SIFMA™
Securities Industry and
Financial Markets Association

November 15, 2007

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

Dear Chairman Frank and Ranking Member Bachus:

The Securities Industry and Financial Markets Association (SIFMA) and American Securitization Forum (ASF) appreciate your serious and thoughtful efforts in crafting H.R. 3915, "The Mortgage Reform and Anti-Predatory Lending Act of 2007." The bill as reported tried to balance important reforms with maintaining the availability of mortgage credit to expand homeownership. We are grateful for the opportunity to have provided input throughout the process. While several of our concerns have been addressed, others remain. Therefore, we are unable to support the legislation. In addition, we oppose the amendments offered by Congressmen Brad Miller and Mel Watt. If these amendments are adopted during floor consideration of the bill, then we would oppose the legislation.

Preemption
We appreciate the bill as reported by the Committee recognizes that a uniform standard for the secondary market is essential for the market to continue to provide efficient and 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.

Size of Safe Harbor
We continue to be concerned about the narrow scope of loan products which would be eligible for the safe harbor. 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 are concerned the interaction between the lowered Home Ownership and Equity Protection Act (HOEPA) triggers in Title III coupled with other financing limitations in the bill will not allow the market to price these loans.

High-Cost Mortgages
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.

Specifically, Title III amends the triggers determining whether a residential mortgage loan is a "high cost" loan subject to the HOEPA. The effect of this change would be a material expansion of the number of loans deemed to be "high cost" loans. Because of the significant penalties and expanded assignee liability provisions under HOEPA, high cost loans generally are not made, financed, purchased, sold, or securitized. Therefore, any potential loan that would become subject to HOEPA as a result of Title III is a loan that likely will never be made.

Statute of Limitations

Although our issues with the statute of limitation for violations of the safe harbor requirements were addressed in Committee, we remain 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 the defense to foreclosure section. We also do not believe that the bill should provide a consumer with a perpetual right to obtain money damages against creditors and assignees following the expiration of the statute of limitations. The bill as reported gives a consumer the right to assert a civil action against a creditor and assignee for violations of the ability to repay and net tangible benefit requirements for the greater of three years and one year after the initial reset or conversion of the loan, but no more than six years. That should be a sufficient time for a consumer to figure out whether they could afford a loan or receive a net tangible benefit from the loan.

Mandatory Arbitration

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.

We also urge you to oppose the following amendments:

Amendment #15 - Congressmen Brad Miller and Mel Watt

This amendment seeks to increase the potential damages of a mortgage originator for violating the provisions of Title I. The bill presently incorporates by reference the civil liability provisions of Section 130 of the Truth in Lending Act, which would provide actual damages, statutory damages and attorneys fees. It also caps the dollar amount of damages to three times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with a loan, plus costs and attorneys fees. This amendment would increase the ceiling to the greater of actual damages or three times the amount of compensation. We believe that there must be a sense of proportionality to the amount of damages to be awarded to a consumer for a violation of this Title, and support the remedies in the bill as reported.

Amendment #17 - Congressmen Brad Miller and Mel Watt

This amendment would be a fundamental change to the safe harbor. If the amendment were enacted, there effectively would be no safe harbor for securitizers and assignees, because, notwithstanding their satisfaction of the statutory elements of the safe harbor, they still would have to cure any violations by a creditor; this effectively dilutes any meaningful benefit resulting from the conduct of due diligence. Moreover, the amendment would penalize the assignee/securitizer for electing to purchase non-safe harbor loans because the assignee/securitizer would lose the right to cure, and instead would be required to provide rescission.

Amendment #19 - Congressmen Brad Miller and Mel Watt
The bill currently provides a safe harbor for two types of loans: qualified loans, which are defined solely by reference to the cost of the loan, and qualified safe harbor loans, which are defined by a combination of objective and subjective elements. This safe harbor is rebuttable as to creditors with respect to safe harbor mortgages. The amendment adds "nontraditional mortgages," which are defined as loans that permit a borrower to defer payments of principal and interest. Any loan that permits a borrower to defer payments of principal and interest has a negative amortization feature. In order to qualify as a safe harbor mortgage, a loan cannot have a negative amortization feature. Thus, the existing rebuttable presumption already addresses this issue, and no change is required.

Additionally, we have concerns regarding Amendment #14 which would authorize regulators to impose penalties in an amount equal to the sum of $1 million plus at least $25,000 per loan for pattern and practice violations of creditors, assignees and securitizers. A pattern and practice violation for an inherently subjective legal violation means that parties acting in good faith in reliance on reasonable business judgments can be subject to extensive penalties based on after the fact determinations of legal compliance. The end result could be to eliminate the making and securitizing of non-safe harbor loans even beyond that which already results from the material reduction in the financial triggers for HOEPA's high cost loans, a concept which is contrary to that which we understood to be the purpose of distinguishing between the two classes.

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 working with you to address our concerns and to your attention to the market impact of the legislation. We look forward to continued dialogue to address standing items of concern, and thank you for your consideration of our views.

Sincerely,

Scott DeFife	Richard Hunt
Senior Managing Director	Senior Managing Director
Government Affairs	Government Affairs