



Consumer Federation of America

Americans for Financial Reform
Accountability, Fairness, Security

February 16, 2010

The Honorable Christopher Dodd
Chairman
Committee on Banking, Housing
and Urban Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Richard Shelby
Ranking Member
Committee on Banking, Housing
and Urban Affairs
U.S. Senate
Washington, D.C. 20510

Dear Chairman Dodd, Ranking Member Shelby and members of the Committee:

As you know, legislative language is currently being circulated that would replace the pro-investor provisions of Section 913 of the Restoring America's Financial Stability Act with new language requiring the Securities and Exchange Commission to study regulatory "gaps and overlaps" between brokers and investment advisers. I am writing to urge you to reject this approach, which would do nothing to ensure that investors who rely on brokers for investment advice receive appropriate protections and would instead waste time and taxpayer money on yet another study of an issue that has already been studied to death. Investors deserve better.

Although the proposed amendment calls for a study, it ignores what years of study have already taught us. It is well established, for example, that investors do not understand the differences between brokers, investment advisers and financial planners and do not realize they are subject to different legal obligations. Focus group testing by the SEC clearly demonstrated that this investor confusion cannot be addressed through disclosure alone. That is why the SEC commissioned the RAND Corporation "to compare the regulatory regimes applicable to investment advisers and broker-dealers and the protections afforded to retail investors by those different regimes" and why it has concluded that the standard for investment advice by brokers needs to be raised.

The proposed amendment would serve as a substitute for Section 913, which is designed to ensure that brokers who give investment advice adhere the same fiduciary duty to act in the best interests of their clients already applicable to investment advisers and financial planners. However, in proposing a new study, the amendment gives scant attention to the issue of what investor protections should apply in these circumstances. To the degree that it raises the issue at all – carefully avoiding the words "fiduciary duty" – it devotes more attention to the impact on brokers than to the impact on investors.

The only investor "concerns" to be addressed by the proposed study are taken directly from misleading industry talking points, which self-servingly suggest that raising the standard for brokers would result in increased costs or reduced investor choice. But we have several decades of experience from the financial planning industry to tell us that combining a fiduciary duty for advice with product sales to implement recommendations has no such ill effects. On the contrary, investors stand to see costs reduced dramatically if brokers are required, as they would be under a fiduciary duty, to take

costs into account when making recommendations. The only products that investors would lose access to under this approach are those that cannot be sold under a “best interests of the client” standard.

A review of the proposed amendment quickly reveals that one purpose of the study is to draw attention to the inadequacy of resources devoted to investment adviser oversight. But we do not need a new study to tell us that Congress has for decades grossly underfunded SEC oversight of investment advisers. A great deal of attention and study was devoted to the issue in the late 1980s and early 1990s, for example, but legislation that would have provided the SEC with needed resources and authority was killed in the Senate in 1994. When the issue arose again in the following session, Congress chose to divide investment adviser oversight between the SEC and the states rather than provide the agency with the funding it needed to fulfill its investor protection mandate. Clearly, lack of adequate regulatory resources is a problem that Congress created, and it is a problem that is well within Congress’s power to solve. Indeed, the funding problem is directly addressed in this legislation. It should not be invoked as an excuse to continue to exempt brokers from regulation under the Advisers Act when they engage in advisory activities.

Finally, the proposed amendment does nothing to enhance the ability of the SEC to respond to any regulatory “gaps or overlaps” it identifies through the required study. Instead, the SEC would be limited to using its existing authority under the Investment Advisers Act and the Securities and Exchange Act to address any such gaps. Where existing authority was inadequate to address the concerns, it could only suggest actions for Congress to take. But if Congress is unwilling to heed the clear recommendation of today’s SEC Chairman that it adopt a fiduciary duty for investment advice by brokers, there is no reason to believe it will be more receptive to a similar pro-investor message two years from now. That suggests that the intent of this amendment is not to improve investor protections but to delay and deflect meaningful reform.

Investors have suffered devastating losses as a result of a financial crisis they did nothing to cause. They are looking to Congress to protect their interests. We urge you to do so by opposing this effort to prevent the adoption of long-overdue reforms.

Sincerely,

Barbara Roper
Director of Investor Protection
Consumer Federation of America

Heather Booth
Executive Director
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
- AARP
- ACORN
- Adler and Colvin
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Family Voices
- American Income Life Insurance
- Americans for Democratic Action, Inc.
- Americans for Fairness in Lending
- Americans United for Change
- Business for Shared Prosperity
- 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
- Green America
- Greenlining Institute
- Good Business International
- HNMA Funding
- 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
- Leadership Conference on Civil Rights
- MoveOn.org Political Action
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Investment Professionals
- 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 Peoples Action
- National Council of Womens Organizations
- Next Step
- OMB Watch
- Opportunity Finance Network
- Partners for the Common Good
- National People's Action (NPA)
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council

- Public Citizen
- Responsible Endowments Coalition
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Carrots and Sticks Project
- The Fuel Savers Club
- The Seminal
- UNET
- Union Plus
- United for a Fair Economy
- U.S. PIRG
- Unitarian Universalist for a Just Economic Community
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Veterans Chamber of Commerce
- We The People Now
- Western States Center
- Woodstock Institute
- Working America
- World Privacy Forum

State Organizations

- 9 to 5, the National Association of Working Women (CO)
- 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)
- Bell Policy Center (CO)
- California PIRG
- California Reinvestment Coalition
- Center for Media and Democracy
- 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)
- Coalition on Homeless Housing in Ohio
- Colorado AFL-CIO
- Colorado PIRG
- Colorado Center on Law and Policy
- Community Capital Development
- 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, AR)
- Connecticut Association for Human Services
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (New York, NY)
- Cooperative Fund of New England (Wilmington, NC)
- Corporacion de Desarrollo Economico de Ceiba (Ceiba, PR)
- CWA 7777 (CO)
- 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 Enterprises, Inc. (Berea, KY)
- Fitness and Praise Youth Development, Inc. (Baton Rouge, LA)
- Florida Consumer Action Network
- Florida PIRG
- Forward Community Investments (Madison, WI)
- Funding Partners for Housing Solutions (Ft. Collins, CO)
- Georgia PIRG
- Grow Iowa Foundation (Greenfield, IA)
- Homewise, Inc. (Santa Fe, NM)
- Idaho Chapter, National Association of Social Workers
- Idaho Community Action Network
- Idaho Nevada CDFI (Pocatello, ID)
- Illinois PIRG
- Impact Capital (Seattle, WA)
- Indiana PIRG
- Information Press (CA)
- 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
- Massachusetts Fair Housing Center
- MASSPIRG
- MichiganPIRG
- Midland Community Development Corporation (Midland, TX)
- Midwest Minnesota Community Development Corporation (Detroit Lakes, MN)
- Mile High Community Loan Fund (Denver, CO)
- Missouri PIRG
- Montana Community Development Corporation (Missoula, MT)
- Montana PIRG
- Mortgage Recovery Service Center of L.A.
- 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)
- North Carolina Association of Community Development Corporations
- North Carolina PIRG
- Northern Community Investment Corporation (St. Johnsbury, VT)
- Northside Community Development Fund (Pittsburgh, PA)
- Ohio Capital Corporation for Housing (Columbus, OH)
- Ohio PIRG
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance (Charlottesville, VA)
- Rhode Island PIRG
- The Rocky Mountain Peace and Justice Center
- Rural Community Assistance Corporation (West Sacramento, CA)
- Rural Organizing Project OR
- San Francisco Metropolitan Transportation Authority
- Seattle Economic Development Fund dba Community Capital Development
- SEIU Local 105 (Colorado)
- Siouxland Economic Development Corporation (Sioux City, IA)
- Southern Bancorp (Arkadelphia, AR)

- 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)
- V-Family, Inc.
- Vermont PIRG
- Village Capital Corporation (Cleveland, OH)
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty – Florida
- WashPIRG
- Westchester Residential Opportunities Inc. NY
- Wigamig Owners Loan Fund, Inc. (Lac du Flambeau, WI)
- WISPIRG