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Memo

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November 15, 2007

To: Members of the U.S. House of Representatives

From: Floyd E. Stoner, Executive Director, Congressional Relations & Public Policy

RE: Opposition to Miller/Frank/Watt "Pattern and Practice" Amendment (#14)

Today, during consideration of H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act, an amendment will be offered by Rep. Brad Miller (D-NC) and Rep. Mel Watt (D-NC), along with Chairman Barney Frank (D-MA). I am writing on behalf of the members of the American Bankers Association to urge your opposition to the Miller/Frank/Watt Amendment (#14), which would add a new "pattern or practice" violation section to H.R. 3915.

The amendment would create major new liability for mortgage originators, assignees, and securitizers by establishing a "pattern and practice" violation with penalties of not less than \$25,000 per loan and \$1 million for the violation itself.

Lenders, assignees, or securitizers who are found to have engaged in a "pattern or practice" of making or buying loans which violate the bill's duty of care standard would be liable – ***even if they corrected their error and no harm came to the borrower.*** A "pattern or practice" can be as few as two loans. Given that the bill still contains some subjectivity with regard to the duty of care standard, it is quite likely that a lender who may have acted in good faith in making a loan could be found to have violated this section – with massive liability.

The increased liability that would result from this amendment would create a chilling effect in the secondary market. Rather than purchase loans which may have such liability attached, the markets will simply move toward other products or pay less for mortgage backed securities, making liquidity less available.

No hearings were held on this issue, and the Financial Services Committee was not given an opportunity to review this concept before this amendment was filed.

While no one defends an actual pattern or practice that would harm borrowers, this amendment will harm legitimate lenders, assignees, and securitizers, and the end result will be harm to borrowers in the form of less credit availability even for well qualified borrowers.

We strongly urge you to oppose the Miller/Frank/Watt amendment.