November 16, 2015

Dear Member of Congress:

The undersigned organizations write to urge you to oppose H.R. 1210 (the "Portfolio Lending and Mortgage Access Act"). This bill makes two harmful changes to the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and its implementing regulations:

- It takes a special exemption designed for more trustworthy small and rural banks and extends it to all banks, regardless of size or trustworthiness.
- It substantially weakens the Act's ban on loan steering—a practice that supports predatory lending and racial discrimination.

**Don't expand the small/rural bank exemption.**
Not long ago, the Consumer Financial Protection Bureau (CFPB) granted small and rural banks an exemption from parts of the Dodd-Frank Act's Qualified Mortgage (QM) rule and the Ability-to-Repay requirement.[1] Moreover, the CFPB substantially expanded the exemption as recently as last month in response to industry concerns. The exemption applies to vital QM standards--including common-sense rules such as requiring lenders to verify a consumer's income and confirming that the borrower can afford to repay the loan. Only smaller and rural lenders are eligible for the CFPB's exemption. And even they must hold the loans in portfolio to qualify for the exemption. Smaller and rural banks were given the exemption because they had a track record of safer banking and because their relationship-based lending model often substantially reduces the risk of unsafe lending practices.

H.R. 1210 would expand the exemption to all depository institutions, regardless of size or risk.

This is a dangerous change for several reasons. Larger lenders are too big to use the relationship-based lending model that makes loans from smaller institutions safer. They don't know their communities as well; they don't know their borrowers as well; and their broader geographic scope makes them less dependent on the consequences of bad decisions. These larger institutions also have a far worse track record than small and rural banks. In fact, both Washington Mutual (WaMu) and Wachovia, two mid-size regional banks, would have been eligible for the expanded exemption--had they not failed because of unsafe lending practices.

Advocates of the expanded exemption say the hold-in-portfolio requirement would prevent abuse of the exemption, because lenders supposedly would not make bad loans if they had enough "skin in the game." Washington Mutual and Wachovia, however, disprove that argument. They held many of their loans in portfolio and they failed because of it.[2]

It is also a fallacy that holding a loan in portfolio automatically means a lender has skin in the game. Most lenders require mortgage insurance for loans with less than a 20% down payment.

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[1] 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.

[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.

And when borrowers have significant equity in their homes, the equity insulates the lender from risk. Current information shows that the average loan-to-value ratio for GSE loans is 75%, with many loans having much lower ratios.[3] This allows lenders to make abusive and risky loans without themselves suffering losses, even if the costs to consumers and their communities are high.

The QM rule and Ability-to-Repay standard were adopted to prevent more lenders like WaMu and Wachovia from bringing down the economy. H.R. 1210 would let lenders like them and others ignore the rules of safe banking by making loans that are abusive and harmful to consumers, and pose a risk to the housing market as a whole.

**Don't reopen the door to steering by loan originators.**
H.R. 1210 partially repeals the ban on loan steering. Steering is when a mortgage broker or other loan originator leads a borrower to a particular lender or loan product even though doing so hurts the consumer. Loan originators steer consumers into bad loans because they are paid or pressured to do so by the lender or their employer. Although many borrowers were subject to steering regardless of race, African-Americans and other borrowers of color were subjected to it at higher rates—even those with good credit.[4]

Steering hurts not just the borrower but can hurt everyone when the borrower is saddled with an unaffordable loan and defaults. Steering helped contribute to the Great Recession and, for that reason, was largely banned by the Dodd-Frank Act. H.R. 1210 would allow steering for loans held by depository lenders, regardless of how bad the loan was. The proposed safeguards are worthless.

H.R. 1210 would let the nation's biggest depository lenders bring back some of the worst practices of pre-crisis mortgage lending. For that reason, we urge you to oppose H.R. 1210.

Sincerely,

American Association for Justice
Americans for Financial Reform
Arkansas Community Organizations
California Reinvestment Coalition
Center for Responsible Lending
Central Ohio Fair Housing Association
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Consumers Union
Corporation for Enterprise Development
Empire Justice Center
Florida Alliance for Consumer Protection
Florida Institute for Reform & Empowerment

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[3] FANNIE MAE 2015 THIRD QUARTER CREDIT SUPPLEMENT 6, *available at* http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2015/q32015_credit_summary.pdf.
[4] 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.

Homeownership Preservation Foundation
Kentucky Equal Justice Center
Local Initiatives Support Corporation
Long island Housing Services
MFY Legal Services, Inc.
MHANY Management Inc.
Miami Valley Fair Housing Center, Inc.
NAACP
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
Nueva Esperanza, Inc.
Reinvestment Partners
The Leadership Conference on Civil and Human Rights
Virginia Citizens Consumer Council