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April 28, 2009

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

Dear Chairman Frank:

I am writing on behalf of the members of the American Bankers Association regarding H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009, which the Committee is scheduled to consider on Tuesday, April 28, 2009.

H.R. 1728 is far-reaching legislation designed to prevent a recurrence of the problems in the subprime market that have harmed many American homebuyers. We appreciate 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 are concerned that this major legislation can have a negative impact on both insured depository institutions and credit-worthy borrowers seeking to buy homes – impacts which have the potential to impair economic recovery. In considering any new legislation, it is critical to recognize the significant regulatory and structural changes that are already underway in the mortgage industry that will provide much greater protections to consumers. It is essential to recognize that the further changes proposed in H.R. 1728 will be cumulative to the changes already being implemented under revisions to Truth in Lending Act, Real Estate Settlement Procedures Act, and Home Mortgage Disclosure Act regulations.

We appreciate the efforts of you and your staff, as well as those of several other Committee Members, to engage in consultation during the drafting process so far, and the shared desire to avoid unduly restricting credit. However, it is still a large bill with ramifications yet to be determined. We plan to work with you and other Members of the Committee as the legislation moves forward to address a number of provisions in the bill which cause us significant concern. To that end, we offer the following comments.

The category of “Qualified Loan” created in Title II of the bill is very narrow. As drafted, only 30-year fixed-rate loans with prime loan rates would be included in this category. “Qualified Loans” are given a rebuttable safe harbor against the new penalties established in the bill, including a borrower’s right to rescind the loan if it is found that the creditor has breached the “duty of care” established by the bill. Additionally, only loans included in the “Qualified Loan” category are exempted from the risk retention

requirements of the bill. The effect of such a narrow definition will be to exclude many of the current prime loan products on the market from the safe harbor, subjecting them not just to the additional penalties, but also requiring that the creditors who make the loans hold 5 percent of the credit risk of the loan on their books.

It is imperative to recognize that a range of product types, including fully amortizing fixed rate loans of durations other than 30 years, garden variety adjustable rate loans, and Veterans Administration and Federal Housing Administration loans are all essential to meeting the credit needs of credit-worthy customers. All of these are legitimate, low-risk product types which can provide borrowers with the credit tools they need to meet their specific financial needs and circumstances. Subjecting these loans to additional penalties and to significant risk retention requirements will only reduce their use by legitimate lenders. We urge the committee to expand the definition of “Qualified Loan” to include these types of important, legitimate, and necessary loan products.

In addition to the concerns raised above, we also believe that the risk retention requirements of Section 213 are overly broad. The bill as drafted would require that any creditor who makes a loan which is not a “Qualified Mortgage” must retain (and cannot hedge against) 5 percent of the credit risk of that loan.

ABA supports the intended objective behind the risk retention requirement. We believe that it is important that all participants in a mortgage transaction have “skin in the game.” Notably, insured depository institutions already have significant “skin in the game.” Insured depositories hold high levels of capital, and are heavily regulated and examined. If an insured depository sells a loan into the secondary market which goes bad due to negligence or malfeasance by the originator, it is typically required to repurchase that loan. The greater regulation and examination of insured depositories makes it less likely that they will engage in negligence or malfeasance. Other loan originators do not have the capital or the regulation and examination of insured depositories, and thus, for them, additional risk retention is appropriate.

We have proposed that insured depositories making “Qualified Loans” (under an expanded definition as discussed above) be specifically exempt from the risk retention requirements. We note that an amendment is expected to be offered that would give the banking regulators the authority to exempt or reduce the risk retention requirements. While this is a step in the right direction, we are concerned that there would still be unnecessary confusion and disruption in the marketplace until the regulators have acted. Instead, we urge a clear, concise exemption for highly regulated and examined insured depository institutions.

We are also very concerned with provisions in Section 208 of the legislation which would not create a uniform federal standard to protect borrowers, but instead would allow state level laws focused on unfair or deceptive acts and practices to supersede the provisions of this act. We find this section frankly confusing, and a likely source of much costly litigation which will harm both consumers and lenders alike. 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 urge that this provision be deleted and that the bill create a single, national standard.

Title III of the legislation addresses “High Cost Mortgage Loans,” expanding upon protections already in place under the Home Owners’ 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, especially in a rising interest rate environment, 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.

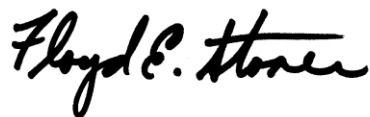
Title IV of the legislation would establish an Office of Housing Counseling within the Department of Housing and Urban Development. We and our members have long advocated increased counseling opportunities for borrowers. The purchase of a home is the largest financial transaction most borrowers ever 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.

We pledge to work with you to address the past abuses in the marketplace and to create a framework for ensuring that only legitimate lenders offer quality products to credit-worthy borrowers. We agree with the general thrust behind H.R. 1728, namely to return the mortgage lending business to a model of strong underwriting backed up by high capital levels. This is the model that insured depositories have followed all along.

We thank you for the inclusive process thus far, but must reiterate our concern that the flawed provisions in the legislation, if left unaddressed, could do harm to borrowers, lenders, and the prospects for economic recovery. Additionally, we must be clear that we would oppose any amendments which would increase litigation risk or add unnecessary regulatory burden.

We look forward to working with you as the process continues.

Sincerely,

A handwritten signature in black ink that reads "Floyd E. Stoner". The signature is written in a cursive, flowing style.

Floyd E. Stoner

Cc: Members of the House Financial Services Committee