

April 14, 2017

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

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

Dear Chairman Crapo and Ranking Member Brown:

On behalf of the members of the American Bankers Association (ABA), we are submitting the enclosed proposals in response to your joint request for ideas that would stimulate economic growth and community development.

Our members have long advocated regulatory relief and other proposals that would help us better serve consumers and our local communities. We have, and continue to support, several legislative [proposals](#) that would improve the regulatory environment and our overall economy. For example, we strongly support:

- The TAILOR Act ([S.366](#)), introduced by Senator Mike Rounds (R-SD), which would empower the regulators to “tailor” regulatory actions so that they apply only when required by the bank’s business model and risk profile.
- The Financial Institutions Examination Fairness and Reform Act ([S.774](#)), bipartisan legislation introduced in the 114th Congress by Senators Jerry Moran (R-KS), Joe Manchin (D-WV) and Shelley Moore Capito (R-WV), that would significantly improve the examination process and ensure that banks receive timely examination reports and create a fair process for banks to appeal examination decisions.
- The Systemic Risk Designation Improvement Act ([H.R. 6392](#)) would authorize the FSOC to subject a bank holding company to enhanced supervision and prudential standards by the Board of Governors of the Federal Reserve System if FSOC makes a final determination that material financial distress at the bank holding company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities, could threaten the financial stability of the United States. This legislation would provide a true risk-based analysis to systemic importance determinations and would ensure that regulatory supervision is appropriately tailored to a financial institution’s risk profile.
- The Durbin interchange amendment, included in the Dodd-Frank Act, is an obsolete government price control which has created friction and inefficiency in consumer payments accepted by virtually every American business. By making price adjustments through a drawn-out federal study conducted at arbitrary intervals, and frequently subject

to litigation, this mandate prevents the market from creating efficiencies that would benefit small businesses and their consumers. More than just creating economic drag, it has failed consumers by increasing the cost of basic financial services products like free checking accounts. In the absence of any evidence showing broadly-shared economic benefit, repealing this price control would allow financial institutions to use their own revenue to invest more value into their basic product lines. Bringing consumers into the mainstream banking system is a proven method of increasing economic growth.

- The Federal Savings Association Charter Flexibility Act ([S. 567](#)), bipartisan legislation sponsored by Senators Jerry Moran (R-KS) and Heidi Heitkamp (D-ND), that would provide thrifts with additional flexibility to adapt to and better meet the needs of changing economic conditions and business environments of their communities.
- Bipartisan legislation ([S. 828](#)) introduced by Senators Mike Rounds (R-SD) and Mark Warner (D-VA) that would expand banks' abilities to count municipal securities as high-quality liquid assets under the Liquidity Coverage Ratio. This legislation could be [improved](#) by removing similar impediments that discourage banks from taking municipal deposits.
- [Legislation](#) that streamlines the rules for Currency Transaction Reporting (CTR) by establishing an exception for very well-known customers and raising the current threshold for filings from \$10,000 to \$20,000.
- Bills and legislative proposals that would improve the regulatory environment and enable banks to better serve their communities by: [raising](#) the threshold for small bank holding company relief from \$1 billion to at least \$5 billion; [providing relief](#) for mortgage servicing rights and trust [preferred](#) securities from Basel III capital requirements; [creating](#) a mutual bank certificate to help mutual institutions raise capital; providing [relief](#) from regulatory requirements penalizing custody banks for taking deposits; and, eliminating the Mid-Cycle (DFAST) stress tests.

We hope that these bills can receive consideration by your Committee, either as part of this process or separately. We are submitting the following five additional proposals that, in our view, could both receive bipartisan support and achieve your goals of economic growth and community development. Specifically:

1. Increase Mortgage Lending

Existing mortgage rules are too restrictive and have made it difficult, and in some cases impossible, for creditworthy borrowers – especially low-income families – to obtain safe and sound loans from portfolio lenders. The proposed legislation, the Portfolio Lending and Mortgage Access Act, would treat any loan made by an insured depository and held in that

lender's portfolio as compliant with the Ability to Repay and Qualified Mortgage (QM) requirements. This concept has received bipartisan support in both the Senate and the House.

2. Modernize Regulations that Prevent Acceptance of Stable Deposits

The FDIC has determined that certain traditional deposit accounts are considered to be “brokered deposits” and subjects them to supervisory limits and additional deposit insurance assessments. These restrictions and additional costs have limited the access of banks, including community banks, to a stable source of deposits that would increase liquidity. This unnecessarily limits the funding banks can make available for lending to small businesses and consumers. This proposal directs the FDIC to clarify that traditional deposit account products involving a direct, continuing relationship between a customer and an insured depository institution are not brokered deposits.

3. Create Bureau Advisory Opinion Process

Innovation and consumer protection in financial products and services is currently hampered because there is no effective way to obtain an advanced ruling from the Consumer Financial Protection Bureau (“Bureau”) regarding whether or not a proposed product or service would conform or would potentially violate the Federal consumer laws. This lack of legal and regulatory certainty chills innovation and prevents consumers from benefitting from such products and services and harms economic growth. Innovators and CFPB staff do not have a means to formally review a product before it reaches consumers, which unnecessarily delays important consumer protection conversations until a costly enforcement action is potentially undertaken. This reactionary posture creates an information vacuum, depriving innovators of vital compliance information and preventing CFPB staff from staying abreast of emerging consumer product trends – knowledge which is important to their effectiveness as a regulator. The proposal directs the Bureau to establish a formal process for innovators to voluntarily ask for an opinion on whether a proposed product or service would conform or violate Federal consumer law. The Bureau's opinion should be one that can be relied upon by the innovator making the inquiry as an official interpretation of the applicable underlying Federal consumer law.

4. Joint Bureau-Small Business Administration Study and Recommendations on Collection of Minority and Women-owned Business Loan Data

Section 1071 of the Dodd Frank Act requires the Bureau to prescribe rules for collecting and reporting data on lending to minority-owned and women-owned small businesses. However, there has been no analysis of whether this new data collection duplicates existing data on small business lending collected by the Small Business Administration (SBA) and the banking agencies pursuant to the Community Reinvestment Act. In addition, there has been no analysis of its impact on economic growth given the potential negative effects this may have on what loans are made or not made in a local community. The proposal revises section 1071 to provide that before the Bureau is authorized to prescribe any rule for collecting and reporting loan data, the Bureau and the Small Business Administration (SBA) must conduct a joint study of existing data on small business lending to determine whether the proposed collection would be duplicative of

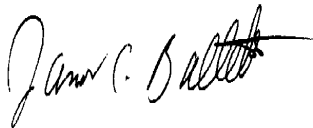
existing data collections and that the costs for such data collection do not exceed the potential benefits. The agencies are required to submit a report to Congress on their findings along with their recommendations, if any, for prescribing rules for the collection and reporting of minority-owned and women-owned small business loan data.

5. Relief for Medium Size Banks from Company Run Stress Tests

The Dodd-Frank Act stress testing requirements contained in section 165 (i) (2) have imposed a significant burden on Midsize Banks. For example, it is typical for a Midsize Bank to spend 10,000 man hours to produce thousands of pages of documents for the exercise and this takes resources away from lending and community development. This burden has been imposed even though there is little supervisory and public benefit. As part of the EGRPRA process, and in separate statements the Fed, FDIC and OCC have supported exempting banks with \$10-50 billion in assets from stress testing. The proposed statutory language would remove company run stress testing requirements from Midsize Banks.

Attached is a more detailed explanation of these proposals along with legislative language. We would be pleased to follow-up with your staff and look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "James C. Ballentine", with a stylized flourish at the end.

James C. Ballentine