

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

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July 27, 2015

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, supports several bills the Committee is expected to mark up on July 28, 2015.

**H.R. 766, the "Financial Institution Customer Protection Act of 2015"**

The Chamber supports H.R. 766, which would establish clear standards that the federal banking agencies must abide by when using their leverage as prudential regulators to effectively shut down lawful businesses by denying them banking services—a program called Operation Chokepoint.

Government agencies have the tools to root out fraud, predation, and even national security threats, and the Chamber supports their efforts to do so, but under Operation Chokepoint government officials strongly discourage financial institutions from providing banking services to entire categories of lawful businesses and industries, but disfavored by these agencies based on "reputational risk." This has left banks with little choice but to terminate longstanding relationships with customers because of explicit or implicit threats from their regulator or the Department of Justice.

Markets function best when there are clear rules, a level playing field, and targeted enforcement. H.R. 766 would ensure that the government's power to terminate banking relationships is used only when there is a material reason for doing so.

**H.R. 1210, the "Portfolio Lending and Mortgage Access Act"**

The Chamber supports H.R. 1210, which would provide regulatory certainty to lenders—particularly small lenders such as community banks and credit unions—by allowing loans held on the books of a lender to be eligible for the safe harbor provided under the Qualified Mortgage (QM) rule. This provision would facilitate a robust underwriting process by lenders and would also help qualified borrowers obtain mortgages by alleviating some of the uncertainty that currently exists under the QM rule.

**H.R. 1317, a bill to amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to specify how clearing requirements apply to certain affiliate transactions, and for other purposes**

The Chamber strongly supports H.R. 1317, which would clarify that non-financial end users of derivatives do not lose critical exemptions from clearing and margin requirements because they conduct their hedging activity through a centralized treasury unit (CTU). CTUs are a “best practice” for companies that have multiple affiliates and must manage risk on an enterprise-wide basis. By centralizing this activity, these non-financial companies maintain tight control over their hedging program, and capture significant efficiencies by netting down their offsetting exposures before transacting with a bank or other counterparty. Because their sole purpose is to represent the company in the financial industry, some CTUs may be treated separately as “financial end users” under Dodd Frank rules, rather than as an integral, risk-reducing part of a non-financial company. This bill would ensure that non-financial companies that use a CTU would be able to claim the clearing and margin exemptions.

**H.R. 1553, the “Small Business Exam Cycle Reform Act of 2015”**

Small financial institutions are critical providers of credit for individuals and small businesses all across the United States, and the Chamber strongly supports measures that would provide them with regulatory relief. H.R. 1553 would allow more of America’s small banks to be examined on an 18-month cycle, reducing the cost and burden of supervision and allowing them to redirect those resources into serving their communities.

**H.R. 1737, the “Reforming CFPB Indirect Auto Financing Guidance Act”**

The Chamber has long sought a change to the Consumer Financial Protection Bureau’s (CFPB) approach to the indirect auto lending market. Regulating complex markets through agency fiat, without public notice and comment or economic analysis, as the CFPB has attempted to do in this instance, is unfair, and unworkable. Companies and consumers benefit when the rules are clear and well-informed. The Chamber supports this bill as a strong step toward fixing these problems. H.R. 1737 would require the CFPB to put any guidance regarding indirect auto lending on a solid footing by eliminating any legal effect of the Bureau’s 2013 guidance, and then imposing reasonable conditions on any future guidance on this topic.

**H.R. 1839, the “Reforming Access for Investments in Startup Enterprises Act” (RAISE Act)**

The Chamber supports H.R. 1839, as well as the Amendment in the Nature of a Substitute expected to be offered by Rep. McHenry. For over a decade America’s economic engine has sputtered through a drag on the traditional strength of business formation. This trend has slowly started to reverse with the passage of the bipartisan Jumpstart Our Business Startups Act (JOBS Act). While the JOBS Act took a number of steps to help companies go public, it also included a number of provisions that allow businesses to stay private for a longer period of time by modernizing 12(g) shareholder thresholds. This allows the owners of a firm to choose the business model most appropriate for long-term growth.

Therefore, it is important that Congress and the Securities and Exchange Commission (SEC) take steps to ensure strong and liquid secondary markets for private companies. Past court decisions have had the effect of allowing the resale of certain private offerings; however,

restricted securities remain an illiquid market and could benefit from a modernization of current SEC rules. This bill would help foster a robust secondary market for the resale of restricted securities that were acquired in a private placement.

### **H.R. 1941, the “Financial Institutions Examination Fairness and Reform Act”**

The Chamber supports H.R. 1941, which would help eliminate ambiguities and delays in the supervision process by requiring better communications between bank examiners, including the CFPB, and financial institutions. It would also create an Office of Independent Examination Review within the Federal Financial Institutions Examination Council that would hear appeals of material supervisory determinations contained in a final examination. The Chamber supports the ability of an institution to appeal an examination to an independent body and has supported similar efforts to empower an ombudsman with similar rights of appeal. This would help to create due process and streamline a process to allow exams to be reviewed, mistakes corrected, or for issues discovered in an exam to be dealt with in a more efficient manner. H.R. 1941 would help Main Street businesses access the liquidity and capital resources needed to grow in a timely and efficient manner.

### **H.R. 3192, the “Homebuyers Assistance Act”**

The CFPB’s TILA-RESPA Integrated Disclosure (TRID) rule will significantly change the documentation used in a mortgage closing. These substantial changes will create significant compliance challenges, as financial services companies have yet to develop experience with its requirements or to work through the questions that inevitably arise when first seeking to comply with a new regulation. As a result, numerous stakeholders have asked the CFPB to establish a grace period in which they will not be punished for their good faith compliance efforts. The CFPB extended the compliance deadline from August 1 to October 3, 2015, and while companies are working hard to meet the deadline, they will need more time.

H.R. 3192 would provide a very short safe-harbor period with respect to the new TRID rule until February 1, 2016. It thereby would allow companies and the CFPB to understand the rule in context and to work out the inevitable remaining ambiguities

The Chamber urges the Committee to report these bills to the full House of Representatives as expeditiously as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten".

R. Bruce Josten

cc: Members of the Committee on Financial Services