

PORTFOLIO LENDING AND MORTGAGE ACCESS ACT

FEBRUARY 23, 2018.—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. 2226]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2226) to amend the Truth in Lending Act to provide a safe harbor from certain requirements related to qualified mortgages for residential mortgage loans held on an originating depository institution's portfolio, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Portfolio Lending and Mortgage Access Act".

**SEC. 2. MINIMUM STANDARDS FOR RESIDENTIAL MORTGAGE LOANS.**

Section 129C(b) of the Truth in Lending Act (15 U.S.C. 1639c(b)) is amended by adding at the end the following:

“(4) SAFE HARBOR.—

“(A) IN GENERAL.—A residential mortgage loan shall be deemed a qualified mortgage loan for purposes of this subsection if the loan—

“(i) is originated by, and continuously retained in the portfolio of, a covered institution;

“(ii) is in compliance with the limitations with respect to prepayment penalties described in subsections (c)(1) and (c)(3);

“(iii) is in compliance with the requirements related to points and fees under paragraph (2)(A)(vii);

“(iv) does not have negative amortization terms or interest-only terms; and

“(v) is a loan for which the covered institution considers, documents, and verifies the debt, income, and financial resources of the consumer in accordance with subparagraph (C).

“(B) EXCEPTION FOR CERTAIN TRANSFERS.—Subparagraph (A) shall not apply to a residential mortgage loan if the legal title to such residential

mortgage loan is sold, assigned, or otherwise transferred to another person unless the legal title to such residential mortgage loan is sold, assigned, or otherwise transferred—

“(i) to another person by reason of the bankruptcy or failure of the covered institution that originated such loan;

“(ii) to an insured depository institution or insured credit union that has less than \$10,000,000,000 in total consolidated assets on the date of such sale, assignment, or transfer, if the loan is retained in portfolio by such insured depository institution or insured credit union;

“(iii) pursuant to a merger of the covered institution that originated such loan with another person or the acquisition of a the covered institution that originated such loan by another person or of another person by a covered institution, if the loan is retained in portfolio by the person to whom the loan is sold, assigned, or otherwise transferred; or

“(iv) to a wholly owned subsidiary of the covered institution that originated such loan if the loan is considered to be an asset of such covered institution for regulatory accounting purposes.

“(C) CONSIDERATION AND DOCUMENTATION REQUIREMENTS.—The consideration and documentation requirements described in subparagraph (A)(v) shall—

“(i) not be construed to require compliance with, or documentation in accordance with, appendix Q to part 1026 of title 12, Code of Federal Regulations, or any successor regulation; and

“(ii) be construed to permit multiple methods of documentation.

“(D) DEFINITIONS.—In this paragraph—

“(i) the term ‘covered institution’ means an insured depository institution or an insured credit union that, together with its affiliates, has less than \$10,000,000,000 in total consolidated assets on the date on the origination of a residential mortgage loan;

“(ii) the term ‘insured credit union’ has the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

“(iii) the term ‘insured depository institution’ has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

“(iv) the term ‘interest-only term’ means a term of a residential mortgage loan that allows one or more of the periodic payments made under the loan to be applied solely to accrued interest and not to the principal of the loan; and

“(v) the term ‘negative amortization term’ means a term of a residential mortgage loan under which the payment of periodic payments will result in an increase in the principal of the loan.

## PURPOSE AND SUMMARY

Introduced by Representative Andy Barr on April 28, 2017, H.R. 2226, the Portfolio Lending and Mortgage Access Act amends Section 129C of the Truth in Lending Act (TILA) [15 U.S.C. 1639c] to extend the “Qualified Mortgage” safe harbor for loans held in portfolio by certain depository institutions with less than \$10 billion in assets. The legislation also imposes additional requirements for safe harbor treatment: loans cannot have negative amortization, interest-only features, and would need to comply with limits on prepayment penalties. Finally, H.R. 2226 requires that the creditor must document and continually verify a consumer’s income, employment, assets, and credit history.

## BACKGROUND AND NEED FOR LEGISLATION

The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203) (Dodd-Frank Act) made significant changes to the mortgage lending market place. Section 1411 of the Dodd-Frank Act amends TILA to require that mortgage lenders determine at the time a loan is made that the borrower has a reasonable ability to repay it. The ability-to-repay requirements are designed to ensure that a lender takes into account the borrower’s capacity

to pay back the mortgage prior to consummation of the loan. Section 1412 of the Dodd-Frank Act creates a statutory category of mortgages known as ‘qualified mortgages’ (QM) that are deemed to comply with Section 1411’s ability-to-repay requirements and are therefore subject to a safe harbor from lawsuit, provided that the loans meet certain characteristics and underwriting criteria. The Bureau of Consumer Financial Protection (CFPB) has the authority to prescribe regulations to implement the Dodd-Frank Act’s qualified mortgage requirements.

Under the CFPB’s qualified mortgage regulations, there are concerns that mortgages have been made ‘safer’ by effectively making them unavailable to a substantial number of would-be homeowners. According to the Federal Reserve Board, 22% of those who borrowed to buy a home in 2010—one out of every five borrowers—would not have met the 43 percent debt-to-income ratio (DTI) underwriting requirements for a Qualified Mortgage.<sup>1</sup>

The CFPB’s mortgage rules also include special ‘automatic QM’ designations for certain types of mortgages. For instance, for a period of seven years, any loan that qualifies for purchase by Fannie Mae and Freddie Mac (provided they are not removed from conservatorship sooner) automatically qualifies for QM status even if a borrower’s DTI exceeds 43% DTI. Because of the exemptions, the QM rule does not affect the roughly 95% of loans originated that the federal government insures or guarantees, explicitly or implicitly.<sup>2</sup>

Additionally, the CFPB gave special treatment to certain institutions that operate in predominantly rural or underserved areas, have less than \$2 billion in assets, and originate 500 or fewer mortgages per year. The CFPB extended QM status to loans made by these small creditors and held in their own portfolios, even if the debtor has a DTI in excess of 43%. Small creditors in rural or underserved areas can also originate mortgage loans with balloon payments, despite the QM rule’s general prohibition on balloon payment loans, and have those loans qualify for safe harbor treatment.

These special exemptions effectively, but only temporarily, minimize the impact of the CFPB’s QM rule. In order to ensure that community financial institutions are able to continue providing mortgage credit to consumers, a commonsense yet flexible approach needs to be taken with mortgage lending. Allowing residential mortgage loans held in portfolio to qualify for a safe harbor equivalent to that of QM will allow these institutions to meet the credit demands of consumers, while incentivizing such institutions to ensure the borrower can meet the monthly obligations of a mortgage. When a community financial institution keeps a loan that it originates in its portfolio—rather than sell the loan—it keeps the risk of a borrower’s default on its balance sheet. Therefore, the lender should benefit from the presumption that the borrower has the ability to repay, and receive the legal benefits of the safe harbor so long as the loan appears on the institution’s balance sheet.

H.R. 2226, introduced by Congressman Barr, and amended by Congressman Michael Capuano during the Committee’s markup on

<sup>1</sup><http://www.federalreserve.gov/boarddocs/snloansurvey/201408/fullreport.pdf>.

<sup>2</sup>CFPB, ‘Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act,’ 78 Federal Register 6569, January 30, 2013.

January 17, 2018, (D-MA), will treat mortgage loans that are kept on a balance sheet as having met the Qualified Mortgage requirements and grant them a legal safe harbor from Dodd-Frank's ability to repay requirements. Doing so will encourage private sector risk retention, encourage small institutions to make more mortgage loans, and improve the business environment for small banks.

#### HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 2226 on April 26, 2017 and April 28, 2017.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on January 18, 2018 and ordered H.R. 2226 to be reported favorably by a recorded vote of 55 yeas to 0 nays (Record vote no. FC-140), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Mr. Barr. Before the motion to report was offered, the Committee adopted an amendment offered by Mr. Capuano by voice vote.

#### 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 recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House with amendment. The motion was agreed to by a recorded vote of 55 yeas to 0 nays (Record vote no. FC-140), a quorum being present.

## Record vote no. FC-140

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Maxine Waters (CA) .....	X		
Mr. McHenry .....				Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King .....				Ms. Velázquez .....	X		
Mr. Royce (CA) .....	X			Mr. Sherman .....	X		
Mr. Lucas .....	X			Mr. Meeks .....	X		
Mr. Pearce .....	X			Mr. Capuano .....	X		
Mr. Posey .....	X			Mr. Clay .....			
Mr. Luetkemeyer .....	X			Mr. Lynch .....	X		
Mr. Huizenga .....	X			Mr. David Scott (GA) .....	X		
Mr. Duffy .....	X			Mr. Al Green (TX) .....	X		
Mr. Stivers .....				Mr. Cleaver .....	X		
Mr. Hultgren .....	X			Ms. Moore .....	X		
Mr. Ross .....	X			Mr. Ellison .....	X		
Mr. Pittenger .....	X			Mr. Perlmutter .....	X		
Mrs. Wagner .....	X			Mr. Himes .....	X		
Mr. Barr .....	X			Mr. Foster .....	X		
Mr. Rothfus .....	X			Mr. Kildee .....	X		
Mr. Messer .....				Mr. Delaney .....	X		
Mr. Tipton .....	X			Ms. Sinema .....	X		
Mr. Williams .....	X			Mrs. Beatty .....	X		
Mr. Poliquin .....	X			Mr. Heck .....	X		
Mrs. Love .....	X			Mr. Vargas .....	X		
Mr. Hill .....	X			Mr. Gottheimer .....	X		
Mr. Emmer .....	X			Mr. Gonzalez (TX) .....	X		
Mr. Zeldin .....	X			Mr. Crist .....	X		
Mr. Trott .....	X			Mr. Kihuen .....	X		
Mr. Loudermilk .....	X						
Mr. Mooney (WV) .....	X						
Mr. MacArthur .....	X						
Mr. Davidson .....	X						
Mr. Budd .....	X						
Mr. Kustoff (TN) .....	X						
Ms. Tenney .....	X						
Mr. Hollingsworth .....	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. 2226 will ensure that mortgage loans remain available to creditworthy borrowers by providing that loans retained on the balance sheet are deemed qualified mortgages.

## 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.

## 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, February 9, 2018.*

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. 2226, the Portfolio Lending and Mortgage Access Act.

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

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 2226—Portfolio Lending and Mortgage Access Act*

Under current law, a “qualified mortgage” has certain characteristics designed to make it more affordable than some other types of loans. Eligible borrowers are presumed to be able to repay amounts owed, and lenders are provided certain legal protections when issuing such mortgages. H.R. 2226 would amend the Truth in Lending Act to deem residential mortgages qualified mortgages if certain criteria are met regarding the financial institution that

originates and retains them, the terms of the loans, and the interest and fees charged for those loans.

Using information from the Consumer Financial Protection Bureau (CFPB), CBO estimates that enacting H.R. 2226 would increase direct spending by \$1 million in 2019 for the agency to issue rules to implement the changes required under the bill. Because enacting H.R. 2226 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 2226 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2226 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

The bill would impose a private-sector mandate by eliminating an existing right of action against lenders that hold residential mortgages on their balance sheets and against mortgage originators that direct consumers to such loans. Under current law, lenders of mortgages that meet the standards for qualified mortgages are granted legal protection from civil actions based on a claim that the lender failed to comply with ability-to-repay requirements. Mortgage originators who direct consumers to qualified mortgages are also granted such legal protections. By broadening the definition of qualified mortgages to include loans held on a lender's balance sheet, the bill would limit the right of borrowers to file claims against holders of such loans and against mortgage originators who directed them to the loans, as long as the originator provided certain disclosures. The cost of the mandate would be the forgone value of the awards and settlements in such claims. Using information from the CFPB, CBO expects that the number of such claims and the awards in such cases would be small. Therefore, CBO estimates that the cost of the mandate would probably fall below the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Jon Sperl (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

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right of borrowers to file claims against holders of such loans and against mortgage originators who directed them to the loans, as long as the originator provided certain disclosures. The cost of the mandate would be the forgone value of the awards and settlements in such claims. Based on information from the CFPB, CBO expects that the number of such claims and the awards in such cases would be small. Therefore, CBO estimates that the cost of the mandate would probably fall below the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

#### 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

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

#### DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section cites H.R. 2226 as the “Portfolio Lending and Mortgage Access Act.”



*Section 2. Minimum standards for residential mortgage loans*

This section provides that a residential mortgage loan shall be deemed a qualified mortgage loan, if the loan is originated by and continuously retained on the portfolio of an insured depository institution or insured credit union that has less than \$10,000,000,000 in total consolidated assets. The section also imposes additional requirements for safe harbor treatment: loans cannot have negative amortization, interest-only features, and would need to comply with limits on prepayment penalties. In addition the creditor must consider, document, and verify a consumer's income, employment, assets, and credit history. This section also provides that the loans may be transferred to another depository institution in certain circumstances.

## 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):

## 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 (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 2—CREDIT TRANSACTIONS**

\* \* \* \* \*

**§ 129C. Minimum standards for residential mortgage loans****(a) ABILITY TO REPAY.—**

(1) **IN GENERAL.**—In accordance with regulations prescribed by the Board, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

(2) **MULTIPLE LOANS.**—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the

same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

(3) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer’s ability to repay a residential mortgage loan shall include consideration of the consumer’s credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer’s equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

(4) INCOME VERIFICATION.—A creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer’s Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer’s income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer’s income history in making a determination under this subsection shall include the verification of such income by the use of—

(A) Internal Revenue Service transcripts of tax returns;

or

(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Board.

(5) EXEMPTION.—With respect to loans made, guaranteed, or insured by Federal departments or agencies identified in subsection (b)(3)(B)(ii), such departments or agencies may exempt refinancings under a streamlined refinancing from this income verification requirement as long as the following conditions are met:

(A) The consumer is not 30 days or more past due on the prior existing residential mortgage loan.

(B) The refinancing does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by the department or agency making, guaranteeing, or insuring the refinancing.

(C) Total points and fees (as defined in section 103(aa)(4), other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the refinancing do not exceed 3 percent of the total new loan amount.

(D) The interest rate on the refinanced loan is lower than the interest rate of the original loan, unless the borrower is refinancing from an adjustable rate to a fixed-rate loan, under guidelines that the department or agency shall establish for loans they make, guarantee, or issue.

(E) The refinancing is subject to a payment schedule that will fully amortize the refinancing in accordance with the regulations prescribed by the department or agency making, guaranteeing, or insuring the refinancing.

(F) The terms of the refinancing do not result in a balloon payment, as defined in subsection (b)(2)(A)(ii).

(G) Both the residential mortgage loan being refinanced and the refinancing satisfy all requirements of the department or agency making, guaranteeing, or insuring the refinancing.

(6) NONSTANDARD LOANS.—

(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer's ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

(C) CALCULATION FOR NEGATIVE AMORTIZATION.—In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

(D) CALCULATION PROCESS.—For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Board, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at

least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

(E) REFINANCE OF HYBRID LOANS WITH CURRENT LENDER.—In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which there would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

(i) consider the mortgagor's good standing on the existing mortgage;

(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

(7) FULLY-INDEXED RATE DEFINED.—For purposes of this subsection, the term “fully indexed rate” means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

(8) REVERSE MORTGAGES AND BRIDGE LOANS.—This subsection shall not apply with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a different dwelling within 12 months.

(9) SEASONAL INCOME.—If documented income, including income from a small business, is a repayment source for a residential mortgage loan, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

(b) PRESUMPTION OF ABILITY TO REPAY.—

(1) IN GENERAL.—Any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this title, may presume that the loan has met the requirements of subsection (a), if the loan is a qualified mortgage.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) QUALIFIED MORTGAGE.—The term “qualified mortgage” means any residential mortgage loan—

(i) for which the regular periodic payments for the loan may not—

(I) result in an increase of the principal balance;

or

(II) except as provided in subparagraph (E), allow the consumer to defer repayment of principal;

(ii) except as provided in subparagraph (E), the terms of which do not result in a balloon payment, where a “balloon payment” is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

(iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

(iv) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(v) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(vi) that complies with any guidelines or regulations established by the Board relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Board may determine relevant and consistent with the purposes described in paragraph (3)(B)(i);

(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount;

(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (3), such as in high-cost areas; and

(ix) in the case of a reverse mortgage (except for the purposes of subsection (a) of section 129C, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes of this subsection.

(B) AVERAGE PRIME OFFER RATE.—The term “average prime offer rate” means the average prime offer rate for a comparable transaction as of the date on which the interest rate for the transaction is set, as published by the Board..

(C) POINTS AND FEES.—

(i) IN GENERAL.—For purposes of subparagraph (A), the term “points and fees” means points and fees as defined by section 103(aa)(4) (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator).

(ii) COMPUTATION.—For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

(I) 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 the average prime offer rate.

(II) Unless 2 bona fide discount points have been excluded under subclause (I), 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 the average prime offer rate.

(iii) BONA FIDE DISCOUNT POINTS DEFINED.—For purposes of clause (ii), 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.

(iv) INTEREST RATE REDUCTION.—Subclauses (I) and (II) of clause (ii) 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.

(D) SMALLER LOANS.—The Board shall prescribe rules adjusting the criteria under subparagraph (A)(vii) in order to permit lenders that extend smaller loans to meet the requirements of the presumption of compliance under paragraph (1). In prescribing such rules, the Board shall consider the potential impact of such rules on rural areas and other areas where home values are lower.

(E) BALLOON LOANS.—The Board may, by regulation, provide that the term “qualified mortgage” includes a balloon loan—

(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);

(ii) for which the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;

(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments; and

(iv) that is extended by a creditor that—

- (I) operates in rural or underserved areas;
- (II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board;
- (III) retains the balloon loans in portfolio; and
- (IV) meets any asset size threshold and any other criteria as the Board may establish, consistent with the purposes of this subtitle.

(3) REGULATIONS.—

(A) IN GENERAL.—The Board shall prescribe regulations to carry out the purposes of this subsection.

(B) REVISION OF SAFE HARBOR CRITERIA.—

(i) IN GENERAL.—The Board may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

(ii) LOAN DEFINITION.—The following agencies shall, in consultation with the Board, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A), and such rules may revise, add to, or subtract from the criteria used to define a qualified mortgage under paragraph (2)(A), upon a finding that such rules are consistent with the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections:

(I) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act (12 U.S.C. 1707 et seq.).

(II) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.

(III) The Department of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h).

(IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.

(4) SAFE HARBOR.—

(A) IN GENERAL.—A residential mortgage loan shall be deemed a qualified mortgage loan for purposes of this subsection if the loan—

(i) is originated by, and continuously retained in the portfolio of, a covered institution;

(ii) is in compliance with the limitations with respect to prepayment penalties described in subsections (c)(1) and (c)(3);

(iii) is in compliance with the requirements related to points and fees under paragraph (2)(A)(vii);

(iv) does not have negative amortization terms or interest-only terms; and

(v) is a loan for which the covered institution considers, documents, and verifies the debt, income, and financial resources of the consumer in accordance with subparagraph (C).

(B) *EXCEPTION FOR CERTAIN TRANSFERS.*—Subparagraph (A) shall not apply to a residential mortgage loan if the legal title to such residential mortgage loan is sold, assigned, or otherwise transferred to another person unless the legal title to such residential mortgage loan is sold, assigned, or otherwise transferred—

(i) to another person by reason of the bankruptcy or failure of the covered institution that originated such loan;

(ii) to an insured depository institution or insured credit union that has less than \$10,000,000,000 in total consolidated assets on the date of such sale, assignment, or transfer, if the loan is retained in portfolio by such insured depository institution or insured credit union;

(iii) pursuant to a merger of the covered institution that originated such loan with another person or the acquisition of a the covered institution that originated such loan by another person or of another person by a covered institution, if the loan is retained in portfolio by the person to whom the loan is sold, assigned, or otherwise transferred; or

(iv) to a wholly owned subsidiary of the covered institution that originated such loan if the loan is considered to be an asset of such covered institution for regulatory accounting purposes.

(C) *CONSIDERATION AND DOCUMENTATION REQUIREMENTS.*—The consideration and documentation requirements described in subparagraph (A)(v) shall—

(i) not be construed to require compliance with, or documentation in accordance with, appendix Q to part 1026 of title 12, Code of Federal Regulations, or any successor regulation; and

(ii) be construed to permit multiple methods of documentation.

(D) *DEFINITIONS.*—In this paragraph—

(i) the term “covered institution” means an insured depository institution or an insured credit union that, together with its affiliates, has less than \$10,000,000,000 in total consolidated assets on the date on the origination of a residential mortgage loan;

(ii) the term “insured credit union” has the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(iii) the term “insured depository institution” has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);



(iv) the term “interest-only term” means a term of a residential mortgage loan that allows one or more of the periodic payments made under the loan to be applied solely to accrued interest and not to the principal of the loan; and

(v) the term “negative amortization term” means a term of a residential mortgage loan under which the payment of periodic payments will result in an increase in the principal of the loan.

(c) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

(1) PROHIBITED ON CERTAIN LOANS.—

(A) IN GENERAL.—A residential mortgage loan that is not a “qualified mortgage”, as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

(B) EXCLUSIONS.—For purposes of this subsection, a “qualified mortgage” may not include a residential mortgage loan that—

(i) has an adjustable rate; or

(ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

(2) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

(A) shall publish, and update at least weekly, average prime offer rates;

(B) may publish multiple rates based on varying types of mortgage transactions; and

(C) shall adjust the thresholds established under subclause (I), (II), and (III) of paragraph (1)(B)(ii) as necessary to reflect significant changes in market conditions and to

effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

(3) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in subsection (b)(2)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

(4) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

(d) SINGLE PREMIUM CREDIT INSURANCE PROHIBITED.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, 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—

(1) 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; and

(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

(e) ARBITRATION.—

(1) IN GENERAL.—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(2) POST-CONTROVERSY AGREEMENTS.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor or any assignee to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

(3) NO WAIVER OF STATUTORY CAUSE OF ACTION.—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

(f) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

(1) the creditor provides the consumer with a statement that—

(A) the pending transaction will or may, as the case may be, result in negative amortization;

(B) describes negative amortization in such manner as the Board shall prescribe;

(C) negative amortization increases the outstanding principal balance of the account; and

(D) negative amortization reduces the consumer's equity in the dwelling or real property; and

(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.

(g) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—

(1) DEFINITION.—For purposes of this subsection, the term “anti-deficiency law” means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

(3) NOTICE BEFORE REFINANCING THAT WOULD CAUSE LOSS OF PROTECTION.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.

(h) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

- (1) the creditor's policy regarding the acceptance of partial payments; and
- (2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.

(i) TIMESHARE PLANS.—This section and any regulations promulgated under this section do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

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