March 12, 2018

Dear Senator:

On behalf of Americans for Financial Reform, we are writing to urge you to vote against Senator Crapo's substitute amendment to S.2155, "The Economic Growth, Regulatory Relief, and Consumer Protection Act."[1] AFR has already made clear our objections to the base bill of S. 2155, which would increase systemic risk by deregulating large banks, expose home buyers to increased risk of predatory lending, and weaken protections against racial discrimination in credit markets.[2]

Unfortunately, the substitute amendment to S. 2155 does not fix any of these issues, and adds new and harmful regulatory loopholes to this already extremely flawed legislation. Additional consumer provisions in the substitute amendment do not compensate for these additional gifts to industry, and in some cases are so poorly conceived that they could actually increase risks to consumers. Section 602, for example, would expose student loan borrowers to abusive debt collection tactics, and section 214 would make it harder to police risky commercial real estate lending.

Below are several examples of these problems with the substitute amendment. Other AFR member organizations are also sending letters with more detailed discussion of these and other issues.

Title 1 of the substitute amendment retains almost unchanged the numerous provisions of the base bill that increase the risk of predatory lending to home buyers. These provisions are a blow to fairness, transparency and affordability in the housing market. They allow loan steering in manufactured home loans, remove crucial protections against foreclosure like escrow requirements and eliminate ability-to-repay protections for portfolio loans. The apparent safeguards in these provisions have significant loopholes and do not adequately inhibit abusive conduct.

Section 104 of the bill continues to vastly expand the exemptions from critical new reporting requirements under the Home Mortgage Disclosure Act, exemptions that would still cover close to 85% of banks. The manager's amendment adds some language revoking the exemption for banks that have failed to meet certain minimum standards under the Community Reinvestment Act (CRA) twice in row, but this applies to a vanishingly small number of institutions, and still allows many banks with negative CRA ratings or who have engaged in fair lending violations to

[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] See AFR March 5th opposition letter to S 2155, available at http://bit.ly/2p3O2YX

avail themselves of the reporting exemption. This section still creates a major reduction in the availability of information vital to identifying and correcting discriminatory lending.

Section 214 is a new addition to the bill that would prevent regulators from requiring additional capital to absorb potential losses in risky commercial real estate lending. The section applies to oversight of all banks, even the largest Wall Street megabanks. In fact, since section 201 of S. 2155 removes risk-based capital adjustments for banks under $10 billion, the new addition of Section 214 will effectively reduce capital only for larger banks.

Risky commercial real estate lending was one of the central drivers of the collapse of Lehman Brothers and the subsequent global economic collapse. It is shocking that today, ten years later, Congress would act to tie regulators hands in policing this crucial area of lending markets. This is especially striking given that commercial real estate markets are currently booming.

Section 301 of the bill allows consumers to freeze their credit, but also excludes usage of credit reports for employment and insurance purposes from the freeze. Some states do apply freezes to credit reports used for employment and insurance, where identity theft can be a problem. S 2155 would preempt these state laws, and would also prevent states from taking even stronger action such as automatically freezing consumer credit reports.

Section 302 adds a right to free credit monitoring for active duty military. However, it bars service members from a private right of action to enforce that right, potentially making it meaningless.

Section 310 could bottleneck the mortgage market by preventing Fannie Mae and Freddie Mac from using credit scores unless and until they solicit applications from credit scoring developers, then validate and approve these scores. This is intended to force the GSEs to consider VantageScore and to update the current scoring models they use. The FHFA is already engaged in a process to update their scoring models. This bill will delay and up-end that process by requiring them to start again from scratch. Note that VantageScore is a joint venture of Equifax, Experian and TransUnion, so this bill will benefit these credit reporting companies. It would be ironic if Congress acted to give special benefits to these companies after the recent consumer harm created by data breaches there.

Section 401 of the bill has been altered by adding a new Section 401(g) that attempts to preserve Federal Reserve discretionary authority to enforce enhanced prudential standards at U.S. subsidiaries of foreign banks. However, this section in no way requires or ensures that the Federal Reserve maintain enhanced prudential standards at foreign banks. These foreign bank subsidiaries hold $1.7 trillion in assets within the U.S., and their parent companies hold over $17 trillion globally. Foreign bank subsidiaries are so significant to the U.S. financial system that they received over $4.5 trillion in emergency credit assistance from the U.S. government during the financial crisis. We urge Senators to vote for Brown amendment 2080 to truly make sure that protections remain in place at foreign bank subsidiaries.

Section 504 of the bill, another new addition, would exempt 'qualifying venture capital funds' with as many as 250 investors and $10 million in assets under management from basic SEC reporting and examination requirements. This section would expose retail investors to increased risk of fraud by completely removing these funds from SEC oversight.

Section 602 of the bill is presented as a new path for consumers to gain relief from indebtedness for private student loans. However, this section does not require that a financial institution take any positive steps at all, such as removing a default from a consumer's credit report if payments are restarted, nor does it ensure that any payment plans offered are reasonable or affordable. But entering into a new agreement could be actively harmful to borrowers, allowing private student loan lenders to lure a borrower to restart payments even where the deadline to file a collections lawsuit, the statute of limitations, has expired, without any guarantee that the plan will be sustainable or that the credit report default will be removed. As a result, a borrower would trigger a restart of the collections period without any guarantee that the new arrangement is beneficial. In many states, making a single payment will reset the statute of limitations on that loan, re-opening collections and creating new negative entries on the borrower's credit report. We urge Senators who wish to actively assist student loan borrowers to vote for the Durbin-Reed-Warren-Murray- Brown-Blumenthal Amendment # 2179, which establishes a student loan borrower's bill of rights, and provides other protections for student loan borrowers.

As we emphasized in our letter on the base bill of S. 2155, there is no economic reason for Congress to engage in the kind of risky deregulation of big banks and lowering of consumer protections included in S. 2155 and in many cases made even worse by this substitute amendment. Bank revenues are at record levels, loan growth is high, and provisions benefiting consumers and small community banks could pass on their own, without inclusion of this kind of broad deregulation. We urge you to reject the substitute amendment to S. 2155.

Sincerely,

Americans for Financial Reform