

CENTER FOR CAPITAL MARKETS
COMPETITIVENESS.

GROWTH ENGINE

INTRODUCTION

In 2016, The Center for Capital Markets Competitiveness (CCMC) at the U.S. Chamber of Commerce published *Restarting the Growth Engine: A Plan to Reform America's Capital Markets*—the *2016 Growth Engine Report*. The *2016 Growth Engine Report* contained a bold list of policy recommendations as a roadmap for revitalizing financial markets so job creators could access the financing they needed to start new businesses, make capital investments, and hire employees.

The *2016 Growth Engine Report* recognized that ideological fights over the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) were a vestige of the past. Instead, it was important for policymakers to focus on smarter regulation that could harness the inherent strength of U.S. financial markets without undermining stability. Recommendations included structural reforms to the rulemaking process so that we develop smart regulation that stands the test of time and provide certainty to the markets, as well as targeted policy proposals for improving financial regulation to unleash the full potential of our capital markets.

Now it is important that the financial sector fuel an economic recovery that is felt throughout the nation and benefits all Americans.

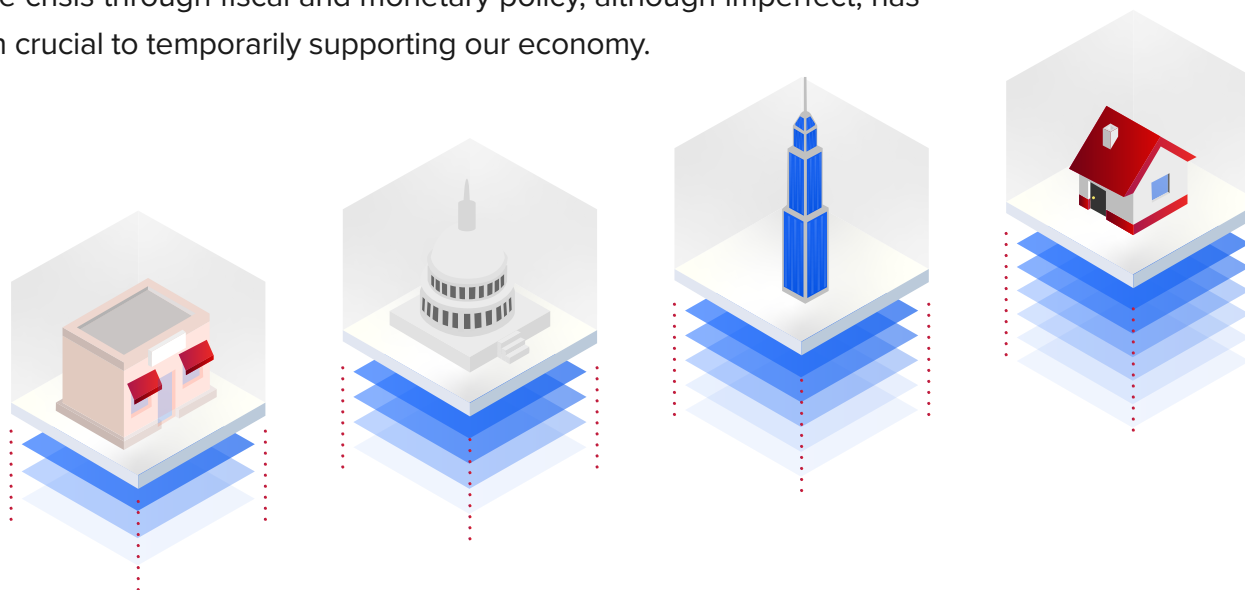
Many of the policy recommendations made by CCMC in 2016 have been implemented, and the work is underway on many others. Congress passed major legislation in 2018 that required banking regulators to ensure that regulations imposed on regional banks after the 2008 financial crisis are appropriate for their size; the legislation also included other commonsense measures with broad bipartisan support such as improving access to credit for consumers and small businesses as well as reducing regulation for community banks and credit unions. Financial regulators have also been busy implementing pro-growth reforms not required by Congress, such as making it easier for companies to go public and making it easier for consumers to access credit. Unemployment had reached record lows and wealth creation was on the rise until the economic repercussions of the COVID-19 pandemic gripped our country in 2020.

No one could have envisioned the havoc imposed on the domestic and global economy as a result of the COVID-19 pandemic. The financial services sector has been a source of strength, assisting the government in stabilizing the economy through the shutdown and its aftermath. Currently, we are in an uneven recovery—some industries are doing well, others are in severe downturn. Now it is important that the financial sector fuel an economic recovery that is felt throughout the nation and benefits all Americans.

The COVID-19 downturn was historically dramatic and widespread. The recovery must be equally dramatic and widespread to provide an equality of opportunity for all Americans.

It is important that the Executive Branch and Congress work together, regardless of party, to shape policies needed to spur and sustain such a broad-based recovery. Issues left untended for years, such as structural regulatory reform, should be tackled expeditiously. New issues that can provide a generational leap, such as digital assets, need to be addressed with dispatch and speed. While the U.S. has the deepest and most developed capital markets in the world, as the *2016 Growth Engine Report* predicted, U.S. markets face unprecedented international competition challenges. The private sector will rise to meet these challenges. However, policymakers in the U.S. can no longer ignore problems that place American capital markets at a competitive disadvantage in a global economy.

It is important for policymakers to keep in mind that the economic crisis was not caused by a market or regulatory failure and did not originate as part of the normal business cycle. Weakness in the financial system was not the cause of the downturn as was the case in 2008—in fact, financial companies have proved resilient and have been at the forefront of the economic recovery. Countless businesses and workers have been harmed through no fault of their own and in many cases were mandated by a government order to shut down or limit their operations. The federal government's response to the crisis through fiscal and monetary policy, although imperfect, has been crucial to temporarily supporting our economy.



The government response to the pandemic is unprecedented in its scope and scale. The Coronavirus Aid, Relief, and Economic Security (CARES) Act and subsequent legislation authorized over \$650 billion for the Paycheck Protection Program that has been an indispensable lifeline for businesses and their employees, while the Federal Reserve has committed to providing upward of \$3 trillion in credit through a number of emergency lending facilities. These actions have stabilized markets, helped businesses stay afloat, and allowed millions of Americans to continue to earn a paycheck, but they cannot remain a permanent feature of our financial markets.

The following recommendations are intended to revitalize our capital markets and jumpstart our economy for all Americans. Businesses are ready to innovate, and Americans are ready to get back to work—policymakers can make this easier by adopting the proposals outlined in this report.

TOP RECOMMENDATIONS:



Enact Policies Expanding Access to Capital to Jumpstart the Economy and Close the Racial Wealth Gap



Increase Oversight over the Financial Stability Board and other International Standard-Setting Bodies



Implement Corporate Governance Reforms to Improve Investor Protections and Grow Companies from Small to Large



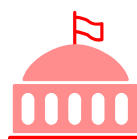
Transform the Consumer Experience by Expanding Access to Digital Channels for Financial Services



Review and Update Liquidity and Capital Requirements for Banks



Expand Consumer Choice and Access to Credit



Reform Supervision of Banks so It is Tailored for Individual Institutions and Improves Communication with Regulators

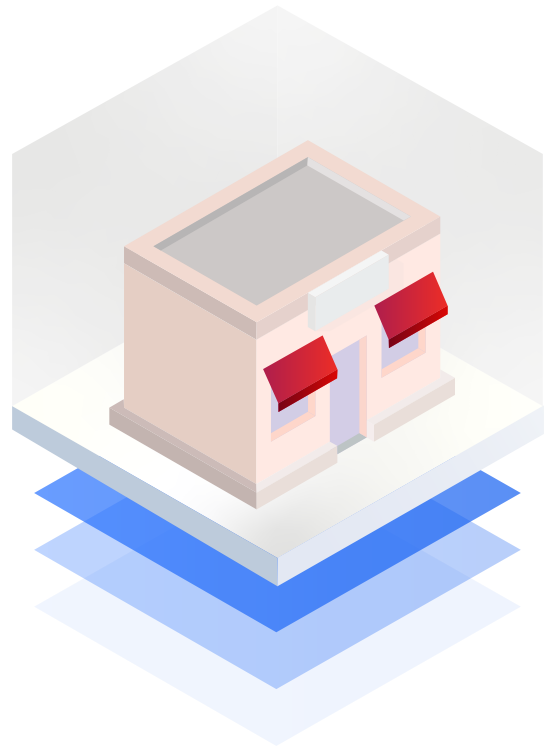


Enact Legislation that Makes Structural Reforms to Financial Regulators and the Rulemaking Process

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POLICY PRIORITIES



CAPITAL FORMATION: STRENGTHENING THE JOBS ACT

The Chamber remains very concerned about the long-term decline in the number of public companies in the U.S., a development that has endured through varied market and political cycles. The U.S. is now home to roughly half the number of public companies as 20 years ago, and we have only slightly more public companies than existed in 1982. As more companies elect to remain private longer, retail investors are denied the opportunity to invest in innovative growth companies early on and enjoy the full benefit of stock price appreciation. Over the past decade, we have also seen an uneven rate of new businesses being started, sometimes because of financial access issues.

In 2018, the House Financial Services Committee negotiated bipartisan legislation designed to increase the availability of capital to businesses, especially small and emerging growth companies. The legislation, modeled after the 2012 Jumpstart Our Businesses Startups (JOBS) Act, passed the U.S. House of Representatives with near unanimous support, but its progress stalled, and the legislation has lingered.

There are several current legislative proposals that Congress should consider that would expand opportunities for businesses to access capital as they try to rebuild from the most recent economic crisis.

The 2012 JOBS Act has provided significant capital-raising opportunities for both public and private enterprises. Beyond its specific policy impacts, the JOBS Act has also unleashed a new and positive way of thinking about the future of securities regulation. But the JOBS Act was just an initial step toward bringing our nation's securities laws into the 21st century, and some of the provisions in the law (as well as subsequent freelancing by regulators) need to be revisited if it is going to achieve its full potential. Congress should also continue to examine the reasons for the dramatic decline in public companies over the past two decades, and the role that corporate governance laws and regulation have in capital formation and the incentives for companies to go public.

There are several current legislative proposals that Congress should consider that would expand opportunities for businesses to access capital as they try to rebuild from the most recent economic crisis. Much of the bipartisan "JOBS Act 3.0" bill negotiated during the 115th Congress is now even timelier as small businesses attempt to access capital during these uncertain economic times. Swift enactment of such a bipartisan package, in addition to recent measures put forward in the wake of the pandemic, would provide a big boost to our economic recovery.

The Crowdfunding to Combat the Coronavirus Act (H.R. 6253–116th) would eliminate offering ceilings under Regulation Crowdfunding, Regulation A, and Regulation A+ under the Securities Act of 1993. While this would provide important capital-raising options for companies not ready to complete an Initial Public Offering (IPO), the Securities and Exchange Commission (SEC) should remain vigorous in its enforcement of any company—regardless of what exemption it may use under the securities laws—that makes false claims, particularly related to the pandemic.

The Relief for Small Businesses Through Micro-Offerings Act of 2020 (H.R. 6252–116th) would provide an exemption from registration requirements for small offerings that do not exceed \$250,000 in the aggregate, or more than \$5,000 to any one investor, and that is conducted through a regulated broker or funding portal. This would benefit entrepreneurs who are looking to raise relatively small amounts of capital and cannot afford costly legal and registration requirements.

The Crowdfunding Amendments Act (H.R. 4860–116th) would address some of the unnecessary compliance burdens that currently exist under the SEC’s crowdfunding rules by allowing for the use of “crowdfunding vehicles” and also exempting securities issued in crowdfunding offerings from registration requirements under the Securities Exchange Act of 1934.

The Helping Angels Lead Our Startups (HALOS) Act (H.R. 1909–116th) would help startup businesses communicate with potential investors by clarifying the definition of “general solicitation” under the 2012 JOBS Act. The bill would affirm that startups and angel investors can participate in “demo days” or other similar events where no specific offerings of securities are made.

The Access to Small Business Investor Capital Act (H.R. 7375–116th) would exempt business development companies (BDCs) from the acquired fund fees and expenses requirement that currently mandates the disclosure of misleading information regarding the costs of investments in BDCs. Passage of this bill will increase institutional investment in BDCs, which are a critical source of nonbank financing for small and middle market companies throughout the country.

The Gig Economy Infrastructure Act (H.R. 6254–116th) would expand the pool of workers who can receive equity compensation under the SEC’s Rule 701 to include independent contractors and “gig” economy workers.

The Improving Investment Research for Small and Emerging Issuers Act (H.R. 2919–116th) would direct the SEC to study and provide recommendations for how to improve research coverage for small capitalization and pre-IPO companies. A lack of analyst coverage in small companies has plagued much of our equity markets for years. This bill would ultimately help increase the flow of information to investors.

The Modernizing Disclosures for Investors Act (H.R. 4076–116th) would permit an alternative method for public companies to provide quarterly disclosures, including through a shortened form or press release. This would cut down on repetitive and costly disclosure requirements without depriving investors of material information they need to make informed decisions.

The Expanding Access to Capital for Rural Job Creators Act (H.R. 2409–116th) would expand the focus of the Office of the Advocate for Small Business Capital Formation at the SEC to include ways to increase capital access for rural small businesses. We believe this would help ensure that rural areas receive due consideration during any future SEC rulemaking process. A 2016 [report](#) from the Economic Innovation Group found that half of all post-recession business creation in the U.S. occurred across only 20 counties, and that many rural areas have not seen expected economic growth since the 2008 financial crisis. This bill is an incremental but important step that would focus the SEC on the needs of businesses in rural communities.

The Helping Startups Continue to Grow Act of 2019 (H.R. 4918–116th) would allow certain issuers of securities regulated as emerging growth companies to continue operating under such regulations, including those related to reduced disclosures and other exemptions, for an additional five years.

The Small Business, Mergers, Acquisitions, Sales and Brokerage Simplification Act (H.R. 609–116th) would simplify SEC registration requirements and provide a safe harbor for certain financial professionals who assist small and mid-size businesses that are looking to transfer corporate ownership. Importantly, the legislation also includes strong investor protections such as requiring the disclosure of relevant information to clients as well as the owners of eligible privately held companies. The bill does not impede in any way on the ability of the SEC to crack down on bad actors, or to prohibit past securities law violators from taking advantage of the exemption.

The Expanding Investment in Small Businesses Act (H.R. 3050–116th) would require the SEC to study whether diversified mutual funds should be permitted to take a larger stake in the voting shares of individual companies. Concerns have been raised that the current 10% threshold limits the amount available for investment in small companies. This legislation could expand the pool of capital available to emerging growth companies and other small issuers.

The Accelerating Access to Capital Act of 2017 (H.R. 4529–115th) would revise Form S-3 and liberalize the offering of securities to accelerate the ability of a business to become a public company. This bill would also modernize the use of Form S-3 and allow smaller issuers to take advantage of the simplified registration statement.

The Family Office Technical Correction Act of 2017 (H.R. 3972–115th) would provide certainty for “family offices” defined under securities laws by clarifying that such offices are accredited investors. This bill would help preserve the ability of family offices to invest in certain private offerings and help them remain an important source of capital for growing businesses.

The Public Company Registration Threshold Act (H.R. 5051–115th) would increase from 500 to 2,000 the number of non-accredited shareholders a company must have before being required to register with the SEC. This legislation would build on the 2012 JOBS Act, and would help many companies, including companies that raise money through crowdfunding and the private markets, avoid having to undergo costly registration with the SEC.

The Small Business Audit Correction Act of 2018 (H.R. 6021–115th) would exempt privately held non-custodial brokerage firms from a requirement to have a Public Company Accounting Oversight Board (PCAOB)-registered firm conduct their annual audit. Small broker-dealers are often important sources of capital for startups or small businesses around the country, and there is no compelling reason to subject them to an audit process that is more fitting of a large company.

The Developing and Empowering Our Aspiring Leaders Act of 2018 (H.R. 6177–115th) would expand the definition of a “qualifying investment” in venture capital funds to include certain equity securities bought on the secondary market. It would allow venture funds to continue to play an important role in deploying capital to growing businesses without having to undergo costly registration requirements.

The Fair Investment Opportunities for Professional Experts Act (H.R. 4762–116th) would provide an innovative way to expand the “accredited investor” definition in a limited manner to bring more sophisticated investors into the market. Traditionally, the accredited investor threshold has been determined through asset and income tests, which have resulted in both an under- and overinclusive outcomes. The definition leaves out sophisticated and savvy investors who may not meet financial thresholds while including a wealthy person with no experience in financial markets.

An individual who has met the educational and licensing requirements to sell securities and investments should be able to qualify as an accredited investor, and the SEC should, through notice and comment rulemaking, consider further ways to expand the accredited investor definition. This process would help balance investor protection concerns with the need to facilitate capital formation.

In August 2020, the SEC finalized a rule expanding the definition of “accredited investor” to include more individual investors, such as those with professional qualifications in the financial industry.

ACTION: Further expansion of the SEC’s definition of “accredited investor”—such as updating the net worth thresholds and recognizing more individuals with demonstrable education or job experience—is necessary to properly reflect certain individual investors’ level of sophistication.

ESTABLISH A LEGAL FRAMEWORK FOR VENTURE EXCHANGES

Technological changes in equity markets over the past two decades have helped reduce trading costs, increase liquidity, and make markets more efficient. However, many small and midsize public companies, including emerging growth companies (EGCs), still operate in a less liquid and more fragmented trading environment compared with the overall equity market. Venture exchange legislation would move policymakers from a regulatory “one-size-fits-all” model by providing a tailored trading platform for certain thin liquidity stocks. This would help promote liquidity for companies with smaller market capitalizations by exempting those stocks from rules that are more appropriate for deeply liquid and highly valued stocks, such as “tick size” and auction rules.

ACTION: Congress should enact legislation amending the Securities Exchange Act of 1934 to permit the creation of venture exchanges.

EXPAND EMPLOYEE OWNERSHIP IN STARTUP COMPANIES

The JOBS Act of 2012 included an important provision that exempted certain employee compensation plans from calculations determining when a business must register with the SEC. The intent behind this provision was to encourage more rank-and-file employees, who have firsthand knowledge of a business, an opportunity to share in ownership of the business and share in the opportunity for wealth creation. The rules were updated after bipartisan urging by Congress but are still not reaching their full potential.

In July 2018, the SEC finalized a rule that would increase the threshold from \$5 to \$10 million the amount of securities sold to employees per year without imposing complicated and costly disclosure requirements. However, the rule does not extend to independent contractors, therefore limiting opportunities for the workforce of the gig economy to share in wealth creation. Furthermore, the final rule only increases the annual threshold for the amount of securities sold under the registration exemption to only \$10 million.

ACTION: The SEC should clarify that updates to its rules also cover independent contractors.

ACTION: The SEC should expand the threshold from \$10 million to \$20 million so more of the workforce can share in the profits of their employers.



ACCESS TO CAPITAL FOR MINORITY- OWNED BUSINESSES

All Americans should have equal opportunity to earn their success, rise on their merit, and live their own American Dream. Through its Equality of Opportunity Initiative, the U.S. Chamber is developing and advancing data-driven business and policy solutions to bridge opportunity gaps and ensure that Black Americans and other people of color have greater opportunities to succeed.

The Chamber believes that policymakers should prioritize policies that promote access to capital and credit for minority-owned businesses. These businesses are often underserved because they do not have convenient access to the regulated banking system or because they reside in traditionally underserved communities.

Entrepreneurship plays an important role in building wealth in families, communities, and economies, but the opportunity to start and grow a business is not equal for White and Black Americans. Research shows that these disparities can be explained by persistent gaps in access to financial capital. According to findings from the U.S. Chamber of Commerce, Black entrepreneurs are nearly three times more likely than White entrepreneurs to have business growth and profitability negatively impacted by a lack of financial capital. Given that 70.6% of Black entrepreneurs rely on personal and family savings for financing, lower family wealth for Black families overall [drives more of a divide](#) in access to capital.

The Federal Reserve, for example, has consistently found there is a racial wealth gap in the U.S. According to a [report](#) released by the Federal Reserve in September 2020, “In 2016, white families had the highest level of both median and mean family wealth: \$171,000 and \$933,700, respectively. Black and Hispanic families have considerably less wealth than white families. Black families’ median and mean net worth is less than 15 percent that of white families, at \$17,600 and \$138,200, respectively. Hispanic families’ median and mean net worth was \$20,700 and \$191,200, respectively.”

There is a moral imperative for promoting an equality of opportunity, and there are also benefits to the American economy.

There is a moral imperative for promoting an equality of opportunity, and there are also benefits to the American economy. Closing racial divides in entrepreneurship would provide a significant infusion of jobs and economic growth. [A recent study](#) found that, if the number of people-of-color-owned firms was proportional to their labor force participation, the U.S. would add more than 1.1 million businesses, supporting an estimated 9 million additional jobs and adding nearly \$300 billion in workers’ income.

CONGRESS: ENACT A JOBS ACT FOR MINORITY-OWNED BUSINESSES

Congress should initiate a formal process through the SEC to develop recommendations for changes in existing law and regulations that would improve access to capital for minority-owned businesses.

This process could be conducted through the SEC's Office of the Advocate for Small Business Capital Formation by prioritizing outreach to minority-owned businesses to understand their financial needs and by working with financial companies to understand what public policy barriers stand in the way of providing capital.

ACTION: Congress should direct the SEC's Office of the Advocate for Small Business Capital Formation to analyze the needs of minority-owned businesses and make recommendations for improving their access to capital.

CONGRESS: ENACT THE IMPROVING CORPORATE GOVERNANCE THROUGH DIVERSITY ACT OF 2019

The Chamber supports efforts to increase gender, racial, and ethnic diversity on corporate boards of directors, as diversity has become increasingly important to institutional investors, pension funds, and other stakeholders. The Improving Corporate Governance Through Diversity Act of 2019 would establish a model to organically boost diversity on boards through disclosure, rather than the counterproductive quota-driven strategies that some jurisdictions have attempted. The bipartisan legislation would also establish an SEC advisory group that would carry out a study and provide recommendations on private sector strategies to increase gender, racial, and ethnic diversity among boards of directors.

ACTION: Congress should enact the Improving Corporate Governance Through Diversity Act of 2019 (H.R. 5084–116th).

ENCOURAGE USE OF ALTERNATIVE DATA FOR UNDERWRITING

Broadly speaking, the Chamber believes the use of appropriate data—both in quality and quantity—is paramount for underwriting financial products. This is true for consumer financial products, such as insurance policies and loans, but the principle is equally applicable to assessing the creditworthiness of a business. Data can be used to predict, with a high degree of confidence, whether a borrower will meet his or her financial obligations to creditors. However, in some cases, these predictions have been criticized for excluding, or not appropriately accounting for the risk of, some demographics. Expanding underwriting to include new sources of data will promote broader inclusion in the financial system without jeopardizing a proper assessment of a borrower's ability to repay.

ACTION: Policymakers should encourage use of alternative data to create a more inclusive financial system that does not exclusively depend on traditional data for underwriting and other business purposes. Reforms should not include new burdens, such as mandatory reporting of certain information, and should strongly weigh the benefits of federal preemption to simplify compliance.

CONGRESS: EXPAND AND STRENGTHEN COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

Status as a Community Development Financial Institution (CDFI) is provided by the U.S. Treasury Department to certain institutions that provide financial services in low-income communities and to people who lack access to financing.

Organizations are designated by the U.S. Treasury Department as a CDFI if they meet certain requirements demonstrating their commitment to serving low-income and distressed communities that have historically had inadequate access to capital and credit. These organizations, which may be a regulated entity like a development bank or credit union, or a nonregulated entity such as a venture capital fund or loan fund, are eligible for certain benefits that support their commitment to developing underserved communities.

The CDFI fund was established in 1994 with the intention of assisting CDFIs in providing support to markets that are underserved by traditional financial institutions. The CDFI fund may provide financial assistance to support lending, investing, and other financing. The CDFI fund may also provide technical assistance to help an organization build capacity to serve the community, such as by purchasing equipment or training staff.

The Chamber has supported increased funding by Congress toward the CDFI fund. The CDFI fund received a \$250 million appropriation from Congress for fiscal year 2019. The Chamber supported the \$1 billion emergency appropriation to the CDFI fund proposed by the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, and supports increasing its regular annual appropriation.

ACTION: Congress should significantly increase the annual appropriations to the CDFI fund.

CONGRESS: EXPAND AND SUPPORT MINORITY DEPOSITORY INSTITUTIONS

The criteria for a Minority Depository Institution (MDI) was established in 1989 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The law defines “minority” as any “Black American, Asian American, Hispanic American, or Native American” and defines “MDI” as any federally insured depository institution where 51% or more of the voting stock is owned by one or more “socially economically disadvantaged individuals.” The Federal Deposit Insurance Corporation (FDIC) later clarified that an “MDI” is defined as any federally insured depository institution where 51% or more of the voting stock is owned by minority individuals.



Designation as an MDI includes some benefits and is important for a number of reasons. The FDIC provides technical assistance to MDIs to assist them with meeting their regulatory compliance requirements. The FDIC also provides training opportunities to MDIs. The FDIC takes steps to preserve the minority status of an MDI by working with other MDIs to acquire it in the event of an insolvency.

Multiple bills were considered by the House in the 116th Congress, receiving bipartisan support, that would make meaningful reforms to strengthen MDIs.

The Expanding Opportunity for Minority Depository Institutions Act (H.R. 5315–116th) would codify the Treasury Department’s Financial Agent Mentor Protégé program. This program requires certain financial agents of the Treasury Department to mentor MDIs in how to fulfill responsibilities of a financial agent in order to expand opportunities for MDIs to do business with the federal government. The bill also requires Treasury’s Office of Minority and Women Inclusion to conduct several outreach events and submit a report to Congress.

The Ensuring Diversity in Community Banking Act (H.R. 5322–116th) would support MDIs and CDFIs through the placement of deposits by the federal government at these institutions to lend to underserved communities. The legislation includes other important reforms, such as establishing a designation of “impact banks” (which primarily lend to low-income borrowers), codifies the Treasury’s minority bank deposit program, and streamlines the FDIC’s application process for CDFI status.

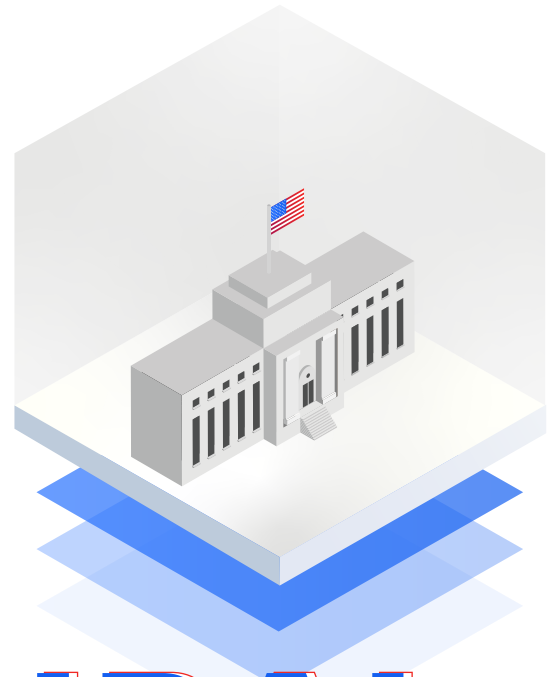
ACTION: Congress should enact legislation to expand the number of Minority Depository Institutions and support their work with underserved communities.

CFPB: COMPLETE SMALL BUSINESS DATA COLLECTION (SECTION 1071) RULEMAKING

Section 1071 of the Dodd-Frank Act directs the Consumer Financial Protection Bureau (CFPB) to collect data on lending to small businesses, with the goal of better understanding the credit availability landscape for those that are owned and operated by women and minorities. The purpose is to facilitate compliance with fair lending laws and enable communities, governmental entities, and creditors to identify the needs and opportunities of minority-owned and women-owned small businesses. However, if compliance costs for lending to businesses are overly burdensome, the costs may pressure lenders to limit the amount of credit they extend.

There are commonsense steps that can be taken to limit the burdens imposed on creditors and borrowers while also fulfilling the intent of the law. The CFPB should use a cost-benefit analysis, develop a clear definition of “small business” that is narrowly tailored, collect only data points mandated by the statute, and protect the privacy of borrowers by keeping the data private.

ACTION: The CFPB should complete the rulemaking required under Section 1071 to improve the information available about credit availability for businesses owned by minorities and women.



STRUCTURAL REFORM TO FINANCIAL REGULATORS

In its landmark 2007 *Commission on the Regulation of U.S. Capital Markets in the 21st Century Report*, the Chamber warned that the New Deal era financial regulatory needs were not able to keep pace with the financing needed by a digitally based globally facing economy. Many of those issues have been unaddressed and, in some cases, exacerbated. These issues have created a significant competitive disadvantage for the American capital markets.

Good public policy is the product of thoughtfully constructed institutions and processes that consider a broad view of stakeholder interests that carefully measures the costs and benefits of proposed solutions to issues identified by the public.

Good public policy is the product of thoughtfully constructed institutions and processes that consider a broad view of stakeholder interests that carefully measures the costs and benefits of proposed solutions to issues identified by the public. Decisions from policymakers should be designed to stand the test of time in order to provide certainty about the rules of the road. This can be accomplished only if stakeholders believe they can participate in the process and the decisions are grounded in the rule of law.

The financial regulatory structure in the U.S. has contributed to an abundant availability of credit and the deepest, most liquid capital markets in the world. This is a testament to the regulatory structure developed throughout our history, but there are opportunities for improvement.

FEDERAL FINANCIAL REGULATORS: IMPROVE COST-BENEFIT ANALYSIS TRANSPARENCY

Because high-impact regulations can have major ripple effects throughout society and the economy, ensuring a robust and transparent public participation process is paramount. Participation in the rulemaking process is equally as important as the cost-benefit analysis used to justify the rules.

High-quality cost-benefit analyses are foundational to balanced and informed regulatory decision-making. Unfortunately, however, many federal regulations are not accompanied by cost-benefit analyses, and those that are often are plagued by inconsistent approaches, problematic or non-transparent assumptions, and a failure to acknowledge and communicate significant sources of uncertainty. Government-wide and individual agency efforts to institute a more open and standardized approach to cost-benefit analyses would enhance public understanding of the data and inputs that drive regulatory decisions, improve the integrity of the rulemaking process, and ultimately lead to better public policy.

ACTION: Federal financial regulators should establish a council of chief economists to periodically discuss the costs and benefits of regulation, including those that overlap or are redundant. The council should report annually to Congress about opportunities it identifies to streamline or otherwise make regulations more efficient.

ACTION: Federal financial regulators should make publicly available the data and methodology used to conduct cost-benefit analyses on a final regulation, so the public can review it.

FSOC: COORDINATE REGULATION AMONG FINANCIAL REGULATORS

The Financial Stability Oversight Council's (FSOC's) mandate includes identifying risks to financial stability, promoting market discipline, and responding to emerging threats to the stability of the U.S. financial system. The FSOC is also the only formal mechanism for communication and coordination among the administration, federal financial regulators, and state financial regulators.

Oftentimes, rules from one financial regulator may conflict or be redundant with rules issued by others. A lack of coordination may therefore contribute to unnecessary or cumbersome regulation that impairs the efficient allocation of capital in financial markets. In its *2019 Annual Report*, members of the FSOC recommended that “federal and state financial regulators continue to work together to evaluate regulatory overlap and duplication, modernize outdated regulations, and, where authority exists, tailor regulations based on the size and complexity of financial institutions.”

ACTION: FSOC should prioritize coordination and modernizing financial regulations to promote the efficient allocation of capital in the U.S. economy.

FEDERAL FINANCIAL REGULATORS: TREAT GUIDANCE AS GUIDANCE, NOT AS LAW

In October 2019, the president issued Executive Order (EO) 13891 on “Promoting the Rule of Law Through Improved Agency Guidance Documents.” The EO states, “Agencies may clarify existing obligations through non-binding guidance documents, which the Administrative Procedure Act (APA) exempts from notice-and-comment requirements. Yet agencies have sometimes used this authority inappropriately in attempts to regulate the public without following the rulemaking procedures of the [APA].”

The EO further notes that certain guidance may be in violation of the APA—the guidance provides insufficient notice to the public about implied action by an agency, including enforcement proceedings, if it does not provide an opportunity for input.

ACTION: Each financial regulatory agency should update its processes and procedures, including regulations, for issuing guidance documents. This update should, at minimum, include a requirement to clearly state a guidance document does not bind the public and a mechanism for the public to petition for withdrawal or modification of a guidance document.

ACTION: Each financial regulatory agency should establish or maintain on its website a single database that contains or links to all guidance documents in effect from such agency.

CONGRESS: ENACT THE COMPREHENSIVE REGULATORY REVIEW ACT

The Economic Growth and Regulatory Paper Reduction Act of 1996 (EGRPRA) requires the Federal Financial Institutions Examination Council and its member agencies to review their regulations at least once every 10 years to identify any outdated, unnecessary, or unduly burdensome regulations and consider how to reduce regulatory burdens on insured depository institutions while, at the same time, ensuring their safety and the stability of the financial system. The EGRPRA process has proved beneficial, but improvements such as more frequent reviews and expanding due diligence will foster better recommendations for decreasing regulatory burden.

The Comprehensive Regulatory Review Act (H.R. 3198–116th) would expand EGRPRA. Importantly, the legislation would expand the review to include the CFPB and National Credit Union Administration NCUA and would make the review more frequent. It would also require agencies to tailor their regulations to limit compliance costs.

ACTION: Congress should enact the Comprehensive Regulatory Review Act (H.R. 3198–116th).

U.S. REPRESENTATIVES TO FINANCIAL STABILITY BOARD: IMPROVE TRANSPARENCY

The Financial Stability Board (FSB) promotes global financial stability by coordinating the development of regulatory, supervisory, and other financial sector policies and conducts outreach to non-member countries. All the main players who set financial stability policies across different sectors of the financial system for the world's largest economies are at one table. The FSB establishes standards that its members agree to implement. The FSB also directs the activity of the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), and the International Organization of Securities Commissions (IOSCO) including the developing of international standards. The U.S. is represented at the FSB by the Treasury Department, the SEC, and the Federal Reserve Board (FRB).

The Chamber believes adequate transparency into the dealings of U.S. representatives to the FSB is critical. Normally, a regulatory mandate comes from the U.S. Congress, but acting under the aegis of an international mandate, U.S. representatives to the FSB, in effect, create their own mandate for new regulation. While FSB members are not bound to adopt/implement FSB policies, the work of this body can influence the direction of jurisdictional supervision and/or regulatory requirements and may not adequately consider specificities and needs of U.S. consumers and markets.

ACTIONS: U.S. representatives to the Financial Stability Board—including from the FRB, Securities and Exchange Commission, and U.S. Department of Treasury—should do the following:

- Engage with U.S. stakeholders to formulate positions on matters before the FSB.
- Notify Congress and the public prior to entering international negotiations.
- Report to Congress regarding the formulation of American positions on matters before the FSB.
- Publish the text of any completed FSB, BCBS, IOSCO, or IAIS agreement and provide a notice and public comment period of no less than 60 days before signing it.
- Brief members of Congress in a timely manner, permitting time for review and response, on the substance of their engagement at the FSB and potential effects FSB policies could have on the U.S.
- Make summaries of FSB-related meetings publicly available on their respective websites.

CONGRESS: SUBJECT THE CFPB TO THE APPROPRIATIONS PROCESS

The Chamber recommends that the CFPB be subject to the Congressional appropriations process. This reform would provide additional opportunity for Congress to fulfill its oversight obligation and provide input into the operations and policymaking of the CFPB similar to the oversight of the SEC and the Commodity Futures Trading Commission (CFTC).

ACTION: This recommendation can be accomplished by enacting legislation that would subject the bureau to the Congressional appropriations process as proposed by the Taking Accounts of Bureaucrats' Spending (TABS) Act (H.R. 2553–115th).

CONGRESS: CREATE A BIPARTISAN COMMISSION AT THE CFPB

The Chamber recommends that the CFPB single-director position be replaced with a bipartisan commission. The improved governance will provide the CFPB with the benefit of a diversity of viewpoints in its decision-making and avoid partisan rulemaking that is unable to stand the test of time. Creating a bipartisan commission at the CFPB would align its governance with that of the SEC, CFTC, FRB, FDIC, and NCUA.

ACTION: This recommendation can be accomplished by enacting the Financial Product Safety Commission Act of 2020 (S. 3990–116th) or the Consumer Financial Protection Commission Act of 2020 (H.R. 6116–116th).

CFPB: INCREASE ANALYTICAL RIGOR OF RULEMAKING PROCESS

It is well established that compliance with regulations place small businesses at a relative disadvantage to larger participants in the market. Notably, small businesses do not have the economies of scale to comply with regulations. And regulations oftentimes do not properly consider the unique challenges facing small businesses.

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 provided new avenues for small businesses to have a strong voice before federal regulators. SBREFA requires the CFPB to convene a Small Business Advocacy Review panel, made up of a chair from the CFPB, the Chief Counsel for Advocacy at the Small Business Administration, and the administration of the Office of Information and Regulatory Affairs, to meet with representatives of directly regulated small entities and recommend regulatory alternatives to minimize the burden on small entities.

The CFPB is required to convene a SBREFA panel for rulemakings that it determines will have a significant economic impact on a substantial number of small entities. This process has proved to be relatively effective but leaves out other rulemakings that the CFPB determines will not have a significant impact on small businesses. Just because the bureau makes such a determination does not mean the regulations are irrelevant for small businesses, however.

ACTION: The Dodd-Frank Act should be amended to require the CFPB to use the SBREFA process for rulemakings, especially economic significant rulemakings, even when not strictly required by law.

CONGRESS: MAKE THE CFPB DEPUTY DIRECTOR A SENATE CONFIRMED POSITION

The Deputy Director of the CFPB has significant influence regarding all major decisions made within the agency. This is at least partly attributable to the fact that the bureau is run by a single director instead of a bipartisan commission. Furthermore, the Deputy Director would ascend to the role of Acting Director in the event another appointment is not confirmed if the Director vacates the position. Therefore, the position of Deputy Director merits additional review and accountability.

ACTION: The Deputy Director of the CFPB should be a position appointed by the President and confirmed by the Senate.

CFPB: FORMALIZE THE PROCESS FOR CONCLUDING CIVIL INVESTIGATIVE DEMANDS

The Dodd-Frank Act provides authority to the CFPB to issue Civil Investigative Demands (CIDs) to any person it has reason to believe may be in possession of information relevant to a violation of consumer law. Such requests assist the CFPB in fulfilling its obligations to enforce the law, but also impose significant compliance burdens on firms that are required to produce documentation.

The bureau made important updates to its policies regarding CIDs in April 2019. Namely, they noted CIDs will include more information about the potentially applicable provisions of law that may have been violated and specify the business activities subject to the CFPB's authority.

The bureau should take steps to ensure that a company that is the target of an investigation is apprised of its status and notified in a timely manner if an investigation is closed. Companies treat CIDs with great importance and will not close out their investigation until the bureau makes clear that its request has concluded.

ACTION: The CFPB should institute a formal process for concluding Civil Investigative Demands, including adopting presumptive timeframes (e.g., every six months) at which it will inform firms of the investigation's status.

CFPB: CREATE A NEW OFFICE OF ECONOMIC ANALYSIS

The central tenant of policymaking is that benefits should exceed the costs. In other words, more good than harm should come from pursuing a specific policy, such as a new regulation. Admittedly, this can be a difficult task given that it requires establishing assumptions about the costs and benefits to be measured, and how to measure them, that can be influenced by implicit biases or preconceived notions about the policy objective. For example, a regulation may add new protections for consumers, but it may also limit the availability of products that are crucial to their financial health. Therefore, a cost-benefit analysis, making use of dedicated resources to balance perspectives and produce an independent assessment, is vital for policymaking.

ACTION: The CFPB should establish an Office of Economic Analysis to objectively review the costs and benefits of its policies, including regulation and guidance.



CONGRESS: SUBJECT THE OFFICE OF FINANCIAL RESEARCH TO THE APPROPRIATIONS PROCESS

The Office of Financial Research (OFR), an independent office within the Treasury Department, was intended to be an early identifier of possible risks emerging in the financial system. Its independent structure, however, permits extremely broad leeway in determining how to allocate personnel and other resources in its work of attempting to identify systemic risk. Congress should retain the authority to oversee the administration of the OFR through the appropriations process.

ACTION: Congress should enact legislation subjecting OFR to the congressional appropriations process.

CONGRESS: SUBJECT FSOC TO THE APPROPRIATIONS PROCESS

The Financial Stability Oversight Council has authority to subject a nonbank financial company to bank-like regulations and supervision by the FRB if it poses a systemic risk to the financial system. FSOC has the authority to single out products and activities for increased oversight due to perceived systemic risk. Suffice to say, FSOC broadly influences the direction of regulatory policy for the financial markets. However, despite the entity's momentous authority and weight with regard to financial regulation, there is relatively little oversight. Appropriate checks and balances lead to stronger and more effective agencies.

ACTION: Congress should enact legislation subjecting FSOC to the congressional appropriations process.



CORPORATE GOVERNANCE AND FINANCIAL REPORTING

The U.S. Chamber of Commerce is passionately committed to promoting the hopeful vision of economic freedom. Companies and entrepreneurs will survive only if they are able to understand, respond to, and serve the needs of customers. And companies will succeed only if they are able to attract, motivate, and reward people to work passionately and productively to serve those customers.

The fundamental challenge we face today is to preserve the ability of our nation's companies to grow, innovate, and drive prosperity under a system of free and fair capitalism, while also acknowledging and addressing the shortcomings in the system. The Chamber—through its Project Growth and Opportunity or “Project GO”—is committed to identifying practical, sustainable ways to address socio-economic challenges.

Reporting of environmental, social, and governance (ESG) activity has been at the forefront of conversations with the investment community and politicians. Investment professionals are in search of useful information, that may not be conspicuously available in financial statements, to inform if a company is positioning itself to create long-term value for its shareholders. On the flip side, some special interest activists have attempted to use ESG to force companies to take certain environmental or social stances that are not necessarily aligned with creating shareholder value.

The Chamber—through its Project Growth and Opportunity or “Project GO”—is committed to identifying practical, sustainable ways to address socio-economic challenges.

The number of companies that have chosen to voluntarily publish annual ESG reports has grown significantly in recent years, with 86% of companies in the S&P 500 voluntarily publishing such reports. ESG disclosures measure a company's non-financial performance indicators, which include sustainability practices, social criteria, and corporate governance issues. Examples can include quantifying the company's greenhouse gas emissions or sharing details about the board's diversity and structure.

ESG reporting is developing organically—it does not require rigid regulations. In fact, these may do more harm than good if they require disclosure of nonmaterial information that is not useful to investors, also imposing unnecessary costs on firms filing securities disclosures.

CCMC released [principles for ESG reporting](#) in 2019 to inform filers, and the public, about best practices. The report notes ESG reporting should do the following:

- Be tied to long-term value creation.
- Consider the audience.
- Be written in plain English and clearly describe the metrics used.
- Be overseen by someone who owns sustainability reporting at the company.
- Fit the needs of that particular company and industry.

SEC: IMPLEMENT NEW PROXY ADVISORY FIRM RULES

Despite being plagued by conflicts of interest, a lack of transparency, and significant errors in voting recommendations, proxy advisory firms continue to carry a significant amount of influence over corporate governance at America's public companies. The two dominant proxy firms—Institutional Shareholder Services (ISS) and Glass Lewis—control roughly 97% of the proxy advisory industry, constituting a duopoly that has become the de facto standard setter for corporate governance in the U.S. without any meaningful input from shareholders or issuers. The status quo has created distortions in the capital markets and has made it more difficult for companies to go and stay public.

The House of Representatives was so concerned over the lack of oversight in this area that it sought to regulate these firms by passing the bipartisan Corporate Governance Reform and Transparency Act of 2017 (H.R. 3015—115th). Similar bipartisan legislation was also introduced in the Senate as the Corporate Governance Fairness Act (S. 3614—115th).

In July 2020, the SEC adopted a rule that provides investors using proxy voting advice more transparent, accurate, and complete information, and provided supplemental guidance regarding proxy voting responsibilities of investment advisers. The rule codifies the SEC's longstanding position that proxy advice is generally a "solicitation" under SEC rules and reaffirms that the anti-fraud provisions under Exchange Act Rule 14a-9 apply to proxy advisory firms.

Findings from the [Chamber's 2020 Proxy Season Survey](#) show public companies are prepared to participate in the new SEC process, specifically welcoming the ability to "review and comment" on draft proxy advisory firm recommendations and confirming it would not cause delays or confusion. The new SEC rule takes on more importance given that the survey also found that responsiveness and transparency of proxy advisory firms continue to decline, and conflicts of interest still largely exist.

ACTION: The SEC should prioritize implementation and enforcement of the rules finalized on July 22, 2020, to ensure transparency and accountability for proxy advisory firms.

ACTION: The SEC should submit reports to Congress regarding the impact of its policies for eliminating conflicts of interest by proxy advisory firms, assessing policies and procedures at proxy advisory firms for preventing false statements or omitting a material fact, and examining whether additional protections would be helpful to investors. This concept is embodied in the bipartisan Corporate Governance Fairness Act (S. 3614–115th).

ACTION: Congress should enact legislation that would codify the regulations of proxy advisory firms finalized by the SEC in July 2020.

DOL: UPDATE FIDUCIARY DUTIES REGARDING PROXY VOTING AND SHAREHOLDER RIGHTS

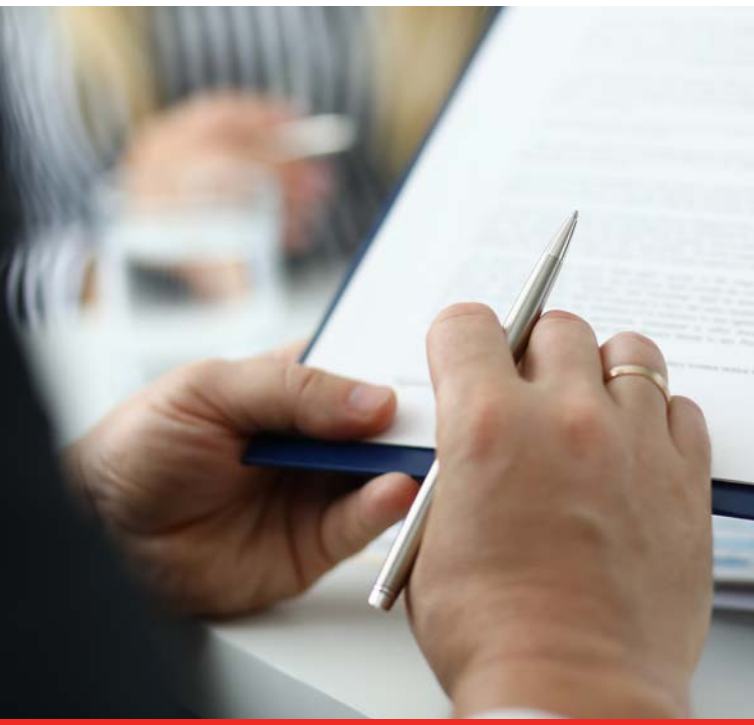
The Department of Labor (DOL) released a proposal in August 2020 to address the application of the prudence and exclusive purpose duties under Employee Retirement Income Security Act of 1974 with respect to proxy voting and exercises of other shareholder rights. The proposed proxy rule, which seeks to eliminate confusion over sub-regulatory guidance and letters the DOL has issued over the years regarding voting proxies, would ensure that fiduciaries are voting proxies only where it is financially in the interest of the plan. This proposal will strengthen investor protection and promote the interests of retirees. Along with recent actions taken by the SEC, the DOL's proposal will ensure that proxy voting is directly tied to the economic return for retirees and follows a transparent and unconflicted process.

ACTION: Policymakers should support the proposed regulatory action on proxy voting under ERISA established plans.

SUPPORT PUBLIC COMPANIES' FLEXIBILITY TO ISSUE DIVIDENDS AND REPURCHASE SHARES

In addition to providing essential goods and services, public companies have an essential role in wealth creation and income generation for everyday American investors that most people don't think about. Each quarter, U.S. publicly traded companies pay out billions in dividends to Americans. A dividend is a distribution of a company's profits to shareholders, including pension plan beneficiaries, 401(k) savers, or everyday investors. Many savers, who may be retired or are no longer working, depend on dividends as a reliable, steady stream of income—which is increasingly important during times of crisis. According to the Federal Reserve's [*Report on the Economic Well-Being of U.S. Households in 2016*](#), income received through interest, dividends, or rental income was received by 27% of respondents over the age of 18. More than one in three (40%) of those 60 or older reported dividends as a stream of income. In fact, for some households, dividends help pay for essential expenses like mortgages or healthcare—both top priorities during a crisis, like the COVID-19 crisis we now face. But still, some policymakers are calling for public companies to be prohibited from distributing dividend payments to their shareholders.

ACTION: Policymakers should allow public companies to continue engaging in dividends and buybacks so they can maintain an efficient capital structure that permits them to finance their growth and share earnings with investors.



SUPPORT SEC REFORMS TO THE SHAREHOLDER PROPOSAL PROCESS

Under the Exchange Act of 1934, Rule 14a-8 establishes the eligibility requirements a shareholder must satisfy to submit a proposal for inclusion in a company's proxy statement. Until recently, shareholders could make a short-term, nominal investment in a company and thereby have free reign to push a proposal unrelated to the company's bottom line performance. These rules had not been substantially updated since 1954 until the SEC modernized them via a rulemaking that was finalized in September 2020.

In 1997—under the leadership of Chairman Arthur Levitt, who was appointed by President Clinton—the SEC proposed raising the resubmission thresholds under Rule 14a-8 so that proposals would have to elicit meaningful support before being proposed again. As the SEC stated then, “We believe that a proposal that has not achieved these [proposed] levels of support has been fairly tested and stands no significant chance of obtaining the level of voting support required for approval.”

The commonsense reforms finalized by the SEC to 14a-8 will protect shareholder value without stifling the voices of serious investors. The amendments update the criteria, including the ownership requirements, that a shareholder must satisfy to be eligible to have a shareholder proposal included in a company’s proxy statement and modernize the levels of shareholder support a proposal must receive to be eligible for resubmission.

ACTION: Policymakers should implement changes to Rule 14a-8 that were finalized by the SEC in September 2020.

CONGRESS: REPEAL REQUIREMENT FOR INCENTIVE COMPENSATION RULEMAKING

Section 956 of the Dodd-Frank Act requires that financial regulators issue joint rules or guidelines to require financial institutions to disclose to the appropriate federal regulator the structure of all incentive-based compensation arrangements offered. An overly broad joint rule was proposed in 2016 that presented a number of issues and went beyond the intent of Congress, but was never finalized. At the time, the Chamber argued that the rule should use a principles-based approach instead of a one-size-fits-all approach for all financial institutions, including nonbank financial institutions, raised concerns that the rule could dilute human capital, and objected to the onerous compliance burdens required. Financial regulators have been unable to reconcile the flawed requirement from Congress and therefore never finalized the rule.

ACTION: Congress should repeal Section 956 of the Dodd-Frank Act.

SEC: MODERNIZE REGULATION S-K ITEMS 101, 103, AND 105

Regulation S-K lays out reporting requirements for various SEC filings issued by public companies in the U.S. Reporting of information to investors by issuers is premised on the concept of materiality to ensure that relevant information is disclosed but also to limit an over-abundance of extraneous information irrelevant to the performance of a public company. Furthermore, disclosure of nonmaterial information imposes costs on public companies while providing little if any benefit to shareholders.

Prescriptive disclosure requirements, instead of a principles-based approach tailored for individual circumstances, is one of the many challenges facing public companies.

In August 2020, the SEC adopted a rule to modernize elements of Regulation S-K that have not undergone revisions in over 30 years. The amendments to modernize the description of business (Item 101), legal proceedings (Item 103), and risk factor disclosures (Item 105) are intended to improve the quality of disclosure while also discouraging repetition and avoiding disclosure of nonmaterial information.

ACTION: Policymakers should take additional steps to ensure that disclosure requirements for public companies exclusively cover information that is material to investors.

FASB AND SEC: REFORM ACCOUNTING STANDARDS PROCESS

Historically there has been a lack of transparent communication and coordination among regulators, standard-setters, and market participants. A Financial Accounting Forum (FAF) should be created with the mission to identify and propose solutions to problems before they reach the crisis stage. It should be composed of the SEC, Financial Accounting Standards Board (FASB), Public Company Accounting Oversight Board (PCAOB), investors (broadly defined), and businesses. An FAF will also provide a mechanism to allow for appropriate coordination among regulators and input from investors and businesses. This concept was put forward in Section 7417 of the original House-passed version of the Dodd-Frank Act but did not become law.

ACTION: Congress should enact Section 7417 of the original House-passed version of the Dodd-Frank Act to create a Financial Accounting Forum.

SEC: ADDRESS ABUSES OR UNLAWFUL ACTIVITY RELATED TO SHORT SALES

Short selling undoubtedly serves a valuable market function, and a free market should allow investors to go either “long” or “short” depending on their view of a particular company or overall investment strategy. However, the SEC has also noted that market manipulators can engage in abusive forms of short selling that unduly harm investors or the reputation of a company. For example, “short and distort” campaigns occur when a manipulator shorts the stock of a particular company, then spreads false or unverified rumors about the company in order to drive down its stock price, which benefits the short seller.

There are extensive public disclosure obligations for investors who bet on a company's performance by "going long" and buying a company's stock. In comparison, investors are not required to disclose if they take a short position on a company, including via derivatives, to enable a profit due to a decrease in the value of a company's equity.

ACTION: The SEC should remain vigilant in taking action against manipulators who unlawfully engage in activities that harm the overall markets.

CONGRESS: REPEAL NON-MATERIAL DISCLOSURE REQUIREMENTS FOR PUBLIC COMPANIES

For more than eight decades, materiality has been the lodestar of the public company disclosure regime under the federal securities laws. The longstanding materiality standard—namely, what is important to a reasonable investor focused on investment returns—has instilled in investors and issuers alike a confidence in the accuracy and integrity of information that promotes market efficiency, competition, liquidity, and price discovery.

In 1975, the SEC described its views on materiality noting, "As a practical matter, it is impossible to provide every item of information that might be of interest to some investor in making investment and voting decisions. . . . [C]ertain types of disclosure might be so voluminous as to render disclosure documents as a whole significantly less readable and, thus, less-useful to investors generally. In addition, disclosure to serve the needs or desires of limited segments of the investing public, even if otherwise desirable, may be inappropriate, since the cost to registrants, which must ultimately be borne by their shareholders, would be likely to outweigh the resulting benefits to most investors."

In recent years, however, a variety of groups have zeroed in on SEC disclosures by pressing for new mandatory disclosure requirements to advocate for social and political change. While these may be important causes, they are not material to investors and their voting decisions. Unfortunately, the Dodd-Frank Act included a number of nonmaterial disclosure requirements for public companies and new legislation is often introduced in Congress requiring public companies to disclose information that is not material to investors.

ACTION: Congress should enact legislation that repeals requirements for public companies to disclose non-material information to investors. Congress should repeal three sections of the Dodd-Frank Act: Section 1502 (relating to conflict minerals), Section 1503 (relating to mine safety), and Section 1504 (relating to resource extraction).

SEC: HARMONIZE THE PRIVATE OFFERINGS REGIME

Securities offerings are required to be registered with the SEC unless they qualify for one of the exemptions to the Securities Act of 1933, such as issuances under Regulation A and Regulation Crowdfunding. These exemptions make it easier for smaller companies to raise capital without undermining investor protection. The private placement regime under the Securities Act is a patchwork of regulatory exemptions and market practices that have developed over many decades in response to statutory provisions, case law, economic developments, periodic acts of Congress, and a gradual evolution of the Commission's thinking about each of these regulatory exemptions and market practices.

The Commission proposed a rule in March 2020 that would harmonize the exempt offering regime such as permitting issuers to more easily switch exemptions depending on their circumstances, increasing offering limits, clarifying rules for communication with investors such as interactions via “demo days,” and updating disclosure requirements. In October, 2020 the Commission finalized this proposal, thus harmonizing the exempt offering framework and making it easier to raise capital in the private markets.

ACTION: Policymakers should support the SEC's October 2020 rule and increase opportunities to raise capital in the private markets.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD REFORMS

The PCAOB was established by the Sarbanes-Oxley Act to oversee the auditing profession for the private sector. The PCAOB is a nonprofit corporation intended to ensure that auditors provide an unbiased opinion on whether financial statements and related disclosures are fairly stated in all material respects in accordance with Generally Accepted Accounting Principles (GAAP). This regulatory structure helps provide more certainty to investors, but also creates some unnecessary issues for audit professionals and new costs for public companies.

PCAOB: ISSUE A POLICY STATEMENT ON THE EVALUATION OF AUDITOR JUDGEMENTS

The PCAOB should issue a policy statement on how it evaluates an auditor's adherence to the auditing standards in complex areas requiring significant judgment on both integrated and financial statement-only audits. Improving communication with the audit profession by issuing a policy statement will help auditors document their judgments.

The SEC Advisory Committee on Improvements to Financial Reporting (CIFiR) has recommended that “the PCAOB develop and articulate guidance related to how the PCAOB, including its inspections and enforcement divisions, would evaluate the reasonableness of judgments made based on PCAOB auditing standards.” CIFiR also stressed that the PCAOB should look to SEC policy in evaluating the appropriateness of accounting judgments as part of an auditor’s compliance with PCAOB auditing standards.

ACTION: The PCAOB should issue a policy statement on auditor judgments.

PCAOB: IMPROVE CONSISTENCY IN THE INSPECTION APPROACH

The PCAOB inspection process oftentimes lacks consistency. This can be attributed to deficiencies in the standardization of its inspection process due to disparities in guidelines and training made available to inspectors. Furthermore, this may be exacerbated when audit firms, and their clients, are uncertain about how they will be judged because they are trying to anticipate expectations based on past experiences rather than established guidelines. The lack of standardization could also permit identical audits to fail based on who is conducting the inspection.

ACTION: The PCAOB should increase involvement by its Board in oversight of inspections and enhance the post-implementation review program.

PCAOB: HASTEN THE AVAILABILITY OF INSPECTION FINDINGS

The PCAOB should expedite feedback it provides to audit firms. Timely feedback is invaluable for audits involving novel business practices or the employment of new auditing practices to review implementation of new accounting standards, for example. Without timely feedback, auditors may be informed of deficiencies in their practices after completing dozens of audits, when these problems could have been corrected by the PCAOB much sooner. The lack of timely feedback may therefore make it more difficult for auditors to deviate from standardized practices even if it would improve the audit quality. Furthermore, oftentimes the firms have already corrected the noted deficiency by the time the audit report is made public, so the headlines are reporting news about a firm’s processes that is no longer current and therefore inaccurate.

ACTION: The PCAOB should expedite feedback it provides to audit firms via inspection findings or another communication framework.

PCAOB: MAKE STRUCTURAL REFORMS TO THE STANDING ADVISORY GROUP

The PCAOB should make structural reforms to its Standing Advisory Group (SAG) to improve the quality of advice provided. The SAG was convened by the Board to advise on the development of auditing and related professional practice standards. Its membership includes auditors, investors, audit committee members, public company executives, and others such as academics. The broad representation of the group causes it to lack a clear focus or direction for advising the PCAOB. The SAG meets two or three times a year and is chaired by the PCAOB chief auditor and director of professional standards. Unfortunately, the deliberations of this body are not as transparent as they could be, and status updates regarding recommendations are not clearly communicated.

ACTION: The SAG should formalize a mission statement describing its purpose, objectives, and processes for assisting the Board in improving its oversight of the audit profession.

ACTION: The SAG should formalize representation parameters (e.g., number of auditors, academics, investors) to ensure a balanced perspective.

ACTION: The SAG should increase the transparency of its deliberations beyond live webcasting of its meetings. It should issue minutes and a transcript of each meeting to make information more available to the public.

ACTION: The SAG should publicly issue recommendations to the Board on an annual basis that will improve oversight of the audit profession. The Board should respond in writing explaining their decisions to accept or not accept recommendations.

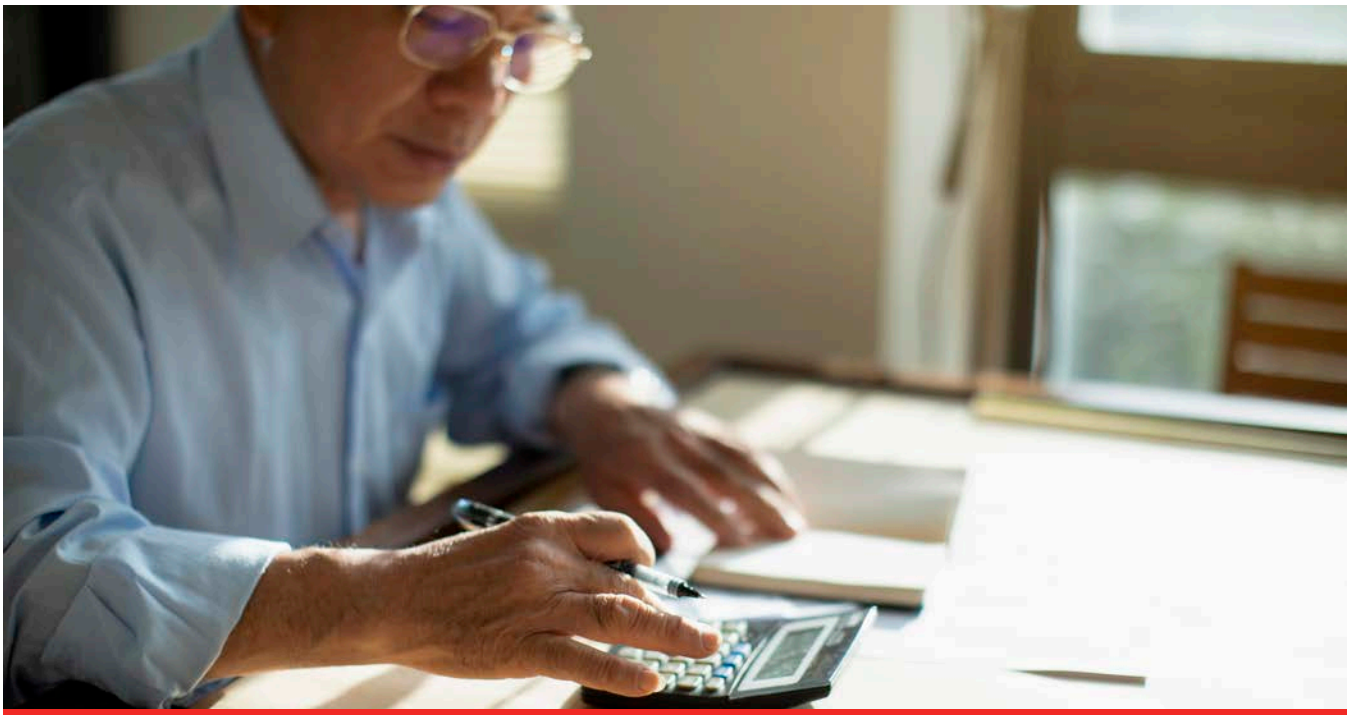
ACTION: The PCAOB should use subsets of the SAG or create new advisory groups focused on defined groups of stakeholders and/or issues to inform the Board on matters of importance. A Business Advisory Group would help the PCAOB better appreciate business operations and the impact of PCAOB activities on businesses. An Audit Advisory Group would more substantively allow the expertise and experience of practicing auditors to inform the PCAOB's activities and initiatives, and potentially field-test new standards to assess their effectiveness prior to implementation.

PCAOB: IMPROVE INSPECTION ARRANGEMENTS WITH FOREIGN REGULATORS

Foreign firms accessing U.S. capital markets may use foreign auditors in their home jurisdiction to audit their financial statements. In some cases, the PCAOB is restricted from inspecting the audit work and practices of PCAOB-registered accounting firms in certain jurisdictions, such as China and Hong Kong.

The absence of agreements could prevent U.S.-listed companies from being able to file consolidated financial statements with the SEC or prevent foreign companies from accessing U.S. capital markets. If audit firms operating in foreign jurisdictions do not comply with SEC standards, such as making audits available for review by the PCAOB, their work may be deemed unsatisfactory for establishing if financial statements are suitable for use by investors. Similarly, the SEC may support removing foreign companies from U.S. exchanges if the PCAOB is unable to review the audit of its parent company. These are lose-lose outcomes that would limit opportunities for investors and reduce the flow of capital in the global economy.

ACTION: The PCAOB and SEC should enter into agreements with all foreign regulators that oversee companies accessing U.S. capital markets. Completion of new agreements should be prioritized by the total market capitalization of jurisdictions that currently do not have an agreement with the U.S.





BANKING

Sweeping capital and liquidity requirements were imposed on banks of all sizes in response to the 2008 financial crisis. Some of these regulations were required by the Dodd-Frank Act or implemented as part of international agreements such as the Basel III Accords. Many of these regulations did not account for existing rules, and many more have been layered on without a robust study of the cost and benefits to our financial system. To be clear, individual banks and our financial system should be built to withstand shocks, just as they did in March 2020, but policymakers must also recognize that poorly calibrated regulations will decrease the availability of credit and liquidity in our financial system.

The bipartisan Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155—115th) improved the tailoring of regulations imposed on banks required under the Dodd-Frank Act and Basel III accords, and included myriad other reforms important to a strong financial system. The major reforms called for by this legislation were implemented by the end of 2019, providing more flexibility for financial institutions, especially regional banks, to lend to businesses and serve their communities.

The banking system received a major shock as a result of the economic crisis resulting from the COVID-19 pandemic, but has demonstrated resiliency in the face of a government-sanctioned shut-down of much of the American economy that no one foresaw or prepared for. Banks have maintained sufficient capital and liquidity and have served as an important countercyclical force in the face of economic headwinds.

In a speech in July 2020, Randy Quarles, vice-chairman for supervision of the Federal Reserve Board, noted, “Banks entered the current crisis in a much stronger position than they did in the global financial crisis. They are much better capitalized and more liquid than back in 2008. . . . A number of stress tests carried out recently in FSB jurisdictions have confirmed that banks are able to continue lending even in the face of this extreme shock.”

The economic crisis from COVID-19 suggests that the capital and liquidity rules implemented since 2008 are more than robust, and that there is room for improvement to avoid pro-cyclical outcomes that restrict credit and liquidity during an economic downturn. Regulators have temporarily suspended or tweaked rules that would normally make it difficult for banks to provide credit, which raises the idea that some regulations should be permanently updated so banks can be even better positioned to respond to economic downturns.

FRB, OCC, AND FDIC: TAILOR SUPERVISORY REQUIREMENTS

The Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) should adhere to basic principles of transparency, accountability, and due process not just when writing regulations, but also when enforcing them. The supervisory process is relatively opaque, esoteric, and oftentimes subjective given the focus on individual firms, their relationship with customers, and how they engage with other market participants.

In general, supervisory requirements should reflect the risk that failure of a bank poses to its customers and the financial system, as is the case with regulatory requirements. Congress recently required federal banking regulators to tailor regulatory requirements for banks with more than \$50 billion in assets. Regulators created new categories of risk-based indicators instead of applying the same rules to all banks with greater than \$50 billion in assets when finalizing new rules in October 2019.

However, a similar holistic set of reforms has not been enacted for how these firms are supervised, including compliance with these rules.

ACTION: Federal banking regulators should tailor all supervisory requirements, including guidance, so it aligns with their updated framework for applying regulations to banks with greater than \$50 billion in assets.

FRB: IMPROVE SUPERVISORY TRANSPARENCY AND ACCOUNTABILITY

Banks are subject to various supervisory requirements and expectations in addition to the regulations they must follow. The purpose of supervision is to implement regulations via cooperation between banks and their supervisor. Regulations provide general rules, but they are not necessarily tailored to particular banks. Guidance is oftentimes created to provide more clarity to banks, but if the law is misinterpreted by supervisors, then banks may find themselves subject to regulation stricter than is intended by Congress.

ACTION: The FRB should make its interpretations of law by Board staff, including FAQs and commentary, available in a user-friendly searchable database that is available to the public.

ACTION: The FRB should make significant supervisory guidance available for public comment consistent with the Administrative Procedure Act. If guidance documents are more than informational (i.e., they reflect a change in policy), then they should be subject to the transparency and due-process principles of the Administrative Procedure Act.

ACTION: The FRB should submit all supervisory guidance to Congress for purposes of review under the Congressional Review Act. This will provide Congress the opportunity to determine what guidance is “significant” and if Congress would like to exercise their statutory authority that the Board has exceeded its mandate.

FRB: IMPROVE SUPERVISORY PROCESSES

Banks, and the financial system, benefit from a framework wherein supervisors assist with interpreting regulations and implementing processes in line with their expectations. This interaction is generally confidential with the intention of instilling a relationship that promotes open and honest communication. This creates a challenge wherein supervisors can devise unfair expectations—including through the creation and application of guidance—with little to no accountability.



Communication could be further improved by providing more granularity in the information provided by supervisors to banks. Matters Requiring Attention (MRAs) are communications intended to provide an informal early warning to banks about the need to correct an issue. Matters Requiring Immediate Attention (MRIAs) are more significant and require immediate remediation. These formal communications are serious and should be used accordingly. Overuse of these formal communications can obfuscate compliance priorities.

ACTION: The FRB should affirm that guidance is not binding for supervisory purposes and that guidance may not be the basis for an enforcement action, consistent with the September 2018 interagency statement on guidance.

ACTION: The FRB should provide more granularity in its communications regarding supervisory expectations, recognizing that not every matter rises to the level of an MRA, so supervised firms can better understand where to focus their compliance resources.

ACTION: The FRB should clarify the importance of MRAs, especially given their effect on a firm's supervisory rating, by limiting their use to violations of law, regulation, and material safety and soundness issues.

ACTION: The FRB should publicly commit to a regular review of its supervisory communication and guidance documents to ensure it is appropriate for covered firms and reflects current expectations.

FRB: TAILOR COMPOSITION OF SUPERVISORY PORTFOLIOS

The FRB should be more transparent about the makeup of its supervisory portfolios. The FRB has created a number of portfolios that are intended to capture institutions with similar structures and risk profiles, which generally receive similar supervisory treatment and are compared against each other through horizontal reviews. The composition of these portfolios can be arbitrary, however, because they are not determined through specific criteria that are developed via a transparent process. This can lead to situations where smaller, less complex banks are supervised like financial institutions that are relatively riskier.

ACTION: The composition of supervisory portfolios should use the criteria finalized by the FRB in October 2019 for the purposes of tailoring regulatory requirements.

FRB: REFORM THE LARGE INSTITUTION SUPERVISION COORDINATION COMMITTEE

The Large Institution Supervision Coordination Committee (LISCC) was created by the FRB in the midst of the 2008 financial crisis to address perceived gaps in supervision at banks that at the time posed the most risk to the U.S. financial system. However, the FRB never used rulemaking, subject to the APA, and instead made arbitrary decisions to determine which firms should be subject to heightened regulatory and supervisory requirements that entail significant costs.

ACTION: The FRB should enhance the transparency and accountability of LISCC by (1) establishing specific criteria for firms to be subject to enhanced regulation, (2) establishing a formal mechanism or “off ramp” from enhanced regulation, and (3) subjecting all LISCC regulatory requirements to notice and comment rulemaking and cost-benefit analyses.

ACTION: The FRB should publish the Program Manual for LISCC to provide more transparency to the public about the approach used by supervisors for identifying risks and pursuing appropriate remedies.

FRB: IMPROVE TRANSPARENCY FOR THE COMPREHENSIVE CAPITAL ANALYSIS REVIEW

The FRB's annual Comprehensive Capital Analysis and Review (CCAR) is an intensive assessment of the capital adequacy of the largest U.S. bank holding companies and U.S. intermediate holding companies of foreign banking organizations and the practices that these firms use to assess their capital needs.

Additional transparency in the stress testing program would allow experts to perform a substantially more informed assessment of the relationship between stress testing and small business lending, for example. Specifically, greater transparency with respect to the economic scenarios and the FRB's models would allow for a more detailed exploration of any underlying causality. A complete and accurate understanding of such a relationship is essential if the FRB is to adequately balance the costs and benefits flowing from its regulatory and supervisory choices—choices including stress test applicability, scenario design, and model development.

ACTION: The FRB should revert to using CCAR to determine capital distributions by banks instead of arbitrarily imposing restrictions outside of the pre-established framework.

ACTION: The FRB should implement due-process reforms, including the opportunity for notice and comment, for changes to stress tests that would materially affect the availability of capital at financial institutions; require them to eliminate or significantly modify business lines; or would otherwise significantly limit the type or prices of products and services available to the market.

ACTION: The FRB should provide more transparency on the models and scenarios underlying the CCAR stress test.

CONGRESS: ENACT THE FINANCIAL INSTITUTIONS EXAMINATION FAIRNESS AND REFORM ACT

The supervisory process can be difficult for lenders, especially smaller institutions, to navigate. Many banks and credit unions can only afford to have one or two individuals devoted to compliance. Therefore, the supervisory process can be intimidating, especially for those who are not regularly subject to examinations or are not practiced in how to communicate with their regulator. This can lead to unnecessary confusion that makes it harder for regulated entities and supervisors to fulfill their responsibilities.

The Financial Institutions Examination Fairness and Reform Act (S. 2649–116th) would significantly reduce the burden of bank examination processes by requiring better communication between bank examiners and financial institutions and improving the appeals process for lenders. This would help create a fair and streamlined process to allow exams to be reviewed, mistakes corrected, and issues discovered to be remedied in an efficient manner.

ACTION: Congress should enact the Financial Institutions Examination Fairness and Reform Act (S. 2649–116th)

CONGRESS: END POLITICAL BIAS IN SUPERVISION AND PREVENT AN “OPERATION CHOKE POINT”

Financial institution regulators have used their authority to discourage banks and credit unions from providing banking services to entire categories of lawful businesses and industries solely because those businesses and industries were politically disfavored. This left financial institutions with little choice but to terminate longstanding relationships with customers because of explicit or implicit threats from their regulator, causing confusion and dismay in many industries. Markets function best when there are clear rules to inform how supervision and enforcement should be undertaken.

In recent years, reports of coercive activity by financial institution regulators have abated, which is at least partly attributable to oversight by Congress. However, banks and credit unions, and their customers, would still benefit from new legal protections to prevent problems from occurring in the future.

In 2017, the House of Representatives favorably reported legislation 395-2, the Financial Institution Customer Protection Act (H.R. 2706–115th), which specifies that a federal banking agency may not request or order a depository institution to terminate a customer account unless 1) the agency has a valid reason for doing so and 2) that reason is not based solely on reputation risk.

ACTION: Enact legislation, such as the Financial Institution Customer Protection Act, that would prohibit federal banking agencies from formally or informally requesting or ordering a bank or credit union to terminate a customer relationship solely on the basis of so-called “reputation risk.”

CONGRESS: TAILOR REGULATION FOR BANKS AND CREDIT UNIONS

Regulations for banks and credit unions are frequently not appropriate for their size and complexity. Policymakers have taken great strides in recent years to tailor some of the requirements imposed under the Dodd-Frank Act and Basel III Accords, but myriad regulations remain, or may be proposed in the future, that should be made to account for the size and complexity of banks and credit unions. The federal regulators for banks and credit unions can make many of these changes voluntarily, but Congress should make its intent clear that a one-size-fits-all approach is not appropriate.

ACTION: This recommendation can be accomplished by enacting the Taking Account of Institutions with Low Operational Risk (TAILOR) Act (H.R. 741–116th).

CONGRESS: AMEND THE COLLINS AMENDMENT

Section 171 of the Dodd-Frank act (also known as the “Collins Amendment”) was intended to ensure that leverage and risk-based capital requirements instituted after the 2008 financial crisis are no less than those already in place before the law was signed in 2010. Over the past decade, banking organizations have built extremely resilient balance sheets in preparation for the possibility of another recession, but now may not be able to provide services that their customers need exactly when they need it most. During the COVID-19 economic downturn, the ability of banks to accept a significant inflow of deposits from their customers, seeking a safe place to store their funds, has been constrained. Section 171 of Dodd-Frank restricts the FRB’s ability to address this issue.

ACTION: Congress should amend Section 171 of the Dodd-Frank Act to temporarily exclude low-risk assets, such as treasuries, from the denominator of the leverage ratio.

FRB: UPDATE GSIB SURCHARGE

The Financial Stability Board, in consultation with the Basel Committee on Banking Supervision, identifies Global Systemically Important Banks (GSIBs) based on a methodology that has been agreed to as an international standard by national supervisors. As part of this agreement, local supervisors have agreed to implement a capital surcharge (“GSIB surcharge”) over and above the minimum risk-based capital requirements and other capital buffers. “Gold-plating” of the internationally agreed upon standard (i.e. implementing stricter rules than agreed to internationally) has made it harder for banks to lend to small businesses. The FRB has instituted a comparatively higher GSIB surcharge, which makes it difficult for these banks to compete abroad and lend to small businesses at home.

ACTION: This recommendation can be enacted by having the FRB revise its calculation of the GSIB surcharge to, for example, use the Method 1 approach or simply provide an inflation adjustment to Method 2.

FRB, OCC, AND FDIC: IMPLEMENT A CECL CAPITAL OFFSET

The Financial Accounting Standards Board (FASB finalized Accounting Standards Update No. 2016-13, Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments (also known as “Current Expected Credit Losses,” or CECL), which requires companies subject to GAAP accounting to take into account the possibility of future credit losses. The FASB is overseen by the SEC and its Office of Chief Accountant.

Once implemented by banking regulators, CECL requires banks to increase their reserves, thus decreasing the amount of credit they can make available. The Chamber strongly believes in the independence of the FASB and the standard-setting process and also believes that banking regulators are uniquely positioned to mitigate any unintended consequences of CECL on lending activity.

The Treasury Department, at the direction of Congress, released a report in September 2020 regarding the impacts of CECL on credit availability and the financial system. However, the report failed to reach definitive conclusions, noting, “[an] assessment on the impact of CECL on financial institutions’ regulatory capital is not feasible at this time, in light of the state of CECL implementation across financial institutions and current market dynamics.” The report emphasized the need for further analysis of CECL and the possible need for amending regulatory capital requirements.

ACTION: The Chamber recommends that banking regulators implement a permanent capital offset to account for the increased reserving for loan losses that may be required under CECL.

ACTION: The SEC’s Office of Chief Accountant should coordinate a roundtable with stakeholders to review if CECL is achieving its intended goals, assess possible unintended consequences, and consider the need for adjustments to the standard.

CONGRESS: MODERNIZE BROKERED DEPOSITS REGIME

The regulatory treatment of brokered deposits is intended to address deposit financing that is relatively risky. The underlying approach is that deposits received from a “deposit broker,” or third party, are risky; however, the definition of “deposit broker” is overly broad and does not take into account the modern financial system. If deposits are treated as brokered then it increases the cost of financing for banks via heightened capital and liquidity requirements.

The regime for brokered deposits should recognize that a deep relationship between a bank and its customers is core to the “stickiness” of deposit financing. Consumers have new expectations for financial institutions to serve them via an omnichannel experience that was not contemplated when the brokered deposit regime was put in place nearly three decades ago.

ACTION: Congress should enact the Brokered Deposit Affiliate-Subsidiary Modernization Act of 2019 (S. 3111–116th), which would exclude affiliates and subsidiaries of an insured depository institution from certain limitations applicable to brokered deposits. It would also expand the definition of an employee of an insured depository institution, thereby exempting these individuals from treatment as a deposit broker.

ACTION: Congress should enact the Asset Growth Restriction Act of 2020 (S. 3962–116th), which would replace Section 29 of the Federal Deposit Insurance Act with limitations on asset growth at troubled banks, instead of limiting their deposit funding.

FDIC: MODERNIZE BROKERED DEPOSITS REGIME

The FDIC has been soliciting feedback on the regulatory treatment of certain relationships between insured depository institutions and third parties to determine if the funding from “brokered deposits” (i.e., via a “deposit broker”) is riskier, or more akin to “hot money” than “core deposits.” The FDIC’s proposal is aimed at “modernizing brokered deposit regulations to reflect recent technological changes and innovations that have occurred.”

ACTION: The FDIC should complete its reforms through its rulemaking titled “Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions,” which would, among other things, clarify the requirements for meeting certain exceptions to existing requirements under Section 29 of the Federal Deposit Insurance Act.

FRB, OCC, AND FDIC: AMEND LIQUIDITY COVERAGE RATIO TREATMENT OF COMMERCIAL PAPER

The volatility of financial markets in March of 2020 exposed liquidity issues in the market for commercial paper. Banks play a central role as intermediaries and liquidity providers for commercial paper, but they understandably withdrew from short-term markets when faced with uncertainty to maintain their own capital and liquidity and to comply with safety and soundness requirements such as the Liquidity Coverage Ratio (LCR).

The LCR requires a bank to hold enough high-quality, liquid assets to cover projected net cash outflows over a 30-day stress period. Expanding the definition of high-quality liquid assets (HQLA) to include the highest rated commercial paper will make it easier for banks to meet their regulatory requirements under the LCR so they can maintain liquidity in the market for commercial paper.

ACTION: Federal banking regulators should amend the Liquidity Coverage Ratio to expand the definition of HQLA to include the highest rated commercial paper, especially in times of market stress.



FRB: MINIMIZE BURDEN OF FUNDAMENTAL REVIEW OF THE TRADING BOOK IMPLEMENTATION

The Fundamental Review of the Trading Book (FRTB), developed by the BCBS, is a capital framework that aims to address market risks for trading activities. The standard has not yet been implemented in the U.S., but a number of concerns have been expressed about what improper calibration would mean for our financial markets. Specifically, markets that rely on securitizations could be particularly disadvantaged given the capital increases that would be required. This would lead to more expensive financing in U.S. markets, including for mortgages, consumer debt like auto loans and credit cards, and debt financing for businesses.

The market volatility in the first quarter of 2020 underscored the value of a diversified business model. Banks that had the infrastructure to actively trade securities and commodities performed relatively well as the demand for their services spiked amid heightened market uncertainty.

ACTION: U.S. banking regulators should not gold plate regulations that implement the FRTB and should take every possible step, including a robust cost-benefit analysis, to ensure the standard does not impair market liquidity.

ACTION: The FRB should coordinate with its counterparts in other jurisdictions to ensure the FRTB is implemented consistently on a global basis.

CONGRESS: IMPROVE TRANSPARENCY IN IMPLEMENTATION OF GLOBAL STANDARDS

International standard-setting bodies such as the FSB and BCBS coordinate regulatory authorities from participating countries on matters important to global financial stability. Part of this work includes the development of regulatory and supervisory standards to be implemented by participating jurisdictions. These standards are not legally binding, and are not intended to replace jurisdictional norms, but have in fact disrupted the well-established policymaking process of jurisdictions and in some cases put them at a global disadvantage.

One major concern is when a jurisdiction's regulators use an international standard as a justification for implementing requirements that exceed those agreed to at the international standard-setting body. This practice, known as gold plating, puts that jurisdiction at a global disadvantage.

ACTION: Congress should enact legislation, such as the Transparency and Accountability for Business Standards Act (H.R. 3179–115th), to require federal banking regulators to justify the decision to implement a prudential standard that is substantively more stringent than the negotiated international standard.

CONGRESS: INCENTIVIZE SMALL BUSINESS LENDING BY COMMUNITY BANKS

Lending to small businesses by banks has decreased in recent years. According to data from the FDIC, small business lending by banks dropped over the last 15 years, and these loans now make up a smaller fraction of total bank assets.

The Access Business Credit Act of 2019 would modify the requirements for calculating taxable income to exclude the gross income interest received on small business loans of up to \$5 million for banks with less than \$50 billion in assets. This would lower the cost of funding for community banks to provide loans to small businesses, thus permitting them to expand their capacity to lend.

ACTION: Congress should enact the Access Business Credit Act of 2019 (H.R. 4805–116th).

CONGRESS: HARMONIZE RULEMAKING AND ENFORCEMENT FOR THE VOLCKER RULE

Section 619 of the Dodd-Frank Act, also known as the “Volcker Rule,” is intended to reduce risks at financial institutions by prohibiting proprietary trading and severely restricting investment in covered funds such as private equity and venture capital. Section 619 vests rulemaking authority with five agencies—the FRB, FDIC, OCC, SEC, and CFTC—which severely complicates their ability to make reforms to the rule.

ACTION: Congress should enact legislation that consolidates rulemaking authority for Section 619 with the FRB as proposed by the Volcker Rule Regulatory Harmonization Act (H.R. 4790—115th).

CONGRESS: MODERNIZE ANTI-MONEY LAUNDERING REQUIREMENTS

Anti-money laundering laws are out of date, having not been updated since the 1970s. The laws require the production of massive amounts of filings, which makes it more difficult for law enforcement to detect crime while imposing unnecessary compliance burden on financial institutions required to report suspicious activity. Banks are required to fulfill “know your customer” requirements, monitor transactions, conduct due diligence, and report suspicious activity. This compliance activity, while important, requires significant resources. Fulfilling these requirements could be greatly simplified, and communication with law enforcement improved if customers were required to disclose information about their beneficial ownership.

The Anti-Money Laundering Act of 2020 is bipartisan legislation introduced by Sens. Crapo (R-ID) and Brown (D-OH) in June 2020. The legislation would improve coordination among agencies charged with administering anti-money laundering and counter-terrorist financing requirements. It would also modernize the Bank Secrecy Act so oversight and reporting are better aligned with the law’s objectives.

ACTION: Congress should advance the Anti-Money Laundering Act of 2020.

FINCEN: IMPROVE EFFECTIVENESS OF THE BANK SECRECY ACT AND ANTI-MONEY LAUNDERING PROGRAMS

In September 2020, the Financial Crimes Enforcement Network (FinCEN) issued an Advanced Notice of Proposed Rulemaking (ANPR) to solicit public comment on a wide range of questions pertaining to potential regulatory amendments under the Bank Secrecy Act (BSA). The proposals under consideration are intended to provide financial institutions greater flexibility in the allocation of resources and greater alignment of priorities across industry and government, resulting in the enhanced effectiveness and efficiency of anti-money laundering (AML) programs.

ACTION: FinCEN should implement regulatory amendments to the Bank Secrecy Act that make it easier for financial institutions to assist law enforcement with preventing money laundering, terrorist financing, and other illicit activities.

CONGRESS: REMOVE BARRIERS FOR BANKS TO HIRE FORMERLY CONVICTED INDIVIDUALS

Section 19 of the Federal Deposit Insurance Act includes a number of restrictions for individuals convicted of a criminal offense involving dishonesty, breach of trust, or money laundering from participating in the affairs of a depository institution. Section 19 is intended to protect banks and their customers from unscrupulous actors, but its overly broad interpretation has prevented individuals with extremely minor criminal offenses and those who have committed offenses in the distant past from working at a bank.

In July 2020, the FDIC issued a rule that simplifies the process for hiring convicted individuals, and estimates that the reforms will reduce applications required under Section 19 by 30%. However, the statute prevents the FDIC from making other commonsense reforms.

The Fair Hiring in Banking Act (S. 3441—116th) would empower the FDIC to make further reforms. Importantly, the bipartisan legislation would replace the lifetime ban for certain offenses with an approach that recognizes our criminal justice system is intended to rehabilitate individuals and reintegrate them into all parts of our society. Specifically, it would allow individuals to be eligible for employment, subject to an FDIC application process, if they have met all sentencing requirements for at least seven years.

ACTION: Congress should enact the Fair Hiring in Banking Act (S. 3441—116th).

ENSURE ORDERED AND SEAMLESS LIBOR TRANSITION

The London Interbank Offered Rate (LIBOR) is the most widely used interest rate benchmark in the world. However, this rate, which is estimated to be referenced in nearly \$400 trillion worth of contracts, is unlikely to be available beyond the end of 2021. Financial market participants will likely need to find alternatives, and policymakers have a responsibility to ensure a seamless transition.

The Alternative Reference Rates Committee is a group of private-market participants convened by the FRB and the New York Fed to help ensure a successful transition from U.S. dollar LIBOR to a more robust reference rate, its recommended alternative, the Secured Overnight Financing Rate (SOFR). The Chamber supports the efforts of state and federal policymakers and the Alternative Reference Rates Committee to prepare the financial system, and end-users, for a transition away from LIBOR by building liquidity in alternative risk-free rates and instituting fallback language in certain legacy cash instruments.

ACTION: Policymakers should ensure legacy contracts have an adequate pathway to transition away from LIBOR.

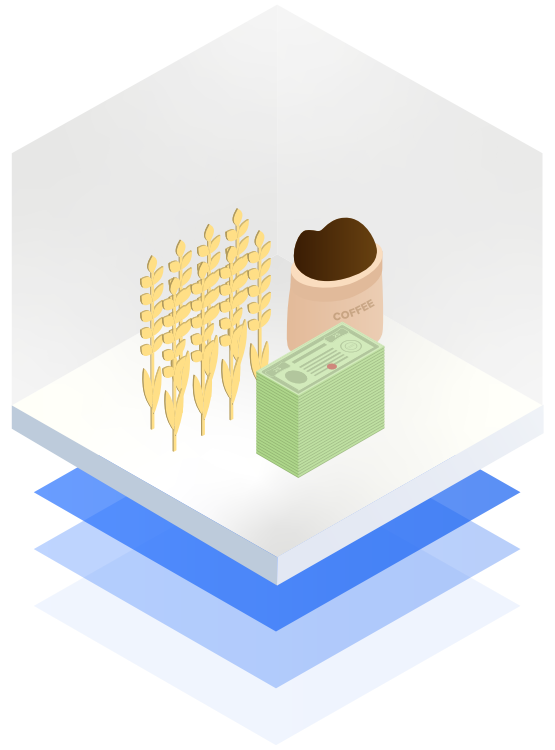
ACTION: The CFPB should clarify compliance with the Truth in Lending Act (Reg. Z), including 1) what constitutes a “comparable index,” 2) the ability to rely on indices beyond SOFR, and 3) clarifying the bureau’s definition of “unavailable” in the event LIBOR is continued to be reported but becomes unreliable.

CONGRESS: OPPOSE A BANK TAX

Various forms of a special tax on banks have been proposed over the years. Some proposals are intended to raise revenue for unrelated programs while others have been designed to reshape or curtail the important role banks play in our financial system. These proposals are misguided and ignore how the cost of the tax would inevitably be borne by businesses and consumers that rely on banks to access credit, facilitate payments, and provide other important financial services.

The Chamber released a [report](#) in 2010 estimating that a 0.15% tax on covered liabilities imposed on banks with \$50 billion or more in assets would decrease lending by \$100 billion per year.

ACTION: Policymakers should OPPOSE any proposal that would directly single out banks in a new tax.



DERIVATIVES

The Dodd-Frank Act's Title VII created a framework for regulating the swap markets, with both the Commodity Futures Trading Commission (CFTC) and Securities and Exchange Commission (SEC) maintaining jurisdiction for regulatory oversight of derivatives. The CFTC is the primary regulator of swaps, while the SEC maintains authority over securities-based swaps.

CCMC supports clearing mechanisms for derivatives and advocates for regulation that allows end-users and investors to continue to use derivatives to deliver on investment objectives or reduce their risk. Many companies use derivatives to manage currency, interest rate, agricultural, or other risks depending on their lines of business. There are several areas where regulators and Congress can take action in order to make meaningful change to the derivatives regulation.

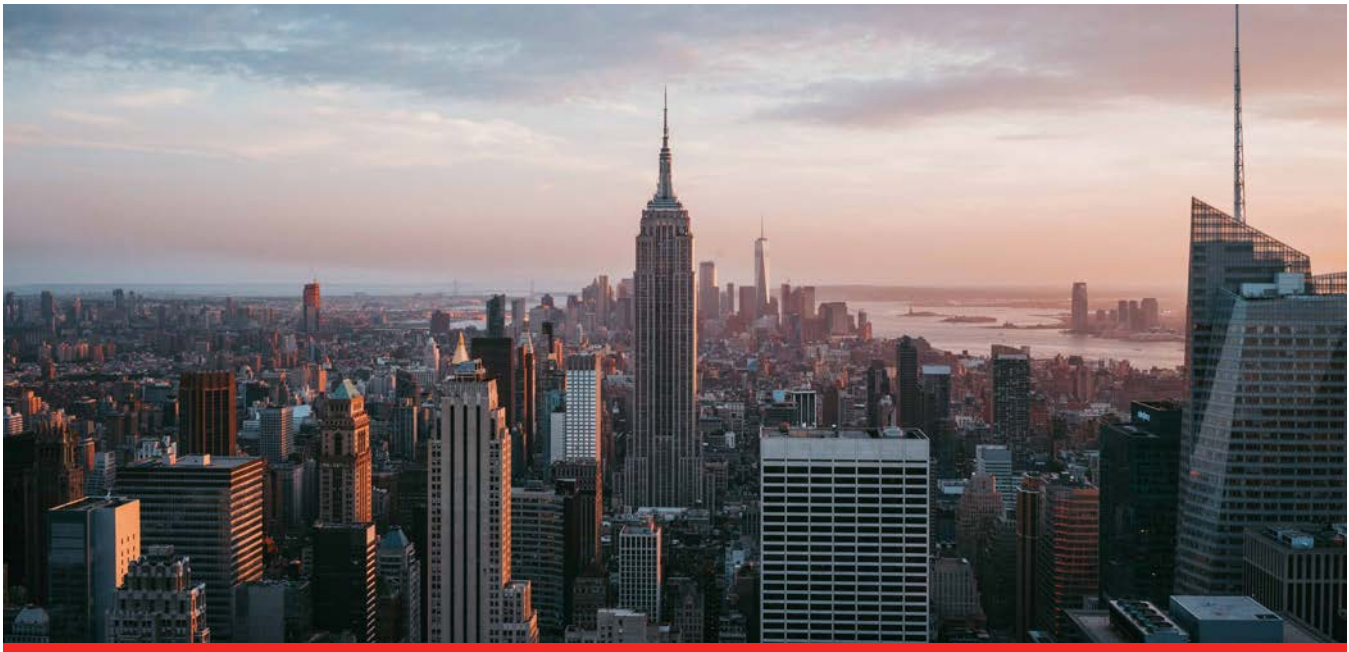
SEC, CFTC: COORDINATE SWAPS REGULATION

Title VII of the Dodd-Frank Act required the SEC and CFTC to create a new regulatory regime for the swaps market. In this market, swaps are financial contracts in which counterparties agree to exchange payments with each other as a result of events like a change in interest rate, stock price, or commodity price. The CFTC is the primary regulator of swaps while the SEC has responsibility for security-based swaps. Progress has been made in implementing Title VII, but inadequate coordination between the two agencies has caused inconsistencies in regulation and uncertainty regarding the treatment of swaps.

ACTION: The SEC and CFTC should produce a report identifying shared statutory responsibility under Title VII, provide a status update on the respective agencies' implementation of rules, identify any inconsistencies, and make a public workplan for implementation. This report should be published every two years until no major inconsistencies remain.

CONGRESS: PROVIDE RELIEF FOR END-USERS FROM CLEARING AND MARGIN REQUIREMENTS

The Chamber supports reforms that would provide meaningful relief from clearing and margin requirements for certain financial end-users that employ derivatives to hedge or mitigate their business risk in the same manner and for similar purposes as non-financial end-users. The Commodity Exchange Act (CEA), as amended by Title VII of the Dodd-Frank Act, precludes relief from clearing and margin requirements for all financial end-users due to an overly expansive “financial entity” definition under CEA Section 2(h)(7)(A)(i). In particular, the “financial entity” definition fails to distinguish between financial entities that utilize derivatives to take on risk for profit, like banks and hedge funds, and end-users of derivatives whose businesses necessitate prudent risk management to operate efficiently and reduce customer costs. Financial end-users who employ derivatives to manage risk serve fundamental roles in the real-world economy, and include payment processors, pension funds, insurance companies, and many others.



The Certainty for End-Users Act (H.R. 4726–116th) would bring relief to all eligible end-users by amending the “financial entity” definition in the CEA to provide greater precision in distinguishing businesses that are “engaged in activities that are in the business of banking or activities that are financial in nature.” The legislation would also help to harmonize the exemptions from clearing and margin requirements and level the playing field for U.S. financial end-users compared to companies in other jurisdictions not subject to the clearing and margin requirements.

ACTION: Congress should enact the Certainty for End-Users Act (H.R. 4726–116th).

SEC: UPDATE RULES FOR FUNDS’ USE OF DERIVATIVES

On October 28, 2020, the SEC issued a final rule modifying the regulatory regime governing the use of derivatives by registered investment companies and business development companies (BDCs). Given the increased importance of the use of derivatives in managing funds, the Chamber recognizes the benefit from modernizing the regulatory framework on funds’ use of derivatives. The new Rule 18f-4 would permit mutual funds, exchange-traded funds (ETFs), registered closed-end funds, and BDCs to enter into derivatives transactions notwithstanding the restrictions under Section 18 of the Investment Company Act of 1940. The final rule incorporated important changes sought by the Chamber.

The SEC also proposed new sales practice rules—Rule 15l-2 under the Securities Exchange Act of 1934 and Rule 211(h)-1 under the Investment Advisers Act of 1940 to require broker-dealers and investment advisers undertake due diligence prior to buying or selling shares of certain leveraged or inverse funds, so that they have a reasonable basis to believe that the customer or client is capable of evaluating associated risk with such an investment. The Chamber encouraged the SEC to incorporate several necessary modifications and clarifications to its 18f-4 proposal, but delay consideration of the 15l-2 sales practice rule until such time that the SEC’s Regulation Best Interest can be fully assessed.

ACTION: Policymakers should support the SEC’s efforts to provide a clear framework for registered funds’ use of derivatives.

CONGRESS: STUDY THE CREDIT VALUATION ADJUSTMENT

The Basel III capital standards introduced a new framework for calculating a credit valuation adjustment (CVA) for the purposes of determining an adjustment in the price of a derivatives instrument to account for counterparty credit risk. The updated CVA is intended to apply to all derivatives transactions that are subject to the risk that a counterparty could default (i.e., uncleared transactions, whether margin is posted or not). The updated CVA introduces a capital charge aimed at capturing variability in credit spreads.

The updated CVA could impose new financial costs on end-users that use derivatives for hedging activities. The European Union recognized this issue when it made the decision to provide an exemption for end-users, such as corporations seeking to limit their market risk.

ACTION: The Government Accountability Office should study and report to Congress on the impacts that differences between the U.S. and other jurisdictions in implementing the derivatives credit valuation adjustment capital requirements have on end-users of derivatives and the competitiveness of U.S. companies and U.S. derivatives markets.



CONSUMER PROTECTION AND ACCESS TO CREDIT

The Consumer Financial Protection Bureau (CFPB) was created in 2010 by the Dodd-Frank Act. This new regulator is intended to protect consumers from unlawful financial products and services. Its creation also contributed to significant uncertainty for providers of consumer financial products and dampened innovation given the bureau's broad regulatory authority, its opaque approach to enforcement, and the overall tone it struck with market participants.

The Dodd-Frank Act clearly defines the purpose and objectives of the CFPB. The purpose of the bureau is to seek to implement—and, where applicable, enforce—federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for financial products and services and that markets for financial products and services are fair, transparent, and competitive. The bureau should always take steps to protect consumers but should not lose sight of how competition in the marketplace provides consumers access to the products they need to thrive, at affordable prices.

Banks, credit unions, and other providers of financial products and services are prepared to embrace regulations that provide clear rules of the road and empower consumers to responsibly access credit, especially in uncertain times. It is important the CFPB remain focused on understanding innovation in the financial sector. New products and services should not be met with skepticism but embraced as the future for meeting the evolving needs of consumers.

Banks, credit unions, and other providers of financial products and services are prepared to embrace regulations that provide clear rules of the road and empower consumers to responsibly access credit, especially in uncertain times.

CFPB: ISSUE NEW NO-ACTION LETTERS

No-Action Letters (NALs) provide increased regulatory certainty through a statement that the CFPB will not bring a supervisory or enforcement action against a company for providing a product or service under certain facts and circumstances. The bureau issued a revised NAL Policy in September 2019, which improved on its 2016 NAL Policy by having, among other things, a more streamlined review process focusing on the consumer benefits and risks of the product or service in question. As of this writing, the bureau had issued only one NAL.

ACTION: The CFPB should issue additional NALs in accordance with its recently updated policy.

CFPB: ISSUE NEW ADVISORY OPINIONS

There is oftentimes confusion about how to interpret laws and regulations that could be clarified via a more streamlined process, such as an Advisory Opinion (AO), to provide more certainty to market participants about how to comply with them. There are countless examples of ambiguities in regulations issued by the CFPB, partly because many are new and because there is not established precedent for how they will be enforced. AOs would permit the bureau to clarify laws and regulations instead of relying on enforcement actions to communicate its interpretation of ambiguities in them.

The bureau announced in June 2020 the establishment of an Advisory Opinion Pilot Program as a mechanism through which parties will be able to request interpretive guidance, in the form of an AO, to resolve regulatory uncertainty. The bureau will publish AOs in the Federal Register and on consumerfinance.gov, including its summary of the material facts and its legal analysis of the issue. Unless otherwise stated, each AO will be applicable to the requestor and to similarly situated parties to the extent that their circumstances conform to the bureau's summary of material facts in the AO.

ACTION: The CFPB should be timely, and thoughtful, in its response to requests for Advisory Opinions.

CONGRESS: ELIMINATE THE CFPB'S AUTHORITY TO REGULATE PRE-DISPUTE ARBITRATION CLAUSES

The Dodd-Frank Act conferred authority for the CFPB to limit the use of pre-dispute arbitration clauses. Arbitration is an important means of resolving disputes that provides significant benefits to consumers and businesses. Arbitration of consumer disputes has been common practice for decades; there are perhaps hundreds of millions of consumer contracts currently in force that include arbitration agreements—many of them relating to consumer financial products or services.

In July 2017, the bureau finalized a rule effectively banning the use of pre-dispute arbitration clauses. The rule was based on a [flawed analysis](#) that ignored the practical benefits of arbitration and exaggerated the supposed benefits of class action lawsuits. In November 2017, legislation was enacted via the Congressional Review Act overturning the bureau's Arbitration Agreement Rule.

ACTION: Congress should enact legislation repealing Section 1028 of the Dodd-Frank Act, thereby eliminating the CFPB's authority to regulate pre-dispute arbitration clauses.

CFPB: CLARIFY UDAAP AUTHORITY AND USE OF “ABUSIVE”

The Dodd-Frank Act provided broad authority to the bureau to enforce consumer financial protection law, including over Unfair, Deceptive, or Abusive Acts and Practices (UDAAP). Similar authority exists with other consumer protection regulators, such as the Federal Trade Commission (FTC) which has authority over “unfair or deceptive acts or practices,” which is well established and understood through substantial case law. However, the CFPB’s “abusive” authority is extremely vague, creating significant uncertainty for providers of consumer financial products, especially those with innovative concepts. The bureau’s application of its “abusive” authority has been frequently used as a “catch-all” rather than a separate cause of action, making it extremely difficult for market participants to interpret how the bureau defines “abusive” or intends to apply its authority.

The CFPB announced a new policy in January 2020 regarding its interpretation of the prohibition on abusive acts or practices. The policy statement clarifies that the bureau intends to apply certain principles during its supervision and enforcement work.

ACTION: The CFPB’s interpretation of “abusive” through use of its UDAAP authority should align with the policy statement it published in January 2020.

ACTION: Pre-dispute arbitration clauses.

CONGRESS AND CFPB: IMPROVE CIVIL PENALTY FUND ACCOUNTABILITY

The proceeds of litigation settlements and judgments are placed into the CFPB’s Civil Penalty Fund rather than the general treasury. While the ostensible purpose of the Civil Penalty Fund is to compensate the victims of consumer protection violations, the statute is conveniently quiet on this subject, theoretically permitting the bureau to fund any of its activities by pursuing enforcement matters. The CFPB’s current rules allow it to use the funds for “consumer education and financial literacy programs;” but it could theoretically utilize the fund to pay for almost anything. The conflict of interest and circumvention of proper oversight by Congress is obvious.

ACTION: The CFPB should use civil payments exclusively to make payments to victims. Any remaining funds should be returned to taxpayers through regular remittances to the Treasury.

ACTION: Congress should enact legislation clarifying the permissible uses of the Civil Penalty Fund.

SUPPORT RISK-BASED UNDERWRITING FOR CONSUMER CREDIT

Risk-based pricing in consumer finance tailors the price and terms of a loan to a borrower's likelihood of repayment, allowing lenders to extend credit to more consumers. All creditors face a risk spectrum of potential borrowers. Each borrower has unique characteristics that influence the probability of default on a loan. Higher-risk borrowers are significantly more costly for lenders to serve than lower-risk borrowers. Risk-based pricing attempts to match the price a borrower pays to the cost incurred by the lender by adjusting the price of the loan to each borrower's probability of default. Compared with the one-price-fits-all practice that was common in consumer lending in earlier decades, risk-based pricing lowers the cost of credit for the majority of borrowers but also expands credit availability to higher-risk borrowers and leads to a broader array of loan products available to all income groups.

ACTION: Support data and methodologies that promote risk-based pricing and innovation in order to lower the cost of credit and expand access to more consumers.

ACTION: Support furnishing of accurate information to credit bureaus and the independence of credit scoring methodologies in order to protect borrowers, creditors, and the financial system.

CFPB: IMPROVE CONSUMER COMPLAINT DATABASE TRANSPARENCY

The CFPB established a mechanism on its website for consumers to report their interactions with financial services providers. The CFPB uses this data to create a publicly viewable Consumer Complaint Database with the ostensible goal of promoting transparency about the market of financial products to inform consumers, the business community, and policymakers. The Consumer Complaint Database, which is not required by law, has undergone some important reforms since first being unveiled in 2012, such as underscoring that the data is not a representative sample of the market, normalizing the data (e.g., explaining that the number of complaints should be considered in the context of total accounts managed by a financial institution), and providing more granularity to the data to show steps taken by financial services providers to address complaints. However, additional transparency would greatly improve the data so it can be used to accurately inform the public.

ACTION: The CFPB should encourage consumers to attempt to resolve disputes with a company before filing a complaint given that this is the least complicated path to resolution.

ACTION: The CFPB should specify if a consumer first tried to resolve a dispute with a company before filing a complaint given that the vast majority of disputes can be addressed without intervention by the bureau.

ACTION: The CFPB should specify if a complaint was filed by a consumer, or if another organization filed the complaint on behalf of a consumer, to ensure consumers are not taken advantage of by intermediaries.

CONGRESS: UPDATE RESPA'S AFFILIATED BUSINESS ENTITY REQUIREMENTS

Rules for Affiliated Business Arrangement (AfBA) disclosures under the Real Estate Settlement Procedures Act (RESPA) restrict how affiliated businesses can communicate with customers. This affects all real estate brokers, title companies, and mortgage lenders who have affiliated settlement service providers, as RESPA mandates consumers must be provided written disclosures prior to being informed of the services of any affiliate. In online and digital environments, this requirement disrupts user experience with dense legal text that can be confusing.

Current AfBA provisions are outdated and reflect a 1980s era mentality. Significant changes in technology—including electronic transactions and the availability of the internet—make the current provisions burdensome to both industry and consumers. To maximize the benefits to consumers, RESPA modernization is necessary to allow for digital delivery of similar information without delivery of the statutory model form. Digital settlement service providers and providers operating in online environments should be able to inform consumers of key information pertinent to their shopping decision without the need for burdensome postal mail or electronic consent requirements.

ACTION: Congress should modify and modernize RESPA's AfBA provisions to improve the consumer's digital experience by updating antiquated rules regarding postal mail delivery and electronic consent for disclosure.

CFPB: UPDATE TILA/RESPA INTEGRATED DISCLOSURES

The Dodd-Frank Act required the CFPB to issue rules to clarify the disclosures provided to consumers during the mortgage process, and combine those required under the Truth in Lending Act (TILA) and RESPA. These changes—updated under a new TILA/RESPA Integrated Disclosure (TRID) rule—required significant updates to compliance systems, and the new disclosures are now a well-established feature of the mortgage market.

In January 2020, the CFPB issued a Request for Information assessing the TRID rule. The Chamber identified a number of opportunities to clarify the rule, such as ending disclosure of lender-paid items (e.g., appraisal) and the treatment of electronic communications, but cautioned against broad changes that would cause the costs to exceed the benefits.

ACTION: The CFPB should make modest clarifications to the TRID rule if the benefits clearly exceed the costs.

CFPB: UPDATE QUALIFIED MORTGAGE DEFINITION

Creditors that make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage generally meet the standard for "Qualified Mortgages," which provides lenders certain liability protections.

Loans that are eligible for purchase or guarantee by either Fannie Mae or Freddie Mac also meet the definition of "qualified mortgage" until the earlier of January 10, 2021, or when the Government Sponsored Enterprises (GSEs) exit government conservatorship. There is uncertainty about how long the GSEs will remain in conservatorship. Therefore, liability protection under the "GSE patch" is uncertain.

Additionally, the Qualified Mortgage (QM) rule's limitation of a debt to income (DTI) ratio of 43% has limited access to credit for mortgage borrowers and instituted unnecessary underwriting costs on lenders. The 43% DTI arbitrarily restricts access to mortgages for creditworthy borrowers. Furthermore, the standards in Appendix Q of the QM rule include complicated and burdensome requirements for calculating debt and income.

In June 2020, the CFPB issued two notices of proposed rulemaking to address the GSE patch. The first proposal suggests changes to the definition of “qualified mortgage”— changes supported by the Chamber include moving away from a strict debt-to-income requirement. The second proposal suggests extending the expiration of the GSE patch to ensure responsible access to credit remains available.

ACTION: The CFPB should temporarily extend the GSE patch in the QM definition before it expires to ensure consumers maintain access to credit.

ACTION: The CFPB should eliminate the debt to income requirement in the QM definition and move toward a price-based solution, as it proposed in June 2020.

CFPB AND CONGRESS: INCREASE OVERSIGHT OF CREDIT REPAIR ORGANIZATIONS

Credit repair organizations are ostensibly intended to help consumers resolve inaccuracies in their credit report. Legitimate inaccuracies are those that may have resulted from fraud, such as unpaid debt incurred via a stolen credit card, or other nefarious activity. Most credit repair organizations operate in accordance with the Credit Repair Organizations Act—including a prohibition against untrue or misleading representations. There are unfortunately nefarious actors that overstate the services they can render on behalf of consumers, such as promising to have adverse information that is accurate, removed from credit reports (e.g., missed payments). As a result, consumers incur a fee, without realizing any improvements to their credit reports, and credit bureaus are compelled to respond to illegitimate claims instead of focusing their resources on assisting consumers.

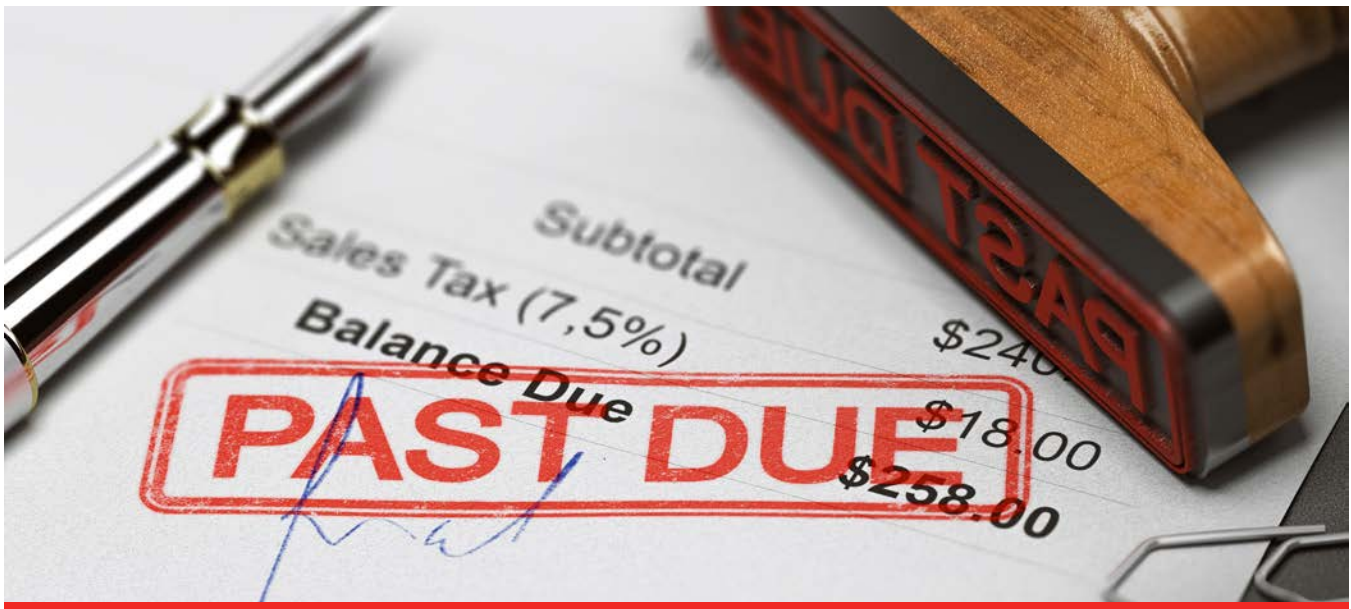
ACTION: Federal regulators and Congress should increase their oversight over unscrupulous credit repair organizations to ensure they are not overstating their services or pursuing changes to accurate credit reports.

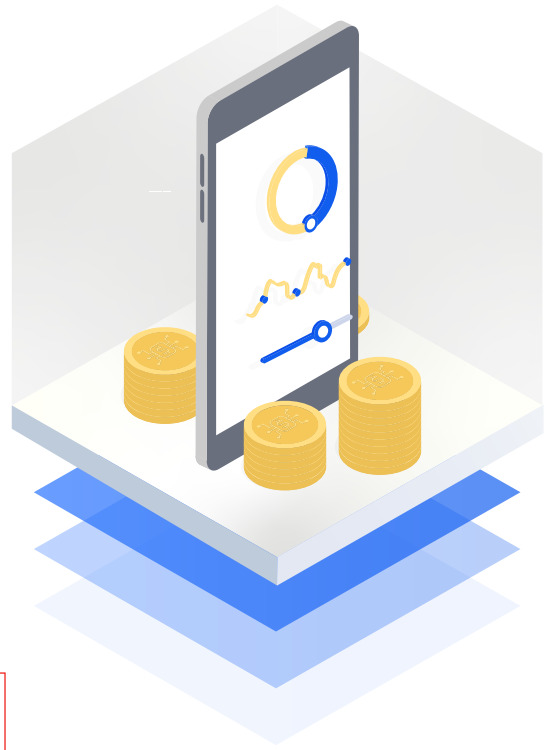
CFPB: DEBT COLLECTION PRACTICES

Debt collection is a critical component of the consumer credit system. Enabling effective collections is essential to maintaining consumers' access to affordable credit. At the same time, collections often occur at moments of significant stress in consumers' lives, making it important for debt collectors to act in a respectful and professional manner. Any debt collection policy must simultaneously allow debt collectors to serve their important function in the credit system while ensuring that consumers are treated with dignity and respect. CCMC supports a final debt collection rule that:

- Clearly reflect the benefits and importance of collections;
- Maximizes the benefit of collections to the credit system and all the consumers it serves;
- Bases the rule on the Bureau's clear authority under the FDCPA, not the Bureau's UDAAP authority;
- Clarifies that the rule does not apply—directly or indirectly—to first-party collections;
- Alters the proposed “know or should know” standard for disclosing that a debt is time-barred because it is unworkable in its current form and will chill legitimate collections activities; and
- Avoids imposing liability based on minor technical flaws in collector communications.

ACTION: Consistent with the above principles, the CFPB should finalize its debt collection practices rule.





FINTECH AND DIGITAL ASSETS

Technology is revolutionizing the financial industry at a remarkable rate. The way we transact, save, bank, and shop have significantly evolved because of technological innovations in the financial services sector.

The Chamber has established a robust FinTech effort that brings together traditional financial institutions and new entrants to the marketplace with the goals of better understanding the FinTech ecosystem and educating policymakers. Today's financial services are not limited by country or state borders and no longer exist within the confines of brick and mortar branches. The rapid rate of change coupled with the potential benefits of FinTech innovation make it critical that companies have clear standards to follow. Failure or hesitation to act would have detrimental impacts on innovation.

It is critical that policymakers in the U.S. quickly move to update rules and regulations. Other countries are quickly moving to update their rules, and the U.S. runs the risk of falling behind. The U.S.—drawing on its entrepreneurial values and access to capital for bold ideas—has always been known as an incubator of innovation. There are numerous opportunities for new technology, partnerships, and other innovations that will expand access to and improve the experience with financial products and services for consumers and businesses.

During this time of rapid innovation, the Chamber is pleased to see collaboration between multiple regulators and innovative approaches to solve complex problems. The FinTech revolution is just beginning, and policymakers should remain focused on achieving its vision.

Other countries are quickly moving to update their rules, and the U.S. runs the risk of falling behind.

OCC AND FDIC: UPHOLD VALID WHEN MADE PRINCIPLE

The National Bank Act is intended to facilitate a national credit market. This has the effect of permitting market competition and providing consumers access to a broad range of affordable credit options. National banks are clearly authorized to transfer the loans they make to facilitate this national market. However, a recent legal decision has called this into question.

In *Madden v. Midland Funding* (2015), the Second Circuit Court ignored the longstanding “valid when made” doctrine when it held that an assignee of a valid credit card agreement violated state usury laws when attempting to collect on the agreement. The Second Circuit thereby overturned marketplace expectations, and legal precedent, thus creating enormous confusion that is hurting consumers—and that persists almost five years later.

The OCC and FDIC issued regulations in 2020 that codify the “valid when made” doctrine and clarify that the interest rate on a loan originated by a national bank or federal savings association, if permissible at the time of origination, will continue to be a permissible and enforceable term of the loan following a sale, transfer, or assignment of the loan, regardless of whether the third-party debt buyer is a federally chartered bank. However, while these regulations are an important step for clarifying the law, there is still legal uncertainty that must be resolved by Congress or the courts.

ACTION: Policymakers should support the “valid when made” doctrine in order to provide certainty to credit providers and borrowers.

OCC: UPHOLD TRUE LENDER PRINCIPLE

Banks frequently partner with nonbank businesses that specialize in loan origination. This partnership has been challenged in some legal proceedings by questioning which entity—the bank funding the loan or the nonbank partner—is the “true lender” when a bank makes a loan and then sells the loan to a nonbank. Courts have taken on the questions in individual cases, but it’s not clear what legal framework applies if there is uncertainty regarding the true lender.

In June 2020, the OCC issued a proposed rule establishing a clear test to determine when a national bank or federal savings association makes a loan and is the true lender in the context of a partnership between a bank and a third party. In October 2020, they finalized the rule.

ACTION: Policymakers should support banks partnering with nonbanks to fund loans that expand access to credit by upholding the True Lender rule finalized by the OCC.

CONGRESS: MODERNIZE E-NOTARIZATION RULES

The ability to notarize documents when the signature is witnessed in a virtual setting is currently subject to a complex patchwork of state laws, making it more difficult to complete the myriad legal documents, including those necessary to secure a loan such as a mortgage. Additionally, obtaining notarized spousal consent for retirement plan distributions has been challenging given the delayed and expiring relief granted by the Internal Revenue Service (IRS). For example, real estate closings increasingly involve parties that are not physically in the same city or state as the property they are buying or selling. When this occurs, a complex choreography takes place to get wet signatures on hard copies of important documents that are necessary to complete the transaction. These challenges have long existed but have recently been made even more evident to consumers during the COVID-19 crisis and the imposition of social distancing requirements.

The Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act (S. 3533 and H.R. 6364–116th) would establish minimum standards for electronic and remote notarization and require states to recognize notarizations performed by a notary public commissioned by another state. The legislation also includes consumer protections requiring tamper-evident technology in electronic notarizations and provides fraud prevention through use of multifactor authentication. These important updates will ensure that lenders can close loans in a way that keeps consumers safe from harm, is consistent across the U.S., and results in a security instrument that will be accepted and recorded by all recording offices.

ACTION: Congress should enact the SECURE Notarization Act of 2020 (S. 3533/H.R. 6363–116th).

CONGRESS: MODERNIZE E-SIGN RULES

The Electronic Signatures in Global and National Commerce Act (E-SIGN) allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent. The E-SIGN Act currently requires consumer consent “in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information.” This reasonable demonstration requirement is an impractical impediment to realizing the benefits of the E-SIGN Act by requiring consumers who request to engage digitally with companies, such as online banking, to jump through additional hoops. In June 2020, when financial firms such as credit card servicers were attempting to provide flexibility to consumers during the height of the economic uncertainty of the COVID-19 pandemic, the CFPB issued a statement on supervisory practices noting, “Obtaining E-Sign consent may thus delay assistance to consumers seeking relief.”

These consumer protections for electronic documentation and signatures may have been reasonable when the law was enacted in 2000, but significant improvements in technology and advances in consumer behavior now need to be recognized.

The E-SIGN Modernization Act (S. 4159–116th) would eliminate the “reasonable demonstration” requirement that documents can be accessed in a non-electronic format.

ACTION: Congress should enact the E-SIGN Modernization Act of 2020 (S. 4159–116th).

FEDERAL FINANCIAL REGULATORS: CREATE AND COORDINATE FINANCIAL INNOVATION OFFICES

Government bureaucracy can be difficult to navigate, even for the most sophisticated companies. Communicating with a regulator—that has the authority to determine if a business succeeds or fails—can be an especially daunting experience, even for companies that believe they are following the law. Receiving regulatory approval can be difficult for an established company but is generally more difficult for startups that are less familiar with the law and unstated expectations. This environment unnecessarily inhibits innovation, especially in the highly regulated financial services industry. Many financial regulators have begun to recognize these issues—and some have created new offices or dedicated policy initiatives—but more must be done to promote innovation and market competition.

ACTION: Each financial regulator should establish a dedicated office with the necessary resources to understand updates in financial technology, identify products and services that improve consumer experience and market competition, and advise leadership on the appropriate amendments to regulation.

ACTION: Each financial innovation office should institute a process for regular coordination among each other office in order to prevent standards that unintentionally conflict.

SOCIAL SECURITY ADMINISTRATION: PREVENT SYNTHETIC IDENTITY THEFT

Synthetic identity theft—which involves the use of stolen Social Security Numbers (SSNs) to create fictitious “synthetic” credit reports, which are ultimately used to open new credit lines—is a growing issue in the U.S. Most often, the victims are minors or other consumers with no or very thin credit histories. It is estimated that total annual losses from synthetic identity fraud are \$6 billion.

Bipartisan legislation—the Protecting Children from Identity Theft Act—was enacted in 2018 that requires the Social Security Administration (SSA) to develop a database to facilitate the verification of consumer information upon request by a certified financial institution. The verification is provided only with the consumer’s consent and in connection with specific types of financial account openings or transactions. The SSA has been working with future users of the system and has begun an initial pilot program to test and scale the system. However, SSA has been hesitant to ensure the system meets the technical requirements of the financial industry, which will limit its ability to protect consumers.

To ensure that the system the SSA is building meets congressional expectations and can serve as a model for other federal agencies to emulate, it is critical that the SSA be more flexible and collaborative during development with the future users of the system. The SSA has been reluctant to discuss many of the critical baseline technologies that should be implemented—such as industry-standard “fuzzy logic” capabilities that would provide users more precise information to help spot fraud.

ACTION: The SSA should move quickly to operationalize the database for all legally eligible users and embrace a more forward-looking approach to the SSN verification system.



SEC AND CFTC: PROTECT SOURCE CODE AND INTELLECTUAL PROPERTY

Congress should require the SEC and CFTC to provide more stringent safeguards for the intellectual property imbedded in source code that underlies trading algorithms. Nearly the entire value of some companies is embodied in its source code. We need to have strong safeguards in place to prevent negligent or inappropriate action by bad actors at regulators so companies maintain the confidence their intellectual property will be protected.

ACTION: Congress should adopt legislation that requires the SEC and CFTC to obtain a subpoena before a person can be compelled to produce or furnish source code, including algorithmic trading source code or similar intellectual property.

CLARIFY REGULATORY TREATMENT OF DIGITAL ASSETS

There has been considerable growth in the marketplace for digital assets spurred by technological innovation. Digital assets that are pecuniary in nature include, for example, stable coins, digital currencies, and in some cases investment contracts. The market has recognized the possible benefits of digital assets—including lower transaction costs—and has expressed a clear interest for this marketplace to grow. However, the regulatory framework has not kept up with the technological advances that underpin digital assets.

Innovators oftentimes are unsure what regulatory framework a digital asset falls under. This regulatory uncertainty makes it difficult to bring new products to market. The interpretation of existing laws by regulators has also dampened innovation. For example, the SEC has taken an approach that relies more heavily on enforcement actions than stating clear rules of the road. This not only makes it difficult for firms to operate for fear of an enforcement action, but also means they need to try to interpret enforcement actions against other firms—instead of clear rules of the road—to determine if they are in compliance with applicable securities laws, or need to be in compliance with them at all if the firm is not offering an investment contract. The SEC has relied on the Howey Test, which refers to a 1946 ruling by the Supreme Court that does not befit decentralized transactions, to guide its legal analysis and enforcement actions.

ACTION: Regulators should construct a reasonable categorization of digital assets to identify the jurisdictional boundaries of disparate regulatory regimes.

ACTION: The SEC should provide greater clarity concerning when a digital asset is or is not a security. This process could start with recognizing that, if the predominant purpose for a digital asset is to allow its holders to access a good or service, then the digital asset should not be treated as a security, consistent with longstanding jurisprudence under the Howey Test.

ACTION: The SEC should fashion an approach that allows sponsors to distribute their digital assets so long as there is a well-articulated path toward achieving decentralization in order to avoid inappropriate categorization as an investment contract.



INVESTMENT AND RETIREMENT SAVINGS

CCMC has worked with the administration and Congress to advocate for policies that make it easier for Americans to save and invest for their future by enhancing their access to investment options and advice, while ensuring strong protections are in place. While much has been accomplished, serious threats to this goal remain. From standards of conduct for retail and retirement plan customers, ESG factors in plan investments, proxy voting rules, and the challenges with proposals to impose a financial transaction tax (FTT), CCMC anticipates the debates surrounding these and other important investor issues to continue.

Standards of conduct for brokers and investment advisers has been a hot topic in Washington over the past decade. When the fiduciary rule issued by the DOL was overturned by courts in 2018, the SEC—the agency with eight-plus decades of relevant experience—established Regulation Best Interest (Reg BI) to clarify the standards of conduct for brokers and investment advisers, while also preserving investor choice. Importantly, subsequent rulemakings from the DOL, Financial Industry Regulatory Authority (FINRA), and Municipal Securities Rulemaking Board (MSRB) have sought to align their standards with Reg BI to bring greater clarity to investment professionals and investors.

Finally, we expect continued calls from some policymakers to impose a financial transaction tax on equity, bonds, and derivatives transactions. While the most recent legislative attempts for an FTT began in 2012, the U.S. has already lived through an unsuccessful experiment with an FTT. The U.S. imposed an FTT in 1914, but it was repealed in an overwhelming bipartisan vote by a Democratic Congress in 1965.

From standards of conduct for retail and retirement plan customers, ESG factors in plan investments, proxy voting rules, and the challenges surrounding proposals to impose a financial transaction tax (FTT), CCMC anticipates the debates surrounding these and other important investor issues to continue.

SEC AND DOL: IMPLEMENT APPROPRIATE BEST-INTEREST STANDARD OF CONDUCT FOR INVESTMENT ADVICE

The SEC is the primary regulator for investment advice and capital markets, and therefore it is appropriate for it to take the lead in developing and implementing standards of conduct. CCMC strongly supports the SEC's Reg BI, adopted on June 5, 2019, which went into effect on June 30, 2020. Reg BI sets a strong, consistent national standard that prohibits broker-dealers from placing their own interests ahead of their clients' interests. CCMC believes that Reg BI strikes an appropriate balance between consumer protection and investor choice. Reg BI preserves investor access to various types of advice and investment products, improves investors' understanding of their choices, and protects investors from conflicted advice.

ACTION: Policymakers should support Reg BI and the necessary alignment of rules at the MSRB, FINRA, and DOL.

ACTION: Policymakers should support federal pre-emption for Reg BI and other federally aligned rules to avoid a state-by-state patchwork of standards that confuses investors and unnecessarily increases the cost of investing.

DOL: IMPROVE INVESTMENT ADVICE FOR WORKERS AND RETIREES

In July 2020, the DOL released a proposed class exemption permitting reasonable compensation for investment advice fiduciaries providing advice and engaging in certain principal transactions with ERISA plans, participants, and Individual Retirement Account (IRA) holders. Providing exemptive relief is an important step in harmonizing Reg BI and ERISA standards to the extent possible. In addition, the DOL's proposal provides other important clarification for investment advisers by reinstating the 1975 regulation defining fiduciary.

The Chamber supports the DOL's proposed exemption, and provided comments about necessary improvements to the proposal. Specifically, the Chamber urged the DOL to remove its new interpretation of the five-part test in the preamble of the rulemaking in order to restore clarity and prevent confusion about the scope of fiduciary investment advice.

ACTION: DOL should finalize a rule aligned with SEC's Regulation Best-Interest.

SEC AND CONGRESS: MODERNIZE E-DELIVERY OF CERTAIN INVESTMENT DOCUMENTS

Investors receive various documents about their business with broker-dealers and investment advisers to apprise them of the securities they are purchasing. These disclosures include, but are not limited to, prospectuses, mutual fund notices, trade confirmations, and account statements. However, these documents are oftentimes not delivered electronically—instead paper reports are mailed to investors, which have higher costs and less utility for consumers.

In 2018, the SEC completed a rulemaking recognizing the value of e-delivery for shareholder reports under Rule 30e-3 for mutual funds, ETFs, and other investment funds that becomes effective January 2021. The commission also invited comment on additional opportunities to modernize delivery of other fund information. The COVID-19 crisis has accelerated the evolution toward a digital economy and confirmed an option for e-delivery of certain documents that benefits investors. Legislation such as the SEC Relief to Slow the Spread of Coronavirus Act of 2020 (H.R. 6242–116th) recognizes the value in shifting more documentation to e-delivery.

ACTION: The SEC should reconsider its past interpretations and revise outdated rules to permit e-delivery of investment documents.

ACTION: Congress should enact legislation to permanently expand the scope of documents eligible for e-delivery (prospectuses, mutual fund notices, trade confirmations, and account forms).

CONGRESS: OPPOSE THE FINANCIAL TRANSACTION TAX

In the past, some policymakers have called for the imposition of a financial transaction tax on stock trades and similar transactions in order to pay for various unrelated initiatives, such as infrastructure spending. These proposals miss the fact that an FTT will hurt average investors, reduce savings, increase the time an individual must work before being able to retire, and make it harder for America's job creators to contribute to economic growth. In fact, FTTs have been tried in the past, both in the U.S. and abroad, and have failed to either raise revenue or curb undesired financial behavior. Such taxes have created havoc in the markets where they have been imposed. In short, an FTT will hurt the liquidity of the U.S. capital markets and dramatically increase the cost of trading, further restricting retail investors from accessing markets, reducing retirement savings growth, and damaging the American economy.

ACTION: Policymakers should OPPOSE any proposal—at the federal or state level—to impose an FTT on financial transactions, including stocks and other financial instruments.

DOL: UPDATE FINANCIAL FACTORS IN SELECTING PLAN INVESTMENTS

The basic premise underlying ERISA is that a fiduciary should act solely in the interest of the plan participant, so while social causes may be laudable, investments without regard to social causes may yield a higher return, and thereby secure a better retirement for participants. Therefore, economic return should be the primary consideration for an ERISA fiduciary.

Over the past 25 years, the DOL has issued several iterations of sub-regulatory guidance on this issue. During the same period, interest surrounding investments that promise the furtherance of various environmental or social objectives has only grown. Establishing a regulatory framework is an appropriate and overdue step and will help provide certainty to plan fiduciaries and other market participants. On October 30, 2020, the DOL released a final rule that would require plan fiduciaries only to consider pecuniary interest in making investment decisions. The Chamber supports the Department of Labor's efforts to clarify the duties of ERISA fiduciaries in the context of pension and retirement plan investments.

ACTION: Policymakers should support DOL's efforts to clarify the duties of ERISA fiduciaries in the context of pension and retirement plan investments.

SEC AND CONGRESS: REFORM SEC INVESTIGATION AND ENFORCEMENT PROGRAMS

A strong and fair SEC is an essential element of maintaining efficient capital markets. Having a strong securities regulator is necessary for investors and businesses to have the certainty necessary to transfer capital for its best use with an expectation of return, which allows market participants to engage in reasonable risk taking on a level playing field. A rigorous enforcement regime ensures efficient markets by rooting out fraudsters and other bad actors, but if not properly calibrated, it will also serve to discourage legitimate businesses that may be seeking growth capital. The certainty of clear rules of the road also means that SEC enforcement should have a fair process for all to ensure that the rights of the accused are preserved while allowing the process to achieve its goals of finding the truth, punishing the wrongdoers, and preventing future harm.

In 2015, CCMC issued a report recommending various reforms to the SEC's processes and practices for enforcement. The commission has recently adopted some reforms aligned with these recommendations, but there are further opportunities for improvement.

ACTION: The SEC should permit defendants the opportunity to use the federal courts as the forum for enforcement actions instead of in-house administrative proceedings at the SEC.

ACTION: The SEC should make reforms to the Wells Process, such as providing reasonable notice to recipients and improved access to investigative files.

ACTION: The SEC should make updates to its policy for admissions, such as publishing guidance on how the issue of requiring admissions will be incorporated into settlement negotiations.

ACTION: The SEC should improve the efficiency of the investigation process by, for example, promptly providing written notification that an investigation has been closed.

ACTION: The SEC should apply the rule of lenity in administrative investigations, enforcement actions, and adjudication by reading genuine statutory or regulatory ambiguities related to administrative violations and penalties in favor of the targeted party in enforcement, as recommended by the Office of Information and Regulatory Affairs (OIRA) Administrator on August 31, 2020, to implement Executive Order 13924.

SEC: CLARIFY HOW DISGORGEMENT AND PENALTIES WILL BE CALCULATED

Disgorgement is a legal remedy that seeks to make whole those harmed financially by returning ill-gotten funds to the harmed parties from wrongdoers. The SEC has routinely pursued disgorgement in federal courts as a form of “equitable relief,” but the agency’s authorizing statute does not list it as a judicial remedy.

In 2017, the U.S. Supreme Court held that, in SEC enforcement actions, disgorgement operates as a “penalty” and is therefore subject to the five-year statute of limitations applicable to enforcement proceedings seeking civil penalties. The court unanimously concluded that disgorgement “bears all the hallmarks of a penalty: It is imposed as a consequence of violating a public law and it is intended to deter, not to compensate.”



The Chamber submitted a brief urging the Court to impose reasonable limitations on the SEC's ability to seek disgorgement, a view that was ultimately aligned with the court's decision. The chairman of the SEC subsequently expressed concern regarding the ruling, saying that the ruling could make it difficult to pursue complicated cases that would inevitably exceed the five-year statute of limitations.

In 2020, the court ruled in *Liu v. SEC* that the SEC may continue to obtain disgorgement in federal court, but with limitations. The court held that "courts must deduct legitimate expenses before ordering disgorgement" in SEC enforcement actions, thus limiting disgorgement awards to wrongdoers' net profits as opposed to total gross illicit gains.

ACTION: The SEC should explain how disgorgement and penalties will be calculated going forward. This action should memorialize how the Commission will handle the deduction of expenses from disgorgement, thus providing certainty to market participants that the SEC won't just increase its penalty demands to make up for the new limitation on disgorgement.

CONGRESS: REPEAL THE SEC'S AUTHORITY TO RESTRICT PRE-DISPUTE MANDATORY ARBITRATION

The Dodd-Frank Act conferred new authority on the SEC to limit the use of pre-dispute arbitration clauses. Arbitration is an important means of resolving disputes that provides significant benefits to investors and other participants in the securities markets. Arbitration has been commonly practiced for decades with a record of resolving disputes efficiently to the benefit of investors and the markets.

ACTION: Congress should repeal Section 921 of the Dodd-Frank Act.

FSOC: RECOMMEND PUBLIC PENSION SYSTEM REFORMS

Policymakers should examine the impact that the unfunded liabilities of state and local pension systems have on financial stability, economic growth, and investment returns for pensioners. According to some estimates, there is a greater than \$4 trillion gap between the current projected funding levels of public pensions and their future liabilities. This gap threatens the retirement security of millions of American public sector workers and creates an enormous budget strain on many state and local governments.

The *2019 Annual Report* by FSOC noted that the different sets of accounting rules used by public pension funds “enable public plan sponsors to assume investment returns based on their own long-run expectations, which are significantly higher than average post-crisis returns . . . underfunded public plans are a significant source of fiscal pressure on several U.S. states and territories.”

This problem is exacerbated by the open political activism of some of the largest public pension systems in the country, which has sacrificed investment returns for the personal objectives of those who oversee these pensions. According to a 2015 Manhattan Institute [study](#), the social activism of certain pensions—including the California Public Employees Retirement System and the New York State Common Retirement System—directly resulted in diminished economic returns for pensioners. While the subjugation of economic return for uncorrelated objectives is prohibited for private retirement plans under ERISA, state and local plans are not subject to the heightened standards that ERISA requires.

ACTION: Congress should enact legislation requiring FSOC to publish a report annually detailing the extent of unfunded public pension liabilities, the primary causes for public pensions failing to meet stated investment benchmarks, and recommendations for reforms that states should enact.

ACTION: FSOC should hold public meetings, that include public testimony from stakeholders, analyzing the extent of unfunded public pension liabilities, the primary causes for public pensions failing to meet stated investment benchmarks, and recommendations for reforms that states should enact.



INSURANCE

Insurance companies are experts at managing risk. They use their expertise to design insurance products to help their clients prepare for unexpected events. Policyholders pay regular premiums with the promise from the insurance firm that it will provide compensation based on a pre-determined contract. Insurance comes in many forms, including property casualty policies and life insurance policies. Some common property casualty policies include automobile insurance, homeowners insurance, and flood insurance, just to name a few. Life insurance policies include, but are not exclusive to, term life, whole life, and universal life, which provide consumers with different benefit options.

According to a [report](#) published in September 2020 by the Brattle Group, the life insurance industry in the U.S. is a driver of economic growth and important to the overall health and financial well-being of U.S. households. Through its primary products—life insurance, annuities, and non-medical health products such as disability income insurance and long-term care insurance . . . the life insurance industry functions as a unique private provider of personal financial protection.”

The insurance sector is also an integral provider of capital to the U.S. economy and the global economy. Inappropriately structured regulation for the insurance sector could have a significant impact on the ability of many public and private entities to access stable capital. The Chamber of Commerce issued a report in March 2019 describing how the insurance sector invests in the U.S. economy. The report finds that U.S. insurance assets totaled approximately \$5.8 trillion as of December 2017.

The unique investment strategy of insurance companies results in tangible, long-term projects being financed by these firms and, indirectly, by policyholders. This investment includes a 21% share of all corporate bonds, approximately \$1.9 trillion, which funds the growth and operations of myriad businesses in all corners of the U.S. economy. For example, life insurers’ public corporate bond investments alone funded about \$120 billion of business investment in needed plants, equipment, and other capital expenditures in 2017. The investment also includes 20% of all municipal bonds outstanding, approximately \$800 billion, which helps fund the activities of state and local governments, including infrastructure investment.

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CONGRESS: CREATE NEW PROGRAM TO REPLACE BUSINESS REVENUE DURING PANDEMICS

Government orders to close or cease operations, and other disruptions caused by COVID-19, raised new questions about the availability and terms of coverage for business interruption insurance and event cancellation insurance. Business interruption insurance is generally understood to replace income that has been forgone due to a covered disaster while event cancellation insurance replaces revenues for a specific event that has to be postponed or canceled. The markets for these insurance policies are robust, but exclusions for loss of damage caused by or resulting from a virus have become more prevalent in recent years leading up to the COVID-19 pandemic. Insurance carriers have struggled with how to underwrite the risk of a pandemic, which causes uncharacteristically difficult-to-predict losses that are not well diversified over geography or time, unlike other perils such as hurricanes and earthquakes.

ACTION: Congress should enact legislation, primarily funded by the federal government, that provides businesses with revenue replacement in the event of business interruption or event cancellation due to a pandemic.

CONGRESS: IMPROVE IAIS TRANSPARENCY

The IAIS is a voluntary membership organization of insurance supervisors and regulators from more than 200 jurisdictions. The mission of the IAIS is to promote effective and globally consistent supervision of the insurance industry in order to develop and maintain fair, safe, and stable insurance markets for the benefit and protection of policyholders and to contribute to global financial stability. Representatives from the U.S. include the Treasury Department, FRB, and National Association of Insurance Commissioners.

The Chamber believes adequate transparency into the dealings of U.S. representatives at the IAIS is critical. While the U.S. is not bound to adopt or implement IAIS policies, the work of this body can influence the direction of jurisdictional supervision and/or regulatory requirements and may not adequately consider specificities and needs of U.S. consumers and markets.

The International Insurance Capital Standards Accountability Act of 2017 (S. 2155–115th) was signed into law in 2018. The bipartisan legislation requires more transparency from U.S. representatives to the IAIS, including regular reports to Congress, and the establishment of a new Insurance Policy Advisory Committee at the FRB. However, at the time of this report, only one hearing has been held by Congress.

ACTION: The Senate Banking Committee and House Financial Services Committee should convene the annual hearings called for under the law.

U.S. REPRESENTATIVES TO THE IAIS: REQUEST TRANSPARENCY AND ACCOUNTABILITY FOR THE INSURANCE CAPITAL STANDARD

In recent years, standard-setting bodies have worked to develop standards that ensure cross-border solvency and stability for insurers with operations across regulatory regimes. In particular, the Insurance Capital Standard (ICS) currently under development by the IAIS is an effort to define comparable standards and determine solvency levels for internationally active insurance groups.

The Chamber believes that a global insurance capital standard must accommodate the specificities of the U.S. market—the world’s largest insurance market—including the type of products favored and needed by U.S. consumers; the time-tested supervisory practices employed by state insurance regulators; and use of diverse asset classes to back insurance liabilities that are critical to supporting financial markets, especially for infrastructure, housing, and corporate debt. To accomplish this, the IAIS must accept the Aggregation Method as a comparable alternative approach to the ICS.

While we appreciate the IAIS’ decision to modify its timeline for voluntary reporting of ICS data in 2020, we believe the impacts of COVID-19 necessitate a broader reassessment of the ICS work plan and development timeline.

ACTION: U.S. members of the IAIS—the Treasury Department’s Federal Insurance Office, FRB, and National Association of Insurance Commissioners—should pursue an extension of the Monitoring Period of at least one year, given the limited ability for discussion of ICS results in supervisory colleges, the impact travel restrictions will have on the ability to review data, and so on. Such an extension will be needed in order to realize the originally intended value of the Monitoring Period.

ACTION: U.S. members of the IAIS should pursue moving the economic impact assessment, which is a critical part of the Monitoring Period, to an earlier stage to ensure there is adequate time to review the results and take meaningful action to address any material flaws and unintended consequences that are identified. The IAIS plan to conclude the economic impact assessment in the last year of the Monitoring Period is unacceptable as it will not permit enough time to inform changes to the standard before it goes into effect.

FRB: IMPROVE AND IMPLEMENT THE BUILDING BLOCK APPROACH

The FRB published a proposal in September 2019 to establish capital requirements for certain insurance companies that it supervises. Under the framework, known as the Building Block Approach (BBA), holding companies significantly engaged in insurance activities would be required to aggregate their state-based capital requirements into a consolidated requirement. The proposal would establish both a minimum requirement and a buffer on top of the minimum.

The Chamber supports the FRB decision to pursue a risk-based group capital framework that aggregates existing legal entity capital requirements, with certain adjustments. The Chamber has urged the FRB to consider several improvements to the design of the framework, in particular that the BBA should avoid deviating from the state-based regulatory system, changes to the definition of qualifying capital, and embracing a robust cost-benefit analysis.

ACTION: The FRB should finalize the BBA once it has updated the framework to include certain improvements.

CONGRESS: ENACT THE STATE INSURANCE REGULATION PRESERVATION ACT (H.R. 5059–115TH)

The Dodd-Frank Act transferred supervision of Insurance Savings and Loan Holding Companies (ISLHCs) to the FRB, causing insurance companies with an affiliated savings association to be required to submit to certain requirements that are more appropriate for banks. Furthermore, many of the requirements are duplicative to the state-based regulation and supervision of insurance companies.

The State Insurance Regulation Preservation Act (H.R. 5059–115th) would require the FRB to tailor the regulation and supervision of ISLHCs and remove duplicative burdens.

ACTION: Congress should enact the State Insurance Regulation Preservation Act (H.R. 5059–115th).

U.S. REPRESENTATIVES TO THE IAIS: IMPLEMENT HOLISTIC FRAMEWORK FOR SYSTEMIC RISK

The Chamber supports the IAIS' adoption of the Holistic Framework, which embraces an activities-based approach (ABA) to assessing potential sources of systemic risk, and the accompanying FSB decision to suspend the identification of globally systemic important insurers (G-SIIs) while jurisdictions implement the framework. The Chamber supports the efforts of U.S. supervisors to implement supervisory and macroprudential tools that are necessary to fully implement an ABA and ensure that the FSB's 2022 review of the effectiveness of the Holistic Framework results in permanent discontinuation of G-SII identification.

ACTION: U.S. members of the IAIS should continue to pursue development and implementation of any tools necessary to complete implementation of the Holistic Framework.

ACTION: U.S. members of the IAIS should ensure the IAIS process for assessing jurisdictional implementation of the Holistic Framework is unbiased and adequately considers all elements of insurance and systemic risk supervision/oversight in our market.

ACTION: U.S. members of the IAIS and FSB should closely monitor the impacts of COVID-19 and the potential need to defer the 2022 review of how implementation of the Holistic Framework is progressing and how it is working in practice until 2023 or later.

CONGRESS: CLARIFY CFPB'S AUTHORITY OVER THE BUSINESS OF INSURANCE

The CFPB has initiated actions involving insurance products and services that fall within the exclusive authority of state insurance regulators despite the Dodd-Frank Act intending to make clear that the bureau does not have authority over the "business of insurance."

The Dodd-Frank Act intended to limit the CFPB's authority over the business of insurance, but the bureau has taken various actions that overstep these limits and interrupt a well-regulated and robust insurance market that adequately serves the needs of consumers. Insurance is regulated by the states and the Dodd-Frank Act makes clear that the bureau has extremely limited and narrow authority to regulate the business of insurance. Nonetheless, various actions by the bureau, including via its supervisory function, have exceeded its authority.

ACTION: Congress should enact legislation to clarify that the CFPB does not have authority over the business of insurance.

CONGRESS: DIRECT THE GAO TO STUDY AUTO-INSURANCE UNDERWRITING

Insurance companies rely on a wide range of predictive data to confidently underwrite actuarially sound policies they make available to consumers, including credit-based insurance risk scores. Credit-based insurance risk scores are used by 95% of auto insurers in states where this is permissible. Numerous studies have shown that there is a correlation between credit-based insurance risk scores and auto insurance loss. However, concerns have also been raised that credit-based insurance risk scores can contribute to unfair outcomes for minorities, including relatively high-priced policies compared with other drivers.

The Chamber believes concerns about unfair outcomes should be identified along with an impartial review of the data associated with the major cost drivers of auto insurance, including the impact of an individual's credit-based insurance risk score. The Government Accountability Office (GAO) is arguably the most independent federal entity for conducting research analysis. The GAO should conduct a study, which should not be based on preconceived conclusions, to inform the need for any potential policy changes for underwriting of automobile insurance.

ACTION: Congress should direct the GAO to conduct an independent study of the major cost drivers that affect the underwriting of automobile insurance to determine if there are any biases that cause inequitable outcomes for minorities, including the major cost drivers of auto insurance along with their correlation to the risk of loss.

CONGRESS: REMOVE THE FEDERAL INSURANCE OFFICE'S SUBPOENA AUTHORITY

The Chamber supported the creation of the Federal Insurance Office (FIO) because it allows the American insurance industry to have a unified governmental entity in the negotiation of international agreements. However, there is no justifiable reason for FIO to have subpoena authority.



The Chamber recommends that the subpoena authority of FIO be rescinded given it is not a regulator. Additionally, the Chamber recommends that FIO coordinate with state insurance commissioners to avoid redundant data requests being imposed on industry.

ACTION: Congress should remove FIO’s subpoena authority by amending Section 513 of the Dodd-Frank Act.

HUD: UPHOLD CLARIFICATION THAT DISPARATE IMPACT RULE DOES NOT APPLY TO INSURANCE

Uncertainty about the availability of disparate impact claims under the Fair Housing Act (FHA) and the contours of any such liability make it challenging for companies to understand their compliance obligations in this context. Varying regulatory and judicial interpretations of the FHA, and related statutes, further complicate these efforts. Companies often decide to avoid undertaking beneficial new projects, offering valuable features, or developing innovative products out of fear of later being second-guessed under a disparate impact theory. The Supreme Court recognized in its decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* that such outcomes “undermine [the] purpose [of the FHA] as well as the free-market system.” In September 2019, the Department of Housing and Urban Development (HUD) issued a Proposed Rule to address these questions, including the applicability of HUD’s disparate impact rule to insurance.

The Chamber requested that HUD’s Disparate Impact Rule, among other things, be clarified with respect to the business of insurance. The Chamber cited the McCarran-Ferguson Act, which states, “no Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance,” to argue that application of the Fair Housing Act to insurance is inappropriate and contrary to Congressional intent. HUD’s final rule, issued in September 2020, stated “State laws regulating insurance will supersede the Fair Housing Act in a discriminatory impact case if the application of the Fair Housing Act in that case would invalidate, impair, or supersede State law regulating insurance.”

ACTION: Policymakers should support the Fair Housing Act Disparate Impact Rule finalized by HUD in September 2020, including its clarifications for the treatment of insurance.

MAINTAIN NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS QUORUM

The National Association of Registered Agents and Brokers (NARAB) is a licensing mechanism for insurance agents and brokers operating outside their home states that permits regulators to maintain their authority to oversee their activities. NARAB streamlines regulatory hurdles facing insurance producers to operate across state lines, thus providing more options to consumers and promoting competition in the marketplace.

In 2015, bipartisan legislation was enacted—known as NARAB II—intended to provide “a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without affecting the laws, rules, and regulation, and preserving the rights of a State” regarding insurance producer activities and conduct.

NARAB has been unable to reach its full potential due to challenges with maintaining a quorum for its governing board. The board is to be composed of eight current or former state insurance commissioners and five insurance industry representatives—a total of 13 individuals to be appointed by the president and confirmed by the Senate.

ACTION: The president, after consulting the Treasury secretary, should nominate appointees to NARAB to ensure the board maintains a quorum.



SYSTEMIC RISK

The Dodd-Frank Wall Street Reform and Consumer Protection Act created the Financial Stability Oversight Council, composed of 10 voting members with diverse areas of expertise, to comprehensively monitor and mitigate threats to the U.S. financial system as well as ensure greater coordination among the array of financial regulators.

In its formative years, the FSOC made a number of decisions that were not without controversy and arguably supplanted robust economic analysis for arbitrary political decisions. One of the primary concerns was a regulatory approach that was bank-centric and disregarded important distinctions in capital markets activities. In recent years, important updates to processes and procedures have been implemented that will improve the FSOC's competence for identifying and addressing systemic risk.

The FSOC can improve financial regulation and the efficient operation of the capital markets if it adheres to the principles of transparency, accountability, and due process.

FSOC: IMPLEMENT ACTIVITIES-BASED APPROACH FOR SYSTEMIC RISK

In December 2019, the FSOC finalized guidance improving the transparency and due process of its activities. Importantly, the guidance established an activities-based approach for the council's efforts to identify, assess, and address potential risks and threats to U.S. financial stability. This guidance formalizes work started in the previous administration, where the FSOC directed staff to “undertake a more focused analysis of industry-wide products and activities to assess potential risks” as it related to the asset management industry. In 2020, the U.S. House of Representatives favorably reported legislation with report language expressing support for FSOC's guidance and a preference for an activities-based approach, rather than individual entity designations, for addressing potential risks.

ACTION: The FSOC should exclusively use an activities-based approach for assessing and addressing systemic risk in the financial system in accordance with its December 2019 guidance.

CONGRESS: DIRECT FSOC TO USE AN ACTIVITIES-BASED APPROACH FOR SYSTEMIC RISK

The Dodd-Frank Act created the FSOC, chaired by the secretary of the Treasury, and provided it with the authority to designate a nonbank financial entity as a Systemically Important Financial Institution (SIFI). This designation by FSOC would have the FRB impose bank-like regulations that are inappropriately tailored for these entities without necessarily providing them adequate opportunity to first address the risks identified by regulators. Designation as an SIFI should be informed by a transparent, evidence-based process with clear rules of the road. Action by Congress would provide more certainty to nonbank financial entities that their business model will not be arbitrarily called into question by the FSOC.

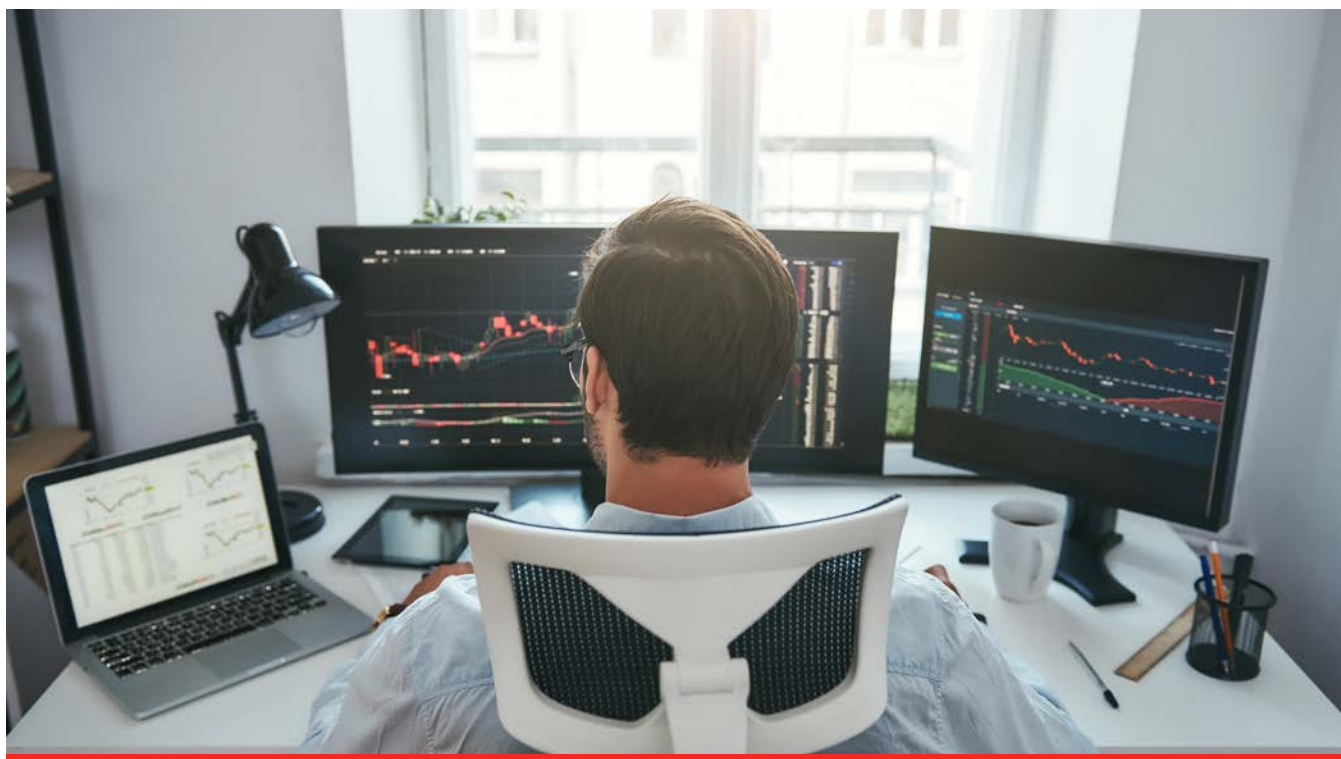
ACTION: Congress should enact the Financial Stability Oversight Council Improvement Act (S. 603/H.R. 3561–116th), which would require closer coordination with an entity's primary regulator by FSOC and an opportunity for entities to “de-risk” by modifying their business, structure, and operations prior to a designation as a SIFI.

CONGRESS: IMPLEMENT THE ALLEVIATING STRESS TEST BURDENS TO HELP INVESTORS ACT

The Dodd-Frank Act calls for enhanced supervision and prudential standards for bank holding companies with greater than \$50 billion in assets and certain nonbank financial entities supervised by the FRB including the application of an annual stress test. A stress test created by the FRB, a bank regulator, would be inherently inappropriate for a nonbank financial entity, such as an asset manager, and disregard the significant differences between the two.

The Alleviating Stress Test Burdens to Help Investors Act (H.R. 3987–116th) would amend the stress test requirements under the Dodd-Frank Act by removing the authority for the FRB to conduct stress tests and instead provide new authority to the SEC and CFTC to conduct periodic analyses of financial conditions, including the availability of liquidity under adverse economic conditions.

ACTION: Congress should enact the Alleviating Stress Test Burdens to Help Investors Act (H.R. 3987–116th).





HOUSING AND INFRASTRUCTURE

The capital markets play a critical role in supporting the development of housing and infrastructure in the U.S. Both housing and infrastructure are critical foundations to promoting economic growth; therefore, it is crucial that the mechanisms for financing these assets are as efficient as possible.

FHFA: AMEND FEDERAL HOME LOAN BANK MEMBERSHIP RULES

The Federal Home Loan Bank System was chartered by Congress, pursuant to the Federal Home Loan Bank Act of 1932, and has a primary mission of providing member financial institutions with financial products and services that assist and enhance the financing of housing and community lending. The Federal Home Loan Bank (FHLB) system helps financial institutions manage their liquidity needs and provides low-cost financing so they can meet the needs of the communities they serve.

Mortgage real estate investment trusts (mREITs) provide liquidity to the real estate markets by investing in residential and commercial mortgages, including mortgage-backed securities. They are an important source of private capital, and it is estimated that mREITs help finance 2.8 million homes in the U.S. These institutions owned and operated captive insurance companies that were members of the FHLB system.

The Federal Housing Finance Agency (FHFA) adopted a final rule that, among other things, prohibits membership eligibility for captive insurance companies and thus for mREITs. These firms must terminate their FHLB membership by February 2021, thus depriving them of the low-cost financing they use to support home ownership.

ACTION: Congress should amend the Federal Home Loan Bank Act of 1932 to clarify mREITs can be members of the FHLB system.

SEC: CLARIFY TREATMENT OF MREITS UNDER THE INVESTMENT COMPANY ACT OF 1940

The SEC should issue a no-action letter to permit partial pool pass-through certificates to be classified as qualifying real estate assets for purposes of Section 3(c)(5)(C) of the Investment Company Act of 1940. This will permit mREITs to continue to purchase securities backed by Fannie Mae and Freddie Mac given whole pools of mortgages are less prevalent under the GSE's Single Security Initiative.

Section 3(c)(5)(C) excludes an issuer from the definition of "investment company" if 1) it does not issue redeemable securities, face amount certifications of the installment type or periodic payment plan certificates; and 2) it is primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interest in real estate.

SEC staff has historically required an issuer to hold 1) at least 55% of its assets in “qualifying real estate assets,” and 2) at least 25% of its assets in additional qualifying real estate assets or in “real estate-related assets.” SEC staff has classified “whole pool certifications” as qualifying real estate assets and “partial pool certificates” as real estate-related assets. As a result of the Single Security Initiative, Fannie and Freddie have changed the way they create mortgage pools and whole pools of mortgages have become less prevalent, thus making it more difficult for REITs to purchase these securities while maintaining an exclusion from the definition of “investment company” under Section 3(c)(5)(C) of the Investment Company Act.

ACTION: The SEC should issue a no-action letter to permit partial pool pass-through certificates to be classified as qualifying real estate assets for purposes of Section 3(c)(5)(C) of the Investment Company Act of 1940.

IRS: CLARIFY REIT INCOME TEST FOR INFRASTRUCTURE INVESTMENT

REITs could be leveraged to provide more financing for infrastructure in the U.S. However, many infrastructure projects that may easily satisfy the REIT asset tests—such as bridges, parking facilities, airports, rail yards, and ports—do not satisfy the REIT gross income tests if they are owned and operated by the same party. This is because most of their income takes the form of tolls, concession charges, and payments from private parties that do not take the form of a rental or lease income stream.

ACTION: The IRS should amend the REIT income test to encompass infrastructure assets and income derived from the use or operation of infrastructure assets.

NAIC: UPDATE INSURANCE REGULATION TO SUPPORT INFRASTRUCTURE INVESTMENT

The Chamber issued a report in 2018 finding that the insurance industry is a major supporter of infrastructure investment in the U.S. Insurance companies invest in a unique set of assets—such as those that support infrastructure—as a direct result of their business model, which is generally low risk given its predictable stream of future income. The insurance industry has over \$6 trillion in total assets and is a major investor in assets that support infrastructure, such as municipal bonds, of which it holds approximately 20% or \$800 billion.

In 2019, the Center for Insurance Policy and Research and the Capital Markets Bureau at the National Association of Insurance Commissioners (NAIC) issued a Request for Information aimed at discussing and clarifying topics surrounding infrastructure investments and determining the role of U.S. insurance companies as a source of infrastructure financing.

ACTION: The NAIC should review its risk-based capital framework to identify opportunities for amendments that, without undermining safety and soundness, will promote infrastructure investment by doing more to differentiate between the risk of disparate assets.

CONGRESS: EXPAND PRIVATE ACTIVITY BONDS

Private activity bonds (PABs) are tax-exempt bonds issued by or on behalf of a state or local government to finance projects that meet certain qualifications. Private activity bonds have an array of qualified uses that permit for the financing of economic infrastructure, like airports, rail yards, roads, and bridges, and social infrastructure, like affordable rental housing, schools, and nonprofit hospitals. They are one of the primary tools used by state and local governments to finance infrastructure projects, and are a critical tool for leveraging support from the private sector via the capital markets.

Investors—which may include individual retail investors or institutional investors like insurance companies—purchase private activity bonds via the capital markets. For example, insurance firms own about 20% of all municipal bonds outstanding, and their annual investments in municipal bonds used for transportation projects could build a road from Washington, D.C., to Los Angeles every year. The tax-exempt status of the bonds makes them attractive to many investors—and the demand for this type of bond helps the issuers, state and local governments, obtain a lower cost of financing than they might receive for a taxable bond.

There have been a number of bipartisan proposals introduced in Congress in recent years to expand the use of PABs. Some proposals have expanded the total amount of PABs that can be issued in a given year by eliminating or extending the current \$15 cap on PAB issuances. Other proposals have expanded the qualified uses for PABs to include new types of infrastructure projects.

ACTION: Congress should enact legislation that promotes expanded use of Private Activity Bonds.

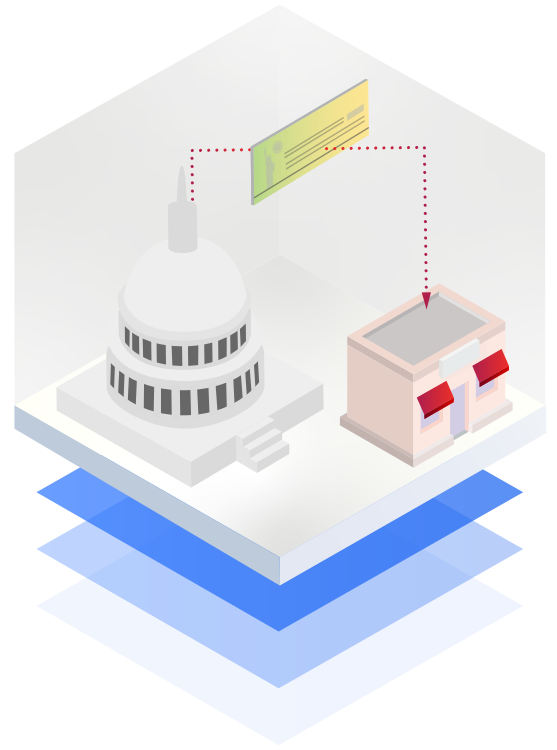


CONGRESS: AUTHORIZE DIRECT PAYMENT BOND PROGRAM

A new direct payment bond could allow state and local governments to lower their cost of financing for important infrastructure projects. A direct payment bond provides a subsidy from the federal government directly to the issuers of the bond or to the owners of the bond. This subsidy is efficient and makes the bond more desirable for a broader class of investors (including pension funds), thus lowering the cost of financing for state and local governments. The bonds would also be taxable—which is generally not the case with municipal bonds—thus preserving a source of revenue for the states.

A taxable direct payment bond program (similar to the Build America Bond program) is one of many important tools for state and local governments to finance infrastructure.

ACTION: Congress should enact legislation that authorizes a new taxable direct bond program.



CARES ACT

EMERGENCY LENDING PROGRAMS

The COVID-19 crisis is unique in that businesses seeking financing find themselves in such a position through no fault of their own, and in most cases have been mandated by a government body to limit or cease operations. The Chamber supported the creation of the Small Business Administration's SBA's Paycheck Protection Program and the myriad lending programs administered by the Federal Reserve. These programs are intended to help businesses weather the economic storm and retain their employees. The financial support provided by Congress is historic in size, and the Chamber strongly supports policymakers providing oversight for the CARES Act lending programs.

Oversight of these programs is central to the confidence of taxpayers that the funding authorized under the CARES Act is being deployed responsibly and in a manner that will support economic recovery. The ultimate goal of policymakers should be to ensure that the credit provided under the CARES Act flows to the businesses and households that most need it, while rooting out any waste, fraud, and abuse that would undermine or impede economic recovery.

At the same time, using the crisis and exploiting the CARES Act facilities to pursue unrelated policy goals—or to shame certain companies or industries for availing themselves of programs they are legally eligible for—should not be confused with “oversight.” Businesses in every sector and of every size are being harmed by the pandemic, and many will ultimately choose to apply for and receive credit under a program. Our economy will never fully recover if lending programs become politicized and used as a mechanism to direct policy outcomes that are uncorrelated to putting Americans back to work and getting the economy growing again.

The Chamber has consistently supported oversight mechanisms in times of crisis when taxpayer dollars are used as a lifeline for the economy. For example, in 2009 the Chamber supported the Troubled Asset Relief Program (TARP) Accountability Act, which provided a mechanism for the government and the public to easily track and monitor disbursement of TARP funds in the wake of the 2008 financial crisis. As we stated then, “This level of transparency will help avoid the misuse of funds and develop a level of confidence that is integral to the success of TARP.” This principle remains true today.

FRB: RIGHT-SIZE THE MAIN STREET LENDING PROGRAM

The Main Street Lending Program (MSLP) is positioned to provide financing to medium and large businesses, and nonprofits, that are in need of bridge financing to overcome the economic challenges of the pandemic. These organizations have successful businesses models, but government orders to close and other disruptions have called their viability into question. The MSLP would be especially critical for middle market businesses—which employ over 60 million Americans—to weather this storm. Early in the crisis, the Chamber strongly supported creation of a bridge-financing facility by the Federal Reserve, such as the MSLP, given the needs being expressed by businesses, but this program is not yet delivering the support being requested by main street businesses.

Lending under the program has been much lower than expected and has not met the expectations of middle market businesses. There is not one single reason for minimal borrowing via the program; it is likely due to a variety of factors that disincentivize both borrowers and lenders from participating.

ACTION: The Federal Reserve should create new lending terms that are secured to real assets. This will permit firms with strong balance sheets, but possibly limited cash flows, to make use of the emergency lending program.

ACTION: The Federal Reserve should continue to reassess the borrowing terms of the program—including the maturity length, interest rate, and repayment schedule—to ensure they are attractive for eligible borrowers.

ACTION: The Federal Reserve should continue to reassess the lending terms of the program—including the fee and risk sharing—to ensure that lenders are incentivized to participate.

ACTION: The Treasury secretary should use his or her authority under Section 4003 to waive restrictions for dividends and other capital distributions in the Main Street Lending Program to improve the ability of participants to attract financing from the capital markets.

ACTION: Certain 501(c)(6) organizations, such as state and local chambers of commerce, should be made eligible to borrow under the program in order to maintain payroll and ensure these organizations can continue to provide guidance and resources to small businesses during this time of uncertainty.



FRB AND TREASURY: CREATE NEW 13(3) SHORT-TERM LIQUIDITY FACILITY FOR ACCOUNTS RECEIVABLE

In the unexpected economic downturn caused by COVID-19, businesses have had to deal with the challenge of forecasting cash flows and harnessing sufficient cash while still maintaining other types of short-term assets, such as inventory, in order to continue their business operations. Because of the extraordinary economic conditions, businesses that normally receive payment for goods or services within 30 days have experienced significant slowdowns in payments of 90 days or more. These delays have caused smaller businesses to hesitate to take on normal business risks and have caused an acute constriction of the supply chain—endangering America’s economic recovery at a time when increasing economic activity is a key goal of policymakers and businesses alike. Unfortunately, the Federal Reserve has not established a program to provide much-needed liquidity to the supply chain.

The Federal Reserve, with approval from the Treasury Department, could use its authority under Section 13(3) of the Federal Reserve Act to create a federally backed short-term facility (or facilities) that provides liquidity for the suppliers and buyers in the supply chain.

ACTION: The Federal Reserve, with the support of the Treasury Department, should use its authority under Section 13(3) of the Federal Reserve Act to create a short-term liquidity facility to support financing in the supply chain.



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