

February 6, 2017

Dear Representative:

We are writing to urge you to oppose H.R. 1153—the so-called “Mortgage Choice Act of 2018.” Specifically, this bill creates a loophole that would allow loans with higher costs to the borrower to improperly meet the Qualified Mortgage (QM) standard established in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). As a result, this bill reintroduces some of the higher fees borrowers faced in the lead up to the mortgage crisis; fees that the new mortgage rules were designed to prevent. Congress should refrain from weakening the QM rule and reject this bill.

The Dodd-Frank Act created “Qualified Mortgages” as a category of loans with stable features that make it more likely a borrower can afford their loan, and these loans are legally assumed to meet the statute’s “Ability-to-Repay” standard. H.R. 1153 would allow many more risky, high-cost loans to qualify as QM loans by creating exceptions to which fees count towards the maximum points and fees threshold. These exceptions would exclude fees paid to certain title companies affiliated with the lender. The points and fees definition is designed to include all compensation received by the lender. It is a reasonable standard that provides basic cost protections for homebuyers.

The title insurance market is a broken market.¹ In 2007, a GAO report concluded that borrowers “have little or no influence over the price of title insurance but have little choice but to purchase it.”² Instead, the lender typically chooses the insurer. As a result, the fees are grossly inflated in relation to the value of the insurance. Recent studies have found that between 5 and 11 cents is paid out in claims for each \$1 of premiums. Almost the entirety of a title insurance premium (approximately 70%) goes to commissions, not insurance coverage. In contrast, loss ratios for health insurance are minimally 80% and ratios for auto insurance fluctuate between 50% and 70%.³ Borrowers already pay inflated title insurance costs. Including affiliated title insurance fees in the QM points and fees cap will not solve all the problems in the market, but the rule provides important market pressure to control costs, especially in cases where the lender making the loan is affiliated with the title company providing the insurance.

The current QM protections represent an appropriate step to directly address recent problems for borrowers without negatively impacting access to credit.⁴ Creating a title insurance loophole in the statute would eliminate one important protection that keeps borrower costs from escalating further.

¹ While the federal Real Estate Settlement Procedures Act (RESPA) prohibits paying kickbacks to third-party title agents, the law does not prohibit payments to affiliated title firms. Lenders often direct consumers to their affiliated title insurance company where they get these high premiums. The points and fees cap simply levels this playing field between affiliated and unaffiliated title insurance companies. See New York Times Editorial Board, “The Title Insurance Scam,” New York Times (May 12, 2015), *available at* <https://www.nytimes.com/2015/05/12/opinion/the-title-insurance-scam.html>.

² U.S. GOVERNMENT ACCOUNTABILITY OFFICE, TITLE INSURANCE: ACTIONS NEEDED TO IMPROVE OVERSIGHT OF THE TITLE INDUSTRY AND BETTER PROTECT CONSUMERS 53 (2007), *available at* http://www.gao.gov/new_items/d07401.pdf.

³ *Id.*

⁴ LAURIE GOODMAN, ET AL., HAS THE QM RULE MADE IT HARDER TO GET A MORTGAGE? (2016), *available at* <http://www.urban.org/research/publication/has-qm-rule-made-it-harder-get-mortgage>.

We welcome the opportunity to engage in a discussion for a comprehensive fix to the flaws in the current title insurance market. However, incentivizing an already overpriced market to further raise rates for borrowers is no solution.

The undersigned groups strongly urge you to oppose H.R. 1153—which will neither benefit consumers nor expand access to credit.

Sincerely

Allied Progress
Americans for Financial Reform
California Reinvestment Coalition
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Leadership Conference on Civil and Human Rights
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
Prosperity Now
Tennessee Citizen Action
Woodstock Institute