

March 1, 2016

Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Re: Oppose the Taking Account of Institutions with Low Operation Risk Act of 2015 (H.R. 2896) and amendments

Dear Representative:

The undersigned consumer groups oppose the Taking Account of Institutions with Low Operation Risk Act of 2015 (H.R. 2896) and amendments that will put consumers at risk from dangerous products or practices and undermine the established notice and comment process in place for financial regulations. If adopted, the TAILOR Act could allow financial institutions to justify and exploit potentially dangerous loopholes, create confusion in the marketplace and cause unnecessary delays in the adoption of important consumer protections. Prudential and consumer regulators already have broad discretion in the application of their rulemakings. The proposal, review and comment process is the appropriate means through which particular accommodations should be considered, as they have been throughout the development of regulations under Dodd-Frank. We urge you to vote no on H.R. 2896 and any amendments.

HR 2896 purports to simply require regulators to ‘tailor’ rules to the specific risks of financial institutions. But regulators have already taken extensive actions to adjust and modify their regulations to be appropriate for particular institutions and financial products, and are already required to consider such issues through the notice and comment process. Since an appropriately 'tailored' approach to regulation is already in place, the main effect of H.R. 2896 would be to add numerous new 'cost benefit' type requirements that would block needed regulatory actions in the future and force banking regulators to conduct a burdensome and time-consuming re-analysis of every single consumer and financial protection they had passed under the Dodd-Frank Act, the CARD Act, and other recent consumer protection laws.

The housing and economic crisis that resulted in the biggest economic downturn since the Great Depression was, in large part, the result of patchwork consumer protections. These insufficient protections gave unscrupulous lenders the ability to exploit consumer protection loopholes and originate dangerous mortgages with minimal oversight. Congress rightfully responded by enacting the Dodd-Frank Act which, among other important changes, created the Consumer Financial Protection Bureau with the mission of ensuring that consumers could expect similar financial protections regardless of the type or structure of the institution offering the product.

The TAILOR Act will weaken those important, and very popular, consumer protection improvements established by Dodd-Frank. Over nine in ten voters agree on the importance of regulating financial services and products to make sure they are fair to consumers. Two-thirds say there should be more, rather than less, oversight and regulation of financial companies.¹

¹ “National Survey by Lake Research Finds Continued Strong Support for Financial Regulation.” Washington, D.C.: Center for Responsible Lending and Americans for Financial Reform, July 8, 2015. http://ourfinancialsecurity.org/wp-content/uploads/2015/07/presentation.AFR_subset.070815.pdf.

Financial regulators already provide appropriate exemptions for certain financial products considered to be low risk

As part of the current notice and comment process for new financial services protections, regulators adopting new financial protection rules already fully consider and accommodate circumstances where regulatory flexibility is necessary – without the need for sweeping changes that would encourage inconsistent consumer protections.

For example, the CFPB has extended extraordinary accommodations to small, community banks in the application of the so-called “qualified mortgage” provisions in Dodd-Frank’s broader requirement for mortgage creditors to demonstrate consumers have the ability to repay loans on the terms at origination. It has done so out of consideration for the unique business model of smaller, community-based lenders. These accommodations have assured consumers of the basic protections afforded under the ability to repay rule as Congress intended while allowing a small set of important mortgage lenders to maintain their specific business models.

In the final rule implementing new changes to the Military Lending Act, the Department of Defense exempted federal credit unions and financial services providers subject to the newly-adopted limits on application fees.² Likewise, the Consumer Financial Protection Bureau has launched Project Catalyst which would allow the Bureau to issue a No-Action Letter to a company confirming that there is no plan to recommend supervisory or enforcement actions in connection with a new product.³

These examples demonstrate the flexibility in the current regulatory process without the need to codify harmful deregulatory changes such as the TAILOR Act that will encourage loopholes in current consumer protections.

The TAILOR Act will lead to confusion in the marketplace and undermine the important consumer protection gains provided in Dodd Frank

By pressuring regulators to change the application of consumer protections to different types of financial entities when it may not be appropriate to do so, consumers will have no way of knowing what protections apply to what product when they compare their options.

Under this proposal, financial services providers that can successfully make the case their institutions are “low-risk” could be granted loopholes even if the products themselves present a risk to consumers. Abusive mortgages, bank payday loans and other products that negatively impact the financial stability of consumers are all examples of problematic products offered by financial institutions that offer a wide range of products with varying degrees of risk to consumers. It is inconceivable that any of these products would be subject to reduced scrutiny simply because of the type of financial provider that offers it.

The TAILOR Act will create a duplicative rulemaking process that will delay important consumer protections

² CFR § 232.4(c)(1)(iii)(B)

³ Consumer Financial Protection Bureau. “Project Catalyst,” October 2014.
<http://www.consumerfinance.gov/blog/category/project-catalyst/>.

The TAILOR Act also requires financial regulators to determine the necessity, appropriateness and impact of applying regulatory action to certain institutions or classes of institutions. This consideration is already a fundamental part of the current notice and comment process for any rulemaking.

Under the current rulemaking process, regulators already take into consideration the scope of the rule and what products will be subject to additional oversight, if necessary. The scope of these rules is firmly grounded in research and takes into full consideration the concerns of the consumers, financial services providers and other stakeholders.

Agencies are required to publish a Unified Agenda laying out future rulemaking activities, consider the costs of a proposed rule, the financial institutions affected and evidence justifying regulatory intervention in the market. The Consumer Financial Protection Bureau is required to take an additional step and must conduct a review of the impact of any rule on small entities, including small businesses, organizations and small government bodies as part of its rulemaking process.

There is a clear process in place that ensures transparency, public input and responsiveness to consumer protection challenges and industry concerns – the TAILOR Act seeks to disregard that process for the sole purpose of providing financial services providers with yet an additional opportunity to secure harmful loopholes for certain financial products.

Conclusion

Strong and consistent oversight of financial products and practices leads to safer products, a more predictable regulatory environment and a more competitive market. The TAILOR Act could lead to confusion in the marketplace and unnecessary delays in much-needed consumer protections critical to preventing another economic collapse.

We urge you to vote no on H.R. 2896 and any amendments.

Sincerely,

Consumer Federation of America
National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform
National People's Action
U.S. PIRG
Consumer Action
Woodstock Institute
Reinvestment Partners
Center for Responsible Lending