November 13, 2017

Dear Representative:

The Center for Responsible Lending (CRL) and the National Consumer Law Center (NCLC) oppose legislation that would ease a return to the era of unchecked predatory lending, irresponsible underwriting, excessive fees, and a lax regulatory environment that triggered the housing and financial crisis. We urge members of the House Financial Services Committee to vote "No" on a series of bills slated for markup on November 14th 2017.[1]

- **Protecting Consumers' Access to Credit Act of 2017 (H.R. 3299):** This bill makes it easier for payday lenders and other nonbanks to use rent-a bank arrangements to ignore state interest rate caps and make high-rate loans. The bill overrides the Second Circuit's *Madden v. Midland* decision, which held that a debt buyer purchasing debts originated by a national bank could not benefit from the National Bank Act's preemption of state interest rate caps. The *Madden* decision is consistent with the centuries-old rule that nonbank creditors are covered by state interest rate caps. The *Madden* decision did not limit the interest rates that banks may charge on credit cards and other forms of credit, but it does limit nonbanks from evading state interest rate caps. By reversing the Second Circuit's decision, the bill would make it easier for payday lenders, debt buyers, online lenders, fintech companies, and other companies to use "rent-a-bank" arrangements to charge high rates on loans, regardless of state law.

  In a letter by 20 State Attorneys General opposing provisions in another bill that would have overturned the Madden decision, the state law enforcement officers warned that the bill "would restrict states' abilities to enforce interest rate caps. It is essential to preserve the ability of individual states to enforce their existing usury caps and oppose any measures to enact a federal law that would preempt state usury caps."[2] In fact, the Colorado Attorney General is in the midst of challenging online lenders' use of a rent-a-bank scheme to make loans in violation of the state's usury limits.[3] This bill would thwart actions like these that seek to enforce state laws. Strong state rate caps, coupled with effective enforcement by states, remain the simplest and most effective method to protect consumers from the predatory lending debt trap.

- **Mortgage Choice Act (H.R. 1153):** The Mortgage Choice Act would allow many more risky, high-cost loans to qualify as Qualified Mortgage (QM) loans by creating exceptions to the points and fees threshold. These exceptions would exclude fees paid to

[1] This letter focuses on a subset of CRL's objections to the bills in this markup. For further detail, please refer to the opposition letter issued by Americans for Financial Reform (AFR).
[2] Letter from Eric T. Schneiderman, New York Attorney General, to Paul Ryan, Speaker, U.S. House of Representatives, et. al. (June 7, 2017), *available at* https://ag.ny.gov/sites/default/files/6.7.2017_choice_act_letter.pdf.
[3] Colorado Moves to Dismiss Lawsuits by Banks Seeking Judgment in Online Lending Cases", LENDIT NEWS (May 1, 2017), *available at* http://www.lendit.com/news/2017/05/01/colorado-moves-dismiss-lawsuits-banksseeking-judgement-online-lending-cases.

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 protections for homebuyers. Borrowers *already* pay inflated title insurance costs. The title insurance market is a broken market. In 2007, a GAO report[4] concluded that borrowers "have little or no influence over the price of title insurance but have little choice but to purchase it." As a result, the fees are grossly inflated—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%.[5] While the federal Real Estate Settlement Procedures Act (RESPA) prohibits paying kickbacks to third-party title agents, the law does <u>not</u> prohibit payments to affiliated title firms. This incentivizes a title agency to be affiliated so it can gain the payment option without violating RESPA. Including affiliated title insurance fees in the QM defined points and fees cap provides important market pressure to control costs for consumers, and supports access to credit.

- **Securing Access to Affordable Mortgages Act (H.R. 3221):** This bill would exempt property mortgages in the amount of $250,000 or less from the definition of "higher-risk mortgage," and therefore from the appraisal requirements required under the Truth in Lending Act (TILA), so long as the creditor holds the loan on its balance sheet for at least 3 years. The lack of adequate regulation in the appraisal market was a significant factor causing the housing market crash.[6] In fact, between 2000 to 2007, a coalition of appraisal organizations produced a petition, signed by 11,000 appraisers that stated lenders were pressuring them to artificially inflate home prices, and would only give business to appraisers that complied.[7] This legislation also removes penalties under TILA regarding professional misconduct, unethical behavior, or violation of law in mortgage dealings. This roll back of penalties and the increase of thresholds then raises questions as to how this legislation would provide relief for smaller lending institutions.

- **TRID Improvement Act (H.R. 3978):** This bill, which amends Section 2603 of RESPA, would create confusion and undermine consistency in mortgage disclosures. The Consumer Financial Protection Bureau's (CFPB) required method of disclosure of title insurance premiums, which can include both lender and owner policies, reduces consumer confusion and enhances consistency between the estimated and final loan cost disclosures. The bill would only change how the final loan disclosure addresses title insurance, not the early good faith estimate. As a result, it would increase consumer

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[4] 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.
[5] Id.
[6] Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States 17-19 (2011). Submitted by The Financial Crisis Inquiry Commission Pursuant to Public Law 111-21.
[7] Id., at 18.

confusion, especially where the consumer opts not to purchase both types of policies after getting the early disclosure (only the lender policy is required). The CFPB regulations now take into account that comparison shopping in about half of all states is not possible because title insurance companies in those states are not required to provide standardized disclosures. Disclosing the "actual" premium may differ even between companies. Further refinement of the title insurance disclosures can be addressed by the CFPB itself in cooperation with stakeholders to ensure any outstanding issues are addressed with the input of all affected parties.

These bills, among others, would inflict immense harm and exposure to consumers, investors, and the public. We urge your office to reject these harmful bills.

Sincerely,

Center for Responsible Lending

National Consumer Law Center (on behalf of its low-income clients)