



Consumer Federation of America

March 5, 2018

Dear Senator,

This week, S. 2155, the “Economic Growth, Regulatory Relief, and Consumer Protection Act” is expected to be on the Senate floor. We are writing on behalf of the Consumer Federation of America (CFA)¹ to urge your opposition to 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.

In addition to the extensive substantive problems in the bill, we object to the flawed process by which the bill is coming to the Senate floor. There was not sufficient opportunity for meaningful debate, nor serious consideration of all of the implications of the numerous provisions in the bill. Making matters worse, we also understand that it is possible that the version of the bill that will be ultimately voted on by the Senate will include new or different provisions that neither the public nor members of the Senate have been able to consider thoughtfully. Based on these procedural deficiencies alone, we urge you to oppose this bill.

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.

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.

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 requirements in this section would, for example, allow loans with terms longer than 30 years, as well as adjustable rate mortgages with weakened protections 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 change the terms on which securities are deemed “covered securities,” and thus exempt from state oversight. This section would remove any requirement that these securities meet conditions comparable to the current listing standards on leading national exchanges. Instead, any security listed on an exchange that is a member of the National Market System (NMS) would be exempt from state regulation and oversight. Because this section would not establish any core quantitative or qualitative requirements for covered securities to replace those eliminated by the bill, it would likely accelerate an already troubling race to the bottom in listing standards among NMS members. Moreover, this section of the bill does not sufficiently protect against the possibility that a venture exchange could eventually be established specifically to meet the bill’s requirements for state preemption. If this were to occur, smaller, more local offerings typically overseen by states could be “designated as qualified for trading” on such an exchange without any assurance that they can meet basic quantitative and qualitative standards designed to ensure investors are appropriately protected.

In short, this section would drastically weaken standards for securities to be listed and traded on exchanges. It would eliminate protections afforded by state oversight, fail to replace the current meaningful protections afforded by high listing standards with a comparable

alternative, and leave investors without any reasonable hope that the SEC will be able to provide effective oversight at the federal level.

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. 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

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

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



Christopher L. Peterson
Senior Fellow