

[DISCUSSION DRAFT]

116TH CONGRESS
2^D SESSION

H. R. _____

To compel regulators to take more severe action against Wells Fargo, including removing negligent directors and either reducing Wells Fargo's size or activities, or to wind down the bank in an orderly fashion, to create a legal framework to compel recalcitrant regulators to escalate and utilize increasingly severe authorities to address any future recidivist megabank that extensively harms consumers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To compel regulators to take more severe action against Wells Fargo, including removing negligent directors and either reducing Wells Fargo's size or activities, or to wind down the bank in an orderly fashion, to create a legal framework to compel recalcitrant regulators to escalate and utilize increasingly severe authorities to address any future recidivist megabank that extensively harms consumers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Megabank Account-
3 ability and Consequences Act”.

4 **SEC. 2. DEFINITIONS.**

5 For purposes of this Act:

6 (1) **AFFILIATED BANKING ORGANIZATION.**—

7 The term “affiliated banking organization” means
8 any depository institution subsidiary or affiliate of a
9 megabank that has an appropriate Federal banking
10 agency.

11 (2) **BANKING ORGANIZATION.**—The term
12 “banking organization” means any depository insti-
13 tution, depository institution holding company, and
14 any subsidiary or affiliate of a depository institution
15 holding company.

16 (3) **BOARD OF GOVERNORS.**—The term “Board
17 of Governors” means the Board of Governors of the
18 Federal Reserve System.

19 (4) **COMPTROLLER.**—The term “Comptroller”
20 means the Comptroller of the Currency.

21 (5) **CONSUMER BUREAU.**—The term “Consumer
22 Bureau” means the Bureau of Consumer Financial
23 Protection.

24 (6) **CORPORATION.**—The term “Corporation”
25 means the Board of Directors of the Federal Deposit
26 Insurance Corporation.

1 (7) FEDERAL CONSUMER FINANCIAL LAW.—
2 The term “Federal consumer financial law” has the
3 meaning given that term under section 1002 of the
4 Consumer Financial Protection Act of 2010 (12
5 U.S.C. 5481).

6 (8) FEDERAL CONSUMER PROTECTION LAW.—
7 The term “Federal consumer protection law”
8 means—

- 9 (A) the Federal consumer financial law;
10 (B) the Fair Housing Act;
11 (C) the Federal Trade Commission Act;
12 (D) section 987 of title 10, United States
13 Code (commonly known as the “Military Lend-
14 ing Act”);
15 (E) the Servicemembers Civil Relief Act;
16 and
17 (F) any regulation issued under a law de-
18 scribed under subparagraph (A), (B), (C), (D),
19 or (E).

20 (9) MEGABANK.—

21 (A) IN GENERAL.—The term “megabank”
22 means—

- 23 (i) a bank holding company that has
24 been identified by the Board of Governors
25 as a global systemically important bank

1 holding company pursuant to section
2 217.402 of title 12, Code of Federal Regu-
3 lations; and

4 (ii) a global systemically important
5 foreign banking organization, as defined
6 under section 252.2 of title 12, Code of
7 Federal Regulations.

8 (B) TREATMENT OF EXISTING GSIBS.—A
9 company or organization described under clause
10 (i) or (ii) of subparagraph (A) on the date of
11 the enactment of this Act shall be deemed a
12 megabank.

13 (10) PATTERN OR PRACTICE OF UNSAFE OR
14 UNSOUND BANKING PRACTICES AND OTHER VIOLA-
15 TIONS RELATED TO CONSUMER HARM.—The term
16 “pattern or practice of unsafe or unsound banking
17 practices and other violations related to consumer
18 harm” means engaging in all of the following activi-
19 ties, to the extent each activity was discovered or oc-
20 curred at least once in the 15 years preceding the
21 date of the enactment of this Act:

22 (A) Having unsafe or unsound practices in
23 the institution’s risk management and oversight
24 of the institution’s sales practices, as evidenced
25 by—

1 (i) an institution lacking an enter-
2 prise-wide sales practices oversight pro-
3 gram that enables the institution to ade-
4 quately monitor sales practices to prevent
5 and detect unsafe or unsound sales prac-
6 tices and mitigate risks that may result
7 from such unsafe and unsound sales prac-
8 tices; and

9 (ii) an institution lacking a com-
10 prehensive customer complaint monitoring
11 process that—

12 (I) enables the institution to as-
13 sess customer complaint activity
14 across the institution;

15 (II) adequately monitors, man-
16 ages, and reports on customer com-
17 plaints; and

18 (III) analyzes and understands
19 the potential risks posed by the insti-
20 tution's sales practices.

21 (B) Engaging in unsafe and unsound sales
22 practices, as evidenced by the institution—

23 (i) opening more than one million un-
24 authorized deposit, credit card, or other
25 accounts;

1 (ii) performing unauthorized transfers
2 of customer funds; and

3 (iii) performing unauthorized credit
4 inquiries for purposes of the conduct de-
5 scribed in clause (i) or (ii).

6 (C) Lacking adequate oversight of third-
7 party vendors for purposes of risk-mitigation, to
8 prevent abusive and deceptive practices in the
9 vendor's provision of consumer products or
10 services.

11 (D) Having deficient policies and proce-
12 dures for sharing customers' personal identifi-
13 able information with third-party vendors for
14 litigation purposes that led to inadvertent dis-
15 closure of such information to unintended par-
16 ties.

17 (E) Violating Federal consumer financial
18 laws with respect to mortgage loans, including
19 charges of hidden fees and unauthorized or im-
20 proper disclosures tied to home mortgage loan
21 modifications.

22 (F) Engaging in unsafe or unsound bank-
23 ing practices related to residential mortgage
24 loan servicing and foreclosure processing.

1 (G) Violating the Servicemembers Civil Re-
2 lief Act.

3 (11) PATTERN OR PRACTICE OF VIOLATIONS OF
4 FEDERAL CONSUMER PROTECTION LAWS.—

5 (A) IN GENERAL.—The term “pattern or
6 practice of violations of Federal consumer pro-
7 tection laws” means—

8 (i) a pattern or practice of unsafe or
9 unsound banking practices and other viola-
10 tions related to consumer harm; and

11 (ii) such other pattern or practice as
12 the Director of the Consumer Bureau
13 shall, in consultation with the Comptroller,
14 the Board of Governors, and the Corpora-
15 tion, establish by regulation.

16 (B) TIME PERIOD.—Eligible activities that
17 may be included in any pattern or practice de-
18 scribed under subparagraph (A) are those that
19 were discovered or occurred in the 15 years pre-
20 ceeding any determination made under section
21 101.

22 (C) RULEMAKING.—Not later than the end
23 of the 1-year period beginning on the date of
24 the enactment of this Act, the Director of the

1 Consumer Bureau shall issue final regulations
2 to carry out subparagraph (A)(ii).

3 (12) STATE.—The term “State” means the sev-
4 eral States, the District of Columbia, and any other
5 territory or possession of the United States.

6 (13) DEFINITIONS RELATED TO SUBSIDIARIES
7 AND AFFILIATES OF FOREIGN BANKS.—The terms
8 “agency”, “branch”, “commercial lending com-
9 pany”, and “representative office” have the mean-
10 ings given those terms, respectively, under section
11 1(b) of the International Banking Act of 1978 (12
12 U.S.C. 3101(b)).

13 (14) OTHER BANKING DEFINITIONS.—The
14 terms “affiliate”, “appropriate Federal banking
15 agency”, “depository institution”, “depository insti-
16 tution holding company”, “Federal banking agen-
17 cies”, “Federal savings association”, “foreign bank”,
18 “insured depository institution”, “national bank”,
19 “State depository institution”, “State member
20 bank”, and “subsidiary” have the meaning given
21 those terms, respectively, under section 3 of the
22 Federal Deposit Insurance Act (12 U.S.C. 1813).

23 **SEC. 3. PATTERN OR PRACTICE OF VIOLATIONS OF FED-**
24 **ERAL CONSUMER PROTECTION LAWS.**

25 (a) DETERMINATION.—

1 (1) COMPTROLLER.—The Comptroller shall reg-
2 ularly review and determine, in consultation with the
3 Director of the Consumer Bureau, whether a na-
4 tional bank or Federal savings association affiliate
5 of a megabank, or a federally licensed branch, agen-
6 cy, commercial lending company, or representative
7 office of any foreign bank affiliate of a megabank is
8 demonstrating a pattern or practice of violations of
9 Federal consumer protection laws. Upon such a de-
10 termination, the Comptroller shall provide a written,
11 confidential notice within 7 days to the other Fed-
12 eral banking agencies, the Committee on Financial
13 Services of the House of Representatives, and the
14 Committee on Banking, Housing, and Urban Affairs
15 of the Senate describing the review and any identi-
16 fied institution and, in consultation with the Direc-
17 tor of the Consumer Bureau, immediately initiate
18 additional enforcement actions pursuant to section 4
19 or initiate proceedings to either appoint a receiver or
20 terminate the Federal charter of such institution
21 pursuant to section 5.

22 (2) BOARD OF GOVERNORS.—The Board of
23 Governors shall regularly review and determine, in
24 consultation with the Director of the Consumer Bu-
25 reau, whether a State member bank affiliate of a

1 megabank or a State-chartered branch, agency, or
2 representative office of a foreign bank affiliate of a
3 megabank is demonstrating a pattern or practice of
4 violations of Federal consumer protection laws.
5 Upon such a determination, the Board of Governors
6 shall provide a written, confidential notice within 7
7 days to the other Federal banking agencies, the
8 Committee on Financial Services of the House of
9 Representatives, and the Committee on Banking,
10 Housing, and Urban Affairs of the Senate describing
11 the review and any identified institution and, in con-
12 sultation with the Director of the Consumer Bureau,
13 immediately initiate additional enforcement actions
14 pursuant to section 4 or initiate proceedings to ter-
15 minate the bank's membership in the Federal Re-
16 serve System or the foreign bank's activities in the
17 United States, as applicable, pursuant to section 5.

18 (3) CORPORATION.—The Corporation shall reg-
19 ularly review and determine, in consultation with the
20 Director of the Consumer Bureau, whether an in-
21 sured depository institution affiliate of a megabank
22 is demonstrating a pattern or practice of violations
23 of Federal consumer protection laws. Upon such a
24 determination, the Corporation shall provide a writ-
25 ten, confidential notice within 7 days to the other

1 Federal banking agencies, the Committee on Finan-
2 cial Services of the House of Representatives, and
3 the Committee on Banking, Housing, and Urban Af-
4 fairs of the Senate describing the review and any
5 identified institution and, in consultation with the
6 Director of the Consumer Bureau, immediately ini-
7 tiate additional enforcement actions pursuant to sec-
8 tion 4 or initiate proceedings to terminate the de-
9 posit insurance of the institution pursuant to section
10 5.

11 (b) CONSIDERATIONS.—

12 (1) RECOMMENDATION BY DIRECTOR.—Upon a
13 finding by the Director of the Consumer Bureau
14 that a depository institution affiliate of a megabank,
15 or a federally licensed branch, agency, representative
16 office, or commercial lending company of a foreign
17 bank affiliate of a megabank is demonstrating a pat-
18 tern or practice of violations of Federal consumer
19 protection laws, the Director of the Consumer Bu-
20 reau shall, within 7 days, recommend to the Comp-
21 troller, the Board of Governors, or the Corporation
22 that a determination should be made under sub-
23 section (a). The Comptroller, the Board of Gov-
24 ernors, or the Corporation, as applicable, shall con-
25 sider such recommendation and publicly respond in

1 writing, including a detailed basis for its decision,
2 within 90 days as to whether they will follow such
3 recommendation.

4 (2) DETAILED EXPLANATION.—In making a de-
5 termination under subsection (a), including in re-
6 sponse to any recommendation made by the Director
7 of the Consumer Bureau and in any written notice
8 to the Committee on Financial Services of the House
9 of Representatives and the Committee on Banking,
10 Housing, and Urban Affairs of the Senate, the
11 Comptroller, the Board of Governors, or the Cor-
12 poration, as applicable, shall include a detailed de-
13 scription of the review of the institution, the basis
14 for its determination, and which of the enforcement
15 actions or proceedings under subsection (c) that the
16 agency has determined to take against the institu-
17 tion.

18 (3) PUBLIC HEARINGS.—The Comptroller, the
19 Board of Governors, or the Corporation, as applica-
20 ble, may convene public hearings to consider facts,
21 observations, evidence, and testimony provided by
22 any institution subject to a determination under this
23 Act as well as affected stakeholders. At least one
24 public hearing shall be granted if made at the writ-
25 ten request of the institution subject to a determina-

1 violations of Federal consumer protection laws, the appro-
2 priate Federal banking agency, in consultation with the
3 Director of the Consumer Bureau, shall take one or more
4 of the following actions, in accordance with the framework
5 established under subsection (c):

6 (1) Remove responsible senior officers or direc-
7 tors of the institution, and permanently ban them
8 from working at another banking organization, pur-
9 suant to section 8(e) of the Federal Deposit Insur-
10 ance Act (12 U.S.C. 1818(e)).

11 (2) Impose a cap on the total assets of the in-
12 stitution.

13 (3) Reduce a cap on the total assets of the in-
14 stitution.

15 (4) Impose a cap on the assets of a line of busi-
16 ness of the institution.

17 (5) Reduce a cap on the assets of a line of busi-
18 ness of the institution

19 (6) Restrict certain lines of business of the in-
20 stitution, pursuant to section 8(b) of the Federal
21 Deposit Insurance Act (12 U.S.C. 1818(b)).

22 (7) Prohibit an existing or new line of business
23 of the institution.

24 (8) Initiate proceedings to terminate the Fed-
25 eral charter of the institution, terminate a foreign

1 bank's ability to operate in the United States, or ap-
2 point a receiver pursuant to either title LXII of the
3 Revised Statutes of the United States, the National
4 Bank Receivership Act (12 U.S.C. 191 et seq.) or
5 the Home Owners' Loan Act (12 U.S.C. 1461 et
6 seq.), with the identified pattern or practice of viola-
7 tions of Federal consumer protection laws deemed as
8 grounds for appointing a conservator or receiver
9 under the Federal Deposit Insurance Act or termi-
10 nating deposit insurance pursuant to section 8(a) of
11 the Federal Deposit Insurance Act (12 U.S.C.
12 1818(a)).

13 (b) RECOMMENDATION BY DIRECTOR.—If a deter-
14 mination is made under section 3 with respect to a na-
15 tional bank, Federal savings association, or federally li-
16 censed branch, agency, commercial lending company, or
17 representative office of a foreign bank—

18 (1) the Director of the Consumer Bureau may
19 recommend to the Comptroller, the Board of Gov-
20 ernors, or the Corporation what actions should be
21 taken under this section; and

22 (2) the Comptroller, the Board of Governors, or
23 the Corporation, as applicable, shall consider such
24 recommendation and publicly respond in writing

1 within 30 days as to whether they will follow such
2 recommendation.

3 (c) FRAMEWORK FOR ENFORCEMENT ACTIONS.—

4 (1) IN GENERAL.—The Federal banking agen-
5 cies shall, jointly, in consultation with the Director
6 of the Consumer Bureau, issue rules to establish a
7 framework under which an institution for which a
8 determination has been made under section 3 shall
9 be automatically subject to certain additional en-
10 forcement actions in an escalating manner as the de-
11 gree of severity of such pattern or practice of viola-
12 tions escalates.

13 (2) CONSIDERATIONS.—In determining the cri-
14 teria for the escalation of enforcement actions under
15 paragraph (1), the Federal banking agencies may
16 look at factors including—

17 (A) the number of individuals harmed by
18 such pattern or practice of violations;

19 (B) whether the institution has failed to
20 remediate such harm; and

21 (C) such other factors as the Federal
22 banking agencies determine appropriate.

23 (d) MANDATORY ENFORCEMENT ACTIONS.—

24 (1) IN GENERAL.—If a determination is made
25 under section 3 with respect to a pattern or practice

1 of violations of Federal consumer protection laws by
2 an institution occurring on or after the date of en-
3 actment of this Act, the Comptroller, the Board of
4 Governors, or the Corporation, as applicable, shall
5 take—

6 (A) the action described under paragraph
7 (1) of subsection (a); and

8 (B) either—

9 (i) one or more action described under
10 paragraphs (2) through (7) of subsection
11 (a); or

12 (ii) the action described under para-
13 graph (8) of subsection (a).

14 (2) **THIRD DETERMINATION.**—With respect to
15 an institution described under paragraph (1), if a
16 third determination is made under section 3 against
17 the same institution after two separate sets of en-
18 forcement actions are taken pursuant to paragraph
19 (1), the Comptroller, the Board of Governors, or the
20 Corporation, as applicable, shall immediately initiate
21 proceedings to terminate a Federal charter, a State
22 member bank's membership in the Federal Reserve
23 System, a foreign bank's ability to operate in the
24 United States, or terminate deposit insurance.

1 (e) MANDATORY ENFORCEMENT ACTIONS FOR EX-
2 ISTING VIOLATIONS.—

3 (1) IN GENERAL.—If a determination is made
4 under section 3 with respect to a pattern or practice
5 of violations of Federal consumer protection laws by
6 an institution occurring before the date of enactment
7 of this Act, the Comptroller, the Board of Gov-
8 ernors, or the Corporation, as applicable, shall
9 take—

10 (A) the action described under paragraph
11 (1) of subsection (a); and

12 (B) either—

13 (i) one or more action described under
14 paragraphs (3) through (7) of subsection
15 (a); or

16 (ii) the action described under para-
17 graph (8) of subsection (a).

18 (2) SUBSEQUENT DETERMINATION.—With re-
19 spect to an institution described under paragraph
20 (1), if a second determination is made under section
21 3 against the same institution after enforcement ac-
22 tions are taken pursuant to paragraph (1), the
23 Comptroller, the Board of Governors, or the Cor-
24 poration, as applicable, shall immediately initiate
25 proceedings to terminate a Federal charter, a State

1 member bank's membership in the Federal Reserve
2 System, a foreign bank's ability to operate in the
3 United States, or terminate deposit insurance.

4 **SEC. 5. RECEIVERSHIP AND LIMITATION ON TRANSFER OF**
5 **ASSETS.**

6 (a) NOTICE TO FDIC.—The Comptroller and the
7 Board of Governors shall notify within 24 hours the Cor-
8 poration of any determination made under section 3.

9 (b) TERMINATION OF FEDERAL DEPOSIT INSURANCE
10 BASED ON REVOCATION OF FEDERAL BANKING CHAR-
11 TER.—If an institution for which a determination has
12 been made under section 101 has the institution's Federal
13 charter terminated, or is subject to the termination of de-
14 posit insurance under section 4(c)(2), the Corporation
15 shall—

16 (1) initiate an involuntary termination of the
17 deposit insurance of the institution under section 8
18 of the Federal Deposit Insurance Act (12 U.S.C.
19 1818); and

20 (2) place the institution into receivership, with
21 the Corporation acting as the receiver, pursuant to
22 the procedures provided under section 11(c) of the
23 Federal Deposit Insurance Act (12 U.S.C. 1821(c)).

24 (c) LIMITATION ON TRANSFER OF ASSETS.—In its
25 capacity as receiver of a national bank, Federal savings

1 association, or branch, agency, commercial lending com-
2 pany, or representative office of a foreign bank under this
3 section, the Corporation may transfer any assets of the
4 institution only to a banking organization that was as-
5 signed a rating of “satisfactory record of meeting commu-
6 nity credit needs” or better for complying with the Com-
7 munity Reinvestment Act of 1977 in the organization’s
8 most recent evaluation, and may not transfer any assets
9 of the institution to either—

10 (1) a megabank or any affiliated banking orga-
11 nization; or

12 (2) a banking organization that has exhibited
13 substantial noncompliance with Federal consumer
14 protection laws as evidenced by any enforcement ac-
15 tions, targeted supervisory exams, or a rating of less
16 than “satisfactory” on its most recent consumer
17 compliance examination.

18 (d) CONSULTATION.—When acting in the capacity of
19 a receiver pursuant to subsection (b), the Corporation
20 shall consult with the Office of Minority and Women In-
21 clusion of the Corporation.

1 **SEC. 6. ADDRESSING PETITIONS FROM STATE AND LOCAL**
2 **GOVERNMENT AGENCIES WITH RESPECT TO**
3 **VIOLATIONS OF FEDERAL CONSUMER PRO-**
4 **TECTION LAWS AND REGULATIONS.**

5 The Federal banking agencies shall—

6 (1) consider petitions from relevant State and
7 local government agencies, including law enforce-
8 ment and city and State attorney generals, regard-
9 ing—

10 (A) a pattern or practice of violations of
11 Federal consumer protection laws by a national
12 bank, a State member bank, or a Federal sav-
13 ings association affiliate of a megabank, or a
14 United States branch, agency, commercial lend-
15 ing company, or representative office of a for-
16 eign bank affiliate of a megabank, or a State
17 depository institution affiliate of a megabank,
18 as applicable; or

19 (B) the appropriate determination as to
20 enforcement actions to be taken under the
21 framework for enforcement action rules issued
22 pursuant to section 4(d);

23 (2) for any petition from State or local govern-
24 ment agencies from at least five States, provide a
25 written response within 180 days after receiving
26 such a petition whether or not a determination is

1 made under this Act, including a detailed basis for
2 the determination; and

3 (3) for any written response under paragraph
4 (2), send a copy of the written response to the Com-
5 mittee on Financial Services of the House of Rep-
6 resentatives and the Committee on Banking, Hous-
7 ing, and Urban Affairs of the Senate.

8 **SEC. 7. CONSIDERATION WITH RESPECT TO EMPLOYEES**
9 **AND CUSTOMERS.**

10 Section 11(h) of the Federal Deposit Insurance Act
11 (12 U.S.C. 1821(h)) is amended by adding at the end the
12 following:

13 “(5) CONSIDERATION WITH RESPECT TO EM-
14 PLOYEES AND CUSTOMERS.—In taking any action in
15 a resolution proceeding, the Corporation shall fully
16 consider the adverse impact of actions to be taken
17 by the Corporation with respect to a depository in-
18 stitution in default on employees and customers of
19 such depository institution.”.

20 **SEC. 8. AGENCY AUTHORITY.**

21 (a) IN GENERAL.—Notwithstanding any other law
22 and for the sole purpose of carrying out the requirements
23 of this Act, in the event that a Federal banking agency
24 lacks a quorum, a majority of the members of the Federal

1 banking agency shall have the full authority to act on be-
2 half of the agency.

3 (b) DETERMINATION OF CERTAIN VIOLATIONS.—In
4 making any determination under this Act with respect to
5 whether an institution has violated a Federal consumer
6 protection law, if a Federal banking agency does not have
7 enforcement authority over the applicable Federal con-
8 sumer protection law, the agency shall rely on publically
9 available information with respect to such violations, such
10 as criminal convictions and enforcement actions, and con-
11 sult with any relevant Federal department or agency that
12 took such actions against the institution.

13 (c) RULE OF CONSTRUCTION.—Nothing in this Act
14 shall be construed to reduce or impair any existing author-
15 ity with respect to enforcement actions taken by a Federal
16 banking agency. Furthermore, a violation of Federal con-
17 sumer protection law by an institution shall not be deemed
18 insufficient grounds for a Federal banking agency to take
19 any enforcement action, including those referenced in this
20 Act, the agency determines necessary and is otherwise au-
21 thorized to take.