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April 15, 2024

Chair Patrick McHenry
Ranking Member Maxine Waters
Honorable Members of the Committee
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

Re: Bills Slated for Committee Vote on April 17, 2024

Dear Chair McHenry, Ranking Member Waters, and Members of the Committee,

On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comment on a suite of bills and Congressional Review Act (CRA) resolutions scheduled for committee consideration on April 17, 2024. We are pleased to support several measures, including the Systemic Risk Authority Transparency Act, and the Bank Safety Act. Fifty weeks ago, the nation revisited the unsettling landscape of financial uncertainty when three regional banks failed. Congress appropriately responded with hearings that highlighted a number of policies ripe for reform. Congress should repeal S. 2155 (Sec. 401), the Trump Administration-supported bill that eliminated enhanced supervision for banks as large as $250 billion in assets. Congress should pass strong banker pay reform as compensation plans led to the regional bank failures. Unfortunately, partisan division widened by industry political spending stifled needed concrete reform. The bills we support here are unassailable, if modest, reforms.

Meanwhile, the balance of the bills simply feathers the financial industry nest of corporations and the financial industry at the expense of consumers. We are especially concerned with HR 7428 whose title implies that it would protect consumers taking advantage of what's known as "earned wage access," but would, instead, leave Americans vulnerable to financial predators. We are also especially concerned with the mistitled HR 7440 regarding financial innovation. With the likes of Artificial Intelligence (AI) transforming the landscape of nearly every industry, this committee should be shaping needed guardrails, not raising the speed limits for corporations using AI. In addition, we strongly oppose each of the Congressional Review Act proposals that would reverse new rules to protect consumers, investors, and our financial system more broadly, from the material and growing financial risks of climate change.

Bills We Support

HR 4116, the Systemic Risk Authority Transparency Act
This bill requires the Comptroller General to report to Congress a post-mortem on bank failures. This report must include "any mismanagement" as well as "compensation practices" of the failed institutions, along with supervisory and regulatory shortcomings. Public Citizen believes that badly structured compensation can explain much mismanagement and misconduct. We support this bill.

HR 4206 the Bank Safety Act
This proposal would prevent large banks from masking losses through an accounting loophole technically known as "Accumulated Other Comprehensive Income." Silicon Valley Bank (SVB) minimized its losses in its portfolio of long-term Treasury bonds by using this loophole, claiming it would hold the bonds to maturity, and therefore, didn't deduct the market value loss from the bank's net income metric. SVB's use of the loophole allowed it to show an accounting profit, triggering executive bonuses. SVB also exploited the loophole to escape stricter capital safety rules. Public Citizen supports this measure to close this loophole. We also believe that Congress should go further than this by approving banker pay reform, which can address numerous manipulations that lead banks to failure, misconduct and consumer abuse.

HR 7437 the Fostering the Use of Tech. to Uphold Regulatory Effectiveness in Supervision Act
This legislation calls on federal financial regulators to assess the adequacy of their technology to oversee and respond to problems. We expect that agencies already conduct such internal reviews, many of which are reflected in their respective annual reports. This bill simply calls for an initial review within a half-year, and thereafter every five years. We ask that the SEC be added to those agencies that would report on their technological capabilities. We also believe Congress should highlight the risks of Artificial Intelligence, risks that this bill's language subordinates. We otherwise support this bill.

Bills We Oppose

HR 7440 the Financial Services Innovation Act
This measure would create a new office in each federal financial regulatory agency dedicated to promoting what the bill vaguely calls "innovation," otherwise known as a new product. In reality, "innovation" in financial services often means a novel way to separate a customer from his or her hard-earned income. If financial services innovations truly improved the economy, this sector would become more efficient and absorb less of an individual American's expenses. Instead, the opposite has been true. AI, for example, looms as a major transformation with both promise and peril. Customer service call centers relying on newly developed large language models may "hallucinate," rendering false and misleading information. Smaller banks reliant on third party computer services may find themselves herding into collectively destructive decisions. This bill presumes that new developments only present benefits and may shield damaging products from existing consumer protection laws. We strongly oppose this bill.

HR 7428 Earned Wage Access Consumer Protection Act
This bill effectively enables financial technology companies to evade the Truth in Lending Act restrictions on fees and other costs associated with payday loans. EWA products are credit and should be subject to the Truth in Lending Act and applicable credit laws. Additionally, EWA products should in no circumstance be preempted from state and credit lending laws such as state rate caps through this legislation. Among other problems, this bill would prevent employees from comparing an earned wage credit advance from other options. Earned wage advances exploit those who do not earn a living wage. Employers enter contracts with payday lenders, and both extract fees and interest from the underpaid worker before the paycheck period. This perpetuates a cycle of debt and simply empowers predatory lenders to prey on vulnerable communities. Workers should not pay to be paid. We oppose this bill.

HR 5535, the Insurance Data Protection Act
This legislation would strip the Federal Insurance Office of important investigation tools such as subpoena power. Approved as part of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, this office helps fill a void in the gaps caused by the nature of insurance company regulation, which is otherwise left to the states. Insurance giant AIG was the largest failure during the 2008 financial crash, a collapse that exposed the frayed patchwork of industry regulation. We oppose this bill.

HR 802 the Respect State Housing Laws Act
This bill adds to the insult of woefully weak proposals on needed housing reform by eliminating a provision that requires a 30-day notice period before a landlord may begin eviction proceedings against a tenant in federally assisted or federally backed housing. Eviction traumatizes struggling Americans. Dwindling to non-existing affordable housing options make it especially difficult for individuals and families to find suitable alternative housing, making them vulnerable to homelessness. Many residents suffer economic problems beyond their control, including emergency medical issues that argue in favor of at least 30-day notice before eviction. We strongly oppose this bill.

CRA Resolutions We Oppose

H.J. Res. 122, CRA Resolution to Rescind CFPB's Credit card Late Fee Rule
In March 2024, the Consumer Financial Protection Bureau (CFPB) issued a rulemaking banning excessive credit card late fees, lowering the typical fee from $32 to eight dollars. This rule is expected to curb fees that cost American families more than $14 billion per year and save them more than $10 billion in late fees per annum. The average savings per year are expected to be $220 per year for more than 45 million people charged late fees. Public Citizen strongly opposes congressional disapproval of this rule as doing so would only protect credit card issuers' interests and not the interest of Americans. Further, congressional disapproval of this rule would invalidate a rule designed by the CFPB to protect American consumers, a central tenant of the CFPB's stated mission.

CRA Resolution to Rescind for SEC Climate-related Financial Risk Disclosure Rule
The SEC promulgated The Enhancement and Standardization of Climate-Related Disclosures for Investors rule on March 6, 2024, after nearly two years of deliberation. The final rule reflects a careful analysis of over 24,000 public comments, the most in the Agency's 90-year history. Due to industry opposition to several key investor protections, including corporate disclosure of Scope 3 emissions, the final rule was significantly weakened and now reflects a middle ground, reflecting true compromise between competing interests. While the SEC has stayed the rule pending existing judicial proceedings, Public Citizen strongly opposes further delay in rule implementation, and this CRA attempt to rescind it in particular. The SEC's core mission is to protect investors and preserve orderly markets. It has obligated companies to disclose material risks to investors for decades. There is nothing new or special about applying these same disclosure obligations to the emergent, material, and growing financial risks related to climate change. To the contrary, ignoring these important risks would be a gross dereliction of the SEC's duties to protect investors, promote fair, orderly, and transparent markets, and facilitate capital formation. We urge the committee to reject this resolution.

Three Resolutions Invoking the CRA for Inter-Agency Climate Related Supervisory Guidance:

In 2023, the Board of Governors of the Federal Reserve System (Fed), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) issued interagency principles for climate-related financial risk management, which represented an important step to provide climate-related supervisory guidance to major financial institutions. Climate change poses significant risks to the safety and soundness of financial institutions, the financial system, and communities. These Principles include measures that will help maintain the safety and soundness of large banks and financial stability, while ensuring that the U.S. remains competitive globally as capital shifts from is reallocated away from fossil-related assets to renewable energy. The three resolutions in question are: H.J.Res. 125, CRA for Federal Reserve Climate Principles (Fitzgerald); H.J.Res. 126, CRA for FDIC Climate principles (Houchin); H.J.Res. 124, CRA for OCC climate principles (Donalds). We urge the committee to reject these resolutions.

H.J.Res.120, CRA resolution to rescind FSOC's nonbank SIFI designation procedures (Hill)

FSOC's Guidance and Framework are critically important to avoiding financial instability. By establishing a clear process for designating Nonbank Financial Companies for Fed Supervision, and by enhancing the public's and financial institutions' understanding of how FSOC will identify, assess, and address systemic risks. More generally, FSOC's Guidance and Framework are critically important to avoiding financial instability.

Climate-related financial risk increasingly threatens Threats by these institutions to financial stability are growing, particularly in light of growing climate change-related financial risks. Nonbank financial institutions are, for example, already facing heightened stress from large and repeated climate-related shocks—as evidenced by several major insurers' recent decisions to withdraw coverage from California and numerous other areas elsewhere. The next financial crisis could easily stem from the failure of a large insurer or the withdrawal of large insurers from important markets and geographies. Moreover, large insurers, publicly listed asset managers, private equity firms and private debt entities are also creating significant risks to the financial system through their insured or financed emissions.

Large or significant nonbank financial institutions are closely connected to other financial entities throughout the United States and globally. Yet the current regulation of these entities is inadequate to maintain their safety and soundness, is not always transparent, and in some cases is virtually nonexistent. Additionally, many nonbanks engage in activities in a non-transparent manner, further contributing to financial stability risk. We urge the committee to reject this resolution.

For questions, please contact Bartlett Naylor at bnaylor@citizen.org.

Sincerely,

Public Citizen