MBA®
MORTGAGE BANKERS ASSOCIATION

December 4, 2017

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Crapo:

On behalf of the Mortgage Bankers Association (MBA), I am writing to commend your efforts in drafting, in a bipartisan manner, *S. 2155, The Economic Growth, Regulatory Relief, and Consumer Protection Act,* which the Senate Banking Committee is scheduled to consider on December 5th. MBA has evaluated the mortgage-related provisions in Title I of this legislation and believes they provide important regulatory relief to the housing market, remove impediments that currently limit employment mobility for qualified loan officers, and establish important consumer protections for Property Assessed Clean Energy (PACE) loans. We support S. 2155 and urge all members of the Senate Banking Committee to vote in favor of this legislation during the committee's markup of the bill.

Section 106: Eliminating Barriers to Jobs for Loan Originators

MBA strongly supports section 106 – which as bipartisan, stand-alone legislation passed the House on the consent calendar in 2016 – to create transitional licensing authority that allows MLOs to originate loans for 120 days when moving from one employer to another or from one state to another. The federal Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act of 2008 created an asymmetrical regulatory regime for mortgage loan officers that, in certain instances, unduly restricts competition and employee flexibility. Loan officers who wish to move from a depository to a non-bank mortgage lender cannot begin to work at that non-bank mortgage lender until they are state licensed, a process that can take weeks, or even months.

Allowing for a transitional authority to originate promotes a fair and competitive labor market by eliminating barriers to the ability of non-bank lenders (especially small lenders) to compete for talented loan officers. It would also allow loan officers to more easily move to the employer that offers them the best chance to succeed. It is also consistent with free-standing, bipartisan Senate legislation, S. 1753, as introduced by Senators Heller and Menendez.

Section 108: Real Property Retrofit loans

MBA supports the Section 108 provisions that would protect homeowners by establishing an "Ability-to-Repay" requirement under the federal Truth in Lending Act (TILA) real property retrofit loans. The provision would require a PACE loan provider to determine that the borrower has a reasonable ability to repay the loan being offered. This is an important first step toward appropriately regulating PACE lending and ensuring that PACE borrowers are fully informed and protected from predatory lending practices.

Energy efficient home improvements, when financed with Property Assessed Clean Energy (PACE) loans, have raised significant and well-documented, consumer protection concerns. These loans are in substance consumer loans secured by real property. Failure to pay a PACE loan can result in foreclosure and loss of the home. Nevertheless, federal mortgage financing rules established by the Consumer Financial Protection Bureau do not protect PACE borrowers, who instead are dependent on a patchwork of limited or non-existent state or municipal laws. Section 108 is an important step toward establishing a national consumer protection standard for PACE loans.

Section 110: Needed Clarity in the TILA-RESPA Integrated Disclosure Rules

MBA strongly supports the Sense of Congress in Section 110(b) in favor of needed clarity for the TILA- RESPA integrated disclosures (TRID). This subsection asks the CFPB to provide clearer, authoritative guidance on several components of the TRID Rule. Specifically, the statement requests clarity on the Rule’s applicability to mortgage assumption transactions and construction-to-permanent home loans. Finally, the request seeks clarity on the extent to which lenders can rely on model disclosures published by the CFPB, without liability, if recent changes to regulations are not reflected in those disclosures.

This clarity is critical. The current uncertainty with respect to these issues presents a significant and unnecessary impediment to mortgage industry participants’ efforts to comply with the TRID Rule.

Section 104: Home Mortgage Disclosure Act Adjustment and Study

Section 104 amends the Home Mortgage Disclosure Act (HMDA) to expand exemptions on itemized disclosures to HMDA added by the Dodd-Frank Act. The proposed bill exempts from these disclosures closed-end mortgages and open-end lines of credit for those banks and credit unions who originate fewer than 500 closed-end mortgages or 500 open-end lines of credit in the last two years, respectively.

While we support the spirit behind raising the threshold for banks and credit unions, we believe extending the exemption to include all small mortgage originators, including small independent mortgage banks, would reduce the regulatory burden placed upon all smaller community lenders by increased HMDA reporting requirements. Continuing to allow small community lenders to thrive results in increased consumer choice and access to credit from locally based lenders. Finally, as it relates to multifamily lending and servicing, we continue to support a complete exemption from the HMDA reporting requirements for these loans, as these business purpose loans were never intended to be captured by HMDA.

Section 101: Minimum Standards for Residential Mortgage Loans

Section 101 extends "Qualified Mortgage" status to loans originated by, and retained in the portfolios of, banks and credit unions with less than $10 billion in consolidated assets. This expansion of QM status would not apply to loans with interest-only or negative-amortization features, points and fees above the existing cap of 3 percent of the loan amount, or prepayment penalties that are in violation of existing QM requirements.

While MBA appreciates the intent of this provision and has consistently viewed the current QM standard as overly restrictive, we are concerned that this provision would create a distorted market for otherwise similar loans, particularly with respect to the charter of the originator. Today, nonbank lenders — many of which are small, community-based lenders — originate approximately half of all U.S. mortgages. Because their business model differs from that of banks and credit unions, nonbank lenders do not collect deposits or hold loans in portfolio. As such, loans originated by nonbank lenders are effectively excluded from this expansion of the QM standard.

Efforts to improve upon the QM standard should, to the greatest extent possible, be undertaken in a manner that preserves a level playing field for all types of lenders. MBA therefore recommends revisions to this section that would extend QM status to loans originated by any lender, provided that they are transferred to, and subsequently held in the portfolio of, a community bank or credit union within 90 days of their origination. Such a revision would provide more opportunities for QM loans to be originated by various types of lenders while retaining the core objective of ultimate risk retention by small, community-based institutions. We believe the outcome would be enhanced consumer access to credit at lower costs, particularly for those consumers negatively affected by the more restrictive features of the current QM standard, such as Appendix Q.

In conclusion, we applaud and appreciate your efforts in crafting *S. 2155**,** The Economic Growth, Regulatory Relief, and Consumer Protection Act,* and believe that these outlined portions of the legislation will go a long way toward removing many of the barriers and regulatory burdens that have been affecting consumers' access to mortgage credit. We look forward to continuing to work with the committee to address these areas of concern, and strongly support the underlying bill.

Sincerely,

Bill Killmer
Senior Vice President, Legislative and Political Affairs

cc: The Honorable Sherrod Brown, Ranking Member
All other members, Senate Banking Committee