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Floor Situation | Summary | Background | Cost | Staff Contact

H.R.1210, Portfolio Lending and Mortgage Access Act

FLOOR SITUATION

On Wednesday, November 18, 2015, the House will consider H.R.1210, the Portfolio Lending and Mortgage Access Act, under a structured rule. H.R. 1210 was introduced on March 3, 2015 by Rep. Andy Barr (R-KY) and was referred to the Committee on Financial Services, which ordered the bill reported by a vote of 38 to 18 on July 29, 2015.

SUMMARY

H.R. 1210 creates a legal safe harbor for creditors that are depository institutions for failure to comply with “ability-to-repay” requirements created by the Dodd-Frank Wall Street Reform and Consumer Protection Act if the creditor has, since originating the loan or intends to upon consummation, hold the loan on its balance sheet until repayment and meets certain other requirements. The legal safe harbor provisions protect lenders against lawsuits by borrowers who claim they were extended a mortgage even though the lender had no reason to believe they could repay.

BACKGROUND

The Dodd-Frank Wall Street Reform and Consumer Protection Act increased residential mortgage underwriting standards by creating an enhanced Ability-to-Repay (ATR) requirement, in an attempt to reduce mortgage foreclosures.[1]

The Dodd-Frank Act created a statutory category of mortgages known as "qualified mortgages" (QM) that are deemed to comply with the Act’s ability-to-repay requirements and are therefore subject to a safe harbor from lawsuit, provided that the loans meet certain characteristics and underwriting criteria. This includes requirements that the borrower's total debt-to-income (DTI) ratio cannot exceed 43 percent, the monthly payment must be calculated based on the highest payment that will apply in the first five years of the loan, cannot be negatively amortized,[2] cannot be interest-only payments,

[1] See House Report Portfolio Lending and Mortgage Access Act at 2.
[2] negative amortization means that a borrower's monthly payment does not cover the amount of accrued interest, so the principle of the loan increases month-to-month.

cannot generally be balloon payments,[3] cannot have terms exceeding 30 years, and certain other criteria.

A safe harbor granted through the QM system has a conclusive presumption of compliance with the ATR requirement. If a borrower with a prime mortgage sues a lender, the court would need to find that the mortgage is not actually a QM because it fails to meet the necessary underwriting or product feature requirements for the borrower to win his case. "If a court finds that the loan met the QM requirements and was not higher-priced, the consumer would lose this claim."[4]

According to the Committee, "under the CFPB's qualified mortgage regulations, there are concerns that mortgages have been made "safer" by effectively making them unavailable to a substantial number of would-be homeowners."[5] Some mortgage market participants have expressed concerns that lenders will only originate mortgages that satisfy the safe harbor QM requirements even though there are alternative methods of complying with the ATR rule. The scope of the QM definition, therefore, could restrict who can qualify for a mortgage. H.R. 1210 extends legal safe harbor status to creditors that, among other things, intend to hold the loan on their balance sheets until repayment, in order to increase access to residential home mortgages for borrowers.

According to the bill sponsor, "The aim of this legislation is simple: banks and credit unions should be given more discretion to originate mortgages as long as they agree to retain the risk of that loan.This reform would promote responsible lending practices that would help more Kentucky homebuyers qualify for a mortgage, and protect hardworking taxpayers from future bailouts."[6]

COST

The Congressional Budget Office (CBO) estimates enacting H.R. 1210 could affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effects on direct spending each year would be insignificant. Enacting H.R. 1210 would not affect revenues.

AMENDMENTS

1. Rep. Donald Norcross (D-NJ)—The amendment clarifies that systemically important financial institutions (SIFI) are excluded from the safe harbor provisions under the bill.

STAFF CONTACT

For questions or further information please contact John Huston with the House Republican Policy Committee by email or at 5-0190.

[3] Balloon payments are permitted in some instances for mortgage originators serving rural communities.
[4] See CRS Report, "The Ability-to-Repay Rule: Possible Effects of the Qualified Mortgage Definition on Credit Availability and Other Selected Issues," March 11, 2014.
[5] See House Report Portfolio Lending and Mortgage Access Act at 2.
[6] See Rep. Andy Barr Press Release, "Barr Introduces Legislation to Help Homebuyers, Prevent Bailouts," February 27, 2015.