Consumer Federation of America

December 4, 2017

Dear Senator,

This week, the Senate Banking Committee is scheduled to consider S. 2155, the "Economic Growth, Regulatory Relief, and Consumer Protection Act." We are writing on behalf of the Consumer Federation of America (CFA)[1] to urge you to oppose this bill. This bill rolls back important consumer protections and repeals or weakens a number of achievements in the Dodd-Frank Act and other critical laws designed to ensure consumers, investors, and honest market participants are appropriately protected from abuses in the marketplace.

In this letter, we will primarily focus on concerns CFA has with Title I of S. 2155. The provisions discussed below are among the sections that raise the most serious concerns. They do not, however, represent all of the concerns that CFA has with this legislation. At the end of this letter we will also express our support for certain amendments that seek to rectify particularly problematic provisions in this bill or conditions in the marketplace.

I. Concerns in Title I: Improving Consumer Access to Mortgage Credit

Numerous sections within Title I of S. 2155 will undermine consumer access to mortgage credit and weaken consumer protections in the mortgage market. In particular, the following provisions would weaken consumer protections.

Section 101 – Minimum Standards for Residential Mortgage Loans
A decade ago, Americans across the country began to witness how our poorly-regulated mortgage market would contribute to a major economic crisis not seen since the Great Depression. In 2010, Congress rightfully put into place new safeguards to protect consumers and our economy from the shoddy practices we saw in the subprime mortgage market. Only the most fair and transparent mortgages would be granted a safe harbor status, with others subject to close scrutiny.

This section would grant blanket "qualified mortgage" safe harbor protection with a reduced set of consumer protections for mortgage loans originated and held in portfolio by depository institutions with $10 billion or less in assets. One of Dodd-Frank's fundamental achievements was the establishment of strong protections against marketing mortgage loans to consumers without being able to demonstrate a clear assessment of their ability to repay the loan under the terms offered. The streamlined requirements in this section would, for example, allow loans with terms longer than 30 years, as well as adjustable rate mortgages with weakened protections

---

[1] Consumer Federation of America (CFA) is a national organization representing approximately 300 organizations at the state, local and national level that conducts public education and policy analysis on behalf of consumers, with a particular focus on low- and moderate-income consumers.

against unsafe terms, to benefit from the QM safe harbor. The QM safe harbor was designed as a means for lenders to reduce their liability under the Dodd-Frank Act's ability to repay requirements by originating loans with enhanced documentation requirements and limited features. It was not meant to provide an "escape clause" from these provisions.

Some lenders have argued that this provision is justified because lenders who hold loans on their balance sheets are naturally going to exercise more caution in underwriting loans and therefore should not have to comply with the full set of standards that apply to QM in order to receive its relief from liability. But if lenders are, indeed, exercising more caution, then they should be willing to accept full responsibility for the underwriting and the liability for failing to do so. By applying this exemption to loans held on the originator's balance sheet and on any subsequent buyer's balance sheet, the provision weakens protections not only for the regional lenders for whose benefit it is advocated, but potentially for the largest banks in the country as well.

Section 103—Exemption from Appraisals on Real Property Located in Rural Areas
Reliable appraisals are an important way to protect lenders, investors and consumers by verifying the value of the collateral standing behind a mortgage. This provision would allow lenders to waive appraisal requirements for purchases under $400,000 if they have been unable to obtain one by the time of closing. As written, this provision would apply to the vast majority of homes in rural areas, where home prices historically are significantly lower than national medians. The rural median home price is $114,000 according to a Center for American Progress analysis of 2015 American Housing Survey data. While the provision provides some protections, including a requirement to attempt to obtain appraisals from at least three appraisers, waiving the requirement for some valid, third party assessment of a property's value undermines the basic underwriting principle that a mortgage loan should not exceed a property's value. The committee should reject this provision and search for further analysis and alternatives in rural areas where appraisals are difficult to obtain.

Section 104 – Home Mortgage Disclosure Act Adjustment and Study
The Home Mortgage Disclosure Act (HMDA) has helped to combat the pernicious effects of redlining and mortgage discrimination. This provision would weaken the important reporting function that the HMDA was meant to provide when enacted in 1975. It would do so by exempting institutions that have originated fewer than 500 mortgage loans and 500 open-ended credit lines in each of the last two years from the expanded data reporting required by the Consumer Finance Protection Bureau (CFPB). The CFPB has estimated that this exemption would apply to 85 percent of the reporting institutions covered by HMDA. Lenders already collect most if not all of the data required in the CFPB's rule. As such, the purpose and value of this provision is unclear, and certainly is outweighed by the importance of assuring that HMDA data is as complete as possible to assure accurate assessments of mortgage lending activity across the country.

Section 107 – Protecting Access to Manufactured Homes
This section would reduce consumer protections in a part of the market that disproportionately serves low and very low-income consumers, as well as those in rural areas. It would undermine efforts to diversify financing for manufactured homes by reducing current constraints on steering borrowers to financing entities associated with the home seller. While the section would require some disclosures, including requiring sellers to recommend at least one non-affiliated creditor,

and prohibits retailer compensation based on the loan, these provisions fall well short of what is needed to protect borrowers by aligning the interests of borrowers and sellers.

Section 109 – Escrow Requirements Relating to Certain Consumer Credit Transactions
This section would exempt depositories with less than $10 billion in assets and that have originated fewer than 1,000 mortgage loans in the previous year from maintaining escrow accounts for mortgages that they service. Failure to maintain proper or adequate escrow accounts was one of the significant harms to consumers in the run-up to the financial crisis. Current law requires these institutions to maintain escrow accounts for high-cost loans, which are the most likely to burden consumers. Eliminating this requirement does not serve consumers and could expose lenders, servicers and borrowers to shortfalls to pay taxes and insurance, leading to delinquencies and potential defaults.

II. Concerns in Title II—Regulatory Relief and Protecting Consumer Access to Credit

Section 212 – National Securities Exchange Regulatory Parity
This section would create potentially sweeping preemption of state oversight of small, local securities offerings without increasing federal oversight to compensate. Congress has exempted certain "covered securities" from state-level protections against fraud and abuse, but only where these securities meet listing standards imposed by leading national exchanges. This legislation, however, would sweep aside the requirement that companies meet listing standards comparable to those of leading national exchanges in order to be deemed "covered securities." As a result, smaller, more local offerings could be "designated as qualified for trading" on an exchange without any assurance that an exchange will impose sufficient quantitative and qualitative standards designed to ensure investors are protected from harm.

This proposal is particularly troubling in the context of recent discussions regarding possible creation of a new venture capital exchange, with listing standards specifically designed for the types of smaller offerings appropriately subject to state review. If this approach were adopted, investors could be left without the protections afforded by state oversight, without the protections afforded by high listing standards, and without any reasonable hope that the SEC will be able to provide effective oversight at the federal level. We therefore urge you to oppose this provision.

III. Concerns in Title III—Protections for Veterans, Consumers and Homeowners

The recent corporate scandals by Equifax and Wells Fargo highlight the need for more consumer protections and not fewer, weaker regulations. Unfortunately, the protections included in Title III do not adequately protect consumers from the types of abuses and failures that have become all too common in recent years.

Section 301 – Protecting Consumers' Credit
The massive data breach at Equifax has served as a stark reminder to the outsized influence that credit reporting agencies have on consumers and the economy, but this bill does little to address the pernicious impact of this and any future breaches. Section 301 purports to include protections for consumers who have suffered as a result of credit report fraud or breaches. These provisions, however, include provisions that many states are already requiring such as the one free credit

freeze and unfreeze annually. Further, this language includes state preemption language that could put stronger state protections at risk, thereby potentially limiting stronger protections from being implemented in states. In addition, other legislation, such as the Freedom from Equifax Exploitation (FREE) Act, which would give consumers more control over their credit and personal information, includes more extensive consumer protections than this provision provides.

Section 302 – Protecting Veterans' Credit
While section 302 seeks to protect veterans' credit, it focuses primarily on medical debt by amending the Fair Credit Reporting Act to prohibit a veteran's medical debt from being reported to credit bureaus for a year, and by removing a fully paid veteran's medical debt that has been charged off from credit reports. While this provision is laudable, it should be strengthened to address a wider range of credit reporting abuses. In addition, many of these benefits are already available to consumers due to a State Attorneys' General settlement with the credit bureaus this summer. This settlement provides a six-month delay for reporting of medical debt to credit bureaus and also requires certain paid-off medical debts to be purged from credit reports.[2]

IV. Amendments CFA Supports

A number of amendments have been introduced to rectify some of the particularly troubling provisions in this bill and conditions in the financial marketplace. We will highlight some of the amendments we support (and one that we oppose), though this is not an exhaustive list.

- We support Amendment #9 offered by Senator Brown, which eliminates section 109, the exemption from escrow requirements. As we stated above, section 109 does not serve consumers and could expose lenders, servicers and borrowers to shortfalls to pay taxes and insurance, leading to delinquencies and potential defaults.

- We support Amendment #11 offered by Senator Brown, which limits garnishments and offsets of income for debt relating to education loans.

- We support Amendment #24 offered by Senator Reed, which allows the CFPB to provide greater protection to servicemembers. Especially given the modest protections included in section 302, this provision would enable the CFPB to provide necessary robust protections for servicemembers.

- We support Amendment #25 offered by Senator Reed, which would require reporting companies to disclose whether they have established procedures to recoup the costs of fines that have been paid by the reporting company from those managers responsible for the violations. This Amendment would ensure that irresponsible corporate executives, rather than shareholders, pay fines and penalties.

- We support Amendment #29 offered by Senator Reed, which requires consideration of federal fines and penalties and violations of the Servicemembers Civil Relief Act and the

---

[2] https://www.nclc.org/media-center/tens-of-millions-consumers-benefit-from-new-rules.html

Military Lending Act. It is important that firms who defraud servicemembers be held accountable and be deterred from wrongful conduct.

- We support Amendment #31 offered by Senator Reed, which would add an assessment to the Treasury report on the risks of cyber threats, of whether executives, board members, and other similar fiduciaries at the studied financial institutions or participants in the capital markets are sufficiently assessing their cyber vulnerabilities and preparedness. Given the increased risk of cyber threats, it is critical to understand whether and to what extent companies' management are taking seriously these threats and are actively engaged in mitigating them.

- We support Amendment #32 offered by Senator Reed, which would add an analysis to the SEC study on algorithmic trading, of whether algorithmic trading is susceptible to cybersecurity risks and whether any individuals or entities engaged in algorithmic trading are sufficiently assessing and prepared for cyber vulnerabilities. Given the increased use of algorithmic trading, it is critical to understand what risks this activity faces and how those risks can adversely affect the market.

- We support Amendment #34 offered by Senator Reed, which would promote transparency by permitting the Public Company Accounting Oversight Board (PCAOB) to allow its disciplinary proceedings to be open to the public. This will help to enhance incentives for compliance and thus promote accurate financial reporting.

- We support Amendment #35 offered by Senator Reed, which would update and enhance civil penalties under the federal securities laws, strengthening the deterrent effect for violating federal securities laws.

- We support Amendment #36 offered by Senator Reed, which would require the Comptroller General to conduct a study regarding the effects of the Jumpstart Our Business Startups (JOBS) Act on the number of initial public offerings. Having a better understanding of the effects of Congress' previous actions in the capital formation arena will aid in designing better legislation in the future.

- We support Amendment #39 offered by Senator Warren, which replaces section 301 with the FREE Act providing stronger tools for consumers to control their credit reports.

- We support Amendment #67 offered by Senator Schatz to modify the requirements for exemptions from appraisals of real property located in rural areas by setting the maximum loan balance eligible for exemption at 115 percent of local median home value, excluding manufactured homes, and requiring that a valuation of the property be made using a Federal Financial Institutions Examination Council FFIEC determined alternative method.

- We support Amendment #68 offered by Senator Schatz to make relief afforded in sections 101, 103, and 104 contingent on the relevant entity not being subject to a

regulatory enforcement action for a 5-year period. This amendment also modifies exemption thresholds in section 104 to 100 mortgage loans and 200 open-end credit lines.

- We support Amendment #70 offered by Senator Cortez Masto, which reinstates the CFPB's mandatory arbitration rulemaking, with an exemption for depositories with less than $10 billion in total consolidated assets. Given the reduced regulatory oversight that would result from many provisions of S. 2155, it is particularly important that consumers be able to collectively organize to hold bad actors in the financial services industry accountable.

- We support Amendment #73 offered by Senator Cortez Masto to strike section 104.

- **Oppose**: We strongly oppose Amendment #108 offered by Sen. Perdue that would extend this ill-advised protection in Section 101 to some non-depositories.

V. Conclusion

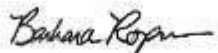
S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, removes critical authority from regulatory agencies and entrusts more of the nation's financial wellbeing to financial institutions, which have shown time and time again they are incapable of self-monitoring and self-policing. As such, it opens the door to a renewed round of financial crises that have in recent years been the real culprits in slowing growth and harming consumers. This bill could increase harm to consumers and investors and foster instability in the financial marketplace. We urge you to oppose S. 2155

Sincerely,

Rachel Weintraub
Legislative Director and General Counsel

Barry Zigas
Director of Housing Policy

Micah Hauptman
Financial Services Counsel



Barbara Roper
Director of Investor Protection