



Americans for Financial Reform
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September 7, 2012

Dear Senator,

On behalf of Americans for Financial Reform, we are writing to express our opposition to S. 3468, the Independent Agency Regulatory Analysis Act.¹ Although it may appear to be a simple change in administrative requirements for cost benefit analysis, this legislation would give Wall Street lobbyists another powerful set of tools to delay and derail the implementation of financial safeguards that are needed to protect our economy. Independent financial agencies already face extensive requirements for economic analysis, as well as mechanisms of appeal for those requirements. This legislation would add an unnecessary, costly, and time-consuming additional layer of requirements to the process of completing oversight rules for our largest banks. In addition, it would violate the independence of financial regulatory agencies that are designed to be insulated from White House influence. No one who supports the effective and timely implementation of new rules to make the financial system safer and more transparent should support it.

S. 3468 authorizes the President to issue an Executive Order requiring independent agencies to perform at least thirteen new resource-intensive analyses of regulatory costs before they can finalize regulations. In addition, the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget is given the right to review any significant rule, guidance, or policy instituted by independent financial agencies. OIRA comments will be included in the official judicial record of the rulemaking, and could be used as the basis for a court challenge. The agencies and rules affected include prudential banking regulations at the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC), independent market regulators such as the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), and the newly created Consumer Financial Protection Bureau (CFPB).

Proper consideration of the impacts of regulation should of course be part of the regulatory process. But S. 3468 is unnecessary to achieve this goal, and would instead be a tool for unnecessary delay or prevention of necessary oversight. Every independent financial agency (with the exception of the Federal Reserve) is already required to do formal economic analysis, and to consider costs and benefits in rulemakings. In addition, each is required to consider small business and paperwork impacts under the Regulatory Flexibility Act and the Paperwork Reduction Act. Existing statutory and legal requirements for cost-benefit analysis, and legal challenges related to these requirements, are already a major source of delay in financial agency rulemaking. Top officials at the SEC and CFTC have identified cost benefit analysis, and legal

¹[Americans for Financial Reform](http://www.ourfinancialsecurity.org) 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, faith based and business groups.

challenges arising from such analysis, as a major reason for the delay of Dodd-Frank rules beyond statutory deadlines. New analytic requirements would add an additional and unnecessary layer of bureaucracy on top of existing requirements.

The thirteen new analytic requirements this legislation could impose are only the beginning of the delays and burdens it would create. The mandated OIRA review of significant rules would take up to six months. In addition, the review process could force agencies to go back to the drawing board or do a re-proposal of the rule, which could add years to the regulatory process. While agencies could overrule an OIRA determination that a rule or a cost-benefit analysis was inadequate, such a step would render the regulation highly susceptible to court challenge. It would make industry attempts to overturn new rules in court almost inevitable. The increased risk of court reversal will discourage independent financial agencies from finalizing any regulation that receives a negative OIRA review.

The reach of the new requirements and review in this legislation is extremely wide because the definition of ‘rule’ is very broad. It includes “any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, or describing the organization, procedure, or practice requirements”. This means that in addition to regulations, almost any agency guidance, policy decision, or possibly even enforcement practice that was classed as having significant economic effects could be reviewed. This could allow OIRA and the White House to reach deep into many aspects of agency operations, including the regulation of individual institutions as well as the financial system as a whole.

By permitting OIRA to effectively second-guess the decisions made by independent financial agencies, S. 3468 also strikes at the heart of agency independence. Congress created independent regulatory agencies precisely in order to insulate them from political pressures, whether during Democratic or Republican Administrations.. At a single stroke S. 3468 would sweep away this tradition of independent financial regulation. Bringing these independent agencies within the regulatory purview of OIRA defeats the purpose of having independent agencies.

OIRA is also very poorly designed to be a super-regulatory agency with authority over the entire sweep of financial regulation. The office has only 50 employees, as opposed to tens of thousands of employees at the various regulatory agencies brought under its jurisdiction by this bill. In addition, OIRA lacks substantive expertise in financial matters. A true attempt to improve analytic capacity at financial regulatory agencies would increase the funding and analytic staff of the agencies themselves, some of which are gravely underfunded. This legislation would instead insert a tiny White House office as a bottleneck for all financial regulation. The agenda is clearly not to assist timely, thoughtful, and objective rulemaking, but instead to hinder and delay effective Wall Street oversight.

According to recent polling data, 70 percent of Americans favor stronger oversight on big Wall Street banks and the financial services industry. A large majority also favor the Dodd-Frank Wall Street Reform Act. This is not surprising, as the global financial crisis has cost the U.S. economy 8 million jobs and many trillions of dollars in household wealth and taxpayer costs. No reasonable observer could look at this record without understanding that the costs of further

delays in oversight necessary to prevent another financial crisis will certainly be far greater than any benefits created by additional layers of mandatory cost-benefit analysis.

Yet Wall Street special interests have an interest in blocking change. By introducing extensive additional delays in rulemaking and preparing the ground for legal challenges to every detail of a new rule, this legislation would empower them to do so. In the face of the public's demand for change, Congress must reject legislation like S. 3468 which would only give special interests additional tools to maintain the status quo.

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
- 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
- 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 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

