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MORTGAGE BANKERS ASSOCIATION

July 26, 2023

The Honorable Patrick McHenry  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
2129 Rayburn House Office Building  
Washington, D.C. 20510

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

Dear Chairman McHenry and Ranking Member Waters:

On behalf of the Mortgage Bankers Association (MBA)<sup>1</sup>, I am writing to share our views on the planned Financial Services Committee markup of several real estate finance-related bills, scheduled for July 27, 2023.

**H.R. 4823, the *American Financial Institution Regulator Sovereignty and Transparency Act (Loudermilk)***  
**Title I – H.R. 4737, the *Stop Executive Capture of Banking Regulators Act (Flood)***

**Background**

Title I of this legislation would require the Federal banking agencies to notify the House Financial Services Committee and the Senate Banking Committee prior to implementing any non-binding recommendation from the Chairperson of the Financial Stability Oversight Council or contained in an Executive Order. Each Federal banking agency, as well as the NCUA and the FHFA, would be required to provide a report containing the proposed implementation and the justification for such implementation and provide testimony upon request.

As drafted, the bill only applies to the Federal Reserve, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency (FHFA).

**MBA Recommendation**

MBA recommends that the bill text be amended to include the Consumer Financial Protection Bureau (CFPB) in the list of covered agencies.

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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).

## **H.J. Res. 66 (Williams)**

### **Background**

H.J. Res. 66 would nullify the CFPB's final rule, implementing Section 1071 of the *Dodd-Frank Act*, to mandate the collection and reporting of demographic data on small business loan applicants.

MBA continues to support a CFPB that operates in a transparent and consistent manner, while providing robust safeguards to consumers and clear rules for covered entities participating in financial markets (especially mortgage markets). While the CFPB small business reporting rule and protections for small business borrowers should not apply to loans to finance income-producing investment properties, the CFPB did not include an overall exemption for this loan category in its final rule. For this reason, MBA supports the joint resolution offered by Representative Roger Williams.

Section 1071 of the *Dodd-Frank Act* requires the CFPB to issue rules to implement requirements to report on lending to small businesses, particularly minority- and woman-owned businesses. On October 8, 2021, the CFPB issued a proposed rule under Section 1071, and, on January 6, 2022, MBA led a commercial real estate industry [comment letter](#) in response. In March 2023, the CFPB released its small business loan reporting final rule, the *Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)*.

Under the final rule, lenders who originate at least 100 small business loans in each of the preceding two calendar years are required to report certain demographic information. A small business has gross revenue of \$5 million or less in its most recent fiscal year and loans reportable under the *Home Mortgage Disclosure Act* (HMDA) will not need to be reported under the small business lending rule.

Lenders that originate at least 2,500 small business loans annually must collect data starting October 1, 2024. Lenders that originate at least 500 loans annually must collect data starting April 1, 2025. Lenders that originate at least 100 loans annually must collect data starting January 1, 2026.

The final rule exempts any HMDA-reportable loans, including loans secured by income producing multifamily property, but does not exclude all investment property loans.

### **MBA Recommendation**

Regardless of the outcome of the Williams resolution's full consideration, MBA recommends that the CFPB revisit its rule and clarify that the investment properties exclusion from Section 1071 applies to all investment property lending.

Section 1071 applies only to small business lending, and the Small Business Administration (SBA) and federal prudential regulatory agencies have long recognized that lending to finance income-producing investment properties is not small business lending.

Most commercial real estate lending involves the financing of investments in commercial and multifamily investment properties; therefore, the overlap between commercial real estate lending and small business lending under Section 1071 should be very narrow. That is, commercial real estate lending that is also small business lending under Section 1071 should, generally, be

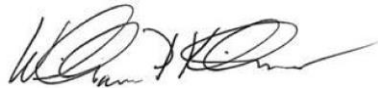
limited to small business loans secured by commercial property that the small business would occupy for its business.

MBA appreciates that the proposed rule recognized the distinction between financing income-producing properties and small business lending, at least in part, by proposing an interpretation that clarifies that loans secured by 1-4 unit dwelling investment properties fall outside the scope of Section 1071. We urge the CFPB to clarify also that all loans secured by investment property similarly fall outside the scope of Section 1071. A clarification of the clear boundary between small business lending and investment property lending would ensure that the information gathered under Section 1071 reflects true small business lending and would enable commercial real estate lenders to confidently screen out a category of loans that are not small business loans under Section 1071.

**Conclusion**

Thank you in advance for your consideration of the views expressed within this letter. We stand ready to work with all Members of the Committee to ensure a robust real estate finance market that is accessible and affordable – and works for all borrowers, renters, end users, and lenders.

Sincerely,

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

Bill Killmer  
Senior Vice President  
Legislative & Political Affairs

cc: All Members, House Committee on Financial Services