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May 23, 2006

The Honorable Michael Oxley
Chairman
House Committee on Financial Services
2308 Rayburn House Office Building
Washington, DC 20515

The Honorable Barney Frank
Ranking Member
House Committee on Financial Services
B-301C Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oxley and Ranking Member Frank:

I am writing to you on behalf of the members of the American Bankers Association (ABA) to provide our views on several of the bills that are scheduled to be marked up by your Committee on Wednesday, May 24.

H.R. 4127 – Data Accountability and Trust Act

The ABA has serious concerns with the “Data Accountability and Trust Act” (H.R. 4127), which was referred to the Financial Services Committee from the House Energy & Commerce Committee. Unlike the “Financial Data Protection Act” (H.R. 3997), which was approved by the Financial Services Committee with a strong, bipartisan 48-17 vote on March 16, H.R. 4127 fails to recognize explicitly the stringent Gramm-Leach-Bliley Act (GLBA) standards and functional regulation that are already in place for financial institutions, and instead leaves it to the subjective judgment of the Federal Trade Commission (FTC) to determine whether financial institutions should be subject to the GLBA and to this new law and additional regulators.

We have several other concerns about H.R. 4127:

- It does not fully preempt state law because it explicitly does not preempt enforcement of “any State consumer protection law” or any law related to “fraud.” These exceptions raise serious concerns that business entities will be subject to both federal and state law, which undermines the goal of having a nationwide standard.
- It authorizes the FTC and the state attorneys general to enforce the data protection and notice requirements of the bill without an exception for financial institutions. This is unnecessary, since financial institutions are already subject to extensive oversight, enforcement, and penalties, including “cease and desist” orders, monetary penalties, and other sanctions by federal and state regulators for violations of the law covering data breaches.
- The definition of “breach of security” is overly broad and will result in expensive and counterproductive over-notification that will provide little, if any, benefit to consumers. Moreover, the definition of “information broker”

is unclear because it may include third-party agents that act as data processors, thereby subjecting them to the sweeping responsibilities imposed by the bill.

Congress should establish a uniform national standard that both recognizes existing law in this area and ensures that consumers receive the same information no matter where they live. Therefore, ABA supports H.R. 3997 rather than H.R. 4127.

H.R. 5341 – Seasoned Customer CTR Exemption Act

ABA strongly supports the “Seasoned Customer CTR Exemption Act” (H.R. 5341) because it recognizes that anti-money-laundering efforts by financial institutions can be improved by eliminating needless cash transaction reporting through a seasoned customer exemption for business entities. This concept was endorsed by the Financial Crimes Enforcement Network (FinCEN) last year in testimony before Congress, and was included in the “Financial Services Regulatory Relief Act” (H.R. 3505) that passed the House, by a vote of 415-2, on March 8, 2006.

As former FinCEN Director William Fox stated in September 2005 testimony on the seasoned customer proposal before the Committee:

We believe this language addresses many of the issues with our current exemption regime that were causing it not to have its intended effect. Due to its complexity and the burden involved in exempting customers, financial institutions were not taking advantage of the exemption regime. This proposal seeks to streamline the exemption process by focusing on a one-time notice to [FinCEN] of an exemption and focusing on the customer’s relationship with the bank as the grounds for such exemption. We believe that these changes will make the exemptions more effective while still ensuring that currency transaction reporting information critical to identifying criminal financial activity is made available to law enforcement.

ABA joins in those sentiments and strongly supports H.R. 5341.

FHA Legislation

ABA supports three bills being considered by the Committee which make significant reforms to the Federal Housing Administration (FHA). The reforms and innovations proposed in these bills would help to make the FHA a strong, relevant tool in helping banks and other lenders to bring homeownership and its attendant benefits to more Americans in the years to come.

H.R. 4804 – FHA Manufactured Housing Loan Modernization Act

H.R. 4804, sponsored by Rep. Patrick Tiberi (R-OH) and Rep. Frank, modernizes the FHA’s manufactured housing insurance program. This legislation will ensure that the FHA has adequate funding to insure manufactured housing loans; will adjust the loan limits for manufactured housing loans and index them for inflation; and will ensure that Ginnie Mae and private lending markets participate in the purchase of manufactured housing loans.

H.R. 3043 – Zero Downpayment Pilot Program Act

H.R. 3043, sponsored by Rep. Tiberi and Rep. David Scott (D-GA), creates a five-year pilot program allowing the FHA to insure no-downpayment mortgages for up to 50,000 first-time homebuyers. The Department of Housing and Urban Development will set eligibility guidelines and eligible borrowers will pay slightly higher fees in return for the lack of a downpayment. This legislation will assist many potential homeowners who have found ownership just out of reach in the past. As a pilot, it will ensure that FHA does not incur losses under the program.

H.R. 5121 – Expanding American Homeownership Act

H.R. 5121, sponsored by Housing Subcommittee Chairman Bob Ney (R-OH) and Ranking Member Maxine Waters (D-CA), as well as Rep. Gary Miller (R-CA) and Rep. Tiberi, will improve the efficiency of the FHA; increase the nation's homeownership rate; and increase competition in the prime home lending market. This legislation simplifies the downpayment process and offers borrowers flexible downpayment options; increases the FHA limits to 100 percent of an area's median home price; extends the mortgage term of an FHA insured loan to 40 years; and modernizes the Home Equity Conversion Mortgage Program. These changes will bring the FHA in line with innovations made in the private market and will help to ensure that more borrowers are able to benefit from FHA insurance.

H.R. 5068 – Export-Import Bank Reauthorization Act

The Export-Import Bank of the United States plays an important role in helping American businesses successfully compete in global markets, and we strongly support its reauthorization as provided in H.R. 5068. The bill includes several provisions to enhance the Bank's operations that we particularly support. However, we are concerned that section 8(f), which requires public disclosure of documents related to environmental matters, could require disclosure of proprietary information, and we urge you to consider a narrower, better-targeted disclosure requirement. We support the bill's five-year reauthorization period, since this provides sufficient time to implement and evaluate its important initiatives. However, we are concerned that an attempt might be made to shorten the authorization period to only two or three years, an inadequate amount of time to evaluate the new initiatives. We urge you to oppose any such amendment.

Thank you for your consideration of our views on these important bills.

Respectfully,

Floyd Stoner

Cc: Members of the House Committee on Financial Services