

March 21, 2019

Memorandum

To: Members of the Committee on Financial Services
From: FSC Majority Staff
Subject: March 26, 2019 Full Committee Markup

The Committee on Financial Services will meet to mark up the following measures, in an order to be determined by the Chairwoman, at 2:00 p.m. on Tuesday, March 26, 2019, and subsequent days if necessary, in room 2128 of the Rayburn House Office Building:

Amendment in the Nature of a Substitute to H.R. XXXX, The Ending Homelessness Act of 2019 (Waters)

Summary: The amendment in the nature of a substitute (ANS), which is expected to be considered as base text, to H.R. XXXX, the Ending Homelessness Act, would appropriate \$13.27 billion in mandatory funding over five years for various Department of Housing and Urban Development (HUD) programs and initiatives in order to functionally end homelessness in America. Specifically, the ANS would provide: \$5 billion over five years for McKinney-Vento Homeless Assistance grants; \$2.5 billion over five years for new special purpose Section 8 Housing Choice Vouchers (HCV) targeted for people experiencing homelessness or those who are at risk of experiencing homelessness; \$1.05 billion annually (or \$5.25 billion over five years) for the National Housing Trust Fund (HTF) above and beyond funding that the program receives through Fannie Mae and Freddie Mac that would be targeted for people experiencing homelessness; \$500 million over five years for a new competitive grant for states and local jurisdictions to provide case management and social services for people experiencing homelessness or who formerly experienced homelessness; and \$20 million in one-time technical assistance funding to help state and local governments better align their health and housing strategies.

Background: The most recent point-in-time count data reported by HUD showed that there are over 550,000 people experiencing homelessness in this country, including nearly 160,000 children and youth. This amended bill provides a surge of new funding to address homelessness in this country by targeting strategies and

models that have been the most effective in helping people experiencing homelessness become and remain stably housed.¹

In addition to increased funding amounts, the ANS would make key changes to the McKinney-Vento Homeless Assistance Grants² and the HTF program. For McKinney-Vento Homeless Assistance Grants, the ANS would require HUD within six months to develop a new formula subject to a rulemaking process to allocate funding that is based on the key structural determinants of homelessness in a geographic area including: the poverty rate, shortages of affordable housing for the lowest income households, the number of overcrowded housing units, the number of unsheltered homeless individuals; and the number of chronically homeless individuals. This formula change responds to concerns that the existing formula for McKinney-Vento Homeless Assistance Grants is outdated and does not accurately target funding to areas with the highest needs.³

For the HTF program, the ANS also would ensure that new housing units are affordable for the lowest income households. Currently, HTF regulations state that units only need to be affordable for a *hypothetical* household at 30 percent of the Area Median Income (AMI), which could cause hardship for those below that income level. The ANS would correct for this and ensure that units are affordable to the households living in these units even if they are below 30 percent of AMI. To help developers keep rents affordable to the lowest income households, the ANS also provides an additional \$50 million annually for new project-based vouchers to be used solely in conjunction with these units.

Lastly, the ANS would permanently authorize the U.S. Interagency Council on Homelessness, which coordinates the federal strategy to end homelessness across various federal agencies. The USICH's authorization was recently extended until 2028 in the last appropriations bill, but nearly expired twice last Congress.

The Ending Homelessness Act is supported by a broad coalition of advocates, public housing agency groups, as well as industry and coalition groups that include developers, owners, and housing and supportive service providers. For example, in her testimony in a hearing on homelessness last month, Ann Oliva with the Corporation for Supportive Housing (CSH) states, "Because the Ending Homelessness Act of 2019 recognizes all of this [referring broadly to issues identified in her testimony], empowers the solutions to homelessness, and commits the federal government to many of the smart investments I've discussed, CSH supports it."

¹ For example, the ANS requires that recipients of Homeless Assistance Grants under this legislation use a "Housing First" model, which is an approach to quickly and successfully connect individuals and families experiencing homelessness to permanent housing without preconditions and barriers to entry, such as sobriety, treatment or service participation requirements. Research has demonstrated that this approach is effective in promoting housing stability, particularly among people who have been homeless for long periods of time and have serious psychiatric disabilities, substance use disorders and/or other disabilities.

² The McKinney Vento Homeless Assistance Grants refer to the Emergency Solutions Grants (ESG) and the Continuum of Care (CoC) programs.

³ See e.g. HUD's solicitation of comment on the Continuum of Care Formula (Docket No. FR-5476-N-04; RIN 2506-AC29)

Amendment in the Nature of a Substitute to H.R. 389, Kleptocracy Asset Recovery Rewards Act (Lynch/Budd)

Summary: The amendment in the nature of a substitute (ANS), which is expected to be considered as base text, to H.R. 389, the Kleptocracy Asset Recovery Rewards Act, would establish a program within the U.S. Department of the Treasury to provide monetary incentives to individuals furnishing information leading to the restraining, seizure, forfeiture, or repatriation of stolen assets linked to foreign government corruption. The ANS also provides for the administration of the program, including reward payment and eligibility.

Background: According to World Bank data, more than \$1 trillion in bribes are paid worldwide every year.⁴ This corruption has a significant impact on developing countries, with estimates as high as \$40 billion per year stolen by public officials.⁵ To assist in recovering the proceeds of crime for victims and to punish the bad acts of the criminals, the ANS establishes a rewards program to incentivize individuals to notify the U.S. government of stolen assets linked to foreign corruption that are found in the U.S., held or controlled by U.S. persons, or within U.S. financial institutions. Doing so may facilitate the ability of authorities to identify, recover, and return these assets and prevent further enabling foreign corruption and terrorist financing. Rewards are paid with funds from the recovered stolen assets.

On March 13, 2019 Mr. Dennis Lormel, a retired FBI agent who co-founded that agency's Terror Financing Operations Section, said in his written testimony at a Subcommittee hearing that H.R. 389 would "serve as a viable tool for law enforcement to develop evidence for prosecution, as well as identify, recover and repatriate stolen funds to victim countries." The FACT Coalition, a non-partisan alliance of more than 100 state, national, and international organizations promoting anti-corruption practices, wrote that rewards program "is a sensible tool to safeguard American citizens and businesses from the scourge of corruption."⁶

Amendment in the Nature of a Substitute to H.R. 1500, the Consumers First Act (Waters)

Summary. The amendment in the nature of a substitute (ANS), which is expected to be considered as base text, to H.R. 1500, the Consumers First Act, includes a series of congressional findings describing the rationale behind the creation of the strong, independent Consumer Financial Protection Bureau (Consumer Bureau), to, among

⁴ *Global Cost of Corruption at Least 5% of World GDP*. United Nations, September 2018.

<https://www.un.org/press/en/2018/sc13493.doc.htm>

⁵ *Few and Far: The Hard Facts on Stolen Asset Recovery*, United Nations Office on Drugs and Crime, The World Bank, September 2014.

https://star.worldbank.org/sites/star/files/few_and_far_the_hard_facts_on_stolen_asset_recovery.pdf

⁶ *Letter to HFSC Chair, Ranking Member, and Members of the House Financial Services Committee*, March 13, 2019.

other things, combat unfair, deceptive or abusive acts or practices that contributed to the global financial crisis a decade ago. The findings identify a list of anti-consumer actions taken by Mick Mulvaney when he led the agency from November 2017 through December 2018. The ANS would restore the supervisory and enforcement powers of the Office of Fair Lending and Equal Opportunity, reestablish a dedicated student loan office, require adequate agency staffing including for supervision and enforcement, direct the agency to immediately resume Military Lending Act examinations, and limit the number of political appointees the Consumer Bureau may hire. The ANS also mandates the consumer complaint database remain transparent and publicly accessible, reinstates the Consumer Advisory Board with protections to ensure consumer voices are well represented and that diversity and inclusion is promoted on the agency's advisory boards, and encourages greater cooperation with other government agencies, like the U.S. Departments of Education and Defense. The ANS also directs the Consumer Bureau to resume publishing how much consumers have saved from the Credit Card Accountability, Responsibility and Disclosure (CARD) Act. The Director would be required to implement all operational changes within 30 days.

Background. In response to the financial crisis from a decade ago, Congress created the Consumer Bureau to be a strong and independent federal agency with the mandate to protect consumers from unfair, deceptive, or abusive acts or practices in the financial marketplace. Under the leadership of former Director Richard Cordray, the Consumer Bureau returned nearly \$12 billion to over 30 million consumers who were harmed, handled over 1.2 million consumer complaints about financial institutions, and implemented new safeguards to better protect consumers who utilize a wide range of consumer financial products and services.

President Trump designated the Office of Management and Budget (OMB) Director, Mick Mulvaney, to run the Consumer Bureau after Director Cordray stepped down, and he led the agency from November 2017 to December 2018. During his tenure, Mr. Mulvaney took a series of actions – such as stripping the Office of Fair Lending and Equal Opportunity of its supervisory and enforcement powers, as well as ceasing financial institution exams to ensure they were complying with the Military Lending Act – that appeared to undermine the agency's ability to fulfill its statutory mission and mandates.⁷ The Consumers First Act would reverse those actions and certain structural reforms.

On March 7, 2019, there was a full committee hearing examining the Consumer Bureau's activities where the legislation was discussed. Seth Frotman, the agency's former Student Loan Ombudsman whose position remains unfilled, explained that little had been done to protect student borrowers the last 15 months and the need for the Consumers First Act. Scott Weltman from Weltman, Weinberg & Reis discussed his concerns with a lawsuit the agency filed against his company. Jennifer Davis with the National Military Family Association testified that the Consumer First Act,

⁷ *Chairwoman Waters Letter to Mick Mulvaney*, December 20, 2018.
<https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=401701>

“would urge CFPB to immediately resume supervision of its regulated entities for compliance with the MLA to ensure the most robust and efficient protection of active-duty service members and their families. We strongly stand behind this proposal within the Consumers First Act.”

Amendment in the Nature of a Substitute to H.R. 1595, the Secure and Fair Enforcement Banking Act of 2019 (Perlmutter/Heck/Stivers/Davidson)

Summary. The amendment in the nature of a substitute (ANS), which is expected to be considered as base text, to H.R.1595, the “Secure and Fair Enforcement Banking Act of 2019” (SAFE Banking Act) would allow lawful state-authorized cannabis businesses, along with their service providers, to access banking services and products. The ANS seeks to harmonize federal and state law by prohibiting federal banking regulators from engaging in certain actions against financial institutions serving state-authorized cannabis businesses. The legislation provides a safe harbor for financial institutions to offer their products and services to well-regulated cannabis-related businesses. The ANS adds protections for ancillary businesses, specifies how businesses on tribal land could qualify, and requires the Federal Financial Institution Examination Council (FFIEC) to develop uniform guidance and exam procedures to help financial institutions lawfully serve cannabis-related legitimate businesses. Furthermore, the ANS clarifies protections for service providers, electronic payments, and armored cars, as well as requires reports to Congress on access to financial services and barriers to marketplace entry for potential and existing minority-owned and women-owned cannabis-related legitimate businesses.

Background. Today, 47 states and the District of Columbia have passed laws and adopted policies allowing for some cultivation, sale, distribution, and possession of cannabis—all of which are contrary to the federal Controlled Substances Act (CSA). This conflict has resulted in cannabis businesses having to operate solely in cash, unable to accept credit cards, deposit their profits or write checks to pay employees or taxes. This can pose a serious public safety risk.

The ANS to the SAFE Banking Act would address this conflict by clarifying that state-authorized and regulated cannabis businesses have access to the banking system, in part by creating a safe harbor clarifying banks and credit unions may provide such services to these businesses. With access to banking services, cannabis businesses would no longer need to operate as a cash only business, which could promote public safety and improve the efficiency of collecting taxes and fees from these businesses. The ANS builds upon existing guidance from the Treasury Department's Financial Crimes Enforcement Network (FinCEN),⁸ and it preserves the banks' and

⁸ *BSA Expectations Regarding Marijuana-Related Business*, FinCEN, FIN-2014-G001, February 14, 2014. <https://www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf>

credit unions' regulatory responsibilities to, among other things, know their customers and avoid illicit money laundering.

On February 13, 2019, the Subcommittee on Consumer Protection and Financial Institutions held a hearing during which the legislation was considered. Executives from members of the Credit Union National Association and Independent Community Bankers of America spoke in support of the bill. Neill Franklin, a retired police officer explained how cannabis businesses operating solely with cash, "leave legitimate businesses vulnerable to theft, robbery, and the violence that accompany those crimes." Jonathan Talcott from Smart Approaches to Marijuana (SAM) testified in opposition to the bill, raising concerns with the use of marijuana. Corey Barnette, an owner of a D.C.-based cannabis dispensary, described how the lack of access to banking services has served as a barrier to entry and "hits especially hard to small and minority-owned business operators." The California State Treasurer, Fiona Ma, discussed her state exploring a range of local options in recent years while noting they found that, "the only truly durable solution was for the federal government to act."

Amendment in the Nature of a Substitute to H.R. 1815, SEC Disclosure Effectiveness Testing Act (Casten)

Summary: The amendment in the nature of a substitute (ANS), which is expected to be considered as base text, to H.R. 1815, the SEC Disclosure Effectiveness Testing Act, would build on efforts by the Securities and Exchange Commission (SEC) to engage in investor testing by requiring the SEC to conduct usability testing of new disclosures that are primarily used by retail investors and are intended to help them make investment decisions or understand their investments. It would also require the SEC to review and test the usability of its existing disclosures for retail investors, such as mutual fund disclosures. Such reviews and tests would be required prior to the SEC adopting a final rulemaking. The ANS would also provide the SEC's Investor Advocate with the authority to conduct investor testing and allow such testing to meet the requirements of the bill. The Investor Advocate would be able to make the testing results and data public.

Background: As part of its proposed changes to the standards of care that apply to professionals who provide retail investors with personalized financial advice, the SEC on April 18, 2018 proposed a relationship disclosure document for brokers and investment advisers (Form CRS) and instructed the SEC's Investor Advocate to conduct investor testing of that form.⁹ The investor testing consisted of a nationwide

⁹ SEC, Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles, 83 Fed. Reg. 21416 (Apr. 18, 2018) (to be codified at 17 C.F.R. pt. 240, available at: <https://www.federalregister.gov/documents/2018/05/09/2018-08583/form-crs-relationship-summary-amendments-to-form-adv-required-disclosures-in-retail-communications>); SEC, Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, 83 Fed. Reg. 21203 (Apr. 18, 2018) (to be codified

online survey of 1,800 individuals and 31 qualitative in-depth interviews in Denver and Pittsburgh. On September 12, 2018, AARP, the Financial Planning Coalition, and Consumer Federation of America (CFA) sent a letter to SEC Chairman Clayton detailing the results of their own independent usability testing.¹⁰ Their testing consisted of 90-minute, one-on-one interviews with 16 investors from three geographically diverse locations. On November 7, 2018, the SEC’s Investor Advisory Committee (IAC) recommended that the SEC conduct usability testing of the disclosures in Form CRS “and, if necessary, revise them to ensure that they enable investors to make an informed choice among different types of providers and accounts.”¹¹

During a March 14, 2019 hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, witnesses from the Certified Financial Planning Board of Standards (CFP Board) and CFA expressed strong support for the SEC Disclosure Effectiveness Testing Act. Former SEC Chairman Harvey Pitt testified that the SEC had already conducted investor testing, making the bill “superfluous” and “would likely be used by those with different objectives to hamstring almost any rulemaking effort involving investor disclosures that the Commission may consider.” Mr. Lee Baker, President of AARP Georgia, testified that the SEC’s test results suggest that “there’s more work to be done.”

at 17 C.F.R. pt. 275), *available* at: <https://www.federalregister.gov/documents/2018/05/09/2018-08679/proposed-commission-interpretation-regarding-standard-of-conduct-for-investment-advisers-request-for>; SEC, Regulation Best Interest, 83 Fed. Reg. 21574 (Apr. 18, 2018 (to be codified at 17 C.F.R. pt. 240)), *available* at: <https://www.federalregister.gov/documents/2018/05/09/2018-08582/regulation-best-interest>.

¹⁰ Letter from the AARP et al., to the SEC, Sept. 12, 2018, *available* at: <https://consumerfed.org/wp-content/uploads/2018/09/letter-to-sec-from-aarp-cfa-fpc-regarding-crs-testing.pdf>.

¹¹ Sec. & Exch. Comm’n, Recommendation of the Investor as Purchaser Subcommittee Regarding Proposed Regulation Best Interest, Form CRS, and Investment Advisers Act Fiduciary Guidance, *available* at: <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac110718-investor-as-purchaser-subcommittee-recommendation.pdf> [hereinafter SEC Recommendation].