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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:

I am writing on behalf of the members of the American Bankers Association (ABA) to express our views on H.R. 3126, the Consumer Financial Protection Agency Act, on which your Committee is scheduled to begin consideration on Wednesday, October 14, 2009.

H.R. 3126 is part of a broader package of far-reaching legislation designed to prevent future failures in the banking regulatory system. It is clear that the existing regulatory structure has proven inadequate. The failure of the regulatory system to identify systemic risks, the lack of statutory resolution authority to address problems that have arisen, and the gaps in supervision have been well documented.

The ABA supports broad reform of the banking regulatory system, and has expressed that view in various hearings before the Committee this year. The Association will continue to support reform that addresses major problems in a number of areas, including: the creation of a systemic risk oversight council; the creation of a strong resolution system, one that aggressively addresses the problems caused by the too-big-to-fail concept; the filling of regulatory gaps for derivatives, hedge funds, and other non-bank lenders; reform of the accounting standard-setting process; additional authority for the Federal Reserve to regulate the payment system; improved international cooperation; and improved consumer protections. We are pleased that the Committee is moving to address these issues in the coming weeks, and ABA looks forward to playing a constructive role in that process.

With respect to H.R. 3126, we appreciate the Chairman's willingness to address some key concerns raised by ABA and its member banks since H.R. 3126 was introduced, including the deletion of mandatory "plain vanilla" products, elimination of the "reasonableness" standard, greater focus on non-banks, and other changes included in the Sept. 25 discussion draft. However, H.R. 3126 still contains several provisions that cause us great concern, particularly with respect to uniform national law issues,

the breadth of the new Agency's powers, and the separation of examination/supervision from consumer protection regulation.

ABA strongly supports the uniform national laws standard that preempts state laws pursuant to the National Bank Act. This preemption standard has existed since the Civil War and has its foundation in the Supremacy Clause of the U.S. Constitution. There is a national market for consumer financial products and services in this country, and it is imperative that the national market be subject to such national standards. Otherwise, banks and the consumers that banks serve will be subject to a patchwork of often-conflicting state laws that will confuse consumers, greatly increase the cost of financial services, and serve as a strong disincentive to the creation of new products of value. The ABA supports a national uniform law system that provides better balance and coordination between federal and state efforts. Unfortunately, under H.R. 3126 the balance would be tilted dramatically away from national standards. Ultimately, it is the national economy and consumers in general who would suffer from such a result.

We likewise remain very concerned over the breadth of authority granted to the Director of the Consumer Financial Protection Agency (CFPA) to exercise unilateral regulatory power to dictate a vast array of conditions under which a financial product or service can be offered. For example, H.R. 3126 fundamentally changes the Unfair or Deceptive Acts and Practices (UDAP) standard embodied in the Federal Trade Commission Act to authorize the agency to make determinations using vague definitions such as "abusive." The Agency also would be given the authority "to ensure fair dealing with consumers." Both standards are so vague and broad that the agency could declare any practice abusive and could essentially justify almost any regulatory action. ABA cannot support legislation that does not protect developed legal standards on UDAP. As noted above, ABA and its members support improved consumer protections. We believe this can be accomplished without tearing down the existing regulatory framework. The consumer protection problems that do exist do not justify these broad new powers proposed for the CFPA.

Finally, H.R. 3126 separates consumer regulation from safety and soundness regulation without recognizing that they both work together. Neither can be separated from the other without negative consequences for the bank and for consumers. A product or practice which appears on its face to benefit consumers can in reality be harmful when safety and soundness concerns are also considered. Federal banking regulators agree, including FDIC Chairman Sheila Bair, who stated earlier this year, "Separating consumer protection regulation and supervision into different organizations would reduce information that is necessary for both entities to effectively perform their functions. Separating consumer protection from safety and soundness would result in similar problems." While the discussion draft requires consultation and coordination between the CFPA and the prudential regulators, a better and more workable approach would be to bolster consumer protection and oversight while ensuring that the existing regulatory agencies retain both safety and soundness and consumer protection responsibilities.

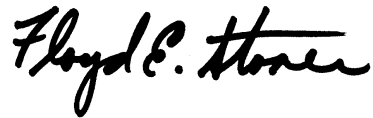
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In conclusion, ABA opposes H.R. 3126 because it still separates safety and soundness regulation from consumer protection regulation, eliminates preemption for nationally chartered institutions, and grants extremely far reaching new authority to the proposed CFPA. ABA wants to continue to work with the Committee on how best to enhance consumer protection.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink that reads "Floyd E. Stoner". The signature is written in a cursive style with a prominent horizontal line across the top of the letters.

Floyd E. Stoner

Cc: Members of the House Financial Services Committee