AFR Americans for Financial Reform

March 1, 2017

Dear Representative:

On behalf of Americans for Financial Reform, we are writing to express our opposition to HR 1009, the "OIRA Insight, Reform, and Accountability Act".[1] This legislation would have a crippling effect on the regulation of our financial system. It would add an unnecessary, burdensome, and time-consuming layer of bureaucracy to the process of completing oversight rules for our largest financial institutions. It would give Wall Street lawyers numerous new tools to overturn agency actions in court, based on compliance with a lengthy, vague, and contradictory new set of analytic hurdles. Finally, it would violate the independence of financial regulatory agencies that are designed to be insulated from White House influence.

HR 1009 would effectively require independent financial regulatory agencies to perform over a dozen new resource-intensive analyses of regulatory costs before they engage in any significant regulatory or enforcement action. These new analyses include near-impossible requirements such as determining whether a regulatory action would "impose the least burden on society" as compared to all other alternatives, which hypothetically requires the analysis of a near-infinite number of alternative courses of action. Because these analytic requirements are included in statute instead of simply being recommended in an executive order, they could be used to challenge agency actions in court.

HR 1009 gives the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget the right to review each regulatory action and compliance with these analytic requirements. OIRA comments will be included in the official judicial record of the rulemaking, and could be used as the basis for a court challenge. The agencies affected include prudential banking regulators like the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC), independent market regulators such as the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), and the Consumer Financial Protection Bureau (CFPB).

These independent financial regulatory agencies are not currently subject to OIRA review for their actions. Every independent financial agency either is required to conduct or voluntarily conducts formal economic analysis and considers costs and benefits in all their rulemakings. In addition, each is required to consider small business and paperwork impacts under the Regulatory Flexibility Act and the Paperwork Reduction Act. Existing statutory and legal

[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 our members is available at http://ourfinancialsecurity.org/about/our-coalition/

requirements for cost-benefit analysis, as well as related legal challenges, are already a major source of delay in financial agency rulemaking.

The new analytic requirements in this legislation would add an additional and unnecessary layer of bureaucracy on top of existing requirements. These new analytic requirements are only the beginning of the delays and burdens it would create. The mandated OIRA review would add extensive additional delay, and the review process could force agencies to go back to the drawing board or do a re-proposal of the rule, which could add years to the regulatory process. While agencies could choose to proceed despite an OIRA determination that their analysis was inadequate, this would render the regulation extremely vulnerable to being overturned in court.

The definition of 'regulatory action' in this statute is very broad and includes "any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, or describing the organization, procedure, or practice requirements" of the agency. So in addition to formal rules, almost any agency guidance, policy decision, or possibly even enforcement practice that was classed as having significant economic effects could be reviewed. This allows the White House to reach deep into the heart of agency operations.

By permitting OIRA to effectively second-guess the decisions made by independent financial agencies, HR 1009 strikes at the core of agency independence. Congress created independent regulatory agencies precisely in order to insulate them from political influence. At a single stroke HR 1009 would sweep away this tradition of independent financial regulation. Bringing these independent agencies within the regulatory purview of OIRA, defeats the purpose of having independent agencies.

OIRA is very poorly designed to be a super-regulatory agency with authority over the entire sweep of financial regulation. The office has only a few dozen employees covering all areas of the government, as opposed to tens of thousands of employees at the various regulatory agencies brought under its jurisdiction by this bill. OIRA lacks substantive expertise in financial matters. The Federal Reserve, which employs more PhD economists than any academic or government organization on earth, clearly has far greater economic and financial expertise than OIRA. The purpose of subjecting the Federal Reserve to OIRA supervision cannot be to improve its analytic capacity – it is clearly to permit political interference with its decisions.

In light of the need for adequate oversight of Wall Street and our "too big to fail" financial institutions, Congress must reject legislation like HR 1009 which would cripple such oversight. If you have any questions, please contact Marcus Stanley, AFR's Policy Director, at marcus@ourfinancialsecurity.org or (202) 466-3672.

Sincerely,

Americans for Financial Reform