JEB HENSARLING, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

MAXINE WATERS, RANKING MEMBER

Memorandum

To: Members of the Committee on Financial Services

From: Committee Staff

Date: April 8, 2016

Subject: April 13, 2016 Full Committee Markup

The Financial Services Committee will meet at 10:00 a.m. on Wednesday, April 13, 2016, and subsequent days if necessary, in Room 2128 of the Rayburn House Office Building to mark up the following two legislative proposals.

H.R. 1486, the Taking Account of Bureaucrats' Spending Act of 2015

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) created the Bureau of Consumer Financial Protection as an independent agency housed within the Federal Reserve System, and charged it with regulating "the offering and provision of consumer financial products or services" under the federal consumer financial laws. Title X grants the Director of the Bureau the "general authority" to "prescribe rules and issue orders and guidance" to administer, enforce, and implement federal consumer financial laws.

The Dodd-Frank Act authorizes the Bureau to fund itself outside the congressional appropriations process by drawing money from the Federal Reserve to the extent the Bureau's Director deems "necessary." The Federal Reserve does not oversee the agency or exercise any authority over it, but the Federal Reserve must transfer to the Bureau whatever funds its Director requests, up to the following fixed percentages of the Federal Reserve's 2009 operating expenses:

- 11 percent in fiscal year 2012, or $547.8 million;
- 12 percent in fiscal year 2013, or $597.6 million; and
- 12 percent each fiscal year thereafter, subject to annual adjustments for inflation.

These funds—diverted from the Federal Reserve to the Bureau—would otherwise have been forwarded from the Federal Reserve to the Treasury, where they could have been used to pay for other expenditures or to reduce the debt.

Given that the Bureau's funding is not appropriated by Congress, many observers have raised concerns about the lack of transparency in the Bureau's funding and expenditures and Congress's ability to exercise oversight of the Bureau. In light of these concerns, H.R. 1486 eliminates the direct funding of the Bureau by the Federal Reserve.

Instead, the Bureau would be subject to the regular appropriations process; as proposed to be amended by an amendment in the nature of a substitute expected to be offered by the bill's sponsor, Rep. Barr, H.R. 1486 authorizes to be appropriated to the Bureau for fiscal year 2017 an amount equal to the aggregate amount of funds transferred by the Federal Reserve to the Bureau during fiscal year 2015.

H.R. ________, To repeal title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act

In hopes of ending "too big to fail," Congress passed the Dodd-Frank Act, which established an Orderly Liquidation Authority (OLA) that granted the Federal Deposit Insurance Corporation (FDIC) the authority to resolve certain non-bank financial institutions in the event of their failure. If a systemically important firm fails, under Title II of the Dodd-Frank Act, the FDIC would serve as the failing institution's receiver, with the mandate to liquidate the institution. This authority is intended as an alternative to bankruptcy for large non-bank financial institutions, vesting federal receivership powers in the FDIC similar to the FDIC's existing powers to take over insured depository institutions.

Title II grants the FDIC the authority to borrow from the Treasury to capitalize an "orderly liquidation fund" that it is authorized to be used to pay off the creditors of a failed firm. Although the proponents of Title II have asserted that taxpayer funds will not be used to liquidate a failed firm, pointing to provisions that contemplate recouping the costs of the liquidation from large financial institutions through *post hoc* assessments, the Congressional Budget Office has estimated that the OLA will cost taxpayers $19 billion between 2015 and 2024. H.R. ________ repeals Title II to protect taxpayers from having to pay the costs of bailing out large financial institutions or their creditors.