



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

April 10, 2013

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to HR 634, the “Business Risk Mitigation and Price Stabilization Act”.¹ This legislation creates a new statutory exemption from margin rules for so-called ‘end user’ swaps, or swaps transactions involving non-financial companies that qualify for the end user exemption from Dodd-Frank clearing requirements. This new statutory exemption is unnecessary given that regulators have already proposed a wide-ranging exemption from margin rules for end user swaps. Furthermore, the exemption proposed here would be dangerous to place in statute, as it would constrain the freedom of action of market regulators in addressing margin issues in the future.

Unregulated swaps markets were at the heart of the 2008 financial crisis. The failure of derivatives dealers to back up their swaps with adequate collateral was a critical contributor to the widespread market failures that triggered taxpayer bailouts and the spread of financial contagion. The Dodd-Frank Act (DFA) addresses this issue by requiring that, where appropriate, derivatives be centrally cleared in clearinghouses that hold adequate protection against counterparty risk. For those derivatives that are not cleared, the DFA also permits regulators to set margin and capital requirements to ensure that dealers hold adequate protection. These requirements are at the heart of the systemic derivatives reforms in the Dodd-Frank Act.

However, those swaps that represent bona fide hedges against commercial risk by legitimate commercial end users are given special treatment under the DFA. Because such swaps will in most cases be hedged by the commercial exposure of the company, they are given a statutory exemption from clearing requirements. The DFA does not, however, contain a specific exemption from any margin or collateral requirements for end user swaps that qualify for the clearing exemption. Instead, the issue of whether margin or collateral should be required for these uncleared swaps is left to regulatory discretion. HR 634 would change this by creating a statutory exemption forbidding regulators from requiring margin for end user swaps under Dodd-Frank at all.

Leaving the margin issue to regulatory discretion is the correct choice. Regulators have no incentive to require margin or collateral in cases where it is not necessary. Indeed, the SEC and

¹ [Americans for Financial Reform](http://www.ourfinancialsecurity.org) 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.

CFTC have already moved to create a complete exemption from margin requirements for swaps by commercial end users, and the prudential banking regulators (the FDIC, OCC, and Federal Reserve) have similarly exempted such swaps from margin requirements in almost all cases. The sole case in which the banking regulators propose to require margin for commercial end user swaps is in the case where unmargined end user swaps exceed a credit limit set by the bank itself (not by regulators). This simply mimics current market practice and reflects sound bank management. HR 634 is thus unnecessary to accomplish the goals its supporters describe, because regulators have already proposed the same type of general exemption from margin requirements for end user swaps.

But even though regulators have already proposed a general exemption from margin requirements for end user swaps, it is important that they retain the statutory authority to require margin if necessary. Margin or collateral requirements are the last line of defense if uncleared swaps are not managed on a sound prudential basis. The authority to require collateral backing for derivatives where it is necessary to protect the safety of individual institutions or the broader banking system is a vital component of regulatory authority. Without such authority, regulators will be unable to address buildups of unmargined derivatives risk even if they determine it is a threat either to the safety and soundness of an individual dealer or to the financial system as a whole.

This discretionary authority is particularly important in the case of non-bank swaps dealers regulated by the SEC and CFTC. Even if HR 634 were to become law, the prudential banking regulators would retain the authority under banking laws to impose margin requirements on bank dealers if necessary. That authority does not extend to the non bank swaps dealers which are regulated only by the SEC and CFTC. The Dodd-Frank Act provides the only statutory authority to require collateral or margin for these dealers. If passed, HR 634 would remove this statutory authority leaving regulators of a non-bank swaps dealer without key tools if they determine that end user swaps are being poorly managed by a dealer. For this reason, HR 634 must be rejected.

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.

- 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
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions

- Housing Counseling Services
- Home Defender's League
- 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
- 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 Affiliates

- 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

