



Americans for Financial Reform
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February 1, 2012

Dear Representative,

We are writing in opposition to HR 3461, the “Financial Institutions Examination Fairness and Reform Act”. This legislation would put significant statutory restraints and restrictions on the judgment of bank examiners. It would damage the ability of regulatory agencies to provide protection for insured deposits in the nation’s banking system. It would disrupt the ability to provide regulatory oversight across the financial system, from community banks up to the nation’s largest banks.

We have a number of serious concerns with the proposal.

First, bank examiners would be greatly restricted in requiring banks to set aside capital against the danger that a commercial loan will go into default cases where the borrower had not actually stopped payment on the loan. Unlike residential mortgages, commercial real estate loans are often structured to require periodic balloon payments, which are much larger than the payments made in other years. Borrowers must generally roll over their loan to make the balloon payment. This means that the current payments may not be a good guide as to whether a commercial real estate borrower will be able to pay in the future. This is especially true when projects are deeply underwater compared to current market values, as is frequently the case today. This legislation would restrict bank examiners from exercising independent judgment regarding when such a future default is likely. This would prevent bank examiners from requiring prudent action to protect the stability of institutions, and of the financial system. We should not make it easier for banks with government-insured deposits to take risky gambles where the bank receives any upside but taxpayers would end up paying for the downside losses if the loan went bad.

Second, the legislation would increase the bureaucratic delays and complexity in the formal appeals process with regard to supervisory decisions, making it more difficult for regulators to perform their mandated functions of ensuring compliance with the law. First, it would significantly expand the number of items in a bank examiners report that a financial institution could appeal. Section 3(b) would change the law in a way that appears to make absolutely any finding or recommendation brought to the attention of the bank management eligible to be contested in a formal appeals process. Since there can be literally hundreds of such matters in a typical bank examiner report, this could lead to an enormous number of time-consuming appeals before any report was acted on.

Even more important, the legislation adds an entirely new administrative law process on to the existing agency appeals processes for bank examiner decisions. Section 4 of the legislation creates a new ‘Office of the Examination Ombudsman’ in the U.S. Treasury. Regulated banks could appeal any regulatory determination to this new office, from which it would be sent to an administrative law judge, and then back to the Ombudsman for a final decision. This new appeals process is in addition to formal appeals processes and ombudsmen already present at the prudential banking agencies. The FDIC, OCC, and Federal Reserve already have a statutory requirement to have an ombudsman and

an intra-agency formal review and appeals process. In addition, banks may bring a court challenge to any formal regulatory enforcement action. By layering an entirely new formal appeals process on top of this existing process, this legislation would multiply red tape and delays in supervisory decisions. Combined with the expansion in the number of items that could be appealed, the effect would be to greatly strengthen the hand of financial institutions wishing to evade compliance.

Taken together, the changes in this legislation would harm the capacity of bank supervisors to provide oversight to banking institutions in areas ranging from basic prudential oversight of sound banking practices for taxpayer-insured deposits to compliance with consumer laws. The changes here would undermine the supervisory process and affect every bank regulatory agency, potentially including the new Consumer Financial Protection Bureau. Furthermore, these changes are unnecessary. Banking agencies are already required to provide ample opportunity for internal appeals, and the court system is available to banks who wish to challenge regulatory enforcement actions.

The record from the past few decades – both the extremely costly Savings and Loan crisis of the 1980s and the disastrous financial crisis of 2008 -- could not be clearer. Excessive deference to the financial industry by the regulators has been a major enabler of the reckless, irresponsible, and sometimes fraudulent actions that did so much damage to our economy and exposed taxpayers to tremendous losses. This legislation would tilt the playing field further in the direction of excessive deference to industry interests and tie the hands of regulators attempting to protect the public interest. It should be rejected.

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
- 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 Nurses United
- 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 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 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
- 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
- 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
- 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
- The Holographic Repatterning Institute at Austin
- UNET

