

October 13, 2009

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

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington DC 20515

Dear Chairman Frank and Ranking Member Bachus:

On behalf of the Mortgage Bankers Association, I am writing to express our strong concerns with key portions of the recently revised draft of H.R. 3126, the Consumer Financial Protection Agency Act. While one of the primary purposes of the legislation – the consolidation of oftentimes disparate consumer protection functions among many federal agencies – is a good one, the overall approach taken in H.R. 3126 is likely to worsen consumer protection and weaken the regulation of mortgage lenders.

MBA's top concern with H.R. 3126 is that it fails to empower the CFPA to establish uniform national standards that will regulate all lenders, and protect all borrowers consistently regardless of where they live. In fact, the legislation specifically encourages states to enact duplicative and oftentimes contradictory state laws that will not only perpetuate, but in fact worsen, the current patchwork of federal and state financial regulation that has lessened competition and unnecessarily increased costs to consumers while failing to adequately protect them. A better role for the states is for them to join in the process of developing national standards and to enforce the standards as full partners with federal officials.

Another key shortcoming of H.R. 3126 is that it establishes the CFPA as a separate agency within the government, rather than consolidating consumer protection functions within a new or existing federal financial regulator responsible for safety and soundness. Separating consumer protection from prudential financial supervision, as proposed in H.R. 3126, will fail to achieve an appropriate balance of these two oftentimes competing considerations. Financial regulators have a critical role: balancing different objectives such as supporting and maintaining the integrity of competitive markets, guarding against systemic risk, and protecting depositors, borrowers, and investors. A regulator armed with appropriate statutory guidance, subject to congressional oversight, and seeking input from all interested parties, will achieve a balance among competing objectives. On the other hand, a regulator singularly focused on any one of these objectives risks being myopic to other important concerns.

The reach and powers of the proposed CFPA are also overly broad. The agency would regulate numerous functions beyond mortgage lending. Because the CFPA would have such a wide range of responsibilities, there is a very real danger that mortgage lending would not receive sufficient priority, delaying and even depriving homebuyers of sound credit options and innovations. A better regulatory model would assign a single federal

prudential regulator (or possibly a council of such regulators), with enhanced consumer protection capabilities, responsibility for the regulation of state-regulated mortgage brokers and nondepository mortgage bankers. In addition to the implementation of uniform mortgage lending standards, assignment of this responsibility to such a regulator (or regulators) would, in the most efficient and effective manner, close obvious regulatory gaps that helped lead to the current economic crisis – something H.R. 3126 fails to do.

Finally, H.R. 3126 does not properly address the important issue of providing homebuyers with accurate and timely mortgage disclosures. The mortgage industry and consumers face years of major but still uncoordinated reforms under the Real Estate Settlement Procedures Act (RESPA), then the Truth in Lending Act (TILA), and potentially under new CFPB requirements. While MBA supports the bill's effort to develop a single combined RESPA/TILA disclosure, the bill does not address the separate, ongoing efforts of HUD and the Federal Reserve to separately reform mortgage disclosures. Nor does it require collaboration between the current regulators – as did H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, which passed the Financial Services Committee and the House earlier this year. Because the compliance date for the RESPA rule (January 1, 2010) is so close, and HUD has yet to provide adequate guidance, Congress should provide a modest delay in the implementation date and require HUD and the Federal Reserve to coordinate their future regulatory efforts.

MBA takes consumer protection very seriously and looks forward to working with Congress on legislation that strengthens consumer laws and improves financial regulation. We have put forward a comprehensive proposal, the Mortgage Improvement and Regulation Act (MIRA), that would establish a tough new federal framework for the regulation of mortgage lending – one that protects borrowers nationwide, ensures the consistent regulation of independent mortgage bankers and mortgage brokers, increases transparency, and helps foster a return to stability for the nation's financial system.

We appreciate the opportunity to comment on H.R. 3126 and look forward to continuing to work with you as you consider legislation affecting financial services regulation.

Sincerely,

A handwritten signature in cursive script that reads "John A. Courson". The signature is written in black ink and is positioned above the printed name and title.

John A. Courson
President and Chief Executive Officer