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March 22, 2010

The Honorable Christopher J. Dodd
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Dodd and Ranking Member Shelby:

I am writing on behalf of the American Bankers Association to provide you with our views on the Committee Print entitled "The Restoring American Financial Stability Act of 2010." These views reflect a unanimous vote of ABA's Board of Directors on March 16, 2010.

We appreciate the extraordinary efforts that you and the members of the Committee have undertaken on financial regulatory reform. However, ABA believes reform needs to focus on the critical issues and to do so in a way that does not put traditional banks at an even further disadvantage to non-banks or reduce the industry's ability to provide the credit the economy so badly needs.

The new Print is in a number of respects an improvement over the original administration proposal and the earlier discussion draft. It contains important reforms, particularly with respect to systemic oversight and, critically, in providing a resolution mechanism for institutions that create systemic risk. In other areas there have been improvements over earlier proposals, including consumer protection. However, for the reasons outlined below, and based on the principles for reform ABA has advocated for a year, ABA must oppose this draft bill.

ABA believes the following issues need to be addressed:

1. The approach to consumer protection will still create conflicts between safety and soundness and consumer regulation, with banks caught in the middle. The consumer function should be part of a prudential regulator and not merely have the same address. Furthermore, the bill does not effectively regulate non-banks, which was a major purpose of the original CFPB. Thus, for example, a community bank that did nothing to cause the financial crisis will be subject to heavy new and conflicting regulatory burdens, while non-bank competitors may have little or no new enforcement or reporting requirements. In addition, ABA is concerned about, first, the still overly broad powers given to the new bureau – particularly the addition of the new and untested term “abusive” to the already broad authority under UDAP – and, second, the imposition of two costly new reporting requirements on deposits and small business lending. The latter requirements have nothing whatsoever to do with preventing a financial crisis.
2. ABA sees no justification for eliminating the federal thrift charter option going forward, particularly when the bill already merges the OTS and OCC, ensuring equal regulatory oversight. Eliminating the option means the charter will atrophy and labels it as somehow “second class” when in fact a number of thrifts have continued to use the charter to best serve their communities.
3. Likewise, ABA sees no justification for eliminating the Federal Reserve’s authority to regulate state member banks. Implementing this change will be costly to existing state member banks. In addition, the result will be a Federal Reserve that is limited in its view and input to the largest financial firms, undermining its ability to fully understand small and mid-size institutions and the communities they serve across the country. It would be a terrible mistake to so limit the Federal Reserve’s ability to view the whole economy and thereby create an inherent bias toward financial centers.
4. ABA is concerned that the resolution mechanism, while much improved from earlier versions, still does not fully address too-big-to-fail. ABA believes the creation of a before-the-fact resolution fund will be read by the market as the creation of a de facto too-big-to-fail insurance fund, thus implicitly supporting too-big-to-fail.

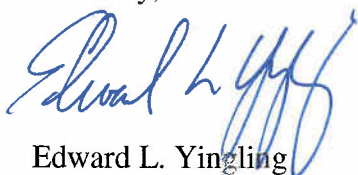
5. The provisions on preemption are complex and unclear and will lead to years of litigation before federally chartered institutions will know what the rules are. Instead, federal preemption should be maintained. We have a nationwide financial system and a mobile population. Requiring federally chartered institutions to understand and comply with potentially hundreds of different state and local laws will raise costs to bank customers, confuse consumers, and chill the creation of new products because of potential legal costs.

6. The ABA believes the failure to address accounting policy is a critical omission. It is now widely agreed that pro-cyclical accounting policies exacerbated the financial crisis. FASB, itself, basically agreed that its policies were misguided and changed them. It is no coincidence that the dramatic turnaround in the stock market began the very day FASB announced it was changing its policies. The last two G-20 reports, supported by the United States, strongly recommended that financial regulators need input into accounting policy, especially in the context of avoiding systemic risks. Yet the bill does nothing to implement the G-20 recommendations. This serious omission can be addressed by specifically empowering the systemic risk council to review accounting policies, while at the same time protecting the independence of the accounting policy process through FASB.

The draft bill is by necessity long and complex. It contains a number of positive reforms. However, ABA does not believe it will be balanced and workable without the changes we are suggesting. Indeed, we believe it will undermine banks with respect to their ability to compete and provide credit to their communities. ABA's proposed changes are consistent with core concepts of reform, and we urge the Senate to adopt them as it continues to shape reform legislation.

Thank you for considering ABA's views on this very important legislation.

Sincerely,



Edward L. Yingling

cc: Members of the Senate Banking, Housing and Urban Affairs Committee