consumer Financial Protection Transfer Clarification Act; H.R. 1309, the Flood Insurance Reform Act of 2011; and H.R. 1573, legislation to facilitate implementation of Title VII of the Dodd-Frank Act

On behalf of the members of the American Bankers Association, I am writing to express our views on legislation that the Financial Services Committee will consider on Thursday, May 12, 2011.

H.R. 1121, the Responsible Consumer Financial Protection Regulations Act of 2011, introduced by Committee Chairman Spencer Bachus, is legislation that would replace the Director of the Bureau of Consumer Financial Protection with a five person Commission. ABA supports the commission concept introduced in H.R. 1121 and believes that a commission structure is appropriate to address the extremely broad authority of the Bureau's Director to impose new rules. We believe that the commission approach would broaden the perspective on any rulemaking and enforcement activity of the Bureau, and it would provide needed balance and appropriate checks in the exercise of the Bureau's authority. The commission also would facilitate continuity of the organization and enhance predictability about rulemaking over time.

We would urge the Committee to consider perfecting the legislation by requiring the commission to include members with consumer finance business experience and direct safety and soundness regulatory expertise. We believe this expertise provides an important and necessary perspective as standards are set and enforcement activities are undertaken. This important addition also will help improve the accountability and address the separation between consumer protection and sound financial management.

ABA also urges the Committee to consider requiring one of the five seats in the proposed commission to be filled with the recently created, statutorily mandated position of the Vice-Chairman for Supervision of the Federal Reserve Board. We believe that the inclusion of the Vice-Chairman for Supervision provides necessary and current safety and soundness experience that directly addresses a pivotal deficiency of the existing structure. The Vice-Chairman for Supervision is a unique official who has oversight responsibility both for large financial holding companies (which include the nation's biggest banks and credit card issuers) and state-chartered community banks that are Federal Reserve members. This broad responsibility and expertise would be invaluable to achieving the accountability for safety and soundness that is missing in the current mandated structure.

We also write in support of **H.R. 1315, the Consumer Financial Protection Safety and Soundness Improvement Act of 2011**, introduced by Congressman Sean Duffy. This legislation would change the voting standard established in the Dodd-Frank Act for the Financial Stability Oversight Council (FSOC) from the two-thirds majority vote currently required to a simple majority vote. The FSOC is comprised

of the nation's top regulators covering the spectrum of the financial services industry. ABA believes that it should be sufficient to set aside a Bureau rule if a simple majority of the nation's top regulators believes the Bureau has acted in a manner that adversely impacts the safety and soundness of the American banking or financial system. The very purpose of the FSOC was to avoid problems that could lead to risks that threaten the economy. To ignore the majority viewpoint of the regulators with this responsibility is counter to the mission of the council. ABA strongly supports H.R. 1315 and would urge the Committee to approve this legislation.

ABA also is concerned about the transfer of authority date established in the Dodd-Frank Act. ABA supports **H.R. 1667, the Bureau of Consumer Financial Protection Transfer Clarification Act**, introduced by Financial Institutions Subcommittee Chairman Shelley Moore Capito, which delays the transfer of authority to the Bureau until a leadership structure has been put in place. Having the Bureau inherit certain regulatory powers but not others because there is no leadership structure in place is not good public administration.

ABA strongly supports **H.R. 1309, the Flood Insurance Reform Act of 2011**, which reauthorizes the National Flood Insurance Program (NFIP) for a period of five years, while also making needed reforms to the program. The NFIP's authorization has been subject to short term extensions in recent years, and has, at times, been allowed to lapse before being re-authorized retroactively. Such lapses create procedural and compliance difficulties for lenders and unnecessarily delay borrowers seeking to purchase homes.

We do bring your attention to a provision included in Section 3 of the legislation dealing with cancellation of force placed insurance when a borrower demonstrates that they have obtained flood insurance. Requiring cancellation of force placed insurance in such an instance is appropriate, but the legislation would require lenders to cancel the force placed insurance and refund to the borrower any fees within 30 days of notification of other insurance. Given the realities of paperwork processing and internal control compliance, we urge that this time frame be extended to 60 days.

We also strongly support amendments expected to be offered by Chairman Bachus and Agriculture Committee Chairman and Financial Services Committee Member Frank Lucas to H.R. 1309. The Bachus amendment would allow homeowners, in areas the Federal Emergency Management Agency (FEMA) has newly determined to be flood risks, to have the option to purchase private flood insurance and still meet the requirements of the Flood Disaster Protection Act of 1973. For Americans living in such areas, but where the risk of flood may be slight, this amendment would make the cost of the mandatory flood insurance policy more affordable and reduce costs associated with federally subsidized coverage provided under the National Flood Insurance Program.

The Lucas amendment would allow lenders or servicers to purchase flood insurance on behalf of borrowers should the borrower's coverage lapse. This amendment ensures that lenders are able to ensure *uninterrupted* flood insurance coverage for property pledged as collateral under the terms of a residential mortgage. This important clarification to the law would contribute to the overall safety of the financial system and to potentially increasing the availability of mortgage loans.

ABA also supports **H.R. 1573, legislation to facilitate implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act**, promote regulatory coordination, and avoid market disruption.

Developing the framework for regulating the swaps market is an enormous undertaking. The Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) have now proposed rules in almost every area required to implement the mandate for transparency and disclosure in the swaps market.

However, the CFTC and the SEC have been working under tight statutory deadlines to draft these rule proposed rules. We are concerned that they have not had sufficient time to do thorough cost-benefit analyses and to carefully consider the interconnected sequencing and implementation of these rules. We also are concerned that banks and other market participants have not had sufficient time to consider the impact on their businesses and provide as much meaningful input as they would like in the process.

It is critical that implementation proceed in a way that does not disrupt the market. H.R. 1573, introduced by Agriculture Committee Chairman Lucas, would extend the implementation deadline by 18 months, which would provide regulators and market participants alike the opportunity to continue thoughtful consideration of the costs, benefits, and potential market impact of the proposed rules. ABA supports this extension. The additional time would enable regulators and industry to continue meaningful dialogue on the proposed mosaic of rules.

It also is critical that the regulatory implementation not, however unintentionally, provide incentives for banks and other market participants to move offshore. By establishing a statutory extension until December 2012, H.R. 1573 would align the timeframe for swaps reporting and central clearing in the United States and the G20. This common deadline should provide an important opportunity for regulators around the globe to harmonize their rules and thereby reduce the incentive for business to shift overseas based on real or perceived differences in international regulatory regimes.

ABA supports the provisions in H.R. 1573 that would provide the CFTC and the SEC with the authority to exempt certain persons from some of the regulatory requirements if they already are subject to supervision and regulation. In the rush to establish an appropriate framework for regulating the swaps market, we should not lose sight of the fact that imposing duplicative and potentially contradictory regulatory requirements could be harmful to the market.

We also would like to take this opportunity to reiterate the importance of ensuring that banks are not unnecessarily subject to burdensome new regulatory requirements. Small banks account for a truly *de minimis* portion of the bank swaps market and should be exempt from complex and costly clearing requirements just as other end users are. In addition, it is important that the regulatory definitions of swap dealer and major swap participant not impede the ability of small banks to provide long-term credit for customers and manage financial risk.

We appreciate the Committee's taking our views into consideration, and we urge Members to support these bills when they come before the full Committee.