



Consumer Federation of America

1620 I Street, N.W., Suite 200 * Washington, DC 20006

CFA Guide to Amendments to S. 3217 Restoring American Financial Stability Act

Dear Senator:

The Consumer Federation of America (CFA) supports swift passage of S. 3217. The Senate now has the opportunity to pass the most meaningful financial reform since the Great Depression, if weakening amendments are defeated and key consumer and investor protection proposals are added:

- 1. Protect investors from brokers who don't act in their best interest.**
 - *Support Akaka/Menendez/Durbin #3889 to require brokers who give investment advice to retail investors to act in their customers' best interests and disclose conflicts of interest.*
- 2. Protect the independence of the consumer protection regulator.**
 - *Support Durbin/Reed #3768 to establish an independent Consumer Financial Protection Agency and Reed #3858 to remove the ability of bank regulators (who failed so badly in protecting consumers) to veto rules proposed by the new consumer regulator.*
 - *Oppose Corker #3836 and #3837 to broaden bank regulator veto authority.*
- 3. Ensure that the Consumer Financial Protection Bureau has full authority over the financial services market without gaps – including over automobile dealers who sell loans.**
 - *Oppose Brownback #3789 and #3790 to exempt auto and other vehicle dealers from Bureau authority.*
 - *Oppose Corker #3835 to remove the authority of the Bureau to write rules requiring that mortgage lenders ensure that borrowers have the ability to repay their loans.*
 - *Support Schumer #3739 to give the Bureau full supervision authority over all non-banks (including payday lenders), regardless of size.*
 - *Support Reed #3857 to give the Bureau back-up enforcement authority over small and mid-sized banks.*
- 4. Allow the states to be full consumer protection partners.**
 - *Oppose Carper #3949 to weaken state Attorneys General enforcement of Bureau rules and to further preempt states from reining in local problems before they become national catastrophes by applying state laws to national financial institutions.*
 - *Support Reed #3859 to clarify that state consumer protection laws apply to national banks and subsidiaries.*
- 5. Don't exempt public companies from Sarbanes-Oxley accounting fraud requirements.**
 - *Oppose Vitter #3764 and Hutchinson #3785 to exempt thousands of public companies from Section 404 of the Sarbanes-Oxley Act, which requires that their controls to prevent accounting fraud be reviewed by an independent auditor.*

Attached is a complete list of amendments important to CFA and consumers. Should you have any questions, please contact Travis Plunkett at tplunkett@consumerfed.org or 202-387-6121.

Sincerely,

Travis Plunkett
Legislative Director

Susan Weinstock
Director, Financial Reform Campaign

Important Amendments for Consumers and Investors to S. 3217:

Investor Protections - SUPPORT

Akaka-Menendez-Durbin	3889	Fiduciary Duty: Adopting the approach taken in the House bill, requires the Securities and Exchange Commission to adopt rules requiring brokers who give investment advice to retail investors to act in the best interests of their customers and disclose conflicts of interest. In addition, it would authorize the SEC to extend those protections to some or all institutional investors.
Specter	3776	Aiding and Abetting Liability: Restores the ability of defrauded investors to sue to recover damages from those who assisted in perpetrating the fraud.
Feingold	3780	Forced Arbitration: Strengthens the bill's provisions on mandatory arbitration by eliminating the requirement that the SEC first study the issue and by requiring, rather than permitting, the agency to initiate a rule-making to restrict the use of mandatory pre-dispute mandatory arbitration clauses.
Reed	3854	SEC Enforcement Tools: Includes a number of provisions to plug gaps in SEC enforcement authority and strengthen its enforcement tools.

Investor Protections - OPPOSE

Vitter	3764	SOX 404: Provides a permanent exemption to companies with under \$75 million in market capitalization from the requirement that their controls to prevent accounting fraud be reviewed by an independent auditor. It would require a joint SEC-GAO study of means to reduce the "burden" of compliance for companies up to \$250 million in market cap.
Hutchison	3785	SOX 404: Expands the exemption from fraud control audits to companies with market values of up to \$150 million, and would require the SEC to study a means of reducing the "burden" of compliance for companies up to \$700 million.
Cornyn	3894	Forced Arbitration: Strikes the bill provision authorizing the SEC to restrict the use of mandatory pre-dispute binding arbitration clauses. As such, it would continue to allow brokers and advisers to force investors to arbitrate disputes in an industry-run system that investors do not perceive as fair.
Carper	3860	Majority Voting in Director Elections: Eliminates the requirement for majority voting in director elections to boards of public companies.
Carper	3861 3887	Proxy Access: Eliminates the provision authorizing the SEC to adopt rules granting shareholders greater access to the proxy for the purpose of nominating directors of public companies.
Harkin	3920	Fixed Annuities: Eliminates SEC jurisdiction over equity-indexed annuities in order to prevent it from adopting rules to protect investors in these products.

Bureau of Consumer Financial Protection - SUPPORT

Hagan	3744	Payday Loan Limits: Establishes meaningful rules for small denomination, short term, unsecured cash advances, such as "payday" loans.
Whitehouse	3746	State Usury Limits: Restores to the states the right to protect consumers from usurious credit card lenders.
Reed	3857	Enforcement Authority: Provides the Bureau with back up enforcement authority over all non-banks.
Reed	3859	National Banks: Clarifies that state consumer protection laws apply to national banks and subsidiaries.
Schumer	3739	Non-Banks Supervision: Gives the Bureau full supervision authority over all non-banks (including payday lenders), regardless of size.
Durbin	3766	Student Loan Protections: Provides students and their families stronger protections against abusive lending practices by giving the Consumer Financial Protection Bureau

		(CFPB) examination and enforcement authority over large private student lenders.
Durbin-Reed	3767	High Cost Credit Limits: Provides consumers and small businesses with stronger protections against abusive lending practices by giving the new Consumer Protection Bureau the ability to limit the rates that payday and other lenders can charge.
Durbin	3768	Agency Independence: Provides consumers and small businesses with stronger protections against abusive lending practices by making the new consumer regulator an independent agency.
Feingold	3780	Binding Arbitration: Eliminates requirement for study by CFPB of binding arbitration agreements. Requires Bureau to write rules on the use of such agreements if it determines such actions to be in the public interest and for the protection of consumers.
Harkin	3812	ATM Fees: Limits the amount of some fees charged at automated teller machines.
Wyden	3849	Credit Card Ratings: Allows the consumer bureau to study establishing a 5-star consumer protection rating system for credit cards.

Bureau of Consumer Financial Protection - OPPOSE

Brownback	3789 3790	Auto Dealer Exemption: Excludes automobile and certain vehicle manufacturer dealers from the authority of the Consumer Financial Protection Bureau.
Carper	3949	State Attorney General Enforcement: Weakens state Attorneys General enforcement of Bureau rules and further preempt states from reining in local problems before they become national catastrophes by applying state laws to national financial institutions.
Corker	3835	Mortgage Underwriting: Removes rulemaking authority for the Consumer Financial Protection Bureau regarding underwriting standards for residential mortgages.
Corker	3836	CFPB Veto: Requires Systemic Risk Council review of member agency rules.
Corker	3837	CFPB Veto: Authorizes the Federal Financial Institutions Examination Council to review each regulation prescribed by the Bureau of Consumer Financial Protection.
Cornyn	3894	Binding Mandatory Arbitration: Eliminates a provision in the bill providing the CFPB and the Securities and Exchange Commission (SEC) with the power to limit the use of forced arbitration clauses in consumer and investment contracts.

Credit Rating Agencies - SUPPORT

Nelson	3751	Post-rating Surveillance: Requires the SEC to adopt rules to ensure that credit rating agencies monitor and update their ratings to ensure that they remain accurate and reliable.
Brown	3821	Accountability: Eliminates special protections from Section 11 liability for credit ratings that were designed to encourage their inclusion in prospectuses.
Franken	3808	Conflicts of Interest: Directs the SEC to establish an independent entity to assign credit rating agencies for initial ratings, eliminating the fundamental conflict of interest in the issuer-pays business model.

Credit Rating Agencies - OPPOSE

LeMieux Shelby	3774 3925	Reliance on Ratings: Removes all statutory references to credit ratings, without the careful review currently required by the legislation of how the ratings are used and whether alternatives to ratings are available.
-------------------	--------------	---

Housing – OPPOSE

Corker-Gregg-Isakson	3834	Mortgage Underwriting: Replaces the risk retention provision in the bill with a study on the feasibility of risk retention requirements and requires a 5 percent down payment for all mortgages.
McCain-Shelby-Gregg	3839	Government-Sponsored Entities: Establishes arbitrary timetables for the dissolution of Fannie Mae and Freddie Mac.