AMERICANS
FOR FINANCIAL REFORM
ACCOUNTABILITY ★ FAIRNESS ★ SECURITY

Americans for Financial Reform
1629 K St NW, 10th Floor, Washington, DC, 20006
202.466.1885

July 29, 2014

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to H.R. 3913, HR 4042, and HR 5148.[1] AFR also opposes HR 5018, "The Federal Reserve Accountability and Transparency Act", another bill being considered today, and has sent a separate letter regarding this legislation.

HR 3913 would ban any rulemaking under Section 13 of the Bank Holding Company Act (the 'Volcker Rule') that "would impose a burden on competition not necessary or appropriate in furtherance of the goals of this section". AFR has consistently opposed broad statutory mandates of this type. Such mandates are an open invitation to endless lawsuits by well-funded Wall Street interests seeking to overturn rules that may reduce their profits, even if they serve the public interest. The mandate in HR 3913 is particularly vague, broad, and far-reaching. This mandate could force the courts to effectively re-litigate the Volcker rule every time regulators took action. It is also significant that the mandate appears to prioritize 'competition' over other public interest considerations such as equity and financial stability. Existing law such as the Administrative Procedures Act already provides ample opportunity for judicial review of agency decisions. Congress should not encourage further lawsuits through vague industry-friendly directives such as bans on any regulatory action that creates a 'burden on competition'.

To the degree that HR 3913 rests on the premise that the Volcker Rule creates an excessive 'burden on competition', AFR also disagrees with this premise. If what is meant by 'competition' is competitive balance, then we would argue that Volcker Rule limitations on the bank involvement of in proprietary trading improve competitive balance. Bank trading activities are dominated by a small number of 'too big to fail' banks.[2] Multiple recent studies have found that these megabanks still have a funding advantage thanks to the belief that they continue to enjoy an implicit public subsidy.[3] Furthermore, as dominant dealers in a wide range of financial instruments, they play a central role in the financial markets, which gives them potentially

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[1] Americans for Financial Reform is an unprecedented coalition of more than 200 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, faith based and business groups.

[2] According to a GAO analysis, just six bank holding companies account for 88 percent of trading revenues among U.S. bank holding companies. See p. 13, General Accounting Office, "Proprietary Trading: Regulators Will Need More Comprehensive Information to Monitor Compliance With New Restrictions When Implemented", Report to Congressional Committees, GAO-11-529, July, 2011.

[3] For a comprehensive list, see "TBTF Subsidy For Large Banks – Literature Review", Prepared for Thomas M. Hoenig, Vice Chairman, Federal Deposit Insurance Corporation, July, 2014. Available at http://www.fdic.gov/news/news/speeches/literature-review.pdf .

significant informational advantages in proprietary trading. Restricting the proprietary trading activities of such banks should improve competitive balance, not harm it.

If what is meant by 'competition' is the international competitiveness of U.S. industry, claims that the Volcker Rule would harm international competitiveness ignore the 60-year period during which U.S. banks operated under Glass-Steagall restrictions which were much more far-reaching than those that apply under the Volcker Rule. This historical experience does not support the conclusion that divisions between investment and commercial banking harm international competitiveness. Furthermore, important foreign jurisdictions such as the U.K. and E.U. are also moving to create new divisions between commercial and investment banking.[4] While these new rules differ in detail from the Volcker Rule, they also reflect the broad-based global recognition that unrestricted involvement of banks in financial market trading creates unacceptable risks.

HR 4042 would delay the application of new capital treatment of mortgage servicing assets for up to 18 months, and would create additional hurdles to finalizing these capital rules. The capital rule targeted by HR 4042 would restrict mortgage servicing assets to at most 10 percent of common equity tier 1 capital. This is a significant change compared to the previous treatment of mortgage servicing rights. But it does not appear inconsistent with the rest of the regulatory capital framework given that the inclusion of most other types of intangible assets in common equity capital was eliminated completely in Basel III.

By delaying these rules, HR 4042 would permit banks to operate with lower levels of common equity capital and to sustain higher rates of leverage. AFR believes that high levels of leverage in the banking system were a significant contributor to the 2008 financial crisis. By delaying new capital rules, HR 4042 would increase banking system leverage.

The effects of HR 4042 would not be limited to smaller community banks. Instead, the delay in new capital rules would apply to all banks except for the largest eight banks in the U.S. (those classified by international regulators as 'globally systemically important'). This means that the legislation would lead to a delay in strengthened capital positions for large regional banks with hundreds of billions of dollars in assets. AFR does not believe it is appropriate to delay the application of capital rules for these larger banks.

During the process of finalizing new Basel III capital requirements, prudential banking regulators carefully considered thousands of comments on their proposed rule. As a result of this examination, regulators chose to significantly ease capital requirements in many areas of the final rule, including the treatment of residential mortgages. But they did not modify the ceiling on mortgage servicing assets as a proportion of total capital. It is possible that much of the information requested in this bill has already been gathered by regulators as part of their previous consideration; these issues could be considered further if necessary without a delay in the application of capital rules.

[4] See the Vickers Commission recommendations were passed into law in the U.K. as the Financial Services (Banking Reform) Act of 2013, available at http://www.legislation.gov.uk/ukpga/2013/33/contents/enacted .The nature and progress of European Commission proposals are summarized at http://ec.europa.eu/internal_market/bank/structural-reform/index_en.htm .

HR 5148 would exempt 'higher-risk mortgages' of $250,000 or less from new appraisal requirements included in the Dodd-Frank Act, so long as such loans were held for at least three years on the balance of the lender. 'Higher-risk mortgages' refers to what were once called subprime mortgages -- loans that are made at higher than prime market rate and generally also include other high-risk features.. Various types of fraud and predatory lending connected to the origination of subprime mortgages were a major cause of the 2008 financial crisis. As the Financial Crisis Inquiry Commission stated[5]:

> "mortgage fraud... flourished in an environment of collapsing lending standards and lax regulation….One study places the losses resulting from fraud on mortgage loans made between 2005 and 2007 at $112 billion….Lenders made loans that they knew borrowers could not afford and that could cause massive losses to investors in mortgage securities."

In response to this experience, the Dodd-Frank Act put new rules in place that are designed to encourage mortgage loans to be properly aligned with the payment ability of the borrower and with the value of the underlying housing collateral. One such rule is the addition of a new requirement that lenders obtain a written appraisal of any property used as collateral for a higher-risk mortgage, based on a physical visit to the property by an independent and certified appraiser. This new requirement is intended to ensure that mortgage loans are properly collateralized. This protects both the lender, through adequate collateral for their loan, and the borrower, by preventing them from borrowing more than their home is worth.

By exempting mortgages of up to $250,000 from appraisal requirements, this legislation would significantly undermine this important new regulatory protection. The $250,000 exemption in this bill could include almost half of all new homes sold in the United States, and likely well over half of subprime or higher-risk mortgage loans.[6] The requirement that a lender retain the loan on their balance sheet for at least three years does provide some additional protection. But data on subprime loan defaults shows significant increases in default past the 36 month point.[7] In addition, mortgage loan terms can be designed to create the largest risks after the three year period set out in this law.

Besides removing appraisal requirements, HR 5148 would exempt even voluntary appraisals of higher-risk mortgages below $250,000 in value from professional standards for appraisal quality. The legislation would also remove obligations on banks or mortgage brokers to report violations of professional standards or other unethical behavior by appraisers. These changes appear to be an open invitation to appraisal fraud. We urge you to reject this legislation.

Thank you for your consideration. For more information please contact AFR's Policy Director, Marcus Stanley at marcus@ourfinancialsecurity.org or 202-466-3672.

Americans for Financial Reform

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[5] Page xxii, Financial Crisis Inquiry Commission, "The Financial Crisis Inquiry Report", January, 2011.
[6] $250,000 exceeds the average value of subprime mortgages in every year from 2001 to 2007. See Table 1 in Demyanyk, Yuliya S. and Van Hemert, Otto, "Understanding the Subprime Mortgage Crisis", December 5, 2008.
[7] See Figure 1 in Palmer, Christopher, "Why Did So Many Subprime Borrowers Default During the Crisis: Loose Credit or Plummeting Prices?", Massachusetts Institute of Technology, November, 2013.

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute

- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development

- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)

- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network

- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- UNET