



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

April 25, 2012

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to HR 3336, entitled “The Small Business Credit Availability Act”.¹ Despite the title, this legislation has nothing to do with the regulation of small business. Instead, it represents an effort by major financial entities to expand already extensive exemptions they were given in both the original Dodd Frank Act and in rules currently being finalized by regulators. For example, this bill would exempt ‘small banks’ with up to \$200 billion in notional swaps exposure from key Dodd-Frank derivatives requirements, could have the effect of exempting major oil companies such as Shell Oil and Koch Trading from oversight for their swaps dealing activities, and could prevent adequate regulatory oversight of the municipal swaps market that has seen so many abuses in recent years. This bill undermines basic accountability requirements placed on derivatives dealers to prevent future taxpayer bailouts. It must be rejected.

For the most part, this legislation addresses the same issues as those handled in the recently finalized regulatory rule determining which entities will be designated for prudential oversight under the new derivatives regime. The regulators’ final rule already exempts from designation all but the largest participants in the swaps market. We believe it already goes too far in this direction. For example, an entity cannot be regulated as a ‘swap dealer’ unless it has in excess of \$8 billion in notional swaps activity each year. This level equates to well over a thousand typical swaps transactions a year. The rule also contains numerous other exemptions. These include a blanket exemption for transactions between a cooperative (including rural, electric, and financial coops) and its members, as well as exemptions for bona fide hedging of production risks for commercial businesses. It is simply impossible to see how an actual small business would be designated for prudential oversight under these rules.

HR 3336 is an effort to expand exemptions still further for the benefit of major participants in the derivatives markets. These new loopholes could have unpredictable and dangerous consequences. For example, regulators are already studying the possibility of a limited community bank exemption to clearing requirements. But this bill would create a statutory exemption for ‘small banks’ with up to \$1 billion in ‘outward exposure’ in swaps. It is important to understand that this \$1 billion exposure level can correspond to an enormous swaps book. For

example, based on currently regulatory proposals, \$1 billion in market exposure could correspond to a book of up to \$200 billion in notional value in interest rate swaps, \$100 billion in notional value in gold or foreign exchange swaps, and up to \$10 billion in oil, commodity, or credit swaps.

The exemption from the ‘financial entity’ definition would put these institutions on the same plane as end users purchasing swaps to hedge legitimate commercial risk, exempting them from core Dodd-Frank oversight rules like required clearing of swaps. Clearing rules require swaps participants to back up their swaps bets with collateral, and are a major prudential protection the Dodd-Frank Act provides against a taxpayer bailout of derivatives markets. Should this bill pass, major swaps operations could be run through ‘small banks’ and be exempted from these important protections.

HR 3336 also creates a statutory exemption for commercial hedging that could lead to exemptions for major commodity companies. The regulators have already placed such a commercial hedging exemption in their final rules. Although we feel that this exemption is already too broad, it does contain limitations intended to restrict the exemption to genuine commercial hedges. The statutory exemption in HR 3336 would be much broader. Such a broad hedging exemption poses a serious risk to the effective regulation of some of the largest dealers in critical commodity swaps markets like those for oil, gasoline and food. Major dealers in these markets are large global commodity producers that could use an overly broad hedge exemption to avoid oversight. For example, about a dozen such firms – including British Petroleum, Koch Supply and Trading, Shell Oil and Cargill firms-- are major derivatives dealers that are ‘primary members’ of the International Swaps and Derivatives Association.²

The typical course taken by such firms is that they begin by hedging business-related risk, and use this market knowledge to do extensive trading and dealing at their own trading desks. Because of the size of the commodities business at these firms, the line between hedging and dealing is a difficult one to draw. The broader exemption is an invitation to game the rules and runs the risk of exempting major energy firms from dealer designation – potentially creating a new ‘Enron loophole’ in the Dodd-Frank Act. This new loophole is particularly pointless given that the regulators have already signaled willingness to exempt bona fide commercial hedges from being counted toward dealer designation.

To take yet another example of a dangerous loophole added by this bill, the Dodd-Frank Act already provides an exemption from dealer designation for banks selling swaps directly connected to originating a bank loan to the swaps purchaser. HR 3336 would replace this targeted exemption for ‘originating a loan’ with a much broader exemption tied to any ‘extension

¹ [Americans for Financial Reform](#) is an unprecedented coalition of over 250 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, religious and business groups.

² [International Swaps and Derivatives Association, Primary Member List](#), accessed April 10, 2012.

of credit' whatsoever that benefits the customer. This change could potentially allow expanding the exemption from dealer status to banks active in the municipal bond market, which often involves complex liquidity facilities that are clearly extensions of credit. It is even possible to argue that bond underwritings themselves are 'extensions of credit'. Of course, the municipal bond market was one of the major areas of derivatives abuses over the past decade. Taxpayers lost billions of dollars in the complete systemic collapse of the Auction Rate Securities market in 2007-08, and the largest municipal bankruptcy in U.S. history, in Jefferson County Alabama, was directly tied to swaps market abuses. The Dodd-Frank Act contains new business conduct standards for swaps dealers that are directly aimed at these abuses – but they won't apply if banks in that market are not designated as dealers.

HR 3336 also expands already existing exemptions to benefit large swaps market players in several other cases. This includes an expansion of the definition of a 'captive finance company' which could affect the treatment of major consumer financing firms. Other changes could work to exempt Wall Street hedge funds which combine proprietary derivatives trading with market making and dealing.

According to recent polling data, almost 80 percent of Americans favor tougher rules and enforcement for big Wall Street banks. About 70 percent also favor the recently passed Dodd-Frank Wall Street Reform Act. The financial crisis of 2008 cost the U.S. economy trillions of dollars and millions of jobs, and led to millions of families losing their homes. Lack of oversight in unregulated derivatives markets was a key cause of these enormous costs.

After almost two years of work, thousands of public comments, and hundreds of meetings and public round tables, regulators are finally beginning to complete critical rules for oversight of the unregulated derivatives markets central to the financial collapse of 2008. Congress should not send them back to the drawing board with instructions to create new loopholes for large financial industry insiders. We urge you to reject HR 3336.

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

