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MORTGAGE BANKERS ASSOCIATION

September 12, 2018

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
2221 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the Mortgage Bankers Association (MBA), I am writing to express our support for H.R. 5534, the *GUIDE Compliance Act*, and H.R. 6737, the *Protect Affordable Mortgages for Veterans Act*, which are scheduled to be considered during a markup by the Committee on Financial Services on Thursday, September 13.

MBA strongly supports H.R. 5534, the *Give Useful Information to Define Effective Compliance Act* or "*GUIDE*" *Compliance Act*. This bipartisan legislation, which was introduced by Representatives Sean Duffy (R-WI) and Ed Perlmutter (D-CO), would provide a statutory framework requiring the Bureau of Consumer Financial Protection ("Bureau") to issue regular, written interpretative rules and guidance to facilitate industry compliance – and thereby better protect consumers.

The Bureau's past record of failing to provide clear, authoritative guidance or adequately respond to the questions raised by the rules it issues has been harmful to consumers and confusing to the lenders that serve them. This legislation seeks to improve the Bureau's process of providing clear, written, authoritative guidance to better protect consumers and the broader market. Increased guidance from the Bureau will give companies a better road map towards compliance without limiting the Bureau's ability to vigorously enforce the rules as written.

Specifically, the *GUIDE Compliance Act*.

- Mandates that the Director issue "guidance" that is necessary or appropriate to carry out the purpose of the laws it is responsible for, including facilitating compliance;
- Defines "guidance" to include a range of written issuances, from interpretative and legislative rules to bulletins and frequently asked questions;
- Prohibits liability for reliance in good faith on guidance from the Bureau or any predecessor agency that was in effect at the time of such alleged act or omission;
- Requires the Bureau to develop guidelines for determining the size of any civil money penalties and publish these guidelines in the Federal Register within 18 months of enactment;

- Requires the Bureau to publish in the Federal Register within one year of enactment the definitions, criteria, timelines and process for issuing each type of guidance the Bureau shall provide, with a final rule required within 18 months of enactment;
- Requires the Bureau to establish a process and timeframes for requests for guidance, including time limits to provide answers in response to requests for guidance; and
- Requires the Bureau to create a process for amending or revoking guidance, including a process for public notice and comment.

MBA also strongly supports H.R. 6737, the *Protect Affordable Mortgages for Veterans Act*, introduced on a bipartisan basis by Representatives Lee Zeldin (R-NY), Claudia Tenney (R-NY), and Kyrsten Sinema (D-AZ). In late May, the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (Public Law 115-174) was signed into law. Among the many provisions contained within the legislation as enacted, Section 309, entitled “Protecting Veterans from Predatory Lending,” sought to address the problem of loan churning targeted at service members and veterans. This section instituted new requirements that refinanced VA loans must meet in order to be eligible for the VA guaranty and for Ginnie Mae pooling.

Section 309(a) of the public law provides the new requirements that must be met for the refinanced VA loan to obtain a VA guaranty. The three requirements are:

- Fee recoupment within 36 months;
- Net tangible benefits to the borrower, measured as a decrease of at least 50 basis points in the interest rate in the case of a fixed-to-fixed refinance, and at least 200 basis points in the interest rate in the case of a fixed-to-floating refinance; and
- Seasoning of the initial loan for at least 210 days, calculated from the date of the first payment made by the borrower on the initial loan to the note date of the new loan (at least six monthly payments must also have been made by the borrower).

Section 309(b) of the public law also provides similar loan seasoning requirements that must be met for the refinanced VA loan to serve as collateral for a Ginnie Mae security.

However, because there was no effective date provided in the legislation as enacted, these various provisions took effect immediately and resulted in an unintended negative consequence for a cohort of recently-closed VA loans. Specifically, these loans were no longer eligible for Ginnie Mae securitization, even though they maintained a valid VA guaranty and met all Ginnie Mae requirements at the time of closing. For some lenders, this situation has created liquidity strains due to the lack of viable alternative secondary market executions for these loans.

H.R. 6737 aims to address this problem by striking section 309(b), thus allowing for Ginnie Mae pooling of these VA-guaranteed refinance loans. Absent this legislation, VA lenders of all sizes will be forced to sell or finance these loans at a loss, potentially hindering their ability or willingness to originate similar loans in the future. Importantly, striking this provision does nothing to weaken the consumer protections that were put in place through the original legislation, as the seasoning requirements in section 309(b) are duplicative of those already instituted in section 309(a). H.R.

6737 would provide the added benefit of better clarifying the treatment of VA-guaranteed loans that were purchased out of pools for loss mitigation activities, as well as cash-out refinances, both of which have been inadvertently made ineligible for Ginnie Mae pooling in certain instances as a result of the original legislation.

As always, thank you for the consideration of the views expressed within this letter. We look forward to continued work together in the coming months to promote a more competitive and sustainable real estate finance market.

Best regards,

A handwritten signature in black ink, appearing to read "Bill Killmer", with a long horizontal flourish extending to the right.

Bill Killmer  
Senior Vice President, Legislative and Political Affairs

cc: All Members, House Committee on Financial Services