



November 9, 2020

Via Email: Tackey.Chan@mahouse.gov

The Honorable Tackey Chan

State House, Room 42

Boston, MA, 02133

RE: Amendments to H 5150, An Act making appropriations for the fiscal year 2021 for the maintenance of the departments, boards, commissions, institutions and certain activities of the commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements

Dear Representative Chan:

On behalf of the Massachusetts Bankers Association's (MBA) more than 130 commercial, savings and cooperative banks and federal savings institution members with 72,000 employees located throughout the Commonwealth and New England, we are writing to express our views on several amendments to H 5150, An Act making appropriations for the fiscal year 2021 for the maintenance of the departments, boards, commissions, institutions and certain activities of the commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements. As you know, the House is expected to consider this important piece of economic legislation this week.

Our views on several amendments are detailed below:

Support Amendments #91 & #92: Crumbling Foundations

Amendments #91 & #92, which were filed by Representative Brian Ashe, provide important relief to homeowners in central and western Massachusetts whose properties may be affected by faulty concrete poured by a Connecticut company. The concrete, which contains the mineral pyrrhotite, 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.

These amendments provide assistance for those that wish to have their foundations tested, provides relief on permitting fees for homeowners who replace their foundations and a process by which these homeowners may provide potential buyers with a written report that includes a statement regarding whether the foundation is made with concrete; whether the purchaser should have the foundation inspected by a structural engineer; as well as whether or not the owner has knowledge pertaining to the foundation condition - including whether or not any repairs were made to the foundation.

In addition, these amendments allow the Connecticut Foundations Solutions Indemnity Company, which was formed to assist homeowners in securing insurance coverage for crumbling foundations, to

operate in Massachusetts. We urge you to support these important amendments that will provide much-needed relief and guidance to these homeowners.

Amendment #110: Revise Student Loan Servicers Language

MBA opposes Amendment #110's Chapter 93L: Student Loan Servicers language, as currently written, as it is duplicative and poses compliance and operational issues for national banks servicing student loans in the Commonwealth. Our concerns arise from the fact that several provisions of the current language would place Massachusetts officials in the position of exercising "visitorial powers" over these institutions in violation of federal law.

As you may know, under 12 C.F.R. Section 7.4(a) and 12 U.S.C. 484, state officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring production of books or records or prosecuting enforcement actions, except in limited circumstances authorized by federal law... The regulation states: "[V]isitorial powers include: examination of a bank, inspection of a bank's books and records, regulation and supervision of activities authorized or permitted pursuant to federal banking law and enforcing compliance with any Federal or state laws concerning those activities, including through investigations that seek to ascertain compliance through production of non-public information by the bank, except as otherwise provided [elsewhere in this regulation]." Therefore, any requirement giving Massachusetts the right to investigate the student loan operations of a national bank, and/or examine or require the production of the books, accounts, records, and files of a national bank that services student loans, constitutes an impermissible exercise of visitorial authority. Similarly, any requirement that banks must submit reports or produce proprietary business data or written complaint responses would violate national bank preemption principles that give exclusive visitorial authority to the federal prudential regulators, including the Office of the Comptroller of the Currency (OCC).

As you're aware, national banks and other national financial institutions are comprehensively examined and regulated by prudential regulators to ensure safety and soundness as well as by the Consumer Financial Protection Bureau (CFPB) for compliance with the types of substantive provisions set forth in the bill. Further, federal law, including the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Federal Trade Commission Act prohibit Unfair, Deceptive or Abusive Acts or Practices (UDAAP). The Senate's language unnecessarily duplicates this provision. In addition, the OCC and FDIC enforce Section 5 of the Federal Trade Commission (FTC) Act which covers banks and bank servicers. Section 5 of the FTC Act, Ch. 311, §5, 38 Stat. 719, codified at 15 U.S.C. §45(a), prohibits entities from engaging in unfair or deceptive acts or practices in interstate commerce.

It is for these reasons MBA is opposed to the adoption of Amendment #110 as it is currently written. However, we would like to suggest an amendment creating a broad chapter 93L exemption for national banks, similar to those that have been adopted in our neighboring states of Rhode Island and Connecticut. MBA believes adoption of the language below would mitigate the concerns of our member institutions. Our suggested amendment, because of extensive existing federal oversight of banks servicing student loans, to be inserted at the end of the proposed Chapter 93L, is as follows:

Section 9. The provisions of this chapter shall not apply to any bank, out-of-state bank, credit union, federal credit union, or out-of-state credit union, bank holding company or any wholly owned subsidiary of any such bank, bank holding company or credit union, or any subsidiary where each owner of such subsidiary is wholly owned by the same bank, bank holding company or credit union.

Oppose Amendments #370, #374 and #542: Sales Tax Remittance

MBA and our member banks urge you to oppose a series of amendments (#370, #374 and #542) that would impose a new, costly mandate on banks, retailers and third-party payment processors requiring them to remit the sales tax on purchases in Massachusetts on a daily basis. As we've noted in testimony to the Legislature and a recent joint industry letter, real-time sales tax remittance has already proven unfeasible and cost ineffective which would impact millions of consumer credit or debit card payments or electronic funds transfers.

A study commissioned by the State Tax Research Institute concluded real time sales tax would "impose an estimated \$1.2 billion in nonrecurring costs" and "nearly \$28 million in annual, recurring costs on businesses operating in Massachusetts." This proposal will not raise any new revenue for the Commonwealth; it would merely try to change the cadence of remittance. We ask that you oppose these amendments during the House debate on H 5150.

Oppose Amendments #144, #524 and #675: Tax Increases

We strongly urge you to oppose several amendments imposing new taxes on businesses and individuals throughout the Commonwealth. MBA recently joined numerous statewide business groups and local chambers of commerce on a letter to legislators outlining "Guiding Principles for Revenues and the Recovery".

The letter notes that, "Employers of all sizes, across the Commonwealth, are wary of the fragile economy, growing and crippling cost pressures, and the very real impacts of remote work on both employee and employer behavior. In this environment of great uncertainty, significant changes to tax policy will exacerbate these considerations and slow the recovery that we are collectively working so hard to achieve." In addition, with the anticipated higher costs of unemployment insurance, paid leave and increasing health insurance premiums combined with the shift to remote work, "The barriers to exit for Massachusetts employers and employees has never been lower."

Given these reasons, "raising taxes at this time would be akin to shooting at a moving target with the potential for dramatic long term impacts for the Massachusetts economy." We ask that you oppose these amendments.

Oppose Amendments #585, #763, #766 and #777: Eviction/Foreclosure Moratorium Extension

This series of amendments imposes a new moratorium on evictions and/or foreclosures to replace the previous moratorium that expired on October 17. Some of these amendments (#585 and #763) also mandate unworkable new mortgage forbearance requirements.

Throughout the pandemic, our member institutions have provided relief to their customers in numerous ways, including loan forbearance and modifications, waiving fees, and assisting local small businesses through the Paycheck Protection Program (PPP) and other state and federal initiatives. While we understand that many homeowners and renters have lost their jobs or seen their incomes reduced significantly due to the pandemic, the forbearance requirements in these amendments place an

unsustainable burden on the banking industry by requiring lenders to forego up to 12 months of mortgage payments while mandating that they advance amounts needed to pay any taxes or insurance that is escrowed by the lender.

There are no documentation requirements for borrowers to verify job or income loss to qualify for forbearance or a loan extension and lenders must wait until the end of the loan term to recoup even the advanced escrow funds, which could be tens of thousands of dollars in some cases, depending on local property tax rates and insurance charges. In addition to requiring banks to forego these payments, the amendments also prohibit lenders from enforcing their liens through the foreclosure process for an extended time period.

Mandating that banks bear this burden at the same time policymakers are asking our industry to provide additional credit to assist with recovery efforts is not sustainable and will inherently force institutions to curtail or stop lending in other areas and increase the cost of credit for those who wish to purchase homes in the future. State and federal banking regulators may also impose additional restrictions on banking activities if institutions are forced to comply with the mandates in this bill. We urge you to oppose these amendments.

Conclusion

Thank you for considering our views on these amendments to H 5150. If you have any questions or need additional information, please contact us at any time.

Sincerely,



Jon K. Skarin
Executive Vice President



Brad S. Papalardo
Director, Government Affairs & Trust Services