United States House of Representatives
Committee on Financial Services
Financial Institutions and Consumer Credit Subcommittee

"Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions"

July 12, 2017

Americans for Financial Reform (AFR)[1] appreciates the opportunity to provide this statement for the record of this Financial Institutions and Consumer Credit Subcommittee hearing, which considers several bills that would significantly undermine consumer financial protection and the safety and soundness of the financial system. Although the hearing is entitled "Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions," the bills under consideration are not focused principally on community financial institutions. The most sweeping provisions of these bills apply to all institutions, many of which would radically decrease oversight of the nation's largest banks and increase the risk of harm to the public.

A non-exhaustive list of examples follows:

- H.R. 924 would create a cumbersome new de novo appeals and review process that would create numerous opportunities for banks to delay and derail changes that examiners require to protect consumers and the public. These changes would apply to both consumer protections and the enforcement of safety and soundness rules designed to prevent another financial crisis. This radical reduction in the authority of bank regulatory agencies would negatively impact regulatory oversight across the entire financial system, including the largest banks.
- Section 6 of H.R. 2133 would repeal the CFPB's authority to stop abusive acts and practices in consumer finance by literally striking the prohibition on abusive acts and practices from the U.S. Code. The CFPB has exercised its authority over abusive conduct to take action against companies that have inflicted significant harm on consumers, including: Wells Fargo, which fraudulently opened accounts without its customers' permission; a credit card company that took advantage of its customers' misunderstanding of limited-time no-interest promotional offers; and a student loan debt

[1] AFR is a 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. A list of AFR member groups is available at http://ourfinancialsecurity.org/about/our-coalition/.

relief company that charged fees for worthless advice on applying to programs that borrowers did not qualify for.[2]

- Section 6(a)(3)(B) of H.R. 2133 would make it effectively impossible for the CFPB to issue rules defining unfair and deceptive acts and practices. The provision would impose unworkable "Magnuson-Moss" requirements for such rulemakings. These requirements now apply only to the Federal Trade Commission (FTC) and have never applied to any bank regulator.[3] These procedural requirements lengthened FTC rulemakings under these procedures to an average of more than five-and-a-half years, leading the FTC to abandon such rulemakings altogether.[4]
- Section 7 of H.R. 2133 would repeal the Fair Housing Act of 1968 and the Equal Credit Opportunity Act's prohibitions on disparate impact discrimination, overriding the Supreme Court's decision only two years ago in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* Section 8 of that bill further undermines fair housing enforcement by reducing the number of institutions reporting full mortgage lending data.
- The "Ensuring Quality Unbiased Access to Loans Act of 2017" would allow banks to again make abusive deposit advances – in essence payday loans. Before federal regulators stepped in, these loans typically carried an annual percentage rate (APR) of 225%-300% and borrowers took out 13.5 loans per year, trapping customers in a cycle of unaffordable debt.[5]
- Section 15 of H.R. 2133 would undermine the statutorily-required CFPB "Qualified Mortgage" rules that have made mortgage loans fairer and simpler, and reduce the risk of default and foreclosure. The provision would exempt all mortgages held on bank portfolios – including those originated by the largest Wall Street banks – from these new rules. Unfortunately, evidence from the financial crisis makes it clear that banks holding loans on their books is not sufficient to ensure that they will not make predatory or exploitative loans on a large scale. Washington Mutual and Wachovia—two large regional banks—failed because of the significant losses in mortgage loans held in their

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[2] AFR, 41 organizations oppose H.R. 5112, May 20, 2016, http://ourfinancialsecurity.org/wp-content/uploads/2016/05/OppoLetterHR5112-5-12-16-1.pdf.

[3] *Id*.

[4] Jeffrey S. Lubbers, "It's Time to Remove the 'Mossified' Procedures for FTC Rulemaking," *The George Washington Law Review*, Nov. 15, 2015, http://www.gwlr.org/wp-content/uploads/2016/01/83-Geo-Wash-L-Rev-1979.pdf.

[5] Rebecca Borné and Peter Smith, *Triple Digit Danger: Bank Payday Lending Persists*, Center for Responsible Lending (March 2013), available at http://www.responsiblelending.org/payday-lending/research-analysis/Triple-Digit-Bank-Payday-Loans.pdf; the CFPB found consistent findings at CFPB White Paper, Payday Loans and Deposit Advance Products (2013), *available at* http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

own portfolios. Congress should not allowing financial institutions to return to those practices.

- H.R. 2148 would reverse regulatory rules that require higher levels of private capital supporting higher-risk commercial real estate loans.
- Section 9 of H.R. 2133 would abandon the effort required by Dodd-Frank (Section 1071) to learn more about small business lending through systematic data collection, undermining enforcement of the Equal Credit Opportunity Act and missing a badly needed opportunity to better understand the small business lending market and help small businesses access credit.
- Section 10 of H.R. 2133 seeks to prevent banking agencies from discouraging a financial institution from providing financial services to facilitate fraud or other illegal activity.[6]

This hearing considers other problematic and poorly considered proposals as well. (Again, this is not an exhaustive list.) For example, draft legislation advanced by Representative Tenney would restructure the deposit insurance application process to exclude the Federal Deposit Insurance Corporation (FDIC) from the evaluation of deposit insurance applications. Instead, it would permit national banks chartered by the Office of the Comptroller of the Currency to receive deposit insurance without any requirement for approval by the FDIC, allowing institutions to shop for approval between multiple federal agencies. It is absurd to remove the agency with the greatest experience and interest in evaluating whether to pledge the full faith and credit of the United States to guarantee millions or billions of dollars of obligations of a private enterprise.

The few legislative proposals under consideration that do utilize size thresholds to determine eligibility for regulatory rollbacks are also largely not focused on community banks. For example, Section 13 of H.R. 2133 would end the CFPB's supervision of banks and credit unions with $10 billion to $50 billion in assets, reducing the number of depository institutions examined by the CFPB from 119 to 42.[7] This would disperse the consumer protection supervision authority for these institutions to the other agencies that failed to use it effectively in the past, and provide opportunities for firms to play one regulator off against another. Some of the largest bank failures in the financial crisis were caused by poor consumer protection supervision of banks of this size. IndyMac failed with $30.6 billion in assets as a result of risky mortgage lending,[8] costing the Deposit Insurance Fund more than $12 billion -- the largest loss in history.[9] Poorly underwritten mortgage loans were also a principal cause in the failure of other institutions with

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[6] *See also* Letter to Congress: AFR, 37 Organizations Oppose HR 766, Urge Congress Not to Give Banks a Free Pass on Fraud, Feb. 2, 2016, available at http://ourfinancialsecurity.org/wp-content/uploads/2016/02/160203_HR766_house_oppose-1.pdf

[7] *Institutions subject to CFPB supervisory authority*, available at https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/institutions/

[8] Office of Inspector General Department of the Treasury, *Material Loss Review of IndyMac Bank, FSB* (OIG-09-032), Feb. 26, 2009, available at https://www.treasury.gov/about/organizational-structure/ig/Documents/oig09032.pdf.

[9] Federal Deposit Insurance Corporation: Failures and Assistance Transactions (Table BF01).

$10 billion to $50 billion in assets: BankUnited ($13.1 billion in assets),[10] Downey ($12.7 billion),[11] and AmTrust ($11.4 billion).[12]

With regard to those few provisions that seek to specially exempt community banks from generally applicable rules, we urge that the Committee consider carefully what the reasons for such exemptions might be, and what risks they pose. Certainly the blanket claim that Dodd-Frank has harmed community banks is simply not supported by the facts. Community bank earnings grew 10.1% from 2015 to 2016, outpacing those at larger banks, as they have done for the last several years. Total loan balances at community banks increased 8.3% in 2016, substantially more than at larger banks. The percentage of community banks making a profit has increased to 95.7%, up from 78.8% in 2010 when the Dodd-Frank Act was passed.[13]

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Thank you for the opportunity to express AFR's views on these legislative proposals. For more information, please contact Marcus Stanley, Policy Director, at marcus@ourfinancialsecurity.org or 202-466-3672, or Brian Marshall, Policy Counsel, at brian@ourfinancialsecurity.org or 202-684-2974.

Respectfully submitted,

Americans for Financial Reform

[10] Office of Inspector General Department of the Treasury, *Material Loss Review of BankUnited, FSB* (OIG-10-042), June 22, 2010, available at https://www.treasury.gov/about/organizational-structure/ig/Documents/OIG10042%20%28BankUnited%20MLR%29.pdf.

[11] Office of Inspector General Department of the Treasury, *Material Loss Review of Downey Savings and Loan, FA* (OIG-09-039), June 15, 2009, available at https://www.treasury.gov/about/organizational-structure/ig/Documents/OIG09039.pdf

[12] Office of Inspector General Department of the Treasury, *Material Loss Review of AmTrust Bank* (OIG-11-076), July 6, 2011, available at https://www.treasury.gov/about/organizational-structure/ig/Documents/OIG-11-076.pdf

[13] FDIC Quarterly Banking Profile, Fourth Quarter 2016, available at https://www.fdic.gov/bank/analytical/qbp/2016dec/.