

Date: April 25, 2023

To: Members of the Committee on Financial Services

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

Re: ABA's Views on Legislation for the April 26, 2023, Full Committee Markup

On behalf of the members of the American Bankers Association<sup>1</sup> (ABA),<sup>1</sup> please see below our views on several bills scheduled for consideration by the Committee on April 26, 2023.

### **CFPB Reforms**

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, in the last few years we have seen the Bureau repeatedly ignore legal boundaries established by Congress. There must be more accountability. As ABA President and CEO Rob Nichols recently noted regarding a case<sup>2</sup> pending before the U.S. Supreme Court:

“The separation of powers—and related accountability of executive power—is a hallmark of American democracy.” Today's announcement that the Supreme Court will consider the constitutionality of the CFPB's funding is a step toward resolving longstanding questions surrounding the bureau. We have seen the bureau repeatedly ignore legal boundaries established by Congress. To bolster the CFPB's accountability, ABA has long advocated for a board or commission structure and for the bureau to be subject to the appropriations process. We hope that the resolution of this case will take heed of these critical issues while ensuring Americans continue to have access to the financial products they want and need, along with the protections they deserve.”

**Commission Structure.** ABA strongly supports the Substitute amendment to the CFPB Transparency and Accountability Reform Act (H.R.2798) that will be considered by the Committee in this markup.

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$23.6 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.2 trillion in deposits and extend \$12.2 trillion in loans.

<sup>2</sup> *Community Financial Services Association of America, Limited, et al. v Consumer Financial Protection Bureau*, No. 21-50826 (5<sup>th</sup> Cir. Oct. 19, 2022).

To bolster the CFPB's accountability, ABA has advocated for a Senate-confirmed, bipartisan board or commission structure to address the extremely broad authority of the Bureau's Director. That is why ABA strongly supports Title I of the bill, which incorporates the Consumer Financial Protection Commission Act (H.R. 1410), sponsored by Rep. Luetkemeyer (R-MO).

A Commission would promote accountability, fairness, and stability. It would also encourage balance and deliberation in the rulemaking and enforcement activity of the Bureau while providing needed balance and appropriate checks in the exercise of the Bureau's authority. Stable and balanced leadership promotes good policy as well as strong and effective consumer protection, while also promoting economic growth.

Appropriations. 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 has long advocated for making the Bureau subject to Congressional appropriations, and we strongly support Title II of the bill that incorporates the Taking Account of Bureaucrats Spending (TABS) Act (H.R. 1382), sponsored by Rep. Barr (R-KY). Funding the Bureau through appropriations 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.

Other CFPB Reforms. ABA also supports several other CFPB reform bills that are included in the remaining titles of the CFPB Transparency and Accountability Reform Act that will help ensure greater accountability and promote more transparent and reasoned rulemaking by the Bureau, including:

- Title III, H.R. 1411, the CFPB-IG Reform Act, by Rep. Luetkemeyer (R-MO);
- Title IV, H.R. 2489, the CFPB Dual Mandate and Economic Analysis Act, by Rep. Emmer (R-MN);
- Title V, H.R. 1313, the Transparency in CFPB Cost-Benefit Analysis Act, by Rep. Mooney (R-WV); and
- Title VI, H.R. 1749, Making the CFPB Accountable to Small Business Act, by Rep. Fitzgerald (R-WI).

## **Capital Markets Reform**

The Committee is also considering a wide range of bills intended to facilitate capital formation by small and emerging companies by removing certain regulatory requirements that make it more difficult for them to attract investments.

ABA supports H.R. 2603, a Bill to Revise Thresholds for Accredited Filers and Large Accredited Filers and for other purposes, by Rep. Luetkemeyer (R-MO), which was included in Division A, Title VII of the Substitute amendment to the Expanding Access to Capital Act (H.R. 2799), by Chairman McHenry (R-NC).

Raising the thresholds for Sarbanes Oxley Act (SOX) Section 404(b) attestation requirements will benefit smaller public banks that may now qualify as a Smaller Reporting Company (SRC), or may no longer be subject to accelerated or large accelerated filer status requirements.

## **Conclusion**

ABA strongly supports the CFPB reforms including in Titles I – VI of H.R. 2798, especially changing the single Director to a five-person Commission and making the Bureau subject to the Congressional appropriations process. We also support Rep. Luetkemeyer’s (R-MO) bill, that would raise the threshold for SOX Section 404(b) attestation requirements, which is part of H.R. 2799.

Thank you for the opportunity to express our views on these important bills.