VOTE 'NO' ON HR 2827: PROTECT TAXPAYERS AND PRESERVE WALL STREET ACCOUNTABILITY IN MUNICIPAL FINANCE

September 19, 2012

Dear Representative,

On behalf of the undersigned organizations, we urge you to vote 'NO' on HR 2827. While this legislation is an improvement on earlier versions of the bill, it still represents a significant weakening of taxpayer protections created by the Dodd-Frank Act to prevent fraud, abuse, and deception in Wall Street financial dealings with municipalities.

These taxpayer protections were a response to the revelation of massive financial abuses of municipal borrowers by Wall Street banks and derivatives dealers. The most notorious case was in Jefferson County, Alabama, which was driven into bankruptcy due to billions in losses suffered in exploitative swaps deals sold by JP Morgan Chase. But there are hundreds of other examples. The Justice Department has brought numerous criminal cases against major banks for manipulation and bid-rigging in the municipal bond markets. Across the country, hundreds of cities and towns have found themselves trapped in deceptive swaps deals requiring them to pay exorbitant fees.

In response to these problems, Congress required financial advisors to municipalities to register with the Securities and Exchange Commission (SEC) and to follow a fiduciary duty to respect the best interests of taxpayers and the municipal client in giving financial advice.

<u>HR 2827 would weaken this protection in ways that are both harmful and unnecessary</u>. The legislation is harmful because it would create significant new exemptions and loopholes. For example, any advice provided by a broker, dealer, bank, or accountant that is any way "related to or connected with" a municipal underwriting would be exempted from the fiduciary requirement. A similar exemption would be created for all advice provided by banks or swap dealers that is in any way "related to or connected with" the sale to municipalities of financial derivatives, loan participation agreements, deposit products, foreign exchange, or a variety of other financial products. The exemptions added by HR 2827 would certainly result in many financial entities claiming that they do not owe any fiduciary duty to respect taxpayer interests, even if they are in fact acting as advisors and not as arms-length underwriters or counterparties.

HR 2827 is also unnecessary, as existing law already contains exemptions from municipal advisor designation for a range of ordinary business dealings with municipalities. The Dodd-Frank Act also already exempts underwriters from advisor designation when they are simply acting as underwriters (as opposed to providing more extensive financial advice). The SEC has discretionary authority to make additional exemptions in cases where it is justified. It is true that the initial SEC proposal defining municipal advisors was criticized by many for overreaching in specific areas. For example, the proposal would have covered financial advice provided by elected or appointed public officials in their capacity as members of public advisory boards. However, SEC Commissioner Mary Schapiro has agreed to fix this problem in the final rule, and narrow the definition of financial advisor to exclude public officials. Should the SEC not follow through on this commitment, Congress could legislate once the final rule is passed. Criticisms concerning these relatively narrow issues should not lead Congress to pass broad new exemptions to important taxpayer protections in municipal finance.

By passing this bill, Congress would unnecessarily create additional financial risks for states and localities and their accompanying residents who pay taxes and use public services. When states and localities suffer financial losses, the inevitable victims are local residents, who through no fault of their own, are faced with higher taxes or fewer services. The typical results are tax increases or budget cuts to education, health care, public safety, infrastructure, and other vital public services protecting the vulnerable and helping middle class families. Indeed, these outcomes are already being seen as municipalities across the country raise taxes or cut services to pay off Wall Street banks for exploitative financial deals. HR 2827 would only increase the potential for such outcomes.

We urge you to oppose HR 2827 because it weakens accountability for financial advice to municipalities, harms communities, and is unnecessary given the authority of the SEC to address any outstanding issues. If you have any questions, please contact Marcus Stanley at Americans for Financial Reform at marcus@ourfinancialsecurity.org or (202) 466-3672.

Sincerely,

AFL-CIO

American Federation of State, County and Municipal Employees (AFSCME)

Americans for Financial Reform

Consumer Federation of America

The Leadership Conference on Civil and Human Rights

Public Citizen

U.S. PIRG