



**Americans for Financial Reform**  
1629 K St NW, 10th Floor, Washington, DC, 20006  
202.466.1885

August 1, 2012

Dear Representative,

The undersigned organizations write to urge you to oppose H.R. 2446, the ‘RESPA Home Warranty Clarification Act of 2011’. This legislation will exempt payments related to homeowner warranties (also known as home service contracts) from the Real Estate Settlement Procedure Act’s ban on kickbacks and referral fees. Home warranties are contracts under which the warrantor agrees to replace or repair home appliances and systems. They are often marketed and sold in the context of a home purchase or mortgage refinancing.<sup>1</sup> The cost of the warranty is imposed at the mortgage closing. We believe exempting payments related to these products from the ban on kickbacks and referral fees would be harmful to consumers.<sup>2</sup>

Warranty vendors often pay real estate agents a fee to encourage them to market and recommend warranties to home buyers. HUD has stated that such payments are prohibited by RESPA because they are unearned referral fees or kickbacks, and we agree that this interpretation is consistent with the facts and the goals and language of RESPA. Home buyers are encouraged to trust their real estate agent’s judgment. Allowing agents to receive ‘referral fees’ for steering borrowers to particular products, and/or encouraging them to buy a particular product would create a conflict of interest for the agent. There have been numerous allegations that warranty companies do not provide the promised services. Payments to agents would provide an incentive to make recommendations based on which vendor pays a fee, or pays the highest fee, rather than based on the quality of the vendor’s product.

Replacing the ban on kickbacks and fees with a disclosure as proposed by the legislation is entirely inadequate. Home buyers are already inundated with countless documents and one more disclosure will only add to the information overload. The disclosure is also vague, confusing, and does not identify the amount of the payment. Under the HUD rule, real estate agents can still provide homeowners with information about home warranties, they just can’t be paid by home warranty companies for doing so as part of the real estate closing.

H.R. 2446 will also interfere with open, fair competition in the marketplace for warranties by promoting reverse competition. Products, such as home warranties, should compete based on

---

<sup>1</sup> One company reported that 22% of its revenue was connected to existing home sales.  
<http://www.inman.com/news/2012/03/21/settlement-reached-over-alleged-home-warranty-kickbacks-brokers>

<sup>2</sup> <http://www.inman.com/news/2012/03/21/american-home-shield-stands-behind-brokers-in-legal-fights>

quality and price. Kickbacks interfere with that beneficial form of competition because real estate agents are encouraged to recommend or sell warranties based on who gives the best kickback, rather than on merit. This can result in a downward spiral in which companies with over-priced, low-quality products can gain a larger market share at the expense of consumers and honest competitors by paying the largest kickbacks.

Reverse competition, sometimes called “the race to the bottom” played a big roll in the subprime mortgage disaster because brokers, loan officers, and lenders were getting incentives to do the opposite of what was best for the borrower (and for the economy as a whole).

Home warranties should be marketed and sold based on their own merits, and current law does not prevent that. A good product should not need a kickback/gift/incentive to succeed.

Thank you for your consideration of our views. If you have further questions, please contact Andrew Pizor at the National Consumer Law Center at 202-452-6252 or apizor@nclc.org.

Sincerely,

Americans for Financial Reform

Center for Responsible Lending

Consumer Watchdog

The Leadership Conference on Civil and Human Rights

National Association of Consumer Advocates (NACA)

National Consumer Law Center (On behalf of its low income clients)

NEDAP

## **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

