

**Testimony regarding H.908  
("An Act Relating to the Administrative Procedure Act")**

*Gavin Boyles, General Counsel, Department of Financial Regulation  
Senate Government Operations Committee, April 24, 2018*

Thank you for the opportunity to present DFR's view of H.908.

First, the Department fully supports the provisions that will make the rulemaking process more transparent and efficient, and that encourage and enable public involvement. This bill does very good things in that regard. In fact, we've started posting more information during rulemakings already.

However, the Department has concerns about a few provisions.

- 1) *The definition of "procedure" (page 3, § 801(b)(8)).* This is of concern because we have internal procedures (e.g. money-laundering examination procedures) that must be confidential lest we advantage potential wrongdoers. In the insurance area we have procedures from the NAIC that are copyrighted and likely cannot be posted publicly. Additionally, DFR needs to be able to quickly modify its examination procedures, across divisions, as we learn of new threats and schemes. The Department recommends retaining the existing definition.
- 2) *Section 831a (pages 8-9) regarding de minimis rulemaking.* DFR frequently promulgates rules that apply to a small number of businesses, but they are necessary because those businesses are unique and need to be treated differently. This is particularly true in the banking and insurance areas. In insurance, we have 1 title insurer, 1 health insurer, and relatively low numbers of each type of captive. In banking, we have 1 litigation funding company, 2 check-cashing companies, 3 trust companies, 5 reverse-mortgage counselors, 6 state-chartered banks, and 13 state-chartered credit unions. The Department would be concerned that rules governing these small sectors could be deemed *de minimis* and objected to on that basis. The Department recommends omitting the section.
- 3) *Section 845(b) regarding waivers.* DFR recommends keeping the word "routine" to make clear that while waivers should be rare, they are possible. We do not routinely grant waivers; we don't even do it often, but it is sometimes necessary to protect consumers. E.g. allowing policies written by a non-admitted insurer to remain in force so claims can be paid, or allowing a

company to continue servicing loans it made before getting a lender license. Waivers can be an important way to protect consumers and businesses in situations like these.

- 4) *Section 838(b)(2) regarding small business.* The previous requirement was that we “*shall consider*” but H.908 requires that economic impact analysis “*shall include*” ways a small business can comply that are different from the usual methods of compliance. This is not always possible, and even when possible, is not always a good idea with financial institutions. For example, financial solvency and consumer protection standards must apply regardless of the size of the business. In the banking area, we can’t vary requirements for small business because some of our examination requirements have to comply with NCUA, CFPB, and/or FDIC guidance. DFR would recommend retaining the prior language regarding small businesses.

Thank you for the opportunity to testify. Please do not hesitate to contact me should you have any questions.

A handwritten signature in blue ink, appearing to read "Gavin Boyles". The signature is fluid and cursive, with a large initial "G" and "B".

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