



**Americans for Financial Reform**  
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May 27, 2011

Mr. Amias Gerety  
Deputy Assistant Secretary  
Financial Stability Oversight Council  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Re: Implementation of the Freedom of Information Act RIN 4030—AA02

Dear Mr. Gerety:

American for Financial Reform (“AFR”) appreciates this opportunity to comment on the proposed rules of the Financial Stability Oversight Council (FSOC) implementing the requirements of the Freedom of Information ACT (FOIA). AFR is a coalition of over 250 national, state, local groups who have come together to advocate for reform of the financial sector. Members of the AFR include consumer, civil rights, investor, retiree, community, labor, religious and business groups along with economists and other experts.

AFR believes these proposed rules impose unacceptable restrictions on the public’s right to know. The 2008 financial crisis disrupted millions of lives and imposed trillions of dollars of damages on the U.S. and world economies. The report by the Financial Crisis Inquiry Commission concluded that this was an avoidable crisis and that failures of financial regulation were a key contributing factor:<sup>1</sup>

“We conclude this financial crisis was avoidable. The crisis was the result of human action and inaction.... We conclude widespread failures in financial regulation and supervision proved devastating to the stability of the nation’s financial markets.”

If we are to ensure that regulators do not repeat the errors that led us to the previous financial crisis, the public must have a real ability to monitor and critique the actions of financial regulators. FOIA disclosure rules are a vital tool in performing this monitoring, and need to be usable by the public.

Specifically, AFR believes that the proposed rules must be modified in the following ways:

- The FSOC should not be permitted to simply ignore FOIA requests due to technical errors. Instead, the FSOC should be required to give timely notice if a request is deficient with specific explanation, as well as guidance on how to correct any defects in the request. In addition, the FSOC should not be permitted to reject records requests based on a subjective determination that excessive effort would be needed to comply with them.
- FSOC determinations in regard to records requests should be subject to appeal.
- The FSOC should be required to disclose the volume of records that are being withheld from production.

<sup>1</sup> See “Conclusions of the Financial Crisis Inquiry Commission”, pp. xvii-xviii.

- The proposed rules should make clear that all votes by members of the FSOC in formal proceedings are available for public inspection.

### **The FSOC Is Granted Excessive, Unreviewable Discretion Regarding Records Requests**

Section 1301.5 (c) of the proposed rules would appear to grant the FSOC the ability to effectively ignore any request which does not meet any and all the technical requirements of Section 1301.5 (b) of the rule. Although the FSOC “may” inform the requester of its decision, or of the specific issues with the request, it is not actually required to do so. This seems to grant the FSOC unlimited discretion to completely ignore FOIA requests due to even the most minor technical errors. This is clearly not in agreement with either the letter or spirit of the FOIA law and needs to be modified. A simple and effective modification would be to require the FSOC to inform requesters of any technical errors in their submission within a reasonable time frame (for example, two weeks), and also give guidance on how the technical error could be corrected.

In addition, Section 1301.5(b)(3) of the proposed rules requires that requesters describe desired disclosures in “sufficient detail to enable Council personnel to locate them with a reasonable amount of effort”. The reference to a “reasonable” amount of effort is subjective and would grant FSOC excessive discretion in avoiding its obligations under the FOIA law. To make matters worse, the proposed rules specifically bar administrative appeals of FSOC determinations that a record request is deficient. In other words, the FSOC would be able to ignore any FOIA request simply on its own arbitrary, unreviewable determination that it could not be complied with easily.

The reference to a “reasonable amount of effort” should be eliminated from the rule, or else ‘reasonable’ should be defined in a clear, limited, and circumscribed manner. Furthermore, FSOC determinations with respect to this and other determinations of deficiency should be subject to administrative appeal.

### **The FSOC Should Be Required to Disclose The Full Volume of Records Withheld**

The Freedom of Information Act requires responding agencies to estimate “the volume of any requested matter the provision of which is denied”.<sup>2</sup> However, the proposed rules simply require the FSOC to indicate the amount of any information deleted at the place such a deletion is made.<sup>3</sup> This is an important difference. The proposed rules would simply require information on redactions, while the FOIA law requires information on the full amount of material being withheld.

The requester will not be able to understand the extent to which information is being withheld unless they are given the full information on withholding required under FOIA. The proposed rules should be changed to comply with statutory requirements under FOIA.

### **Proposed Rules Should Make Clear That All Votes In FSOC Proceedings Are Subject to Disclosure**

The FOIA requires all agencies to make vote records from formal proceedings publicly available.<sup>4</sup> This requirement is binding on the FSOC. The proposed rules should make this disclosure requirement clear, so that possible FOIA requesters will understand their ability to access this information.

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<sup>2</sup> 5 USC 552(a)(6)(F).

<sup>3</sup> Proposed Rules 1301.8(b)(4)

<sup>4</sup> 5 USC 522(a)(5)

Thank you for the opportunity to comment on this proposed rule. If you have any further questions, please contact Marcus Stanley, AFR's Policy Director, at [marcus@ourfinancialsecurity.org](mailto: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.*

- A New Way Forward
- AARP
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- 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
- 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
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services

- Information Press
- 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
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- 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 Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National People's Action
- National Training and Information Center/National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO
- 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
- 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

*Partial list of State and Local Signers*

- 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
- 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
- Neighborhood Economic Development Advocacy 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
- 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



