

109TH CONGRESS
1ST SESSION

H. R. 1295

To protect consumers against unfair and deceptive practices in connection with higher cost mortgage transactions, to strengthen the civil remedies available to consumers under existing law, to provide for certain uniform lending standards, to improve housing counseling, to better mortgage servicing, to enhance appraisal standards and oversight, to establish licensing and minimum standards for mortgage brokers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2005

Mr. NEY (for himself, Mr. KANJORSKI, Mr. GARY G. MILLER of California, Mr. MEEKS of New York, Mr. GILLMOR, Mr. CROWLEY, Mr. FEENEY, Mr. CLAY, Mr. SHERMAN, Mr. SCOTT of Georgia, Ms. HOOLEY, and Mr. TIBERI) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To protect consumers against unfair and deceptive practices in connection with higher cost mortgage transactions, to strengthen the civil remedies available to consumers under existing law, to provide for certain uniform lending standards, to improve housing counseling, to better mortgage servicing, to enhance appraisal standards and oversight, to establish licensing and minimum standards for mortgage brokers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Responsible Lending
3 Act”.

4 SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.

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1 **TITLE I—HIGHER-COST** 2 **MORTGAGES**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Mortgage Lending Im-
5 provements and Uniform National Standards Act”.

6 **SEC. 102. DEFINITIONS RELATING TO HIGHER-COST MORT-** 7 **GAGES.**

8 (a) **HIGHER-COST MORTGAGE DEFINED.**—Section
9 103(aa) of the Truth in Lending Act (15 U.S.C.
10 1602(aa)(1)) is amended—

11 (1) by striking all that precedes paragraph (2)
12 and inserting the following:

13 “(aa) **HIGHER-COST MORTGAGE DEFINED.**—

14 “(1) **IN GENERAL.**—The terms ‘higher-cost
15 mortgage’ and ‘mortgage referred to in this sub-
16 section’ mean a consumer credit transaction that is

1 secured by the consumer's principal dwelling, other
2 than a reverse mortgage transaction, if any of the
3 following apply with respect to such consumer credit
4 transaction:

5 “(A) The transaction is secured by a first
6 mortgage on the consumer's principal dwelling
7 and the annual percentage rate on the credit, at
8 consummation of the transaction, will exceed by
9 more than 8 percentage points the yield on
10 Treasury securities having comparable periods
11 of maturity on the 15th day of the month im-
12 mediately preceding the month in which the ap-
13 plication for the extension of credit is received
14 by the creditor.

15 “(B) The transaction is secured by a jun-
16 ior or subordinate mortgage on the consumer's
17 principal dwelling and the annual percentage
18 rate on the credit, at consummation of the
19 transaction, will exceed by more than 10 per-
20 centage points the yield on Treasury securities
21 having comparable periods of maturity on the
22 15th day of the month immediately preceding
23 the month in which the application for the ex-
24 tension of credit is received by the creditor.

1 “(C) The total loan amount exceeds
2 \$40,000 and total points and fees payable on
3 the transaction will exceed 5 percent of the
4 total loan amount.

5 “(D) The total loan amount is \$40,000 or
6 less and total points and fees payable on the
7 transaction will exceed 6 percent of the total
8 loan amount.”; and

9 (2) in paragraph (2)(B)(i), by striking “that”
10 and inserting “than”.

11 (b) POINTS AND FEES DEFINED.—Section 103(aa)
12 of the Truth in Lending Act (15 U.S.C. 1602(aa)) is
13 amended—

14 (1) by striking paragraph (3);

15 (2) by striking paragraph (4) and inserting the
16 following new paragraph:

17 “(3) POINTS AND FEES DEFINED.—

18 “(A) IN GENERAL.—For purposes of sub-
19 paragraphs (C) and (D) of paragraph (1), the
20 term ‘points and fees’ includes—

21 “(i) all items included in the finance
22 charge, except interest or the time-price
23 differential;

1 “(ii) all compensation paid directly to
2 mortgage brokers by or on behalf of the
3 consumer (other than borrower credits);

4 “(iii) each of the charges listed in sec-
5 tion 106(e), except an escrow for future
6 payment of taxes or insurance, unless—

7 “(I) the charge is bona fide, com-
8 petitive, and reasonable;

9 “(II) the creditor receives no di-
10 rect compensation; and

11 “(III) the charge is paid to a
12 third party; and

13 “(iv) all prepayment fees or penalties
14 on the new loan that will be incurred by
15 the borrower if the loan refinances a pre-
16 vious loan currently held by the same cred-
17 itor or an affiliate of the creditor.

18 “(B) EXCLUDABLE BONA FIDE DISCOUNT
19 POINTS.—Not more than 2 bona fide loan dis-
20 count points in connection with the loan trans-
21 action may be excluded from the amount of
22 points and fees taken into account for purposes
23 of paragraph (1).”; and

24 (3) by redesignating paragraph (5) as para-
25 graph (4).

1 (c) BONA FIDE DISCOUNT POINTS AND BENCHMARK
2 RATE DEFINED.—Section 103 of the Truth in Lending
3 Act (15 U.S.C. 1602) is amended by adding at the end
4 the following new subsection:

5 “(cc) OTHER INTEREST RATE RELATED TERMS.—

6 “(1) BONA FIDE DISCOUNT POINTS.—The term
7 ‘bona fide discount points’ means loan discount
8 points that—

9 “(A) are knowingly paid by the borrower;

10 “(B) are paid for the express purpose of
11 lowering the interest rate;

12 “(C) reduce the interest rate applicable to
13 the loan from an interest rate that does not ex-
14 ceed the benchmark rate; and

15 “(D) reduce the interest rate by a min-
16 imum of 25 basis points per discount point so
17 long as all other terms of the loan remain the
18 same.

19 “(2) BENCHMARK RATE.—The term ‘bench-
20 mark rate’ means the interest rate that the con-
21 sumer can reduce by paying bona fide discount
22 points, not to exceed the sum of—

23 “(A) the yield on Treasury securities hav-
24 ing comparable periods of maturity on the 15th
25 day of the month immediately preceding the

1 month in which the application for the exten-
2 sion of credit is received by the creditor; and

3 “(B) 4 percentage points.”

4 (d) TECHNICAL AND CONFORMING AMENDMENT.—
5 Paragraph (2) of section 103(aa) of the Truth in Lending
6 Act (15 U.S.C. 1602(aa)(2)) is amended by striking
7 “specified in paragraph (1)(A)” and inserting “specified
8 in subparagraph (A) or (B) of paragraph (1)”.

9 **SEC. 103. AMENDMENTS TO REQUIREMENTS FOR HIGHER-**
10 **COST MORTGAGES.**

11 (a) PREPAYMENT PENALTIES.—Subsection (c) of
12 section 129 of the Truth in Lending Act (15 U.S.C.
13 1639(c)) is amended to read as follows:

14 “(c) [Repealed]”.

15 (b) BALLOON PAYMENTS.—Section 129(e) of the
16 Truth in Lending Act (15 U.S.C. 1639(e)) is amended—

17 (1) by striking “PAYMENTS.—A mortgage” and
18 inserting “PAYMENTS.—

19 “(1) IN GENERAL.—A mortgage”;

20 (2) by striking “having a term of less than 5
21 years”; and

22 (3) by adding at the end the following new
23 paragraphs:

24 “(2) EXCEPTION.—

1 “(A) IN GENERAL.—Paragraph (1) shall
2 not apply when the payment schedule is ad-
3 justed to account for the seasonal or irregular
4 income of the consumer or if the purpose of the
5 loan is a bridge loan.

6 “(B) BRIDGE LOAN DEFINED.—For pur-
7 poses of this subsection, the term ‘bridge loan’
8 means a loan that—

9 “(i) has a period to maturity of 18
10 months or less; and

11 “(ii) is made in connection with the
12 acquisition or construction of a dwelling.

13 “(3) NOTICE REQUIRED.—A creditor that offers
14 a higher-cost mortgage having a balloon payment
15 term that, in accordance with paragraph (2), is not
16 subject to paragraph (1) shall clearly disclose to the
17 consumer that—

18 “(A) the loan contains such a term;

19 “(B) the balloon payment amount that will
20 be owed by the consumer on the loan maturity
21 date will be equal to the initial principal loan
22 amount, plus interest and costs that may be
23 due, minus any principal payments that may
24 have been made over the term of the loan; and

1 “(C) balloon payments are permissible
2 under the circumstances described in paragraph
3 (2).”.

4 (c) NEGATIVE AMORTIZATION.—Subsection (f) of
5 section 129 of the Truth in Lending Act (15 U.S.C.
6 1639(f)) is amended—

7 (1) by striking “AMORTIZATION.—A mortgage
8 referred to in section 103(aa)” and inserting “AM-
9 ORTIZATION.—

10 “(1) IN GENERAL.—A higher-cost mortgage”;
11 and

12 (2) by adding at the end the following new
13 paragraph:

14 “(2) EXCEPTION FOR PERIOD OF FORBEAR-
15 ANCE.—Paragraph (1) shall not apply with respect
16 to negative amortization resulting from periods of
17 temporary forbearance allowed by the creditor.”.

18 (d) FINANCING OF POINTS OR FEES.—Section 129
19 of the Truth in Lending Act (15 U.S.C. 1639) is amended
20 by adding at the end the following new subsection:

21 “(m) RESTRICTIONS ON FINANCING OF POINTS OR
22 FEES; DISCLOSURES REQUIRED.—

23 “(1) IN GENERAL.—No creditor may, in con-
24 nection with the formation or consummation of a
25 higher-cost mortgage transaction, finance, directly or

1 indirectly, any portion of the points and fees applica-
2 ble to such mortgage that exceeds an amount equal
3 to 5 percent of the total loan amount (or, if the total
4 loan amount is \$40,000 or less, an amount equal to
5 6 percent of the total loan amount).

6 “(2) DISCLOSURE.—If, in connection with the
7 consummation of a higher-cost mortgage, any por-
8 tion of the points, fees, or other charges payable to
9 the creditor or any third party are included, directly
10 or indirectly, in the principal amount of the loan or
11 otherwise financed by the creditor, the creditor shall
12 disclose that fact to the consumer together with a
13 statement that the creditor cannot require that such
14 point, fee or charge be financed.”.

15 (e) PROHIBITION ON EVASIONS THROUGH STRUC-
16 TURING TRANSACTION OR RECIPROCAL ARRANGE-
17 MENTS.—Section 129 of the Truth in Lending Act (15
18 U.S.C. 1639) is amended by inserting after subsection (n)
19 (as added by section 104(a) of this Act) the following new
20 subsection:

21 “(o) PROHIBITION ON EVASIONS THROUGH STRUC-
22 TURING TRANSACTION OR RECIPROCAL ARRANGE-
23 MENTS.—

24 “(1) IN GENERAL.—No creditor, or any affiliate
25 of a creditor, may take any action for the purpose

1 of, or with the intent to, circumvent or evade any re-
2 quirement of this title with respect to higher-cost
3 mortgages, including—

4 “(A) entering into any reciprocal arrange-
5 ment;

6 “(B) dividing any loan transaction into
7 separate parts for the purpose of evading, and
8 with the intent to evade, the provisions of this
9 section; and

10 “(C) in the case of a credit transaction
11 that would be a higher-cost mortgage if struc-
12 tured as a consumer loan, structuring or re-
13 structuring such transaction as a business loan
14 or other form of credit for the purpose of evad-
15 ing, and with the intent to evade, the provisions
16 of this section.

17 “(2) RULE ON NONATTRIBUTION.—If, in the
18 case of 2 credit transactions that are consummated
19 at the same time and are secured by the same real
20 property, the loan-to-value ratio of 1 of such trans-
21 actions is 80 percent or more, the points and fees
22 payable by the consumer at or before closing on such
23 transaction may not be imputed or attributed to the
24 other transaction for purposes of determining wheth-

1 er a creditor has attempted to evade any require-
2 ment of this title.

3 “(3) RECIPROCAL ARRANGEMENT DEFINED.—

4 For purposes of this subsection, the term ‘reciprocal
5 arrangement’ means any agreement, understanding,
6 or other arrangement under which—

7 “(A) a creditor or affiliate of a creditor
8 agrees to engage in a transaction with, or on
9 behalf of, another creditor, or an affiliate of
10 such other creditor, in exchange for

11 “(B) the agreement of the second creditor
12 referred to in subparagraph (A), or any affiliate
13 of such creditor, to engage in a transaction
14 with, or on behalf of, the first creditor referred
15 to in such subparagraph, or any affiliate of
16 such creditor,

17 for the purpose of evading any requirement or prohi-
18 bition under this title, or any other provision of any
19 Federal law or regulation relating to higher-cost
20 mortgages.”.

21 (f) NO ENCOURAGEMENT OF DEFAULT OR NON-
22 PAYMENT ON PRIOR EXISTING LOAN.—Section 129 of the
23 Truth in Lending Act (15 U.S.C. 1639) is amended by
24 inserting after subsection (o) (as added by subsection (e)
25 of this section) the following new subsection:

1 “(p) NO ENCOURAGEMENT OF DEFAULT OR
2 SKIPPED PAYMENT.—No creditor may recommend or en-
3 courage default or nonpayment, including nonpayment of
4 any periodic payment, on an existing loan or other debt
5 prior to and in connection with the consummation or
6 planned consummation of a higher-cost mortgage that re-
7 finances all or any portion of such existing loan or debt.”.

8 (g) ABILITY TO REPAY.—Subsection (h) of section
9 129 of the Truth in Lending Act (15 U.S.C. 1639(h)) is
10 amended to read as follows:

11 “(h) PROHIBITION ON EXTENDING CREDIT WITH-
12 OUT REGARD TO PAYMENT ABILITY OF CONSUMER.—

13 “(1) IN GENERAL.—A creditor shall not extend
14 credit to a consumer under a higher-cost mortgage
15 based on the foreclosure value of the consumer’s
16 principal dwelling securing the loan without regard
17 to the consumer’s repayment ability, including the
18 consumer’s current and expected income, current ob-
19 ligations, and employment.

20 “(2) PRESUMPTION OF ABILITY.—

21 “(A) IN GENERAL.—Unless a creditor
22 knows or has reason to know otherwise and ex-
23 cept as provided in paragraphs (3) and (4), a
24 creditor may presume that a consumer is able
25 to make the scheduled payments to repay the

1 higher-cost mortgage, if, at the time the exten-
2 sion of credit is approved—

3 “(i) the consumer’s total monthly pay-
4 ments due on outstanding obligations, in-
5 cluding amounts owed under the higher-
6 cost mortgage, do not exceed 50 percent of
7 the consumer’s monthly gross income, as
8 verified by the credit application, the con-
9 sumer’s financial statement, a credit re-
10 port, or any other reasonable means, sub-
11 ject to subparagraph (B); and

12 “(ii) the consumer has sufficient re-
13 sidual income, as determined in accordance
14 with regulations issued by the Board, to
15 pay essential monthly expenses after pay-
16 ing the scheduled monthly payments and
17 any additional debt.

18 “(B) VERIFICATION OF RETIREMENT AND
19 OTHER BENEFITS.—If a consumer’s repayment
20 ability is based substantially on fixed income
21 (from any source, public or private, including
22 retirement or disability benefits paid by the So-
23 cial Security Administration or other govern-
24 mental agency), the income verification required
25 under subparagraph (A)(i) shall include reason-

1 able documentation of such fixed income, in ad-
2 dition to any statement by the consumer.

3 “(C) RULE OF CONSTRUCTION.—The ab-
4 sence of any means of verification described in
5 clause (i) or (ii) of subparagraph (A) shall not
6 be construed as creating a presumption of a
7 violation of this subsection.

8 “(3) PRESUMPTION NOT APPLICABLE IN CASE
9 OF BALLOON PAYMENTS.—A balloon payment or
10 final payment on a bridge loan otherwise permissible
11 under subsection (e) shall not be construed as a pay-
12 ment for purposes of paragraph (2)(A).

13 “(4) VERIFICATION OF INCOME REQUIRED IN
14 CASE OF CONSUMER WITHOUT EARNED OR FIXED
15 INCOME.—A creditor may rely on a consumer’s
16 statement of income for purposes of paragraph
17 (2)(A) if—

18 “(A) the consumer verifies his or her
19 monthly income on a signed financial statement
20 or other documentation that shows the con-
21 sumer’s income and obligations before the ex-
22 tension of credit; and

23 “(B) the creditor has a reasonable basis
24 for believing that the income exists and will
25 support repayment of the transaction.”.

1 (h) PROHIBITION ON SINGLE PREMIUM CREDIT IN-
2 SURANCE.—Section 129 of the Truth in Lending Act (15
3 U.S.C. 1639) is amended by inserting after subsection (p)
4 (as added by subsection (f) of this section) the following
5 new subsection:

6 “(q) PROHIBITION ON SINGLE PREMIUM CREDIT IN-
7 SURANCE.—

8 “(1) IN GENERAL.—No consumer credit trans-
9 action involving a higher-cost mortgage may include
10 the offer or sale of any credit insurance policy, or
11 any analogous product whether deemed to be insur-
12 ance, including any debt cancellation or suspension
13 agreement or contract, on a single premium basis.

14 “(2) COLLECTION OF MONTHLY PREMIUMS NOT
15 AFFECTED.—The prohibition in paragraph (1) shall
16 not be construed as affecting the right of a creditor
17 to collect premium payments on credit insurance or
18 any analogous products that are calculated and paid
19 on a regular monthly basis.

20 “(3) CREDIT INSURANCE DEFINED.—For pur-
21 poses of this subsection, the term ‘credit insurance’
22 means a policy of insurance that insures, guarantees
23 or indemnifies the creditor, as the primary bene-
24 ficiary, for the repayment of the outstanding balance
25 of the loan against death, illness, accident, disability,

1 loss of property, or unemployment of the con-
2 sumer.”.

3 (i) LIMITATIONS ON REFINANCING.—Section 129 of
4 the Truth in Lending Act (15 U.S.C. 1639) is amended
5 by inserting after subsection (q) (as added by subsection
6 (h) of this section) the following new subsection:

7 “(r) LIMITATIONS ON REFINANCING.—

8 “(1) IN GENERAL.—No creditor shall knowingly
9 or intentionally engage in the unfair act or practice
10 of loan flipping.

11 “(2) SAFE HARBOR.—A higher-cost mortgage
12 shall be presumed to provide a reasonable tangible
13 benefit to the consumer if any 1 of the following fac-
14 tors applies to the new loan:

15 “(A) The purpose of the higher-cost mort-
16 gage is to finance a personal investment or a
17 purchase or acquisition of real property that is
18 not the principal dwelling of the consumer.

19 “(B) The interest rate on the new fixed-
20 rate higher-cost mortgage is lower than the in-
21 terest rate on the fixed-rate refinanced loan and
22 it will take 4 years or less for the consumer to
23 recoup the costs of the points and fees, and
24 other closing costs that are required to be paid
25 by the consumer on the new higher-cost mort-

1 gage through savings resulting from the lower
2 interest rate.

3 “(C) The creditor makes a good-faith de-
4 termination that the consumer’s monthly pay-
5 ment to pay the higher-cost mortgage is a min-
6 imum of 15 percent less than the total of all
7 minimum monthly payments on the obligations
8 being financed, based on a consumer credit re-
9 port or other reasonable documentation utilized
10 by the creditor.

11 “(D) Any cash proceeds paid either to the
12 consumer, or on behalf of the consumer, above
13 the payoff of the refinanced loan are in excess
14 of twice the amount of total points and fees and
15 closing costs that are required to be paid by the
16 consumer.

17 “(E) The refinanced loan is changed from
18 a loan that is not a fixed-rate fully-amortizing
19 loan to a fixed-rate fully-amortizing loan.

20 “(F) The terms of repayment of the refi-
21 nanced loan are changed from a longer full am-
22 ortization term to a shorter full amortization
23 term by at least 5 years.

24 “(G) The consumer presents a certificate,
25 dated not more than 90 days prior to the date

1 of the application for the new higher-cost mort-
2 gage, from an independent housing or credit
3 counselor approved by the United States De-
4 partment of Housing and Urban Development,
5 or by any State regulatory agency, which states
6 that the consumer has received counseling with
7 regard to refinancing the existing loan.

8 “(H) The consumer provides the creditor
9 with a written, signed statement not prepared
10 by the creditor, at or before the consummation
11 of the new higher-cost mortgage, that the new
12 loan is needed to meet a bona fide personal or
13 family financial, health or medical emergency,
14 or to avoid a filed foreclosure action.

15 “(I) The refinancing is necessary under, or
16 in response to, any order or judgment of a
17 court of competent jurisdiction.

18 “(3) SPECIAL MORTGAGES.—

19 “(A) IN GENERAL.—A higher-cost mort-
20 gage may not be used to refinance an existing
21 loan if—

22 “(i) it is apparent on the face of the
23 security instrument for the existing loan
24 that it is a special mortgage; and

1 “(ii) as a result of the refinancing, the
2 consumer would lose 1 or more of the ben-
3 efits of the special mortgage.

4 “(B) EXCEPTION UNDER CERTAIN CIR-
5 CUMSTANCES.—The restriction in subparagraph
6 (A) shall not apply if—

7 “(i) the holder of the special mortgage
8 being refinanced consents in writing to the
9 new higher-cost mortgage; and

10 “(ii) a credit counselor referred to in
11 paragraph (2)(G) certifies in writing that
12 the consumer has obtained counseling on
13 the advantages and disadvantages of the
14 new loan.

15 “(4) DEFINITIONS.—For purposes of this sub-
16 section, the following definitions shall apply:

17 “(A) LOAN FLIPPING.—

18 “(i) IN GENERAL.—The term ‘loan
19 flipping’ means an extension of credit by a
20 creditor to a consumer for a higher-cost
21 mortgage that—

22 “(I) refinances an existing home
23 loan that was consummated within the
24 prior 24 months; and

1 “(II) does not have a reasonable
2 tangible benefit to the consumer con-
3 sidering all material circumstances
4 known to the creditor.

5 “(ii) DETERMINATION OF REASON-
6 ABLE TANGIBLE BENEFIT.—In instances
7 where one of the safe harbor provisions
8 contained in subsection (r) is inapplicable,
9 the factors to be considered may include
10 the terms and conditions of both the new
11 and refinanced loan, the consumer’s known
12 economic and non-economic circumstances,
13 the purpose of the loan, and the cost of the
14 new loan.

15 “(B) SPECIAL MORTGAGE.—The term ‘spe-
16 cial mortgage’ means a consumer credit trans-
17 action that is originated, subsidized, or guaran-
18 teed by or through a Federal, State, tribal, or
19 local government, government-sponsored enter-
20 prise (as defined in section 1404(e) of Financial
21 Institutions Reform, Recovery, and Enforce-
22 ment Act of 1989), or nonprofit organization
23 (other than a mutual bank, mutual savings as-
24 sociation, or credit union) that either—

1 “(i) bears, by at least 2 percentage
2 points, a below-market interest rate as of
3 the date of its consummation; or

4 “(ii) has non-standard payment terms
5 beneficial to the consumer, such as pay-
6 ments that vary with income or are limited
7 to a percentage of income, or terms that
8 permit the consumer to make no payments
9 under specified conditions.

10 “(5) RULE OF CONSTRUCTION.—No negative
11 inference may be drawn from the absence of any fac-
12 tor or circumstance described in any subparagraph
13 of paragraph (2) with regard to any higher-cost
14 mortgage so as to create a presumption of a viola-
15 tion of this subsection with regard to such mortgage
16 by reason of such absence.

17 “(6) LIMITATION ON LEGAL FEES.—Notwith-
18 standing section 130 or any other provision of law,
19 in any successful action instituted by a person for a
20 violation of paragraph (1), the person shall not be
21 entitled to recover the costs of the action and attor-
22 ney’s fees if the court determines, in the court’s dis-
23 cretion, that a reasonable offer to remedy the viola-
24 tion and compensate the person for the violation was
25 made to such person and the offer was rejected.”.

1 (j) REQUIREMENTS RELATING TO HOME IMPROVE-
2 MENT CONTRACTS.—Section 129(i) of the Truth in Lend-
3 ing Act (15 U.S.C. 1639(i)) is amended—

4 (1) by redesignating paragraphs (1) and (2) as
5 subparagraphs (A) and (B), respectively, and mov-
6 ing the left margin of each such subparagraph (as
7 so redesignated) 2 ems to the right;

8 (2) by striking “IMPROVEMENT CONTRACTS.—
9 A creditor shall not” and inserting “IMPROVEMENT
10 CONTRACTS.—

11 “(1) IN GENERAL.—A creditor shall not”; and

12 (3) by adding at the end the following new
13 paragraph:

14 “(2) NO PAYMENT IN FULL WITHOUT PROOF
15 OF COMPLETION OF THE WORK.—

16 “(A) IN GENERAL.—No creditor may use
17 the proceeds of a higher-cost mortgage to make
18 a final payment or payment in full to a home
19 improvement contractor under a home improve-
20 ment contract without proof of completion in
21 accordance with subparagraph (B).

22 “(B) PROOF OF COMPLETION.—

23 “(i) COMPLETION CERTIFICATE
24 UNDER STATE LAW.—A completion certifi-
25 cate, completed in compliance with applica-

1 ble State law, stating that the contractor
2 has fully performed the contract obliga-
3 tions, shall be deemed proof of completion
4 of such obligations for purposes of this
5 subsection.

6 “(ii) LACK OF AVAILABILITY OF CER-
7 TIFICATE UNDER STATE LAW.—If applica-
8 ble State law does not provide for or recog-
9 nize completion certificates for home im-
10 provement contractors, a signed statement
11 by both the consumer who entered into the
12 higher-cost mortgage and the home im-
13 provement contractor referred to in sub-
14 paragraph (A) that the contractor has fully
15 performed the contract shall constitute
16 proof of completion of such obligation for
17 purposes of this subsection.

18 “(C) INSPECTION.—No creditor may use
19 the proceeds of a higher-cost mortgage to make
20 a final payment or payment in full to a home
21 improvement contractor under a home improve-
22 ment contract without first arranging and pay-
23 ing for an independent inspection of any home
24 improvements exceeding \$10,000 to verify that
25 the work has been completed.

1 “(D) DISCLOSURE.—Before making a final
2 payment to a home improvement contractor, the
3 creditor shall provide the following written dis-
4 closure to the consumer: ‘You will be asked,
5 when the job is completed, to sign a statement
6 confirming the work has been completed be-
7 cause the lender may not make a final payment
8 or payment in full to the home improvement
9 contractor without such a statement signed by
10 both the contractor and you. If the work has
11 not been completed according to the terms of
12 your work agreement, do not sign the statement
13 and notify the lender immediately. If the im-
14 provements you are financing exceed \$10,000,
15 the lender is required by law to arrange for an
16 inspection of the job. The purpose of the in-
17 spection is to ensure that the job has been com-
18 pleted according to the terms of the contract,
19 and it is not a warranty or guarantee of the
20 overall quality of the work. If you would like a
21 more detailed inspection of the contractor’s
22 work, you may want to arrange for an addi-
23 tional inspection on your own.’”.

24 (k) ADDITIONAL SPECIFIC DISCLOSURES.—Section
25 129(a)(1) of the Truth in Lending Act (15 U.S.C.

1 1639(a)(1)) is amended by adding at the end the following
2 new subparagraphs:

3 “(C) ‘The interest rate and the amount of
4 fees you pay on this loan are higher than you
5 would pay for a conventional or “prime” rate
6 loan. As a result, your monthly interest pay-
7 ments are higher than those on a comparable
8 loan with a lower interest rate.’.

9 “(D) ‘The rate of interest and the amount
10 of fees you pay on a loan may vary depending
11 on which lender or broker you select. You may
12 be able to get a loan with a lower interest rate.
13 Your credit score can provide an indication of
14 whether you may qualify for a lower-cost prime
15 loan. If you have a relatively good credit score,
16 such as a FICO score in excess of 660, you
17 may qualify for a “prime” loan. In that event,
18 you should consider shopping more for a lower-
19 cost loan instead of simply accepting the high-
20 er-cost loan that has been offered to you.’.

21 “(E) ‘If you are taking out this loan to
22 repay other loans, look to see how many months
23 it will take to pay for this loan and what the
24 total amount is that you will have to pay before
25 this loan is repaid. Even though the total

1 amount you will have to pay each month for
2 this loan may be less than the total amount you
3 are paying each month for those other loans,
4 you may have to pay on this loan for a longer
5 period than those other loans, and that may
6 cost you more overall.’.

7 “(F) ‘You may get into serious financial
8 difficulties if you use this loan to pay off old
9 debts and then replace them with other new
10 debts.’”.

11 (l) NO CALL PROVISION.—Section 129 of the Truth
12 in Lending Act (15 U.S.C. 1639) is amended by inserting
13 after subsection (r) (as added by subsection (i) of this sec-
14 tion) the following new subsection:

15 “(s) NO CALL PROVISION.—

16 “(1) IN GENERAL.—A higher-cost mortgage
17 may not include terms under which the indebtedness
18 may be accelerated by the creditor, in the creditor’s
19 sole discretion.

20 “(2) EXCEPTIONS.—Paragraph (1) shall not
21 apply if the repayment of the higher-cost mortgage
22 has been accelerated—

23 “(A) by default or pursuant to a due-on-
24 sale provision or some other provision of the

1 loan documents unrelated to the payment
2 schedule; or

3 “(B) due to any action or omission by the
4 consumer that adversely affects the creditor’s
5 security interest in the dwelling or any rights of
6 the creditor in such security.”.

7 (m) MODIFICATION AND DEFERRAL FEES PROHIB-
8 ITED.—Section 129 of the Truth in Lending Act (15
9 U.S.C. 1639) is amended by inserting after subsection (s)
10 (as added by subsection (l) of this section) the following
11 new subsection:

12 “(t) MODIFICATION AND DEFERRAL FEES PROHIB-
13 ITED.—

14 “(1) IN GENERAL.—A creditor may not charge
15 a consumer any fee in excess of the lesser of the
16 amount of 1 monthly loan payment on the existing
17 higher-cost mortgage or \$300.00 to modify, renew,
18 extend, or amend a higher-cost mortgage, or to defer
19 any payment due under the terms of such mortgage.

20 “(2) EXCEPTION FOR CERTAIN WORKOUTS.—
21 The restrictions in paragraph (1) shall not apply in
22 the case of an existing higher-cost mortgage that is
23 in default or more than 60 days delinquent, if the
24 modification, renewal, extension, or amendment is

1 part of the resolution or workout of the default or
2 delinquency.”.

3 (n) INCREASED INTEREST RATE UPON DEFAULT
4 PROHIBITED.—Section 129 of the Truth in Lending Act
5 (15 U.S.C. 1639) is amended by inserting after subsection
6 (t) (as added by subsection (m) of this section) the fol-
7 lowing new subsection:

8 “(u) INCREASED INTEREST RATE UPON DEFAULT
9 PERMITTED FOR VARIABLE-RATE HIGHER-COST MORT-
10 GAGE.—In the case of a higher-cost mortgage that is sub-
11 ject to a variable rate of interest, subsection (d) shall not
12 apply to changes in the rate of interest due to any change
13 in the index rate, to the extent the change of interest is
14 not due in any part to a default by the consumer or a
15 permissible acceleration by the creditor.”.

16 (o) PREPAYMENT OF PERIODIC PAYMENTS FROM
17 PROCEEDS PROHIBITED.—Subsection (g) of section 129
18 of the Truth in Lending Act (15 U.S.C. 1639) is amended
19 to read as follows:

20 “(g) PREPAYMENT OF PERIODIC PAYMENTS FROM
21 PROCEEDS PROHIBITED.—No higher-cost mortgage may
22 include terms under which more than 2 scheduled pay-
23 ments of interest or principal due under such mortgage
24 may be paid in advance or otherwise deducted from the
25 proceeds of the loan.”.

1 (p) PAYOFF STATEMENTS.—Section 129 of the
2 Truth in Lending Act (15 U.S.C. 1639) is amended by
3 inserting after subsection (u) (as added by subsection (n)
4 of this section) the following new subsection:

5 “(v) PAYOFF STATEMENTS.—

6 “(1) FEES.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraphs (B) and (C), no creditor or
9 servicer may charge a fee for informing or
10 transmitting to any person the balance due to
11 pay off the outstanding balance on a higher-
12 cost mortgage.

13 “(B) TRANSACTION FEE.—When payoff in-
14 formation referred to in subparagraph (A) is
15 provided by facsimile transmission or by a cou-
16 rier service, a creditor or servicer may charge a
17 processing fee not to exceed an amount that is
18 comparable to fees imposed for similar services
19 provided in connection with consumer credit
20 transactions that are secured by the consumer’s
21 principal dwelling and that are not higher-cost
22 mortgages.

23 “(C) MULTIPLE REQUESTS.—A creditor or
24 servicer shall not charge any fee for the first 2
25 payoff requests in any continuous 6-month pe-

1 riod. A creditor or servicer may charge a rea-
2 sonable fee for each additional request during
3 any such period.

4 “(2) PROMPT DELIVERY.—A creditor or
5 servicer shall send a payoff balance within 7 busi-
6 ness days of receipt of a written request for such
7 balance.”.

8 (q) CREDIT REPORTING REQUIREMENTS.—Section
9 129 of the Truth in Lending Act (15 U.S.C. 1639) is
10 amended by inserting after subsection (v) (as added by
11 subsection (p) of this section) the following new sub-
12 section:

13 “(w) DUTY TO REPORT.—

14 “(1) IN GENERAL.—Each creditor who enters
15 into a higher-cost mortgage, and each successor, as-
16 signee or servicer to such creditor with respect to
17 such mortgage shall report monthly the complete
18 payment history, favorable and unfavorable, of the
19 obligor with respect to such transaction to a con-
20 sumer reporting agency that compiles and maintains
21 files on consumers on a nationwide basis, while such
22 transaction is in effect.

23 “(2) EXCEPTION FOR SHORT-TERM HOLD-
24 ERS.—Paragraph (1) shall not apply to any person

1 who holds a higher-cost mortgage for less than 90
2 days.

3 “(3) EXCEPTION FOR CERTAIN CIR-
4 CUMSTANCES.—Paragraph (1) shall not apply in
5 connection with a loan forbearance or workout of a
6 loan in default or the settlement of a dispute or con-
7 sumer complaint.”.

8 (r) STEERING PROHIBITED.—Section 129 of the
9 Truth in Lending Act (15 U.S.C. 1639) is amended by
10 inserting after (w) (as added by subsection (q) of this sec-
11 tion) the following new subsection:

12 “(x) STEERING PROHIBITED.—

13 “(1) CREDITORS.—

14 “(A) IN GENERAL.—A creditor who origi-
15 nates a higher-cost mortgage shall not know-
16 ingly or intentionally steer or direct a consumer
17 into a loan product offered by the creditor that
18 is not based upon the creditor’s best credit
19 grade that the consumer would qualify for
20 under the creditor’s then-current underwriting
21 guidelines.

22 “(B) NOTICE OF CREDIT SCORE.—A cred-
23 itor who originates a higher-cost mortgage
24 shall, within 3 business days of the later of—

1 “(i) the receipt of an application for
2 such higher-cost mortgage loan; or

3 “(ii) the making of a determination
4 that the consumer only qualifies for a
5 higher-cost mortgage,

6 notify the consumer in writing of the con-
7 sumer’s credit score.

8 “(C) RESCISSION OR REFORMATION.—

9 “(i) IN GENERAL.—A creditor found
10 by a preponderance of the evidence to have
11 violated subparagraph (A) shall, if the
12 creditor is the holder of the obligation, at
13 the consumer’s option—

14 “(I) rescind the loan as provided
15 for in section 125; or

16 “(II) rewrite the loan into a loan
17 product at the credit grade that the
18 consumer would have originally quali-
19 fied for but for the violation.

20 “(ii) RESTITUTION.—In addition to
21 the action required under clause (i) with
22 respect to a creditor, or in the case of a
23 creditor who is not the holder of the obli-
24 gation and has been found by a preponder-
25 ance of the evidence to have violated sub-

1 paragraph (A), such creditor shall make
2 appropriate restitution to the consumer of
3 all fees, interest, or other charges paid by
4 the consumer above those that would have
5 been paid had the loan not been originated
6 at the less favorable credit grade.

7 “(D) SAFE HARBOR.—A creditor shall not
8 be presumed to have violated subparagraph (A)
9 if—

10 “(i) the creditor had a reasonable
11 basis to believe that the credit grade deter-
12 mined by the creditor’s then-current un-
13 derwriting guidelines applied to a con-
14 sumer was appropriate, based on the infor-
15 mation available to that creditor, including
16 the information provided by the consumer;
17 or

18 “(ii) the consumer voluntarily, on an
19 informed basis, agreed to a loan with a
20 higher rate than that for which the con-
21 sumer would otherwise qualify.

22 “(2) BROKERS.—

23 “(A) IN GENERAL.—A broker who is not a
24 creditor shall not knowingly or intentionally
25 steer or direct any prospective consumer to ac-

1 cept a loan product offered by a creditor that
2 is less favorable than the loan products offered
3 by the creditors with whom the broker regularly
4 does business and for which the consumer
5 would qualify for under such creditors' best
6 credit grade based on such creditors' then-cur-
7 rent underwriting guidelines.

8 “(B) SAFE HARBOR.—A broker shall not
9 be presumed to have violated subparagraph (A)
10 if—

11 “(i) the broker had a reasonable basis
12 to believe that the credit grade applied to
13 a consumer was appropriate, based on the
14 information available to that broker, in-
15 cluding the information provided by the
16 consumer; or

17 “(ii) the consumer voluntarily, on an
18 informed basis, agreed to a loan with a
19 higher rate than that for which the con-
20 sumer would otherwise qualify.

21 “(C) PENALTY.—A broker who knowingly
22 or intentionally violates this section shall be lia-
23 ble to the consumer for an amount equal to the
24 sum of \$4,000 and the consumer's actual finan-

1 cial damages and reasonable attorney’s fees and
2 court costs.”.

3 (s) REGULATIONS FOR DISCLOSURES.—Section
4 129(l) of the Truth in Lending Act (15 U.S.C. 1639(l))
5 is amended by adding at the end the following new para-
6 graph:

7 “(3) REDEFINITION.—The Board may amend
8 the definition and determination of what constitutes
9 a prime loan for purposes of the disclosure require-
10 ments contained in subsection (a)(1).”.

11 **SEC. 104. AMENDMENTS RELATING TO DISPUTE AND**
12 **ERROR RESOLUTION.**

13 (a) PROHIBITION ON ARBITRATION REQUIRE-
14 MENTS.—Section 129 of the Truth in Lending Act (15
15 U.S.C. 1639) is amended by inserting after subsection (m)
16 (as added by subsection (d) of section 103) the following
17 new subsection:

18 “(n) ARBITRATION.—

19 “(1) IN GENERAL.—A higher-cost mortgage
20 may not include terms that require arbitration or
21 any other nonjudicial procedure as the method for
22 resolving any controversy or settling any claim aris-
23 ing out of the transaction.

24 “(2) POST-CONTROVERSY VOLUNTARY AGREE-
25 MENTS.—

1 “(A) IN GENERAL.—Subject to paragraph
2 (3), paragraph (1) shall not be construed as
3 limiting the right of the consumer and the cred-
4 itor to agree voluntarily to arbitration or any
5 other nonjudicial procedure as the method for
6 resolving any controversy at any time after a
7 dispute or claim under the transaction arises.

8 “(B) REQUIREMENTS FOR POST-CON-
9 TROVERSY AGREEMENTS.—Post-controversy
10 voluntary agreements shall—

11 “(i) establish the venue for the arbi-
12 tration in the Federal judicial district or
13 division in which the real property that is
14 the security for the higher-cost mortgage is
15 located;

16 “(ii) comply with the standards set
17 forth by a nationally recognized arbitration
18 organization, such as the Statement of
19 Principles of the National Consumer Dis-
20 pute Advisory Committee of the American
21 Arbitration Association or any comparable
22 standards of such other organization as
23 may be approved by the Board; and

24 “(iii) require the creditor to bear the
25 reasonable costs of all parties to the arbi-

1 tration, including the production of fact
2 witnesses and documents, during at least
3 the first 2 days of such arbitration.

4 “(3) NO WAIVER OF STATUTORY CAUSE OF AC-
5 TION.—No provision of any higher-cost mortgage or
6 any voluntary agreement between the consumer and
7 the creditor shall be applied or interpreted so as to
8 bar a consumer from bringing an action in an appro-
9 priate district court of the United States, or any
10 other court of competent jurisdiction, pursuant to
11 section 130 or any other provision of law, for dam-
12 ages or other relief in connection with any alleged
13 violation of this section, any other provision of this
14 title, or any other Federal law.”.

15 (b) CORRECTION OF ERRORS.—Subsection (b) of sec-
16 tion 130 of the Truth in Lending Act (15 U.S.C. 1640(b))
17 is amended to read as follows:

18 “(b) CORRECTION OF ERRORS.—

19 “(1) IN GENERAL.—A creditor or assignee shall
20 have no liability under this section or section 108 or
21 section 112 for any failure to comply with any re-
22 quirement imposed under this chapter or chapter 5,
23 if—

24 “(A) before the end of the 45-day period
25 beginning on the date of consummation of a

1 loan, the creditor or assignee notifies the con-
2 sumer of the error and makes appropriate res-
3 titution to the consumer of any amounts col-
4 lected in error, and takes the necessary action
5 to make all appropriate adjustments to the
6 credit transaction to correct the error, includ-
7 ing, if applicable, that the consumer will not be
8 required to pay an amount in excess of the
9 charge actually disclosed, or the dollar equiva-
10 lent of the annual percentage rate actually dis-
11 closed, whichever is less; or

12 “(B) before the end of the 60-day period
13 beginning on the date an error is discovered,
14 whether pursuant to a final examination report
15 or notice issued under section 108(e) of this
16 title, or through the creditor’s or assignee’s own
17 procedures, or receipt of written notice from the
18 consumer or service upon the creditor or as-
19 signee of the institution of an action, the cred-
20 itor or assignee notifies the consumer of the
21 error, makes appropriate restitution to the con-
22 sumer of any amounts collected in error, takes
23 the necessary action to make all appropriate ad-
24 justments to the credit transaction to correct
25 the error, including, if applicable, that the con-

1 sumer will not be required to pay an amount in
2 excess of the charge actually disclosed, or the
3 dollar equivalent of the annual percentage rate
4 actually disclosed, whichever is less, pays the
5 consumer an error penalty of \$2,000 and the
6 consumer's reasonable attorney's fees, if any,
7 except that no error penalty or attorney's fees
8 shall be assessed if the creditor or assignee dis-
9 covers the error through the creditor's or as-
10 signee's own procedures.

11 “(2) MODIFICATION OF TERMS.—In the case of
12 a higher-cost mortgage, appropriate restitution for
13 purposes of paragraph (1) above may also include a
14 creditor modifying the terms of the credit trans-
15 action in such a way that the transaction is no
16 longer a higher-cost mortgage within the meaning of
17 this title.

18 “(3) CONSUMER REMEDY.—If a creditor or as-
19 signee fails to correct the error as provided for above
20 in paragraph (1), the consumer may file an action
21 or proceed with an action already filed.

22 “(4) EFFECTIVE DATE OF DOCUMENT REVI-
23 SIONS.—Any document revisions necessitated by and
24 made consistent with the procedures set forth above
25 in subparagraph (A) or (B) of paragraph (1) shall

1 be deemed legally effective for all purposes as of the
2 original date of the document that was revised.”.

3 (c) CLARIFICATION RELATING TO STATE-REGU-
4 LATED TRANSACTIONS.—Section 123 of the Truth in
5 Lending Act (15 U.S.C. 1633) is amended by striking
6 “The Board” and inserting “Except with respect to higher-
7 cost mortgages, the Board”.

8 **SEC. 105. AMENDMENTS TO DAMAGES, RESCISSION AND LI-**
9 **ABILITY PROVISIONS.**

10 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-
11 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of
12 the Truth in Lending Act (15 U.S.C. 1640(a)) is amend-
13 ed—

14 (1) in paragraph (2)(A)(iii), by striking
15 “\$2,000” and inserting “\$4,000”; and

16 (2) in paragraph (2)(B), by striking
17 “\$500,000” and inserting “\$1,000,000”.

18 (b) COORDINATION OF CLASS-ACTION DAMAGES
19 WITH ACTUAL DAMAGES.—Section 130 of the Truth in
20 Lending Act (15 U.S.C. 1640) is amended by adding at
21 the end the following new subsection:

22 “(j) CLASS ACTIONS RELATING TO HIGHER-COST
23 MORTGAGES.—

24 “(1) COORDINATION OF CLASS-ACTION DAM-
25 AGES WITH ACTUAL DAMAGES.—The maximum

1 amount of general damages that may otherwise be
2 imposed on any person under subsection (a)(2)(B)
3 for violations of section 129 in a class action shall
4 be reduced by the aggregate amount of actual dam-
5 ages for which such person is liable to members of
6 the class under subsection (a)(1).

7 “(2) PATTERN AND PRACTICE.—In determining
8 the amount of any liability of any person under sub-
9 section (a)(2)(B) for violations of section 129 in a
10 class action, the court shall consider the pattern and
11 practices of the person giving rise to the violations,
12 and whether or not such pattern and practices were
13 willful.”.

14 (c) AMENDMENTS RELATING TO TIMING OF WAIVER
15 BY CONSUMER OF RIGHT OF RESCISSION.—Section
16 125(a) of the Truth in Lending Act (15 U.S.C. 1635(a))
17 is amended—

18 (1) by striking “(a) Except as otherwise pro-
19 vided” and inserting “(a) RIGHT ESTABLISHED.—

20 “(1) IN GENERAL.—Except as otherwise pro-
21 vided”; and

22 (2) by adding at the end the following new
23 paragraph:

24 “(2) TIMING OF ELECTION OF WAIVER BY CON-
25 SUMER.—No election by a consumer to waive the

1 right established under paragraph (1) to rescind a
2 transaction shall be effective if—

3 “(A) the waiver was required by the cred-
4 itor as a condition for the transaction; or

5 “(B) the creditor advised or encouraged
6 the consumer to waive such right of the con-
7 sumer.”.

8 (d) STATUTE OF LIMITATIONS EXTENDED FOR SEC-
9 TION 129 VIOLATIONS.—Section 130(e) of the Truth in
10 Lending Act (15 U.S.C. 1640(e)) is amended—

11 (1) in the 1st sentence, by striking “Any ac-
12 tion” and inserting “Except as provided in the sub-
13 sequent sentence, any action”;

14 (2) by inserting after the first sentence the fol-
15 lowing new sentence: “Any action under this section
16 with respect to any violation of section 129 (other
17 than subsection (x) of such section) may be brought
18 in any United States district court, or in any other
19 court of competent jurisdiction, before the end of the
20 2-year period beginning on the date of the occur-
21 rence of the violation, unless a shorter time period
22 is herein provided.”; and

23 (3) by inserting “and except that this sentence
24 shall not apply to a violation of section 129(x)” be-
25 fore the period at the end of the 3rd sentence (as

1 determined taking into account the amendment
2 made by paragraph (2) of this subsection).

3 (e) AMENDMENTS RELATING TO LIABILITY OF AS-
4 SIGNEES.—

5 (1) IN GENERAL.—Paragraph (4) of section
6 131(d) of the Truth in Lending Act (15 U.S.C.
7 1641(d)) is amended by striking “mortgage referred
8 to in section 103(aa)” and inserting “higher-cost
9 mortgage”.

10 (2) RIGHTS UPON ASSIGNMENT OF HIGHER-
11 COST MORTGAGES.—Section 131(d) of the Truth in
12 Lending Act (15 U.S.C. 1641(d)) is amended—

13 (A) by redesignating paragraphs (3) and
14 (4) as paragraphs (4) and (5), respectively; and

15 (B) by striking paragraphs (1) and (2) and
16 inserting the following new paragraphs:

17 “(1) CLAIMS AND DEFENSES.—

18 “(A) IN GENERAL.—Any person who pur-
19 chases or is otherwise assigned a higher-cost
20 mortgage shall be subject to all claims and de-
21 fenses with respect to that mortgage that the
22 consumer could assert against the creditor of
23 the mortgage either—

24 “(i) as a defense to the enforcement
25 of such mortgage by the purchaser or as-

1 signee based on a default by the consumer
2 if such default is reasonably related to a
3 violation of this section by the creditor, un-
4 less the consumer demonstrates that the
5 purchaser or assignee had actual knowl-
6 edge of or exhibited reckless indifference to
7 a violation in which case the consumer may
8 raise any defensive claim without regard to
9 whether such violation is related to the
10 consumer’s default; or

11 “(ii) as an affirmative claim, unless
12 the purchaser or assignee demonstrates, by
13 a preponderance of the evidence, that a
14 reasonable person exercising ordinary due
15 diligence could not determine with reason-
16 able certainty based on information con-
17 tained in the documentation required by
18 this title, the itemization of the amount fi-
19 nanced, and other disclosure of disburse-
20 ments that a violation had occurred.

21 “(B) CLARIFICATION OF RIGHTS OF CON-
22 SUMER.—Subparagraph (A) may not be con-
23 strued as affecting any rights of a consumer
24 under subsection (a), (b), or (c) of this section
25 or any other provision of this title.

1 “(C) EXCLUSION.—This section shall not
2 apply if a purchaser or assignee has exercised
3 such due diligence by demonstrating that such
4 purchaser or assignee—

5 “(i) has in place at the time of the
6 purchase or assignment of the loans, poli-
7 cies that expressly prohibit the purchase or
8 acceptance of assignment, by such pur-
9 chaser or assignee, of either any higher-
10 cost mortgage at all or any higher-cost
11 mortgage containing such violations;

12 “(ii) requires, by the applicable pur-
13 chase contract, that a seller or assignor of
14 such loans to the purchaser or assignee
15 represents and warrants to the purchaser
16 or assignee as of the applicable sale date
17 that either—

18 “(I) the seller or assignor will not
19 sell or assign to the purchaser or as-
20 signee either any higher-cost mort-
21 gage at all or any higher-cost mort-
22 gage containing such violations; or

23 “(II) the seller or assignor is a
24 beneficiary of a representation and
25 warranty from a previous seller or as-

1 signor to that effect, and, as a result
2 of its purchase of the loans, the pur-
3 chaser or assignee is a beneficiary of
4 such representation and warranty;
5 and

6 “(iii) exercises reasonable due dili-
7 gence at or before the time of the purchase
8 or assignment of home loans, or within a
9 reasonable period of time after the pur-
10 chase or assignment of such home loans,
11 that is intended by the purchaser or as-
12 signee to prevent the purchaser or assignee
13 from purchasing or taking assignment of
14 either any higher-cost mortgages at all or
15 any higher-cost mortgages containing such
16 violations.

17 “(D) REASONABLE DUE DILIGENCE.—The
18 reasonable due diligence requirement referred to
19 in subparagraph (C)(iii) may be met by employ-
20 ing a statistically significant sampling method-
21 ology and shall not require loan-by-loan review,
22 for purposes of this subsection.

23 “(2) LIMITATION ON RELIEF.—

24 “(A) IN GENERAL.—Notwithstanding any
25 other provision of law, relief provided as a re-

1 sult of any action made permissible by para-
2 graph (1) may not exceed the greater of—

3 “(i) with respect to actions based
4 upon a violation of this title, the amount
5 specified in section 130; or

6 “(ii) with respect to other actions, as
7 specified in paragraph (1)(A)(i), the sum
8 of—

9 “(I) the amount of all remaining
10 indebtedness; and

11 “(II) the total amount paid by
12 the consumer in connection with the
13 transaction.

14 “(B) FACTORS FOR THE COURT TO CON-
15 SIDER.—In determining the amount of the
16 award in any action referred to in clause (i) or
17 (ii) of subparagraph (A), the court shall con-
18 sider, among other relevant factors—

19 “(i) the amount of any actual eco-
20 nomic damages awarded and the extent to
21 which the noneconomic harm suffered from
22 the violation should be compensable by
23 general damages;

24 “(ii) the lack of such purchaser’s or
25 assignee’s knowledge of or participation in

1 the facts or circumstances giving rise to
2 the violations and claim and defenses;

3 “(iii) the materiality of the violation;
4 and

5 “(iv) the relative harm to the con-
6 sumer.

7 “(C) LIMITATION ON DAMAGES FOR
8 WRONGS NOT CREATING FINANCIAL LOSSES.—
9 Unless the consumer demonstrates that the
10 purchaser or assignee had actual knowledge of
11 or exhibited reckless indifference to a violation
12 of this title or other applicable law, the dam-
13 ages for which a purchaser or assignee shall be
14 liable shall be limited to the amounts specified
15 in paragraphs (1) and (2) of section 130(a),
16 which consist of damages for actual financial
17 losses and attorney’s fees.

18 “(3) CLARIFICATION OF TERMS.—For purposes
19 of determining the liability of assignees under this
20 section, the terms ‘purchaser’ and ‘assignee’ shall
21 not include—

22 “(A) persons whose interest in higher-cost
23 mortgages is limited to a security interest or
24 who acquire title as a result of the foreclosure
25 of such security interest;

1 “(B) broker-dealers and their affiliates
2 that trade in mortgage loans and related mort-
3 gage securities and otherwise are not involved
4 in any material respect in the terms and condi-
5 tions under which such mortgage loans were
6 made or such securities were issued;

7 “(C) passive investors in securities, or in-
8 terests in securities, including investors who
9 guarantee the payment of principal and interest
10 of securities to other investors, based on and
11 backed by a pool of residential mortgage loans;
12 or

13 “(D) purchasers of mortgage loans that do
14 not take record title to such loans where, within
15 1 year following the initial sale, the seller is ob-
16 ligated by written agreement to repurchase the
17 loans or the purchaser is obligated by written
18 agreement to deliver the loans to a third party
19 at the direction of a seller.”.

20 **SEC. 106. COORDINATION WITH STATE LAW.**

21 Section 111 of the Truth in Lending Act (15 U.S.C.
22 1610) is amended—

23 (1) by adding at the end the following new sub-
24 section:

25 “(f) HIGHER-COST MORTGAGES.—

1 “(1) IN GENERAL.—The provisions of this title
2 shall supersede any provision of the law of any State
3 to the extent that such provision of law attempts, di-
4 rectly or indirectly, to regulate, or has the effect of
5 regulating, mortgage lending activities by or
6 through—

7 “(A) the imposition of a high-cost limita-
8 tion, including—

9 “(i) through limitations or prohibi-
10 tions in connection with contracts for other
11 business with any such State or any polit-
12 ical subdivision of any such State;

13 “(ii) by making any conduct in con-
14 nection with any such activities subject to
15 civil or criminal penalties; or

16 “(iii) by making activities regulated
17 under real estate, foreclosure, or other
18 laws of such State or political subdivision
19 contingent upon the manner in which
20 mortgage lending activities are conducted;
21 or

22 “(B) any requirement, limitation, or prohi-
23 bition without regard to whether the provisions
24 of the requirement, limitation, or prohibition
25 are consistent or inconsistent with section 129

1 or 129A or whether the consumer credit trans-
2 action subject to such requirement is a higher-
3 cost mortgage,
4 without respect to whether or the extent to which
5 such provision of law may afford greater protection,
6 substantive or otherwise, to consumers.

7 “(2) DEFINITIONS.—For purposes of this sub-
8 section, the following definitions shall apply:

9 “(A) MORTGAGE LENDING ACTIVITIES.—
10 The term ‘mortgage lending activities’ includes
11 any advertisement, solicitation, offer, negotia-
12 tion, placement, application, processing, under-
13 writing, originating, closing, funding, recording,
14 assignment, purchase, pledge, securitization,
15 holding, servicing, collection, modification, satis-
16 faction, or foreclosure in connection with or
17 arising out of a consumer credit transaction se-
18 cured by a lien against a consumer’s dwelling,
19 by or on behalf of a broker, creditor, secured
20 creditor, purchaser, servicer, trustee, certificate
21 or securities holder, or any other person or enti-
22 ty that may engage in any of the above enumer-
23 ated activities and their respective agents, con-
24 tractors, employees, officers, and directors.

1 “(B) LAW OF ANY STATE.—The term ‘law
2 of any State’ includes any constitutional provi-
3 sion, statute, rule, regulation, or ordinance of
4 any State or any political subdivision of any
5 State, including any State law as to which the
6 Board has made a determination under section
7 123, and any judicial decision or determination
8 rendered in connection therewith.

9 “(C) HIGH-COST LIMITATION.—The term
10 ‘high-cost limitation’ means any requirement,
11 limitation, or prohibition on any mortgage lend-
12 ing activities in connection with a consumer
13 credit transaction secured by a lien against a
14 consumer’s dwelling when the applicability of
15 such requirement, limitation or prohibition is
16 based in whole or in part on whether the actual
17 or contingent, direct or indirect, interest rate,
18 costs, fees, price or finance charges to the con-
19 sumer associated with such consumer credit
20 transaction exceed any particular threshold,
21 however such threshold may be defined, without
22 regard to whether the consumer credit trans-
23 action subject to such requirement, limitation,
24 or prohibition is a higher-cost mortgage.

1 “(3) CLARIFICATION OF PREEMPTION.—Any
2 law of any State preempted under paragraph (1) of
3 this subsection shall, without in any way limiting the
4 effect of paragraph (1) of this subsection, include
5 any law of any State that directly or indirectly—

6 “(A) limits a creditor’s ability to extend
7 new credit to a consumer;

8 “(B) limits the rights, claims, defenses, or
9 other remedies at law or equity available to a
10 creditor, secured creditor, servicer, assignee or
11 other direct or indirect holder, and their respec-
12 tive agents or contractors, including without
13 limitation, the right to foreclose on the lien
14 against the consumer’s dwelling in respect of a
15 consumer’s default under the related loan docu-
16 ments; or

17 “(C) imposes legal liability on any party
18 for the violations of law by another party by
19 virtue of such first party’s acquisition of any di-
20 rect or indirect right, title or interest in and to,
21 or contractual responsibility for the servicing or
22 administration of, a higher-cost mortgage.

23 “(4) EXCLUSIONS.—Notwithstanding para-
24 graphs (1), (2), and (3), the following laws are ex-

1 pressly excluded from the preemption established
2 under paragraph (1):

3 “(A) Any law of any State, not otherwise
4 preempted under Federal law, limiting the rate
5 of interest reflected in the note or other instru-
6 ment evidencing an extension of consumer cred-
7 it secured by a lien against a consumer’s dwell-
8 ing, to the extent that such law does not re-
9 quire compliance with any law that is otherwise
10 preempted under paragraphs (1), (2), and (3)
11 as a condition of contracting for, charging, or
12 collecting any rate of interest otherwise per-
13 mitted by such law.

14 “(B) Any law of any State requiring the li-
15 censing, registration, or authorization of any
16 person engaged in mortgage-lending activities,
17 except that the law of any State will be pre-
18 empted to the extent that such law conditions
19 the issuance or maintenance of such a license,
20 registration or other authorization, or the au-
21 thority granted thereby, on compliance with any
22 law that is otherwise preempted under para-
23 graphs (1), (2) and (3).

24 “(5) PROMPT DETERMINATION BY BOARD OF
25 GOVERNORS.—

1 “(A) IN GENERAL.—In response to a re-
2 quest from any person, the Board, or any offi-
3 cial or employee of the Board duly authorized
4 by the Board, shall—

5 “(i) promptly determine whether and
6 to the extent to which the specific law of
7 any State identified in such request is pre-
8 empted by operation of this subsection;
9 and

10 “(ii) cause such determination to be
11 published in the Federal Register.

12 “(B) EFFECT OF PUBLICATION.—The pre-
13 emption provided under this section shall be
14 self-executing, and the publication of a finding
15 or preemption by the Board shall not be re-
16 quired in order for preemption to occur in ac-
17 cordance with the terms of this section.”;

18 (2) in subsection (a)(1), by striking the 1st sen-
19 tence and inserting the following new sentence: “Ex-
20 cept as provided in subsections (e) and (f), no provi-
21 sion of chapter 1, 2, or 3 shall be construed as an-
22 nulling, altering, or affecting the laws of any State
23 relating to the disclosure of information in connec-
24 tion with credit transactions, except to the extent
25 that those laws are inconsistent with the provisions

1 of this title, and then only to the extent of the incon-
2 sistency.”;

3 (3) in subsection (b)—

4 (A) by striking “section 129” the 1st place
5 such term appears and inserting “subsection (f)
6 and sections 129, 129A, and 129B”; and

7 (B) by inserting “, 129A, or 129B” after
8 “section 129” each place such term appears
9 after the 1st place; and

10 (4) in subsection (d), by striking “sections 125,
11 130, and 166” and inserting “subsection (f) and
12 sections 125, 130, and 166”.

13 **SEC. 107. CLARIFICATION OF STATE ENFORCEMENT AU-**
14 **THORITY.**

15 Subsection (e) of section 130 of Truth in Lending
16 Act (15 U.S.C. 1640(e)) (as amended by section 105(d)
17 of this Act) is amended—

18 (1) by striking “(e) Except as provided in the
19 subsequent sentence, any action” and inserting “(e)
20 JURISDICTION; STATUTE OF LIMITATIONS.—

21 “(1) IN GENERAL.—Except as provided in the
22 subsequent sentence, any action”; and

23 (2) by adding at the end the following new
24 paragraph:

1 “(2) CLARIFICATION OF PRIMARY ENFORCE-
 2 MENT AUTHORITY WITH RESPECT TO STATE-CHAR-
 3 TERED OR LICENSED ENTITIES.—In addition to the
 4 authority provided under subsection (1), no provision
 5 of this title shall be construed as limiting the au-
 6 thority of any State to enforce the provisions of this
 7 title, as the primary enforcement authority, with re-
 8 gard to any person licensed or chartered by such
 9 State.”.

10 **SEC. 108. PREPAYMENT PENALTIES AND LATE CHARGES.**

11 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 12 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
 13 after section 129 the following new section:

14 **“§ 129A. Prepayment penalties and late charges**

15 “Except as otherwise provided by this title, any con-
 16 sumer credit transaction that is secured by a dwelling that
 17 is, or upon the consummation of the transaction will be,
 18 occupied by the consumer as his principal dwelling, may
 19 contain—

20 “(1) a provision for the imposition of a prepay-
 21 ment penalty for the prepayment of the credit trans-
 22 action, only if—

23 “(A) the penalty cannot be imposed if the
 24 debt is accelerated as a result of default or any
 25 other breach of the loan documents;

1 “(B) the penalty does not apply after the
2 end of the 36-month period beginning on the
3 date the transaction is consummated;

4 “(C) the consumer is offered a choice of
5 another similar loan without a prepayment pen-
6 alty and is given a description of the benefit the
7 consumer will receive, and the consequences the
8 consumer might encounter, for accepting a loan
9 with the prepayment penalty; and

10 “(D) the penalty does not exceed an
11 amount equal to the payment of 6 months ad-
12 vance interest on the amount prepaid in any
13 12-month period in excess of 20 percent of the
14 original principal amount; and

15 “(2) a provision for the imposition of unantici-
16 pated late payment, only if the late-payment fee—

17 “(A) is not in excess of 5 percent of the
18 amount of the scheduled payment past due;

19 “(B) may only be assessed on a payment
20 past due for 15 days or more; and

21 “(C) may not be charged more than once
22 with respect to a single late payment.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for chapter 2 of the Truth in Lending Act is amended

1 by inserting after the item relating to section 129 the fol-
2 lowing new item:

“129A. Prepayment penalties and late charges.”.

3 **SEC. 109. REGULATIONS.**

4 Notwithstanding any provision of the Truth in Lend-
5 ing Act, the Board of Governors of the Federal Reserve
6 System shall—

7 (1) prescribe such regulations implementing
8 this title and the amendments made by this title as
9 the Board may determine to be appropriate; and

10 (2) publish such regulations in final form in the
11 *Federal Register* before the end of the 12-month pe-
12 riod beginning on the date of the enactment of this
13 Act.

14 **SEC. 110. EFFECTIVE DATES.**

15 (a) IN GENERAL.—This title, and the amendments
16 made by this title, shall take effect at the end of the 3-
17 month period beginning on the date of the enactment of
18 this Act.

19 (b) SCOPE OF APPLICATION.—This title, and the
20 amendments made by this title, shall apply with respect
21 to applications for consumer credit transactions received
22 on or after the effective date of this Act.

1 **TITLE II—HOUSING**
2 **COUNSELING**
3 **Subtitle A—Consumer Counseling**

4 **SEC. 201. CONSUMER COUNSELING REQUIREMENTS.**

5 Section 129 of the Truth in Lending Act (15 U.S.C.
6 1639) is amended by inserting after subsection (x) (as
7 added by section 103(r) of this Act) the following:

8 “(y) CONSUMER COUNSELING REQUIREMENTS.—

9 “(1) IN GENERAL.—A creditor may not extend
10 any credit in the form of a higher-cost mortgage to
11 any consumer unless the creditor has provided to the
12 consumer, at such time before the consummation of
13 the mortgage and in such manner as the Board shall
14 provide by regulation—

15 “(A) a separate written statement recom-
16 mending that the consumer take advantage of
17 available home ownership or credit counseling
18 services before agreeing to the terms of any
19 higher-cost mortgage; and

20 “(B) a written statement containing the
21 names, addresses and telephone numbers of
22 counseling agencies or programs reasonably
23 available to the consumer that have been cer-
24 tified or approved and made publicly available
25 by the Secretary of Housing and Urban Devel-

1 opment, a State housing finance authority (as
 2 defined in section 1301 of the Financial Institu-
 3 tions Reform, Recovery, and Enforcement Act
 4 of 1989), or the agency referred to in sub-
 5 section (a) or (c) of section 108 with jurisdic-
 6 tion over the creditor as qualified to provide
 7 counseling on—

8 “(i) the advisability of a higher-cost
 9 mortgage transaction; and

10 “(ii) the appropriateness of a higher-
 11 cost mortgage for the consumer.

12 “(2) COMPLETE AND UPDATED LISTS RE-
 13 QUIRED.—A creditor shall be deemed to be in com-
 14 pliance with the requirements of this subsection if
 15 the creditor provides the consumer with a reasonably
 16 complete or updated list of counseling agencies re-
 17 quired by section 5(a) of the Real Estate Settlement
 18 Procedures Act of 1974.”.

19 **Subtitle B—Expanded Housing** 20 **Counseling Opportunities**

21 **SEC. 211. SHORT TITLE.**

22 This subtitle may be cited as the “Expanding Hous-
 23 ing Opportunities Through Education and Counseling
 24 Act”.

1 **SEC. 212. ESTABLISHMENT OF OFFICE OF HOUSING COUN-**
2 **SELING.**

3 Section 4 of the Department of Housing and Urban
4 Development Act (42 U.S.C. 3533) is amended by adding
5 at the end the following new subsection:

6 “(g) OFFICE OF HOUSING COUNSELING.—

7 “(1) ESTABLISHMENT.—There is established,
8 in the Office of the Secretary, the Office of Housing
9 Counseling.

10 “(2) DIRECTOR.—There is established the posi-
11 tion of Director of Housing Counseling. The Direc-
12 tor shall be the head of the Office of Housing Coun-
13 seling and shall be appointed by the Secretary. Such
14 position shall be a career-reserved position in the
15 Senior Executive Service.

16 “(3) FUNCTIONS.—

17 “(A) IN GENERAL.—The Director shall
18 have ultimate responsibility within the Depart-
19 ment, except for the Secretary, for all activities
20 and matters relating to homeownership coun-
21 seling and rental housing counseling, includ-
22 ing—

23 “(i) research, grant administration,
24 public outreach, and policy development re-
25 lating to such counseling; and

1 “(ii) establishment, coordination, and
2 administration of all regulations, require-
3 ments, standards, and performance meas-
4 ures under programs and laws adminis-
5 tered by the Department that relate to
6 housing counseling, homeownership coun-
7 seling (including maintenance of homes),
8 mortgage-related counseling (including
9 home equity conversion mortgages and
10 credit protection options to avoid fore-
11 closure), and rental housing counseling, in-
12 cluding the requirements, standards, and
13 performance measures relating to housing
14 counseling.

15 “(B) SPECIFIC FUNCTIONS.—The Director
16 shall carry out the functions assigned to the Di-
17 rector and the Office under this section and any
18 other provisions of law. Such functions shall in-
19 clude establishing rules necessary for—

20 “(i) the counseling procedures under
21 section 106(h)(1) of the Housing and
22 Urban Development Act of 1968 (12
23 U.S.C. 1701x(h)(1));

24 “(ii) carrying out all other functions
25 of the Secretary under section 106(h) of

1 the Housing and Urban Development Act
2 of 1968, including the establishment, oper-
3 ation, and publication of the availability of
4 the toll-free telephone number under para-
5 graph (2) of such section;

6 “(iii) carrying out section 5 of the
7 Real Estate Settlement Procedures Act of
8 1974 (12 U.S.C. 2604) for home buying
9 information booklets prepared pursuant to
10 such section;

11 “(iv) carrying out the certification
12 program under section 106(e) of the Hous-
13 ing and Urban Development Act of 1968
14 (12 U.S.C. 1701x(e));

15 “(v) carrying out the assistance pro-
16 gram under section 106(a)(4) of the Hous-
17 ing and Urban Development Act of 1968,
18 including criteria for selection of applica-
19 tions to receive assistance;

20 “(vi) carrying out any functions re-
21 garding abusive, deceptive, or unscrupulous
22 lending practices relating to residential
23 mortgage loans that the Secretary con-
24 siders appropriate, which shall include con-
25 ducting the study under section 216 of the

1 Expanding Housing Opportunities
2 Through Education and Counseling Act;

3 “(vii) providing for operation of the
4 advisory committee established under para-
5 graph (4) of this subsection; and

6 “(viii) collaborating with community-
7 based organizations with expertise in the
8 field of housing counseling.

9 “(4) ADVISORY COMMITTEE.—

10 “(A) IN GENERAL.—The Secretary shall
11 appoint an advisory committee to provide advice
12 and oversight regarding the carrying out of the
13 functions of the Director.

14 “(B) MEMBERS.—Such advisory committee
15 shall consist of not more than 12 individuals,
16 and the membership of the committee shall
17 equally represent all aspects of the mortgage
18 and real estate industry, including consumers.

19 “(C) TERMS.—Except as provided in sub-
20 paragraph (D), each member of the advisory
21 committee shall be appointed for a term of
22 three years. Members may be reappointed at
23 the discretion of the Secretary.

24 “(D) TERMS OF INITIAL APPOINTEES.—As
25 designated by the Secretary at the time of ap-

1 pointment, of the members first appointed to
2 the advisory committee, four shall be appointed
3 for a term of one year and four shall be ap-
4 pointed for a term of two years.

5 “(E) PROHIBITION OF PAY; TRAVEL EX-
6 PENSES.—Members of the advisory committee
7 shall serve without pay, but shall receive travel
8 expenses, including per diem in lieu of subsist-
9 ence, in accordance with applicable provisions
10 under subchapter I of chapter 57 of title 5,
11 United States Code.

12 “(F) ADVISORY ROLE ONLY.—The advi-
13 sory committee shall have no role in reviewing
14 or awarding housing counseling grants.

15 “(5) SCOPE OF HOMEOWNERSHIP COUN-
16 SELING.—In carrying out the responsibilities of the
17 Director, the Director shall ensure that homeowner-
18 ship counseling provided by, in connection with, or
19 pursuant to any function, activity, or program of the
20 Department addresses the entire process of home-
21 ownership, including the decision to purchase a
22 home, the selection and purchase of a home, issues
23 arising during or affecting the period of ownership
24 of a home (including refinancing, default and fore-

1 closure, and other financial decisions), and the sale
2 or other disposition of a home.”.

3 **SEC. 213. COUNSELING PROCEDURES.**

4 (a) IN GENERAL.—Section 106 of the Housing and
5 Urban Development Act of 1968 (12 U.S.C. 1701x), as
6 amended by the preceding provisions of this title, is fur-
7 ther amended by adding at the end the following new sub-
8 section:

9 “(h) PROCEDURES AND ACTIVITIES.—

10 “(1) COUNSELING PROCEDURES.—

11 “(A) IN GENERAL.—The Secretary shall
12 establish, coordinate, and monitor the adminis-
13 tration by the Department of Housing and
14 Urban Development of the counseling proce-
15 dures for homeownership counseling and rental
16 housing counseling provided in connection with
17 any program of the Department, including all
18 requirements, standards, and performance
19 measures that relate to homeownership and
20 rental housing counseling.

21 “(B) HOMEOWNERSHIP COUNSELING.—

22 For purposes of this subsection and as used in
23 the provisions referred to in this subparagraph,
24 the term ‘homeownership counseling’ means
25 counseling related to homeownership and resi-

1 dential mortgage loans. Such term includes
2 counseling related to homeownership and resi-
3 dential mortgage loans that is provided pursu-
4 ant to—

5 “(i) section 105(a)(20) of the Housing
6 and Community Development Act of 1974
7 (42 U.S.C. 5305(a)(20));

8 “(ii) in the United States Housing
9 Act of 1937—

10 “(I) section 9(e) (42 U.S.C.
11 1437g(e));

12 “(II) section 8(y)(1)(D) (42
13 U.S.C. 1437f(y)(1)(D));

14 “(III) section 18(a)(4)(D) (42
15 U.S.C. 1437p(a)(4)(D));

16 “(IV) section 23(c)(4) (42 U.S.C.
17 1437u(c)(4));

18 “(V) section 32(e)(4) (42 U.S.C.
19 1437z-4(e)(4));

20 “(VI) section 33(d)(2)(B) (42
21 U.S.C. 1437z-5(d)(2)(B));

22 “(VII) sections 302(b)(6) and
23 303(b)(7) (42 U.S.C. 1437aaa-
24 1(b)(6), 1437aaa-2(b)(7)); and

1 “(VIII) section 304(c)(4) (42
2 U.S.C. 1437aaa–3(c)(4));

3 “(iii) section 302(a)(4) of the Amer-
4 ican Homeownership and Economic Oppor-
5 tunity Act of 2000 (42 U.S.C. 1437f note);

6 “(iv) sections 233(b)(2) and 258(b) of
7 the Cranston-Gonzalez National Affordable
8 Housing Act (42 U.S.C. 12773(b)(2),
9 12808(b));

10 “(v) this section and section 101(e) of
11 the Housing and Urban Development Act
12 of 1968 (12 U.S.C. 1701x, 1701w(e));

13 “(vi) section 220(d)(2)(G) of the Low-
14 Income Housing Preservation and Resident
15 Homeownership Act of 1990 (12 U.S.C.
16 4110(d)(2)(G));

17 “(vii) sections 422(b)(6), 423(b)(7),
18 424(c)(4), 442(b)(6), and 443(b)(6) of the
19 Cranston-Gonzalez National Affordable
20 Housing Act (42 U.S.C. 12872(b)(6),
21 12873(b)(7), 12874(c)(4), 12892(b)(6),
22 and 12893(b)(6));

23 “(viii) section 491(b)(1)(F)(iii) of the
24 McKinney-Vento Homeless Assistance Act
25 (42 U.S.C. 11408(b)(1)(F)(iii));

1 “(ix) sections 202(3) and
2 810(b)(2)(A) of the Native American
3 Housing and Self-Determination Act of
4 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

5 “(x) in the National Housing Act—

6 “(I) in section 203 (12 U.S.C.
7 1709), the penultimate undesignated
8 paragraph of paragraph (2) of sub-
9 section (b), subsection (c)(2)(A), and
10 subsection (r)(4);

11 “(II) subsections (a) and (c)(3)
12 of section 237 (12 U.S.C. 1715z-2);
13 and

14 “(III) subsections (d)(2)(B) and
15 (m)(1) of section 255 (12 U.S.C.
16 1715z-20);

17 “(xi) section 502(h)(4)(B) of the
18 Housing Act of 1949 (42 U.S.C.
19 1472(h)(4)(B)); and

20 “(xii) section 508 of the Housing and
21 Urban Development Act of 1970 (12
22 U.S.C. 1701z-7).

23 “(C) RENTAL HOUSING COUNSELING.—

24 For purposes of this subsection, the term ‘rent-
25 al housing counseling’ means counseling related

1 to rental of residential property, which may in-
2 clude counseling regarding future homeownership
3 opportunities and providing referrals for
4 renters and prospective renters to entities pro-
5 viding counseling and shall include counseling
6 related to such topics that is provided pursuant
7 to—

8 “(i) section 105(a)(20) of the Housing
9 and Community Development Act of 1974
10 (42 U.S.C. 5305(a)(20));

11 “(ii) in the United States Housing
12 Act of 1937—

13 “(I) section 9(e) (42 U.S.C.
14 1437g(e));

15 “(II) section 18(a)(4)(D) (42
16 U.S.C. 1437p(a)(4)(D));

17 “(III) section 23(c)(4) (42
18 U.S.C. 1437u(c)(4));

19 “(IV) section 32(e)(4) (42 U.S.C.
20 1437z-4(e)(4));

21 “(V) section 33(d)(2)(B) (42
22 U.S.C. 1437z-5(d)(2)(B)); and

23 “(VI) section 302(b)(6) (42
24 U.S.C. 1437aaa-1(b)(6));

1 “(iii) section 233(b)(2) of the Cran-
2 ston-Gonzalez National Affordable Housing
3 Act (42 U.S.C. 12773(b)(2));

4 “(iv) section 106 of the Housing and
5 Urban Development Act of 1968 (12
6 U.S.C. 1701x);

7 “(v) section 422(b)(6) of the Cran-
8 ston-Gonzalez National Affordable Housing
9 Act (42 U.S.C. 12872(b)(6));

10 “(vi) section 491(b)(1)(F)(iii) of the
11 McKinney-Vento Homeless Assistance Act
12 (42 U.S.C. 11408(b)(1)(F)(iii));

13 “(vii) sections 202(3) and
14 810(b)(2)(A) of the Native American
15 Housing and Self-Determination Act of
16 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
17 and

18 “(viii) the rental assistance program
19 under section 8 of the United States Hous-
20 ing Act of 1937 (42 U.S.C. 1437f).

21 “(2) TOLL-FREE TELEPHONE NUMBER AND
22 WEB SITE.—The Secretary shall provide for the es-
23 tablishment, operation, and publication of a toll-free
24 telephone number and a World Wide Web site
25 through which persons interested in homeownership

1 or rental housing counseling services may locate and
2 obtain names and contact information of persons
3 and organizations certified under section 106(e) of
4 the Housing and Urban Development Act of 1968 to
5 provide such services.

6 “(3) STANDARDS FOR MATERIALS.—The Sec-
7 retary, in conjunction with the advisory committee
8 established under subsection (g)(4), shall establish
9 standards for materials and forms to be used, as ap-
10 propriate, by organizations providing homeownership
11 counseling services, including any recipients of as-
12 sistance pursuant to subsection (a)(4).

13 “(4) MORTGAGE SOFTWARE SYSTEMS.—

14 “(A) CERTIFICATION.—The Secretary shall
15 provide for the certification of various computer
16 software programs for consumers to use in eval-
17 uating different residential mortgage loan pro-
18 posals. The Secretary shall require, for such
19 certification, that the mortgage software sys-
20 tems take into account—

21 “(i) the consumer’s financial situation
22 and the cost of maintaining a home, in-
23 cluding insurance, taxes, and utilities;

1 “(ii) the amount of time the consumer
2 expects to remain in the home or expected
3 time to maturity of the loan;

4 “(iii) such other factors as the Sec-
5 retary considers appropriate to assist the
6 consumer in evaluating whether to pay
7 points, to lock in an interest rate, to select
8 an adjustable or fixed rate loan, to select
9 a conventional or government-insured or
10 guaranteed loan and to make other choices
11 during the loan application process.

12 If the Secretary determines that available exist-
13 ing software is inadequate to assist consumers
14 during the residential mortgage loan application
15 process, the Secretary shall arrange for the de-
16 velopment by private sector software companies
17 of new mortgage software systems that meet
18 the Secretary’s specifications.

19 “(B) USE AND INITIAL AVAILABILITY.—
20 Such certified computer software programs
21 shall be used to supplement, not replace, hous-
22 ing counseling. The Secretary shall provide that
23 such programs are initially used only in connec-
24 tion with the assistance of housing counselors
25 certified pursuant to subsection (e).

1 “(C) AVAILABILITY.—After a period of ini-
2 tial availability under subparagraph (B) as the
3 Secretary considers appropriate, the Secretary
4 shall take reasonable steps to make mortgage
5 software systems certified pursuant to this
6 paragraph widely available through the Internet
7 and at public locations, including public librar-
8 ies, senior-citizen centers, public housing sites,
9 offices of public housing agencies that admin-
10 ister rental housing assistance vouchers, and
11 housing counseling centers.

12 “(5) OUTREACH TO VULNERABLE POPU-
13 LATIONS.—The Secretary shall develop a multimedia
14 outreach program designed to make elderly persons,
15 persons who face language barriers, low-income per-
16 sons, and other potentially vulnerable consumers
17 aware that it is advisable, before seeking a residen-
18 tial mortgage loan, to obtain homeownership coun-
19 seling from an unbiased and reliable source and that
20 such homeownership counseling is available, includ-
21 ing through programs of the Department of Housing
22 and Urban Development.

23 “(6) EDUCATION PROGRAMS.—The Secretary
24 shall provide advice and technical assistance to
25 States, units of general local government, and non-

1 profit organizations regarding the establishment and
2 operation of, including assistance with the develop-
3 ment of content and materials for, educational pro-
4 grams to inform and educate consumers, particularly
5 those most vulnerable with respect to residential
6 mortgage loans (such as elderly persons, persons
7 facing language barriers, low-income persons, and
8 other potentially vulnerable consumers), regarding
9 home mortgages, mortgage refinancing, home equity
10 loans, and home repair loans.”.

11 (b) CONFORMING AMENDMENTS TO GRANT PRO-
12 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-
13 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and
14 Urban Development Act of 1968 (12 U.S.C.
15 1701x(c)(5)(A)(ii)) is amended—

16 (1) in subclause (II), by striking “and” at the
17 end;

18 (2) in subclause (III) by striking the period at
19 the end and inserting “; and”; and

20 (3) by inserting after subclause (III) the fol-
21 lowing new subclause:

22 “(IV) notify the housing or mort-
23 gage applicant of the availability of
24 mortgage software systems provided
25 pursuant to subsection (h)(4).”.

1 **SEC. 214. GRANTS FOR HOUSING COUNSELING ASSIST-**
2 **ANCE.**

3 Section 106(a) of the Housing and Urban Develop-
4 ment Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended
5 by adding at the end the following new paragraph:

6 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING
7 ASSISTANCE.—

8 “(A) IN GENERAL.—The Secretary shall make
9 financial assistance available under this paragraph
10 to States, units of general local governments, and
11 nonprofit organizations providing homeownership or
12 rental counseling (as such terms are defined in sub-
13 section (h)(1)).

14 “(B) QUALIFIED ENTITIES.—The Secretary
15 shall establish standards and guidelines for eligibility
16 of organizations (including governmental and non-
17 profit organizations) to receive assistance under this
18 paragraph.

19 “(C) DISTRIBUTION.—Assistance made avail-
20 able under this paragraph shall be distributed in a
21 manner that encourages efficient and successful
22 counseling programs.

23 “(D) AUTHORIZATION OF APPROPRIATIONS.—
24 There are authorized to be appropriated
25 \$75,000,000 for each of fiscal years 2006 through
26 2009 for—

1 “(i) the operations of the Office of Hous-
2 ing Counseling of the Department of Housing
3 and Urban Development;

4 “(ii) the responsibilities of the Secretary
5 under paragraphs (2) through (6) of subsection
6 (h); and

7 “(iii) assistance pursuant to this para-
8 graph for entities providing homeownership and
9 rental counseling.”.

10 **SEC. 215. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**
11 **SELORS UNDER HUD PROGRAMS.**

12 Section 106(e) of the Housing and Urban Develop-
13 ment Act of 1968 (12 U.S.C. 1701x(e)) is amended—

14 (1) by striking paragraph (1) and inserting the
15 following new paragraph:

16 “(1) REQUIREMENT FOR ASSISTANCE.—An or-
17 ganization may not receive assistance for counseling
18 activities under subsection (a)(1)(iii), (a)(2), (a)(4),
19 (c), or (d) of this section, or under section 101(e),
20 unless the organization, or the individuals through
21 which the organization provides such counseling, has
22 been certified by the Secretary under this subsection
23 as competent to provide such counseling.”;

24 (2) in paragraph (2)—

1 (A) by inserting “and for certifying organi-
2 zations” before the period at the end of the
3 first sentence; and

4 (B) in the second sentence by striking “for
5 certification” and inserting “, for certification
6 of an organization, that each individual through
7 which the organization provides counseling shall
8 demonstrate, and, for certification of an indi-
9 vidual,”;

10 (3) in paragraph (3), by inserting “organiza-
11 tions and” before “individuals”;

12 (4) by redesignating paragraph (3) as para-
13 graph (5); and

14 (5) by inserting after paragraph (2) the fol-
15 lowing new paragraphs:

16 “(3) REQUIREMENT UNDER HUD PROGRAMS.—
17 Any homeownership counseling or rental housing
18 counseling (as such terms are defined in subsection
19 (h)(1)) required under, or provided in connection
20 with, any program administered by the Department
21 of Housing and Urban Development shall be pro-
22 vided only by organizations or counselors certified by
23 the Secretary under this subsection as competent to
24 provide such counseling.

1 “(4) OUTREACH.—The Secretary shall take
2 such actions as the Secretary considers appropriate
3 to ensure that individuals and organizations pro-
4 viding homeownership or rental housing counseling
5 are aware of the certification requirements and
6 standards of this subsection and of the training and
7 certification programs under subsection (f).”.

8 **SEC. 216. STUDY OF DEFAULTS AND FORECLOSURES.**

9 The Secretary of Housing and Urban Development
10 shall conduct an extensive study of the root causes of de-
11 fault and foreclosure of home loans, using as much empir-
12 ical data as are available. The study shall also examine
13 the role of escrow accounts in helping prime and nonprime
14 borrowers to avoid defaults and foreclosures. Not later
15 than 12 months after the date of the enactment of this
16 Act, the Secretary shall submit to the Congress a prelimi-
17 nary report regarding the study. Not later than 24 months
18 after such date of enactment, the Secretary shall submit
19 a final report regarding the results of the study, which
20 shall include any recommended legislation relating to the
21 study, and recommendations for best practices and for a
22 process to identify populations that need counseling the
23 most.

1 **SEC. 217. DEFINITIONS FOR COUNSELING-RELATED PRO-**
2 **GRAMS.**

3 Section 106 of the Housing and Urban Development
4 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
5 ceding provisions of this title, is further amended by add-
6 ing at the end the following new subsection:

7 “(i) DEFINITIONS.—For purposes of this section:

8 “(1) NONPROFIT ORGANIZATION.—The term
9 ‘nonprofit organization’ has the meaning given such
10 term in section 104(5) of the Cranston-Gonzalez Na-
11 tional Affordable Housing Act (42 U.S.C.
12 12704(5)), except that subparagraph (D) of such
13 section shall not apply for purposes of this section.

14 “(2) STATE.—The term ‘State’ means each of
15 the several States, the Commonwealth of Puerto
16 Rico, the District of Columbia, the Commonwealth
17 of the Northern Mariana Islands, Guam, the Virgin
18 Islands, American Samoa, the Trust Territories of
19 the Pacific, or any other possession of the United
20 States.

21 “(3) UNIT OF GENERAL LOCAL GOVERN-
22 MENT.—The term ‘unit of general local government’
23 means any city, county, parish, town, township, bor-
24 ough, village, or other general purpose political sub-
25 division of a State.”.

1 **SEC. 218. UPDATING AND SIMPLIFICATION OF MORTGAGE**
2 **INFORMATION BOOKLET.**

3 Section 5 of the Real Estate Settlement Procedures
4 Act of 1974 (12 U.S.C. 2604) is amended—

5 (1) in the section heading, by striking “SPE-
6 CIAL” and inserting “HOME BUYING”;

7 (2) by striking subsections (a) and (b) and in-
8 serting the following new subsections:

9 “(a) **PREPARATION AND DISTRIBUTION.**—The Sec-
10 retary shall prepare, at least once every 5 years, a booklet
11 to help consumers applying for federally related mortgage
12 loans to understand the nature and costs of real estate
13 settlement services. The Secretary shall prepare the book-
14 let in various languages and cultural styles, as the Sec-
15 retary determines to be appropriate, so that the booklet
16 is understandable and accessible to homebuyers of dif-
17 ferent ethnic and cultural backgrounds. The Secretary
18 shall distribute such booklets to all lenders that make fed-
19 erally related mortgage loans. The Secretary shall also dis-
20 tribute to such lenders lists, organized by location, of
21 homeownership counselors certified under section 106(e)
22 of the Housing and Urban Development Act of 1968 (12
23 U.S.C. 1701x(e)) for use in complying with the require-
24 ment under subsection (c) of this section.

25 “(b) **CONTENTS.**—Each booklet shall be in such form
26 and detail as the Secretary shall prescribe and, in addition

1 to such other information as the Secretary may provide,
2 shall include in plain and understandable language the fol-
3 lowing information:

4 “(1) A description and explanation of the na-
5 ture and purpose of the costs incident to a real es-
6 tate settlement or a federally related mortgage loan.
7 The description and explanation shall provide gen-
8 eral information about the mortgage process as well
9 as specific information concerning, at a minimum—

10 “(A) balloon payments;

11 “(B) prepayment penalties; and

12 “(C) the trade-off between closing costs
13 and the interest rate over the life of the loan.

14 “(2) An explanation and sample of the uniform
15 settlement statement required by section 4.

16 “(3) A list and explanation of lending practices,
17 including those prohibited by the Truth in Lending
18 Act or other applicable Federal law, and of other un-
19 fair practices and unreasonable or unnecessary
20 charges to be avoided by the prospective buyer with
21 respect to a real estate settlement.

22 “(4) A list and explanation of questions a con-
23 sumer obtaining a federally related mortgage loan
24 should ask regarding the loan, including whether the
25 consumer will have the ability to repay the loan,

1 whether the consumer sufficiently shopped for the
2 loan, whether the loan terms include prepayment
3 penalties or balloon payments, and whether the loan
4 will benefit the borrower.

5 “(5) An explanation of the right of rescission as
6 to certain transactions provided by sections 125 and
7 129 of the Truth in Lending Act.

8 “(6) A brief explanation of the nature of a vari-
9 able rate mortgage and a reference to the booklet
10 entitled ‘Consumer Handbook on Adjustable Rate
11 Mortgages’, published by the Board of Governors of
12 the Federal Reserve System pursuant to section
13 226.19(b)(1) of title 12, Code of Federal Regula-
14 tions, or to any suitable substitute of such booklet
15 that such Board of Governors may subsequently
16 adopt pursuant to such section.

17 “(7) A brief explanation of the nature of a
18 home equity line of credit and a reference to the
19 pamphlet required to be provided under section
20 127A of the Truth in Lending Act.

21 “(8) Information about homeownership coun-
22 seling services made available pursuant to section
23 106(a)(4) of the Housing and Urban Development
24 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-
25 ommendation that the consumer use such services,

1 and notification that a list of certified providers of
2 homeownership counseling in the area, and their
3 contact information, is available.

4 “(9) An explanation of the nature and purpose
5 of escrow accounts when used in connection with
6 loans secured by residential real estate and the re-
7 quirements under section 10 of this Act regarding
8 such accounts.

9 “(10) An explanation of the choices available to
10 buyers of residential real estate in selecting persons
11 to provide necessary services incidental to a real es-
12 tate settlement.

13 “(11) An explanation of a consumer’s respon-
14 sibilities, liabilities, and obligations in a mortgage
15 transaction.

16 “(12) An explanation of the nature and purpose
17 of real estate appraisals, including the difference be-
18 tween an appraisal and a home inspection.

19 “(13) Notice that the Office of Housing of the
20 Department of Housing and Urban Development has
21 made publicly available a brochure regarding loan
22 fraud and a World Wide Web address and toll-free
23 telephone number for obtaining the brochure.

24 The booklet prepared pursuant to this section shall take
25 into consideration differences in real estate settlement pro-

1 cedures that may exist among the several States and terri-
 2 tories of the United States and among separate political
 3 subdivisions within the same State and territory.”;

4 (3) in subsection (c), by striking the last sen-
 5 tence and inserting the following new sentence:
 6 “Each lender shall also include with the booklet a
 7 reasonably complete or updated list of homeowner-
 8 ship counselors who are certified pursuant to section
 9 106(e) of the Housing and Urban Development Act
 10 of 1968 (12 U.S.C. 1701x(e)) and located in the
 11 area of the lender.”; and

12 (4) in subsection (d), by inserting after the pe-
 13 riod at the end of the first sentence the following:
 14 “The lender shall provide the HUD-issued booklet in
 15 the version that is most appropriate for the person
 16 receiving it.”.

17 **SEC. 219. OPTION FOR NOTICE OF FORECLOSURE PREVEN-**
 18 **TION COUNSELING AVAILABILITY.**

19 Section 4 of the Real Estate Settlement Procedures
 20 Act of 1974 (12 U.S.C. 2603) is amended by adding at
 21 the end the following new subsection:

22 “(c) **OPTION FOR NOTICE OF FORECLOSURE PRE-**
 23 **VENTION COUNSELING AVAILABILITY.—**

24 “(1) **OPTION.—**In connection with any federally
 25 related mortgage loan, the mortgagee shall provide

1 the borrower, at the time of the execution of the
2 mortgage, an optional written agreement that, if
3 signed by the borrower, allows, but does not require,
4 the mortgagee to provide the notice described in
5 paragraph (2) to a homeownership counseling entity
6 that has agreed to provide the notice and counseling
7 required under paragraph (3) and is approved by the
8 Secretary.

9 “(2) NOTICE TO COUNSELING AGENCY.—The
10 notice described in this paragraph, with respect to
11 any federally related mortgage loan, is notice, pro-
12 vided at the earliest time practicable after the bor-
13 rower becomes 60 days delinquent with respect to
14 any payment due under the mortgage, that the bor-
15 rower is so delinquent and of how to contact the bor-
16 rower. Such notice may only be provided once with
17 respect to each delinquency period for a mortgage.

18 “(3) NOTICE TO MORTGAGOR.—Upon notice
19 from a mortgagee that a borrower is 60 days delin-
20 quent with respect to payments due under the mort-
21 gage, the homeownership counseling entity shall at
22 the earliest time practicable notify the borrower of
23 such delinquency, that the entity makes available
24 foreclosure-prevention counseling that may assist the

1 mortgagor in resolving the delinquency, and of how
2 to contact the entity to arrange for such counseling.

3 “(4) ABILITY TO CURE.—Failure to provide the
4 optional written agreement required under para-
5 graph (1) may be corrected by sending such agree-
6 ment to the borrower not later than the earliest time
7 practicable after the mortgagor first becomes 60
8 days delinquent with respect to payments due under
9 the mortgage. Mortgage insurance, if any, provided
10 in connection with such federally related mortgage
11 loan may not be terminated and penalties for such
12 failure may not be prospectively or retroactively im-
13 posed if such failure is corrected in accordance with
14 this paragraph.

15 “(5) PENALTIES FOR FAILURE TO PROVIDE
16 AGREEMENT.—The Secretary may establish and im-
17 pose appropriate penalties for failure of a mortgagee
18 to provide the optional written agreement required
19 under paragraph (1).

20 “(6) LIMITATION ON LIABILITY OF MORT-
21 GAGEE.—A mortgagee shall not incur any liability or
22 penalties for any failure of a homeownership coun-
23 seling entity to provide notice under paragraph (3).

1 “(7) NO PRIVATE RIGHT OF ACTION.—This
2 subsection shall not create any private right of ac-
3 tion on behalf of the borrower.

4 “(8) DEFINITIONS.—For purposes of this sub-
5 section, the following definitions shall apply:

6 “(A) DELINQUENCY PERIOD.—The term
7 ‘delinquency period’ means, with respect to a
8 mortgage, a period that begins upon the bor-
9 rower becoming delinquent with respect to pay-
10 ments due under the mortgage and ends upon
11 the first subsequent occurrence of such pay-
12 ments under the mortgage becoming current or
13 the property subject to the mortgage being fore-
14 closed or otherwise disposed of.

15 “(B) HOMEOWNERSHIP COUNSELING ENTI-
16 TY.—The term ‘homeownership counseling enti-
17 ty’ means any State, unit of general local gov-
18 ernment, or nonprofit organization that pro-
19 vides homeownership counseling (as defined in
20 section 106(h)(1)(B) of the Housing and Urban
21 Development Act of 1968).”.

1 **TITLE III—MORTGAGE**
2 **SERVICING**

3 **SEC. 301. ESCROW AND IMPOUND ACCOUNTS RELATING TO**
4 **CERTAIN CONSUMER CREDIT TRANS-**
5 **ACTIONS.**

6 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
7 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
8 after section 129A (as added by section 108 of this Act)
9 the following new section:

10 **“SEC. 129B. ESCROW OR IMPOUND ACCOUNTS RELATING**
11 **TO CERTAIN CONSUMER CREDIT TRANS-**
12 **ACTIONS.**

13 “(a) IN GENERAL.—Except as provided in subsection
14 (b) or (c), a creditor, in connection with the formation or
15 consummation of a consumer credit transaction secured
16 by the principal dwelling of the consumer, shall establish,
17 at the time of the consummation of such transaction, an
18 escrow or impound account for the payment of taxes and
19 hazard insurance as provided in, and in accordance with,
20 this section.

21 “(b) WHEN REQUIRED.—No impound, trust, or other
22 type of account for payment of taxes on the property, in-
23 surance premiums, or other purposes relating to the prop-
24 erty may be required as a condition of a real property sale
25 contract or a loan secured by a deed of trust or mortgage

1 on real property containing only a single-family, owner-
2 occupied dwelling, except when—

3 “(1) any such impound, trust, or other type of
4 escrow or impound account for such purposes is re-
5 quired by Federal or State law;

6 “(2) a loan is made, guaranteed, or insured by
7 a State or Federal governmental lending or insuring
8 agency;

9 “(3) the consumer’s debt-to-income ratio taking
10 into account income from all sources including the
11 consumer’s employment exceeds 45 percent;

12 “(4) a consumer obtains a higher-cost mort-
13 gage;

14 “(5) the original principal amount of such loan
15 is—

16 “(A) 90 percent or more of the sale price,
17 if the property involved is sold; or

18 “(B) 90 percent or more of the appraised
19 value of the property securing the loan;

20 “(6) the combined principal amount of all loans
21 secured by the real property exceeds 95 percent of
22 the appraised value of the property securing the
23 loans; or

24 “(7) so required by the Board pursuant to reg-
25 ulation.

1 “(c) DURATION OF ESCROW OR IMPOUND AC-
2 COUNT.—An escrow or impound account established pur-
3 suant to this section, shall remain in existence for a min-
4 imum period of 5 years, unless the underlying mortgage
5 is terminated.

6 “(d) ADMINISTRATION OF ESCROW OR IMPOUND AC-
7 COUNTS.—

8 “(1) IN GENERAL.—Except as may otherwise
9 be provided for in this title or in regulations pre-
10 scribed by the Board, escrow or impound accounts
11 established pursuant to this section may be estab-
12 lished in an insured depository institution in the
13 State where the creditor, or servicer, if not the cred-
14 itor, is located.

15 “(2) ADMINISTRATION.—Except as provided in
16 this section or regulations prescribed under this sec-
17 tion, an escrow or impound account subject to this
18 section shall be administered in accordance with—

19 “(A) the Real Estate Settlement Proce-
20 dures Act of 1974 and regulations prescribed
21 under such Act; and

22 “(B) the law of the State where the real
23 property securing the consumer credit trans-
24 action is located.

1 “(3) PAYMENT OF INTEREST.—Each creditor
2 shall pay interest to the consumer on the amount
3 held in any impound, trust, or escrow account that
4 is subject to this section in the manner as prescribed
5 by applicable Federal or State law.

6 “(e) DISCLOSURES RELATING TO ESCROW OR IM-
7 POUND ACCOUNT.—

8 “(1) IN GENERAL.—In the case of any im-
9 pound, trust, or escrow account that is subject to
10 this section, the creditor shall disclose by written no-
11 tice to the consumer within 3 business days before
12 the consummation of the consumer credit trans-
13 action giving rise to such account the following in-
14 formation:

15 “(A) The fact that an escrow or impound
16 account will be established at consummation of
17 the transaction.

18 “(B) The amount required at closing to
19 initially fund the escrow or impound account.

20 “(C) The amount in the initial year of the
21 estimated taxes and hazard insurance pre-
22 miums.

23 “(D) The estimated monthly amount pay-
24 able for taxes and hazard insurance.

1 “(E) The fact that if the consumer chooses
2 to terminate the account after 5 years, the con-
3 sumer will become responsible for the payment
4 of all taxes and hazard insurance on the prop-
5 erty unless a new escrow or impound account is
6 established.

7 “(2) REGULATIONS.—The Board shall prescribe
8 by regulation the contents of the notice required in
9 paragraph (1) no later than 90 days after the date
10 of the enactment of the Responsible Lending Act.

11 “(f) HAZARD INSURANCE DEFINED.—For purposes
12 of this section, the term ‘hazard insurance’ shall have the
13 same meaning as provided under the law of the State
14 where the real property securing the consumer credit
15 transaction is located.

16 “(g) EXCLUSIONS.—

17 “(1) NOT INCLUDED IN POINTS AND FEES.—
18 Amounts paid for escrow, trust, or impound ac-
19 counts in accordance with this section shall not be
20 treated as points or fees under section 103(aa).

21 “(2) EXCLUSIONS BY BOARD.—The Board may
22 exclude, by regulation, any category or type of loan
23 from the requirements of this section.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for chapter 2 of the Truth in Lending Act is amended

1 by inserting after the item relating to section 129 the fol-
 2 lowing new item:

“129B. Escrow or impound accounts relating to certain consumer credit trans-
 actions.”.

3 **SEC. 302. DISCLOSURE NOTICE REQUIRED FOR CON-**
 4 **SUMERS WHO OPT OUT OF ESCROW SERV-**
 5 **ICES.**

6 Section 129B of the Truth in Lending Act (as added
 7 by section 301 of this title) is amended by adding at the
 8 end the following new subsection:

9 “(h) DISCLOSURE NOTICE REQUIRED FOR CON-
 10 SUMERS WHO OPT OUT OF ESCROW SERVICES.—

11 “(1) IN GENERAL.—If an impound, trust, or
 12 other type of account for the payment of property
 13 taxes, insurance premiums, or other purposes relat-
 14 ing to property securing a consumer credit trans-
 15 action is not established in connection with the
 16 transaction, or if a consumer chooses, at any time
 17 after such an account is established in connection
 18 with any such transaction, to close such account, the
 19 creditor shall provide a timely and clearly written
 20 disclosure to the consumer that advises the con-
 21 sumer of the responsibilities of the consumer and
 22 implications for the consumer in the absence of any
 23 such account, including—

1 “(A) information concerning any applicable
2 fees associated with either the nonestablishment
3 of any such account at the time of the trans-
4 action, or any subsequent closure of any such
5 account;

6 “(B) clear and prominent notice that the
7 consumer is responsible for personally and di-
8 rectly paying the non-escrowed items, in addi-
9 tion to paying the mortgage loan payment, in
10 the absence of any such account; and

11 “(C) a clear explanation of the con-
12 sequences of any failure to pay non-escrowed
13 items, including the possible requirement for di-
14 rect placement of insurance by the creditor and
15 the potentially higher cost (including any poten-
16 tial commission payments to the servicer) or re-
17 duced coverage for the consumer in the event of
18 any such creditor-placed insurance.

19 “(2) REGULATIONS.—The Board shall prescribe
20 such regulations as are necessary to implement the
21 requirements of this subsection in final form before
22 the end of the 12-month period beginning on the
23 date of the enactment of the Responsible Lending
24 Act.”.

1 **SEC. 303. MORTGAGE SERVICING CLARIFICATION.**

2 (a) IN GENERAL.—The Fair Debt Collection Prac-
3 tices Act (15 U.S.C. 1692 et seq.) is amended—

4 (1) by redesignating section 818 as section 819;

5 and

6 (2) by inserting after section 817 the following

7 new section:

8 **“§ 818. Mortgage servicer exemption**

9 “(a) EXEMPTION.—A covered mortgage servicer who,
10 whether by assignment, sale or transfer, becomes the per-
11 son responsible for servicing federally related mortgage
12 loans secured by first liens that include loans that were
13 in default at the time such person became responsible for
14 the servicing of such federally related mortgage loans shall
15 be exempt from the requirements of section 807(11) in
16 connection with the collection of any debt arising from
17 such defaulted federally related mortgage loans.

18 “(b) DEFINITIONS.—For purposes of this section, the
19 following definitions shall apply:

20 “(1) COVERED MORTGAGE SERVICER.—The
21 term ‘covered mortgage servicer’ means any servicer
22 of federally related mortgage loans secured by first
23 liens—

24 “(A) who is also a debt collector; and

25 “(B) for whom the collection of delinquent
26 debts is incidental to the servicer’s primary

1 function of servicing current federally related
2 mortgage loans.

3 “(2) FEDERALLY RELATED MORTGAGE LOAN.—

4 The term ‘federally related mortgage loan’ has the
5 meaning given to such term in section 3(1) of the
6 Real Estate Settlement Procedures Act of 1974, ex-
7 cept that, for purposes of this section, such term in-
8 cludes only loans secured by first liens.

9 “(3) PERSON.—The term ‘person’ has the
10 meaning given to such term in section 3(5) of the
11 Real Estate Settlement Procedures Act of 1974.

12 “(4) SERVICER; SERVICING.—The terms
13 ‘servicer’ and ‘servicing’ have the meanings given to
14 such terms in section 6(i) of the Real Estate Settle-
15 ment Procedures Act of 1974.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 for the Fair Debt Collection Practices Act (15 U.S.C.
18 1692 et seq.) is amended—

19 (1) by redesignating the item relating to section
20 818 as section 819; and

21 (2) by inserting after the item relating to sec-
22 tion 817 the following new item:

“818. Mortgage servicer exemption.”.

1 **SEC. 304. REAL ESTATE SETTLEMENT PROCEDURES ACT OF**
2 **1974 AMENDMENTS.**

3 (a) **SERVICER PROHIBITIONS.**—Section 6 of the Real
4 Estate Settlement Procedures Act of 1974 (12 U.S.C.
5 2605) is amended by adding at the end the following new
6 subsection:

7 “(k) **SERVICER PROHIBITIONS.**—A servicer of a fed-
8 erally related mortgage shall not—

9 “(1) force place insurance unless there is a rea-
10 sonable basis to believe the borrower has failed to
11 comply with the loan contract’s requirements to
12 maintain property insurance;

13 “(2) charge fees for responding to valid quali-
14 fied written requests under this section;

15 “(3) fail to take timely action to respond to a
16 borrower’s requests to correct errors relating to allo-
17 cation of payments, final balances for purposes of
18 paying off the loan, or avoiding foreclosure, or other
19 standard servicer’s duties;

20 “(4) fail to respond within 10 business days to
21 a request from a borrower to provide the identity,
22 address and other relevant information about the
23 owner assignee of the loan; or

24 “(5) fail to comply with any other obligation
25 found by the Secretary to be appropriate to carry
26 out the consumer protection purposes of this Act.”.

1 (b) INCREASE IN PENALTY AMOUNTS.—Section 6(f)
2 of the Real Estate Settlement Procedures Act of 1974 (12
3 U.S.C. 2605(f)) is amended—

4 (1) in paragraphs (1)(B) and (2)(B), by strik-
5 ing “\$1,000” each place such term appears and in-
6 serting “\$2,000”; and

7 (2) in paragraph (2)(B)(i), by striking
8 “\$500,000” and inserting “\$1,000,000”.

9 (c) DECREASE IN RESPONSE TIMES.—Section 6(e) of
10 the Real Estate Settlement Procedures Act of 1974 (12
11 U.S.C. 2605(e)) is amended—

12 (1) in paragraph (1)(A), by striking “20 days”
13 and inserting “15 days”;

14 (2) in paragraph (2), by striking “60 days” and
15 inserting “30 days”; and

16 (3) by adding at the end the following new
17 paragraph:

18 “(4) LIMITED EXTENSION OF RESPONSE
19 TIME.—The 30-day period described in paragraph
20 (2) may be extended for not more than 30 days if,
21 before the end of such 30-day period, the servicer
22 notifies the borrower of the extension and the rea-
23 sons for the delay in responding.”.

24 (d) REQUESTS FOR PAY-OFF AMOUNTS.—Section
25 6(e) of the Real Estate Settlement Procedures Act of 1974

1 (12 U.S.C. 2605(e)) is amended by inserting after para-
2 graph (4) (as added by subsection (c) of this section) the
3 following new paragraph:

4 “(5) REQUESTS FOR PAY-OFF AMOUNTS.—A
5 creditor or servicer shall send a payoff balance with-
6 in 7 business days of receipt of a written request for
7 such balance from or on behalf of the borrower by
8 first-class mail.”.

9 (e) PROMPT REFUND OF ESCROW ACCOUNTS UPON
10 PAYOFF.—Section 6(g) of the Real Estate Settlement
11 Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended
12 by adding at the end the following new sentence: “Any
13 balance in any such account at the time the loan is paid
14 off shall be promptly returned to the borrower.”.

15 **SEC. 305. MORTGAGE SERVICING STUDIES REQUIRED.**

16 (a) MORTGAGE SERVICING FRAUD.—

17 (1) STUDY.—The Secretary of Housing and
18 Urban Development, in consultation with the Board
19 of Governors of the Federal Reserve System and the
20 Federal Trade Commission, shall conduct a com-
21 prehensive study on mortgage servicing fraud.

22 (2) ISSUES TO BE INCLUDED.—In addition to
23 other issues the Secretary, Board, and Commission
24 may determine to be appropriate and possibly perti-

1 ment to the study conducted under paragraph (1),
2 the study shall include the following issues:

3 (A) A survey of the industry in order to
4 examine the issue of the timely posting of pay-
5 ments by servicers.

6 (B) The use of force placed insurance.

7 (C) The employment of daily interest when
8 payments are made after a due date.

9 (D) The charging of late fees on the entire
10 outstanding principal.

11 (E) The charging of interest on servicing
12 fees.

13 (F) The utilization of abusive collection
14 practices.

15 (G) The charging of prepayment penalties
16 when not authorized by either the note or law.

17 (H) The employment of unconscionable
18 forbearance agreements.

19 (I) Foreclosure abuses.

20 (3) REPORT.—Before the end of the 18-month
21 period beginning on the date of the enactment of
22 this Act, the Secretary of Housing and Urban Devel-
23 opment shall submit a report on the study conducted
24 under this subsection to the Committee on Financial
25 Services of the House of Representatives and the

1 Committee on Banking, Housing, and Urban Affairs
2 of the Senate.

3 (b) MORTGAGE SERVICING IMPROVEMENTS.—

4 (1) STUDY.—The Secretary of Housing and
5 Urban Development, in consultation with the Board
6 of Governors of the Federal Reserve System and the
7 Federal Trade Commission, shall conduct a com-
8 prehensive study on means to improve the best prac-
9 tices of the mortgage servicing industry, and Federal
10 and State laws governing such industry.

11 (2) REPORT.—Before the end of the 24-month
12 period beginning on the date of the enactment of
13 this Act, the Secretary of Housing and Urban Devel-
14 opment shall submit a report on the study conducted
15 under this subsection to the Committee on Financial
16 Services of the House of Representatives and the
17 Committee on Banking, Housing, and Urban Affairs
18 of the Senate, together with such recommendations
19 for administrative or legislative action as the Sec-
20 retary, in consultation with the Board and the Com-
21 mission, may determine to be appropriate.

1 **TITLE IV—APPRAISAL**
2 **ACTIVITIES**

3 **SEC. 401. PROPERTY APPRAISAL REQUIREMENTS.**

4 Section 129 of the Truth in Lending Act (15 U.S.C.
5 1639) is amended by inserting after subsection (y) (as
6 added by section 201 of this Act) the following new sub-
7 section:

8 “(z) PROPERTY APPRAISAL REQUIREMENTS.—

9 “(1) IN GENERAL.—A creditor may not extend
10 credit in the form of a higher-cost mortgage to any
11 consumer without first obtaining a written appraisal
12 of the property to be mortgaged prepared in accord-
13 ance with the requirements of this subsection.

14 “(2) APPRAISAL REQUIREMENTS.—

15 “(A) PHYSICAL INSPECTION.—An ap-
16 praisal of property to be secured by a higher-
17 cost mortgage does not meet the requirement of
18 this subsection unless it is performed by a
19 qualified appraiser who conducts a physical in-
20 spection of the mortgaged property.

21 “(B) SECOND APPRAISAL UNDER CERTAIN
22 CIRCUMSTANCES.—

23 “(i) IN GENERAL.—If the purpose of
24 the higher-cost mortgage is to finance the
25 purchase or acquisition of the mortgaged

1 property from a person within 180 days of
2 the purchase or acquisition of such prop-
3 erty by that person at a price that was
4 lower than the current sale price of the
5 property, the creditor shall obtain a second
6 appraisal from a second qualified appraiser
7 that supports the current sale price of the
8 property.

9 “(ii) NO COST TO CONSUMER.—The
10 cost of any second appraisal required
11 under clause (i) may not be charged to the
12 consumer.

13 “(C) QUALIFIED APPRAISER DEFINED.—
14 For purposes of this subsection, the term
15 ‘qualified appraiser’ means a person who—

16 “(i) is certified or licensed by the
17 State in which property to be appraised is
18 located; and

19 “(ii) performs each appraisal in con-
20 formity with the Uniform Standards of
21 Professional Appraisal Practice and Title
22 XI of the Financial Institutions Reform,
23 Recovery, and Enforcement Act of 1989,
24 and the regulations prescribed under such

1 title, as in effect on the date of the ap-
2 praisal.

3 “(3) FREE COPY OF APPRAISAL.—A creditor
4 shall provide 1 copy of each appraisal conducted in
5 accordance with this subsection in connection with a
6 higher-cost mortgage to the consumer without
7 charge.

8 “(4) VIOLATIONS.—In addition to any other li-
9 ability to any person under this title, a creditor
10 found to have willfully failed to obtain an appraisal
11 as required in this subsection shall be liable to the
12 consumer for the sum of \$2,000.”

13 **SEC. 402. AMENDMENTS RELATING TO APPRAISAL SUB-**
14 **COMMITTEE OF FIEC, APPRAISER INDEPEND-**
15 **ENCE, AND APPROVED APPRAISER EDU-**
16 **CATION.**

17 (a) ANNUAL REPORT OF APPRAISAL SUB-
18 COMMITTEE.—Section 1103(a)(4) of Financial Institu-
19 tions Reform, Recovery, and Enforcement Act of 1989 (12
20 U.S.C. 3332(a)(4)) is amended by inserting “in detail the
21 activities of the Appraisal Subcommittee and” after
22 “which describes”.

23 (b) OPEN MEETINGS.—Section 1104(b) of the Fi-
24 nancial Institutions Reform, Recovery, and Enforcement
25 Act of 1989 (12 U.S.C. 3333(b)) is amended by inserting

1 “in public session after notice to the general public” after
2 “shall meet”.

3 (c) REGULATIONS.—Section 1106 of the Financial
4 Institutions Reform, Recovery, and Enforcement Act of
5 1989 (12 U.S.C. 3335) is amended by inserting “prescribe
6 regulations after notice and opportunity for comment,”
7 after “hold hearings”.

8 (d) CRITERIA.—Section 1116 of the Financial Insti-
9 tutions Reform, Recovery, and Enforcement Act of 1989
10 (12 U.S.C. 3345) is amended—

11 (1) in subsection (c), by inserting “whose cri-
12 teria for the licensing of a real estate appraiser cur-
13 rently meet or exceed the minimum criteria issued
14 by the Appraiser Qualifications Board of The Ap-
15 praiser Foundation for the licensing of real estate
16 appraisers” before the period at the end; and

17 (2) by striking subsection (e).

18 (e) TEMPORARY PRACTICE.—Section 1122(a)(1) of
19 the Financial Institutions Reform, Recovery, and Enforce-
20 ment Act of 1989 (12 U.S.C. 3351(a)(1)) is amended—

21 (1) by striking subparagraph (A);

22 (2) by redesignating subparagraphs (B) and
23 (C) as subparagraphs (A) and (B), respectively; and

24 (3) by moving the left margin of such subpara-
25 graphs 2 ems to the right.

1 (f) RECIPROCITY.—Subsection (b) of section 1122 of
2 the Financial Institutions Reform, Recovery, and Enforce-
3 ment Act of 1989 (12 U.S.C. 3351(b)) is amended to read
4 as follows:

5 “(b) RECIPROCITY.—A State appraiser certifying or
6 licensing agency shall issue a reciprocal certification or li-
7 cense for an individual from another State when—

8 “(1) the appraiser licensing and certification
9 program of such other State is in compliance with
10 the provisions of this title; and

11 “(2) the appraiser holds a valid certification
12 from a State whose requirements for certification or
13 licensing meet the requirements for certification and
14 licensing as established by the Appraiser Qualifica-
15 tions Board of The Appraisal Foundation.”.

16 (g) CONSIDERATION OF PROFESSIONAL APPRAISAL
17 DESIGNATIONS.—Section 1122(d) of the Financial Insti-
18 tutions Reform, Recovery, and Enforcement Act of 1989
19 (12 U.S.C. 3351(d)) is amended by adding at the end the
20 following new sentence: “Consideration may be given for
21 professional appraisal designations conferred by spon-
22 soring organizations of The Appraisal Foundation as an
23 indication of proficiency in addition to the criteria estab-
24 lished by certification or licensing.”.

1 (h) APPRAISER INDEPENDENCE.—Section 1122 of
2 the Financial Institutions Reform, Recovery, and Enforce-
3 ment Act of 1989 (12 U.S.C. 3351) is amended by adding
4 at the end the following new subsection:

5 “(g) APPRAISER INDEPENDENCE.—

6 “(1) IN GENERAL.—No mortgage lender, mort-
7 gage broker or mortgage banker, real estate broker,
8 nor any other person with an interest in a real es-
9 tate transaction involving an appraisal shall improper-
10 ly influence or attempt to improperly influence,
11 through coercion, extortion, or bribery, the develop-
12 ment, reporting, result, or review of a real estate ap-
13 praisal sought in connection with a mortgage loan.

14 “(2) EXCEPTIONS.—The requirements of para-
15 graph (1) shall not be construed as prohibiting a
16 mortgage lender, mortgage broker, mortgage banker,
17 real estate broker, or any other person with an inter-
18 est in a real estate transaction from asking an ap-
19 praiser to provide 1 or more of the following serv-
20 ices:

21 “(A) Consider additional, appropriate
22 property information.

23 “(B) Provide further detail, substantiation,
24 or explanation for the appraiser’s value conclu-
25 sion.

1 “(C) Correct errors in the appraisal re-
2 port.”.

3 (i) APPRAISER EDUCATION.—Section 1122 of the Fi-
4 nancial Institutions Reform, Recovery, and Enforcement
5 Act of 1989 (12 U.S.C. 3351) is amended by inserting
6 after subsection (g) (as added by subsection (h) of this
7 section) the following new subsection:

8 “(h) APPROVED EDUCATION.—A State certifying or
9 licensing agency shall accept courses and seminars ap-
10 proved by the Appraiser Qualification Board’s Course Ap-
11 proval Program.”.

12 **SEC. 403. STUDY REQUIRED ON IMPROVEMENTS IN AP-**
13 **PRAISAL PROCESS AND COMPLIANCE PRO-**
14 **GRAMS.**

15 (a) STUDY.—The Comptroller General shall conduct
16 a comprehensive study on possible improvements in the
17 appraisal process generally, and specifically on the consist-
18 ency in and the effectiveness of, and possible improve-
19 ments in, State compliance efforts and programs in ac-
20 cordance with title XI of Financial Institutions Reform,
21 Recovery, and Enforcement Act of 1989.

22 (b) REPORT.—Before the end of the 18-month period
23 beginning on the date of the enactment of this Act, the
24 Comptroller General shall submit a report on the study
25 under subsection (a) to the Committee on Financial Serv-

1 ices of the House of Representatives and the Committee
2 on Banking, Housing, and Urban Affairs of the Senate,
3 together with such recommendations for administrative or
4 legislative action, at the Federal or State level, as the
5 Comptroller General may determine to be appropriate.

6 **TITLE V—REQUIREMENTS FOR**
7 **MORTGAGE BROKERS**
8 **Subtitle A—Licensing and**
9 **Minimum Standards**

10 **SEC. 501. STATE REGULATION OF MORTGAGE BROKERS.**

11 (a) IN GENERAL.—The Federal mortgage broker re-
12 quirements established pursuant to this title shall apply
13 only with respect to States that, upon the expiration of
14 the 3-year period beginning on the date of the enactment
15 of this Act, have not enacted and do not have in effect
16 uniform State laws and regulations described in subsection
17 (b).

18 (b) UNIFORM STATE LAWS.—

19 (1) IN GENERAL.—Laws and regulations de-
20 scribed in this subsection are laws and regulations
21 that—

22 (A) require licensing for mortgage brokers;

23 (B) require, as a condition of the issuance
24 of a license, that an applicant submit a written
25 application for a license;

1 (C) require, as a condition of the issuance
2 of a license, that an applicant complete at least
3 24 hours of education on primary and subordi-
4 nate mortgage financing and pass a written ex-
5 amination upon the completion of such training;

6 (D) require a criminal background check
7 to be performed on the applicant;

8 (E) establish minimum testing standards
9 for mortgage brokers;

10 (F) require continuing education of mort-
11 gage brokers, including at least 12 hours of
12 education on a biennial basis, a minimum of 2
13 hours of which shall address ethics education;

14 (G) require the public agency or official in
15 the State that is responsible for the licensing of
16 mortgage brokers to provide, directly or other-
17 wise to the national mortgage database estab-
18 lished under subtitle B, such information as
19 may be necessary to ensure that such database
20 is effective for the purposes for which it is es-
21 tablished; and

22 (H) comply with such standards regarding
23 uniformity of information submitted to the na-
24 tional database of mortgage brokers established
25 under subtitle B as the Secretary of Housing

1 and Urban Development considers necessary to
2 facilitate the operation of the database.

3 (2) EXEMPTIONS.—For purposes of this sub-
4 section, the term “mortgage broker” has the mean-
5 ing provided in section 503(3), except that the laws
6 and regulations of a State shall exempt from treat-
7 ment as mortgage brokers the following persons:

8 (A) Any bank, savings bank, savings and
9 loan association, or credit union organized
10 under the laws of a State or the United States,
11 or a subsidiary or affiliate of a bank, savings
12 bank, savings and loan association, or credit
13 union.

14 (B) Any budget or debt counseling service,
15 as defined by the Secretary, that is a nonprofit
16 organization exempt from taxation under sec-
17 tion 501(c)(3) of the Internal Revenue Code of
18 1986 (26 U.S.C. 501(c)(3)).

19 (C) Any consumer reporting agency that is
20 in substantial compliance with the Fair Credit
21 Reporting Act (15 U.S.C. 1681 et seq.).

22 (D) Any political subdivision, or any gov-
23 ernmental or other public entity, corporation, or
24 agency, in or of the United States or any State.

1 (E) Any college or university, or entity
2 that is controlled by a college or university, as
3 determined by the Secretary.

4 (F) Any person who—

5 (i) makes, services, buys, or sells
6 mortgage loans;

7 (ii) underwrites the loans; and

8 (iii)(I) has been approved by the Sec-
9 retary of Housing and Urban Development
10 as a nonsupervised mortgagee with partici-
11 pation in the direct endorsement program,
12 but not including a mortgagee approved as
13 a loan correspondent;

14 (II) has been approved by the Federal
15 National Mortgage Association as a seller
16 or servicer;

17 (III) has been approved by the Fed-
18 eral Home Loan Mortgage Corporation as
19 a seller or servicer;

20 (IV) has been approved by the Sec-
21 retary of Veterans Affairs as a nonsuper-
22 vised automatic lender, but not including a
23 person approved by the Secretary as a non-
24 supervised lender, an agent of a nonsuper-

1 vised automatic lender, or an agent of a
2 nonsupervised lender; or

3 (V) is a creditor (as defined in section
4 103(f) of the Truth in Lending Act) who
5 makes or invests in residential real estate
6 loans aggregating more than \$1,000,000
7 per year, and irrespective of whether such
8 creditor is licensed or supervised by an
9 agency of a State.

10 (G) Any person created solely for the pur-
11 pose of packaging and selling, as a unit of sale
12 as investment securities, mortgage loans that
13 are secured by an interest in real estate, if the
14 person does not service the loans.

15 (H) Any officer or employee of any of the
16 persons described in a preceding subparagraph
17 of this paragraph while such officer or employee
18 is acting within the the scope of the office or
19 employment.

20 (c) DETERMINATION.—

21 (1) HUD DETERMINATION.—At the end of the
22 3-year period beginning on the date of the enact-
23 ment of this Act, the Secretary of Housing and
24 Urban Development shall determine, in consultation
25 with the Federal banking agencies (as defined in

1 section 3 of the Federal Deposit Insurance Act) and
2 the National Credit Union Administration, whether
3 the uniformity necessary to comply with subsection
4 (a) has been achieved.

5 (2) JUDICIAL REVIEW.—The appropriate
6 United States district court shall have exclusive ju-
7 risdiction over any challenge to the determination
8 pursuant to paragraph (1) and such court shall
9 apply the standards set forth in section 706 of title
10 5, United States Code, when reviewing any such
11 challenge.

12 (d) CONTINUED APPLICATION.—If, at any time, the
13 Secretary determines that a State no longer has in effect
14 laws and regulations described in subsection (a) or the
15 uniformity necessary to comply with subsection (a) no
16 longer exists with respect to a State, the Federal mortgage
17 broker requirements shall take effect with respect to such
18 State 2 years after the date on which such determination
19 was made, unless the State has in effect such laws or regu-
20 lations, or the uniformity necessary to comply with sub-
21 section (a) is satisfied, before the expiration of such 2-
22 year period.

23 (e) MONITORING.—The Secretary shall monitor the
24 laws and regulations of the States governing the matters

1 referred to in subsection (a) for purposes of making deter-
2 minations under subsection (d).

3 **SEC. 502. FEDERAL MORTGAGE BROKER REQUIREMENTS.**

4 (a) IN GENERAL.—Not later than 3 years after the
5 date of the enactment of this Act, the Secretary of Hous-
6 ing and Urban Development shall, by regulation and in
7 consultation with the Federal banking agencies (as defined
8 in section 3 of the Federal Deposit Insurance Act) and
9 the National Credit Union Administration, establish Fed-
10 eral mortgage broker requirements under this section that
11 meet the requirements established in section 501(b)(1).

12 (b) RULEMAKING.—The regulations required under
13 subsection (a) shall be issued after notice and opportunity
14 for public comment pursuant to the provisions of section
15 553 of title 5, United States Code (notwithstanding sub-
16 sections (a)(2), (b)(B), and (d)(3) of such section).

17 **SEC. 503. DEFINITIONS.**

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

20 (1) BUYER.—The term “buyer” means an indi-
21 vidual who is solicited to purchase, or who pur-
22 chases, the services of a mortgage broker for pur-
23 poses other than obtaining a business loan.

1 (2) MORTGAGE.—The term “mortgage” means
2 any indebtedness secured by a deed of trust, security
3 deed, or other lien on real property.

4 (3) MORTGAGE BROKER.—The term “mortgage
5 broker” means a person who engages for compensa-
6 tion, either directly or indirectly, in the acceptance
7 of applications for mortgage loans for others, solici-
8 tation of mortgage loans on behalf of borrowers, or
9 negotiation of terms or conditions of loans on behalf
10 of borrowers or lenders.

11 (4) SECRETARY.—The term “Secretary” means
12 the Secretary of Housing and Urban Development.

13 **Subtitle B—Database of Licensed**
14 **Mortgage Brokers**

15 **SEC. 511. ESTABLISHMENT.**

16 (a) IN GENERAL.—The Secretary of Housing and
17 Urban Development (hereafter in this subtitle referred to
18 as the “Secretary”) shall provide for the establishment
19 and maintenance of a national database of mortgage bro-
20 kers.

21 (b) ADMINISTRATION.—The Secretary shall either
22 maintain and administrate the database established under
23 this subtitle or enter into a contract with a private regu-
24 latory organization to maintain and administrate the data-
25 base. The Secretary shall consult with the American Asso-

1 ciation of Residential Mortgage Regulators, the Con-
2 ference of State Bank Supervisors, and other appropriate
3 organizations in determining the information to be main-
4 tained in the database and, if the Secretary provides for
5 any other organization to maintain and administrate the
6 database, in selecting such organization.

7 (c) COMPETITIVELY PROCURED CONTRACT.—If the
8 Secretary decides to select a private regulatory organiza-
9 tion to maintain and administrate the database, the Sec-
10 retary shall enter into any contract for administration of
11 the database using competitive procedures (as such term
12 is defined in section 4 of the Office of Federal Procure-
13 ment Policy Act).

14 (d) PERFORMANCE REVIEW.—The Secretary—

15 (1) shall periodically review the performance of
16 any organization serving as administrator of the
17 database; and

18 (2) may replace any such other organization
19 with another qualified organization, pursuant to
20 competitive procedures if the Secretary determines
21 in writing that the organization serving as adminis-
22 trator is not fulfilling the terms of the contract or
23 upon the expiration of the contract.

1 **SEC. 512. DATABASE.**

2 The national database of mortgage brokers main-
3 tained pursuant to this title shall—

4 (1) include a listing of each person licensed
5 under State law or regulation or under Federal
6 mortgage broker requirements under section 502 to
7 act as a mortgage broker;

8 (2) make available to the public information re-
9 garding complaints made, and final disciplinary and
10 enforcement actions taken, against each licensed
11 mortgage broker;

12 (3) make available to the Secretary of Housing
13 and Urban Development and to each public agency
14 or official in a State responsible for licensing or test-
15 ing under the laws or regulations referred to in sec-
16 tion 501(b) such information regarding mortgage
17 brokers as the Secretary, by regulation, considers
18 appropriate for the Secretary and such agencies and
19 officials to carry out their functions regarding regu-
20 lation, licensing, or testing of mortgage brokers, in-
21 cluding information regarding employment histories
22 and criminal backgrounds of mortgage brokers;

23 (4) make available to persons employing or
24 using the services of mortgage brokers such informa-
25 tion regarding mortgage brokers as the Secretary, by
26 regulation, considers appropriate; and

1 (5) provide for the maintenance of such other
2 information as the Secretary considers appropriate.

3 **SEC. 513. FEES.**

4 The Secretary may provide for the national database
5 of mortgage brokers to charge reasonable fees to cover
6 costs of maintaining and providing access to information
7 from the database to the extent such fees are not charged
8 to the general public.

9 **SEC. 514. CONFIDENTIALITY OF INFORMATION.**

10 (a) IN GENERAL.—

11 (1) DATABASE.—Except as otherwise provided
12 in this section, any requirement under Federal or
13 State law regarding the privacy or confidentiality of
14 any information or material in the possession of the
15 Secretary or any other organization serving as the
16 administrator of the database, and any privilege
17 arising under Federal or State law (including the
18 rules of any Federal or State court) with respect to
19 such information or material, shall continue to apply
20 to such information or material after the informa-
21 tion or material has been disclosed to the database.

22 (2) NONAPPLICABILITY OF CERTAIN REQUIRE-
23 MENTS.—Information or material that is subject to
24 a privilege or confidentiality under any other para-
25 graph of this subsection shall not be subject to—

1 (A) disclosure under any Federal or State
2 law governing the disclosure to the public of in-
3 formation held by an officer or an agency of the
4 Federal Government or the respective State; or

5 (B) subpoena or discovery, or admission
6 into evidence, in any private civil action or ad-
7 ministrative process,

8 unless with respect to any privilege held by the Sec-
9 retary with respect to such information or material,
10 the participant waives, in whole or in part, in the
11 discretion of the participant, such privilege.

12 (b) **PREEMPTION OF STATE LAW.**—Any State law,
13 including any State open record law, relating to the disclo-
14 sure of confidential supervisory information or any infor-
15 mation or material described in subsection (a) that is in-
16 consistent with subsection (a) shall be superseded by the
17 requirements of such provision to the extent State law pro-
18 vides less confidentiality or a weaker privilege.

19 **SEC. 515. LIABILITY PROVISIONS.**

20 (a) **NO LIABILITY FOR GOOD-FAITH DISCLO-**
21 **SURES.**—Any State official or agency, or employee thereof,
22 shall not be subject to any civil action or proceeding for
23 monetary damages by reason of the good-faith action or
24 omission of any officer or employee, while acting within
25 the scope of office or employment, relating to collecting,

1 furnishing, or disseminating of information concerning
2 persons who are mortgage brokers or are applying for li-
3 censing as mortgage brokers, whether directly or through
4 the national database established under this subtitle.

5 (b) CRIMINAL LIABILITY FOR INTENTIONAL UNLAW-
6 FUL DISCLOSURES.—

7 (1) IN GENERAL.—It shall be unlawful to will-
8 fully disclose to any person any information con-
9 cerning any person who is a mortgage broker or is
10 applying for licensing as a mortgage broker knowing
11 the disclosure to be in violation of any provision of
12 this title—

13 (A) requiring the confidentiality of such in-
14 formation; or

15 (B) establishing a privilege from disclosure
16 for such information that has not been waived
17 by the Secretary and the person who is a mort-
18 gage broker or is applying for licensing as a
19 mortgage broker.

20 (2) PENALTY.—Notwithstanding section 3571
21 of title 18, United States Code, any person who vio-
22 lates paragraph (1) shall be fined an amount not to
23 exceed the greater of \$100,000 or the amount of the
24 actual damages sustained by any person as a result

1 of such violation, or imprisoned not more than 5
2 years, or both.

3 (c) FULL, CONTINUED PROTECTION UNDER THE SO-
4 CALLED “FEDERAL TORT CLAIMS ACT”.—No provision
5 of this Act shall be construed as reducing or limiting any
6 protection provided for any Federal agency, or any officer
7 or employee of any Federal agency, under section 2679
8 of title 28, United States Code.

○