February 27, 2018

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to urge you to vote in opposition to H.R. 4296, which is being considered on the House floor today.[1] This bill is a transparent effort to boost big bank profits by pressuring regulators to weaken public protections. If it were passed, major Wall Street banks could increase their borrowing and reduce the private capital they hold to protect the financial system and the public against the effects of a megabank failure.

H.R. 4296 undermines regulatory authority to require operational risk capital at the nation's largest banks. Operational risk capital is a new capital protection instituted at banks with over $250 billion in assets, to protect against the possibility that poor risk management or illegal behavior by bank employees will cause significant losses. Crucial areas of potential bank losses, including cyber risk, rogue traders, erroneous risk measurements, and legal judgements, all fall under the heading of operational risk.

Operational risk capital is a central part of the capital added to make big banks safer since the financial crisis. It accounts for hundreds of billions of dollars in capital at large banks. A fifth to a third of the total risk-based capital held against potential future losses at the largest banks in the country is operational risk capital.[2]

H.R. 4296 would weaken regulators ability to require operational risk capital by creating a statutory mandate that any such capital requirements must be based "primarily" on the banks current activities, cannot be based "solely" on historical losses, and must permit adjustment based on "operational risk mitigants."

Current activities are obviously central to operational risk, and are already treated as such. But the recent loss experience of banks is the best concrete evidence regulators usually have as to the magnitude of current and future risks. Recent past activities are also vital to understanding the future exposures of the bank, including potential legal exposures. When a bank engages in misconduct or mismanagement that creates losses, such as the recent illegal activities at Wells Fargo, regulators must be permitted to include those losses in their assessment of bank risks.

Creating a statutory requirement that restricts the use of evidence from past behavior and historical losses is a blow against evidence-based policymaking. It would open regulators up to

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

[2] Telis Demos, "The 93 Words That Could Unlock $200 Billion in Bank Capital," *The Wall Street Journal*, April 30, 2018. Available at: http://on.wsj.com/2p0guta.

lawsuits if they used clear evidence from the recent past activities and losses of a bank in setting capital requirements.

Defenders of legislation, like H.R. 4296, argue that capital requirements reduce bank lending. But this claim is deceptive and misguided. Capital refers to how banks fund themselves – higher capital means that banks fund themselves with more of their own equity capital and less borrowed money. Higher levels of bank capital in no way restrict bank lending capacity. They simply ensure that banks have more of their own money available to absorb any losses without turning to taxpayers for a bailout.

H.R. 4296 is a transparent attempt to pressure regulators to reduce capital protections at the nation's largest banks, and it should be rejected.

Thank you for your attention to this matter. For more information please contact AFR's Policy Director, Marcus Stanley, at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,

Americans for Financial Reform