AFR Americans for Financial Reform

January 11, 2017

Dear Representative:

On behalf of Americans for Financial Reform (AFR), we are writing to urge you to oppose HR 5, the “Regulatory Accountability Act of 2017”, or RAA.[1]

This legislation could instead be entitled the “End Wall Street Accountability Act of 2017”, since this would be one of its major effects. This legislation would require regulatory agencies, including those charged with oversight of our largest Wall Street banks and most critical financial markets, to comply with a host of additional bureaucratic and procedural requirements that would make effective action virtually impossible. By doing so it would tilt the playing field still further in the direction of powerful Wall Street banks, and against the public interest. It would paralyze the ability of regulators to protect consumers from financial exploitation and prevent another catastrophic financial crisis,

There is overwhelming agreement that the lack of adequate regulation of the financial markets has cost the U.S. economy millions of jobs and many trillions of dollars in lost wealth. While Wall Street profits have recovered, many Americans are still struggling. Support for this legislation is support for eliminating the ability of regulators to prevent the next financial crisis.

This legislation would burden financial regulators with over 70 new procedural and analytical requirements that must be completed before they could pass significant rules or guidance. For example, the legislation requires agencies to identify and analyze any theoretical alternative to imposing a regulation, and analyze the costs and benefits of each alternative in detail. Since there are always numerous possible alternatives to any course of action, this requirement alone could force agencies to complete dozens of additional analyses prior to proposing a regulation. The bill also includes an unprecedented mandate on agencies to determine all “indirect” costs from their proposed regulation, with no guidance to agencies as what counts as an “indirect” cost.

Should any of the mandated analyses be found to be inadequate by a court, the court could then overturn the regulation. Furthermore, Title 2 of the bill specifies that the court would not be required to defer to the agency in any way, and could freely substitute its own judgement for that of agency experts. Thus, even if an agency manages to satisfy the dozens of additional requirements imposed by this legislation and publish a final rule, the courts would have effectively unlimited opportunities to second-guess and overturn the agency’s decision.

[1] Americans for Financial Reform is an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups. A list of AFR coalition members is available at http://ourfinancialsecurity.org/about/our-coalition/ .

Even if the agency could run the gauntlet of procedural mandates and court challenges, any regulated company could force agencies to engage in a formal adversarial hearing process. This process would require agencies to formally demonstrate that their chosen rule had lower net costs than any alternative proposed by private industry. Such a demonstration would also be subject to judicial review, without any requirement for the court to defer to the agency's professional judgment. This formal hearing process would amount to a de facto Wall Street veto of regulatory oversight. Any bank would simply have to propose that the agency analyze an additional regulatory option in order to freeze the regulatory process in place, send the agency back to the drawing board, and gain a new opportunity to overturn agency rules in court.

Adding to the devastating impact of this legislation, Title IV of the bill would require courts to stay enforcement of a regulation until all litigation challenging the regulation was completed. When combined with the almost limitless opportunities for litigation created by the rest of HR 5, this provision would ensure that it was effectively impossible to enforce rules opposed by industry interests.

The misguided premise of this legislation is that regulations are inevitably costly to the economy, while regulatory inaction is not. Yet analyses have shown that basic health, safety, and environmental regulations typically bring far greater economic benefits than costs. It is clear that the costs of failing to provide adequate oversight of Wall Street are enormous. The financial crisis of 2008 cost the U.S. economy trillions of dollars and millions of jobs, and led to millions of families losing their homes. Nonpartisan experts have estimated the costs of the crisis to the U.S. as $6 to $14 trillion in lost economic output alone.[2]

In the face of the overwhelming costs of regulatory inaction, we cannot afford to hamstring our financial regulatory agencies. The needless litigation and delay that will result from enactment of this bill will serve only to halt critical safeguards for our economy and the public. According to recent polling data, 78 percent of Americans favor tougher rules and enforcement for big Wall Street banks.[3] This legislation would cripple the ability of regulators to institute any new oversight on our largest banks, and it must be rejected.

Sincerely,

Americans for Financial Reform

[2] The costs of the 2008 financial crisis are analyzed in an AFR briefing paper available at http://ourfinancialsecurity.org/wp-content/uploads/2012/09/Costs-of-The-Financial-Crisis-September-20142.pdf

[3] See response to Question 2 in CRL/AFR Poll of 1000 Likely Voters, June 25-30, 2014, available at http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2014/07/toplines.AFR_.public.071714.pdf.