

COMMUNITY FINANCIAL INSTITUTION EXEMPTION ACT

—————
AUGUST 3, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
—————

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1264]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1264) to provide an exemption from rules and regulations of the Bureau of Consumer Financial protection for community financial institutions, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Community Financial Institution Exemption Act”.

SEC. 2. EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.

Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended—

(1) in paragraph (3), by amending the heading to read as follows: “GENERAL EXEMPTIONS”;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

“(4) SPECIFIC EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—

“(A) IN GENERAL.—An insured depository institution or credit union with less than \$50,000,000,000 in consolidated assets shall be exempt from all rules and regulations issued by the Bureau.

“(B) EXCEPTION.—The Bureau may revoke an exemption provided under subparagraph (A) with respect to a specific rule or regulation and a specific class of insured depository institutions or credit unions described in subparagraph (A) if—

“(i) the Bureau makes a detailed, written finding that such class of insured depository institutions or credit unions described in subparagraph (A) has engaged in a pattern or practice of activities that have been detrimental to the interests of consumers and are of a type that the specific rule or regulation is intended to address;

“(ii) the Bureau consults with the Federal banking agencies with respect to such revocation; and

“(iii) each Federal banking agency provides the Bureau with a written notice stating that the Federal banking agency agrees with such revocation.

“(C) EFFECTIVE DATE; EFFECT ON PRIOR RULES.—

“(i) EFFECTIVE DATE.—This paragraph shall take effect with respect to rules and regulations issued or modified after the date of enactment of this paragraph.

“(ii) EFFECT ON PRIOR RULES.—This paragraph shall not prohibit the Bureau from modifying a rule or regulation issued prior to the date of enactment of this paragraph with respect to insured depository institutions or credit unions described in subparagraph (A) if the effect of such modification is to expand a current exemption or to reduce the costs and the regulatory burden associated with complying with such rule or regulation.

“(D) FEDERAL BANKING AGENCY DEFINED.—For purposes of this paragraph, the term ‘Federal banking agency’ means the Board of Governors, the Office of the Comptroller of the Currency, the Corporation, and the National Credit Union Administration.”.

Amend the title so as to read:

A bill to provide an exemption from rules and regulations of the Bureau of Consumer Financial Protection for certain financial institutions, and for other purposes.

PURPOSE AND SUMMARY

Introduced by Representative Roger Williams on February 28, 2017, H.R. 1264, the “Community Financial Institution Exemption Act”, amends the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 [P.L. 111–203] to exempt insured depository institutions or credit unions with less than \$50 billion in consolidated assets from all rules and regulations issued by the Bureau of Consumer Financial Protection (BCFP). Under specified circumstances, and with the written agreement of the Board of Governors of the Federal Reserve System (Federal Reserve) and other specified federal banking agencies, the BCFP may revoke such an exemption with respect to a certain rule, regulation, or class of institutions.

BACKGROUND AND NEED FOR LEGISLATION

Title X of the Dodd-Frank Act established the BCFP with a dual mandate to enforce federal consumer financial law and ensure that consumers have access to financial products and services, and warranting fair, transparent, and competitive markets for such services and products. Under the Dodd-Frank Act, the Bureau can issue rules, examine certain institutions, and enforce consumer protection laws and regulations. Under the same authority, the BCFP can also exempt, conditionally or unconditionally, covered persons from its rules and regulations.

Although Dodd-Frank’s reforms are purportedly directed primarily at large, complex U.S. financial institutions, the Act’s breadth, coupled with the regulatory response from 2010 through 2016, captured smaller community financial institutions as well. These smaller institutions regularly express concerns to the Bu-

reau and to Congress about the growing weight and complexity of regulation, and never-ending compliance costs, which affects their ability to provide the products and services necessary to allow small businesses to grow and consumers to access credit to realize their financial and personal goals.

The regulatory burden falls into three major categories: (1) additional operational, legal and auditing costs associated with compliance; (2) restrictions on fees, interest rates, or other revenue; and (3) unintentional barriers to offer a product or service because of regulatory complexity.

Dodd-Frank's complex and expansive regulatory regime has had a "trickle-down effect, where regulation originally meant for big institutions is being applied to smaller banks," often in the form of bank examiners identifying those regulations as "best practices" that should be followed by institutions regardless of their size. Smaller institutions are disproportionately affected by increased regulation because they are less able to absorb additional costs.

The explosive growth of bank regulation following the enactment of Dodd-Frank has made it significantly harder for smaller banks and credit unions to serve their customers. Community financial institutions find that their compliance costs have gone up as they attempt to keep up with new regulations and more intrusive examinations. New regulations and higher compliance costs have forced small banks and credit unions to cut back on the services they offer to their customers. As a result, many consumers have found that their local banks can no longer provide them with the products and services that they need and want.

Regulators have acknowledged the validity of these concerns. For example, in an October 4, 2017, speech, Federal Reserve Chairwoman Janet Yellen stated:

The Fed has been working hard to ensure that its regulation and supervision of banks are tailored appropriately to the size, complexity and role different institutions play in the financial system . . . [f]or community banks, which by and large avoided the risky business practices that contributed to the financial crisis, we have been focused on making sure that much-needed improvements to regulation and supervision since the crisis are appropriate and not unduly burdensome[.]¹

These findings are buttressed by a 2014 working paper by the Mercatus Center at George Mason University which surveyed "approximately 200 banks across 41 states with less than \$10 billion in assets each, serving mostly rural and small metropolitan markets."² The authors found that "Dodd-Frank has proved burdensome to small banks, and customers are seeing the effects of the increased regulatory burden through reduced product and service offerings as small banks rethink their lines of business and consider consolidation activity." As a result, "[t]hese customers . . . may shift their patronage to larger banks that enjoy competitive advantages in managing regulatory costs but are not as conveniently located, do not provide the same level of customer service, or do not offer a regionally tailored product mix. Large banks may

¹ <https://www.federalreserve.gov/newsevents/speech/yellen20171004a.htm>.

² <https://www.mercatus.org/publication/how-are-small-banks-faring-under-dodd-frank>.

also not be as willing to serve the customers, such as small businesses and rural populations, which small banks typically serve.”

The Mercatus study also explained how the Dodd-Frank Act’s “one-size-fits-all” regulatory approach harms small banks and their customers:

“Regulations—such as many of those emerging from Dodd-Frank—that encourage or insist on standardization of bank products and services can be particularly harmful to small banks and their customers. Large banks find it profitable to offer standardized products. Small banks tend to serve idiosyncratic markets, and they succeed by molding their business models to the economic contours of their local communities. A large bank cannot accommodate certain types of customers with its standard products and processes. If federal banking regulations require small banks to mimic these products and processes, these customers might find that small banks cannot serve them either.”³

The result of a less competitive marketplace, where smaller institutions are overwhelmed by the volume and complexity of regulations and are forced to exit business lines or seek to merge with other institutions, is fewer and more expensive borrowing choices for consumers and small businesses—particularly for those economically disadvantaged groups that have historically had the most difficulty to access credit.

By exempting institutions with less than \$50 billion in total consolidated assets from the Bureau’s current and future rules and regulations, H.R. 1264 appropriately refines Dodd-Frank’s breadth and interpretation by aggressive regulators and replaces it with a regulatory regime that recognizes that small, non-threatening, community-based financial institutions did not cause the financial crisis, and are fundamentally incapable of inflicting harm relative to the onerous regulations exacted upon them. The exemption provided by H.R. 1264 does not exempt these institutions from all prudential regulation. The Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the National Credit Union Administration would continue to issue regulations, examine, and enforce the consumer finance laws for institutions that H.R. 1264 would exempt from the Bureau’s direct oversight. There are approximately 38 banks with total consolidated assets of \$50 billion or greater. Approximately four of those 38 are traditional banks, meaning that they do not engage in a wider range of nonbank financial activities that could present risk. Therefore, approximately 5,700 banks with less than \$50 billion in assets, and the consumers they serve, would directly benefit from this exemption.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 1264 on January 9, 2018.

³*Id.*

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on January 18, 2018, and ordered H.R. 1264 to be reported favorably to the as amended by a recorded vote of 30 yeas to 25 nays (recorded vote no. FC-137), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment in the nature of a substitute offered by Mr. Williams by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the as amended. The motion was agreed to by a recorded vote of 30 yeas to 25 nays (Record vote no. FC-137), a quorum being present.

Record vote no. FC-137

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)		X	
Mr. King				Ms. Velázquez		X	
Mr. Royce (CA)	X			Mr. Sherman		X	
Mr. Lucas	X			Mr. Meeks		X	
Mr. Pearce	X			Mr. Capuano		X	
Mr. Posey	X			Mr. Clay			
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)		X	
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers				Mr. Cleaver		X	
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross	X			Mr. Ellison		X	
Mr. Pittenger	X			Mr. Perlmutter		X	
Mrs. Wagner	X			Mr. Himes		X	
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee		X	
Mr. Messer				Mr. Delaney		X	
Mr. Tipton	X			Ms. Sinema		X	
Mr. Williams	X			Mrs. Beatty		X	
Mr. Poliquin	X			Mr. Heck		X	
Mrs. Love	X			Mr. Vargas		X	
Mr. Hill	X			Mr. Gottheimer		X	
Mr. Emmer	X			Mr. Gonzalez (TX)		X	
Mr. Zeldin	X			Mr. Crist		X	
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1264 will allow for small financial institutions with consolidated assets under \$50 billion to more adequately provide reasonably priced financial services and products to the general public without having to abide by BCFP regulations and rules that were intended for significantly bigger institutions.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 2018.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1264, the Community Financial Institution Exemption Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1264—Community Financial Institution Exemption Act

The Consumer Financial Protection Bureau (CFPB) enforces federal consumer financial protection laws but may exempt classes of institutions, service providers, or consumer financial products or services from its rules.

H.R. 1264 would require the CFPB to exempt insured depository institutions and credit unions with less than \$50 billion in assets from all rules and regulations the agency issues or modifies after the date of the bill's enactment. The bill would authorize CFPB to revoke the exemption from a specific rule for a specific class of institutions under certain circumstances. The agency also could modify existing rules and regulations for insured depository institutions and credit unions with less than \$50 billion in assets if the modification would expand a current exemption or reduce the cost and regulatory burden of compliance.

Using information from the CFPB, CBO estimates that enacting H.R. 1264 would require the equivalent of one additional employee to expand the CFPB's current analyses of the effects of new or modified rules and regulations. Assuming the CFPB hired an additional employee to do that work the bill would increase direct spending by \$2 million over the 2019–2028 period. Because enacting H.R. 1264 could affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 1264 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 1264 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 1264 as the “Community Financial Institutions Exemption Act”.

Section 2. Exemption for certain financial institutions

This section amends Section 1022(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5512(b)) by providing for insured depository institution or credit union with less than \$50 billion in consolidated assets to be exempt from all rules and regulations issued by the Bureau. The Bureau may revoke an exemption for an institution with less than \$50 billion in assets or a specific rule if the Bureau finds an institution has engaged in a pattern of activity that is detrimental to the interest of consumers. Exemption revocation requires the appropriate federal banking agency to agree with the Bureau’s findings.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CONSUMER FINANCIAL PROTECTION ACT OF 2010

* * * * *

**TITLE X—BUREAU OF CONSUMER
FINANCIAL PROTECTION**

* * * * *

Subtitle B—General Powers of the Bureau

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SEC. 1022. RULEMAKING AUTHORITY.

(a) **IN GENERAL.**—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) **RULEMAKING, ORDERS, AND GUIDANCE.**—

(1) **GENERAL AUTHORITY.**—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) **STANDARDS FOR RULEMAKING.**—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) **EXEMPTIONS.**— *GENERAL EXEMPTIONS.*—

(A) **IN GENERAL.**—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines nec-

essary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) **FACTORS.**—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

- (i) the total assets of the class of covered persons;
- (ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and
- (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) **SPECIFIC EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.**—

(A) **IN GENERAL.**—*An insured depository institution or credit union with less than \$50,000,000,000 in consolidated assets shall be exempt from all rules and regulations issued by the Bureau.*

(B) **EXCEPTION.**—*The Bureau may revoke an exemption provided under subparagraph (A) with respect to a specific rule or regulation and a specific class of insured depository institutions or credit unions described in subparagraph (A) if—*

(i) the Bureau makes a detailed, written finding that such class of insured depository institutions or credit unions described in subparagraph (A) has engaged in a pattern or practice of activities that have been detrimental to the interests of consumers and are of a type that the specific rule or regulation is intended to address;

(ii) the Bureau consults with the Federal banking agencies with respect to such revocation; and

(iii) each Federal banking agency provides the Bureau with a written notice stating that the Federal banking agency agrees with such revocation.

(C) **EFFECTIVE DATE; EFFECT ON PRIOR RULES.**—

(i) EFFECTIVE DATE.—*This paragraph shall take effect with respect to rules and regulations issued or modified after the date of enactment of this paragraph.*

(ii) EFFECT ON PRIOR RULES.—*This paragraph shall not prohibit the Bureau from modifying a rule or regulation issued prior to the date of enactment of this paragraph with respect to insured depository institutions or credit unions described in subparagraph (A) if the effect of such modification is to expand a current exemption or to reduce the costs and the regulatory burden associated with complying with such rule or regulation.*

(D) **FEDERAL BANKING AGENCY DEFINED.**—*For purposes of this paragraph, the term “Federal banking agency” means the Board of Governors, the Office of the Comptroller of the Currency, the Corporation, and the National Credit Union Administration.*

[(4)] (5) EXCLUSIVE RULEMAKING AUTHORITY.—

(A) IN GENERAL.—Notwithstanding any other provisions of Federal law and except as provided in section 1061(b)(5), to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(B) DEFERENCE.—Notwithstanding any power granted to any Federal agency or to the Council under this title, and subject to section 1061(b)(5)(E), the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) SIGNIFICANT FINDINGS.—

(A) IN GENERAL.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(B) CONFIDENTIAL INFORMATION.—The Bureau may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to

protect confidential information in accordance with paragraphs (4), (6), (8), and (9).

(4) COLLECTION OF INFORMATION.—

(A) IN GENERAL.—In conducting any monitoring or assessment required by this section, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

(B) METHODOLOGY.—In order to gather information described in subparagraph (A), the Bureau may—

(i) gather and compile information from a variety of sources, including examination reports concerning covered persons or service providers, consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with covered persons and service providers, and review of available databases; and

(ii) require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.

(C) LIMITATION.—The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers.

(5) LIMITED INFORMATION GATHERING.—In order to assess whether a nondepository is a covered person, as defined in section 1002, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.

(6) CONFIDENTIALITY RULES.—

(A) RULEMAKING.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(B) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(C) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(7) REGISTRATION.—

(A) IN GENERAL.—The Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

(B) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.

(C) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(8) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(9) CONSUMER PRIVACY.—

(A) IN GENERAL.—The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person or service provider to the Bureau; or

(ii) as may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) TREATMENT OF COVERED PERSON OR SERVICE PROVIDER.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978, to a disclosure by a covered person or service provider subject to this subsection, the covered person or service provider shall be treated as if it were a “financial institution”, as defined in section 1101 of that Act (12 U.S.C. 3401).

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) REPORTS.—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

* * * * *

MINORITY VIEWS

H.R. 1264 would exempt depository institutions with less than \$50 billion in assets, or over 99 percent of all banks and credit unions, from any new or modified consumer protection regulation issued by the Consumer Financial Protection Bureau (“Consumer Bureau”). Only under extremely limited circumstances, and with the written approval of all other federal prudential banking regulators—the Board of Governors of the Federal Reserve System (“Federal Reserve Board”), the Federal Deposit Insurance Corporation (“FDIC”), the Office of the Comptroller of the Currency (“OCC”), and the National Credit Union Administration (“NCUA”)—would the Consumer Bureau be able to revoke the exemption for a class of institutions with respect to a specific consumer protection regulation.

Section 1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) established the Consumer Bureau, and granted it rulemaking authority for over 20 major federal consumer financial protection laws, including the Equal Credit Opportunity Act, the Truth In Lending Act, and the Fair Credit Reporting Act. The same section of the Dodd-Frank Act also provides the Consumer Bureau with discretion to tailor its rulemaking for smaller, rural, and community financial institutions.¹ The Consumer Bureau has repeatedly exercised this authority to provide targeted regulatory relief when it is warranted. For example, the Consumer Bureau tailored its Ability-to-Repay and Qualified Mortgage Standards to provide carve-outs for small creditors in rural and underserved areas.

However, H.R. 1264 would override the Dodd-Frank Act and take the unprecedented step of exempting all banks and credit unions with less than \$50 billion in total assets from any updated or new federal consumer financial protection regulations. Nearly all of the nation’s banks, and all but one credit union, would fall under the bill’s exemption. The bill would provide a narrow exception to allow the Consumer Bureau to apply, or re-apply, a federal consumer financial protection regulation to some or all of these institutions, but only if the institution “has engaged in a pattern or practice of activities that have been detrimental to the interests of consumers and are of a type that the specific rule or regulation is intended to address,” and the application is approved by the Federal Reserve Board, FDIC, OCC and NCUA. If a single regulator vetoed the action, the depository institutions would continue to be exempt from the rule.

¹ 12 U.S.C. § 5512 (2010) “The [Consumer Bureau] may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title.”

Furthermore, the bill only adds to the extensive constraints that the Consumer Bureau's rulemaking authority is already subject to. Specifically, the Dodd-Frank Act establishes procedures that the Consumer Bureau must follow when proposing and prescribing rules, in addition to the notice of proposed rulemaking and comment period procedures required for informal rulemakings under the Administrative Procedure Act and other generally applicable federal administrative laws. For example, before proposing a rule as well as during the comment period of a proposed rule, the Consumer Bureau must consult with other appropriate financial regulators, and address any written objections by federal prudential banking regulators.

At a time when banks are experiencing record growth and profitability and the Executive Branch has taken illegal actions to subvert the Consumer Bureau, this measure would further weaken oversight for consumer protection laws and regulations for almost all of our nation's banks. The Consumer Bureau is the only federal agency solely responsible for consumer protection in the financial sector, and this legislative proposal would severely hamper its ability to carry out its mission. H.R. 1264 impedes the Consumer Bureau's authority to protect consumers and regulate the banking industry. In no way can this be described as a targeted and reasonable approach.

For these reasons, we oppose H.R. 1264.

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