

110TH CONGRESS  
1ST SESSION

# H. R. 3915

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IN THE SENATE OF THE UNITED STATES

DECEMBER 3, 2007

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## AN ACT

To amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to establish licensing and registration requirements for residential mortgage originators, to provide certain minimum standards for consumer mortgage loans, 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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4        (a) **SHORT TITLE.**—This Act may be cited as the  
 5 “Mortgage Reform and Anti-Predatory Lending Act of  
 6 2007”.

7        (b) **TABLE OF CONTENTS.**—The table of contents for  
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION**

Subtitle A—Licensing System for Residential Mortgage Loan Originators

Sec. 101. Purposes and methods for establishing a mortgage licensing system  
 and registry.

Sec. 102. Definitions.

Sec. 103. License or registration required.

Sec. 104. State license and registration application and issuance.

Sec. 105. Standards for State license renewal.

Sec. 106. System of registration administration by Federal banking agencies.

Sec. 107. Secretary of Housing and Urban Development backup authority to  
 establish a loan originator licensing system.

Sec. 108. Backup authority to establish a nationwide mortgage licensing and  
 registry system.

Sec. 109. Fees.

Sec. 110. Background checks of loan originators.

Sec. 111. Confidentiality of information.

Sec. 112. Liability provisions.

Sec. 113. Enforcement under HUD backup licensing system.

Subtitle B—Residential Mortgage Loan Origination Standards

Sec. 121. Definitions.

Sec. 122. Residential mortgage loan origination.

Sec. 123. Prohibition on steering incentives.

Sec. 124. Liability.

Sec. 125. Regulations.

**TITLE II—MINIMUM STANDARDS FOR MORTGAGES**

Sec. 201. Ability to repay.

Sec. 202. Net tangible benefit for refinancing of residential mortgage loans.

Sec. 203. Safe harbor and rebuttable presumption.

Sec. 204. Liability.

Sec. 205. Defense to foreclosure.

Sec. 206. Additional standards and requirements.

- Sec. 207. Rule of construction.
- Sec. 208. Effect on State laws.
- Sec. 209. Regulations.
- Sec. 210. Amendments to civil liability provisions.
- Sec. 211. Lender rights in the context of borrower deception.
- Sec. 212. Six-month notice required before reset of hybrid adjustable rate mortgages.
- Sec. 213. Required disclosures.
- Sec. 214. Disclosures required in monthly statements for residential mortgage loans.
- Sec. 215. Authorization of appropriations.
- Sec. 216. Effective date.
- Sec. 217. Report by the GAO.

#### TITLE III—HIGH-COST MORTGAGES

- Sec. 301. Definitions relating to high-cost mortgages.
- Sec. 302. Amendments to existing requirements for certain mortgages.
- Sec. 303. Additional requirements for certain mortgages.
- Sec. 304. Amendment to provision governing correction of errors.
- Sec. 305. Regulations.
- Sec. 306. Effective date.

#### TITLE IV—OFFICE OF HOUSING COUNSELING

- Sec. 401. Short title.
- Sec. 402. Establishment of Office of Housing Counseling.
- Sec. 403. Counseling procedures.
- Sec. 404. Grants for housing counseling assistance.
- Sec. 405. Requirements to use HUD-certified counselors under HUD programs.
- Sec. 406. Study of defaults and foreclosures.
- Sec. 407. Definitions for counseling-related programs.
- Sec. 408. Updating and simplification of mortgage information booklet.

#### TITLE V—MORTGAGE DISCLOSURES UNDER REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

- Sec. 501. Universal mortgage disclosure in good faith estimate of settlement services costs.

#### TITLE VI—MORTGAGE SERVICING

- Sec. 601. Escrow and impound accounts relating to certain consumer credit transactions.
- Sec. 602. Disclosure notice required for consumers who waive escrow services.
- Sec. 603. Real Estate Settlement Procedures Act of 1974 amendments.
- Sec. 604. Mortgage servicing studies required.
- Sec. 605. Escrows included in repayment analysis.

#### TITLE VII—APPRAISAL ACTIVITIES

- Sec. 701. Property appraisal requirements.
- Sec. 702. Unfair and deceptive practices and acts relating to certain consumer credit transactions.
- Sec. 703. Appraisal subcommittee of FIEC, appraiser independence, and approved appraiser education.

Sec. 704. Study required on improvements in appraisal process and compliance programs.

Sec. 705. Consumer appraisal disclosure.

1           **TITLE I—RESIDENTIAL**  
 2           **MORTGAGE LOAN ORIGINATION**  
 3           **Subtitle A—Licensing System for**  
 4           **Residential Mortgage Loan**  
 5           **Originators**

6           **SEC. 101. PURPOSES AND METHODS FOR ESTABLISHING A**  
 7                           **MORTGAGE LICENSING SYSTEM AND REG-**  
 8                           **ISTRY.**

9           In order to increase uniformity, reduce regulatory  
 10 burden, enhance consumer protection, and reduce fraud,  
 11 the States, through the Conference of State Bank Super-  
 12 visors and the American Association of Residential Mort-  
 13 gage Regulators, are hereby encouraged to establish a Na-  
 14 tionwide Mortgage Licensing System and Registry for the  
 15 residential mortgage industry that accomplishes all of the  
 16 following objectives:

17                   (1) Provides uniform license applications and  
 18 reporting requirements for State-licensed loan origi-  
 19 nators.

20                   (2) Provides a comprehensive licensing and su-  
 21 pervisory database.

22                   (3) Aggregates and improves the flow of infor-  
 23 mation to and between regulators.

1           (4) Provides increased accountability and track-  
2           ing of loan originators.

3           (5) Streamlines the licensing process and re-  
4           duces the regulatory burden.

5           (6) Enhances consumer protections and sup-  
6           ports anti-fraud measures.

7           (7) Provides consumers with easily accessible  
8           information regarding the employment history of,  
9           and publicly adjudicated disciplinary and enforce-  
10          ment actions against, loan originators.

11 **SEC. 102. DEFINITIONS.**

12          For purposes of this subtitle, the following definitions  
13 shall apply:

14           (1) **FEDERAL BANKING AGENCIES.**—The term  
15           “Federal banking agencies” means the Board of  
16           Governors of the Federal Reserve System, the  
17           Comptroller of the Currency, the Director of the Of-  
18           fice of Thrift Supervision, the National Credit Union  
19           Administration, and the Federal Deposit Insurance  
20           Corporation.

21           (2) **DEPOSITORY INSTITUTION.**—The term “de-  
22           pository institution” has the same meaning as in  
23           section 3 of the Federal Deposit Insurance Act and  
24           includes any credit union.

25           (3) **LOAN ORIGINATOR.**—

1 (A) IN GENERAL.—The term “loan origi-  
2 nator”—

3 (i) means an individual who—

4 (I) takes a residential mortgage  
5 loan application;

6 (II) assists a consumer in obtain-  
7 ing or applying to obtain a residential  
8 mortgage loan; or

9 (III) offers or negotiates terms of  
10 a residential mortgage loan, for direct  
11 or indirect compensation or gain, or in  
12 the expectation of direct or indirect  
13 compensation or gain;

14 (ii) includes any individual who rep-  
15 resents to the public, through advertising  
16 or other means of communicating or pro-  
17 viding information (including the use of  
18 business cards, stationery, brochures,  
19 signs, rate lists, or other promotional  
20 items), that such individual can or will pro-  
21 vide or perform any of the activities de-  
22 scribed in clause (i);

23 (iii) does not include any individual  
24 who is not otherwise described in clause (i)  
25 or (ii) and who performs purely adminis-

1           trative or clerical tasks on behalf of a per-  
2           son who is described in any such clause.

3           (iv) does not include a person or enti-  
4           ty that only performs real estate brokerage  
5           activities and is licensed or registered in  
6           accordance with applicable State law, un-  
7           less the person or entity is compensated by  
8           a lender, a mortgage broker, or other loan  
9           originator or by any agent of such lender,  
10          mortgage broker, or other loan originator.

11          (B) OTHER DEFINITIONS RELATING TO  
12          LOAN ORIGINATOR.—For purposes of this sub-  
13          section, an individual “assists a consumer in  
14          obtaining or applying to obtain a residential  
15          mortgage loan” by, among other things, advis-  
16          ing on loan terms (including rates, fees, other  
17          costs), preparing loan packages, or collecting in-  
18          formation on behalf of the consumer with re-  
19          gard to a residential mortgage loan.

20          (C) ADMINISTRATIVE OR CLERICAL  
21          TASKS.—The term “administrative or clerical  
22          tasks” means the receipt, collection, and dis-  
23          tribution of information common for the proc-  
24          essing or underwriting of a loan in the mort-  
25          gage industry and communication with a con-

1           sumer to obtain information necessary for the  
2           processing or underwriting of a residential  
3           mortgage loan.

4           (D) REAL ESTATE BROKERAGE ACTIVITY  
5           DEFINED.—The term “real estate brokerage ac-  
6           tivity” means any activity that involves offering  
7           or providing real estate brokerage services to  
8           the public, including—

9                   (i) acting as a real estate agent or  
10                  real estate broker for a buyer, seller, les-  
11                  sor, or lessee of real property;

12                  (ii) listing or advertising real property  
13                  for sale, purchase, lease, rental, or ex-  
14                  change;

15                  (iii) providing advice in connection  
16                  with sale, purchase, lease, rental, or ex-  
17                  change of real property;

18                  (iv) bringing together parties inter-  
19                  ested in the sale, purchase, lease, rental, or  
20                  exchange of real property;

21                  (v) negotiating, on behalf of any  
22                  party, any portion of a contract relating to  
23                  the sale, purchase, lease, rental, or ex-  
24                  change of real property (other than in con-



1           nection with providing financing with re-  
2           spect to any such transaction);

3           (vi) engaging in any activity for which  
4           a person engaged in the activity is required  
5           to be registered or licensed as a real estate  
6           agent or real estate broker under any ap-  
7           plicable law; and

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

11          (4) LOAN PROCESSOR OR UNDERWRITER.—

12           (A) IN GENERAL.—The term “loan proc-  
13           essor or underwriter” means an individual who  
14           performs clerical or support duties at the direc-  
15           tion of and subject to the supervision and in-  
16           struction of—

17           (i) a State-licensed loan originator; or

18           (ii) a registered loan originator.

19           (B) CLERICAL OR SUPPORT DUTIES.—For  
20           purposes of subparagraph (A), the term “cler-  
21           ical or support duties” may include—

22           (i) the receipt, collection, distribution,  
23           and analysis of information common for  
24           the processing or underwriting of a resi-  
25           dential mortgage loan; and

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

8           (5) NATIONWIDE MORTGAGE LICENSING SYS-  
9           TEM AND REGISTRY.—The term “Nationwide Mort-  
10          gage Licensing System and Registry” means a mort-  
11          gage licensing system developed and maintained by  
12          the Conference of State Bank Supervisors and the  
13          American Association of Residential Mortgage Regu-  
14          lators for the State licensing and registration of  
15          State-licensed loan originators and the registration  
16          of registered loan originators or any system estab-  
17          lished by the Secretary under section 108.

18          (6) REGISTERED LOAN ORIGINATOR.—The term  
19          “registered loan originator” means any individual  
20          who—

21                (A) meets the definition of loan originator  
22                and is an employee of a depository institution  
23                or a subsidiary of a depository institution; and

1           (B) is registered with, and maintains a  
2           unique identifier through, the Nationwide Mort-  
3           gage Licensing System and Registry.

4           (7) RESIDENTIAL MORTGAGE LOAN.—The term  
5           “residential mortgage loan” means any loan pri-  
6           marily for personal, family, or household use that is  
7           secured by a mortgage, deed of trust, or other equiv-  
8           alent consensual security interest on a dwelling (as  
9           defined in section 103(v) of the Truth in Lending  
10          Act) or residential real estate upon which is con-  
11          structed or intended to be constructed a dwelling (as  
12          so defined).

13          (8) SECRETARY.—The term “Secretary” means  
14          the Secretary of Housing and Urban Development.

15          (9) STATE-LICENSED LOAN ORIGINATOR.—The  
16          term “State-licensed loan originator” means any in-  
17          dividual who—

18                  (A) is a loan originator;

19                  (B) is not an employee of a depository in-  
20                  stitution or any subsidiary of a depository insti-  
21                  tution; and

22                  (C) is licensed by a State or by the Sec-  
23                  retary under section 107 and registered as a  
24                  loan originator with, and maintains a unique

1 identifier through, the Nationwide Mortgage Li-  
2 censing System and Registry.

3 (10) UNIQUE IDENTIFIER.—The term “unique  
4 identifier” means a number or other identifier  
5 that—

6 (A) permanently identifies a loan origi-  
7 nator; and

8 (B) is assigned by protocols established by  
9 the Nationwide Mortgage Licensing System and  
10 Registry and the Federal banking agencies to  
11 facilitate electronic tracking of loan originators  
12 and uniform identification of, and public access  
13 to, the employment history of and the publicly  
14 adjudicated disciplinary and enforcement ac-  
15 tions against loan originators.

16 **SEC. 103. LICENSE OR REGISTRATION REQUIRED.**

17 (a) IN GENERAL.—An individual may not engage in  
18 the business of a loan originator without first—

19 (1) obtaining and maintaining—

20 (A) a registration as a registered loan  
21 originator; or

22 (B) a license and registration as a State-  
23 licensed loan originator; and

24 (2) obtaining a unique identifier.

25 (b) LOAN PROCESSORS AND UNDERWRITERS.—

1           (1) SUPERVISED LOAN PROCESSORS AND UN-  
2           DERWRITERS.—A loan processor or underwriter who  
3           does not represent to the public, through advertising  
4           or other means of communicating or providing infor-  
5           mation (including the use of business cards, sta-  
6           tionery, brochures, signs, rate lists, or other pro-  
7           motional items), that such individual can or will per-  
8           form any of the activities of a loan originator shall  
9           not be required to be a State-licensed loan originator  
10          or a registered loan originator.

11          (2) INDEPENDENT CONTRACTORS.—A loan  
12          processor or underwriter may not work as an inde-  
13          pendent contractor unless such processor or under-  
14          writer is a State-licensed loan originator or a reg-  
15          istered loan originator.

16 **SEC. 104. STATE LICENSE AND REGISTRATION APPLICA-**  
17 **TION AND ISSUANCE.**

18          (a) BACKGROUND CHECKS.—In connection with an  
19          application to any State for licensing and registration as  
20          a State-licensed loan originator, the applicant shall, at a  
21          minimum, furnish to the Nationwide Mortgage Licensing  
22          System and Registry information concerning the appli-  
23          cant's identity, including—

24                  (1) fingerprints for submission to the Federal  
25          Bureau of Investigation, and any governmental

1 agency or entity authorized to receive such informa-  
2 tion for a State and national criminal history back-  
3 ground check; and

4 (2) personal history and experience, including  
5 authorization for the System to obtain—

6 (A) an independent credit report obtained  
7 from a consumer reporting agency described in  
8 section 603(p) of the Fair Credit Reporting  
9 Act; and

10 (B) information related to any administra-  
11 tive, civil or criminal findings by any govern-  
12 mental jurisdiction.

13 (b) ISSUANCE OF LICENSE.—The minimum stand-  
14 ards for licensing and registration as a State-licensed loan  
15 originator shall include the following:

16 (1) The applicant has not had a loan originator  
17 or similar license revoked in any governmental juris-  
18 diction during the 5-year period immediately pre-  
19 ceding the filing of the present application.

20 (2) The applicant has not been convicted, pled  
21 guilty or nolo contendere in a domestic, foreign, or  
22 military court of a felony during the 7-year period  
23 immediately preceding the filing of the present appli-  
24 cation.

1           (3) The applicant has demonstrated financial  
2           responsibility, character, and general fitness such as  
3           to command the confidence of the community and to  
4           warrant a determination that the loan originator will  
5           operate honestly, fairly, and efficiently within the  
6           purposes of this subtitle.

7           (4) The applicant has completed the pre-licens-  
8           ing education requirement described in subsection  
9           (c).

10          (5) The applicant has passed a written test that  
11          meets the test requirement described in subsection  
12          (d).

13          (c) PRE-LICENSING EDUCATION OF LOAN ORIGINA-  
14          TORS.—

15               (1) MINIMUM EDUCATIONAL REQUIREMENTS.—

16          In order to meet the pre-licensing education require-  
17          ment referred to in subsection (b)(4), a person shall  
18          complete at least 20 hours of education approved in  
19          accordance with paragraph (2), which shall include  
20          at least 3 hours of Federal law and regulations and  
21          3 hours of ethics which shall include instruction on  
22          fraud, consumer protection and fair lending issues.

23               (2) APPROVED EDUCATIONAL COURSES.—For  
24          purposes of paragraph (1), pre-licensing education

1 courses shall be reviewed, and published by the Na-  
2 tionwide Mortgage Licensing System and Registry.

3 (3) LIMITATION AND STANDARDS.—

4 (A) LIMITATION.—To maintain the inde-  
5 pendence of the approval process, the Nation-  
6 wide Mortgage Licensing System and Registry  
7 shall not directly or indirectly offer pre-licen-  
8 sure educational courses for loan originators.

9 (B) STANDARDS.—In approving courses  
10 under this section, the Nationwide Mortgage Li-  
11 censing System and Registry shall apply rea-  
12 sonable standards in the review and approval of  
13 courses.

14 (d) TESTING OF LOAN ORIGINATORS.—

15 (1) IN GENERAL.—In order to meet the written  
16 test requirement referred to in subsection (b)(5), an  
17 individual shall pass, in accordance with the stand-  
18 ards established under this subsection, a qualified  
19 written test developed by the Nationwide Mortgage  
20 Licensing System and Registry and administered by  
21 an approved test provider.

22 (2) QUALIFIED TEST.—A written test shall not  
23 be treated as a qualified written test for purposes of  
24 paragraph (1) unless—



1 (A) the test consists of a minimum of 100  
2 questions; and

3 (B) the test adequately measures the appli-  
4 cant's knowledge and comprehension in appro-  
5 priate subject areas, including—

6 (i) ethics;

7 (ii) Federal law and regulation per-  
8 taining to mortgage origination;

9 (iii) State law and regulation per-  
10 taining to mortgage origination; and

11 (iv) Federal and State law and regula-  
12 tion, including instruction on fraud, con-  
13 sumer protection, and fair lending issues.

14 (3) MINIMUM COMPETENCE.—

15 (A) PASSING SCORE.—An individual shall  
16 not be considered to have passed a qualified  
17 written test unless the individual achieves a test  
18 score of not less than 75 percent correct an-  
19 swers to questions.

20 (B) INITIAL RETESTS.—An individual may  
21 retake a test 3 consecutive times with each con-  
22 secutive taking occurring in less than 14 days  
23 after the preceding test.

1 (C) SUBSEQUENT RETESTS.—After 3 con-  
2 secutive tests, an individual shall wait at least  
3 14 days before taking the test again.

4 (D) RETEST AFTER LAPSE OF LICENSE.—  
5 A State-licensed loan originator who fails to  
6 maintain a valid license for a period of 5 years  
7 or longer shall retake the test, not taking into  
8 account any time during which such individual  
9 is a registered loan originator.

10 **SEC. 105. STANDARDS FOR STATE LICENSE RENEWAL.**

11 (a) IN GENERAL.—The minimum standards for li-  
12 cense renewal for State-licensed loan originators shall in-  
13 clude the following:

14 (1) The loan originator continues to meet the  
15 minimum standards for license issuance.

16 (2) The loan originator has satisfied the annual  
17 continuing education requirements described in sub-  
18 section (b).

19 (b) CONTINUING EDUCATION FOR STATE-LICENSED  
20 LOAN ORIGINATORS.—

21 (1) IN GENERAL.—In order to meet the annual  
22 continuing education requirements referred to in  
23 subsection (a)(2), a State-licensed loan originator  
24 shall complete at least 8 hours of education ap-  
25 proved in accordance with paragraph (2), which

1 shall include at least 3 hours of Federal law and  
2 regulations and 2 hours of ethics, including edu-  
3 cation on fraud, consumer protection, and fair lend-  
4 ing issues.

5 (2) APPROVED EDUCATIONAL COURSES.—For  
6 purposes of paragraph (1), continuing education  
7 courses shall be reviewed, and published by the Na-  
8 tionwide Mortgage Licensing System and Registry.

9 (3) CALCULATION OF CONTINUING EDUCATION  
10 CREDITS.—A State-licensed loan originator—

11 (A) may only receive credit for a con-  
12 tinuing education course in the year in which  
13 the course is taken; and

14 (B) may not take the same approved  
15 course in the same or successive years to meet  
16 the annual requirements for continuing edu-  
17 cation.

18 (4) INSTRUCTOR CREDIT.—A State-licensed  
19 loan originator who is approved as an instructor of  
20 an approved continuing education course may receive  
21 credit for the originator’s own annual continuing  
22 education requirement at the rate of 2 hours credit  
23 for every 1 hour taught.

24 (5) LIMITATION AND STANDARDS.—

1 (A) LIMITATION.—To maintain the inde-  
2 pendence of the approval process, the Nation-  
3 wide Mortgage Licensing System and Registry  
4 shall not directly or indirectly offer any con-  
5 tinuing education courses for loan originators.

6 (B) STANDARDS.—In approving courses  
7 under this section, the Nationwide Mortgage Li-  
8 censing System and Registry shall apply rea-  
9 sonable standards in the review and approval of  
10 courses.

11 **SEC. 106. SYSTEM OF REGISTRATION ADMINISTRATION BY**  
12 **FEDERAL BANKING AGENCIES.**

13 (a) DEVELOPMENT.—

14 (1) IN GENERAL.—The Federal banking agen-  
15 cies shall jointly develop and maintain a system for  
16 registering employees of depository institutions or  
17 subsidiaries of depository institutions as registered  
18 loan originators with the Nationwide Mortgage Li-  
19 censing System and Registry. The system shall be  
20 implemented before the end of the 1-year period be-  
21 ginning on the date of the enactment of this Act.

22 (2) REGISTRATION REQUIREMENTS.—In con-  
23 nection with the registration of any loan originator  
24 who is an employee of a depository institution or a  
25 subsidiary of a depository institution with the Na-

1        nationwide Mortgage Licensing System and Registry,  
2        the appropriate Federal banking agency shall, at a  
3        minimum, furnish or cause to be furnished to the  
4        Nationwide Mortgage Licensing System and Reg-  
5        istry information concerning the employees’s iden-  
6        tity, including—

7                (A) fingerprints for submission to the Fed-  
8                eral Bureau of Investigation, and any govern-  
9                mental agency or entity authorized to receive  
10              such information for a State and national  
11              criminal history background check; and

12              (B) personal history and experience, in-  
13              cluding authorization for the Nationwide Mort-  
14              gage Licensing System and Registry to obtain  
15              information related to any administrative, civil  
16              or criminal findings by any governmental juris-  
17              diction.

18        (b) COORDINATION.—

19              (1) UNIQUE IDENTIFIER.—The Federal bank-  
20              ing agencies, through the Financial Institutions Ex-  
21              amination Council, shall coordinate with the Nation-  
22              wide Mortgage Licensing System and Registry to es-  
23              tablish protocols for assigning a unique identifier to  
24              each registered loan originator that will facilitate  
25              electronic tracking and uniform identification of, and

1 public access to, the employment history of and pub-  
2 licly adjudicated disciplinary and enforcement ac-  
3 tions against loan originators.

4 (2) NATIONWIDE MORTGAGE LICENSING SYS-  
5 TEM AND REGISTRY DEVELOPMENT.—To facilitate  
6 the transfer of information required by subsection  
7 (a)(2), the Nationwide Mortgage Licensng System  
8 and Registry shall coordinate with the Federal bank-  
9 ing agencies, through the Financial Institutions Ex-  
10 amination Council, concerning the development and  
11 operation, by such System and Registry, of the reg-  
12 istration functionality and data requirements for  
13 loan originators.

14 (c) CONSIDERATION OF FACTORS AND PROCE-  
15 DURES.—In establishing the registration procedures under  
16 subsection (a) and the protocols for assigning a unique  
17 identifier to a registered loan originator, the Federal bank-  
18 ing agencies shall make such de minimis exceptions as  
19 may be appropriate to paragraphs (1)(A) and (2) of sec-  
20 tion 103(a), shall make reasonable efforts to utilize exist-  
21 ing information to minimize the burden of registering loan  
22 originators, and shall consider methods for automating the  
23 process to the greatest extent practicable consistent with  
24 the purposes of this subtitle.

1 **SEC. 107. SECRETARY OF HOUSING AND URBAN DEVELOP-**  
2 **MENT BACKUP AUTHORITY TO ESTABLISH A**  
3 **LOAN ORIGINATOR LICENSING SYSTEM.**

4 (a) **BACK UP LICENSING SYSTEM.**—If, by the end of  
5 the 1-year period, or the 2-year period in the case of a  
6 State whose legislature meets only biennially, beginning  
7 on the date of the enactment of this Act or at any time  
8 thereafter, the Secretary determines that a State does not  
9 have in place by law or regulation a system for licensing  
10 and registering loan originators that meets the require-  
11 ments of sections 104 and 105 and subsection (d) or does  
12 not participate in the Nationwide Mortgage Licensing Sys-  
13 tem and Registry, the Secretary shall provide for the es-  
14 tablishment and maintenance of a system for the licensing  
15 and registration by the Secretary of loan originators oper-  
16 ating in such State as State-licensed loan originators.

17 (b) **LICENSING AND REGISTRATION REQUIRE-**  
18 **MENTS.**—The system established by the Secretary under  
19 subsection (a) for any State shall meet the requirements  
20 of sections 104 and 105 for State-licensed loan origina-  
21 tors.

22 (c) **UNIQUE IDENTIFIER.**—The Secretary shall co-  
23 ordinate with the Nationwide Mortgage Licensing System  
24 and Registry to establish protocols for assigning a unique  
25 identifier to each loan originator licensed by the Secretary  
26 as a State-licensed loan originator that will facilitate elec-

1 tronic tracking and uniform identification of, and public  
2 access to, the employment history of and the publicly adju-  
3 dicated disciplinary and enforcement actions against loan  
4 originators.

5 (d) STATE LICENSING LAW REQUIREMENTS.—For  
6 purposes of this section, the law in effect in a State meets  
7 the requirements of this subsection if the Secretary deter-  
8 mines the law satisfies the following minimum require-  
9 ments:

10 (1) A State loan originator supervisory author-  
11 ity is maintained to provide effective supervision and  
12 enforcement of such law, including the suspension,  
13 termination, or nonrenewal of a license for a viola-  
14 tion of State or Federal law.

15 (2) The State loan originator supervisory au-  
16 thority ensures that all State-licensed loan origina-  
17 tors operating in the State are registered with Na-  
18 tionwide Mortgage Licensing System and Registry.

19 (3) The State loan originator supervisory au-  
20 thority is required to regularly report violations of  
21 such law, as well as enforcement actions and other  
22 relevant information, to the Nationwide Mortgage  
23 Licensing System and Registry.

24 (e) TEMPORARY EXTENSION OF PERIOD.—The Sec-  
25 retary may extend, by not more than 6 months, the 1-



1 year or 2-year period, as the case may be, referred to in  
2 subsection (a) for the licensing of loan originators in any  
3 State under a State licensing law that meets the require-  
4 ments of sections 104 and 105 and subsection (d) if the  
5 Secretary determines that such State is making a good  
6 faith effort to establish a State licensing law that meets  
7 such requirements, license mortgage originators under  
8 such law, and register such originators with the Nation-  
9 wide Mortgage Licensing System and Registry.

10 (f) LIMITATION ON HUD-LICENSED LOAN ORIGINA-  
11 TORS.—Any loan originator who is licensed by the Sec-  
12 retary under a system established under this section for  
13 any State may not use such license to originate loans in  
14 any other State.

15 **SEC. 108. BACKUP AUTHORITY TO ESTABLISH A NATION-**  
16 **WIDE MORTGAGE LICENSING AND REGISTRY**  
17 **SYSTEM.**

18 If at any time the Secretary determines that the Na-  
19 tionwide Mortgage Licensing System and Registry is fail-  
20 ing to meet the requirements and purposes of this subtitle  
21 for a comprehensive licensing, supervisory, and tracking  
22 system for loan originators, the Secretary shall establish  
23 and maintain such a system to carry out the purposes of  
24 this subtitle and the effective registration and regulation  
25 of loan originators.

1 **SEC. 109. FEES.**

2       The Federal banking agencies, the Secretary, and the  
3 Nationwide Mortgage Licensing System and Registry may  
4 charge reasonable fees to cover the costs of maintaining  
5 and providing access to information from the Nationwide  
6 Mortgage Licensing System and Registry to the extent  
7 such fees are not charged to consumers for access such  
8 system and registry.

9 **SEC. 110. BACKGROUND CHECKS OF LOAN ORIGINATORS.**

10       (a) **ACCESS TO RECORDS.**—Notwithstanding any  
11 other provision of law, in providing identification and  
12 processing functions, the Attorney General shall provide  
13 access to all criminal history information to the appro-  
14 priate State officials responsible for regulating State-li-  
15 censed loan originators to the extent criminal history  
16 background checks are required under the laws of the  
17 State for the licensing of such loan originators.

18       (b) **AGENT.**—For the purposes of this section and in  
19 order to reduce the points of contact which the Federal  
20 Bureau of Investigation may have to maintain for pur-  
21 poses of subsection (a), the Conference of State Bank Su-  
22 pervisors or a wholly owned subsidiary may be used as  
23 a channeling agent of the States for requesting and dis-  
24 tributing information between the Department of Justice  
25 and the appropriate State agencies.

1 **SEC. 111. CONFIDENTIALITY OF INFORMATION.**

2 (a) SYSTEM CONFIDENTIALITY.—Except as other-  
3 wise provided in this section, any requirement under Fed-  
4 eral or State law regarding the privacy or confidentiality  
5 of any information or material provided to the Nationwide  
6 Mortgage Licensing System and Registry or a system es-  
7 tablished by the Secretary under section 108, and any  
8 privilege arising under Federal or State law (including the  
9 rules of any Federal or State court) with respect to such  
10 information or material, shall continue to apply to such  
11 information or material after the information or material  
12 has been disclosed to the system. Such information and  
13 material may be shared with all State and Federal regu-  
14 latory officials with mortgage industry oversight authority  
15 without the loss of privilege or the loss of confidentiality  
16 protections provided by Federal and State laws.

17 (b) NONAPPLICABILITY OF CERTAIN REQUIRE-  
18 MENTS.—Information or material that is subject to a  
19 privilege or confidentiality under subsection (a) shall not  
20 be subject to—

21 (1) disclosure under any Federal or State law  
22 governing the disclosure to the public of information  
23 held by an officer or an agency of the Federal Gov-  
24 ernment or the respective State; or

25 (2) subpoena or discovery, or admission into  
26 evidence, in any private civil action or administrative

1 process, unless with respect to any privilege held by  
2 the Nationwide Mortgage Licensing System and  
3 Registry or the Secretary with respect to such infor-  
4 mation or material, the person to whom such infor-  
5 mation or material pertains waives, in whole or in  
6 part, in the discretion of such person, that privilege.

7 (c) COORDINATION WITH OTHER LAW.—Any State  
8 law, including any State open record law, relating to the  
9 disclosure of confidential supervisory information or any  
10 information or material described in subsection (a) that  
11 is inconsistent with subsection (a) shall be superseded by  
12 the requirements of such provision to the extent State law  
13 provides less confidentiality or a weaker privilege.

14 (d) PUBLIC ACCESS TO INFORMATION.—This section  
15 shall not apply with respect to the information or material  
16 relating to the employment history of, and publicly adju-  
17 dicated disciplinary and enforcement actions against, loan  
18 originators that is included in Nationwide Mortgage Li-  
19 censing System and Registry for access by the public.

20 **SEC. 112. LIABILITY PROVISIONS.**

21 The Secretary, any State official or agency, any Fed-  
22 eral banking agency, or any organization serving as the  
23 administrator of the Nationwide Mortgage Licensing Sys-  
24 tem and Registry or a system established by the Secretary  
25 under section 108, or any officer or employee of any such

1 entity, shall not be subject to any civil action or proceeding  
2 for monetary damages by reason of the good-faith action  
3 or omission of any officer or employee of any such entity,  
4 while acting within the scope of office or employment, re-  
5 lating to the collection, furnishing, or dissemination of in-  
6 formation concerning persons who are loan originators or  
7 are applying for licensing or registration as loan origina-  
8 tors.

9 **SEC. 113. ENFORCEMENT UNDER HUD BACKUP LICENSING**  
10 **SYSTEM.**

11 (a) **SUMMONS AUTHORITY.**—The Secretary may—

12 (1) examine any books, papers, records, or  
13 other data of any loan originator operating in any  
14 State which is subject to a licensing system estab-  
15 lished by the Secretary under section 107; and

16 (2) summon any loan originator referred to in  
17 paragraph (1) or any person having possession, cus-  
18 tody, or care of the reports and records relating to  
19 such loan originator, to appear before the Secretary  
20 or any delegate of the Secretary at a time and place  
21 named in the summons and to produce such books,  
22 papers, records, or other data, and to give testi-  
23 mony, under oath, as may be relevant or material to  
24 an investigation of such loan originator for compli-  
25 ance with the requirements of this subtitle.

1 (b) EXAMINATION AUTHORITY.—

2 (1) IN GENERAL.—If the Secretary establishes  
3 a licensing system under section 107 for any State,  
4 the Secretary shall appoint examiners for the pur-  
5 poses of administering such section.

6 (2) POWER TO EXAMINE.—Any examiner ap-  
7 pointed under paragraph (1) shall have power, on  
8 behalf of the Secretary, to make any examination of  
9 any loan originator operating in any State which is  
10 subject to a licensing system established by the Sec-  
11 retary under section 107 whenever the Secretary de-  
12 termines an examination of any loan originator is  
13 necessary to determine the compliance by the origi-  
14 nator with this subtitle.

15 (3) REPORT OF EXAMINATION.—Each examiner  
16 appointed under paragraph (1) shall make a full and  
17 detailed report of examination of any loan originator  
18 examined to the Secretary.

19 (4) ADMINISTRATION OF OATHS AND AFFIRMA-  
20 TIONS; EVIDENCE.—In connection with examinations  
21 of loan originators operating in any State which is  
22 subject to a licensing system established by the Sec-  
23 retary under section 107, or with other types of in-  
24 vestigations to determine compliance with applicable  
25 law and regulations, the Secretary and examiners

1 appointed by the Secretary may administer oaths  
2 and affirmations and examine and take and preserve  
3 testimony under oath as to any matter in respect to  
4 the affairs of any such loan originator.

5 (5) ASSESSMENTS.—The cost of conducting any  
6 examination of any loan originator operating in any  
7 State which is subject to a licensing system estab-  
8 lished by the Secretary under section 107 shall be  
9 assessed by the Secretary against the loan originator  
10 to meet the Secretary's expenses in carrying out  
11 such examination.

12 (c) CEASE AND DESIST PROCEEDING.—

13 (1) AUTHORITY OF SECRETARY.—If the Sec-  
14 retary finds, after notice and opportunity for hear-  
15 ing, that any person is violating, has violated, or is  
16 about to violate any provision of this subtitle, or any  
17 regulation thereunder, with respect to a State which  
18 is subject to a licensing system established by the  
19 Secretary under section 107, the Secretary may pub-  
20 lish such findings and enter an order requiring such  
21 person, and any other person that is, was, or would  
22 be a cause of the violation, due to an act or omission  
23 the person knew or should have known would con-  
24 tribute to such violation, to cease and desist from  
25 committing or causing such violation and any future

1 violation of the same provision, rule, or regulation.  
2 Such order may, in addition to requiring a person to  
3 cease and desist from committing or causing a viola-  
4 tion, require such person to comply, or to take steps  
5 to effect compliance, with such provision or regula-  
6 tion, upon such terms and conditions and within  
7 such time as the Secretary may specify in such  
8 order. Any such order may, as the Secretary deems  
9 appropriate, require future compliance or steps to  
10 effect future compliance, either permanently or for  
11 such period of time as the Secretary may specify,  
12 with such provision or regulation with respect to any  
13 loan originator.

14 (2) HEARING.—The notice instituting pro-  
15 ceedings pursuant to paragraph (1) shall fix a hear-  
16 ing date not earlier than 30 days nor later than 60  
17 days after service of the notice unless an earlier or  
18 a later date is set by the Secretary with the consent  
19 of any respondent so served.

20 (3) TEMPORARY ORDER.—Whenever the Sec-  
21 retary determines that the alleged violation or  
22 threatened violation specified in the notice insti-  
23 tuting proceedings pursuant to paragraph (1), or the  
24 continuation thereof, is likely to result in significant  
25 dissipation or conversion of assets, significant harm



1 to consumers, or substantial harm to the public in-  
2 terest prior to the completion of the proceedings, the  
3 Secretary may enter a temporary order requiring the  
4 respondent to cease and desist from the violation or  
5 threatened violation and to take such action to pre-  
6 vent the violation or threatened violation and to pre-  
7 vent dissipation or conversion of assets, significant  
8 harm to consumers, or substantial harm to the pub-  
9 lic interest as the Secretary deems appropriate pend-  
10 ing completion of such proceedings. Such an order  
11 shall be entered only after notice and opportunity for  
12 a hearing, unless the Secretary determines that no-  
13 tice and hearing prior to entry would be impracti-  
14 cable or contrary to the public interest. A temporary  
15 order shall become effective upon service upon the  
16 respondent and, unless set aside, limited, or sus-  
17 pended by the Secretary or a court of competent ju-  
18 risdiction, shall remain effective and enforceable  
19 pending the completion of the proceedings.

20 (4) REVIEW OF TEMPORARY ORDERS.—

21 (A) REVIEW BY SECRETARY.—At any time  
22 after the respondent has been served with a  
23 temporary cease-and-desist order pursuant to  
24 paragraph (3), the respondent may apply to the  
25 Secretary to have the order set aside, limited,

1 or suspended. If the respondent has been served  
2 with a temporary cease-and-desist order entered  
3 without a prior hearing before the Secretary,  
4 the respondent may, within 10 days after the  
5 date on which the order was served, request a  
6 hearing on such application and the Secretary  
7 shall hold a hearing and render a decision on  
8 such application at the earliest possible time.

9 (B) JUDICIAL REVIEW.—Within—

10 (i) 10 days after the date the respond-  
11 ent was served with a temporary cease-  
12 and-desist order entered with a prior hear-  
13 ing before the Secretary; or

14 (ii) 10 days after the Secretary ren-  
15 ders a decision on an application and hear-  
16 ing under paragraph (1), with respect to  
17 any temporary cease-and-desist order en-  
18 tered without a prior hearing before the  
19 Secretary,

20 the respondent may apply to the United States  
21 district court for the district in which the re-  
22 spondent resides or has its principal place of  
23 business, or for the District of Columbia, for an  
24 order setting aside, limiting, or suspending the  
25 effectiveness or enforcement of the order, and

1 the court shall have jurisdiction to enter such  
2 an order. A respondent served with a temporary  
3 cease-and-desist order entered without a prior  
4 hearing before the Secretary may not apply to  
5 the court except after hearing and decision by  
6 the Secretary on the respondent's application  
7 under subparagraph (A).

8 (C) NO AUTOMATIC STAY OF TEMPORARY  
9 ORDER.—The commencement of proceedings  
10 under subparagraph (B) shall not, unless spe-  
11 cifically ordered by the court, operate as a stay  
12 of the Secretary's order.

13 (5) AUTHORITY OF THE SECRETARY TO PRO-  
14 HIBIT PERSONS FROM SERVING AS LOAN ORIGINA-  
15 TORS.—In any cease-and-desist proceeding under  
16 paragraph (1), the Secretary may issue an order to  
17 prohibit, conditionally or unconditionally, and per-  
18 manently or for such period of time as the Secretary  
19 shall determine, any person who has violated this  
20 subtitle or regulations thereunder, from acting as a  
21 loan originator if the conduct of that person dem-  
22 onstrates unfitness to serve as a loan originator.

23 (d) AUTHORITY OF THE SECRETARY TO ASSESS  
24 MONEY PENALTIES.—

1           (1) IN GENERAL.—The Secretary may impose a  
2           civil penalty on a loan originator operating in any  
3           State which is subject to licensing system established  
4           by the Secretary under section 107 if the Secretary  
5           finds, on the record after notice and opportunity for  
6           hearing, that such loan originator has violated or  
7           failed to comply with any requirement of this sub-  
8           title or any regulation prescribed by the Secretary  
9           under this subtitle or order issued under subsection  
10          (c).

11          (2) MAXIMUM AMOUNT OF PENALTY.—The  
12          maximum amount of penalty for each act or omis-  
13          sion described in paragraph (1) shall be \$5,000 for  
14          each day the violation continues.

## 15       **Subtitle B—Residential Mortgage** 16       **Loan Origination Standards**

### 17       **SEC. 121. DEFINITIONS.**

18          Section 103 of the Truth in Lending Act (15 U.S.C.  
19       1602) is amended by adding at the end the following new  
20       subsection:

21          “(cc) DEFINITIONS RELATING TO MORTGAGE ORIGI-  
22       NATION AND RESIDENTIAL MORTGAGE LOANS.—

23               “(1) COMMISSION.—Unless otherwise specified,  
24               the term ‘Commission’ means the Federal Trade  
25               Commission.

1           “(2) FEDERAL BANKING AGENCIES.—The term  
2           ‘Federal banking agencies’ means the Board of Gov-  
3           ernors of the Federal Reserve System, the Comp-  
4           troller of the Currency, the Director of the Office of  
5           Thrift Supervision, the Federal Deposit Insurance  
6           Corporation, and the National Credit Union Admin-  
7           istration Board.

8           “(3) MORTGAGE ORIGINATOR.—The term  
9           ‘mortgage originator’—

10           “(A) means any person who—

11           “(i) takes a residential mortgage loan  
12           application;

13           “(ii) assists a consumer in obtaining  
14           or applying to obtain a residential mort-  
15           gage loan; or

16           “(iii) offers or negotiates terms of a  
17           residential mortgage loan, for direct or in-  
18           direct compensation or gain, or in the ex-  
19           pectation of direct or indirect compensa-  
20           tion or gain;

21           “(B) includes any person who represents  
22           to the public, through advertising or other  
23           means of communicating or providing informa-  
24           tion (including the use of business cards, sta-  
25           tionery, brochures, signs, rate lists, or other

1 promotional items), that such person can or will  
2 provide any of the services or perform any of  
3 the activities described in subparagraph (A);  
4 and

5 “(C) does not include any person who is  
6 not otherwise described in subparagraph (A) or  
7 (B) and who performs purely administrative or  
8 clerical tasks on behalf of a person who is de-  
9 scribed in any such subparagraph.

10 “(4) NATIONWIDE MORTGAGE LICENSING SYS-  
11 TEM AND REGISTRY.—The term ‘Nationwide Mort-  
12 gage Licensing System and Registry’ has the same  
13 meaning as in section 102(5) of the Mortgage Re-  
14 form and Anti-Predatory Lending Act of 2007.

15 “(5) OTHER DEFINITIONS RELATING TO MORT-  
16 GAGE ORIGINATOR.—For purposes of this sub-  
17 section, a person ‘assists a consumer in obtaining or  
18 applying to obtain a residential mortgage loan’ by,  
19 among other things, advising on residential mort-  
20 gage loan terms (including rates, fees, and other  
21 costs), preparing residential mortgage loan packages,  
22 or collecting information on behalf of the consumer  
23 with regard to a residential mortgage loan.

24 “(6) RESIDENTIAL MORTGAGE LOAN.—The  
25 term ‘residential mortgage loan’ means any con-

1 consumer credit transaction that is secured by a mort-  
2 gage, deed of trust, or other equivalent consensual  
3 security interest on a dwelling or on residential real  
4 property that includes a dwelling, other than a con-  
5 sumer credit transaction under an open end credit  
6 plan or a reverse mortgage.

7 “(7) SECRETARY.—The term ‘Secretary’, when  
8 used in connection with any transaction or person  
9 involved with a residential mortgage loan, means the  
10 Secretary of Housing and Urban Development.

11 “(8) SECURITIZATION VEHICLE.—The term  
12 ‘securitization vehicle’ means a trust, corporation,  
13 partnership, limited liability entity, or special pur-  
14 pose entity that—

15 “(A) is the issuer, or is created by the  
16 issuer, of mortgage pass-through certificates,  
17 participation certificates, mortgage-backed secu-  
18 rities, or other similar securities backed by a  
19 pool of assets that includes residential mortgage  
20 loans; and

21 “(B) holds such loans.

22 “(9) SECURITIZER.—The term ‘securitizer’  
23 means the person that transfers, conveys, or assigns,  
24 or causes the transfer, conveyance, or assignment of,  
25 residential mortgage loans, including through a spe-

1       cial purpose vehicle, to any securitization vehicle, ex-  
2       cluding any trustee that holds such loans solely for  
3       the benefit of the securitization vehicle.

4               “(10) SERVICER.—The term ‘servicer’ has the  
5       same meaning as in section 6(i)(2) of the Real Es-  
6       tate Settlement Procedures Act of 1974.”.

7       **SEC. 122. RESIDENTIAL MORTGAGE LOAN ORIGINATION.**

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

11      **“§ 129A. Residential mortgage loan origination**

12      “(a) DUTY OF CARE.—

13               “(1) STANDARD.—Subject to regulations pre-  
14      scribed under this subsection, each mortgage origi-  
15      nator shall, in addition to the duties imposed by oth-  
16      erwise applicable provisions of State or Federal  
17      law—

18                       “(A) be qualified and, when required, reg-  
19                       istered and licensed as a mortgage originator in  
20                       accordance with applicable State or Federal law  
21                       including subtitle A of title I of the Mortgage  
22                       Reform and Anti-Predatory Lending Act of  
23                       2007;

24                       “(B) with respect to each consumer seek-  
25                       ing or inquiring about a residential mortgage



1 loan, diligently work to present the consumer  
2 with a range of residential mortgage loan prod-  
3 ucts for which the consumer likely qualifies and  
4 which are appropriate to the consumer’s exist-  
5 ing circumstances, based on information known  
6 by, or obtained in good faith by, the originator;

7 “(C) make full, complete, and timely dis-  
8 closure to each such consumer of—

9 “(i) the comparative costs and bene-  
10 fits of each residential mortgage loan prod-  
11 uct offered, discussed, or referred to by the  
12 originator;

13 “(ii) the nature of the originator’s re-  
14 lationship to the consumer (including the  
15 cost of the services to be provided by the  
16 originator and a statement that the mort-  
17 gage originator is or is not acting as an  
18 agent for the consumer, as the case may  
19 be); and

20 “(iii) any relevant conflicts of interest;

21 “(D) certify to the creditor, with respect to  
22 any transaction involving a residential mortgage  
23 loan, that the mortgage originator has fulfilled  
24 all requirements applicable to the originator

1 under this section with respect to the trans-  
2 action; and

3 “(E) include the unique identifier of the  
4 originator provided by the Nationwide Mortgage  
5 Licensing System and Registry on all loan doc-  
6 uments.

7 “(2) CLARIFICATION OF EXTENT OF DUTY TO  
8 PRESENT RANGE OF PRODUCTS AND APPROPRIATE  
9 PRODUCTS.—

10 “(A) NO DUTY TO OFFER PRODUCTS FOR  
11 WHICH ORIGINATOR IS NOT AUTHORIZED TO  
12 TAKE AN APPLICATION.—Paragraph (1)(B)  
13 shall not be construed as requiring—

14 “(i) a mortgage originator to present  
15 to any consumer any specific residential  
16 mortgage loan product that is offered by a  
17 creditor which does not accept consumer  
18 referrals from, or consumer applications  
19 submitted by or through, such originator;  
20 or

21 “(ii) a creditor to offer products that  
22 the creditor does not offer to the general  
23 public.

24 “(B) APPROPRIATE LOAN PRODUCT.—For  
25 purposes of paragraph (1)(B), a residential

1 mortgage loan shall be presumed to be appro-  
2 priate for a consumer if—

3 “(i) the mortgage originator deter-  
4 mines in good faith, based on then existing  
5 information and without undergoing a full  
6 underwriting process, that the consumer  
7 has a reasonable ability to repay and, in  
8 the case of a refinancing of an existing res-  
9 idential mortgage loan, receives a net tan-  
10 gible benefit, as determined in accordance  
11 with regulations prescribed under sub-  
12 sections (a) and (b) of section 129B.

13 “(ii) the loan does not have predatory  
14 characteristics or effects (such as equity  
15 stripping and excessive fees and abusive  
16 terms) as determined in accordance with  
17 regulations prescribed under paragraph  
18 (4).

19 “(3) RULES OF CONSTRUCTION.—No provision  
20 of this subsection shall be construed as—

21 “(A) creating an agency or fiduciary rela-  
22 tionship between a mortgage originator and a  
23 consumer if the originator does not hold himself  
24 or herself out as such an agent or fiduciary; or

1           “(B) restricting a mortgage originator  
2           from holding himself or herself out as an agent  
3           or fiduciary of a consumer subject to any addi-  
4           tional duty, requirement, or limitation applica-  
5           ble to agents or fiduciaries under any Federal  
6           or State law.

7           “(4) REGULATIONS.—

8           “(A) IN GENERAL.—The Federal banking  
9           agencies, in consultation with the Secretary, the  
10          Chairman of the State Liaison Committee to  
11          the Financial Institutions Examination Council,  
12          and the Commission, shall jointly prescribe reg-  
13          ulations to—

14               “(i) further define the duty estab-  
15               lished under paragraph (1);

16               “(ii) implement the requirements of  
17               this subsection;

18               “(iii) establish the time period within  
19               which any disclosure required under para-  
20               graph (1) shall be made to the consumer;  
21               and

22               “(iv) establish such other require-  
23               ments for any mortgage originator as such  
24               regulatory agencies may determine to be

1           appropriate to meet the purposes of this  
2           subsection.

3           “(B) COMPLEMENTARY AND NONDUPLICA-  
4           TIVE DISCLOSURES.—The agencies referred to  
5           in subparagraph (A) shall endeavor to make the  
6           required disclosures to consumers under this  
7           subsection complementary and nonduplicative  
8           with other disclosures for mortgage consumers  
9           to the extent such efforts—

10                   “(i) are practicable; and

11                   “(ii) do not reduce the value of any  
12                   such disclosure to recipients of such dislo-  
13                   sures.

14           “(5) COMPLIANCE PROCEDURES REQUIRED.—  
15           The Federal banking agencies shall prescribe regula-  
16           tions requiring depository institutions to establish  
17           and maintain procedures reasonably designed to as-  
18           sure and monitor the compliance of such depository  
19           institutions, the subsidiaries of such institutions,  
20           and the employees of such institutions or subsidi-  
21           aries with the requirements of this section and the  
22           registration procedures established under section  
23           106 of the Mortgage Reform and Anti-Predatory  
24           Lending Act of 2007.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 for chapter 2 of the Truth in Lending Act is amended  
3 by inserting after the item relating to section 129 the fol-  
4 lowing new item:

“129A. Residential mortgage loan origination.”.

5 **SEC. 123. PROHIBITION ON STEERING INCENTIVES.**

6 Section 129A of the Truth in Lending Act (as added  
7 by section 122(a)) is amended by inserting after sub-  
8 section (a) the following new subsection:

9 “(b) PROHIBITION ON STEERING INCENTIVES.—

10 “(1) AMOUNT OF ORIGINATOR COMPENSATION  
11 CANNOT VARY BASED ON TERMS.—No mortgage  
12 originator may receive from any person, and no per-  
13 son may pay to any mortgage originator, directly or  
14 indirectly, any incentive compensation, including  
15 yield spread premium or any equivalent compensa-  
16 tion or gain, that is based on, or varies with, the  
17 terms (other than the amount of principal) of any  
18 loan that is not a qualified mortgage (as defined in  
19 section 129B(c)(3)).

20 “(2) REGULATIONS.—The Federal banking  
21 agencies, in consultation with the Secretary and the  
22 Commission, shall jointly prescribe regulations to  
23 prohibit—

1           “(A) mortgage originators from steering  
2 any consumer to a residential mortgage loan  
3 that—

4                   “(i) the consumer lacks a reasonable  
5 ability to repay (in accordance with regula-  
6 tions prescribed under section 129B(a));

7                   “(ii) in the case of a refinancing of a  
8 residential mortgage loan, does not provide  
9 the consumer with a net tangible benefit  
10 (in accordance with regulations prescribed  
11 under section 129B(b)); or

12                   “(iii) has predatory characteristics or  
13 effects (such as equity stripping, excessive  
14 fees, or abusive terms);

15           “(B) mortgage originators from steering  
16 any consumer from a residential mortgage loan  
17 for which the consumer is qualified that is a  
18 qualified mortgage (as defined in section  
19 129B(c)(3)) to a residential mortgage loan that  
20 is not a qualified mortgage; and

21           “(C) abusive or unfair lending practices  
22 that promote disparities among consumers of  
23 equal credit worthiness but of different race,  
24 ethnicity, gender, or age.

1           “(3) RULES OF CONSTRUCTION.—No provision  
2 of this subsection shall be construed as—

3           “(A) limiting or affecting the ability of a  
4 mortgage originator to sell residential mortgage  
5 loans to subsequent purchasers;

6           “(B) restricting a consumer’s ability to fi-  
7 nance, including through rate or principal, any  
8 origination fees or costs permitted under this  
9 subsection, or the originator’s ability to receive  
10 such fees or costs (including compensation)  
11 from any person, so long as such fees or costs  
12 were fully and clearly disclosed to the consumer  
13 earlier in the application process as required by  
14 129A(a)(1)(C)(ii) and do not vary based on the  
15 terms of the loan or the consumer’s decision  
16 about whether to finance such fees or costs; or

17           “(C) prohibiting incentive payments to a  
18 mortgage originator based on the number of  
19 residential mortgage loans originated within a  
20 specified period of time.”.

21 **SEC. 124. LIABILITY.**

22           Section 129A of the Truth in Lending Act is amend-  
23 ed by inserting after subsection (b) (as added by section  
24 123) the following new subsection:

25           “(c) LIABILITY FOR VIOLATIONS.—



1           “(1) IN GENERAL.—For purposes of providing  
2           a cause of action for any failure by a mortgage origi-  
3           nator to comply with any requirement imposed  
4           under this section and any regulation prescribed  
5           under this section, subsections (a) and (b) of section  
6           130 shall be applied with respect to any such failure  
7           by substituting ‘mortgage originator’ for ‘creditor’  
8           each place such term appears in each such sub-  
9           section.

10           “(2) MAXIMUM.—The maximum amount of any  
11           liability of a mortgage originator under paragraph  
12           (1) to a consumer for any violation of this section  
13           shall not exceed an amount equal to 3 times the  
14           total amount of direct and indirect compensation or  
15           gain accruing to the mortgage originator in connec-  
16           tion with the residential mortgage loan involved in  
17           the violation, plus the costs to the consumer of the  
18           action, including a reasonable attorney’s fee.”.

19 **SEC. 125. REGULATIONS.**

20           The regulations required or authorized to be pre-  
21           scribed under this title or the amendments made by this  
22           title—

23           (1) shall be prescribed in final form before the  
24           end of the 12-month period beginning on the date of  
25           the enactment of this Act; and

1           (2) shall take effect not later than 18 months  
2           after the date of the enactment of this Act.

3       **TITLE II—MINIMUM STANDARDS**  
4                               **FOR MORTGAGES**

5       **SEC. 201. ABILITY TO REPAY.**

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 122(a)) the fol-  
9       lowing new section:

10    **“§ 129B. Minimum standards for residential mortgage**  
11                               **loans**

12           “(a) ABILITY TO REPAY.—

13                       “(1) IN GENERAL.—In accordance with regula-  
14       tions prescribed jointly by the Federal banking agen-  
15       cies, in consultation with the Commission, no cred-  
16       itor may make a residential mortgage loan unless  
17       the creditor makes a reasonable and good faith de-  
18       termination based on verified and documented infor-  
19       mation that, at the time the loan is consummated,  
20       the consumer has a reasonable ability to repay the  
21       loan, according to its terms, and all applicable taxes,  
22       insurance, and assessments.

23                       “(2) MULTIPLE LOANS.—If the creditor knows,  
24       or has reason to know, that 1 or more residential  
25       mortgage loans secured by the same dwelling will be

1       made to the same consumer, the creditor shall make  
2       a reasonable and good faith determination, based on  
3       verified and documented information, that the con-  
4       sumer has a reasonable ability to repay the com-  
5       bined payments of all loans on the same dwelling ac-  
6       cording to the terms of those loans and all applicable  
7       taxes, insurance, and assessments.

8               “(3) BASIS FOR DETERMINATION.—A deter-  
9       mination under this subsection of a consumer’s abil-  
10      ity to repay a residential mortgage loan shall be  
11      based on consideration of the consumer’s credit his-  
12      tory, current income, expected income the consumer  
13      is reasonably assured of receiving, current obliga-  
14      tions, debt-to-income ratio, employment status, and  
15      other financial resources other than the consumer’s  
16      equity in the dwelling or real property that secures  
17      repayment of the loan.

18              “(4) NONSTANDARD LOANS.—

19                      “(A) VARIABLE RATE LOANS THAT DEFER  
20              REPAYMENT OF ANY PRINCIPAL OR INTER-  
21              EST.—For purposes of determining, under this  
22              subsection, a consumer’s ability to repay a vari-  
23              able rate residential mortgage loan that allows  
24              or requires the consumer to defer the repay-  
25              ment of any principal or interest, the creditor

1 shall take into consideration a fully amortizing  
2 repayment schedule.

3 “(B) INTEREST-ONLY LOANS.—For pur-  
4 poses of determining, under this subsection, a  
5 consumer’s ability to repay a residential mort-  
6 gage loan that permits or requires the payment  
7 of interest only, the creditor shall take into con-  
8 sideration the payment amount required to am-  
9 ortize the loan by its final maturity.

10 “(C) CALCULATION FOR NEGATIVE AMOR-  
11 TIZATION.—In making any determination under  
12 this subsection, a creditor shall also take into  
13 consideration any balance increase that may ac-  
14 crue from any negative amortization provision.

15 “(D) CALCULATION PROCESS.—For pur-  
16 poses of making any determination under this  
17 subsection, a creditor shall calculate the month-  
18 ly payment amount for principal and interest on  
19 any residential mortgage loan by assuming—

20 “(i) the loan proceeds are fully dis-  
21 bursed on the date of the consummation of  
22 the loan;

23 “(ii) the loan is to be repaid in sub-  
24 stantially equal monthly amortizing pay-  
25 ments for principal and interest over the

1 entire term of the loan with no balloon  
2 payment, unless the loan contract requires  
3 more rapid repayment (including balloon  
4 payment), in which case the contract's re-  
5 payment schedule shall be used in this cal-  
6 culation; and

7 “(iii) the interest rate over the entire  
8 term of the loan is a fixed rate equal to the  
9 fully indexed rate at the time of the loan  
10 closing, without considering the introduc-  
11 tory rate.

12 “(5) FULLY-INDEXED RATE DEFINED.—For  
13 purposes of this subsection, the term ‘fully indexed  
14 rate’ means the index rate prevailing on a residential  
15 mortgage loan at the time the loan is made plus the  
16 margin that will apply after the expiration of any in-  
17 troduutory interest rates.”.

18 (b) CLERICAL AMENDMENT.—The table of sections  
19 for chapter 2 of the Truth in Lending Act is amended  
20 by inserting after the item relating to section 129A (as  
21 added by section 122(b)) the following new item:

“129B. Minimum standards for residential mortgage loans.”.

1 **SEC. 202. NET TANGIBLE BENEFIT FOR REFINANCING OF**  
2 **RESIDENTIAL MORTGAGE LOANS.**

3 Section 129B of the Truth in Lending Act (as added  
4 by section 201(a)) is amended by inserting after sub-  
5 section (a) the following new subsection:

6 “(b) NET TANGIBLE BENEFIT FOR REFINANCING OF  
7 RESIDENTIAL MORTGAGE LOANS.—

8 “(1) IN GENERAL.—In accordance with regula-  
9 tions prescribed under paragraph (3), no creditor  
10 may extend credit in connection with any residential  
11 mortgage loan that involves a refinancing of a prior  
12 existing residential mortgage loan unless the creditor  
13 reasonably and in good faith determines, at the time  
14 the loan is consummated and on the basis of infor-  
15 mation known by or obtained in good faith by the  
16 creditor, that the refinanced loan will provide a net  
17 tangible benefit to the consumer.

18 “(2) CERTAIN LOANS PROVIDING NO NET TAN-  
19 GIBLE BENEFIT.—A residential mortgage loan that  
20 involves a refinancing of a prior existing residential  
21 mortgage loan shall not be considered to provide a  
22 net tangible benefit to the consumer if the costs of  
23 the refinanced loan, including points, fees and other  
24 charges, exceed the amount of any newly advanced  
25 principal without any corresponding changes in the

1 terms of the refinanced loan that are advantageous  
2 to the consumer.

3 “(3) NET TANGIBLE BENEFIT.—The Federal  
4 banking agencies shall jointly prescribe regulations  
5 defining the term ‘net tangible benefit’ for purposes  
6 of this subsection.”.

7 **SEC. 203. SAFE HARBOR AND REBUTTABLE PRESUMPTION.**

8 Section 129B of the Truth in Lending Act is amend-  
9 ed by inserting after subsection (b) (as added by section  
10 202) the following new subsection:

11 “(c) PRESUMPTION OF ABILITY TO REPAY AND NET  
12 TANGIBLE BENEFIT.—

13 “(1) IN GENERAL.—Any creditor with respect  
14 to any residential mortgage loan, and any assignee  
15 or securitizer of such loan, may presume that the  
16 loan has met the requirements of subsections (a)  
17 and (b), if the loan is a qualified mortgage or a  
18 qualified safe harbor mortgage.

19 “(2) REBUTTABLE PRESUMPTION.—Any pre-  
20 sumption established under paragraph (1) with re-  
21 spect to any residential mortgage loan shall be re-  
22 buttable only—

23 “(A) against the creditor of such loan; and

24 “(B) if such loan is a qualified safe harbor  
25 mortgage.

1           “(3) DEFINITIONS.—For purposes of this sec-  
2           tion the following definitions shall apply:

3           “(A) MOST RECENT CONVENTIONAL MORT-  
4           GAGE RATE.—The term ‘most recent conven-  
5           tional mortgage rate’ means the contract inter-  
6           est rate on commitments for fixed-rate first  
7           mortgages most recently published in the Fed-  
8           eral Reserve Statistical Release on selected in-  
9           terest rates (daily or weekly), and commonly re-  
10          ferred to as the H.15 release (or any successor  
11          publication), in the week preceding a date of de-  
12          termination for purposes of applying this sub-  
13          section.

14          “(B) QUALIFIED MORTGAGE.—The term  
15          ‘qualified mortgage’ means—

16                 “(i) any residential mortgage loan  
17                 that constitutes a first lien on the dwelling  
18                 or real property securing the loan and ei-  
19                 ther—

20                         “(I) has an annual percentage  
21                         rate that does not equal or exceed the  
22                         yield on securities issued by the Sec-  
23                         retary of the Treasury under chapter  
24                         31 of title 31, United States Code,  
25                         that bear comparable periods of matu-



1 rity by more than 3 percentage points;

2 or

3 “(II) has an annual percentage  
4 rate that does not equal or exceed the  
5 most recent conventional mortgage  
6 rate, or such other annual percentage  
7 rate as may be established by regula-  
8 tion under paragraph (6), by more  
9 than 175 basis points;

10 “(ii) any residential mortgage loan  
11 that is not the first lien on the dwelling or  
12 real property securing the loan and ei-  
13 ther—

14 “(I) has an annual percentage  
15 rate that does not equal or exceed the  
16 yield on securities issued by the Sec-  
17 retary of the Treasury under chapter  
18 31 of title 31, United States Code,  
19 that bear comparable periods of matu-  
20 rity by more than 5 percentage points;  
21 or

22 “(II) has an annual percentage  
23 rate that does not equal or exceed the  
24 most recent conventional mortgage  
25 rate, or such other annual percentage

1 rate as may be established by regula-  
2 tion under paragraph (6), by more  
3 than 375 basis points;

4 “(iii) a loan made or guaranteed by  
5 the Secretary of Veterans Affairs; and

6 “(iv) a mortgage insured under title  
7 II of the National Housing Act (12 U.S.C.  
8 1707 et seq.).

9 “(C) QUALIFIED SAFE HARBOR MORT-  
10 GAGE.—The term ‘qualified safe harbor mort-  
11 gage’ means any residential mortgage loan—

12 “(i) for which the income and finan-  
13 cial resources of the consumer are verified  
14 and documented;

15 “(ii) for which the residential mort-  
16 gage loan underwriting process is based on  
17 the fully-indexed rate, and takes into ac-  
18 count all applicable taxes, insurance, and  
19 assessments;

20 “(iii) which does not provide for a re-  
21 payment schedule that results in negative  
22 amortization at any time;

23 “(iv) meets such other requirements  
24 as may be established by regulation; and

1                   “(v) for which any of the following  
2 factors apply with respect to such loan:

3                   “(I) The periodic payment  
4 amount for principal and interest are  
5 fixed for a minimum of 5 years under  
6 the terms of the loan.

7                   “(II) In the case of a variable  
8 rate loan, the annual percentage rate  
9 varies based on a margin that is less  
10 than 3 percent over a single generally  
11 accepted interest rate index that is  
12 the basis for determining the rate of  
13 interest for the mortgage.

14                   “(III) The loan does not cause  
15 the consumer’s total monthly debts,  
16 including amounts under the loan, to  
17 exceed a percentage established by  
18 regulation of his or her monthly gross  
19 income or such other maximum per-  
20 centage of such income as may be pre-  
21 scribed by regulation under paragraph  
22 (6).

23                   “(4) DETERMINATION OF COMPARISON TO  
24 TREASURY SECURITIES.—

1           “(A) IN GENERAL.—Without regard to  
2 whether a residential mortgage loan is subject  
3 to or reportable under the Home Mortgage Dis-  
4 closure Act of 1975 and subject to subpara-  
5 graph (B), the difference between the annual  
6 percentage rate of such loan and the yield on  
7 securities issued by the Secretary of the Treas-  
8 ury under chapter 31 of title 31, United States  
9 Code, having comparable periods of maturity  
10 shall be determined using the same procedures  
11 and methods of calculation applicable to loans  
12 that are subject to the reporting requirements  
13 under the Home Mortgage Disclosure Act of  
14 1975.

15           “(B) DATE OF DETERMINATION OF  
16 YIELD.—The yield on the securities referred to  
17 in subparagraph (A) shall be determined, for  
18 purposes of such subparagraph and paragraph  
19 (3) with respect to any residential mortgage  
20 loan, as of the 15th day of the month preceding  
21 the month in which a completed application is  
22 submitted for such loan.

23           “(5) APR IN CASE OF INTRODUCTORY  
24 OFFER.—For purposes of making a determination of  
25 whether a residential mortgage loan that provides

1 for a fixed interest rate for an introductory period  
2 and then resets or adjusts to a variable rate is a  
3 qualified mortgage, the determination of the annual  
4 percentage rate, as determined in accordance with  
5 regulations prescribed by the Board under section  
6 107, shall be based on the greater of the introduc-  
7 tory rate and the fully indexed rate of interest.

8 “(6) REGULATIONS.—

9 “(A) IN GENERAL.—The Federal banking  
10 agencies shall jointly prescribe regulations to  
11 carry out the purposes of this subsection.

12 “(B) REVISION OF SAFE HARBOR CRI-  
13 TERIA.—The Federal banking agencies may  
14 jointly prescribe regulations that revise, add to,  
15 or subtract from the criteria that define a quali-  
16 fied mortgage and a qualified safe harbor mort-  
17 gage to the extent necessary and appropriate to  
18 effectuate the purposes of this subsection, to  
19 prevent circumvention or evasion of this sub-  
20 section, or to facilitate compliance with this  
21 subsection.

22 “(7) RULE OF CONSTRUCTION.—No provision  
23 of this subsection may be construed as implying that  
24 a residential mortgage loan may be presumed to vio-

1 late subsection (a) or (b) if such loan is not a quali-  
2 fied mortgage or a qualified safe harbor mortgage.”.

3 **SEC. 204. LIABILITY.**

4 Section 129B of the Truth in Lending Act is amend-  
5 ed by inserting after subsection (c) (as added by section  
6 203) the following new subsection:

7 “(d) LIABILITY FOR VIOLATIONS.—

8 “(1) IN GENERAL.—

9 “(A) RESCISSION.—In addition to any  
10 other liability under this title for a violation by  
11 a creditor of subsection (a) or (b) (for example  
12 under section 130) and subject to the statute of  
13 limitations in paragraph (7), a civil action may  
14 be maintained against a creditor for a violation  
15 of subsection (a) or (b) with respect to a resi-  
16 dential mortgage loan for the rescission of the  
17 loan, and such additional costs as the obligor  
18 may have incurred as a result of the violation  
19 and in connection with obtaining a rescission of  
20 the loan, including a reasonable attorney’s fee.

21 “(B) CURE.—A creditor shall not be liable  
22 for rescission under subparagraph (A) with re-  
23 spect to a residential mortgage loan if, no later  
24 than 90 days after the receipt of notification

1 from the consumer that the loan violates sub-  
2 section (a) or (b), the creditor provides a cure.

3 “(2) LIMITED ASSIGNEE AND SECURITIZER LI-  
4 ABILITY.—Notwithstanding sections 125(e) and 131  
5 and except as provided in paragraph (3), a civil ac-  
6 tion which may be maintained against a creditor  
7 with respect to a residential mortgage loan for a vio-  
8 lation of subsection (a) or (b) may be maintained  
9 against any assignee or securitizer of such residen-  
10 tial mortgage loan, who has acted in good faith, for  
11 the following liabilities only:

12 “(A) Rescission of the loan.

13 “(B) Such additional costs as the obligor  
14 may have incurred as a result of the violation  
15 and in connection with obtaining a rescission of  
16 the loan, including a reasonable attorney’s fee.

17 “(3) ASSIGNEE AND SECURITIZER EXEMP-  
18 TION.—No assignee or securitizer of a residential  
19 mortgage loan shall be liable under paragraph (2)  
20 with respect to such loan if—

21 “(A) no later than 90 days after the re-  
22 ceipt of notification from the consumer that the  
23 loan violates subsection (a) or (b), the assignee  
24 or securitizer provides a cure so that the loan

1 satisfies the requirements of subsections (a)  
2 and (b); or

3 “(B) each of the following conditions are  
4 met:

5 “(i) The assignee or securitizer—

6 “(I) has a policy against buying  
7 residential mortgage loans other than  
8 qualified mortgages or qualified safe  
9 harbor mortgages (as defined in sub-  
10 section (c));

11 “(II) the policy is intended to  
12 verify seller or assignor compliance  
13 with the representations and warran-  
14 ties required under clause (ii); and

15 “(III) in accordance with regula-  
16 tions which the Federal banking agen-  
17 cies and the Securities and Exchange  
18 Commission shall jointly prescribe, ex-  
19 ercises reasonable due diligence to ad-  
20 here to such policy in purchasing resi-  
21 dential mortgage loans, including  
22 through adequate, thorough, and con-  
23 sistent applied sampling procedures.

24 “(ii) The contract under which such  
25 assignee or securitizer acquired the resi-



1           dential mortgage loan from a seller or as-  
2           signor of the loan contains representations  
3           and warranties that the seller or as-  
4           signor—

5                   “(I) is not selling or assigning  
6                   any residential mortgage loan which is  
7                   not a qualified mortgage or a qualified  
8                   safe harbor mortgage; or

9                   “(II) is a beneficiary of a rep-  
10                  resentation and warranty from a pre-  
11                  vious seller or assignor to that effect,  
12                  and the assignee or securitizer in good  
13                  faith takes reasonable steps to obtain the  
14                  benefit of such representation or warranty.

15           “(4) ABSENT PARTIES.—

16                   “(A)     ABSENT     CREDITOR.—Notwith-  
17                  standing the exemption provided in paragraph  
18                  (3), if the creditor with respect to a residential  
19                  mortgage loan made in violation of subsection  
20                  (a) or (b) has ceased to exist as a matter of law  
21                  or has filed for bankruptcy protection under  
22                  title 11, United States Code, or has had a re-  
23                  ceiver or liquidating agent appointed, a con-  
24                  sumer may maintain a civil action against an  
25                  assignee to cure, but not rescind, the residential

1 mortgage loan, plus the costs and reasonable  
2 attorney's fees incurred in obtaining such rem-  
3 edy.

4 “(B) ABSENT CREDITOR AND ASSIGNEE.—  
5 Notwithstanding the exemption provided in  
6 paragraph (3), if the creditor with respect to a  
7 residential mortgage loan made in violation of  
8 subsection (a) or (b) and each assignee of such  
9 loan have ceased to exist as a matter of law or  
10 have filed for bankruptcy protection under title  
11 11, United States Code, or have had receivers  
12 or liquidating agents appointed, the consumer  
13 may maintain the civil action referred to in sub-  
14 paragraph (A) against the securitizer.

15 “(5) CURE DEFINED.—For purposes of this  
16 subsection, the term ‘cure’ means, with respect to a  
17 residential mortgage loan that violates subsection (a)  
18 or (b), the modification or refinancing, at no cost to  
19 the consumer, of the loan to provide terms that  
20 would have satisfied the requirements of subsections  
21 (a) and (b) if the loan had contained such terms as  
22 of the origination of the loan and the payment of  
23 such additional costs as the obligor may have in-  
24 curred as a result of the violation and in connection

1 with obtaining a cure of the loan, including a rea-  
2 sonable attorney's fee.

3 “(6) DISAGREEMENT OVER CURE.—If any cred-  
4 itor, assignee, or securitizer and a consumer fail to  
5 reach agreement on a cure with respect to a residen-  
6 tial mortgage loan that violates subsection (a) or (b),  
7 or the consumer fails to accept a cure proffered by  
8 a creditor, assignee, or securitizer—

9 “(A) the creditor, assignee, or securitizer  
10 may provide the cure; and

11 “(B) the consumer may challenge the ade-  
12 quacy of the cure during the 6-month period be-  
13 ginning when the cure is provided.

14 If the consumer's challenge, under this paragraph,  
15 of a cure is successful, the creditor, assignee, or  
16 securitizer shall be liable to the consumer for rescis-  
17 sion of the loan and such additional costs under  
18 paragraph (2).

19 “(7) INABILITY TO PROVIDE OR OBTAIN RE-  
20 SCISSION.—If a creditor, assignee, or securitizer  
21 cannot provide, or a consumer cannot obtain, rescis-  
22 sion under paragraph (1) or (2), the liability of such  
23 creditor, assignee, or securitizer shall be met by pro-  
24 viding the financial equivalent of a rescission, to-  
25 gether with such additional costs as the obligor may

1 have incurred as a result of the violation and in con-  
2 nection with obtaining a rescission of the loan, in-  
3 cluding a reasonable attorney’s fee.

4 “(8) NO CLASS ACTIONS AGAINST ASSIGNEE OR  
5 SECURITIZER UNDER PARAGRAPH (2).—Only indi-  
6 vidual actions may be brought against an assignee  
7 or securitizer of a residential mortgage loan for a  
8 violation of subsection (a) or (b).

9 “(9) STATUTE OF LIMITATIONS.—The liability  
10 of a creditor, assignee, or securitizer under this sub-  
11 section shall apply in any original action against a  
12 creditor under paragraph (1) or an assignee or  
13 securitizer under paragraph (2) which is brought be-  
14 fore—

15 “(A) in the case of any residential mort-  
16 gage loan other than a loan to which subpara-  
17 graph (B) applies, the end of the 3-year period  
18 beginning on the date the loan is consummated;  
19 or

20 “(B) in the case of a residential mortgage  
21 loan that provides for a fixed interest rate for  
22 an introductory period and then resets or ad-  
23 justs to a variable rate or that provides for a  
24 nonamortizing payment schedule and then con-

1           verts to an amortizing payment schedule, the  
2           earlier of—

3                   “(i) the end of the 1-year period be-  
4                   ginning on the date of such reset, adjust-  
5                   ment, or conversion; or

6                   “(ii) the end of the 6-year period be-  
7                   ginning on the date the loan is con-  
8                   summated.

9                   “(10) POOLS AND INVESTORS IN POOLS EX-  
10                  CLUDED.—In the case of residential mortgage loans  
11                  acquired or aggregated for the purpose of including  
12                  such loans in a pool of assets held for the purpose  
13                  of issuing or selling instruments representing inter-  
14                  ests in such pools including through a securitization  
15                  vehicle, the terms ‘assignee’ and ‘securitizer’, as  
16                  used in this section, do not include the securitization  
17                  vehicle, the pools of such loans or any original or  
18                  subsequent purchaser of any interest in the  
19                  securitization vehicle or any instrument representing  
20                  a direct or indirect interest in such pool.”.

21 **SEC. 205. DEFENSE TO FORECLOSURE.**

22           Section 129B of the Truth in Lending Act is amend-  
23   ed by inserting after subsection (d) (as added by section  
24   204) the following new subsection:

1       “(e) DEFENSE TO FORECLOSURE.—Notwithstanding  
2 any other provision of law—

3           “(1) when the holder of a residential mortgage  
4 loan or anyone acting for such holder initiates a ju-  
5 dicial or nonjudicial foreclosure—

6           “(A) a consumer who has the right to re-  
7 scind under this section with respect to such  
8 loan against the creditor or any assignee or  
9 securitizer may assert such right as a defense  
10 to foreclosure or counterclaim to such fore-  
11 closure against the holder, or

12           “(B) if the foreclosure proceeding begins  
13 after the end of the period during which a con-  
14 sumer may bring an action for rescission under  
15 subsection (d) and the consumer would have  
16 had a valid basis for such an action if it had  
17 been brought before the end of such period, the  
18 consumer may seek actual damages incurred by  
19 reason of the violation which gave rise to the  
20 right of rescission, together with costs of the  
21 action, including a reasonable attorney’s fee  
22 against the creditor or any assignee or  
23 securitizer; and

24           “(2) such holder or anyone acting for such  
25 holder or any other applicable third party may sell,

1 transfer, convey, or assign a residential mortgage  
2 loan to a creditor, any assignee, or any securitizer,  
3 or their designees, to effect a rescission or cure.”.

4 **SEC. 206. ADDITIONAL STANDARDS AND REQUIREMENTS.**

5 (a) IN GENERAL.—Section 129B of the Truth in  
6 Lending Act is amended by inserting after subsection (e)  
7 (as added by section 205) the following new subsections:

8 “(f) PROHIBITION ON CERTAIN PREPAYMENT PEN-  
9 ALTIES.—

10 “(1) PROHIBITED ON CERTAIN LOANS.—A resi-  
11 dential mortgage loan that is not a qualified mort-  
12 gage (as defined in subsection (c)) may not contain  
13 terms under which a consumer must pay a prepay-  
14 ment penalty for paying all or part of the principal  
15 after the loan is consummated.

16 “(2) PHASED-OUT PENALTIES ON QUALIFIED  
17 MORTGAGES.—A qualified mortgage (as defined in  
18 subsection (c)) may not contain terms under which  
19 a consumer must pay a prepayment penalty for pay-  
20 ing all or part of the principal after the loan is con-  
21 summated in excess of the following limitations:

22 “(A) During the 1-year period beginning  
23 on the date the loan is consummated, the pre-  
24 payment penalty shall not exceed an amount

1 equal to 3 percent of the outstanding balance  
2 on the loan.

3 “(B) During the 1-year period beginning  
4 after the period described in subparagraph (A),  
5 the prepayment penalty shall not exceed an  
6 amount equal to 2 percent of the outstanding  
7 balance on the loan.

8 “(C) During the 1-year period beginning  
9 after the 1-year period described in subpara-  
10 graph (B), the prepayment penalty shall not ex-  
11 ceed an amount equal to 1 percent of the out-  
12 standing balance on the loan.

13 “(D) After the end of the 3-year period be-  
14 ginning on the date the loan is consummated,  
15 no prepayment penalty may be imposed on a  
16 qualified mortgage.

17 “(3) PROHIBITED AFTER INITIAL PERIOD ON  
18 LOANS WITH A RESET.—A qualified mortgage with  
19 a fixed interest rate for an introductory period that  
20 adjusts or resets after such period may not contain  
21 terms under which a consumer must pay a prepay-  
22 ment penalty for paying all or part of the principal  
23 after the beginning of the 3-month period ending on  
24 the date of the adjustment or reset.



1           “(4) OPTION FOR NO PREPAYMENT PENALTY  
2           REQUIRED.—A creditor may not offer a consumer a  
3           residential mortgage loan product that has a prepay-  
4           ment penalty for paying all or part of the principal  
5           after the loan is consummated as a term of the loan  
6           without offering the consumer a residential mort-  
7           gage loan product that does not have a prepayment  
8           penalty as a term of the loan.

9           “(g) SINGLE PREMIUM CREDIT INSURANCE PROHIB-  
10          ITED.—No creditor may finance, directly or indirectly, in  
11          connection with any residential mortgage loan or with any  
12          extension of credit under an open end consumer credit  
13          plan secured by the principal dwelling of the consumer  
14          (other than a reverse mortgage), any credit life, credit dis-  
15          ability, credit unemployment or credit property insurance,  
16          or any other accident, loss-of-income, life or health insur-  
17          ance, or any payments directly or indirectly for any debt  
18          cancellation or suspension agreement or contract, except  
19          that—

20                 “(1) insurance premiums or debt cancellation or  
21                 suspension fees calculated and paid in full on a  
22                 monthly basis shall not be considered financed by  
23                 the creditor; and

24                 “(2) this subsection shall not apply to credit  
25                 unemployment insurance for which the unemploy-

1       ment insurance premiums are reasonable and at no  
2       additional cost to the consumer, the creditor receives  
3       no direct or indirect compensation in connection  
4       with the unemployment insurance premiums, and  
5       the unemployment insurance premiums are paid pur-  
6       suant to another insurance contract and not paid to  
7       an affiliate of the creditor.

8       “(h) ARBITRATION.—

9               “(1) IN GENERAL.—No residential mortgage  
10       loan and no extension of credit under an open end  
11       consumer credit plan secured by the principal dwell-  
12       ing of the consumer, other than a reverse mortgage,  
13       may include terms which require arbitration or any  
14       other nonjudicial procedure as the method for resolv-  
15       ing any controversy or settling any claims arising  
16       out of the transaction.

17               “(2) POST-CONTROVERSY AGREEMENTS.—Sub-  
18       ject to paragraph (3), paragraph (1) shall not be  
19       construed as limiting the right of the consumer and  
20       the creditor, any assignee, or any securitizer to  
21       agree to arbitration or any other nonjudicial proce-  
22       dure as the method for resolving any controversy at  
23       any time after a dispute or claim under the trans-  
24       action arises.

1           “(3) NO WAIVER OF STATUTORY CAUSE OF AC-  
2           TION.—No provision of any residential mortgage  
3           loan or of any extension of credit under an open end  
4           consumer credit plan secured by the principal dwell-  
5           ing of the consumer (other than a reverse mort-  
6           gage), and no other agreement between the con-  
7           sumer and the creditor relating to the residential  
8           mortgage loan or extension of credit referred to in  
9           paragraph (1), shall be applied or interpreted so as  
10          to bar a consumer from bringing an action in an ap-  
11          propriate district court of the United States, or any  
12          other court of competent jurisdiction, pursuant to  
13          section 130 or any other provision of law, for dam-  
14          ages or other relief in connection with any alleged  
15          violation of this section, any other provision of this  
16          title, or any other Federal law.

17          “(i) DUTY OF SECURITIZER TO RETAIN ACCESS TO  
18          LOANS.—Any securitizer shall reserve the right and pre-  
19          serve an ability, in any document or contract establishing  
20          any pool of assets that includes any residential mortgage  
21          loan—

22                 “(1) to identify and obtain access to any such  
23          loan in the pool; and

24                 “(2) to provide for and obtain a remedy under  
25          this title for the obligor under any such loan.

1       “(j) EFFECT OF FORECLOSURE ON PREEXISTING  
2 LEASE.—

3           “(1) IN GENERAL.—In the case of any fore-  
4 closure on any dwelling or residential real property  
5 securing an extension of credit made under a con-  
6 tract entered into after the date of the enactment of  
7 the Mortgage Reform and Anti-Predatory Lending  
8 Act of 2007, any successor in interest in such prop-  
9 erty pursuant to the foreclosure shall assume such  
10 interest subject to—

11           “(A) the provision, by the successor in in-  
12 terest, of a notice to vacate to any bona fide  
13 tenant at least 90 days before the effective date  
14 of the notice to vacate; and

15           “(B) the rights of any bona fide tenant, as  
16 of the date of such notice of foreclosure—

17           “(i) under any bona fide lease entered  
18 into before the notice of foreclosure to oc-  
19 cupy the premises until the end of the re-  
20 maining term of the lease or the end of the  
21 6-month period beginning on the date of  
22 the notice of foreclosure, whichever occurs  
23 first, subject to the receipt by the tenant  
24 of the 90-day notice under subparagraph  
25 (A); or

1                   “(ii) without a lease or with a lease  
2                   terminable at will under State law, subject  
3                   to the receipt by the tenant of the 90-day  
4                   notice under subparagraph (A).

5                   “(2) BONA FIDE LEASE OR TENANCY.—For  
6                   purposes of this section, a lease or tenancy shall be  
7                   considered bona fide only if—

8                   “(A) the mortgagor under the contract is  
9                   not the tenant;

10                   “(B) the lease or tenancy was the result of  
11                   an arms-length transaction; or

12                   “(C) the lease or tenancy requires the re-  
13                   ceipt of rent that is not substantially less than  
14                   fair market rent for the property.

15                   “(k) MORTGAGES WITH NEGATIVE AMORTIZA-  
16                   TION.—No creditor may extend credit to a borrower in  
17                   connection with a consumer credit transaction under an  
18                   open or closed end consumer credit plan secured by a  
19                   dwelling or residential real property that includes a dwell-  
20                   ing, other than a reverse mortgage, that provides or per-  
21                   mits a payment plan that may, at any time over the term  
22                   of the extension of credit, result in negative amortization  
23                   unless, before such transaction is consummated—

24                   “(1) the creditor provides the consumer with a  
25                   statement that—

1           “(A) the pending transaction will or may,  
2           as the case may be, result in negative amortiza-  
3           tion;

4           “(B) describes negative amortization in  
5           such manner as the Federal banking agencies  
6           shall prescribe;

7           “(C) negative amortization increases the  
8           outstanding principal balance of the account;  
9           and

10          “(D) negative amortization reduces the  
11          consumer’s equity in the dwelling or real prop-  
12          erty; and

13          “(2) in the case of a first-time borrower with  
14          respect to a residential mortgage loan that is not a  
15          qualified mortgage, the first-time borrower provides  
16          the creditor with sufficient documentation to dem-  
17          onstrate that the consumer received homeownership  
18          counseling from organizations or counselors certified  
19          by the Secretary of Housing and Urban Develop-  
20          ment as competent to provide such counseling.

21          “(l) ANNUAL CONTACT INFORMATION.—At least  
22          once annually and whenever there is a change in owner-  
23          ship of a residential mortgage loan, the servicer with re-  
24          spect to a residential mortgage loan shall provide a written  
25          notice to the consumer identifying the name of the creditor

1 or any assignee or securitizer who should be contacted by  
2 the consumer for any reason concerning the consumer’s  
3 rights with respect to the loan.”.

4 (b) CONFORMING AMENDMENT RELATING TO EN-  
5 FORCEMENT.—Section 108(a) of the Truth in Lending  
6 Act (15 U.S.C. 1607(a)) is amended by inserting after  
7 paragraph (6) the following new paragraph:

8 “(7) sections 21B and 21C of the Securities  
9 Exchange Act of 1934, in the case of a broker or  
10 dealer, other than a depository institution, by the  
11 Securities and Exchange Commission.”.

12 **SEC. 207. RULE OF CONSTRUCTION.**

13 Except as otherwise expressly provided in section  
14 129A or 129B of the Truth in Lending Act (as added by  
15 this Act), no provision of such section 129A or 129B shall  
16 be construed as superseding, repealing, or affecting any  
17 duty, right, obligation, privilege, or remedy of any person  
18 under any other provision of the Truth in Lending Act  
19 or any other provision of Federal or State law.

20 **SEC. 208. EFFECT ON STATE LAWS.**

21 (a) IN GENERAL.—Section 129B(d) of the Truth in  
22 Lending Act (as added by section 204) shall supersede any  
23 State law or application thereof that provides additional  
24 remedies against any assignee, securitizer, or  
25 securitization vehicle, and the remedies described in such

1 section shall constitute the sole remedies against any as-  
2 signee, securitizer, or securitization vehicle, for a violation  
3 of subsection (a) or (b) of section 129B of such Act or  
4 any other State law the terms of which address the specific  
5 subject matter of subsection (a) (determination of ability  
6 to repay) or (b) (requirement of a net tangible benefit)  
7 of such section 129B.

8 (b) RULES OF CONSTRUCTION.—No provision of this  
9 section shall be construed as limiting—

10 (1) the application of any State law against a  
11 creditor;

12 (2) the availability of remedies based upon  
13 fraud, misrepresentation, deception, false adver-  
14 tising, or civil rights laws—

15 (A) against any assignee, securitizer, or  
16 securitization vehicle for its own conduct relat-  
17 ing to the making of a residential mortgage  
18 loan to a consumer; or

19 (B) against any assignee, securitizer, or  
20 securitization vehicle in the sale or purchase of  
21 residential mortgage loans or securities; or

22 (3) the application of any other State law  
23 against any assignee, securitizer, or securitization  
24 vehicle except as specifically provided in subsection  
25 (a) of this section.



1 **SEC. 209. REGULATIONS.**

2 Regulations required or authorized to be prescribed  
3 under this title or the amendments made by this title—

4 (1) shall be prescribed in final form before the  
5 end of the 12-month period beginning on the date of  
6 the enactment of this Act; and

7 (2) shall take effect not later than 18 months  
8 after the date of the enactment of this Act.

9 **SEC. 210. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

10 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-  
11 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a)(2) of  
12 the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is  
13 amended—

14 (1) by striking “\$100” and inserting “\$200”;

15 (2) by striking “\$1,000” and inserting  
16 “\$2,000”;

17 (3) by striking “\$200” and inserting “\$400”;

18 (4) by striking “\$2,000” and inserting  
19 “\$4,000”; and

20 (5) by striking “\$500,000” and inserting  
21 “\$1,000,000”.

22 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-  
23 TION 129 VIOLATIONS.—Section 130(e) of the Truth in  
24 Lending Act (15 U.S.C. 1640(e)) is amended—

1           (1) in the first sentence, by striking “Any ac-  
2           tion” and inserting “Except as provided in the sub-  
3           sequent sentence, any action”; and

4           (2) by inserting after the first sentence the fol-  
5           lowing new sentence: “Any action under this section  
6           with respect to any violation of section 129 may be  
7           brought in any United States district court, or in  
8           any other court of competent jurisdiction, before the  
9           end of the 3-year period beginning on the date of the  
10          occurrence of the violation.”.

11 **SEC. 211. LENDER RIGHTS IN THE CONTEXT OF BORROWER**  
12 **DECEPTION.**

13          Section 130 of the Truth in Lending Act is amended  
14 by adding at the end the following new subsection:

15          “(j) EXEMPTION FROM LIABILITY AND RESCISSION  
16 IN CASE OF BORROWER FRAUD OR DECEPTION.—In ad-  
17 dition to any other remedy available by law or contract,  
18 no creditor, assignee, or securitizer shall be liable to an  
19 obligor under this section, nor shall it be subject to the  
20 right of rescission of any obligor under 129B, if such obli-  
21 gor, or co-obligor, knowingly, or willfully and with actual  
22 knowledge furnished material information known to be  
23 false for the purpose of obtaining such residential mort-  
24 gage loan.”.

1 **SEC. 212. SIX-MONTH NOTICE REQUIRED BEFORE RESET OF**  
2 **HYBRID ADJUSTABLE RATE MORTGAGES.**

3 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
4 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
5 after section 128 the following new section:

6 **“§ 128A. Reset of hybrid adjustable rate mortgages**

7 “(a) HYBRID ADJUSTABLE RATE MORTGAGES DE-  
8 FINED.—For purposes of this section, the term ‘hybrid ad-  
9 justable rate mortgage’ means a consumer credit trans-  
10 action secured by the consumer’s principal residence with  
11 a fixed interest rate for an introductory period that ad-  
12 justs or resets to a variable interest rate after such period.

13 “(b) NOTICE OF RESET AND ALTERNATIVES.—Dur-  
14 ing the 1-month period that ends 6 months before the date  
15 on which the interest rate in effect during the introductory  
16 period of a hybrid adjustable rate mortgage adjusts or  
17 resets to a variable interest rate, the creditor or servicer  
18 of such loan shall provide a written notice, separate and  
19 distinct from all other correspondence to the consumer,  
20 that includes the following:

21 “(1) Any index or formula used in making ad-  
22 justments to or resetting the interest rate and a  
23 source of information about the index or formula.

24 “(2) An explanation of how the new interest  
25 rate and payment would be determined, including an

1 explanation of how the index was adjusted, such as  
2 by the addition of a margin.

3 “(3) A good faith estimate, based on accepted  
4 industry standards, of the creditor or servicer of the  
5 amount of the monthly payment that will apply after  
6 the date of the adjustment or reset, and the assump-  
7 tions on which this estimate is based.

8 “(4) A list of alternatives consumers may pur-  
9 sue before the date of adjustment or reset, and de-  
10 scriptions of the actions consumers must take to  
11 pursue these alternatives, including—

12 “(A) refinancing;

13 “(B) renegotiation of loan terms;

14 “(C) payment forbearances; and

15 “(D) pre-foreclosure sales.

16 “(5) The names, addresses, telephone numbers,  
17 and Internet addresses of counseling agencies or  
18 programs reasonably available to the consumer that  
19 have been certified or approved and made publicly  
20 available by the Secretary of Housing and Urban  
21 Development or a State housing finance authority  
22 (as defined in section 1301 of the Financial Institu-  
23 tions Reform, Recovery, and Enforcement Act of  
24 1989).

1           “(6) The address, telephone number, and Inter-  
2           net address for the State housing finance authority  
3           (as so defined) for the State in which the consumer  
4           resides.”.

5           (b) CLERICAL AMENDMENT.—The table of sections  
6           for chapter 2 of the Truth in Lending Act is amended  
7           by inserting after the item relating to section 128 the fol-  
8           lowing new item:

          “128A. Reset of hybrid adjustable rate mortgages.”.

9           **SEC. 213. REQUIRED DISCLOSURES.**

10          (a) ADDITIONAL INFORMATION.—Section 128(a) of  
11          Truth in Lending Act (15 U.S.C. 1638(a)) is amended  
12          by adding at the end the following new paragraphs:

13               “(16) In the case of an extension of credit that  
14               is secured by the dwelling of a consumer, under  
15               which the annual rate of interest is variable, or with  
16               respect to which the regular payments may other-  
17               wise be variable, in addition to the other disclosures  
18               required under this subsection, the disclosures pro-  
19               vided under this subsection shall state the maximum  
20               amount of the regular required payments on the  
21               loan, based on the maximum interest rate allowed,  
22               introduced with the following language in con-  
23               spicuous type size and format: ‘Your payment can  
24               go as high as \$\_\_\_\_’, the blank to be filled in with  
25               the maximum possible payment amount.

1           “(17) In the case of a residential mortgage loan  
2           for which an escrow or impound account will be es-  
3           tablished for the payment of all applicable taxes, in-  
4           surance, and assessments, the following statement:  
5           ‘Your payments will be increased to cover taxes and  
6           insurance. In the first year, you will pay an addi-  
7           tional \$\_\_\_\_\_ [insert the amount of the monthly pay-  
8           ment to the account] every month to cover the costs  
9           of taxes and insurance.’.

10           “(18) In the case of a variable rate residential  
11           mortgage loan for which an escrow or impound ac-  
12           count will be established for the payment of all ap-  
13           plicable taxes, insurance, and assessments—

14           “(A) the amount of initial monthly pay-  
15           ment due under the loan for the payment of  
16           principal and interest, and the amount of such  
17           initial monthly payment including the monthly  
18           payment deposited in the account for the pay-  
19           ment of all applicable taxes, insurance, and as-  
20           sessments; and

21           “(B) the amount of the fully indexed  
22           monthly payment due under the loan for the  
23           payment of principal and interest, and the  
24           amount of such fully indexed monthly payment  
25           including the monthly payment deposited in the

1 account for the payment of all applicable taxes,  
2 insurance, and assessments.

3 “(19) In the case of a residential mortgage  
4 loan, the aggregate amount of settlement charges for  
5 all settlement services provided in connection with  
6 the loan, the amount of charges that are included in  
7 the loan and the amount of such charges the bor-  
8 rower must pay at closing, the approximate amount  
9 of the wholesale rate of funds in connection with the  
10 loan, and the aggregate amount of other fees or re-  
11 quired payments in connection with the loan.

12 “(20) In the case of a residential mortgage  
13 loan, the aggregate amount of fees paid to the mort-  
14 gage originator in connection with the loan, the  
15 amount of such fees paid directly by the consumer,  
16 and any additional amount received by the originator  
17 from the creditor based on the interest rate of the  
18 loan.”.

19 (b) TIMING.—Section 128(b) of the Truth in Lending  
20 Act (15 U.S.C. 1638(b)) is amended by adding at the end  
21 the following new paragraph:

22 “(4) RESIDENTIAL MORTGAGE LOAN DISCLO-  
23 SURES.—In the case of a residential mortgage loan,  
24 the information required to be disclosed under sub-

1 section (a) with respect to such loan shall be dis-  
2 closed before the earlier of—

3 “(A) the time required under the first sen-  
4 tence of paragraph (1); or

5 “(B) the end of the 3-day period beginning  
6 on the date the application for the loan from a  
7 consumer is received by the creditor.”.

8 (c) ENHANCED MORTGAGE LOAN DISCLOSURES.—  
9 Section 128(b)(2) of the Truth in Lending Act (15 U.S.C.  
10 1638(b)(2)) is amended—

11 (1) by striking “(2) In the” and inserting the  
12 following:

13 “(2) MORTGAGE DISCLOSURES.—

14 “(A) IN GENERAL.—In the”;

15 (2) by striking “a residential mortgage trans-  
16 action, as defined in section 103(w)” and inserting  
17 “any extension of credit that is secured by the dwell-  
18 ing of a consumer”;

19 (3) by striking “shall be made in accordance”  
20 and all that follows through “extended, or”;

21 (4) by striking “If the” and all that follows  
22 through the end of the paragraph and inserting the  
23 following new subparagraphs:

24 “(B) STATEMENT AND TIMING OF DISCLO-  
25 SURES.—In the case of an extension of credit



1 that is secured by the dwelling of a consumer,  
2 in addition to the other disclosures required by  
3 subsection (a), the disclosures provided under  
4 this paragraph shall state in conspicuous type  
5 size and format, the following: ‘You are not re-  
6 quired to complete this agreement merely be-  
7 cause you have received these disclosures or  
8 signed a loan application.’.

9 “(i) state in conspicuous type size and  
10 format, the following: ‘You are not re-  
11 quired to complete this agreement merely  
12 because you have received these disclosures  
13 or signed a loan application.’; and

14 “(ii) be furnished to the borrower not  
15 later than 7 business days before the date  
16 of consummation of the transaction, sub-  
17 ject to subparagraph (D).

18 “(C) VARIABLE RATES OR PAYMENT  
19 SCHEDULES.—In the case of an extension of  
20 credit that is secured by the dwelling of a con-  
21 sumer, under which the annual rate of interest  
22 is variable, or with respect to which the regular  
23 payments may otherwise be variable, in addition  
24 to the other disclosures required by subsection  
25 (a), the disclosures provided under this para-

1 graph shall label the payment schedule as fol-  
2 lows: ‘Payment Schedule: Payments Will Vary  
3 Based on Interest Rate Changes.’.

4 “(D) UPDATING APR.—In any case in  
5 which the disclosure statement provided 7 busi-  
6 ness days before the date of consummation of  
7 the transaction contains an annual percentage  
8 rate of interest that is no longer accurate, as  
9 determined under section 107(c), the creditor  
10 shall furnish an additional, corrected statement  
11 to the borrower, not later than 3 business days  
12 before the date of consummation of the trans-  
13 action.”.

14 **SEC. 214. DISCLOSURES REQUIRED IN MONTHLY STATE-**  
15 **MENTS FOR RESIDENTIAL MORTGAGE**  
16 **LOANS.**

17 Section 128 of the Truth in Lending Act (15 U.S.C.  
18 1638) is amended by adding at the end the following new  
19 subsection:

20 “(e) PERIODIC STATEMENTS FOR RESIDENTIAL  
21 MORTGAGE LOANS.—

22 “(1) IN GENERAL.—The creditor, assignee, or  
23 servicer with respect to any residential mortgage  
24 loan shall transmit to the obligor, for each billing  
25 cycle, a statement setting forth each of the following

1 items, to the extent applicable, in a conspicuous and  
2 prominent manner:

3 “(A) The amount of the principal obliga-  
4 tion under the mortgage.

5 “(B) The current interest rate in effect for  
6 the loan.

7 “(C) The date on which the interest rate  
8 may next reset or adjust.

9 “(D) The amount of any prepayment fee  
10 to be charged, if any.

11 “(E) A description of any late payment  
12 fees.

13 “(F) A telephone number and electronic  
14 mail address that may be used by the obligor to  
15 obtain information regarding the mortgage.

16 “(G) Such other information as the Board  
17 may prescribe in regulations.

18 “(2) DEVELOPMENT AND USE OF STANDARD  
19 FORM.—The Federal banking agencies shall jointly  
20 develop and prescribe a standard form for the disclo-  
21 sure required under this subsection, taking into ac-  
22 count that the statements required may be trans-  
23 mitted in writing or electronically.”.

1 **SEC. 215. AUTHORIZATION OF APPROPRIATIONS.**

2 For fiscal years 2008, 2009, 2010, 2011, and 2012,  
3 there are authorized to be appropriated to the Attorney  
4 General a total of—

5 (1) \$31,250,000 to support the employment of  
6 30 additional agents of the Federal Bureau of Inves-  
7 tigation and 2 additional dedicated prosecutors at  
8 the Department of Justice to coordinate prosecution  
9 of mortgage fraud efforts with the offices of the  
10 United States Attorneys; and

11 (2) \$750,000 to support the operations of inter-  
12 agency task forces of the Federal Bureau of Inves-  
13 tigation in the areas with the 15 highest concentra-  
14 tions of mortgage fraud.

15 **SEC. 216. EFFECTIVE DATE.**

16 The amendments made by this title shall apply to  
17 transactions consummated on or after the effective date  
18 of the regulations specified in section 209.

19 **SEC. 217. REPORT BY THE GAO.**

20 (a) REPORT REQUIRED.—The Comptroller General  
21 shall conduct a study to determine the effects the enact-  
22 ment of this Act will have on the availability and afford-  
23 ability of credit for homebuyers and mortgage lending, in-  
24 cluding the effect—

1           (1) on the mortgage market for mortgages that  
2           are not within the safe harbor provided in the  
3           amendments made by this title;

4           (2) on the ability of prospective homebuyers to  
5           obtain financing;

6           (3) on the ability of homeowners facing resets  
7           or adjustments to refinance—for example, do they  
8           have fewer refinancing options due to the unavail-  
9           ability of certain loan products that were available  
10          before the enactment of this Act;

11          (4) on minorities' ability to access affordable  
12          credit compared with other prospective borrowers;

13          (5) on home sales and construction;

14          (6) of extending the rescission right, if any, on  
15          adjustable rate loans and its impact on litigation;

16          (7) of State foreclosure laws and, if any, an in-  
17          vestor's ability to transfer a property after fore-  
18          closure;

19          (8) of expanding the existing provisions of the  
20          Home Ownership and Equity Protection Act of  
21          1994;

22          (9) of prohibiting prepayment penalties on  
23          high-cost mortgages; and

24          (10) of establishing counseling services under  
25          the Department of Housing and Urban Development

1 and offered through the Office of Housing Coun-  
2 seling.

3 (b) REPORT.—Before the end of the 1-year period be-  
4 ginning on the date of the enactment of this Act, the  
5 Comptroller General shall submit a report to the Congress  
6 containing the findings and conclusions of the Comptroller  
7 General with respect to the study conducted pursuant to  
8 subsection (a).

## 9 **TITLE III—HIGH-COST** 10 **MORTGAGES**

### 11 **SEC. 301. DEFINITIONS RELATING TO HIGH-COST MORT-** 12 **GAGES.**

13 (a) HIGH-COST MORTGAGE DEFINED.—Section  
14 103(aa) of the Truth in Lending Act (15 U.S.C.  
15 1602(aa)) is amended by striking all that precedes para-  
16 graph (2) and inserting the following:

17 “(aa) HIGH-COST MORTGAGE.—

18 “(1) DEFINITION.—

19 “(A) IN GENERAL.—The term ‘high-cost  
20 mortgage’, and a mortgage referred to in this  
21 subsection, means a consumer credit trans-  
22 action that is secured by the consumer’s prin-  
23 cipal dwelling, other than a reverse mortgage  
24 transaction, if—

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

3                   “(I) by a first mortgage on the  
4                   consumer’s principal dwelling, the an-  
5                   nual percentage rate at consummation  
6                   of the transaction will exceed by more  
7                   than 8 percentage (10 percentage  
8                   points, if the dwelling is personal  
9                   property and the transaction is for  
10                  less than \$50,000) points the yield on  
11                  Treasury securities having comparable  
12                  periods of maturity on the 15th day of  
13                  the month immediately preceding the  
14                  month in which the application for the  
15                  extension of credit is received by the  
16                  creditor; or

17                  “(II) by a subordinate or junior  
18                  mortgage on the consumer’s principal  
19                  dwelling, the annual percentage rate  
20                  at consummation of the transaction  
21                  will exceed by more than 10 percent-  
22                  age points the yield on Treasury secu-  
23                  rities having comparable periods of  
24                  maturity on the 15th day of the  
25                  month immediately preceding the

1 month in which the application for the  
2 extension of credit is received by the  
3 creditor;

4 “(ii) the total points and fees payable  
5 in connection with the transaction ex-  
6 ceed—

7 “(I) in the case of a transaction  
8 for \$20,000 or more, 5 percent of the  
9 total transaction amount; or

10 “(II) in the case of a transaction  
11 for less than \$20,000, the lesser of 8  
12 percent of the total transaction  
13 amount or \$1,000; or

14 “(iii) the credit transaction documents  
15 permit the creditor to charge or collect pre-  
16 payment fees or penalties more than 36  
17 months after the transaction closing or  
18 such fees or penalties exceed, in the aggre-  
19 gate, more than 2 percent of the amount  
20 prepaid.

21 “(B) INTRODUCTORY RATES TAKEN INTO  
22 ACCOUNT.—For purposes of subparagraph  
23 (A)(i), the annual percentage rate of interest  
24 shall be determined based on the following in-  
25 terest rate:



1           “(i) In the case of a fixed-rate trans-  
2           action in which the annual percentage rate  
3           will not vary during the term of the loan,  
4           the interest rate in effect on the date of  
5           consummation of the transaction.

6           “(ii) In the case of a transaction in  
7           which the rate of interest varies solely in  
8           accordance with an index, the interest rate  
9           determined by adding the index rate in ef-  
10          fect on the date of consummation of the  
11          transaction to the maximum margin per-  
12          mitted at any time during the transaction  
13          agreement.

14          “(iii) In the case of any other trans-  
15          action in which the rate may vary at any  
16          time during the term of the loan for any  
17          reason, the interest charged on the trans-  
18          action at the maximum rate that may be  
19          charged during the term of the trans-  
20          action.”.

21          (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section  
22          103(aa)(2) of the Truth in Lending Act (15 U.S.C.  
23          1602(aa)(2)) is amended by striking subparagraph (B)  
24          and inserting the following new subparagraph:

1           “(B) An increase or decrease under sub-  
2 paragraph (A)—

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

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

13 (c) POINTS AND FEES DEFINED.—

14           (1) IN GENERAL.—Section 103(aa)(4) of the  
15 Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is  
16 amended—

17           (A) by striking subparagraph (B) and in-  
18 serting the following:

19           “(B) all compensation paid directly or indi-  
20 rectly by a consumer or creditor to a mortgage  
21 broker from any source, including a mortgage  
22 originator that originates a loan in the name of  
23 the originator in a table-funded transaction;”;

24           (B) in subparagraph (C)(ii), by inserting  
25 “except where applied to the charges set forth

1 in section 106(e)(1) where a creditor may re-  
2 ceive indirect compensation solely as a result of  
3 obtaining distributions of profits from an affili-  
4 ated entity based on its ownership interest in  
5 compliance with section 8(e)(4) of the Real Es-  
6 tate Settlement Procedures Act of 1974” before  
7 the semicolon at the end;

8 (C) in subparagraph (C)(iii), by striking “;  
9 and” and inserting “, except as provided for in  
10 clause (ii);”;

11 (D) by redesignating subparagraph (D) as  
12 subparagraph (G); and

13 (E) by inserting after subparagraph (C)  
14 the following new subparagraphs:

15 “(D) premiums or other charges payable at  
16 or before closing for any credit life, credit dis-  
17 ability, credit unemployment, or credit property  
18 insurance, or any other accident, loss-of-income,  
19 life or health insurance, or any payments di-  
20 rectly or indirectly for any debt cancellation or  
21 suspension agreement or contract, except that  
22 insurance premiums or debt cancellation or sus-  
23 pension fees calculated and paid in full on a  
24 monthly basis shall not be considered financed  
25 by the creditor;

1           “(E) except as provided in subsection (cc),  
2           the maximum prepayment fees and penalties  
3           which may be charged or collected under the  
4           terms of the credit transaction;

5           “(F) all prepayment fees or penalties that  
6           are incurred by the consumer if the loan refi-  
7           nances a previous loan made or currently held  
8           by the same creditor or an affiliate of the cred-  
9           itor; and”.

10           (2) CALCULATION OF POINTS AND FEES FOR  
11           OPEN-END CONSUMER CREDIT PLANS.—Section  
12           103(aa) of the Truth in Lending Act (15 U.S.C.  
13           1602(aa)) is amended—

14           (A) by redesignating paragraph (5) as  
15           paragraph (6); and

16           (B) by inserting after paragraph (4) the  
17           following new paragraph:

18           “(5) CALCULATION OF POINTS AND FEES FOR  
19           OPEN-END CONSUMER CREDIT PLANS.—In the case  
20           of open-end consumer credit plans, points and fees  
21           shall be calculated, for purposes of this section and  
22           section 129, by adding the total points and fees  
23           known at or before closing, including the maximum  
24           prepayment penalties which may be charged or col-  
25           lected under the terms of the credit transaction, plus

1 the minimum additional fees the consumer would be  
2 required to pay to draw down an amount equal to  
3 the total credit line.”.

4 (d) HIGH COST MORTGAGE LENDER.—Section  
5 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f))  
6 is amended by striking the last sentence and inserting the  
7 following new sentence: “Any person who originates or  
8 brokers 2 or more mortgages referred to in subsection (aa)  
9 in any 12-month period, any person who originates 1 or  
10 more such mortgages through a mortgage broker in any  
11 12 month period, or, in connection with a table funding  
12 transaction of such a mortgage, any person to whom the  
13 obligation is initially assigned at or after settlement shall  
14 be considered to be a creditor for purposes of this title.”.

15 (e) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS  
16 AND PREPAYMENT PENALTIES.—Section 103 of the  
17 Truth in Lending Act (15 U.S.C. 1602) is amended by  
18 inserting after subsection (cc) (as added by section 121)  
19 the following new subsection:

20 “(dd) BONA FIDE DISCOUNT POINTS AND PREPAY-  
21 MENT PENALTIES.—For the purposes of determining the  
22 amount of points and fees for purposes of subsection (aa),  
23 either the amounts described in paragraph (1) or (4) of  
24 the following paragraphs, but not both, may be excluded:

1           “(1) EXCLUSION OF BONA FIDE DISCOUNT  
2 POINTS.—The discount points described in 1 of the  
3 following subparagraphs shall be excluded from de-  
4 termining the amounts of points and fees with re-  
5 spect to a high-cost mortgage for purposes of sub-  
6 section (aa):

7           “(A) Up to and including 2 bona fide dis-  
8 count points payable by the consumer in con-  
9 nection with the mortgage, but only if the inter-  
10 est rate from which the mortgage’s interest rate  
11 will be discounted does not exceed by more than  
12 1 percentage point the required net yield for a  
13 90-day standard mandatory delivery commit-  
14 ment for a reasonably comparable loan from ei-  
15 ther the Federal National Mortgage Association  
16 or the Federal Home Loan Mortgage Corpora-  
17 tion, whichever is greater.

18           “(B) Unless 2 bona fide discount points  
19 have been excluded under subparagraph (A), up  
20 to and including 1 bona fide discount point pay-  
21 able by the consumer in connection with the  
22 mortgage, but only if the interest rate from  
23 which the mortgage’s interest rate will be dis-  
24 counted does not exceed by more than 2 per-  
25 centage points the required net yield for a 90-

1           day standard mandatory delivery commitment  
2           for a reasonably comparable loan from either  
3           the Federal National Mortgage Association or  
4           the Federal Home Loan Mortgage Corporation,  
5           whichever is greater.

6           “(2) DEFINITION.—For purposes of paragraph  
7           (1), the term ‘bona fide discount points’ means loan  
8           discount points which are knowingly paid by the con-  
9           sumer for the purpose of reducing, and which in fact  
10          result in a bona fide reduction of, the interest rate  
11          or time-price differential applicable to the mortgage.

12          “(3) EXCEPTION FOR INTEREST RATE REDUC-  
13          TIONS INCONSISTENT WITH INDUSTRY NORMS.—  
14          Paragraph (1) shall not apply to discount points  
15          used to purchase an interest rate reduction unless  
16          the amount of the interest rate reduction purchased  
17          is reasonably consistent with established industry  
18          norms and practices for secondary mortgage market  
19          transactions.

20          “(4) ALLOWANCE OF CONVENTIONAL PREPAY-  
21          MENT PENALTY.—Subsection (aa)(1)(4)(E) shall not  
22          apply so as to include a prepayment penalty or fee  
23          that is authorized by law other than this title and  
24          may be imposed pursuant to the terms of a high-cost

1 mortgage (or other consumer credit transaction se-  
2 cured by the consumer's principal dwelling) if—

3 “(A) the annual percentage rate applicable  
4 with respect to such mortgage or transaction  
5 (as determined for purposes of subsection  
6 (aa)(1)(A)(i))—

7 “(i) in the case of a first mortgage on  
8 the consumer's principal dwelling, does not  
9 exceed by more than 2 percentage points  
10 the yield on Treasury securities having  
11 comparable periods of maturity on the  
12 15th day of the month immediately pre-  
13 ceding the month in which the application  
14 for the extension of credit is received by  
15 the creditor; or

16 “(ii) in the case of a subordinate or  
17 junior mortgage on the consumer's prin-  
18 cipal dwelling, does not exceed by more  
19 than 4 percentage points the yield on such  
20 Treasury securities; and

21 “(B) the total amount of any prepayment  
22 fees or penalties permitted under the terms of  
23 the high-cost mortgage or transaction does not  
24 exceed 2 percent of the amount prepaid.”.



1 **SEC. 302. AMENDMENTS TO EXISTING REQUIREMENTS FOR**  
2 **CERTAIN MORTGAGES.**

3 (a) PREPAYMENT PENALTY PROVISIONS.—Section  
4 129(e)(2) of the Truth in Lending Act (15 U.S.C.  
5 1639(e)(2)) is amended—

6 (1) by striking “and” after the semicolon at the  
7 end of subparagraph (C);

8 (2) by redesignating subparagraph (D) as sub-  
9 paragraph (E); and

10 (3) by inserting after subparagraph (C) the fol-  
11 lowing new subparagraph:

12 “(D) the amount of the principal obliga-  
13 tion of the mortgage exceeds the maximum  
14 principal obligation limitation (for the applica-  
15 ble size residence) under section 203(b)(2) of  
16 the National Housing Act for the area in which  
17 the residence subject to the mortgage is located;  
18 and”.

19 (b) NO BALLOON PAYMENTS.—Section 129(e) of the  
20 Truth in Lending Act (15 U.S.C. 1639(e)) is amended to  
21 read as follows:

22 “(e) NO BALLOON PAYMENTS.—No high-cost mort-  
23 gage may contain a scheduled payment that is more than  
24 twice as large as the average of earlier scheduled pay-  
25 ments. This subsection shall not apply when the payment

1 schedule is adjusted to the seasonal or irregular income  
2 of the consumer.”.

3 (c) NO LENDING WITHOUT DUE REGARD TO ABIL-  
4 ITY TO REPAY.—Section 129(h) of the Truth in Lending  
5 Act (15 U.S.C. 1639(h)) is amended—

6 (1) by striking “PAYMENT ABILITY OF CON-  
7 SUMER.—A creditor shall not” and inserting “PAY-  
8 MENT ABILITY OF CONSUMER.—

9 “(1) PATTERN OR PRACTICE.—

10 “(A) IN GENERAL.—A creditor shall not”;

11 (2) by inserting after subparagraph (A) (as so  
12 designated by paragraph (1) of this subsection) the  
13 following new subparagraph:

14 “(B) PRESUMPTION OF VIOLATION.—

15 There shall be a presumption that a creditor  
16 has violated this subsection if the creditor en-  
17 gages in a pattern or practice of making high-  
18 cost mortgages without verifying or docu-  
19 menting the repayment ability of consumers  
20 with respect to such mortgages.”; and

21 (3) by adding at the end the following new  
22 paragraph:

23 “(2) PROHIBITION ON EXTENDING CREDIT  
24 WITHOUT REGARD TO PAYMENT ABILITY OF CON-  
25 SUMER.—

1           “(A) IN GENERAL.—A creditor may not  
2 extend credit to a consumer under a high-cost  
3 mortgage unless a reasonable creditor would be-  
4 lieve at the time the mortgage is closed that the  
5 consumer or consumers that are residing or will  
6 reside in the residence subject to the mortgage  
7 will be able to make the scheduled payments as-  
8 sociated with the mortgage, based upon a con-  
9 sideration of current and expected income, cur-  
10 rent obligations, employment status, and other  
11 financial resources, other than equity in the res-  
12 idence.

13           “(B) PRESUMPTION OF ABILITY.—For  
14 purposes of this subsection, there shall be a re-  
15 buttable presumption that a consumer is able to  
16 make the scheduled payments to repay the obli-  
17 gation if, at the time the high-cost mortgage is  
18 consummated, the consumer’s total monthly  
19 debts, including amounts under the mortgage,  
20 do not exceed 50 percent of his or her monthly  
21 gross income as verified by tax returns, payroll  
22 receipts, or other third-party income  
23 verification.”.

1 **SEC. 303. ADDITIONAL REQUIREMENTS FOR CERTAIN**  
2 **MORTGAGES.**

3 (a) ADDITIONAL REQUIREMENTS FOR CERTAIN  
4 MORTGAGES.—Section 129 of the Truth in Lending Act  
5 (15 U.S.C. 1639) is amended—

6 (1) by redesignating subsections (j), (k) and (l)  
7 as subsections (n), (o) and (p) respectively; and

8 (2) by inserting after subsection (i) the fol-  
9 lowing new subsections:

10 “(j) RECOMMENDED DEFAULT.—No creditor shall  
11 recommend or encourage default on an existing loan or  
12 other debt prior to and in connection with the closing or  
13 planned closing of a high-cost mortgage that refinances  
14 all or any portion of such existing loan or debt.

15 “(k) LATE FEES.—

16 “(1) IN GENERAL.—No creditor may impose a  
17 late payment charge or fee in connection with a  
18 high-cost mortgage—

19 “(A) in an amount in excess of 4 percent  
20 of the amount of the payment past due;

21 “(B) unless the loan documents specifically  
22 authorize the charge or fee;

23 “(C) before the end of the 15-day period  
24 beginning on the date the payment is due, or in  
25 the case of a loan on which interest on each in-  
26 stallment is paid in advance, before the end of

1 the 30-day period beginning on the date the  
2 payment is due; or

3 “(D) more than once with respect to a sin-  
4 gle late payment.

5 “(2) COORDINATION WITH SUBSEQUENT LATE  
6 FEES.—If a payment is otherwise a full payment for  
7 the applicable period and is paid on its due date or  
8 within an applicable grace period, and the only delin-  
9 quency or insufficiency of payment is attributable to  
10 any late fee or delinquency charge assessed on any  
11 earlier payment, no late fee or delinquency charge  
12 may be imposed on such payment.

13 “(3) FAILURE TO MAKE INSTALLMENT PAY-  
14 MENT.—If, in the case of a loan agreement the  
15 terms of which provide that any payment shall first  
16 be applied to any past due principal balance, the  
17 consumer fails to make an installment payment and  
18 the consumer subsequently resumes making install-  
19 ment payments but has not paid all past due install-  
20 ments, the creditor may impose a separate late pay-  
21 ment charge or fee for any principal due (without  
22 deduction due to late fees or related fees) until the  
23 default is cured.

24 “(l) ACCELERATION OF DEBT.—No high-cost mort-  
25 gage may contain a provision which permits the creditor,

1 in its sole discretion, to accelerate the indebtedness. This  
2 provision shall not apply when repayment of the loan has  
3 been accelerated by default, pursuant to a due-on-sale pro-  
4 vision, or pursuant to a material violation of some other  
5 provision of the loan documents unrelated to the payment  
6 schedule.

7 “(m) RESTRICTION ON FINANCING POINTS AND  
8 FEES.—No creditor may directly or indirectly finance, in  
9 connection with any high-cost mortgage, any of the fol-  
10 lowing:

11 “(1) Any prepayment fee or penalty payable by  
12 the consumer in a refinancing transaction if the  
13 creditor or an affiliate of the creditor is the  
14 noteholder of the note being refinanced.

15 “(2) Any points or fees.”.

16 (b) PROHIBITIONS ON EVASIONS.—Section 129 of  
17 the Truth in Lending Act (15 U.S.C. 1639) is amended  
18 by inserting after subsection (p) (as so redesignated by  
19 subsection (a)(1)) the following new subsection:

20 “(q) PROHIBITIONS ON EVASIONS, STRUCTURING OF  
21 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A  
22 creditor may not take any action in connection with a  
23 high-cost mortgage—

24 “(1) to structure a loan transaction as an open-  
25 end credit plan or another form of loan for the pur-

1       pose and with the intent of evading the provisions of  
2       this title; or

3               “(2) to divide any loan transaction into sepa-  
4       rate parts for the purpose and with the intent of  
5       evading provisions of this title.”.

6       (c) MODIFICATION OR DEFERRAL FEES.—Section  
7 129 of the Truth in Lending Act (15 U.S.C. 1639) is  
8 amended by inserting after subsection (q) (as added by  
9 subsection (b) of this section) the following new sub-  
10 section:

11       “(r) MODIFICATION AND DEFERRAL FEES PROHIB-  
12 ITED.—A creditor may not charge a consumer any fee to  
13 modify, renew, extend, or amend a high-cost mortgage, or  
14 to defer any payment due under the terms of such mort-  
15 gage, unless the modification, renewal, extension or  
16 amendment results in a lower annual percentage rate on  
17 the mortgage for the consumer and then only if the  
18 amount of the fee is comparable to fees imposed for simi-  
19 lar transactions in connection with consumer credit trans-  
20 actions that are secured by a consumer’s principal dwell-  
21 ing and are not high-cost mortgages.”.

22       (d) PAYOFF STATEMENT.—Section 129 of the Truth  
23 in Lending Act (15 U.S.C. 1639) is amended by inserting  
24 after subsection (r) (as added by subsection (c) of this  
25 section) the following new subsection:

1       “(s) PAYOFF STATEMENT.—

2               “(1) FEES.—

3                       “(A) IN GENERAL.—Except as provided in  
4                       subparagraph (B), no creditor or servicer may  
5                       charge a fee for informing or transmitting to  
6                       any person the balance due to pay off the out-  
7                       standing balance on a high-cost mortgage.

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

19                      “(C) FEE DISCLOSURE.—Prior to charging  
20                      a transaction fee as provided in subparagraph  
21                      (B), a creditor or servicer shall disclose that  
22                      payoff balances are available for free pursuant  
23                      to subparagraph (A).

24                      “(D) MULTIPLE REQUESTS.—If a creditor  
25                      or servicer has provided payoff information re-



1           ferred to in subparagraph (A) without charge,  
2           other than the transaction fee allowed by sub-  
3           paragraph (B), on 4 occasions during a cal-  
4           endar year, the creditor or servicer may there-  
5           after charge a reasonable fee for providing such  
6           information during the remainder of the cal-  
7           endar year.

8           “(2) PROMPT DELIVERY.—Payoff balances shall  
9           be provided within 5 business days after receiving a  
10          request by a consumer or a person authorized by the  
11          consumer to obtain such information.”.

12          (e) PRE-LOAN COUNSELING REQUIRED.—Section  
13 129 of the Truth in Lending Act (15 U.S.C. 1639) is  
14 amended by inserting after subsection (s) (as added by  
15 subsection (d) of this section) the following new sub-  
16 section:

17          “(t) PRE-LOAN COUNSELING.—

18                 “(1) IN GENERAL.—A creditor may not extend  
19                 credit to a consumer under a high-cost mortgage  
20                 without first receiving certification from a counselor  
21                 that is approved by the Secretary of Housing and  
22                 Urban Development, or at the discretion of the Sec-  
23                 retary, a state housing finance authority, that the  
24                 consumer has received counseling on the advisability  
25                 of the mortgage. Such counselor shall not be em-

1       employed by the creditor or an affiliate of the creditor  
2       or be affiliated with the creditor.

3               “(2) DISCLOSURES REQUIRED PRIOR TO COUN-  
4       SELING.—No counselor may certify that a consumer  
5       has received counseling on the advisability of the  
6       high-cost mortgage unless the counselor can verify  
7       that the consumer has received each statement re-  
8       quired (in connection with such loan) by this section  
9       or the Real Estate Settlement Procedures Act of  
10      1974 with respect to the transaction.

11              “(3) REGULATIONS.—The Secretary of Housing  
12      and Urban Development may prescribe such regula-  
13      tions as the Secretary determines to be appropriate  
14      to carry out the requirements of paragraph (1).”.

15      (f) FLIPPING PROHIBITED.—Section 129 of the  
16      Truth in Lending Act (15 U.S.C. 1639) is amended by  
17      inserting after subsection (t) (as added by subsection (e))  
18      the following new subsection:

19              “(u) FLIPPING.—

20              “(1) IN GENERAL.—No creditor may knowingly  
21      or intentionally engage in the unfair act or practice  
22      of flipping in connection with a high-cost mortgage.

23              “(2) FLIPPING DEFINED.—For purposes of this  
24      subsection, the term ‘flipping’ means the making of  
25      a loan or extension of credit in the form a high-cost

1 mortgage to a consumer which refinances an existing  
2 mortgage when the new loan or extension of credit  
3 does not have reasonable, net tangible benefit (as de-  
4 termined in accordance with regulations prescribed  
5 under section 129B(b)) to the consumer considering  
6 all of the circumstances, including the terms of both  
7 the new and the refinanced loans or credit, the cost  
8 of the new loan or credit, and the consumer's cir-  
9 cumstances.”.

10 **SEC. 304. AMENDMENT TO PROVISION GOVERNING COR-**  
11 **RECTION OF ERRORS.**

12 Section 130(b) of the Truth in Lending Act (15  
13 U.S.C. 1640(b)) is amended to read as follows:

14 “(b) CORRECTION OF ERRORS.—A creditor has no li-  
15 ability under this section or section 108 or 112 for any  
16 failure to comply with any requirement imposed under this  
17 chapter or chapter 5, if—

18 “(1) within 30 days of the loan closing and  
19 prior to the institution of any action, the consumer  
20 is notified of or discovers the violation, appropriate  
21 restitution is made, and whatever adjustments are  
22 necessary are made to the loan to either, at the  
23 choice of the consumer—

24 “(A) make the loan satisfy the require-  
25 ments of this chapter; or

1           “(B) in the case of a high-cost mortgage,  
2           change the terms of the loan in a manner bene-  
3           ficial to the consumer so that the loan will no  
4           longer be a high-cost mortgage; or

5           “(2) within 60 days of the creditor’s discovery  
6           or receipt of notification of an unintentional viola-  
7           tion or bona fide error as described in subsection (c)  
8           and prior to the institution of any action, the con-  
9           sumer is notified of the compliance failure, appro-  
10          priate restitution is made, and whatever adjustments  
11          are necessary are made to the loan to either, at the  
12          choice of the consumer—

13           “(A) make the loan satisfy the require-  
14          ments of this chapter; or

15           “(B) in the case of a high-cost mortgage,  
16          change the terms of the loan in a manner bene-  
17          ficial so that the loan will no longer be a high-  
18          cost mortgage.”.

19 **SEC. 305. REGULATIONS.**

20          (a) **IN GENERAL.**—The Board of Governors of the  
21 Federal Reserve System shall publish regulations imple-  
22 menting this title and the amendments made by this title  
23 in final form before the end of the 6-month period begin-  
24 ning on the date of the enactment of this Act.

25          (b) **CONSUMER MORTGAGE EDUCATION.**—

1           (1) REGULATIONS.—The Board of Governors of  
2           the Federal Reserve System may prescribe regula-  
3           tions requiring or encouraging creditors to provide  
4           consumer mortgage education to prospective cus-  
5           tomers or direct such customers to qualified con-  
6           sumer mortgage education or counseling programs  
7           in the vicinity of the residence of the consumer.

8           (2) COORDINATION WITH STATE LAW.—No re-  
9           quirement established by the Board of Governors of  
10          the Federal Reserve System pursuant to paragraph  
11          (1) shall be construed as affecting or superseding  
12          any requirement under the law of any State with re-  
13          spect to consumer mortgage counseling or education.

14 **SEC. 306. EFFECTIVE DATE.**

15          The amendments made by this title shall take effect  
16          at the end of the 6-month period beginning on the date  
17          of the enactment of this Act and shall apply to mortgages  
18          referred to in section 103(aa) of the Truth in Lending  
19          Act (15 U.S.C. 1602(aa)) consummated after the end of  
20          such period.

21           **TITLE IV—OFFICE OF HOUSING**  
22                           **COUNSELING**

23 **SEC. 401. SHORT TITLE.**

24          This title may be cited as the “Expand and Preserve  
25          Home Ownership Through Counseling Act”.

1 **SEC. 402. 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(g)(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(g) 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 6 of the



1 Expand and Preserve Home Ownership  
2 Through Counseling Act;

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

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

9 “(ix) providing for the building of ca-  
10 pacity to provide housing counseling serv-  
11 ices in areas that lack sufficient services.

12 “(4) ADVISORY COMMITTEE.—

13 “(A) IN GENERAL.—The Secretary shall  
14 appoint an advisory committee to provide advice  
15 regarding the carrying out of the functions of  
16 the Director.

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

22 “(C) TERMS.—Except as provided in sub-  
23 paragraph (D), each member of the advisory  
24 committee shall be appointed for a term of 3

1 years. Members may be reappointed at the dis-  
2 cretion of the Secretary.

3 “(D) TERMS OF INITIAL APPOINTEES.—As  
4 designated by the Secretary at the time of ap-  
5 pointment, of the members first appointed to  
6 the advisory committee, 4 shall be appointed for  
7 a term of 1 year and 4 shall be appointed for  
8 a term of 2 years.

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

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

19 “(5) SCOPE OF HOMEOWNERSHIP COUN-  
20 SELING.—In carrying out the responsibilities of the  
21 Director, the Director shall ensure that homeowner-  
22 ship counseling provided by, in connection with, or  
23 pursuant to any function, activity, or program of the  
24 Department addresses the entire process of home-  
25 ownership, including the decision to purchase a

1 home, the selection and purchase of a home, issues  
2 arising during or affecting the period of ownership  
3 of a home (including refinancing, default and fore-  
4 closure, and other financial decisions), and the sale  
5 or other disposition of a home.”.

6 **SEC. 403. COUNSELING PROCEDURES.**

7 (a) IN GENERAL.—Section 106 of the Housing and  
8 Urban Development Act of 1968 (12 U.S.C. 1701x) is  
9 amended by adding at the end the following new sub-  
10 section:

11 “(g) PROCEDURES AND ACTIVITIES.—

12 “(1) COUNSELING PROCEDURES.—

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

23 “(B) HOMEOWNERSHIP COUNSELING.—

24 For purposes of this subsection and as used in  
25 the provisions referred to in this subparagraph,

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

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

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

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

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

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

18 “(IV) section 23(c)(4) (42 U.S.C.  
19 1437u(c)(4));

20 “(V) section 32(e)(4) (42 U.S.C.  
21 1437z-4(e)(4));

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

1 “(VII) sections 302(b)(6) and  
2 303(b)(7) (42 U.S.C. 1437aaa–  
3 1(b)(6), 1437aaa–2(b)(7)); and

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

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

9 “(iv) sections 233(b)(2) and 258(b) of  
10 the Cranston-Gonzalez National Affordable  
11 Housing Act (42 U.S.C. 12773(b)(2),  
12 12808(b));

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

16 “(vi) section 220(d)(2)(G) of the Low-  
17 Income Housing Preservation and Resident  
18 Homeownership Act of 1990 (12 U.S.C.  
19 4110(d)(2)(G));

20 “(vii) sections 422(b)(6), 423(b)(7),  
21 424(c)(4), 442(b)(6), and 443(b)(6) of the  
22 Cranston-Gonzalez National Affordable  
23 Housing Act (42 U.S.C. 12872(b)(6),  
24 12873(b)(7), 12874(c)(4), 12892(b)(6),  
25 and 12893(b)(6));

1 “(viii) section 491(b)(1)(F)(iii) of the  
2 McKinney-Vento Homeless Assistance Act  
3 (42 U.S.C. 11408(b)(1)(F)(iii));

4 “(ix) sections 202(3) and  
5 810(b)(2)(A) of the Native American  
6 Housing and Self-Determination Act of  
7 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

8 “(x) in the National Housing Act—

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

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

17 “(III) subsections (d)(2)(B) and  
18 (m)(1) of section 255 (12 U.S.C.  
19 1715z-20);

20 “(xi) section 502(h)(4)(B) of the  
21 Housing Act of 1949 (42 U.S.C.  
22 1472(h)(4)(B)); and

23 “(xii) section 508 of the Housing and  
24 Urban Development Act of 1970 (12  
25 U.S.C. 1701z-7).

1           “(C) RENTAL HOUSING COUNSELING.—  
2           For purposes of this subsection, the term ‘rent-  
3           al housing counseling’ means counseling related  
4           to rental of residential property, which may in-  
5           clude counseling regarding future homeownership  
6           opportunities and providing referrals for  
7           renters and prospective renters to entities pro-  
8           viding counseling and shall include counseling  
9           related to such topics that is provided pursuant  
10          to—

11                   “(i) section 105(a)(20) of the Housing  
12                   and Community Development Act of 1974  
13                   (42 U.S.C. 5305(a)(20));

14                   “(ii) in the United States Housing  
15                   Act of 1937—

16                           “(I) section 9(e) (42 U.S.C.  
17                           1437g(e));

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

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

22                           “(IV) section 32(e)(4) (42 U.S.C.  
23                           1437z-4(e)(4));

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

1                   “(VI) section 302(b)(6) (42  
2                   U.S.C. 1437aaa–1(b)(6));

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

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

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

12                   “(vi) section 491(b)(1)(F)(iii) of the  
13                   McKinney-Vento Homeless Assistance Act  
14                   (42 U.S.C. 11408(b)(1)(F)(iii));

15                   “(vii) sections 202(3) and  
16                   810(b)(2)(A) of the Native American  
17                   Housing and Self-Determination Act of  
18                   1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));  
19                   and

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

23                   “(2) STANDARDS FOR MATERIALS.—The Sec-  
24                   retary, in conjunction with the advisory committee  
25                   established under subsection (g)(4) of the Depart-



1       ment of Housing and Urban Development Act, shall  
2       establish standards for materials and forms to be  
3       used, as appropriate, by organizations providing  
4       homeownership counseling services, including any re-  
5       cipients of assistance pursuant to subsection (a)(4).

6               “(3) MORTGAGE SOFTWARE SYSTEMS.—

7                       “(A) CERTIFICATION.—The Secretary shall  
8       provide for the certification of various computer  
9       software programs for consumers to use in eval-  
10      uating different residential mortgage loan pro-  
11      posals. The Secretary shall require, for such  
12      certification, that the mortgage software sys-  
13      tems take into account—

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

17                      “(ii) the amount of time the consumer  
18                      expects to remain in the home or expected  
19                      time to maturity of the loan;

20                      “(iii) such other factors as the Sec-  
21                      retary considers appropriate to assist the  
22                      consumer in evaluating whether to pay  
23                      points, to lock in an interest rate, to select  
24                      an adjustable or fixed rate loan, to select  
25                      a conventional or government-insured or

1           guaranteed loan and to make other choices  
2           during the loan application process.

3           If the Secretary determines that available exist-  
4           ing software is inadequate to assist consumers  
5           during the residential mortgage loan application  
6           process, the Secretary shall arrange for the de-  
7           velopment by private sector software companies  
8           of new mortgage software systems that meet  
9           the Secretary's specifications.

10           “(B) USE AND INITIAL AVAILABILITY.—  
11           Such certified computer software programs  
12           shall be used to supplement, not replace, hous-  
13           ing counseling. The Secretary shall provide that  
14           such programs are initially used only in connec-  
15           tion with the assistance of housing counselors  
16           certified pursuant to subsection (e).

17           “(C) AVAILABILITY.—After a period of ini-  
18           tial availability under subparagraph (B) as the  
19           Secretary considers appropriate, the Secretary  
20           shall take reasonable steps to make mortgage  
21           software systems certified pursuant to this  
22           paragraph widely available through the Internet  
23           and at public locations, including public librar-  
24           ies, senior-citizen centers, public housing sites,  
25           offices of public housing agencies that admin-

1           ister rental housing assistance vouchers, and  
2           housing counseling centers.

3           “(4) NATIONAL PUBLIC SERVICE MULTIMEDIA  
4           CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

5                   “(A) IN GENERAL.—The Director of Hous-  
6           ing Counseling shall develop, implement, and  
7           conduct national public service multimedia cam-  
8           paigns designed to make persons facing mort-  
9           gage foreclosure, persons considering a  
10          subprime mortgage loan to purchase a home, el-  
11          derly persons, persons who face language bar-  
12          riers, low-income persons, and other potentially  
13          vulnerable consumers aware that it is advisable,  
14          before seeking or maintaining a residential  
15          mortgage loan, to obtain homeownership coun-  
16          seling from an unbiased and reliable sources  
17          and that such homeownership counseling is  
18          available, including through programs spon-  
19          sored by the Secretary of Housing and Urban  
20          Development.

21                   “(B) CONTACT INFORMATION.—Each seg-  
22          ment of the multimedia campaign under sub-  
23          paragraph (A) shall publicize the toll-free tele-  
24          phone number and web site of the Department  
25          of Housing and Urban Development through

1           which persons seeking housing counseling can  
2           locate a housing counseling agency in their  
3           State that is certified by the Secretary of Hous-  
4           ing and Urban Development and can provide  
5           advice on buying a home, renting, defaults,  
6           foreclosures, credit issues, and reverse mort-  
7           gages.

8           “(C) AUTHORIZATION OF APPROPRIA-  
9           TIONS.—There are authorized to be appro-  
10          priated to the Secretary, not to exceed  
11          \$3,000,000 for fiscal years 2008, 2009, and  
12          2010, for the develop, implement, and conduct  
13          of national public service multimedia campaigns  
14          under this paragraph.

15          “(5) EDUCATION PROGRAMS.—The Secretary  
16          shall provide advice and technical assistance to  
17          States, units of general local government, and non-  
18          profit organizations regarding the establishment and  
19          operation of, including assistance with the develop-  
20          ment of content and materials for, educational pro-  
21          grams to inform and educate consumers, particularly  
22          those most vulnerable with respect to residential  
23          mortgage loans (such as elderly persons, persons  
24          facing language barriers, low-income persons, and  
25          other potentially vulnerable consumers), regarding

1 home mortgages, mortgage refinancing, home equity  
2 loans, and home repair loans.”.

3 (b) CONFORMING AMENDMENTS TO GRANT PRO-  
4 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-  
5 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and  
6 Urban Development Act of 1968 (12 U.S.C.  
7 1701x(c)(5)(A)(ii)) is amended—

8 (1) in subclause (III), by striking “and” at the  
9 end;

10 (2) in subclause (IV) by striking the period at  
11 the end and inserting “; and”; and

12 (3) by inserting after subclause (IV) the fol-  
13 lowing new subclause:

14 “(V) notify the housing or mort-  
15 gage applicant of the availability of  
16 mortgage software systems provided  
17 pursuant to subsection (g)(3).”.

18 **SEC. 404. GRANTS FOR HOUSING COUNSELING ASSIST-**  
19 **ANCE.**

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

23 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING  
24 ASSISTANCE.—

1           “(A) IN GENERAL.—The Secretary shall make  
2 financial assistance available under this paragraph  
3 to States, units of general local governments, and  
4 nonprofit organizations providing homeownership or  
5 rental counseling (as such terms are defined in sub-  
6 section (g)(1)).

7           “(B) QUALIFIED ENTITIES.—The Secretary  
8 shall establish standards and guidelines for eligibility  
9 of organizations (including governmental and non-  
10 profit organizations) to receive assistance under this  
11 paragraph.

12           “(C) DISTRIBUTION.—Assistance made avail-  
13 able under this paragraph shall be distributed in a  
14 manner that encourages efficient and successful  
15 counseling programs.

16           “(D) AUTHORIZATION OF APPROPRIATIONS.—  
17 There are authorized to be appropriated  
18 \$45,000,000 for each of fiscal years 2008 through  
19 2011 for—

20                   “(i) the operations of the Office of Hous-  
21 ing Counseling of the Department of Housing  
22 and Urban Development;

23                   “(ii) the responsibilities of the Secretary  
24 under paragraphs (2) through (5) of subsection  
25 (g); and

1           “(iii) assistance pursuant to this para-  
2           graph for entities providing homeownership and  
3           rental counseling.”.

4 **SEC. 405. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**  
5 **SELORS UNDER HUD PROGRAMS.**

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

8           (1) by striking paragraph (1) and inserting the  
9           following new paragraph:

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

18           (2) in paragraph (2)—

19           (A) by inserting “and for certifying organi-  
20           zations” before the period at the end of the  
21           first sentence; and

22           (B) in the second sentence by striking “for  
23           certification” and inserting “, for certification  
24           of an organization, that each individual through  
25           which the organization provides counseling shall

1 demonstrate, and, for certification of an indi-  
2 vidual,”;

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

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

7 (5) by inserting after paragraph (2) the fol-  
8 lowing new paragraphs:

9 “(3) REQUIREMENT UNDER HUD PROGRAMS.—  
10 Any homeownership counseling or rental housing  
11 counseling (as such terms are defined in subsection  
12 (g)(1)) required under, or provided in connection  
13 with, any program administered by the Department  
14 of Housing and Urban Development shall be pro-  
15 vided only by organizations or counselors certified by  
16 the Secretary under this subsection as competent to  
17 provide such counseling.

18 “(4) OUTREACH.—The Secretary shall take  
19 such actions as the Secretary considers appropriate  
20 to ensure that individuals and organizations pro-  
21 viding homeownership or rental housing counseling  
22 are aware of the certification requirements and  
23 standards of this subsection and of the training and  
24 certification programs under subsection (f).”.



1 **SEC. 406. STUDY OF DEFAULTS AND FORECLOSURES.**

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

17 **SEC. 407. DEFINITIONS FOR COUNSELING-RELATED PRO-**  
18 **GRAMS.**

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

23       “(h) DEFINITIONS.—For purposes of this section:

24               “(1) NONPROFIT ORGANIZATION.—The term  
25       ‘nonprofit organization’ has the meaning given such  
26       term in section 104(5) of the Cranston-Gonzalez Na-

1 tional Affordable Housing Act (42 U.S.C.  
2 12704(5)), except that subparagraph (D) of such  
3 section shall not apply for purposes of this section.

4 “(2) STATE.—The term ‘State’ means each of  
5 the several States, the Commonwealth of Puerto  
6 Rico, the District of Columbia, the Commonwealth  
7 of the Northern Mariana Islands, Guam, the Virgin  
8 Islands, American Samoa, the Trust Territories of  
9 the Pacific, or any other possession of the United  
10 States.

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

16 **SEC. 408. UPDATING AND SIMPLIFICATION OF MORTGAGE**  
17 **INFORMATION BOOKLET.**

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

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

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

24 “(a) PREPARATION AND DISTRIBUTION.—The Sec-  
25 retary shall prepare, at least once every 5 years, a booklet

1 to help consumers applying for federally related mortgage  
2 loans to understand the nature and costs of real estate  
3 settlement services. The Secretary shall prepare the book-  
4 let in various languages and cultural styles, as the Sec-  
5 retary determines to be appropriate, so that the booklet  
6 is understandable and accessible to homebuyers of dif-  
7 ferent ethnic and cultural backgrounds. The Secretary  
8 shall distribute such booklets to all lenders that make fed-  
9 erally related mortgage loans. The Secretary shall also dis-  
10 tribute to such lenders lists, organized by location, of  
11 homeownership counselors certified under section 106(e)  
12 of the Housing and Urban Development Act of 1968 (12  
13 U.S.C. 1701x(e)) for use in complying with the require-  
14 ment under subsection (c) of this section.

15       “(b) CONTENTS.—Each booklet shall be in such form  
16 and detail as the Secretary shall prescribe and, in addition  
17 to such other information as the Secretary may provide,  
18 shall include in plain and understandable language the fol-  
19 lowing information:

20               “(1) A description and explanation of the na-  
21               ture and purpose of the costs incident to a real es-  
22               tate settlement or a federally related mortgage loan.  
23               The description and explanation shall provide gen-  
24               eral information about the mortgage process as well  
25               as specific information concerning, at a minimum—

1           “(A) balloon payments;

2           “(B) prepayment penalties; and

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

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

7           “(3) A list and explanation of lending practices,  
8           including those prohibited by the Truth in Lending  
9           Act or other applicable Federal law, and of other un-  
10          fair practices and unreasonable or unnecessary  
11          charges to be avoided by the prospective buyer with  
12          respect to a real estate settlement.

13          “(4) A list and explanation of questions a con-  
14          sumer obtaining a federally related mortgage loan  
15          should ask regarding the loan, including whether the  
16          consumer will have the ability to repay the loan,  
17          whether the consumer sufficiently shopped for the  
18          loan, whether the loan terms include prepayment  
19          penalties or balloon payments, and whether the loan  
20          will benefit the borrower.

21          “(5) An explanation of the right of rescission as  
22          to certain transactions provided by sections 125 and  
23          129 of the Truth in Lending Act.

24          “(6) A brief explanation of the nature of a vari-  
25          able rate mortgage and a reference to the booklet

1 entitled ‘Consumer Handbook on Adjustable Rate  
2 Mortgages’, published by the Board of Governors of  
3 the Federal Reserve System pursuant to section  
4 226.19(b)(1) of title 12, Code of Federal Regula-  
5 tions, or to any suitable substitute of such booklet  
6 that such Board of Governors may subsequently  
7 adopt pursuant to such section.

8 “(7) A brief explanation of the nature of a  
9 home equity line of credit and a reference to the  
10 pamphlet required to be provided under section  
11 127A of the Truth in Lending Act.

12 “(8) Information about homeownership coun-  
13 seling services made available pursuant to section  
14 106(a)(4) of the Housing and Urban Development  
15 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-  
16 ommendation that the consumer use such services,  
17 and notification that a list of certified providers of  
18 homeownership counseling in the area, and their  
19 contact information, is available.

20 “(9) An explanation of the nature and purpose  
21 of escrow accounts when used in connection with  
22 loans secured by residential real estate and the re-  
23 quirements under section 10 of this Act regarding  
24 such accounts.

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

5           “(11) An explanation of a consumer’s respon-  
6 sibilities, liabilities, and obligations in a mortgage  
7 transaction.

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

11           “(13) Notice that the Office of Housing of the  
12 Department of Housing and Urban Development has  
13 made publicly available a brochure regarding loan  
14 fraud and a World Wide Web address and toll-free  
15 telephone number for obtaining the brochure.

16 The booklet prepared pursuant to this section shall take  
17 into consideration differences in real estate settlement pro-  
18 cedures that may exist among the several States and terri-  
19 tories of the United States and among separate political  
20 subdivisions within the same State and territory.”;

21           (3) in subsection (c), by inserting at the end  
22 the following new sentence: “Each lender shall also  
23 include with the booklet a reasonably complete or  
24 updated list of homeownership counselors who are  
25 certified pursuant to section 106(e) of the Housing

1 and Urban Development Act of 1968 (12 U.S.C.  
2 1701x(e)) and located in the area of the lender.”;  
3 and

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

9 **TITLE V—MORTGAGE DISCLO-**  
10 **SURES UNDER REAL ESTATE**  
11 **SETTLEMENT PROCEDURES**  
12 **ACT OF 1974**

13 **SEC. 501. UNIVERSAL MORTGAGE DISCLOSURE IN GOOD**  
14 **FAITH ESTIMATE OF SETTLEMENT SERVICES**  
15 **COSTS.**

16 (a) IN GENERAL.—Section 5 of the Real Estate Set-  
17 tlement Procedures Act of 1974 (12 U.S.C. 2604) is  
18 amended—

19 (1) in subsection (c), by adding after the period  
20 at the end the following: “Each such good faith esti-  
21 mate shall include the disclosure required under sub-  
22 section (f) in the form prescribed by the Secretary  
23 pursuant to such subsection, except that if the Sec-  
24 retary at any time issues any regulations requiring  
25 the use of a standard or uniform form or statement

1 in providing the good faith estimate required under  
2 this subsection and prescribing such standard or  
3 uniform form or statement, such disclosure shall not  
4 be required after the effective date of such regula-  
5 tions.”; and

6 (2) by adding at the end the following new sub-  
7 section:

8 “(f) UNIVERSAL MORTGAGE DISCLOSURE REQUIRE-  
9 MENT FOR GOOD FAITH ESTIMATES.—

10 “(1) DISCLOSURE.—The disclosure required  
11 under this subsection is a written statement regard-  
12 ing the federally related mortgage loan for which the  
13 good faith estimate under subsection (c) is made,  
14 that consists of the following statements, appro-  
15 priately and in good faith completed by the lender  
16 in accordance with the terms of the federally related  
17 mortgage loan involved in the settlement:

18 “(A) ‘Your Loan Amount will be’ and  
19 ‘\$\_\_\_\_\_’, each statement appearing in a  
20 separate column of the disclosure.

21 “(B) ‘Your Loan is’, ‘A Fixed Rate Loan’,  
22 and ‘An Adjustable Rate Loan ’, each state-  
23 ment appearing in a separate column and each  
24 of the last two such statements preceded by a  
25 checkbox.



1           “(C) ‘Your Loan Term is’, ‘\_\_\_\_\_ years’,  
2           and ‘\_\_\_\_\_ years’, each statement appearing  
3           in a separate column, and the second such  
4           statement shall appear in the same column as  
5           the statement required by subparagraph (B) re-  
6           garding fixed rate loans and the third such  
7           statement shall appear in the same column as  
8           the statement required by subparagraph (B) re-  
9           garding adjustable rate loans;

10           “(D) ‘Your Estimated Interest Rate (APR)  
11           is’, ‘\_\_\_\_\_ %’, and ‘\_\_\_\_\_ % initially, then it  
12           will adjust. In \_\_\_\_\_ months, Your rate may  
13           adjust to a maximum of \_\_\_\_\_ %’, each state-  
14           ment appearing in a separate column, the sec-  
15           ond such statement shall appear in the same  
16           column as the statement required by subpara-  
17           graph (B) regarding fixed rate loans and the  
18           third such statement shall appear in the same  
19           column as the statement required by subpara-  
20           graph (B) regarding adjustable rate loans, and  
21           the blanks relating to estimated interest rate  
22           shall be completed by the lender using an an-  
23           nual percentage rate determined in accordance  
24           with the Truth in Lending Act.

1           “(E) ‘Your Total Estimated Monthly Pay-  
2           ment (Including loan Principal and Interest,  
3           and property Taxes (based on current rates)  
4           and Insurance (PITI)) is’, ‘\$\_\_\_\_\_ which  
5           represents \_\_\_\_\_% of Your estimated monthly  
6           income’, and ‘\$\_\_\_\_\_ which represents  
7           \_\_\_\_\_% of Your estimated monthly income.  
8           When Your interest rate initially adjusts, Your  
9           maximum monthly payment may be as high as  
10          \$\_\_\_\_\_ which represents \_\_\_\_\_% of Your  
11          estimated monthly income’, each statement ap-  
12          pearing in a separate column, and the second  
13          such statement shall appear in the same column  
14          as the statement required by subparagraph (B)  
15          regarding fixed rate loans and the third such  
16          statement shall appear in the same column as  
17          the statement required by subparagraph (B) re-  
18          garding adjustable rate loans.

19           “(F) ‘Your Rate Lock Period is’ and  
20          ‘\_\_\_\_\_ days. After You lock into Your inter-  
21          est rate, You must go to settlement within this  
22          number of days to be guaranteed this interest  
23          rate.’, each statement appearing in a separate  
24          column.

1           “(G) ‘Does Your loan have a prepayment  
2 penalty?’, ‘YES, Your maximum prepayment  
3 penalty is \$\_\_\_\_\_’, and ‘NO’, the first such  
4 statement and the last two such statements ap-  
5 pearing in a separate column, and each of the  
6 last two such statements preceded by a  
7 checkbox.

8           “(H) ‘Does Your loan have a balloon pay-  
9 ment?’, ‘YES, Your balloon payment of  
10 \$\_\_\_\_\_ is due in \_\_\_\_\_ months’, and ‘NO’,  
11 the first such statement and the last two such  
12 statements appearing in a separate column, and  
13 each of the last two such statements preceded  
14 by a checkbox.

15           “(I) ‘Your Total Estimated Settlement  
16 Charges Will be \$\_\_\_\_\_ (a)’ and ‘Your  
17 Total Estimated Down Payment will be  
18 \$\_\_\_\_\_ (b)’, each statement appearing in a  
19 separate column.

20           “(J) ‘Your Total Estimated Cash Needed  
21 at Closing Will Be’ and ‘\$\_\_\_\_\_ (a+b)’,  
22 each statement appearing in a separate column.

23           “(K) ‘This represents a simple summary of  
24 Your Good Faith Estimate (GFE). To under-  
25 stand the terms of Your loan, You must see dis-

1 closure forms and the Truth in Lending Act.’,  
2 such statement appearing directly below the en-  
3 tirety of the remainder of the disclosure.

4 “(2) STANDARD FORM.—

5 “(A) DEVELOPMENT AND USE.—The Sec-  
6 retary, in consultation with the Secretary of  
7 Veterans Affairs, the Federal Deposit Insurance  
8 Corporation, and the Director of the Office of  
9 Thrift Supervision, shall develop and prescribe  
10 a standard form for the disclosure required  
11 under this subsection, which shall be used with-  
12 out variation in all transactions in the United  
13 States that involve federally related mortgage  
14 loans.

15 “(B) APPEARANCE.—The standard form  
16 developed pursuant to this paragraph shall—

17 “(i) set forth each statement required  
18 under a separate subparagraph under  
19 paragraph (1) on a separate row of the  
20 disclosure;

21 “(ii) be set forth in 8-point type;

22 “(iii) be not more than 6 inches in  
23 width or 3.5 inches in height;

1           “(iv) include such boldface type and  
2 shading as the Secretary considers appro-  
3 priate;

4           “(v) include such parenthetical state-  
5 ments directing the borrower to the terms  
6 of the loan (such as ‘see terms’) as the  
7 Secretary considers appropriate, in such  
8 places as the Secretary considers appro-  
9 priate; and

10           “(vi) be located in the upper one-third  
11 of the first page of the good faith estimate  
12 required under subsection (c) in a manner  
13 that allows the identity, address, phone  
14 number, and other relevant information of  
15 the lender, the identity, address, phone  
16 number, and other relevant information of  
17 the borrower, and the address of the prop-  
18 erty for which the federally related mort-  
19 gage loan is to be made, to be located  
20 above the standard form.”.

21           (b) REGULATIONS.—The Secretary of Housing and  
22 Urban Development shall issue regulations prescribing the  
23 standard form and the use of such form, as required by  
24 the amendment made by subsection (a), not later than the  
25 expiration of the 180-day period beginning upon the date

1 of the enactment of this Act, and such regulations shall  
2 take effect upon issuance.

3                   **TITLE VI—MORTGAGE**  
4                   **SERVICING**

5 **SEC. 601. ESCROW AND IMPOUND ACCOUNTS RELATING TO**  
6                   **CERTAIN CONSUMER CREDIT TRANS-**  
7                   **ACTIONS.**

8           (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
9 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
10 after section 129B (as added by section 201) the following  
11 new section:

12 **“SEC. 129C. ESCROW OR IMPOUND ACCOUNTS RELATING**  
13                   **TO CERTAIN CONSUMER CREDIT TRANS-**  
14                   **ACTIONS.**

15           “(a) IN GENERAL.—Except as provided in subsection  
16 (b) or (c), a creditor, in connection with the formation or  
17 consummation of a consumer credit transaction secured  
18 by a first lien on the principal dwelling of the consumer,  
19 other than a consumer credit transaction under an open  
20 end credit plan or a reverse mortgage, shall establish, at  
21 the time of the consummation of such transaction, an es-  
22 crow or impound account for the payment of taxes and  
23 hazard insurance, and, if applicable, flood insurance,  
24 mortgage insurance, ground rents, and any other required  
25 periodic payments or premiums with respect to the prop-

erty or the loan terms, as provided in, and in accordance with, this section.

“(b) WHEN REQUIRED.—No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

“(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

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

“(3) the consumer’s debt-to-income ratio at the time the home mortgage is established taking into account income from all sources including the consumer’s employment exceeds 50 percent;

“(4) the transaction is secured by a first mortgage or lien on the consumer’s principal dwelling and the annual percentage rate on the credit, at the time of consummation of the transaction, will exceed by more than 3.0 percentage points the yield on

1 Treasury securities having comparable periods of  
2 maturity on the 15th day of the month immediately  
3 preceding the month in which the application of the  
4 extension of credit is received by the creditor;

5 “(5) a consumer obtains a mortgage referred to  
6 in section 103(aa);

7 “(6) the original principal amount of such loan  
8 at the time of consummation of the transaction is—

9 “(A) 90 percent or more of the sale price,  
10 if the property involved is purchased with the  
11 proceeds of the loan; or

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

14 “(7) the combined principal amount of all loans  
15 secured by the real property exceeds 95 percent of  
16 the appraised value of the property securing the  
17 loans at the time of consummation of the last mort-  
18 gage transaction;

19 “(8) the consumer was the subject of a pro-  
20 ceeding under title 11, United States Code, at any  
21 time during the 7-year period preceding the date of  
22 the transaction (as determined on the basis of the  
23 date of entry of the order for relief or the date of  
24 adjudication, as the case may be, with respect to  
25 such proceeding and included in a consumer report



1 on the consumer under the Fair Credit Reporting  
2 Act) ; or

3 “(9) so required by the Board pursuant to reg-  
4 ulation.

5 “(c) DURATION OF MANDATORY ESCROW OR IM-  
6 POUND ACCOUNT.—An escrow or impound account estab-  
7 lished pursuant to subsection (b), shall remain in existence  
8 for a minimum period of 5 years and until such borrower  
9 has sufficient equity in the dwelling securing the consumer  
10 credit transaction so as to no longer be required to main-  
11 tain private mortgage insurance, or such other period as  
12 may be provided in regulations to address situations such  
13 as borrower delinquency, unless the underlying mortgage  
14 establishing the account is terminated.

15 “(d) CLARIFICATION ON ESCROW ACCOUNTS FOR  
16 LOANS NOT MEETING STATUTORY TEST.—For mort-  
17 gages not covered by the requirements of subsection (b),  
18 no provision of this section shall be construed as pre-  
19 cluding the establishment of an impound, trust, or other  
20 type of account for the payment of property taxes, insur-  
21 ance premiums, or other purposes relating to the prop-  
22 erty—

23 “(1) on terms mutually agreeable to the parties  
24 to the loan;

1           “(2) at the discretion of the lender or servicer,  
2           as provided by the contract between the lender or  
3           servicer and the borrower; or

4           “(3) pursuant to the requirements for the  
5           escrowing of flood insurance payments for regulated  
6           lending institutions in section 102(d) of the Flood  
7           Disaster Protection Act of 1973.

8           “(e) ADMINISTRATION OF MANDATORY ESCROW OR  
9           IMPOUND ACCOUNTS.—

10           “(1) IN GENERAL.—Except as may otherwise  
11           be provided for in this title or in regulations pre-  
12           scribed by the Board, escrow or impound accounts  
13           established pursuant to subsection (b) shall be estab-  
14           lished in a federally insured depository institution.

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;

22                   “(B) the Flood Disaster Protection Act of  
23                   1973 and regulations prescribed under such  
24                   Act; and

1           “(C) the law of the State, if applicable,  
2           where the real property securing the consumer  
3           credit transaction is located.

4           “(3) APPLICABILITY OF PAYMENT OF INTER-  
5           EST.—If prescribed by applicable State or Federal  
6           law, each creditor shall pay interest to the consumer  
7           on the amount held in any impound, trust, or escrow  
8           account that is subject to this section in the manner  
9           as prescribed by that applicable State or Federal  
10          law.

11          “(4) PENALTY COORDINATION WITH RESPA.—  
12          Any action or omission on the part of any person  
13          which constitutes a violation of the Real Estate Set-  
14          tlement Procedures Act of 1974 or any regulation  
15          prescribed under such Act for which the person has  
16          paid any fine, civil money penalty, or other damages  
17          shall not give rise to any additional fine, civil money  
18          penalty, or other damages under this section, unless  
19          the action or omission also constitutes a direct viola-  
20          tion of this section.

21          “(f) DISCLOSURES RELATING TO MANDATORY ES-  
22          CROW OR IMPOUND ACCOUNT.—In the case of any im-  
23          pound, trust, or escrow account that is subject to this sec-  
24          tion, the creditor shall disclose by written notice to the  
25          consumer at least 3 business days before the consumma-

1 tion of the consumer credit transaction giving rise to such  
2 account or in accordance with timeframes established in  
3 prescribed regulations the following information:

4           “(1) The fact that an escrow or impound ac-  
5 count will be established at consummation of the  
6 transaction.

7           “(2) The amount required at closing to initially  
8 fund the escrow or impound account.

9           “(3) The amount, in the initial year after the  
10 consummation of the transaction, of the estimated  
11 taxes and hazard insurance, including flood insur-  
12 ance, if applicable, and any other required periodic  
13 payments or premiums that reflects, as appropriate,  
14 either the taxable assessed value of the real property  
15 securing the transaction, including the value of any  
16 improvements on the property or to be constructed  
17 on the property (whether or not such construction  
18 will be financed from the proceeds of the trans-  
19 action) or the replacement costs of the property.

20           “(4) The estimated monthly amount payable to  
21 be escrowed for taxes, hazard insurance (including  
22 flood insurance, if applicable) and any other re-  
23 quired periodic payments or premiums.

24           “(5) The fact that, if the consumer chooses to  
25 terminate the account at the appropriate time in the

1 future, the consumer will become responsible for the  
2 payment of all taxes, hazard insurance, and flood in-  
3 surance, if applicable, as well as any other required  
4 periodic payments or premiums on the property un-  
5 less a new escrow or impound account is established.

6 “(g) DEFINITIONS.—For purposes of this section, the  
7 following definitions shall apply:

8 “(1) FLOOD INSURANCE.—The term ‘flood in-  
9 surance’ means flood insurance coverage provided  
10 under the national flood insurance program pursu-  
11 ant to the National Flood Insurance Act of 1968.

12 “(2) HAZARD INSURANCE.—The term ‘hazard  
13 insurance’ shall have the same meaning as provided  
14 for ‘hazard insurance’, ‘casualty insurance’, ‘home-  
15 owner’s insurance’, or other similar term under the  
16 law of the State where the real property securing the  
17 consumer credit transaction is located.”.

18 (b) IMPLEMENTATION.—

19 (1) REGULATIONS.—The Board of Governors of  
20 the Federal Reserve System, the Comptroller of the  
21 Currency, the Director of the Office of Thrift Super-  
22 vision, the Federal Deposit Insurance Corporation,  
23 the National Credit Union Administration Board,  
24 (hereafter in this Act referred to as the “Federal  
25 banking agencies”) and the Federal Trade Commis-

1 sion shall prescribe, in final form, such regulations  
 2 as determined to be necessary to implement the  
 3 amendments made by subsection (a) before the end  
 4 of the 180-day period beginning on the date of the  
 5 enactment of this Act.

6 (2) EFFECTIVE DATE.—The amendments made  
 7 by subsection (a) shall only apply to covered mort-  
 8 gage loans consummated after the end of the 1-year  
 9 period beginning on the date of the publication of  
 10 final regulations in the Federal Register.

11 (c) CLERICAL AMENDMENT.—The table of sections  
 12 for chapter 2 of the Truth in Lending Act is amended  
 13 by inserting after the item relating to section 129B (as  
 14 added by section 201) the following new item:

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

15 **SEC. 602. DISCLOSURE NOTICE REQUIRED FOR CON-**  
 16 **SUMERS WHO WAIVE ESCROW SERVICES.**

17 (a) IN GENERAL.—Section 129C of the Truth in  
 18 Lending Act (as added by section 601) is amended by add-  
 19 ing at the end the following new subsection:

20 “(h) DISCLOSURE NOTICE REQUIRED FOR CON-  
 21 SUMERS WHO WAIVE ESCROW SERVICES.—

22 “(1) IN GENERAL.—If—

23 “(A) an impound, trust, or other type of  
 24 account for the payment of property taxes, in-

1           surance premiums, or other purposes relating to  
2           real property securing a consumer credit trans-  
3           action is not established in connection with the  
4           transaction; or

5           “(B) a consumer chooses, at any time after  
6           such an account is established in connection  
7           with any such transaction and in accordance  
8           with any statute, regulation, or contractual  
9           agreement, to close such account,

10          the creditor or servicer shall provide a timely and  
11          clearly written disclosure to the consumer that ad-  
12          vises the consumer of the responsibilities of the con-  
13          sumer and implications for the consumer in the ab-  
14          sence of any such account.

15          “(2) DISCLOSURE REQUIREMENTS.—Any dis-  
16          closure provided to a consumer under paragraph (1)  
17          shall include the following:

18                 “(A) Information concerning any applica-  
19                 ble fees or costs associated with either the non-  
20                 establishment of any such account at the time  
21                 of the transaction, or any subsequent closure of  
22                 any such account.

23                 “(B) A clear and prominent notice that the  
24                 consumer is responsible for personally and di-  
25                 rectly paying the non-escrowed items, in addi-

1           tion to paying the mortgage loan payment, in  
2           the absence of any such account, and the fact  
3           that the costs for taxes, insurance, and related  
4           fees can be substantial.

5           “(C) A clear explanation of the con-  
6           sequences of any failure to pay non-escrowed  
7           items, including the possible requirement for  
8           the forced placement of insurance by the cred-  
9           itor or servicer and the potentially higher cost  
10          (including any potential commission payments  
11          to the servicer) or reduced coverage for the con-  
12          sumer in the event of any such creditor-placed  
13          insurance.”.

14          (b) IMPLEMENTATION.—

15           (1) REGULATIONS.—The Federal banking agen-  
16          cies and the Federal Trade Commission shall pre-  
17          scribe, in final form, such regulations as such agen-  
18          cies determine to be necessary to implement the  
19          amendments made by subsection (a) before the end  
20          of the 180-day period beginning on the date of the  
21          enactment of this Act.

22           (2) EFFECTIVE DATE.—The amendments made  
23          by subsection (a) shall only apply in accordance with  
24          the regulations established in paragraph (1) and be-  
25          ginning on the date occurring 180-days after the



1 date of the publication of final regulations in the  
2 Federal Register.

3 **SEC. 603. REAL ESTATE SETTLEMENT PROCEDURES ACT OF**  
4 **1974 AMENDMENTS.**

5 (a) **SERVICER PROHIBITIONS.**—Section 6 of the Real  
6 Estate Settlement Procedures Act of 1974 (12 U.S.C.  
7 2605) is amended by adding at the end the following new  
8 subsections:

9 “(k) **SERVICER PROHIBITIONS.**—

10 “(1) **IN GENERAL.**—A servicer of a federally re-  
11 lated mortgage shall not—

12 “(A) obtain force-placed hazard insurance  
13 unless there is a reasonable basis to believe the  
14 borrower has failed to comply with the loan  
15 contract’s requirements to maintain property  
16 insurance;

17 “(B) charge fees for responding to valid  
18 qualified written requests (as defined in regula-  
19 tions which the Secretary shall prescribe) under  
20 this section;

21 “(C) fail to take timely action to respond  
22 to a borrower’s requests to correct errors relat-  
23 ing to allocation of payments, final balances for  
24 purposes of paying off the loan, or avoiding  
25 foreclosure, or other standard servicer’s duties;

1           “(D) fail to respond within 10 business  
2           days to a request from a borrower to provide  
3           the identity, address, and other relevant contact  
4           information about the owner assignee of the  
5           loan; or

6           “(E) fail to comply with any other obliga-  
7           tion found by the Secretary, by regulation, to  
8           be appropriate to carry out the consumer pro-  
9           tection purposes of this Act.

10           “(2) FORCE-PLACED INSURANCE DEFINED.—  
11           For purposes of this subsection and subsections (l)  
12           and (m), the term ‘force-placed insurance’ means  
13           hazard insurance coverage obtained by a servicer of  
14           a federally related mortgage when the borrower has  
15           failed to maintain or renew hazard insurance on  
16           such property as required of the borrower under the  
17           terms of the mortgage.

18           “(l) REQUIREMENTS FOR FORCE-PLACED INSUR-  
19           ANCE.—A servicer of a federally related mortgage shall  
20           not be construed as having a reasonable basis for obtain-  
21           ing force-placed insurance unless the requirements of this  
22           subsection have been met.

23           “(1) WRITTEN NOTICES TO BORROWER.—A  
24           servicer may not impose any charge on any borrower

1 for force-placed insurance with respect to any prop-  
2 erty securing a federally related mortgage unless—

3 “(A) the servicer has sent, by first-class  
4 mail, a written notice to the borrower con-  
5 taining—

6 “(i) a reminder of the borrower’s obli-  
7 gation to maintain hazard insurance on the  
8 property securing the federally related  
9 mortgage;

10 “(ii) a statement that the servicer  
11 does not have evidence of insurance cov-  
12 erage of such property;

13 “(iii) a clear and conspicuous state-  
14 ment of the procedures by which the bor-  
15 rower may demonstrate that the borrower  
16 already has insurance coverage; and

17 “(iv) a statement that the servicer  
18 may obtain such coverage at the borrower’s  
19 expense if the borrower does not provide  
20 such demonstration of the borrower’s exist-  
21 ing coverage in a timely manner;

22 “(B) the servicer has sent, by first-class  
23 mail, a second written notice, at least 30 days  
24 after the mailing of the notice under subpara-  
25 graph (A) that contains all the information de-

1           scribed in each clauses of such subparagraph;  
2           and

3           “(C) the servicer has not received from the  
4           borrower any demonstration of hazard insur-  
5           ance coverage for the property securing the  
6           mortgage by the end of the 15-day period be-  
7           ginning on the date the notice under subpara-  
8           graph (B) was sent by the servicer.

9           “(2) SUFFICIENCY OF DEMONSTRATION.—A  
10          servicer of a federally related mortgage shall accept  
11          any reasonable form of written confirmation from a  
12          borrower of existing insurance coverage, which shall  
13          include the existing insurance policy number along  
14          with the identity of, and contact information for, the  
15          insurance company or agent.

16          “(3) TERMINATION OF FORCE-PLACED INSUR-  
17          ANCE.—Within 15 days of the receipt by a servicer  
18          of confirmation of a borrower’s existing insurance  
19          coverage, the servicer shall—

20                 “(A) terminate the force-placed insurance;  
21                 and

22                 “(B) refund to the consumer all force-  
23                 placed insurance premiums paid by the bor-  
24                 rower during any period during which the bor-  
25                 rower’s insurance coverage and the force-placed

1 insurance coverage were each in effect, and any  
2 related fees charged to the consumer's account  
3 with respect to the force-placed insurance dur-  
4 ing such period.

5 “(4) CLARIFICATION WITH RESPECT TO FLOOD  
6 DISASTER PROTECTION ACT.—No provision of this  
7 section shall be construed as prohibiting a servicer  
8 from providing simultaneous or concurrent notice of  
9 a lack of flood insurance pursuant to section 102(e)  
10 of the Flood Disaster Protection Act of 1973.

11 “(m) LIMITATIONS ON FORCE-PLACED INSURANCE  
12 CHARGES.—All charges for force-placed insurance pre-  
13 miums shall be bona fide and reasonable in amount.

14 “(n) PROMPT CREDITING OF PAYMENTS RE-  
15 QUIRED.—

16 “(1) IN GENERAL.—All amounts received by a  
17 lender or a servicer on a home loan at the address  
18 where the borrower has been instructed to make  
19 payments shall be accepted and credited, or treated  
20 as credited, on the business day received, to the ex-  
21 tent that the borrower has made the full contractual  
22 payment and has provided sufficient information to  
23 credit the account.

24 “(2) SCHEDULED METHOD.—If a servicer uses  
25 the scheduled method of accounting, any regularly

1 scheduled payment made prior to the scheduled due  
2 date shall be credited no later than the due date.

3 “(3) NOTICE OF NONCREDIT.—If any payment  
4 is received by a lender or a servicer on a home loan  
5 and not credited, or treated as credited, the bor-  
6 rower shall be notified within 10 business days by  
7 mail at the borrower’s last known address of the dis-  
8 position of the payment, the reason the payment was  
9 not credited, or treated as credited to the account,  
10 and any actions necessary by the borrower to make  
11 the loan current.”.

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

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

18 (2) in paragraph (2)(B)(i), by striking  
19 “\$500,000” and inserting “\$1,000,000”.

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

23 (1) in paragraph (1)(A), by striking “20 days”  
24 and inserting “10 days”;

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

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

5           “(4) LIMITED EXTENSION OF RESPONSE  
6           TIME.—The 30-day period described in paragraph  
7           (2) may be extended for not more than 30 days if,  
8           before the end of such 30-day period, the servicer  
9           notifies the borrower of the extension and the rea-  
10          sons for the delay in responding.”.

11          (d) REQUESTS FOR PAY-OFF AMOUNTS.—Section  
12          6(e) of the Real Estate Settlement Procedures Act of 1974  
13          (12 U.S.C. 2605(e)) is amended by inserting after para-  
14          graph (4) (as added by subsection (c) of this section) the  
15          following new paragraph:

16          “(5) REQUESTS FOR PAY-OFF AMOUNTS.—A  
17          creditor or servicer shall send a payoff balance with-  
18          in 7 business days of the receipt of a written request  
19          for such balance from or on behalf of the bor-  
20          rower.”.

21          (e) PROMPT REFUND OF ESCROW ACCOUNTS UPON  
22          PAYOFF.—Section 6(g) of the Real Estate Settlement  
23          Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended  
24          by adding at the end the following new sentence: “Any  
25          balance in any such account that is within the servicer’s

1 control at the time the loan is paid off shall be promptly  
2 returned to the borrower within 20 business days or cred-  
3 ited to a similar account for a new mortgage loan to the  
4 borrower with the same lender.”.

5 **SEC. 604. MORTGAGE SERVICING STUDIES REQUIRED.**

6 (a) MORTGAGE SERVICING PRACTICES.—

7 (1) STUDY.—The Secretary of Housing and  
8 Urban Development, in consultation with the Fed-  
9 eral banking agencies, and the Federal Trade Com-  
10 mission, shall conduct a comprehensive study on  
11 mortgage servicing practices and their potential for  
12 fraud and abuse.

13 (2) ISSUES TO BE INCLUDED.—In addition to  
14 other issues the Secretary of Housing and Urban  
15 Development, the Federal banking agencies, and the  
16 Federal Trade Commission may determine to be ap-  
17 propriate and possibly pertinent to the study con-  
18 ducted under paragraph (1), the study shall include  
19 the following issues:

20 (A) A survey of the industry in order to  
21 examine the issue of the timely or effective  
22 posting of payments by servicers.

23 (B) The employment of daily interest when  
24 payments are made after a due date.



1 (C) The charging of late fees on the entire  
2 outstanding principal.

3 (D) The charging of interest on servicing  
4 fees.

5 (E) The utilization of collection practices  
6 that failed to comply with the Fair Debt Collec-  
7 tion Practices Act.

8 (F) The charging of prepayment penalties  
9 when not authorized by either the note or law.

10 (G) The employment of unconscionable for-  
11 bearance agreements.

12 (H) Foreclosure abuses.

13 (3) REPORT.—Before the end of the 12-month  
14 period beginning on the date of the enactment of  
15 this Act, the Secretary of Housing and Urban Devel-  
16 opment shall submit a report on the study conducted  
17 under this subsection to the Committee on Financial  
18 Services of the House of Representatives and the  
19 Committee on Banking, Housing, and Urban Affairs  
20 of the Senate.

21 (b) MORTGAGE SERVICING IMPROVEMENTS.—

22 (1) STUDY.—The Secretary of Housing and  
23 Urban Development, in consultation with the Fed-  
24 eral banking agencies, and the Federal Trade Com-  
25 mission, shall conduct a comprehensive study on

1 means to improve the best practices of the mortgage  
2 servicing industry, and Federal and State laws gov-  
3 erning such industry.

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

15 **SEC. 605. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.**

16 (a) IN GENERAL.—Section 128(b) of the Truth in  
17 Lending Act (15 U.S.C. 1638(b)) is amended by adding  
18 at the end the following new paragraph:

19 “(4) REPAYMENT ANALYSIS REQUIRED TO IN-  
20 CLUDE ESCROW PAYMENTS.—

21 “(A) IN GENERAL.—In the case of any  
22 consumer credit transaction secured by a first  
23 mortgage or lien on the principal dwelling of  
24 the consumer, other than a consumer credit  
25 transaction under an open end credit plan or a

1 reverse mortgage, for which an impound, trust,  
2 or other type of account has been or will be es-  
3 tablished in connection with the transaction for  
4 the payment of property taxes, hazard and flood  
5 (if any) insurance premiums, or other periodic  
6 payments or premiums with respect to the  
7 property, the information required to be pro-  
8 vided under subsection (a) with respect to the  
9 number, amount, and due dates or period of  
10 payments scheduled to repay the total of pay-  
11 ments shall take into account the amount of  
12 any monthly payment to such account for each  
13 such repayment in accordance with section  
14 10(a)(2) of the Real Estate Settlement Proce-  
15 dures Act of 1974.

16 “(B) ASSESSMENT VALUE.—The amount  
17 taken into account under subparagraph (A) for  
18 the payment of property taxes, hazard and flood  
19 (if any) insurance premiums, or other periodic  
20 payments or premiums with respect to the  
21 property shall reflect the taxable assessed value  
22 of the real property securing the transaction  
23 after the consummation of the transaction, in-  
24 cluding the value of any improvements on the  
25 property or to be constructed on the property

1 (whether or not such construction will be fi-  
2 nanced from the proceeds of the transaction), if  
3 known, and the replacement costs of the prop-  
4 erty for hazard insurance, in the initial year  
5 after the transaction.”.

6 **TITLE VII—APPRAISAL**  
7 **ACTIVITIES**

8 **SEC. 701. PROPERTY APPRAISAL REQUIREMENTS.**

9 Section 129 of the Truth in Lending Act (15 U.S.C.  
10 1639) is amended by inserting after subsection (u) (as  
11 added by section 303(f)) the following new subsection:

12 “(v) PROPERTY APPRAISAL REQUIREMENTS.—

13 “(1) IN GENERAL.—A creditor may not extend  
14 credit in the form of a mortgage referred to in sec-  
15 tion 103(aa) to any consumer without first obtaining  
16 a written appraisal of the property to be mortgaged  
17 prepared in accordance with the requirements of this  
18 subsection.

19 “(2) APPRAISAL REQUIREMENTS.—

20 “(A) PHYSICAL PROPERTY VISIT.—An ap-  
21 praisal of property to be secured by a mortgage  
22 referred to in section 103(aa) does not meet the  
23 requirement of this subsection unless it is per-  
24 formed by a qualified appraiser who conducts a

1 physical property visit of the interior of the  
2 mortgaged property.

3 “(B) SECOND APPRAISAL UNDER CERTAIN  
4 CIRCUMSTANCES.—

5 “(i) IN GENERAL.—If the purpose of  
6 a mortgage referred to in section 103(aa)  
7 is to finance the purchase or acquisition of  
8 the mortgaged property from a person  
9 within 180 days of the purchase or acqui-  
10 sition of such property by that person at a  
11 price that was lower than the current sale  
12 price of the property, the creditor shall ob-  
13 tain a second appraisal from a different  
14 qualified appraiser. The second appraisal  
15 shall include an analysis of the difference  
16 in sale prices, changes in market condi-  
17 tions, and any improvements made to the  
18 property between the date of the previous  
19 sale and the current sale.

20 “(ii) NO COST TO CONSUMER.—The  
21 cost of any second appraisal required  
22 under clause (i) may not be charged to the  
23 consumer.

1           “(C) QUALIFIED APPRAISER DEFINED.—

2           For purposes of this subsection, the term

3           ‘qualified appraiser’ means a person who—

4                   “(i) is certified or licensed by the  
5                   State in which the property to be ap-  
6                   praised is located; and

7                   “(ii) performs each appraisal in con-  
8                   formity with the Uniform Standards of  
9                   Professional Appraisal Practice and title  
10                  XI of the Financial Institutions Reform,  
11                  Recovery, and Enforcement Act of 1989,  
12                  and the regulations prescribed under such  
13                  title, as in effect on the date of the ap-  
14                  praisal.

15           “(3) FREE COPY OF APPRAISAL.—A creditor  
16           shall provide 1 copy of each appraisal conducted in  
17           accordance with this subsection in connection with a  
18           mortgage referred to in section 103(aa) to the con-  
19           sumer without charge, and at least 3 days prior to  
20           the transaction closing date.

21           “(4) CONSUMER NOTIFICATION.—At the time  
22           of the initial mortgage application, the consumer  
23           shall be provided with a statement by the creditor  
24           that any appraisal prepared for the mortgage is for  
25           the sole use of the creditor, and that the consumer

1       may choose to have a separate appraisal conducted  
2       at their own expense.

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

8   **SEC. 702. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**  
9               **RELATING TO CERTAIN CONSUMER CREDIT**  
10              **TRANSACTIONS.**

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 129C (as added by section 601) the following  
14       new section:

15   **“SEC. 129D. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**  
16               **RELATING TO CERTAIN CONSUMER CREDIT**  
17              **TRANSACTIONS.**

18       “(a) IN GENERAL.—It shall be unlawful, in providing  
19       any services for a consumer credit transaction secured by  
20       the principal dwelling of the consumer, to engage in any  
21       unfair or deceptive act or practice as described in or pur-  
22       suant to regulations prescribed under this section.

23       “(b) APPRAISAL INDEPENDENCE.—For purposes of  
24       subsection (a), unfair and deceptive practices shall in-  
25       clude—

1           “(1) any appraisal of a property offered as se-  
2           curity for repayment of the consumer credit trans-  
3           action that is conducted in connection with such  
4           transaction in which a person with an interest in the  
5           underlying transaction compensates, coerces, extorts,  
6           colludes, instructs, induces, bribes, or intimidates a  
7           person conducting or involved in an appraisal, or at-  
8           tempts, to compensate, coerce, extort, collude, in-  
9           struct, induce, bribe, or intimidate such a person,  
10          for the purpose of causing the appraised value as-  
11          signed, under the appraisal, to the property to be  
12          based on any factor other than the independent  
13          judgment of the appraiser;

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

17          “(3) seeking to influence an appraiser or other-  
18          wise to encourage a targeted value in order to facili-  
19          tate the making or pricing of the transaction; and

20          “(4) failing to timely compensate an appraiser  
21          for a completed appraisal regardless of whether the  
22          transaction closes.

23          “(c) EXCEPTIONS.—The requirements of subsection  
24 (b) shall not be construed as prohibiting a mortgage lend-  
25 er, mortgage broker, mortgage banker, real estate broker,



1 appraisal management company, employee of an appraisal  
2 management company, or any other person with an inter-  
3 est in a real estate transaction from asking an appraiser  
4 to provide 1 or more of the following services:

5           “(1) Consider additional, appropriate property  
6 information, including the consideration of addi-  
7 tional comparable properties to make or support an  
8 appraisal.

9           “(2) Provide further detail, substantiation, or  
10 explanation for the appraiser’s value conclusion.

11           “(3) Correct errors in the appraisal report.

12           “(d) RULEMAKING PROCEEDINGS.—The Board, the  
13 Comptroller of the Currency, the Director of the Office  
14 of Thrift Supervision, the Federal Deposit Insurance Cor-  
15 poration, the National Credit Union Administration  
16 Board, and the Federal Trade Commission—

17           “(1) shall, for purposes of this section, jointly  
18 prescribe regulations defining with specificity acts or  
19 practices which are unfair or deceptive in the provi-  
20 sion of mortgage lending services for a consumer  
21 credit transaction secured by the principal dwelling  
22 of the consumer or mortgage brokerage services for  
23 such a transaction and defining any terms in this  
24 section or such regulations; and

1           “(2) may jointly issue interpretive guidelines  
2           and general statements of policy with respect to un-  
3           fair or deceptive acts or practices in the provision of  
4           mortgage lending services for a consumer credit  
5           transaction secured by the principal dwelling of the  
6           consumer and mortgage brokerage services for such  
7           a transaction, within the meaning of subsections (a),  
8           (b), and (c).

9           “(e) PENALTIES.—

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

15           “(2) SUBSEQUENT VIOLATIONS.—In the case of  
16           any person on whom a civil penalty has been im-  
17           posed under paragraph (1), paragraph (1) shall be  
18           applied by substituting ‘\$20,000’ for ‘\$10,000’ with  
19           respect to all subsequent violations.

20           “(3) ASSESSMENT.—The agency referred to in  
21           subsection (a) or (c) of section 108 with respect to  
22           any person described in paragraph (1) shall assess  
23           any penalty under this subsection to which such per-  
24           son is subject.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 for chapter 2 of the Truth in Lending Act is amended  
 3 by inserting after the item relating to section 129C (as  
 4 added by section 601) the following new item:

“129D. Unfair and deceptive practices and acts relating to certain consumer credit transactions.”.

5 **SEC. 703. APPRAISAL SUBCOMMITTEE OF FIEC, APPRAISER**  
 6 **INDEPENDENCE, AND APPROVED APPRAISER**  
 7 **EDUCATION.**

8 (a) CONSUMER PROTECTION MISSION.—

9 (1) PURPOSE.—A purpose for the establishment  
 10 and operation of the Appraisal Subcommittee of the  
 11 Financial Institutions Examination Council (here-  
 12 after in this section referred to as the “Appraisal  
 13 Subcommittee”) shall be to establish a consumer  
 14 protection mandate.

15 (2) FUNCTIONS OF APPRAISAL SUB-  
 16 COMMITTEE.—It shall be a function of the Appraisal  
 17 Subcommittee to protect the consumer from im-  
 18 proper appraisal practices and the predations of un-  
 19 licensed appraisers.

20 (3) THRESHOLD LEVELS.—In establishing a  
 21 threshold level under section 1112(b) of the Finan-  
 22 cial Institutions Reform, Recovery, and Enforcement  
 23 Act of 1989 (12 U.S.C. 3341(b)), each agency shall  
 24 determine in writing that the threshold level provides

1 reasonable protection for consumers who purchase 1-  
2 4 unit single-family residences.

3 (b) ANNUAL REPORT OF APPRAISAL SUB-  
4 COMMITTEE.—The annual report of the Appraisal Sub-  
5 committee under section 1103(a)(4) of Financial Institu-  
6 tions Reform, Recovery, and Enforcement Act of 1989  
7 shall detail the activities of the Appraisal Subcommittee,  
8 including the results of all audits of State appraiser regu-  
9 latory agencies, and provide an accounting of disapproved  
10 actions and warnings taken in the previous year, including  
11 a description of the conditions causing the disapproval.

12 (c) OPEN MEETINGS.—All meetings of the Appraisal  
13 Subcommittee shall be held in public session after notice  
14 in the Federal Register.

15 (d) REGULATIONS.—The Appraisal Subcommittee  
16 may prescribe regulations after notice and opportunity for  
17 comment. Any regulations prescribed by the Appraisal  
18 Subcommittee shall (unless otherwise provided in this sec-  
19 tion or title XI of the Financial Institutions Reform, Re-  
20 covery, and Enforcement Act of 1989) be limited to the  
21 following functions: temporary practice, national registry,  
22 information sharing, and enforcement. For purposes of  
23 prescribing regulations, the Appraisal Subcommittee shall  
24 establish an advisory committee of industry participants,

1 including appraisers, lenders, consumer advocates, and  
2 government agencies, and hold regular meetings.

3 (e) FIELD APPRAISALS AND APPRAISAL REVIEWS.—

4 All field appraisals performed at a property within a State  
5 shall be prepared by appraisers licensed in the State where  
6 the property is located. All Uniform Standards of Profes-  
7 sional Appraisal Practice-compliant appraisal reviews shall  
8 be performed by an appraiser who is duly licensed by a  
9 State appraisal board.

10 (f) STATE AGENCY REPORTING REQUIREMENT.—

11 Each State with an appraiser certifying and licensing  
12 agency whose certifications and licenses comply with title  
13 XI of the Financial Institutions Reform, Recovery, and  
14 Enforcement Act of 1989 shall transmit reports on sanc-  
15 tions, disciplinary actions, license and certification revoca-  
16 tions, and license and certification suspensions on a timely  
17 basis to the national registry of the Appraisal Sub-  
18 committee.

19 (g) REGISTRY FEES MODIFIED.—

20 (1) IN GENERAL.—The annual registry fees for  
21 persons performing appraisals in federally related  
22 transactions shall be increased from \$25 to \$40. The  
23 maximum amount up to which the Appraisal Sub-  
24 committee may adjust any registry fees shall be in-  
25 creased from \$50 to \$80 per annum. The Appraisal

1 Subcommittee shall consider at least once every 5  
2 years whether to adjust the dollar amount of the  
3 registry fees to account for inflation. In imple-  
4 menting any change in registry fees, the Appraisal  
5 Subcommittee shall provide flexibility to the States  
6 for multi-year certifications and licenses already in  
7 place, as well as a transition period to implement the  
8 changes in registry fees.

9 (2) INCREMENTAL REVENUES.—Incremental  
10 revenues collected pursuant to the increases required  
11 by this section shall be placed in a separate account  
12 at the United States Treasury, entitled the Ap-  
13 praisal Subcommittee Account.

14 (h) GRANTS AND REPORTS.—

15 (1) IN GENERAL.—Amounts appropriated for or  
16 collected by the Appraisal Subcommittee after the  
17 date of the enactment of this Act shall, in addition  
18 to other uses authorized, be used—

19 (A) to make grants to State appraiser reg-  
20 ulatory agencies to help defray those costs re-  
21 lating to enforcement activities; and

22 (B) to report to all State appraiser certi-  
23 fying and licensing agencies when a license or  
24 certification is surrendered, revoked, or sus-  
25 pended.

1           (2) LIMITATION ON OBLIGATIONS.—Obligations  
2 authorized under this section may not exceed 75 per-  
3 cent of the fiscal year total of incremental increase  
4 in fees collected and deposited in the Appraisal Sub-  
5 committee Account pursuant to section 703(g) of  
6 this Act.

7           (i) CRITERIA.—

8           (1) DEFINITION.—For purposes of this section  
9 and title XI of the Financial Institutions Reform,  
10 Recovery, and Enforcement Act of 1989 (notwith-  
11 standing section 1116(c) of such title), the term  
12 “State licensed appraiser” means an individual who  
13 has satisfied the requirements for State licensing in  
14 a State or territory whose criteria for the licensing  
15 of a real estate appraiser currently meet or exceed  
16 the minimum criteria issued by the Appraisal Quali-  
17 fications Board of The Appraisal Foundation for the  
18 licensing of real estate appraisers.

19           (2) MINIMUM QUALIFICATION REQUIRE-  
20 MENTS.—Any requirements established for individ-  
21 uals in the position of “Trainee Appraiser” and “Su-  
22 pervisory Appraiser” shall meet or exceed the min-  
23 imum qualification requirements of the Appraiser  
24 Qualifications Board of The Appraisal Foundation.

1       The Appraisal Subcommittee shall have the author-  
2       ity to enforce these requirements.

3       (j) MONITORING OF STATE APPRAISER CERTIFYING  
4       AND LICENSING AGENCIES.—The Appraisal Sub-  
5       committee shall monitor State appraiser certifying and  
6       licencing agencies for the purpose of determining whether  
7       a State agency’s funding and staffing are consistent with  
8       the requirements of title XI of the Financial Institutions  
9       Reform, Recovery, and Enforcement Act of 1989, whether  
10      a State agency processes complaints and completes exams  
11      in a reasonable time period, and whether a State agency  
12      reports claims and disciplinary actions on a timely basis  
13      to the national registry maintained by the Appraisal Sub-  
14      committee. The Appraisal Subcommittee shall have the  
15      authority to impose interim sanctions and suspensions.

16      (k) RECIPROCITY.—A State appraiser certifying or li-  
17      censing agency shall issue a reciprocal certification or li-  
18      cense for an individual from another State when—

19              (1) the appraiser licensing and certification pro-  
20              gram of such other State is in compliance with the  
21              provisions of this title; and

22              (2) the appraiser holds a valid certification  
23              from a State whose requirements for certification or  
24              licensing meet or exceed the licensure standards es-



1        established by the State where an individual seeks ap-  
2        praisal licensure.

3        (l) CONSIDERATION OF PROFESSIONAL APPRAISAL  
4 DESIGNATIONS.—No provision of section 1122(d) of the  
5 Financial Institutions Reform, Recovery, and Enforce-  
6 ment Act of 1989 shall be construed as prohibiting consid-  
7 eration of designations conferred by recognized national  
8 professional appraisal organizations, such as sponsoring  
9 organizations of The Appraisal Foundation.

10        (m) APPRAISER INDEPENDENCE.—

11            (1) PROHIBITIONS ON INTERESTED PARTIES IN  
12 A REAL ESTATE TRANSACTION.—No mortgage lend-  
13 er, mortgage broker, mortgage banker, real estate  
14 broker, appraisal management company, employee of  
15 an appraisal management company, nor any other  
16 person with an interest in a real estate transaction  
17 involving an appraisal shall improperly influence, or  
18 attempt to improperly influence, through coercion,  
19 extortion, collusion, compensation, instruction, in-  
20 ducement, intimidation, non-payment for services  
21 rendered, or bribery, the development, reporting, re-  
22 sult, or review of a real estate appraisal sought in  
23 connection with a mortgage loan.

24            (2) EXCEPTIONS.—The requirements of para-  
25 graph (1) shall not be construed as prohibiting a

1 mortgage lender, mortgage broker, mortgage banker,  
2 real estate broker, appraisal management company,  
3 employee of an appraisal management company, or  
4 any other person with an interest in a real estate  
5 transaction from asking an appraiser to provide 1 or  
6 more of the following services:

7 (A) Consider additional, appropriate prop-  
8 erty information, including the consideration of  
9 additional comparable properties to make or  
10 support an appraisal.

11 (B) Provide further detail, substantiation,  
12 or explanation for the appraiser's value conclu-  
13 sion.

14 (C) Correct errors in the appraisal report.

15 (3) PROHIBITIONS ON CONFLICTS OF INTER-  
16 EST.—No certified or licensed appraiser conducting  
17 an appraisal may have a direct or indirect interest,  
18 financial or otherwise, in the property or transaction  
19 involving the appraisal.

20 (4) MANDATORY REPORTING.—Any mortgage  
21 lender, mortgage broker, mortgage banker, real es-  
22 tate broker, appraisal management company, em-  
23 ployee of an appraisal management company, or any  
24 other person with an interest in a real estate trans-  
25 action involving an appraisal who has a reasonable

1 basis to believe an appraiser is violating applicable  
2 laws, or is otherwise engaging in unethical conduct,  
3 shall refer the matter to the applicable State ap-  
4 praiser certifying and licensing agency.

5 (5) REGULATIONS.—The Federal financial in-  
6 stitutions regulatory agencies (as defined in section  
7 1003(1) of the Federal Financial Institutions Exam-  
8 ination Council Act of 1978) shall prescribe such  
9 regulations as may be necessary to carry out the  
10 provisions of this subsection.

11 (6) PENALTIES.—Any person who violates any  
12 provision of this subsection shall be subject to civil  
13 penalties under section 8(i)(2) of the Federal De-  
14 posit Insurance Act or section 206(k)(2) of the Fed-  
15 eral Credit Union Act, as appropriate.

16 (7) PROCEEDING.—A proceeding with respect  
17 to a violation of this subsection shall be an adminis-  
18 trative proceeding which may be conducted by a  
19 Federal financial institutions regulatory agency in  
20 accordance with the procedures set forth in sub-  
21 chapter II of chapter 5 of title 5, United States  
22 Code.

23 (n) APPROVED EDUCATION.—The Appraisal Sub-  
24 committee shall encourage the States to accept courses ap-

1 proved by the Appraiser Qualification Board's Course Ap-  
2 proval Program.

3 **SEC. 704. STUDY REQUIRED ON IMPROVEMENTS IN AP-**  
4 **PRAISAL PROCESS AND COMPLIANCE PRO-**  
5 **GRAMS.**

6 (a) STUDY.—The Comptroller General shall conduct  
7 a comprehensive study on possible improvements in the  
8 appraisal process generally, and specifically on the consist-  
9 ency in and the effectiveness of, and possible improve-  
10 ments in, State compliance efforts and programs in ac-  
11 cordance with title XI of the Financial Institutions Re-  
12 form, Recovery, and Enforcement Act of 1989. In addi-  
13 tion, this study shall examine the existing de minimis loan  
14 levels established by Federal regulators for compliance  
15 under title XI and whether there is a need to revise them  
16 to reflect the addition of consumer protection to the pur-  
17 poses and functions of the Appraisal Subcommittee.

18 (b) REPORT.—Before the end of the 18-month period  
19 beginning on the date of the enactment of this Act, the  
20 Comptroller General shall submit a report on the study  
21 under subsection (a) to the Committee on Financial Serv-  
22 ices of the House of Representatives and the Committee  
23 on Banking, Housing, and Urban Affairs of the Senate,  
24 together with such recommendations for administrative or

1 legislative action, at the Federal or State level, as the  
 2 Comptroller General may determine to be appropriate.

3 **SEC. 705. CONSUMER APPRAISAL DISCLOSURE.**

4 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
 5 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
 6 after section 129D (as added by section 702) the following  
 7 new section:

8 **“SEC. 129E. CONSUMER APPRAISAL DISCLOSURE.**

9 “In any case in which an appraisal is performed in  
 10 connection with an extension of credit secured by an inter-  
 11 est in real property, the creditor or other mortgage origi-  
 12 nator shall make available to the applicant for the exten-  
 13 sion of credit a copy of all appraisal valuation reports upon  
 14 completion but no later than 3 business days prior to the  
 15 transaction closing date.”.

16 (b) CLERICAL AMENDMENT.—The table of sections  
 17 for chapter 2 of the Truth in Lending Act is amended  
 18 by inserting after the item relating to section 129D (as  
 19 added by section 702) the following new item:

“129E. Consumer appraisal disclosure.”.

Passed the House of Representatives November 15,  
 2007.

Attest: LORRAINE C. MILLER,  
*Clerk.*