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Joint Hearing on H.R. 1697: The Communities First Act

House Subcommittee on Financial Institutions and Consumer Credit and House Subcommittee on Capital Markets and Government Sponsored Enterprises

November 16, 2011

Good afternoon Chairman Capito and Chairman Garrett, and Ranking Members Maloney and Waters. My name is Damon Silvers, I am the Policy Director and Special Counsel for the American Federation of Labor and Congress of Industrial Organizations. I served as Deputy Chair of the Congressional Oversight Panel for TARP for the entirety of that body's statutorily mandated existence. I am testifying today on behalf of both the AFL-CIO and Americans for Financial Reform, a coalition of more than 250 organizations representing more than 50 million Americans. The AFL-CIO and AFR very much appreciate the opportunity to be heard before the subcommittees on these important issues relating to small banks.

Let me begin by stating that the double standard in the treatment of small banks by both the Bush and the Obama Administration during the financial crisis should be a source of lasting embarrassment to all involved. As near as the Congressional Oversight Panel could determine, small banks were uniformly required to rigorously demonstrate their health before they could access TARP funds, and have been required to repay those funds with equity capital, which in many cases has proved difficult to raise. By contrast, large institutions on the brink of failure—Citigroup and Bank of America were given ad hoc access to TARP funds, and arguably several others were as well, in each case without having to demonstrate that they were healthy.

Furthermore, on at least one occasion a large institution, Bank of America, was allowed to repay TARP funds with borrowed money despite having been found to have been in need of capital in the stress tests, while numerous small institutions continue to hold TARP funds because they have no realistic ability to raise equity to repay those funds and are not being allowed to do so with debt. Currently, 375 smaller financial institutions continue to have outstanding Capital Purchase Program preferred stock. However, since the statutory sunset of the Congressional Oversight Panel, 278 smaller banks have repaid their TARP funds.

Smaller banks face fundamental problems in this economic environment raising new capital. Those problems relate to the broader weakness of our economy, the weakness of commercial real estate markets, and the competitive challenges associated with operating in markets where larger institutions have implicit government guarantees. These challenges will not be addressed by weakening our securities laws. All that will do is endanger the investing public.

The Financial Services Committee should consider looking closely at the circumstances that have led to the 278 banks that have repaid TARP funds over the last eight months being able to do so and the circumstances that have led the remainder not to be able to do so. Both small banks and the American public would be benefited by creative solutions that helped smaller banks repay the American public and obtain cheaper long term capital as the cost of TARP capital escalates.

At the same time, while there are disagreements about the causes, there is clearly a continuing crisis of commercial credit for small and medium sized enterprises in the United States. More than two years after the official end of the 2007-2009 recession, commercial lending levels remain just off recession era lows when looked at in aggregate.

The Congressional Oversight Panel warned on multiple occasions that if steps were not taken to both address weaknesses in large banks and to aid smaller banks more aggressively, the United States was in danger of repeating the Japanese experience of the 1990's—where a financial system dominated by weak large banks protected by regulatory and accounting forbearance simply failed to function in the most basic way—i.e. failed to provide credit to operating businesses. Today, we appear to be living in that world—a world of weak banks, constrained credit to small and medium sized enterprises, overleveraged households, persistent high unemployment and growth so sluggish there is no sign of job creation on the horizon.

This situation cries out for aggressive policy responses—to end the double standard in bank regulatory policy, to recapitalize weak large banks, to rebuild business lending and restructure home mortgage loans so households are no longer trapped in a downward spiral. Instead, however, this joint hearing addresses a bill, H.R. 1697, that seeks to extend the bad practices of regulatory forbearance from the big banks to the small banks, rather than asking big banks to live up to the same standards we ask small banks to live by.

This bill seeks to allow banks to hide the very real losses that accompany foreclosing on American families—effectively creating a regulatory subsidy for throwing people out of their homes and driving down housing prices.

It undoes the fundamental principle that has underpinned our financial accounting system since the 1930's—the principle of the independence of the Financial Accounting Standards Board—by effectively requiring the Securities and Exchange Commission to only approve financial accounting rules that report good news about small banks, rather than having rules that tell the truth about small banks.

The bill seeks once again to weaken the Consumer Financial Protection Bureau by depriving the Bureau of jurisdiction over banks with assets of less than --, effectively recreating the fragmented system of consumer protections that brought us the mortgage crisis that we continue to suffer through.

H.R. 1697 exempts banks assets up to $1 billion from the internal controls requirements of the Sarbanes-Oxley Act, effectively increasing the risks that such banks would pose to the Federal Deposit Insurance Corporation, and overturning the basic proposition that has been in place since the beginning of federal bank regulation in the 1870's that banks must have internal controls that are at least adequate to ensure the accuracy of their financial statements.

H.R. 1697 weakens capital requirements for banks with assets from $500 million to $1 billion, again increasing the risk borne by the FDIC.

More broadly, H.R. 1697 weakens consumer privacy protections for all banking customers, undermines the integrity of real estate appraisals, allowing lookbacks to the bubble period for determining the value of real estate that backs demand deposits, seeks to suborn the protection of the American public to the interests of the banks by broadly weakening the authority of the Consumer Financial Protection Bureau, fundamentally undermines the securities laws by allowing public offerings to up to 2,000 people without requiring registration with the Securities and Exchange Commission, and seeks to make banks more reliant on credit rating agencies.

Over time, I have been impressed with the capacity of members of Congress to name bills in ways that are fundamentally dishonest. This grab bag of regulatory subsidies, many of which are in fact for the benefit of big banks, no more deserves the name of The Communities First Act than did TARP itself. I have tried to think of a more accurate name for this bill, and thought the

Potemkin Village Act or the Let's Make Believe Act of 2011 sounded pretty good. But as I thought about how much of this Act is really about helping big banks, about helping Wall Street, I concluded that the best title for it would be the Help the 1% and Hurt the 99% Act of 2011.

Thank you for the opportunity to testify today. I look forward to your questions.

United States House of Representatives
Committee on Financial Services

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Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name: Damon Silvers	**2. Organization or organizations you are representing:** AFL-CIO, Americans for Financial Reform
3. Business Address and telephone number: [redacted]	
4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? ☐ Yes ☒ No	**5.** Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? ☐ Yes ☒ No
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
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