Support H.R. 3211, 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 affiliated (but not unaffiliated) title companies, and (ii) amounts of insurance and taxes held in escrow. As a result of this problematic definition, many affiliated loans, particularly those made to low- and moderate-income borrowers, would not qualify as QMs and would be unlikely to be made or would only be available at higher rates due to heightened liability risks. Consumers would lose the ability to choose to take advantage of the convenience and market efficiencies offered by one-stop shopping.

Congress should pass H.R. 3211, the Mortgage Choice Act, before the "ability to repay" provisions take effect in January 2014. This bipartisan legislation would modify the definition of "points and fees" used to determine whether a loan meets the QM test.

Points and Fees Definition Requires Revision

To ensure that consumers continue to be 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 would be unlikely to 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 still 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. Title insurance is highly regulated by most states: 44 states and the District of Columbia 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).

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H.R. 3211 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) preserve the ability of consumers to choose the benefits of one-stop shopping when they purchase or refinance their home.

- **Clarify escrow charges.** The definition of "points and fees" in Dodd-Frank is ambiguous regarding whether the dollar values for amounts held for insurance 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. These amounts are not retained by the lender or its affiliates and amounts for taxes are paid to governmental entities. Additionally, amounts held in escrow that exceed a certain cushion are returned to the consumer as required under RESPA.