

# Americans for Financial Reform

## Accountability, Fairness, Security

*Americans for Financial Reform is a coalition of more than 200 national, state and local consumer, employee, investor, community, labor, civil rights, and community development organizations that have come together to spearhead a campaign for real reform in our banking and financial system based on accountability, fairness and security.*

Americans for Financial Reform (AFR) supports financial reform that will police Wall Street, defend consumers from abusive practices, and make sure banking and finance serve the real economy, rather than being its master. Real financial reform is crucial to getting the economy back on track and people back to work.

Irresponsible behavior by the biggest banks and Wall Street titans – along with thoughtless deregulation propelled by narrow financial industry self-interest, and a regulatory structure designed to fail - were the fundamental causes of the financial crisis, and the terrible recession we are now enduring. Responding to the crisis, we have bailed out the banks. But we have not yet changed the rules that got us into this mess. We must move forward on making the financial system work for the American people.

Americans for Financial Reform strongly urges you to support and to strengthen the financial reform legislation coming to the House floor.

### **WALL STREET REFORM AND CONSUMER PROTECTION (H.R. 4173)**

#### **Consumer Financial Protection Agency**

Expert Contact: David Arkush, Public Citizen, 202-454-5130, [Darkush@citizen.org](mailto:Darkush@citizen.org)

Meaningful financial reform must make the marketplace safer for everyday Americans. The Consumer Financial Protection Agency (CFPA) will ensure fairness and safety for American consumers. Without it, the reform effort will fail in its current mission to save Americans from the type of crisis through which we are presently struggling. With a strong Consumer Financial Protection Agency, Americans can work and save to provide for their families and generations to come. Existing bank regulators failed to design and enforce fair rules of the road for credit, and the results include billions of dollars worth of tricks and traps on high priced credit cards, over-limit fees on debit cards and abusive mortgages that cost families their homes. The financial crisis demonstrates that unchecked abuse not only hurts individual borrowers, but also undermines the whole financial system. The CFPA will streamline government and ensure a stable and safe marketplace. We don't let manufacturers sell toasters that are likely to explode: we need basic rules and protection against exploding loans, too.

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AFR supports the CFPB proposal in the Financial Reform legislation, and we support amendments to close remaining loopholes, and oppose amendments to weaken CFPB authority. **In particular, the CFPB should:**

- **Cover all financial products:** AFR supports amendments that close loopholes that exempt specific sectors and we oppose amendments to provide additional loopholes. All financial products must be covered.
- **Have primary examination, enforcement and rulemaking authority:** AFR opposes amendments that would split up consumer protection responsibilities because it would weaken the agency's effectiveness.
- **Be a federal floor of protection, not a ceiling:** AFR opposes any amendment that would thwart the ability of states to be the first responder to local and regional issues.
- **Include the Community Reinvestment Act under its purview:** The CFPB must be given both rulemaking and enforcement authority for the CRA in order for the agency to carry out its mission and to level the playing field for underserved communities.

### **Derivatives, Hedge Funds, and Venture Capital (H.R. 3795 & 3818)**

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#### **Transparent, regulated derivatives markets are a critical element of systemic risk mitigation**

Unregulated over-the-counter derivatives brought down AIG and fueled the housing bubble by allowing banks to purchase inexpensive "insurance" against risky loans in lieu of credit standards. Taxpayers bore the cost of this subsidy when \$134 billion was paid out to AIG's counterparties. Now the 5 biggest banks dominate the derivatives market and want to maintain the status quo, since opaque markets permit them to charge very high fees to derivatives clients. Taxpayers, consumers of energy and other commodities, and commercial enterprises using derivatives to hedge, are the losers.

*AFR urges the House of Representatives to ensure that any legislation passed requires all standard derivatives to trade on an exchange, providing instant price information to market participants and regulators. This includes foreign currency derivatives. Because derivatives market participants are "too interconnected to fail" any exception to this policy risks rendering the legislation of little use.*

#### **Pooled investment vehicles may cause the next meltdown**

Private equity funds, hedge funds, and venture capital funds are rarely stand-alone entities; they are interconnected financial enterprises about which little is known to either regulators or investors. The next Ponzi scheme to defraud investors could be disguised as any of these entities, and their web of opaque and leveraged structures poses significant risk to the US economy.

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AFR supports the following elements of the House Financial Services Committee bill applicable to hedge funds and private equity funds:

- Requires managers of hedge funds and private equity funds to register with the SEC;
- Allows the SEC to establish record-keeping and reporting requirements;
- Authorizes the SEC to do periodic and special examinations.

*AFR recommends that the bill be strengthened by removing the exemption for venture capital, regulating the funds as well as their managers, and requiring public disclosure in addition to SEC reporting.*

### **Systemic Risk (H.R. 3996)**

Expert Contact: Jane D'Arista, University of Massachusetts Amherst, 860-885-9567, jane.darista@snet.net

**We need both robust mechanisms for preventing undue risk and putting on the brakes before catastrophic failure is a danger, and a system for resolving institutions should they fail that does not leave taxpayers holding the bag.**

The proposed legislation creates a council of regulators to oversee systemic risk, gives the FDIC the authority to put failing banks into receivership, and creates a resolution fund that large financial institutions will pay into on an ongoing basis.

AFR would support amendments to:

- Democratize the Federal Reserve Board and prevent the banks from controlling the regional Bank Boards.
- Strengthen regulators ability to break up banks that are too big or too interconnected to fail, and to prohibit dangerous activity like excessive leverage.
- Provide the systemic risk regulator with its own staff.
- Reinstate separations between commercial and investment banking and limit insured depositories' ability to engage in excessively risky activities.

AFR supports leaving in place the provisions on auditing the Federal Reserve Board added to the legislation during mark up.

### **Investor Protections (H.R. 3817)**

Expert Contact: Rich Ferlauto, AFSCME, 202-429-1275, rferlauto@afscme.org

The Investor Protection Act (IPA) contains a variety of measures to enhance the ability of the Securities and Exchange Commission (SEC) to detect and prosecute fraud, including increasing the agency's authorized funding, strengthening its enforcement tools, and providing new protections for whistleblowers. It also includes measures to address long neglected gaps in investor protection. The most important of these would require brokers who give investment advice to act in their customers' best interests and would authorize

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the SEC to limit the use of mandatory arbitration clauses. The bill also strengthens the ability of shareholders to more effectively hold management and boards accountable from inside the company. This is a necessary, market-based complement to the external regulatory efforts of the SEC.

AFR supports the goals of the IPA and supports changes to strengthen this title and opposes changes that will weaken it. Specifically, the IPA should:

- **Require all providers of investment advice to act in the customers' best interests under the fiduciary duty of the Investment Advisers Act.** AFR supports stripping FINRA (the brokerage industry's self-regulatory organization) of the responsibility for enforcing the fiduciary requirement for its member firms and associated persons and opposes any amendment to further limit the scope of the fiduciary duty.
- **End forced arbitration.** AFR opposes any weakening of this provision.
- **Restore anti-fraud protections.** AFR opposes weakening the investor protections of the Sarbanes-Oxley Act and supports restoring requirements that all publicly traded companies comply with Sarbanes-Oxley.
- **Give shareholders a greater role in holding corporate boards and management accountable.** AFR opposes stripping the proxy access provisions from the bill.

### Credit Rating Agencies (H.R. 3890)

Expert Contact: Barb Roper, Consumer Federation, 719-543-9468, bnroper@comcast.net

Credit rating agencies, attracted by lucrative fees and virtual immunity from accountability when their ratings failed, had given their seal of approval to financial products whose risks they had not adequately investigated and did not fully comprehend. Disastrously unfounded triple A ratings were key ingredients of the financial crisis; we need credit rating agency reform.

The proposed legislation includes useful and important measures to provide for:

- Accountability, including significantly increased SEC oversight.
- Increased liability for credit rating agency judgments (although it does not dramatically alter the structure of the credit rating agency system, as we believe might be the best long term course).
- Universal ratings for corporate and municipal bonds.

AFR recommends that the bill be strengthened in two areas:

- **Reliance on ratings.** Require regulators to identify areas where laws rely on ratings, determine whether better measures of creditworthiness are available, and either replace or supplement the ratings as appropriate, rather than simply eliminating reliance on ratings with no alternatives.

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- **Independence.** Increase the independence of the oversight board and impose a small fee on ratings engagements to fund increased oversight.