June 15, 2010

The Honorable Barney Frank
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington DC 20515

The Honorable Christopher J. Dodd
Chairman
Committee on Banking, Housing & Urban Affairs
U.S. Senate
Washington DC 20510

Dear Chairmen Frank and Dodd:

On behalf of the Mortgage Bankers Association, I want to highlight several sections of the Conference Base Text for H.R. 4173, the Restoring American Financial Stability Act of 2010, we hope can be addressed during the conference negotiations.

First, MBA strongly supports the inclusion of the bipartisan Landrieu-Isakson amendment directing federal regulators to create a class of qualified residential mortgages that would be exempt from the bill's five percent risk retention requirement in Section 941 of the base text ("*Regulation of Credit Risk Retention*").

Qualified residential mortgages are defined in the legislation as loans with underwriting and product features – such as full documentation and verification of income – that result in a lower risk of default. Furthermore, these mortgages would be prohibited from exhibiting nontraditional features like interest-only payments, balloon payments, and negative amortization.

This approach will incentivize lenders to adopt the highest lending standards, which we can all agree is the overall goal of additional risk retention. Lenders and securitizers that choose to originate mortgages that do not meet the strict definition set by regulators would still be required to comply with the bill's credit risk retention requirements.

The exemption for qualified residential mortgages in the base text will especially benefit consumers. Safe, sound and properly underwritten loans meeting this definition would be more affordable because they would not be subject to the unintended consequences and additional costs associated with risk retention including eliminating competition by smaller lenders. It would create greater incentives for good lending without making safe mortgage products more expensive.

Section 941 also contains a provision authored by Senator Mike Crapo that would require regulators to consider alternate forms of risk retention that may be better suited for the commercial mortgage backed securities (CMBS) market. This language appropriately recognizes the unique nature of the CMBS market, provides greater flexibility with regard to the various forms of retained risk, furthers the goal of aligning interests across transactional parties and represents a significant step toward restoring the CMBS markets.

The second issue of concern for MBA's members is Title XIV (*"Mortgage Reform and Anti-Predatory Lending Act"*). Both the Senate- and House-passed bills contained minimum underwriting requirements that mandate that creditors determine borrowers have a "reasonable

1717 Rhode Island Avenue, N.W. | Washington, DC 20036 | www.mortgagebankers.org | (202) 557-2700

ability to repay" their loans, and the House bill required that refinanced loans provide the borrower with a "net tangible benefit." MBA strongly supports sound underwriting and, for this reason, urges Congress to provide a clear safe harbor for qualified mortgage loans, similar to the provisions in the risk retention section discussed above. We remain concerned that the safe harbor in the base text does not offer adequate protection to incent sound underwriting, the test for qualified mortgages may be too restrictive, and appropriate regulators are not involved in developing the safe harbor.

Failure to provide legal certainty will unnecessarily increase costs and reduce the availability of affordable mortgage financing. Qualified mortgages, by definition, are properly underwritten and should meet the law's requirements without additional regulatory and legal burdens. Moreover, under the base text, loans that do not meet the definition of qualified mortgage will carry enormous legal risk for their entire term. If lenders are uncertain as to whether a loan product falls within the definition, they are unlikely to make the loan at all. We urge the conference committee to ensure that the final bill establishes a clear safe harbor for qualified mortgages – a mere "presumption," especially if it is rebuttable, will create enormous legal uncertainty and greatly increase the cost of credit.

For similar reasons, we also urge that the definition of points and fees used in the qualified mortgage definition include only direct fees to originators and creditors, retain an exception for affiliate fees, and exclude all up-front mortgage insurance to ensure that the bill's three-percent fee limit does not unduly restrict credit. Like the definition of high-cost loans, we believe the final bill should explicitly clarify that it excludes bona fide discount points. A final bill should establish an alternative formula for points and fees for low-balance loans of five percent or require the regulator to create such a formula to ensure liquidity for affordable housing.

Notably, Title XIV assigns responsibility for defining "qualified mortgage" to the Board of Governors of the Federal Reserve, leaving out the remaining federal banking regulators and other agencies that are assigned a similar responsibility in the risk retention portion of the bill. Because underwriting requirements affect safety and soundness, banking agencies should be full partners in the rulemaking process. While we note that the base text requires the Federal Reserve to consult with the Federal Housing Administration, Department of Veterans Affairs, and Rural Housing Service concerning their mortgages, we believe the bill should require that these agencies, with the depth of their underwriting expertise, should participate in a joint rulemaking to determine which mortgages should be deemed "qualified."

Third, Subtitle E of Title XIV (*"Mortgage Servicing"*) and other provisions concerning servicing practices also require revisions. While these provisions may be well intentioned, some are contradictory, others are unnecessary and still others risk unduly increasing borrowers' costs. For example, some provisions of the bill require escrow accounts for taxes and insurance for particular types of loans and other provisions appear to preclude them for these same loans. Other provisions require mandatory monthly statements sent to borrowers for all loan types, including fixed-rate loans and other traditional products. Many borrowers already receive coupon books and/or use electronic and telephonic means to access real-time data on their accounts. Many borrowers have shown they prefer these means to monthly statements because they reduce paper, the risk of identity theft and unnecessary clutter. For traditional products, additional statements are unnecessary, costly and often contrary to customer preference.

Fourth, we are very concerned about the assignee liability provision in the base text. It would permit borrowers to assert defenses to payment against an assignee or holder based on certain

violations by the creditor. By creating this new perpetual right of set-off or recoupment against innocent assignees or holders, the bill will provide a powerful disincentive to invest in mortgages and mortgage-backed securities that are not qualified loans. This will ensure that virtually no loans outside of the qualified label will be eligible to be financed, purchased and securitized, particularly because an assignee will never know if the statutory test is satisfied and virtually any attempt to collect on a delinquent loan could be met with legal challenges. We strongly recommend that the related provision in the Senate bill be used instead, with revisions dealing with the monetary damages that do not impair the enforceability of loans purchased by subsequent assignees.

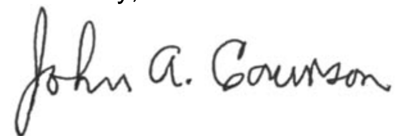
Fifth, MBA believes the provisions of Title XIV, Subtitle F (*"Appraisal Activities"*) also require changes. MBA commends the decision embodied in the base text to exclude language from the House-passed bill that would have required that the government sponsored enterprises and lenders accept appraisals ordered by commissioned mortgage brokers and loan officers. In light of the Home Valuation Code of Conduct, lenders have adjusted to the use of vendor management companies or the establishment of internal controls to avoid conflicts of interest in the appraisal process. Lenders report that both approaches have resulted in sounder appraisals to the benefit of lenders and borrowers. MBA is concerned, however, that provisions of the base text concerning fees and governance of vendor management companies may make it difficult for these entities to continue to provide sound appraisals.

MBA also opposes the requirement in the base text that there be separate disclosures of appraisal and vendor management fees. The Department of Housing and Urban Development has recently promulgated a new good faith estimate (GFE) and settlement statement (HUD-1), which require agglomeration of related fees and that are being implemented at a very high cost to lenders and therefore borrowers. Considering that the new Consumer Financial Protection Bureau, created by this legislation, will be broadly empowered to revisit disclosure requirements, the enactment of additional disclosure requirements that may be contrary to the Bureau's direction should not be legislated in a piecemeal basis at this time.

Finally, while MBA recognizes both the House and Senate bills restricted loan originator compensation based on the terms of loans, MBA urges that Congress reconsider the restrictions against borrowers paying some of their origination costs up front and building some into their interest rates. As long as the costs of origination are transparent, homebuyers should be free to choose among a range of options to pay loan charges suited to their particular financial situations.

Thank you for your consideration of MBA's comments with respect to ways to improve the financial regulatory reform bill. We look forward to providing any additional information as may be needed.

Sincerely,



John A. Courson
President and Chief Executive Officer

cc: All Conferees on H.R. 4173, the Restoring American Financial Stability Act of 2010