American Bankers Association®

Memo

Date: May 16, 2024
To: Members of the House Committee on Financial Services
From: Kirsten Sutton, Executive Vice President, Congressional Relations & Legislative Affairs
Re: ABA's Views on Legislation for the May 16, 2024 Full Committee Markup

On behalf of the members of the American Bankers Association (ABA), please see below our views on several bills scheduled for consideration by the Committee on May 16, 2024. Thank you for the opportunity to express our position on these measures.

Promoting Access to Capital in Underbanked Communities Act of 2023 (H.R. 758)

The ABA supports the "Promoting Access to Capital in Underbanked Communities Act of 2023" (H.R. 758), which was introduced by Rep. Andy Barr (R-KY). The bill would establish a three-year phase-in period for new banks to comply with federal capital standards, among other provisions designed to promote and sustain de novo banking.

Today, there are over 4,000 fewer banks in the United States than there were in 2005. By facilitating the formation of new banks in urban and rural areas, this legislation expands banking access for both individuals and small- and medium-sized businesses. The bill would unlock economic opportunity, growth, and investment in communities most in need, while also promoting competition. The temporary regulatory adjustments provided in this bill are a reasonable step to encourage the formation of de novo banks that will be well equipped to meet the banking and financial needs of their local customers and communities.

Titles II, III, V and VI of the Bank Resilience and Regulatory Improvement Act (H.R. 8337)

The ABA supports the following titles of the Bank Resilience and Regulatory Improvement Act (H.R. 8337), introduced by Rep. Barr:

Bank Failure Prevention (Title II)

Title II—Bank Failure Prevention—seeks to eliminate uncertainty in the bank merger application process by requiring the Federal Reserve to make a determination on merger applications in a timely fashion. Mergers can increase competition and maintain a dynamic banking industry by allowing institutions to achieve economies of scale, leading to cost savings for consumers. This legislation would decrease uncertainty in the merger application process by implementing a 90-day window within which the Fed must act on a bank merger application.

Stress Capital Buffer Requirements (Title III)

Title III—Stress Capital Buffer Requirements—would require notice-and-comment rulemaking by the Federal Reserve for the formulas used to calculate the Stress Capital Buffer (SCB) and would also prohibit the Fed from changing the SCB calculation without a new rulemaking. Annual notice-and-comment rulemaking would also be required for the annual stress test scenarios. Every three years, the Government Accountability Office (GAO) would be required to conduct a study and report to Congress on the stress testing scenarios. ABA member banks have often cited the lack of transparency in the formulas used to calculate the SCB and other aspects of the Fed's stress testing scenarios, and this legislation would help bring needed clarity to this process.

Review of Discount Window Operations (Title V)

Title V—Fed Review of Discount Window Operations—would require the Fed to review its discount window operations, seek public comment on its operations, and develop and implement a plan to address any deficiencies.

ABA and its member banks understand and acknowledge that robust liquidity risk measurement, monitoring, and management are critical for making both individual banks and the U.S. financial system resilient. The discount window, established to help banks weather a liquidity storm, is an essential component of liquidity risk management. For many reasons, however, many banks tend to turn to other funding sources during stress. To make the discount window a preferred source of funding during periods of stress, it needs to meet the needs of modern banking for banks of all sizes. This legislation could be a significant first step in resolving the potential mismatch between when a bank has liquidity needs and the speed at which the Fed can supply the needed funds; implementing lessons learned from the Bank Term Funding Program; eliminating the stigma of banks using the discount window; and not undermining or disadvantaging other important sources of liquidity such as the Federal Home Loan Bank system.

Small Bank Holding Company Relief (Title VI)

Title VI—Small Bank Holding Company Relief—would require the Fed to raise the consolidated asset threshold that applies to small bank holding companies. This would allow small bank holding companies to operate with higher debt levels than would be allowed for larger bank holding companies. This legislation will strengthen America's community banks by making it easier for smaller institutions to issue debt and bolster their capital. The bill will allow community banks to better meet the needs of their customers, clients, and communities, while preserving their commitment to safety and soundness.

Titles II, III and IV of the Clarity in Lending Act (H.R. 8338)

The ABA supports Titles II, III and IV of the Clarity in Lending Act (H.R. 8338), which was introduced by Rep. Young Kim (R-CA).

Rectifying Undefined Descriptions of Abusive Acts and Practices (Title II)

Title II—Rectifying UDAAP—would amend the Consumer Financial Protection Act of 2010 to clarify standards for unfair, deceptive, and abusive acts and practices (UDAAP) enforcement actions brought by the Consumer Financial Protection Bureau (CFPB).

In recent years, the banking industry and the broader financial services market have been left without clarity of the definition of the term "abusive" and have received inadequate guidance from the CFPB on what would constitute a UDAAP violation. This legislation would more clearly define the Bureau's authority with respect to UDAAP actions and would rein in the Bureau's overly aggressive stance on "abusive" acts or practices by requiring the CFPB to prove intentional misconduct. This bill would also make clear that the Bureau's UDAAP authority does not extend to discriminatory practices, which are already governed by our nation's anti-discrimination laws.

Provisions Providing Relief from CFPB Section 1071 Rule (Titles III and IV)

Section 1071 requires lenders to collect and report to the CFPB information on small business lending to enforce fair lending laws and support community development efforts. The CFPB has finalized a rule implementing Section 1071, which directs what data must be collected, but there are still unanswered questions about how that data will be used and how much of it may be public. Banks and other lenders who make at least 100 small business loans in each of the two preceding calendar years will be required to collect the information.

While the banking industry fully supports complying with the nation's fair lending laws, the enormity of the data points to be collected and the 100-loan threshold for determining which lenders must report means compliance with this new ruling will place significant collection and reporting burdens on lenders, especially community banks. The CFPB itself downplays the cost that would be imposed on banks, but data from an ABA survey shows that the CFPB's analysis grossly underestimated the costs associated with implementing and complying annually with the final rule and failed to adequately assess the proportional impact on smaller banks.

For example, while the Bureau said it would only cost entities between $44,800 to $77,800 to build the systems and implement processes necessary for compliance with the rule, respondents to the ABA survey said one-time costs would range between $112,685 and $7,474,186.13. Additionally, the final rule states that the CFPB will not go through a public rulemaking procedure to determine whether and how data will be redacted prior to publication. Publication of the data collected for Section 1071 compliance purposes will create privacy concerns for small businesses across the country.

ABA supports legislation that would provide targeted reporting relief for the banking industry and help address privacy concerns with the CFPB's Section 1071 rule, including the following two bills that have been incorporated into Titles III and IV of H.R. 8338:

- Title III—Small Lenders Exempt From New Data and Excessive Reporting [originally H.R. 1806, the Small LENDER Act introduced by Rep. French Hill (R-AR)], would

adjust the final rule 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, rather than businesses with revenues of $5 million or less. A 500-loan threshold would still cover 70% of bank lending to small businesses, which would produce a robust data set for enforcement of fair lending and support for community development, without driving small lenders out of the market.

- Title IV—Bank Loan Privacy [originally H.R. 1810, the Bank Loan Privacy Act introduced Rep. Blaine Luetkemeyer (R-MO)], 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.

Congressional Review Act Resolution of Disapproval – SEC Cyber Incident Reporting Rule (H.J. Res. 100)

The ABA supports H.J. Res. 100, which was introduced by Rep. Andrew Garbarino (R-NY). This measure is a joint resolution providing for congressional disapproval of the rule submitted by the Securities and Exchange Commission (SEC) relating to "Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure."

On July 26, 2023, the SEC adopted final rules for new disclosures requiring registrants to publicly report—including immediately on Form 8-K—any cybersecurity incident they determine to be material; to describe the material aspects of the incident's nature, scope, and timing; and to describe its material impact or reasonably likely material impact on the registrant. The registrant will be required to make this disclosure four business days after it determines that a cybersecurity incident is material, unless the Attorney General determines that disclosure would threaten national security or public safety.

The banking industry is committed to protecting customers and their data from cyberattacks. Banks are already required to report computer security incidents to their primary regulator and notify their customers if their data is stolen. Fighting cyberattacks is critically important, but the SEC's cyber disclosure rule's four-day reporting requirement requires an unnecessary and dangerous public identification of the business that has been hacked, inviting other bad actors to target that business. This requirement would make critically sensitive information public before the problem is fixed, potentially interfering with efforts by law enforcement to stop attackers. This flawed public reporting requirement allows attackers to exploit a company's cyber vulnerability, endangering investors, and thwarting efforts to mitigate contagion risks.

SEC Reform and Restructuring Act (H.R. 8339)

The ABA supports H.R. 8339, the SEC Reform and Restructuring Act, a package introduced by Rep. Ann Wagner (R-MO) that would implement a series of much-needed reform measures at the SEC. Title I—SEC Regulatory Accountability—requires the SEC to consider a series of specified factors before issuing regulations, including identifying the nature of the problem to be

addressed, adopting regulations based on a reasoned determination of benefits justifying costs, assessing alternatives, and ensuring regulations are accessible and consistent. Additionally, when adopting or amending major rules, the SEC must state purposes, economic impact metrics, assessment plans, and potential unintended consequences. Requiring the SEC to conduct this robust cost-benefit analysis strengthens the rulemaking process and will lead to better market outcomes. Title II—SEC Transparency—would enhance transparency at the SEC by requiring semiannual testimony from the Chair of the Commission, while Title III—SEC Cybersecurity—would identify deficiencies in the Commission's information technology through an independent audit by the Comptroller General. The requirement that the SEC periodically review final rules every five years to assess cumulative impact is an important element in Title IV—Review the Expansion of Government—aimed at eliminating unnecessary rules. In addition, Title V—Streamlining Public Accounting Oversight—would eliminate regulatory ambiguity and duplicative authorities by transferring the functions of the Public Company Accounting Oversight Board (PCAOB) into the new Office of Public Accounting Oversight within the SEC. Further, the periodic Government Accountability Office studies of major SEC rulemakings included in Title VI—Study Regarding Major Rules Issued by the Securities and Exchange Commission—would render critical, independent cost-benefit analyses of SEC rules. Finally, the requirement in Title VII—Minimum Public Comment Period—that the SEC provide at least 60 days for public comment (unless the proposed rule addresses imminent investor harm) ensures that the Commission provides stakeholders adequate time to provide detailed, substantive feedback to the SEC on proposed rules.

Conclusion

The ABA applauds the Committee for marking up this important legislation aimed at reducing regulatory burdens, promoting transparency at the financial regulatory agencies, and enhancing banks' ability to serve customers in communities across the country. We look forward to continuing to work with Committee members as the legislation marked up today advances in the legislative process.