U.S. PIRG
Standing Up
To Powerful Interests

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Dear Senator,

On behalf of U.S. PIRG and its member non-partisan state Public Interest Research Groups, we are writing to urge you to oppose S2155, the so-called "Economic Growth, Regulatory Relief, and Consumer Protection Act." We appreciate the committee's serious effort to attempt to craft a narrow bill but cannot support S2155.

First, we are disappointed that the bill claims to be a consumer protection bill. Its housing and mortgage provisions are largely harmful to consumers. Its other supposedly countervailing but small consumer provisions, even if improved by amendments, do not in any way make the rest of the bill acceptable as a consumer protection bill.

Second, the regulatory relief it does provide poses risks to the economic growth it purports to obtain. The relief it promises to small community banks is premised first on the notion that small banks are suffering due to the Dodd-Frank Act. In fact, the consolidation in the industry, though widely blamed on Dodd-Frank, was not caused by the act. According to Federal Reserve economists, bank consolidation has been occurring at a steady pace since at least 1984.[1]

Third, the relief it provides to massive regional banks takes away important tools, some long-standing and some granted prudential regulators by Dodd-Frank after the 2008 collapse. Members should recall that other – now failed – similarly-sized super-regional banks proved to be active participants in the events leading to the 2008 collapse.

Further, as the PIRG-backed Americans for Financial Reform has detailed, there is no evidence that overregulation of the banking sector is having a negative impact on economic growth.[2] As AFR has further explained, lending and bank profits, including by community banks, are both up since passage of Dodd-Frank.[3]

Commendably, the bill is not the bludgeon to Dodd-Frank and consumer protection that passage of the House's Financial Choice Act, HR10, would be. Some of its provisions include efforts at maintaining some regulatory balance, but it does reduce the ability of regulators to conduct their prudential oversight mission.

[1] For a discussion of historic bank consolidation trends derived from the St. Louis Fed's FRED commercial bank database, see my 2 May 2017 commentary, available at https://uspirg.org/blogs/eds-blog/usp/banks-cook-books-promote-wrong-choice-act-attack-cfpb
[2] http://ourfinancialsecurity.org/wp-content/uploads/2017/06/The-Trump-Treasury-And-The-Big-Bank-Agenda.pdf
[3] http://ourfinancialsecurity.org/wp-content/uploads/2017/03/AFR-Statement-on-2016-Bank-Earnings-Data.pdf

Among our bigger concerns with S2155 are these:

- The bill would significantly weaken mortgage protections for numerous consumers, especially those buying manufactured homes and those who are customers of smaller or rural banks. It includes provisions that could accelerate appraisal fraud, reduce escrow protections and even allow expensive bait-and-switch schemes at mortgage closings.
- The bill would also create harmful exceptions to the Home Mortgage Disclosure Act or HMDA, an important law which helps prevents racial discrimination.
- As Americans for Financial Reform notes in a much more detailed letter, which we associate ourselves with, the bill would increase the fragility of the financial system by weakening risk controls at some 25 super-regional banks – with between $50 to $250 billion in assets -- many of which collectively received tens of billions in TARP bailout funds. Recall that many banks in this size range failed in the run-up to the financial collapse, some spectacularly, after wreaking a massive impact on the economy. Those failed super-regional banks which contributed greatly to the 2007-2008 debacle included IndyMac, Wachovia, Washington Mutual and Countrywide.
- Again, while the bill does attempt to ameliorate its removal of prudential oversight protections by including a highly unlikely fallback position for the regulators to affirmatively act, we see the risks that this won't work as greater than the odds it will.
- We are also concerned with the bill's dilution of the Volcker Rule, its easing of rules on brokered deposits, and other provisions covered in greater detail by AFR.

The bill attempts to balance these giant and risky giveaways to banks both large and small against a few small, consumer gains that should be enacted on their own, as consensus provisions under unanimous consent.

My organization and others have long highlighted the idea of the credit freeze—indeed, U.S. PIRG actively promoted it to the states years ago as a way to stop new account identity theft.[4] Fifteen years ago, the freeze itself was a novel protection. Now, the idea of a free freeze at any time should be a consensus protection.

Making the freeze free everywhere at any time is a way to return some control of their personal information to consumers. Companies view us as products, not customers. Ideally, consumer credit reports should, by default, also be frozen until if and when the consumer applies for credit and authorizes use of her credit report. The bill, S2155, instead, merely provides one free freeze and lift annually and a few other modest credit freeze provisions.

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[4] U.S. PIRG and Consumers Union, "The Clean Credit and Identity Theft Protection Act: Model State Laws - A Project of the State Public Interest Research Groups and Consumers Union of U.S., Inc." Version of November 2005, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=846505 Also, see testimony of Mike Litt, U.S. PIRG on credit freezes before the House Financial Services Committee's "Continuation of the Equifax Hearing," 25 October 2017, available at https://financialservices.house.gov/uploadedfiles/hhrg-115-ba00-wstate-mlitt-20171025.pdf

The bill would also amend the Fair Credit Reporting Act to provide that a veteran's medical debt may not be reported to credit bureaus for a year, and that a fully paid veteran's medical debt that has been charged off must be removed from a credit report.

Yet, thanks to a bi-partisan 31-state Attorneys General settlement with the Big 3 credit bureaus, all consumers already have many of the protections against medical debt mistakes and abuses that the bill offers veterans, although the bill would extend some of them a mere 6 months further for veterans.[5]

The bill would also indemnify banks for taking steps to limit access to an older American's account to prevent financial exploitation. They should be doing that anyway. It would also extend permanently some tenant protections that recently sunset but since then have largely already become industry practice or been embedded into state or local law. So, again, S2155's consumer provisions are bare minimums.

Inclusion of these four modest, incremental consumer protections – even if the provisions were vastly strengthened – provides no justification for calling S2155 a consumer protection bill. We are also concerned that the bill could be amended to provide its limited credit reporting and credit freeze protections of Sections 301 and 302 in return for the unacceptable price of preempting the states from ever perfecting the provisions or any other privacy protections.

In sum, the bill includes myriad large-scale anti-consumer provisions disguised as regulatory relief. It removes numerous prudential safeguards at the behest of powerful industry lobbies. It purports to offset this weakening of current law with a set of extremely modest Title 3 consumer protections that do not offset the balance of the bill's rollbacks. The bill should be opposed. We would be happy to provide a witness for hearings, should the bill be delayed for regular order consideration.

Please have your staff contact me at 202-461-3821 (direct) or edm [AT] pirg.org with questions. Thank you for your consideration of our views.

Sincerely yours,

Edmund Mierzwinski

Edmund Mierzwinski
Consumer Program Director

[5] https://www.nclc.org/media-center/tens-of-millions-consumers-benefit-from-new-rules.html