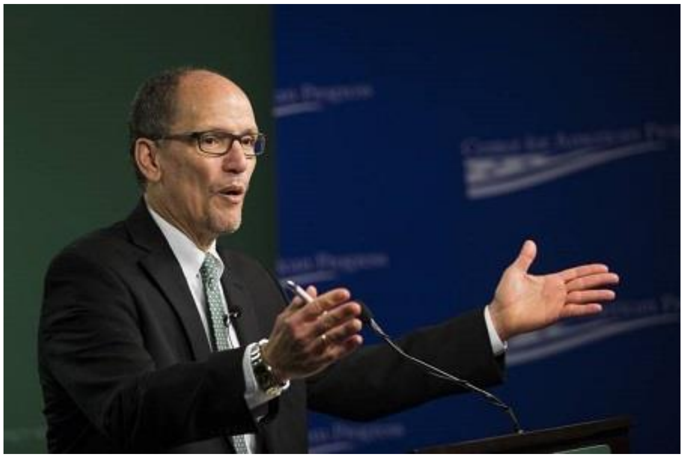
AFR Update - Spring 2016

"A huge victory for American workers and retirees"

Despite fierce resistance from a large swath of Wall Street, the Department of Labor has published a rule that sets a broad and enforceable fiduciary standard for retirement investment advisers. In plain language, that means an obligation to give honest advice – the kind that serves the best interests of the client, not the best interests of the adviser or the adviser's firm.

The old rules, which haven't been updated since the days of defined-benefit pensions, allowed some financial professionals to offer sales pitches disguised as advice, steering people into high-commission investment products instead of alternatives with lower fees, higher returns, or fewer risks.



The DOL's announcement was a "huge victory for American workers and retirees," AFR said in a press release. It was also a gratifying step for AFR and its partners in the Save Our Retirement campaign, which "helped resuscitate the regulation," according to Bloomberg, "after many thought it was dead" because of the well-resourced campaign against it by elements of the financial industry and their friends in Congress.

To counter that effort, our side organized letters, mounted petition drives, put out fact sheets and reports, generated a tremendous amount of favorable media coverage, and galvanized support from a striking number of financial professionals and firms. We will need to keep our shoulders to the wheel in order to fend off more congressional attacks and a likely legal challenge.

The fight will be well worth making. "Putting the clients first is no longer a marketing slogan," Secretary of Labor Thomas Perez said in announcing the rule. "It's the law." The new rule holds the potential to stop Wall Street from siphoning tens or even hundreds of thousands of dollars out of an individual's retirement savings, and could mean a difference of more than $17 billion a year for retirement savers in the aggregate.

Ending 'Too Big to Fail'

One of the key provisions of the Dodd-Frank Act requires banks to draft "living wills," convincing regulators of their ability, if necessary, to declare bankruptcy and unwind their operations without causing a wider crisis.

On April 13th, the Federal Reserve and the Federal Deposit Insurance Corporation rejected the revised plans of five of the largest banks, including JP Morgan and Bank of America, declaring that they did not pass the credibility test. The regulators cited a number of issues that AFR had raised in response to last year's submissions. In a detailed letter, we questioned whether the banks would have the funds for an orderly bankruptcy, described some of the other major barriers they would face, and expressed extreme skepticism about their claims of progress toward meeting the requirement. A Wall Street Journal article about AFR's arguments concluded that they had added momentum to calls by Senator Elizabeth Warren and others for better explanations of how the biggest banks could plan for such a contingency.

Through their latest action, the regulators gain the authority to place additional risk controls on the five banks with failing grades. (The plans of three other banks were rated flawed without being formally rejected.) Under the terms of Dodd-Frank, formal rejection of the five banks' plans starts a two-year clock on their potential breakup. The regulators struck the right note of firmness this time, but the effectiveness of the living-will mechanism will depend on continued follow-through. We will be watching closely.

"Personnel is policy"

Wall Street reform has been getting a lot of play on the presidential campaign trail. But while most of the debate has been over policy positions, painful experience tells us that personnel can be just as important as policy, or, as Senator Elizabeth Warren puts it, "Personnel is policy."

This is a particularly salient lesson when it comes to financial regulation. In the years leading up to the crisis of 2008, key federal officials, many with past ties to the banking world, consistently failed to use existing powers to crack down on deceptive and dangerous industry practices. Since that time, decisions made by regulators have played a large part in both the successes and failures of Dodd-Frank implementation.

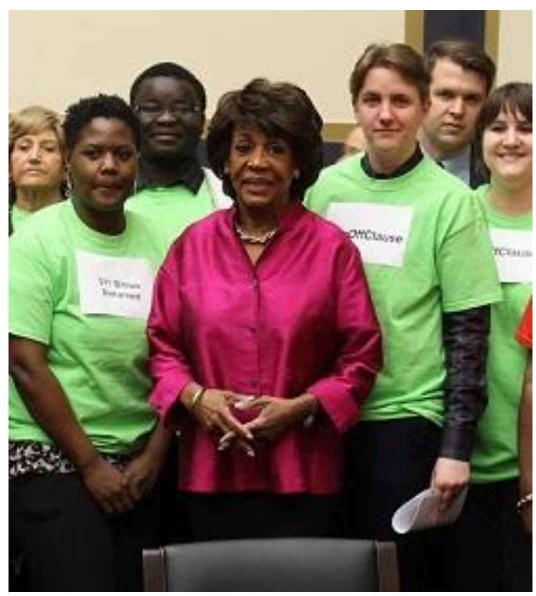
In recent months, AFR and our allies have continued our longstanding efforts to push for effective public-interest nominees for specific regulatory positions, while elevating that standard as a general principle. In February, AFR joined Rootstrikers, the Progressive Change Campaign Committee, the Revolving Door Project, and Public Citizen's Congress Watch in a petition drive urging all the presidential candidates to openly discuss their criteria for filling important positions from Treasury Secretary on down, and to commit themselves to finding nominees "with a record of challenging Wall Street power."

The petition drive was well covered in the media and came on the eve of a Democratic debate in Miami. At the debate, moderator Karen Tumulty asked a question long raised by Senator Elizabeth Warren: whether candidates would appoint people who are prepared to be tough on Wall Street. In response, Hillary Clinton noted her support for a bill – the Financial Services Conflict of Interest Act, co-introduced by Senator Tammy Baldwin (D-Wis.) and Rep. Elijah Cummings (R-Md.) – to slow the revolving door. Clinton also said she would "put the interests of consumers first" when making appointments, and would seek the advice of Senator Warren and others on her choices. Senator Bernie Sanders, in addition to being a co-sponsor of the revolving-door bill, has consistently promised to appoint financial reformers. "As president, I will nominate and appoint people with a track record of standing up to power, rather than those who have made millions defending Wall Street CEOs," he said in January. "Goldman Sachs and other Wall Street banks will not be represented in my administration."

Show of support for the CFPB

In his 61 appearances before Congress, Director Richard Cordray has heard many nonsensical claims made against the Consumer Bureau by lawmakers who seem to have received most of their information from financial industry lobbyists.

It happened again on March 16, when Cordray testified before the House Financial Services Committee, and once more at a Senate banking committee hearing on April 7. But there was a noticeable difference: as a result of AFR's advance work, the audience at each of these hearings included a delegation of consumer and civil rights advocates wearing lime green t-shirts that said "Stand Up for the CFPB" or "The CFPB Has My Back." They were there to show their support for the Consumer Bureau and to remind any committee members who needed reminding that the great majority of Americans, across party lines, like both the *idea* of a tough financial industry watchdog AND the specific things the CFPB is doing to bring fairness to the banking and lending markets.



At the House hearing, Rep. Keith Ellison (D-Minn.) took time out to "congratulate the people here with the green shirts who are standing with the CFPB today." On the Senate side, Virginia's Mark Warner publicly thanked a delegation of eight activists from Virginia Organizing, and Senator Robert Menendez (D-N.J.) posed with a group from New Jersey Citizen Action.

Ohio Senator Sherrod Brown, the ranking Democrat on the committee, referred to polls showing that *3* in 4 voters view the CFPB's work favorably, and to a set of petitions, which we delivered to his office that morning, in which hundreds of thousands of Americans express support for the agency's work.

More than two dozen advocates showed up at each hearing, although not everybody was able to get inside. Meanwhile, advocates around the country participated in informal Twitter storms. During the Senate hearing, one of the most widely shared tweets was a line of Senator Elizabeth Warren's (D-Mass.), comparing a payday loan to a brick handed to a drowning person.

The organizations participating in these actions included Casa de Virginia, Center for Popular Democracy, Color of Change, Consumer Action, Consumers Union, Fair Budget Coalition, Habitat for Humanity, Leadership Conference on Civil and Human Rights, Main Street Alliance, NAACP, National Community Reinvestment Coalition, New Jersey Citizen Action, PennPIRG, Rootstrikers, Strong Economy for All, and Washington Homeless Coalition.

Stepping up the campaign to close an egregious tax loophole

How is it possible to rake in tens of millions of dollars a year and yet pay a smaller share of your earnings in taxes than ordinary American workers do? Private equity fund managers have figured out how: they count the money they're paid for managing other people's money as "carried interest" on the profits of the fund. By this means, what is essentially a salary is magically transformed into capital gains, which qualify for a lower tax rate. Bottom line: teachers, construction workers, and firefighters end up paying more of their earnings in taxes than do some of the wealthiest people in the country.

Americans for Financial Reform has joined with Senator Tammy Baldwin (D-Wis.) and Representative Sander Levin (D-Mich.) to support their efforts to close this egregious loophole through the Carried Interest Fairness Act of 2015.

To build support for this effort, AFR and our partner organizations are asking for more information on just how many billions of dollars of taxes are being evaded through the carried interest loophole. As things stand, no one knows exactly. The Joint Committee on Taxation has estimated the lost revenue at $18 billion over ten years; other tax experts think it could be as much as ten times that amount. That's why AFR joined with nine other organizations in urging the Treasury Department and the Internal Revenue Service to insist that private funds reveal the amount of carried interest distributed to their general partners.

We are also pressing ahead with efforts to get Treasury and IRS to crack down on other PE fund tax tricks, including so-called monitoring fees that deprive the U.S. government of hundreds of millions if not billions more in tax revenue every year.

More public transparency on implementing the Volcker rule

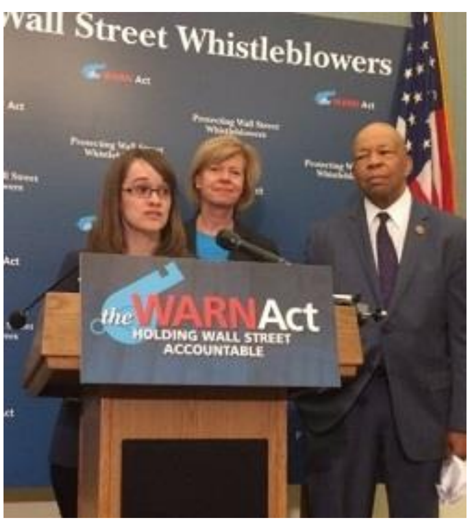
Regulations to implement the Volcker Rule – the provision of Dodd-Frank that bans banks from making proprietary bets with depositor money – were finalized in December 2013. But that was just one step toward the real-world changes needed to give practical force to this reform. More than two years later, many crucial decisions about the actual reach and enforcement of the Volcker Rule are still in the works.

These decisions could have a large bearing on the effectiveness of an important safeguard against big-bank recklessness. The public has a right to know how the regulatory agencies and their bank supervisors are going about the implementation process, what has or hasn't changed as a result, and how the consequences are being measured and monitored.

In a recent letter, AFR called on regulators to reveal more of what is actually happening with the implementation and enforcement of the Volcker Rule, and we laid out a set of specific suggestions on how to do so. The letter led to a series of meetings with bank supervisors; but while they generally seemed sympathetic to the call for greater transparency, they have not made clear commitments to bring it about. We will press ahead with our efforts to get these agencies to provide more information and clarity on how they are implementing the Volcker Rule, and whether it is actually altering bank behavior and serving its intended purpose.

Expanding protections for financial industry whistleblowers

In February, Representative Elijah Cummings (D-Md.) and Senator Tammy Baldwin (D-Wis.) co-introduced the "Whistleblower Augmented Reward and Non-Retaliation (or WARN) Act, which expands protections for those who blow the whistle on financial crimes.



AFR Senior Policy Analyst Alexis Goldstein spoke at a press conference marking the bill's introduction, along with the two lawmakers and Shanna Devine, Legislative Director of the Government Accountability Project. "Ensuring that insiders can blow the whistle on illegal acts is crucially important to a financial system that works," Goldstein said.

The Dodd-Frank Act gave regulators important new tools to work with financial whistleblowers, and these programs are showing initial signs of success. But problems remain. Big banks and other large companies are still trying to prevent acts of whistleblowing; their methods include confidentiality agreements that force whistleblowers to waive their rights and rules requiring workers to tell their employers about any and all communications with government regulators. The WARN Act outlaws these tactics. It also expands the activities that constitute protected whistleblowing, closes loopholes in existing anti-retaliation rules, and directs banks to educate their employees about their whistleblower rights and remedies.

Defending reform in the derivative and commodity markets

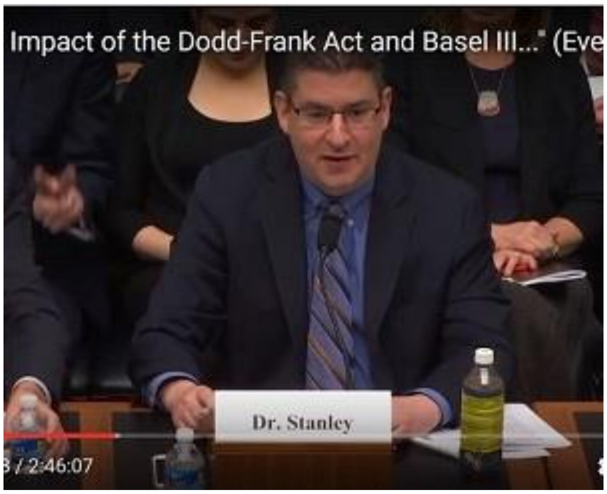
The Dodd-Frank Act brought the multi-hundred trillion dollar market for over-the-counter derivatives under federal oversight for the first time. Regulators were given a dual mandate: in the first place, they were supposed to establish safeguards against the kind of massive derivatives betting that had helped trigger the 2008 financial collapse. In addition, Dodd-Frank specifically directed regulators to prevent excessive speculation in derivatives tied to the price of oil, grain, and other essential commodities, recognizing that market manipulation had occurred in the past and could have a profound negative impact on consumers and national economies around the world.

Congress gave most of this regulatory responsibility to the Commodity Futures Trading Commission (CFTC), the smallest of the Federal financial oversight agencies. The CFTC was told to address the speculation problem through “position limits,” or limits on any one trader’s holdings in a given market. From the start this agency has been the target of an intense industry lobbying effort, including continuing – and thus far successful – efforts to keep it from having the funding necessary to fulfill its responsibilities.

The past few months have seen some especially notable attacks on the CFTC’s ability to regulate commodity derivatives trading. In February, a CFTC advisory group stacked with industry representatives released a report that blasted the very idea of position limits, arguing that growing speculation was not affecting market prices. Fortunately, the panel included Tyson Slocum of Public Citizen, a key AFR member. Slocum used his position as the sole public interest representative on the advisory group to sound an alarm about the flaws in its highly slanted report. We echoed that message, as did Senator Elizabeth Warren and many others.

In a victory for transparency and public accountability, Republican CFTC Commissioner Christopher Giancarlo, who headed the advisory panel, was persuaded to withdraw the report, which means that it cannot be used as the basis for a future legal attack on the final position-limits rule.

Weeks later, industry lobbyists targeted the CFTC again, this time in the congressional reauthorization process. The majority on the Senate Agriculture Committee advanced a reauthorization bill that included half a dozen exemptions and loopholes for Wall Street interests, some of them specifically aimed at position limits. (By contrast, the bill did not include any effort to increase the CFTC’s funding in recognition of its vastly expanded responsibilities.) AFR helped organize opposition to the bill, releasing a letter with a detailed critique. While the bill narrowly passed the Agriculture Committee, it did so on a strictly party-line vote, making its approval by the full Senate unlikely.



AFR Testifies. On February 24, AFR Policy Director Marcus Stanley testified at a House hearing on financial regulation and the fixed-income securities markets. In this latest of many appearances before Congress, Dr. Stanley refuted industry claims that the Dodd-Frank Act has had a significant negative impact on these markets. He also spoke out against several bills that would weaken regulations designed to prevent securitization abuses like those that created the "toxic assets" that helped fuel the financial crisis.

Urging Treasury to finish money-laundering rule for investment advisors

As a safeguard against money laundering, banks and other U.S. financial companies are required to know their customers and report suspect transactions to law enforcement. What may surprise you is who's *not* covered yet by this requirement: hedge funds, private equity funds, and other big investment firms with $100 million or more in assets. A decade of inaction has allowed some of the largest of these firms to accept substantial funds with no questions asked.

Registered investment advisers collectively bring billions of dollars into the U.S. financial system. Clearly, they should be subject to the same anti-money laundering obligations as other firms. In September, the Treasury Department took an important first step in this direction by putting out a proposed rule. Now AFR has joined with 10 other organizations in urging Treasury to finish its rule, strengthening a key U.S. defense against money laundering that furthers terrorism, drug trafficking, organized crime, and tax evasion.

Baby steps toward financial relief for scammed students

Court judgments have finally shown what advocates have known for years: the now-bankrupt Corinthian college chain was a chronic lawbreaker. Corinthian has been found guilty of predatory lending in actions brought by the Consumer Financial Protection Bureau and the California Attorney General's office, and the Department of Education says the school misled an estimated 125,000 students about their job-placement prospects.

Nevertheless, only a frustratingly narrow group of students have had their debts cancelled so far. Rather than automatically granting relief to all those known to have been affected by Corinthian's fraud, the Department is requiring students to individually apply by filling out a complex attestation form – or an even more complex application for "borrower defense to repayment." Department officials have also done a wholly inadequate job of getting out the word that this possibility exists in the first place.

In all, out of 8,501 former Corinthian students who have applied for relief, just over 2,000 cases have been approved: 1,312 in December and another 736 in March. AFR, TICAS, and NCLC, among other advocacy organizations, will continue to push the Department to broaden and expedite relief for the victims of this sham institution, which cost taxpayers billions in government-backed loans on top of the terrible waste of time and money endured by hundreds of thousands of former students.

Hints of progress in the fight against forced arbitration 'ripoff' clauses

Corinthian isn't the only for-profit school to face legal challenges in recent years. ITT Tech and DeVry Education Group Inc., among others, have been the targets of lawsuits filed by either the CFPB, the Securities and Exchange Commission, or the Federal Trade Commission. Despite evidence of widespread abuse, however, virtually no suits have been brought by the victimized students themselves.

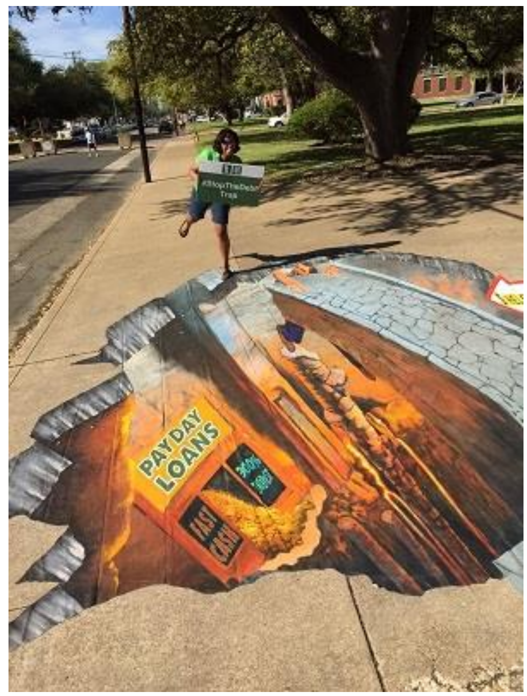
Why not? Because many for-profit schools used "forced arbitration" clauses to systematically rob students of their constitutional right to a day in court. Typically, these clauses also bar students from joining together in a class action; in other words, each victim of wrongdoing must take on a large educational corporation *alone*, even if hundreds or thousands of others have been damaged by essentially the same misconduct. It's a very sneaky, and very powerful, way to dodge accountability for illegal acts.

But the good news is, the Department of Education seems to be losing patience with these ripoff clauses. The Department has said it may decide to limit or ban forced arbitration at schools receiving federal student loan dollars. This move comes after pressure from both lawmakers and advocates. In February, a group of nine U.S. senators co-signed a letter urging the Department of Education to turn off the flow of loan money to schools with forced-arbitration clauses. In March, 47 organizations including AFR sent the Department a letter making the same demand.

And in April, the Department heard from an array of organizations representing two of the communities most targeted by for-profit colleges: in one letter, The Leadership Conference on Civil and Human Rights joined 20 civil rights organizations in urging the Department to ban the practice, as did eight veterans groups in a separate letter. Advocates anticipate that the Department will release a draft rule in early summer, and AFR and our allies continue to work to ensure that the draft rule places a strong ban on this abusive practice.

‘Pit of Despair’ generates energy for payday lending reform

With the CFPB moving toward the release of a proposed rule on payday lending, AFR has been coordinating a cross-country tour for the Pit of Despair, a 3D art installation designed to dramatize the danger of these loans. In February, the pit arrived in Birmingham, Alabama, where it became the centerpiece of an event organized by Alabama Appleseed and Alabama Arise in a lower-income neighborhood checkered with payday storefronts. City Councilwoman Lashunda Scales and community leaders from the Baptist Church of the Covenant and the Greater Birmingham Ministries watched a band of local residents act out the experience of being dragged into debt. The next day, a group of activists from Birmingham Southern University staged a similar event to engage fellow students in the cause of payday lending reform.



In early March, Bishop Placido Rodriguez could be spotted falling into the Pit of Despair in Lubbock, Texas, where the Texas Catholic Conference, West Texas Organizing Strategy, and Texas Appleseed hosted a forum and press event. The Bishop and other area Catholic and Presbyterian clergy took turns saving their friends from falling, and praying for the pit to be closed. The event was covered by the local FOX34 affiliate, the Lubbock Avalanche-Journal newspaper, and the El Editor newspaper.

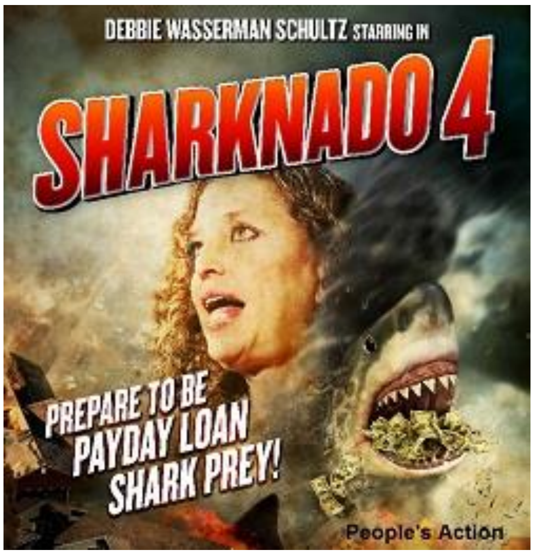
The next appearance of the pit was at Baylor University in Waco, Texas, where students draped a #StopTheDebtTrap banner around a statue of the campus's namesake. Waco had recently passed an ordinance against payday lending, and Baylor students collected scores of signatures calling on the CFPB to move forward with its rulemaking. The campus Office of Community Engagement and Service joined a number of student groups in cosponsoring what students called a "wonderful event." Their action was covered on KWTX CBS10 and was the Waco Tribune-Herald's photo-of-the-day.

From Texas, the Pit of Despair moved on to an event sponsored by Rise Up Georgia in Atlanta. Although Georgia does not allow payday lending narrowly defined, the state is rife with auto-title lenders, who follow a similar business model. In early April, the pit headlined a community event in Gallup, New Mexico, where payday lenders target the Navajo community, before flying off to Oklahoma City for three more events.

“Debt-Trap Debbie”

In its relentless efforts to dodge meaningful regulation, the payday lending industry continues to promote an ineffectual Florida law as a model for the country. Industry lobbyists have been leaning on Congressional Democrats as well as Republicans to support HR 4018, which would block any rulemaking by the Consumer Financial Protection Bureau for at least two years while creating a legal safe harbor for lenders in any state that adopts Florida’s “industry best practices” standards.

When the bill was introduced, AFR and our partners in the StoptheDebtTrap campaign put together a letter with 268 co-signers pointing to a range of abusive practices that continue in Florida despite its law. Several Florida newspapers ran articles or editorials critical of the Florida law and the proposed legislation in Congress. That message was also delivered in person to congressional offices in at least a dozen states by advocates working with AFR partner organizations.



More recently, AFR and our allies have zeroed in on the role of one of the bill's more notable co-sponsors, Representative Debbie Wasserman Schultz (D-Fla.). Why would Rep. Wasserman Schultz, who also serves as chair of the Democratic National Committee, ally herself with an industry predicated on targeting vulnerable communities and ensnaring them in a cycle of debt? One possible factor is documented in AFR’s Payday Pay-to-Play report, which places Rep. Wasserman Schultz among the fifty top recipients of campaign contributions from payday lending companies and trade associations. (Allied Progress put her total receipts from the industry at $68,000.)

As a result of these efforts Rep. Wasserman Schultz’s financial ties to the payday industry and her support for HR 4018 have been widely covered. There have been stories in the Huffington Post, Salon, Think Progress, New York Magazine, The New Republic, Jezebel, Vox, Esquire, The Consumerist, The Chicago Tribune, USA Today, The Detroit News, and The Kansas City Star, among other outlets.

Rep. Wasserman Schultz has also been hearing directly from critics of her position on these issues. AFR, People's Action, Center for Popular Democracy, and Democracy For America, among other groups, have organized petitions opposing congressional efforts to thwart payday reform and calling on Rep. Wasserman Schultz (or Debt Trap Debbie, as some online activists have dubbed her) to stand with consumers rather than with payday lenders. People’s Action staged a protest at her Washington office, and Allied Progress released a television ad in her congressional district. In a March 29 letter, Wade Henderson and Nancy Zirkin, President and

Executive Vice President of the Leadership Conference on Civil and Human Rights, urged Rep. Wasserman-Schultz to withdraw her co-sponsorship of the bill.

Taking on Wall Street – the next stage

The presidential race has both rekindled and re-revealed a sense of national outrage against the excesses of Wall Street and the rigging of the U.S. economy. In that context, AFR and a group of key allies have decided to launch a campaign for a new wave of financial reform.

"We are in this fight because someone has to be willing to fight back," Senator Elizabeth Warren told participants (by video) in the first of two large strategizing sessions that we have convened in recent months. "And that someone -- that's us. So get ready to fight. We're partners in this all the way."

Proponents of reform have made real progress, but there is much more that needs to be done. Our partners – representatives of more than 40 labor unions, community organizing networks, advocacy groups, and others – are united behind the following policy changes as key next steps towards transforming the financial system so that it does a much better job of serving the real economy and the needs of the American people, while promoting shared prosperity and racial equity instead of ever-increasing inequality:

- Fair taxation of Wall Street billionaires, with the outrageous "carried interest" loophole as an early target of attack.

- Strong measures to deal with out-of-control executive compensation, including an end to the tax deductibility of the highest pay packages.

- A Wall Street speculation tax as a source of public investment and an alternative to cuts and austerity.

- Reducing the size, complexity and conflicts of the megabanks, with a major push for reinstitution of the Glass-Steagall boundary between commercial and investment banking as well as decisive steps to address the problem of financial institutions that are "too big to fail."

- Progress on access to fair and sustainable banking services through postal banking and other public banking options, coupled with effective regulation to stop predatory practices.

The campaign will include state and local mobilization as well as federal policy work, and a communications focus on Wall Street wrongdoers and the harm they inflict on the rest of us.

AFR in the News (sampling of recent media coverage)

- **Wall St. Regulators Propose Stricter Pay Rules for Bankers (New York Times, 4/21)**
- **Corinthian students may have a clearer path towards debt relief (Washington Post, 3/25)**
- **Coalition of Unions, Consumer Groups Press Regulators on Bank "Living Wills" (Wall Street Journal, 3/22)**
- **What Crisis? Big Ratings Firms Stronger Than Ever (Wall Street Journal, 3/11)**
- **Moderate Democrats helped Wall Street avoid regulation in the '90s. They're doing it again. (Vox, 2/18)**
- **Should We Break Up the Big Banks? (MSNBC, 1/6)**

AFR Articles and Blog Posts

- **End forced arbitration (Amanda Werner and Sonia Gill, Politico, 4/26)**
- **Are we repeating history by letting our financial sector get too big? (James Lardner, Washington Post, 4/20)**
- **An easy case: why a Federal appeals court should reject a constitutional challenge to the CFPB (Brian Simmonds-Marshall, American Constitution Society blog, 4/11)**
- **The death trap of debt-trap lending (Gynnie Robnett and Gabriel Hopkins, U.S. News, 3/18)**
- **Advocates and lawmakers press for relief to groups of students victimized by predatory practices (Alexis Goldstein, RealBankReform, 3/11)**
- **Hedge funds are worth worrying about (James Lardner & Michael Kink, Orlando Sentinel. 2/4)**