



MORTGAGE BANKERS ASSOCIATION

March 9, 2018

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
S-230, The Capitol  
Washington, D.C. 20510

The Honorable Chuck Schumer  
Minority Leader  
United States Senate  
S-221, The Capitol  
Washington, D.C. 20510

The Honorable Mike Crapo  
Chairman  
Committee on Banking, Housing and Urban  
Affairs  
United States Senate  
239 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing and Urban  
Affairs  
United States Senate  
713 Hart Senate Office Building  
Washington, D.C. 20510

Dear Majority Leader McConnell, Minority Leader Schumer, Chairman Crapo, and Ranking Member Brown:

On behalf of the Mortgage Bankers Association (MBA), I am writing to commend the efforts that led to drafting, in a bipartisan manner, S. 2155, *the Economic Growth, Regulatory Relief, and Consumer Protection Act*, which the full Senate is currently debating.

MBA has evaluated the mortgage-related provisions within the recently-released substitute amendment, and believes that, in the aggregate, this revised base text provides important regulatory relief to the housing market, extends critical consumer protections to U.S. veterans who utilize the VA Home Loan program, removes the impediments that currently limit employment mobility for qualified loan officers, establishes important consumer protections for Property Assessed Clean Energy (PACE) loans, and promotes sustainable construction and development through clarification of the current High Volatility Commercial Real Estate (HVCRE) rule.

MBA supports S. 2155 and would urge all Senators to vote to preserve the bill's key elements throughout the amendment process, and, in turn, to vote in favor of the bill's final passage at the conclusion of the debate. Our more specific comments regarding key mortgage-related elements of the bill follow:

*Section 106: Eliminating Barriers to Jobs for Loan Originators*

MBA enthusiastically supports Section 106 – which as bipartisan, stand-alone legislation passed the House unanimously in 2016 and by a strong bipartisan margin just weeks ago – to create transitional licensing authority that allows mortgage loan officers (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 MLOs 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, competitive, consumer-facing 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 worth noting that Section 106 was developed in consultation with the Conference of State Bank Supervisors to incorporate provisions that ensure state regulators are empowered to protect consumers during the provision's transition period.

### *Section 309: Protecting Veterans from Predatory Lending Act of 2018*

MBA strongly supports the inclusion of the *Protecting Veterans from Predatory Lending Act of 2018* within the substitute amendment. This bipartisan provision extends critical consumer protections to U.S. military servicemembers, veterans, and surviving spouses who utilize Department of Veterans Affairs (VA) home loans. In recent years, some VA borrowers have been targeted aggressively for repeat refinancings via the VA Interest Rate Reduction Refinance Loan (IRRRL). While this streamlined product is a low-cost option that is well-suited for many borrowers, in some cases it has been used for serial refinancings, or churning, that strips equity and can put the borrower in a worse financial position.

Section 309 advances multiple protections that MBA believes would help curtail this behavior. IRRRLs would no longer be eligible for the VA guaranty unless they meet requirements such as a maximum fee recoupment period, a net tangible benefit test for the borrower, and a minimum loan seasoning period. Importantly, these reforms are targeted at the recent churning in the market while preserving beneficial refinancing opportunities for VA borrowers. While MBA does not believe that the rulemaking exemptions for VA in this section are necessary, we nonetheless support this critical effort to protect servicemembers, veterans, and surviving spouses.

### *Section 307: Property Assessed Clean Energy (PACE) Financing*

MBA supports the Section 307 provisions that would protect homeowners by establishing an "Ability-to-Repay" requirement under the federal Truth in Lending Act (TILA) for real property retrofit loans. The provision would require a loan originator 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 109: Needed Clarity in the TILA-RESPA Integrated Disclosure Rules

MBA strongly supports the Sense of Congress in Section 109(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.

MBA also supports the intent behind the "No Wait for Lower Rates" section of the bill but notes that as currently structured this would only impact "high cost mortgages" rather than providing broader relief. Adjusting the APR accuracy provision found in TILA § 107 [15 U.S.C. § 1606(c)], so as to remove the requirement for an additional three day waiting period in situations where the borrower receives an actual APR that is less than the APR disclosed, would achieve the intent behind the "No Wait for Lower Rate" section. This adjustment would eliminate an unnecessary delay for a wider range of mortgage loan originations.

### 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 better serve consumers and the marketplace. Such an exemption 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. 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 214: Promoting Construction and Development

MBA strongly supports including the Promoting Construction and Development section within the substitute amendment. This bipartisan provision would clarify and modify the banking agencies' High Volatility Commercial Real Estate (HVCRE) rule. As currently written, the regulatory HVCRE rule is not sufficiently clear. As a result, this regulatory rule is causing some acquisition, development and construction (ADC) loans to trigger HVCRE status (and a 150 percent risk weight) for loans that do not present the elevated credit risk the rule was intended to capture. Those problems add unnecessary costs to banks and their borrowers, and interfere with their ability to provide real estate financing, and the banking agencies have failed to adequately address these issues. This matters because ADC commercial real estate projects play a substantial role in supporting jobs and economic growth, and banks are critical sources of capital for that sector.

Section 214 would address these issues by: clarifying the definition of “HVCRE ADC Loan;” permitting withdrawal of HVCRE classification when a project meets underwriting requirements for permanent financing; permitting withdrawal of contributed capital when a project meets underwriting requirements for permanent financing, permitting withdrawal of internally generated capital; permitting banks to count the value of appreciated property toward the borrower’s required 15 percent capital contribution; and exempting loans originated prior to January 1, 2015. Notably, Section 214 would not eliminate the higher, 150 percent risk weight for HVCRE ADC loans or incentives for banks to mitigate ADC lending risk. MBA supports these changes because they would clarify the HVCRE rule and make it more workable, better enabling banks to support prudent ADC projects that contribute to economic growth.

### Federal Home Loan Bank Membership

MBA strongly supports the amendment filed by Senator Duckworth to improve eligibility standards for Federal Home Loan Bank (FHLB) membership. This amendment mirrors legislation introduced by Senators Duckworth, Johnson, Scott, and Baldwin, which would continue or restore FHLB membership for affiliates of companies that maintain a commitment to housing finance, such as mortgage real estate investment trusts (REITs). Notably, this provision would only continue or restore FHLB membership for those companies that were previously FHLB members in good standing.

At the very core of their business model, mortgage REITs provide investments that support a variety of mortgage lending, including lending to creditworthy borrowers not currently well-served by other parts of the market. Access to advances from the FHLBs would allow mortgage REITs a complementary funding mechanism which de-risks their portfolios via term borrowing and strengthens their ability to provide financing through all parts of the economic cycle. MBA believes this amendment would help inject reliable private capital into the mortgage market—to the benefit of consumers and taxpayers alike.

### Section 310: Credit Score Competition

MBA appreciates the inclusion of provisions in Section 310 which would encourage competition in the development and usage of credit scoring models for residential mortgages. Heightened competition should produce more accurate modeling, which in turn provides a variety of benefits for consumers, lenders, and investors. MBA also supports transparent model validation processes that ensure a level playing field for all providers of credit scoring models. There are numerous operational challenges associated with any transition in credit scoring models—including both updates to existing models and the adoption of new models developed by entrants to the market. Any policies that guide such transitions should address these operational challenges, such as the need to protect against adverse selection and the importance of avoiding disruptions to the liquidity of the secondary mortgage market.

### 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.

Conclusion

In conclusion, we applaud and appreciate the collective, bipartisan coalition efforts that led to the crafting of S. 2155 (and the substitute amendment), and believe that these outlined portions of the legislation will remove many of the barriers and regulatory burdens that have impacted consumers' current access to mortgage credit. We look forward to continuing to work with the House and Senate leadership to address any areas of remaining concern, but strongly support the underlying bill and urge all Senators to vote in favor of S. 2155.

Sincerely,



Bill Killmer  
Senior Vice President, Legislative and Political Affairs

cc: All United States Senators