



January 25, 2021

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

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

Dear Chairman Brown and Ranking Member Toomey:

Congratulations on your new positions as Chairman and Ranking Member of the Senate Banking, Housing, and Urban Affairs Committee for the 117th Congress. The Consumer Bankers Association (CBA) looks forward to working with you and the members of the Banking Committee on issues that affect consumers and our members during these unprecedented times.

CBA is entering our 102nd year as the voice of retail banking in Washington, D.C. and advocates for policies that allow banks to continue offering well-regulated services to families and small businesses across the country. We are the only member-driven trade association focused exclusively on retail banking. Whether buying a home, financing an education, or launching a small business, our members partner with consumers to help them achieve their unique dreams. Our corporate members include the nation's largest retail banks serving every part of the country, 85% of which hold over \$10 billion in assets.

Thanks to the leadership of Congress, CBA member banks were able to meet the emergency credit needs of their small business customers through the Paycheck Protection Program (PPP) in a matter of weeks to deliver billions to small businesses to meet payroll and cover their bills. Our members partnered with their customers and small businesses to help mitigate the devastation Americans are experiencing from the COVID-19 pandemic. While much more must be done, banks have been repeatedly cited as a source of economic strength and stability in the past year. The nation's largest banks have donated millions of dollars, offered proactive assistance to individuals and families enduring hardship and remain committed to helping communities have access to highly regulated bank products.

The lending community distributed PPP funds to more than 5 million small businesses, providing them the vital lifeline they needed to endure the effects of the pandemic. Thirteen of the fifteen most active PPP lenders were CBA member banks who together served more than 1.3 million small businesses. Our industry stood up an entirely new federal program in less than a month thanks to thousands of highly motivated and well-trained professionals working 24 hours a day, seven days a week to deliver the CARES Act objectives. We take enormous pride in their accomplishments and they deserve widespread appreciation for their good work, without which the PPP would not have succeeded.

The unprecedented level of service our banks' employees delivered this year is all due to the strong, well-regulated foundation banks have built up over the last decade. As we emerge and build back from the COVID-19 crisis our member banks will be focused on helping consumers and small businesses regain their financial footing and reach new levels of success. Key to those efforts will be working with your leadership to improve access to credit and opportunity for all Americans, including small dollar loans and other affordable, high-quality consumer financial products.

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Our priorities for the coming year focus on four key objectives for the banking industry and the customers they serve:

1. Drive the Industry's COVID Response Efforts

CBA will work hand-in-hand with member institutions to promote the work being done to keep customers financially stable and serve as a constant source of breaking information necessary to navigate the ever-changing legislative, regulatory and operational environment brought about by COVID.

2. Champion the Consumer Benefits of Retail Banking

Consumers are best served within the well-regulated, well-capitalized, safe and sound banking industry. CBA will highlight those benefits and work to bring about modern banking regulations to allow banks to offer products and services to more consumers, including the un- and under-banked, in a way which meets their unique needs.

3. Advocate for Sound Banking Policy

CBA will advocate for policies to ensure the continuation of a vibrant and strong consumer and small business banking sector. CBA will also work to create a level playing field, especially regarding consumer protections, with banks and non-bank financial companies.

4. Redouble Diversity, Equity, and Inclusion Efforts

CBA will promote industry initiatives to achieve racial and gender equality and the availability of banking services to all communities. We will strive for diversity among CBA activities and programs including our committees, our Executive Banking School, along with deliberate hiring decisions and advancement opportunities.

Attached below is a longer list of issues CBA members routinely engage with policymakers on. We look forward to partnering with you to advance our shared objectives of improving financial access and inclusion for all Americans, ensuring a level regulatory playing field for all institutions and providing the necessary consumer protections for the products and services our customers require to meet their economic needs.

Sincerely,



Richard Hunt
President and CEO
Consumer Bankers Association

CBA members represent a substantial portion of the industry impacted by these topics.

Consistent and Timely Guidance Related to COVID-19

CBA members continue to work hard to support their customers during COVID-19 with a multitude of options to mitigate the financial burden this pandemic has caused. As consumers short-term loss mitigation options diminish, we encourage all federal banking regulators to provide clear guidance on how banks should proceed in a safe and sound manner with the support of their prudential regulators to provide all customers options during these challenging times. CBA members comprised 13 of the top 15 lenders. In addition, the 122 financial institutions with assets greater than \$10 billion (out of 5,460 total) made more than half of all PPP loans.

Modernizing the Community Reinvestment Act (CRA)

CBA believes banks have an affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income (LMI) areas, consistent with safe and sound banking policies. Our member banks support the CRA's objectives to ensure that LMI communities' credit needs are served, and we are committed to ensuring appropriate resources are invested through approved CRA activity conducted across the country. Modernizing the CRA to reflect the digital evolution of banking and ensure more certainty and clarity throughout the CRA process is a top priority for CBA's membership.

Improving Anti-Money Laundering Protections

Financial institutions take seriously their role as the front line of defense against money laundering, and CBA members strongly support protecting U.S. national security interests and the integrity of our financial system. Each year financial institutions submit more than 15 million suspicious activity and currency transaction reports to the Treasury Department to assist law enforcement efforts. Given their active role in disrupting illicit finance operations, our members are best positioned to explain how today's framework can be modernized to effectively deter financial crime while minimizing compliance burdens and counterproductive redundancies. In recent years we have been pleased to work alongside democrats and republicans in Congress to lend our input and assistance to update U.S. Anti-Money Laundering laws to ensure the highest standards are in place to prevent criminal activity.

Providing Industrial Loan Companies (ILC's) Charters Only to Financial Services Companies

The ILC charter has strayed from its simple beginnings of providing loans to industrial workers, and today's ILCs can be leveraged by large commercial enterprises (including global mega-conglomerates) to engage in activity that has always been off limits for banks and their holding companies.

In March 2020, the FDIC proposed a rule for the supervision of commercial firms that control ILCs. CBA strongly believes the ILC charter should only support non-commercial financial services companies, and any FDIC rulemaking should honor the basic cardinal tenet of American banking: the mixing of banking and commerce is impermissible. Therefore, any final rule should ensure the FDIC's supervisory approach is as close to consolidated supervision as possible and should maximize the FDIC's existing authority to ensure an even playing field between ILCs and banks so commercial parents cannot use the ILC charter to escape regulatory scrutiny.

Modernizing the Brokered Deposits Framework

In December 2019, the FDIC issued a notice of proposed rulemaking to modernize its brokered deposits regulations. The proposal would establish a new framework for analyzing whether deposit arrangements between insured depository institutions and third parties, such as financial technology companies, qualify as brokered deposits. CBA supports modernizing the regulatory approach to brokered deposits to allow banks to better serve their customers and remain competitive in today's financial services landscape. Since the FDIC's brokered deposit restrictions were last amended in 1991, legal developments, consumer preferences and technological advances have drastically transformed the business models, products, and delivery channels that support the banking industry, as well as the manner in which banks gather deposits to fund their activities.

CBA believes the current definition of brokered deposits is overly broad, and often captures deposits that have stable, core deposit attributes. To better serve their customers through mobile and digital channels, banks should be permitted to accept stable and low volatility deposits outside their geographic branch footprint or with the involvement of third parties using digital technologies without running afoul of antiquated brokered deposit restrictions. Nevertheless, CBA urges the FDIC to strike the proper balance to improve brokered deposits treatment for low-risk deposits while also ensuring the federal safety net and core deposit treatment does not extend too far to riskier deposits gathered outside the well-regulated banking system.

Creating a Level Playing Field with Fintech/Payment Charters

In 2018, the OCC announced it will begin accepting applications for national bank charters from non-depository financial technology (fintech) companies engaged in the business of banking. However, the OCC's efforts to produce a fintech charter have been blocked by a New York District Court in a case that is currently being appealed. The OCC is also set to introduce another special purpose national bank charter that would give payment companies a nationwide servicing platform and federal preemption of state laws regarding licensing and regulation of money transmitters and payment services providers.

CBA urges the OCC to undertake an open and transparent process before considering any new charter as the issues being considered have broad implications for the banking system and longstanding policy determinations. We oppose the OCC's effort to grant commercial companies a national fintech/payments charter to access the federal national bank safety net. CBA is concerned that those commercial companies accessing a fintech or payments charter would avoid oversight and regulations that protect the financial system and consumers. We further believe the OCC should ensure that the Bank Holding Act oversight is applied. We believe in and remain committed to the continued evolution of banking, allowing banks to offer innovative products that help banks connect with customers in new ways.

Clear Guidance for Loans Sold into the Secondary Market

In June of this year, the OCC and FDIC took actions to reaffirm the "valid when made" doctrine in response to the uncertainty on the validity of interest rates of bank-originated loans sold in the secondary market after the 2015 decision by the U.S. Court of Appeals for the Second Circuit in *Madden v. Midland Funding LLC* (Madden). The OCC and FDIC issued final rules to clarify that when a bank sells, assigns, or otherwise transfers a loan, the interest permissible prior to the transfer would continue to be permissible following the transfer. The long-recognized, common law principle "valid when made" provides that loan terms that are valid when made remain valid loan terms until the loan is satisfied or forgiven, irrespective of whether, or to

whom, the loan is sold. The OCC's and FDIC's final rules make it explicit that the terms of permissible loans will not be affected by the sale, assignment, or other transfer of those loans.

The OCC also issued a final rule to address when a national bank or federal savings association should be considered the "true lender" in the context of a partnership with a third party. The final rule provides a bright line test for determining when a bank is the lender for loans made with substantial assistance from a fintech or other non-bank company and/or when the fintech or non-bank company acquired all or a predominant economic interest in the loan. We continue to hope for a substantially similar "true lender" rule from the FDIC.

Provide Consumers Access to Credit through Bank Small Dollar Loan Products

CBA encourages a coordinated effort between the Bureau, the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation on its regulatory approach toward small dollar lending. Through coordination, these agencies can create a consistent regulatory framework that would remove obstacles and more effectively promote banks' ability to preserve or expand small-dollar credit offerings and to allow them to preserve currently offered traditional bank products that are unintentionally covered by the broad scope of the existing Rule.

Financing Secondary Education

CBA believes that the federal government needs to address the current student federal lending program and the levels of debt students take on by taking a closer look at what is driving the cost of education for borrowers.

Over the last two decades the price of college has increased nearly 200 percent and the amount of student loan debt held by Americans has gone up with it, from just over \$600 billion in 2008 to approximately \$1.6 trillion today, with 92 percent of this debt being originated from the federal government loan programs. These federal loans have a double-digit delinquency and default rate and lack plain-language disclosures on the total costs of the loan. Private student loans from banks, on the other hand, have over a 98 percent repayment rate, offer clear disclosures at the start of the loan process, and set borrowers up for success.

CFPB Structural Reform

CBA continues to urge lawmakers to support the most appropriate and sensible remedy for the question at issue in the Seila case, which is for Congress to replace the single director structure with a five-person, bipartisan commission.

The CFPB director is currently a single officer responsible for leading the CFPB and is the chief decisionmaker over all rulemakings, enforcement and supervisory actions that affect millions of Americans' everyday financial lives. This high level of authority is unparalleled when compared to other regulatory agencies. An at-will Director, removable every four years, or sooner, would leave both consumers and financial institutions with few assurances that the rules in place today would remain in place. When regulatory stability is eroded by changing political dynamics, the consumer suffers from financial institutions' inability to rely upon a consistent regulatory environment.