December 4, 2017

Dear Senator:

On behalf of Americans for Financial Reform, we are writing to urge you to vote against S 2155, "The Economic Growth, Regulatory Relief, and Consumer Protection Act".[1] Of the three goals laid out in the bill's title, this legislation accomplishes only one – regulatory relief. Many of the deregulatory provisions in the bill would be actively harmful to consumers, and likely to economic growth as well. The small number of consumer measures included in Title III of the bill are entirely inadequate to counterbalance the impacts of weakening or eliminating important regulatory protections in areas ranging from mortgage lending to the oversight of large banks and other financial institutions. Instead of prioritizing this deregulatory agenda, we urge you to focus on addressing pressing economic needs of individuals and communities.

Support for this bill is support for stripping back and weakening the regulatory safeguards passed in response to the disastrous 2008 financial crisis. This is the wrong message for a time when the Trump Administration and newly appointed regulators are already pushing hard to deregulate Wall Street.

Not only would this legislation be harmful to consumers and to the responsible oversight of financial institutions, it is unjustified on economic grounds. As AFR has detailed in previous letters, there is no evidence that overregulation of the banking sector is having a negative impact on economic growth.[2] Both overall commercial bank lending and overall bank business lending have been growing more rapidly than historical averages since the passage of the Dodd-Frank Act. Bank revenues have increased to record levels, and over 95% of community banks showed a profit in 2016, up from just 79% in 2010, the year Dodd-Frank was passed.[3]

It is true that S 2155 does not include some of the most egregious deregulatory proposals favored by Wall Street, and in some cases the sponsors of the bill have tried to incorporate guardrails to protect against the worst impacts of the statutory changes they propose. But this bill needs to be judged on the actual negative consequences it would have for consumers and on the vulnerability of the financial system. These negative impacts would still be significant.

Core issues in S 2155 include:

- Significantly weakening mortgage protections for numerous homebuyers, especially those buying manufactured homes and those who are customers of smaller banks.

- Weakening protections against racial discrimination in credit markets by vastly expanding exemptions from the Home Mortgage Disclosure Act (HMDA), the key source of information about racial patterns in lending.

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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. A list of AFR members is available at http://ourfinancialsecurity.org/about/our-coalition/

[2] Americans for Financial Reform, The Trump Treasury and the Big Bank Agenda, June, 2017. http://bit.ly/2AtnCos

[3] Americans for Financial Reform, Analysis of 2016 Bank Earnings Data, March, 2017. http://bit.ly/2AmKCaV

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- Increasing the fragility of the financial system by weakening risk controls at banks – not just community banks, but also large banks that collectively received tens of billions in TARP funds. Some provisions in this bill even weaken risk controls at the very largest Wall Street banks.

Against these major deregulatory changes, S 2155 includes only a few essentially symbolic or token consumer benefits, such as permitting one free credit freeze a year. Even though public interest and community organizations, including AFR, submitted numerous consumer protection ideas to the Banking Committee as part of the Committee's economic growth initiative, none of these meaningful changes are included in S 2155.[4]

The numerous deregulatory measures in S 2155 would have benefited from more extensive discussion in a policy hearing, rather than proceeding directly to markup. Hearings should also have been held to discuss a fuller range of consumer protection measures. We urge the Committee to step back before approving such a broad deregulatory bill. Instead, the Committee should hold hearings to examine the potential harm caused by the measures in this bill, as well as the question of whether such measures are in any way necessary given the profitability of the banking industry and the ideological stance and closeness to the regulated industries of the appointees now in charge of the major bank regulatory agencies.

Below, we discuss issues in S 2155 in more detail.

## Weakening Protections against Predatory Lending

The consumer harms created by S 2155 are especially glaring in the area of mortgage protections, particularly for rural and lower income home buyers.

**Section 107** of the bill destroys important existing consumer protections for some of the most vulnerable homeowners -- buyers of manufactured housing. The section amends the Truth in Lending Act to exempt retailers of manufactured homes from the definition of a "mortgage originator", thus also exempting these retailers from rules that limit conflict of interest and prevent steering home buyers into exploitative or predatory loans. This exemption means that there would be no barrier to placing buyers of manufactured homes into higher-cost loans that benefit the retailer but harm the consumer, possibly increasing the funding cost of the home by thousands of dollars.[5] More than one in ten homes in rural and small-town America are manufactured homes, and they are usually owned by lower income individuals.[6] The manufactured housing market is dominated by a few large retailers who would benefit from this provision, most notably Berkshire Hathaway's Invitation Homes, which sells almost 40% of manufactured housing in the country.[7]

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[4] See submissions by Americans for Financial Reform, AFL-CIO, Center for Responsible Lending, Public Citizen, and other public interest and community groups, available at http://bit.ly/2igZuwY
[5] Consumer Financial Protection Bureau, Manufactured Housing Consumer Finance in the United States, September, 2014. http://bit.ly/Zosl7E
[6] Ibid
[7] Mike Baker and Daniel Wagner, "The Mobile Home Trap: How a Warren Buffet Empire Preys on the Poor," *The Seattle Times*, April 2, 2015. http://bit.ly/2BvOyTO

The bill does require retailers to mention at least one non-affiliate lender to consumers and also states that an employee providing financing must be compensated similarly to an employee in a cash sale. But given the complexity of these transactions and the ability to sidestep disclosures by personally selling the client on a favored option, these requirements are entirely inadequate to provide safeguards in practice.

**Section 109** of the bill would remove the guarantee of escrow account services for home buyers with higher-priced mortgage loans at community banks across the country. Such accounts are a key consumer protection that has been demonstrated to reduce foreclosures.[8] Without an escrow account, a home buyer may not understand the full costs of homeownership, including taxes and insurance, and later lump-sum payments for such costs may trigger foreclosure. Section 109 expands the current limited regulatory exemption for certain small rural lenders with under $2 billion in assets to a significantly larger statutory exemption for all banks with $10 billion and under in assets.

**Section 103** of the bill would create a major new exemption from appraisal requirements for many home sales taking place in rural areas of the U.S., meaning that these rural area homebuyers would now be more vulnerable to buying an overpriced home and owing more on their mortgage than their home is worth. Specifically, the bill states that bank portfolio mortgages of $400,000 or under in rural areas would be exempt from appraisal requirements so long as sellers find that no certified appraiser was available "within a reasonable amount of time". Since the median home value in rural areas is approximately $114,000, this would exempt numerous home sales in rural areas from firm appraisal requirements. Such requirements would be replaced with a mandate to simply make an effort to find an appraiser.

As documented by the Financial Crisis Inquiry Commission (FCIC), appraisal fraud was a significant contributor to the housing price bubble that preceded the 2008 financial crash.[9] Accurate appraisals are a crucial protection for both home buyers and the integrity of the broader housing market. While appraiser availability may be an issue in some rural areas, this does not justify such a broad rollback of appraisal requirements in rural America.

**Section 101** creates a new statutory exemption from predatory lending protections that would impact mortgage borrowers at the thousands of banks with up to $10 billion in assets across the country. The Dodd-Frank Act addressed the devastating experience of predatory lending that victimized millions of families by requiring lenders to demonstrate mortgage affordability prior to lending. The CFPB's "Qualified Mortgage" (QM) rule lays out the affordability requirements lenders must satisfy to gain legal immunity from being sued for violation of this rule.

S 2155 expands the carefully crafted regulatory small lender exemptions to the QM requirements by creating a broad statutory exemption to QM affordability requirements for loans held in portfolio by all banks with $10 billion or less in assets. As compared to current small lender exemptions, this would exempt a further 300 banks holding some $1.3 trillion in assets from important mortgage affordability requirements.[10] It is true that Section 101 does exclude

[8] Joe Valenti, Sarah Edelman, and Julia Gordon, Lending for Success, Washington: Center for American Progress, 2015. http://ampr.gs/2kkWAfd

[9] National Commission on the Causes of the Financial and Economic Crisis in the United States, Financial Crisis Inquiry Report, January 2011. http://bit.ly/1SxIyj3

[10] See list of commercial bank asset size as of June, 2017, www.usbanklocations.com, http://bit.ly/1uOxlyK

certain types of toxic loans from receiving QM immunity from affordability requirements. But these exclusions still fall well short of the affordability requirements in the CFPB's current rule. For example, they permit adjustable rate mortgages and other types of potentially deceptive products controlled under the current CFPB rule.

**Section 110** of the bill creates a loophole in mortgage disclosure rules that could allow lenders to substitute a loan that is harmful to the consumer at the mortgage closing without giving adequate time for assessment of the loan. This section eliminates the three-day wait period required for mortgage disclosures if a creditor extends to a consumer a second offer of credit with a lower annual percentage rate. This waiting period is intended to give the consumer time to assess written loan terms. The three-day period starts over if there is a material change in terms requiring a new disclosure. Section 110 eliminates any waiting period provided that the loan's annual percentage rate is lower than the initial disclosure. While a lower rate benefits the homeowner, there may be other changes that accompany this shift that require more examination by the borrower. This creates a loophole that unscrupulous lenders could utilize to circumvent disclosure requirements.

## Weakening Protections against Racial Discrimination in Credit Markets

S 2155 also greatly expands reporting exemptions from the Home Mortgage Disclosure Act (HMDA), which is the major tool for detecting racial discrimination in lending markets. HMDA reporting is the only tool available in most areas of the country for determining lending application, denials, and volumes by borrower demographic characteristics and location.

**Section 104** of the bill would create a new statutory exemption for depository institutions that have originated fewer than 500 closed-end mortgage loans or fewer than 500 open-end lines of credit in each of the last two years from HMDA reporting requirements. This new threshold, which is over twenty times higher than the current CFPB de minimis exemption limit, would exempt the vast majority of the nation's mortgage lenders from updated HMDA requirements. The new threshold would sacrifice key data about lending in underserved communities. Based on 2013 data, under the threshold set by the CFPB, 22 percent (1,400) of the depository institutions that currently report on their closed-end mortgages would be exempt. In contrast, if this provision and bill are enacted, the Bureau estimates that 85 percent (5,400) of depositories would not have to update reporting on their mortgages.

The National Community Reinvestment Coalition (NCRC) has estimated the loss of post-crisis data about loan originations by state under this limit and found states with large rural areas face some of the largest losses of updated data about mortgage originations. Additional data would be lost about loan applications and why denials are occurring.[11]

## Increasing Financial Sector Fragility by Weakening Risk Controls at Big Banks

Several provisions in S 2155 would significantly weaken risk controls at banks ranging from community banks to some of the largest banks in the country.

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[11] This map tool estimates the local impact on loan originations data: http://maps.ncrc.org/s1310/index.html. This provision would have a similar impact on information about loan applications and denials.

Specifically, S 2155 would:

- greatly undermine the Federal Reserve mandate to ensure adequate oversight of large banks,
- create inappropriate statutory exemptions from regulatory risk controls for "hot money" brokered deposits in order to benefit insider bank lobbyists,
- create a new loophole in the Volcker Rule that would open the door for both community banks and larger financial institutions to engage in speculative trading with customer deposits, and
- create a new statutory exemption to capital rules for large custody banks that are crucial to the financial system.

Below, we discuss these issues in more detail.

**Section 401** of the bill would reduce or eliminate enhanced regulatory controls at 25 of the largest 38 banks in the country. Specifically, the provision would increase the asset threshold for enhanced prudential supervision in Title I of the Dodd-Frank Act from $50 billion to $250 billion. It also weakens some risk controls even at financial institutions over $250 billion in size.

***Impact at Banks Between $50 and $250 Billion in Size:*** Prior to the 2008 financial crisis, Federal regulators failed to properly oversee risks at numerous large commercial banks, many of which failed or were taken over during the crisis. Large regional banks like Washington Mutual, Wachovia, Countrywide, Golden West, and Indymac, while smaller than the very largest Wall Street banks, engaged in risky and irresponsible lending practices that made a major contribution to the mortgage bubble and eventual financial crash. All of these banks effectively failed. The failure of Indymac alone, the smallest of these banks, cost taxpayers almost $11 billion.[12]

In response to this failure, Congress required the Federal Reserve to impose enhanced prudential standards on banks over $50 billion, representing the largest few dozen banks in the country. The Dodd-Frank Act requires these banks to be more strongly regulated than smaller banks, with the nature and stringency of the regulation scaled to the size and risks of the bank. It also imposes some basic internal risk management requirements on these banks.

Section 401 of this legislation would remove the requirement for enhanced prudential standards for banks ranging in size from $50 billion to $250 billion. This eliminates the mandate for higher prudential standards at some two dozen of the nation's largest banks. These banks collectively hold over $3.5 trillion in assets, about one sixth of total assets held by U.S. bank holding companies and almost a quarter of commercial bank assets. Collectively, they received $47 billion in TARP bailout funds.[13] Section 401 would eliminate mandates for core risk management requirements at these banks such as internal risk committees and company-run stress tests (forward looking risk forecasts).

Section 401 does preserve the discretionary authority of the Federal Reserve to re-impose risk controls at banks from $100 billion to $250 billion in size. However, the entire point of the

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[12] Office of the Inspector General, Department of the Treasury, Material Loss Review of IndyMac Bank, OIG 09-032, February 26, 2009. http://bit.ly/1M0Lmnv

[13] Calculation using National Information Center, "Holding Companies with Assets Greater Than $10 Billion," available at https://www.ffiec.gov/nicpubweb/nicweb/HCSGreaterThan10B.aspx; *Pro Publica*," Bailout Tracker," https://projects.propublica.org/bailout/

Dodd-Frank mandate on the Federal Reserve was to require regulators to properly supervise large banks; a mandate put in place in light of their failure to do so in the lead up to the financial crisis. The removal of the mandate would permit regulators to once again close their eyes to emerging risks. This mandate is particularly important today under the Trump Administration, as a new set of Federal banking regulators who are closer to Wall Street and less committed to strong oversight are taking office. In a practical sense, the bill would eliminate many existing risk controls and require their re-imposition through a new rulemaking. Given current regulators at the Federal Reserve, it is likely that these new rules would be far more lenient than previously.

***Impact at the Largest Financial Institutions:*** Section 401 also negatively impacts the supervision of even larger financial institutions. The legislation reduces the requirement for self-administered stress tests at the largest Wall Street banks from "biannual" to "periodic". This grants the Federal Reserve complete discretion over the frequency of these key internal risk management exercises rather than ensuring they take place on at least an annual basis.
It would also entirely eliminate the requirement for either self-administered or regulatory stress tests at large non-banks, including giant asset managers like Fidelity or Blackrock that manage trillions of dollars in client assets. These non-bank institutions are also central to the financial system.

**Section 202** of the bill would create a new statutory loophole in the ability of regulators to control "brokered deposits", a category of "hot money" deposits that have been found to increase the risk of bank failure.[14] Brokered deposits are designed to circumvent limits on public insurance for deposits. Brokered deposit systems are designed to allow deposits that are larger than the legal FDIC insurance limit of $250,000 / depositor to be fully publicly insured. By breaking up large, multi-million dollar deposits into separate chunks that are each smaller than the $250,000 limit and distributing these among multiple banks, brokered deposit networks permit institutional investors and wealthy investors to benefit from insurance that is designed for retail investors.

The main innovator of brokered deposit networks is Promontory Financial, a consulting firm employing many former regulators. Promontory profits by running the CDARS network of reciprocal brokered deposits. Section 202 of this bill would exempt certain types of brokered deposits, including CDARS, from new regulatory rules designed to limit the risks that brokered deposits present to bank safety and soundness. Up to $5 billion of brokered deposits per bank could be exempted from Federal Deposit Insurance Commission (FDIC) controls in this manner.

It is entirely inappropriate to grant financial insiders a statutory exemption from regulatory risk controls in order to circumvent limits on insured deposits, as well as benefit products created by powerful organizations of insider lobbyists.

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[14] Federal Deposit Insurance Commission, Study on Core Deposits and Brokered Deposits, July 8, 2011. http://bit.ly/2ASwJlX ; Shaffer, Sherrill, "Reciprocal Brokered Deposits and Bank Risk", January 1, 2010, CAMA Working Paper No. 15/2010. http://bit.ly/2zOQKFu

**Section 203** of the bill would create a significant new loophole in the Volcker Rule, which bans banks from using publicly insured deposits to fund trading on their own account. Holdings of assets for proprietary trading was a significant contributor to the financial crisis of 2008.[15]

The section purports to exempt all banks with under $10 billion in assets and less than $500 million in trading assets from the Volcker Rule, on the grounds that such banks would not be expected to engage in proprietary trading. This assumption is itself conceptually problematic. If banks of a certain size are unlikely to engage in proprietary trading, then their compliance could be facilitated by granting a rebuttable presumption or assumption that they are not proprietary trading. But moving them entirely outside of the Volcker Rule effectively grants them permission to proprietary trade. The restriction on trading assets is not a particularly effective barrier against this, since smaller banks could also choose to trade out of their "available for sale" account. It simply does not make sense to say that community banks may trade for their own account with publicly insured deposits, but larger banks may not.

However, in addition to this issue, the section is drafted in a manner that would allow financial institutions that were much larger than $10 billion to use it. This is because it is written to exempt any institution from Volcker Rule coverage which owns a bank or banks with under $10 billion in assets from Volcker Rule coverage. This means that a holding company which owns multiple banks of $10 billion or under, or a financial entity such as an insurance company or broker-dealer that owns a $10 billion bank, would be exempted completely from the Volcker Rule even if it was much larger than $10 billion in total size. Armed with this exemption, such an institution could move assets between its depository bank and trading operations in a manner that lets it use publicly insured deposits to back proprietary market speculation, all without being restricted by the Volcker Rule.

**Section 402** of the bill would exempt large custodial banks from requirements to hold their own equity capital against potential losses in funds they have deposited with the Federal Reserve. This provision would mainly benefit BNY Mellon and State Street, the two custody banks large enough to be subject to the Supplementary Leverage Ratio (SLR), which requires the largest systemically significant banks to hold 5% equity funding against their balance sheets to protect from financial risks. These banks hold enormous amounts of client assets. They are by any measure central to the financial system and have been designated as such by the Federal Reserve and by global regulators.

It is true that the exemption in this bill is limited to funds currently on deposits with the Federal Reserve that are linked to assets held in custody, which is a comparatively low risk asset category. However, the effect of the new statutory exemption would still be to significantly reduce capital held by these banks and lower their protection against insolvency. The vital importance of strong equity capital holdings by the largest and most systemically significant banks means that this issue is more suited to regulatory than statutory treatment. Congress simply should not create statutory exemptions from capital rules for large, systemically significant banks such as major custody banks. Regulators can easily provide a tailored

[15] Americans for Financial Reform, "Comment Letter on the Volcker Rule", February 13, 2012. http://bit.ly/2A1TLqr ; Merkeley, Jeff and Carl Levin, "Policy Essay: The Dodd-Frank Restrictions on Proprietary Trading and Conflicts of Interest", *Harvard Journal of Legislation*, Volume 48, No 2, Summer, 2011. http://harvardjol.com/archive/48-2/

exemption through a rule where justified, and a statutory exemption has the effect of tying regulators hands should they wish to address risks at these banks.

**Consumer Protections in Title III of the Bill Are Inadequate**

Against the long list of deregulatory measures in the bill – only the highlights of which are described above – the bill includes several pro-consumer measures in Title III. However, these measures are minor, and this is especially true when compared to the deregulatory benefits for financial institutions that are included the bill.

**Section 301** of the bill permits consumers one free credit freeze and unfreeze annually, with certain other limited benefits for minors. However, all states already grant the right to an annual credit freeze and unfreeze for a fee of $10 or less, and many grant these benefits for free already.[16] This section is utterly inadequate to address the actual consumer issues created by the Equifax hack or others like it.

**Section 302** of the bill amends the Fair Credit Reporting Act to provide that veterans' medical debt may not be reported to credit bureaus for a year and that fully paid veterans' medical debt that has been charged off must be removed from a credit report, in cases where the Department of Veterans Affairs is or was liable for the debt. However, many of these benefits are already available to all consumers thanks to the State Attorneys General settlement with the credit bureaus this summer, which provides a six month delay for reporting of medical debt to credit bureaus and also requires certain paid-off medical debts to be purged from credit reports.[17] Medical debt is by far the number one reason consumers are contacted by collection bureaus.[18] Responsibly addressing this issue requires far stronger action than is evident in this legislation. Indeed, S 2155 is weaker than previous bipartisan legislation which proposed to extend similar benefits to all consumers.[19]

**Section 303** of the bill, the Senior Safe Act, legally indemnifies banks who in good faith restrict access to the funds of a senior citizen who they suspect is being financially exploited, and inform law enforcement of such exploitation. While this may be a positive provision given the possibility of exploitation of seniors, it is difficult to see that the indemnification of banks from lawsuits constitutes a significant new consumer protection.

**Section 304** of the bill makes permanent the Protecting Tenants at Foreclosure Act (PTFA), a law containing certain anti-foreclosure measures that was put in place during the financial crisis. The PTFA was active from 2009 to 2014 and then ceased due to a sunset provision. While we support the PTFA, most of its provisions have already been adapted as law in many states and localities.[20] In response to this, many mortgage servicing firms seem to have adopted the 90 day advance notice standard from the PTFA nationwide. While making the PTFA permanent is still a positive step that we support, it does not constitute a significant advance in current practice.

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[16] Consumers Union, Consumers Union Guide to Security Freeze Protection , http://bit.ly/2xspD2I
[17] National Consumer Law Center, "Tens of Millions of Consumers Will Benefit from New Rules for Medical Debt on Consumer Reports", Media Center, September 7, 2017. http://bit.ly/2AW45A4
[18] Consumer Financial Protection Bureau, Consumer Experiences with Debt Collection, January, 2017. http://bit.ly/2inX5hW
[19] See e.g. HR 2362 in the 114th Congress
[20] National Housing Law Project, "State and Local Tenant Protections", Updated January 23, 2015. http://bit.ly/1EH6Ro3

In sum, the numerous deregulatory measures included in S 2155 are not justified either on their own merits or by the relatively insignificant consumer benefits included in the bill. We urge you to reject this bill.

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

Sincerely,

Americans for Financial Reform