

HOUSING OPPORTUNITIES MADE EASIER ACT

JANUARY 29, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2255]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2255) to clarify that nonprofit organizations may accept donated mortgage appraisals, 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 Trott, H.R. 2255, the “Housing Opportunities Made Easier Act” amends the Truth in Lending Act (TILA) to deem mortgage appraisal services donated by a fee appraiser to an organization that is eligible to receive tax-deductible charitable contributions to be customary and reasonable.

BACKGROUND AND NEED FOR LEGISLATION

Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act)(P.L. 111-203), also known as the Mortgage Reform and Anti-Predatory Lending Act, made a number of changes to the regulation of property appraisals. The Dodd-Frank Act set new federal standards for the independence of appraisers, mandated independence for appraisers, and created rules for customary and reasonable fees.

Section 1472(i) of the Dodd-Frank Act directed the Bureau of Consumer Financial Protection (CFPB) to establish reasonable and customary fees for fee appraisers, professionals who furnish appraisal services for a fee. The definition of fee appraiser excludes employees of banks and appraisal management companies. Under

this provision, fee appraisers are to receive payment that is “customary and reasonable” for appraisal services performed in the market area of the property being appraised. As the prudential financial regulators seek to formulate these fees, Title XIV of Dodd-Frank requires them to consider objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. As the prudential regulators collect the necessary information to formulate customary and reasonable fees, Section 1472(i) also directs relevant federal agencies¹ to exclude fees that are connected to assignments ordered by appraisal management companies. The CFPB promulgated rules to implement the statute, which went into effect in 2014.²

However, the CFPB’s use of the terms “customary” and “reasonable” in its rule created an issue for non-profit housing organizations, such as Habitat for Humanity, who enlist individuals and groups in local communities all over the world to help build or improve dwellings for low-income and impoverished families. In many cases these organizations require volunteer labor and monetary donations to complete projects, help build homes and obtain affordable mortgages. In 2017 alone Habitat for Humanity assisted more than 30 thousand low-income Americans construct or rehabilitate their dwellings. This figure could have been substantially higher if organizations such as Habitat for Humanity were permitted to receive appraisals at no cost.³

As a result, the CFPB’s definition for the cost of appraisals has hindered certain non-profit housing organizations’ ability to provide cost effective residences for the needy because the CFPB could interpret appraisal donations as a violation of the law. With appraisal costs reaching up to more than \$1000 each, Habitat for Humanity has said that the “provisions in [the Dodd-Frank Act], including appraisal independence regulations, created unintended consequences for Habitat for Humanity and other nonprofit organizations providing responsible homeownership opportunities to families without access to bank mortgages.”

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 2255 on April 26, 2017 and April 28, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on January 17, 2018 and January 18, 2018 and ordered H.R. 2255 to be reported favorably by a recorded vote of 55 yeas to 0 nays (Record vote no. FC–139), a quorum being present.

¹ Term “agencies” collectively refers to the Office of Comptroller of the Currency (OCC), the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Association (NCUA), the Consumer Financial Protection Bureau (CFPB), and the Federal Housing Finance Agency (FHFA).

² <https://www.federalregister.gov/documents/2013/01/31/2013-01384/disclosure-and-delivery-requirements-for-copies-of-appraisals-and-other-written-valuations-under-the>

³ <https://www.habitat.org/sites/default/files/annual-report-FY2017-web.pdf>.

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 55 yeas to 0 nays (Record vote no. FC-139), a quorum being present.

Record vote no. FC-139

| Representative | Yea | Nay | Present | Representative | Yea | Nay | Present |
|-------------------------|-----|-----|---------|---------------------------------|-----|-----|---------|
| Mr. Hensarling | X | | | Ms. Maxine Waters (CA) | X | | |
| Mr. McHenry | | | | Mrs. Carolyn B. Maloney (NY) .. | X | | |
| Mr. King | | | | Ms. Velázquez | X | | |
| Mr. Royce (CA) | X | | | Mr. Sherman | X | | |
| Mr. Lucas | X | | | Mr. Meeks | X | | |
| Mr. Pearce | X | | | Mr. Capuano | X | | |
| Mr. Posey | X | | | Mr. Clay | | | |
| Mr. Luetkemeyer | X | | | Mr. Lynch | X | | |
| Mr. Huizenga | X | | | Mr. David Scott (GA) | X | | |
| Mr. Duffy | X | | | Mr. Al Green (TX) | X | | |
| Mr. Stivers | | | | Mr. Cleaver | X | | |
| Mr. Hultgren | X | | | Ms. Moore | X | | |
| Mr. Ross | X | | | Mr. Ellison | X | | |
| Mr. Pittenger | X | | | Mr. Perlmutter | X | | |
| Mrs. Wagner | X | | | Mr. Himes | X | | |
| Mr. Barr | X | | | Mr. Foster | X | | |
| Mr. Rothfus | X | | | Mr. Kildee | X | | |
| Mr. Messer | | | | Mr. Delaney | X | | |
| Mr. Tipton | X | | | Ms. Sinema | X | | |
| Mr. Williams | X | | | Mrs. Beatty | X | | |
| Mr. Poliquin | X | | | Mr. Heck | X | | |
| Mrs. Love | X | | | Mr. Vargas | X | | |
| Mr. Hill | X | | | Mr. Gottheimer | X | | |
| Mr. Emmer | X | | | Mr. Gonzalez (TX) | X | | |
| Mr. Zeldin | X | | | Mr. Crist | X | | |
| Mr. Trott | X | | | Mr. Kihuen | X | | |
| Mr. Loudermilk | X | | | | | | |
| Mr. Mooney (WV) | X | | | | | | |
| Mr. MacArthur | X | | | | | | |
| Mr. Davidson | X | | | | | | |
| Mr. Budd | X | | | | | | |
| Mr. Kustoff (TN) | X | | | | | | |
| Ms. Tenney | X | | | | | | |
| Mr. Hollingsworth | X | | | | | | |

COMMITTEE OVERSIGHT FINDINGS

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

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2255 will allow mortgage appraisal services donated by a fee appraiser to an organization that is eligible to receive tax-deductible charitable contributions to be deemed customary and reasonable.

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, January 26, 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. 2255, the HOME Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2255—HOME Act

Under current law, mortgage lenders are required to compensate property appraisers at a customary and reasonable rate for performing appraisal services. H.R. 2255 would deem appraisal services donated to an organization that is eligible to receive tax-deductible charitable contributions to be customary and reasonable for purposes of that requirement.

Using information from the Consumer Financial Protection Bureau (CFPB), CBO estimates that enacting H.R. 2255 would cost \$1

million over the 2018–2020 period for several agencies to prepare an interagency rule amending their regulations to reflect the new appraisal requirements.

Costs incurred by the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Federal Housing Finance Agency are recorded in the budget as increases in direct spending. Those agencies are authorized to collect premiums and fees from the financial institutions they regulate to fully cover such administrative expenses. The CFPB is permanently authorized to spend amounts transferred from the Federal Reserve. Because that activity is not subject to appropriation, the CFPB's expenditures are recorded in the budget as direct spending. In total, CBO estimates that enacting H.R. 2255 would increase net direct spending by less than \$500,000 over the 2018–2020 period.

Costs to the Federal Reserve System reduce remittances to the Treasury, which are recorded in the budget as revenues. CBO estimates that enacting H.R. 2255 would decrease such revenues by less than \$500,000 over the 2018–2020 period.

The net effect on the deficit would be insignificant. Because enacting H.R. 2255 would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 2255 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2255 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. 2255 as the “Housing Opportunities Made Easier Act” or the “HOME Act”.

Section 2. Exemption from Truth in Lending Act

This section amends the Truth in Lending Act (TILA) to allow mortgage appraisal services donated by fee appraisers to an organization that is eligible to receive tax-deductible charitable contributions as defined by Section 170(c)(2) of the Internal Revenue Code of 1986, be deemed customary and reasonable.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SECTION 129E OF THE TRUTH IN LENDING ACT

* * * * *

§ 129E. Appraisal independence requirements

(a) **IN GENERAL.**—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under this section.

(b) **APPRAISAL INDEPENDENCE.**—For purposes of subsection (a), acts or practices that violate appraisal independence shall include—

(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

(c) **EXCEPTIONS.**—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:

(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

(3) Correct errors in the appraisal report.

(d) **PROHIBITIONS ON CONFLICTS OF INTEREST.**—No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

(e) **MANDATORY REPORTING.**—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis

to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

(g) RULES AND INTERPRETIVE GUIDELINES.—

(1) IN GENERAL.—Except as provided under paragraph (2), the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue rules, interpretive guidelines, and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), (f), (h), and (i).

(2) INTERIM FINAL REGULATIONS.—The Board shall, for purposes of this section, prescribe interim final regulations no later than 90 days after the date of enactment of this section defining with specificity acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations. Rules prescribed by the Board under this paragraph shall be deemed to be rules prescribed by the agencies jointly under paragraph (1).

(h) APPRAISAL REPORT PORTABILITY.—Consistent with the requirements of this section, the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue regulations that address the issue of appraisal report portability, including regulations that ensure the portability of the appraisal report between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.

(i) CUSTOMARY AND REASONABLE FEE.—

(1) IN GENERAL.—Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies.

(2) FEE APPRAISER DEFINITION.—For purposes of this section, the term “fee appraiser” means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is—

(A) a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice; or

(B) a company not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

(3) EXCEPTION FOR COMPLEX ASSIGNMENTS.—In the case of an appraisal involving a complex assignment, the customary and reasonable fee may reflect the increased time, difficulty, and scope of the work required for such an appraisal and include an amount over and above the customary and reasonable fee for non-complex assignments.

(4) RULE OF CONSTRUCTION RELATED TO APPRAISAL DONATIONS.—*For purposes of paragraph (1), if a fee appraiser voluntarily donates appraisal services to an organization described in section 170(c)(2) of the Internal Revenue Code of 1986, such voluntary donation shall be deemed customary and reasonable.*

(j) SUNSET.—Effective on the date the interim final regulations are promulgated pursuant to subsection (g), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

(k) PENALTIES.—

(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than \$10,000 for each day any such violation continues.

(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting “\$20,000” for “\$10,000” with respect to all subsequent violations.

(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.

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