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115TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 115–416

PRESERVING ACCESS TO MANUFACTURED HOUSING ACT OF 2017

NOVEMBER 21, 2017.—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

together with

MINORITY VIEWS

[To accompany H.R. 1699]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1699) to amend the Truth in Lending Act to modify the definitions of a mortgage originator and a high-cost mortgage, to amend the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 to modify the definition of a loan originator, 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 Andy Barr on March 23, 2017, H.R. 1699, the "Preserving Access to Manufactured Housing Act of 2017", amends Section 103 of the Truth in Lending Act (TILA) (15 U.S.C. 1602) to clarify that retailers of manufactured homes, or their employees, are not "mortgage originators" for purposes of the TILA unless these retailers or their employees receive compensation from a lender, mortgage broker, or loan originator. The bill also amends the Section 1503 of the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act of 2008 (12 U.S.C. 5102) to specify that such a retailer is generally not a "loan originator" subject to requirements under that Act.

79–006

The bill also revises the Consumer Financial Protection Bureau's (CFPB) definition of "high cost mortgages," and adjusts the Home Ownership and Equity Protection Act (HOEPA) high-cost mortgage thresholds for a first mortgage of less than $75,000 on a dwelling that is not real property to: (1) an Annual Percentage Rate (APR) that will exceed the average prime offer rate by more than 10 percentage points, or (2) points and fees that will exceed the greater of 5 percent of the total transaction amount or $3,000.

BACKGROUND AND NEED FOR LEGISLATION

In 1994 Congress amended, and President Clinton signed into law, amendments to TILA, known as HOEPA, to address abusive practices in mortgage re-financings and closed-end home equity loans with high interest rates or high fees. Since HOEPA's enactment, re-financings or home equity mortgage loans meeting any of HOEPA's high-cost coverage tests have been subject to special disclosure requirements and restrictions on loan terms, and HOEPA provides enhanced remedies to consumers with high-cost mortgages for violations of the law. HOEPA identifies a class of high-cost mortgage loans through rate and fee triggers, and it provides consumers that enter into these transactions with special protections.

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

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

H.R. 1699 clarifies that a manufactured home sales person is not originating a loan when it assists a consumer apply for a mortgage or prepare loan information, unless they receive compensation from a creditor, lender or mortgage broker. The legislation also improves the "high cost" mortgage definition by slightly increasing the maximum interest rate and points and fees cap for manufactured loans that are provided for less than $75,000 in order to preserve access

to mortgage credit for low and moderate-income consumers who are seeking to buy a manufactured home.

In a statement in support for H.R. 1699 dated March 24, 2017, the Manufactured Housing Institute wrote:

> Recent Home Mortgage Disclosure Act data shows that consumers have been shut out of the market for quality, affordable housing because regulations have decreased the availability of financing for manufactured homes, which are a vital source of affordable housing for millions of low- and moderate-income families across the country . . .
>
> . . . H.R. 1699 modifies the definition of "high-cost" loans so that manufactured home loans are not unfairly swept under this designation simply due to their small size. The provision of the Dodd-Frank Act that established parameters for which mortgage loans are classified as "high cost" included more flexible annual percentage rate (APR) and points and fees provisions for small loans. This was in recognition of the simple mathematical fact that fixed costs on smaller loans translate into higher percentages of the total loan. In practice, this flexibility has not been sufficient to address market realities. Thus, some manufactured housing lenders have exited the market and others are no longer offering smaller dollar amount (and most affordable) loans.

In a letter of support for H.R. 1699 dated May 1, 2017, the Mortgage Bankers Association wrote:

> [H.R. 1699] would allow more low-balance loans to fit within the cap on points and fees under the Home Ownership and Equity Protection Act by revising those triggers. This will allow more consumers, particularly on the lower end of the economic spectrum, to gain access to safe and affordable mortgage credit.

In a letter of support for H.R. 1699 dated October 11, 2017, the National Association of Federal Credit Unions Inc. wrote:

> [H.R. 1699] would modify the definitions of a mortgage originator and a high-cost mortgage to ensure that consumers of small-balance mortgage loans, including manufactured housing loans, will have access credit. Working families across the country, particularly in rural America, depend on access to financing for affordable manufactured homes and this bill addresses an impo1tant barrier to entry in the marketplace.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 1699 on April 5, 2017, April 26, 2017 and April 28, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 11 and 12, 2017 and ordered H.R. 1699 to be reported favor-

ably to the House as amended by a recorded vote of 42 yeas to 18 nays (Record vote no. FC–75), 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 as amended. The motion was agreed to by a recorded vote of 42 yeas to 18 nays (Record vote no. FC–75), a quorum being present.

Record vote no. FC-75

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		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		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. Huitgren	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	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	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. 1699 will alter certain definitions contained within the Truth in Lending Act and Secure and Fair Enforcement for Mortgage Licensing Act to ensure that consumers of small-balance residential loans have access to mortgage credit.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

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

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, November 21, 2017.

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. 1699, the Preserving Access to Manufactured Housing 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,

MARK P. HADLEY
(For Keith Hall).

Enclosure.

H.R. 1699—Preserving Access to Manufactured Housing Act of 2017

H.R. 1699 would amend the Truth in Lending Act (TILA) and the SAFE Mortgage Licensing Act to change the definitions of mortgage originator, loan originator, and high-cost mortgage. Under TILA, employees of manufactured-home retailers that do not accept residential mortgage loan applications, offer or negotiate terms of loans, or advise consumers on loan terms are excluded from the

definition of mortgage originator. H.R. 1699 would broaden that exception to include retailers of manufactured homes and their employees, as long as they receive no more compensation for selling a home with a mortgage than they would for selling the same home for cash. The bill also would amend the SAFE Mortgage Licensing Act to exempt the same people from the definition of loan originator.

TILA also provides special protections, such as restrictions on certain fees, to consumers who are offered high-cost mortgages. H.R. 1699 would increase the amount an originator or creditor could charge in interest rates and fees for a loan on manufactured housing before the loan would be considered a high-cost mortgage.

Based on an analysis of information from the Consumer Financial Protection Bureau, CBO estimates that enacting H.R. 1699 would increase direct spending by less than $500,000 for that agency to implement the proposed changes to TILA and the SAFE Mortgage Licensing Act. Because enacting the bill would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 1699 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1699 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 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 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 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. 1699 as the 'Preserving Access to Manufactured Housing Act of 2017.'

Section 2. Mortgage and loan originator definition

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

This section amends section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110–289) to specify that the definition of 'loan originator' does not include a retailer of manufactured or modular homes or its employees unless such retailer or its employees receive compensation or gain for engaging in activities related to taking a residential mortgage loan application, and offering or negotiating terms of a residential mortgage loan for compensation or gain, that is in excess of any compensation or gain received in a comparable cash transaction.

Section 3. High-cost mortgage definition

This section amends section 103 of the Truth in Lending Act (P.L. 90–321), as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203), to clarify that a first mortgage on a consumer's principal dwelling that is considered personal property will be considered a 'high-cost mortgage' if the annual percentage rate at consummation of the transaction will exceed the average prime offer rate for a comparable transaction by more than 10 percentage points, in the case of a transaction in an amount of $75,000 or less. This section would also amend the defi-

nition of 'high-cost mortgage' to include a transaction for less than $75,000 in which the dwelling is personal property and the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed the greater of 5 percent of the total transaction amount or $3,000. This section authorizes the CFPB to adjust such amounts to reflect the change in the Consumer Price Index.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TRUTH IN LENDING ACT

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TITLE I—CONSUMER CREDIT COST DISCLOSURE

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CHAPTER 1—GENERAL PROVISIONS

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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 balance. A credit plan or open end consumer credit plan which is an open end credit plan or open end consumer credit plan within the meaning of the preceding sentence is an open end credit plan or open end consumer credit plan even if credit information is verified from time to time.

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

ment of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

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

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

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

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

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

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

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

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

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

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

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

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

(x) The term "residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security

interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.

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

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

[(bb)**]** *(aa)* HIGH-COST MORTGAGE.—

(1) DEFINITION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

issued upon notification of the satisfaction of the underlying mortgage loan; and

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

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

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

(ii) warranted by the need for credit.

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

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

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

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

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

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

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

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

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

(i) the charge is reasonable;

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

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

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

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

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

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

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

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

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

(cc) The term "reverse mortgage transaction" means a nonrecourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer's principal dwelling—

(1) securing one or more advances; and

(2) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after—

(A) the transfer of the dwelling;

(B) the consumer ceases to occupy the dwelling as a principal dwelling; or

(C) the death of the consumer.

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

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

(2) MORTGAGE ORIGINATOR.—The term "mortgage originator"—

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

(i) takes a residential mortgage loan application;

(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

(iii) offers or negotiates terms of a residential mortgage loan;

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

of the services or perform any of the activities described in subparagraph (A);

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

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

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

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

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

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

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

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

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

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

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

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

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SECTION 1503 OF THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008

SEC. 1503. DEFINITIONS

For purposes of this title, the following definitions shall apply:

(1) BUREAU.—The term "Bureau" means the Bureau of Consumer Financial Protection.

(2) FEDERAL BANKING AGENCY.—The term "Federal banking agency" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(3) DEPOSITORY INSTITUTION.—The term "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(4) LOAN ORIGINATOR.—

(A) IN GENERAL.—The term "loan originator"—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) 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 the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; **[**and**]**

(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code**[**.**]***; and*

(v) does not include a retailer of manufactured or modular homes or its employees unless such retailer or its employees receive compensation or gain for engaging in activities described in clause (i) that is in excess

of any compensation or gain received in a comparable cash transaction.

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

(C) ADMINISTRATIVE OR CLERICAL TASKS.—The term "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including—

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv).

(5) LOAN PROCESSOR OR UNDERWRITER.—

(A) IN GENERAL.—The term "loan processor or underwriter" means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

(i) a State-licensed loan originator; or

(ii) a registered loan originator.

(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term "clerical or support duties" may include—

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(6) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Director under section 1509.

(7) NONTRADITIONAL MORTGAGE PRODUCT.—The term "nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

(8) REGISTERED LOAN ORIGINATOR.—The term "registered loan originator" means any individual who—

(A) meets the definition of loan originator and is an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(9) RESIDENTIAL MORTGAGE LOAN.—The term "residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(10) DIRECTOR.—The term "Director" means the Director of the Bureau of Consumer Financial Protection.

(11) STATE.—The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(12) STATE-LICENSED LOAN ORIGINATOR.—The term "State-licensed loan originator" means any individual who—

(A) is a loan originator;

(B) is not an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(C) is licensed by a State or by the Director under section 1508 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(13) UNIQUE IDENTIFIER.—

(A) IN GENERAL.—The term "unique identifier" means a number or other identifier that—

(i) permanently identifies a loan originator;

(ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and

(iii) shall not be used for purposes other than those set forth under this title.

(B) RESPONSIBILITY OF STATES.—To the greatest extent possible and to accomplish the purpose of this title, States shall use unique identifiers in lieu of social security numbers.

MINORITY VIEWS

We believe that low-income families that rely on manufactured housing as an affordable option deserve the same anti-predatory lending standards as other families. H.R. 1699 would not create more access to affordable housing, but instead allow an already incredibly profitable industry to make even more money by charging higher interest rates and fees to low-income borrowers while simultaneously decreasing consumer protections.

First, H.R. 1699 would change the definition of a "mortgage originator" such that rules established by the Consumer Financial Protection Bureau (Consumer Bureau) for marketing and documenting consumer financial transactions would not apply to manufactured housing salespeople that offer credit to borrowers.

In 2014, the Consumer Bureau published a study on the manufactured housing industry, which noted that individuals who apply for manufactured housing loans "include consumers that may be considered more financially vulnerable and, thus, may particularly stand to benefit from strong consumer protections." This study also revealed that many practices, consistent with the current definition of a mortgage loan originator, are practices commonly engaged in by retailers of manufactured housing, such as assisting customers in filling out a mortgage application and exempting retailers from the definition may increase consumer costs and reduce incentives to work in the best interests of the customer.[1] Furthermore, while increasing access to credit in the manufactured housing sector is a worthy goal, information from this study, as well as press articles highlighting increased production in the manufactured housing sector,[2] suggests that reducing consumer protections is not an appropriate trade-off.

Additionally, a years-long joint investigation by *The Seattle Times* and Center for Public Integrity, which focused on Clayton Homes, the largest manufactured homebuilder in the United States, found that Clayton Homes, which is controlled by multi-billionaire Warren Buffet, reaps significant financial profits from unsuspecting consumers—from producing the housing, to selling the housing, to originating loans that take advantage of vulnerable consumers that leave them with virtually no way to refinance.[3] Specifically, the article noted that, "Clayton systematically pursues

[1] "Manufactured-housing consumer finance in the United States'" at 40–42.

[2] *See*, Manufactured Housing Institute, "4,942 New HUD-Code Homes Shipped in January 2015," http://www.manufacturedhousing.org/lib/showtemp_detail.asp?Id=1127&cat=whats_hot (noting a trend of "[year over year] gains across the board" in January 2015 for the manufacturers of mobile homes in homes and floors shipped); *see also*, "4,730 New HUD-Code Homes Shipped in December 2014," http://www.manufacturedhousing.org/lib/showtemp_detail asp?Id=1125&cat=whats_hot ("Compared with the prior year, 2014 has recorded shipment increases in every month. For all twelve months, shipments totaled 64,344 homes compared with 60,210 homes in 2013, a net increase of 6.9 percent").

[3] *See* "The Mobile Home Trap," The Seattle Times, https://www.seattletimes.com/category/mobile-homes/.

unwitting minority homebuyers and baits them into costly subprime loans, many of which are doomed to fail," charges minority borrowers substantially higher rates, on average, than their white counterparts, and "typically charges black people who make over $75,000 a year slightly more than white people who make only $35,000."[4]

Second, H.R. 1699 would increase the spread over the average prime offer rate (APOR) required to trigger Home Ownership and Equity Protection Act (HOEPA) protections for loans that do not include the purchase of real property from 6.5 percent to 10 percent for loans between $50,000 and $75,000 and from 8.5 percent to 10 percent for loans under $50,000. The bill would also raise the fees cap that trigger HOEPA protections to the greater of 5 percent of the total transaction amount or $3,000, whichever is greater. According to Home Mortgage Disclosure Act (HMDA) data, obtained from the Consumer Bureau, this new interest rate trigger would have exempted 58 percent of manufactured home loans originated in 2013 from HOEPA protections. HOEPA is an essential protection tool for consumers and we support policy ensuring that all vulnerable homeowners are protected under the statute, including owners of manufactured homes.

For these reasons, we oppose H.R. 1699.

MAXINE WATERS.
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WM. LACY CLAY.
KEITH ELLISON.
NYDIA M. VELÁZQUEZ.
AL GREEN.
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EMANUEL CLEAVER.
GWEN MOORE.
DENNY HECK.

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[4] Mike Baker and Daniel Wagner, "Minorities Exploited by Warren Buffet's Mobile Home Empire," THE SEATTLE TIMES, Dec. 26, 2015, available at https://www.seattletimes.com/seattle-news/times-watchdog/minorities-exploited-by-warren-buffetts-mobile-home-empire-clayton-homes/.