



July 20, 2022

The Honorable Michael Barrett
State House, Room 109D
Boston, MA 02133

Dear Senator Barrett:

On behalf of the Massachusetts Bankers Association's (MBA) more than 120 commercial, savings and cooperative banks and federal savings institution members with 72,000 employees located throughout the Commonwealth and New England, I am writing to express our views on several proposed amendments to S 3018, the Senate amendment to H 5034, An Act Relating to Economic Growth and Relief for the Commonwealth. As you know, the Senate is expected to consider this legislation later this week.

Our views on specific amendments are below:

Support Amendment #79, Crumbling Foundation Relief Agency

MBA strongly supports Amendment #79, filed by Senator Anne Gobi (D-Spencer), which establishes a Crumbling Concrete Assistance Fund to help homeowners in the central and western parts of the state whose properties may be affected by faulty concrete which contains the mineral pyrrhotite. The existence of this mineral can cause these foundations to deteriorate and crumble, leaving the homeowner with almost no choice but to spend their own funds to pour a new foundation for their property. Amendment #79 creates a \$2.5 million fund to assist these homeowners in remediating this crumbling foundation issue and we urge you to support it during the Senate debate.

Oppose Amendment #208, Consumer Protection in Real Estate Appraisals

While MBA supports strong consumer protections with regards to real estate appraisals, we are concerned that Amendment #208 eliminates existing options for banks and other lenders to order valuation products from non-appraisers that are permitted under federal law. For example, the amendment appears to prohibit lenders from ordering evaluations in the Commonwealth, which would impact the cost of collateral risk decisions and impose higher costs to consumers in certain circumstances. In addition, it appears to prohibit real estate brokers, agents and other professionals who are currently accepting non-appraisal assignments in compliance with federal law.

Evaluations are limited in scope and are designed to adhere to the requirements in the federal Interagency Appraisal and Evaluation Guidelines. Lenders use evaluations for things such as for internal collateral due diligence reviews or to make a risk decision for certain smaller loans. Because these products are designed to be used for lower-risk transactions, they can be completed more quickly than a full appraisal and they generally lower the cost to the borrower. Most importantly, federal law explicitly permits lenders to use these products.

For these reasons, we ask that you oppose Amendment #208.

Oppose Amendments #296 and 363, Real Estate Transfer Fees

While MBA and our member institutions strongly believe that more affordable and market rate housing should be built in the Commonwealth, we are opposed to proposals to impose new transfer taxes

on real estate transactions to fund these initiatives. Taxing certain home sales will increase income stratification, raising the already expensive market rate price to become a homeowner. In particular, these taxes will be another barrier to homeownership for middle- and lower-income individuals and families since in some cases their transactions are more complicated due to special financing or assistance programs. The layering of a complicated transfer tax will further limit their ability to become homeowners and build equity.

In addition, transfer taxes are a logistical nightmare for buyers, sellers, lenders, closing attorneys, and other stakeholders and will add significant costs and complexity to the mortgage market. Many of these additional costs will be passed on to homebuyers or sellers. We urge you to oppose Amendments #296 and 363.

Oppose Amendment #338, Public Bank

MBA strongly opposes Amendment #338, which would establish a state-owned bank in the Commonwealth. The Amendment details an extensive list of goals for the public bank to achieve and while these may be laudable initiatives, the breadth of the objectives would require a staff of experts in a broad range of fields and the institution's board and senior management would need to manage an extremely diverse portfolio of loans, investments, and other financial instruments. It is particularly concerning that there is no requirement that any of the 10 members of the Board of Directors have any experience in banking or finance, let alone the technical expertise to oversee the bank's extensive mandate.

Under the Amendment, the public bank would be capitalized with \$200 million in state funds with the Treasurer then being required to maintain a minimum balance of state funds in the bank of at least \$1.4 billion. Municipalities and quasi-public entities would also be eligible to deposit funds in the public bank. While it is unclear how large the public bank could become, given its expansive mandate, it will be a substantial competitor to local banks in attracting these deposits. The bills also specifically allow the public bank to pay interest on public deposits, further exacerbating the competitive concerns since the bank could be subject to pressure from government officials to maximize their rate of return.

Funds deposited in the state bank would also not be insured by the Federal Deposit Insurance Corporation (FDIC) but would instead be guaranteed by the Commonwealth, putting taxpayer monies at risk should the bank encounter any financial difficulties and likely negatively affecting the state's bond rating. Finally, we call your attention to a report released in 2011 by a 21-member Special Commission created by the Legislature to determine whether the creation of a state-owned bank was appropriate. The Commission recommended that "the Legislature not pursue establishing a bank owned by the Commonwealth or by a public authority constituted by the Commonwealth." Key reasons include high initial capital investment by the state and most notably, "Massachusetts has a prominent network of public agencies, quasi-public agencies, and non-profits which offer various lending programs and services, including lending to help support infrastructure."

For these and many other reasons, we ask that you oppose Amendment #338 when it is before the Senate for a vote.

Oppose Amendment #377, Debt Collection Fairness Act

The Association continues to have concerns with the provisions in Amendment #377, which includes the language of the Debt Collection Fairness Act. Specifically, under the amendment, the statute of limitations for all consumer loans including unsecured credit lines is shortened from six to four years. Any voluntary payment towards a defaulted consumer loan does not restart the limitation period unless the payment completely cures the default and pays off any delinquency. This is inconsistent with

Massachusetts caselaw and could inadvertently incentivize creditors to pursue formal remedies, including filing lawsuits, rather than working directly with consumers to settle their debts.

In addition, to preserve their rights, creditors may have to enter into shorter voluntary repayment agreements with higher payments if an account is nearing the statute of limitations, where if it were clarified that payments restart the limitations period, this would not be an issue. We are also concerned with several other technical provisions in the amendment, including a lack of consistency and clarity in several of the definitions. For these reasons, we ask that you oppose Amendment #377.

Oppose Amendment #507, Promoting Inclusive Entrepreneurship and Economic Justice

MBA is strongly opposed to two specific provisions in Amendment #507 that will have a significant negative impact on state-chartered banks and the small businesses they serve throughout the Commonwealth. Specifically, Sections X5 and X7 mandate a massive new data collection mandate that will conflict with federal law and regulation and reduce the availability of credit to businessowners. Section X7 requires the Division of Banks to promulgate broad regulations mandating banks and other lenders to report enormous amounts of data on their loans to small businesses, including the “average annual percent rates, default rates, and fees” associated with these loans.

Unlike residential mortgage lending, small business loans are tailored to the unique circumstances of the individual business, so the rates, terms and fees applicable to each loan may differ substantially. In addition, the financial position of the business also determines the loan terms in many cases, with personal guarantees, collateral, and cash reserves among the items underwriters consider.

In addition, Section X5 requires the Treasurer to only deposit state funds into institutions that comply with the small business data collection requirements. Since federally chartered institutions are not subject to regulations promulgated by the Division of Banks, it is unclear whether the Treasurer will be unable to deposit funds into these institutions, a group that includes many of the large, multi-state institutions operating in the Commonwealth. Reducing the number of banks able to accept state funds will limit the Treasurer’s options for contracting with institutions to manage the state’s banking business, potentially raising costs for taxpayers.

Finally, the federal Consumer Financial Protection Bureau (CFPB) has been working to promulgate a rule mandating small business lending data collection for nearly a decade. The rule, which is required under Section 1071 of the Dodd-Frank Act, has been delayed because of the complexity of collecting and reporting data on small business loans. However, we expect a regulation to be finalized in early 2023 and it is likely that some or all of the federal rules will conflict with the state requirements. For these reasons, we urge you to oppose Amendment #507.

Oppose Amendment #510, Nonprofit Receivership Authorization

MBA has serious concerns with Amendment #510, which appears to allow nonprofit entities to purchase properties directly out of receivership without the receiver foreclosing on the property. While there may be limited circumstances where a local nonprofit organization could purchase and renovate homes that are in the receivership process, the amendment gives substantial new powers to the courts to allow sales of properties in receivership without going through the traditional foreclosure process.

Specifically, it is unclear how the title is transferred, the property is valued or under what parameters a court could decide to effectuate the sale. In addition, there is no language detailing how the proceeds of the sale will be distributed or if the property owner retains any right to reside in the property during the receivership. There also appear to be only limited protections for the homeowner, mortgagee or other lienholders in this process.

For example, the language states that “with notice to the owner, mortgagee, and all interested parties, may allow for the sale of the property to a nonprofit entity for fair market value in its then current condition” without defining what type of and how the notice must be provided. Under the amendment, a property could also be sold only 30 days after the notice is provided – which leaves owners with little opportunity to bring their property up to code.

MBA believes that these policy concerns must be addressed to ensure that the rights of property owners, mortgagees and other lienholders continue to be protected in the state’s receivership process. We urge you to oppose Amendment #510.

Oppose Amendment #626, Good Faith

The Association opposes Amendment #626, which establishes a broad new standard for mortgage servicing in Massachusetts and will impose significant penalties on lenders and services for noncompliance. Specifically, the Amendment mandates that servicers act in “Good Faith” which is defined only as “honesty in fact and the observance of reasonable commercial standards of fair dealing.” Courts could interpret this statute in numerous ways, leaving mortgage servicers with no clear standards for interacting with borrowers. In addition, any violation of this undefined “good faith” standard would be considered a violation of Chapter 93A in addition to the other legal remedies in the amendment language.


Lenders and servicers are already subject to many state and federal requirements through existing laws and regulations. Amendment #626 would conflict with or override many of these mandates and for these reasons we urge you to oppose it.

Thank you for considering our views on these proposed amendments to S 3018. If you have any questions or need additional information, please contact us at any time.

Sincerely,



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