

111TH CONGRESS
1ST SESSION

H. R. 1728

To amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2009

Mr. MILLER of North Carolina (for himself, Mr. WATT, Mr. FRANK of Massachusetts, Mr. KANJORSKI, Mr. GUTIERREZ, Ms. BEAN, and Mr. MINNICK) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, 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”.

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

Sec. 1. Short title; table of contents.

TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION STANDARDS

Sec. 101. Definitions.
 Sec. 102. Residential mortgage loan origination.
 Sec. 103. Prohibition on steering incentives.
 Sec. 104. Liability.
 Sec. 105. 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. Credit risk retention.
 Sec. 214. Required disclosures.
 Sec. 215. Disclosures required in monthly statements for residential mortgage loans.
 Sec. 216. Legal assistance for foreclosure-related issues.
 Sec. 217. Effective date.
 Sec. 218. 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 SERVICING

- Sec. 501. Escrow and impound accounts relating to certain consumer credit transactions.
- Sec. 502. Disclosure notice required for consumers who waive escrow services.
- Sec. 503. Real Estate Settlement Procedures Act of 1974 amendments.
- Sec. 504. Mortgage servicing studies required.
- Sec. 505. Escrows included in repayment analysis.

TITLE VI—APPRAISAL ACTIVITIES

- Sec. 601. Property appraisal requirements.
- Sec. 602. Unfair and deceptive practices and acts relating to certain consumer credit transactions.
- Sec. 603. Amendments relating to appraisal subcommittee of FIEC, appraiser independence, and approved appraiser education.
- Sec. 604. Study required on improvements in appraisal process and compliance programs.
- Sec. 605. Equal Credit Opportunity Act amendment.

1 **TITLE I—RESIDENTIAL MORT-** 2 **GAGE LOAN ORIGINATION** 3 **STANDARDS**

4 **SEC. 101. DEFINITIONS.**

5 Section 103 of the Truth in Lending Act (15 U.S.C.
 6 1602) is amended by adding at the end the following new
 7 subsection:

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

10 “(1) COMMISSION.—Unless otherwise specified,
 11 the term ‘Commission’ means the Federal Trade
 12 Commission.

13 “(2) FEDERAL BANKING AGENCIES.—The term
 14 ‘Federal banking agencies’ means the Board of Gov-
 15 ernors of the Federal Reserve System, the Comp-
 16 troller of the Currency, the Director of the Office of
 17 Thrift Supervision, the Federal Deposit Insurance

1 Corporation, and the National Credit Union Admin-
2 istration Board.

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

5 “(A) means any person who—

6 “(i) takes a residential mortgage loan
7 application;

8 “(ii) assists a consumer in obtaining
9 or applying to obtain a residential mort-
10 gage loan; or

11 “(iii) offers or negotiates terms of a
12 residential mortgage loan, for direct or in-
13 direct compensation or gain, or in the ex-
14 pectation of direct or indirect compensa-
15 tion or gain;

16 “(B) includes any person who represents
17 to the public, through advertising or other
18 means of communicating or providing informa-
19 tion (including the use of business cards, sta-
20 tionery, brochures, signs, rate lists, or other
21 promotional items), that such person can or will
22 provide any of the services or perform any of
23 the activities described in subparagraph (A);
24 and

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

6 “(4) NATIONWIDE MORTGAGE LICENSING SYS-
7 TEM AND REGISTRY.—The term ‘Nationwide Mort-
8 gage Licensing System and Registry’ has the same
9 meaning as in the Secure and Fair Enforcement for
10 Mortgage Licensing Act of 2008.

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

20 “(6) RESIDENTIAL MORTGAGE LOAN.—The
21 term ‘residential mortgage loan’ means any con-
22 sumer credit transaction that is secured by a mort-
23 gage, deed of trust, or other equivalent consensual
24 security interest on a dwelling or on residential real
25 property that includes a dwelling, other than a con-

1 sumer credit transaction under an open end credit
2 plan or a reverse mortgage.

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

7 “(8) SECURITIZATION VEHICLE.—The term
8 ‘securitization vehicle’ means a trust, corporation,
9 partnership, limited liability entity, special purpose
10 entity, or other structure that—

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

17 “(B) holds such loans.

18 “(9) SECURITIZER.—The term ‘securitizer’
19 means the person that transfers, conveys, or assigns,
20 or causes the transfer, conveyance, or assignment of,
21 residential mortgage loans, including through a spe-
22 cial purpose vehicle, to any securitization vehicle, ex-
23 cluding any trustee that holds such loans solely for
24 the benefit of the securitization vehicle.

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

4 **SEC. 102. RESIDENTIAL MORTGAGE LOAN ORIGINATION.**

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

8 **“§ 129B. Residential mortgage loan origination**

9 “(a) FINDING AND PURPOSE.—

10 “(1) FINDING.—The Congress finds that eco-
11 nomic stabilization would be enhanced by the protec-
12 tion, limitation, and regulation of the terms of resi-
13 dential mortgage credit and the practices related to
14 such credit.

15 “(2) PURPOSE.—It is the purpose of this sec-
16 tion and section 129C to assure that consumers are
17 offered and receive residential mortgage loans on
18 terms that reasonably reflect their ability to repay
19 the loans and that are understandable and not un-
20 fair, deceptive or abusive.

21 “(b) DUTY OF CARE.—

22 “(1) STANDARD.—Subject to regulations pre-
23 scribed under this subsection, each mortgage origi-
24 nator shall, in addition to the duties imposed by oth-

1 erwise applicable provisions of State or Federal
2 law—

3 “(A) be qualified and, when required, reg-
4 istered and licensed as a mortgage originator in
5 accordance with applicable State or Federal
6 law, including the Secure and Fair Enforcement
7 for Mortgage Licensing Act of 2008;

8 “(B) with respect to each consumer seek-
9 ing or inquiring about a residential mortgage
10 loan, diligently work to present the consumer
11 with a range of residential mortgage loan prod-
12 ucts for which the consumer likely qualifies and
13 which are appropriate to the consumer’s exist-
14 ing circumstances, based on information known
15 by, or obtained in good faith by, the originator;

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

18 “(i) the comparative costs and bene-
19 fits of each residential mortgage loan prod-
20 uct offered, discussed, or referred to by the
21 originator;

22 “(ii) the nature of the originator’s re-
23 lationship to the consumer (including the
24 cost of the services to be provided by the
25 originator and a statement that the mort-

1 gage originator is or is not acting as an
2 agent for the consumer, as the case may
3 be); and

4 “(iii) any relevant conflicts of interest;

5 “(D) certify to the creditor, with respect to
6 any transaction involving a residential mortgage
7 loan, that the mortgage originator has fulfilled
8 all requirements applicable to the originator
9 under this section with respect to the trans-
10 action; and

11 “(E) include the unique identifier of the
12 originator provided by the Nationwide Mortgage
13 Licensing System and Registry on all loan doc-
14 uments.

15 “(2) CLARIFICATION OF EXTENT OF DUTY TO
16 PRESENT RANGE OF PRODUCTS AND APPROPRIATE
17 PRODUCTS.—

18 “(A) NO DUTY TO OFFER PRODUCTS FOR
19 WHICH ORIGINATOR IS NOT AUTHORIZED TO
20 TAKE AN APPLICATION.—Paragraph (1)(B)
21 shall not be construed as requiring—

22 “(i) a mortgage originator to present
23 to any consumer any specific residential
24 mortgage loan product that is offered by a
25 creditor which does not accept consumer

1 referrals from, or consumer applications
2 submitted by or through, such originator;
3 or

4 “(ii) a creditor to offer products that
5 the creditor does not offer to the general
6 public.

7 “(B) APPROPRIATE LOAN PRODUCT.—For
8 purposes of paragraph (1)(B), a residential
9 mortgage loan shall be presumed to be appro-
10 priate for a consumer if—

11 “(i) the mortgage originator deter-
12 mines in good faith, based on then existing
13 information and without undergoing a full
14 underwriting process, that the consumer
15 has a reasonable ability to repay and, in
16 the case of a refinancing of an existing res-
17 idential mortgage loan, receives a net tan-
18 gible benefit, as determined in accordance
19 with regulations prescribed under sub-
20 sections (a) and (b) of section 129B; and

21 “(ii) the loan does not have predatory
22 characteristics or effects (such as equity
23 stripping and excessive fees and abusive
24 terms) as determined in accordance with

1 regulations prescribed under paragraph
2 (4).

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

5 “(A) creating an agency or fiduciary rela-
6 tionship between a mortgage originator and a
7 consumer if the originator does not hold himself
8 or herself out as such an agent or fiduciary; or

9 “(B) restricting a mortgage originator
10 from holding himself or herself out as an agent
11 or fiduciary of a consumer subject to any addi-
12 tional duty, requirement, or limitation applica-
13 ble to agents or fiduciaries under any Federal
14 or State law.

15 “(4) REGULATIONS.—

16 “(A) IN GENERAL.—The Federal banking
17 agencies, in consultation with the Secretary, the
18 Chairman of the State Liaison Committee to
19 the Financial Institutions Examination Council,
20 and the Commission, shall jointly prescribe reg-
21 ulations to—

22 “(i) further define the duty estab-
23 lished under paragraph (1);

24 “(ii) implement the requirements of
25 this subsection;

1 “(iii) establish the time period within
2 which any disclosure required under para-
3 graph (1) shall be made to the consumer;
4 and

5 “(iv) establish such other require-
6 ments for any mortgage originator as such
7 regulatory agencies may determine to be
8 appropriate to meet the purposes of this
9 subsection.

10 “(B) COMPLEMENTARY AND NONDUPLICA-
11 TIVE DISCLOSURES.—The agencies referred to
12 in subparagraph (A) shall endeavor to make the
13 required disclosures to consumers under this
14 subsection complementary and nonduplicative
15 with other disclosures for mortgage consumers
16 to the extent such efforts—

17 “(i) are practicable; and

18 “(ii) do not reduce the value of any
19 such disclosure to recipients of such disclo-
20 sures.

21 “(5) COMPLIANCE PROCEDURES REQUIRED.—
22 The Federal banking agencies shall prescribe regula-
23 tions requiring depository institutions to establish
24 and maintain procedures reasonably designed to as-
25 sure and monitor the compliance of such depository

1 institutions, the subsidiaries of such institutions,
 2 and the employees of such institutions or subsidi-
 3 aries with the requirements of this section and the
 4 registration procedures established under section
 5 1507 of the Secure and Fair Enforcement for Mort-
 6 gage Licensing Act of 2008.”.

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

“129A. Fiduciary duty of servicers of pooled residential mortgages.
 “129B. Residential mortgage loan origination.”.

11 **SEC. 103. PROHIBITION ON STEERING INCENTIVES.**

12 Section 129B of the Truth in Lending Act (as added
 13 by section 102(a)) is amended by inserting after sub-
 14 section (b) the following new subsection:

15 “(c) PROHIBITION ON STEERING INCENTIVES.—

16 “(1) IN GENERAL.—For any mortgage loan, the
 17 total amount of direct and indirect compensation
 18 from all sources permitted to a mortgage originator
 19 may not vary based on the terms of the loan (other
 20 than the amount of the principal).

21 “(2) REGULATIONS.—The Federal banking
 22 agencies, in consultation with the Secretary and the
 23 Commission, shall jointly prescribe regulations to
 24 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) affecting the mechanism for providing
4 the total amount of direct and indirect com-
5 pensation permitted to a mortgage originator;

6 “(B) limiting or affecting the ability of a
7 mortgage originator to sell residential mortgage
8 loans to subsequent purchasers;

9 “(C) restricting a consumer’s ability to fi-
10 nance, including through rate or principal, any
11 origination fees or costs permitted under this
12 subsection, or the originator’s ability to receive
13 such fees or costs (including compensation)
14 from any person, so long as such fees or costs
15 were fully and clearly disclosed to the consumer
16 earlier in the application process as required by
17 129A(a)(1)(C)(ii) and do not vary based on the
18 terms of the loan or the consumer’s decision
19 about whether to finance such fees or costs; or

20 “(D) prohibiting incentive payments to a
21 mortgage originator based on the number of
22 residential mortgage loans originated within a
23 specified period of time.”.

1 **SEC. 104. LIABILITY.**

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

5 “(d) LIABILITY FOR VIOLATIONS.—

6 “(1) IN GENERAL.—For purposes of providing
7 a cause of action for any failure by a mortgage origi-
8 nator to comply with any requirement imposed
9 under this section and any regulation prescribed
10 under this section, subsections (a) and (b) of section
11 130 shall be applied with respect to any such failure
12 by substituting ‘mortgage originator’ for ‘creditor’
13 each place such term appears in each such sub-
14 section.

15 “(2) MAXIMUM.—The maximum amount of any
16 liability of a mortgage originator under paragraph
17 (1) to a consumer for any violation of this section
18 shall not exceed [the greater of actual damages or]
19 an amount equal to 3 times the total amount of di-
20 rect and indirect compensation or gain accruing to
21 the mortgage originator in connection with the resi-
22 dential mortgage loan involved in the violation, plus
23 the costs to the consumer of the action, including a
24 reasonable attorney’s fee.”.

1 **SEC. 105. REGULATIONS.**

2 (a) DISCRETIONARY REGULATORY AUTHORITY.—
3 Section 129B of the Truth in Lending Act is amended
4 by inserting after subsection (c) (as added by section 104)
5 the following new subsection:

6 “(e) DISCRETIONARY REGULATORY AUTHORITY.—

7 “(1) IN GENERAL.—The Federal banking agen-
8 cies shall, by regulations issued jointly, prohibit or
9 condition terms, acts or practices relating to residen-
10 tial mortgage loans that the agencies find to be abu-
11 sive, unfair, deceptive, predatory, inconsistent with
12 reasonable underwriting standards, necessary or
13 proper to effectuate the purposes of this section and
14 section 129C, to prevent circumvention or evasion
15 thereof, or to facilitate compliance with such sec-
16 tions, or are not in the interest of the borrower.

17 “(2) APPLICATION.—The regulations prescribed
18 under paragraph (1) shall be applicable to all resi-
19 dential mortgage loans and shall be applied in the
20 same manner as regulations prescribed under section
21 105.”.

22 (b) EFFECTIVE DATE.—The regulations required or
23 authorized to be prescribed under this title or the amend-
24 ments made by this title—

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

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

6 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
 7 Section 129(1)(2) of the Truth in Lending Act (15 U.S.C.
 8 1639(1)(2)) is amended by inserting “referred to in section
 9 103(aa)” after “loans” each place such term appears.

10 **TITLE II—MINIMUM STANDARDS** 11 **FOR MORTGAGES**

12 **SEC. 201. ABILITY TO REPAY.**

13 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 14 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
 15 after section 129B (as added by section 102(a)) the fol-
 16 lowing new section:

17 **“§ 129C. Minimum standards for residential mortgage** 18 **loans**

19 “(a) ABILITY TO REPAY.—

20 “(1) IN GENERAL.—In accordance with regula-
 21 tions prescribed jointly by the Federal banking agen-
 22 cies, in consultation with the Commission, no cred-
 23 itor may make a residential mortgage loan unless
 24 the creditor makes a reasonable and good faith de-
 25 termination based on verified and documented infor-

1 mation that, at the time the loan is consummated,
2 the consumer has a reasonable ability to repay the
3 loan, according to its terms, and all applicable taxes,
4 insurance, and assessments.

5 “(2) MULTIPLE LOANS.—If the creditor knows,
6 or has reason to know, that 1 or more residential
7 mortgage loans secured by the same dwelling will be
8 made to the same consumer, the creditor shall make
9 a reasonable and good faith determination, based on
10 verified and documented information, that the con-
11 sumer has a reasonable ability to repay the com-
12 bined payments of all loans on the same dwelling ac-
13 cording to the terms of those loans and all applicable
14 taxes, insurance, and assessments.

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

25 “(4) NONSTANDARD LOANS.—

1 “(A) VARIABLE RATE LOANS THAT DEFER
2 REPAYMENT OF ANY PRINCIPAL OR INTER-
3 EST.—For purposes of determining, under this
4 subsection, a consumer’s ability to repay a vari-
5 able rate residential mortgage loan that allows
6 or requires the consumer to defer the repay-
7 ment of any principal or interest, the creditor
8 shall use a fully amortizing repayment schedule.

9 “(B) INTEREST-ONLY LOANS.—For pur-
10 poses of determining, under this subsection, a
11 consumer’s ability to repay a residential mort-
12 gage loan that permits or requires the payment
13 of interest only, the creditor use the payment
14 amount required to amortize the loan by its
15 final maturity.

16 “(C) CALCULATION FOR NEGATIVE AMOR-
17 TIZATION.—In making any determination under
18 this subsection, a creditor shall also take into
19 consideration any balance increase that may ac-
20 cruer from any negative amortization provision.

21 “(D) CALCULATION PROCESS.—For pur-
22 poses of making any determination under this
23 subsection, a creditor shall calculate the month-
24 ly payment amount for principal and interest on
25 any residential mortgage loan by assuming—

1 “(i) the loan proceeds are fully dis-
2 bursed on the date of the consummation of
3 the loan;

4 “(ii) the loan is to be repaid in sub-
5 stantially equal monthly amortizing pay-
6 ments for principal and interest over the
7 entire term of the loan with no balloon
8 payment, unless the loan contract requires
9 more rapid repayment (including balloon
10 payment), in which case the contract’s re-
11 payment schedule shall be used in this cal-
12 culation; and

13 “(iii) the interest rate over the entire
14 term of the loan is a fixed rate equal to the
15 fully indexed rate at the time of the loan
16 closing, without considering the introduc-
17 tory rate.

18 “(5) FULLY-INDEXED RATE DEFINED.—For
19 purposes of this subsection, the term ‘fully indexed
20 rate’ means the index rate prevailing on a residential
21 mortgage loan at the time the loan is made plus the
22 margin that will apply after the expiration of any in-
23 troductory interest rates.”.

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

1 by inserting after the item relating to section 129B (as
2 added by section 102(b)) the following new item:

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

3 **SEC. 202. NET TANGIBLE BENEFIT FOR REFINANCING OF**
4 **RESIDENTIAL MORTGAGE LOANS.**

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

8 “(b) NET TANGIBLE BENEFIT FOR REFINANCING OF
9 RESIDENTIAL MORTGAGE LOANS.—

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

20 “(2) CERTAIN LOANS PROVIDING NO NET TAN-
21 GIBLE BENEFIT.—A residential mortgage loan that
22 involves a refinancing of a prior existing residential
23 mortgage loan shall not be considered to provide a
24 net tangible benefit to the consumer if the costs of
25 the refinanced loan, including points, fees and other

1 charges, exceed the amount of any newly advanced
2 principal without any corresponding changes in the
3 terms of the refinanced loan that are advantageous
4 to the consumer.

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

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

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

13 “(c) PRESUMPTION OF ABILITY TO REPAY AND NET
14 TANGIBLE BENEFIT.—

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

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

22 “(A) QUALIFIED MORTGAGE.—The term
23 ‘qualified mortgage’ means any residential
24 mortgage loan—

1 “(i) with an annual percentage rate
2 that does not exceed the average prime
3 offer rate for a comparable transaction, as
4 of the date the interest rate is set—

5 “(I) by 1.5 or more percentage
6 points for a first lien residential mort-
7 gage loan; and

8 “(II) by 3.5 or more percentage
9 points for a subordinate lien residen-
10 tial mortgage loan;

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

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

19 “(iv) that does not cause the con-
20 sumer’s total monthly debts, including
21 amounts under the loan, to exceed a per-
22 centage established by regulation of the
23 consumer’s monthly gross income or such
24 other maximum percentage of such income

1 as may be prescribed by regulation under
2 paragraph (4); and

3 “(v) for which the term of the loan is
4 fixed for a period of not less than or more
5 than 30 years.

6 “(B) AVERAGE PRIME OFFER RATE.—The
7 term ‘average prime offer rate’ means an an-
8 nual percentage rate that is derived from aver-
9 age interest rates, points, and other loan pric-
10 ing terms currently offered to consumers by a
11 representative sample of creditors for mortgage
12 transactions that have low risk pricing charac-
13 teristics.

14 “(3) PUBLICATION OF AVERAGE PRIME OFFER
15 RATE.—The Board—

16 “(A) shall publish, and update at least
17 weekly, average prime offer rates; and

18 “(B) may publish multiple rates based on
19 varying types of mortgage transactions.

20 “(4) REGULATIONS.—

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

24 “(B) REVISION OF SAFE HARBOR CRI-
25 TERIA.—The Federal banking agencies may

1 jointly prescribe regulations that revise, add to,
2 or subtract from the criteria that define a quali-
3 fied mortgage to the extent necessary and ap-
4 propriate to effectuate the purposes of this sub-
5 section, to prevent circumvention or evasion of
6 this subsection, or to facilitate compliance with
7 this subsection.”.

8 **SEC. 204. LIABILITY.**

9 Section 129C of the Truth in Lending Act is amend-
10 ed by inserting after subsection (c) (as added by section
11 203) the following new subsection:

12 “(d) LIABILITY FOR VIOLATIONS.—

13 “(1) IN GENERAL.—

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

1 “(B) CURE.—A creditor shall not be liable
2 for rescission under subparagraph (A) with re-
3 spect to a residential mortgage loan if, no later
4 than 90 days after the receipt of notification
5 from the consumer that the loan violates sub-
6 section (a) or (b), the creditor provides a cure.

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

16 “(A) Rescission of the loan.

17 “(B) 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 “(3) ASSIGNEE AND SECURITIZER EXEMP-
22 TION.—No assignee or securitizer of a residential
23 mortgage loan shall be liable under paragraph (2)
24 with respect to such loan if, no later than 90 days
25 after the receipt of notification from the consumer

1 that the loan violates subsection (a) or (b), the as-
2 signee or securitizer provides a cure so that the loan
3 satisfies the requirements of subsections (a) and (b).

4 “(4) ABSENT PARTIES.—

5 “(A) ABSENT CREDITOR.—Notwith-
6 standing the exemption provided in paragraph
7 (3), if the creditor with respect to a residential
8 mortgage loan made in violation of subsection
9 (a) or (b) has ceased to exist as a matter of law
10 or has filed for bankruptcy protection under
11 title 11, United States Code, or has had a re-
12 ceiver or liquidating agent appointed, a con-
13 sumer may maintain a civil action against an
14 assignee to cure the residential mortgage loan,
15 plus the costs and reasonable attorney’s fees in-
16 curred in obtaining such remedy.

17 “(B) ABSENT CREDITOR AND ASSIGNEE.—

18 Notwithstanding the exemption provided in
19 paragraph (3), if the creditor with respect to a
20 residential mortgage loan made in violation of
21 subsection (a) or (b) and each assignee of such
22 loan have ceased to exist as a matter of law or
23 have filed for bankruptcy protection under title
24 11, United States Code, or have had receivers
25 or liquidating agents appointed, the consumer

1 may maintain the civil action referred to in sub-
2 paragraph (A) against the securitizer.

3 “(5) CURE DEFINED.—For purposes of this
4 subsection, the term ‘cure’ means, with respect to a
5 residential mortgage loan that violates subsection (a)
6 or (b), the modification or refinancing, at no cost to
7 the consumer, of the loan to provide terms that
8 would have satisfied the requirements of subsections
9 (a) and (b) if the loan had contained such terms as
10 of the origination of the loan and the payment of
11 such additional costs as the obligor may have in-
12 curred as a result of the violation and in connection
13 with obtaining a cure of the loan, including a rea-
14 sonable attorney’s fee.

15 “(6) DISAGREEMENT OVER CURE.—If any cred-
16 itor, assignee, or securitizer and a consumer fail to
17 reach agreement on a cure with respect to a residen-
18 tial mortgage loan that violates subsection (a) or (b),
19 or the consumer fails to accept a cure proffered by
20 a creditor, assignee, or securitizer—

21 “(A) the creditor, assignee, or securitizer
22 may provide the cure; and

23 “(B) the consumer may challenge the ade-
24 quacy of the cure during the 6-month period be-
25 ginning when the cure is provided.

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

6 “(7) INABILITY TO PROVIDE OR OBTAIN RE-
7 SCISSION.—If a creditor, assignee, or securitizer
8 cannot provide, or a consumer cannot obtain, rescis-
9 sion under paragraph (1) or (2), the liability of such
10 creditor, assignee, or securitizer shall be met by pro-
11 viding the financial equivalent of a rescission, to-
12 gether with such additional costs as the obligor may
13 have incurred as a result of the violation and in con-
14 nection with obtaining a rescission of the loan, in-
15 cluding a reasonable attorney's fee.

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

21 “(9) STATUTE OF LIMITATIONS.—The liability
22 of a creditor, assignee, or securitizer under this sub-
23 section shall apply in any original action against a
24 creditor under paragraph (1) or an assignee or

1 securitizer under paragraph (2) which is brought be-
2 fore—

3 “(A) in the case of any residential mort-
4 gage loan other than a loan to which subpara-
5 graph (B) applies, the end of the 3-year period
6 beginning on the date the loan is consummated;
7 or

8 “(B) in the case of a residential mortgage
9 loan that provides for a fixed interest rate for
10 an introductory period and then resets or ad-
11 justs to a variable rate or that provides for a
12 nonamortizing payment schedule and then con-
13 verts to an amortizing payment schedule, the
14 earlier of—

15 “(i) the end of the 1-year period be-
16 ginning on the date of such reset, adjust-
17 ment, or conversion; or

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

21 “(10) POOLS AND INVESTORS IN POOLS EX-
22 CLUDED.—In the case of residential mortgage loans
23 acquired or aggregated for the purpose of including
24 such loans in a pool of assets held for the purpose
25 of issuing or selling instruments representing inter-

1 ests in such pools including through a securitization
2 vehicle, the terms ‘assignee’ and ‘securitizer’, as
3 used in this section, do not include the securitization
4 vehicle, the pools of such loans or any original or
5 subsequent purchaser of any interest in the
6 securitization vehicle or any instrument representing
7 a direct or indirect interest in such pool.”.

8 **SEC. 205. DEFENSE TO FORECLOSURE.**

9 Section 129C of the Truth in Lending Act is amend-
10 ed by inserting after subsection (d) (as added by section
11 204) the following new subsection:

12 “(e) DEFENSE TO FORECLOSURE.—Notwithstanding
13 any other provision of law—

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

17 “(A) a consumer who has the right to re-
18 scind under this section with respect to such
19 loan against the creditor or any assignee or
20 securitizer may assert such right as a defense
21 to foreclosure or counterclaim to such fore-
22 closure against the holder, or

23 “(B) if the foreclosure proceeding begins
24 after the end of the period during which a con-
25 sumer may bring an action for rescission under

1 subsection (c) and the consumer would have
2 had a valid basis for such an action if it had
3 been brought before the end of such period, the
4 consumer may seek actual damages incurred by
5 reason of the violation which gave rise to the
6 right of rescission, together with costs of the
7 action, including a reasonable attorney's fee
8 against the creditor or any assignee or
9 securitizer; and

10 “(2) such holder or anyone acting for such
11 holder or any other applicable third party may sell,
12 transfer, convey, or assign a residential mortgage
13 loan to a creditor, any assignee, or any securitizer,
14 or their designees, to effect a rescission or cure.”.

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

16 (a) IN GENERAL.—Section 129C of the Truth in
17 Lending Act is amended by inserting after subsection (e)
18 (as added by section 205) the following new subsections:

19 “(f) PROHIBITION ON CERTAIN PREPAYMENT PEN-
20 ALTIES.—

21 “(1) PROHIBITED ON CERTAIN LOANS.—A resi-
22 dential mortgage loan that is not a ‘qualified mort-
23 gage’ may not contain terms under which a con-
24 sumer must pay a prepayment penalty for paying all

1 or part of the principal after the loan is con-
2 summated.

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

9 “(A) During the 1-year period beginning
10 on the date the loan is consummated, the pre-
11 payment penalty shall not exceed an amount
12 equal to 3 percent of the outstanding balance
13 on the loan.

14 “(B) During the 1-year period beginning
15 after the period described in subparagraph (A),
16 the prepayment penalty shall not exceed an
17 amount equal to 2 percent of the outstanding
18 balance on the loan.

19 “(C) During the 1-year period beginning
20 after the 1-year period described in subpara-
21 graph (B), the prepayment penalty shall not ex-
22 ceed an amount equal to 1 percent of the out-
23 standing balance on the loan.

24 “(D) After the end of the 3-year period be-
25 ginning on the date the loan is consummated,

1 no prepayment penalty may be imposed on a
2 qualified mortgage.

3 “(3) PROHIBITED AFTER INITIAL PERIOD ON
4 LOANS WITH A RESET.—A qualified mortgage with
5 a fixed interest rate for an introductory period that
6 adjusts or resets after such period may not contain
7 terms under which a consumer must pay a prepay-
8 ment penalty for paying all or part of the principal
9 after the beginning of the 3-month period ending on
10 the date of the adjustment or reset.

11 “(4) OPTION FOR NO PREPAYMENT PENALTY
12 REQUIRED.—A creditor may not offer a consumer a
13 residential mortgage loan product that has a prepay-
14 ment penalty for paying all or part of the principal
15 after the loan is consummated as a term of the loan
16 without offering the consumer a residential mort-
17 gage loan product that does not have a prepayment
18 penalty as a term of the loan.

19 “(g) SINGLE PREMIUM CREDIT INSURANCE PROHIB-
20 ITED.—No creditor may finance, directly or indirectly, in
21 connection with any residential mortgage loan or with any
22 extension of credit under an open end consumer credit
23 plan secured by the principal dwelling of the consumer
24 (other than a reverse mortgage), any credit life, credit dis-
25 ability, credit unemployment or credit property insurance,

1 or any other accident, loss-of-income, life or health insur-
2 ance, or any payments directly or indirectly for any debt
3 cancellation or suspension agreement or contract, except
4 that—

5 “(1) insurance premiums or debt cancellation or
6 suspension fees calculated and paid in full on a
7 monthly basis shall not be considered financed by
8 the creditor; and

9 “(2) this subsection shall not apply to credit
10 unemployment insurance for which the unemploy-
11 ment insurance premiums are reasonable and at no
12 additional cost to the consumer, the creditor receives
13 no direct or indirect compensation in connection
14 with the unemployment insurance premiums, and
15 the unemployment insurance premiums are paid pur-
16 suant to another insurance contract and not paid to
17 an affiliate of the creditor.

18 “(h) ARBITRATION.—

19 “(1) IN GENERAL.—No residential mortgage
20 loan and no extension of credit under an open end
21 consumer credit plan secured by the principal dwell-
22 ing of the consumer, other than a reverse mortgage,
23 may include terms which require arbitration or any
24 other nonjudicial procedure as the method for resolv-

1 ing any controversy or settling any claims arising
2 out of the transaction.

3 “(2) POST-CONTROVERSY AGREEMENTS.—Sub-
4 ject to paragraph (3), paragraph (1) shall not be
5 construed as limiting the right of the consumer and
6 the creditor, any assignee, or any securitizer to
7 agree to arbitration or any other nonjudicial proce-
8 dure as the method for resolving any controversy at
9 any time after a dispute or claim under the trans-
10 action arises.

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

1 violation of this section, any other provision of this
2 title, or any other Federal law.

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

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

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

12 “(j) MORTGAGES WITH NEGATIVE AMORTIZATION.—
13 No creditor may extend credit to a borrower in connection
14 with a consumer credit transaction under an open or
15 closed end consumer credit plan secured by a dwelling or
16 residential real property that includes a dwelling, other
17 than a reverse mortgage, that provides or permits a pay-
18 ment plan that may, at any time over the term of the ex-
19 tension of credit, result in negative amortization unless,
20 before such transaction is consummated—

21 “(1) the creditor provides the consumer with a
22 statement that—

23 “(A) the pending transaction will or may,
24 as the case may be, result in negative amortiza-
25 tion;

1 “(B) describes negative amortization in
2 such manner as the Federal banking agencies
3 shall prescribe;

4 “(C) negative amortization increases the
5 outstanding principal balance of the account;
6 and

7 “(D) negative amortization reduces the
8 consumer’s equity in the dwelling or real prop-
9 erty; and

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

18 “(k) ANNUAL CONTACT INFORMATION.—At least
19 once annually and whenever there is a change in owner-
20 ship of a residential mortgage loan, the servicer with re-
21 spect to a residential mortgage loan shall provide a written
22 notice to the consumer identifying the name of the creditor
23 or any assignee or securitizer who should be contacted by
24 the consumer for any reason concerning the consumer’s
25 rights with respect to the loan.

1 “(1) TENANT PROTECTION.—

2 “(1) IN GENERAL.—In the case of any fore-
3 closure on any dwelling or residential real property,
4 after the date of the enactment of the Mortgage Re-
5 form and Anti-Predatory Lending Act, any imme-
6 diate successor in interest in such property pursuant
7 to the foreclosure shall assume such interest subject
8 to—

9 “(A) except as provided in paragraph (2),
10 the rights of any bona fide tenant, as of the
11 date of foreclosure under any bona fide lease
12 entered into before the notice of foreclosure, to
13 occupy the premises until the end of the re-
14 maining term of the lease; and

15 “(B) the rights of any bona fide tenant, as
16 of the date of foreclosure, without a lease or
17 with a lease terminable at will under State law,
18 subject to the provision by the immediate suc-
19 cessor in interest and the receipt by the tenant
20 in the unit, of a notice to vacate at least 90
21 days before the effective date of such notice.

22 “(2) EXCEPTION FOR SUBSEQUENT OWNER-OC-
23 CUPANT.—Notwithstanding paragraph (1), if the im-
24 mediate successor in interest of any dwelling or resi-
25 dential real property that is otherwise subject to

1 paragraph (1) is a purchaser who will occupy a unit
2 of the dwelling or residential real property as a pri-
3 mary residence, or such successor in interest sells
4 the dwelling or residential real property to a pur-
5 chaser who will occupy a unit of the dwelling or resi-
6 dential real property, as a primary residence—

7 “(A) such purchaser may terminate a lease
8 relating to such unit on the effective date of a
9 notice to vacate; and

10 “(B) such notice to vacate shall be pro-
11 vided by the purchaser to the tenant in such
12 unit at least 90 days before the effective date
13 of such notice.

14 “(3) BONA FIDE LEASE OR TENANCY.—For
15 purposes of this section, a lease or tenancy shall be
16 considered bona fide only if—

17 “(A) the mortgagor under the contract is
18 not the tenant;

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

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

1 “(4) RULE OF CONSTRUCTION.—No provision
2 of this subsection shall be construed as affecting the
3 requirements—

4 “(A) for termination of any Federal- or
5 State-subsidized tenancy; or

6 “(B) of any State or local law that pro-
7 vides longer time periods or other additional
8 protections for tenants.”.

9 (b) CORRESPONDING PROVISION RELATING TO EF-
10 FECT OF FORECLOSURES ON SECTION 8 TENANCIES.—

11 Paragraph (7) of section 8(o) of the United States Hous-
12 ing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

13 (1) in subparagraph (C), by inserting before the
14 semicolon at the end the following: “, and in the
15 case of an owner who is an immediate successor in
16 interest pursuant to foreclosure—

17 “(i) during the initial term of the ten-
18 ant’s lease having the property vacant
19 prior to sale shall not constitute good
20 cause; and

21 “(ii) in subsequent lease terms, having
22 the property vacant prior to sale may con-
23 stitute good cause if the property is un-
24 marketable while occupied, or if such

1 owner will occupy the unit as a primary
2 residence”;

3 (2) in subparagraph (E), by striking “and” at
4 the end;

5 (3) by redesignating subparagraph (F) as sub-
6 paragraph (G); and

7 (4) by inserting after subparagraph (E) the fol-
8 lowing:

9 “(F) shall provide that in the case of any
10 foreclosure on any residential real property in
11 which a recipient of assistance under this sub-
12 section resides, the immediate successor in in-
13 terest in such property pursuant to the fore-
14 closure shall assume such interest subject to the
15 lease between the prior owner and the tenant
16 and to the housing assistance payments con-
17 tract between the prior owner and the public
18 housing agency for the occupied unit; if a public
19 housing agency is unable to make payments
20 under the contract to the immediate successor
21 in interest after foreclosure, due to action or in-
22 action by the successor in interest, including
23 the rejection of payments or the failure of the
24 successor to maintain the unit in compliance
25 with paragraph (8) or an inability to identify

1 the successor, the agency may use funds that
2 would have been used to pay the rental amount
3 on behalf of the family—

4 “(i) to pay for utilities that are the
5 responsibility of the owner under the lease
6 or applicable law, after taking reasonable
7 steps to notify the owner that it intends to
8 make payments to a utility provider in lieu
9 of payments to the owner, except prior no-
10 tification shall not be required in any case
11 in which the unit will be or has been ren-
12 dered uninhabitable due to the termination
13 or threat of termination of service, in
14 which case the public housing agency shall
15 notify the owner within a reasonable time
16 after making such payment; or

17 “(ii) for the family’s reasonable mov-
18 ing costs, including security deposit costs;
19 except that this subparagraph and the provi-
20 sions related to foreclosure in subparagraph (C)
21 shall not affect any State or local law that pro-
22 vides longer time periods or other additional
23 protections for tenants.”.

24 (c) CONFORMING AMENDMENT RELATING TO EN-
25 FORCEMENT.—Section 108(a) of the Truth in Lending

1 Act (15 U.S.C. 1607(a)) is amended by inserting after
2 paragraph (6) the following new paragraph:

3 “(7) sections 21B and 21C of the Securities
4 Exchange Act of 1934, in the case of a broker or
5 dealer, other than a depository institution, by the
6 Securities and Exchange Commission.”.

7 **SEC. 207. RULE OF CONSTRUCTION.**

8 Except as otherwise expressly provided in section
9 129B or 129C of the Truth in Lending Act (as added by
10 this Act), no provision of such section 129B or 129C shall
11 be construed as superseding, repealing, or affecting any
12 duty, right, obligation, privilege, or remedy of any person
13 under any other provision of the Truth in Lending Act
14 or any other provision of Federal or State law.

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

16 (a) IN GENERAL.—Section 129C(d) of the Truth in
17 Lending Act (as added by section 204) shall supersede any
18 State law or application thereof that provides additional
19 remedies against any assignee, securitizer, or
20 securitization vehicle, and the remedies described in such
21 section shall constitute the sole remedies against any as-
22 signee, securitizer, or securitization vehicle, for a violation
23 of subsection (a) or (b) of section 129C of such Act or
24 any other State law the terms of which address the specific
25 subject matter of subsection (a) (determination of ability

1 to repay) or (b) (requirement of a net tangible benefit)
2 of such section 129C.

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

5 (1) the application of any State law against a
6 creditor for a particular residential mortgage loan
7 regardless of whether such creditor also acts as as-
8 signee, securitizer, or securitization vehicle for such
9 mortgage; or

10 (2) availability of remedies based upon fraud,
11 misrepresentation, deceptive acts or practices, false
12 advertising, or civil rights laws—

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

17 (B) against any assignee, securitizer, or
18 securitization vehicle in the sale or purchase of
19 residential mortgage loans or securities.

20 (c) DEFINITION.—For purposes of subsection (b)(2),
21 acts or practices are deceptive if—

22 (1) there is a representation, omission, or prac-
23 tice that misleads or is likely to mislead a consumer;

1 (2) from the consumer’s perspective, the inter-
2 pretation of the representation, omission, or practice
3 is reasonable under the circumstances; and

4 (3) the representation, omission or practice is
5 material so that it is likely to affect the consumer’s
6 conduct or decision with regard to a product or serv-
7 ice.

8 **SEC. 209. REGULATIONS.**

9 Regulations required or authorized to be prescribed
10 under this title or the amendments made by this title—

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

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

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

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

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

22 (2) by striking “\$1,000” and inserting
23 “\$2,000”;

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

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

3 (5) by striking “\$500,000” and inserting
4 “\$1,000,000”.

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

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

11 (2) by inserting after the first sentence the fol-
12 lowing new sentence: “Any action under this section
13 with respect to any violation of section 129 may be
14 brought in any United States district court, or in
15 any other court of competent jurisdiction, before the
16 end of the 3-year period beginning on the date of the
17 occurrence of the violation.”.

18 **SEC. 211. LENDER RIGHTS IN THE CONTEXT OF BORROWER**

19 **DECEPTION.**

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

22 “(j) EXEMPTION FROM LIABILITY AND RESCISSION
23 IN CASE OF BORROWER FRAUD OR DECEPTION.—In ad-
24 dition to any other remedy available by law or contract,
25 no creditor, assignee, or securitizer shall be liable to an

1 obligor under this section, nor shall it be subject to the
2 right of rescission of any obligor under 129B, if such obli-
3 gor, or co-obligor, knowingly, or willfully and with actual
4 knowledge furnished material information known to be
5 false for the purpose of obtaining such residential mort-
6 gage loan.”.

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

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

12 **“§ 128A. Reset of hybrid adjustable rate mortgages**

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

19 “(b) NOTICE OF RESET AND ALTERNATIVES.—Dur-
20 ing the 1-month period that ends 6 months before the date
21 on which the interest rate in effect during the introductory
22 period of a hybrid adjustable rate mortgage adjusts or
23 resets to a variable interest rate, the creditor or servicer
24 of such loan shall provide a written notice, separate and

1 distinct from all other correspondence to the consumer,
2 that includes the following:

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

6 “(2) An explanation of how the new interest
7 rate and payment would be determined, including an
8 explanation of how the index was adjusted, such as
9 by the addition of a margin.

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

15 “(4) A list of alternatives consumers may pur-
16 sue before the date of adjustment or reset, and de-
17 scriptions of the actions consumers must take to
18 pursue these alternatives, including—

19 “(A) refinancing;

20 “(B) renegotiation of loan terms;

21 “(C) payment forbearances; and

22 “(D) pre-foreclosure sales.

23 “(5) The names, addresses, telephone numbers,
24 and Internet addresses of counseling agencies or
25 programs reasonably available to the consumer that

1 have been certified or approved and made publicly
2 available by the Secretary of Housing and Urban
3 Development or a State housing finance authority
4 (as defined in section 1301 of the Financial Institu-
5 tions Reform, Recovery, and Enforcement Act of
6 1989).

7 “(6) The address, telephone number, and Inter-
8 net address for the State housing finance authority
9 (as so defined) for the State in which the consumer
10 resides.”.

11 (b) 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 128 the fol-
14 lowing new item:

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

15 **SEC. 213. CREDIT RISK RETENTION.**

16 Section 129C of the Truth in Lending Act is amend-
17 ed by inserting after subsection (l) (as added by section
18 206) the following new subsection:

19 “(m) CREDIT RISK RETENTION.—

20 “(1) IN GENERAL.—The Federal banking agen-
21 cies shall prescribe regulations jointly to require any
22 creditor that makes a residential mortgage loan that
23 is not a qualified mortgage (as defined in section
24 129B(c)), to retain an economic interest in a mate-
25 rial portion of the credit risk for any such loan that

1 the creditor transfers, sells or conveys to a third
2 party.

3 “(2) STANDARDS FOR REGULATIONS.—Regula-
4 tions prescribed under paragraph (1) shall—

5 “(A) apply only to residential mortgage
6 loans that are not qualified mortgages (as so
7 defined);

8 “(B) prohibit creditors from directly or in-
9 directly hedging or otherwise transferring the
10 credit risk creditors are required to retain
11 under the regulations with respect to any resi-
12 dential mortgage loan; and

13 “(C) require creditors to retain at least 5
14 percent of the credit risk on any non-qualified
15 mortgage that is transferred, sold or con-
16 veyed.”.

17 **SEC. 214. REQUIRED DISCLOSURES.**

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

21 “(16) In the case of a variable rate residential
22 mortgage loan for which an escrow or impound ac-
23 count will be established for the payment of all ap-
24 plicable taxes, insurance, and assessments—

1 “(A) the amount of initial monthly pay-
2 ment due under the loan for the payment of
3 principal and interest, and the amount of such
4 initial monthly payment including the monthly
5 payment deposited in the account for the pay-
6 ment of all applicable taxes, insurance, and as-
7 sessments; and

8 “(B) the amount of the fully indexed
9 monthly payment due under the loan for the
10 payment of principal and interest, and the
11 amount of such fully indexed monthly payment
12 including the monthly payment deposited in the
13 account for the payment of all applicable taxes,
14 insurance, and assessments.

15 “(17) In the case of a residential mortgage
16 loan, the aggregate amount of settlement charges for
17 all settlement services provided in connection with
18 the loan, the amount of charges that are included in
19 the loan and the amount of such charges the bor-
20 rower must pay at closing, the approximate amount
21 of the wholesale rate of funds in connection with the
22 loan, and the aggregate amount of other fees or re-
23 quired payments in connection with the loan.

24 “(18) In the case of a residential mortgage
25 loan, the aggregate amount of fees paid to the mort-

1 gage originator in connection with the loan, the
2 amount of such fees paid directly by the consumer,
3 and any additional amount received by the originator
4 from the creditor based on the interest rate of the
5 loan.”.

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

9 “(4) RESIDENTIAL MORTGAGE LOAN DISCLO-
10 SURES.—In the case of a residential mortgage loan,
11 the information required to be disclosed under sub-
12 section (a) with respect to such loan shall be dis-
13 closed before the earlier of—

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

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

19 **SEC. 215. DISCLOSURES REQUIRED IN MONTHLY STATE-**
20 **MENTS FOR RESIDENTIAL MORTGAGE**
21 **LOANS.**

22 Section 128 of the Truth in Lending Act (15 U.S.C.
23 1638) is amended by adding at the end the following new
24 subsection:

1 “(f) PERIODIC STATEMENTS FOR RESIDENTIAL
2 MORTGAGE LOANS.—

3 “(1) IN GENERAL.—The creditor, assignee, or
4 servicer with respect to any residential mortgage
5 loan shall transmit to the obligor, for each billing
6 cycle, a statement setting forth each of the following
7 items, to the extent applicable, in a conspicuous and
8 prominent manner:

9 “(A) The amount of the principal obliga-
10 tion under the mortgage.

11 “(B) The current interest rate in effect for
12 the loan.

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

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

17 “(E) A description of any late payment
18 fees.

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

22 “(G) Such other information as the Board
23 may prescribe in regulations.

24 “(2) DEVELOPMENT AND USE OF STANDARD
25 FORM.—The Federal banking agencies shall jointly

1 develop and prescribe a standard form for the dislo-
2 sure required under this subsection, taking into ac-
3 count that the statements required may be trans-
4 mitted in writing or electronically.”.

5 **SEC. 216. LEGAL ASSISTANCE FOR FORECLOSURE-RELATED**
6 **ISSUES.**

7 (a) **ESTABLISHMENT.**—The Secretary of Housing
8 and Urban Development (hereafter in this section referred
9 to as the “Secretary” shall establish a program for making
10 grants for providing a full range of foreclosure legal assist-
11 ance to low- and moderate-income homeowners and ten-
12 ants related to home ownership preservation, home fore-
13 closure prevention, and tenancy associated with home fore-
14 closure.

15 (b) **COMPETITIVE ALLOCATION.**—The Secretary shall
16 allocate amounts made available for grants under this sec-
17 tion to State and local legal organizations on the basis
18 of a competitive process.

19 (c) **PRIORITY TO CERTAIN AREAS.**—In allocating
20 amounts in accordance with subsection (b), the Secretary
21 shall give priority consideration to State and local legal
22 organizations that are operating in the 100 metropolitan
23 statistical areas (as that term is defined by the Director
24 of the Office of Management and Budget) with the highest
25 home foreclosure rates.

1 (d) LEGAL ASSISTANCE.—

2 (1) IN GENERAL.—Any State or local legal or-
3 ganization that receives financial assistance pursu-
4 ant to this section may use such amounts only to as-
5 sist—

6 (A) homeowners of owner-occupied homes
7 with mortgages in default, in danger of default,
8 or subject to or at risk of foreclosure; and

9 (B) tenants at risk of or subject to eviction
10 as a result of foreclosure of the property in
11 which such tenant resides.

12 (2) COMMENCE USE WITHIN 90 DAYS.—Any
13 State or local legal organization that receives finan-
14 cial assistance pursuant to this section shall begin
15 using any financial assistance received under this
16 section within 90 days after receipt of the assist-
17 ance.

18 (3) PROHIBITION ON CLASS ACTIONS.—No
19 funds provided to a State or local legal organization
20 under this section may be used to support any class
21 action litigation.

22 (4) LIMITATION ON LEGAL ASSISTANCE.—Legal
23 assistance funded with amounts provided under this
24 section shall be limited to mortgage-related default,

1 eviction, or foreclosure proceedings, without regard
2 to whether such foreclosure is judicial or nonjudicial.

3 (e) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Secretary
5 \$35,000,000 for each of fiscal years 2009 through 2012
6 for grants under this section.

7 **SEC. 217. EFFECTIVE DATE.**

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

11 **SEC. 218. REPORT BY THE GAO.**

12 (a) REPORT REQUIRED.—The Comptroller General
13 shall conduct a study to determine the effects the enact-
14 ment of this Act will have on the availability and afford-
15 ability of credit for homebuyers and mortgage lending, in-
16 cluding the effect—

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

20 (2) on the ability of prospective homebuyers to
21 obtain financing;

22 (3) on the ability of homeowners facing resets
23 or adjustments to refinance—for example, do they
24 have fewer refinancing options due to the unavail-

1 ability of certain loan products that were available
2 before the enactment of this Act;

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

5 (5) on home sales and construction;

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

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

11 (8) of expanding the existing provisions of the
12 Home Ownership and Equity Protection Act of
13 1994;

14 (9) of prohibiting prepayment penalties on
15 high-cost mortgages; and

16 (10) of establishing counseling services under
17 the Department of Housing and Urban Development
18 and offered through the Office of Housing Coun-
19 seling.

20 (b) REPORT.—Before the end of the 1-year period be-
21 ginning on the date of the enactment of this Act, the
22 Comptroller General shall submit a report to the Congress
23 containing the findings and conclusions of the Comptroller
24 General with respect to the study conducted pursuant to
25 subsection (a).

1 **TITLE III—HIGH-COST**
2 **MORTGAGES**

3 **SEC. 301. DEFINITIONS RELATING TO HIGH-COST MORT-**
4 **GAGES.**

5 (a) HIGH-COST MORTGAGE DEFINED.—Section
6 103(aa) of the Truth in Lending Act (15 U.S.C.
7 1602(aa)) is amended by striking all that precedes para-
8 graph (2) and inserting the following:

9 “(aa) HIGH-COST MORTGAGE.—

10 “(1) DEFINITION.—

11 “(A) IN GENERAL.—The term ‘high-cost
12 mortgage’, and a mortgage referred to in this
13 subsection, means a consumer credit trans-
14 action that is secured by the consumer’s prin-
15 cipal dwelling, other than a reverse mortgage
16 transaction, if—

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

19 “(I) by a first mortgage on the
20 consumer’s principal dwelling, the an-
21 nual percentage rate at consummation
22 of the transaction will exceed by more
23 than 8 percentage (10 percentage
24 points, if the dwelling is personal
25 property and the transaction is for

1 less than \$50,000) points the yield on
2 Treasury securities having comparable
3 periods of maturity on the 15th day of
4 the month immediately preceding the
5 month in which the application for the
6 extension of credit is received by the
7 creditor; or

8 “(II) by a subordinate or junior
9 mortgage on the consumer’s principal
10 dwelling, the annual percentage rate
11 at consummation of the transaction
12 will exceed by more than 10 percent-
13 age points the yield on Treasury secu-
14 rities having comparable periods of
15 maturity on the 15th day of the
16 month immediately preceding the
17 month in which the application for the
18 extension of credit is received by the
19 creditor;

20 “(ii) the total points and fees payable
21 in connection with the transaction ex-
22 ceed—

23 “(I) in the case of a transaction
24 for \$20,000 or more, 5 percent of the
25 total transaction amount; or

1 “(II) in the case of a transaction
2 for less than \$20,000, the lesser of 8
3 percent of the total transaction
4 amount or \$1,000; or

5 “(iii) the credit transaction documents
6 permit the creditor to charge or collect pre-
7 payment fees or penalties more than 36
8 months after the transaction closing or
9 such fees or penalties exceed, in the aggre-
10 gate, more than 2 percent of the amount
11 prepaid.

12 “(B) INTRODUCTORY RATES TAKEN INTO
13 ACCOUNT.—For purposes of subparagraph
14 (A)(i), the annual percentage rate of interest
15 shall be determined based on the following in-
16 terest rate:

17 “(i) In the case of a fixed-rate trans-
18 action in which the annual percentage rate
19 will not vary during the term of the loan,
20 the interest rate in effect on the date of
21 consummation of the transaction.

22 “(ii) In the case of a transaction in
23 which the rate of interest varies solely in
24 accordance with an index, the interest rate
25 determined by adding the index rate in ef-

1 fect on the date of consummation of the
2 transaction to the maximum margin per-
3 mitted at any time during the transaction
4 agreement.

5 “(iii) In the case of any other trans-
6 action in which the rate may vary at any
7 time during the term of the loan for any
8 reason, the interest charged on the trans-
9 action at the maximum rate that may be
10 charged during the term of the trans-
11 action.”.

12 (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section
13 103(aa)(2) of the Truth in Lending Act (15 U.S.C.
14 1602(aa)(2)) is amended by striking subparagraph (B)
15 and inserting the following new subparagraph:

16 “(B) An increase or decrease under sub-
17 paragraph (A)—

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

23 “(ii) may not result in the number of
24 percentage points referred to in paragraph
25 (1)(A)(i)(II) being less than 8 percentage

1 points or greater than 12 percentage
2 points.”.

3 (c) POINTS AND FEES DEFINED.—

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

7 (A) by striking subparagraph (B) and in-
8 serting the following:

9 “(B) all compensation paid directly or indi-
10 rectly by a consumer or creditor to a mortgage
11 broker from any source, including a mortgage
12 originator that originates a loan in the name of
13 the originator in a table-funded transaction;”;

14 (B) in subparagraph (C)(ii), by inserting
15 “except where applied to the charges set forth
16 in section 106(e)(1) where a creditor may re-
17 ceive indirect compensation solely as a result of
18 obtaining distributions of profits from an affili-
19 ated entity based on its ownership interest in
20 compliance with section 8(e)(4) of the Real Es-
21 tate Settlement Procedures Act of 1974” before
22 the semicolon at the end;

23 (C) in subparagraph (C)(iii), by striking “;
24 and” and inserting “, except as provided for in
25 clause (ii);”;

1 (D) by redesignating subparagraph (D) as
2 subparagraph (G); and

3 (E) by inserting after subparagraph (C)
4 the following new subparagraphs:

5 “(D) premiums or other charges payable at
6 or before closing for any credit life, credit dis-
7 ability, credit unemployment, or credit property
8 insurance, or any other accident, loss-of-income,
9 life or health insurance, or any payments di-
10 rectly or indirectly for any debt cancellation or
11 suspension agreement or contract, except that
12 insurance premiums or debt cancellation or sus-
13 pension fees calculated and paid in full on a
14 monthly basis shall not be considered financed
15 by the creditor;

16 “(E) except as provided in subsection (cc),
17 the maximum prepayment fees and penalties
18 which may be charged or collected under the
19 terms of the credit transaction;

20 “(F) all prepayment fees or penalties that
21 are incurred by the consumer if the loan refi-
22 nances a previous loan made or currently held
23 by the same creditor or an affiliate of the cred-
24 itor; and”.

1 (2) CALCULATION OF POINTS AND FEES FOR
2 OPEN-END CONSUMER CREDIT PLANS.—Section
3 103(aa) of the Truth in Lending Act (15 U.S.C.
4 1602(aa)) is amended—

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

7 (B) by inserting after paragraph (4) the
8 following new paragraph:

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

20 (d) HIGH-COST MORTGAGE LENDER.—Section
21 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f))
22 is amended by striking the last sentence and inserting the
23 following new sentence: “Any person who originates or
24 brokers 2 or more mortgages referred to in subsection (aa)
25 in any 12-month period, any person who originates 1 or

1 more such mortgages through a mortgage broker in any
2 12 month period, or, in connection with a table funding
3 transaction of such a mortgage, any person to whom the
4 obligation is initially assigned at or after settlement shall
5 be considered to be a creditor for purposes of this title.”.

6 (e) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS
7 AND PREPAYMENT PENALTIES.—Section 103 of the
8 Truth in Lending Act (15 U.S.C. 1602) is amended by
9 inserting after subsection (cc) (as added by section 101)
10 the following new subsection:

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

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

22 “(A) Up to and including 2 bona fide dis-
23 count points payable by the consumer in con-
24 nection with the mortgage, but only if the inter-
25 est rate from which the mortgage’s interest rate

1 will be discounted does not exceed by more than
2 1 percentage point the required net yield for a
3 90-day standard mandatory delivery commit-
4 ment for a reasonably comparable loan from ei-
5 ther the Federal National Mortgage Association
6 or the Federal Home Loan Mortgage Corpora-
7 tion, whichever is greater.

8 “(B) Unless 2 bona fide discount points
9 have been excluded under subparagraph (A), up
10 to and including 1 bona fide discount point pay-
11 able by the consumer in connection with the
12 mortgage, but only if the interest rate from
13 which the mortgage’s interest rate will be dis-
14 counted does not exceed by more than 2 per-
15 centage points the required net yield for a 90-
16 day standard mandatory delivery commitment
17 for a reasonably comparable loan from either
18 the Federal National Mortgage Association or
19 the Federal Home Loan Mortgage Corporation,
20 whichever is greater.

21 “(2) DEFINITION.—For purposes of paragraph
22 (1), the term ‘bona fide discount points’ means loan
23 discount points which are knowingly paid by the con-
24 sumer for the purpose of reducing, and which in fact

1 result in a bona fide reduction of, the interest rate
2 or time-price differential applicable to the mortgage.

3 “(3) EXCEPTION FOR INTEREST RATE REDUC-
4 TIONS INCONSISTENT WITH INDUSTRY NORMS.—
5 Paragraph (1) shall not apply to discount points
6 used to purchase an interest rate reduction unless
7 the amount of the interest rate reduction purchased
8 is reasonably consistent with established industry
9 norms and practices for secondary mortgage market
10 transactions.

11 “(4) ALLOWANCE OF CONVENTIONAL PREPAY-
12 MENT PENALTY.—Subsection (aa)(1)(4)(E) shall not
13 apply so as to include a prepayment penalty or fee
14 that is authorized by law other than this title and
15 may be imposed pursuant to the terms of a high-cost
16 mortgage (or other consumer credit transaction se-
17 cured by the consumer’s principal dwelling) if—

18 “(A) the annual percentage rate applicable
19 with respect to such mortgage or transaction
20 (as determined for purposes of subsection
21 (aa)(1)(A)(i))—

22 “(i) in the case of a first mortgage on
23 the consumer’s principal dwelling, does not
24 exceed by more than 2 percentage points
25 the yield on Treasury securities having

1 comparable periods of maturity on the
2 15th day of the month immediately pre-
3 ceding the month in which the application
4 for the extension of credit is received by
5 the creditor; or

6 “(ii) in the case of a subordinate or
7 junior mortgage on the consumer’s prin-
8 cipal dwelling, does not exceed by more
9 than 4 percentage points the yield on such
10 Treasury securities; and

11 “(B) the total amount of any prepayment
12 fees or penalties permitted under the terms of
13 the high-cost mortgage or transaction does not
14 exceed 2 percent of the amount prepaid.”.

15 **SEC. 302. AMENDMENTS TO EXISTING REQUIREMENTS FOR**
16 **CERTAIN MORTGAGES.**

17 (a) PREPAYMENT PENALTY PROVISIONS.—Section
18 129(c)(2) of the Truth in Lending Act (15 U.S.C.
19 1639(c)(2)) is amended—

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

22 (2) by redesignating subparagraph (D) as sub-
23 paragraph (E); and

24 (3) by inserting after subparagraph (C) the fol-
25 lowing new subparagraph:

1 “(D) the amount of the principal obliga-
2 tion of the mortgage exceeds the maximum
3 principal obligation limitation (for the applica-
4 ble size residence) under section 203(b)(2) of
5 the National Housing Act for the area in which
6 the residence subject to the mortgage is located;
7 and”.

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

11 “(e) NO BALLOON PAYMENTS.—No high-cost mort-
12 gage may contain a scheduled payment that is more than
13 twice as large as the average of earlier scheduled pay-
14 ments. This subsection shall not apply when the payment
15 schedule is adjusted to the seasonal or irregular income
16 of the consumer.”.

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

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

23 “(1) PATTERN OR PRACTICE.—

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

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

4 “(B) PRESUMPTION OF VIOLATION.—

5 There shall be a presumption that a creditor
6 has violated this subsection if the creditor en-
7 gages in a pattern or practice of making high-
8 cost mortgages without verifying or docu-
9 menting the repayment ability of consumers
10 with respect to such mortgages.”; and

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

13 “(2) PROHIBITION ON EXTENDING CREDIT
14 WITHOUT REGARD TO PAYMENT ABILITY OF CON-
15 SUMER.—

16 “(A) IN GENERAL.—A creditor may not
17 extend credit to a consumer under a high-cost
18 mortgage unless a reasonable creditor would be-
19 lieve at the time the mortgage is closed that the
20 consumer or consumers that are residing or will
21 reside in the residence subject to the mortgage
22 will be able to make the scheduled payments as-
23 sociated with the mortgage, based upon a con-
24 sideration of current and expected income, cur-
25 rent obligations, employment status, and other

1 financial resources, other than equity in the res-
2 idence.

3 “(B) PRESUMPTION OF ABILITY.—For
4 purposes of this subsection, there shall be a re-
5 buttable presumption that a consumer is able to
6 make the scheduled payments to repay the obli-
7 gation if, at the time the high-cost mortgage is
8 consummated, the consumer’s total monthly
9 debts, including amounts under the mortgage,
10 do not exceed 50 percent of his or her monthly
11 gross income as verified by tax returns, payroll
12 receipts, or other third-party income
13 verification.”.

14 **SEC. 303. ADDITIONAL REQUIREMENTS FOR CERTAIN**
15 **MORTGAGES.**

16 (a) ADDITIONAL REQUIREMENTS FOR CERTAIN
17 MORTGAGES.—Section 129 of the Truth in Lending Act
18 (15 U.S.C. 1639) is amended—

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

21 (2) by inserting after subsection (i) the fol-
22 lowing new subsections:

23 “(j) RECOMMENDED DEFAULT.—No creditor shall
24 recommend or encourage default on an existing loan or
25 other debt prior to and in connection with the closing or

1 planned closing of a high-cost mortgage that refinances
2 all or any portion of such existing loan or debt.

3 “(k) LATE FEES.—

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

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

9 “(B) unless the loan documents specifically
10 authorize the charge or fee;

11 “(C) before the end of the 15-day period
12 beginning on the date the payment is due, or in
13 the case of a loan on which interest on each in-
14 stallment is paid in advance, before the end of
15 the 30-day period beginning on the date the
16 payment is due; or

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

19 “(2) COORDINATION WITH SUBSEQUENT LATE
20 FEES.—If a payment is otherwise a full payment for
21 the applicable period and is paid on its due date or
22 within an applicable grace period, and the only delin-
23 quency or insufficiency of payment is attributable to
24 any late fee or delinquency charge assessed on any

1 earlier payment, no late fee or delinquency charge
2 may be imposed on such payment.

3 “(3) FAILURE TO MAKE INSTALLMENT PAY-
4 MENT.—If, in the case of a loan agreement the
5 terms of which provide that any payment shall first
6 be applied to any past due principal balance, the
7 consumer fails to make an installment payment and
8 the consumer subsequently resumes making install-
9 ment payments but has not paid all past due install-
10 ments, the creditor may impose a separate late pay-
11 ment charge or fee for any principal due (without
12 deduction due to late fees or related fees) until the
13 default is cured.

14 “(1) ACCELERATION OF DEBT.—No high-cost mort-
15 gage may contain a provision which permits the creditor,
16 in its sole discretion, to accelerate the indebtedness. This
17 provision shall not apply when repayment of the loan has
18 been accelerated by default, pursuant to a due-on-sale pro-
19 vision, or pursuant to a material violation of some other
20 provision of the loan documents unrelated to the payment
21 schedule.

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

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

5 “(2) Any points or fees.”.

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

10 “(q) PROHIBITIONS ON EVASIONS, STRUCTURING OF
11 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A
12 creditor may not take any action in connection with a
13 high-cost mortgage—

14 “(1) to structure a loan transaction as an open-
15 end credit plan or another form of loan for the pur-
16 pose and with the intent of evading the provisions of
17 this title; or

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

21 (c) MODIFICATION OR DEFERRAL FEES.—Section
22 129 of the Truth in Lending Act (15 U.S.C. 1639) is
23 amended by inserting after subsection (q) (as added by
24 subsection (b) of this section) the following new sub-
25 section:

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

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

16 “(s) PAYOFF STATEMENT.—

17 “(1) FEES.—

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

23 “(B) TRANSACTION FEE.—When payoff in-
24 formation referred to in subparagraph (A) is
25 provided by facsimile transmission or by a cou-

1 rier service, a creditor or servicer may charge a
2 processing fee to cover the cost of such trans-
3 mission or service in an amount not to exceed
4 an amount that is comparable to fees imposed
5 for similar services provided in connection with
6 consumer credit transactions that are secured
7 by the consumer's principal dwelling and are
8 not high-cost mortgages.

9 “(C) FEE DISCLOSURE.—Prior to charging
10 a transaction fee as provided in subparagraph
11 (B), a creditor or servicer shall disclose that
12 payoff balances are available for free pursuant
13 to subparagraph (A).

14 “(D) MULTIPLE REQUESTS.—If a creditor
15 or servicer has provided payoff information re-
16 ferred to in subparagraph (A) without charge,
17 other than the transaction fee allowed by sub-
18 paragraph (B), on 4 occasions during a cal-
19 endar year, the creditor or servicer may there-
20 after charge a reasonable fee for providing such
21 information during the remainder of the cal-
22 endar year.

23 “(2) PROMPT DELIVERY.—Payoff balances shall
24 be provided within 5 business days after receiving a

1 request by a consumer or a person authorized by the
2 consumer to obtain such information.”.

3 (e) PRE-LOAN COUNSELING REQUIRED.—Section
4 129 of the Truth in Lending Act (15 U.S.C. 1639) is
5 amended by inserting after subsection (s) (as added by
6 subsection (d) of this section) the following new sub-
7 section:

8 “(t) PRE-LOAN COUNSELING.—

9 “(1) IN GENERAL.—A creditor may not extend
10 credit to a consumer under a high-cost mortgage
11 without first receiving certification from a counselor
12 that is approved by the Secretary of Housing and
13 Urban Development, or at the discretion of the Sec-
14 retary, a State housing finance authority, that the
15 consumer has received counseling on the advisability
16 of the mortgage. Such counselor shall not be em-
17 ployed by the creditor or an affiliate of the creditor
18 or be affiliated with the creditor.

19 “(2) DISCLOSURES REQUIRED PRIOR TO COUN-
20 SELING.—No counselor may certify that a consumer
21 has received counseling on the advisability of the
22 high-cost mortgage unless the counselor can verify
23 that the consumer has received each statement re-
24 quired (in connection with such loan) by this section

1 or the Real Estate Settlement Procedures Act of
2 1974 with respect to the transaction.

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

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

11 “(u) FLIPPING.—

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

15 “(2) FLIPPING DEFINED.—For purposes of this
16 subsection, the term ‘flipping’ means the making of
17 a loan or extension of credit in the form a high-cost
18 mortgage to a consumer which refinances an existing
19 mortgage when the new loan or extension of credit
20 does not have reasonable, net tangible benefit (as de-
21 termined in accordance with regulations prescribed
22 under section 129B(b)) to the consumer considering
23 all of the circumstances, including the terms of both
24 the new and the refinanced loans or credit, the cost

1 of the new loan or credit, and the consumer's cir-
2 cumstances.”.

3 **SEC. 304. AMENDMENT TO PROVISION GOVERNING COR-**
4 **RECTION OF ERRORS.**

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

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

11 “(1) within 30 days of the loan closing and
12 prior to the institution of any action, the consumer
13 is notified of or discovers the violation, appropriate
14 restitution is made, and whatever adjustments are
15 necessary are made to the loan to either, at the
16 choice of the consumer—

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

19 “(B) in the case of a high-cost mortgage,
20 change the terms of the loan in a manner bene-
21 ficial to the consumer so that the loan will no
22 longer be a high-cost mortgage; or

23 “(2) within 60 days of the creditor's discovery
24 or receipt of notification of an unintentional viola-
25 tion or bona fide error as described in subsection (c)

1 and prior to the institution of any action, the con-
2 sumer is notified of the compliance failure, appro-
3 priate restitution is made, and whatever adjustments
4 are necessary are made to the loan to either, at the
5 choice of the consumer—

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

8 “(B) in the case of a high-cost mortgage,
9 change the terms of the loan in a manner bene-
10 ficial so that the loan will no longer be a high-
11 cost mortgage.”.

12 **SEC. 305. REGULATIONS.**

13 (a) IN GENERAL.—The Board of Governors of the
14 Federal Reserve System shall publish regulations imple-
15 menting this title and the amendments made by this title
16 in final form before the end of the 6-month period begin-
17 ning on the date of the enactment of this Act.

18 (b) CONSUMER MORTGAGE EDUCATION.—

19 (1) REGULATIONS.—The Board of Governors of
20 the Federal Reserve System may prescribe regula-
21 tions requiring or encouraging creditors to provide
22 consumer mortgage education to prospective cus-
23 tomers or direct such customers to qualified con-
24 sumer mortgage education or counseling programs
25 in the vicinity of the residence of the consumer.

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

7 **SEC. 306. EFFECTIVE DATE.**

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

14 **TITLE IV—OFFICE OF HOUSING**
 15 **COUNSELING**

16 **SEC. 401. SHORT TITLE.**

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

19 **SEC. 402. ESTABLISHMENT OF OFFICE OF HOUSING COUN-**
 20 **SELING.**

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

24 “(g) OFFICE OF HOUSING COUNSELING.—

1 “(1) ESTABLISHMENT.—There is established,
2 in the Office of the Secretary, the Office of Housing
3 Counseling.

4 “(2) DIRECTOR.—There is established the posi-
5 tion of Director of Housing Counseling. The Direc-
6 tor shall be the head of the Office of Housing Coun-
7 seling and shall be appointed by the Secretary. Such
8 position shall be a career-reserved position in the
9 Senior Executive Service.

10 “(3) FUNCTIONS.—

11 “(A) IN GENERAL.—The Director shall
12 have ultimate responsibility within the Depart-
13 ment, except for the Secretary, for all activities
14 and matters relating to homeownership coun-
15 seling and rental housing counseling, includ-
16 ing—

17 “(i) research, grant administration,
18 public outreach, and policy development re-
19 lating to such counseling; and

20 “(ii) establishment, coordination, and
21 administration of all regulations, require-
22 ments, standards, and performance meas-
23 ures under programs and laws adminis-
24 tered by the Department that relate to
25 housing counseling, homeownership coun-

1 seling (including maintenance of homes),
2 mortgage-related counseling (including
3 home equity conversion mortgages and
4 credit protection options to avoid fore-
5 closure), and rental housing counseling, in-
6 cluding the requirements, standards, and
7 performance measures relating to housing
8 counseling.

9 “(B) SPECIFIC FUNCTIONS.—The Director
10 shall carry out the functions assigned to the Di-
11 rector and the Office under this section and any
12 other provisions of law. Such functions shall in-
13 clude establishing rules necessary for—

14 “(i) the counseling procedures under
15 section 106(g)(1) of the Housing and
16 Urban Development Act of 1968 (12
17 U.S.C. 1701x(h)(1));

18 “(ii) carrying out all other functions
19 of the Secretary under section 106(g) of
20 the Housing and Urban Development Act
21 of 1968, including the establishment, oper-
22 ation, and publication of the availability of
23 the toll-free telephone number under para-
24 graph (2) of such section;

1 “(iii) carrying out section 5 of the
2 Real Estate Settlement Procedures Act of
3 1974 (12 U.S.C. 2604) for home buying
4 information booklets prepared pursuant to
5 such section;

6 “(iv) carrying out the certification
7 program under section 106(e) of the Hous-
8 ing and Urban Development Act of 1968
9 (12 U.S.C. 1701x(e));

10 “(v) carrying out the assistance pro-
11 gram under section 106(a)(4) of the Hous-
12 ing and Urban Development Act of 1968,
13 including criteria for selection of applica-
14 tions to receive assistance;

15 “(vi) carrying out any functions re-
16 garding abusive, deceptive, or unscrupulous
17 lending practices relating to residential
18 mortgage loans that the Secretary con-
19 siders appropriate, which shall include con-
20 ducting the study under section 6 of the
21 Expand and Preserve Home Ownership
22 Through Counseling Act;

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

1 “(viii) collaborating with community-
2 based organizations with expertise in the
3 field of housing counseling; and

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

7 “(4) ADVISORY COMMITTEE.—

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

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

17 “(C) TERMS.—Except as provided in sub-
18 paragraph (D), each member of the advisory
19 committee shall be appointed for a term of 3
20 years. Members may be reappointed at the dis-
21 cretion of the Secretary.

22 “(D) TERMS OF INITIAL APPOINTEES.—As
23 designated by the Secretary at the time of ap-
24 pointment, of the members first appointed to
25 the advisory committee, 4 shall be appointed for

1 a term of 1 year and 4 shall be appointed for
2 a term of 2 years.

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

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

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

1 **SEC. 403. COUNSELING PROCEDURES.**

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

6 “(g) PROCEDURES AND ACTIVITIES.—

7 “(1) COUNSELING PROCEDURES.—

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

18 “(B) HOMEOWNERSHIP COUNSELING.—

19 For purposes of this subsection and as used in
20 the provisions referred to in this subparagraph,
21 the term ‘homeownership counseling’ means
22 counseling related to homeownership and resi-
23 dential mortgage loans. Such term includes
24 counseling related to homeownership and resi-
25 dential mortgage loans that is provided pursu-
26 ant to—

1 “(i) section 105(a)(20) of the Housing
2 and Community Development Act of 1974
3 (42 U.S.C. 5305(a)(20));

4 “(ii) in the United States Housing
5 Act of 1937—

6 “(I) section 9(e) (42 U.S.C.
7 1437g(e));

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

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

12 “(IV) section 23(c)(4) (42 U.S.C.
13 1437u(c)(4));

14 “(V) section 32(e)(4) (42 U.S.C.
15 1437z-4(e)(4));

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

18 “(VII) sections 302(b)(6) and
19 303(b)(7) (42 U.S.C. 1437aaa-
20 1(b)(6), 1437aaa-2(b)(7)); and

21 “(VIII) section 304(c)(4) (42
22 U.S.C. 1437aaa-3(c)(4));

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

1 “(iv) sections 233(b)(2) and 258(b) of
2 the Cranston-Gonzalez National Affordable
3 Housing Act (42 U.S.C. 12773(b)(2),
4 12808(b));

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

8 “(vi) section 220(d)(2)(G) of the Low-
9 Income Housing Preservation and Resident
10 Homeownership Act of 1990 (12 U.S.C.
11 4110(d)(2)(G));

12 “(vii) sections 422(b)(6), 423(b)(7),
13 424(c)(4), 442(b)(6), and 443(b)(6) of the
14 Cranston-Gonzalez National Affordable
15 Housing Act (42 U.S.C. 12872(b)(6),
16 12873(b)(7), 12874(c)(4), 12892(b)(6),
17 and 12893(b)(6));

18 “(viii) section 491(b)(1)(F)(iii) of the
19 McKinney-Vento Homeless Assistance Act
20 (42 U.S.C. 11408(b)(1)(F)(iii));

21 “(ix) sections 202(3) and
22 810(b)(2)(A) of the Native American
23 Housing and Self-Determination Act of
24 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

25 “(x) in the National Housing Act—

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

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

9 “(III) subsections (d)(2)(B) and
10 (m)(1) of section 255 (12 U.S.C.
11 1715z-20);

12 “(xi) section 502(h)(4)(B) of the
13 Housing Act of 1949 (42 U.S.C.
14 1472(h)(4)(B)); and

15 “(xii) section 508 of the Housing and
16 Urban Development Act of 1970 (12
17 U.S.C. 1701z-7).

18 “(C) RENTAL HOUSING COUNSELING.—

19 For purposes of this subsection, the term ‘rent-
20 al housing counseling’ means counseling related
21 to rental of residential property, which may in-
22 clude counseling regarding future homeownership
23 opportunities and providing referrals for
24 renters and prospective renters to entities pro-
25 viding counseling and shall include counseling

1 related to such topics that is provided pursuant
2 to—

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

6 “(ii) in the United States Housing
7 Act of 1937—

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

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

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

14 “(IV) section 32(e)(4) (42 U.S.C.
15 1437z-4(e)(4));

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

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

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

23 “(iv) section 106 of the Housing and
24 Urban Development Act of 1968 (12
25 U.S.C. 1701x);

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

4 “(vi) section 491(b)(1)(F)(iii) of the
5 McKinney-Vento Homeless Assistance Act
6 (42 U.S.C. 11408(b)(1)(F)(iii));

7 “(vii) sections 202(3) and
8 810(b)(2)(A) of the Native American
9 Housing and Self-Determination Act of
10 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
11 and

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

15 “(2) STANDARDS FOR MATERIALS.—The Sec-
16 retary, in conjunction with the advisory committee
17 established under subsection (g)(4) of the Depart-
18 ment of Housing and Urban Development Act, shall
19 establish standards for materials and forms to be
20 used, as appropriate, by organizations providing
21 homeownership counseling services, including any re-
22 cipients of assistance pursuant to subsection (a)(4).

23 “(3) MORTGAGE SOFTWARE SYSTEMS.—

24 “(A) CERTIFICATION.—The Secretary shall
25 provide for the certification of various computer

1 software programs for consumers to use in eval-
2 uating different residential mortgage loan pro-
3 posals. The Secretary shall require, for such
4 certification, that the mortgage software sys-
5 tems take into account—

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

9 “(ii) the amount of time the consumer
10 expects to remain in the home or expected
11 time to maturity of the loan;

12 “(iii) such other factors as the Sec-
13 retary considers appropriate to assist the
14 consumer in evaluating whether to pay
15 points, to lock in an interest rate, to select
16 an adjustable or fixed rate loan, to select
17 a conventional or government-insured or
18 guaranteed loan and to make other choices
19 during the loan application process.

20 If the Secretary determines that available exist-
21 ing software is inadequate to assist consumers
22 during the residential mortgage loan application
23 process, the Secretary shall arrange for the de-
24 velopment by private sector software companies

1 of new mortgage software systems that meet
2 the Secretary's specifications.

3 “(B) USE AND INITIAL AVAILABILITY.—
4 Such certified computer software programs
5 shall be used to supplement, not replace, hous-
6 ing counseling. The Secretary shall provide that
7 such programs are initially used only in connec-
8 tion with the assistance of housing counselors
9 certified pursuant to subsection (e).

10 “(C) AVAILABILITY.—After a period of ini-
11 tial availability under subparagraph (B) as the
12 Secretary considers appropriate, the Secretary
13 shall take reasonable steps to make mortgage
14 software systems certified pursuant to this
15 paragraph widely available through the Internet
16 and at public locations, including public librar-
17 ies, senior-citizen centers, public housing sites,
18 offices of public housing agencies that admin-
19 ister rental housing assistance vouchers, and
20 housing counseling centers.

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

23 “(A) IN GENERAL.—The Director of Hous-
24 ing Counseling shall develop, implement, and
25 conduct national public service multimedia cam-

1 paigns designed to make persons facing mort-
2 gage foreclosure, persons considering a
3 subprime mortgage loan to purchase a home, el-
4 derly persons, persons who face language bar-
5 riers, low-income persons, and other potentially
6 vulnerable consumers aware that it is advisable,
7 before seeking or maintaining a residential
8 mortgage loan, to obtain homeownership coun-
9 seling from an unbiased and reliable sources
10 and that such homeownership counseling is
11 available, including through programs spon-
12 sored by the Secretary of Housing and Urban
13 Development.

14 “(B) CONTACT INFORMATION.—Each seg-
15 ment of the multimedia campaign under sub-
16 paragraph (A) shall publicize the toll-free tele-
17 phone number and website of the Department
18 of Housing and Urban Development through
19 which persons seeking housing counseling can
20 locate a housing counseling agency in their
21 State that is certified by the Secretary of Hous-
22 ing and Urban Development and can provide
23 advice on buying a home, renting, defaults,
24 foreclosures, credit issues, and reverse mort-
25 gages.

1 “(C) AUTHORIZATION OF APPROPRIA-
2 TIONS.—There are authorized to be appro-
3 priated to the Secretary, not to exceed
4 \$3,000,000 for fiscal years 2009, 2010, and
5 2011, for the development, implementation, and
6 conduct of national public service multimedia
7 campaigns under this paragraph.

8 “(5) EDUCATION PROGRAMS.—The Secretary
9 shall provide advice and technical assistance to
10 States, units of general local government, and non-
11 profit organizations regarding the establishment and
12 operation of, including assistance with the develop-
13 ment of content and materials for, educational pro-
14 grams to inform and educate consumers, particularly
15 those most vulnerable with respect to residential
16 mortgage loans (such as elderly persons, persons
17 facing language barriers, low-income persons, and
18 other potentially vulnerable consumers), regarding
19 home mortgages, mortgage refinancing, home equity
20 loans, and home repair loans.”.

21 (b) CONFORMING AMENDMENTS TO GRANT PRO-
22 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-
23 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and
24 Urban Development Act of 1968 (12 U.S.C.
25 1701x(c)(5)(A)(ii)) is amended—

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

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

5 (3) by inserting after subclause (IV) the fol-
6 lowing new subclause:

7 “(V) notify the housing or mort-
8 gage applicant of the availability of
9 mortgage software systems provided
10 pursuant to subsection (g)(3).”.

11 **SEC. 404. GRANTS FOR HOUSING COUNSELING ASSIST-**
12 **ANCE.**

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

16 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING
17 ASSISTANCE.—

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

24 “(B) QUALIFIED ENTITIES.—The Secretary
25 shall establish standards and guidelines for eligibility

1 of organizations (including governmental and non-
2 profit organizations) to receive assistance under this
3 paragraph.

4 “(C) DISTRIBUTION.—Assistance made avail-
5 able under this paragraph shall be distributed in a
6 manner that encourages efficient and successful
7 counseling programs.

8 “(D) AUTHORIZATION OF APPROPRIATIONS.—
9 There are authorized to be appropriated
10 \$45,000,000 for each of fiscal years 2009 through
11 2012 for—

12 “(i) the operations of the Office of Hous-
13 ing Counseling of the Department of Housing
14 and Urban Development;

15 “(ii) the responsibilities of the Secretary
16 under paragraphs (2) through (5) of subsection
17 (g); and

18 “(iii) assistance pursuant to this para-
19 graph for entities providing homeownership and
20 rental counseling.”.

21 **SEC. 405. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**
22 **SELORS UNDER HUD PROGRAMS.**

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

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

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

11 (2) in paragraph (2)—

12 (A) by inserting “and for certifying organi-
13 zations” before the period at the end of the
14 first sentence; and

15 (B) in the second sentence by striking “for
16 certification” and inserting “, for certification
17 of an organization, that each individual through
18 which the organization provides counseling shall
19 demonstrate, and, for certification of an indi-
20 vidual,”;

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

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

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

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

12 “(4) OUTREACH.—The Secretary shall take
13 such actions as the Secretary considers appropriate
14 to ensure that individuals and organizations pro-
15 viding homeownership or rental housing counseling
16 are aware of the certification requirements and
17 standards of this subsection and of the training and
18 certification programs under subsection (f).”.

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

20 The Secretary of Housing and Urban Development
21 shall conduct an extensive study of the root causes of de-
22 fault and foreclosure of home loans, using as much empir-
23 ical data as are available. The study shall also examine
24 the role of escrow accounts in helping prime and nonprime
25 borrowers to avoid defaults and foreclosures. Not later

1 than 12 months after the date of the enactment of this
2 Act, the Secretary shall submit to the Congress a prelimi-
3 nary report regarding the study. Not later than 24 months
4 after such date of enactment, the Secretary shall submit
5 a final report regarding the results of the study, which
6 shall include any recommended legislation relating to the
7 study, and recommendations for best practices and for a
8 process to identify populations that need counseling the
9 most.

10 **SEC. 407. DEFINITIONS FOR COUNSELING-RELATED PRO-**
11 **GRAMS.**

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

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

17 “(1) NONPROFIT ORGANIZATION.—The term
18 ‘nonprofit organization’ has the meaning given such
19 term in section 104(5) of the Cranston-Gonzalez Na-
20 tional Affordable Housing Act (42 U.S.C.
21 12704(5)), except that subparagraph (D) of such
22 section shall not apply for purposes of this section.

23 “(2) STATE.—The term ‘State’ means each of
24 the several States, the Commonwealth of Puerto
25 Rico, the District of Columbia, the Commonwealth

1 of the Northern Mariana Islands, Guam, the Virgin
2 Islands, American Samoa, the Trust Territories of
3 the Pacific, or any other possession of the United
4 States.

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

10 **SEC. 408. UPDATING AND SIMPLIFICATION OF MORTGAGE**
11 **INFORMATION BOOKLET.**

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

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

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

18 “(a) PREPARATION AND DISTRIBUTION.—The Sec-
19 retary shall prepare, at least once every 5 years, a booklet
20 to help consumers applying for federally related mortgage
21 loans to understand the nature and costs of real estate
22 settlement services. The Secretary shall prepare the book-
23 let in various languages and cultural styles, as the Sec-
24 retary determines to be appropriate, so that the booklet
25 is understandable and accessible to homebuyers of dif-

1 ferent ethnic and cultural backgrounds. The Secretary
2 shall distribute such booklets to all lenders that make fed-
3 erally related mortgage loans. The Secretary shall also dis-
4 tribute to such lenders lists, organized by location, of
5 homeownership counselors certified under section 106(e)
6 of the Housing and Urban Development Act of 1968 (12
7 U.S.C. 1701x(e)) for use in complying with the require-
8 ment under subsection (c) of this section.

9 “(b) CONTENTS.—Each booklet shall be in such form
10 and detail as the Secretary shall prescribe and, in addition
11 to such other information as the Secretary may provide,
12 shall include in plain and understandable language the fol-
13 lowing information:

14 “(1) A description and explanation of the na-
15 ture and purpose of the costs incident to a real es-
16 tate settlement or a federally related mortgage loan.
17 The description and explanation shall provide gen-
18 eral information about the mortgage process as well
19 as specific information concerning, at a minimum—

20 “(A) balloon payments;

21 “(B) prepayment penalties; and

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

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

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

7 “(4) A list and explanation of questions a con-
8 sumer obtaining a federally related mortgage loan
9 should ask regarding the loan, including whether the
10 consumer will have the ability to repay the loan,
11 whether the consumer sufficiently shopped for the
12 loan, whether the loan terms include prepayment
13 penalties or balloon payments, and whether the loan
14 will benefit the borrower.

15 “(5) An explanation of the right of rescission as
16 to certain transactions provided by sections 125 and
17 129 of the Truth in Lending Act.

18 “(6) A brief explanation of the nature of a vari-
19 able rate mortgage and a reference to the booklet
20 entitled ‘Consumer Handbook on Adjustable Rate
21 Mortgages’, published by the Board of Governors of
22 the Federal Reserve System pursuant to section
23 226.19(b)(1) of title 12, Code of Federal Regula-
24 tions, or to any suitable substitute of such booklet

1 that such Board of Governors may subsequently
2 adopt pursuant to such section.

3 “(7) A brief explanation of the nature of a
4 home equity line of credit and a reference to the
5 pamphlet required to be provided under section
6 127A of the Truth in Lending Act.

7 “(8) Information about homeownership coun-
8 seling services made available pursuant to section
9 106(a)(4) of the Housing and Urban Development
10 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-
11 ommendation that the consumer use such services,
12 and notification that a list of certified providers of
13 homeownership counseling in the area, and their
14 contact information, is available.

15 “(9) An explanation of the nature and purpose
16 of escrow accounts when used in connection with
17 loans secured by residential real estate and the re-
18 quirements under section 10 of this Act regarding
19 such accounts.

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

1 “(11) An explanation of a consumer’s respon-
2 sibilities, liabilities, and obligations in a mortgage
3 transaction.

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

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

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

17 (3) in subsection (c), by inserting at the end
18 the following new sentence: “Each lender shall also
19 include with the booklet a reasonably complete or
20 updated list of homeownership counselors who are
21 certified pursuant to section 106(e) of the Housing
22 and Urban Development Act of 1968 (12 U.S.C.
23 1701x(e)) and located in the area of the lender.”;
24 and

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

6 **TITLE V—MORTGAGE SERVICING**

7 **SEC. 501. ESCROW AND IMPOUND ACCOUNTS RELATING TO** 8 **CERTAIN CONSUMER CREDIT TRANS-** 9 **ACTIONS.**

10 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 11 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
 12 after section 129C (as added by section 201) the following
 13 new section:

14 **“SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING** 15 **TO CERTAIN CONSUMER CREDIT TRANS-** 16 **ACTIONS.**

17 “(a) IN GENERAL.—Except as provided in subsection
 18 (b) or (c), a creditor, in connection with the formation or
 19 consummation of a consumer credit transaction secured
 20 by a first lien on the principal dwelling of the consumer,
 21 other than a consumer credit transaction under an open
 22 end credit plan or a reverse mortgage, shall establish, at
 23 the time of the consummation of such transaction, an es-
 24 crow or impound account for the payment of taxes and
 25 hazard insurance, and, if applicable, flood insurance,

1 mortgage insurance, ground rents, and any other required
2 periodic payments or premiums with respect to the prop-
3 erty or the loan terms, as provided in, and in accordance
4 with, this section.

5 “(b) WHEN REQUIRED.—No impound, trust, or other
6 type of account for the payment of property taxes, insur-
7 ance premiums, or other purposes relating to the property
8 may be required as a condition of a real property sale con-
9 tract or a loan secured by a first deed of trust or mortgage
10 on the principal dwelling of the consumer, other than a
11 consumer credit transaction under an open end credit plan
12 or a reverse mortgage, except when—

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

16 “(2) a loan is made, guaranteed, or insured by
17 a State or Federal governmental lending or insuring
18 agency;

19 “(3) the consumer’s debt-to-income ratio at the
20 time the home mortgage is established taking into
21 account income from all sources including the con-
22 sumer’s employment exceeds 50 percent;

23 “(4) the transaction is secured by a first mort-
24 gage or lien on the consumer’s principal dwelling
25 and the annual percentage rate on the credit, at the

1 time of consummation of the transaction, will exceed
2 by more than 3.0 percentage points the yield on
3 Treasury securities having comparable periods of
4 maturity on the 15th day of the month immediately
5 preceding the month in which the application of the
6 extension of credit is received by the creditor;

7 “(5) a consumer obtains a mortgage referred to
8 in section 103(aa);

9 “(6) the original principal amount of such loan
10 at the time of consummation of the transaction is—

11 “(A) 90 percent or more of the sale price,
12 if the property involved is purchased with the
13 proceeds of the loan; or

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

16 “(7) the combined principal amount of all loans
17 secured by the real property exceeds 95 percent of
18 the appraised value of the property securing the
19 loans at the time of consummation of the last mort-
20 gage transaction;

21 “(8) the consumer was the subject of a pro-
22 ceeding under title 11, United States Code, at any
23 time during the 7-year period preceding the date of
24 the transaction (as determined on the basis of the
25 date of entry of the order for relief or the date of

1 adjudication, as the case may be, with respect to
2 such proceeding and included in a consumer report
3 on the consumer under the Fair Credit Reporting
4 Act); or

5 “(9) so required by the Board pursuant to reg-
6 ulation.

7 “(c) DURATION OF MANDATORY ESCROW OR IM-
8 POUND ACCOUNT.—An escrow or impound account estab-
9 lished pursuant to subsection (b), shall remain in existence
10 for a minimum period of 5 years and until such borrower
11 has sufficient equity in the dwelling securing the consumer
12 credit transaction so as to no longer be required to main-
13 tain private mortgage insurance, or such other period as
14 may be provided in regulations to address situations such
15 as borrower delinquency, unless the underlying mortgage
16 establishing the account is terminated.

17 “(d) CLARIFICATION ON ESCROW ACCOUNTS FOR
18 LOANS NOT MEETING STATUTORY TEST.—For mort-
19 gages not covered by the requirements of subsection (b),
20 no provision of this section shall be construed as pre-
21 cluding the establishment of an impound, trust, or other
22 type of account for the payment of property taxes, insur-
23 ance premiums, or other purposes relating to the prop-
24 erty—

1 “(1) on terms mutually agreeable to the parties
2 to the loan;

3 “(2) at the discretion of the lender or servicer,
4 as provided by the contract between the lender or
5 servicer and the borrower; or

6 “(3) pursuant to the requirements for the
7 escrowing of flood insurance payments for regulated
8 lending institutions in section 102(d) of the Flood
9 Disaster Protection Act of 1973.

10 “(e) ADMINISTRATION OF MANDATORY ESCROW OR
11 IMPOUND ACCOUNTS.—

12 “(1) IN GENERAL.—Except as may otherwise
13 be provided for in this title or in regulations pre-
14 scribed by the Board, escrow or impound accounts
15 established pursuant to subsection (b) shall be estab-
16 lished in a federally insured depository institution.

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

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

1 “(B) the Flood Disaster Protection Act of
2 1973 and regulations prescribed under such
3 Act; and

4 “(C) the law of the State, if applicable,
5 where the real property securing the consumer
6 credit transaction is located.

7 “(3) APPLICABILITY OF PAYMENT OF INTER-
8 EST.—If prescribed by applicable State or Federal
9 law, each creditor shall pay interest to the consumer
10 on the amount held in any impound, trust, or escrow
11 account that is subject to this section in the manner
12 as prescribed by that applicable State or Federal
13 law.

14 “(4) PENALTY COORDINATION WITH RESPA.—
15 Any action or omission on the part of any person
16 which constitutes a violation of the Real Estate Set-
17 tlement Procedures Act of 1974 or any regulation
18 prescribed under such Act for which the person has
19 paid any fine, civil money penalty, or other damages
20 shall not give rise to any additional fine, civil money
21 penalty, or other damages under this section, unless
22 the action or omission also constitutes a direct viola-
23 tion of this section.

24 “(f) DISCLOSURES RELATING TO MANDATORY ES-
25 CROW OR IMPOUND ACCOUNT.—In the case of any im-

1 pound, trust, or escrow account that is subject to this sec-
2 tion, the creditor shall disclose by written notice to the
3 consumer at least 3 business days before the consumma-
4 tion of the consumer credit transaction giving rise to such
5 account or in accordance with timeframes established in
6 prescribed regulations the following information:

7 “(1) The fact that an escrow or impound ac-
8 count will be established at consummation of the
9 transaction.

10 “(2) The amount required at closing to initially
11 fund the escrow or impound account.

12 “(3) The amount, in the initial year after the
13 consummation of the transaction, of the estimated
14 taxes and hazard insurance, including flood insur-
15 ance, if applicable, and any other required periodic
16 payments or premiums that reflects, as appropriate,
17 either the taxable assessed value of the real property
18 securing the transaction, including the value of any
19 improvements on the property or to be constructed
20 on the property (whether or not such construction
21 will be financed from the proceeds of the trans-
22 action) or the replacement costs of the property.

23 “(4) The estimated monthly amount payable to
24 be escrowed for taxes, hazard insurance (including

1 flood insurance, if applicable) and any other re-
2 quired periodic payments or premiums.

3 “(5) The fact that, if the consumer chooses to
4 terminate the account at the appropriate time in the
5 future, the consumer will become responsible for the
6 payment of all taxes, hazard insurance, and flood in-
7 surance, if applicable, as well as any other required
8 periodic payments or premiums on the property un-
9 less a new escrow or impound account is established.

10 “(g) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 “(1) FLOOD INSURANCE.—The term ‘flood in-
13 surance’ means flood insurance coverage provided
14 under the national flood insurance program pursu-
15 ant to the National Flood Insurance Act of 1968.

16 “(2) HAZARD INSURANCE.—The term ‘hazard
17 insurance’ shall have the same meaning as provided
18 for ‘hazard insurance’, ‘casualty insurance’, ‘home-
19 owner’s insurance’, or other similar term under the
20 law of the State where the real property securing the
21 consumer credit transaction is located.”.

22 (b) IMPLEMENTATION.—

23 (1) REGULATIONS.—The Board of Governors of
24 the Federal Reserve System, the Comptroller of the
25 Currency, the Director of the Office of Thrift Super-

1 vision, the Federal Deposit Insurance Corporation,
2 the National Credit Union Administration Board,
3 (hereafter in this Act referred to as the “Federal
4 banking agencies”) and the Federal Trade Commis-
5 sion shall prescribe, in final form, such regulations
6 as determined to be necessary to implement the
7 amendments made by subsection (a) before the end
8 of the 180-day period beginning on the date of the
9 enactment of this Act.

10 (2) EFFECTIVE DATE.—The amendments made
11 by subsection (a) shall only apply to covered mort-
12 gage loans consummated after the end of the 1-year
13 period beginning on the date of the publication of
14 final regulations in the Federal Register.

15 (c) CLERICAL AMENDMENT.—The table of sections
16 for chapter 2 of the Truth in Lending Act is amended
17 by inserting after the item relating to section 129C (as
18 added by section 201) the following new item:

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

19 **SEC. 502. DISCLOSURE NOTICE REQUIRED FOR CON-**
20 **SUMERS WHO WAIVE ESCROW SERVICES.**

21 (a) IN GENERAL.—Section 129D of the Truth in
22 Lending Act (as added by section 501) is amended by add-
23 ing at the end the following new subsection:

1 “(h) DISCLOSURE NOTICE REQUIRED FOR CON-
2 SUMERS WHO WAIVE ESCROW SERVICES.—

3 “(1) IN GENERAL.—If—

4 “(A) an impound, trust, or other type of
5 account for the payment of property taxes, in-
6 surance premiums, or other purposes relating to
7 real property securing a consumer credit trans-
8 action is not established in connection with the
9 transaction; or

10 “(B) a consumer chooses, at any time after
11 such an account is established in connection
12 with any such transaction and in accordance
13 with any statute, regulation, or contractual
14 agreement, to close such account,

15 the creditor or servicer shall provide a timely and
16 clearly written disclosure to the consumer that ad-
17 vises the consumer of the responsibilities of the con-
18 sumer and implications for the consumer in the ab-
19 sence of any such account.

20 “(2) DISCLOSURE REQUIREMENTS.—Any dis-
21 closure provided to a consumer under paragraph (1)
22 shall include the following:

23 “(A) Information concerning any applica-
24 ble fees or costs associated with either the non-
25 establishment of any such account at the time

1 of the transaction, or any subsequent closure of
2 any such account.

3 “(B) A clear and prominent notice that the
4 consumer is responsible for personally and di-
5 rectly paying the non-escrowed items, in addi-
6 tion to paying the mortgage loan payment, in
7 the absence of any such account, and the fact
8 that the costs for taxes, insurance, and related
9 fees can be substantial.

10 “(C) A clear explanation of the con-
11 sequences of any failure to pay non-escrowed
12 items, including the possible requirement for
13 the forced placement of insurance by the cred-
14 itor or servicer and the potentially higher cost
15 (including any potential commission payments
16 to the servicer) or reduced coverage for the con-
17 sumer in the event of any such creditor-placed
18 insurance.”.

19 (b) IMPLEMENTATION.—

20 (1) REGULATIONS.—The Federal banking agen-
21 cies and the Federal Trade Commission shall pre-
22 scribe, in final form, such regulations as such agen-
23 cies determine to be necessary to implement the
24 amendments made by subsection (a) before the end

1 of the 180-day period beginning on the date of the
2 enactment of this Act.

3 (2) EFFECTIVE DATE.—The amendments made
4 by subsection (a) shall only apply in accordance with
5 the regulations established in paragraph (1) and be-
6 ginning on the date occurring 180-days after the
7 date of the publication of final regulations in the
8 Federal Register.

9 **SEC. 503. REAL ESTATE SETTLEMENT PROCEDURES ACT OF**
10 **1974 AMENDMENTS.**

11 (a) SERVICER PROHIBITIONS.—Section 6 of the Real
12 Estate Settlement Procedures Act of 1974 (12 U.S.C.
13 2605) is amended by adding at the end the following new
14 subsections:

15 “(k) SERVICER PROHIBITIONS.—

16 “(1) IN GENERAL.—A servicer of a federally re-
17 lated mortgage shall not—

18 “(A) obtain force-placed hazard insurance
19 unless there is a reasonable basis to believe the
20 borrower has failed to comply with the loan
21 contract’s requirements to maintain property
22 insurance;

23 “(B) charge fees for responding to valid
24 qualified written requests (as defined in regula-

1 tions which the Secretary shall prescribe) under
2 this section;

3 “(C) fail to take timely action to respond
4 to a borrower’s requests to correct errors relat-
5 ing to allocation of payments, final balances for
6 purposes of paying off the loan, or avoiding
7 foreclosure, or other standard servicer’s duties;

8 “(D) fail to respond within 10 business
9 days to a request from a borrower to provide
10 the identity, address, and other relevant contact
11 information about the owner assignee of the
12 loan; or

13 “(E) fail to comply with any other obliga-
14 tion found by the Secretary, by regulation, to
15 be appropriate to carry out the consumer pro-
16 tection purposes of this Act.

17 “(2) FORCE-PLACED INSURANCE DEFINED.—
18 For purposes of this subsection and subsections (l)
19 and (m), the term ‘force-placed insurance’ means
20 hazard insurance coverage obtained by a servicer of
21 a federally related mortgage when the borrower has
22 failed to maintain or renew hazard insurance on
23 such property as required of the borrower under the
24 terms of the mortgage.

1 “(1) REQUIREMENTS FOR FORCE-PLACED INSUR-
2 ANCE.—A servicer of a federally related mortgage shall
3 not be construed as having a reasonable basis for obtain-
4 ing force-placed insurance unless the requirements of this
5 subsection have been met.

6 “(1) WRITTEN NOTICES TO BORROWER.—A
7 servicer may not impose any charge on any borrower
8 for force-placed insurance with respect to any prop-
9 erty securing a federally related mortgage unless—

10 “(A) the servicer has sent, by first-class
11 mail, a written notice to the borrower con-
12 taining—

13 “(i) a reminder of the borrower’s obli-
14 gation to maintain hazard insurance on the
15 property securing the federally related
16 mortgage;

17 “(ii) a statement that the servicer
18 does not have evidence of insurance cov-
19 erage of such property;

20 “(iii) a clear and conspicuous state-
21 ment of the procedures by which the bor-
22 rower may demonstrate that the borrower
23 already has insurance coverage; and

24 “(iv) a statement that the servicer
25 may obtain such coverage at the borrower’s

1 expense if the borrower does not provide
2 such demonstration of the borrower's exist-
3 ing coverage in a timely manner;

4 “(B) the servicer has sent, by first-class
5 mail, a second written notice, at least 30 days
6 after the mailing of the notice under subpara-
7 graph (A) that contains all the information de-
8 scribed in each clauses of such subparagraph;
9 and

10 “(C) the servicer has not received from the
11 borrower any demonstration of hazard insur-
12 ance coverage for the property securing the
13 mortgage by the end of the 15-day period be-
14 ginning on the date the notice under subpara-
15 graph (B) was sent by the servicer.

16 “(2) SUFFICIENCY OF DEMONSTRATION.—A
17 servicer of a federally related mortgage shall accept
18 any reasonable form of written confirmation from a
19 borrower of existing insurance coverage, which shall
20 include the existing insurance policy number along
21 with the identity of, and contact information for, the
22 insurance company or agent.

23 “(3) TERMINATION OF FORCE-PLACED INSUR-
24 ANCE.—Within 15 days of the receipt by a servicer

1 of confirmation of a borrower's existing insurance
2 coverage, the servicer shall—

3 “(A) terminate the force-placed insurance;
4 and

5 “(B) refund to the consumer all force-
6 placed insurance premiums paid by the bor-
7 rower during any period during which the bor-
8 rower's insurance coverage and the force-placed
9 insurance coverage were each in effect, and any
10 related fees charged to the consumer's account
11 with respect to the force-placed insurance dur-
12 ing such period.

13 “(4) CLARIFICATION WITH RESPECT TO FLOOD
14 DISASTER PROTECTION ACT.—No provision of this
15 section shall be construed as prohibiting a servicer
16 from providing simultaneous or concurrent notice of
17 a lack of flood insurance pursuant to section 102(e)
18 of the Flood Disaster Protection Act of 1973.

19 “(m) LIMITATIONS ON FORCE-PLACED INSURANCE
20 CHARGES.—All charges for force-placed insurance pre-
21 miums shall be bona fide and reasonable in amount.

22 “(n) PROMPT CREDITING OF PAYMENTS RE-
23 QUIRED.—

24 “(1) IN GENERAL.—All amounts received by a
25 lender or a servicer on a home loan at the address

1 where the borrower has been instructed to make
2 payments shall be accepted and credited, or treated
3 as credited, on the business day received, to the ex-
4 tent that the borrower has made the full contractual
5 payment and has provided sufficient information to
6 credit the account.

7 “(2) SCHEDULED METHOD.—If a servicer uses
8 the scheduled method of accounting, any regularly
9 scheduled payment made prior to the scheduled due
10 date shall be credited no later than the due date.

11 “(3) NOTICE OF NONCREDIT.—If any payment
12 is received by a lender or a servicer on a home loan
13 and not credited, or treated as credited, the bor-
14 rower shall be notified within 10 business days by
15 mail at the borrower’s last known address of the dis-
16 position of the payment, the reason the payment was
17 not credited, or treated as credited to the account,
18 and any actions necessary by the borrower to make
19 the loan current.”.

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

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

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

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

6 (1) in paragraph (1)(A), by striking “20 days”
7 and inserting “10 days”;

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

10 (3) by adding at the end the following new
11 paragraph:

12 “(4) LIMITED EXTENSION OF RESPONSE
13 TIME.—The 30-day period described in paragraph
14 (2) may be extended for not more than 30 days if,
15 before the end of such 30-day period, the servicer
16 notifies the borrower of the extension and the rea-
17 sons for the delay in responding.”.

18 (d) REQUESTS FOR PAYOFF AMOUNTS.—Section 6(e)
19 of the Real Estate Settlement Procedures Act of 1974 (12
20 U.S.C. 2605(e)) is amended by inserting after paragraph
21 (4) (as added by subsection (c) of this section) the fol-
22 lowing new paragraph:

23 “(5) REQUESTS FOR PAYOFF AMOUNTS.—A
24 creditor or servicer shall send a payoff balance with-
25 in 7 business days of the receipt of a written request

1 for such balance from or on behalf of the bor-
2 rower.”.

3 (e) PROMPT REFUND OF ESCROW ACCOUNTS UPON
4 PAYOFF.—Section 6(g) of the Real Estate Settlement
5 Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended
6 by adding at the end the following new sentence: “Any
7 balance in any such account that is within the servicer’s
8 control at the time the loan is paid off shall be promptly
9 returned to the borrower within 20 business days or cred-
10 ited to a similar account for a new mortgage loan to the
11 borrower with the same lender.”.

12 **SEC. 504. MORTGAGE SERVICING STUDIES REQUIRED.**

13 (a) MORTGAGE SERVICING PRACTICES.—

14 (1) STUDY.—The Secretary of Housing and
15 Urban Development, in consultation with the Fed-
16 eral banking agencies, and the Federal Trade Com-
17 mission, shall conduct a comprehensive study on
18 mortgage servicing practices and their potential for
19 fraud and abuse.

20 (2) ISSUES TO BE INCLUDED.—In addition to
21 other issues the Secretary of Housing and Urban
22 Development, the Federal banking agencies, and the
23 Federal Trade Commission may determine to be ap-
24 propriate and possibly pertinent to the study con-

1 ducted under paragraph (1), the study shall include
2 the following issues:

3 (A) A survey of the industry in order to
4 examine the issue of the timely or effective
5 posting of payments by servicers.

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

8 (C) The charging of late fees on the entire
9 outstanding principal.

10 (D) The charging of interest on servicing
11 fees.

12 (E) The utilization of collection practices
13 that failed to comply with the Fair Debt Collec-
14 tion Practices Act.

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

17 (G) The employment of unconscionable for-
18 bearance agreements.

19 (H) Foreclosure abuses.

20 (3) REPORT.—Before the end of the 12-month
21 period beginning on the date of the enactment of
22 this Act, the Secretary of Housing and Urban Devel-
23 opment shall submit a report on the study conducted
24 under this subsection to the Committee on Financial
25 Services of the House of Representatives and the

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

3 (b) MORTGAGE SERVICING IMPROVEMENTS.—

4 (1) STUDY.—The Secretary of Housing and
5 Urban Development, in consultation with the Fed-
6 eral banking agencies, and the Federal Trade Com-
7 mission, shall conduct a comprehensive study on
8 means to improve the best practices of the mortgage
9 servicing industry, and Federal and State laws gov-
10 erning such industry.

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

22 **SEC. 505. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.**

23 (a) IN GENERAL.—Section 128(b) of the Truth in
24 Lending Act (15 U.S.C. 1638(b)) is amended by adding
25 at the end the following new paragraph:

1 “(4) REPAYMENT ANALYSIS REQUIRED TO IN-
2 CLUDE ESCROW PAYMENTS.—

3 “(A) IN GENERAL.—In the case of any
4 consumer credit transaction secured by a first
5 mortgage or lien on the principal dwelling of
6 the consumer, other than a consumer credit
7 transaction under an open end credit plan or a
8 reverse mortgage, for which an impound, trust,
9 or other type of account has been or will be es-
10 tablished in connection with the transaction for
11 the payment of property taxes, hazard and flood
12 (if any) insurance premiums, or other periodic
13 payments or premiums with respect to the
14 property, the information required to be pro-
15 vided under subsection (a) with respect to the
16 number, amount, and due dates or period of
17 payments scheduled to repay the total of pay-
18 ments shall take into account the amount of
19 any monthly payment to such account for each
20 such repayment in accordance with section
21 10(a)(2) of the Real Estate Settlement Proce-
22 dures Act of 1974.

23 “(B) ASSESSMENT VALUE.—The amount
24 taken into account under subparagraph (A) for
25 the payment of property taxes, hazard and flood

1 (if any) insurance premiums, or other periodic
2 payments or premiums with respect to the
3 property shall reflect the taxable assessed value
4 of the real property securing the transaction
5 after the consummation of the transaction, in-
6 cluding the value of any improvements on the
7 property or to be constructed on the property
8 (whether or not such construction will be fi-
9 nanced from the proceeds of the transaction), if
10 known, and the replacement costs of the prop-
11 erty for hazard insurance, in the initial year
12 after the transaction.”.

13 **TITLE VI—APPRAISAL**
14 **ACTIVITIES**

15 **SEC. 601. PROPERTY APPRAISAL REQUIREMENTS.**

16 Section 129 of the Truth in Lending Act (15 U.S.C.
17 1639) is amended by inserting after subsection (u) (as
18 added by section 303(f)) the following new subsection:

19 “(v) **PROPERTY APPRAISAL REQUIREMENTS.**—

20 “(1) **IN GENERAL.**—A creditor may not extend
21 credit in the form of a mortgage referred to in sec-
22 tion 103(aa) to any consumer without first obtaining
23 a written appraisal of the property to be mortgaged
24 prepared in accordance with the requirements of this
25 subsection.

1 “(2) APPRAISAL REQUIREMENTS.—

2 “(A) PHYSICAL PROPERTY VISIT.—An ap-
3 praisal of property to be secured by a mortgage
4 referred to in section 103(aa) does not meet the
5 requirement of this subsection unless it is per-
6 formed by a qualified appraiser who conducts a
7 physical property visit of the interior of the
8 mortgaged property.

9 “(B) SECOND APPRAISAL UNDER CERTAIN
10 CIRCUMSTANCES.—

11 “(i) IN GENERAL.—If the purpose of
12 a mortgage referred to in section 103(aa)
13 is to finance the purchase or acquisition of
14 the mortgaged property from a person
15 within 180 days of the purchase or acquisi-
16 tion of such property by that person at a
17 price that was lower than the current sale
18 price of the property, the creditor shall ob-
19 tain a second appraisal from a different
20 qualified appraiser. The second appraisal
21 shall include an analysis of the difference
22 in sale prices, changes in market condi-
23 tions, and any improvements made to the
24 property between the date of the previous
25 sale and the current sale.

1 “(ii) NO COST TO CONSUMER.—The
2 cost of any second appraisal required
3 under clause (i) may not be charged to the
4 consumer.

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

8 “(i) is certified or licensed by the
9 State in which the property to be ap-
10 praised is located; and

11 “(ii) performs each appraisal in con-
12 formity with the Uniform Standards of
13 Professional Appraisal Practice and title
14 XI of the Financial Institutions Reform,
15 Recovery, and Enforcement Act of 1989,
16 and the regulations prescribed under such
17 title, as in effect on the date of the ap-
18 praisal.

19 “(3) FREE COPY OF APPRAISAL.—A creditor
20 shall provide 1 copy of each appraisal conducted in
21 accordance with this subsection in connection with a
22 mortgage referred to in section 103(aa) to the con-
23 sumer without charge, and at least 3 days prior to
24 the transaction closing date.

1 “(4) CONSUMER NOTIFICATION.—At the time
2 of the initial mortgage application, the consumer
3 shall be provided with a statement by the creditor
4 that any appraisal prepared for the mortgage is for
5 the sole use of the creditor, and that the consumer
6 may choose to have a separate appraisal conducted
7 at their own expense.

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

13 **SEC. 602. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
14 **RELATING TO CERTAIN CONSUMER CREDIT**
15 **TRANSACTIONS.**

16 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
17 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
18 after section 129D (as added by section 501(a)) the fol-
19 lowing new section:

20 **“SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
21 **RELATING TO CERTAIN CONSUMER CREDIT**
22 **TRANSACTIONS.**

23 “(a) IN GENERAL.—It shall be unlawful, in providing
24 any services for a consumer credit transaction secured by
25 the principal dwelling of the consumer, to engage in any

1 unfair or deceptive act or practice as described in or pur-
2 suant to regulations prescribed under this section.

3 “(b) APPRAISAL INDEPENDENCE.—For purposes of
4 subsection (a), unfair and deceptive practices shall in-
5 clude—

6 “(1) any appraisal of a property offered as se-
7 curity for repayment of the consumer credit trans-
8 action that is conducted in connection with such
9 transaction in which a person with an interest in the
10 underlying transaction compensates, coerces, extorts,
11 colludes, instructs, induces, bribes, or intimidates a
12 person conducting or involved in an appraisal, or at-
13 tempts, to compensate, coerce, extort, collude, in-
14 struct, induce, bribe, or intimidate such a person,
15 for the purpose of causing the appraised value as-
16 signed, under the appraisal, to the property to be
17 based on any factor other than the independent
18 judgment of the appraiser;

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

22 “(3) seeking to influence an appraiser or other-
23 wise to encourage a targeted value in order to facili-
24 tate the making or pricing of the transaction; and

1 “(4) failing to timely compensate an appraiser
2 for a completed appraisal regardless of whether the
3 transaction closes.

4 “(c) EXCEPTIONS.—The requirements of subsection
5 (b) shall not be construed as prohibiting a mortgage lend-
6 er, mortgage broker, mortgage banker, real estate broker,
7 appraisal management company, employee of an appraisal
8 management company, or any other person with an inter-
9 est in a real estate transaction from asking an appraiser
10 to provide 1 or more of the following services:

11 “(1) Consider additional, appropriate property
12 information, including the consideration of addi-
13 tional comparable properties to make or support an
14 appraisal.

15 “(2) Provide further detail, substantiation, or
16 explanation for the appraiser’s value conclusion.

17 “(3) Correct errors in the appraisal report.

18 “(d) RULEMAKING PROCEEDINGS.—The Board, the
19 Comptroller of the Currency, the Director of the Office
20 of Thrift Supervision, the Federal Deposit Insurance Cor-
21 poration, the National Credit Union Administration
22 Board, and the Federal Trade Commission—

23 “(1) shall, for purposes of this section, jointly
24 prescribe regulations defining with specificity acts or
25 practices which are unfair or deceptive in the provi-

1 sion of mortgage lending services for a consumer
2 credit transaction secured by the principal dwelling
3 of the consumer or mortgage brokerage services for
4 such a transaction and defining any terms in this
5 section or such regulations; and

6 “(2) may jointly issue interpretive guidelines
7 and general statements of policy with respect to un-
8 fair or deceptive acts or practices in the provision of
9 mortgage lending services for a consumer credit
10 transaction secured by the principal dwelling of the
11 consumer and mortgage brokerage services for such
12 a transaction, within the meaning of subsections (a),
13 (b), and (c).

14 “(e) PENALTIES.—

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

20 “(2) SUBSEQUENT VIOLATIONS.—In the case of
21 any person on whom a civil penalty has been im-
22 posed under paragraph (1), paragraph (1) shall be
23 applied by substituting ‘\$20,000’ for ‘\$10,000’ with
24 respect to all subsequent violations.

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

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for chapter 2 of the Truth in Lending Act is amended
8 by inserting after the item relating to section 129D (as
9 added by section 501(c)) the following new item:

 “129E. Unfair and deceptive practices and acts relating to certain consumer
 credit transactions.”.

10 **SEC. 603. AMENDMENTS RELATING TO APPRAISAL SUB-**
11 **COMMITTEE OF FIEC, APPRAISER INDEPEND-**
12 **ENCE, AND APPROVED APPRAISER EDU-**
13 **CATION.**

14 (a) CONSUMER PROTECTION MISSION.—

15 (1) PURPOSES.—Section 1101 of the Financial
16 Institutions Reform, Recovery, and Enforcement Act
17 of 1989 (12 U.S.C. 3331) is amended by inserting
18 “and to provide the Appraisal Subcommittee with a
19 consumer protection mandate” before the period at
20 the end.

21 (2) FUNCTIONS OF APPRAISAL SUB-
22 COMMITTEE.—Section 1103(a) of the Financial In-
23 stitutions Reform, Recovery, and Enforcement Act
24 of 1989 (12 U.S.C. 3332(a)) is amended—

1 (A) by striking “and” at the end of para-
2 graph (3);

3 (B) by striking the period at the end of
4 paragraph (4) and inserting “; and”; and

5 (C) by adding at the end the following new
6 paragraph:

7 “(5) protect the consumer from improper ap-
8 praisal practices and the predations of unlicensed
9 appraisers.”.

10 (3) THRESHOLD LEVELS.—Section 1112(b) of
11 the Financial Institutions Reform, Recovery, and
12 Enforcement Act of 1989 (12 U.S.C. 3341(b)) is
13 amended by inserting before the period the fol-
14 lowing: “, and that such threshold level provides rea-
15 sonable protection for consumers who purchase 1–4
16 unit single-family residences”.

17 (b) ANNUAL REPORT OF APPRAISAL SUB-
18 COMMITTEE.—Section 1103(a)(4) of Financial Institu-
19 tions Reform, Recovery, and Enforcement Act of 1989 (12
20 U.S.C. 3332(a)(4)) is amended at the end by inserting:
21 “The report shall also detail the activities of the Appraisal
22 Subcommittee, including the results of all audits of State
23 appraiser regulatory agencies, and provide an accounting
24 of disapproved actions and warnings taken in the previous

1 year, including a description of the conditions causing the
2 disapproval.”.

3 (c) OPEN MEETINGS.—Section 1104(b) of the Finan-
4 cial Institutions Reform, Recovery, and Enforcement Act
5 of 1989 (12 U.S.C. 3333(b)) is amended by inserting “in
6 public session after notice in the Federal Register” after
7 “shall meet”.

8 (d) REGULATIONS.—Section 1106 of the Financial
9 Institutions Reform, Recovery, and Enforcement Act of
10 1989 (12 U.S.C. 3335) is amended—

11 (1) by inserting “prescribe regulations after no-
12 tice and opportunity for comment,” after “hold
13 hearings”; and

14 (2) at the end by inserting “Any regulations
15 prescribed by the Appraisal Subcommittee shall (un-
16 less otherwise provided in this title) be limited to the
17 following functions: temporary practice, national reg-
18 istry, information sharing, and enforcement. For
19 purposes of prescribing regulations, the Appraisal
20 Subcommittee shall establish an advisory committee
21 of industry participants, including appraisers and
22 government agencies, and hold regular meetings.”.

23 (e) FIELD APPRAISALS AND APPRAISAL REVIEWS.—
24 Section 1113 of the Financial Institutions Reform, Recov-

1 ery, and Enforcement Act of 1989 (12 U.S.C. 3342) is
2 amended—

3 (1) by striking “In determining” and inserting
4 “(a) IN GENERAL.—In determining”; and

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

7 “(b) FIELD APPRAISALS AND APPRAISAL RE-
8 VIEWS.—All field appraisals performed at a property with-
9 in a State shall be prepared by appraisers licensed in the
10 State where the property is located. All Uniform Stand-
11 ards of Professional Appraisal Practice-compliant ap-
12 praisal reviews shall be performed by an appraiser who
13 is duly licensed by a State appraisal board.”.

14 (f) STATE AGENCY REPORTING REQUIREMENT.—
15 Section 1109(a) of the Financial Institutions Reform, Re-
16 covery, and Enforcement Act of 1989 (12 U.S.C. 3338(a))
17 is amended—

18 (1) by striking “and” after the semicolon in
19 paragraph (1);

20 (2) by redesignating paragraph (2) as para-
21 graph (3); and

22 (3) by inserting after paragraph (1) the fol-
23 lowing new paragraph:

24 “(2) transmit reports on sanctions, disciplinary
25 actions, license and certification revocations, and li-

1 cense and certification suspensions on a timely basis
2 to the national registry of the Appraisal Sub-
3 committee; and”.

4 (g) REGISTRY FEES MODIFIED.—Section 1109(a)(3)
5 of the Financial Institutions Reform, Recovery, and En-
6 forcement Act of 1989 (12 U.S.C. 3338(a)(3)) (as modi-
7 fied by section 203(e) of this Act) is amended by—

8 (1) striking “\$25” and inserting “\$40”;

9 (2) striking “\$50” and inserting “\$80”; and

10 (3) inserting after the period at the end the fol-
11 lowing new sentences: “The Appraisal Subcommittee
12 shall consider at least once every 5 years whether to
13 adjust the dollar amount of the registry fees to ac-
14 count for inflation. In implementing any change in
15 registry fees, the Appraisal Subcommittee shall pro-
16 vide flexibility to the States for multi-year certifi-
17 cations and licenses already in place, as well as a
18 transition period to implement the changes in reg-
19 istry fees.”

20 (h) GRANTS AND REPORTS.—Section 1109(b) of the
21 Financial Institutions Reform, Recovery, and Enforce-
22 ment Act of 1989 (12 U.S.C. 3348(b)) is amended—

23 (1) by striking “and” after the semicolon in
24 paragraph (3);

1 (2) by striking the period at the end of para-
2 graph (4) and inserting a semicolon; and

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

5 “(5) make grants to State appraiser regulatory
6 agencies to help defray those costs relating to en-
7 forcement activities; and

8 “(6) to report to all State appraiser certifying
9 and licensing agencies when a license or certification
10 is surrendered, revoked, or suspended.”.

11 (i) CRITERIA.—Section 1116 of the Financial Institu-
12 tions Reform, Recovery, and Enforcement Act of 1989 (12
13 U.S.C. 3345) is amended—

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

20 (2) by striking subsection (e) and inserting the
21 following new subsection:

22 “(e) MINIMUM QUALIFICATION REQUIREMENTS.—
23 Any requirements established for individuals in the posi-
24 tion of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’
25 shall meet or exceed the minimum qualification require-

1 ments of the Appraiser Qualifications Board of The Ap-
2 praisal Foundation. The Appraisal Subcommittee shall
3 have the authority to enforce these requirements.”.

4 (j) MONITORING OF STATE APPRAISER CERTIFYING
5 AND LICENSING AGENCIES.—Section 1118(a) of the Fi-
6 nancial Institutions Reform, Recovery, and Enforcement
7 Act of 1989 (12 U.S.C. 3347(a)) is amended—

8 (1) by inserting “funding, staffing,” after
9 “practices,” each place such term appears;

10 (2) by inserting before the period at the end of
11 the first sentence the following: “, whether a State
12 agency processes complaints and completes exams in
13 a reasonable time period, and whether a State agen-
14 cy reports claims and disciplinary actions on a time-
15 ly basis to the national registry maintained by the
16 Appraisal Subcommittee”; and

17 (3) by inserting at the end the following new
18 sentence: “The Appraisal Subcommittee shall have
19 the authority to impose interim sanctions and sus-
20 pensions.”.

21 (k) RECIPROCITY.—Subsection (b) of section 1122 of
22 the Financial Institutions Reform, Recovery, and Enforce-
23 ment Act of 1989 (12 U.S.C. 3351(b)) is amended to read
24 as follows:

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

4 “(1) the appraiser licensing and certification
5 program of such other State is in compliance with
6 the provisions of this title; and

7 “(2) the appraiser holds a valid certification
8 from a State whose requirements for certification or
9 licensing meet or exceed the licensure standards es-
10 tablished by the State where an individual seeks ap-
11 praisal licensure.”.

12 (l) CONSIDERATION OF PROFESSIONAL APPRAISAL
13 DESIGNATIONS.—Section 1122(d) of the Financial Insti-
14 tutions Reform, Recovery, and Enforcement Act of 1989
15 (12 U.S.C. 3351(d)) is amended by adding at the end the
16 following new sentence: “No provision of this subsection
17 shall be construed as prohibiting consideration of designa-
18 tions conferred by recognized national professional ap-
19 praisal organizations, such as sponsoring organizations of
20 The Appraisal Foundation.”.

21 (m) APPRAISER INDEPENDENCE.—Section 1122 of
22 the Financial Institutions Reform, Recovery, and Enforce-
23 ment Act of 1989 (12 U.S.C. 3351) is amended by adding
24 at the end the following new subsection:

25 “(g) APPRAISER INDEPENDENCE.—

1 “(1) PROHIBITIONS ON INTERESTED PARTIES
2 IN A REAL ESTATE TRANSACTION.—No mortgage
3 lender, mortgage broker, mortgage banker, real es-
4 tate broker, appraisal management company, em-
5 ployee of an appraisal management company, or any
6 other person with an interest in a real estate trans-
7 action involving an appraisal shall improperly influ-
8 ence, or attempt to improperly influence, through co-
9 ercion, extortion, collusion, compensation, instruc-
10 tion, inducement, intimidation, non-payment for
11 services rendered, or bribery, the development, re-
12 porting, result, or review of a real estate appraisal
13 sought in connection with a mortgage loan.

14 “(2) EXCEPTIONS.—The requirements of para-
15 graph (1) shall not be construed as prohibiting a
16 mortgage lender, mortgage broker, mortgage banker,
17 real estate broker, appraisal management company,
18 employee of an appraisal management company, or
19 any other person with an interest in a real estate
20 transaction from asking an appraiser to provide 1 or
21 more of the following services:

22 “(A) Consider additional, appropriate
23 property information, including the consider-
24 ation of additional comparable properties to
25 make or support an appraisal.

1 “(B) Provide further detail, substantiation,
2 or explanation for the appraiser’s value conclu-
3 sion.

4 “(C) Correct errors in the appraisal report.

5 “(3) PROHIBITIONS ON CONFLICTS OF INTER-
6 EST.—No certified or licensed appraiser conducting
7 an appraisal may have a direct or indirect interest,
8 financial or otherwise, in the property or transaction
9 involving the appraisal.

10 “(4) MANDATORY REPORTING.—Any mortgage
11 lender, mortgage broker, mortgage banker, real es-
12 tate broker, appraisal management company, em-
13 ployee of an appraisal management company, or any
14 other person with an interest in a real estate trans-
15 action involving an appraisal who has a reasonable
16 basis to believe an appraiser is violating applicable
17 laws, or is otherwise engaging in unethical or unpro-
18 fessional conduct, shall refer the matter to the appli-
19 cable State appraiser certifying and licensing agen-
20 cy.

21 “(5) REGULATIONS.—The Federal financial in-
22 stitutions regulatory agencies (as defined in section
23 1003(1) of the Federal Financial Institutions Exam-
24 ination Council Act of 1978) shall prescribe such

1 regulations as may be necessary to carry out the
2 provisions of this subsection.

3 “(6) PENALTIES.—Any person who violates any
4 provision of this section shall be subject to civil pen-
5 alties under section 8(i)(2) of the Federal Deposit
6 Insurance Act or section 206(k)(2) of the Federal
7 Credit Union Act, as appropriate.

8 “(7) PROCEEDING.—A proceeding with respect
9 to a violation of this section shall be an administra-
10 tive proceeding which may be conducted by a Fed-
11 eral financial institutions regulatory agency in ac-
12 cordance with the procedures set forth in subchapter
13 II of chapter 5 of title 5, United States Code.”.

14 (n) APPRAISER EDUCATION.—Section 1122 of the
15 Financial Institutions Reform, Recovery, and Enforce-
16 ment Act of 1989 (12 U.S.C. 3351) is amended by insert-
17 ing after subsection (g) (as added by subsection (l) of this
18 section) the following new subsection:

19 “(h) APPROVED EDUCATION.—The Appraisal Sub-
20 committee shall encourage the States to accept courses ap-
21 proved by the Appraiser Qualification Board’s Course Ap-
22 proval Program.”.

23 (o) TECHNICAL CORRECTIONS.—

24 (1) Section 1119(a)(2) of the Financial Institu-
25 tions Reform, Recovery, and Enforcement Act of

1 1989 (12 U.S.C. 3348(a)(2)) is amended by striking
2 “council,” and inserting “Council,”.

3 (2) Section 1121(6) of the Financial Institu-
4 tions Reform, Recovery, and Enforcement Act of
5 1989 (12 U.S.C. 3350(6)) is amended by striking
6 “Corporations,” and inserting “Corporation,”.

7 (3) Section 1121(8) of the Financial Institu-
8 tions Reform, Recovery, and Enforcement Act of
9 1989 (12 U.S.C. 3350(8)) is amended by striking
10 “council” and inserting “Council”.

11 (4) Section 1122 of the Financial Institutions
12 Reform, Recovery, and Enforcement Act of 1989
13 (12 U.S.C. 3351) is amended—

14 (A) in subsection (a)(1) by moving the left
15 margin of subparagraphs (A), (B), and (C) 2
16 ems to the right; and

17 (B) in subsection (c)—

18 (i) by striking “Federal Financial In-
19 stitutions Examination Council” and in-
20 serting “Financial Institutions Examina-
21 tion Council”; and

22 (ii) by striking “the council’s func-
23 tions” and inserting “the Council’s func-
24 tions”.

1 **SEC. 604. STUDY REQUIRED ON IMPROVEMENTS IN AP-**
2 **PRAISAL PROCESS AND COMPLIANCE PRO-**
3 **GRAMS.**

4 (a) **STUDY.**—The Comptroller General shall conduct
5 a comprehensive study on possible improvements in the
6 appraisal process generally, and specifically on the consist-
7 ency in and the effectiveness of, and possible improve-
8 ments in, State compliance efforts and programs in ac-
9 cordance with title XI of the Financial Institutions Re-
10 form, Recovery, and Enforcement Act of 1989. In addi-
11 tion, this study shall examine the existing de minimis loan
12 levels established by Federal regulators for compliance
13 under title XI and whether there is a need to revise them
14 to reflect the addition of consumer protection to the pur-
15 poses and functions of the Appraisal Subcommittee.

16 (b) **REPORT.**—Before the end of the 18-month period
17 beginning on the date of the enactment of this Act, the
18 Comptroller General shall submit a report on the study
19 under subsection (a) to the Committee on Financial Serv-
20 ices of the House of Representatives and the Committee
21 on Banking, Housing, and Urban Affairs of the Senate,
22 together with such recommendations for administrative or
23 legislative action, at the Federal or State level, as the
24 Comptroller General may determine to be appropriate.

1 **SEC. 605. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

2 Subsection (e) of section 701 of the Equal Credit Op-
3 portunity Act (U.S.C. 1691) is amended to read as fol-
4 lows:

5 “(e) COPIES FURNISHED TO APPLICANTS.—

6 “(1) IN GENERAL.—Each creditor shall furnish
7 to an applicant, a copy of all appraisal reports and
8 valuations developed in connection with the appli-
9 cant’s application for a loan that is or would have
10 been secured by a lien on residential real property.

11 “(2) PROCEDURES.—Appraisal reports shall be
12 furnished under this subsection upon written request
13 by the applicant, made within a reasonable period of
14 time of the application and before any closing on the
15 loan.

16 “(3) REIMBURSEMENT.—The creditor may re-
17 quire an applicant to pay a reasonable fee for the
18 provision of copies of appraisal reports under this
19 subsection.

20 “(4) NOTIFICATION TO CONSUMERS.—The
21 creditor shall notify (pursuant to regulations pre-
22 scribed by the Board) an applicant in writing of the
23 right to receive a copy of each appraisal report,
24 under this subsection.”.

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