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## [H.R. 685, the Mortgage Choice Act of 2015](#)

### FLOOR SITUATION

On Tuesday, April 14, 2015, the House will consider [H.R. 685](#), *the Mortgage Choice Act of 2015*, under a closed rule. The bill was introduced on February 3, 2015 by Rep. Bill Huizenga (R-MI) and was referred to the Committee on Financial Services, which ordered the bill reported by a vote of 43 to 12 on March 26, 2015.

### SUMMARY

H.R. 685 amends the Truth in Lending Act (15 U.S.C 1601) to exclude insurance held in escrow and, under certain circumstances, fees paid to companies affiliated with the creditor from the costs that are considered when calculating the “points and fees” used when determining if a mortgage can be classified as a “Qualified Mortgage” (QM). H.R. 685 directs the Consumer Financial Protection Bureau (CFPB) to issue final regulations to carry out the provisions in this bill within 90 days of the enactment of this Act.

### BACKGROUND

The Qualified Mortgage standard was established under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) to help consumers avoid risky mortgages and to provide for increased transparency about potential mortgage liability. On January 10, 2013, the CFPB issued its “[Ability-to-Repay and Qualified Mortgage](#)” rule, which implemented sections 1411, 1412 and 1414 of the Dodd-Frank Act.<sup>1</sup> The final rule, which went into effect January 10, 2014, generally requires creditors to make a “reasonable, good faith determination of a consumer's ability to repay” any consumer credit transaction secured by a dwelling, but establishes a legal safe harbor from liability under this requirement for “Qualified Mortgages” (QM) that are not “higher-priced.”

A mortgage will be considered a QM if, among other things, it does not have total “points and fees” exceeding 3 percent of the total loan amount for loan amounts greater than or equal to \$100,000 (higher thresholds are permitted for loans that are less than \$100,000).<sup>2</sup> The rule stipulates which costs, known at or before consummation of the loan, are included in the “points and fees” cap. These

<sup>1</sup> See [House Report 114-54](#) at 1.

<sup>2</sup> See [CFPB Qualified Mortgage Guide](#) at 42, for further details about thresholds for smaller-balance loans.

costs include the finance charge, loan originator compensation, real-estate related fees, insurance premiums, and loan-level price adjustment fees.<sup>3</sup>

The QM rule permits the exclusion of certain real estate-related fees, including fees for title examination, abstract of a title, title insurance, property survey, document preparation, notaries, credit reports, appraisals, inspections, flood hazard determinations, and non-tax related amounts paid into escrow, but only if they are “reasonable,” the lender receives no direct or indirect compensation in connection with the charge, or if the charge is not paid to an affiliate of the lender. Consequently, the points-and-fees definition includes charges paid to a third party, such as for an appraisal or for title insurance, if the third party is affiliated with the lender, but not if the third party is unaffiliated. This could cause many loans, in which consumers take advantage of convenient one-stop loan shopping, to fail the QM test because insurance premiums held in escrow could count towards the “points and fees” cap, under the rule. H.R. 685 clarifies that insurance premiums held in escrow would not count towards this cap, which will enhance competition in the mortgage and title insurance markets and ensure that consumers have greater access to mortgage credit.<sup>4</sup>

The House passed a similar bill ([H.R. 3211](#)) by voice vote on June 9, 2014. The Senate did not act on that measure during the 113<sup>th</sup> Congress.

## **COST**

[CBO estimates](#) that enacting H.R. 685 would affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that those effects would be insignificant. Enacting H.R. 685 would not affect revenues. Implementing the bill would not affect discretionary costs because the CFPB is permanently authorized to spend amounts transferred from the Federal Reserve System.

## **STAFF CONTACT**

For questions or further information, contact the House Republican Policy Committee at 6-5539.

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<sup>3</sup> Id. 43-48, for further details about how the “points and fees” cap is determined.

<sup>4</sup> See [House Report at 114-54](#) at 2