



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

September 16, 2014

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to the “Insurance Capital Standards Act of 2014”, and to HR 5405, the “Promoting Job Creation And Reducing Small Business Burdens Act of 2014”.¹

It is entirely inappropriate that this legislation is being considered under suspension of the rules. The thirteen different pieces of legislation bundled into these two bills include numerous provisions that, despite their seemingly technical nature, could have a significant impact on various areas of financial regulation, including the Volcker Rule and the regulation of global derivatives markets. These issues deserve careful debate, and should not be rushed through the legislative process under a suspension of the rules.

“The Insurance Capital Standards Act”

The actual ‘Insurance Capital Standards Act’ contained in this bill was carefully negotiated on a bipartisan basis in the Senate, with input from both industry and consumer groups. This legislation passed the Senate unanimously. It would clarify Federal Reserve regulatory responsibilities toward insurance companies designated as systemically significant. As a stand-alone bill this statute could easily have passed Congress and been signed by the President.

However, in this House version the bipartisan legislation has been packaged together with three controversial and technical regulatory loopholes that could weaken important parts of Dodd-Frank.

Title II of the bill addresses the treatment of collateralized loan obligations (CLOs) under the Volcker Rule. CLOs are complex securitizations generally used to sell leveraged loans, a class of assets that have been the subject of multiple recent warnings from regulators due to their prudential risks.² The Volcker Rule restricts ownership of certain types of CLOs, because banks who own such securitizations can use them to replicate hedge fund-type proprietary trading. This legislation would make a statutory change to the Volcker Rule to permit greater ownership of such securities, specifically by stating that the ability to fire and replace the managers of such securitizations could not be defined as ‘ownership’ that is restricted by the rule.

¹ Americans for Financial Reform is an unprecedented 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.

² McGrane, Victoria, and Gilliam Tan, “[Lenders Are Warned on Risk](#)”, Wall Street Journal, June 25, 2014; Cross, Tim, “[Leveraged Loan Market Remains Hot as CLOs Offset Fund Outflows](#)”, Forbes Magazine, June 13, 2014.

Since the CLO market is dominated by a few of the nation's largest banks, this weakening of the Volcker Rule can be expected mainly to benefit large Wall Street banks that wish to find an end run around proprietary trading restrictions.

Title III of the bill would amend the mortgage rules established by the Dodd-Frank Act to allow the fees from affiliated title insurance companies to be exempt from the fee limits in the definition of a Qualified Mortgage. This would weaken the ability to repay provisions of the law, leaving consumers more vulnerable to excessive fees; the same fees the new Qualified Mortgage rules were designed to prevent. Excluding fees paid to certain title companies and compensation to brokers from the points and fees definition is particularly troubling because the title insurance market is neither transparent nor competitive and, as a result, borrowers have little choice but to overpay. A 2007 GAO report concluded that borrowers “have little or no influence over the price of title insurance and have little choice but to purchase it.”³ The study also found that 70% of the premiums are paid to agents for commissions, while only 5% are paid out in claims. The Qualified Mortgage rules do not solve the problem in the current market but they help encourage more competitive pricing. By preventing any reform of the title insurance market, H.R. 3211 would eliminate one effective way to drive down costs for borrowers.

Title IV of the bill would forbid regulators from imposing requirements for derivatives margin on commercial end users of derivatives. Both prudential banking regulators and market regulators have already proposed to exempt commercial end users from derivatives margin, so the legislation is not necessary to achieve this result. As currently drafted this legislation would go beyond this specific step and effectively eliminate statutory authority for the Commodity Futures Trading Commission (CFTC) to regulate derivatives margin at non-bank derivatives dealers serving commercial end users. The oversight of derivatives margin is a basic regulatory function. Even though regulators have not proposed to require any margin of commercial end users at this time, it is inappropriate to completely eliminate the ability of a central derivatives market regulator to take action in this important area.

HR 5405, “The Promoting Job Creation And Reducing Small Business Burdens Act of 2014”

This legislation contains a number of potentially significant deregulatory measures, including the legislation on collateralized loan obligations and derivatives margin described above that is also contained in the “Insurance Capital Standards Act”.

In addition to these measures, Title II of HR 5405 would deregulate international derivatives markets by expanding exemptions from derivatives clearing requirements for financial affiliates of large international corporations who claim to hedge risk on behalf of commercial entities within the corporation. In some cases exemptions for such treasury affiliates are appropriate, and in fact the CFTC has already issued no-action relief for treasury affiliates who perform such hedging.⁴ However, clearing exemptions may not be appropriate in cases where financial

³ See GAO Report, Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers.” April 2007, Page 2, available at <http://www.gao.gov/new.items/d07401.pdf>.

⁴ See CFTC Letter No. 13-22, No-Action Letter, June 4, 2013, Division of Clearing and Risk, available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-22.pdf>.

affiliates of commercial corporations are performing speculative trading or other purely financial non-commercial activities. As drafted, this legislation would greatly weaken the CFTC's ability to protect against such abuses.

In the name of promoting small company capital formation, H.R. 5405 also packages together a number of unnecessary or ill-considered measures related to securities regulation, many of which duplicate actions already being undertaken by the Securities and Exchange Commission. For example, the bill includes measures related to mergers and acquisition brokers, a tick size pilot project, and disclosure modernization, all of which have been or are being addressed by the SEC without need for legislation. Placing these measures directly into statute without careful consideration could cut off the ability of the SEC to include needed investor protection measures as part of their regulatory efforts.

In sum, these two pieces of legislation include numerous technical changes that could have significant impacts on regulators ability to enforce new financial rules. They deserve full debate, consideration, and input from regulatory experts, and are inappropriate for consideration under suspension of the rules. We urge you to reject this legislation.

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

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

