



July 23, 2018

Dear Representative:

The undersigned organizations oppose H.R. 2570, the Mortgage Fairness Act of 2017. H.R. 2570 will make the market less fair by making it easier for lenders to steer homeowners into high-cost, abusive deals on certain mortgages. High-cost mortgage loans come with special protections, but this bill will allow lenders to evade those important safeguards and to undermine the Dodd-Frank ability to repay rules.

Whether or not a loan meets the safeguards required of a qualified mortgage under the Dodd-Frank ability to repay test as well as coverage under the high-cost loan rules is determined in part by the "points and fees" charged on the loan. Currently, all payments to a broker or other loan originator, including kickbacks called "yield spread premiums," count as part of the "points and fees" and are one factor in determining whether a loan qualifies as a 'qualified mortgage' and whether it warrants high-cost loan protections. The term 'yield spread premium' is used to refer to any compensation that a creditor pays to a loan originator for loans with interest rates above the rate for which borrowers qualify based on their individual creditworthiness. The creditor recoups the payment to the loan originator through the higher interest rate. Yield spread premiums are a pernicious form of incentive payment to mortgage originators that have been shown to contribute to steering, discrimination, and lending without regard to ability to repay. As a result, Congress chose to ban them in many circumstances.

HR 2570 would amend the Truth in Lending Act (TILA) to exempt payments to a mortgage broker or other loan originator from the definition of "points and fees" if such payments were reimbursed by the buyer through an increase in the mortgage interest rate rather than directly through a separate charge; that is, it would exempt yield spread premiums. As a result, if HR 2570 passes, the points and fees measure would no longer incorporate these hidden and often abusive fees, and mortgages with higher rates as a result of these incentive payments would lose high-cost loan protections.

The Truth in Lending Act currently discourages yield spread premiums on loans because these payments count toward the points and fees threshold for qualified mortgages and high-cost loan protections. By excluding these kickbacks from the points and fees calculation, H.R. 2570 would create a loophole for loan originators to steer borrowers to overpriced loans without triggering high-cost loan protections and while still benefiting from lender protections for qualified mortgages. Essentially, the bill would leave borrowers more vulnerable to being saddled with disguised fees, one of the practices that fueled the financial crisis.

Continued inclusion of yield spread premiums towards the points and fees trigger is particularly critical for home equity lines of credit (HELOCs). Dollar volume of HELOCs rose from \$183 billion in 2015 to \$197.6 billion in 2016. While rules governing loan origination prohibit many forms of interest-rate based compensation, these rules do not apply to HELOCs, making it particularly important that HELOCs with high interest rates receive high-cost loan protections. The current points and fees threshold is the mechanism that protects borrowers with HELOCs from getting high-cost loans containing yield spread premiums.

Supporters of this bill point out that these yield spread premium payments are incorporated into the interest rate paid by the borrower, and that there is also an interest rate threshold test used for classifying a loan as high-cost. But this does not justify a carve-out of these fees from the points and fees threshold for high-cost loan protections. Congress appropriately rejected any changes to the points and fees trigger in Dodd-Frank.

Congress intentionally designated high cost thresholds as alternatives--either a loan meets the test due to its interest rate or due to the points and fees test - to ensure that all borrowers with high-cost loans remain protected under the law. If yield spread premiums are not counted as part of the points and fees for a loan, it would be relatively easy for mortgage originators to use yield spread premiums to charge high fees while evading the interest rate trigger for high-cost loans. All they would have to do is charge fees that raise the interest rate to a point just short of the threshold for high-cost loan classification.

For example, assume a borrower is eligible for a \$200,000 mortgage loan at the fixed rate of 10% that carries a term of 30 years based on her lower credit score and history. (Note: the conventional rate for this loan on July 11, 2018 was 4.7%). Instead of obtaining approval for a 10% loan, the creditor offers an 11% loan in order to pay a loan originator a yield spread premium of \$5,000 for connecting the creditor to the borrower without informing the borrower of her eligibility for a 10% loan. The 11% loan carries an APR that is just below the interest rate for the high-cost loan trigger. However, the borrower will pay an extra \$10,322.65 in interest over the first five years alone, double the amount of the yield spread premium payment, leaving the borrower with a high-cost loan without any of the high-cost loan protections.

Accordingly, inclusion of the yield spread premium in the points and fees threshold is not redundant or double counting. Carving out these kickbacks from the high-cost coverage rules would promote abusive loan steering and disrupt the inclusive approach Congress adopted to protect high-cost loan borrowers.

Moreover, excluding yield spread premiums from the points and fees threshold also would allow lenders to receive the benefits of being a qualified mortgage lender while charging excess fees over permissible limits by disguising these kickbacks. With a qualified mortgage designation, a lender receives a complete defense from any challenges based on a consumer's ability to repay and gains the ability to easily sell the loan on the secondary market. HR 2570 undermines Congress's intended purpose in its ability to repay rule: to ensure that borrowers receive a mortgage loan that is guaranteed to be fairer, safer, and devoid of hidden fees and costs.

We urge you to oppose H.R. 2570. A vote to support this bill is a vote to promote predatory mortgage lending.

Sincerely,

Americans for Financial Reform

Center for Responsible Lending

Connecticut Fair Housing Center

Consumer Action

Consumer Federation of America

National Association for Latino Community Asset Builders

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

National Fair Housing Alliance

Prosperity Now

U.S. PIRG

Woodstock Institute