

Carolyn B. Lamm
President

AMERICAN BAR ASSOCIATION

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June 11, 2010

Re: Need to Include the House-passed Exclusion for Practice of Law in the Final
Version of the Consumer Financial Protection Act (H.R. 4173)

Dear Conferee:

On behalf of the American Bar Association, which has nearly 400,000 members, I write to express our concerns regarding provisions in the "Consumer Financial Protection Act" (CFPA) contained in H.R. 4173 that would create a new federal agency or bureau with sweeping powers to regulate anyone providing a "consumer financial product or service," including lawyers who represent consumer clients with debt problems and most other lawyers with a traditional legal practice.

While the House-passed version of the bill contains an appropriate exclusion for lawyers who are licensed and regulated by their state supreme court and engaged in the practice of law, the Senate bill does not contain a comparable exclusion. Therefore, the Senate bill would allow the new entity to impose burdensome new federal regulations on lawyers who help consumer clients to modify or settle their debts or avoid foreclosure. This, in turn will adversely affect thousands of bankruptcy lawyers, litigators, tax lawyers, family lawyers, real estate lawyers and general practitioners, and their ability to properly represent their clients. In addition, language in the Senate bill authorizing the entity to regulate anyone acting as a "custodian of funds" would allow the entity to regulate hundreds of thousands of other lawyers with client trust accounts. As the Conference Committee works to reconcile the differences in the House and Senate-approved versions of the CFPA, we urge you to include language similar to the House's practice of law exclusion in the final bill.

The ABA does not object to provisions in both versions of the CFPA that would allow the new entity to regulate lawyers who are engaging in various commercial activities that do not constitute the practice of law, as well as other provisions that would simply transfer current federal regulatory authority from existing agencies to the new entity. At the same time, we have very serious concerns over the provisions in the Senate-passed bill that would grant the entity broad new powers to regulate lawyers engaged in the practice of law for several important reasons.

First, these provisions will allow the agency or bureau to regulate and interfere with core aspects of the confidential lawyer-client relationship, including the attorney-client privilege and the confidential legal advice and other important legal services that lawyers routinely provide to their consumer and other clients. Second, these provisions will undermine traditional state court regulation of lawyers and will result in new federal rules that are inconsistent with the state courts' longstanding ethical rules and standards governing lawyers. Finally, allowing the new entity to

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regulate lawyers as if they were financial institutions will discourage many lawyers from providing the legal services consumer clients often desperately need to save their homes from foreclosure, resolve their debt problems, or avoid bankruptcy. For additional details regarding the ABA's concerns regarding these provisions, please see the ABA's Fact Sheet on this issue at http://www.abanet.org/poladv/nosearch/2010jun_cfpalpg.pdf.

To avoid these problems, we urge you to include language similar to the House-passed "exclusion for practice of law" in the final version of the CFPA. Unlike the ineffective "exclusion for attorneys" language contained in the Senate bill, the House language will protect consumers while preserving the confidential attorney-client relationship, traditional state court regulation and supervision of lawyers, and the continued availability of quality legal services that consumer clients need.

Thank you for considering our views on this issue, which is of critical importance to many thousands of attorneys and the consumer clients that they represent throughout the United States. If you would like more information regarding the ABA's proposed amendment, please contact our Director of Governmental Affairs, Tom Susman, at (202) 662-1765 or our senior legislative counsel, Larson Frisby, at (202) 662-1098.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn B. Lamm". The signature is written in black ink and includes a long horizontal flourish at the end.

Carolyn B. Lamm

cc: Members of the House Financial Services Committee
Members of the Senate Banking, Housing and Urban Affairs Committee