MORTGAGE BANKERS ASSOCIATION

April 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)[1], I am writing to share our views on the planned Financial Services Committee markup of Representative Andy Barr's Amendment in the Nature of a Substitute (ANS) to H.R. 2798, the *CFPB Transparency and Accountability Reform Act*, scheduled for April 26, 2023.

MBA continues to support a Consumer Financial Protection Bureau ("Bureau") 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). With the Bureau's funding structure now the subject of proceedings before the U.S. Supreme Court this fall, a broader fix to the agency's governance that would preserve a functioning marketplace for consumers and covered entities could take on heightened urgency. For these reasons, and consistent with our industry's position on the need for enhanced checks and balances within the agency's governance structure dating back to the *Dodd Frank Act* debate, MBA strongly supports several specific titles contained within the ANS.

Title I - Commission of The Bureau of Consumer Financial Protection Act

MBA applauds Representative Blaine Luetkemeyer for introducing H.R. 1410, now included as Title I within the ANS. MBA has long supported the conversion of the Bureau from an agency headed by a sole director to a multi-member, bipartisan commission – similar to other consumer or investor protection agencies such as the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Consumer Product Safety Commission. A commission structure will assure the consideration of a range of viewpoints in conducting regulatory functions with appropriate involvement by representatives of both political parties and a range of interests

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 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 2,000 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.

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including those of both consumers and industry stakeholders. A commission structure will also help ensure greater stability in the rules and prevent wild and destabilizing swings as the Bureau follows the agenda of a single unchecked Director.

Title II – TABS Act of 2023

MBA applauds Representative Andy Barr for introducing H.R. 1382, now included as Title II of the ANS. MBA strongly supports Title II, as subjecting the Bureau to the regular congressional appropriations process is an appropriate check and balance and basic tool of good governance, oversight, and transparency.

Title IV – CFPB Dual Mandate and Economic Analysis Act

MBA applauds Representative Tom Emmer for introducing H.R. 2489, now included as Title IV of the ANS. MBA supports Title IV that would establish an Office of Economic Analysis (OEA) within the Bureau to review proposed rules, guidance, orders, and regulations and their impact on choice, price, and access to credit – and publish such reviews in the Federal Register. Additionally, the OEA would be charged with measuring existing rules and regulations to determine their success in solving specifically identified problems – and publishing those reviews as well. The OEA would serve to justify or alter the Bureau's existing supervisory and regulatory framework and ensure consumers and market participants have a clear understanding of what the agency is targeting through its regulatory actions.

Title V – Transparency in CFPB Cost Benefit Analysis Act

MBA applauds Representative Alex Mooney for introducing H.R. 1313, now included as Title V of the ANS. In 1993, President Bill Clinton signed E.O. 12866[2] to foster clear "rules of the road" for industry participants without curtailing innovation, access, or consumer protections. By requiring the CFPB to conduct and publish more meaningful cost benefit analysis for rulemakings, Title V will help limit duplicative and overly burdensome proposals.

For example, the cost of total mortgage loan production expenses – commissions, compensation, occupancy, equipment, and other production expenses and corporate allocations – increased to a high of $12,450 per loan in the fourth quarter of 2022, up from $11,016 per loan in the third quarter of 2022. From the third quarter of 2008, loan production expenses have averaged $7,068 per loan. The Bureau can help reduce the cost of providing mortgage credit and make home ownership more affordable by ensuring the costs of regulations imposed on industry are fair, transparent, and appropriate. The need for such analysis is particularly acute at a time when the nation is experiencing an affordability crisis.

Title VI – Making the CFPB Accountable to Small Businesses Act

MBA applauds Representative Scott Fitzgerald for introducing H.R. 1749, now included as Title VI of the ANS. MBA believes the Small Business Regulatory Enforcement Fairness Act (SBREFA) process has proven to be a valuable tool that helps aid in the early identification of key issues and unnecessary burdens during the rulemaking process. As previously noted, the costs of complying with regulations imposed by the Bureau can be extensive, and (as contemplated by this title) proposed rules should more adequately consider a covered entity's size and ability to adhere to newly imposed requirements.

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[2] https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf

Conclusion

MBA supports the ANS to H.R. 2798, and appreciates the authors' strong, collective focus on improving the way the Bureau's covered entities – including members of the mortgage industry – would be regulated under this proposed new construct. We appreciate the thoughtful work and consultation that went into crafting this comprehensive legislation.

Thank you in advance for your consideration of the views expressed within this letter.

Sincerely,

Bill Killmer
Senior Vice President, Legislative & Political Affairs

cc: All Members, House Committee on Financial Services