MBa®

MORTGAGE BANKERS ASSOCIATION

January 29, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, U.S. Capitol Building
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, U.S. Capitol Building
Washington, DC 20515

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
2221 Rayburn House Office Building
Washington, DC 20515

Dear Speaker Pelosi, Minority Leader McCarthy, Chairwoman Waters and Ranking Member McHenry:

On behalf of the Mortgage Bankers Association (MBA), I am writing to express the substantive concerns that have led to our opposition to the *Comprehensive CREDIT Act of 2020* ("*CREDIT Act*") scheduled to be considered and voted on by the U.S. House of Representatives on January 29, 2020.

MBA has long recognized the value of innovation in credit scoring models. For this reason, we have consistently supported efforts to incorporate new data and modeling techniques into existing models, provided those developments increase the predictive value of the models. Nonetheless, certain provisions within the *CREDIT Act*, and a number of amendments proposed to the bill, raise concerns.

Title V of the CREDIT Act gives authority to the Consumer Financial Protection Bureau (CFPB) to oversee the development of credit scoring models and analyze the impact of new data and modeling techniques on underserved communities. This Title also provides CFPB authority to prohibit credit scoring model developers from including certain inputs.

MBA has serious concerns with the proposal in Title V since it may undermine the predictive value of credit underwriting practices and models. At a high level, the role of federal regulators with respect to credit scoring models should be to ensure such models exceed a minimum threshold of predictive capacity, while also remaining in compliance with fair lending requirements. If the CFPB or any other regulator was able to regularly change the weighting of various model inputs, or remove certain inputs altogether, the predictive capacity of the models could be seriously jeopardized, which could result in less sustainable mortgage lending and harm the very consumers that policymakers and market participants are attempting to better serve.

More specifically, we would caution that amendments to the Fair Credit Reporting Act (FCRA) not require "downstream" users of credit scores, such as mortgage originators, mortgage servicers, and mortgage insurers, to be subject to new requirements on the validity of these models. Further, any new requirements contemplated by Congress should be within the purview of prudential

regulators, *in consultation with* CFPB and other regulators, and harmonized with existing requirements already enforced by these regulators.   Finally, as noted above, the CFPB or other regulators should not be granted authority to deem certain model inputs as "inappropriate" for reasons other than those already provided under fair lending laws.

Title I includes a provision that has the potential to increase uncertainty for lenders and consumers alike by providing injunctive relief under FCRA. This proposal could create a new patchwork quilt of FCRA interpretations, as opposed to a national standard administered by the Federal Trade Commission and the CFPB. The likely result would be greater confusion for consumers seeking relief, increased legal liability and uncertainty for mortgage lenders and, ultimately, increased cost of credit for consumers. MBA recommends that Congress fully contemplate the potential consequences of this provision before advancing the legislation.

Lastly, the revised amendment offered by Rep. DeSaulnier directs the GAO to study how credit reports and scores are used in housing determinations and whether or not such use can amount to "banned red-lining." Since "banned red-lining" is not a technical legal term, it is unclear how this analysis would be conducted and whether critical factors considered during a traditional disparate impact analysis – like the existence of a substantial legitimate justification – will be included within the GAO's study.   Because of this lack of clarity, MBA strongly opposes this amendment.

Broadly, MBA welcomes efforts to promote accuracy, predictiveness, and innovation in the credit scoring market. Given the importance of our nationwide system of consumer data flow to the mortgage lending process, MBA must also advocate for consistency and certainty in FCRA enforcement and supervision.

Thank you as always for the consideration of the views expressed within this letter. We look forward to our continued work together to promote a more competitive and sustainable real estate finance market in the United States.

Sincerely,

Bill Killmer
Senior Vice President
Legislative and Political Affairs

cc: All Members, U.S. House of Representatives