



MORTGAGE BANKERS ASSOCIATION
OF METROPOLITAN WASHINGTON



MARYLAND
MORTGAGE
BANKERS AND BROKERS
ASSOCIATION



June 9, 2020

Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Chairman Mendelson, Chair Pro Tempore McDuffie and Members of the Council of the District of Columbia,

On behalf of the American Financial Services Association (“AFSA”)ⁱ, the Mortgage Bankers Associationⁱⁱ, Mortgage Bankers Association of Metro Washington, Virginia Mortgage Bankers Association and Maryland Mortgage Bankers Association we would like to offer comments related to the proposed amendment language in Section 304 (“Emergency credit alerts”) in the Coronavirus Support Emergency Amendment Act of 2020 (Bill 23-0757), the Coronavirus Support Temporary Amendment Act of 2020 (Bill 23-0758) and the Coronavirus Support Congressional Review Emergency Amendment Act of 2020 (Bill 23-0759).

In particular, we are concerned with Council Member White’s proposed amendment that would prohibit users of credit reports from using or taking into consideration any adverse information in a report that occurred during any public health emergency if the report includes a personal statement. The amendment would also subject users to private rights of action and Attorney General enforcement for violations of this new provision. In essence, this would expose all users—from mortgage and auto lenders to potential employers, insurers, and even government agencies—to significant litigation and liability risk for any negative decision, as it would be virtually impossible for them to prove that they did not consider certain information on a credit report or exclude credit report information that may or may not reflect pandemic information (there’s no way of knowing) from a credit decision.

We believe that this proposal would have unintended and wide-ranging consequences that would serve only to impede rather than facilitate the financial recovery of DC residents affected by the COVID-19 pandemic. Most concerning, with respect to real estate finance, is the potential for unintended consequences related to working in partnership with the federal housing programs. Many middle-class families obtain mortgage credit through programs offered by Fannie Mae, Freddie Mac, the Federal Housing Administration and the Veterans Administration. Lenders working to qualify consumers in Washington, DC for these loans to purchase or refinance a home must use the algorithmic underwriting models employed by these federal government agencies. If this proposal becomes law, it could expose lenders to litigation risk for credit decisions made using these models.

The District of Columbia already has powerful tools to ensure consumer protection. Attorney General Racine recently filed a lawsuit against an online lender for deceptively marketing high-cost loans carrying interest rates far above the District’s cap. This a great example of using the powers the District of Columbia already possesses to help consumers who have been wronged by a user of consumer report and why we believe the problems consumers face can be addressed without legislation like this.

Additionally, federal investors and agencies are committed to assisting consumers affected by COVID-19 hardships recover financially. For example, on March 9, 2020, all five federal banking agencies and the Conference of State Bank Supervisors issued a [joint statement](#) to “encourage financial institutions to meet the financial needs of customers and members affected by the coronavirus.” In response to the pandemic, we have seen lenders and other users of consumer reports from across the business community proactively reach out to and provide unprecedented relief to consumers negatively affected by COVID-19.

In conclusion, we believe there are already existing methods in the credit reporting system for users of credit reports to address the concerns behind this new provision while providing relief to individuals whose credit reports and scores are affected by economic distress related to the COVID-19 pandemic. In addition to the methods that already existed, we believe that the Federal CARES act, guidance from the CFPB and efforts taken by lenders around the country have addressed these concerns as well. For these reasons we ask you to remove the new provision restricting users of credit reports.

We thank you for your attention to this matter. If you have any questions, or if we can be of assistance to you in any way, please do not hesitate to contact any of us at your convenience.

Sincerely,

American Financial Services Association
Mortgage Bankers Association
Mortgage Bankers Association of Metro Washington
Virginia Mortgage Bankers Association
Maryland Mortgage Bankers Association

CC:

The Honorable Muriel Bowser
The Honorable Karl A. Racine

ⁱ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

ⁱⁱ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, 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 over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA’s website: www.mba.org.