Congress Should Pass the Mortgage Choice Act

The Dodd-Frank Wall Street Reform Act establishes a Qualified Mortgage (QM) as the primary means for mortgage lenders to satisfy its "ability to repay" requirements. Dodd-Frank also provides that a QM may not have points and fees in excess of 3 percent of the loan amount. As currently defined, "points and fees" include (among other charges): (i) fees paid to affiliates of mortgages lenders, such as an affiliated title agency, but not to unaffiliated parties, and (ii) funds held in escrow for the payment of homeowners insurance. As a result of this problematic definition, many affiliated loans, particularly those made to low- and moderate-income borrowers, cannot qualify as QMs and are unlikely to be made or are only be available at higher rates due to heightened liability risks. Consumers are also losing the ability to choose to take advantage of the convenience and market efficiencies offered by one-stop shopping.

Congress should pass the Mortgage Choice Act to expand access to Qualified Mortgages, give consumers more choice among mortgage and title insurance providers, and level the playing field between affiliated and unaffiliated providers of mortgage and title insurance including affiliates of community banks, credit unions and homebuilders. This bipartisan legislation would narrowly modify the definition of "points and fees" used to determine whether a loan meets the QM test. In the 114th Congress, the Mortgage Choice Act has been introduced on a bipartisan basis in the House as H.R. 685. An identical bill (H.R. 3211) passed the House on June 9, 2014, by voice vote on the suspension calendar.

POINTS AND FEES DEFINITION REQUIRES REVISION

To ensure that consumers are able to access affordable housing credit, Congress should amend the definition of "points and fees" to:

- **Provide equal treatment of title charges.** The current definition includes title charges paid to an affiliate, but excludes title charges paid to an unaffiliated title company. As a result, consumers, especially low- and moderate-income consumers buying homes under $150,000, may not have the option to use an affiliated title company if title charges would cause the loan to have points and fees greater than 3 percent of the loan amount — even if the loan met all other QM standards. This is both anti-consumer and anti-competitive. Studies have shown that affiliated title providers, which comprise more than 26 percent of the market, are competitive in cost with unaffiliated providers. And national consumer surveys have shown that consumers who take advantage

of the one-stop shopping that affiliated businesses offer are very satisfied with their home purchase or refinance experience. At the same time, consumers are always free to choose not to use affiliated providers. The Real Estate Settlement Procedures Act (RESPA) prohibits any mortgage lender from requiring the use of an affiliated company and also requires a clear disclosure of affiliated relationships and the estimated charges of the affiliate. Moreover, title insurance charges vary little or are identical within a state. In 44 states and the District of Columbia, laws require that title premiums be set by the state, approved by the state, or filed with the state (23 states also include title examinations and searches in the regulated premium). Almost all states prohibit title insurance rates from being excessive, inadequate or unfairly discriminatory.

The Mortgage Choice Act excludes from the definition of "points and fees" all title charges, regardless of whether they are charged by an affiliated company, provided they are bona fide and reasonable. By amending the definition of points and fees in this manner, Congress will: (1) maintain a competitive marketplace, (2) prevent higher prices or the withdrawal of affiliated title service providers in low- and moderate income marketplaces; and (3) restore the ability of all consumers to choose the benefits of one-stop shopping when they purchase or refinance their home.

- **Clarify escrow charges.** Dodd-Frank specifically excluded payments for homeowners insurance from "points and fees" when paid directly to the insurance company, but it is ambiguous whether funds for homeowners insurance placed within an escrow account are included in the calculation. Historically, the industry has not included escrowed funds held for the future payment of taxes and insurance because the Home Owners Equity Protection Act (HOEPA) made clear that such amounts were excluded. There simply is no public policy reason to include these amounts when they are placed into escrow. Insurance premiums are not retained by the lender or by its affiliates, and any escrowed funds exceeding a certain cushion are returned to the consumer as required under RESPA.