



Americans for Financial Reform
1629 K St NW, 10th Floor, Washington, DC, 20006
202.466.1885

April 9, 2014

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to “The Customer Protection and End User Relief Act”.¹ This legislation would place significant new barriers in the way of effective oversight of commodities and derivatives markets crucial to our economy, barriers not faced by any other regulatory agency. The new statutory ‘cost benefit’ restrictions it places on CFTC rulemaking would enable financial industry interests to indefinitely delay and possibly overturn regulations, even where Congress has clearly directed the regulators to act, and where regulation is sorely needed to protect the public interest. It would tilt the regulatory playing field still further in favor of Wall Street. The legislation would also place significant restrictions on the CFTC’s capacity to oversee derivatives transactions channeled through foreign subsidiaries that impact the U.S. economy or pose potential threats to the U.S. financial system and U.S. taxpayers.

The CFTC already has a statutory requirement to consider the costs and benefits of its actions, and to evaluate these costs and benefits as applied to numerous considerations, including market efficiency, price discovery, and protection of the public. This legislation would more than double than number of different factors the CFTC must measure and consider in any rulemaking or guidance, including the addition of a mandate to determine whether a regulation ‘maximizes net benefits’ compared to a potentially vast number of other theoretical alternatives. Perhaps even more important, Section 212 of the legislation would give Wall Street sweeping new powers to challenge CFTC rules in court based on any aspect of the rulemaking. Section 212(d) requires that CFTC rules meet a “substantial evidence” standard which is a significantly higher standard of review than the well accepted “arbitrary and capricious” standard of review afforded to most agencies under current law. Further, section 212(e) contains an unprecedented measure that would allow litigants to introduce new evidence that had not been provided to the CFTC during notice and comment as a basis for the court to require the CFTC to re-write the rule.

These new barriers to rulemaking amount to a playbook for industry interests to tie up regulations they oppose in endless litigation, delays, and red tape. With critical rulemakings such as position limits to control the manipulation of commodity prices still not completed some three and a half years after they were mandated in law, the addition of new barriers to action would be movement in absolutely the wrong direction..

¹ Americans for Financial Reform is a coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups.

Heightening the effect of these hurdles are new requirements in Section 206 of the legislation that the great majority of staff actions at the Commission receive a majority vote of the Commission – another provision of the law that would substantially delay action and needlessly hinder the effective implementation of even rules that had already passed through the burdensome new cost-benefit requirements created by this legislation.²

In addition to these elements of the bill, Section 359 of the bill contains sweeping new restrictions on the ability of the CFTC to properly oversee derivatives transactions conducted through foreign subsidiaries of U.S. banks, even when such transactions have a direct and significant connection to the U.S. economy. We need only look at the example of J.P Morgan’s ‘London Whale’ transactions, or the London derivatives transactions of AIG Financial Products which resulted in the largest bailout in U.S. history, to see that derivatives transactions conducted through nominally overseas entities can have a profound impact on the U.S. economy. Section 359 of the bill, mirroring controversial legislation which passed the House on a partisan vote, would create a presumption that U.S. rules could not govern transactions channeled through foreign subsidiaries unless the CFTC overturned this presumption through a complex procedure. Since over half of Wall Street derivatives transactions are conducted through foreign entities, this could have a profound impact on the ability of U.S. regulators to properly oversee derivatives transactions.

This legislation contains several other provisions that raise concerns for us, but the short time offered the public for review of this complex proposal before the Committee’s vote has left us insufficient time to adequately assess their impact.

We urge the Committee to reject this legislation, which would create major new barriers to effective CFTC oversight of the crucial commodity and derivatives markets within its jurisdiction. Thank you for your consideration. For more information please contact AFR’s Policy Director, Marcus Stanley at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,

Americans for Financial Reform

² This requirement for a majority Commission vote may be waived, but only by a majority Commission vote – thus requiring a vote in any case.

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International

- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club

- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC

- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending

- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- UNET