H.R. 685 Will Lead to Higher Fees for Homebuyers

Fact Sheet *March 18, 2015*

H.R. 685 creates loopholes that allow for the higher fees charged in the lead up to mortgage crisis in 2008. H.R. 685, The Mortgage Choice Act of 2015, would weaken mortgage reforms in the Dodd-Frank Act by creating loopholes allowing higher-fee mortgages to classify as Qualified Mortgages (QM) by exempting certain title insurance fees from the points and fees definition. The provisions of the Dodd-Frank Act are an extension of decades of existing federal law and policy of affiliated title fees being included in cost calculations, due to the history of lenders using affiliates to needlessly charge higher fees to borrowers.

QM loans have certain features, such as prohibition of certain risky features, lower costs, and stronger underwriting requirements that make them safer loans. Lenders who follow the rules and make QM loans receive special legal protections. The consumer and market protections prevent borrowers from having to pay excessive fees that were common during the subprime lending boom. Instead of protecting borrowers and the market, loopholes in H.R. 685 unnecessarily create new incentives to charge higher fees to the borrower.

Loopholes include exempting title insurance paid to a company affiliated with the lender. The current QM points and fees definition is designed to include all compensation received by the lender. As a result, the current statute only includes title insurance in the points and fees calculation when paid to a company *affiliated with the lender*. The title insurance exception in H.R. 685 would create a loophole that would exclude these fees and drive up the cost of mortgages by hundreds, if not thousands of dollars.

Borrowers already pay inflated title insurance costs. Including title insurance costs paid to a company affiliated with the lender provides important market pressure to reduce title insurance costs. A 2007 Government Accountability Office (GAO) report concluded that 70 cents to the dollar of title insurance premiums are "paid to or retained by agents" while only 5% of premiums go to cover losses.[1] Creating a title insurance loophole in the statute would eliminate one important pathway to drive down these costs for borrowers.

The Dodd-Frank Act and Consumer Financial Protection Bureau rules already accommodate points and fees settings for smaller loans. The points and fees limit already in place is calibrated based on the size of a borrower's mortgage. Statutory loopholes like H.R. 685 are not needed to accommodate smaller loans.

Dodd-Frank Already Makes Allowances for Smaller Loans

Points & Fees Cost Threshold	Loan Balance
3%	Loans $100,000 and above (i.e., $6,000 for a $200,000 loan)
$3,000	Greater than or equal to $60,000 and less than $100,000
5%	Loans greater than or equal to $20,000 and less than $60,000
$1,000	Greater than or equal to $12,500 and less than $20,000
8%	Loans less than $12,500

[1] U.S. Government Accountability Office, Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers 9 (2007), *available at* http://www.gao.gov/new.items/d07401.pdf.

The new rules already allow for flexibility by loan size and lender type. The CFPB carefully has and continues to consider the impacts of the rule on various types of loans and lending institutions when writing the QM rules. The result allows for differences to accommodate small and rural lenders, and smaller loans.[2] While the QM rule is just over a year old, early data suggest that the market is slowly improving and access to credit for creditworthy borrowers shows promise of improvements as well. A rollback of consumer protections will not in any way help borrowers. H.R. 685 will unnecessarily raise the cost of mortgages and limit access to homeownership for creditworthy borrowers.

Recent mortgages would not exceed the existing points and fees threshold: Freddie Mac and industry data show that average mortgage origination fees are below 1%. This leaves substantial room to charge borrowers other fees, such as mortgage broker compensation and settlement services paid to a company affiliated with the lender, and still remain within the points and fees limit *without creating loopholes in the statute.*

QM consumer protections are neither harming mortgage lending nor limiting access to credit. Prior to implementation, many housing industry representatives and industry analysts warned that QM's consumer protections and the Ability-to-Repay rule would lead to decreases in mortgage lending. Despite the claims, studies are showing that the QM rule has not had a negative impact on mortgage lending or access to credit.

- Urban Institute's analysis of the Federal Reserve's Senior Loan Officer Survey on Bank Lending shows that the QM rule has had "almost no impact on the government sponsored enterprises (i.e., Fannie Mae and Freddie Mac) or government agency (i.e., Ginnie Mae) market…"[3]
- This same analysis also notes that QM has not negatively impacted access to credit. The analysis attributes the ongoing lack of credit to underserved communities to over-corrections in the post-housing crisis market. These are conditions that have been carried over from the period prior to enactment of the QM rule.
- The survey analysis also found that QM's points and fees cap, which includes adjustments for smaller loans, did not appear to be a factor in access to credit.
- The Home Mortgage Disclosure Act (HMDA) 2013 report states that mortgage market is showing signs of slight improvement since the housing crisis.[4]
- Additional studies site issues such as wage stagnation and poor credit scores as barriers to mortgage lending, not consumer protections or CFPB rules.[5]
- The mortgage market is showing signs of improvement. Lower down payment options have been reintroduced by the GSEs, and general reporting tracks slight easing of tight lending standards to a greater amount of borrowers.[6]

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[2] Ability-to-Repay and Qualified Mortgage Rule, Small Entity Compliance Guide, Consumer Financial Protection Bureau (2014), *available at* http://files.consumerfinance.gov/f/201411_cfpb_atr-qm_small-entity-compliance-guide.pdf.

[3] Jim Parrot et. Al., Data show surprisingly little impact of new mortgage rules, Urban Institute, (August 21, 2014) *citing* Board of Governors of the Federal Reserve System, July 2014 Senior Loan Officer Opinion Survey on Bank Lending Practices (2014), *available at* http://blog.metrotrends.org/2014/08/data-show-surprisingly-impact-mortgage-rules.

[4] Board of Governors of the Federal Reserve System, The 2013 Home Mortgage Disclosure Act Data 2 (2014), *available at* http://www.federalreserve.gov/pubs/bulletin/2014/pdf/2013_HMDA.pdf.

[5] Jim Parrot and Mark Zandi, Opening up the Credit Box 5 (2013), *available at* http://www.urban.org/UploadedPDF/412910-Opening-the-Credit-Box.pdf.

[6] Statement of FHFA Director Melvin L. Watt on Release of Guidelines for Purchase of Low Down Payment Mortgages, Federal Housing Finance Agency, *available at* http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-Melvin-L-Watt-on-Release-of-Guidelines-for-Purchase-of-Low-Down-Payment-Mortgages.aspx. *See also* Board of Governors of the Federal Reserve System, January 2015 Senior Loan Officer Opinion Survey on Bank Lending Practices 37 (2015), *available at* http://www.federalreserve.gov/boarddocs/snloansurvey/201502/fullreport.pdf.

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