

PRESERVING ACCESS TO MANUFACTURED HOUSING ACT OF 2015

APRIL 6, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 650]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 650) to amend the Truth in Lending Act to modify the definitions of a mortgage originator and a high-cost mortgage, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 650, the “Preserving Access to Manufactured Housing Act of 2015,” provides technical clarifications to the definition of a “mortgage originator” for purposes of the Truth in Lending Act. The bill also amends the definition of a “high cost” mortgage to ensure that consumers of small-balance residential loans have access to mortgage credit.

BACKGROUND AND NEED FOR LEGISLATION

The Home Ownership and Equity Protection Act (HOEPA) was enacted in 1994 as an amendment to the Truth in Lending Act (15 U.S.C. 1601 et seq.) to address abusive practices in refinancings and closed-end home equity loans with high interest rates or high fees. Since HOEPA’s enactment, refinancings or home equity mortgage loans meeting any of HOEPA’s high-cost coverage tests have been subject to special disclosure requirements and restrictions on loan terms, and consumers with high-cost mortgages have had enhanced remedies for violations of the law. HOEPA identifies a class of high-cost mortgage loans through rate and fee triggers, and it

provides consumers entering into these transactions with special protections.

On January 10, 2013, the Consumer Financial Protection Bureau (CFPB) issued a final rule implementing the changes to HOEPA mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203). The Dodd-Frank Act expanded the scope of HOEPA coverage to include purchase money mortgage loans and home equity lines of credit. Previously HOEPA only applied to refinancings and home equity installment loans.

Additionally, the Dodd-Frank Act, and the implementing rule, amends the tests for determining whether a loan is “high cost” under HOEPA. Previously a loan was covered by HOEPA if the annual percentage rate (APR) exceeded the rate for Treasury securities with a comparable maturity by more than 10 percentage points, or if the points and fees paid by the consumer exceeded the greater of 8 percent of the loan amount or \$400. The \$400 figure, set in 1994, was adjusted annually based on the Consumer Price Index. The Dodd-Frank Act, and the implementing rule, lowered the rate threshold for HOEPA coverage. Under the new regime, a loan will be covered by HOEPA if the APR applicable to the transaction exceeds the average prime offer rate (APOR) for a comparable transaction by more than 6.5 percent for a first-lien mortgage, or by more than 8.5 percent for a first-lien mortgage if the transaction is for less than \$50,000. Additionally, the Dodd-Frank Act, and the implementing rule, reduces the total amount of points and fees that would trigger HOEPA coverage. A loan will be covered by HOEPA if the points and fees associated with the transaction exceed 5 percent of the total loan amount for a loan greater than or equal to \$20,000; or 8 percent of the total loan amount or \$1,000 (whichever is less) for a loan less than \$20,000.

The Financial Services Committee heard testimony that the new tests for determining whether a loan is “high cost” are problematic and could reduce access to credit for consumers of manufactured housing. In a March 2015 letter, the Manufactured Housing Institute wrote in support of H.R. 650, stating that:

Due to an unintended consequence of the Dodd-Frank Act, manufactured housing is less available as an affordable housing option. The CFPB rules are having a significant impact on credit availability for the purchase of affordable manufactured housing . . .

H.R. 650, the Preserving Access to Affordable Housing Act would clarify the Dodd-Frank provisions that have impeded the ability of consumers to access affordable manufactured housing financing, without undermining key Dodd-Frank mortgage protections . . . H.R. 650 revises the triggers by which small-sized manufactured home loans are considered “High-Cost” under the Home Ownership and Equity Protection Act (HOEPA). The fixed costs of originating and servicing loans causes smaller-sized manufactured housing loans to violate caps in Dodd-Frank and be categorized as “High-Cost” or predatory. The discrepancy exists because while the cost of originating and servicing a \$200,000 loan and a \$20,000 loan are nearly [the] same in terms of real dollars, the cost as a percentage of each loan’s size is very different. Many manufac-

tured home owners will not be able to purchase, refinance or sell a home because small-balance manufactured home loans will not exist due to their stigma as High-Cost Mortgage loans under HOEPA.

H.R. 650 clarifies that manufactured home retailers and their employees are not considered Loan Originators (LOs) under Consumer Financial Protection Bureau (CFPB) guidelines, provided they receive no compensation for performing LO activities. Similar to real estate agents, manufactured housing retailers and salespeople are fundamentally in the business of selling homes, not originating loans. Their compensation is solely derived from the sale of a home. The sales compensation paid to retailers and their employees is not tied to LO activities, as defined by CFPB, because: (1) the sales compensation is not paid by lenders; (2) the amount and type of sales compensation is not dependent on whether a home is purchased with cash or financing, lender incentives, or loan terms; and (3) the compensation is clearly for sales services that are NOT loan origination activities. Just as a real estate agent's sales commission does not make them an LO under CFPB rules, a similar distinction is needed for those selling manufactured homes.

In a March 23, 2015 letter to the Committee, the Mortgage Bankers Association stated its support for the bill:

H.R. 650 would allow more low-balance loans to fit within the cap on points and fees under the Home Ownership and Equity Protection Act (HOEPA) by revising those triggers. This will allow more consumers, particularly on the lower end of the economic spectrum, to gain access to safe and affordable mortgage credit. The legislation also contains an important technical change that will clarify that manufactured home salespersons are not considered mortgage originators, provided they receive no compensation from a creditor, lender or mortgage broker.

In a March 23, 2015 letter to the Committee, the National Association of Federal Credit Unions explained that H.R. 650:

would modify the definitions of a mortgage originator and a high-cost mortgage to ensure that consumers of small-balance mortgage loans, including manufactured housing loans, will have access to credit. Working families across the country, particularly in rural America, depend on access to financing for affordable manufactured homes and this bill addresses an important barrier to entry in the marketplace.

In a March 6, 2015 letter to the Committee, the California Association of Mortgage professionals explained

[Manufactured] homes are often a more accessible and affordable way for many people to buy their own home. Manufactured housing has come a long way with respect to the features and benefits it provides homeowners. Today, manufactured homes can blend seamlessly into any market or neighborhood. In many areas of the country, particularly

rural communities, manufactured homes are the only type of quality affordable housing available.

The Dodd/Frank regulations mistakenly result in manufactured homes becoming less available as an affordable housing option. H.R. 650 clarifies the difference between manufactured housing manufacturers and loan originators, and insures that low-dollar manufactured housing loans are exempt from HOEPA standards.

In a September 2014 white paper entitled “Manufactured-housing consumer finance in the United States,” the CFPB stated that:

The Dodd-Frank changes likely increased the share of manufactured-home loans that are classified as HOEPA loans substantially . . . In their comments during the HOEPA rulemaking process, some industry commenters stated that . . . they would not make HOEPA loans and therefore consumers would experience reduced access to credit for manufactured-home loans . . . Notwithstanding these arguments, the Bureau decided to implement the statute as Congress had written it, rather than use its authority to make adjustments beyond those that Congress deemed appropriate . . . The extension of HOEPA to home-purchase loans increased the share of all loans (i.e., home-purchase, refinance or home improvement loans) that are classified as HOEPA loans, but the resulting increase in the share of high-cost mortgages was much larger for manufactured-housing loans than for loans on site-built homes.

By improving the definition of “high cost” mortgages for purposes of the application of HOEPA, H.R. 650 preserves the ability of lenders to make smaller mortgage loans to low and moderate income borrowers. Without this critical change, American consumers seeking to purchase manufactured or modular housing will face reduced choice and fewer financing opportunities.

HEARINGS

The Committee held no hearings on H.R. 650 in the 114th Congress. However, while the Committee did not hold a specific legislative hearing on this measure, it held a hearing entitled “Preserving Consumer Choice and Financial Independence” on March 18, 2015, at which matters relating to this measure were discussed.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 25, 2015 and March 26, 2015, and ordered H.R. 650 to be reported favorably to the House without amendment by a recorded vote of 43 yeas to 15 nays (Record vote no. FC-22), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 43 yeas to 15 nays (Record vote no. FC-22), a quorum being present.

Record vote no. FC-22

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)	X			Mrs. Maloney (NY)		X	
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks	X		
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa			
Mr. Pearce	X			Mr. Clay	X		
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland				Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver		X	
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter		X	
Mr. Stivers	X			Mr. Himes		X	
Mr. Fincher	X			Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster		X	
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty	X		
Mr. Rothfus	X			Mr. Heck (WA)		X	
Mr. Messer	X			Mr. Vargas		X	
Mr. Schweikert	X						
Mr. Dold	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 650 will alter certain definitions contained within the Truth in Lending Act to ensure that consumers of small-balance residential loans have access to mortgage credit.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 3, 2015.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 650, the Preserving Access to Manufactured Housing Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 650—Preserving Access to Manufactured Housing Act of 2015

H.R. 650 would amend the Truth in Lending Act (TILA) by adjusting the definitions of a mortgage originator and a high-cost mortgage. Under current law, employees of retailers of manufactured homes who do not accept residential mortgage loan applications, offer or negotiate terms of loans, or advise consumers on loan terms are excluded from the definition of mortgage originator. H.R. 650 would broaden the exception to include retailers of manufactured homes as well as their employees, as long as they do not receive more compensation for selling a home with a mortgage than they would for selling the same home for cash.

The TILA also provides special protections for consumers who are offered high-cost mortgages. H.R. 650 would amend the definition of a high-cost mortgage by increasing the maximum rates and fees that an originator or creditor could charge on loans for manufactured housing without a mortgage being considered a high-cost mortgage.

Based on information from the Consumer Financial Protection Bureau (CFPB), CBO estimates that enacting H.R. 650 would increase direct spending by less than \$500,000 for that agency to implement changes to the TILA. Because H.R. 650 would affect direct spending, pay-as-you-go procedures apply. CBO estimates that the bill would not affect revenues. Implementing H.R. 650 would not affect spending subject to appropriation because the CFPB is permanently authorized to spend amounts transferred from the Federal Reserve System.

H.R. 650 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 650 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 650 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 650 does not require any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 650 as the “Preserving Access to Manufactured Housing Act of 2015.”

Section 2. Mortgage originator definition

This section amends section 103 of the Truth in Lending Act (P.L. 90–321) to specify that the definition of “mortgage originator” does not include any person who is a retailer of manufactured or modular homes unless the retailer or its employees receive compensation for taking a residential mortgage loan application, assisting a consumer in obtaining or applying to obtain a residential mortgage loan, or offering or negotiating terms of a residential mortgage loan that is in excess of any compensation or gain received in a comparable cash transaction.

Section 3. High-cost mortgage definition

This section amends section 103 of the Truth in Lending Act (P.L. 90–321), as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203), to clarify that a first mortgage on a consumer’s principal dwelling that is considered personal property will be considered a “high-cost mortgage” if the annual percentage rate at consummation of the transaction will exceed the average prime offer rate for a comparable transaction by more than 10 percentage points, in the case of a transaction in an amount of \$75,000 or less. This section would also amend the definition of “high-cost mortgage” to include a transaction for less than \$75,000 in which the dwelling is personal property and the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed the greater of 5 percent of the total transaction amount or \$3,000. This section authorizes the CFPB to adjust such amounts to reflect the change in the Consumer Price Index.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TRUTH IN LENDING ACT

* * * * *

TITLE I—CONSUMER CREDIT COST DISCLOSURE

CHAPTER 1—GENERAL PROVISIONS

* * * * *

§ 103. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection.

(c) The term “Bureau” refers to the Bureau of Governors of the Federal Reserve System.

(d) The term “organization” means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(e) The term “person” means a natural person or an organization.

(f) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(g) The term “creditor” refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under chapter 4 and sections 127(a)(5), 127(a)(6), 127(a)(7), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(8), and 127(b)(10) of chapter 2 of this title, the term “creditor” shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Bureau shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans. Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this title. The term “creditor” includes a private edu-

cational lender (as that term is defined in section 140) for purposes of this title.

(h) The term “credit sale” refers to any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(i) The adjective “consumer”, used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

(j) The terms “open end credit plan” and “open end consumer credit plan” mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan or open end consumer credit plan which is an open end credit plan or open end consumer credit plan within the meaning of the preceding sentence is an open end credit plan or open end consumer credit plan even if credit information is verified from time to time.

(k) The term “adequate notice”, as used in section 133, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(l) The term “credit card” means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(m) The term “accepted credit card” means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(n) The term “cardholder” means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(o) The term “card issuer” means any person who issues a credit card, or the agent of such person with respect to such card.

(p) The term “unauthorized use”, as used in section 133, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(q) The term “discount” as used in section 167 means a reduction made from the regular price. The term “discount” as used in section 167 shall not mean a surcharge.

(r) The term “surcharge” as used in section 103 and section 167 means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means.

(s) The term “State” refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(t) The term “agricultural purposes” includes the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

(u) The term “agricultural products” includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(v) The term “material disclosures” means the disclosure, as required by this title, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 129(a).

(w) The term “dwelling” means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

(x) The term “residential mortgage transaction” means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer’s dwelling to finance the acquisition or initial construction of such dwelling.

(y) As used in this section and section 167, the term “regular price” means the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan or a credit cardholder’s open-end account shall not be considered payment made by use of the plan or the account.

(z) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Bureau under this title or the provision thereof in question.

[(bb)] (aa) HIGH-COST MORTGAGE.—

(1) DEFINITION.—

(A) IN GENERAL.— The term “high-cost mortgage”, and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer’s principal dwelling, other than a reverse mortgage transaction, if—

(i) in the case of a credit transaction secured—

(I) by a first mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points **[(8.5 percentage points, if the dwelling is personal property and the transaction is for less than \$50,000)]** *(10 percentage points if the dwelling is personal property or is a transaction that does not include the purchase of real property on which a dwelling is to be placed, and the transaction is for less than \$75,000 (as such amount is adjusted by the Bureau to reflect the change in the Consumer Price Index))* the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction; or

(II) by a subordinate or junior mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction;

(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed—

(I) in the case of a transaction for \$20,000 or more, 5 percent of the total transaction amount; **[or]**

(II) in the case of a transaction for less than \$20,000, the lesser of 8 percent of the total transaction amount or \$1,000 (or such other dollar amount as the Bureau shall prescribe by regulation); or

(III) in the case of a transaction for less than \$75,000 (as such amount is adjusted by the Bureau to reflect the change in the Consumer Price Index) in which the dwelling is personal property (or is a consumer credit transaction that does not include the purchase of real property on which a dwelling is to be placed) the greater of 5 percent of the total transaction amount or \$3,000 (as such amount is adjusted by the Bureau to reflect the change in the Consumer Price Index); or

(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.— For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the loan.

(C) MORTGAGE INSURANCE.— For the purposes of computing the total points and fees under paragraph (4), the total points and fees shall exclude—

(i) any premium provided by an agency of the Federal Government or an agency of a State;

(ii) any amount that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; and

(iii) any premium paid by the consumer after closing.

(2)(A) After the 2-year period beginning on the effective date of the regulations promulgated under section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994, and no more frequently than biennially after the first increase or decrease under this subparagraph, the Bureau may by regulation increase or decrease the number of percentage points specified in paragraph (1)(A), if the Bureau determines that the increase or decrease is—

(i) consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994; and

(ii) warranted by the need for credit.

(B) An increase or decrease under subparagraph (A)—

(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.

(C) In determining whether to increase or decrease the number of percentage points referred to in subparagraph (A), the Bureau shall consult with representatives of consumers, including low-income consumers, and lenders.

(3) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(4) For purposes of paragraph (1)(B), points and fees shall include—

(A) all items included in the finance charge, except interest or the time-price differential;

(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;

(C) each of the charges listed in section 106(e) (except an escrow for future payment of taxes), unless—

(i) the charge is reasonable;

(ii) the creditor receives no direct or indirect compensation; and

(iii) the charge is paid to a third party unaffiliated with the creditor; and

(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and

(G) such other charges as the Bureau determines to be appropriate.

(5) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.— In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.

(6) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.

[(aa)] (bb) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this title does not in itself constitute a violation of this title.

(cc) The term “reverse mortgage transaction” means a non-recourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer’s principal dwelling—

- (1) securing one or more advances; and
- (2) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after—
 - (A) the transfer of the dwelling;
 - (B) the consumer ceases to occupy the dwelling as a principal dwelling; or
 - (C) the death of the consumer.

[(cc)] (dd) DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—

(1) COMMISSION.— Unless otherwise specified, the term “Commission” means the Federal Trade Commission.

(2) MORTGAGE ORIGINATOR.— The term “mortgage originator”—

(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

- (i) takes a residential mortgage loan application;
- (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or
- (iii) offers or negotiates terms of a residential mortgage loan;

(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) [an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs)] *a retailer of manufactured or modular homes or its employees unless such retailer or its employees receive compensation or gain for engaging in activities described in subparagraph (A) that is in excess of any compensation or gain received in a comparable cash transaction;*

(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mort-

gage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan—

(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

(ii) is fully amortizing;

(iii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

(v) meets any other criteria the Bureau may prescribe;

(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 129B(c); and

(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

(3) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.— The term “Nationwide Mortgage Licensing System and Registry” has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(4) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.— For purposes of this subsection, a person “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(5) RESIDENTIAL MORTGAGE LOAN.— The term “residential mortgage loan” means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), (18), and (19), and sections 128(f) and 130(k), and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

(6) SECRETARY.— The term “Secretary”, when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

(7) **SERVICER.**— The term “servicer” has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).

[(dd)] (ee) BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point—

(A) the average prime offer rate, as defined in section 129C; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points—

(A) the average prime offer rate, as defined in section 129C; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(3) For purposes of paragraph (1), the term “bona fide discount points” means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

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