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MORTGAGE BANKERS ASSOCIATION

January 18, 2023

Legal Division Docket Manager  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

**RE: TILA Preemption Determination – Docket No. CFPB-2022-0070**

To Whom it May Concern:

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau's (CFPB) Notice of Intent to Make Preemption Determination under the Truth in Lending Act (the Notice)<sup>2</sup>. Following review of the Notice, the MBA supports the CFPB's preliminary conclusion that a New York State commercial financing law is not preempted by the Truth in Lending Act (TILA)<sup>3</sup>.

The Notice is a result of a request received by the CFPB from a business association seeking a determination that certain provisions in New York State's Commercial Financing Law<sup>4</sup> (the New York law) are preempted by TILA. TILA does not preempt or annul any laws of a State unless those laws are contrary or inconsistent with TILA.<sup>5</sup>

TILA requires certain disclosures for consumer credit transactions and was designed to protect consumers from predatory lending and unfair credit practices. The New York law requires certain disclosures only for non-consumer, commercial transactions. TILA has no application to business-to-business commercial transactions and a decision that TILA preempts any state law governing commercial transactions would run completely contrary to the stated purpose of TILA. Upon review of the Notice, the MBA supports the CFPB's preliminary view that TILA does not preempt the New York law as the two laws govern completely different types of transactions.

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

<sup>2</sup> See 87 Fed. Reg. 76551 (December 15, 2022)

<sup>3</sup> See 15 U.S.C. 1601 *et. seq.*

<sup>4</sup> See N.Y. Comm. Fin. Law, sec. 801 *et seq.*

<sup>5</sup> See 87 Fed. Reg. 76551 (December 15, 2022)

MBA also supports the CFPB's preliminary conclusion that TILA does not preempt similar commercial disclosure laws in California, Utah and Virginia. Again, the purpose of TILA is to assure that consumers receive meaningful disclosure of credit terms in consumer transactions and state laws governing commercial financing disclosures cannot be found to be inconsistent with or contrary to the provisions of TILA.

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Again, MBA and our members are grateful for the opportunity to review and respond to the Notice. If you have any questions please contact Stephanie Milner, Associate Vice President of Commercial/Multifamily Policy ([smilner@mba.org](mailto:smilner@mba.org)).

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Flood', with a stylized flourish at the end.

Mike Flood  
Senior Vice President  
Commercial/Multifamily  
Mortgage Bankers Association