July 27, 2015

Dear Member of Congress:

The undersigned organizations write 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 put in place under 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. H.R. 1210 also reopens the door to predatory steering practices by providing legal safe harbor to originators of portfolio loans. This bill 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. 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. The Ability-to-Repay requirement and the correlated broader QM rule are essential to preventing these irresponsible lending practices from returning to the housing market.

The Consumer Financial Protection Bureau (CFPB) has already created exemptions from some QM requirements for loans originated and held in portfolio by institutions with less than $2 billion in total assets. The small-creditor exemption recognizes 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 limit and securitization cap, H.R.1210 allows institutions with well over $2 billion in assets to use the portfolio exemption. History has shown that 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 who would be eligible for safe harbors under the bill—failed in the aftermath of the financial crisis because of their portfolio loans.[1] The asset-size limit and securitization cap 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.

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. When borrowers have significant equity in their homes this equity, rather than the lender, absorbs the actual risk. Current information shows that the average loan-to-value ratio for GSE loans is 75%, with many

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[1] 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.

loans having much lower ratios.[2] Lenders can make abusive and risky loans without themselves suffering losses, even if the costs to consumers and their communities are high.

H.R. 1210 also opens the door to risky lending by allowing balloon loans made in any geographic area to qualify for the safe harbor as long as they are held in portfolio. Like the general portfolio exemption in H.R. 1210, the balloon-loan exemption in the bill eliminates the asset limit and removes the underwriting criteria and product-feature limitations that the CFPB included in the small creditor regulation to ensure that eligible balloon loans were made in a safe manner.

As a result, HR 1210 opens up a reasonable portfolio exemption for community banks in the current CFPB rule in a way that will allow larger financial institutions to potentially exploit consumers, while stripping consumers of any meaningful legal recourse. Under this bill, depository institutions that originate toxic lending products and steer borrowers into high cost loans−including those products that were at the heart of the housing market's collapse−would be absolved of any legal responsibility to make a good-faith effort to ensure that a consumer has the ability to repay a mortgage loan. In the lead up to the financial crisis, African-Americans and Latinos were much more likely to be steered into high-cost mortgage loans with toxic features than similarly situated Caucasian Americans, creating much greater foreclosure risks for these households.[3] Congress should not allow or provide a legal safe harbor to predatory lending practices and to loans with harmful features.

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,

Americans for Financial Reform
California Reinvestment Coalition
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union
Corporation for Enterprise Development
Empire Justice Center
Homeownership Preservation Foundation
Leadership Conference on Civil and Human Rights
Local Initiatives Support Corporation
MHANY Management Inc.
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Community Reinvestment Coalition
National Fair Housing Alliance
Nueva Esperanza, Inc.

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[2] FANNIE MAE 2105 FIRST QUARTER CREDIT SUPPLEMENT 6, *available at* http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2015/q12015_credit_summary.pdf.

[3] DEBBIE GRUENSTEIN BOCIAN ET. AL., FORECLOSURES BY RACE AND ETHNICITY: THE DEMOGRAPHICS OF A CRISIS 16 (2010), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf.