Center for American Progress

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Statement for the Record
Markup of the House Financial Services Committee on H.R. 5983, "Financial CHOICE Act of 2016"

Chairman Jeb Hensarling
Ranking Member Maxine Waters
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

Six years after the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, its track record speaks for itself. In the wake of the Great Recession, in which five million Americans lost their homes to foreclosure and millions more lost trillions in wealth, financial reform has enabled the recovery and helped to rebuild trust in the financial system. We are deeply concerned that by rolling back significant portions of Dodd-Frank, passage of the proposed "Financial CHOICE Act" would significantly undermine the stability of our financial system, the consumer and investor protections critical to the public trust, and ultimately the health of our economy. In particular, we would like to highlight several areas where the CHOICE Act would likely increase risk, rather than reducing it. While not an exhaustive list of the 531-page bill's deficiencies, the following areas are of particular concern.

The CHOICE Act would undermine the government's ability to identify and deal with emerging threats in the financial system. It would end the FDIC's orderly liquidation authority to take failing firms into receivership, and repeal the ability of the Financial Stability Oversight Council to designate firms as systemically important. Among other provisions, it would exempt large financial institutions that meet certain capital requirements from limitations on mergers, leading to even greater market consolidation.[1] By repealing the Volcker Rule, it would encourage risk-taking by banks that could lead to further instability.[2] And by making all banking regulators' funding streams subject to annual appropriations—among other administrative technical changes such as cost-benefit requirements likely to increase gridlock—it would significantly weaken our nation's financial regulatory infrastructure and facilitate regulatory capture through special interest lobbying in Congress.

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[1] Marc Jarsulic, Ethan Gurwitz, Kate Bahn, Andy Green, "Revising Antitrust" (Washington: Center for American Progress, 2016), available at https://www.americanprogress.org/issues/economy/report/2016/06/29/140613/reviving-antitrust/.
[2] Travis Waldron, "The Volcker Rule Must Be Strengthened" (Washington: Center for American Progress, 2012), available at https://www.americanprogress.org/issues/regulation/news/2012/05/21/11632/the-volcker-rule-must-be-strengthened/.

The Act would also have dangerous implications for consumer and investor protection. The Consumer Financial Protection Bureau's track record of returning over $11 billion to 27 million consumers in just five years—and returning approximately five dollars to victims of financial wrongdoing for every dollar in its budget—speaks for itself.[3] Its unique mission is particularly significant given last week's $185 million enforcement action against Wells Fargo over the fraudulent, unauthorized opening of approximately two million customer accounts.[4] Without federal oversight, this practice, which cost consumers millions in fees as well as damaged credit reports, would likely not have been identified or corrected. This is particularly true in light of the arbitration clauses used by Wells Fargo and others that largely eliminate consumers' ability to obtain redress for consumer harm through the legal system.[5] Additionally, the Act would prevent the CFPB from banning abusive practices and in particular, from taking strong actions currently within its statutory authority on both payday lending and on indirect auto lending, two areas in which abuses have long gone unaddressed.[6]

Ultimately, the CHOICE Act appears to undermine consumer and investor protection across the board. The CHOICE Act would prohibit both the CFPB and the SEC from taking steps to limit the use of mandatory consumer arbitration, thereby weakening both public and private enforcement mechanisms in cases of wrongdoing. And it would undo the Department of Labor's conflict of interest rule, or "fiduciary rule," which is expected to return to savers and retirees $17 billion annually by requiring that all retirement financial advisers act in the best interest of their clients, rather than their own.[7]

The CHOICE Act also threatens the stability of our housing markets. By exempting banks from the Qualified Mortgage rule for any mortgages held in portfolio and rolling back protections for consumers of manufactured housing, the Act reopens the door to predatory mortgage lending. While Congress should take steps to address gaps in access to credit and support small banks, further regulatory rollbacks would be an unnecessary distraction from reaching this goal.[8]

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[3] Joe Valenti, "Many Happy Returns for Consumers: The CFPB at 5 Years" (Washington: Center for American Progress, 2016), available at https://www.americanprogress.org/issues/housing/news/2016/07/21/141664/many-happy-returns-for-consumers-the-cfpb-at-5-years/.

[4] Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau Fines Wells Fargo $100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts," Press release, September 8, 2016, available at http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/.

[5] Joe Valenti, "The Case Against Mandatory Consumer Arbitration Clauses" (Washington: Center for American Progress, 2016), available at https://www.americanprogress.org/issues/economy/report/2016/08/02/142095/the-case-against-mandatory-consumer-arbitration-clauses/.

[6] Joe Valenti, Sarah Edelman, and Julia Gordon, "Lending for Success" (Washington: Center for American Progress, 2015), available at https://www.americanprogress.org/issues/economy/report/2015/07/13/117020/lending-for-success/.

[7] Joe Valenti, "A Secure Retirement Demands Limiting Conflicts of Interest" (Washington: Center for American Progress, 2016), available at https://www.americanprogress.org/issues/economy/news/2016/04/06/134883/a-secure-retirement-demands-limiting-conflicts-of-interest/.

[8] Sarah Edelman, "Gutting Financial Regulations Won't Help Community Banks" (Washington: Center for American Progress, 2016), available at https://www.americanprogress.org/issues/housing/news/2016/01/27/129855/gutting-financial-regulations-wont-help-community-banks/.

Rather than fixing flaws in financial regulation, the CHOICE Act represents an irresponsible turning back of the clock to a pre-crisis regulatory environment that does little to ensure accountability and trust. Thank you for providing us with the opportunity to discuss this matter. Please do not hesitate to contact us if you have any questions or would like any additional information.

Sincerely,

Joe Valenti	Sarah Edelman	Andy Green
Director, Consumer Finance	Director, Housing Policy	Managing Director, Economic Policy
Center for American Progress	Center for American Progress	Center for American Progress