

July 27, 2022

To: Members of the Committee on Financial Services

From: Kirsten Sutton, Executive Vice President, Congressional Relations & Legislative Affairs

Re: ABA's Views on July 27<sup>th</sup> Full Committee Markup

On behalf of the members of the American Bankers Association (ABA), I am writing to express our opposition to the *Overdraft Protection Act (H.R. 4277)* and the *Expanding Access Credit through Consumer-Permissioned Data Act (H.R. 8485)*, which are scheduled for markup this week.

The *Overdraft Protection Act* would upend a framework that was established in 2009 when the Federal Reserve amended Regulation E to require customers to “opt-in” for overdraft protection for one-time debit card (in-store, “point of sale” purchases) and ATM transactions. This opt-in process involves clear pre-election and post-election disclosures, and consumers may opt-out at any time. The Federal Reserve’s decision to require a consumer’s opt-in only to point-of-sale debit card and ATM transactions was based on consumer testing that demonstrated that consumers want check, ACH, and recurring debit card transactions paid because these transactions tend to be important payments (i.e., rent, car and utility payments). This finding was recently supported by a February 2022 Morning Consult survey that found that 74% of consumers are happy that their depository institution covered an expense when their account was overdrawn.

If the *Overdraft Protection Act* is enacted, depository institutions would be prohibited from charging consumers more than one overdraft fee in a month and more than six overdraft fees in a year, regardless of a consumer’s choice to opt-in. In contrast to the Federal Reserve’s rule, this limit would apply to any overdraft transaction regardless of form of payment – i.e. all check, ACH, bill-pay, debit card (point-of-sale and recurring) transactions. In other words, the bill’s limits on overdraft usage would replace the consumer’s choice with a government mandate.

This bill is also unnecessary because banks of all sizes already offer consumers a wide array of account options, including accounts that do not offer overdraft protection. As an example, depository institutions accounting for 56% of the deposit market offer Bank On-certified accounts — simple, affordable bank accounts that do not charge overdraft or insufficient fund fees. Congress should not limit the choice of consumers who wish to have overdraft services when overdraft-free accounts are so widely available.

We respectfully urge members of the committee to oppose H.R.4277.

While ABA supports the use of alternative data and credit underwriting, we do not support the narrow and prescriptive mandate proposed in H.R. 8485, the *Expanding Access to Credit through Consumer-Permissioned Data Act*. This legislation would codify and expand Regulation B of the Equal Credit Opportunity Act and at the request of the applicant would require lenders to consider additional, alternative information not typically considered when evaluating a borrower for a mortgage, and not typically found in credit reports. While the overall objective of this legislation is well intentioned, the bill is flawed in its current form.

This legislation would add new mandates and burdens to the mortgage process, which would hinder both lenders and consumers alike. Additionally, the legislation does not clearly define what information is included in alternative data sets, and adds additional complexity in the form of additional disclosure and notice to the consumer on top of the extensive disclosures already provided in the mortgage process.

It is worth noting that ABA supports the concept of alternative data being used when considering a mortgage application, as was the case in 2018 with the passage and enactment of S. 2155, which included a provision that required Fannie Mae and Freddie Mac to develop processes to update their credit-scoring models to determine creditworthiness. However, Fannie Mae and Freddie Mac have only recently begun considering alternative data, making a mandate inappropriate at this time.

ABA believes that the use of alternative data is a valuable tool for consumers, but unfortunately *Expanding Access to Credit through Consumer-Permissioned Data Act* tries to accomplish that goal in the wrong way, and could potentially lead to unintended consequences in the mortgage underwriting process.

We respectfully request members of the committee to oppose H.R. 8485.