May 18, 2018

Dear Representative:

The undersigned organizations write to express our opposition to S. 2155, the so-called "Economic Growth, Regulatory Relief, and Consumer Protection Act," and urge you to oppose this harmful legislation. As you know, S. 2155 passed in the Senate on March 14th. The bill *already* contains destructive policies that roll back or eliminate essential protections put in place by the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act after unchecked reckless lending nearly destroyed the US economy. Although this bill seeks to protect smaller lenders while maintaining access to credit, it contains significant, harmful provisions that do not relate to small institutions and does not create a meaningful set of new protections for consumers from predatory and deceptive lender practices. Furthermore, this bill ultimately harms small and community banks.[1] While there are dangerous provisions throughout this bill,[2] we primarily limit our letter to address concerns in Title I of this legislation. We oppose this legislation in its current form and are very concerned about additional changes that would make the bill even more dangerous for consumers. If our concerns[3] are not remedied, we will continue to oppose the bill.

Contrary to its stated purpose, the bill would re-expose consumers, investors, and the public to a host of risky and abusive financial practices, including many of the practices that contributed to the last recession and foreclosure crisis. Some sections of this bill would exempt a wide range of mortgages from the Consumer Financial Protection Bureau's (CFPB) Qualified Mortgage (QM) rule and other consumer protections. This is particularly disturbing, as the QM rule and Ability-to-Repay standard addressed the frontline abuses that led up to the 2008 financial crisis. These rules defined bright line standards to move the market away from high-risk, unsustainable loans and ensure borrowers have an ability to repay the loans they receive. Irresponsible mortgage lending that ignored borrowers' ability to repay their loans resulted in a foreclosure tsunami that disproportionately impacted communities of color—eviscerating a generation of wealth building. QM and Ability-to-Repay promote product features that have helped reorient the housing market back toward safe, sustainable lending for all borrowers, lenders, and investors alike.[4] This bill contains several problematic provisions that weaken the Ability-to-Repay standard and other key consumer protections:

- The bill exempts manufactured-home retailers and their employees from anti-steering protections that apply to other mortgage originators (loan officers and mortgage brokers), with illusory, substitute protections (Section 107);
- Instead of exempting truly small financial institutions that hold loans in portfolio from the QM rule, it expands the exemption to institutions holding up to $10 billion in assets (Section 101);

[1] More information *available at* http://ourfinancialsecurity.org/wp-content/uploads/2018/02/Fact-Sheet-on-S-2155-and-Community-Banks.pdf, see also David Dayen, Bill Aimed at Saving Community Banks is Already Killing Them (2018), The Intercept, *available at* https://theintercept.com/2018/05/16/wall-street-bank-regulation-bill/.

[2] This letter focuses on housing issues in the bill. For further detail, please refer to the letter issued by Americans for Financial Reform (AFR).

[3] Id. We share the concerns stated in the letter from AFR.

[4] Reports, including Home Mortgage Disclosure Act (HMDA) reports, show that QM has not negatively impacted mortgage lending or access to credit. In fact, (post-QM) HMDA data is very much consistent with market trends immediately preceding the implementation of the QM rule and Ability-to-Repay standard. Report analysis *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-2016hmda-policy-brief-sep2017.pdf.

- It exempts 85% of depositories from Home Mortgage Disclosure Act (HMDA) reporting requirements, dramatically expanding an existing CFPB rule that exempts lenders making very few mortgages from HMDA reporting requirements (Section 104);
- The bill expands an exemption that allows lenders to avoid escrowing taxes and insurance for many higher-cost, higher-risk loans (Section 108);
- It exempts lenders from appraisal requirements for many rural loans when the loan is below $400,000 in home value (Section 103);
- It eliminates the requirement of a three-day waiting period on mortgage disclosures in cases where the lender offers a new interest rate (Section 109); and
- It opens the door for continued predatory behavior by student loan creditors and debt collectors (Section 602).

Section 107, "Protecting Access to Manufactured Homes" will harm some of the most vulnerable of the homebuyer population by exempting employees of manufactured housing retailers from compliance with consumer protection laws.

Section 107 would exempt manufactured-home retailers and their employees from the definition of mortgage originators. Mortgage originators are subject to certain legal requirements, including being prohibited from receiving compensation based on the terms of the loan, as well as other consumer protections. While the proposed provision adds that manufactured housing retailers and employees excluded from the mortgage originator definition may not be directly compensated more than they would be for a cash transaction, must disclose any affiliation with a lender in writing, must provide the consumer information on at least one unaffiliated lender, and must not directly negotiate loan terms, these protections are substantially weaker than the existing mortgage originator provisions in Dodd-Frank.

Whether or not a retailer or its employee is directly compensated, there are many avenues for indirectly promoting steering to affiliated lenders through indirect incentives and general corporate policies. For instance, the written disclosure requirement and the requirement that at least one unaffiliated lender be disclosed to the borrower does not and will not prevent deceptive oral presentations that unfortunately are a major problem in this industry. Moreover, written information on one unaffiliated lender can easily be marginalized orally. Therefore, the guardrail language of this provision would not ultimately prevent abusive steering to affiliated lenders.

The proposed repeal of protections in this section would perpetuate the conflicts of interest and steering that plague this industry and allow lenders to pass additional costs on to consumers. As documented recently in a series of articles published by the Seattle Times,[5] the manufactured housing industry is dominated by affiliate and joint ownership arrangements between manufactured home dealers and financing shops. The closeness of these relationships, when combined with minimal state oversight and these proposed changes to the loan originator compensation requirements, will once again make the industry ripe for steering, discrimination, and other consumer abuses. This is of great concern because manufactured home purchasers and borrowers tend to be low and moderate-income. Manufactured housing consumers who obtain loans from affiliated lenders pay much more

[5] A recent exposé series by the Pulitzer Prize winning investigative journalism group the Center for Public Integrity in partnership with the Seattle Times illustrated the shocking abuses consumers face in this industry, *available at* http://www.seattletimes.com/business/real-estate/the-mobile-home-trap-how-a-warren-buffett-empire-preys-on-the-poor. *See also* http://www.seattletimes.com/seattle-news/times-watchdog/minorities-exploited-by-warren-buffetts-mobile-home-empire-clayton-homes/.

than they would from banks and other lenders and often receive loans with unnecessary or deceptive add-ons.

This section would roll back vital Dodd-Frank consumer protections and would be especially harmful to low and moderate-income families. Moreover, it does not target relief at small institutions but rather promotes abuses by large corporations that own both manufactured housing retailers and lenders.

Section 101, "Minimum Standards for Residential Mortgage Loans" will allow for a return to abuses in portfolio lending that helped to cause the financial crisis.

This provision in the legislation would unduly expand the Bureau's carefully contemplated small-creditor definition contained in the final QM rule. The CFPB created a separate category of Qualified Mortgages for loans originated and held in portfolio (for a minimum of three years) by institutions with less than $2 billion in total assets. Section 101 would expand that exemption—by $8 billion—to benefit larger institutions with up to $10 billion in assets, appropriating the Bureau's accommodation designed for small creditors. QM status (which includes safe harbor legal protection for lenders) for loans held in portfolio should not be extended to larger depository institutions, as this presents significant risks to borrowers and the economy and is unlikely to meaningfully expand lending.

Granting QM status to portfolio loans held by larger financial actors will allow some lenders to steer consumers to potentially toxic loan products that are more likely to result in default and foreclosure. Automatic QM status for loans in portfolio also insulates larger institutions from legal accountability while allowing them to take advantage of consumers. For instance, under this provision, the Ability-to-Repay standard and its requirements that a lender fully assess a borrower's income and ability to repay the loan would be weakened, leading the way for some abusive mortgage products of the past to make a return.

While this provision does exclude certain toxic loans from receiving QM and safe harbor protections even if they are held in portfolio, other dangerous loans that were prevalent and held in portfolio in the lead-up to the recession, such as adjustable rate mortgages (ARM),[6] are not excluded by this provision. The current QM Rule and Ability-to-Repay standard protects lenders, borrowers, and investors alike from a repeat of the tsunami of foreclosures that nearly destroyed the US economy. We must not open doors for poor underwriting practices to re-emerge and cause harm once again.

Expanding QM to all portfolio loans held by depository institutions with less than $10 billion in assets is unlikely to lead to an increase in volume. Granting outright legal immunity for toxic loan products is extreme, encourages steering and poor underwriting, and puts consumers at great risk. As demonstrated above and in the housing crisis, larger institutions holding loans in portfolio alone will not protect borrowers, taxpayers, and the market from the mistakes of the past.

[6] In the time directly preceding the financial crisis, many of the toxic loans, such as negative amortization loans, and "ARMs" underwritten to initial "teaser" rates were held in bank portfolios. Lenders underwrote these loans based upon only this initial, artificially low payment, even though dramatically higher payments commenced after a few years. This product was one of many that devastated the housing market and economy.

Section 104, "Home Mortgage Disclosure Act Adjustment and Study" creates a massive gap in the essential mortgage lending data needed to help determine how to further address predatory lending practices and improve access to credit.

This provision exempts small depository institutions that have originated fewer than 500 closed-end mortgage loans or less than 500 open-end lines of credit in each of the two preceding calendar years from certain disclosure requirements under the Home Mortgage Disclosure Act (HMDA). This provision upsets a careful balance: its proposed reporting thresholds would exempt the vast majority of the nation's mortgage lenders from the updated requirements. In contrast, the CFPB has already set an exemption for lenders that make very few loans at an appropriate level.

In response to widespread concerns about predatory lending and opacity in the mortgage market in the run-up to and following the financial crisis,[7] Congress amended HMDA to require both banks and non-bank lenders to disclose more information about their mortgage lending activities – updates finalized by the CFPB in 2015. As part of its rulemaking, the CFPB included an exemption for lenders that make very few mortgage loans.

The proposed higher threshold would sacrifice key data about lending in underserved communities that would help to ensure the flow of credit to qualified borrowers, stimulate the economy, and prevent future mortgage crises.[8] Based on 2013 data, under the threshold set by the CFPB, 22 percent (1,400) of the depository institutions that currently report on their closed-end mortgages would be exempt. In contrast, if this provision and bill are enacted, the Bureau estimates that 85 percent (5,400) of depositories would not have to update reporting on their mortgages.

The CFPB has already carefully crafted exemptions to HMDA reporting. After considering a number of higher reporting thresholds and receiving extensive feedback from all size and type of lending institutions, the CFPB adopted a standard that applies the new reporting requirements to institutions that made 25 closed-end mortgage loans or 100 open end/ home equity lines of credit (HELOCs). Importantly, in response to concerns raised by lenders and by some in Congress, the CFPB has already temporarily raised the reporting threshold for HELOCs to 500 through 2019 to further review the impact of the rule and what the permanent HELOC threshold should be.

The stark disparities in access to mortgage credit[9] and the continued struggle for economy recovery in the communities hardest hit by the financial crisis call for strengthening our fair lending laws, not

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[7] See GAO, Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts, GAO-09-704 (2009); and Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending, GAO-04-280 (2004).

[8] Based on 2013 data, the CFPB estimates that updated reporting would be lost for 10 percent of loan records under a 500 closed-end loan volume threshold, and over 5,300 census tracts would lose 20 percent of the updated data about mortgage lending in their communities. The National Community Reinvestment Coalition (NCRC) estimated the loss of post-crisis data about loan originations by state and found states with large rural areas face some of the largest losses of updated data about mortgage originations. Additional data would be lost about loan applications and why denials are occurring. This map tool estimates the local impact on loan originations data: http://maps.ncrc.org/s1310/index.html. This provision would also result in communities knowing less about loan applications and denials.

[9] Aaron Glantz and Emmanuel Martinez, For people of color, Banks are shutting the door to homeownership (2018), Reveal News, *available at* https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/.

weakening them. Analyzing recent HMDA data, federal researchers at the Federal Reserve Board found a 9 percentage point drop in share of mortgages by smaller banks and nonbank lenders (including credit unions and independent mortgage companies) to low and moderate-income households between 2010 and 2016.[10] As we recover from the crisis and consider how to best expand access to credit and responsible homeownership, Congress should not roll back or limit the ability to adequately assess (and then address) the reasons for restricted credit access for underserved borrowers.

We also find that the changes to this section via the manager's amendment are nowhere near suitable to address the dangers of this provision. This section as amended revokes the exemption discussed above for banks that do not meet bare minimum standards under the Community Reinvestment Act (CRA) two years in row. This minor exemption will not have the intended impact as the changes only apply to very few banks and do not ease the massive deficit of vital lending information this exemption allows.

Section 108, "Escrow Requirements Relating to Certain Consumer Credit Transactions" will hurt homeowners with higher cost loans who without escrow requirements may be hurt or even face default due to unexpected homeowner costs.

This provision would exempt many more lenders from escrow requirements on higher-cost mortgage loans. Depositories with less than $10 billion in assets who have originated fewer than 1,000 mortgage loans in the previous year would be exempt from requiring and maintaining escrow accounts. While the rule only would apply to lenders predominantly operating in rural or underserved areas, making one loan in such an area would qualify an institution for the exemption.

Section 108 would set a dangerous precedent by expanding the current small lender escrow exemption to a much larger portion of the market than the current definition of small creditor (under $10 billion in assets instead of under $2 billion in assets). Escrow accounts protect consumers by ensuring that they have funds for reoccurring homeownership-related expenses, such as property taxes and insurance premiums. This is especially critical with high-cost and higher-risk loans. Pursuant to the Dodd-Frank Act, the CFPB implemented clear rules establishing a minimum time period for which escrows must be held for higher-priced mortgages.

A significantly broader exemption threatens to upend current regulations designed to help consumers stay informed about the costs of homeownership, remain in their homes, and avoid the likelihood of default. Unexpected and unmanageable costs as well as mortgage defaults happen all too often where escrow protections are weakened. The bill undermines this consumer safeguard by allowing larger and possibly less-community-focused lenders, with sufficient financial resources, to make higher-priced mortgages to rural and underserved borrowers without offering escrow accounts. This provision is risky for both prospective homebuyers and the general taxpayer, and is a direct threat to sustainable homeownership.

See also New York Times Editorial Board, Blacks Still Face a Red Line on Housing (2018), New York Times, *available at* https://www.nytimes.com/2018/04/14/opinion/blacks-still-face-a-red-line-on-housing.html.

[10] NEIL BHUTTA ET AL., THE DECLINE IN LENDING TO LOWER-INCOME BORROWERS BY THE BIGGEST BANKS (2017), *AVAILABLE AT* https://www.federalreserve.gov/econres/notes/feds-notes/the-decline-in-lending-to-lower-income-borrowers-by-the-biggest-banks-20170928.htm.

Section 103, "Exemptions from Appraisals of Real Property Located in Rural Areas" reopens the door for abuse in the appraisal space and threatens to harm consumers who are often unaware of the actual value of their home at purchase and beyond.

Section 103 exempts loans with a balance of less than $400,000 from appraisal requirements in federally designated rural areas when the originator after a "good faith effort" is unable to find a licensed appraiser. Exempting appraisal requirements for "higher-risk" or any loans under $400,000, would mean that most rural loans would be exempt from appraisal standards reporting requirements, making this an extremely broad exemption in rural lending. The term "higher-risk mortgage" refers to subprime-like mortgages -- loans that are made at higher than prime market rates and generally include other high-risk features that resulted in unsustainable loan products that devastated homeowners across the nation. The current rules help to ensure that mortgage loans are properly and accurately collateralized. This protects both the lender, through adequate collateral for their loan, and the borrower, by preventing them from borrowing more than their home is worth.

The lack of adequate regulation in the appraisal market was a significant factor causing the housing market crash. This provision is another example of weakening the rules just enough to allow abuses to return to the field. While this provision attempts to set requirements for what makes a "good faith effort" to find an appraiser, these requirements do not go nearly far enough to protect consumers and the market. For instance, even with the requirement that lenders contact at least three appraisers, the language is not strong enough to prevent deceptive lender practices. Rural consumers are among the most vulnerable, and this provision opens a wide loophole that could be ripe for abuse in rural communities. Moreover, the appraisal exemption does not even substitute adequate broker price opinions, leaving the door open for automated valuations, which are notoriously inaccurate in rural areas.

In the lead up to the financial crisis, consumers suffered from intentional inflation of home appraisals. The Financial Crisis Inquiry Commission cites various testimonies describing the prevalence of these fraudulent appraisal practices. This practice, extremely harmful on its own, also proved to be a dangerous combination with declining incomes and toxic loan products. The Dodd-Frank Act and the CFPB have improved appraisal-reporting standards. The rule enacted in 2014 requires that applicants receive copies of all appraisals and home value estimates.[11] The rule also allows for consumers to receive information on how the property was evaluated in advance of closing. In addition, rules for certain higher-risk mortgages[12] now require lenders to use a licensed appraiser who reports on the physical inspection of the inside of a home, and requires that lenders disclose the purpose of the inspection, and provide a free copy of the appraisal report. These rules allow for transparency and allow consumers to be fully informed about the worth of their homes.

An extreme roll back of appraisal standards and reporting requirements in rural areas will take us back to the period of misconduct, including rural homeowners paying higher costs for homes than they are worth, or consumers losing equity on their homes. Congress should not support legislation that removes this consumer protection and should uphold appraisal rules, which help to ensure a safer transaction for both the homeowner and the lender.

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[11] Rule *available at* http://files.consumerfinance.gov/f/201301_cfpb_final-rule_ecoa-appraisals.pdf.

[12] Board of Governors of the Federal Reserve System (Board); Consumer Financial Protection Bureau (CFPB); Federal Deposit Insurance Corporation (FDIC); Federal Housing Finance Agency (FHFA); National Credit Union Administration (NCUA); and Office of the Comptroller of the Currency, Treasury (OCC), *available at* http://files.consumerfinance.gov/f/201301_cfpb_final-rule_tila-appraisals.pdf.

Section 109, "No Wait for Lower Mortgage Rates" opens the door for loopholes in waiting period and disclosure requirements for consumers when closing a mortgage loan.

This section eliminates the three-day waiting period required for the combined TILA/RESPA mortgage disclosure if a creditor extends to a consumer a second offer of credit with a lower annual percentage rate. This provision weakens an important waiting period between the time a borrower gets written notice about their loan terms and closing time. Currently, homeowners receive their final loan terms three days before closing. The three-day period starts over if there is a material change in terms requiring a new disclosure. Section 109 would eliminate the waiting period when the loan's annual percentage rate decreases after the closing disclosure has been provided. While a lower rate benefits the homeowner, there may be other changes that accompany this shift that require more examination by the borrower. This also creates a loophole that unscrupulous lenders could utilize to circumvent disclosure requirements. In addition, section 109 expresses a sense of Congress that the CFPB should provide further guidance on the mortgage disclosure rules. To date, the Bureau has created many resources providing specific and extensive guidance to industry on implementation of the new mortgage disclosure rules. We expect the Bureau will continue to do so. Congress should allow the CFPB to continue its work here without interfering in ways that will become confusing and harmful to the consumer.

Section 307, "Real Property Retrofit Loans" may help to create legal and regulatory standards to address predatory abuses in Property Assessed Clean Energy loans.

Section 307 is an important step forward to ensure Property Assessed Clean Energy (PACE) loans are affordable for borrowers. PACE loans are used to fund energy efficiency and other upgrades for a home and are repaid through tax assessments. Because of their repayment structure, homeowners are at risk of losing their homes if they default on PACE loans. Section 307 directs the CFPB to write rules ensuring PACE loans will be subject to the Truth in Lending Act's Ability-to-Repay provisions. This will be an important part of ensuring that homeowners with PACE loans have the same legal protections that other mortgage borrowers have. The use of PACE loans has been significantly increasing across California and has started to spread into many other states. Too often, borrowers are steered into unaffordable PACE loans and are at risk of losing their homes.[13] This can and should be prevented. Section 307 will help ensure that borrowers will be protected from unaffordable and dangerous financing as PACE loans become more prevalent.

Section 602, "Rehabilitation of Private Student loans" permits expressly abusive behavior by student loan creditors and debt collectors.

Section 602 does not require that a financial institution take any positive steps, such as removing a default from a consumer's credit report if payments are restarted, nor does it ensure that any payment plans offered are reasonable or affordable. Rather, it allows private student loan lenders to lure a borrower to restart payments even where the deadline for collections, the statute of limitations, has expired, without any guarantee that the plan will be sustainable or that the credit report default will be removed. As a result, a borrower who can no longer be sued over older debt would trigger a restart of the collections period without any guarantee that the new arrangement is beneficial. This result

[13] National Consumer Law Center, Residential Property Assessed Clean Energy (PACE) Loans: The Perils of Easy Money for Clean Energy Improvements (2017), *available at* https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-stories.pdf.

would be especially tragic for students who are burdened with a lifetime of debt from abusive for-profit colleges that did not provide a quality education.

In many states, making a single payment will reset the statute of limitations on that loan, re-opening collections and creating new negative entries on the borrower's credit report. For many states, the statute of limitations for collecting on student loans is still shorter than the seven-year rule for when a debt is removed from a credit report. As a result, borrowers may not realize that their loans are no longer enforceable or soon will be beyond collections. There is a substantial record of student loan debt collectors exaggerating the credit benefits of loan rehabilitation. In fact, the Department of Education fired[14] five debt collectors and provided this conduct as one of the reasons for the terminations. S. 2155's new private student loan rehabilitation provision will not help borrowers improve their credit. It will sanction known abuses and make real reform in this area more difficult to obtain.

Conclusion

Financial institutions, especially community banks and credit unions, play an important and essential role in this nation's financial market. We understand and support the need for appropriate and tailored regulatory flexibility for small depositories. We oppose any effort to use regulatory relief for community banks and credit unions as a vehicle for larger financial institutions to avoid having the regulatory scrutiny and oversight that proved lacking in the build up to the financial crisis. The need for regulatory flexibility must be balanced against the importance of consumer safeguards, the safety and soundness of financial institutions, and the security of America's financial system as a whole. Federal financial regulators like the CFPB must be allowed to both protect the American people and ensure access to a broad, sustainable financial market. We simply cannot afford another financial crisis. Congress should not roll back consumer protections under the Dodd-Frank Act that have helped and continue to help millions of people across the country.

Sincerely,

Allied Progress
Americans for Financial Reform
Baltimore Neighborhoods, Inc.
California Reinvestment Coalition
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Demos
Empire Justice Center
Grounded Solutions Network
NAACP
National Association for Latino Community Asset Builders
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League

[14] U.S. Department of Education to End Contracts with Several Private Collection Agencies (2015), *available at* https://www.ed.gov/news/press-releases/us-department-education-end-contracts-several-private-collection-agencies.

National Fair Housing Alliance
National Housing Law Project
Prosperity Now
Public Citizen
Reinvestment Partners
Tennessee Citizen Action
Tzedek DC
U.S. PIRG
Woodstock Institute