

Date: September 19, 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 September 20, 2023, Full Committee Markup

On behalf of the members of the American Bankers Association (ABA),¹ please see below our views on several bills scheduled for consideration by the Committee on September 20, 2023.

A. FinCEN Transparency and Oversight Legislation

ABA is very pleased that the Committee is bringing attention to several issues with respect to the transparency and oversight of the Financial Crimes Enforcement Network (FinCEN) and supports the following bills for the markup.

ANS to H.R. 5485, the Financial Privacy Act of 2023

This bill, as amended, requires the Secretary of the Treasury to submit a new report to the House Financial Services Committee and Senate Banking Committee. This report requires FinCEN to identify the number of Bank Secrecy Act (BSA) reports filed by financial institutions with FinCEN (and their retention). It also requires FinCEN to count and report the number of law enforcement, national security, and intelligence agency queries of FinCEN's database containing those reports, identify denials of access, and provide relevant protocols protecting Americans' sensitive financial information. H.R. 5485 would help banks understand the protection and use of highly sensitive BSA reports by law enforcement and intelligence agencies. Overall, it will bring a much-needed measure of accountability to the BSA process.

ANS to H.R. 5524, the Foreign Affiliates Sharing Pilot Program Extension Act

This bill, as amended, would extend the deadline for the pilot program authorizing SAR sharing with foreign affiliates from January 1, 2024, to three years after the date the program begins. FinCEN proposed a rule outlining the proposed foreign affiliate SAR sharing program in January 2022 but has not yet finalized the rule which would start the program. Statutory authorization for the program expires on January 1, 2024 (which the Treasury Secretary may take steps to extend for an additional two years). Even with that extension, the pilot, which seeks to evaluate the

¹ ABA is the voice of the nation's \$23.5 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2.1 million people, safeguard \$18.6 trillion in deposits, and extend \$12.3 trillion in loans.

utility of SAR sharing that is otherwise prohibited by strict confidentiality rules, could no longer run for three years. H.R. 5524 would ensure the clock starts when the program does, allowing a fair assessment of its value.

Comment on FinCEN Beneficial Ownership Rulemaking

Although supportive of both the Corporate Transparency Act (CTA), and Treasury’s Financial Crimes Enforcement Network (FinCEN)’s mission, the ABA has been very concerned about the seemingly indefinite delays in completing the rulemakings required by the CTA, as well as ensuring those rules faithfully carry out the purpose of this important law. For that reason, ABA strongly supports efforts that would ensure banks and their customers fully understand new obligations before they suffer unintended and adverse consequences. This includes legislation requiring FinCEN to finalize all rulemakings required under the CTA before any rules take effect, providing an important — but not indefinite — delay.² This would allow time for FinCEN to work with financial institutions and other stakeholders to achieve congruence between CTA objectives and existing anti-money laundering program requirements.

Among other things, FinCEN should propose a better access rule, as the current proposal creates a framework in which banks’ access to the Registry will be so limited that it will effectively be useless, resulting in a dual reporting regime for both banks and small businesses. Further, banks cannot work effectively with FinCEN on an improved access rule if they are in the dark about their corresponding customer due diligence obligations. Therefore, FinCEN should revise the access rule as well as identify proposed amendments to the CDD rule that will facilitate the improved and efficient CDD process contemplated by the CTA.

B. Central Bank Digital Currency Legislation

In comments and testimony, ABA has expressed serious concerns about the Federal Reserve Board issuing a Central Bank Digital Currency (CBDC). In fact, just last week ABA submitted a Statement for the Record (SFR) for the September 14 hearing by the Digital Assets, Financial Technology and Inclusion Subcommittee.³ ABA believes strongly that a CBDC is unnecessary in the United States and would present unacceptable risks and costs to the financial system. The dollar is already digital today, and it is unclear how issuing a CBDC would improve financial inclusion or achieve the other laudable goals its proponents advocate for. On the other hand, issuance of a CBDC would fundamentally change the relationship between citizens and the Federal Reserve, undermine the important role banks play in financial intermediation, exacerbate economic and liquidity crises, and impede the transmission of sound monetary policy.

² American Bankers Association Letter to House Financial Services Committee Leadership Supporting H.R.4035, Sept. 12, 2023. See: <https://www.aba.com/advocacy/policy-analysis/letter-to-hfsc-leadership-hr-4035>

³ Statement for the Record on Behalf of the American Bankers Association before the Subcommittee on Digital Assets, Financial Technology and Inclusion of the House Financial Services Committee, Sept. 14, 2023. See: <https://www.aba.com/advocacy/policy-analysis/statement-for-the-record-on-digital-dollar-dilemma>

The risks associated with issuing a CBDC are often downplayed but are real and likely to undermine any possible benefit that a CBDC would have. For example, a CBDC would serve as an advantaged competitor to retail bank deposits that would move money away from banks and into accounts at the Federal Reserve, severely limiting the ability of commercial banks to make loans that power economic growth in communities across the country.

Moreover, there may be other possible designs for new digital money that may merit further evaluation in lieu of a CBDC. For example, a digital form of money that 1) is a liability of the central bank and 2) is not widely available to the general public. Instead of being consumer-facing, such a technology could be used for wholesale settlement among regulated financial institutions and the Federal Reserve. A “wholesale CBDC” (or wCBDC) would not be available to the general public and would avoid many of the key risks associated with a CBDC. In particular, a wCBDC would not change the relationship between citizens and the central bank nor undermine banks’ critical financial intermediation role. We believe that the wholesale CBDC concept should be evaluated carefully in lieu of moving forward with a CBDC.

In that regard, ABA supports the following bill for today’s markup:

ANS to H.R. 5403, the CBDC Anti-Surveillance State Act

This bill, as amended, would prohibit the Federal Reserve Banks from issuing a CBDC directly or indirectly to individuals. It would also prohibit the use of a CBDC to implement monetary policy. It also includes language from H.R. 3402, the Power of the Mint Act, that would prohibit the Federal Reserve Board or the Department of Treasury from issuing a CBDC without Congressional approval. This could be improved by narrowing the definition of “digital money” to exclude the wholesale CDBC concept.

Conclusion

ABA is pleased that the Committee is bringing attention to several transparency and oversight issues with respect to interactions between our members and FinCEN and supports the ANS to Financial Privacy Act of 2023 (H.R. 5485) and the Foreign Affiliates Sharing Pilot Program Extension Act (H.R. 5524). Although not included in today’s markup, we urge the Committee to move forward on separate legislation that would require FinCEN to finalize all rulemakings required under the Corporate Transparency Act (CTA) before any rules take effect, which would provide an important — but not indefinite — delay to ensure the rules work together to achieve the purpose of the CTA. In addition, ABA has expressed strong concerns about the Federal Reserve Board’s CBDC proposal and for that reason supports the ANS to CBDC Anti-Surveillance State Act (H.R. 5403).

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