Testimony of

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On behalf of the
Mortgage Bankers Association

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Subcommittee on Financial Institutions and Consumer Credit

"Legislative Proposals for a More Efficient Federal Financial Regulatory Regime: Part II"

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Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee, thank you for the opportunity to testify on behalf of the Mortgage Bankers Association (MBA). My name is Chris George, and I am the Founder, President, and CEO of CMG Financial, a privately-held mortgage banking firm headquartered in San Ramon, California. I also currently hold the position of Chairman-Elect of the MBA, and I have previously served as Chairman of the California Mortgage Bankers Association.

MBA is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. 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. MBA's membership of over 2,300 companies represents all elements of real estate finance, including firms serving both the single-family and commercial/multifamily markets. Our membership features commercial banks, community banks, credit unions, independent mortgage bankers, investors, brokers, conduits, and industry vendors, among others.

I applaud the subcommittee for its efforts to improve the efficiency of federal financial regulation. In particular, I wish to express my support for the *Mortgage Fairness Act of 2017* and the *Comprehensive Regulatory Review Act of 2017*.

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One of the most significant features of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) and the subsequent rulemakings that followed was the requirement that lenders verify a borrower's ability to repay (ATR) a mortgage loan during the underwriting process. There is ample justification for this concept, particularly given the structural problems in the mortgage market that were exposed during the financial crisis.

And while the Qualified Mortgage (QM) standard that was developed by the Consumer Financial Protection Bureau (CFPB) was not meant to limit mortgage originations to loans that meet this standard, the significant potential liability and litigation expenses for violations of the ATR rule have directed the vast majority of the market toward QM loans that receive safe harbor treatment.

As the ATR rule and QM standard have been implemented, MBA has consistently maintained its view that mortgages originated with the same interest rate and other product features should be treated equally from a regulatory perspective, regardless of the channel through which the loan is originated.

The *Mortgage Fairness Act of 2017* addresses and improves upon a provision of the ATR rule and QM standard that generates unequal treatment of loans originated through mortgage brokers. The ATR rule and QM standard includes fees paid by a wholesale lender to a mortgage broker in the calculation of points and fees, which is used to determine whether a loan qualifies for QM safe harbor. However, fees paid by a wholesale lender to a mortgage broker are already reflected in the interest rate offered to the consumer. As such, their inclusion in the calculation of points and fees represents a double-counting of these fees.

Because of this double-counting, loans originated through mortgage brokers, and particularly small-balance loans, are more likely to exceed the maximum allowable points and fees under the ATR rule and QM standard. This anomaly results in some loans originated through mortgage brokers failing to qualify for the QM safe harbor, whereas the same loans would have qualified if originated through a different channel.

This provision in the ATR rule and QM standard is derived from language provided under Dodd-Frank, which amends the Truth in Lending Act to include in the calculation of points and fees, "all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction."[1] More directly, this language specifies that compensation (fees) paid by a creditor (wholesale lender) to a mortgage originator (mortgage broker) must be included in the calculation of points and fees.

The *Mortgage Fairness Act of 2017* corrects this flaw by clarifying that fees paid by a wholesale lender to a mortgage broker are not to be counted toward the maximum allowable points and fees under the ATR rule and QM standard. It does so by providing that "compensation taken into account in setting the interest rate and for which there is no separate charge to the consumer" not be included in the calculation of points and fees. Fees paid by a wholesale lender to a mortgage broker satisfy both conditions—they are reflected in the interest rate and there is no separate charge to the consumer. The double-counting described above would be eliminated and loans originated through mortgage brokers would no longer be more likely to exceed the maximum allowable points and fees, relative to loans originated through other channels, solely because of the compensation paid to mortgage brokers.

Because of the strong market preference for QM loans, this correction would put wholesale lenders and mortgage brokers on a level playing field with other market participants in the dominant segment of residential mortgage originations. Such an outcome would increase competition in the market, ultimately benefiting consumers through greater choice and lower costs. I therefore urge the full committee to advance

[1] Dodd-Frank §1431(c)(1)(A)

this common-sense provision to ensure that otherwise similar loans are not treated differently purely due to their origination channels.

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The *Comprehensive Regulatory Review Act of 2017* (CRRA) seeks to amend the *Economic Growth and Regulatory Paperwork Reduction Act of 1996* (EGRPRA). The EGRPRA requires the Federal Financial Institutions Examination Council (FFIEC), as well as each federal banking agency represented on the FFIEC[2], to conduct a comprehensive review of their regulations at least once every ten years. They are directed to identify outdated or unnecessary regulations imposed on insured depository institutions. Once identified, regulators must eliminate unnecessary regulations, *but only to the extent the regulators believe elimination is appropriate.*

EGRPRA is an important tool to ensure that regulations are reviewed and evaluated in light of changes in the market or the interlocking federal regulatory structure. The CRRA furthers this goal by improving the EGRPRA regime to better reflect significant structural changes to the federal regulatory landscape since 1996. CRRA does so by increasing the frequency of reviews, expanding the breadth of reviews, and incorporating additional regulators. Most importantly, the CRRA strengthens the impact of the EGRPRA by requiring regulators to act in response to concerns identified during the review process.

Under the CRRA, regulators must eliminate regulations deemed unnecessary by the EGRPRA review process. In addition, each regulation must be tailored in a manner that limits its regulatory compliance impact, cost, liability risk, and other burdens. Unlike the current state under the EGRPRA, the regulator's responsibility no longer ends with an inventory of unnecessary regulations, but with the elimination of unnecessary regulations. In this way, the proposal provides actual regulatory relief.

Next, the proposed bill requires comprehensive reviews every five years, rather than the current once-per-decade requirement. A shorter interval between reviews will prompt regulators to move more quickly to relieve the burden of outdated regulations or identify those that are otherwise unnecessary. Given the increasingly fast pace of technological innovation, a more frequent regulatory review cycle is critical to ensuring that regulations keep pace with the market and do not stifle innovation or beneficial change.

Indeed, the appropriateness of a five-year review cycle was recognized by Dodd-Frank, which requires the CFPB to review "each significant rule or order adopted by the Bureau under Federal consumer financial law...not later than 5 years after the effective date of

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[2] Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation

the subject rule or order."[3] The CRRA further improves upon this structure by requiring an ongoing review during five-year cycles rather than a one-time review.

In addition to more frequent regulatory reviews, the CRRA calls for more thorough reviews. Under EGRPRA, regulators must only consider the regulatory burden on insured depository institutions. The CRRA greatly expands the scope of the reviews to include any 'covered person,' a term defined under Dodd-Frank to include "any person that engages in offering or providing a consumer financial product or service."[4] The CRRA's addition of covered persons requires that regulators assess the regulatory burden on a wider set of industry participants. This expansion is both necessary and appropriate to reflect the broad scope of the regulations promulgated by Dodd-Frank. Absent this expansion outlined in the CRRA, EGRPRA reviews will not consider the burden of regulation on many of the new and innovative market entrants that expand credit through business models that deviate from those of depository institutions. More frequent reviews may also turn up regulatory gaps that should be filled, allowing for regulations that ensure a level playing field while creating space for positive improvements.

The proposed CRRA legislation also adds clarity to the review process. Regulators must consider the impact of regulations on the financial safety and soundness of covered persons, as well as the impact on their risk profile and business models. Once these effects are known, agencies must determine the necessity, appropriateness, and impact of "continuing to apply such regulatory action to such covered persons."

Next, the proposed amendment expands the review requirement beyond the federal banking agencies. The CRRA's proposals extend the regulatory review requirement to the CFPB and the National Credit Union Administration (NCUA) Board. While both agencies have shown interest in taking part in the review process, with the NCUA voluntarily participating in the most recent EGRPRA review, neither are required to do so under current law.

Officially extending EGRPRA to these agencies will eliminate ambiguity and ensure that they undertake reviews of their regulations consistently in the future. This is particularly important for the CFPB given its expansive regulatory jurisdiction and the frequently high costs incurred by regulated entities to comply with some of its regulations. While the CFPB does have the responsibility discussed above under Dodd-Frank to review its "significant" rulemakings within five years of enactment, this statutory mandate is broadly discretionary. It has been interpreted by CFPB to not apply to many of its recent regulatory actions, nor does it establish a framework for the assessment. The CRRA

[3] Dodd-Frank §1022(d)(1); §1022(d)(2)
[4] Dodd-Frank §1002(6)

addresses both of these weaknesses by eliminating the CFPB's discretion as to which regulations to review and how to review them.

I therefore urge the full committee to advance the CRRA to ensure that the consumer financial regulatory regime is appropriately tailored and nimble enough to accommodate market changes or technological innovation.

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Once again, I appreciate the opportunity to present this testimony, and I look forward to working with the subcommittee to help develop practical solutions to improve the efficiency of mortgage market regulations.