

## MORTGAGE FAIRNESS ACT OF 2017

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NOVEMBER 14, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

### R E P O R T

together with

### MINORITY VIEWS

[To accompany H.R. 2570]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2570) to amend the Truth in Lending Act to clarify that the points and fees in connection with a mortgage loan do not include certain compensation amounts already taken into account in setting the interest rate on such loan, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE AND SUMMARY

Introduced by Representative Bill Posey on May 19, 2017, H.R. 2570, the “Mortgage Fairness Act” amends the Truth in Lending Act to revise the definition of “points and fees” under a high-cost mortgage.

#### BACKGROUND AND NEED FOR LEGISLATION

On January 10, 2013, the Bureau of Consumer Financial Protection (BCFP) issued a final rule to implement sections 1411 and 1412 as well as section 1414 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 [P.L. 111-203], which limits prepayment penalties. The final rule, also known as the “QM” Rule provides lenders with a safe harbor for loans that satisfy the definition of a “Qualified Mortgage” and are not “higher-

priced.” A mortgage will be considered a Qualified Mortgage if it: (1) has regular periodic payments that are substantially equal, except for the payment changes on an adjustable rate mortgage or a step-rate loan; (2) does not permit negative amortization; (3) does not have a balloon payment; (4) does not exceed 30 years; and (5) does not have total points and fees exceeding 3 percent of the total loan amount.

Additionally, when underwriting a mortgage, a lender must: (1) take into account mortgage-related obligations using the maximum interest rate that may apply during the first five years and periodic payments of principal and interest that will be repaid; (2) consider and verify the consumer’s current or reasonably expected income or assets, other than the value of the dwelling, and the consumer’s current debt obligations, alimony and child support; and (3) determine that the consumer’s debt-to-income ratio does not exceed 43 percent, as calculated using Federal Housing Administration (FHA) guidelines. The requirements in the ability-to-repay rule went into effect on January 10, 2014.

The final QM Rule sets limits on points and fees for Qualified Mortgages. It provides that a loan cannot be treated as a Qualified Mortgage unless its total points and fees do not exceed the certain limits and all dollar and loan amounts are indexed for inflation.

The QM Rule stipulates that the following costs, known at or before consummation, are included in the points and fees cap:

- All items included in the finance charge, with the following exceptions:
  - Interest;
  - The time-price differential;
  - Federal or state government-sponsored mortgage insurance premiums;
  - Private mortgage insurance;
  - Bona fide third-party charges not retained by the lender, loan originator or an affiliate of either; and
  - Bona fide discount points.
- Direct or indirect loan originator compensation, including compensation paid by the consumer to mortgage brokers and compensation paid by the lender to mortgage brokers and retail loan officers. Salaries are excluded.
- Real estate-related fees, including fees for title examination, abstract of a title, title insurance, property survey, document preparation, notaries, credit reports, appraisals, inspections, flood hazard determinations, and non-tax related amounts paid into escrow. Any of these charges may be excluded from the points and fees calculation if they are reasonable, if the lender receives no direct or indirect compensation in connection with the charge, or if the charge is not paid to an affiliate of the lender.
- Premiums for credit insurance; credit property insurance; other life, accident, health or loss-of-income insurance where the lender is beneficiary; or debt cancellation or suspension coverage payments.
- Maximum prepayment penalty.
- Prepayment penalty paid in a refinance.
- Fees charged to consumers to recover the costs of loan-level price adjustments (LLPAs) imposed by secondary market purchasers of loans, including the GSEs.

Unfortunately, these methods double-count the brokerage fee and generate a distorted picture of the overall cost of the loan. The brokerage fee may be “set as a percentage of the loan amount (1 to 2.5 percent is customary), and is paid either by the borrower or the lender. Brokers are required to disclose their fees upfront, and they are not permitted to earn any more than the disclosed amount . . . . If due from the borrower, it could either be rolled into the loan amount or paid upfront by check.”<sup>1</sup> In other words, mortgage brokers may be compensated in a lump sum or in the form of a higher interest rate on the loan. In the latter case, the broker’s origination fees are reflected in the higher interest rate on the loan. However, the points-and-fees calculation includes a line item for indirect loan origination compensation, even if it is already priced into the interest rate. In effect, the QM rule double-counts the mortgage brokerage fee.

The BCFP acknowledged this issue when it promulgated a rule amending Regulation Z, which implements the Truth in Lending Act (TILA). In its official interpretation of the rule, the BCFP noted that it was:

“particularly concerned about *situations in which the creditor pays compensation to a mortgage broker* or its own loan originator employees because there is no simple way to determine whether the compensation is paid from money the creditor collected from up-front charges to the consumer (which would already be counted against the points and fees thresholds) or from the interest rate on the loan (which would not be counted toward the thresholds).”<sup>2</sup>

However, the BCFP ultimately decided not to address the problem in full. Instead, the “final rule retains an ‘additive’ approach for calculating loan originator compensation paid by a creditor to a loan originator other than an employee of creditor.”<sup>3</sup>

As a result, many loans that would not otherwise be considered “high cost” exceed the 3 percent cap. The consequences are significant. Lenders are less likely to offer “high cost” mortgages, or may make them available at higher rates due to heightened liability risks.

While QM loans are given safe harbor against legal liability under the Ability to Repay rules, “high cost” mortgages receive only a rebuttable presumption of compliance. As the Congressional Research Service (CRS) has written:

“[w]hen a lender originates a mortgage that receives QM status, it is presumed to have complied with the ATR requirement, which consequently reduces the lender’s potential legal liability of its residential mortgage lending activities. . . . The definition of a QM, therefore, is important to a lender seeking to minimize its *legal risk* of its residential

<sup>1</sup> Lisa Prevost, Choosing Between Mortgage Broker and Bank, N.Y. Times, November 29, 2013, <http://www.nytimes.com/2013/12/01/realestate/choosing-between-mortgage-broker-and-bank.html>.

<sup>2</sup> 78 Fed. Reg. 35430, June 12, 2013. <https://www.federalregister.gov/d/2013-13173/p-9>.

<sup>3</sup> Id.

mortgage lending activities, specifically its compliance with the statutory ATR requirement.”<sup>4</sup>

This legislation would resolve the issues related to double-counting as points and fees, any compensation already priced into the interest rate, while also codify the BCFP’s current practice of avoiding double-counting mortgage lender compensation to their own mortgage origination employees. Correcting the definitional error, H.R. 2570, will help to better serve consumers and serve as another step to restore healthy market competition that has been absent following the enactment of the Dodd-Frank Act.

#### HEARINGS

The Subcommittee on Financial Institutions, held a hearing examining matters relating to H.R. 2570 on December 7, 2017.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 24, 2018 and ordered H.R. 2570 to be reported favorably to the House without amendment by a recorded vote of 34 yeas to 22 nays (recorded vote no. FC–199), 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 recorded vote was on 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 34 yeas to 22 nays (Record vote no. FC–199), a quorum being present.

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<sup>4</sup>Sean M. Hoskins, *An Analysis of Portfolio Lending and Qualified Mortgages*, CRS, January 21, 2016, <https://fas.org/sgp/crs/misc/R44350.pdf> (emphasis in original).

## Record vote no. FC-199

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Maxine Waters (CA) .....		X	
Mr. McHenry .....	X			Mrs. Carolyn B. Maloney (NY) .....		X	
Mr. King .....	X			Ms. Velázquez .....			
Mr. Royce (CA) .....	X			Mr. Sherman .....		X	
Mr. Lucas .....	X			Mr. Meeks .....		X	
Mr. Pearce .....	X			Mr. Capuano .....		X	
Mr. Posey .....	X			Mr. Clay .....		X	
Mr. Luetkemeyer .....	X			Mr. Lynch .....		X	
Mr. Huizenga .....	X			Mr. David Scott (GA) .....		X	
Mr. Duffy .....	X			Mr. Al Green (TX) .....		X	
Mr. Stivers .....	X			Mr. Cleaver .....		X	
Mr. Hultgren .....	X			Ms. Moore .....			
Mr. Ross .....	X			Mr. Ellison .....			
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 .....	X			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 .....			
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. 2570 will resolve the issues related to double-counting as points and fees, any compensation already priced into the interest rate, while also codify the BCFP's current practice of avoiding double-counting mortgage lender compensation to their own mortgage origination employees, by correcting a definitional error.

## 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, September 11, 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. 2570, the Mortgage Fairness Act of 2017.

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. 2570—Mortgage Fairness Act of 2017*

Under current law, a “qualified mortgage” is a type of loan that prohibits certain terms and features and offers additional legal protections to lenders who issue them. One of those features is that some costs that are incidental to the loan and that are paid by the borrower—for example, title insurance fees, guarantee fees, and

service charges—cannot exceed 3 percent of the total loan amount. Lenders offering “high-cost mortgages” (home mortgages with interest rates and fees that exceed certain thresholds) must make additional disclosures to borrowers and must comply with restrictions on the terms of those loans.

H.R. 2570 would change what costs are included in the points and fees calculation used to determine if a loan is a qualified mortgage or a high-cost mortgage. The bill would exclude compensation paid by a consumer or creditor to an individual who is employed by or has a contract with the mortgage originator. The bill also would exclude compensation that was accounted for in setting the mortgage’s interest rate but for which the consumer was not separately charged.

Using information from the Consumer Financial Protection Bureau, CBO estimates that enacting H.R. 2570 would increase direct spending by less than \$500,000 for the agency to issue a rule to implement the changes to the points and fees calculation.

Because enacting H.R. 2570 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 2570 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 2570 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was reviewed 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 contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### 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 rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

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

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

This section cites H.R. 2570 as the “Mortgage Fairness Act of 2017”.

##### *Section 2. Points and fees*

This section amends Section 103 of the Truth in Lending Act (15 U.S.C. 1602) by correcting existing definitional errors of what constitutes “points and fees” for a high cost mortgage.

#### 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):

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#### SECTION 103 OF THE TRUTH IN LENDING ACT

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##### **§ 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 educational 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 bal-

ance. 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) 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) 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;]**

*(B) all compensation from any source (other than compensation taken into account in setting the interest rate and for which there is no separate charge to the consumer) paid directly or indirectly by a consumer or creditor to—*

*(i) a mortgage originator, including a mortgage originator that is also the creditor in a table-funded transaction;*

*or*

*(ii) an individual employed by or contracting with the originator or a mortgage originator;*

(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.

(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) a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable—

(I) does not 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;

(II) discloses to the consumer—

(aa) in writing any corporate affiliation with any creditor; and

(bb) if the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

(III) does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs).

(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 mortgage 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)).

(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.

## MINORITY VIEWS

H.R. 2570, the so called “Mortgage Fairness Act of 2017,” would erode important protections for would be homebuyers under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), the Truth In Lending Act (“TILA”), and the Real Estate Settlement Procedures Act (“RESPA”), among other statutes.

This bill would weaken borrower protections under the Consumer Financial Protection Bureau’s (“Consumer Bureau”) Ability to Repay rule by excluding certain types of mortgage loan originator compensation (or commission payments) from the points and fees cap for Qualified Mortgage, or “QM” loans. Qualified mortgages are important loans that ensure that borrowers have sufficient assets and income to repay their mortgage loan, inclusive to all fees.

Generally, when a lender originates a QM loan, it must follow the Consumer Bureau’s Ability to Repay rule, including the rule’s three percent cap on points and fees for the borrower’s mortgage, to obtain a safe harbor under the rule. H.R. 2570 would change this calculation by excluding certain types of loan originator compensation from the three percent cap. By changing the points and fees calculation in this way, H.R. 2570 could incentivize originators to steer borrowers into mortgage products that may not be in the best interest of a homebuyer, and it would make it harder to trigger certain borrower protections for certain high-cost mortgages.

Specifically, if a lender offers a borrower a high-cost mortgage with an annual percentage rate (“APR”) or total points and fees that exceed certain threshold amounts,<sup>1</sup> the borrower receives additional protections under the Home Ownership and Equity Protection Act (“HOEPA”).<sup>2</sup> For example before making such a loan, a lender must provide the borrower information in advance that explains that he or she is receiving a high-cost mortgage, and disclose the terms, costs and fees associated with the loan. The lender must also certify that the borrower received homeownership counseling about the high-cost mortgage being offered. These additional protections help ensure the borrower is well informed before receiving loan.

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<sup>1</sup>For example, high cost mortgage protections are triggered for a first mortgage loan if the APR is more than 6.5 percentage points higher than the average prime offer rate, which is an estimate of the rate people with good credit typically pay for a similar first mortgage. In addition, a transaction will be a high-cost mortgage if the total loan amount is \$21,032 or more and the points and fees exceed 5 percent of the total loan amount, or if the total loan amount is less than \$21,032 and the points and fees exceed the lesser of \$1,052 or 8 percent of the total loan amount. See [https://files.consumerfinance.gov/f/201301\\_cfpb\\_high-cost-mortgage-rule-what-it-means-for-consumers.pdf](https://files.consumerfinance.gov/f/201301_cfpb_high-cost-mortgage-rule-what-it-means-for-consumers.pdf) and <https://www.gpo.gov/fdsys/pkg/FR-2017-08-30/pdf/2017-18003.pdf>.

<sup>2</sup><https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-issues-rules-to-strengthen-protections-for-high-cost-mortgages/>

More than a dozen national consumer and civil rights groups, including the NAACP and the National Consumer Law Center, wrote a letter to Congress opposing H.R. 2570, explaining:

The high-cost loan rules currently discourage kickbacks on loans where they are still allowed because these payments count toward the coverage threshold based on points and fees. H.R. 2570 would exclude kickbacks from this trigger, creating an incentive for loan originators to steer borrowers to overpriced loans without getting the benefit of the high-cost loan protections. . . . The supporters of the bill point out that these kickback payments are incorporated into the interest rate and claim that also including it in the points and fees test is redundant. Incorporation into the interest rate is the mechanism used to ensure that the borrower is the one who is actually funding the kickback that promotes steering. But this does not necessitate a carve-out from the points and fees threshold for high-cost loan protections. . . . Carving out these kickbacks from the high-cost coverage rules would disrupt the inclusive approach Congress adopted and promote abusive loan steering and price gouging. We urge you to oppose H.R. 2570. A vote to support this bill is a vote to promote predatory mortgage lending.<sup>3</sup>

Following the devastating financial crisis a decade ago, Congress intentionally included all types of loan originator compensation in the mortgage points and fees calculation to disincentivize the types of abusive loan steering that contributed to millions of foreclosures. Congress should not reverse course by repealing these critical safeguards for families looking to buy a home.

For these reasons we oppose H.R. 2570.

MAXINE WATERS.  
CAROLYN B. MALONEY.  
WM. LACY CLAY.  
DANIEL T. KILDEE.  
MICHAEL E. CAPUANO.

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<sup>3</sup> <https://www.nclc.org/images/pdf/legislation/opp-letter-hr-2570.pdf>