

June 9, 2015

Dear Member of Congress,

We are writing to urge you to oppose H.R. 2213, which insulates lenders from accountability when they make misleading disclosures to homeowners. The bill, which suspends liability to individuals for the first five months after the new mortgage disclosure rules take effect, inhibits compliance with the new rules by letting lenders off the hook even where a homeowner has been harmed. Homeowners who would receive misleading mortgage cost disclosures during such a period would have no remedy. Moreover, the CFPB already has made clear that it will be sensitive to efforts to comply in good faith. Finally, the bill sets a dangerous precedent by suspending liability where legal rules apply.

The mortgage industry has had almost two years to implement the new disclosure requirements. The time has now come to let the combined TILA/RESPA disclosures take effect. The disclosure form will give consumers expanded information before making the biggest purchase of their lives. A blanket carve-out will provide an opportunity for some to evade the rules and will generally inhibit incentives to comply promptly. A rule without enforcement is no rule at all.

The CFPB already has addressed industry concerns by announcing formally that it will be sensitive to institution efforts to comply in good faith with the new requirements. If further time is needed for adjustment, the CFPB already has the authority to extend the mandatory compliance date and establish an optional compliance period. Any change in the effective date of the regulations should be left to the CFPB to determine based on all the facts at hand.

It would be dangerous to set a new precedent of suspending private enforcement for violations of a law that is in effect. The ability of consumers to protect themselves is essential to the efficacy of legal requirements. An individual homeowner, however, is not in a position to prove whether the lender operated in good faith. While few homeowners ever bring a legal case, those who do generally have faced substantial harm and have a right to redress.

Lenders are not subject to any liability at all under the Real Estate Settlement Procedures Act (RESPA) for violations of the disclosure requirements because the law does not allow for private rights of action for such cases. The Truth in Lending Act (TILA) already includes provisions protecting creditors from errors made in good faith (such as timing of disclosures). For TILA errors involving numerical disclosures, Congress already has allowed creditors to overstate the actual amount without penalty, and the CFPB's rule for the new disclosures permits third party fees to exceed the earlier estimates by up to ten percent. As a result, homeowners who seek redress have received markedly inaccurate disclosures.

Litigation is a last resort and rarely undertaken. Few consumers seek out attorneys even when they are injured. Moreover, TILA provides for payment of attorney fees only if the lawsuit is successful, so attorneys are reluctant to take on cases unless violations are clear.

The incidence of private litigation under the Truth in Lending Act is fairly rare, especially in comparison to the volume of mortgage loans and credit generally outstanding in the United

States. Even during a financial crisis that rivaled the Great Depression, only a tiny fraction of mortgage loans became the focus of TILA litigation.

We urge you to oppose H.R. 2213, which would remove key incentives for lenders to comply with the new mortgage disclosures and leave homeowners who have been misled with no recourse.

Sincerely,

Alliance for a Just Society  
Americans for Financial Reform  
California Reinvestment Coalition  
Community Legal Services, Inc. (Philadelphia, PA) (on behalf of its low-income clients)  
Connecticut Fair Housing Center  
Consumer Action  
Consumer Federation of America  
Consumers Union  
Corporation for Enterprise Development (CFED)  
Empire Justice Center  
Housing and Economic Rights Advocates  
MFY Legal Services, Inc.  
National Association of Consumer Advocates  
National Consumer Law Center (on behalf of its low-income clients)  
National Council of La Raza  
National Fair Housing Alliance  
New Economy Project  
New York Legal Assistance Group  
North Carolina Justice Center  
Public Justice Center  
U.S. PIRG