

June 2, 2010

Members of the Conference Committee on the “Wall Street Reform and Consumer Protection Act of 2009” and the “Restoring American Financial Stability Act of 2010”

The Honorable Christopher J. Dodd, Chair
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Barney Frank, Chair
Financial Services Committee
United States House
Washington, D.C. 20515

Dear Chairman Dodd, Chairman Frank and Members of the Conference Committee:

We, the undersigned organizations, urge you to ensure that the final version of the financial reform legislation does not unnecessarily limit public access to critical information about financial fraud or harm whistleblowers.

Tucked inside two otherwise excellent provisions to establish whistleblower incentives and protections to rightly encourage the flow of information of wrongdoing to the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) are unacceptable secrecy measures. Sections 748(h)(2) and 922(h)(2) in S. 3217 (passed as H.R. 4173) bar the public and whistleblowers from ever being able to obtain information about investigations, even if the government never acts. If a whistleblower faces retaliation there would be no access to government records needed to prove status as a whistleblower. If there is no action due to inept bureaucracy, fraud, collusion, or worse, there would be no way to hold the government accountable.

While perhaps well-intentioned to protect the confidentiality of whistleblowers, Sections 748(h) and 922(h) in the Senate bill are overly broad. We appreciate that the SEC provision in Section 7203(g)(2) in the House-passed bill, H.R. 4173, is significantly more narrow. However, that provision could be further improved by removing a Freedom of Information Act (FOIA) exemption that is not needed to protect the identity of the whistleblower.

We encourage you to replace these provisions with language that would provide authentic confidentiality and protection of the identity of whistleblowers. An amendment proposed by Senator Patrick Leahy (SA 3297) to the Restoring American Financial Stability Act, S. 3217 would address our concerns and strike the important balance of preserving government accountability and providing whistleblowers with the confidentiality to come forward. We encourage you to work with Senator Leahy to address this important transparency issue during the House-Senate conference.

We must preserve the ability of the whistleblower to gain access to the information if retaliation occurs, as well as public access to hold the SEC, CFTC, and other government agencies accountable, especially if there is no investigation or the investigation leads to no further judicial or administrative action.

Moreover, it is unnecessary to add additional exemptions to the Freedom of Information Act (FOIA) in these whistleblower provisions. Forty years of jurisprudence have proven the FOIA's exemptions (amended in 1986 to expand protection for law enforcement records) have stood the test of time, fairly and effectively balancing an agency's interests in confidentiality and personal privacy rights with the public's right to know.

Investigations occur across the federal government every day and information pertaining to the administrative stages of these investigations is protected. In more than two decades, no agency has expressed concern over unwarranted access to investigative information during an open investigation. We not only see no justification to hide closed investigations of possible wrongdoing in the financial industry, whether or not provided by a whistleblower, but find this to be at cross-purposes with making government regulation of the financial industry more transparent and effective.

Congress must preserve the whistleblower incentive programs at the SEC and CFTC, and the protection of the confidentiality of the identity of whistleblowers. We urge you to remove the blanket gag orders creating a permanent seal and government secrecy and replace these unacceptable secrecy provisions are replaced with language similar to the Leahy amendment to preserve whistleblower rights, public access to information, and government accountability. We commend you for taking these important steps to ensure transparency and to protect American whistleblowers.

Sincerely,

Project on Government Oversight (POGO)

Citizens for Responsibility and Ethics in Washington (CREW)

Government Accountability Project (GAP)

OpenTheGovernment.org

Public Citizen

Progressive States Network

Common Cause

National Community Reinvestment Coalition

Consumer Action

OMB Watch

Americans for Financial Reform

Fund for Constitutional Government

Californians Aware

National Freedom of Information Coalition

Liberty Coalition

Society of Professional Journalists

Essential Information

Washington Coalition for Open Government

American Society of News Editors

Society of American Archivists

Northern California Association of Law Libraries

Minnesota Coalition on Government Information

A New Way Forward

American Association of Law Libraries

Cc: Senate Ma

ajority Leader Harry Reid, House Speaker Nancy Pelosi, Chairman Edolphus Towns, Members of the House Transparency Caucus