BILL FLORES, CHAIRMAN

RSC THE REPUBLICAN STUDY COMMITTEE

H.R. 1210—Portfolio Lending and Mortgage Access Act (Barr, R-KY)

CONTACT: Jennifer Weinhart, 202-226-0706

FLOOR SCHEDULE:

Scheduled for consideration on November 18, under a structured rule.

TOPLINE SUMMARY:

H.R. 1210 would amend the Truth in Lending Act to relax the Qualified Mortgage Rule to provide creditors protection from legal action for failure to comply with federally mandated mortgage terms if the creditor holds the mortgage in its own portfolio, rather than selling it or securitizing it.

COST:

The Congressional Budget Office (CBO) estimates that implementing H.R. 1210 would result in additional costs to the federal government of less than $500k over the 2016-2025 period.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Under Dodd-Frank, substantial changes have been made to the mortgage lending marketplace, requiring lenders to determine whether a borrower has the ability to repay at the time of lending. This could result in lawsuits and a lender paying damages to a borrower for inability to follow the ability to repay rule. To mitigate risk of frivolous lawsuits for lenders, Dodd-Frank provided a legal safe harbor to "Qualified Mortgages," providing the lender with a presumption of compliance with the ability to repay rule.

H.R. 1210 would extend the legal safe harbor to creditors with residential loans held in the portfolio of the original creditor, allowing them to satisfy Dodd-Frank's ability to repay rule. If a loan is later moved off portfolio or is securitized, it loses this access to safe harbor. This would protect lenders who maintain full exposure to the risk of default from meeting federal mandates for the terms of the loan and instead leave those terms to be decided by the lender and the borrower.

Specifically, depository institutions would have a safe harbor from lawsuit for failure to comply with certain sections of the Truth in Lending Act, including: Section 129 subsection (a), the ability to repay requirements, subsection; (c)(1), the "qualified mortgage rule," which excludes certain residential mortgage loans that have an adjustable rate or has an annual percentage rate that is in excess of the average prime rate offer for a comparable transaction; subsection (f)(2), which requires first-time borrowers to produce proof of homeownership counseling; or section 129H which creates special appraisal requirements for higher risk mortgages. To qualify for safe harbor, the depository institutions must be the loan originator and all prepayment penalties with respect to the loan must comply with the limitations on qualified mortgages outlined in the Truth in Lending Act.

This legislation would create an exception in the case of depository institutions that transfer a loan held in portfolio to another institution because of bankruptcy or the purchase of the originating depository institution. Loans originating under this exception are also eligible for safe harbor under this act.

This legislation would also create a safe harbor from suit for mortgage originators for steering consumers to residential mortgage loans, if those loans qualify for the new safe harbor provision. In this case, the creditor must be a depository institution and must inform the mortgage originator it intends to hold the loan on the creditor's balance sheet for the entirety of the loan, and have informed the consumer of this intention.

This legislation would not prevent a balloon loan from qualifying for safe harbor under TILA if the balloon loan meets TILA's requirements, regardless of whether or not it meets the requirements of this legislation.

AMENDMENTS:

1. Norcross, (D-NJ): This amendment would clarify that systemically important financial institutions (SIFI) would be excluded from the safe harbor provisions of the bill. SIFIs are banks, insurance companies, or financial institutions designated by the Financial Stability Oversight Council, whose failure could trigger a financial crisis.

COMMITTEE ACTION:

H.R. 1210 was introduced on March 3, 2015 and was referred to the House Committee on Financial Services, where it was reported by the yeas and nays, 38-18, on July 29, 2015.

ADMINISTRATION POSITION:

A Statement of Administration Policy can be found here.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to Article I, Section 8, Clause 3.

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