The Honorable Patrick McHenry
Chair
House Committee on Financial Services
2129 Rayburn
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
HOB 4340 O'Neill HOB
Washington, DC 20515

May 16, 2024

Dear Chair McHenry and Ranking Member Waters:

The below signed organizations are writing to express our strong opposition to the set of deregulatory Financial Institution measures in H.R. 8337, "the Bank Resilience and Regulatory Improvement Act" and H.R. 758, "the Promoting Access to Capital in Underbanked Communities Act."

These bills would, based on the text and summaries we have seen thus far, interfere with the banking agencies' critical prudential and consumer protection supervision and regulatory processes. Several changes, if enacted, would give some banking organizations additional leeway to *increase* their risk profiles and maintain *lower* capital cushions, while not addressing root causes of the issues they purportedly seek to address. Many midsize banking organizations would escape the Consumer Financial Protection Bureau's oversight and Mortgage Ability-to-repay, Volcker Rule, Durbin Amendment, and other requirements as a result. Other changes would create new limitations and obstruct the agencies' oversight of capital planning, especially as pertains to market risk, just as the banking agencies are seeking to raise capital standards for the megabanks' riskiest capital markets and trading activities in order to increase the safety and soundness of the banking system.

We urge you and all members to vote to oppose H.R. 8337, the "Bank Resilience and Regulatory Improvement Act." The titles herein embody key aspects of previous bills that remain problematic in H.R. 8337. These would raise the dollar thresholds and caps for Dodd Frank mandated regulatory requirements without a robust rationale for the policy change. Banks with similar concentrations are already vulnerable to a bank run and to transmitting panic to other banks, especially those with an over reliance on uninsured deposits and high commercial real estate (CRE) or similarly opaque asset concentrations.

- **Title I H.R. 6398, the "Financial Institutions Regulatory Tailoring Enhancement Act" (Barr)**.

The Dodd-Frank Act established dollar thresholds for certain regulatory requirements in recognition of their limited relevance to firms under a certain total assets threshold. This title would require uniform increases in the threshold for multiple public protections, raising from $10 billion to $50 billion the threshold for exemption from CFPB supervision, Qualified Mortgage ability-to-repay requirements, the Volcker Rule's prohibition on proprietary trading, and the Durbin Amendment's debit interchange fee caps. The CFPB provision alone would remove close to 100 banking organizations from CFPB oversight at a time when the agency's critical role protecting consumers has never been more necessary and yet is under broad attack. Further, some of these banks such as Pacific Western Bank have been under financial distress recently. The bill would expand the Community Bank Leverage Ratio (CBLR) to allow banks with up to $50 billion (versus $10 billion currently) to be exempt from other risk-based and leverage ratio requirements if they meet the CBLR, currently set at 9%.

Safety and soundness and consumer protection oversight will suffer substantially from these changes. The banking agencies have acknowledged that clusters of midsize banks with similar concentrations are vulnerable to contagion. This may include some firms' over reliance on uninsured deposits on the liability side, and vulnerable or opaque loans or securities concentrations on the asset side of the balance sheet. This also includes weakened CRE portfolios and rising loan exposures to non bank financial institutions.

- **Title II [H.R. 7403, the "Bank Failure Prevention Act" (Barr/Fitzgerald)].**

The bank merger review process is supposed to protect Americans against the dangers of bank consolidation and bank mergers that are not in the interest of customers or for which managerial resources are lacking. President Biden has called for stepped up attention to mergers in order to prevent dangerous concentration, but this title would instead modify the bank merger review process to *limit* the Board's ability to consider feedback from affected stakeholders. It would force regulators to either approve or deny a merger application within 90 days of receiving an initial application. We oppose the bill as it would dangerously require the agencies to decide on merger applications even when the application is not complete and/or the merging parties have not provided all the information regulators request to adequately assess the merger application. Regulators have a consistent pattern of waving mergers through without sufficient scrutiny - creating an increasingly consolidated market that makes banking more expensive for consumers and increases systemic risk. Merger scrutiny needs to become more robust, not less so, as this bill would require.

- **Title III Stress Capital Buffer Requirements (Barr).**

Robust scenario design is an important component of banks' capital planning that should incorporate appropriately severe stress losses for the products and risks most relevant to the bank organizations' portfolios and external conditions. This bill would require the Board of Governors (the Board) to issue rules relating to stress capital buffer requirements *each time* it introduces a new scenario. This would be highly redundant and would *impede* the Board's capital planning oversight, including its ability to design sufficiently severe scenarios, incorporate relevant risks into stress scenarios on a timely basis, and command appropriate responses. Effective stress testing, including flexible scenario design, enables the supervisors and firms to identify anticipated sources of stress loss and adapt scenarios accordingly as risk factors change. Impeding that process - as this bill would do - reduces firms' preparedness and potentially compromises their ability to survive severe financial stress.

- **Title IV Bank Supervision Appeals Improvement.**

The Fed relies on its discretionary authority and stature to communicate effectively with supervised firms about their weaknesses and to require the firms' attention to fix these issues, in some cases immediately. The bill ostensibly seeks to improve the timeliness of examination reports and other guidance. However, the requirement for panels to oversee appeals and other features would slow the supervisory process down. Similar bills in the past, for example [H.R. 1515 (115th Cong.)], would have allowed a bank of any size, including Silicon Valley Bank, to appeal and delay addressing adverse supervisory citations. These and other tactics usurp supervisors' discretionary authority and have contributed to an erosion of their ability to do their jobs effectively, making examiners reluctant to raise safety and soundness issues if the practices are not illegal.[1] This was identified as a factor contributing to the failure of Silicon Valley Bank in 2023.[2]

- **Title VI H.R. 4346, the "Small Bank Holding Company Relief Act" (Mooney)**.

This title would raise the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement threshold from $3 billion to $10 billion in total assets. The holding companies for banks covered by this policy statement would be able to take on more debt than they otherwise would be allowed to, subject to other limitations, in order to facilitate a merger. By exempting those holding companies from certain leverage and capital requirements, the bill would incentivize increased leverage, reduce some banks' safety and soundness, and increase the trend of over consolidation of the industry.

We urge you and all members to vote to oppose H.R. 758, which would increase risk profiles of de novo banks while not addressing the root causes of slower new bank creation.

H.R. 758, the "Promoting Access to Capital in Underbanked Communities Act" of 2023 (Barr)

The Promoting Access to Capital in Underbanked Communities Act is described as seeking to increase the number of de novo bank charters by reducing capital and other regulatory hurdles, especially during their first three years, with additional capital reductions for *rural* de novo community banks. It would limit regulatory review of revised business plans for *de novo* banks to 30 days (otherwise they would be automatically approved) and eliminate a cap on agricultural loans.[3] This approach raises significant safety and soundness concerns because it encourages new banks to hold less capital than applicable to existing banks with comparable risks and to accrue greater asset concentrations. Additionally, by limiting reviews of business plans to 30 days, it would compromise the ability of the public to provide feedback on the applicant's proposed community reinvestment activities.

This approach encourages higher risk profiles and lower capital cushions despite many *de novos* failing in their first few years. Substantial evidence suggests that the number of new banks is correlated with broader economic indicators rather than regulatory hurdles. A Board study also showed that the number of new entrants closely correlates to the Fed Funds rate and interest rates in general.[4] More telling than any of these statistics is that a 2016 FDIC study concluded that most de novo banks do not fail during

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[1] Board of Governors of the Federal Reserve System. "Interagency Statement Clarifying the Role of Supervisory Guidance," SR letter 18-5/CA letter 18-7 (September 11, 2018). Because the SR letter was codified in the 2021 final rule on guidance, the SR letter was made inactive.

[2] Board of Governors of the Federal Reserve System. "Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank." April 28, 2023.

[3] Applies to agricultural loans made by thrift banks following the savings & loan crisis.

[4] Adams, Robert and J. Gramlich. "Where Are All The New Banks? The Role of Regulatory Burden in New Charter Creation". Federal Reserve Board. 16 December 2014. Pg 3.

their early years when they are required to have high capital cushions relative to established banks but instead fail when their capital requirements are similar to that of other banks.[5]

We urge members of Congress to oppose these bills to prevent measures that in various ways decrease accountability for banks, decrease regulators ability to protect the public and increase risk.

Sincerely,

Americans for Financial Reform
Center for Responsible Lending
Consumer Federation of America
Institute for Agriculture and Trade Policy
National Consumer Law Center (on behalf of its low-income clients)
New Economy Project
Public Citizen
Rise Economy
20/20 Vision

[5] FDIC Center for Financial Research. Yan Lee, Chiwon Yom. "The Entry, Performance, and Risk Profile of De Novo Banks." April 2016.