



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

March 10, 2015

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to HR 1090, the “Retail Investor Protection Act”.<sup>1</sup> This misnamed legislation in fact eliminates needed protections for retail investors. HR 1090 would significantly delay and possibly prevent the Department of Labor from proposing a rule addressing flaws in protections for retirement savings, protections that have not been updated for some forty years. It would also add numerous roadblocks to efforts of the Securities and Exchange Commission to raise the standard of conduct that applies to brokers when they give advice to retail investors.

Tens of millions of average American families rely on financial professionals for investment advice that will determine whether they can afford to retire or fund their children’s college education. But many financial professionals are not subject to a fiduciary duty to put their customers’ best interests first. Financial professionals not covered by a fiduciary duty are legally free to recommend investments that benefit them, the seller of the product, at the expense of the customer who is saving for their future.

The dangers of bad advice are real, not theoretical. In a summary of dozens of independent academic studies, the White House Council of Economic Advisors has concluded that conflicted advice from brokers costs working families some \$17 billion in lost returns on their retirement savings each year, or about 12 percent of their lifetime retirement savings.<sup>2</sup> The non-partisan Government Accountability Office has issued multiple reports warning that there are serious issues of conflicts of interest and deception in 401-Ks, IRAs, and other broker-advised retirement accounts (see e.g. GAO-11-119, January 28, 2011; GAO -13-30, March 7, 2013). Carefully designed academic studies have demonstrated that some brokers systematically steer savers into investments that create losses for the saver, but are more lucrative for the advisor.<sup>3</sup>

Unfortunately, the rules that protect ordinary workers and investors from being steered into sub-standard investment products are weak and have not been updated for decades. The rules for

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<sup>1</sup> [Americans for Financial Reform](#) is an unprecedented coalition of more than 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, faith based and business groups.

<sup>2</sup> Council of Economic Advisors, “[The Effects of Conflicted Investment Advice on Retirement Savings](#)”, February, 2015, Executive Office of the President.

<sup>3</sup> Mullainathan, Sendhil, Noeth, Markus and Schoar, Antoinette, “[The Market for Financial Advice: An Audit Study](#)” (March 2012). NBER Working Paper No. 17929.

retirement savings protections established by the Department of Labor (DOL) were written in the 1970s, before the modern era of self-directed retirement investments like 401-Ks and IRAs. These DOL rules are full of loopholes and thus give inadequate protection to most worker retirement savings today. Furthermore, brokers regulated by the Securities and Exchange Commission (SEC) who provide investment advice to retail customers are free to misrepresent themselves as advisers without having to meet the requirement to act in the best interests of their clients that applies to all other investment advisers.

HR 1090 would strike at the heart of regulatory efforts to address these serious problems. First, HR 1090 would prevent DOL from moving forward with its current proposal to improve retirement savings protections until after the SEC has finalized new rules covering the duties of brokers to their customers. This is an unprecedented and unjustified statutory interference with the Department of Labor's ability to oversee protections for retirement savings, which has been within DOL jurisdiction for forty years under the Employee Retirement and Income Security Act (ERISA). It is not justified by anything in the Dodd-Frank Act, as the Dodd-Frank Act in no way affected DOL's jurisdiction over ERISA-covered retirement savings or its responsibility to ensure fiduciary protection for such savings.

The requirement that DOL halt its rulemaking and wait for SEC action is also a transparent effort to delay and hinder needed protections for worker savings. The Department of Labor is far more advanced in the rule writing process than the SEC. The DOL is already moving forward with a proposed rule, while it is unclear when or if the SEC will write new rules for brokers. Requiring DOL to wait for SEC to complete an as yet non-existent rule is a recipe for years of additional delays.

Having first prevented any DOL action prior to an SEC rulemaking, HR 1090 would then add approximately a dozen new analytic and reporting requirements that must be fulfilled before any SEC action to impose fiduciary duty on brokers. These requirements would do nothing to improve the analytical underpinnings of the rule, but would instead encourage additional litigation and delay rulemaking. The SEC has already studied the issue for over a decade. Additional required findings would simply provide the basis for a legal challenge by those industry groups who oppose any efforts to require them to act in their customers' best interests when providing advice. The effect would be to further delay SEC action that is already long overdue.

The combination of delaying the DOL fiduciary rule for retirement savings until the SEC has completed a rule in another area of the financial markets, and then imposing new bureaucratic hurdles on the SEC before a rule can be finalized, is a transparent effort to halt progress in creating crucial protections for retirement savings. We urge you to protect investors and OPPOSE HR 1090.

If you have any 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.*

- 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

- Government Accountability Project
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defenders 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
- 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



