

Statement for the Record
On Behalf of the
American Bankers Association
before the
Financial Institutions Subcommittee
of the
House Financial Services Committee
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The American Bankers Association (ABA) appreciates the opportunity to provide a Statement for the Record for this hearing, “A New Era for the CFPB: Balancing Power and Reprioritizing Consumer Protections.” ABA is the voice of the nation’s \$24.1 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard \$19.2 trillion in deposits and extend \$12.7 trillion in loans.

ABA members support strong consumer protections. Consumers are our customers, and we need to earn their trust every day to stay in business. While the CFPB has made some important contributions to consumer protection, we appreciate this opportunity for all those affected by the CFPB’s work to consider structural reforms that will improve the way the agency pursues its important mission. Like all government agencies, the CFPB must strike a balance that allows it to pursue its objectives without undermining other important values, including fairness to those it regulates. Since opening its doors in July 2011, the CFPB’s focus all too often has been on increasing the scope of its authority, rather than on instituting checks and balances to ensure that its authority is exercised wisely and fully for the benefit of consumers and consistent with law and due process.

There must be more accountability, and to accomplish this the ABA has long advocated for reforms that would help ensure that Americans continue to have access to the financial products they want and need, along with the protections they deserve. Several of these reforms have been noticed for this hearing. ABA strongly supports the following bills and Congressional Review Act Resolutions:

H.R. ___, the Consumer Financial Protection Commission Act, by Rep. Bill Huizenga (R-MI). Amending the Bureau’s governance structure by creating a Senate-confirmed, bipartisan commission is sorely needed to address the extremely broad authority of the Bureau’s sole director. A commission would promote accountability, fairness, and stability while also encouraging balance and deliberation in the Bureau’s rulemaking and enforcement activity. Further, the bipartisan commission governance model would provide an appropriate check on the exercise of the Bureau’s authority. Stable and balanced leadership promotes sound

policymaking, innovation in the financial services arena, and ultimately effective consumer protection.

H.R. 654, the Taking Account of Bureaucrats' Spending (TABS) Act, by Rep. Andy Barr (R-KY). Uniquely among federal agencies, the CFPB receives its funding directly from the Federal Reserve System based solely on a request from the Bureau's director. ABA strongly supports making the Bureau subject to Congressional appropriations. Funding the Bureau through the annual appropriations process would make it more accountable to Congress (and taxpayers) while making it harder for the CFPB to ignore the plain meaning of laws and regulations.

H.R. 1652, the Rectifying UDAAP Act, introduced by Rep. Andy Barr (R-KY). The legislation would clarify standards for unfair, deceptive, and abusive acts and practices (UDAAP) supervision and enforcement actions brought by the Bureau. Innovation by banks and the broader financial services providers has been limited by the lack of clarity of the definition of the term "abusive" in the Dodd-Frank Act and the CFPB's aggressive approach to what constitutes a UDAAP violation. The Rectifying UDAAP Act would more clearly define the Bureau's authority with respect to UDAAP actions and would rein in the Bureau's overly aggressive interpretation of "abusive" acts or practices by requiring it to prove intentional misconduct.

H.J. Res. 74, introduced in House by Rep. Ralph Norman (R-SC), this Congressional Review Act resolution disapproves of the Bureau's "midnight" rule on the reporting and consideration of medical debt, which was finalized just four days before the inauguration of President Trump. The rule requires credit reporting agencies to remove medical debt and medical bills from credit reports and prohibits lenders from considering medical information in underwriting. The rule disregards creditors' legitimate needs for medical debt information and the effect suppressing this information would have on banks' lending risk, consumers' default risk, and the availability of credit. Prohibiting consideration of medical debt in credit underwriting would reduce lenders' ability to understand consumers' credit risk and ability to repay. As a result, it is likely to cause significant adverse consequences to banks and consumers, including causing tightened credit standards.

H.R. 1653, the CID Reform Act, introduced by Rep. Andy Barr (R-KY), will make much-needed reforms to the civil investigative demand (CID) process of the CFPB. Like many of the Bureau's powers, CIDs are an important tool. But any tool can be over-used or misused, and some of the ways the Bureau has exercised its CID authority have created unnecessary and improper burdens on CID recipients. The CID Reform Act will promote fairness for CID recipients without undermining Bureau investigations. This legislation will strengthen the Bureau for the long term by reducing well-founded criticisms of the way it currently conducts investigations, reduce unnecessary drain on resources at the Bureau as well as at the supervised firms, and enhance investigations with a better focus of its information requests and reviews.

H.R. _____, the Business of Insurance Regulatory Reform Act, by Rep. Bryan Steil (R-WI). The Dodd-Frank Act broadly prohibits the Bureau from exercising regulatory authority over the business of insurance. Over the years, the Bureau has relied on a few limited exceptions to this broad prohibition to impermissibly step into the shoes of a state insurance regulator. For example, the Bureau has used its UDAAP authority to exercise jurisdiction over insurance

marketing and sale activities by banks and their services providers. The Business of Insurance Regulatory Reform Act will help prevent the potential for duplicative or conflicting regulations and reaffirm the congressional intent of the Dodd-Frank Act to defer to state insurance regulators who have the necessary expertise to protect policyholders.

Other CFPB Reforms. Several other CFPB reform bills that would help ensure greater accountability and promote more transparent, reasoned, and data-driven rulemaking by the Bureau, including:

- H.R.____, the CFPB-IG Reform Act, by Rep. Dan Meuser (R-PA).
- H.R.____, the CFPB Dual Mandate and Economic Analysis Act, by Rep. Tom Emmer (R-MN).
- H.R.____, the Transparency in CFPB Cost-Benefit Analysis Act, by Rep. Barry Loudermilk (R-GA).
- H.R. 1606, the Making the CFPB Accountable to Small Business Act, by Rep. Scott Fitzgerald (R-WI).

Additional Legislation

As the Committee considers these and other structural reforms for the Bureau, the ABA is grateful that Chairman Hill and other Members of the Committee are taking decisive action through the following ABA-supported Congressional Review Act resolutions of disapproval to curb excessive and arbitrary action already taken by the Bureau related to overdraft protection services.

H.J. Res. 59, sponsored by Chairman French Hill (R-AR), would invalidate the Bureau’s final rule on overdraft protection which declares discretionary overdraft services offered by banks and credit unions with more than \$10 billion in assets to be “credit” regulated by the Truth in Lending Act and Regulation Z unless the overdraft fee is below a \$5 price cap or below the CFPB-defined “breakeven” costs to operate an institution’s overdraft program. The rule would lead banks to restrict or eliminate access to overdraft services, harming those consumers who have few, if any, other options for meeting short-term liquidity needs. Not surprisingly, survey after survey shows that consumers appreciate and value their institution’s overdraft program and are glad that their institution covered their overdraft payment, rather than returned or declined the payment.

ABA also strongly supports the following legislation to amend or repeal Section 1071 of the Dodd-Frank Act, the Small Business Data Collection and Reporting Rule. We encourage the Committee to advance these three bills in the near future:

H.R. 976, the 1071 Repeal to Protection Small Business Lending Act, introduced by Chairman Roger Williams (R-TX) would repeal Section 1071 of the Dodd-Frank Act, which requires financial institutions to report 13 data points on small-business loan applications by women and minority-owned small businesses. In March 2023, the CFPB finalized a rule implementing section 1071, which vastly expands the statutorily required data collection and requires lenders to collect and report 81 data fields. The final rule will impose significant

compliance costs on financial institutions, reducing access to credit and raising its costs for small businesses.

H.R. 941, the Small LENDER Act, by Chairman French Hill (R-AR). This legislation would amend Section 1071 to apply to lenders originating at least 500 small business loans in each of the two preceding calendar years rather than those originating at least 100 small business loans; and only cover loans to businesses with gross annual revenues of \$1 million or less in the most recently completed fiscal year, rather than businesses with revenues of \$5 million or less. A 500-loan threshold would still cover 70% of bank lending to small businesses, a robust data set, without driving small lenders out of the market.

H.R. ____ , the Bank Loan Privacy Act, would require the CFPB to undergo a rulemaking with public comment before modifying or making public any of the 1071 data. This rulemaking requirement is a strong step toward advancing the privacy interests of small businesses loan applicants.

In 2023, Congress passed a bipartisan joint resolution sponsored by Senator John Kennedy (R-LA) and Chairman Roger Williams (R-TX) to overturn the Bureau's rule implementing Section 1071. Unfortunately, the resolution was vetoed by former President Biden. During her February 5 testimony before the Committee, ABA Vice Chair Cathy Owen said that in addition to increased compliance costs and other concerns, Section 1071's publishing requirements on small-business lending raise serious privacy concerns because the release of private information into the marketplace means that "it is not going to be difficult to determine whether or not someone was approved or denied a loan, especially in a small community where there are only so many businesses, especially of a particular industry."

Conclusion

ABA strongly supports the CFPB reforms summarized in this statement and urges the Committee to report them favorably to the House as soon as possible.