CONGRESSIONAL RECORD — HOUSE
H5325
May 7, 2009

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assem-
bled, SECTION 1. SHORT TITLE; TABLE OF CONTENTS. (a) SHORT TITLE—This Act may be cited as the “Mortgage Reform and Anti-Predatory Lending Act”.
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 101. Definitions.
Sec. 102. Residential mortgage loan origination.
Sec. 103. Prohibition on steering incentives.
Sec. 104. Liabilities.
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Sec. 605. Equal Credit Opportunity Act amend-
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TITLE VII—SENSE OF CONGRESS REGARD-
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Sec. 701. Sense of Congress regarding the impor-
tance of Government-sponsored enterprises reform to enhance the protection, limitation, and regula-
tion of the terms of residential mortgage credit.

TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION STANDARDS

SEC. 101. DEFINITIONS.
"(1) COMMISSION.—Unless otherwise specified, the term ‘Commission’ means the Federal Trade Commission.

"(2) FEDERAL BANKING AGENCIES.—The term ‘Federal banking agencies’ means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.

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

"(A) means any person who, for direct or indirect compensation or gain, or in the expecta-
tion of direct or indirect compensation or gain—

"(i) performs services on behalf of a consumer in obtaining a residential mortgage loan; or

"(ii) offers or negotiates terms of a residential mortgage loan; or

"(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (in-
cluding the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

"(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is des-
cribed in any such subparagraph, or (ii) an em-
ployee of a retailer of manufactured homes who is not described in clause (i) or (iii) of para-
graph (A);

"(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or enti-
ty is compensated for performing such brokerage activities by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator; and
"(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 1 property in any 36-month period, provided that such loan—

"(i) is fully amortizing;

"(ii) is with respect to a sale for which the seller is determined in good faith and by the underwriters that the buyer has a reasonable ability to repay the loan;

"(iii) is a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

"(iv) meets any other criteria the Federal banking agencies prescribe.

"(4) NATIONWIDE MORTGAGE LENDING SYSTEM AND REGISTRY.—The term ‘Nationwide Mortgage Lending System and Registry’ has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

"(5) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.—For purposes of this subsection, a person ‘assists a consumer in obtaining or applying to obtain a residential mortgage loan’ by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

"(6) RESIDENTIAL MORTGAGE LOAN.—The term ‘residential mortgage loan’ means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consummated security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or a reverse mortgage or, for purposes of sections 129B and 129C and section 128(a)(16), (17), (18), (128a)(f) and (128b)(4) and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(s)(2) of title 11, United States Code.

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

"(8) SECURITIZATION VEHICLE.—The term ‘securitization vehicle’ means a trust, corporation, partnership, limited liability entity, special purpose entity, or other similar entity for purposes of the sale of or other similar securities backed by a pool of assets, that is or is created by the issuer, or is created by the issuer, for purposes of sections 129B and 129C and section 128a, as (f) and (128b)(4) and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(s)(2) of title 11, United States Code.

"(9) SECURITIZER.—The term ‘securitizer’ means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, residential mortgage loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans solely for the benefit of the securitization vehicle.

"(10) SERVICER.—The term ‘servicer’ has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.

SEC. 102. RESIDENTIAL MORTGAGE LOAN ORIGINATION.

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

"§ 129B. Residential mortgage loan origination.

"(a) FINDING AND PURPOSE.—The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices of mortgage originators and servicers that responsible, affordable mortgage credit remains available to consumers.

"(2) PURPOSE.—It is the purpose of this section and section 129C to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans, are understandable and not unfair, deceptive or abusive.

"(b) DUTY OF CARE.—

"(1) STANDARD.—Subject to regulations prescribed in subsection (c), each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

"(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Fair Enforcement for Mortgage Licensing Act of 2008;

"(B) with respect to each consumer seeking or inquiring about a residential mortgage loan, prepare and present the consumer with a range of residential mortgage loan products for which the consumer likely qualifies and which are appropriate to the consumer’s existing circumstances, based on information known by, or obtained in good faith by, the originator;

"(C) make full, complete, and timely disclosure to each such consumer of—

"(i) the comparative costs and benefits of each residential mortgage loan product offered, discussed, or referred to by the originator;

"(ii) the nature of the originator’s relationship to the consumer (including the cost of services to be provided by the originator and a statement that the mortgage originator is or is not acting as an agent for the consumer, as the case may be);

"(iii) any relevant conflicts of interest between the originator and the consumer;

"(D) certify to the creditor, with respect to any transaction involving a residential mortgage loan, that the mortgage originator has fulfilled all requirements applicable to the originator under this section with respect to the transaction;

"(E) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

"(2) CLARIFICATION OF EXTENT OF DUTY TO PRESENT RANGE OF PRODUCTS AND APPROPRIATE PRODUCTS.

"(A) NO DUTY TO OFFER PRODUCTS FOR WHICH ORIGINATOR IS NOT AUTHORIZED TO TAKE AN APPOINTMENT.—Paragraph (1)(B) shall not be construed as requiring that—

"(i) a mortgage originator to present to any consumer any specific residential mortgage loan product that is offered by a creditor which does not accept consumer referrals from, or consumer credit applications submitted by or through, such originator; or

"(ii) a creditor to offer products that the creditor does not offer to the general public.

"(B) APPROPRIATE LOAN PRODUCT.—For purposes of paragraph (1)(B), a residential mortgage loan shall be presumed to be appropriate for a consumer if—

"(i) the mortgage originator determines in good faith, based on then existing information and without undergoing a full underwriting process, that the consumer has a reasonable ability to repay and, in the case of a refinancing of an existing residential mortgage loan, receives a net tangible benefit, as determined in accordance with regulations prescribed under subsections (a) and (b) of section 129C; and

"(ii) the loan does not have predatory characteristics or effects (such as equity stripping and excessive fees and abusive terms) as determined in accordance with regulations prescribed under paragraph (c).

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

"(A) creating an agency or fiduciary relationship between the mortgage originator and a consumer if the originator does not hold himself or herself out as such an agent or fiduciary; or

"(B) restricting a mortgage originator from holding himself or herself out as an agent or fiduciary of a consumer subject to any additional duty, requirement, or limitation applicable to agents or fiduciaries under any Federal or State law.

"(4) REGULATIONS.—

"(A) IN GENERAL.—The Federal banking agencies shall jointly prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 129 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

"(B) COMPLEMENTARY AND NONDUPLICATIVE DISCLOSURES.—The agencies referred to in subparagraph (A) shall endeavor to make the required disclosures to consumers under this subsection complementary and noncumulative with other disclosures for mortgage consumers to the extent such disclosures—

"(i) are practicable; and

"(ii) do not reduce the value of any such disclosure to recipients of such disclosures.

"(5) COMPLIANCE PROCEDURES REQUIRED.—The Federal banking agencies shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 129 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

"(6) CLERICAL AMENDMENT.—The table of sections of chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129 the following new items:

"129A. Fiduciary duty of servicers of pooled residential mortgages.

"129B. Residential mortgage loan origination.

SEC. 103. PROHIBITION ON STEERING INCENTIVES.

Section 129B of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after subsection (b) the following new subsection:

"(c) PROHIBITION ON STEERING INCENTIVES.—

"(1) IN GENERAL.—For purposes of this section, total amount of direct and indirect compensation from all sources permitted to a mortgage originator may not vary based on the terms of the loan (other than the amount of the principal)

"(2) REGULATIONS.—The Federal banking agencies, in consultation with the Secretary and the Comptroller of the Currency, shall jointly prescribe regulations to prohibit—

"(A) mortgage originators from steering any consumer to a residential mortgage loan that lacks a reasonable ability to repay in accordance with regulations prescribed under section 129C(a);

"(B) in the case of a refinancing of a residential mortgage loan, fails the consumer with a net tangible benefit in accordance with regulations prescribed under section 129C(b); or

"(C) mortgage originators from steering any consumer to a residential mortgage loan that lacks a reasonable ability to repay in accordance with regulations prescribed under section 129C(c)(3)

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to a residential mortgage loan that is not a qualified mortgage:

“(c) Abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age; and

“(D) mortgage originators from assessing ex-
cessive fees or costs (as such term shall be construed
under section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4))) to a consumer for
the origination of a residential mortgage loan based on such consumer’s decision to finance all or part of the payment through the rate for such points and fees.

“(3) RULES OF CONSTRUCTION.—No provision of this 2008 Rule shall be construed as—

“(A) permitting yield spread premiums or other similar incentive compensation;

“(B) affecting the mechanism for providing the total amount of direct and indirect compensa-
tion permitted to a mortgage originator;

“(C) limiting or affecting the amount of compensa-
tion received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

“(D) restricting a consumer’s ability to fi-
nance, including through rate or principal, any
origination fees or costs permitted under this subsection, or the mortgage originator’s ability to receive such fees or costs (including compen-
sation) from any person, so long as such fees or costs are clearly disclosed to the consumer earlier in the application process as required by 129B(b)(1)(C)(ii) and do not vary based on the terms of the loan (other than the amount of the monthly mortgage payment)
originator to comply with any requirement im-
posed under this section and any regulation
prescribed under this section, subsections (a)
and (b) of section 130 shall be applied with re-
spect to any such failure by substituting ‘mort-
gage originator’ for ‘creditor’ each place such
word appears in such section or subsection.

“(c) SUSPENSION OF 2008 RESPA RULE.—

“(1) REQUIREMENT.—The Secretary of Housing and Urban Development shall, during the period beginning on the date of the enactment of this Act and ending upon issuance of proposed regu-
lations pursuant to subsection (b) and im-
plementation of any provisions of the final rule referred to in paragraph (2) that would estab-
lish and implement a new standardized good faith estimate a new standardized settle-
date and reduce consumer settlement costs’’.

“(2) IMPLEMENTATION.—The regulations re-
quired under subsection (a) shall take effect, and
shall provide an implementation date for the new disclosures required under such regu-
lations not later than the end of the 12-
month period following the date of the en-
actment of this Act.

“SEC. 106. RESPA AND TILA DISCLOSURE IMPROVEMENT.

“(a) COMPATIBLE DISCLOSURES.—The Secretary of Housing and Urban Development and the Board of Governors of the Federal Reserve shall, not later than the expiration of the 6-month pe-
riod beginning on the date of enactment of this Act, jointly issue for public comment pro-
posed regulations providing for compatible dis-
closures for borrowers to receive at the time of mortgage application and at the time of closing.

“(b) TECHNICAL AND CONFORMING AMEND-
MENTS.—Section 129(f)(2) of the Truth in Lending
Act (15 U.S.C. 1639(f)(2)) is amended by in-
serting ‘‘referred to in section 160(aa)’’ after
‘‘loans’’ each place such term appears.

“SEC. 108. ABILITY TO REPEAL.

“(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by
inserting after section 129AB (as added by sec-
section 102(a)) the following new section:

“§129C. Minimum standards for residential mort-
gage loans

“(a) ABILITY TO REPEAL.—

“(1) IN GENERAL.—In accordance with regula-
tions prescribed jointly by the Federal banking
agencies in consultation with the Comptroller of
the Currency, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and
applicable taxes, insurance, and assessments.

“(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residen-
tial mortgage loans secured by the same dwell-
ing will be made to the same consumer, the cred-
thor shall determine a reasonable and good faith de-
termination based on verified and documented information that, at the time the
loan is consummated, the consumer has a rea-
sible ability to repay the loan, according to
its terms, and all applicable taxes, insurance, and assessments.

“TITLE II—MINIMUM STANDARDS FOR MORTGAGES

“SEC. 201. ABILITY TO REPEAL.

“(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by
inserting after section 129AB (as added by sec-
section 102(a)) the following new section:

“§129C. Minimum standards for residential mort-
gage loans

“(a) ABILITY TO REPEAL.—

“(1) IN GENERAL.—In accordance with regula-
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applicable taxes, insurance, and assessments.

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termination based on verified and documented information that, at the time the
loan is consummated, the consumer has a rea-
sible ability to repay the loan, according to
its terms, and all applicable taxes, insurance, and assessments.

“(c) SUSPENSION OF 2008 RESPA RULE.—

“(1) REQUIREMENT.—The Secretary of Housing and Urban Development shall, during the period beginning on the date of the enactment of this Act and ending upon issuance of proposed regu-
lations pursuant to subsection (b) and im-
plementation of any provisions of the final rule referred to in paragraph (2) that would estab-
lish and implement a new standardized good faith estimate a new standardized settle-
date and reduce consumer settlement costs’’.

“(2) IMPLEMENTATION.—The regulations re-
quired under subsection (a) shall take effect, and
shall provide an implementation date for the new disclosures required under such regu-
lations not later than the end of the 12-
month period following the date of the en-
actment of this Act.

“SEC. 106. RESPA AND TILA DISCLOSURE IMPROVEMENT.

“(a) COMPATIBLE DISCLOSURES.—The Secretary of Housing and Urban Development and the Board of Governors of the Federal Reserve shall, not later than the expiration of the 6-month pe-
riod beginning on the date of enactment of this Act, jointly issue for public comment pro-
posed regulations providing for compatible dis-
closures for borrowers to receive at the time of mortgage application and at the time of closing.

“(b) TECHNICAL AND CONFORMING AMEND-
MENTS.—Section 129(f)(2) of the Truth in Lending
Act (15 U.S.C. 1639(f)(2)) is amended by in-
serting ‘‘referred to in section 160(aa)’’ after
‘‘loans’’ each place such term appears.

“SEC. 108. ABILITY TO REPEAL.

“(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by
inserting after section 129AB (as added by sec-
section 102(a)) the following new section:

“§129C. Minimum standards for residential mort-
gage loans

“(a) ABILITY TO REPEAL.—

“(1) IN GENERAL.—In accordance with regula-
tions prescribed jointly by the Federal banking
agencies in consultation with the Comptroller of
the Currency, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and
applicable taxes, insurance, and assessments.

“(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residen-
tial mortgage loans secured by the same dwell-
ing will be made to the same consumer, the cred-
thor shall determine a reasonable and good faith de-
termination based on verified and documented information that, at the time the
loan is consummated, the consumer has a rea-
sible ability to repay the loan, according to
its terms, and all applicable taxes, insurance, and assessments.

“TITLE II—MINIMUM STANDARDS FOR MORTGAGES

“SEC. 201. ABILITY TO REPEAL.

“(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by
inserting after section 129AB (as added by sec-
section 102(a)) the following new section:

“§129C. Minimum standards for residential mort-
gage loans

“(a) ABILITY TO REPEAL.—

“(1) IN GENERAL.—In accordance with regula-
tions prescribed jointly by the Federal banking
agencies in consultation with the Comptroller of
the Currency, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and
applicable taxes, insurance, and assessments.

“(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residen-
tial mortgage loans secured by the same dwell-
ing will be made to the same consumer, the cred-
thor shall determine a reasonable and good faith de-
termination based on verified and documented information that, at the time the
loan is consummated, the consumer has a rea-
sible ability to repay the loan, according to
its terms, and all applicable taxes, insurance, and assessments.
"(3) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer’s ability to repay a residential mortgage loan shall include consideration of the consumer’s credit history, employment status, and other financial resources other than the consumer’s equity in the dwelling or other real property that secures repayment of the loan.

(4) NONSTANDARD LOANS.—

(5) VARIABLE RATE LOANS THAT DEFER PAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer’s ability to repay a variable rate residential mortgage loan that does not provide a net tangible benefit to the consumer the creditor shall use the payment amount required to amortize the loan by its final maturity.

(6) CALCULATION FOR NEGATIVE AMORTIZATION.—For purposes of this section, the calculation for negative amortization shall be made by assuming—

(i) in the case of a balloon loan, that the loan is a fully amortizing loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payments) which case the contract’s repayment schedule shall be used in this calculation;

(ii) in the case of a balloon loan, that the loan is a fully-indexed rate loan in which case the balloon payment amount for principal and interest on the original principal obligation amount shall be used in this calculation;

(iii) in the case of a balloon loan, that the loan is a fully-indexed rate loan in which case the loan proceeds are fully disbursed on the date of the consummation of the loan;

(iv) in the case of a balloon loan, that the loan is a fully-indexed rate loan in which case the loan proceeds are fully disbursed on the date of the consummation of the loan;

(v) the loan is to be repaid in substantially equal monthly payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payments) which case the contract’s repayment schedule shall be used in this calculation;

(vi) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

(7) FULLY-INDEXED RATE DEFINED.—For purposes of this section, the term ‘fully-indexed rate’ means the index rate prevailing on a residential mortgage loan at the time the loan is made by the creditor that will apply on the date of consummation of the loan excluding any balance increase that may accrue from any negative amortization provision.

(8) DEFINITIONS.—For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

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

SEC. 203. SAFE HARBOR AND REBUTTABLE PRE-SUMPTION.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (b) (as added by section 202) the following new subsection—

"(c) PRESUMPTION OF ABILITY TO REPAY AND NET TANGIBLE BENEFIT.—

(1) IN GENERAL.—Any creditor with respect to any residential mortgage loan, and any assignee or successor of such loan, may presume that the loan has met the requirements of subsection (a) and (b), if the loan is a qualified mortgage.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply—

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

(i) that does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a ‘non-traditional mortgage’ under guidance, advisories, or regulations prescribed under paragraph (3), no creditor reasonably and in good faith

(ii) that does not provide for a repayment schedule that results in negative amortization at any time;

(iii) for which the terms are fully amortizing and which does not result in a balloon payment, where a ‘balloon payment’ is a scheduled payment that is in excess of the average of earlier scheduled payments;

(iv) that which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set;

(v) which has a debt-to-income ratio that does not exceed the current income, expected income the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

(B) AVERAGE PRIME OFFER RATE.—The term ‘average prime offer rate’ means, with respect to any residential mortgage loan—

(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

(ii) any residential mortgage loan by assuming—

(iii) any residential mortgage loan by assuming—

(iv) which has an annual percentage rate that does not exceed the maximum limit on the original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454a(a)(2)); and

(v) by 2.5 percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that exceeds the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454a(a)(2));

(vi) for which the income and financial resources relied upon to qualify the obligor on the loan are verified;

(vii) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(viii) in the case of an adjustable rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(ix) that does not cause the consumer’s total monthly debts, including amounts under any loan described by the loan, to exceed 30 percent of the consumer’s monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under paragraph (4), and such rules shall also take into consideration the consumer’s income available to pay regular expenses after payment of the purchase money obligation and required expenses that are not related to the mortgage.

(2) BURDEN OF PROOF.—In any action brought to enforce the provisions of this subsection, the party prevailing shall be entitled to recover a reasonable attorney’s fee.

SEC. 204. LIABILITY.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 203) the following new subsection—

"(d) LIABILITY FOR VIOLATIONS.—

(1) IN GENERAL.—The Federal banking agencies shall jointly prescribe regulations to carry out the purposes of this subsection.

(2) BURDEN OF PROOF.—The party prevailing in any action to enforce the provisions of this section shall be entitled to recover a reasonable attorney’s fee.

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

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

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

(4) REGULATIONS.—

(A) IN GENERAL.—The Federal banking agencies shall jointly prescribe regulations to carry out the purposes of this section.

(B) REVISION OF SAFE HARBOR CRITERIA.—

(C) IN GENERAL.—The Federal banking agencies shall jointly prescribe regulations that provide for a rebuttable presumption with regard to loans that involve violations of prescribed consumer protection rules or have low risk priority characteristics.

(D) PUBLICATION.—The Federal agencies shall prescribe rules defining the types of loans they insure, guarantee or administer, as the case may be, that are Qualified Mortgages for purposes of subsection (c)(1)(A) upon a finding that such rules are consistent with the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

(E) BROAD DEFINITION.—The following agencies shall prescribe rules defining the types of loans they insure, guarantee or administer, as the case may be, that are Qualified Mortgages for purposes of this section:

(F) LIABILITY FOR VIOLATIONS.—

(1) IN GENERAL.—

(A) PENALTIES.—In addition to any other liability under this title for a violation by a creditor of subsection (a) or (b) for example under section 139) and subject to the statute of limitations in paragraph (9), a civil action may be brought against a creditor for a violation of subsection (a) or (b) with respect to a residential mortgage loan for the rescission of the loan, and such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney’s fee.
“(B) CURE.—A creditor shall not be liable for rescission under subparagraph (A) with respect to a residential mortgage loan if, no later than 90 days after the receipt of notification from the consumer that the loan violates subsection (a) or (b), the creditor provides a cure.

“(2) LIMITED ASSIGNEE AND SECURITIZER LIABILITY.—Notwithstanding sections 125(e) and 121 added in paragraph (2) with respect to a civil action which may be maintained against a creditor with respect to a residential mortgage loan for a violation of subsection (a) or (b) or may be brought against any assignee or securitizer of such residential mortgage loan, who has acted in good faith, for the following liabilities only:

“(A) Violation of the loan.

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

“(3) ASSIGNEE AND SECURITIZER EXEMPTION.—No assignee or securitizer of a residential mortgage loan that has exercised reasonable due diligence in complying with the requirements of subsections (a) and (b) shall be liable under paragraph (2) with respect to such loan if, no later than 90 days after the receipt of notification from the consumer that the loan violates subsection (a) or (b), the assignee or securitizer provides a cure so that the loan satisfies the requirements of subsections (a) and (b).

“(4) ABSENT PARTIES.—

“(A) ABSENT CREDITOR.—Notwithstanding the exemption provided in paragraph (3), if the creditor with respect to a residential mortgage loan made in violation of subsection (a) or (b) has ceased to exist as a matter of law or has filed for bankruptcy protection under title 11, United States Code, no assignee or any receiver, conservator, or liquidating agent appointed, a consumer may maintain a civil action against an assignee or securitizer of such mortgage loan for a violation of subsection (a) or (b).

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

“(5) CURE DEFINED.—For purposes of this subsection, the term ‘cure’ means, with respect to a residential mortgage loan that violates subsection (a) or (b), the modification or refinancing, at no cost to the consumer, of the loan to provide terms that satisfy the requirements of subsections (a) and (b) and the payment of such additional costs as the obligor may have incurred in connection with obtaining a cure of the loan, including a reasonable attorney’s fee.

“(6) ALTERNATIVE CURE.—If any creditor, assignee, or securitizer and a consumer fail to reach agreement on a cure with respect to a residential mortgage loan that violates subsection (a) or (b), the consumer may seek a judicial or nonjudicial foreclosure—

“(A) to identify and obtain access to any such loan;

“(B) to acquire any such loan in the event of a violation of subsections (a) or (b) of this section; and

“(C) to provide to the consumer any and all remedies provided for under this title for any violation of this title.

“(2) ADDITIONAL DAMAGES.—Any assignee, or securitizer of a residential mortgage loan that is subject to a remedy under subparagraph (A) or (B) shall be subject to additional exemplary or punitive damages not to exceed the original principal balance of such loan.

“(3) Section (d) and has failed to comply with paragraph (2) which is brought by a consumer identifying the mortgage loan and in connection with obtaining a cure of the loan, a reasonable attorney’s fee shall be provided.

“(4) ON A REGULAR BASIS, NOT LESS THAN ANNUALLY.

“(7) RULES TO ESTABLISH PROCESS.—The Board shall promulgate rules to effect the rescission process established for violations of subsections (a) and (b) of this section. Such rules shall provide that notice given to a servicer or holder is sufficient notice regardless of the identity of the party or the parties liable under this title.

SECTION 205. DEFENSE TO FORECLOSURE.

Section 205(c) of the Truth in Lending Act is amended by inserting after subsection (f) (as added by section 204) the following new subsection:

“(g) DEFENSE TO FORECLOSURE.—Notwithstanding any other provision of law—

“(1) when the holder of a residential mortgage loan or anyone acting for such holder initiates a judicial or nonjudicial foreclosure—

“(A) a consumer who has the right to rescind under this section with respect to such loan the creditor or securitizer may assert such right as a defense to foreclosure or counterclaim to such foreclosure against the holder, or

“(B) if the foreclosure proceedings begin after the end of the period during which a consumer may bring an action for rescission under subsection (d) and the consumer would have had a valid basis for such action if it had been brought before the end of such period, the consumer may seek actual damages incurred by reason of the violation which gave rise to the right of rescission, together with costs of the action, including a reasonable attorney’s fee against the creditor or any assignee or securitizer; and

“(C) in the case of a residential mortgage loan that provides for a fixed interest rate for an introductory period and then resets or adjusts to a variable rate or that provides for a nonamortizing payment schedule and then converts to an amortizing payment schedule, the earlier of—

“(i) the end of the 3-year period beginning on the date the loan is consummated; or

“(ii) the end of the 6-year period beginning on the date the loan is consummated.

“(10) POOLS AND INVESTORS IN POOLS EXCLUDED.—In the case of residential mortgage loans acquired or aggregated for the purpose of securitization, the terms ‘as- signee’ and ‘securitizer’ as used in this section do not include the securitization vehicle, the pools of such loans or any original or subsequent purchaser of any interest in the securitization vehicle that represents a direct or indirect interest in such pool.

“(e) OBLIGATION OF SECURITIES AND PRESERVATION OF BORROWER REMEDIES.—

“(1) OBLIGATION TO RETAIN ACCESS.—Any securitizer of a residential mortgage loan sold or conveyed into a securitization vehicle shall, in any document or contract providing for the transfer, conveyance, or the establishment of such securitization vehicle, reserve the right and preserve the ability—

“(A) to identify and obtain access to any such loan;

“(B) to acquire any such loan in the event of a violation of subsections (a) or (b) of this section; and

“(C) to provide to the consumer any and all remedies provided for under this title for any violation of this title.

“(2) ADDITIONAL DAMAGES.—Any assignee, or securitizer of a residential mortgage loan that is subject to a remedy under subparagraph (A) or (B) shall be subject to additional exemplary or punitive damages not to exceed the original principal balance of such loan.

“(3) Section (d) and has failed to comply with paragraph (2) which is brought by the consumer identifying the mortgage loan and in connection with obtaining a cure of the loan shall provide that notice given to a servicer or holder is sufficient notice regardless of the identity of the party or the parties liable under this title.

SECTION 206. ADDITIONAL STANDARDS AND REQUIREMENTS.

(a) IN GENERAL.—Section 205(c) of the Truth in Lending Act is amended by inserting after subsection (g) (as added by section 205) the following new subsections:

“(1) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

“(A) PROHIBITED ON CERTAIN LOANS.—A residential mortgage loan that is not a ‘qualified mortgage’ may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated. For purposes of this subsection, a ‘qualified mortgage’ may not include a residential mortgage loan that has an adjustable rate.

“(B) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in section 129C) (c) may contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

“(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

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

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

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

“(2) PROHIBITED AFTER INITIAL PERIOD ON LOANS WITH A RESET.—A qualified mortgage with a fixed interest rate for an introductory period that adjusts or resets after such period may contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the beginning of the 3-
month period ending on the date of the adjustment or reset.

“(4) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

“(i) SINGLE PREMIUM CREDIT INSURANCE PROHIBITED.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage), any credit life, credit disability, credit unemployment or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

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

“(2) such subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

“(j) ARBITRATION.—

“(1) IN GENERAL.—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, other than a reverse mortgage, may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy for settling any claims arising out of the transaction.

“(2) POST-CONTROVERSY AGREEMENTS.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor, any assignee, or any securitizer to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy arising out of the transaction.

“(3) NO WAIVER OF STATUTORY CAUSE OF ACTION.—Any residential mortgage loan or any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage) may not be made unless the creditor and the consumer relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

“(k) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the loan, reduce the amount of credit, result in negative amortization unless, before such transaction is consummated—

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

“(A) the pending transaction will or may, as the case may be, result in negative amortization;

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

“(C) negative amortization increases the outstanding balance of the account; and

“(D) negative amortization reduces the consumer’s equity in the dwelling or real property; and

“(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with a document and the assumption on which to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.

“(l) CONFORMING AMENDMENT RELATING TO ENFORCEMENT.—Section 106(a) of the Truth in Lending Act (15 U.S.C. 1637(a)) is amended by inserting after paragraph (6) the following new paragraph:

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

“SEC. 205. RULE OF CONSTRUCTION.—Except as otherwise provided in section 129B or 129C of the Truth in Lending Act (as added by this Act), no provision of such section 129B or 129C shall be construed as superseding, replacing, modifying, altering, voiding, right, obligation, privilege, or remedy of any person under another provision of the Truth in Lending Act or another provision of Federal or State law.

“SEC. 208. EFFECT ON STATE LAWS.

“(a) IN GENERAL.—Except as provided in subsection (b), section 129C(d) of the Truth in Lending Act (as added by section 204) shall supersede any State law to the extent that it provides additional remedies against any assignee, securitizer, or securitization vehicle for a violation of subsection (a) of section 129C of such Act or any other State law the terms of which address the specific subject matter of subsection (a) (determination of ability to repay) or (b) (requirement of a net tangible benefit) of section 129C of such Act, and the remedies described in section 129C(d) shall constitute the sole remedies against any assignee, securitizer, or securitization vehicle for such violations.

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

“(1) the applicability of any State law, or the availability of remedies under such law, against a creditor for a particular residential mortgage loan regardless of whether such creditor also acts as an assignee, securitizer, or securitization vehicle for such loan;

“(2) the application of any State law, or the availability of remedies under such law, against an assignee, securitizer, or securitization vehicle under State law, other than a provision of such State law the terms of which address the specific subject matter of subsection (a) (determination of ability to repay) or (b) (requirement of a net tangible benefit) of section 129C of such Act;

“(3)(A) the application of any State law, or the availability of remedies under such law, against an assignee, securitizer, or securitization vehicle for its participation in or direction of the credit or underwriting decisions of a creditor relating to the making of such residential mortgage loan; or

“(B) the ability of a consumer to assert any rights against or obtain any remedies from an assignee, securitizer or securitization vehicle with respect to such residential mortgage loan as a defense to foreclosure under section 129C(g); or

“(4) the availability of any equitable remedies, including injunctive relief, under State law.

“SEC. 209. REGULATIONS.

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

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

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

“SEC. 210. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.

“(a) INCREASE IN AMOUNT OF CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS.—Section 130(a)(2) of the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is amended—

“(1) by striking "$1,000" and inserting "$200";

“(2) by striking "$1,000" and inserting "$2,000"; and

“(3) by striking "$50,000" and inserting "$1,000,000.

“(b) STATUTE OF LIMITATIONS EXTENDED FOR SECTION 129 VIOLATIONS.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended to read—

“(1) in the first sentence, by striking "Any action" and inserting “Except as provided in the subsequent sentence, any action”; and

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

“SEC. 211. LENDER RIGHTS IN THE CONTEXT OF BORROWER DECEPTION.

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

“(a) EXEMPTION FROM LIABILITY AND RESCISSION IN CASE OF BORROWER FRAUD OR DECEPTION.—In addition to any other remedy available at law or in equity, any assignee, servicer, or securitizer shall be liable to an obligor under this section, nor shall it be subject to the right of rescission in connection with a reverse mortgage, hybrid adjustable rate mortgage, or co-obligor, or co-obligor, knowingly, or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining such residential mortgage loan.

“SEC. 212. SIX-MONTH NOTICE REQUIRED BEFORE RESET OF HYBRID ADJUSTABLE RATE MORTGAGES.

“(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 128 the following new section:

“§128A. Reset of hybrid adjustable rate mortgage.

“(b) HYBRID ADJUSTABLE RATE MORTGAGES DEFINED.—For purposes of this section, the term ‘hybrid adjustable rate mortgage’ means a consumer credit transaction secured by a consumer’s principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

“(c) NOTICE OF RESET AND ALTERNATIVES.—During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer that includes the following:

“(1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula.

“(2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted or reset.

“(3) A good faith estimate, based on accepted industry standards, of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.

“May 7, 2009
“(A) a list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(1) the time the adjustment or reset is scheduled to occur;

(2) the amount of any prepayment premium that will be charged, if any;

(3) a description of any late payment fees.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(1) the time the adjustment or reset is scheduled to occur;

(2) the amount of any prepayment premium that will be charged, if any;

(3) a description of any late payment fees.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(1) the time the adjustment or reset is scheduled to occur;

(2) the amount of any prepayment premium that will be charged, if any;

(3) a description of any late payment fees.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(1) the time the adjustment or reset is scheduled to occur;

(2) the amount of any prepayment premium that will be charged, if any;

(3) a description of any late payment fees.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(1) the time the adjustment or reset is scheduled to occur;

(2) the amount of any prepayment premium that will be charged, if any;

(3) a description of any late payment fees.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(1) the time the adjustment or reset is scheduled to occur;

(2) the amount of any prepayment premium that will be charged, if any;

(3) a description of any late payment fees.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(1) the time the adjustment or reset is scheduled to occur;

(2) the amount of any prepayment premium that will be charged, if any;

(3) a description of any late payment fees.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(1) the time the adjustment or reset is scheduled to occur;

(2) the amount of any prepayment premium that will be charged, if any;

(3) a description of any late payment fees.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(1) the time the adjustment or reset is scheduled to occur;

(2) the amount of any prepayment premium that will be charged, if any;

(3) a description of any late payment fees.
The amendments made by this title shall apply to transactions consummated on or after the effective date of the regulations specified in section 204 of this Act.

SEC. 218. REPORT BY THE GAO.

(a) Report required.—The Comptroller General shall conduct a study to determine the effects of the enactment of this Act will have on the availability and affordability of credit for homebuyers and mortgage lending, including the effect—

(1) on the mortgage market for mortgages that are within the safe harbor provided in the amendments made by this title; and

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

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

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

(5) on home sales and construction;

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

(7) of State foreclosure laws and, if any, an investor’s ability to transfer a property after foreclosure;

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

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

(10) of establishing counseling services under the Department of Housing and Urban Development and offered through the Office of Housing Counseling.

(b) Report.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (a).

(C) EXAMINATION RELATED TO CERTAIN CREDIT RISK RETENTION PROVISIONS.—The report required by subsection (b) shall also include an analysis by the Comptroller General of the effect on the funding of lenders of credit risk retention provisions for non-qualified mortgages.

SEC. 219. STATE ATTORNEY GENERAL ENFORCEMENT AUTHORITY.

Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by striking “section 129 may also” and inserting “section 129, 129B, or 129C of this Act, section 219 of the Mortgage Reform and Anti-Predatory Lending Act, or any amendment made by section 219 of the Mortgage Reform and Anti-Predatory Lending Act may also”.

SEC. 220. TENANT PROTECTION.

(a) Tenant Protection Generally.—

(1) IN GENERAL.—In the case of any foreclosure on the property, including security deposit costs; or (ii) to the agency’s reasonable moving costs, including security deposit costs; except that this subparagraph and the provisions related to foreclosure in subparagraph (C) shall not affect any State or local law that provides longer time periods or other additional protections for tenants.”.

(c) EFFECTIVE DATE.—Notwithstanding section 217, this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

TITLE III—HIGH-COST MORTGAGES

SEC. 301. DEFINITIONS RELATING TO HIGH-COST MORTGAGES.

(a) High-Cost Mortgage Defined.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended by striking all that precedes paragraph (2) and inserting the following:—

("aa)—High-Cost Mortgage.—"

(i) DEFINITION.—

(1) In General.—The term “high-cost mortgage,” and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer’s principal dwelling, other than a reverse mortgage transaction, if—

(II) in the case of a credit transaction secured—

(I) by a first mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction; or

(III) by a subordinate or junior mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.3 percentage points the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction;

(II) the total points and fees payable in connection with the transaction exceed—

(III) in the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or

(IV) in the case of a transaction for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

(III) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the contractual interest rate; and

(II) in the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

(III) in the case of a transaction in which the interest rate varies solely in accordance with a change in the index rate, the interest rate in effect on the date of consummation shall not exceed by more than 2 percentage points, if the dwelling is personal property 129C(c)(2)(B), for a comparable transaction; or

(II) by a subordinate or junior mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.3 percentage points the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction;

(III) the total points and fees payable in connection with the transaction exceed—

(II) in the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or

(III) in the case of a transaction for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

(III) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the contractual interest rate; and

(II) in the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

(III) in the case of a transaction in which the interest rate varies solely in accordance with a change in the index rate, the interest rate in effect on the date of consummation shall not exceed by more than 2 percentage points, if the dwelling is personal property 129C(c)(2)(B), for a comparable transaction; or

(II) by a subordinate or junior mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.3 percentage points the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction;

(III) the total points and fees payable in connection with the transaction exceed—

(II) in the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or

(III) in the case of a transaction for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

(III) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the contractual interest rate; and

(II) in the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

(III) in the case of a transaction in which the interest rate varies solely in accordance with a change in the index rate, the interest rate in effect on the date of consummation shall not exceed by more than 2 percentage points, if the dwelling is personal property 129C(c)(2)(B), for a comparable transaction; or

(II) by a subordinate or junior mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.3 percentage points the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction;
margin permitted at any time during the transaction agreement.

“(ii) In the case of any other transaction in which the rate may vary at any time during the term of the transaction, the maximum amount charged on the transaction at the maximum rate that may be charged during the term of the transaction—

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

“(B) An increase or decrease under subparagraph (A)—

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

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

(1) POINTS AND FEES DEFINED.—

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

(a) by striking paragraph (A), and inserting the following paragraph:

“(A) a previous loan made or currently held by the same creditor or an affiliate of the creditor;

(b) by redesignating subparagraph (A) as subparagraph (C); and

(c) by inserting ‘‘(B) in subparagraph (C)(i), by inserting ‘‘except where the charge is the purchase price of an individual credit insurance policy that may be charged during the term of the transaction and is not the cash purchase price of deposits on a credit insurance policy that is sold separate from credit insurance policies that are sold in connection with another transaction or is reimbursed to a consumer by a previous loan made or currently held by the same creditor or an affiliate of the creditor; or where the charge is the purchase price of deposits on a credit insurance policy that is sold separate from credit insurance policies that are sold in connection with another transaction or is reimbursed to a consumer by a previous loan made or currently held by the same creditor or an affiliate of the creditor; or “

“(2) by striking subsection (h)(1)(B), and inserting the following new subparagraph:

“(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage broker, mortgage insurer, credit insurance company, mortgage insurer, or mortgage originator that originates a loan in the name of the originator in a table-funded transaction;”.

(2) in subparagraph (C)(i), by inserting ‘‘except where the charge is the purchase price of an individual credit insurance policy that may be charged during the term of the transaction and is not the cash purchase price of deposits on a credit insurance policy that is sold separate from credit insurance policies that are sold in connection with another transaction or is reimbursed to a consumer by a previous loan made or currently held by the same creditor or an affiliate of the creditor; or where the charge is the purchase price of deposits on a credit insurance policy that is sold separate from credit insurance policies that are sold in connection with another transaction or is reimbursed to a consumer by a previous loan made or currently held by the same creditor or an affiliate of the creditor; or “

(c) in subparagraph (C)(iii), by striking ‘‘; and “.

(3) by inserting a period at the end; and

(d) by redesigning subparagraph (D) as subparagraph (G); and

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

“(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, family, liability, automobile, or similar insurance, or any payments that are directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension agreements or contracts, or payments in connection with which are based on a monthly basis shall not be considered financed by the creditor;

“(E) except as provided in subsection (c), the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;”.

“(f) all prepayment fees or penalties that are incurred in the case of any refinancing if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and

“(g) by redesigning paragraph (5) as paragraph (6); and

“(h) by inserting after paragraph (4) the following new paragraph:

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

(1) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS AND PREPAYMENT PENALTIES.—Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended by inserting after subsection (cc) (as added by section 101) the following new subsection:

“(d) BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraphs (G) and (H) of section 129 shall be excluded from determining the amounts of points and fees with respect to a high-cost mortgage for purposes of subsection (aa):

“(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point (i) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater, or (ii) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(2) Unless 2 bona fide discount points have been excluded under subparagraph (A), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points (i) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater, or (ii) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(2) MODIFICATION OR DEFERRAL FEES.—No creditor may take any action in connection with a high-cost mortgage—

“(A) that may be charged during the term of the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point (i) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater, or (ii) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(3) FAILURE TO MAKE INSTALLMENT PAYMENT.—If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resums making installment payments but has not paid all past due installments, the creditor may impose a late fee to cover the cost of any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.

“(4) DECELERATION OF DEBT.—No high-cost mortgage may contain a provision which permits a consumer to accelerate and pay off the indebtedness. This provision shall not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to a material violation of the mortgage documents unrelated to the related to the payment schedule.

“(m) RESTRICTION ON FINANCING POINTS AND FEES.—No creditor may directly or indirectly finance any points or fees by the consumer in a refinancing transaction if the consumer agrees to the mortgage provision that the consumer is the note holder of the note that is refinanced.

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

“(2) Any points or fees.”.

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

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

“(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title;”.

“(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this title;”.

“(r) MODIFICATION AND DEFERRAL FEES PROHIBITED.—A creditor may not charge a consumer
any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage, unless the modification, renewal, extension or amendment results in a reduction of the loan’s annual percentage rate or the mortgage for the consumer and then only if the amount of the fee is comparable to fees imposed for similar transactions in connection with consumer credit transactions that are secured by a consumer’s principal dwelling and are not high-cost mortgages.

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

"(s) PAYOFF STATEMENT.—

(i) FEE. — At the time a consumer requests payoff balances on a high-cost mortgage, a creditor shall not charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

(ii) TRANSACTION FEE.—When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar transactions in connection with consumer credit transactions that are secured by the consumer’s principal dwelling and are not high-cost mortgages.

(iii) FEK DISCLOSURE.—Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

(iv) MULTIPLE REQUESTS.—If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

(v) PROMPT DELIVERY.—Payoff balances shall be provided within 5 business days after receiving a request by a consumer or a person authorized by the consumer to obtain such information.

(vi) SERVICES CONSIDERED ASSIGNED.—For the purposes of this subsection, a servicer shall be considered an assignee under the Truth in Lending Act.

**E. PRE-LOAN COUNSELING REQUIRED.**—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (s) (as added by subsection (c) of this section) the following new subsection:

"(t) PRE-LOAN COUNSELING.—

(i) IN GENERAL.—A creditor may not extend a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage, or make the loan satisfy the requirements of this chapter, or change the terms of the loan or extend credit to a consumer under a high-cost mortgage.

(ii) PAYOFF STATEMENT.—

(a) IN GENERAL.—The Board of Governors of the Federal Reserve System shall publish regulations implementing this title and the amendments made by this title, establishing requirements relating to the availability of the toll-free telephone number 1-800-356-9396 and the Office under this section and any other requirements, standards, and performance measures relating to mortgage counseling.

(b) SPECIFIC FUNCTIONS.—The Director shall carry out the functions assigned to the Director and the Office under this section and any other provisions of law. Such functions shall include establishing rules necessary for—

(i) the counseling procedures under section 106(q) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701m(h)(1))

(ii) carrying out all other functions of the Secretary under section 106 of the Housing and Urban Development Act of 1968, including the establishment, operation, and publication of the availability of the toll-free telephone number under paragraph (2) of such section;

(iii) contributing to the preparation and distribution of home buying information booklets pursuant to section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604);

(iv) carrying out the certification program under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701m(e));

(v) carrying out the assistance program under section 106(a)(4) of the Housing and Urban Development Act of 1968, including criteria for the selection of applications to receive assistance;

(vi) carrying out any functions regarding abusive, deceptive, or unscrupulous lending practices relating to residential mortgage loans that the Secretary considers appropriate, which shall include conducting the study under section 6 of the Expand and Preserve Home Ownership Counseling Act of 1982 (15 U.S.C. 1701m(e));

(vii) providing for operation of the advisory committee established under paragraph (4) of this subsection;

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

(ix) providing for the building of capacity to provide housing counseling services in areas that lack sufficient services.

(x) ADVISORY COMMITTEE.—
"(A) IN GENERAL.—The Secretary shall ap-
point an advisory committee to provide advice
regarding the carrying out of the functions of
the Director.
"(B) MEMBERS.—Such advisory committee
shall consist of not more than 12 individuals,
and the membership of the committee shall
equally represent the mortgage and real estate
industries, housing counselors and housing
counseling agencies certified by the Secretary.
"(C) TERMS.—Except as provided in subpara-
graph (D), each member of the advisory com-
mitee for a term of 3 years. Members may be reappointed at the discretion of
the Secretary.
"(D) TERMS OF INITIAL APPOINTERS.—As
designated by the Secretary, the first term of
membership of the initial members appointed
shall be effective for a term of not more than
2 years.
""(E) PROHIBITION OF PAY; TRAVEL EX-
PENSES.—Members of the advisory committee
shall serve without pay, but shall receive travel
expenses, including per diem in lieu of subsist-
ence, in accordance with applicable provisions
under subchapter I of chapter 57 of title 5,
United States Code.
"(F) ADVISORY ROLE ONLY.—The advisory
committee shall have no role in reviewing or
awarding housing counseling grants.
"(G) SCOPE OF HOMEOWNERSHIP COUNSEL-
ING.—In carrying out the responsibilities of the Direc-
tor, the Director shall ensure that homeowner-
counseling provided by, in connection with,
or pursuant to any function, activity, or pro-
gram of the Department addresses the entire
process of homeownership, including the de-
cision to purchase a home, the selection and pur-
chase of a home, issues arising during or affect-
ing the ownership or disposition of a home (includ-
ing refinancing, default and foreclosure, and other financial decisions), and the sale or other
disposition of a home.

SEC. 402. COUNSELING PROCEDURES.

(a) IN GENERAL.—Section 106 of the Housing
1701x) is amended by adding at the end the fol-
nowing new subsection:
""(g) PROCEDURES AND ACTIVITIES.—
""(1) COUNSELING PROCEDURES.—
""(A) IN GENERAL.—The Secretary shall estab-
lish, conspicuously display, and monitor the admin-
istration by the Department of Housing and Urban De-
velopment of the counseling procedures for
homeownership counseling and rental housing
counseling in connection with a program of
the Department, including all require-
ments, standards, and performance measures
that relate to homeownership and rental hous-
ing counseling.
""(B) HOMEOWNERSHIP COUNSELING.—For
purposes of this subsection and as used in the pro-
cedures referred to in this subparagraph, the term
homeownership counseling means counsel-
ing related to homeownership and residential
mortgage loans. Such term includes counseling
related to homeownership and residential mort-
gage loans offered or provided pursuant to—
""(i) section 105(a)(20) of the Housing and
Community Development Act of 1974 (42 U.S.C.
5035(a)(20));
""(ii) in the United States Housing Act of
1937—
""(I) section 9(e) (42 U.S.C. 1437p(e));
""(II) section 18(a)(4)(D) (42 U.S.C. 1437p(4)(D));
""(III) section 23(c)(4) (42 U.S.C. 1437u(4)(D));
""(IV) section 32(e)(4) (42 U.S.C. 1437z–4(4));
""(V) section 33(d)(2)(B) (42 U.S.C. 1437z–
5(2)(B));
""(VI) sections 302(b)(6) and 303(b)(7) (42
U.S.C. 1437aaa–2(b)(6) and 1437aaa–2(b)(7)); and
""(VII) section 304(c)(4) (42 U.S.C. 1437aaa–
3(c)(4));
""(iii) section 302(a)(4) of the American Home-
ownership and Economic Opportunity Act of
2000 (42 U.S.C. 1437f note);
""(iv) sections 233(b)(2) and 258(b) of the Cran-
ton-Gonzalez National Affordable Housing Act
(42 U.S.C. 12737(b)(2), 12808(b));
""(v) this section and title 101(e) of the
Housing and Urban Development Act of 1968 (12
U.S.C. 1701x(101(e))); and
""(vi) section 229(d)(3)(G) of the Low-Income
Housing Preservation and Resident Homeowner-
""(B) HOMEOWNERSHIP COUNSELING .—For pur-
poses of this subsection and as used in the pro-
cedures referred to in this subparagraph, the term 'rental hous-
ing counseling' means counseling related to
rental of residential property, which may in-
clude counseling regarding future homeowner-
ship opportunities and providing referrals for
renters and prospective renters to entities pro-
viding counseling and shall include counseling
related to such topics that is provided pursuant to—
""(I) section 105(a)(20) of the Housing and
Community Development Act of 1974 (42 U.S.C.
5035(a)(20));
""(II) in the United States Housing Act of
1937—
""(I) section 9(e) (42 U.S.C. 1437p(e));
""(II) section 18(a)(4)(D) (42 U.S.C. 1437p(4)(D));
""(III) section 23(c)(4) (42 U.S.C. 1437u(4)(D));
""(IV) section 32(e)(4) (42 U.S.C. 1437z–4(4));
""(V) section 33(d)(2)(B) (42 U.S.C. 1437z–
5(2)(B));
""(VI) sections 302(b)(6) and 303(b)(7) (42
U.S.C. 1437aaa–2(b)(6) and 1437aaa–2(b)(7)); and
""(VII) section 304(c)(4) (42 U.S.C. 1437aaa–
3(c)(4));
""(iii) section 302(a)(4) of the American Home-
ownership and Economic Opportunity Act of
2000 (42 U.S.C. 1437f note);
""(iv) sections 233(b)(2) and 258(b) of the Cran-
ton-Gonzalez National Affordable Housing Act
(42 U.S.C. 12737(b)(2), 12808(b));
""(v) this section and title 101(e) of the
Housing and Urban Development Act of 1968 (12
U.S.C. 1701x(101(e))); and
""(vi) section 229(d)(3)(G) of the Low-Income
Housing Preservation and Resident Homeowner-
""(C) MORTGAGE SOFTWARE SYSTEMS.—
""(A) CERTIFICATION.—The Secretary shall pro-
vide for the certification of various computer software programs for consumers to use in eval-
uating different residential mortgage loan pro-
posals. The Secretary shall require, for such cer-
tification, that the mortgage software systems take into account—
""(I) the consumer’s financial situation and
the cost of maintaining a home, including insur-
ance, taxes, and utilities;
""(II) the amount of time the consumer expects
to remain in the home or expected time to mature
ity of the loan; and
""(iii) such other factors as the Secretary con-
siders appropriate to use in determining whether to
pay points, to lock in an interest rate, to select an adjustable or fixed rate loan, to select a conventional or government-insured or guaranteed loan and to make other choices during the loan application process.
If the Secretary determines that available exist-
ing software is inadequate to assist consumers
during the residential mortgage loan application
process, the Secretary shall arrange for the de-
velopment by private sector software companies
of new mortgage software systems that meet the Secretary’s specifications.
""(B) USE AND INITIAL AVAILABILITY.—Such
certified computer software programs shall be
used to supplement, not replace, housing coun-
seling. The Secretary shall ensure that such programs are initially used only in connection with
the assistance of housing counselors cer-
tified pursuant to subsection (c).
""(C) AVAILABILITY.—The Secretary shall
ensure that the period of initial availability under subparagraph (B) as the Sec-
retary considers appropriate, the Secretary shall take reasonable steps to make mortgage software systems certified pursuant to this paragraph widely available through the Internet and at public locations, including public libraries, sen-
or–citizen centers, public housing sites, offices of local housing counseling and rental
housing assistance centers, and rental housing counseling centers.
""(D) BUDGET COMPLIANCE.—This paragraph
shall be effective only to the extent that
the amounts to carry out this paragraph are
drawn available in advance in appropriations Acts.
""(4) NATIONAL PUBLIC SERVICE MULTIMEDIA
CAMPAIGNS TO PROMOTE HOMEOWNING COUNSEL-
ING.—
""(A) IN GENERAL.—The Director of Housing
Counseling shall develop, implement, and con-
duct national multimedia campaigns designed
to make persons facing mort-
gage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly per-
som, persons who have been denied
low-income persons, minorities, and other poten-
tially vulnerable consumers aware that it is ad-
visable, before seeking or maintaining a residen-
tial mortgage loan, to obtain homeownership
counseling from an unbiased and reliable
source and that such homeownership coun-
seling is available, including through programs
sponsored by the Secretary of Housing and Urban
Development.

(B) CONTACT INFORMATION.—Each segment of
each national multimedia campaign under subpara-
graph (A) shall publicize the toll–free telephone
number and website of the Department of Hous-
ing and Urban Development through which per-
cipients may contact a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, default, foreclosures, credit issues, and reverse mortgages.

(C) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated $11 million for each of the fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this para-
""(D) FORECLOSURE RESCUE EDUCATION PRO-
"
“(1) IN GENERAL.—Ten percent of any funds appropriated pursuant to the authorization under subparagraph (C) shall be used by the Director of Housing Counseling to conduct an education program that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

(B) tips on avoiding foreclosure rescue scams; and

(C) tips on avoiding predatory lending mortgage agreements;

(2) tips on avoiding for-profit foreclosure counseling services; and

(3) tips on avoiding Community Action agencies.

(IV) local counseling resources that are approved by the Department of Housing and Urban Development.

(V) PROGRAM EMPHASIS.—In conducting the education program described under clause (i), the Director of Housing Counseling shall also place emphasis on organizations that have a high percentage of residents that have a high percentage of retired communities or a high percentage of low-income minority communities.

(VI) TERMS DEFINED.—For purposes of this subparagraph:

(A) HIGH DENSITY OF FORECLOSURES.—An area has a ‘high density of foreclosures’ if such area is a metropolitan statistical area (as that term is defined by the Director of the Office of Management and Budget) with the highest five consecutive years that have a high percentage of residents aged 65 or older.

(B) HIGH PERCENTAGE OF RETIREMENT COMMUNITIES.—An area has a ‘high percentage of retirement communities’ if such area contains a higher-than-normal percentage of residents that are both minorities and low-income, as defined by the Director of Housing Counseling.

(C) EDUCATION PROGRAMS.—The Secretary shall provide advice and technical assistance to States, units of general local government, and nonprofit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate potentially vulnerable consumers, regarding as elderly persons, persons facing language barriers, and persons with disabilities, regarding the development of content and materials for, educational programs to inform and educate nonprofit organizations regarding the establishment of, housing counseling programs.

(D) PROGRAMS.—There are authorized to be appropriated $50,000,000 for each of fiscal years 2011 through 2016 for—

(I) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;

(II) the activities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and

(III) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.

SEC. 405. REQUIREMENTS TO USE HUD-CERTIFIED COUNSELORS UNDER HUD PROGRAMS.

Section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701i(e)) is amended—

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

“(1) REQUIREMENT FOR ASSISTANCE.—Any organization may not receive assistance under subsection (c) unless it—

(A) has been certified by the Secretary under this subsection as competent to provide such counseling; and

(B) provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling; or

(2) in clause (3), by striking the period at the end and inserting ‘‘; and’’; and

(3) by inserting after clause (4) the following new clause:

“(4) Allen National Affordable Housing Act (42 U.S.C. 1701x(c)(2)) is amended—

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

“(1) IN GENERAL.—None of the assistance made available under this paragraph shall be distributed to—

(A) any organization which has been indicted for a violation under Federal law relating to an election for Federal office; or

(B) any organization which employs applicable individuals.

(ii) DEFINITION OF APPLICABLE INDIVIDUAL.—In this subparagraph, the term ‘‘applicable individual’’ means an individual who—

(I) is—

(aa) employed by the organization in a permanent or temporary capacity;

(bb) contracted or retained by the organization; or

(cc) acting on behalf of, or with the express or apparent authority of, the organization; and

(ii) has been indicted for a violation under Federal law relating to an election for Federal office.

(E) GRANTMAKING—.—In making assistance available under this paragraph, the Secretary shall consider appropriate ways of streamlining and improving the processes for grant application, review, approval, and award.

(F) AUTHORITY OF THE SECRETARY.—There are authorized to be appropriated $15,000,000 for each of fiscal years 2010 through 2012 for—

(1) the operations of the Department of Housing and Urban Development;

(2) the activities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and

(3) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.

SEC. 406. STUDY OF DEFAULTS AND FORECLOSURES.

The Secretary of Housing and Urban Development shall conduct an extensive study of the root causes of default and foreclosure of home loans and as much empirical data as is available. The study shall examine also the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures. Not later than 12 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a preliminary report regarding the study. Not later than 24 months after such date of enactment, the Secretary shall submit a final report regarding the results of the study, which shall include any recommended legislation relating to the study, and recommendations for further study for a process to identify populations that need counseling the most.

SEC. 407. DEFINITIONS FOR COUNSELING-RELATED PROGRAMS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701z), as amended by the preceding provisions of this title, is further amended by adding at the end the following new subsection:

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

(1) NONPROFIT ORGANIZATION.—The term ‘‘nonprofit organization’’ has the meaning given such term in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1706(e)(5)), except that (D) of such subsection shall not apply for purposes of this section.

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

(3) UNIT OF GENERAL LOCAL GOVERNMENT.—The term ‘‘unit of general local government’’ means any city, county, metro, township, trade area, borough, village, or other general purpose political subdivision of a State.

(4) HUD-APPROVED COUNSELING AGENCY.—The term ‘‘HUD-approved counseling agency’’ means a private or public nonprofit organization that is—

(A) exempt from taxation under section 501(c) of the Internal Revenue Code of 1986; and

(B) certified by the Secretary to provide housing counseling services.

(5) STATE HOUSING FINANCE AGENCY.—The term ‘‘State housing finance agency’’ means any public body, agency, or instrumentality specifically created under State statute that is authorized to finance activities designed to provide housing and related facilities throughout an entire State through land acquisition, construction, or rehabilitation.

SEC. 408. UPDATING AND SIMPLIFICATION OF MORTGAGE INFORMATION BOOKLET.

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

(1) in the section heading, by striking ‘‘SPECIAL MORTGAGE INFORMATION BOOKLET’’ and inserting ‘‘MORTGAGE INFORMATION BOOKLET’’;

(2) by adding the following new subsection:

(P) The Secretary of Housing and Urban Development shall, subject to appropriations, provide copies of the Mortgage Information booklet to each lender or other financial institution which the Secretary determines is likely to make mortgage loans in the State, every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand...
the nature and costs of real estate settlement services. The Secretary shall prepare the booklet in various languages and cultural styles, as the Secretary determines to be appropriate, so that the booklets are understandable to homebuyers of different ethnic and cultural backgrounds. The Secretary shall distribute such booklets to all lenders that make federally related mortgage loans. The Secretary shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

(b) CONTENTS.—Each booklet shall be in such form and detail as the Secretary shall prescribe and, in addition to such other information as the Secretary may provide, shall include in plain and understandable language the following information:

(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning:

(A) balloon payments;

(B) preprocessing penalties; and

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

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

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

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

(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled ‘Consumer Handbook on Adjustable Rate Mortgages’. Such handbook shall contain detailed information on, among other things, (A) the terms of adjustable rate mortgages, (B) the significance of individual changes and the overall effect of such changes on the interest rate, (C) the importance of understanding the interest rate index on which your mortgage rate is calculated, and (D) the consequences of prepayment of an adjustable rate mortgage.

(7) A brief explanation of the nature of a home equity line of credit and a reference to the booklet entitled ‘Home Equity Lines of Credit’. Such booklet shall include:

(A) a description and explanation of the nature and costs of real estate settlement services.

(b) REGULATIONS, OR TO ANY SUITABLE SUBSTITUTES.—Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act (12 U.S.C. 1701 et seq.) shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within any State or territory, as the case may be.

(c) DURATION OF MANDATORY ESCROW OR CUSTODIAL ACCOUNTS.—Escrow accounts shall be established pursuant to subsection (b), shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, and until such borrower has sufficient equity in the property securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance, or such other period as may be provided in regulations promulgated by the Department in reviewing the circumstances involving such as borrower delinquency, unless the underlying mortgage establishing the account is terminated.

(d) LIMITED EXEMPTIONS FOR LOANS SECURED BY SHARED INTEREST AND FOR CERTAIN CONDOMINIUM UNITS.—Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a mortgage insurance covering such a unit.
Section 503. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENTS.

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

"(i) on terms mutually agreeable to the parties to the transaction is located.

"(j) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) FLOOD INSURANCE.—The term ‘flood insurance’ means insurance coverage provided under the National flood insurance program pursuant to the National Flood Insurance Act of 1968.

"(2) HAZARD INSURANCE.—The term ‘hazard insurance’ shall have the same meaning as provided for ‘hazard insurance’, ‘casualty insurance’, ‘homeowners insurance’, or other similar term under the law of the State where the real property securing the consumer credit transaction is located.

"(k) IMPLEMENTATION.—

(1) REGULATIONS.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the FDIC, the National Credit Union Administration Board, (hereafter in this Act referred to as the “Federal banking agencies”) and the Federal Reserve Bank of New York shall, in prescribed form, in final form, such regulations as determined to be necessary to implement the amendments made by subsection (a) before the end of the 180-day period beginning on the date of the enactment of this Act.

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

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the FDIC, the National Credit Union Administration Board, (hereafter in this Act referred to as the “Federal banking agencies”) and the Federal Reserve Bank of New York shall, in prescribed form, in final form, such regulations as determined to be necessary to implement the amendments made by subsection (a) before the end of the 180-day period beginning on the date of the enactment of this Act.

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

(c) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 128C (as added by section 201) the following new item:

"(129D. Escrow or impound accounts relating to certain consumer credit transactions.

SECT. 502. DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.

(a) IN GENERAL.—Section 129D of the Truth in Lending Act (as added by section 301) is amended by adding at the end the following new subsection:

"(ii) DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.—

"(1) IN GENERAL.—

(2) DISCLOSURE REQUIREMENTS.—Any disclosure required under paragraph (1) shall include the following:

"(A) Information concerning any applicable fees or costs associated with such service, including the time of the transaction, or any subsequent closure of such account.
“(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

(iii) a clear and conspicuous statement of the procedure by which the borrower may demonstrate to the servicer that the borrower already has insurance coverage; and

(iv) a statement that the servicer may not obtain such insurance coverage and that the servicer’s expenses for any such insurance coverage that the servicer does not provide such demonstration of the borrower’s existing coverage in a timely manner;

(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains the information described in each clauses of such subparagraph; and

(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage within 180 days of the date the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

(C) SUFICIENCY OF DEMONSTRATION.—A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, but shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent.

(3) ESTABLISHMENT OF FORCE-PLACED INSURANCE.—Within 15 days of the receipt by a servicer of a confirmation of a borrower’s existing insurance coverage, the servicer shall:

(A) terminate the force-placed insurance; and

(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the servicer’s insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer’s account with respect to the force-placed insurance during such period.

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

(m) LIMITATIONS ON FORCE-PLACED INSURANCE CHARGES.—All charges for force-placed insurance payments or premiums with respect to the property shall be bona fide and reasonable in amount.

(b) INCREASE IN PENALTY AMOUNTS.—Section 6(f) of the Real Estate Settlement Procedures Act of 1989 (12 U.S.C. 2605(g)) is amended by adding at the end the following new sentence: "Any balance in any other type of account has been or will be established shall be determined in accordance with the requirements of this subsection in connection with a subprime mortgage to the applicant before, and at least 3 days prior to, the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction), if known, and the re-placement cost for hazard insurance, in the initial year after the transaction.

TITLE VI—APPRaisal ACTIVITIES

SEC. 601. PROPERTY APPRAISAL REQUIREMENTS.

Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after section 129F (as added by section 602) the following new section (and by amending the table of contents accordingly): "SEC. 129F. REQUIREMENTS FOR PROMPT CREDITING OF HOME LOAN PAYMENTS.

(a) IN GENERAL.—In connection with a consumer credit transaction secured by a consumer’s principal dwelling, the servicer shall—

(1) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person under 3 years of the date of the purchase of such property by that person at a price that was lower than the current sale price of the property, the servicer shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the mortgaged property from the date of the previous sale and the current sale.

(ii) a statement that the servicer does not have evidence of insurance coverage of such property; and

(iii) a clear and conspicuous statement of the procedure by which the borrower may demonstrate to the servicer that the borrower already has insurance coverage; and

(iv) a statement that the servicer may not obtain such insurance coverage and that the servicer’s expenses for any such insurance coverage that the servicer does not provide such demonstration of the borrower’s existing coverage in a timely manner;

(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains the information described in each clauses of such subparagraph; and

(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage within 180 days of the date the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

(C) SUFICIENCY OF DEMONSTRATION.—A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, but shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent.

(3) ESTABLISHMENT OF FORCE-PLACED INSURANCE.—Within 15 days of the receipt by a servicer of a confirmation of a borrower’s existing insurance coverage, the servicer shall:

(A) terminate the force-placed insurance; and

(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the servicer’s insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer’s account with respect to the force-placed insurance during such period.

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

(m) LIMITATIONS ON FORCE-PLACED INSURANCE CHARGES.—All charges for force-placed insurance payments or premiums with respect to the property shall be bona fide and reasonable in amount.

(b) INCREASE IN PENALTY AMOUNTS.—Section 6(f) of the Real Estate Settlement Procedures Act of 1989 (12 U.S.C. 2605(g)) is amended by adding at the end the following new sentence: "Any balance in any other type of account has been or will be established shall be determined in accordance with the requirements of this subsection in connection with a subprime mortgage to the applicant before, and at least 3 days prior to, the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction), if known, and the re-placement cost for hazard insurance, in the initial year after the transaction.

TITLE VI—APPRaisal ACTIVITIES

SEC. 601. PROPERTY APPRAISAL REQUIREMENTS.

Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after section 129F (as added by section 602) the following new subsection:

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

(5) VIOLATIONS.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this subsection shall be liable to the applicant or borrower for the sum of $2,000.

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unfair or deceptive act or practice as described in or pursuant to regulations prescribed under this section.

"(b) APPRAISAL INDEPENDENCE.—For purposes of subsection (a), unfair and deceptive practices shall include—

"(1) any appraisal of a property offered as security for the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction competes, colludes, induces, duces, bribes, or intimidates a person conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, duce, bribe, or intimidate such a person for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent evaluation of the property; and

"(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

"(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

"(4) withholding or threatening to withhold timely payment for the appraisal report or for appraisal services rendered.

"(c) EXCEPTIONS.—The requirements of subsection (b) shall not be construed as prohibiting a mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to provide 1 or more of the following services:

"(1) Consent additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

"(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

"(3) Correct errors in the appraisal report.

"(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

"(e) MANDATORY REPORTING.—Any mortgage lender, mortgage broker, mortgage banker, real estate lender, mortgage loan originator, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying authority.

"(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such a consumer credit transaction that is secured by a consumer's principal dwelling; and

"(g) RULEMAKING PROCEEDINGS.—The Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission.

"(1) shall, for purposes of this section, jointly prescribe regulations no later than 180 days after the date of the enactment of this section, and where such regulations have an effective date of no less than 1 year from the date of the enactment of this section, defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for such a transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations;

"(2) may jointly issue interpretive guidelines and general statements of policy with respect to unfair or deceptive acts or practices in the provision of mortgage lending services for such a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

"(h) PENALTIES.—

"(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

"(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), such person shall be assessed, by the principal dwelling of a consumer who has

"(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to the consumer or to the consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

"(i) PENALTIES.—

"(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

"(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1) shall be applied by substituting '$20,000' for '$10,000' with respect to all subsequent violations.

"(j) PENALTIES.—

"(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

"(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1) shall be applied by substituting '$20,000' for '$10,000' with respect to all subsequent violations.

"(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to the consumer or to the consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

"(i) PENALTIES.—

"(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

"(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1) shall be applied by substituting '$20,000' for '$10,000' with respect to all subsequent violations.

"(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to the consumer or to the consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction,
"(7) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are owned or controlled by a federal regulatory financial institution.

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section (and amending the table of contents accordingly):"

"SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.

"(a) In General.—The Appraiser Qualifications Board of the Appraisal Foundation shall establish minimum qualifications to be applied by a State in the registration of appraisal management companies. Such qualifications shall include a requirement that such companies—

(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

(2) verify that only licensed or certified appraisers are used for federally related transactions;

(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice;

(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act;

(b) Exception for Federally Regulated Financial Institutions.—The requirements of subsection (a) shall not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency, in such case, the appropriate federal financial institutions regulatory agency shall, at a minimum, develop regulations affecting the operations of the appraisal management company to—

(1) verify that only licensed or certified appraisers are used for federally related transactions;

(2) require that appraisals coordinated by an institution or subsidiary providing appraisal management services comply with the Uniform Standards of Professional Appraisal Practice; and

(3) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

(c) Registration Limitations.—An appraisal management company may not be registered by a State if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certification refused, denied, cancelled, surrendered, or revoked in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall disclose to the Appraiser Qualifications Board, in such manner as determined by the State appraiser certifying and licensing agency, any pending action against such person by any State appraiser certifying and licensing agency.

(d) Regulations.—The Appraiser Subcommittee shall promulgate regulations to implement the minimum qualifications developed by the Appraiser Qualifications Board under this section, as such qualifications relate to the State appraiser certifying and licensing agencies. The Appraiser Subcommittee shall also promulgate regulations for the reporting of the activities of appraisal management companies in determining the payment of the annual registry fee.

(1) IN GENERAL.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.

(2) Extension of Effective Date.—Subject to the approval of the Council, the Appraiser Subcommittee may extend the period of 36 months the requirements for the registration and supervision of appraisal management companies if it finds a written finding that a State has made substantial progress in establishing a State appraiser management company registration and supervision system that appears to conform with the provisions of this title.

(3) The Appraiser Qualifications Board and Licensing Agency Authority.—Section 1107 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following:

(1) IN GENERAL.—The term ‘appraisal management company’ means, among other things—

(1) a management company that is a subsidiary owned and controlled by a financial institution and regulated by a financial institution regulatory agency, or a management company that is a subsidiary of or other principal in the secondary mortgage market, that is owned and controlled by a financial institution and regulated by a financial institution regulatory agency, or a management company that is owned and controlled by a financial institution and regulated by a financial institution regulatory agency.

(2) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice;

(3) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

(6) to report to all State appraiser certifying and licensing agencies the following information for each appraisal management company that either has registered with a State or is subject to oversight by a federal financial institutions regulatory agency:

(1) the fee of all such companies that were not in existence for more than a year, $25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the sub-committee’s functions under this title; and

(II) in the case of such a company that has not been in existence for more than a year, $25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the sub-committee’s functions under this title; and

(B) by amending the last sentence of paragraph (4), as redesignated, to read as follows:

Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of the registry fees under this section (12 U.S.C. 3346(b)(4)(A)) up to a maximum of $80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least one time every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide adequate notice to the participating financial institutions and certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.

(2) Incremental Revenues.—Incremental revenues collected pursuant to the increases required by this subsection shall be placed in a separate account at the United States Treasury, entitled the “Appraisal Subcommittee Account.”

(i) Grants and Reports.—Section 1109(b)(4) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)) is amended—

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

(2) by striking the period at the end of paragraph (3) and inserting a semicolon;

(3) by adding at the end the following paragraphs:

(1) to make grants to State appraiser certifying and licensing agencies to support the efforts of such agencies to comply with this title, including—

(I) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

(II) the submission of data on State licensed and certified appraiser management companies to the National Appraisal Registry, including information affirming that the appraiser or appraisal management company maintains the required qualifications criteria, and formal and informal disciplinary actions; and

(2) to report to all State appraiser certifying and licensing agencies when a license or certification is suspended, revoked, or surrendered.

(3) Obligations authorized under this subsection may not exceed 7 percent of the fiscal year total of incremental increase in fees collected
3351(b)) is amended to read as follows:

1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(a) by adding at the end the following subsection:

"SEC. 1125. AUTOMATED VALUATION MODELS USED TO VALUE CERTAIN MORTGAGES.

"(a) IN GENERAL.—Automated valuation models shall adhere to quality control standards designed to—

(1) ensure a high level of confidence in the estimates produced by automated valuation models;

(2) protect against the manipulation of data;

(3) seek to avoid conflicts of interest; and

(4) require random sample testing and reviews, where such testing and reviews are performed by an appraiser who is licensed or certified in the State where the testing and reviews take place.

(b) ENFORCEMENT.—Compliance with regulations issued under this subsection shall be enforced by—

(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a federal financial institution or regulatory agency, the federal financial institution regulatory agency that acts as the primary federal regulator of such financial institution or subsidiary; and

(2) with respect to other persons, the Appraisal Subcommittee.

"(m) CONSIDERATION OF PROFESSIONAL APRAISER STANDARDS OF PRACTICE.—Any regulations established under section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) are amended by striking "shall not exclude" and all that follows after "that failure to follow such provisions of..." and inserting the following: "may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a consideration, though lack of membership therein shall not be the bar against consideration for an assignment under these criteria.".

"(n) APPRAISER INDEPENDENCE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(1) by amending subsection (a) to read as follows:

"(a) M INIMUM QUALIFICATION REQUIREMENTS.—Any requirements established for the licensing of individual appraisers under section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) are amended by striking "shall not exclude" and all that follows after "that failure to follow such provisions of..." and inserting the following: "any requirements established for the licensing of individual appraisers under section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) are amended by striking "shall not exclude" and all that follows after "that failure to follow such provisions of..." and inserting the following: "may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a consideration, though lack of membership therein shall not be the bar against consideration for an assignment under these criteria.".

(2) by adding at the end the following new subsection:

"(q) APPRAISAL INDEPENDENCE MONITORING.—The Appraisal Subcommittee shall have the authority to monitor the States and the Federal Housing Finance Agency to determine whether such agency has policies, practices, funding, staffing, or procedures found to be inconsistent with this title; and

(3) by adding at the end the following new subsection:

"(r) BROKER PRICE OPINION DEFINED.—For purposes of this section, the term 'broker price opinion' means any computer generated model used by government sponsored secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

"(s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following new section (and amending the table of contents accordingly):

"SEC. 1126. BROKER PRICE OPINIONS.

"(a) GENERAL PROHIBITION.—Broker price opinions may not be used as the sole basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

(b) EXCEPTIONS.—Subsection (a) shall not apply if—

(1) those transaction as may be designated by the federal financial institutions regulatory agencies or the Federal Housing Finance Agency.

(2) real estate brokers who produce broker price opinions or competitive market analyses solely for the purposes of the real estate listing process.

(c) BROKER PRICE OPINION DEFINED.—For purposes of this section, the term 'broker price opinion' means an estimate, done in lieu of a usual appraisal, by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of confidence about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).

(d) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by adding at the end the following:

(1) in the first sentence, by adding before the period the following: "and the Federal Housing Finance Agency".

(2) by inserting at the end the following: "At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge, competence, and experience in the appraisal profession, and professional designation within the appraisal profession.".
The CHAIR. No amendment to the committee amendment is in order except those printed in House Report 111-98. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent of the amendment, shall be in order, subject to amendment, and shall not be subject to a demand for division of the question.
In section 129B(c)(2)(D) of the Truth in Lending Act (as added by section 103 of the bill), strike “rate or”; 

In section 129B(e)(1) of the Truth in Lending Act (as added by section 155 of the bill), insert after “standards” the following: “necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers and to provide for the protection of consumers in a manner consistent with the purposes of this section and section 129B,” 

Section 106 is amended by inserting after subsection (e) the following new subsection: 

(f) STANDARDIZED DISCLOSURE FORMS.—

(1) IN GENERAL.—Any regulations proposed or issued pursuant to the requirements of this section shall include model disclosure forms.

(2) OPTION FOR MANDATORY USE.—In issuing proposed or final regulations pursuant to subsection (a), the Secretary of Housing and Urban Development and the Board of Governors of the Federal Reserve System shall include regulations for the mandatory use of standardized disclosure forms if they jointly determine that it would substantially benefit the consumer.

At the end of title I, add the following new section:

SEC. 107. STUDY OF SHARED APPRECIATION MORTGAGES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury and other relevant agencies, shall conduct a comprehensive study to determine prudent statutory and regulatory requirements sufficient to provide for the widespread use of shared appreciation mortgages to strengthen local housing markets, provide new opportunities and unique forms of mortgage credit for consumers in a manner consistent with the purposes of this section.

(b) REPORT.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit a report to the Congress on the results of the study, which shall include recommendations for the regulatory and legislative requirements referred to in subsection (a).

In paragraph (4) of section 129A of the Truth in Lending Act (as added by section 206 of the bill), after “standees,” insert the following: “and (b),”; and

In section 129A(c)(2)(D) of the Truth in Lending Act (as added by section 206 of the bill), strike “and (b)” and insert “and (b),” the Chairman of the State Liaison Committee,”.

In section 129A(c)(3) of the Truth in Lending Act (as added by section 101 of the bill), insert the following following terms of a residential mortgage loan at the end and insert “; and”:

(1) in subparagraph (D), strike the final “and”;

(ii) the mortgage is a qualified mortgage.

In section 129A(c)(2)(D) of the Truth in Lending Act (as added by section 103 of the bill)—

(1) in subparagraph (C), strike the final “and”;

(2) in subparagraph (D), strike the period at the end and insert “; and”; and

(3) add at the end the following:

“(F) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, repaying, or refinancing principal outstanding mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or failing behind.”

In section 129A(c)(6) of the Truth in Lending Act (as added by section 101 of the bill), strike “129A(a)(1) and 129A(b)(1)″ and insert “129A,”

In section 129B(b)(4)(A) of the Truth in Lending Act (as added by section 102 of the bill), strike “,” the Chairman of the State Liaison Committee to the Financial Institutions Examination Council,”.

In section 129B(a) of the Truth in Lending Act (as added by section 103 of the bill), insert after paragraph (1) the following (and redesignate succeeding paragraphs accordingly):

“(2) Restructuring of financing origination fee.—

“(A) IN GENERAL.—For any mortgage loan, a mortgage originator may not arrange for a consumer to finance through rate any origination fee or cost except bona fide third party settlement charges not retained by the creditor, acting in good faith, as of the date the mortgage is closed.

“(B) EXCEPTION.—Notwithstanding paragraph subparagraph (A), a mortgage originator may arrange for a consumer to finance through rate any origination fee or cost except bona fide third party settlement charges not retained by the creditor, acting in good faith, as of the date the mortgage is closed.

“(C) FEE REDUCTION.—If at any time after the origination fee or cost has been included in the financing of a mortgage for a consumer, the consumer requests the lender to purchase the mortgage loan at a discount, or the mortgage originator receives any other compensation from the consumer except the compensation that is financed through rate, and

“(ii) the mortgage originator does not receive any other compensation from the consumer except the compensation that is financed through rate, and

“(ii) the mortgage is a qualified mortgage.

In section 129B(c)(2) of the Truth in Lending Act (as added by section 103 of the bill)—

(1) in subparagraph (C), strike the final “and”;

(2) in subparagraph (D), strike the period and insert “; and”; and

(3) add at the end the following new subparagraph:

“(K) Mortgage originators from—

“(I) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

“(II) the financing or subordinating the mischaracterization of the appraised value of the property securing the extension of credit; or

“(III) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discouraging a consumer from obtaining a mortgage loan secured by a consumer’s principal dwelling from another mortgage originator.”.
strike paragraph (3) and redesignate succeeding paragraphs accordingly.

In section 206, insert at the end the following new subsections:

(c) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (k) (as added by section (a) of this section) the following new subsection (designated succeeding subsections accordingly):

“(1) DEFINITION.—For purposes of this subsection, the term ‘anti-deficiency law’ means the law, rule or regulation of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

“(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

“(3) NOTICE BEFORE REFINANCING THAT WOULD CAUSE LOSS OF PROTECTION.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator surrenders an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.

(d) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (1) the following new subsection (and redesignating succeeding subsections of such section accordingly):

“(m) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator surrenders an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.

“(1) the creditor’s policy regarding the acceptance of partial payments; and

“(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.”

In section 208(b)—

(1) in paragraph (3)(B), strike the final “or”; and

(2) in paragraph (4), strike the period on the end and insert “; or”;

and

(3) add at the end a following new paragraph:

“notwithstanding paragraph (2), the availability of any remedies under State law against any assignee, securitizor or securitization vehicle that—

(A) are in addition to those remedies provided in section 129K; and

(B) were in effect on the date of enactment of this Act.”

In section 129C(1)(l) of the Truth in Lending Act (as added by section 213 of the bill)—

(1) strike “providing creditors” and insert “providing creditors”; and

(2) strike “creditors are required” and insert “creditors are required”;

In section 129C(2)(C) of the Truth in Lending Act (as added by section 213 of the bill)—

(1) strike “require creditors” and insert “require a creditor”; and

(2) insert before “; or” the following:

“by such creditor.”

In section 129C(3)(A) of the Truth in Lending Act (as added by section 213 of the bill), after “authority to” insert the following: “jointly.”

In section 129C(1)(3)(B)(i) of the Truth in Lending Act (as added by section 213 of the bill), strike “mortgage lenders” and insert “creditors that make residential mortgage loans that are not qualified mortgages”.

In section 129C(1)(3)(B)(ii) of the Truth in Lending Act (as added by section 213 of the bill), after “; or” insert “; or”;

In section 129C(1)(3)(A) of the Truth in Lending Act (as added by section 213 of the bill), strike “such creditors” and insert “creditors”;

In section 129C(1)(3)(B) of the Truth in Lending Act (as added by section 213 of the bill), strike “such creditors” and insert “creditors”;

In section 206(b)—

(1) strike “broker” and insert “originator”; and

(2) strike “the originator” and insert “the creditor”.

In section 103(dd) of the Truth in Lending Act (as added by section 301(d) of the bill)—

(1) strike “broker” and insert “originator”; and

(2) strike “the originator” and insert “the creditor”.

In section 128(a)(18) of the Truth in Lending Act (as added by section 214(a) of the bill)—

“(19) In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. Such amount shall be computed assuming the consumer makes each monthly payment in full and on-time, and does not make any over-payments.”

Strike section 214(b).

In section (f)(1) of section 128 of the Truth in Lending Act (as added by section 215 of the bill), insert after subparagraph (F) the following new subparagraph (and redesignate the subsequent subparagraph accordingly):

“(G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as determined by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).”

In subsection (c) of section 218, insert—

“(1) except that—

(a) the required net yield for a 90-day standby mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; and

(b) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.),

(2) Unless 2 bona fide discount points have been included under paragraph (1), up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from
which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points—

(4) The required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall be no greater; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

In subsection (r) of section 129 of the Truth in Lending Act, as added by section 303(c) of the Housing and Economic Recovery Act of 2008, strike “DEFERRAL FEES PROHIBITED.”

(1) CREDITORS.—A creditor.

(2) THIRD PARTIES.—A third-party may—

(A) modify, renew, extend, or amend a high-cost mortgage due under the terms of such mortgage;

(B) negotiate with a creditor on behalf of a consumer, the modification, renewal, extension, or amendment of a high-cost mortgage; or

(C) negotiate with a creditor on behalf of a consumer, the deferral of any payment due under a high-cost mortgage unless the modification, renewal, extension or amendment results in a significantly lower annual percentage rate on the mortgage, or a significant reduction in the amount that does not exceed the amount of the fee is comparable to fees imposed for similar transactions in connection with consumer credit transactions that are secured by a consumer’s principal dwelling and are not high-cost mortgages.

(3) ENFORCEMENT.—Section 130 shall be applied for purposes of paragraph (2) by—

(A) substituting “third party” for “creditor” each place such term appears; and

(B) substituting “any fee charged by a third party for services charge” each place such term appears.

In subsection (g)(3)(B)(ix) of section 4 of the Department of Housing and Urban Development, Housing and Economic Recovery Act of 2008, strike “, including underdeveloped areas that lack basic water and sewer systems, electricity services, and safe, sanitary housing” before the period at the end.

In the matter proposed to be inserted by the amendment made by section 406(a) of the bill, in subsection (g)(1)(B)(v), strike “and” after the semicolon.

In the matter proposed to be inserted by the amendment made by section 408(a) of the bill, in subsection (g)(1)(B)(x)(ii), strike “and” after the semicolon.

In the matter proposed to be inserted by the amendment made by section 408(a) of the bill, in paragraph (c) of subsection (g)(1)(B), add the following:


In the matter proposed to be inserted by the amendment made by section 409(a) of the bill, in subsection (g)(5), strike “and home repair loans” and insert the following: “homestead loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage”.

In section 139(c) of the Truth in Lending Act, in subsection (d), before the period at the end insert the following:

“(a) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall be no greater; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).”

In subsection (r) of section 129 of the Truth in Lending Act, as added by section 303(c) of the Housing and Economic Recovery Act of 2008, strike “DEFERRAL FEES PROHIBITED.”

(1) CREDITORS.—A creditor.

(2) THIRD PARTIES.—A third-party may—

(A) modify, renew, extend, or amend a high-cost mortgage due under the terms of such mortgage;

(B) negotiate with a creditor on behalf of a consumer, the modification, renewal, extension, or amendment of a high-cost mortgage; or

(C) negotiate with a creditor on behalf of a consumer, the deferral of any payment due under a high-cost mortgage unless the modification, renewal, extension or amendment results in a significantly lower annual percentage rate on the mortgage, or a significant reduction in the amount that does not exceed the amount of the fee is comparable to fees imposed for similar transactions in connection with consumer credit transactions that are secured by a consumer’s principal dwelling and are not high-cost mortgages.

(3) ENFORCEMENT.—Section 130 shall be applied for purposes of paragraph (2) by—

(A) substituting “third party” for “creditor” each place such term appears; and

(B) substituting “any fee charged by a third party for services charge” each place such term appears.

In subsection (g)(3)(B)(ix) of section 4 of the Department of Housing and Urban Development, Housing and Economic Recovery Act of 2008, strike “, including underdeveloped areas that lack basic water and sewer systems, electricity services, and safe, sanitary housing” before the period at the end.

In the matter proposed to be inserted by the amendment made by section 406(a) of the bill, in subsection (g)(1)(B)(v), strike “and” after the semicolon.

In the matter proposed to be inserted by the amendment made by section 408(a) of the bill, in paragraph (c) of subsection (g)(1)(B), strike “and” after the semicolon.

In the matter proposed to be inserted by the amendment made by section 408(a) of the bill, in subsection (g)(1)(B)(x)(ii), strike the period at the end and insert “; and”.

In the matter proposed to be inserted by the amendment made by section 408(a) of the bill, in section (g)(3)(B)(ix) of subsection (g)(1)(B), add the following:


In the matter proposed to be inserted by the amendment made by section 409(a) of the bill, in subsection (g)(5), strike “and home repair loans” and insert the following: “homestead loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage”.

In section 139(c) of the Truth in Lending Act, in subsection (d), before the period at the end insert the following:

“(a) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall be no greater; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).”

In section 406, insert “; and the role of computer registries of mortgages, including those secured by government loans; before the period at the end insert the following:

“A creditor shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

(3) QUALIFIED APPRAISER DEFINED.—For purposes of this section, the term ‘qualified appraiser’ means a person who—

(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the regulations prescribed under such title, as in effect on the date of the appraisal.

(C) FREE COPY OF APPRAISAL.—A creditor shall provide a copy of each appraisal conducted in accordance with this section in connection with a subprime mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

(D) CONSUMER NOTIFICATION.—At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the applicant’s expense.

(E) VIOLATIONS.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of $2,000.

(1) SUBPRIME MORTGAGE DEFINED.—For purposes of this section, the term ‘subprime mortgage’ means a residential mortgage loan secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate on a comparable transaction, as of the date the interest rate is set—

(1) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of
the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth section of title 12, section 1454(a)(2); and
“(2) by 2.5 or more percentage points, in the case of a subordinate lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth section of title 12, section 1454(a)(2); and
“(3) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.”

For the purposes of this section, the board shall insert the following: “Amendments relating to Appraisal Subcommittee of FIEC, Appraiser Independence Monitoring, Approved Appraiser Education, Appraisal Management Companies, Appraiser Complaint Hotline, Automated Valuation Models, and Broker Price Opinions.”

Strike section 603(a)(2)(B) (and redesignate succeeding subparagraphs accordingly). In section 1125(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (as amended by sections 603(a) and 603(b) of the bill)—
(1) in paragraph (5), strike “10 certified” and insert “15 certified”; and
(2) strike paragraph (4) and redesignate paragraph (6) as paragraph (4).

In the header of section 603(e), strike “Field”.

In section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (as added by section 603(e)(4) of the bill), strike “10 certified” and insert “15 certified”.

In section 1126(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (as added by section 603(q) of the bill), after “member agencies” insert the following: “, in consultation with the Appraisal Board of the Appraisal Foundation and other interested parties.”

In section 1125(c)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (as added by section 603(q) of the bill), strike “institutional or regulatory” and insert “institutional regulatory”.

In section 1126 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (as added by section 603(r) of the bill), strike subsections (a), (b), and (c), and insert the following:
“(a) General Prohibition.—In conjunction with the purchase of a consumer’s principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property. “(b) Broker Price Opinion Defined.—For purposes of this section, the term “broker price opinion” means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property’s condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).”

In section 606, add at the end the following:
“(c) Credit Score Requirements.—The Comptroller General shall conduct an additional study to determine the effects that the changes to the seller-guide appraisal requirements for Freddie Mac and Freddie Mac contained in the Home Valuation Code of Conduct have on small business, like mortgage brokers and independent appraisers, and consumers, including the effect on the—
(1) quality and costs of appraisals;
(2) length of time for obtaining appraisals; and
(3) impact on mortgage brokers and other small business professionals in the financial services industry."

(a) Study.—The Comptroller General shall submit an additional report to the Committee on Financial Services of the House of Representatives and the Senate containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (c). Such additional report shall take into consideration the Small Business Administration, the Federal Housing Finance Agency, the Federal Deposit Insurance Corporation, the Federal Reserve System, the Federal Housing Administration, and other interested parties, as appropriate.

The Comptroller General shall conduct an additional study to determine the effects that the changes to the seller-guide appraisal requirements for Freddie Mac and Freddie Mac contained in the Home Valuation Code of Conduct have on small business, like mortgage brokers and independent appraisers, and consumers, including the effect on the—
(1) quality and costs of appraisals;
(2) length of time for obtaining appraisals; and
(3) impact on mortgage brokers and other small business professionals in the financial services industry."

The CHAIR. Pursuant to House Resolution 406, the gentleman from Massachusetts (Mr. Frank) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. Frank of Massachusetts. Mr. Chairman, this is a somewhat bigger than usual manager’s amendment because, frankly, we are responding to the interest of the Members in trying to leave. I prevailed on some Members who had amendments to put them in this amendment. They are not 100 percent agreed to. I think, in every case, but none of them are major changes. There are some major changes that we will be dealing with separately.

My intention during the time that I have will be to yield to those Members who very graciously have agreed to have their amendments put in the manager’s amendment.

Mr. Chairman, I will begin by yielding 1½ minutes to the gentleman from Maryland (Mr. Sarbanes).

Mr. Sarbanes. Mr. Chairman, I rise in support of H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act.

I want to express my thanks to Chair Frank for incorporating into the manager’s amendment a proposal we developed to fight back against a new class of predators which is emerging right now. These are third-party consultants that see the chance to make fast money promising to help people fix their loans one more time.

I want to emphasize that not all counseling services by third parties are bad and not all middlemen are bad, but...
Congressman MILLER offered an amendment during the Financial Services Committee markup that would have preserved the careful balance of banning steering while preserving a consumer’s ability to finance the closing costs of their mortgage. Mr. MILLER withdrew his amendment, given the agreement

in committee, Chairman FRANK said he felt that he and Mr. MILLER had agreed in principle about only banning incentive compensation and not direct compensation. Mr. MILLER withdrew his amendment, given the agreement by the chairman to work with him on details of the language. The manager’s amendment does not reflect that agreement, and the Rules Committee did not make in order an amendment submitted by Mr. MILLER. Really instead of clarifying the ability of consumers to finance closing costs and origination fees through rate or other means, this bill would simply remove that option to finance through the rate completely.

Additionally, the manager’s amendment says all origination fees must be collected up front or all fees shall be in the rate. This means consumers, again, will no longer have the option of paying some closing costs up front and some through the rate.

Consumers should be able to finance closing costs and origination fees in any way they deem appropriate for their individual circumstances. Clarifications were expected to ensure the preservation of this option, but the only clarification made was that the bill will now only allow the option in the manager’s amendment.

What does that mean? Well, that means when an individual goes to their mortgage lender or to their local community bank, in the past they had an option they knew. I would need to put a certain amount of my closing costs in the loan and maybe that would be reflected in the rate. Maybe part of it would be reflected in the rate if we’re going to take away the option for the banker to offer that to the individuals. And I think that’s what our opposition has been to this bill from the very beginning, that while we are trying to prevent predatory lending, and everybody is against predatory lending, at the same time we’ve started down a road where we are going to limit the available products to individuals. We’re going to raise the cost of these mortgages to individuals; and, more importantly, we’re going to cause mass confusion in the marketplace.

There are some very punitive things in this bill that if someone is “steering,” that could result in a lawsuit. And I think we have to think this mortgage, if I offered you this one, it would be beneficial to you but I also think if I offered you this mortgage. But I think it’s going to deter a lot of mortgage bankers and community banks from offering them different options to individuals because they’re going to be afraid that somehow they are steering.

I have some other concerns which I will express further into the debate here.

At this time, Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

The gentleman from Texas is correct. I did tell my friend Mr. MILLER from California we will work on it. It slipped. But I have spoken to him. The gentleman presented things very accurately. As I talked to Mr. MILLER, I think what we have to do, and we will do this before this bill becomes law, is spell out exactly what’s allowed. I think we have conceptual agreement on what should be banned and what should be allowed. Sometimes people want to leave too much implicit. I’m a great believer that redundancy is better than ambiguity. So I have given the gentleman from California my commitment that before this bill becomes law, if it does, we will spell out what is permitted, much of what the gentleman said.

Mr. Chairman, I submit the following correspondence:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,

Hon. Barney Frank,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

Dear Chairman Frank: This is to advise you that, as a result of your having consulted with us on proposed changes to the “Mortgage Reform and Anti-Predatory Lending Act,” that fall within the rule X jurisdiction of the Committee on the Judiciary, we are able to agree to discharging our committee from further consideration of the bill in order that it may proceed without delay to the House floor for consideration.

The Judiciary Committee takes this action with the understanding that by foregoing further consideration of H.R. 1728 at this time, we do not waive our subject matter contained in this or similar legislation. We appreciate your continued willingness to consider further clarifications and refinements to the provisions in our jurisdiction as the legislation moves forward. Finally, we reserve the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this important legislation, and request your support if such a request is made.

I would appreciate your including this letter in the Congressional Record during consideration of the bill on the House floor.

Thank you for your attention to this request, and for the cooperative relationship between our two committees.

Sincerely,

JOHN CONYERS, Jr.,
Chairman.

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there is a group that is always ready to take advantage of people. They’re like sharks that are circling, and in Maryland we’ve seen the Department of Licensing Labor and Regulation has 70 open cases right now looking into fraudulent mortgage modifications to a high-cost mortgage unless these actions result in a benefit to the consumer through a significant reduction in principal or a significantly lower annual percentage rate on the mortgage. This will protect a lot of people, and I thank Chairman FRANK for including this in the manager’s amendment.

Mr. NEUGEBAUER. Mr. Chairman, I rise to claim time in opposition to the amendment.

The CHAIR. The gentleman is recognized for 15 minutes.

Mr. NEUGEBAUER. Mr. Chairman, I yield myself such time as I may consume.

There are some provisions in this amendment that I support and there are some that I don’t.

One of the parts of it that I do support is the amendment does call for a GAO study to analyze the effectiveness of the risk-retention provisions of this bill and make recommendations to Congress. My only regret is I wish we could have done a study before we implement this particular piece of legislation.

As you know, section 213 of the bill requires creditors to retain an economic interest in at least 5 percent of the credit risk of each loan that is not a qualified mortgage that the creditor transfers, sells, or conveys to a third party.

I think a lot of people feel that this skin in the game may be a good provision. I think the question that arises is what impact will this have on small creditors and small community banks across the country? One of the things that we want to make sure is that the bill is not really clear about the mechanism or the mechanics of how this provision would be implemented, and we’re going to have to have regulatory clarification on that. I wish that, again, we could have had a study in advance of that so that we could then make sure that, as we are implementing this bill, that the regulators have some direction of how to go to make sure we implement this provision without causing major disruption in the mortgage process. Again, I wish we could have done that before.

There are concerns that I have about the manager’s amendment as well, Mr. Chairman. First of all, rather than clarifying provisions related to broker compensation, yield-spread premiums, and ensuring all types of mortgage credit risk are covered by equal antisteering provisions, this amendment adds further inequity and confusion.
This bill. I acknowledge that portions of the bill as reported fall within the jurisdiction of the Committee on the Judiciary and I appreciate your cooperation in moving the bill to the House floor. Notably, I understand that your decision to not to proceed with a markup on this bill will not prejudice the Committee on the Judiciary with respect to its particular or similar legislation. I would support your request for conferrees on those provisions within your jurisdiction in the event of a House-Senate conference.

I will include a copy of this letter and your response in the Congressional Record. Thank you again for your assistance.

Barney Frank, Chairman.

With that, Mr. Chairman, I will now yield 1 1/2 minutes to a very diligent member of the committee who has an amendment in the manager’s amendment, the gentleman from Minnesota (Mr. Ellison).

Mr. Ellison. Let me thank the Chair for his shepherding this critically important piece of legislation to the floor and getting us to this point.

Mr. Chairman, I am very grateful that the Chair and all the members of the committee were able to include in the manager’s amendment what I believe is almost the very heart of the problem here, and that is that people who qualified for certain kinds of loans were steered to loans that made certain other folks more wealthy and other people who were out to seek loans had their credit ratings mischaracterized. Sometimes people had appraisals that were false and true, and then, of course, people who were eligible for certain loans were literally discouraged from shopping around to get a better loan.

This type of steering is not ambiguous; it’s not middle-of-the-road stuff. It is just wrong. And I am glad that the manager’s amendment is going to direct the Secretary to promulgate rules that will put certain no-nos into the bill that would prevent steering.

I think if we had had the level of steering that we had, we would not have the number of exotic subprime loans that we had, predatory loans. And if we didn’t have that, we very likely would not be at the depth of trouble that we’re in right now.

So I’m very happy that this is included in the manager’s amendment, that we will have some clear don’ts that we will ask rules to be promulgated on, prohibiting mischaracterization of appraisal, prohibiting discouraging shopping around, prohibiting mischaracterization of credit scores and others.

Mr. Neugebauer. Mr. Chairman, I appreciate the chair’s sensitivity to this because I think it is a very important issue that we need to resolve in this legislation before it becomes law.

Mr. Frank of Massachusetts. Will the gentleman yield?

Mr. Neugebauer. I yield to the gentleman.

Mr. Frank of Massachusetts. It’s my fault it wasn’t done. I guarantee to you it will be done before the bill, and I appreciate the indulgence. And I have apologized to Mr. Miller.

Mr. Neugebauer. Thank you.

Mr. Chairman, at this time it’s my privilege to yield 2 minutes to the gentlewoman from West Virginia (Mrs. Capito).

Mrs. Capito. I would like to thank the gentleman for yielding to me.

I would like to talk about the bill in general. Mr. Chairman. This legislation was just introduced on March 23, and it is less than a month later, which included our 2-week District Work Period, we had one hearing and then it was followed by a 2-week markup, and we’re hearing now where things are still needing to be clarified, which I think goes to my first point. I think it’s important that to our colleagues to realize that this legislation has the potential to forever change the mortgage market, and I have concerns that, while changes are indeed needed, maybe we may be losing some of the scope of the legislation that could have some serious unintended consequences.

The credit risk-retention provision, the skin-in-the-game provision, while it’s supported in concept by most, it’s still being worked out. The consensus on whom the scope of this provision would encompass or what the effect would be on the liquidity in the market. According to the Mortgage Bankers Association, a record number of borrowers are refinancing, the housing market is still firmly fragile, and what is needed is a sense of certainty so that we can accept a floor in the market. We don’t need constant tinkering and changing so that that stability is not there.

A glaring omission in this legislation, also, is it does nothing to address the future of the GSEs Fannie and Freddie. These two entities provide the lion’s share of liquidity in the mortgage market, and any mortgage reform legislation must recognize what the role of the GSEs will be in the future of the mortgage market.

I supported this legislation last week in the Financial Services Committee and I will support it again today, but I do have real concerns about some of the provisions that are still left in the bill. I don’t believe, and I don’t think anybody does, we should be cutting dollars to homebuyers and homeowners while trying to prevent a problem from happening again.

Mr. Frank of Massachusetts. Mr. Chairman, I now yield 1 1/2 minutes to one of the Members of the House who has been most concerned with stopping this abuse, the gentlewoman from Maryland (Ms. Edwards).

Ms. Edwards of Maryland. Mr. Chairman, I rise today in support of Chairman Frank’s manager’s amendment, and I want to thank the chair, with whom I worked diligently to modify the preemption language in section 208 in a way that would allow the preservation of State laws that provide for “additional remedies against any assignee, securitizer, or securitization vehicle,” which is the case in my home State of Maryland.

My home State of Maryland has been very aggressive at addressing the foreclosure crisis to protect consumers from fraud and predatory lenders. Maryland was one of the first States to enact the ability to promote mortgage law and has worked closely with the Department of Justice in these efforts on behalf of consumers.

That important amendment would respect States like Maryland that already have stringent laws to address some of these issues.

I would like to thank Chairman Frank and particularly Mr. Miller and Mr. Watt for their years of work on behalf of consumers.

I urge all of my colleagues to support Chairman Frank’s manager’s amendment and the underlying bill. Many of these mortgage products should never have been on the market in the first place, and now we will get it right on behalf of consumers.

Mr. Neugebauer. I want to speak to the gentlewoman’s provision in this bill, and one of the things I have, I mean, is that there is a lot of people who want to debate States’ rights versus Federal rights. One of the concerns I have about the provision in the manager’s amendment is that it says yes. It says, yes, there is State jurisdiction and, yes, there is State jurisdiction.

What I am concerned about is that could cause some potential conflicts, and that States would think they had jurisdiction, the Federal Government would think they have jurisdiction, and that States might get the opinion that they might have jurisdiction on some of the other provisions in this bill.

And so one of the things that I think we need to make sure of, as we move forward on this legislation, is we have, maybe, clearer lines on this preemption statute to make sure that everybody understands what the rules of engagement are, as this particular piece of legislation is being implemented.

So one of the other pieces of opposition that we have to this is that we need a clear, I think a clearer preemption wording in this bill to make sure that we understand what the States’ jurisdiction is over this bill and what the Federal jurisdiction is over this bill.

I reserve the balance of my time.

Mr. Frank of Massachusetts. Mr. Chairman, first I would say to my friend from Texas that we wanted some protection to States that don’t have the option of seceding. States that could secede don’t need this protection. But those that plan to stay in the Union, we thought we would try to recognize it to try to protect them.

I yield 1 1/2 minutes to the gentleman from Rhode Island (Mr. Langevin).

(Mr. Langevin asked and was given permission to revise and extend his remarks.)
Mr. LANGEVIN. I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of H.R. 1718, the Mortgage Reform and Anti-Predatory Lending Act and the manager’s amendment that’s before us today, which I know will bring greater transparency to lending practices nationwide.

Unconventional mortgages have left countless Americans facing foreclosure, and this is especially true in my home state of Rhode Island, with one of the highest foreclosure rates in the country.

With this bill, we will combat unscrupulous lending practices and bring transparency to the process by requiring mortgage originators to be licensed and mandating full disclosure of loan terms. Perhaps, most importantly, mortgage originators would certify that consumers have a reasonable ability to pay back the loans that they were applying for and that they are not predatory in nature.

We have seen too many lenders steer consumers into loans that they cannot afford. We cannot allow that practice to continue or to ever happen again. I am also pleased that this measure in- cludes protections to renters of foreclosed property.

H.R. 1728 will address persistent problems in the housing market, bring financial stability to families and ensure that the appropriate measures are in place to prevent this kind of mortgage foreclosure crisis from ever happening again in the future.

I want to thank and commend the gentleman from Massachusetts, Chairman FRANK, for his outstanding leadership on this important measure. I urge support of this bill and the manager’s amendment before us today.

Mr. NEUGEBAUER. Mr. Chairman, another provision in this that has caused concern is the tenant provisions.

This amendment would require property owners to promptly notify any tenants or potential tenants upon becoming subject to foreclosure or defaulting on their mortgage loan. This language requires the owner to provide information on the circumstances with respect to the property and the effect of the default or foreclosure.

Notice to tenants is important. However, in multifamily projects such as apartments, a receiver is typically put in place to manage the property so that residents can remain in their apartments with no disruption. Mandating a notice to residents, if not done correctly, could cause alarm and maybe not even needed alarm.

I have a letter from the National Apartment Association where they have concerns about this very issue, that if you have got an apartment complex, the owner may be temporarily in default. You give notice to the tenants that you are temporarily in default. The tenants get scared, they start looking for other places to live, and, basically, creating vacancies, and, in fact, maybe making the default permanent by the fact that there will not be sufficient revenues to make the payments. So I have very large concerns about that.

Additionally, the amendment allows HUD to step in to troubled properties, transfer a multiproperty project, if delinquent, at the risk of fault or disinvestment or foreclosure.

This is a fairly major expansion of HUD’s authority and could be considered to be a property taking. Property of this type may not be in foreclosure as yet, yet the provision would force properties into foreclosure or over into government control, again, a major expansion, quite honestly, a move away from what the original intent of this legislation was.

The original intent of this legislation was to prevent predatory lending and now we are prescribing how tenants are going to be treated, whether we are going to force property owners to make disclosures about their financial condition, a major diversion from what I think is the legislation and, again, one of the reasons that I do not support this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I reserve the balance of my time.

Mr. NEUGEBAUER. Mr. Chairman, I, again, rise in opposition to this amendment. One of the purposes of this legislation, again, we said, was to prevent predatory lending. But, unfortunately, the consequences of this legislation are going to be to increase the cost of mortgage financing for consumers.

It’s going to raise the monthly payments for many consumers over what their choices would have originally been. It’s going to limit the choices that are available to them. It’s going to force lenders to provide maybe only one choice. It’s also, I think, going to continue to cause a major disruption in the mortgage system.

As one of the speakers originally said, the market is very fragile right now, and some of the provisions in this amendment, I think, contribute to that.

With that, I encourage Members to vote against this.

I yield back the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, how much time do I have remaining?

The CHAIR. The gentleman from Massachusetts has 8 minutes remaining.

Mr. FRANK of Massachusetts. I yield back the balance of my time.

The CHAIR. The gentleman from Massachusetts has 8 minutes remaining.

Mr. FRANK of Massachusetts. I yield back the balance of my time.

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Mr. FRANK of Massachusetts. I yield back the balance of my time.

The CHAIR. The gentleman from Massachusetts has 8 minutes remaining.

Mr. FRANK of Massachusetts. I yield back the balance of my time.

The CHAIR. The gentleman from Massachusetts has 8 minutes remaining.

Mr. FRANK of Massachusetts. I yield back the balance of my time.

The CHAIR. Pursuant to House Resolution 406, the gentleman from Massachusetts (Mr. FRANK) and a Member opposed each will control 5 minutes.