AMERICANS FOR FINANCIAL REFORM
ACCOUNTABILITY ★ FAIRNESS ★ SECURITY

Americans for Financial Reform
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Dear Senator,

On behalf of Americans for Financial Reform (AFR), we are writing to express our opposition to Senator Shelby's draft legislation, "The Financial Regulatory Improvement Act of 2015".[1]

Chairman Shelby's 218-page bill is a major rollback of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. It goes far beyond what might be reasonable regulatory relief for small community banks. Instead, it provides regulatory exemptions for some of the largest financial institutions in the country. This includes exemptions from key systemic risk protections that are directly responsive to problems revealed during the financial crisis of 2008, such as abusive and exploitative mortgage lending, poor risk management at large multi-hundred billion dollar banks, and lack of regulatory oversight for large non-bank financial institutions.

Senator Shelby's bill also includes numerous additional provisions that would be harmful to consumers and the public. Below, we detail major areas of concern with the Shelby bill.

<u>Senator Shelby's Proposal Rolls Back Central Dodd-Frank Systemic Risk Protections</u>

Senator Shelby's bill would roll back key systemic risk and consumer protections in the following areas:

Protections against abusive mortgage lending: To address the toxic mortgage lending that played such a central role in the crisis, the Dodd-Frank Act established 'ability to pay' requirements designed to ensure proper underwriting for mortgage loans and to eliminate exploitative lending involving excessive fees and sharp increases in future payments that would make the loan unaffordable to the borrower. These new rules are a response to the financial crisis experience, which demonstrated that numerous lenders – including banks like Washington Mutual that held many mortgage loans on portfolio – did not observe basic rules of common-sense underwriting and ethical treatment of borrowers.

Section 106 of the Shelby legislation would exempt a very broad range of mortgage loans from these new ability to pay protections. This exemption includes not just loans that are held by community banks, but loans originated by the nation's largest banks, as well as loans which are not held in the portfolio of the originating bank but instead sold on to another party. It is true that

[1] Americans for Financial Reform is a coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of AFR member groups is available at http://ourfinancialsecurity.org/about/our-coalition/

the exemption would not apply to interest-only or negatively amortizing mortgages. But few other consumer protections or underwriting standards would remain. For example, loans would qualify for this exemption even where they have not been assessed for affordability, or where they include abusive fees or a balloon payment.

Controls on risks at some of the nation's largest banks: Title II of the Shelby bill would require regulators to roll back prudential risk protections at 28 of the nation's largest 34 banks. The protections affected would include all the risk controls established under the authority of Title I of the Dodd-Frank Act, including basic financial stability protections such as stress tests and resolution plans. The set of banks affected would include banks holding up to $500 billion in assets. These are banks comparable to or greater in size to banks like Countrywide or Washington Mutual, whose poor lending practices and subsequent failure played a central role in the financial crisis. It also includes two banks, State Street and Bank of New York Mellon, which have been designated by international regulators as global systemically important institutions.

If regulators wished to restore these risk protections, they would have two alternatives. Under the procedures laid out in the Shelby bill, they could engage in a cumbersome and likely multi-year 'designation' process. This process, laid out in Section 201 of the Shelby proposal, is novel and has never before been imposed on bank regulators seeking to regulate banks or bank holding companies. It would require the approval of at least two-thirds of the ten members of the Financial Stability Oversight Council, as well as extensive written justifications, hearings, and legal challenges. As an alternative to this lengthy and cumbersome process, bank regulators could attempt to use legal authorities that predate the Dodd-Frank Act to reestablish the risk controls mandated in Title I of Dodd-Frank. However, these pre Dodd-Frank 'safety and soundness' authorities are not as broad as the financial stability authority granted in Dodd-Frank. Further, rules passed under these authorities may come under legal challenge given the explicit mandate in the Shelby proposal to roll back risk controls at large regional banks. Such rulemaking would in any case take a substantial period of time to re-propose and complete.

Controls on risks at the nation's largest non-bank financial institutions: Regulatory failures at large non-bank financial entities played a major role in the 2008 financial crisis. Examples include AIG, an insurance company, and investment banks such as Bear Stearns and Goldman Sachs that were not at that time bank holding companies. For this reason, the Dodd-Frank Act created a process by which large non-bank financial institutions could be designated for increased regulatory oversight. As established in the Dodd-Frank Act, this process requires a two-thirds vote by the Financial Stability Oversight Council (FSOC), as well as a lengthy study process with multiple opportunities for hearings and appeals. For example, in designating Metlife, an insurance company, the Commission and member agencies held twelve meetings with the company over the course of a year to discuss designation issues and reviewed 21,000 pages of documents submitted by the company.[2] The company also received a hearing to challenge the FSOC's proposed designation and has since used the Dodd-Frank procedure to challenge the designation in court. In the five years since the passage of the Dodd-Frank Act, the FSOC has designated only four non-bank financial companies for supervision, meaning that each such designation has taken over a year.

Title III of the Shelby proposal would greatly expand the already extensive procedural requirements required before designating a non-bank financial company. These additional procedures would mean that it would take the FSOC at least two to three years, and likely even longer, to designate a large non-bank financial company for additional oversight. The only alternative to the lengthy and time-consuming additional procedures added by the Shelby bill would be making use of the FSOC's emergency designation powers – a drastic step that would likely *reduce* procedural safeguards for designated companies.

Other Major Areas of Concern With Senator Shelby's Proposal

These issues outlined above are hardly the only elements of Senator Shelby's bill that negatively impact oversight of financial risk and consumer protection. Numerous other provisions in its 218 pages would be extremely harmful as well. These include:

- Section 125 of the Shelby proposal subjects Dodd-Frank implementing regulations, which have just passed through a multi-year process of notice and comment and in most cases have not even gone into effect, to further extensive review under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPA). The EGRPA process is designed as a retrospective review of experience with regulations that have been in effect for years. Since Dodd-Frank regulations are new and in most cases have not even been fully implemented, the EGRPA process for Dodd-Frank regulations would simply be another opportunity to delay their effect and seek to change them. This would weaken regulatory oversight and increase uncertainty for businesses and consumers alike.

- Section 108 of the legislation would also roll back basic consumer protections for purchasers of manufactured housing. These protections currently limit the ability of lenders to steer borrowers into higher-risk, higher-fee loans. Should this legislation pass, borrowers purchasing manufactured homes could experience interest rates as high as 14 percent, as well as fees totaling from 5 percent to as much as 15 percent of the loan value, without triggering basic consumer protections designed to stop exploitation by lenders. This would facilitate the kinds of lending abuses recently uncovered in a Seattle Times investigation of the nation's largest seller of manufactured housing.[3]

- Section 115 of the legislation would completely exempt banks with under $10 billion in assets from the provisions of the Volcker Rule banning hedge-fund type proprietary

[2] Financial Stability Oversight Council, "Basis For the Financial Stability Oversight Council's Final Determination Regarding Metlife, Inc.", December 18, 2014.
[3] Mike Baker and Daniel Wagner, "The Mobile Home Trap: How a Warren Buffet Empire Preys on the Poor", Seattle Times/The Center for Public Integrity, April 7, 2015.

trading. Such banks are already exempted from almost all compliance burdens under the rule, but a complete exemption would open the door for such banks to be used by larger financial entities as vehicles for insured deposits to be used in proprietary trading.

- Section 111 of the legislation would delay the availability of new data on home mortgage lending which is crucial for understanding barriers to credit access, particularly among low income and minority populations. The justification for this delay is the publication of a report on privacy issues created by data availability. However, the CFPB is already carefully considering how to protect borrowers' privacy in making new data public, and has a very good record in this area. Privacy is an area of concern for AFR and its members, but we note that a tremendous amount of detailed information about mortgage borrowers is already available for purchase by financial industry firms and others. The availability of this data is a greater locus of our concern.

- Section 104 of the legislation would create a new 'examination ombudsman', outside of the various bank regulatory agencies, which could potentially be used by regulated banks to challenge examination findings and delay application of regulatory safeguards found during bank supervision. Note that access to the examination ombudsman is not limited to community banks, but would be available to banks of any size.

Examples of other provisions in the Shelby bill that raise serious issues include an expansion in the definition of 'rural' lenders that would permit an inappropriately broad number of banks to qualify for exemptions to safe mortgage lending standards (Section 103), a provision weakening accountability for fraud in the appraisal of housing values (Section 112), and unworkable bureaucratic reporting requirements that would make it almost impossible for U.S. regulators to engage in international standards-setting negotiations regarding the regulation of global insurance companies (Section 403). This list of potential issues is not exhaustive.

In sum, the Shelby proposal would significantly undermine rules critical to safeguarding the stability of our financial system and protecting consumers. We strongly urge you to oppose this legislation.

Thank you for the opportunity to express our views on this legislation. Should you have additional questions on this issue, please contact Marcus Stanley, AFR's Policy Director, at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,
Americans for Financial Reform