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September 12, 2016

Honorable Member
House Committee on Financial Services
United States House of Representatives

RE: Oppose the Financial CHOICE Act, HR 5983

Dear Honorable Committee Member,

On behalf of more than 400,000 members and supporters of Public Citizen, we ask you to VOTE NO on Chair Hensarling's Financial CHOICE Act, HR 5983, which is currently slated for consideration before the House Committee on Financial Services on September 13.

This measure is a 513-page gift to those in the financial sector who would endanger the system and abuse consumers. We will attempt to itemize some of the worst elements, but they are simply too numerous to mention them all.

We highlight a few below:

Consumer Protection

Title III, Section 338 undermines the ability of consumer-focused agencies to stop practices that clearly injure customers of financial products and services. For example, the legislation would block the Consumer Financial Protection Bureau (CFPB) from implementing its proposed rule to limit the use of forced arbitration "rip-off" clauses that force harmed consumers into private arbitration proceedings, denying them their constitutional right to a day in court. The rule's public comment period ended last month, with more than 100,000 consumers expressing support for this reform.

Title IV Section 441 repeals the recently adopted rule by the Department of Labor where investment advisors must put their clients' interests ahead of their own. Selling dubious products that generate big commissions costs consumers more than $17 billion a year, according to government estimates.

Section 325 repeals limits on debit card fees charged by banks with more than $10 billion in assets. The law requires the fee to be limited to the reasonable cost of the transaction. Even those who favor repeal of this regulation agree that this would allow the nation's largest banks to charge retailers and customers an additional $6 – $8 billion per year in card fees.

Title III Section 311 weakens the Consumer Financial Protection Bureau (CFPB) by establishing a board, a structure that is proven to slow policing response time. The CFPB has proven itself a welcome champion to consumers, and has returned more than $11 billion to consumers' pockets through its enforcement actions. The bill contains numerous other measures that would poison the ability of the CFPB to robustly protect consumers.

Increasing Systemic Risk

Bankers threatened the financial system because they sought bonuses through risky and even fraudulent activity. Title IX eliminates the Volcker Rule, which is the Dodd-Frank restriction on bankers gambling with taxpayer-backed (FDIC) deposits. It also eliminates Dodd-Frank's already tepid efforts to reform banker pay practices that incentivize risky behaviors. In fact, on two of the 513 pages of this bill, the CHOICE Act repeals no fewer 40 of Dodd-Frank's specific statutory sections that deal with reigning in systemic risk.

Title II *completely eliminates* the Dodd-Frank liquidation authority. Subtitle C replaces it with a procedure that would grant special privileges under the bankruptcy code to large financial institutions and their key directors. Dodd-Frank's OLA contains specific provisions to hold executives and directors accountable for actions connected to a company's failure. By contrast, the special privileges granted in the Financial CHOICE Act would completely immunize the directors of a failing financial company from personal liability for actions in connection with the bankruptcy.

By depriving the court of crucial elements of its supervision over a failing financial company, this section would also allow a large financial institution to avoid creditor claims that would apply to any normal company entering bankruptcy. It also appears likely that the rapid process laid out in Subtitle C could be inadequate to address financial instability resulting from the failure of a large financial firm, in that it provides no liquidity support and the firm might not be sufficiently restructured to remedy the issues that led to its failure. This would again leave regulators without necessary tools to address the failure of giant financial firms.

Title IV, Section 468 forces US regulators to defer to foreign counterparts with a US firm books a derivatives deal in that foreign country. Already, half of all swaps conducted by US banks are booked in foreign subsidiaries.

Regulatory hurdles

Title VI establishes new, unworkable rules that will hobble oversight and rulemaking. Subtitle A contains new analytic requirements a financial regulatory agency must complete before any rulemaking, any one of which could be material for a lawsuit by Wall Street interests seeking to block new rules. Then, Subtitle B requires an affirmative vote by both houses of Congress of any significant new financial regulation. Where Congress fails to act, which has unfortunately often been the norm in the last 6 years; there would be no new rules. Subtitle C overturns Supreme Court precedents whereby courts defer to experts in regulatory agencies when deciding anti-regulation lawsuits. Instead, courts would be required to judge "de novo" claims involving the justification for and technical details of the regulation, reversing the precedent of more than three decades under the *Chevron* doctrine. This means that in any lawsuit claiming that a regulatory action was unjustified, the judge would be encouraged to substitute his or her views for that of the regulatory agency.

Again, there are many other measures we believe are untenable in this legislation beyond those we flag here today.

Public Citizen has attempted to comment on many of the bills moving through this committee during the 114th Congress. We have opposed most, but have appreciated that they moved at a pace that allowed for at least some basic research and time for reaction. This measure is many orders of magnitude worse in content and quantity than other bad policy proposals we have encountered this Congress. We appreciate that this exercise is more symbol than sensible lawmaking. But we cannot imagine a reason why any responsible, thoughtful lawmaker-Democrat or Republican-would want constituents to know they favored a bill with so many controversial measures and so little time to consider them.

With questions, please contact Bartlett Naylor at bnaylor@citizen.org, or 202.580.5626

Sincerely,

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