January 17, 2017

Dear Representative:

On behalf of Americans for Financial Reform, we are writing to urge you to reject twelve of the bills under consideration at today's markup, which would dangerously weaken regulatory oversight of Wall Street and the financial industry.[1]

Today's markup continues the rush to loosen controls on Wall Street that has been particularly evident in the Financial Services Committee the last several months. Since mid-October, the Committee has marked up some seventy-seven bills, the vast majority of which have been deregulatory.

As we have stated previously, this rush to deregulate is not justified by any fair assessment of the economic problems that face our country. With banks showing record earnings, capital markets setting new records for debt issuance, and stock markets reaching new heights, there is no basis for the argument that excessive controls on financial activities are damaging ordinary Americans. The dozens of deregulatory bills passed by the committee over the past few months will benefit only financial sector insiders, not working families. Instead, they will harm consumers, investors, and the economic security of the broader public.

Below, we have laid out specific objections to twelve of the bills being marked up by the Committee today. The bills are addressed in numerical order.

CONCERNS ABOUT SPECIFIC BILLS

H.R. 1264 takes the unprecedented step of exempting all banks with under $50 billion in assets from any new rules or oversight by the Consumer Financial Protection Bureau (CFPB).

This sweeping exemption, which impacts institutions far larger than community banks, would mean that thousands of banks serving millions of people would move back toward the same flawed consumer protection framework that existed prior to the financial crisis of 2008. Consumer protection rules would once again be established by banking regulators whose primary interest was in prudential regulation and have systematically failed to enforce key consumer protections. The CFPB has done a far superior job taking on abusive and unfair practices, and the only reason to take away its authority would be to allow those practices to flourish.

The CFPB already has authority to tailor its rules and regulations according to asset size and capital, and has used this authority in numerous cases to tailor rules as appropriate for community banks and credit unions..

If this bill were to become law, to apply any new rule to banks below $50 billion the CFPB would have to go through a burdensome process in which it would need to demonstrate that

[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/

institutions "engaged in a pattern or practice of activities that have been detrimental to the interests of consumers and are of a type that the specific rule or regulation is intended to address." In addition to that, the CFPB would also need to collect written approval from all four federal prudential banking regulators.

The argument for H.R. 1264 is based on the false premise that community banks and credit unions cannot comply with new consumer regulations and still earn a healthy profit. But the latest FDIC Quarterly Profile shows that community banks have been reporting strong revenue growth.[2] In 2016, over 95% of community banking institutions were profitable, up from 78% in 2010 when Dodd-Frank was passed.

The CFPB has recovered nearly $12 billion for 29 million consumers who have been victims of illegal practices of banks, credit card companies, debt collectors, mortgage companies, and others.[3] It should be allowed to continue its work. We urge you to oppose H.R. 1264.

H.R. 2226 creates a dangerously broad exemption for depository institutions from predatory lending protections afforded to residential mortgage borrowers.

The Dodd-Frank Act addressed the devastating experience of predatory lending that victimized millions of families by requiring lenders to comply with a number of standards to make sure borrowers are able to understand the terms of the loans and have a demonstrated ability to repay. The Consumer Financial Protection Bureau's "Qualified Mortgage" (QM) rule lays out the mortgage lending requirements lenders must satisfy to gain presumptive legal immunity from being sued for violation of this rule, and already contains a small lender exemption for a variety of loan types made by banks under $2 billion in size.

H.R. 2226 expands the carefully crafted regulatory small lender exemptions to the QM requirements by creating a broad statutory exemption for loans extended by depository institutions and held in their balance sheet. The base text of the bill would exempt depository institutions of all sizes, including megabanks, with few conditions. But the expected substitute amendment would grant the exemption to banks under $10 billion in size and would retain certain restrictions on points and fees, interest-only, and negative amortization loans.

Even with the substitute amendment, this bill remains overbroad. It would open wider the door to predatory lending by allowing thousands of depository institutions to avoid regulations prohibiting mortgage originators from steering borrowers into excessively costly non-qualified loans. It would also exempt creditors from requirements to make a good faith determination based on documented information that consumers understand the terms of the loans and have a reasonable ability to repay it. The bill also exempts depository institutions from complying with property appraisal requirements for high-risk mortgages.

H.R. 2226 would immediately impact mortgage borrowers across the country by removing protections afforded to consumers to guarantee they are not steered into residential mortgage loans on terms that are beyond their ability to repay the loans or that are deceptive or abusive.

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[2] Federal Deposit Insurance Corporation, "Quarterly Banking Profile," see Community Bank Performance Third Quarter 2017. Available at: http://bit.ly/2DCsyZO.

[3] See *Consumer Financial Protection Bureau: By the Numbers,* Fact Sheet, CFPB, December 2016. Available at: http://bit.ly/2olQFUz.

Unfair predatory lending has harmed millions of families across the country. Abusive loans have been more pervasively marketed in low and moderate-income and minority communities, which stand to be disproportionately impacted by this bill. H.R. 2226 should be rejected.

H.R. 2319 would reverse key 2014 reforms to rules governing Money Market Funds (MMFs). During the 2008 crisis, declines in the value of MMFs that were over-invested in risky bank debt eventually led to a multi-hundred billion dollar run on the entire sector of prime MMFs. Due to the threat to financial stability and the broader economy, the Federal government intervened and bailed out the entire MMF sector by publicly guaranteeing its assets. This stopped the run, but exposed taxpayers to the potential loss of hundreds of billions of dollars.[4]

In response to these events, regulators took several steps to require that a key subsector of MMFs—institutional prime funds—report accurate information to their investors about the current market value of their holdings. In a technical sense, this is a requirement that funds report a so-called "floating Net Asset Value" (NAV) which represents the true market value of their holdings, rather than a fixed NAV which gives the impression that each share in a money market fund is worth one dollar. This reform became effective October, 2016.[5]

This regulatory change enhances financial stability by helping to ensure that fund investors are prepared for fluctuations in the value of their funds and are less likely to engage in a disorderly exit from the sector when prices start to shift. It also makes clear that shares in MMFs are market investments that carry risk. The floating NAV is designed to lessen the impression that shares in MMFs are similar to insured bank deposits, thus lessening the perception that they are implicitly backed by the government.

H.R. 2319 would reverse the regulatory response to the crisis by once again permitting institutional prime funds to report an inaccurate fixed value for their holdings, thus encouraging investors to view these instruments as the equivalent of bank deposits—which they are not. Funds affected by this regulatory change are funds invested in by large institutional investors, not retail investors, and only "prime" funds that hold securities not guaranteed by the Federal government are affected.

H.R. 2319 purports to address any increased threat of a taxpayer bailout by prohibiting any Federal government bailout of MMFs. However, the definition exempts a "facility with broad-based eligibility established in unusual or exigent circumstances" from the definition of "covered Federal assistance." This language would exempt Federal government assistance provided under Section 13(3) of the Federal Reserve Act from any prohibition on bailouts under this bill -- leaving the door wide open to future Federal Reserve assistance to MMFs.

Congress should not reverse important regulatory changes made in response to the government bailout of MMFs during the crisis, and should maintain the requirement to report more accurate fund valuations to investors. In recent testimony to the Committee (October 4, 2017), SEC chair

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[4] McNamara, Christian, "Temporary Guarantee Program for Money Market Funds," Yale Program on Financial Stability Intervention Case Study, January 13, 2016. Available at: https://ssrn.com/abstract=2723529 or http://bit.ly/2D9lupZ.

[5] "Money Market Fund Reform; Amendments to Form PF," Investment Company Act Release No. 31166, July 23, 2014.

Jay Clayton expressed his view that any such change would be premature at best.[6] We urge the Committee to reject H.R. 2319.

H.R. 3746 would supposedly "clarify" the authority of the Consumer Financial Protection Bureau (CFPB) in the area of insurance. But the vague and sweeping limitations on CFPB authority in HR 3746 would drastically narrow or perhaps even eliminate the CFPB's ability to oversee financial products and services offered to consumers by insurance companies.

To better protect consumers, it is essential to maintain the CFPB's ability to investigate and correct consumer abuses in the many consumer financial markets that involve both lending and insurance sales. There are numerous products and activities that span the insurance/credit divide in this manner, including credit insurance sold with loans, title insurance sold with home mortgages, auto GAP insurance, and many others. The limits this bill would impose on CFPB authority would be particularly severe in cases where lenders own insurance companies, or insurance companies engage directly in credit-related activities. For example, H.R. 3746 would have called into question the CFPB's ability to investigate and punish the Wells Fargo scheme to sell unnecessary insurance to its auto credit customers through National General, an insurance company.[7]

The CFPB is premised on the idea there should be a consistent set of consumer protection rules for credit-related products which are enforced and implemented consistently by one agency, regardless of the identity of the individual or charter type of the firm who is selling those products. This functional approach to defining the CFPB's jurisdiction creates a level-playing field for firms selling credit-related products, while preventing the type of regulatory arbitrage that was so prominent before Dodd-Frank, when similar products were regulated very differently depending on who sold them. In direct contravention of these principles, this interpretation of HR 3746 would allow insurers and other persons engaged in the business of insurance to sell the very same financial products as other firms and individuals, but to be shielded from scrutiny by the CFPB. This result would not only produce potential competitive advantages for insurance entities over non-insurers with respect to the sale of consumer financial products, but it would also create the risk of dangerous regulatory arbitrage that could produce a race to the bottom in consumer protections.

HR 3746 strikes a major blow against CFPB regulatory authority over large financial services firms, and we urge you to reject it.

H.R. 4061 adds numerous additional procedural obstacles to the already cumbersome and time-consuming process which the Financial Stability Oversight Council (FSOC) must use to designate large non-bank financial entities for increased oversight. This process already includes ten distinct major steps and numerous opportunities for appeal, and typically takes some two years to complete. H.R. 4061 micromanages the FSOC designation process in ways that would at least double the time required for designation of a large non-bank entity. The new procedural

[6] See Testimony by Jay Clayton on Hearing entitled "Examining the SEC's Agenda, Operations, and Budget," House Committee on Financial Services, October 4, 2017. Available at: http://bit.ly/2fP4POK.
[7] See Testimony by Marcus Stanley on Hearing entitled "Legislative Proposals for a More Efficient Federal Financial Regulatory Regime: Part II," House Committee on Financial Services, December 7, 2017. Available at: http://bit.ly/2B2S07U.

requirements in H.R. 4061 could also permit a large financial firm that is skilled at manipulating the process to delay increased regulatory oversight almost indefinitely. It would provide giant global financial firms numerous opportunities to use insider lobbying and the courts to delay or prevent actions that banking regulators are attempting to take to safeguard economic stability.

H.R. 4061 would also fundamentally change the nature of the FSOC designation process. Currently, the standard for FSOC designation in Section 113(a)(1) of the Dodd-Frank Act is whether material financial distress at a large non-bank financial company could pose a threat to the financial stability of the United States. H.R. 4061 would add to this standard a requirement that the FSOC list specific identified risks (beyond instability created by the failure of the company) and work with the company to alter such risks. This would involve the FSOC in the detailed oversight of the company's structure and organization, based on a detailed prediction of future events during a period of financial distress. Such a process requires the FSOC to perform, without sufficient resources or authority, the kind of oversight that is more suited to a specific primary regulator such as the Federal Reserve. This kind of oversight is actual supervision, not a determination of systemic significance.. FSOC is a council of regulators that was not created as a primary financial regulator. The FSOC mandate is simply to judge whether a company's financial distress could create financial stability risks, but HR 4061 would expand this mandate in impractical and unworkable ways.

Given the importance of the FSOC's work, H.R. 4061 should be rejected.

HR 4550 would amend the Fair Debt Collection Practices Act (FDCPA) to exempt law firms and attorneys engaged in legal action to collect a debt from the definition of "debt collector." The bill would sharply restrict the CFPB's authority to supervise and take enforcement action against debt collectors when these collectors were law firms or attorneys pursuing a collection case. As a result, H.R. 4550 would leave consumers vulnerable to deceptive, misleading, and abusive practices by collection attorneys.

For the past thirty years, attorneys engaged in debt collection have been required to comply with the provision of FDCPA. This bill not only eliminates this important protection, but goes further and undermines the CFPB ability to stop widespread deceptive practices by debt collection law firms and their attorneys. As dozens of consumer, civil rights, and national and community organizations argue in a joint opposition letter to this bill, "it is critical that Congress ensure that the [FDCPA] applies broadly to all types of collection activities engaged in by collection attorneys and law firms," in order to protect consumers from abusive debt collection practices by debt collectors.[8] Deregulating debt collectors by passing this bill would be especially damaging to individuals who have recently lost jobs, suffered a medical emergency, or a stressful and costly family event. We urge you to reject H.R. 4550.

H.R. 4566 would exempt large nonbank financial institutions from annual stress tests requirements included in the Dodd-Frank Act This legislation would remove the Board of Governors' discretion to require annual stress tests from non-SIFI-designated nonbank financial companies. The bill would also eliminate the current requirement that the lead Federal regulator

[8] See letter from the National Consumer Law Center, "*Groups strongly oppose H.R. 1849 – Practice of Law Technical Clarification Act of 2017,*" May 5, 2017. Available at: http://bit.ly/2D6OL1a.

of a non-bank entity conduct an annual stress test for all nonbank financial companies with more than $10 billion in total consolidated assets and regulated at the Federal level.

The failure of nonbank financial institutions like Bear Sterns, Lehman Brothers, and AIG Insurance was among the events that precipitated the last global financial collapse. Had such institutions regularly evaluated their capacity to absorb and manage losses in an adverse economic environment, we might have avoided grave damage to our economy.

Today, large asset managers such as Blackrock manage trillions of dollars and their risk management procedures are essential to the health of the financial markets. Such entities should be subject to stress testing, and the Committee should reject HR 4566.

HR 4607 would modify the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) by shortening the cycle on which regulations must be reviewed and instructing regulators to "tailor" rules to reduce regulatory costs on businesses.

Currently the EGRPRA review requirement is simple, direct, and clear. The statute requires regulators to ask the public for comment on aspects of regulations that are "outdated, unnecessary, or unduly burdensome", and to do so not less than once every ten years. After review of these comments regulators must "eliminate unnecessary regulations to the extent such action is appropriate".

We believe some of the language inserted into EGRPRA by HR 4607 would be harmful to the public interest. The bill adds Subsection d(3) to EGRPRA, which changes the mandate on regulators from simply eliminating "unnecessary regulations" to also require them to "tailor other regulations related to covered persons in a manner that limits the regulatory compliance impact, liability risk, and other burdens" on affected businesses. This added language contains no consideration of the public benefits that are the justification for creating the regulations in the first place, and which regulators should be seeking to preserve. Any mandate to tailor regulations must include consideration of public benefits, rather than being a one-sided directive to reduce business costs.

The change in the minimum required regulatory review cycle from ten years to seven years is also problematic, among other things because the compliance costs of new regulations are front-loaded while benefits to consumers and the public are weighted toward later periods when businesses have fully complied with the new requirements.

H.R. 4738 would impose major barriers to mutual fund investors exercising their statutory right to dispute excessive and unreasonable advisory fees charged by mutual funds investment advisers.

H.R. 4738 modifies the cause of action pursuant to Section 36(b) of the Investment Company Act of 1940 to raise the pleading standard by requiring plaintiffs to "state with particularity all facts establishing a breach of fiduciary duty," even before the discovery process. The bill also increases the burden of proof by requiring that plaintiffs demonstrate a breach of fiduciary duty "by clear and convincing evidence"—a more severe test of evidence than the preponderance of evidence usually required in civil cases.

Raising both the pleading standard and the burden of proof for claims on breach of fiduciary duty would leave investors, especially retail investors, at an even larger legal disadvantage than they currently are with respect to large investment advisors. As scholars have pointed out, it is already almost impossible to win a case for 36(b) violation of fiduciary duty, even though there are major concerns about excessive fees in the mutual fund industry.[9] H.R. 4738 should be rejected.

HR 4771 would raise the asset threshold for the Federal Reserve's Small Bank Holding Company Policy Statement (the "Policy Statement") from $1 billion to $3 billion, so banks of up to $3 billion in size could take advantage of increased leverage allowed in the Policy Statement.

According to the Federal Reserve, the purpose of the Policy Statement is to facilitate mergers and acquisitions between small banks deemed uneconomic in size by allowing the holding companies for such banks to do additional borrowing.[10] "Small banks" were originally defined as banks below $500 million in size but this limit was raised to $1 billion in the 113th Congress.

Raising the limit to $3 billion is a policy well calculated to significantly reduce the number of community banks in the U.S. First, raising the limit will allow medium sized community banks of $2 to 3 billion in size to more easily acquire smaller community banks, reducing the number of independent community banks. Second, allowing holding companies to borrow excessively will raise the risk of bank failure the next time the financial system is under stress.

A $3 billion limit is unjustified, as there is no evidence that community banks over $1 billion in size are currently too small to survive. According to a recent FDIC report, "While economies of scale are important for community banks, historical trends in the size distribution of community banks that have survived over the last quarter century do not suggest that economies of scale require a community bank to grow or merge to asset sizes larger than $1 billion."[11] Even the Trump Administration's Treasury Department has only endorsed an increase to $2 billion.[12]

The Committee should reject HR 4771.

H.R. 4785 would prohibit the consolidated audit trail (CAT) from accepting any personally identifying information (PII) for most traders and customers. This would enormously limit the utility of the CAT in monitoring the financial markets.

The CAT data collection system would provide regulators with an unprecedented market surveillance mechanism to identify, investigate, and address market manipulations, violations, flash crashes, and other forms of predatory and destabilizing market trading. As former SEC

9 See Donald C. Langevoort, Private Litigation to Enforce Fiduciary Duties in Mutual Funds: Derivative Suits, Disinterested Directors and the Ideology of Investor Sovereignty, 83 Wash. U. L.Q. 1017-1044 (2005), available at http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1140&context=facpub.

10 Federal Reserve Board of Governors, "Federal Reserve Board Issues Final Rule to to Expand Eligibility for Small Bank Holding Company Policy Statement", Press Release, April 9 2015, available at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20150409a.htm

11 https://www.fdic.gov/regulations/resources/cbi/report/cbi-eff.pdf

12 https://www.treasury.gov/press-center/press-releases/Documents/A Financial System.pdf

Chairman Mary Jo White put it, the implementation of CAT is a "game-changer for investors and for the SEC to monitor [the] entire markets."[13]

In a November 14, 2017 statement regarding the status of the CAT, SEC Chairman Jay Clayton highlighted the importance of this system to "enable regulators to oversee our securities markets on a consolidated basis" and to "better protect these markets and investors."[14] The statement also emphasized the SEC's commitment to and investment in protecting the integrity of the information compiled and stored through the CAT—making it clear that cybersecurity and protecting privacy are already priorities for federal regulators moving ahead with the CAT. Moreover, the CAT system is designed and operated by the same vendor that the SEC has used for years with its Market Information Data Analytics System (MIDAS) without incident.

HR 4785 would prevent the CAT from identifying customers and brokers who were potentially involved in fraud, or in manipulative or destabilizing trading. The bill does include an exception for data collection from "large traders." However, the conditions of the exception would only apply to some 6,000 individuals and institutions, which only represent a limited fraction of the markets the CAT is designed to monitor.

The CAT is the SEC's direct regulatory response to the "flash crash" of 2010 and a major step forward in preventing similar crashes in the future. It is a key tool for the SEC to achieve its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. H.R. 4785 would greatly limit the effectiveness of the CAT and should be rejected.

HR 4790 would undermine the implementation of the Volcker Rule (Section 619 of the Dodd-Frank Act) by giving a blanket exemption from the rule to entities owning banks with less than $10 billion in assets, and also by giving sole rulemaking authority for the Volcker Rule to the Federal Reserve.

Both of these major provisions of the bill are problematic. Delegating sole rulemaking authority to the Federal Reserve would cut the Federal Deposit Insurance Corporation (FDIC) entirely out of the implementation of the rule. Yet a core purpose of the Volcker Rule is to prevent deposit insurance funds from being used to finance speculative trading. The FDIC is the custodian and institutional protector of the deposit insurance fund, but HR 4790 would entirely eliminate their role in writing and interpreting the rule. This would greatly weaken the rule's enforcement. In addition, defining the Federal Reserve as the sole rulemaking agency would significantly speed up and facilitate the Trump Administration's announced agenda of weakening Volcker Rule restrictions on proprietary trading.

HR 4790 also exempts banks with under $10 billion in assets from counting as "banking organizations" for the purposes of the Volcker Rule. This gives such entities a full exemption from the Volcker Rule, effectively granting them permission to proprietary trade.

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[13] Dave Michaels, *U.S. Exchanges Said to Be Seeking Last-Minute Delay of Trading Database Project,* The Wall Street Journal, November 10, 2017. Available at: http://on.wsj.com/2ABvV1d.

[14] U.S. Securities and Exchange Commission, "Statement on Status of the Consolidated Audit Trail," by Chairman Jay Clayton, November 14, 2017. Available at: http://bit.ly/2D95nW9.

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. As FDIC Vice-Chair Thomas Hoenig has said of this policy change, "I think this would be a loophole. It does open a door, if you are oriented to use deposits to speculate."[15] Instead, smaller banks should be granted a rebuttable presumption that they are not proprietary trading – an assumption that they do not require compliance oversight with the rule, but one which could be overturned if regulators found evidence that the bank was proprietary trading (e.g. if it owned a broker dealer).

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 exempts 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 larger 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 the total entity was much larger than $10 billion in total size.

We urge you to reject HR 4790 and preserve the Volcker Rule's protections against the use of public funds to finance speculative trading.

If you have questions, please contact AFR's Policy Director, Marcus Stanley, at marcus@ourfinancialsecurity.org or 202-466-3672. Thank you for your attention to this letter.

Sincerely,

Americans for Financial Reform

[15] Tracy, Ryan, *Exempting Small Banks From Volcker Rule is Popular, but Not With Their Regulator*, Wall Street Journal, December 26, 2017. http://on.wsj.com/2EMDBPG