

# Americans for Financial Reform

## Accountability, Fairness, Security

U.S. House of Representatives  
Washington, D.C. 20515

December 10, 2009

### **Re: Support H. R. 4173 “Wall Street Reform and Consumer Protection Act of 2009” and Statements on Amendments**

Dear Representative:

The undersigned organizations strongly urge you to **support H.R. 4173, the “Wall Street Reform and Consumer Protection Act of 2009,”** when it comes to the House floor this week. We write individually and also on behalf of Americans for Financial Reform, a coalition of more than 200 national, state and local consumer, labor, retiree, investor, community, business and civil rights organizations who are campaigning for real reform in our nation’s financial system.

The need for this legislation could not be more obvious. Years of deregulation have produced a financial system that is a threat to our economy. Rampant abuses in consumer lending practices, combined with a casino mentality on Wall Street and the willful blindness of federal regulators, have plunged our economy into its worst economic crisis since the Great Depression – and it is clear that Wall Street has not learned its lessons. While H.R. 4173 needs to be strengthened, it contains vital reforms for our country and must be passed.

A number of amendments will be offered which will fundamentally affect the shape of this legislation. In order to ensure meaningful financial reform we strongly urge you to:

- **OPPOSE** the Minnick amendment to eliminate a new Consumer Financial Protection Agency (CFPA) from the bill. It would leave enforcement of consumer protection and civil rights laws in the hands of the same existing regulatory bodies that resoundingly failed to use them.
- **SUPPORT** the Stupak/DeLauro/Larson/Van Hollen amendment on derivatives. Regulators must have the authority to ban abusive derivatives instruments rather than simply reporting them to Congress, transactions which violate the law should be considered invalid, and loopholes which leave too many trades to continue in the shadows must be closed.

At the same time, we believe that as the legislative process moves forward H.R. 4173 must be improved in important respects including:

- The bill provides systemic regulatory authority to the Board of Governors of the Federal Reserve without reforming the Federal Reserve System to remove the banks

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themselves from a role in overseeing the Federal Reserve's regulatory staff. We need a fully public systemic risk regulator, either in the form of a separate agency as detailed in Chairman Dodd's proposal, or a reformed Federal Reserve.

- The proposed CFPB needs to have jurisdiction over the Community Reinvestment Act (CRA), as it does in Chairman Dodd's proposal. The CRA is vital to fighting discriminatory, deceptive, and unsustainable lending practices in minority communities. But as is the case with other consumer protection and civil rights laws, CRA enforcement in recent years has been extremely weak, allowing a wide range of under-regulated, non-bank – and often predatory – lenders to fill the void.
- The legislation should also be changed to give the SEC authority to make the exemption from registration under the 1940 Act for private investment funds contingent upon such funds fulfilling requirements established by the SEC.

Despite the need for these improvements, passage of H.R. 4173 would represent dramatic progress towards a financial system that works for all Americans. By voting for it, you will send an important message to the American public that you intend to change the way that Wall Street works for the better.

Thank you for your consideration of our views. If you have any questions, please contact Rob Randhava, Leadership Conference on Civil Rights, (202) 466-6058 and Lisa Donner, Americans for Financial Reform, (202) 263-4544.

Sincerely,

Americans for Financial Reform

# Americans for Financial Reform

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### Re: Support H.R. 4173 “Wall Street Reform and Consumer Protection”

#### Statements on Selected Amendments

Below is a chart of amendments on which we have a view, and our positions on them. Following the chart is more detailed information on each.

Frank 65	Support
Cohen 46	Support
Kanjorski 51	Support
Peterson	Support
Lynch 135	Support
Marshall I 27	Oppose
Minnick 88	Oppose
Burgess 23	Oppose
Burgess 24	Oppose

Kilroy 103	Support
Stupak 47	Support
Frank 66	Support
Watt 165	Support
McCarthy 168	Support
Murphy 129	Oppose
Bachus 87	Oppose
Burgess 21	Oppose
Minnick 33	Oppose

Matsui 231	Support
Conyers 201	Support
Stupak 48	Support
Conyers 201	Support
Garrett 215	Oppose
Burgess 11	Oppose
Sessions 96	Oppose
Burgess 22	Oppose

#### **Vote Yes on the Stupak, DeLauro, Larson, and Van Hollen Amendment**

This Amendment would narrow the exemptions intended to protect corporations that use derivatives for bona fide hedging, which are currently so broad that they permit hedge funds, private equity firms, and commodity speculators to avoid regulation, defeating the very purpose of the legislation. The amendment would also authorize the CFTC and SEC to ban swaps that are “detrimental to the stability of a financial market” instead of just issuing a report. Finally the amendment would strike provisions that grant immunity to illegal transactions.

#### **Vote Yes on the Stupak and Van Hollen Amendment**

This Amendment requires that all transactions clear, providing greater transparency to market participants for price discovery.

#### **Vote Yes on the Frank Amendment**

This Amendment authorizes the regulators to establish margin requirements for all market participants, not just major swaps participants and swap dealers. Together these amendments would significantly reduce systemic risk by giving regulators a more

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comprehensive view of market size, players, and dynamics as well as the tools to mitigate counterparty risk.

### **Vote Yes on the Peterson Amendment**

This Amendment clarifies the authority of the CFTC to define the terms relating to bona fide commercial hedging by corporate end users who are exempt from clearing and exchange-trading requirements.

### **Vote Yes on the Lynch**

This Amendment prohibits swaps dealers from controlling exchanges and clearinghouses, a conflict of interest that would be contrary to the intent of the legislation.

### **Vote Yes on the Kanjorski-Frank-Sarbanes Cohen**

This Amendment would restore vital Sarbanes-Oxley Act protections against accounting fraud at thousands of public companies. Major revisions to the standards to make them more flexible and more scalable based on the size of the company and the complexity of its accounting have brought compliance costs down dramatically – an estimated 29 percent over two years, according to the SEC. Meanwhile, new research also shows the standards are effective in reducing the surprise restatements that can have a devastating impact on stock price and a destabilizing influence on company health. Based on these and other findings, the SEC voted to proceed with implementation beginning next year for the roughly half of all public companies with under \$75 million in assets under management. This amendment would permit them to proceed as planned.

### **Vote Yes on the Cohen-Frank Amendment**

This Amendment would allow brokers who offer investment advice act in the best interests of their clients, but only if the legislation is implemented appropriately. The Cohen-Frank amendment would help to ensure pro-investor implementation by striking language in the bill that would allow the SEC to delegate primary authority in this area to FINRA, the broker-dealer self-regulatory organization. In light of its domination by the brokerage industry and its long history of opposition to holding brokers to a fiduciary duty when they give advice, Finra is not the right organization to fulfill this responsibility. Moreover, the legislation includes other provisions to increase SEC resources to handle these responsibilities that make any such delegation of authority unnecessary.

### **Vote Yes on the Frank-Kanjorski Amendment**

During mark-up, the House Financial Services Committee voted to change the official designation of credit rating agencies to Nationally Registered Statistical Rating Organizations. This created a conflict with state and local laws that reference the term Nationally Recognized Statistical Rating Organizations. The Frank-Kanjorski amendment would rectify that problem.

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### **Vote No on the Sessions Amendment**

### **Vote No on the McCarthy Amendment**

Credit rating agencies' willingness to slap AAA ratings on investments whose risks they did not understand and could not accurately measure played a key role in turning a U.S. housing crisis into a global financial calamity. In response, the legislation seeks to make the ratings agencies more responsible by holding them legally liable for their actions. The Sessions amendment would eliminate all provisions in the bill holding credit rating agencies legally liable for their actions. The McCarthy amendment would weaken the legal accountability of ratings agencies by restoring existing protections from liability under Section 11 of the Securities Act.

### **Vote No on the Garrett Amendment**

This Amendment imposes a robust new regime of regulatory oversight and responsibilities on credit rating agencies. The Garrett amendment would allow certain ratings agencies to escape that regulatory oversight by deregistering as NRSROs, weakening investor protections in the process.

The financial crisis has provided a stark demonstration of the heavy costs we pay when we abandon tough regulation. Your votes on the above amendments can help to ensure that vital investor protections are restored and protected.

### **Vote No on the Minnick Amendment**

This dangerous amendment would actually make it less likely that existing regulators would act to protect consumers from abusive financial practices, which is quite an achievement given how spectacularly these regulators have already failed in that task. The amendment would leave consumer protection in the hands of the fractured “alphabet soup” of federal regulatory agencies that were on watch while subprime mortgage lenders and credit card companies went unchecked, and erect an elaborate new 11 member “Consumer Financial Protection Council” of federal and state regulators to approve all regulatory measures. This new consumer protection bureaucracy would inevitably lead to gridlock and inaction, rather than the streamlined, straight forward process proposed for the Consumer Financial Protection Agency, which this amendment would eliminate.

### **Vote Yes on the Conyers-Turner-Lofgren-Marshall Amendment**

This Amendment will help families avoid foreclosure and stay in their homes – at no cost to the taxpayers – by allowing for judicial mortgage modification. Lenders have insisted for almost three years now that they will voluntarily address the foreclosure crisis, but the record shows they've made too few long-term modifications and foreclosures continue to swell. Without the “stick” of judicial modifications to encourage voluntary modifications, foreclosure prevention efforts—no matter how well-intentioned—will not succeed. And the cost of failure will be borne by not just struggling homeowners, but by their neighbors, communities, and the larger economy.

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### **Vote Yes on the Kilroy Amendment**

This Amendment amends Section 1604(g) to make explicit that “amounts expended from the Fund by the Corporation under this Section shall be repaid in full to the Fund ONLY from the following sources,” thereby limiting financing for the Systemic Dissolution Fund provided in H.R. 4173 exclusively to assessments on industry, without recourse to the American taxpayer.

### **Vote Yes on the Watt Amendment**

This Amendment narrows exemption for auto dealers to ensure that financing companies are not exempt and that auto dealers cannot use their exemption to engage in payday lending or other financial activities other than originating and brokering auto loans that are routinely assigned. It does not address problems with unfair or deceptive auto dealer activities concerning auto financing.

### **Vote No on the Minnick Amendment**

This Amendment would bind CFPA to definitions of "unfair" and "deceptive" that the FTC issued in policy statements in 1980 and 1983, when FTC was under pressure to weaken its advocacy on behalf of consumers. Even if the FTC Act standard evolves, Minnick Amendment #33 would leave CFPA bound by 1980 and 1983 statements. The amendment also defines the term "abusive" far too narrowly as practices that could lead to systemic risk.

### **Vote No on the Burgess Amendment**

This Amendment would index to inflation any mitigatory action imposed by the Financial Services Oversight Council involving the sale, divestiture or transfer of more than \$10 billion in total assets by a financial holding company subject to stricter standards

### **Vote No on the Burgess Amendment**

This Amendment would require the Federal Reserve to define by rule or regulation the term 'significantly undercapitalized' at a threshold the Fed determines to be prudent for the effective monitoring, management and oversight of the financial system.

### **Vote No on the Burgess Amendment**

This Amendment would set an outer time limit of two years to the amount of time the GAO can use to audit the Federal Reserve.

### **Vote No on the Burgess Amendment**

This Amendment would remove from the GAO study of the SEC's "revolving door" the requirement to determine if employees of the SEC who are later employed by financial institutions "have engaged in information sharing".

### **Vote Yes on the Schakowsky amendment**

This Amendment to clarify the authority of the CFPA to issue rules to regulate underwriting and marketing practices for reverse mortgages and provide a model consolidated mortgage document with relevant disclosures for reverse mortgage

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borrowers. As currently written, the authority of the CFPB derives from specific enumerated federal consumer statutes. However, most requirements specifically relevant to reverse mortgages are included as requirements for FHA insurance under HUD regulations implementing the Home Equity Conversion Mortgage (HECM) provisions of Section 255 of the National Housing Act. The amendment clarifies the CFPB's authority to build upon and enforce the protections currently in HUD regulations, as well as in consumer statutes, and directs it to consult with HUD, as well as federal and state financial regulatory authorities, in developing appropriate regulations and model disclosures covering both HECM and non-FHA "proprietary" reverse mortgages.

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### **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
- ACORN
- Adler and Colvin
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans for Fairness in Lending
- Americans United for Change
- Calvert Asset Management Company, Inc.
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- 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

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- 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
- Leadership Conference on Civil Rights
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Coalition for Asian Pacific American Community Development
- 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 Institute
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Training and Information Center/National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- 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 Seminal
- U.S. Public Interest Research Group
- Union Plus
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Veterans Chamber of Commerce
- Western States Center

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- 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
- Center of Concern
- Center for Media and Democracy
- 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
- Connecticut Association for Human Services
- 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
- Forward Community Investment (Madison, WI)
- Florida Consumer Action Network

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- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Green America
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Idaho Community Action Network
- Illinois PIRG
- Impact Capital, Seattle WA
- Information Press CA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- Keystone Research Center
- 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
- National Housing Institute
- 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
- Next Step MN
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis MN
- Northern Community Investment Corporation (St. Johnsbury, VT)
- North Carolina Association of Community Development Corporations
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG

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- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- 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
- Siouxland Economic Development Corporation (Sioux City, IA)
- Southern Bancorp (Arkadelphia.AR)
- Community Capital Development
- TexPIRG
- The Association for Housing and Neighborhood Development
- The Fair Housing Council of Central New York
- The Help Network
- 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