SIFMA
Securities Industry and Financial Markets Association

November 5, 2007

The Honorable Barney Frank
Chairman
House Financial Services Committee
Washington, D.C. 20515

The Honorable Spencer Bachus
Ranking Member
House Financial Services Committee
Washington, D.C. 20515

Dear Chairman Frank and Ranking Member Bachus:

On behalf of the Securities Industry and Financial Markets Association (SIFMA) and American Securitization Forum (ASF), we appreciate your leadership in crafting H.R. 3915, "The Mortgage Reform and Anti-Predatory Lending Act of 2007," and the open and inclusive process that you have employed in working with industry on subsequent refinements since the bill's introduction.

The approach you have outlined for this legislation has tried to stay true to a simple principle – namely – that a borrower should not get a loan that he or she cannot afford and from which he or she does not benefit. SIFMA and ASF have tried to articulate some basic principles as well—namely, that any borrower's ability to get a loan depends on a vibrant and functional primary and secondary market where the free flow of capital can move between and among states with uniform and clear standards and where risk and responsibility is properly allocated among the parties.

Our housing finance system requires the ability to innovate and develop new techniques to best reach and serve all market participants. Occasionally, some of these techniques do not work as well as they are intended. The market has already adjusted to the rise in delinquencies with dozens of subprime lenders exiting the market altogether and others eliminating practices that did not work or tightening their lending standards. Despite the current troubles in the residential mortgage market, our housing finance system has been extremely successful in making homeownership available to millions of Americans. Home mortgage credit has been more widely available at a lower cost because of securitization and the secondary mortgage market. The secondary market efficiently links mortgage borrowers to the capital markets and enables lenders to provide more credit at a lower price than they otherwise could.

ASF and SIFMA appreciate your understanding of the importance of the secondary market, and that the Manager's Amendment addresses many problems that we highlighted in our testimony. We continue, however, to have specific concerns with the legislation that we would like to work with you to address as the bill moves forward.

First and foremost is the issue of federal preemption. Importantly, we appreciate that the Manger's Amendment recognizes that the national mortgage market must remain liquid, and that a uniform standard for the secondary market can continue providing efficient, effective financing for borrowers. In order to eliminate a patchwork of regulation flowing from 50 states, a uniform standard is equally important for assignees in Title III and for creditors throughout the bill – otherwise the bill will simply add another layer of complexity and inefficiency to the lending process.

Washington ▪ New York ▪ London ▪ Hong Kong
1425 K Street, NW, 7th Floor ▪ Washington DC 20005-3500 ▪ P: 202.216.2000 ▪ F: 202.216.2119 ▪ www.SIFMA.org

Second, we appreciate that adjustments have been made to broaden the volume of loans covered by the safe harbor in terms of changes to debt-to-income ratio and the reduction in the length of time that payments must be fixed. We remain concerned that the market will be reluctant to fund non-safe harbor mortgages, because of the difficulty in determining the risk of doing so, or if these loans are eventually priced, they may become prohibitively expensive for many borrowers. We continue to believe that reasonable limits on the amount of adjustments that can occur during the life of the loan more accurately reflects the proper test for adjustable rate products. Also, we remain concerned that the objective test for qualified mortgages, which we understand is a proxy for prime loans, is based on a formula adopted by the State of North Carolina but not yet effective. Thus there is no evidence by which to gauge the effects of such a standard; we believe there could be significant unintended consequences on the market of a proxy that does not adequately capture prime loans. It is important to keep in mind that the market for prime loans is healthy at this time – it is not the source of today's problems.

Third, we appreciate that our issues with the statute of limitation for violations of the safe harbor requirements were addressed. We are concerned that the question of time limitations is reopened by permitting a consumer to assert claims following the expiration of the statute of limitations in defense to foreclosure section. While the damages in this case are limited to monetary damages rather than rescission, this provision allows an excessive time period for a consumer to bring a claim.

We also remain concerned that Title III, High-Cost Mortgage, significantly expands the scope of HOEPA through the lowering of APR, points and fee triggers. The end result will be a restriction in credit to the very borrowers this legislation aims to help. We believe that elements of the anti-steering provisions may create legal uncertainty and the possibility of class action law suits against lenders that in good faith are trying to meet their statutory responsibilities.

Finally, we continue to believe there should not be an outright prohibition on mandatory arbitration. Arbitration continues to be a far more efficient and cost-effective dispute resolution mechanism than traditional court-based litigation. Moreover, we believe language should be clarified so that it is not construed or interpreted as prohibiting non-judicial foreclosure in accordance with applicable state laws.

Again, we appreciate your leadership on this matter and the process under which the Committee crafted H.R. 3915 - in a deliberative and participatory manner. We look forward to continued dialogue to address standing items of concern, and thank you for your consideration of our views.

Sincerely,

Scott DeFife
Senior Managing Director
Government Relations

Richard Hunt
Senior Managing Director
Government Relations