March 6, 2018

Dear Representative:

The Center for Responsible Lending, Americans for Financial Reform, and the National Consumer Law Center write to oppose H.R. 2226, the so-called "Portfolio Lending and Mortgage Access Act," and urge you to oppose this harmful legislation. This bill eliminates essential protections implemented by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Instead of exempting truly small financial institutions that hold loans in portfolio from the requirements of the Qualified Mortgage (QM) rule, it expands the exemption to institutions holding up to $10 billion in assets.

H.R. 2226 will allow for a return to the kinds of abuses in portfolio lending that helped to cause the financial crisis by unduly expanding the Bureau's carefully drawn 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. H.R. 2226 would expand that exemption—by $8 billion—to benefit larger institutions with up to $10 billion in assets. 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 such as loans with very high fixed rates, a significant danger in a rising-rate environment. 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)[1], are not excluded by this provision. An ARM can result in unaffordable payments, especially as rates rise or where the lender underwrites for the initial payment or otherwise does not take into account the maximum payment a borrower may be required to pay.

Passing this bill means a borrower could receive an unaffordable loan without any recourse to obtain better terms from the lender. Automatic QM status for loans in portfolio insulates larger institutions from legal accountability through a complete safe harbor while allowing them to take advantage of consumers. 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 the QM rule generally goes beyond the mandate to assess a borrower's debts and income by establishing a bright line ratio for determining affordability in order to qualify for the safe harbor, this bill would eliminate this approach for the loans it exempts, undermining enforcement of the underwriting requirement.

[1] 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. Even a loan without an interest-only or negative amortization feature can contain rate resets that result in unaffordable loans.

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 status to this set of portfolio loans held by depository institutions with less than $10 billion in assets is unlikely to lead to an increase in loan volume. Granting out-right legal immunity for toxic loan products is extreme, encourages steering and poor underwriting, and puts consumers at great risk. Larger institutions holding loans in portfolio alone will not protect borrowers, taxpayers, and the market from the mistakes of the past.

Financial institutions, especially community banks and credit unions, play an important role in this nation's financial markets. We understand and support the need for appropriate and tailored regulatory flexibility for small depositories. However, 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. 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. We urge you to vote NO on H.R. 2226, the Portfolio Lending and Mortgage Access Act.

Sincerely,

Center for Responsible Lending
Americans for Financial Reform
National Consumer Law Center (on behalf of its low-income clients)