April 30, 2019

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
U.S. Senate
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
U.S. Senate
Washington, D.C. 20510

Dear Chairman Crapo and Ranking Member Brown:

On behalf of the Consumer Bankers Association (CBA), I write to share our comments on the Senate Banking Committee's hearing entitled "Guidance, Supervisory Expectations, and the Rule of Law: How do the Banking Agencies Regulate and Supervise Institutions?". CBA is the voice of the retail banking industry whose products and services provide access to credit for consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

The Role of Guidance

CBA supports a regulatory framework that provides clear rules of the road which have been vetted through formal notice and comment periods. The rulemaking process, as mandated by the Administrative Procedure Act and the Dodd-Frank Act, is time consuming for a reason: it demands agencies adhere to a strict process that invites those who are affected by a proposal to have a say in the creation of the rule. While we are strong proponents of formal rulemaking, we also recognize there is an appropriate role for regulatory guidance to provide financial institutions with needed clarity.

Unfortunately, the Consumer Financial Protection Bureau (CFPB) under the leadership of former Director Cordray tested the boundaries of the use of guidance when it issued its 2013 bulletin on indirect auto lending. This was a clear example of the Bureau overstepping its authority and Congress agreed by revoking this form of guidance in 2018.

To ensure proper rulemaking and instructive guidance is issued for future CFPB actions, CBA supports previously introduced bi-partisan legislation known as the GUIDE Act, which would provide greater clarity to what constitutes guidance, improve compliance with consumer financial protection laws, and bring predictability to the Bureau's rulemaking. The bill would require the Bureau to issue guidance necessary or appropriate to comply with consumer protection laws. It would provide for public notice and a comment period for the issuance, amendment, or revocation of guidance, with clear timelines for industry. It would provide liability protection for acting in good faith in accordance with guidance. The bill would also create a penalty matrix that would require the Bureau to publish penalty guidelines that determine the size of any civil monetary penalties issued by the Bureau based on the severity of the violation of Federal consumer law. By requiring the Bureau to issue clear guidance and rules, the financial services industry can build and offer products and services with greater clarity.

Supervision

Bank examinations are an essential function of the regulatory process that oversees financial institutions and ensures compliance with regulations and adherence to safety and soundness standards. It is critical prudential bank examiners and CFPB examiners be experienced, competent and conduct their jobs without pre-judgement. Unfortunately, it has been the experience of some CBA members that CFPB examiners have had little to no experience making examinations disjointed, overly burdensome, and time consuming. CBA also strongly encourages the CFPB to promote a level regulatory playing field through the robust supervision of nonbanks, who are playing an increasingly large role in mortgage originations and consumer deposit taking, among other areas.

In addition, CBA supports a supervisory structure that allows financial institutions to have an independent third party review disputes on supervisory actions and provide impartial rulings. In the 115th Congress, CBA supported H.R. 4545, the Financial Institution's Examination Fairness and Reform Act. This bill would provide additional clarity to the examination process and allow banks and credit unions the right to have supervisory determinations reviewed by the newly created Independent Examination Review Director that would be housed under the Federal Financial Examinations Institution Council (FFIEC). The bill would also require reasonable time limits for examiners to provide their findings to the institutions they oversee. CBA encourages Congress to support this legislation to increase impartiality and help streamline the examination process for banks and credit unions.

Regulatory Coordination

CBA member banks are often supervised by multiple federal regulators (not to mention the state regulatory bodies that supervise state chartered banks). A single financial services company can be examined by the Federal Reserve, the OCC, the FDIC, and the CFPB. In some cases, more than one agency is examining a bank for similar or related issues, each with a slightly different set of lenses. The same documents can be requested, or variations can be sought, and similar inquiries can be made to the same people. Better coordination is needed to minimize the cost and burden to the financial institutions, permitting them to better serve their customers.

In a similar vein, enforcement can be a multiple agency process, with each agency taking on the same issue and imposing its own penalties for related violations. At times this appears to be driven by a desire to demonstrate its regulatory authority and not defer to any other regulatory body, but this duplication is an unnecessary cost that ultimately reduces the effectiveness of the entire enforcement process. The Treasury Department, in its 2017 report on financial services, recommended a single entity act as a coordinator of these regulatory actions. CBA encourages Congress to take a closer look at the benefits this approach to increased regulatory coordination would have on efficiency.

Thank you for the opportunity to share our thoughts on the financial regulatory framework, and particularly the role of guidance and supervision. CBA looks forward to working with you to ensure the U.S. financial regulation is structured in a way that promotes a safe and competitive marketplace which can meet consumers financial needs.

Sincerely,

Richard Hunt
President and CEO
Consumer Bankers Association