

112TH CONGRESS  
1ST SESSION

# H. R. 1477

To require certain mortgagees to evaluate loans for modifications, to establish a grant program for State and local government mediation programs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2011

Mr. CUMMINGS (for himself, Mr. CLARKE of Michigan, Mr. MILLER of North Carolina, Mr. GEORGE MILLER of California, Mr. CLAY, Ms. BERKLEY, Ms. ESHOO, Ms. WOOLSEY, Mr. WELCH, Ms. SPEIER, Mr. GARAMENDI, Ms. BROWN of Florida, Ms. NORTON, Mr. TIERNEY, Mr. GRIJALVA, Mr. HINCHEY, Ms. EDWARDS, Mr. HOLT, Mr. CICILLINE, Ms. MOORE, Ms. SUTTON, Ms. SCHAKOWSKY, Mr. HASTINGS of Florida, and Mr. AL GREEN of Texas) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To require certain mortgagees to evaluate loans for modifications, to establish a grant program for State and local government mediation programs, 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.**

4 This Act may be cited as the “Preserving Homes and  
5 Communities Act of 2011”.

1 **SEC. 2. DEFINITION.**

2 In this Act, the term “Secretary” means the Sec-  
3 retary of Housing and Urban Development.

4 **SEC. 3. LOAN MODIFICATION REQUIREMENTS.**

5 (a) DEFINITIONS.—In this section—

6 (1) the term “covered mortgagee” means—

7 (A) an original lender under a federally re-  
8 lated mortgage loan;

9 (B) any servicer, affiliate, agent, sub-  
10 sidiary, successor, or assignee of a lender under  
11 a federally related mortgage loan; and

12 (C) any purchaser, trustee, or transferee of  
13 any mortgage or credit instrument issued by an  
14 original lender under a federally related mort-  
15 gage loan;

16 (2) the term “covered mortgagor”—

17 (A) means an individual—

18 (i) who—

19 (I) is a mortgagor under a feder-  
20 ally related mortgage loan—

21 (aa) made by a covered  
22 mortgagee; and

23 (bb) secured by the principal  
24 residence of the mortgagor; or

25 (II) is eligible to assume a feder-  
26 ally related mortgage loan described

1 in clause (I) in a manner described in  
2 paragraph (3), (5), (6), or (7) of sec-  
3 tion 341(d) of the Garn-St Germain  
4 Depository Institutions Act of 1982  
5 (12 U.S.C. 1701j-3(d)), if the prin-  
6 cipal residence of the individual is the  
7 principal residence securing the feder-  
8 ally related mortgage loan; and

9 (ii) who cannot make payments on a  
10 federally related mortgage loan due to fi-  
11 nancial hardship, as determined by the  
12 Secretary, in consultation with the Sec-  
13 retary of the Treasury and the Director of  
14 the Bureau of Consumer Financial Protec-  
15 tion; and

16 (B) does not include an individual who the  
17 Secretary, in consultation with the Secretary of  
18 the Treasury and the Director of the Bureau of  
19 Consumer Financial Protection, determines has  
20 abandoned the principal residence securing the  
21 federally related mortgage loan;

22 (3) the term “federally related mortgage loan”  
23 has the same meaning as in section 3 of the Real  
24 Estate Settlement Procedures Act of 1974 (12  
25 U.S.C. 2602);

1           (4) the term “home loan modification protocol”  
2 means a home loan modification protocol that—

3           (A) is developed under a home loan modi-  
4 fication program developed or put into effect by  
5 the Secretary of the Treasury, the Secretary, or  
6 the Director of the Bureau of Financial Protec-  
7 tion;

8           (B) includes principal reduction; and

9           (C) to the extent possible, in the case of  
10 real property on which there is a first lien and  
11 a subordinate lien securing a federally related  
12 mortgage loan, requires that any principal re-  
13 duction with respect to the first lien be accom-  
14 panied by a proportional principal reduction  
15 with respect to the subordinate lien;

16          (5) the term “qualified loan modification”  
17 means a modification to the terms of a mortgage  
18 agreement between a covered mortgagee and a cov-  
19 ered mortgagor that—

20           (A) is made pursuant to a determination  
21 by the covered mortgagee using a home loan  
22 modification protocol that a modification  
23 would—

24           (i) produce a greater net present value  
25 than not modifying the loan to—

1 (I) the covered mortgagee; or  
2 (II) in the aggregate, all persons  
3 that hold an interest in the mortgage  
4 agreement; and

5 (ii) produce mortgage payments that,  
6 at a minimum, are reduced to an afford-  
7 able and sustainable amount, based on a  
8 debt-to-income ratio that takes into ac-  
9 count the total housing debt and gross  
10 household income of the covered mort-  
11 gator;

12 (B) applies for the remaining term of the  
13 original mortgage agreement, prior to modifica-  
14 tion or amendment; and

15 (C) permits the maximum amount of prin-  
16 cipal reduction that produces a greater net  
17 present value than foreclosure to the persons  
18 described in subparagraph (A)(i); and

19 (6) the term “State” means any State of the  
20 United States, the District of Columbia, any terri-  
21 tory of the United States, Puerto Rico, Guam,  
22 American Samoa, the Trust Territory of the Pacific  
23 Islands, the Virgin Islands, and the Northern Mar-  
24 iana Islands.

25 (b) LOAN MODIFICATION PROCEDURES.—

1           (1) INITIATION OF FORECLOSURE.—A covered  
2 mortgagee may not initiate a nonjudicial foreclosure  
3 or a judicial foreclosure against a covered mortgagor  
4 that is otherwise authorized under State law un-  
5 less—

6           (A) the covered mortgagee has used its  
7 best efforts to determine whether the covered  
8 mortgagor is eligible for a qualified loan modi-  
9 fication;

10          (B) in the case of a covered mortgagor  
11 who the covered mortgagee determines is eligi-  
12 ble for a qualified loan modification, the covered  
13 mortgagee has used its best efforts to promptly  
14 offer a qualified loan modification to the cov-  
15 ered mortgagor; and

16          (C) in the case of a covered mortgagor who  
17 the covered mortgagee determines is not eligible  
18 for a qualified loan modification, the covered  
19 mortgagee has made available to the covered  
20 mortgagor documentation of—

21           (i) a loan modification calculation or  
22 net present value calculation, including the  
23 information necessary to verify and evalu-  
24 ate the calculation, made by the covered  
25 mortgagee in relation to the federally re-

1           lated mortgage using a home loan modi-  
2           fication protocol;

3           (ii) the loan origination, including any  
4           note, deed of trust, or other document nec-  
5           essary to establish the right of the mort-  
6           gagee to foreclose on the mortgage, includ-  
7           ing proof of assignment of the mortgage to  
8           the mortgagee and the right of the mort-  
9           gagee to enforce the relevant note under  
10          the law of the State in which the real prop-  
11          erty securing the mortgage is located;

12          (iii) any pooling and servicing agree-  
13          ment that the covered mortgagee believes  
14          prohibits a qualified loan modification;

15          (iv) the payment history of the cov-  
16          ered mortgagor and a detailed accounting  
17          of any costs or fees associated with the ac-  
18          count of the covered mortgagor; and

19          (v) the specific alternatives to fore-  
20          closure considered by the covered mort-  
21          gagee, including qualified loan modifica-  
22          tions, workout agreements, and short sales.

23          (2) FORECLOSURE IN PROGRESS.—If a covered  
24          mortgagee initiated a nonjudicial foreclosure or a ju-  
25          dicial foreclosure proceeding against a covered mort-

1       gagor before the date of enactment of this Act, the  
2       covered mortgagee—

3               (A) shall use its best efforts to take all  
4       steps necessary to—

5                       (i) suspend the foreclosure or fore-  
6       closure proceeding, as permitted under the  
7       law of the State in which the real property  
8       securing the federally related mortgage  
9       loan is located, including the cancellation  
10      of any sale date that has been scheduled  
11     with respect to the real property securing  
12     the federally related mortgage loan; and

13                      (ii) toll any deadlines limiting the  
14     rights of the covered mortgagor, whether  
15     imposed by statute, scheduling order, or  
16     otherwise, until the covered mortgagee has  
17     complied with the requirements under this  
18     section; and

19               (B) may not—

20                      (i) conduct or schedule a sale of the  
21     real property securing the federally related  
22     mortgage loan; or

23                      (ii) cause judgment to be entered  
24     against the covered mortgagor.

1           (3) REEVALUATION OF APPLICATION FOR  
2 QUALIFIED LOAN MODIFICATION.—If, after receiving  
3 information under paragraph (1)(C), a covered  
4 mortgagor is able to demonstrate that the covered  
5 mortgagor is eligible for a qualified loan modifica-  
6 tion, the covered mortgagee shall—

7           (A) promptly reevaluate the application by  
8 the covered mortgagor for a qualified loan  
9 modification; and

10          (B) if the covered mortgagor is eligible,  
11 offer the covered mortgagor a qualified loan  
12 modification.

13           (4) DISPUTE RESOLUTION.—Not later than 90  
14 days after the date of enactment of this Act, the  
15 Secretary of the Treasury, the Secretary, and the  
16 Director of the Bureau of Financial Protection shall  
17 ensure that any home loan modification protocol es-  
18 tablished by the Secretary of the Treasury, the Sec-  
19 retary, or the Director of the Bureau of Financial  
20 Protection, respectively, includes a procedure with a  
21 neutral third party to resolve disputes between cov-  
22 ered mortgagors and covered mortgagees regarding  
23 applications for qualified loan modifications.

24           (5) NO WAIVER OF RIGHTS.—A covered mort-  
25 gagee may not require a covered mortgagor to waive

1 any right of the covered mortgagor as a condition of  
2 making a qualified loan modification.

3 (6) CERTIFICATION REQUIRED PRIOR TO SALE  
4 OF REAL PROPERTY SECURING MORTGAGE.—

5 (A) CERTIFICATION.—A covered mort-  
6 gagee shall submit to the appropriate State en-  
7 tity in the State in which the real property se-  
8 curing a federally related mortgage loan is lo-  
9 cated a certification that the covered mortgagee  
10 has complied with all requirements of this sec-  
11 tion, before—

12 (i) the covered mortgagee may sell the  
13 real property; or

14 (ii) a purchaser at sale may file an ac-  
15 tion to recover possession of the real prop-  
16 erty.

17 (B) RECORDATION OF DEED PROHIBITED  
18 WITHOUT CERTIFICATION.—The government of-  
19 ficial responsible for recording deeds and other  
20 transfers of real property in a jurisdiction may  
21 not permit the recordation of a deed transfer-  
22 ring title after a foreclosure relating to a feder-  
23 ally related mortgage loan in the jurisdiction  
24 unless the government official certifies that—

1 (i) the person conducting the sale has  
2 demonstrated that the requirements of this  
3 subsection have been met with respect to  
4 the federally related mortgage loan; or

5 (ii) the requirements of this sub-  
6 section do not apply to the federally re-  
7 lated mortgage loan.

8 (C) VOIDING OF SALE.—A sale of property  
9 in violation of this subsection is void.

10 (D) REGULATIONS.—The Secretary, in  
11 consultation with the Secretary of the Treasury  
12 and Director of the Bureau of Consumer Fi-  
13 nancial Protection, shall issue regulations estab-  
14 lishing the content of the certification under  
15 this subparagraph.

16 (7) BAR TO FORECLOSURE.—Failure to comply  
17 with this subsection is a bar to foreclosure under the  
18 applicable law of a State.

19 (8) RULE OF CONSTRUCTION.—Nothing in this  
20 subsection may be construed to prevent a covered  
21 mortgagee from offering or making a loan modifica-  
22 tion with a lower payment, lower interest rate, or  
23 principal reduction beyond that required by a modi-  
24 fication made using a home loan modification pro-  
25 tocol with respect to a covered mortgagor.

1 (c) FEES PROHIBITED.—

2 (1) LOAN MODIFICATION FEES PROHIBITED.—

3 A covered mortgagee may not charge a fee to a cov-  
4 ered mortgagor for carrying out the requirements  
5 under subsection (b).

6 (2) FORECLOSURE-RELATED FEES.—

7 (A) IN GENERAL.—Except as provided in  
8 subparagraph (B) and (C), a covered mortgagee  
9 may not charge a foreclosure-related fee to a  
10 covered mortgagor before—

11 (i) the covered mortgagee has made a  
12 determination under subsection (b)(1); and

13 (ii) the mortgage has entered the fore-  
14 closure process.

15 (B) DELINQUENCY FEES.—A covered  
16 mortgagee may charge 1 delinquency fee for  
17 each late payment by a covered mortgagor, if  
18 the fee is specified by the mortgage agreement  
19 and permitted by other applicable Federal and  
20 State law. A delinquency fee may be collected  
21 only once on an installment however long it re-  
22 mains in default.

23 (C) OTHER FEES.—A covered mortgagee  
24 may charge a covered mortgagor 1 property

1 valuation fee and 1 title search fee in connec-  
2 tion with a foreclosure.

3 (3) FEES NOT IN CONTRACT.—A covered mort-  
4 gagee may charge a fee to a covered mortgagor only  
5 if—

6 (A) the fee was specified by the mortgage  
7 agreement before a modification or amendment;  
8 and

9 (B) the fee is otherwise permitted under  
10 this subsection.

11 (4) FEES FOR EXPENSES INCURRED.—

12 (A) IN GENERAL.—A covered mortgagee  
13 may charge a fee to a covered mortgagor only—

14 (i) for services actually performed by  
15 the covered mortgagee or a third party in  
16 relation to the mortgage agreement, before  
17 a modification or amendment; and

18 (ii) if the fee is reasonably related to  
19 the actual cost of providing the service.

20 (B) HOME PRESERVATION SERVICES.—A  
21 covered mortgagee may charge a fee to a cov-  
22 ered mortgagor for home preservation services,  
23 only if the covered mortgagor has not submitted  
24 a payment under the federally related mortgage

1 during the 60-day period ending on the date the  
2 fee is charged.

3 (5) FORCEPLACED INSURANCE.—

4 (A) FEE PERMITTED.—If a home insur-  
5 ance policy on the real property securing a fed-  
6 erally related mortgage loan lapses due to the  
7 failure of a covered mortgagor to make a pay-  
8 ment, a covered mortgagee may charge the cov-  
9 ered mortgagor a fee in an amount equal to the  
10 actual cost of continuing or re-establishing the  
11 home insurance policy on the same terms in ef-  
12 fect before the lapse.

13 (B) RECOVERY OF FEE.—A covered mort-  
14 gagee may recover the fee described in subpara-  
15 graph (A)—

16 (i) by establishing an escrow account  
17 in accordance with section 10 of the Real  
18 Estate Settlement Procedures Act of 1974  
19 (12 U.S.C. 2609); or

20 (ii) in equal monthly amounts during  
21 one 12-month period.

22 (6) PENALTY.—The Director of the Bureau of  
23 Consumer Financial Protection shall collect from  
24 any covered mortgagee that charges a fee in viola-

1       tion of this subsection an amount equal to \$6,000  
2       for each such fee.

3       (d) REGULATIONS.—Not later than 3 months after  
4 the date of enactment of this Act, the Secretary, in con-  
5 sultation with the Secretary of the Treasury and the Di-  
6 rector of the Bureau of Consumer Financial Protection,  
7 shall issue by notice any requirements to carry out this  
8 section. The Secretary shall subsequently issue, after no-  
9 tice and comment, final regulations to carry out this sec-  
10 tion.

11       (e) BUREAU OF CONSUMER FINANCIAL PROTECTION  
12 HOME LOAN MODIFICATION PROTOCOL.—Not later than  
13 90 days after the date of enactment of this Act, the Direc-  
14 tor of the Bureau of Consumer Financial Protection shall  
15 develop a home loan modification protocol.

16       (f) TREASURY AND HUD HOME LOAN MODIFICA-  
17 TION PROTOCOLS.—Not later than 90 days after the date  
18 of enactment of this Act, the Secretary of the Treasury  
19 and the Secretary shall make any changes to the home  
20 loan modification protocol of the Secretary of the Treasury  
21 and the Secretary, respectively, that are necessary to carry  
22 out this Act.

23 **SEC. 4. MEDIATION INITIATIVES.**

24       (a) DEFINITIONS.—In this section—

1           (1) the term “mortgagee” includes the agent of  
2 a mortgagee; and

3           (2) the term “mediation” means a process in  
4 which a neutral third party presides over discussions  
5 between mortgagors and mortgagees to review and  
6 discuss available loss mitigation options in order to  
7 avoid foreclosure.

8           (b) GRANT PROGRAM ESTABLISHED.—The Secretary  
9 shall establish a grant program to make competitive  
10 grants to State and local governments to establish medi-  
11 ation programs that assist mortgagors facing foreclosure.

12           (c) MEDIATION PROGRAMS.—A mediation program  
13 established using a grant under this section shall—

14           (1) require participation in the program by—

15                   (A) any mortgagee that seeks to initiate or  
16 has initiated a judicial or nonjudicial fore-  
17 closure; and

18                   (B) any mortgagor who is subject to a ju-  
19 dicial or nonjudicial foreclosure;

20           (2) require that a representative of the mort-  
21 gagee who has authority to decide on loss mitigation  
22 options (including loan modification) participate, in  
23 person, in scheduled sessions;

24           (3) require any mortgagee or mortgagor re-  
25 quired to participate in the program to make a good

1 faith effort to resolve promptly, through mediation,  
2 issues relating to the default on the mortgage;

3 (4) if mediation is not made available to the  
4 mortgagor before a foreclosure proceeding is initi-  
5 ated, allow the mortgagor to request mediation at  
6 any time before a foreclosure sale;

7 (5) provide that any proceeding to foreclose  
8 that is initiated by the mortgagee shall be stayed  
9 until the mediator has issued a written certification  
10 that the mortgagee complied in good faith with its  
11 obligations under the mediation program established  
12 under this section;

13 (6) provide for—

14 (A) supervision by a State court (or a  
15 State court in conjunction with an agency or  
16 department of a State or local government) of  
17 the mediation program;

18 (B) selection and training of neutral, third-  
19 party mediators by a State court (or an agency  
20 or department of the State or local govern-  
21 ment);

22 (C) penalties to be imposed by a State  
23 court, or an agency or department of a State or  
24 local government, if a mortgagee fails to comply  
25 with an order to participate in mediation; and

1 (D) consideration by a State court (or an  
2 agency or department of a State or local gov-  
3 ernment) of recommendations by a mediator re-  
4 lating to penalties for failure to fulfill the re-  
5 quirements of the mediation program;

6 (7) require that each mortgagee that partici-  
7 pates in the mediation program make available to  
8 the mortgagor, before and during participation in  
9 the mediation program, documentation of—

10 (A) a loan modification calculation or net  
11 present value calculation, including the informa-  
12 tion necessary to verify and evaluate the cal-  
13 culation, made by the mortgagee in relation to  
14 the mortgage using a home loan modification  
15 protocol;

16 (B) the loan origination, including any  
17 note, deed of trust, or other document nec-  
18 essary to establish the right of the mortgagee to  
19 foreclose on the mortgage, including proof of  
20 assignment of the mortgage to the mortgagee  
21 and the right of the mortgagee to enforce the  
22 relevant note under the law of the State in  
23 which the real property securing the mortgage  
24 is located;

1 (C) any pooling and servicing agreement  
2 that the mortgagee believes prohibits a loan  
3 modification;

4 (D) the payment history of the mortgagor  
5 and a detailed accounting of any costs or fees  
6 associated with the account of the mortgagor;  
7 and

8 (E) the specific alternatives to foreclosure  
9 considered by the mortgagee, including loan  
10 modifications, workout agreements, and short  
11 sales;

12 (8) prohibit a mortgagee from shifting the costs  
13 of participation in the mediation program, including  
14 the attorney's fees of the mortgagee, to a mortgagor;

15 (9) provide that—

16 (A) any holder of a junior lien against the  
17 property that secures a mortgage that is the  
18 subject of a mediation—

19 (i) be notified of the mediation; and

20 (ii) be permitted to participate in the  
21 mediation; and

22 (B) any proceeding initiated by a holder of  
23 a junior lien against the property that secures  
24 a mortgage that is the subject of a mediation  
25 be stayed pending the mediation;

1           (10) provide information to mortgagors about  
2           housing counselors approved by the Secretary; and

3           (11) be free of charge to the mortgagor and  
4           mortgagee.

5           (d) RECORDKEEPING.—A State or local government  
6           that receives a grant under this section shall keep a record  
7           of the outcome of each mediation carried out under the  
8           mediation program, including the nature of any loan modi-  
9           fication made as a result of participation in the mediation  
10          program.

11          (e) TARGETING.—A State that receives a grant under  
12          this section may establish—

13                 (1) a statewide mediation program; or

14                 (2) a mediation program in a specific locality  
15                 that the State determines has a high need for such  
16                 program due to—

17                         (A) the number of foreclosures in the local-  
18                         ity; or

19                         (B) other characteristics of the locality  
20                         that contribute to the number of foreclosures in  
21                         the locality.

22          (f) FEDERAL SHARE.—The Federal share of the cost  
23          of a mediation program established using a grant under  
24          this section may not exceed 50 percent.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to carry out this section  
3 such sums as may be necessary for each of fiscal years  
4 2011 through 2014.

5 **SEC. 5. OVERSIGHT OF PUBLIC AND PRIVATE EFFORTS TO**  
6 **REDUCE MORTGAGE DEFAULTS AND FORE-**  
7 **CLOSURES.**

8 (a) DEFINITIONS.—In this section—

9 (1) the term “heads of appropriate agencies”  
10 means the Comptroller of the Currency, the Board  
11 of Governors of the Federal Reserve System, the  
12 Federal Deposit Insurance Corporation, the National  
13 Credit Union Administration, the Director of the  
14 Bureau of Consumer Financial Protection, the Di-  
15 rector of the Office of Financial Research of the De-  
16 partment of the Treasury, and a representative of  
17 State banking regulators selected by the Secretary;

18 (2) the term “mortgagee” means—

19 (A) an original lender under a mortgage;

20 (B) any servicers, affiliates, agents, sub-  
21 sidiaries, successors, or assignees of an original  
22 lender; and

23 (C) any subsequent purchaser, trustee, or  
24 transferee of any mortgage or credit instrument  
25 issued by an original lender; and

1           (3) the term “servicer” means any person who  
2           collects on a home loan, whether such person is the  
3           owner, the holder, the assignee, the nominee for the  
4           loan, or the beneficiary of a trust, or any person act-  
5           ing on behalf of such person.

6           (b) MONITORING OF HOME LOANS.—

7           (1) IN GENERAL.—The Secretary, in consulta-  
8           tion with the heads of appropriate agencies, shall de-  
9           velop and implement a plan to monitor—

10                   (A) conditions and trends in homeownership and the mortgage industry, in order to pre-  
11                   dict trends in foreclosures to better understand  
12                   other critical aspects of the mortgage market;  
13                   and  
14                   

15                   (B) the effectiveness of public and private  
16                   efforts to reduce mortgage defaults and fore-  
17                   closures.

18           (2) REPORT TO CONGRESS.—Not later than 1  
19           year after the development of the plan under para-  
20           graph (1), and each year thereafter, the Secretary  
21           shall submit a report to Congress that—

22                   (A) summarizes and describes the findings  
23                   of the monitoring required under paragraph  
24                   (1); and

1 (B) includes recommendations or proposals  
2 for legislative or administrative action nec-  
3 essary—

4 (i) to increase the authority of the  
5 heads of appropriate agencies to levy pen-  
6 alties against any mortgagee, or other per-  
7 son or entity, who fails to comply with the  
8 requirements described in this section;

9 (ii) to improve coordination between  
10 public and private initiatives to reduce the  
11 overall rate of mortgage defaults and fore-  
12 closures; and

13 (iii) to improve coordination between  
14 initiatives undertaken by Federal, State,  
15 and local governments.

16 **SEC. 6. HOUSING TRUST FUND.**

17 From funds received or to be received by the Sec-  
18 retary of the Treasury from the sale of warrants under  
19 title I of the Emergency Economic Stabilization Act of  
20 2008 (12 U.S.C. 5211 et seq.), the Secretary of the Treas-  
21 ury shall transfer and credit \$1,000,000,000 to the Hous-  
22 ing Trust Fund established under section 1338 of the  
23 Federal Housing Enterprises Financial Safety and Sound-

1 ness Act of 1992 (12 U.S.C. 4568) for use in accordance  
2 with such section.

○