Congress of the United States
Washington, DC 20515

July 1, 2010

Dear Senator

On June 30th, the House of Representatives approved the conference report to H.R. 4173, the Democrats' financial regulation bill. The conference report, which spans more than 2,300 pages, fails to enact the needed reforms to address the causes of the crisis, it fails to end the bailouts, and it will have serious negative consequences on our economy and on U.S. businesses. In an effort to meet an arbitrary deadline, the Majority rushed through the conference consideration of the bill in order to have it approved by the time President Obama attended the G-20 meeting. Unfortunately, this caused changes to be made in the middle of the night and without public debate or knowledge, leading to many drafting errors that will increase the negative impact on our economy. One of the most serious errors is the provision that directs the regulators to set margin requirements for the thousands of businesses across the country that use derivatives to manage their legitimate commercial risk. We write to urge you to oppose H.R. 4173 when the Senate considers the conference report.

Derivative contracts are essential financial instruments for many American companies with one feature in common: their value is linked to changes in some underlying variable, such as the price of a physical commodity, a stock index or an interest rate. Everyday small businesses utilize derivatives to protect themselves against unforeseen market volatility, commodity price increases or currency fluctuations.

Unfortunately, the Majority's financial regulation will force U.S. businesses to divert resources from job creation and investment to meet costly new margin requirements on their derivatives transactions. It has been estimated that this will redirect as much as $1 trillion from productive activities and require it to be posted as collateral. This will make it more difficult and more expensive for Main Street companies to use derivatives to manage risk. In the end, the Majority's margin requirement drains capital from U.S. businesses that could be used for loans and job creation. It will reduce the availability of loans and credit, force small businesses to close and cripple new startups at a time when our economy is struggling.

Recently, Senators Chris Dodd and Blanche Lincoln have claimed that regulators have no authority to impose margin on end users. They are mistaken. The legislation specifically directs regulators to set margin requirements for end users. Additionally, Democrats had two opportunities this week to fix this language. On Tuesday, June 29th, the conference committee had to meet in order to consider an amendment by Senator Dodd to change the funding mechanism for the bill. At this meeting, Senator Saxby Chambliss attempted to clarify this derivatives provision but was blocked by the Democratic conferees. And yesterday, during House consideration of the final conference report, Republicans offered a motion that would have sent the bill back to conference with instructions to remove the new margin requirements for U.S. companies. The Majority again blocked our efforts.

Democrat protestations to the contrary not-with-standing, their refusal to correct this language was the strongest message they could send to regulators. The Majority apparently intended for regulators to impose these provisions on end-users. Otherwise, they would have made these changes when they had the chance.

It is important that financial regulatory reform does not unfairly hurt our U.S. businesses. If the derivatives language in H.R. 4173 is not changed our small businesses will not be able to use derivatives to manage risk. Additionally, these companies will have less capital to devote to hiring workers and expanding their operations. Testifying before the Financial Services Committee in October 2009, Jon Hixson from Cargill said of margin requirements:

> "For us, we've estimated it would cost approximately about $1 billion depending upon market conditions. An additional amount of money we'd have to borrow. For some local context, one of our largest investments, we've got two members from Kansas City sitting here. You know, we've built a brand new oil seed (ph) facility. Our largest in the U.S. in Kansas City. So it's -- you know, for us we have to choose whether you put that money in margin, or do you continue and build that plant? That's the type of thing we'd have to decide."

While we all support modernizing our financial regulatory structure, the bill fails to enact necessary reforms. We need to carefully consider the changes that were made during the conference and study their impact on the economy and job creation. As currently drafted, the legislation will hurt our small businesses, shift all private risk onto the backs of American taxpayers, and send American jobs overseas. We urge you to oppose H.R. 4173.

Sincerely,

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