October 5, 2015

Dear Member of Congress,

We are writing to urge you to oppose H.R. 3192, which insulates lenders from accountability when they make misleading disclosures to homeowners. The bill, which suspends liability to individuals and government for the first four months after the new mortgage disclosure rules take effect, undermines compliance with the new rules by letting lenders off the hook even where homeowners have been harmed. Homeowners who would receive false or misleading mortgage cost disclosures during such a period would have no remedy. Moreover, it sets a dangerous precedent by suspending liability where legal rules apply.

The mortgage industry, after having had approximately two years to implement the new disclosure requirements, was given an additional reprieve when the effective date was extended to October 3, 2015. Moreover, the Consumer Financial Protection Bureau has repeatedly demonstrated its responsiveness to concerns about implementation of this rule and to mortgage rules generally. Director Cordray announced in June that the Bureau would be sensitive to good faith efforts to implement the new rule, and recently the Bureau and the prudential regulators offered greater detail on how initial examinations for compliance with the rule will take into account systems adopted to promote compliance. The Bureau successfully used a similar approach for implementation of the ability to repay rule and also demonstrated its responsiveness to lenders by adjusting the small creditor definition for that rule.

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 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.

H.R. 3192 seeks to establish a "good faith" standard for exemption from the rule. However, the CFPB already has the authority to take into account good-faith efforts to comply with regulations. In contrast, a homeowner who receives false or misleading disclosures would face significant hurdles in overcoming a good-faith requirement. Even if a lender acted in good faith, the homeowner would still have agreed to the loan based on incorrect information and would have no recourse.

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. In addition, 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. 3192, 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,

Americans for Financial Reform
California Reinvestment Coalition
Connecticut Fair Housing Center
Corporation for Enterprise Development (CFED)
Empire Justice Center
Homeownership Preservation Foundation
Housing and Economic Rights Advocates
Local Initiatives Support Corporation
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
North Carolina Justice Center
U.S. PIRG
Woodstock Institute