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**Testimony
Bartlett Collins Naylor
Financial Policy Advocate
Congress Watch, a division of Public Citizen
Public Witness Hearing
House Committee on Appropriations
Subcommittee on Financial Services and General Government
March 27, 2019**

Chair Quigley, Ranking Members Graves, and members of the subcommittee: On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comments on funding for federal agencies within the portfolio of the subcommittee.

My name is Bartlett Naylor. I'm the financial policy advocate for Public Citizen's Congress Watch division. Previously, I was chief of investigations for the Senate Banking Committee during the savings-and-loan crisis, director of Corporate Affairs for the Teamsters, and principal of Capital Strategies Consulting.

Our comments focus primarily on financial services, with a brief discussion of the Internal Revenue Services, the Federal Trade Commission, the Federal Elections Commission and the Consumer Product Safety Commission. Broadly, we oppose poison pill riders carried by Appropriations measures approved in the past that stifle needed reforms. We ask the subcommittee to remove these "legacy poison pill" policies, and direct the respective agencies to complete needed rulemaking, including those rules mandated by law. These comments are informed by contributions from Congress Watch colleagues Emily Peterson-Cassin, Rachel Curley, Dr. Craig Holman, Remington Gregg, and by peers from organizations with which we work in coalition.

Financial Services

In ordinary times, the financial sector is the pivot on which the economy balances. Financial institutions intermediate between savers and users of capital. When this exchange works fluidly, the economy grows, workers find employment and growing wages, and prosperity results in affordable nutrition, health care, housing, education, and more. In extraordinary times, such as the Wall Street crash of 2008, misconduct and poor Washington oversight of the financial sector can lead to devastation. The crash cost millions of Americans their jobs, savings and homes.

Health care deteriorated as average people suffered despair. Education suffered as municipalities faced budget constraints, or students could no longer afford tuition. In short, the decisions that this subcommittee makes are critical to ensure a sound financial sector.

Public Citizen supports appropriate funding for financial sector regulators. At the Securities and Exchange Commission (SEC), we support funding in line with the task of protecting the integrity of markets. We believe that the SEC now operates with funding well below what's necessary to make sure that firms faithfully disclose their financial results, that brokers are not exploiting their customers, and that bad actors be held to account.

In the past, this appropriations bill has carried a rider preventing the SEC from finalizing a rule that requires publicly traded companies to disclose their political spending. The absence of such a requirement deprives investors and the public of critical information on corporate political activity. In *Citizens United*, the U.S. Supreme Court decision that opened the flood gates for unlimited corporate spending in our elections, Justice Anthony Kennedy assumed that prompt internet disclosures would be the norm. However, this rider stops the type of critical disclosure regime Kennedy believed was in place from being implemented, and deprives investors and the public of critical information on corporate political activity. More than 1.2 million institutional and retail investor as well as regular Americans have petitioned the SEC to require this disclosure.

With its current funding, we believe the SEC should be able to complete rules mandated by the Dodd-Frank Wall Street Reform Act regarding executive compensation. This includes Section 953(a), regarding performance metrics; Section 954, regarding claw backs; and Section 956, regarding "inappropriate" compensation. When SEC officials appear before the subcommittee, we urge that this unfinished business be addressed.

Congress approved Section 953(a) to provide investors with a means of measuring senior management pay in the context of firm performance.¹ This provision derives from a troublesome trajectory of senior executive pay that absorbs increasing percentages of shareholder capital. The legal ability of a shareholder to bridle CEO pay is limited; shareholders even lack a convenient means of assessing whether management pay accords with performance. The SEC proposed a rule on April 29, 2015, but has taken no action since then.

Dodd-Frank Section 954 mandates the SEC to adopt rules requiring all publicly traded companies to adopt a claw back policy. Claw backs clearly serve the interest of shareholders. To date, however, firms have failed to police this area. Prior to 2005, only three Fortune 100 companies disclosed claw back policies.² Now, most major companies provide for a basic claw back policy. But it isn't clear that the policies are strong, nor that they are implemented.³ We believe that claw back practices should be disclosed. In 2012, JP Morgan Chase clawed back

¹ S. Rep. No. 111-176, at 135 (Apr. 30, 2010), http://www.banking.senate.gov/public/files/Committee_Report_S_Rept_111_176.pdf.

² "Does Voluntary Adoption of Claw back Provision Improve financial Reporting Quality," by Ed DeHaan, et al, (April, 2012), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2049442

³ Claw backs still a Rare Breed," by Gretchen Morgenson, New York Times (December 2013), available at: http://www.nytimes.com/2013/12/29/business/clawbacks-theyre-still-a-rare-breed.html?pagewanted=all&_r=0

certain compensation from three traders involved in the so-called London Whale fraud. But the firm did not detail the amount of the claw back.⁴ Walmart reportedly clawed back certain pay, but it was unclear if this was related to a Mexican bribery case. Even in the case of Wells Fargo, shareholders are only informed of those individuals that the firm chooses to publicize. The SEC proposed a rule July 1, 2015, but has taken no action since then.

Section 956 addresses the excessive pay that led to “inappropriate” risk-taking that led to the financial crash. Dangerous compensation plans figured at the center of the financial crash. The 10 senior executives of Bear Stearns and Lehman Brothers were paid \$1.4 billion in eight the years leading to the crash (2000-2008). That’s an average of \$140 million each.⁵ Under this perversion, these executives were rewarded lavishly for creating failure. Congress understood the urgent need to reform this arena, and set a deadline for completion of this rule: May, 2011. Again, we ask the subcommittee to address this unfinished business with SEC officials.

Internal Revenue Services

This Appropriations bill should not carry a rider that prevents the IRS and the U.S. Treasury Department from setting standards for 501(c)(4) political activity that clearly define what nonprofits can and cannot do in elections. Without clear guidance, nonprofits that want to spend in elections without disclosing their donors can abuse the system with impunity.

The IRS is woefully underfunded and has been for years. This underfunding losses the United States about \$18 billion per year, according to one account, and may be tens of billions of dollars higher.⁶ Underfunding the IRS harms even parts of public life that seem tangential. For example, enforcement of the rules surrounding nonprofit political activity has nearly ceased, facilitating abuse of the rules that leads to dark money spending in our elections.⁷ The budget should underline the importance of the IRS’s role, restore funding to pre-2011 levels.

Relatedly, though outside the IRS, this Appropriations bill must not contain a rider that blocks an Executive Order requiring government contractors to disclose their political spending. The public has the right to know whether companies are being awarded contracts because of campaign donations.

⁴ “Whale Claw backs About Two Years of Compensation,” by Dan Fitzpatrick, Wall Street Journal, (July 13, 2012), Available at: <http://www.wsj.com/articles/SB10001424052702303740704577524730994899406>

⁵ Bebchuk, L., Cohen, A., Spamann, H. *The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000–2008*. YALE JOURNAL ON REGULATION 27, 257–282

⁶ Jesse Eisinger, How the IRS was gutted, ProPublica (Dec. 11, 2018) <https://www.propublica.org/article/how-the-irs-was-gutted>

⁷ *Review of the Processing of Referrals Alleging Impermissible Political Activity by Tax-Exempt Organizations*, TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION (October 4, 2018) https://www.treasury.gov/tigta/auditreports/2019reports/201910006fr.pdf?utm_campaign=Washington%20Snapshot&utm_source=hs_email&utm_medium=email&utm_content=66618699&_hsenc=p2ANqtz-9ixaIODqHpcw3Lg3ePCaLlohXo8vYpqEpbWgd3phs3nF1GaHOjQYHtjprqQTrgo2xb90oxp3u8uNaMTAb52dO1Epld-KV_3WOXcY8MKJireMo77v4&_hsmi=66618699

Federal Trade Commission

As the subcommittee reviews needed funding for the Federal Trade Commission (FTC), we urge members to insist that FTC officials meet their obligations to contest mergers that restrain trade. Four food companies control 82 percent of meatpacking. Travelocity, Orbitz, Hotels.com are all one company. Four airlines control 80 percent of traffic. Four banks control nearly half of all consumer deposits.⁸ These consolidations raise prices and reduce wages. We believe more robust anti-trust enforcement would serve the American economy.

Federal Election Commission

As the subcommittee considers the Federal Election Commission (FEC) budget, we ask members to question whether commissioners will restore enforcement of donor disclosure of independent expenditures and electioneering communications in light of the recent District Court decision in *CREW v. FEC*.⁹ In this 2018 decision, the court found that the FEC's donor disclosure requirement does not conform to the disclosure requirements established under the Federal Election Campaign Finance Act and is therefore invalid. The current FEC policy allows widespread evasion. The FEC determined that outside groups only need disclose donors who earmark their campaign contributions for an electioneering communication or independent expenditure. Since few donors earmark campaign contributions for a specific campaign use, outside campaign organizations understood they need not disclose their donors and have declined to do so – hence, the invention of “dark money.” Before the FEC relaxed its requirements, disclosure of sources of funds used for electioneering communications and independent expenditures by outside groups approached nearly 100 percent. We believe the FEC should follow federal law and require that all donors behind the funds used to pay for electioneering communications and independent expenditures be subject to disclosure – as it used to be.

Consumer Product Safety Commission

We object to a policy rider that would delay implementation of the Consumer Product Safety Commission's (CPSC) proposed rule to set minimum safety standards for recreational off-highway vehicles (ROVs).¹⁰ The CPSC's proposed rule for ROVs seeks to strengthen the voluntary standard by effectively addressing key issues that pose potential hazards to consumers, including lateral stability, vehicle handling, and occupant protection. The proposed ROV rule would address these issues to better protect the safety of all ROV riders, and must be permitted to move forward. Delaying this rule would result in further fatalities.

⁸ Robert Reich, *Does America Have a Monopoly Problem?* SENATE JUDICIARY COMMITTEE (March 5, 2019)

<https://www.judiciary.senate.gov/imo/media/doc/Reich%20Testimony.pdf>

⁹ *CREW v. Federal Election Commission*, No. 16-259 (BAH) (D.D.C. Aug 3, 2018)

¹⁰ CPSC Briefing Package. Pg. 91.

www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforRecreationalOff-HighwayVehicles-ProposedRule.pdf

Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)*, of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: House Appropriations

Subcommittee: FSGG

Hearing Date: March 27, 2019

Hearing Subject:

Public Witness Hearing

Witness Name: Bartlett Naylor

Position/Title: financial policy advocate

Witness Type: Governmental Non-governmental

Are you representing yourself or an organization? Self Organization

If you are representing an organization, please list what entity or entities you are representing:

Public Citizen

If you are a **non-governmental witness**, please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent at this hearing received in the current calendar year and previous two calendar years. Include the source and amount of each grant or contract. *If necessary, attach additional sheet(s) to provide more information.*

none

If you are a **non-governmental witness**, please list any contracts or payments originating with a foreign government and related to the hearing's subject matter that you or the organization(s) you represent at this hearing received in the current year and previous two calendar years. Include the amount and country of origin of each contract or payment. *If necessary, attach additional sheet(s) to provide more information.*

none

False Statements Certification

Knowingly providing material false information to this committee/subcommittee, or knowingly concealing material information from this committee/subcommittee, is a crime (18 U.S.C. § 1001). This form will be made part of the hearing record.

Witness signature

3/26/19

Date

If you are a non-governmental witness, please ensure that you attach the following documents to this disclosure. Check both boxes to acknowledge that you have done so.

Written statement of proposed testimony

Curriculum vitae or biography

*Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of any Federal grants or contracts, or contracts or payments originating with a foreign government, received during the current calendar year or either of the two previous calendar years by the witness or by an entity represented by the witness and related to the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B) shall include—

(i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and

(ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

Bartlett Collins Naylor

Present: Public Citizen, Congress Watch division, financial policy advocate. Author of *TOO Big, a Public Citizen Blueprint for Wall Street Reform*. Chair, AFR Task Forces on executive compensation, systemic risk. Media coverage: New York Times, Washington Post, Los Angeles Times, NPR, MarketPlace, BoomBust, MSNBC, other.

Capital Strategies Consulting, Principal:

Teamsters, director of Corporate Affairs, author, *America's Least Valuable Directors*

U.S. Senate Banking Committee, chief of investigations

Other (employment or contract work): AFSCME, AFL-CIO, SEIU, Pew Charitable Trusts, National Environmental Trust, American Banker, Scripps Howard, National Commercial News, TESIS/England.

Other writing: *The Price of Life; The Great Leap; From Monasteries to Microsoft; a history of Christian Thinking about Business; the New Teamsters.*

Education: Harvard, AB

