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Memo

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December 7, 2009

To: Members of the House of Representatives

From: Floyd Stoner, Executive Vice President, Congressional Relations & Public Policy

RE: H.R. 4173, the Wall Street Reform and Consumer Protection Act

I am writing on behalf of the members of the American Bankers Association (ABA) to express our opposition to H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, which is scheduled for consideration by the House on Wednesday, December 9.

ABA supports broad reform of the banking regulatory system, and we have expressed that view in testimony numerous times this year. ABA also recognizes that the House Financial Services Committee has addressed some issues that we raised in those hearings. The Committee made progress on some important provisions, including the mechanism for resolving institutions that are systemically important but would have been, in the past, considered “too-big-to-fail.” The separation of the role of the Federal Deposit Insurance Corporation (FDIC) as insurer of deposits from a new role in resolutions of systemically important institutions was clarified, and a systemic oversight council was created to address systemically important institutions.

In addition, the Committee adopted an amendment that requires the new systemic oversight council to review accounting policies, a very important addition to the responsibilities of the council. The thrift charter, a key component of our home mortgage lending system, also has been protected in H.R. 4173.

However, H.R. 4173 creates a new Consumer Financial Protection Agency (CFPA), which ABA and our member banks of all sizes have consistently opposed. Improvements were made to the initial proposal, including: removing authority over the Community Reinvestment Act (CRA) from the CFPA; changing the funding mechanism to lessen the impact on banks; deleting the power to design and mandate products; and to some degree moving the examination and enforcement power with respect to banks under \$10 billion back to the prudential regulator. H.R. 4173, unfortunately, still contains a number of provisions that ABA must oppose.

In particular, the breadth of authority granted to the Director of the CFPA to exercise unilateral regulatory power to dictate a vast array of conditions under which a financial product or service may be offered is unprecedented. The CFPA would have broad authority to impose “fairness” standards and set sales practices. The agency would write rules for banks, both large and small, and this consumer regulatory authority would not be responsible for considering safety and soundness. ABA has consistently maintained

that consumer protection should not be separated from safety and soundness in the regulation of insured depository institutions.

Also, ABA strongly supports the uniform national laws standards that preempt state laws pursuant to the National Bank Act and the Home Owners' Loan Act (Thrift Act). The National Bank preemption standard has existed since the Civil War. There is a national market for consumer financial products and services in this country, and it is imperative that the national market be governed by 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. ABA supports a national uniform law system that provides better balance and coordination between federal and state efforts. Unfortunately, under H.R. 4173 the balance would be tilted dramatically away from national standards. Ultimately, it is the national economy and consumers in general that would suffer from such a result.

Another provision that ABA opposes addresses the handling of secured creditors in the resolution process. This provision requires a 20 percent "haircut" for secured creditors of failed "systemically important" financial institutions. It would have a devastating impact on the Federal Home Loan Bank (FHLB) system because FHLBs are statutorily prohibited from lending on a less-than-fully secured basis. As a result of the provision, large members would, at a minimum, greatly reduce their borrowings from the system, and the system would shrink. The remaining members would face higher borrowing costs and a lower return on their investments in the system. Credit would be less available from all lenders, large and small.

The provision in H.R. 4173 on risk retention for loans sold or securitized continues to be a major concern for ABA. While we understand the intent of "skin in the game," as proposed, these provisions could prevent banks from effectively moving loans off their books under accounting and regulatory requirements. Here again, credit would be less available.

ABA also has very significant concerns about the fact that a fund for the resolution of any systemically important institutions would now be created in advance and could be three times the size the FDIC fund was at its maximum. Since H.R. 4173 contains provisions making clear that the purpose of the resolution authority is only to act as a receiver, not a conservator, thus ending "too-big-to-fail," this huge fund is not necessary. In fact, ABA is concerned that a large fund would be, in effect, a "too-big-to-fail" insurance fund that contradicts the goal of ending "too-big-to-fail."

While ABA appreciates that some changes were made to provisions of H.R. 4173 in response to concerns expressed, ABA opposes H.R. 4173.