June 10, 2015

Dear Member of Congress:

The Center for Responsible Lending writes to urge you to oppose H.R. 1210 (the "Portfolio Lending and Mortgage Access Act").

H.R. 1210 would change the new Qualified Mortgage (QM) rules in the Wall Street Reform and Consumer Protection Act's Ability-to-Repay requirement by exempting all depository financial institutions, large and small, from QM standards—including very basic standards like verifying a consumer's income—as long as the mortgage loans in question are held in portfolio by the institution. Under the bill, depository institutions that hold a loan in portfolio will receive a legal safe harbor even if the loan contains terms and features that are abusive and harmful to consumers. This measure is extreme, overly broad, and dangerous for both consumers and the housing market.

The simple premise behind the Ability-to-Repay standard is that a lender should make a good-faith effort to determine a borrower's ability to repay a mortgage before making the loan. Leading up to the housing meltdown, several lending institutions—and some of the biggest banks in particular—sold mortgages to borrowers that ignored this premise, were improperly underwritten, and layered toxic product features in mortgages that made repayment difficult for many households. Researchers have found that toxic loan terms, such as hybrid and interest-only ARMs, balloon payments, prepayment penalties, and negative amortization significantly increase the likelihood of foreclosure, even after controlling for borrower risk characteristics.[1] Accordingly, the Ability-to-Repay requirement and the correlated QM rule are essential components of the effort to prevent irresponsible lending practices from returning to the housing market by discouraging their use.

The Consumer Financial Protection Bureau (CFPB) has already created a separate category for QM loans that are originated and held in portfolio by institutions with less than $2 billion in total assets. This narrowly tailored small-creditor exemption for institutions serving local mortgage credit needs is based on the understanding that community banks use a relationship-based lending model that, when combined with other qualified mortgage standards, can ensure that mortgage loans are safe for both the institutions and consumers. H.R. 1210 would pry open this exemption for possible exploitation by larger, more complex lending institutions.

By eliminating the asset-size and securitization caps, H.R. 1210 allows larger institutions, with well over $2 billion in assets, to use the portfolio exemption. History shows that these larger institutions, which rarely rely on a relationship-based lending model, have poorer performance in portfolio lending. In fact, both Washington Mutual and Wachovia—two mid-size regional banks whose loans would have been eligible under the bill—failed in the aftermath of the financial crisis because of

[1] QUERCIA, R. G., ET. AL, THE IMPACT OF PREDATORY LOAN TERMS ON SUBPRIME FORECLOSURES: THE SPECIAL CASE OF PREPAYMENT PENALTIES AND BALLOON PAYMENTS, CENTER FOR COMMUNITY CAPITAL, UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL 27-30 (2005), *available at* http://ccc.sites.unc.edu/files/2013/02/ImpactPredatoryLoanTerms.pdf.

poor mortgage portfolio loans.[2] Asset-size and securitization caps are necessary to ensure that the institutions that qualify for a portfolio exemption are truly engaged in the relationship-based lending model that justifies treating portfolio loans differently.

Even after the requirements imposed by the Wall Street Reform and Consumer Protection Act and its implementing regulations, portfolio loans can still be risky for consumers and taxpayers. This is true because lenders that hold loans on portfolio are not necessarily assuming the credit risk. Many homeowners have substantial equity in their homes and a significant number have no current home debt. Current information shows that the average loan-to-value for GSE loans is 75% with many loans having much lower levels.[3] With these loans, the borrower's equity absorbs the risk of loss rather than the lender. Therefore, the lender is protected even from very risky loan terms.

H.R. 1210 also opens the door to risky lending by allowing portfolio balloon loans to qualify for safe harbor, regardless of depository institution's size or the geographic location of its lending. Like the general portfolio exemption in H.R. 1210, the balloon loan exemption in the bill removes the underwriting criteria and product feature limitations that the CFPB included in regulation to ensure that balloon loans were made in a manner that is safe for consumers.

Under H.R. 1210, institutions that originate toxic lending products—including those products that were at the heart of the housing market's collapse— would be absolved of the legal responsibility to make a good-faith effort to ensure that a consumer has the ability-to-repay a mortgage loan. The bill opens up a reasonable portfolio exemption intended for community banks in a way that will allow larger financial institutions to potentially exploit consumers, while stripping consumers of any meaningful legal recourse.

We urge you to oppose H.R. 1210, the "Portfolio Lending and Mortgage Access Act" to prevent re-opening the door to the recklessness lending period that caused the housing crisis.

Sincerely,

Center for Responsible Lending

---

[2] Ben White and Eric Dash, Wachovia, Looking for Help, Turns to Citigroup, New York Times (September 26, 2008), *available at* http://www.nytimes.com/2008/09/27/business/27bank.html?_r=0.

[3] FANNIE MAE 2015 FIRST QUARTER CREDIT SUPPLEMENT, *available at* http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annualresults/2015/q12015_credit_summary.pdf.