

## **CAI Alerts Congress on Financial Services Reform Issues**

Seeking to reign in the excesses of the banking system, Congress has passed a sweeping bill to reform the financial services industry. The bill would create a new agency, the Bureau of Consumer and Financial Protection, which would be empowered to regulate a broad array of financial transaction. As drafted, community associations and management companies could be considered financial institutions and fall under the regulatory scope of this new agency. In addition, a last minute amendment by Senator Mary Landrieu would create the potential for radical changes in the mortgage markets that could threaten community associations. In response to these challenges, CAI has sent a detailed letter to the chairs of the House and Senate Banking and Finance Committees.

### Banking Reform

The Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173), as passed by Congress, would overhaul the federal regulation of financial services. The legislation is in response to the excesses of the industry which contributed to both the economic crisis and the subsequent \$700 billion bailout of the financial system. The intent is to ensure a regulatory environment to curb practices in the financial services industry seen as the cause of the banking crisis.

The law would create a new federal entity, the Bureau of Consumer Financial Protection, which would have authority to regulate a host of consumer financial transactions. Because of the broad definitions of “consumer financial transactions” and the many financial exchanges that take place between unit owners, management companies and volunteer boards, CAI is concerned that such organizations will get caught up in the regulatory net intended for true financial services and banking entities. As such, CAI is working with conferees to seek exemptions for professionally licensed or certified community association managers and elected association board members. Additionally, the legislation would require regulation of any entity offering foreclosure avoidance or credit counseling services. Again, the broad language in the legislation is cause for concern that an association, which works with unit owners on payment plans, would be regulated as a financial service firm for purposes of the law. CAI has asked conferees to exempt association boards and others who work voluntarily from this regulation.

### Landrieu/Isakson Amendment

A second challenge created by the passage of H.R. 4173 is an amendment designed to serve as a check on bank mortgage lending practices. The Landrieu/Isakson amendment would require lenders to retain a 5 percent interest (risk retention) in any mortgages lent unless such mortgages complied with a set of federal defined standards. Such standards would create a category of qualified residential mortgages. These mortgage products would be developed by several federal agencies including federal banking agencies, the secretary of HUD, the director of the Federal Housing Finance Agency and the Securities and Exchange Commission. In other words, the bill

would create a set of government defined mortgage products which, due to their exemption from the risk retention requirement, would likely become the default lending standards for most purchasers.

As CAI members have seen to date, efforts by existing mortgage underwriting entities such as Fannie Mae and FHA to develop new lending standards have been uneven. When applied to community associations, the criteria have been at best arbitrary and at worst detrimental to the lending in community associations. Creating a new set of federal administered products through this alphabet soup of federal agencies, CAI believes would create further problems and even less transparency and stakeholder engagement. The federal government needs to reach out to stakeholders like CAI and look at empirical data to support development of lending standards rather than expanding its inter-agency dialogue.

As this amendment was only included in the Senate version of the legislation, CAI hopes that the conferees who are reconciling the legislation will instead focus its efforts on bringing effective parties together and with proper oversight to allow lenders to develop their own risk parameters.

#### More Challenges to Come

It is clear from the ongoing efforts by mortgage underwriters and now by Congress that the move to restructure the federal mortgage finance system has finally begun. As Congress moves forward, it is also clear that for CAI members, the challenge continues to be helping legislators and regulators understand the unique issues in mortgage lending created in community associations. The common ownership element binds all homeowners together in a common destiny. If mortgage criteria create inappropriate standards for community association lending, the impact on the market will be immense. CAI will continue to push Congress and work with regulators to set appropriate criteria and regulations to ensure community associations continue to thrive. You can view the full text of CAI's letter to Congress [here](#).