

June 14, 2010

To: Members of the Senate-House Conference on H.R. 4173

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

Re: H.R. 4173, the Restoring American Financial Stability Act of 2010

I am writing on behalf of the members of the American Bankers Association (ABA) to share our positions on a number of issues that will be addressed during conference consideration of H.R. 4173, the Restoring American Financial Stability Act of 2010.

The ABA has supported regulatory reform since the beginning of this debate early last year. We are, however, concerned about numerous provisions in the underlying bill that impose tremendous new burdens and restrictions on traditional banks. These burdens and restrictions will make it extremely difficult for banks of all sizes to make loans to consumers and small businesses. Bankers from all size banks and from across the country have expressed to ABA their deep concern that the reform legislation could undermine the very banks that are needed to support economic growth.

For example, an amendment offered by Senator Susan Collins would require the regulators to establish minimum leverage and risk-based capital requirements for all banks, bank holding companies, and non-financial firms under the Fed's jurisdiction. The amendment eliminates trust-preferred securities and Treasury's Capital Purchase Program investments from bank holding company Tier 1 capital and eliminates the small bank holding company exception from risk-based capital requirements. This amendment would eliminate more than \$177 billion in capital from bank and bank holding companies. Inclusion of this amendment in the final version of the bill would cause tremendous harm to banks. ABA and its members are strongly opposed to the Collins amendment and encourage conferees to strike it.

The base text of the bill contains 30 new or expanded regulations and many of these regulations are not remotely related to the financial crisis. A clear example of this is an amendment offered by Senator Richard Durbin that would direct the Federal Reserve Board to set "reasonable rates" under very restrictive standards for debit card interchange. The amendment also would permit retailers to discriminate against particular debit and credit cards that may carry higher rates. This amendment will harm banks of all sizes, including community and minority banks. We strongly oppose the Durbin interchange amendment and encourage conferees to remove this unrelated provision from the financial restructuring bill.

A strong preemption standard is the basis of the national regulatory framework that has helped the U.S. economy to become truly national in scope, permitting financial products and services to be available on similar terms throughout the country and giving millions of individuals and businesses unparalleled mobility and convenience. The base text would preserve the national regulation of U.S. financial institutions by protecting the Barnett standard for national bank preemption. The base text is a compromise that will keep in place a national regulatory framework that reflects over 150 years of statutory action and court precedent.

We also are greatly concerned over language in the base text to regulate the derivatives marketplace. The bill would eliminate the ability of banks of all sizes to engage in swap transactions. It would impose fiduciary duties on swaps entities when engaging in transactions with municipalities, state or federal agencies, endowments, or pension plans. We strongly oppose the inclusion of the swap “push-out” provision and the imposition of a fiduciary duty when transacting with municipalities, state or federal agencies, endowments, or pension plans. We urge the conferees to strike these provisions.

There are a number of other issues that ABA encourages conferees to consider before voting on the final version of the bill. These include preservation of the thrift charter (support base text), oversight of accounting standards (urge addition of House language), exemption of Federal Home Loan Banks from concentration limits (support base text), state bank lending limits (support striking provision from base text), and risk retention (support base text).

ABA remains committed to supporting core elements of reform – including a systemic risk council; ending too-big-to fail; creating a strong resolution process; enhanced capital; liquidity, and strong regulation of the shadow-banking sector. We remain concerned, however, about provisions that seem to be aimed at the financial crisis but which hit traditional banks.

We strongly encourage the conferees to address these concerns during consideration of the conference report.

Cc: Members of the U.S. Senate
Members of the U.S. House of Representatives