AFR Americans for Financial Reform

June 12, 2018

Dear Chairman Frelinghuysen and Ranking Member Lowey:

On behalf of the undersigned organizations, we are writing to urge you to reject the numerous sweeping financial deregulatory measures that are inappropriately packaged in the Committee's Financial Services and General Government appropriations bill.

Title IX of this bill – consisting of 125 pages, more than one third of the entire bill – includes a grab bag of deregulatory provisions aimed at assisting banks and financial institutions at the expense of the public interest. Besides the evident absurdity of devoting more than one-third of an appropriations bill to dozens of policy proposals that together would comprise one of the most sweeping Wall Street deregulatory bills passed in decades, most of these policies are ill-considered, harmful, and damaging to consumers and to financial stability. Provisions in this bill would deregulate everything from the nation's largest banks to high-frequency Wall Street traders to consumer lenders supervised by the Consumer Financial Protection Bureau.

For example, the legislation contains multiple provisions that would be devastating to the independence of the Consumer Financial Protection Bureau. The CFPB has successfully gone to bat for consumers, delivering results that have made markets work more fairly and putting a stop to fraud and abuse. In total, CFPB enforcements have resulted in nearly $12 billion in relief for more than 29 million Americans who have been harmed by illegal, deceptive, and discriminatory practices of various companies. The agency's rules, supervision, and other activities have saved money, aided understanding, and prevented harm for many millions more.

The following provisions in the bill would gravely undermine the CFPB's independence and ability to take on abusive consumer practices:

- Section 943 in the FSGG 2019 print eliminates the CFPB's independent funding, making it the only banking regulator subject to the appropriations process. Permitting the change in Section 943 would leave the CFPB more uniquely vulnerable to industry influence and would make it much less likely that the agency would take action to protect the public interest in the face of opposition from industry profiting from an abusive status quo. It would give Wall Street and the worst elements of the financial services industry endless lobbying opportunities to deny the CFPB the funding to do its job if the regulator took action the industry did not like.

- Section 947 further damages the CFPB's independence by allowing the president to fire the CFPB director for any reason or no reason, despite a January, 2018 appellate decision upholding the constitutionality and appropriateness of an independent CFPB director. As the judges in that case stated, "Congress's decision to provide the CFPB Director a degree of insulation reflects its permissible judgment that civil regulation of consumer financial protection should be kept one step removed from political winds and presidential will."

- Section 948 would impose numerous draconian restrictions on the CFPB's authority to issue rules, which would dramatically undermine the CFPB's ability to carry out its duty to protect consumers. For example, this section subjects CFPB's "major rules" to a congressional veto similar to the likely unconstitutional Regulations In Need Of Scrutiny (REINS) Act. This bill allows inaction by at least one chamber of Congress to block any "major" CFPB rules. Even if both chambers of Congress were to approve a "major" rule, the section would further require the CFPB to adhere to a so-called regulatory budget by offsetting the costs of any "major" rules by in turn repealing other rules, despite whatever harm to consumers and the public interest might be inflicted by that repeal. This misguided standard would create a unique barrier to CFPB rule-making that is faced by no other agencies.

● Subtitle W (Sections 939-942) would unnecessarily establish a separate Inspector General for the CFPB. As a part of the Federal Reserve the CFPB is currently under the jurisdiction of the Federal Reserve Inspector General, who is ably carrying out the job. The new inspector general would be selected by the president, which would further dilute the CFPB's independence from the White House.

These provisions strike at the independence and effectiveness of the CFPB are only the beginning of the objectionable elements in this bill. Several additional examples are listed below.

Subtitle D of the bill ("The Mortgage Choice Act") would open a new loophole to permit loans with higher costs to the borrower to improperly qualify for a legal safe harbor. This provision would once again expose borrowers to some of the exploitative fees that the new mortgage rules passed in Dodd-Frank were designed to prevent. Fees exempted by the Mortgage Choice Act include fees paid to title insurance companies affiliated with the lender – lender affiliated title insurance fees are some of the most notoriously inflated fees in housing markets.

Subtitle M of the bill would put unprecedented limits on the ability of securities regulators to do basic oversight of automated high-speed trading, the riskiest and fastest-growing element of trading markets. This provision would severely restrict the ability of the Securities and Exchange Commission to examine the detailed trading strategies of automated traders, even in cases where such traders posed a risk to markets or the financial system. It would prevent regulators from inspecting not only the raw source code used in automated trading, but also any related intellectual property that "forms the basis for the design of" source code. Examination of such intellectual property would only be possible in an enforcement context pursuant to a subpoena. This would mean in practice that the SEC would have to wait until the damage was done through a "flash crash" or similar market disruption before taking any action, rather than being able to take action to prevent abuse.

Subtitle T in the print ("The Financial Institutions Examination Fairness and Reform Act") would grant regulated banks the right to appeal any supervisory determination made by any banking agency to a new "Office of Independent Examination Review". Upon appeal by a supervised bank, this new office would be required to undertake a de novo review of the agency's supervisory decision. No deference to the initial examination findings or the agency's judgment would be required in this review. This new appeals process is an addition to formal appeals processes and ombudsmen already present at the banking agencies. By layering an entirely new de novo appeals process on top of existing processes, the Exam Fairness Act would enormously increase the ability of banks to resist supervisory decisions. This effect would be most pronounced at the largest banks, who could appeal dozens or hundreds of material findings from every examination, creating enormous barriers to bank oversight. The bank supervision process has been the first line of regulatory defense against threats to bank safety and soundness for a century or more. Subtitle T would create unprecedented roadblocks to bank supervision, making it more likely that banks could get away with dangerous or abusive practices.

These are just a few examples of the dozens of harmful financial deregulatory provisions inappropriately included in this legislation. Other provisions weaken the Volcker Rule ban on speculative gambling with publicly insured deposits (Subtitle R), eliminate requirements for annual examinations of the giant securities rating agencies found guilty of fraudulent activities during the 2008 financial crisis (Subtitle L), weaken risk controls for financial derivatives (Subtitle Z), and more. The list of harmful deregulatory provisions goes on from there.

These financial policy riders are wrongheaded and dangerous in and of themselves, and it is entirely inappropriate to include them in a funding bill. All of the deregulatory provisions should be eliminated from the legislation.

Sincerely,

Americans for Financial Reform
Allied Progress
American Association for Justice
American Federation of State, County and Municipal Employees (AFSCME)
Baltimore Neighborhoods, Inc, MD
California Reinvestment Coalition, CA
Center for Popular Democracy
Center for Responsible Lending
Consumer Federation of America
Consumers Union
Demos
Hispanic Federation
Hispanic Federation - CT
Hispanic Federation - FL
Impact Fund
Indivisible
Institute for Agriculture and Trade Policy
NAACP
National Association of Consumer Advocates
National Community Reinvestment Coalition (NCRC)
National Consumer Law Center (on behalf of its low income clients)
New Progressive Alliance
Prosperity Now
Public Citizen
Service Employees International Union (SEIU)
Strong Economy For All Coalition
Tennessee Citizen Action, TN
U.S. PIRG
Woodstock Institute, IL