October 17, 2013

Dear Member of Congress,

We are writing to urge you to oppose H.R. 3211 and any Senate companion bill, which reopens the door to the higher fees borrowers faced in the lead up to the mortgage crisis. Specifically, this bill creates loopholes that would allow loans with higher costs to improperly meet the Qualified Mortgage (QM) standard established in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Congress should refrain from weakening the Qualified Mortgage standard and reject this bill. Due to a broken market, title insurance fees are grossly inflated—less than 10 cents is paid out in claims for each $1 of premiums, and title insurance adds $1,000 or more to the upfront costs of many mortgages. In other words, almost the entirety of a title insurance premium goes to commissions, not insurance coverage. The QM protections represent appropriate steps to directly address recent problems without impacting access to credit.

The mortgage reforms in Title XIV of Dodd-Frank were put in place as a direct response to the deceptive and unsound mortgage lending practices and products that put borrowers into risky, high-cost loans they could not understand or afford. Many of these inflated loans were made in communities of color and low-income communities, where the effects of the recent economic collapse are ongoing. The Ability to Repay provision requires all lenders to reasonably determine whether a mortgage is affordable for the borrower. Lenders can demonstrate their compliance with the Ability to Repay requirement by originating loans that meet the bright line tests in the Qualified Mortgage definition. One such bright line is a limit on "points and fees" – which account for a loan's origination costs – that exceed 3 percent of the loan amount. This borrower protection prevents loans with more expensive origination costs from gaining QM status.

H.R. 3211would weaken the consumer protections of QM loans by legislating exceptions to the 3 percent points and fees threshold. These exceptions include exempting title insurance paid to a company affiliated with a lender from counting toward the 3 percent cap. The approach taken in this bill, which is misleadingly named the Mortgage Choice Act, leaves the door open for abuses that were typical in the recent subprime crisis. During the subprime lending boom, borrowers often paid excessive origination costs; Dodd-Frank's Qualified Mortgage provisions aim at restoring a fair market.

This bill would undermine those rules just as they are about to take effect. Congress passed Dodd-Frank and the Bureau, as directed, has written regulations for Qualified Mortgages and the Ability to Repay requirements. Plans for implementation of the new rules are already underway for the January effective date. Congress should not now second guess a two-year rulemaking process with thoughtful input from a variety of stakeholders with hasty passage of a bill to undermine the protections put in place to prevent the next housing crisis.

There are a number of specific features of the title insurance market which add to our concerns about HR 3211

Lenders steer borrowers to overpriced title insurance. Borrowers are responsible for paying title insurance costs, but the price for this product is agreed upon between the lender and the title insurance company. Consumers do not, and essentially cannot, shop for this product, so this is a broken market where competition does not function to drive down prices. The incentives to increase the costs of title insurance paid by borrowers are enhanced when lenders are coordinating with their own affiliates that provide title insurance.

Title insurance prices are vastly inflated. The opaque pricing and sales system for title insurance leaves borrowers without information or leverage to get a better price. As a result, higher prices can be charged with most of the insurance fee going to the sales agent, not to provide coverage for losses. See attached Chart from a GAO study on the title insurance market.

States don't adequately regulate the market. The "file and use" approach employed by many states allows insurers and lenders to push prices up at their own discretion, filing fee hike requests with regulators and then using them with homeowners. There is minimal evaluation as to the appropriateness of fee increases.

Households and communities across the country have yet to recover from the recent subprime lending crisis, and Congress should learn from the past instead of creating incentives to repeat these lending abuses. As a result, the undersigned organizations oppose H.R. 3211 and ask that you not support this bill

Sincerely,

AFL-CIO
Alliance for a Just Society
Americans for Financial Reform
Center for Economic Justice
Center for Responsible Lending
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Consumers Union
Empire Justice Center
Home Defenders League
The 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 Council of La Raza
National Fair Housing Alliance
New Economic Project
Public Citizen
Woodstock Institute