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House of Representatives

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November 10, 2015

The Honorable Gene Dodaro
Comptroller General of the United States
Government Accountability Office
441 G St. NW
Washington, DC 20541

Dear Mr. Dodaro:

We are writing to ask that GAO conduct an investigation of the impact of last year's partial repeal of Dodd-Frank provisions limiting risky swap transactions by federally insured banks.

The 2015 Consolidated and Further Continuing Appropriations Act, signed into law in December 2014, substantially modified Section 716 of the Dodd-Frank Act, which had been intended to prevent federally insured banks from putting taxpayers at risk by requiring them to "push out" the riskiest types of swaps transactions to subsidiaries.[1]

We have been deeply concerned about these changes, which were inserted into the Appropriations bill without debate, just prior to a final vote, after intense lobbying from the financial industry.[2] Over the last year, we have conducted our own investigation of the effects of the changes in Section 716 by seeking information from the banks and from financial regulators.

We have learned several key facts from our investigation. First, according to the Federal Deposit Insurance Corporation (FDIC), as a result of the Dodd-Frank rollback, banks will be able to keep within their insured depository institutions (IDI) an estimated $10 trillion worth of swaps that they would otherwise have been forced to push out under the original law.[3]

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[1] Pub. L. 111-203, § 716

[2] Pub. L. 113-235, § 630. *Banks' Lobbyists Help in Drafting Financial Bills*, New York Times (May 23, 2013) (online at http://dealbook.nytimes.com/2013/05/23/banks-lobbyists-help-in-drafting-financial-bills/?_r=0). *Jamie Dimon Himself Called to Urge Support for the Derivatives Rule in the Spending Bill*, Washington Post (Dec. 11, 2014) (online at www.washingtonpost.com/news/wonkblog/wp/2014/12/11/the-item-that-is-blowing-up-the-budget-deal/).

[3] For more details about these swaps and their treatment after the partial repeal of Section 716, see: Letter from Ranking Member Elizabeth Warren, Subcommittee on Economic Policy, Senate Committee on Banking, Housing, and Urban Affairs, and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform to the Honorable Timothy

The FDIC noted that "generally speaking, large volumes of derivative activity conducted by an IDI would be expected to increase its risk profile."[4] However, as they made clear in their responses to our inquiries, neither the FDIC nor any other prudential regulator has conducted an analysis of the risks posed by the trillions of dollars in derivatives that the Dodd-Frank rollback allows the banks to keep on their books.

The Federal Reserve told us that it "did not undertake an assessment of the effect of an amendment to Section 716 compared to the originally enacted section nor did we conduct an assessment of the impact of the amendment of section 716 on bank behavior in the swaps market, risks to the U.S. economy, or other matters."[5]

Similarly, the OCC noted that "the OCC has not made any specific assessments regarding the impact of the partial repeal of the swaps push-out rule on the risk of taxpayer-funded bailouts ... the OCC has not conducted any specific assessments regarding the impact of the partial repeal on bank behavior in the swaps markets ...[and] the OCC has not made any assessments regarding the risks to the U.S. economy resulting from the partial repeal of section 716."[6]

The failure to assess the impact on banks and the economy of the repeal of Section 716 raises critical questions about whether federal policymakers are sufficiently attentive to the risk posed by nearly $10 trillion of risky swaps now primarily held – and allowed to be traded and held on an ongoing basis – by a handful of the country's largest, FDIC-insured banks.

Understanding this risk is critical as policymakers continue to make decisions about how banks are regulated. We are therefore asking that you conduct a study of the impact of the partial repeal of Section 716 of Dodd-Frank. We ask that your analysis include, at a minimum, the following:

(1) An estimate of the total value of swaps U.S. banks would have been required to "push out" under Section 716 as originally adopted;

(2) An estimate of the total value of swaps U.S. banks will now be required to "push out" under the revised Section 716;

(3) A quantified assessment of the "operational and credit risks" the implementation of Section 716 would have created for U.S. banks;

Massad , Chair, Commodity Futures Trading Commission and the Honorable Mary Jo White, Chair, Securities and Exchange Commission (November 10, 2015).

[4] Letter from Martin J. Gruenberg, Chairman, Federal Deposit Insurance Corporation to Senator Elizabeth Warren and Representative Elijah E. Cummings (September 14, 2015).

[5] Letter from the Honorable Janet Yellen, Chair, Federal Reserve, to Senator Elizabeth Warren and Representative Elijah E. Cummings (September 9, 2015).

[6] Letter from Thomas J. Curry, Comptroller of the Currency, to Senator Elizabeth Warren and Representative Elijah E. Cummings (Aug. 13, 2015).

(4) An assessment of the impact of the partial repeal of Section 716 on bank behavior in the swaps derivatives market generally, including an assessment of whether or how the partial repeal of Section 716 increases the risk profiles of major banks;

(5) An assessment of the risks to U.S. taxpayers and to the U.S. economy created by the partial repeal of Section 716; and

(6) An assessment of the additional profits likely to be earned by banks as a result of the repeal of Section 716.

Thank you for your assistance with this request. Please feel free to contact Brian Cohen with Senator Warren at (202) 224-4543 and Todd Phillips with Ranking Member Cummings at (202) 225-4741 if you have any questions.

Sincerely,

Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform

Elizabeth Warren
Ranking Member
Subcommittee on Economic Policy