BEFORE THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

House Bill 133 Proponent Testimony

Tuesday, March 9, 2021

Chair Jordan, Vice Chair Ferguson, Ranking Member Crossman, and members of the House Financial Institutions Committee, thank you for the opportunity to provide proponent testimony on House Bill 133. My name is Don Boyd, and I am Vice President of State Government Relations and General Counsel for the Ohio Bankers League.

Position

House Bill 133 is one of OBL's top priorities because it will clarify a currently unworkable notice requirement and cut down on compliance costs while still providing protections to consumers. The bill also contains numerous other financial institutions cleanup measures as well as provisions to benefit Ohio's broader business community. This legislation is a reintroduction of House Bill 38 from last General Assembly that should have gotten done but failed for lack of a concurrence vote after previously passing the Ohio House of Representatives by a vote of 91 to 1 and then the Ohio Senate by a vote of 30 to 1. We ask for your favorable and expeditious passage of this important measure.

The Ohio Bankers League

The Ohio Bankers League is the state's leading trade association for the Ohio banking industry—and is Ohio's only organization focused on meeting the needs of all banks and thrifts in the Buckeye State. For more than 130 years, the OBL has been the voice of the Ohio banking industry fostering a cooperation that has made it one of the strongest and most reputable financial trade associations in the country.

By linking banks, bankers, and industry experts—and by pooling their intellectual and capital resources—the OBL serves as a powerful creator of knowledge and collective resources. The non-profit association is comprised of more than 170 FDIC-insured financial institutions including commercial banks, savings banks, and savings and loan associations ranging in size from just over $14 million in assets to more than $3 trillion and employing over 60,000 Ohioans.

Introduction

First, I would like to begin by thanking the sponsor, Representative Hillyer, for working with our organization and several others representing Ohio's financial institutions to address issues left over from the last two General Assemblies. There are numerous provisions of the bill that others have spoken or will speak on today so I will contain my remarks to a specific change contained in Substitute HB 133 that would have a significant positive impact on Ohio's banks.

HB 133 would update Ohio Revised Code § 1349.72 that was created in House Bill 489 from the 132nd General Assembly. HB 489, which is currently in statute, created a new notice requirement that is both overly broad and vague while providing no real mechanism to seek guidance.

Problems with Notice Requirement in Current Law

ORC 1349.72 requires a notice to be sent to consumers via U.S. Mail prior to collecting or attempting to collect on a debt secured by a junior lien on residential real property. The notice must be in at least 12-point type and provide name and contact info of person collecting debt, amount of debt, and a statement that (1) debtor has a right to an attorney, (2) debtor may qualify for Chapter 7/liquidation or Chapter 13/reorganization bankruptcy relief, AND (3) debtor that qualified under Chapter 13 may be able to protect the property from foreclosures. The main problem with this section is that there is no definition of what qualifies as an attempt to collect. Depending how broad it is construed, simply notifying a customer that their payment is due or providing a monthly statement could be construed as an attempt to collect and require the notice be sent.

Further, many banks provide a grace period up to 90 days for customers and some customers do not even consider themselves as late on their payment during this time. Customers also do not face any late fees or negative consequences if they pay during this time period. However, banks are still required to send this notice about attorneys and bankruptcy which leads to an extremely negative customer experience. The fact that the notice requirements, such as the type point to be used, are so specific yet the rest of the statute is so vague makes it extremely likely that litigation will result.

Following passage of the bill, OBL reached out to several state agencies on behalf of our members for guidance on how to comply with this provision. However, no state agency is tasked with enforcing this Section, so none were able to provide guidance. Additionally, in response to a request for clarification, the Legislative Services Commission stated that, "Only a court could decide the scope of this provision for certain." A copy of that memo has been submitted along with my testimony. In short, this puts all banks in Ohio in an extremely precarious position and opens them up unnecessarily to potential litigation when banks do not even appear to be the original target of this legislation.

House Bill 133 Changes to Notice Requirement

Last General Assembly, OBL worked with members of the House Financial Institutions Committee from both parties and other interested parties to come up with a compromise that would alleviate many of the concerns banks have with the current notice requirement while still addressing the concerns of certain members on the committee that debt servicers down the line were not providing adequate notices to consumers. Based on the testimony from HB 489 originally enacting the notice requirement, debt servicers appeared to be the main target of the legislation, not depository institutions.

The changes included in HB 133 would provide much needed clarity in the statute and ease the compliance burden on banks. The revisions would do several things including only requiring the notice to be sent 30 days in advance of filing a foreclosure action rather being triggered based on the lienholder collecting or attempting collect. It also allows the notice to be included in any other communication sent to the debtor.

Since banks, as opposed to some other debt servicers, are required to send numerous notices by state and federal law, this allows banks to include the information in those other communications.

Conclusion

These changes would make this notice requirement workable and cut down on compliance costs. As previously mentioned, this legislation passed both Chambers last General Assembly with overwhelming bipartisan support. We again urge your favorable consideration of HB 133. Thank you for your time and I would be happy to try to answer any questions.

OBL Contact: Don Boyd—VP, State Government Relations & General Counsel
Direct: (614) 340-7608 dboyd@ohiobankersleague.com