AFR Americans for Financial Reform

S 2155 Talking Points

S. 2155 is a bank lobbyist's dream: it contains over two dozen deregulatory gifts to the financial industry. These include provisions that roll back the rules on some of the biggest banks in the country, increasing the risk of financial disaster and a public bailout. Other provisions would expose home buyers to financial exploitation and predatory lending, as well as enable racial discrimination in mortgage lending.

There's no excuse for weakening public protections in this way at any time. But it's particularly egregious to do it at a time when banks are making record revenues, over 95% of community banks are profitable, and lending is growing more rapidly than historic averages. This bill is a victory for banks and their lobbyists over the interests of virtually everyone else.

S 2155 is touted as a community bank bill, but in fact it is full of gifts to big banks:

- ***Section 401*** of the bill eliminates most of the requirements for special post-crisis risk controls at banks from $50 billion to $250 billion in size. This would free Trump appointees to deregulate these banks, which are among the largest 1% of banks in the country. They include 25 of the 38 biggest banks in the U.S.

  Financial institutions between $50 and $250 billion in size, such as Countrywide and Golden West, were significant contributors to the 2008 financial crisis. And they clearly pose risk to the public – the same banks deregulated in this bill received almost $50 billion in Federal bailout money during the crisis.

- The Trump Administration has also made clear that it intends to use S. 2155 to deregulate the U.S. operations of giant foreign megabanks like Deutsche Bank, Barclays, Credit Suisse, and Santander – which also played a central role in the 2008 financial crisis. Because the U.S. operations of these banks hold under $250 billion in capital, they would be deregulated despite the fact that their multi-trillion dollar global operations pose major systemic risks.

- Other provisions in Section 401, like a new statutory requirement to tailor rules to individual banks, would give even the biggest Wall Street megabanks new tools for mounting lawsuits and pressuring the Federal Reserve to weaken critical rules.

- ***Section 402*** of the bill would let two of the biggest and most systemically significant banks in the country, BNY Mellon and State Street, significantly reduce their loss-absorbing capital. This would lower protections against insolvency at these critical banks, which together received $5 billion in Federal bailout money during the financial crisis. The general language in Section 402 might also allow other large banks to take advantage of the exemption to lower their required capital.

- ***Section 214*** of the bill would prevent regulators from requiring additional capital to absorb potential losses in risky commercial real estate loans. The section applies to all banks, even the largest Wall Street megabanks. 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.

The bill includes many provisions that harm home buyers:

- ***Section 107*** of the bill creates a new exemption from key mortgage lending protections for sales of manufactured home. This exemption would make it easier for sellers of manufactured homes to steer customers into overpriced loans and pocket the extra profits. The millions of Americans who live or wish to live in manufactured homes would be more vulnerable to predatory lending practices like those that trapped so many of families in overpriced mortgages prior to the 2008 crisis.

- ***Sections 101 and 109*** of the bill would weaken consumer protections for millions of Americans who obtain mortgages from banks with under 10 billion in assets. These provisions eliminate requirements for escrow accounts, a key anti-foreclosure safeguard that ensures consumers can pay tax and insurance on their home and prevent these bills from leading to foreclosure. They would also eliminate protections against predatory lending such as overpriced and adjustable rate mortgages at these banks.

- ***Sections 103 and 110*** of the bill would weaken important protections against fraud in home sales, including exempting most homes sold in rural areas from appraisal requirements (Section 103) and making it easier to misinform homebuyers about the terms of their mortgage loan (Section 110).

The bill enables discrimination in mortgage lending:

- ***Section 104*** of the bill would exempt over 85% of depository institutions from full reporting of loan data under the Home Mortgage Disclosure Act. The data is a fundamentally important tool for identifying and combatting racial discrimination in mortgage lending. A major new report just confirmed that in cities around the country African American applicants continue to be denied loans at much higher rates than White borrowers. In the lead up to the financial crisis borrowers of color were systemically pushed into higher cost loans; this exemption specifically hides information about the cost of mortgage credit. The danger of weakening HMDA as a tool for ending mortgage discrimination and increasing access to credit is made even worse because Mick Mulvaney as Acting Director of the CFPB has weakened fair lending enforcement there.

That doesn’t exhaust the harmful provisions in S 2155. **Section 211** of the bill, which is opposed by state securities regulators, would exempt potentially fraudulent securities issuances from state supervision designed to protect investors from being cheated. **Section 202** of the bill creates a new exemption from risk controls at community banks, increasing the risk of bank failure. This exemption benefits brokers and lobbyists who help wealthy clients use "hot money" deposits in order to evade the $250,000 limit on insured bank deposits for ordinary consumers.

Supposed "consumer" provisions of the bill are completely inadequate to counterbalance the long list of deregulation that's included. What's more, in some cases these provisions could actually be harmful. For example, **Section 301** of the bill, which allows consumers a no-cost freeze to their credit, would also have the effect of overriding stronger state protections on credit reporting and blocking states from enacting better protections in this area such as automatic freezes when certain events occur. **Section 310** of the bill, which is being touted as a consumer protection, instead appears designed to give Equifax – the same company that just experienced a massive data breach where private information from hundreds of millions of consumers was stolen -- special advantages in getting its new credit scoring products used by the Federal Housing Finance Agency. **Section 602** of the bill is presented as a new path for consumers to gain relief from private student loan debt. But entering into a new agreement under Section 602 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 has expired, without any guarantee that the plan will be sustainable or that the credit report default will be removed.

You don't have to take our word for it that S 2155 is terrible policy. A host of experts and experienced regulators from both parties have called out this bill as misguided and dangerous. They include former Federal Reserve chair Paul Volcker, former Republican appointee as FDIC chair Sheila Bair, former Federal Reserve head of supervision Daniel Tarullo, Republican vice-chair of the FDIC Tom Hoenig, former Obama Administration Treasury Department appointees Sarah Bloom Raskin and Michael Barr, and Phil Angelides, the former head of the Financial Crisis Inquiry Commission. All of these critics highlight the risk to the broader economy created by this bill, as well as the harm its passage will do to homebuyers and consumers. Even the non-partisan Congressional Budget Office, traditionally extremely cautious, has stated its belief that the likelihood of a financial crisis or the failure of a large bank critical to the economy would be greater if S 2155 was passed.

S. 2155 is simply not in the interests of the regular people Congress is supposed to represent. Congress should not be deregulating big banks and undermining consumer protections, especially at a time when the banking industry, including community banks, is showing record levels of revenues and profits,