# AFR Americans for Financial Reform

May 18, 2018

Dear Representative:

On behalf of Americans for Financial Reform (AFR), 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 provides only one – regulatory relief. The deregulatory provisions in the bill would be actively harmful to consumers and increase the instability of the financial system. The consumer measures included in the bill are often flawed and do not come close to counterbalancing the impacts of weakening or eliminating important regulatory protections in areas ranging from mortgage lending to the oversight of large banks. In any case, measures benefiting consumers and small banks do not need to be tied to the deregulatory measures in S. 2155. They could be passed as standalone legislation.

A frequent justification for support of this legislation is that it helps small banks. It is true that there are provisions in the bill that exempt banks below $10 billion from many regulations, including important consumer and fair lending protections. However, the overall effect of passing S. 2155 will likely be to further reduce the number of small banks in the U.S. by facilitating consolidation and the acquisition of smaller banks by larger ones. S. 2155 weakens prudential standards on a few dozen of the largest banks in the country, making it easier for them to acquire community banks. Industry analysts are already saying that they "absolutely expect bank consolidation to accelerate" as a result of the passage of S. 2155.[2]

Not only would passage of S. 2155 be harmful to consumers and financial stability, there is no clear economic argument that the changes it includes are needed. There is no evidence that current regulation of the banking sector is having a negative impact on economic growth.[3] 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 approximately 95% of community banks showed a profit in 2016 and 2017. This is up from just 79% in 2010, the year Dodd-Frank was passed.[4]

Core problems with S. 2155 include:

- Increasing the fragility of the financial system by weakening risk controls at dozens of large banks that collectively received tens of billions in TARP funds.

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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] Dayen, David, "Bill Aimed at Saving Small Banks is Already Killing Them," *The Intercept*, May 16, 2018. https://bit.ly/2k3uxh2

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

[4] Federal Deposit Insurance Commission, Quarterly Banking Profile: December 2017, Table V-B, Community Bank Data, available at https://bit.ly/2IMGohe ; Americans for Financial Reform, Analysis of 2016 Bank Earnings Data, March, 2017. http://bit.ly/2AmKCaV

- Lowering risk capital requirements at key Wall Street banks designated as critical to our financial system, possibly including megabanks like Citibank and Goldman Sachs.

- Significantly weakening mortgage protections for numerous homebuyers, especially for those buying manufactured homes and those who are customers of banks with less than $10 billion in assets.

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

Even the provisions in the bill that are being sold as consumer-friendly have significant issues that may in some cases weaken consumer protections, or aid giant corporations such as Equifax that have been connected to consumer harms. For example, provisions purporting to offer new ways to manage student debt could actually harm borrowers who try to use them. These consequences may not have been intended by drafters, but they are nevertheless there.

Support for S. 2155 is support for stripping back and weakening the regulatory safeguards passed in response to the disastrous 2008 financial crisis. This is especially dangerous at a time when the Trump Administration is already pushing hard to deregulate Wall Street. This legislation actively assists their efforts by removing requirements for strong regulation of some of the nation's largest banks. It is true that S. 2155 does not include some of the most egregious deregulatory proposals favored by Wall Street. But avoiding some provisions Wall Street favors is not a sufficient standard for sound policy.

We urge the House to step back before approving such an unnecessary and harmful bill. The measures in this bill are not needed given the profitability of the banking industry and the stance and approaches of the appointees now in charge of the major bank regulatory agencies. Furthermore, they are actively harmful to both consumers and the financial system. In many cases, they would encourage consolidation in ways that are harmful to community banks, as lowering risk controls would free larger banks to purchase and acquire smaller institutions.

Below, we discuss all of the issues referenced above in more detail.

## Increasing Financial Sector Fragility by Weakening Bank Risk Controls

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. Some of the critical sections of the bill that do this are listed and explained below:

- **Section 401** exempts large banks that collectively hold trillions of dollars in assets from enhanced prudential standards that safeguard our economy, removing the Federal Reserve mandate to provide strong oversight of these banks. It would also weaken regulation of subsidiaries of large foreign banks operating in the U.S., banks which received public assistance during the 2008 crisis and play a crucial role on Wall Street.

- **Section 402** creates a new statutory exemption to capital protections for large custody banks that are crucial to the financial system. When combined with rules already proposed by Trump banking regulators, this provision would cut leverage capital protections for some of the nation's largest banks by more than half.

- **Section 214** restricts the ability of regulators to put risk controls on commercial real estate investments at the nation's largest banks. Losses in commercial real estate were a significant driver of the 2008 financial crisis.

- **Section 202** creates inappropriate statutory exemptions from regulatory risk controls for "hot money" brokered deposits in order to benefit insider bank lobbyists.

- **Section 203** ends Volcker Rule protections against financial speculation using insured deposits at banks below $10 billion in size.

**Section 401 Exempts Certain Large Banks from Enhanced Prudential Standards**

This part of the bill would eliminate the mandate for enhanced regulatory supervision of 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 U.S. 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.[5]

In response to this failure, Congress required the Federal Reserve to impose enhanced prudential standards on banks over $50 billion, which includes only the largest few dozen banks in the country. The Dodd-Frank Act requires these banks to be more strongly regulated than small and medium size 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 S. 2155 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 over $45 billion in TARP bailout funds.[6] Section 401 would eliminate mandates for core risk management requirements at these banks such as internal risk committees, company-run stress tests (forward looking risk forecasts), and credit exposure limits.

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[5] 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

[6] 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/

Section 401 does preserve some discretionary authority of the Federal Reserve to re-impose risk controls at banks from $100 billion to $250 billion in size. However, the point of the Dodd-Frank mandate on the Federal Reserve was to *require* regulators to properly supervise large banks, 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. In a practical sense, the bill would eliminate many existing risk controls and require their re-imposition through a new rulemaking that would be subject to legal challenge to determine if it met requirements laid out in S. 2155. It is overwhelmingly likely that either new rules would not be imposed or that they would be far more lenient than previously.

***Impact at the Largest Financial Institutions:*** Section 401 also negatively impacts the supervision of even the very largest 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 regularly.

This section 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 and are critical to the financial system.

A new requirement in Section 401 of S. 2155 also requires that the Federal Reserve must differentiate among banks on an individual basis or by category, based on a list of risk-related factors. This new statutory requirement (optional in the current text of Dodd-Frank) would give even the largest banks leverage for lawsuits attempting to overturn any regulatory rules they claimed were not properly justified by the listed factors, possibly creating new weaknesses in regulatory oversight for the largest banks.

***Impact at U.S. Subsidiaries of Foreign Mega-Banks:*** U.S. subsidiaries of the largest global banks – including Credit Suisse, Deutsche Bank, Barclays, Santander, and others – could be affected by Section 401. Although parent banks are trillion dollar global megabanks, their U.S. subsidiaries fall within the $50-250 billion asset size range that would be deregulated by S. 2155.

Drafters of the bill claim that the legislation maintains regulatory controls on these foreign mega-banks. It is true that Section 401(g) of the bill attempts to preserve Federal Reserve discretionary authority to enforce enhanced prudential standards at U.S. subsidiaries of large foreign banks. However, this section in no way requires or ensures that the Federal Reserve maintain enhanced prudential standards at foreign banks. In implementing Dodd-Frank, the Federal Reserve took special steps to ensure that standards governing foreign bank subsidiaries over $50 billion in size could be directly implemented by U.S. regulators, rather than deferring to foreign regulators for oversight as had been done prior to the 2008 financial crisis. This new "intermediate holding company" (IHC) requirement was put in place starting at $50 billion because this was the applicable threshold for U.S. banks in Dodd-Frank.[7]

[7] "The Board believes that establishing a minimum threshold for forming a U.S. intermediate holding company at $50 billion helps to advance the principle of national treatment and equality of competitive opportunity in the United States by more closely aligning standards applicable to the U.S. non-branch operations of foreign banking organizations under section 165 with the threshold for domestic U.S. bank holding companies that are subject to enhanced prudential standards under Title I of the Dodd-Frank Act." See CFR 17272 in the Federal Reserve Board's final rule on enhanced prudential standards, available at http://bit.ly/2FPTKW1.

Raising the statutory threshold to $250 billion would thus bring tremendous pressure on the Federal Reserve to change regulatory practices, eliminate requirements to establish an intermediate holding company that permits direct oversight by U.S. regulators, and once again defer to foreign regulators to determine whether enhanced prudential standards were properly applied to foreign banks operating in the U.S. Indeed, Treasury Secretary Mnuchin stated in recent Banking Committee testimony that the passage of S. 2155 would lead to this outcome.[8]

Deferring oversight to foreign regulators is precisely the regulatory framework that failed during the 2008 financial crisis. The irresponsible activities of foreign bank subsidiaries greatly increased stress on the U.S. financial system and led to large amounts of Federal Reserve assistance flowing to these foreign megabanks.[9]

In sum, Section 401 of S. 2155 would eliminate enhanced safety and soundness standards for dozens of the nation's largest banks collectively holding trillions of dollars in assets, is likely to significantly weaken oversight of the foreign subsidiaries of global megabanks, and would also reduce risk management requirements for even the very largest globally significant U.S. banks.

**Section 402 Slashes Capital Requirements for Large Systemically Significant Banks**

Section 402 of S. 2155 exempts large custody banks from requirements to hold their own equity capital against potential losses in funds they have deposited with the Federal Reserve or any other central bank around the world. The exemption would apply to banks large enough to be subject to the Supplementary Leverage Ratio (SLR), which requires the largest systemically significant banks to hold additional equity funding to absorb potential future losses.

By exempting funds held at the Federal Reserve, Section 402 could reduce leverage capital requirements by up to thirty percent. It would also encourage banks to hold funds with the Fed instead of lending them out to real economy businesses. The impact of this provision becomes even more significant because Trump Administration banking regulators are already proposing to slash leverage capital requirements in a separate rulemaking.[10] The cuts in equity capital mandated by Section 402 would be in addition to the cuts already proposed by banking regulators. In combination these capital reductions would cut minimum leverage ratios by more than half at affected banks.

This provision was originally drafted to benefit BNY Mellon and State Street, the two custody banks large enough to be subject to the SLR. However, the provision was modified in committee to apply to all banking entities "predominantly engaged in custody, safekeeping, and asset servicing activities." As written, this provision may now be broad enough to potentially apply to other megabanks such as Citibank, Goldman Sachs, and JP Morgan. Sheila Bair, the former chair of the Federal Deposit Insurance Corporation (FDIC), has stated that Section 402 "would weaken

[8] See transcript of January 30th , 2018 Banking Committee hearing on the annual report of the Financial Stability Oversight Committee, Treasury Secretary Mnuchin's response to Senator Brown's questions.
[9] For more detail, see Daniel Tarullo, "Regulating Large Foreign Banking Organizations," March 27, 2014. http://bit.ly/2thqkgP .
[10] Board of Governors of the Federal Reserve, "Rule Proposed to Tailor Enhanced Supplementary Leverage Ratio," Press Release, April 11, 2018. https://bit.ly/2IteZ0q

a key constraint against excessive leverage" and that it would be "the height of irresponsibility" for Congress to weaken capital requirements through this provision.[11]

Even if the impact of Section 402 is limited only to the two largest custody banks, these banks hold enormous amounts of client assets and are by any measure central to the financial system. The effect of this new statutory exemption is to significantly reduce capital held by all the banks to which it applies 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.

**Section 214 Restricts Regulatory Oversight of Commercial Real Estate Risks at Big Banks**

Section 214 of the bill 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. Commercial real estate exposures were also a major factor in the failure of hundreds of smaller banks.

Post-crisis regulatory actions to require more equity capital to back commercial real estate loans have not significantly affected the market. In fact, a recent report from the Federal Reserve Bank of Richmond shows that commercial real estate lending by U.S. banks has surged in the past five years.[12] The report also suggest that the commercial real estate loan market may be overheated and regulators should carefully monitor excessive risk in this market. By tying regulators hands in addressing risks in commercial real estate, Section 214 contradicts those findings and recommendations and obstructs regulators overseeing this market.

**Section 202 Weakens Risk Controls for "Hot Money" Deposits**

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.[13] 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 per 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

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[11] Bair, Sheila, "Congress Flirts With Disaster on Bank Leverage Ratios," *The Wall Street Journa*l, February 12, 2018.

[12] Helen Fessenden and Catherine Muething, "Understanding the Surge in Commercial Real Estate Lending," Federal Reserve Bank of Richmond, *Economic Brief 17-08.* August 2017. Accessed November 6, 2017. Available at http://bit.ly/2xxClAE.

[13] 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

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 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.

**Section 203 Weakens the Volcker Rule**

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 accounts. Holding of assets for proprietary trading was a significant contributor to the financial crisis of 2008.[14]

The section would 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 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.

**Weakening Protections against Predatory Mortgage Lending**

S. 2155 would erode protections for homebuyers, and especially 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.[15] More than one in ten homes in rural and small-town America are

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[14] 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/

[15] Consumer Financial Protection Bureau, Manufactured Housing Consumer Finance in the United States, September, 2014. http://bit.ly/Zosl7E

manufactured homes, and they are usually purchased by lower income individuals.[16] This is not a provision that benefits community banks. Instead, it benefits the few large entities which dominate the manufactured housing market, most notably Berkshire Hathaway's Invitation Homes, which sells almost 40% of manufactured housing in the country.[17]

This section does require retailers to mention at least one non-affiliate lender to consumers and also states that the direct compensation of an employee providing financing must be similar to an employee performing a cash sale. There are no limits on indirect compensation for loan steering. Given the complexity of these transactions, 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 banks with less than $10 billion in assets across the country. Such accounts are a key consumer protection that has been demonstrated to reduce foreclosures.[18] 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.[19] 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.

**Section 101** creates a new statutory exemption from predatory lending protections that would impact mortgage borrowers at 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

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[16] Ibid
[17] 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
[18] Joe Valenti, Sarah Edelman, and Julia Gordon, Lending for Success, Washington: Center for American Progress, 2015. http://ampr.gs/2kkWAfd
[19] 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

to lending. The CFPB's "Qualified Mortgage" (QM) rule lays out the affordability requirements lenders must satisfy to gain legal "safe harbor" 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.[20] It is true that Section 101 does exclude 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 public tool for detecting racial discrimination in mortgage lending markets.

**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% (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% (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 by state under this limit and found states with large rural areas face some of the largest losses of updated data about mortgage originations. The additional data that would be eliminated

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

from reporting requirements due to S. 2155 includes information on credit scores and loan eligibility that is critical to determining whether racial discrimination is taking place.[21] Given recent evidence of continued major gaps between racial groups in loan approval rates, it is vital to require reporting of this data in order to create more equitable access to credit.[22]

## Some Consumer Provisions in S. 2155 Could Actually Harm Consumers

S. 2155 contains a number of provisions intended to be consumer-friendly. It is our belief that these or similar provisions could easily pass as stand-alone legislation, without being attached to the dozens of deregulatory provisions in this bill. Public interest and consumer groups are united in their belief that the consumer provisions in this bill fall far short of what would be needed to justify a highly deregulatory bill such as S. 2155.

However, some of these consumer provisions could actually be harmful, or could give special benefits to major corporations that have harmed consumers.

**Section 301** of S. 2155 allows consumers to freeze their credit, but applies only to credit checks, not to usage of credit reports for employment and insurance purposes. Some state laws 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. It would also prevent states from taking stronger actions to protect consumers, such as automatically freezing consumer credit reports under certain circumstances. The pre-emption of state law in Section 301 could easily end up harming consumers in many parts of the country.

**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 and unenforceable in many cases. Section 302 of this bill would be the first time that consumers have been deprived of a private right of action against credit bureau abuses.

**Section 310** could disrupt the mortgage market by preventing Fannie Mae and Freddie Mac from using credit scores unless and until they solicit new applications from credit scoring developers, then validate and approve these scores. This provision appears intended to force the GSEs to consider new private products in addition to the FICO scores they currently use.

The FHFA is already engaged in a process to update their scoring models and are considering multiple different options. This measure will delay and up-end that process by requiring them to start again from scratch. A beneficiary of this provision will be a new credit scoring product called VantageScore, a joint venture of *Equifax*, Experian and TransUnion. It would be ironic if Congress intervened with the GSEs to assist these companies after the recent consumer harm created by data breaches there.

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[21] See the introduction and background discussion in the CFPB HMDA final rule, available at http://bit.ly/2I1FJFC , for a discussion of the additional data items affected by S. 2155 and their significance in determining discrimination.
[22] Aaron Glantz and Emmaneul Martinez, "Kept Out: How Banks Block People of Color from Homeownership," Associated Press, February 15, 2018. http://bit.ly/2Fcd0w0

**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.

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In sum, the numerous deregulatory measures included in S. 2155 are dangerous for consumers and for the stability of the financial system that we all depend on. They are not justified either on their own merits or by any consumer benefits included in the bill. We therefore 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