

9-A §8-103. Definitions and rules of construction

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9-A §8-103. Definitions and rules of construction

1-A. As used in this Article, unless the context otherwise indicates, the following words have the following meanings.

A. “Accepted credit card” means any credit card that 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.

B. “Adequate notice” as used in section 8-302 means a printed notice to a cardholder that 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. That notice may be given to a cardholder by printing the notice on any credit card, on each periodic statement of account issued to the cardholder or by any other means reasonably ensuring the receipt by the cardholder.

C. “Affiliate” has the same meaning as set forth in 12 United States Code, Section 1841.

D. “Annual percentage rate” means the annual percentage rate for a loan calculated according to the provisions of 12 Code of Federal Regulations, Part 226.

E. “Bona fide discount points” means an amount knowingly paid by a borrower for the express purpose of reducing, and which in fact does result in a bona fide reduction of, the interest rate applicable to a residential mortgage loan, as long as the undiscounted interest rate for the residential mortgage loan does not exceed the conventional mortgage rate by more than 2 percentage points for a residential mortgage loan secured by a first lien or by 3 1/2 percentage points for a residential mortgage loan secured by a subordinated lien.

F. “Borrower” means any natural person obligated to repay a loan, including a coborrower, cosigner or guarantor.

G. “Bureau of Consumer Credit Protection” has the same meaning as set out in section 6-103.

H. “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 card to another person.

I. “Card issuer” means any person who issues a credit card or the agent of that person with respect to that card.

J. “Conventional mortgage rate” means the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any superseding

publication, as of the applicable time set forth in 12 Code of Federal Regulations, Section 226.32(a)(1)(i).

K. "Conventional prepayment penalty" means any prepayment penalty or fee that may be collected or charged in a residential mortgage loan and that is authorized by law other than this section, as long as the residential mortgage loan does not have an annual percentage rate that exceeds the conventional mortgage rate by more than 2 percentage points and does not permit any prepayment fees or penalties that exceed 2% of the amount prepaid.

L. "Creditor" has the same meaning as "lender" as set forth in 24 Code of Federal Regulations, Section 3500.2 and includes a mortgage broker.

M. "Discount" as used in section 8-303 means a reduction made from the regular price. The term "discount" does not mean a surcharge.

N. "Dwelling" means a residential structure or mobile home that contains one to 4 family housing units, or individual units of condominiums or cooperatives.

O. "Excluded points and fees" means, in connection with a residential mortgage loan, 1% of the total loan amount attributable to bona fide fees paid to a federal or state government agency that insures payment of some portion of a residential mortgage loan plus an amount not to exceed 2% of the total loan amount attributable to bona fide discount points or a conventional prepayment penalty.

P. "Flipping a residential mortgage loan" means the making of a residential mortgage loan to a borrower that refinances an existing residential mortgage loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan and the borrower's circumstances.

P-1. "Fully amortizing payment schedule" means a schedule based on the term of the loan. For a balloon mortgage that contains an option for an extended amortization period, the fully amortizing payment schedule may be based on the full term available to the borrower.

P-2. "Fully indexed rate" means the index rate prevailing at origination plus the margin that will apply after the expiration of an introductory interest rate.

Q. "High-rate, high-fee mortgage" means a residential mortgage loan in which the terms of the loan meet or exceed one or more of the thresholds defined in paragraph FF.

R. "Material disclosures" means the disclosure, as required by this Article, 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 and the due dates or periods of payments scheduled to repay the indebtedness.

S. "Mortgage broker" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2.

T. “Nontraditional mortgage” has the same meaning as those mortgages described in the “Interagency Guidance on Nontraditional Mortgage Product Risks” issued September 29, 2006 and published in 71 Federal Register, 58609 on October 4, 2006 and as updated from time to time, except that “nontraditional mortgage” does not include a mortgage that does not allow a borrower to defer repayment of principal or interest.

U. “Points and fees” means:

- (1) All items included in the definition of “finance charge” in 12 Code of Federal Regulations, Section 226.4(a) and 226.4(b) except interest or the time price differential;
- (2) All items described in 12 Code of Federal Regulations, Section 226.32(b)(1)(iii);
- (3) All compensation paid directly or indirectly to a mortgage broker from any source, including a mortgage broker that originates a loan in its own name in a table-funded transaction;
- (4) The cost of all premiums financed by a creditor directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums, including private mortgage insurance or debt cancellation or suspension fees calculated and paid on a monthly basis or through regularly scheduled periodic payments, may not be considered financed by the creditor;
- (5) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents; and
- (6) All prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor.

“Points and fees” does not include taxes, per diem or odd days interest paid at closing, filing fees, recording fees and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing or satisfying a security interest or bona fide and reasonable charges and fees paid to a person other than the creditor or an affiliate of the creditor as follows: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to closing; fees for credit reports; fees for surveys; attorney’s fees; notary fees; escrow charges not otherwise included under subparagraph (1); title insurance premiums; and fire and hazard insurance and flood insurance premiums, as long as the conditions in 12 Code of Federal Regulations, Section 226.4(d)(2) are met.

For open-end loans, the points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties that may be charged or collected under the terms of the loan documents and the minimum additional fees the borrower would be required to pay to draw down an

amount equal to the total credit line.

V. "Rate spread home loan" means any loan for which the rate spread must be reported under the Home Mortgage Disclosure Act of 1975, Regulation C, 12 Code of Federal Regulations, Section 203.4(a)(12); and any loan that meets the criteria of a high-rate, high-fee mortgage.

W. "Residential mortgage loan" means an extension of credit, including an open-end credit plan, in which:

- (1) The loan does not exceed the maximum original principal obligation as set forth in and from time to time adjusted according to the provisions of 12 United States Code, Section 1454(a)(2);
- (2) The loan is considered a federally related mortgage loan as set forth in 24 Code of Federal Regulations, Section 3500.2;
- (3) The loan is not a reverse mortgage transaction or a loan made primarily for business, agricultural or commercial purposes;
- (4) The loan is not a construction loan; and
- (5) The loan is secured by the borrower's principal dwelling.

X. "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 that dwelling.

Y. "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 to secure one or more advances and 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 the transfer of the dwelling, after the consumer ceases to occupy the dwelling as a principal dwelling or after the death of the consumer.

Z. "Servicer" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2.

AA. "Servicing" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2 and includes any other activities or responsibilities undertaken in connection with a residential mortgage loan by a person who acts as a servicer with respect to that residential mortgage loan, including collection and default management functions.

BB. "Subprime mortgage loan" means a residential mortgage loan that is either a nontraditional mortgage as defined in paragraph T or a rate spread home loan as defined in paragraph V.

CC. "Superintendent of Consumer Credit Protection" has the same meaning as set out in section 6-103.

DD. "Surcharge" means any means of increasing the regular price to a cardholder that is not imposed upon customers paying by cash, check or similar means.

EE. "Tax refund loan," also known as "refund anticipation loan," means a transaction in which a creditor lends an amount less than or equal to a consumer's expected tax refund.

FF. "Threshold" means either:

(1) Rate threshold, which is, for a residential mortgage loan, the point at which the annual percentage rate equals or exceeds the rate set forth in 12 Code of Federal Regulations, Section 226.32(a)(1)(i), without regard to whether the residential mortgage loan may be considered a "residential mortgage transaction" or an extension of "open-end credit" as those terms are set forth in 12 Code of Federal Regulations, Section 226.2; or

(2) The total points and fees threshold, which is:

(a) For loans in which the total loan amount is \$40,000 or more, the point at which the total points and fees payable in connection with the residential mortgage loan less any excluded points and fees exceed 5% of the total loan amount; and

(b) For loans in which the total loan amount is less than \$40,000, the point at which the total points and fees payable in connection with the residential mortgage loan less any excluded points and fees exceed 6% of the total loan amount.

GG. "Total loan amount" means the principal of a loan minus those points and fees that are included in the principal amount of the loan. For open-end loans, the total loan amount must be calculated using the total line of credit allowed under the residential mortgage loan at closing.

HH. "Unauthorized use," as used in section 8-303, 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.

2. The following rules of construction are applicable for the purposes of this Article.

A. Any reference to any requirement imposed under this Article or any provision thereof includes reference to the regulations of the administrator under this Article or the provision thereof in question.

B. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this Article does not in itself constitute a violation of this Article.