

timing of campaign contributions related to the firm, as well as reports of the Justice Department conducting research on earmarks and campaign contributions, raise concern about the integrity of congressional proceedings and the dignity of this institution.

Now, therefore, be it: Resolved, that

(a) the Committee on Standards of Official Conduct, or a subcommittee of the committee designated by the committee and its members appointed by the chairman and ranking member, shall immediately begin investigation into the relationship between the source and timing of past campaign contributions to Members of the House related to the raided firm and earmark requests made by Members of the House on behalf of clients of the raided firm.

(b) The Committee on Standards of Official Conduct shall submit a report of its findings to the House of Representatives within 2 months after the date of adoption of the resolution.

The SPEAKER pro tempore. Under rule IX, a resolution offered from the floor by a Member other than the majority leader or the minority leader as a question of the privileges of the House has immediate precedence only at a time designated by the Chair within 2 legislative days after the resolution is properly noticed.

Pending that designation, the form of the resolution noticed by the gentleman from Arizona will appear in the RECORD at this point.

The Chair will not at this point determine whether the resolution constitutes a question of privilege. That determination will be made at the time designated for consideration of the resolution.

#### MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

The SPEAKER pro tempore. Pursuant to House Resolution 406 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1728.

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IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1728) to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes, with Mr. ROSS in the chair.

The Clerk read the title of the bill.

The CHAIR. When the Committee of the Whole rose on Wednesday, May 6, 2009, all time for general debate, pursuant to House Resolution 400, had expired.

Pursuant to House Resolution 406, no further general debate is in order. The amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment is as follows:

H.R. 1728

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### 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.

#### TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION STANDARDS

Sec. 101. Definitions.

Sec. 102. Residential mortgage loan origination.

Sec. 103. Prohibition on steering incentives.

Sec. 104. Liability.

Sec. 105. Regulations.

Sec. 106. RESPA and TILA disclosure improvement.

#### TITLE II—MINIMUM STANDARDS FOR MORTGAGES

Sec. 201. Ability to repay.

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

Sec. 203. Safe harbor and rebuttable presumption.

Sec. 204. Liability.

Sec. 205. Defense to foreclosure.

Sec. 206. Additional standards and requirements.

Sec. 207. Rule of construction.

Sec. 208. Effect on State laws.

Sec. 209. Regulations.

Sec. 210. Amendments to civil liability provisions.

Sec. 211. Lender rights in the context of borrower deception.

Sec. 212. Six-month notice required before reset of hybrid adjustable rate mortgages.

Sec. 213. Credit risk retention.

Sec. 214. Required disclosures.

Sec. 215. Disclosures required in monthly statements for residential mortgage loans.

Sec. 216. Legal assistance for foreclosure-related issues.

Sec. 217. Effective date.

Sec. 218. Report by the GAO.

Sec. 219. State Attorney General enforcement authority.

Sec. 220. Tenant protection.

#### TITLE III—HIGH-COST MORTGAGES

Sec. 301. Definitions relating to high-cost mortgages.

Sec. 302. Amendments to existing requirements for certain mortgages.

Sec. 303. Additional requirements for certain mortgages.

Sec. 304. Regulations.

Sec. 305. Effective date.

#### TITLE IV—OFFICE OF HOUSING COUNSELING

Sec. 401. Short title.

Sec. 402. Establishment of Office of Housing Counseling.

Sec. 403. Counseling procedures.

Sec. 404. Grants for housing counseling assistance.

Sec. 405. Requirements to use HUD-certified counselors under HUD programs.

Sec. 406. Study of defaults and foreclosures.

Sec. 407. Definitions for counseling-related programs.

Sec. 408. Updating and simplification of mortgage information booklet.

Sec. 409. Home inspection counseling.

#### TITLE V—MORTGAGE SERVICING

Sec. 501. Escrow and impound accounts relating to certain consumer credit transactions.

Sec. 502. Disclosure notice required for consumers who waive escrow services.

Sec. 503. Real Estate Settlement Procedures Act of 1974 amendments.

Sec. 504. Truth in Lending Act amendments.

Sec. 505. Escrows included in repayment analysis.

#### TITLE VI—APPRAISAL ACTIVITIES

Sec. 601. Property appraisal requirements.

Sec. 602. Unfair and deceptive practices and acts relating to certain consumer credit transactions.

Sec. 603. Amendments relating to appraisal subcommittee of FIEC, appraiser independence, and approved appraiser education.

Sec. 604. Study required on improvements in appraisal process and compliance programs.

Sec. 605. Equal Credit Opportunity Act amendment.

Sec. 606. Real Estate Settlement Procedures Act of 1974 amendment relating to certain appraisal fees.

#### TITLE VII—SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT SPONSORED ENTERPRISES REFORM

Sec. 701. Sense of Congress regarding the importance of Government-sponsored enterprises reform to enhance the protection, limitation, and regulation of the terms of residential mortgage credit.

#### TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION STANDARDS

##### SEC. 101. DEFINITIONS.

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

“(cc) *DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS*.—

“(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 expectation of direct or indirect compensation or gain—

“(i) takes a residential mortgage loan application;

“(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

“(iii) offers or negotiates terms of a residential mortgage loan;

“(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including 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 described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (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 entity 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 determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

“(iii) has 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 may prescribe.

“(4) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term ‘Nationwide Mortgage Licensing 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 consensual 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), and (18), 128(a)(f) and 128(b)(4) and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) 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 structure that—

“(A) is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans; and

“(B) holds such loans.

“(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 ORIGINATOR.**

(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.—

“(1) FINDING.—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 related to such credit, while ensuring 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 and that are understandable and not unfair, deceptive or abusive.

“(b) DUTY OF CARE.—

“(1) STANDARD.—Subject to regulations prescribed under this subsection, 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 Secure and Fair Enforcement for Mortgage Licensing Act of 2008;

“(B) with respect to each consumer seeking or inquiring about a residential mortgage loan, diligently work to 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 the 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); and

“(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; and

“(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 APPLICATION.—Paragraph (1)(B) shall not be construed as requiring—

“(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 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 (4).

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

“(A) creating an agency or fiduciary relationship between a 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, in consultation with the Secretary, the Chairman of the State Liaison Committee to the Financial Institutions Examination Council, and the Commission, shall jointly prescribe regulations to—

“(i) further define the duty established under paragraph (1);

“(ii) implement the requirements of this subsection;

“(iii) establish the time period within which any disclosure required under paragraph (1) shall be made to the consumer; and

“(iv) establish such other requirements for any mortgage originator as such regulatory agencies may determine to be appropriate to meet the purposes of this subsection.

“(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 nonduplicative with other disclosures for mortgage consumers to the extent such efforts—

“(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 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.”

(b) 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 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 (as added by section 102(a)) is amended by inserting after subsection (b) the following new subsection:

“(c) PROHIBITION ON STEERING INCENTIVES.—

“(1) IN GENERAL.—For any mortgage loan, the 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 Commission, shall jointly prescribe regulations to prohibit—

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

“(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 129C(a));

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

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

“(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 129C(c)(3))

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 excessive points and fees (as such term is described 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 subsection 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 compensation permitted to a mortgage originator;

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

“(D) restricting a consumer’s ability to finance, 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 compensation) from any person, so long as such fees or costs were fully and clearly disclosed to the consumer earlier in the application process as required by 129B(b)(1)(C)(i) and do not vary based on the terms of the loan (other than the amount of the principal) or the consumer’s decision about whether to finance such fees or costs; or

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

#### SEC. 104. LIABILITY.

Section 129B of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 103) the following new subsection:

“(d) LIABILITY FOR VIOLATIONS.—

“(1) IN GENERAL.—For purposes of providing a cause of action for any failure by a mortgage originator to comply with any requirement imposed under this section and any regulation prescribed under this section, subsections (a) and (b) of section 130 shall be applied with respect to any such failure by substituting ‘mortgage originator’ for ‘creditor’ each place such term appears in each such subsection.

“(2) MAXIMUM.—The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including a reasonable attorney’s fee.”

#### SEC. 105. REGULATIONS.

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

“(e) DISCRETIONARY REGULATORY AUTHORITY.—

“(1) IN GENERAL.—The Federal banking agencies shall, by regulations issued jointly, prohibit or condition terms, acts or practices relating to residential mortgage loans that the agencies find to be abusive, unfair, deceptive, predatory, inconsistent with reasonable underwriting standards, necessary or proper to effectuate the purposes of this section and section 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

“(2) APPLICATION.—The regulations prescribed under paragraph (1) shall be applicable to all

residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 105.

“(f) Section 129B and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.”

(b) EFFECTIVE DATE.—The 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.

(c) TRUTH IN LENDING FINAL RULE.—Notwithstanding any other provision of this Act, the regulations adopted by the Board concerning Truth in Lending, 73 Fed. Reg. 44522 (July 30, 2008), shall take effect as decided by the Board with such exceptions or revisions as the Board determines necessary.

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

#### 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 period beginning upon the date of the enactment of this Act, jointly issue for public comment proposed regulations providing for compatible disclosures for borrowers to receive at the time of mortgage application and at the time of closing.

(b) REQUIREMENTS.—Such disclosures shall—

(1) provide clear and concise information to borrowers on the terms and costs of residential mortgage transactions and mortgage transactions covered by the Truth in Lending Act (12 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(2) satisfy the requirements of section 128 of the Truth in Lending Act (12 U.S.C. 1638) and section 4 and 5 of the Real Estate Settlement Procedures Act of 1974; and

(3) comprise early disclosures under the Truth in Lending Act and the good faith estimate disclosures under the Real Estate Settlement Procedures Act of 1974 and final Truth in Lending Act disclosures and the uniform settlement statement disclosures under Real Estate Settlement Procedures Act of 1974 and provide for standardization to the greatest extent possible among such disclosures from mortgage origination through the mortgage settlement.

(4) shall include, with respect to a residential home mortgage loan, a written statement of—

(A) the principal amount of the loan;

(B) the term of the loan;

(C) whether the loan has a fixed rate of interest or an adjustable rate of interest;

(D) the annual percentage rate of interest under the loan as of the time of the disclosure;

(E) if the rate of interest under the loan can adjust after the disclosure, for each such possible adjustment—

(i) when such adjustment will or may occur; and

(ii) the maximum annual percentage rate of interest to which it can be adjusted;

(F) the total monthly payment under the loan (including loan principal and interest, property taxes, and insurance) at the time of the disclosure;

(G) the maximum total estimated monthly maximum payment pursuant to each such possible adjustment;

(H) the total settlement charges in connection with the loan and the amount of any downpayment and cash required at settlement; and

(I) whether or not the loan has a prepayment penalty or balloon payment and the terms, timing, and amount of any such penalty or pay-

(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 regulations pursuant to subsection (a), suspend implementation of any provisions of the final rule referred to in paragraph (2) that would establish and implement a new standardized good faith estimate and a new standardized uniform settlement statement. Any such provisions shall be replaced by the regulations issued pursuant to subsections (a) and (b).

(2) 2008 RULE.—The final rule referred to in this paragraph is the rule of the Department of Housing and Urban Development published on November 17, 2008, on pages 68204–68288 of Volume 73 of the Federal Register (Docket No. FR-5180-F-03; relating to “Real Estate Settlement Procedures Act (RESPA): Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs”).

(d) IMPLEMENTATION.—The regulations required under subsection (a) shall take effect, and shall provide an implementation date for the new disclosures required under such regulations, not later than the expiration of the 12-month period beginning upon the date of the enactment of this Act.

(e) FAILURE TO ISSUE COMPATIBLE DISCLOSURES.—If the Secretary of Housing and Urban Development and the Board of Governors of the Federal Reserve System cannot agree on compatible disclosures pursuant to subsections (a) and (b), the Secretary and the Board shall submit a report to the Congress, after the 6-month period referred to in subsection (a), explaining the reasons for such disagreement. After the 15-day period beginning upon submission of such report, the Secretary and the Board may separately issue for public comment regulations providing for disclosures under the Real Estate Settlement Procedures Act of 1974 and the Truth in Lending Act, respectively. Any final disclosures as a result of such regulations issued by the Secretary and the Board shall take effect on the same date, and not later than the expiration of the 12-month period beginning on the date of the enactment of this Act. If either the Secretary or the Board fails to act during such 12-month period, either such agency may act independently and implement final regulations.

## TITLE II—MINIMUM STANDARDS FOR MORTGAGES

### SEC. 201. ABILITY TO REPAY.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129B (as added by section 102(a)) the following new section:

#### “§ 129C. Minimum standards for residential mortgage loans

“(a) ABILITY TO REPAY.—

“(1) IN GENERAL.—In accordance with regulations prescribed jointly by the Federal banking agencies, in consultation with the Commission, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance, and assessments.

“(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans 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, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer’s equity in the dwelling or real property that secures repayment of the loan.

“(4) NONSTANDARD LOANS.—

“(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT 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 allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

“(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer’s ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

“(C) CALCULATION FOR NEGATIVE AMORTIZATION.—In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

“(D) CALCULATION PROCESS.—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—

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

“(ii) the loan is to be repaid in substantially equal monthly amortizing 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 payment), in which case the contract’s repayment schedule shall be used in this calculation; and

“(iii) 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.

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

(b) 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 129B (as added by section 102(b)) the following new item:

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

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

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

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

“(1) IN GENERAL.—In accordance with regulations prescribed under paragraph (3), no creditor may extend credit in connection with any residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan unless the creditor reasonably and in good faith determines, at the time the loan is consummated and on the basis of information known by or obtained in good faith by the creditor, that the refinanced loan will provide a net tangible benefit to the consumer.

“(2) CERTAIN LOANS PROVIDING NO NET TANGIBLE BENEFIT.—A residential mortgage loan that involves a refinancing of a prior existing

residential mortgage loan shall not be considered to provide a net tangible benefit to the consumer if the costs of the refinanced loan, including points, fees and other charges, exceed the amount of any newly advanced principal without any corresponding changes in the terms of the refinanced loan that are advantageous to the consumer.

“(3) 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 PRESUMPTION.**

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 securitizer of such loan, may presume that the loan has met the requirements of subsections (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 by the Federal Banking Agencies;

“(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 more than twice as large as the average of earlier scheduled payments;

“(iv) 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—

“(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a 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. 1454(a)(2)); and

“(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a 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 sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(v) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

“(vi) 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;

“(vii) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first seven years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

“(viii) that does not cause the consumer’s total monthly debts, including amounts under the loan, to exceed a percentage established by regulation 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 all installment and revolving debt;

“(ix) for which the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where ‘points and fees’ means points and fees as defined by Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)); and

“(x) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (4).

“(B) AVERAGE PRIME OFFER RATE.—The term ‘average prime offer rate’ means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low risk pricing characteristics.

“(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 subsection.

“(B) REVISION OF SAFE HARBOR CRITERIA.—

“(i) IN GENERAL.—The Federal banking agencies may jointly prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

“(ii) LOAN 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 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—

“(I) The Department of Housing and Urban Development, with regard to mortgages insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

“(II) The Secretary of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs;

“(III) The Secretary of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h);

“(IV) The Federal Housing Finance Agency, with regard to loans meeting the conforming loan standards of the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation; and

“(V) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.”.

**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.—

“(A) RESCISSION.—In addition to any other liability under this title for a violation by a creditor of subsection (a) or (b) (for example under section 130) and subject to the statute of limitations in paragraph (9), a civil action may be maintained 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 131 and except as provided in paragraph (3), 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) may be maintained against any assignee or securitizer of such residential mortgage loan, who has acted in good faith, for the following liabilities only:

“(A) Rescission of the loan.

“(B) 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.

“(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, or has had a receiver, conservator, or liquidating agent appointed, a consumer may maintain a civil action against an assignee to cure the residential mortgage loan, plus the costs and reasonable attorney’s fees incurred in obtaining such remedy.

“(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 the civil action referred to in subparagraph (A) against the securitizer.

“(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) DISAGREEMENT OVER 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), or the consumer fails to accept a cure proffered by a creditor, assignee, or securitizer—

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

“(B) the consumer may challenge the adequacy of the cure during the 6-month period beginning when the cure is provided.

If the consumer’s challenge, under this paragraph, of a cure is successful, the creditor, assignee, or securitizer shall be liable to the consumer for rescission of the loan and such additional costs under paragraph (2).

“(7) INABILITY TO PROVIDE OR OBTAIN RESCISSION.—If a creditor, assignee, or securitizer cannot provide, or a consumer cannot obtain, rescission under paragraph (1) or (2), the liability of such creditor, assignee, or securitizer shall be

met by providing the financial equivalent of a rescission, together with 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.

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

“(9) STATUTE OF LIMITATIONS.—The liability of a creditor, assignee, or securitizer under this subsection shall apply in any original action against a creditor under paragraph (1) or an assignee or securitizer under paragraph (2) which is brought before—

“(A) in the case of any residential mortgage loan other than a loan to which subparagraph (B) applies, the end of the 3-year period beginning on the date the loan is consummated; or

“(B) 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 1-year period beginning on the date of such reset, adjustment, or conversion; 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 including such loans in a pool of assets held for the purpose of issuing or selling instruments representing interests in such pools including through a securitization vehicle, the terms ‘assignee’ 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 or any instrument representing a direct or indirect interest in such pool.

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

“(1) OBLIGATION TO RETAIN ACCESS.—Any securitizer of a residential mortgage loan sold or to be sold as part of 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 creditor, assignee, or securitizer of a residential mortgage loan that is subject to a remedy under subsection (d) and has failed to comply with paragraph (1) shall be subject to additional exemplary or punitive damages not to exceed the original principal balance of such loan.

“(3) CONTACT INFORMATION NOTICE.—The servicer with respect to a residential mortgage loan shall provide a written notice to a consumer identifying the name and contact information of the creditor or any assignee or securitizer who should be contacted by the consumer for any reason concerning the consumer’s rights with respect to the loan. Such notice shall be provided—

“(A) upon request of the consumer;

“(B) whenever there is a change in ownership of a residential mortgage loan; or

“(C) on a regular basis, not less than annually.

“(f) RULES TO ESTABLISH PROCESS.—The Board shall promulgate rules to govern 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.”

#### SEC. 205. DEFENSE TO FORECLOSURE.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (f) (as added by section 204) the following new subsections:

“(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 against the creditor or any assignee or securitizer may assert such right as a defense to foreclosure or counterclaim to such foreclosure against the holder, or

“(B) if the foreclosure proceeding begins 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 an 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

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

#### SEC. 206. ADDITIONAL STANDARDS AND REQUIREMENTS.

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

“(h) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

“(1) 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.

“(2) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in subsection (c)) 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 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 beginning 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 1-year period beginning after the 1-year 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.

“(3) 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 not 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) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection 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 or 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 at any time after a dispute or claim under the transaction arises.

“(3) **NO WAIVER OF STATUTORY CAUSE OF ACTION.**—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage), and no other agreement between the consumer and the creditor 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 extension 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 principal 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 sufficient documentation 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.”

(b) **CONFORMING AMENDMENT RELATING TO ENFORCEMENT.**—Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(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. 207. RULE OF CONSTRUCTION.**

Except as otherwise expressly 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, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act or any other 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) or (b) 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 application 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 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 a 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 a 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 “\$100” and inserting “\$200”;

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

(3) by striking “\$500,000” 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—

(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 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:

“(k) **EXEMPTION FROM LIABILITY AND RESCISSION IN CASE OF BORROWER FRAUD OR DECEPTION.**—In addition to any other remedy available by law or contract, no creditor, assignee, or securitizer shall be liable to an obligor under this section, nor shall it be subject to the right of rescission of any obligor under 129B, if such 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 mortgages**

“(a) **HYBRID ADJUSTABLE RATE MORTGAGES DEFINED.**—For purposes of this section, the term ‘hybrid adjustable rate mortgage’ means a consumer credit transaction secured by the 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.

“(b) **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, such as by the addition of a margin.

“(3) A good faith estimate, based on accepted industry standards, of the creditor or servicer 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.

“(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—

- “(A) refinancing;
- “(B) renegotiation of loan terms;
- “(C) payment forbearances; and
- “(D) pre-foreclosure sales.

“(5) 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 defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

“(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.”.

(b) 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 128 the following new item:

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

#### SEC. 213. CREDIT RISK RETENTION.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (k) (as added by section 206) the following new subsection:

##### “(1) CREDIT RISK RETENTION.—

“(1) IN GENERAL.—The Federal banking agencies shall prescribe regulations jointly to require any creditor that makes a residential mortgage loan that is not a qualified mortgage (as defined in section 129C(c)(2)(A)), to retain an economic interest in a material portion of the credit risk for any such loan that the creditor transfers, sells or conveys to a third party.

“(2) STANDARDS FOR REGULATIONS.—Regulations prescribed under paragraph (1) shall—

- “(A) apply only to residential mortgage loans that are not qualified mortgages (as so defined);
- “(B) prohibit creditors from directly or indirectly hedging or otherwise transferring the credit risk creditors are required to retain under the regulations with respect to any residential mortgage loan;
- “(C) require creditors to retain at least 5 percent of the credit risk on any non-qualified mortgage that is transferred, sold or conveyed; and
- “(D) specify the permissible forms of the required risk retention (for example, first loss position or pro rata vertical slice) and the minimum duration of the required risk retention.

##### “(3) EXCEPTIONS AND ADJUSTMENTS.—

“(A) IN GENERAL.—The Federal banking agencies shall have authority to provide exceptions or adjustments to the requirements of this subsection, including exceptions or adjustments relating to the 5 percent risk retention threshold and the hedging prohibition.

“(B) APPLICABLE STANDARDS.—Any exceptions or adjustments granted by the Federal banking agencies shall—

- “(i) be consistent with the purpose of this subsection to help ensure high quality underwriting standards for mortgage lenders; and
- “(ii) facilitate appropriate risk management practices by mortgage lenders, improve access of consumers to mortgage credit on reasonable terms, or otherwise serve the public interest.

“(4) ALTERNATIVE RISK RETENTION FOR SECURITIZATION SPONSORS.—The Federal banking agencies shall have discretion to apply the risk retention requirements of this subsection to securitizers of non-qualified mortgages in addition to or in place of creditors that make non-qualified mortgages if the agencies determine that applying the requirements to securitization sponsors rather than originators would—

“(A) be consistent with the purpose of this subsection to help ensure high quality underwriting standards for mortgage lenders; and

“(B) facilitate appropriate risk management practices by mortgage lenders, or improve access of consumers to mortgage credit on reasonable terms.

“(m) Section 129C and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.”.

#### SEC. 214. REQUIRED DISCLOSURES.

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

“(16) In the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments—

“(A) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and

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

“(17) In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

“(18) In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.”.

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

“(4) RESIDENTIAL MORTGAGE LOAN DISCLOSURES.—In the case of a residential mortgage loan, the information required to be disclosed under subsection (a) with respect to such loan shall be disclosed before the earlier of—

“(A) the time required under the first sentence of paragraph (1); or

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

#### SEC. 215. DISCLOSURES REQUIRED IN MONTHLY STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.

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

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

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

“(A) The amount of the principal obligation under the mortgage.

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

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

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

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

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

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

“(2) DEVELOPMENT AND USE OF STANDARD FORM.—The Federal banking agencies shall jointly develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or electronically.”.

#### SEC. 216. LEGAL ASSISTANCE FOR FORECLOSURE-RELATED ISSUES.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development (hereafter in this section referred to as the “Secretary”) shall establish a program for making grants for providing a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.

(b) COMPETITIVE ALLOCATION.—The Secretary shall allocate amounts made available for grants under this section to State and local legal organizations on the basis of a competitive process. For purposes of this subsection “State and local legal organizations” are those State and local organizations whose primary business or mission is to provide legal assistance.

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

##### (d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—Any State or local legal organization that receives financial assistance pursuant to this section may use such amounts only to assist—

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

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

(2) COMMENCE USE WITHIN 90 DAYS.—Any State or local legal organization that receives financial assistance pursuant to this section shall begin using any financial assistance received under this section within 90 days after receipt of the assistance.

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

(4) LIMITATION ON LEGAL ASSISTANCE.—Legal assistance funded with amounts provided under this section shall be limited to mortgage-related default, eviction, or foreclosure proceedings, without regard to whether such foreclosure is judicial or nonjudicial.

(5) EFFECTIVE DATE.—Notwithstanding section 217, this subsection shall take effect on the date of the enactment of this Act.

(e) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

(1) IN GENERAL.—None of the amounts made available under this section 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.

(2) DEFINITION OF APPLICABLE INDIVIDUAL.—In this subparagraph, the term “applicable individual” means an individual who—

(A) is—

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

(ii) contracted or retained by the organization; or

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

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

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

**SEC. 217. EFFECTIVE DATE.**

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

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

(a) **REPORT REQUIRED.**—The Comptroller General shall conduct a study to determine the effects 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 not within the safe harbor provided in the amendments made by this title;

(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 capital reserves and 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 any dwelling or residential real property, after the date of the enactment of the Mortgage Reform and Anti-Predatory Lending Act, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

(A) except as provided in paragraph (2), the rights of any bona fide tenant, as of the date of foreclosure under any bona fide lease entered into before the date of foreclosure, to occupy the premises until the end of the remaining term of the lease; and

(B) the rights of any bona fide tenant, as of the date of foreclosure, without a lease or with a lease terminable at will under State law, sub-

ject to the provision by the immediate successor in interest and the receipt by the tenant in the unit, of a notice to vacate at least 90 days before the effective date of such notice.

(2) **EXCEPTION FOR SUBSEQUENT OWNER-OCCUPANT.**—Notwithstanding paragraph (1), if the immediate successor in interest of any dwelling or residential real property that is otherwise subject to paragraph (1) is a purchaser who will occupy a unit of the dwelling or residential real property as a primary residence, or such successor in interest sells the dwelling or residential real property to a purchaser who will occupy a unit of the dwelling or residential real property, as a primary residence—

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

(B) such notice to vacate shall be provided by the purchaser to the tenant in such unit at least 90 days before the effective date of such notice.

(3) **BONA FIDE LEASE OR TENANCY.**—For purposes of this subsection, a lease or tenancy shall be considered bona fide only if—

(A) the mortgagor under the contract is not the tenant;

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

(C) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(4) **RULE OF CONSTRUCTION.**—Except for the specific provisions of this subsection, no provision of this subsection shall be construed as affecting the requirements for termination of any Federal- or State-subsidized tenancy. The provisions of this subsection shall not be construed to limit any State or local law that provides longer time periods or other additional protections for tenants.

(b) **CORRESPONDING PROVISION RELATING TO EFFECT OF FORECLOSURES ON SECTION 8 TENANCIES.**—Paragraph (7) of section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

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

"(i) during the initial term of the tenant's lease, having the property vacant prior to sale shall not constitute good cause; and

"(ii) in subsequent lease terms of the tenant's lease, who will occupy the unit as a primary residence, who sells the property to a purchaser who will occupy a unit of the property as a primary residence, or if the unit is unmarketable while occupied, such owner may terminate a lease relating to such unit for good cause on the effective date of the notice to vacate, where such notice is provided by the owner to the tenant in such unit at least 90 days before the effective date of such notice.";

(2) in subparagraph (E), by striking "and" at the end;

(3) by redesignating subparagraph (F) as subparagraph (G); and

(4) by inserting after subparagraph (E) the following:

"(F) shall provide that in the case of any foreclosure on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit; if a public housing agency is unable to make payments under the contract to the immediate successor in interest after foreclosure, due to action or inaction by the successor in interest, including the rejection of payments or the failure of the successor to maintain the unit in compliance with paragraph (8) or an inability to identify the successor, the

agency may use funds that would have been used to pay the rental amount on behalf of the family—

"(i) to pay for utilities that are the responsibility of the owner under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to make payments to a utility provider in lieu of payments to the owner, except prior notification shall not be required in any case in which the unit will be or has been rendered uninhabitable due to the termination or threat of termination of service, in which case the public housing agency shall notify the owner within a reasonable time after making such payment; or

"(ii) for the family'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.**—

"(A) **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—

"(i) 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 (8.5 percentage points, if the dwelling is personal property and the transaction is for less than \$50,000) the average prime offer rate, as defined in section 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 8.5 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—

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

"(II) 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 following interest rate:

"(i) 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.

"(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum



margin permitted at any time during the transaction agreement.

“(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the transaction.”

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

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

(c) **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 subparagraph (B) and inserting the following:

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

(B) in subparagraph (C)(ii), by inserting “except where applied to the charges set forth in section 106(e)(1) where a creditor may receive indirect compensation solely as a result of obtaining distributions of profits from an affiliated entity based on its ownership interest in compliance with section 8(c)(4) of the Real Estate Settlement Procedures Act of 1974” before the semicolon at the end;

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

(D) by redesignating 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, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that 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;

“(E) except as provided in subsection (cc), 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 by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and”

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

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

(B) 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.”

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

“(dd) **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 paragraph (1) or (4) of the following paragraphs, but not both, may be excluded:

“(1) **EXCLUSION OF BONA FIDE DISCOUNT POINTS.**—The discount points described in 1 of the following subparagraphs shall be excluded from determining the amounts of points and fees with respect to a high-cost mortgage for purposes of subsection (aa):

“(A) 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.).

“(B) 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) **DEFINITION.**—For purposes of paragraph (1), the term ‘bona fide discount points’ means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

“(3) **EXCEPTION FOR INTEREST RATE REDUCTIONS INCONSISTENT WITH INDUSTRY NORMS.**—Paragraph (1) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.”

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

(a) **PREPAYMENT PENALTY PROVISIONS.**—Section 129(c)(2) of the Truth in Lending Act (15 U.S.C. 1639(c)(2)) is hereby repealed.

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

“(e) **NO BALLOON PAYMENTS.**—No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.”

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

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

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

(2) by inserting after subsection (i) the following new subsections:

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

“(k) **LATE FEES.**—

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

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

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

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

“(D) more than once with respect to a single late payment.

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

“(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 resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

“(1) **ACCELERATION OF DEBT.**—No high-cost mortgage may contain a provision which permits the creditor, in its sole discretion, to accelerate 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 some other provision of the loan documents unrelated to the payment schedule.

“(m) **RESTRICTION ON FINANCING POINTS AND FEES.**—No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

“(1) 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 EVASIONS.**—Section 129 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 EVASIONS, 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; or

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

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

“(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 lower annual percentage rate on 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.**—

"(1) **FEES.**—

"(A) **IN GENERAL.**—Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

"(B) **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 services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages.

"(C) **FEE 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).

"(D) **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.

"(2) **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.

"(3) **SERVICES CONSIDERED ASSIGNEE.**—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 (d) of this section) the following new subsection:

"(t) **PRE-LOAN COUNSELING.**—

"(1) **IN GENERAL.**—A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

"(2) **DISCLOSURES REQUIRED PRIOR TO COUNSELING.**—No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 with respect to the transaction.

"(3) **REGULATIONS.**—The Board may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1)."

(f) **FLIPPING PROHIBITED.**—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amend-

ed by inserting after subsection (t) (as added by subsection (e)) the following new subsection:

"(u) **FLIPPING.**—

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

"(2) **FLIPPING DEFINED.**—For purposes of this subsection, the term 'flipping' means the making of a loan or extension of credit in the form of a high-cost mortgage to a consumer which refinances an existing mortgage when the new loan or extension of credit does not have reasonable, net tangible benefit (as determined in accordance with regulations prescribed under section 129C(b)) to the consumer considering all of the circumstances, including the terms of both the new and the refinanced loans or credit, the cost of the new loan or credit, and the consumer's circumstances.

"(v) **CORRECTIONS AND UNINTENTIONAL VIOLATIONS.**—A creditor or assignee in a high cost loan who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—

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

"(A) make the loan satisfy the requirements of this chapter; or

"(B) in the case of 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

"(2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error as described in subsection (c) and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

"(A) make the loan satisfy the requirements of this chapter; or

"(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage."

#### SEC. 304. REGULATIONS.

(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 in final form before the end of the 6-month period beginning on the date of the enactment of this Act.

(b) **CONSUMER MORTGAGE EDUCATION.**—

(1) **REGULATIONS.**—The Board of Governors of the Federal Reserve System may prescribe regulations requiring or encouraging creditors to provide consumer mortgage education to prospective customers or direct such customers to qualified consumer mortgage education or counseling programs in the vicinity of the residence of the consumer.

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

#### SEC. 305. EFFECTIVE DATE.

The amendments made by this title shall take effect at the end of the 6-month period beginning on the date of the enactment of this Act and shall apply to mortgages referred to in section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) for which an application is received by the creditor after the end of such period.

## TITLE IV—OFFICE OF HOUSING COUNSELING

### SEC. 401. SHORT TITLE.

This title may be cited as the "Expand and Preserve Home Ownership Through Counseling Act".

### SEC. 402. ESTABLISHMENT OF OFFICE OF HOUSING COUNSELING.

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

"(g) **OFFICE OF HOUSING COUNSELING.**—

"(1) **ESTABLISHMENT.**—There is established, in the Department, the Office of Housing Counseling.

"(2) **DIRECTOR.**—There is established the position of Director of Housing Counseling. The Director shall be the head of the Office of Housing Counseling and shall be appointed by, and shall report to, the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.

"(3) **FUNCTIONS.**—

"(A) **IN GENERAL.**—The Director shall have primary responsibility within the Department for all activities and matters relating to homeownership counseling and rental housing counseling, including—

"(i) research, grant administration, public outreach, and policy development relating to such counseling; and

"(ii) establishment, coordination, and administration of all regulations, requirements, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership counseling (including maintenance of homes), mortgage-related counseling (including home equity conversion mortgages and credit protection options to avoid foreclosure), and rental housing counseling, including the requirements, standards, and performance measures relating to housing 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(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(h)(1));

"(ii) carrying out all other functions of the Secretary under section 106(g) 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. 1701x(e));

"(v) carrying out the assistance program under section 106(a)(4) of the Housing and Urban Development Act of 1968, including criteria for 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 Through Counseling Act;

"(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.

"(4) **ADVISORY COMMITTEE.**—

“(A) IN GENERAL.—The Secretary shall appoint 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 industry, including consumers and housing counseling agencies certified by the Secretary.

“(C) TERMS.—Except as provided in subparagraph (D), each member of the advisory committee shall be appointed for a term of 3 years. Members may be reappointed at the discretion of the Secretary.

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

“(E) PROHIBITION OF PAY; TRAVEL EXPENSES.—Members of the advisory committee shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, 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.

“(5) SCOPE OF HOMEOWNERSHIP COUNSELING.—In carrying out the responsibilities of the Director, the Director shall ensure that homeownership counseling provided by, in connection with, or pursuant to any function, activity, or program of the Department addresses the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default and foreclosure, and other financial decisions), and the sale or other disposition of a home.”

#### SEC. 403. COUNSELING PROCEDURES.

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

“(g) PROCEDURES AND ACTIVITIES.—

“(I) COUNSELING PROCEDURES.—

“(A) IN GENERAL.—The Secretary shall establish, coordinate, and monitor the administration by the Department of Housing and Urban Development of the counseling procedures for homeownership counseling and rental housing counseling provided in connection with any program of the Department, including all requirements, standards, and performance measures that relate to homeownership and rental housing counseling.

“(B) HOMEOWNERSHIP COUNSELING.—For purposes of this subsection and as used in the provisions referred to in this subparagraph, the term ‘homeownership counseling’ means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

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

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

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

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

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

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

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

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

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

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

“(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);

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

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

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

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

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

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

“(x) in the National Housing Act—

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

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

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

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

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

“(C) RENTAL HOUSING COUNSELING.—For purposes of this subsection, the term ‘rental housing counseling’ means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing 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. 5305(a)(20));

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

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

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

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

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

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

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

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

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

“(v) section 422(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6));

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

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

“(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

“(2) STANDARDS FOR MATERIALS.—The Secretary, in consultation with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

“(3) MORTGAGE SOFTWARE SYSTEMS.—

“(A) CERTIFICATION.—The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

“(i) the consumer’s financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

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

“(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating 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 existing software is inadequate to assist consumers during the residential mortgage loan application process, the Secretary shall arrange for the development 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 counseling. The Secretary shall provide that such programs are initially used only in connection with the assistance of housing counselors certified pursuant to subsection (e).

“(C) AVAILABILITY.—After a period of initial availability under subparagraph (B) as the Secretary 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, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

“(D) BUDGET COMPLIANCE.—This paragraph shall be effective only to the extent that amounts to carry out this paragraph are made available in advance in appropriations Acts.

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

“(A) IN GENERAL.—The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, minorities, and other potentially vulnerable consumers aware that it is advisable, before seeking or maintaining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable sources and that such homeownership counseling is available, including through programs sponsored by the Secretary of Housing and Urban Development.

“(B) CONTACT INFORMATION.—Each segment of the multimedia campaign under subparagraph (A) shall publicize the toll-free telephone number and website of the Department of Housing and Urban Development through which persons seeking housing counseling can locate 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, defaults, foreclosures, credit issues, and reverse mortgages.

“(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed \$3,000,000 for fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this paragraph.

“(D) FORECLOSURE RESCUE EDUCATION PROGRAMS.—

“(i) 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 in areas that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

“(I) tips on avoiding foreclosure rescue scams;

“(II) tips on avoiding predatory lending mortgage agreements;

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

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

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

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

“(I) HIGH DENSITY OF FORECLOSURES.—An area has a ‘high density of foreclosures’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

“(II) HIGH PERCENTAGE OF RETIREMENT COMMUNITIES.—An area has a ‘high percentage of retirement communities’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest percentage of residents aged 65 or older.

“(III) HIGH PERCENTAGE OF LOW-INCOME MINORITY COMMUNITIES.—An area has a ‘high percentage of low-income minority communities’ if such area contains a higher-than-normal percentage of residents who are both minorities and low-income, as defined by the Director of Housing Counseling.

“(5) 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 consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, minorities, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, and home repair loans.”.

(b) CONFORMING AMENDMENTS TO GRANT PROGRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.—Section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) is amended—

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

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

(3) by inserting after subclause (IV) the following new subclause:

“(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).”.

#### SEC. 404. GRANTS FOR HOUSING COUNSELING ASSISTANCE.

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

“(4) HOMEOWNERSHIP AND RENTAL COUNSELING ASSISTANCE.—

“(A) IN GENERAL.—The Secretary shall make financial assistance available under this paragraph to HUD-approved housing counseling agencies and State housing finance agencies.

“(B) QUALIFIED ENTITIES.—The Secretary shall establish standards and guidelines for eligibility of organizations (including govern-

mental and nonprofit organizations) to receive assistance under this paragraph, in accordance with subparagraph (D).

“(C) DISTRIBUTION.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs.

“(D) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

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

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

“(II) 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 PROCESS.—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) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$45,000,000 for each of fiscal years 2009 through 2012 for—

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

“(ii) the responsibilities 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. 1701x(e)) is amended—

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

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

(2) in paragraph (2)—

(A) by inserting “and for certifying organizations” before the period at the end of the first sentence; and

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

(3) in paragraph (3), by inserting “organizations and” before “individuals”;

(4) by redesignating paragraph (3) as paragraph (5); and

(5) by inserting after paragraph (2) the following new paragraphs:

“(3) REQUIREMENT UNDER HUD PROGRAMS.—Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or

counselors certified by the Secretary under this subsection as competent to provide such counseling.

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

#### 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, using as much empirical data as are available. The study shall also examine 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 best practices and 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. 1701x), 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. 12704(5)), except that subparagraph (D) of such section 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, parish, town, township, 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” and inserting “HOME BUYING”;

(2) by striking subsections (a) and (b) and inserting the following new subsections:

“(a) PREPARATION AND DISTRIBUTION.—The Secretary shall prepare, at least once 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 booklet is understandable and accessible 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, at a minimum—

“(A) balloon payments;

“(B) prepayment penalties; and

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

“(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.

“(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

“(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’, published by the Board of Governors of the Federal Reserve System pursuant to section 226.19(b)(1) of title 12, Code of Federal Regulations, or to any suitable substitute of such booklet that such Board of Governors may subsequently adopt pursuant to such section.

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

“(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

“(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 10 of this Act regarding such accounts.

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

“(11) An explanation of a consumer’s responsibilities, liabilities, and obligations in a mortgage transaction.

“(12) An explanation of the nature and purpose of real estate appraisals, including the dif-

ference between an appraisal and a home inspection.

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

The booklet prepared pursuant to this section 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 the same State and territory.”;

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

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

#### SEC. 409. HOME INSPECTION COUNSELING.

(a) PUBLIC OUTREACH.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the “Secretary”) shall take such actions as may be necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. Such actions shall include—

(A) publication of the HUD/FHA form HUD 92564-CN entitled “For Your Protection: Get a Home Inspection”, in both English and Spanish languages;

(B) publication of the HUD/FHA booklet entitled “For Your Protection: Get a Home Inspection”, in both English and Spanish languages;

(C) development and publication of a HUD booklet entitled “For Your Protection—Get a Home Inspection” that does not reference FHA-insured homes, in both English and Spanish languages; and

(D) publication of the HUD document entitled “Ten Important Questions To Ask Your Home Inspector”, in both English and Spanish languages.

(2) AVAILABILITY.—The Secretary shall make the materials specified in paragraph (1) available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development. The Secretary shall give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts.

(3) UPDATING.—The Secretary may periodically update and revise such materials, as the Secretary determines to be appropriate.

(b) REQUIREMENT FOR FHA-APPROVED LENDERS.—Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act shall provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval, or initial application, the materials specified in subparagraphs (A), (B), and (D) of subsection (a)(1).

(c) REQUIREMENTS FOR HUD-APPROVED COUNSELING AGENCIES.—Each counseling agency certified pursuant by the Secretary to provide housing counseling services shall provide each of their clients, as part of the home purchase counseling process, the materials specified in subparagraphs (C) and (D) of subsection (a)(1).

(d) TRAINING.—Training provided the Department of Housing and Urban Development for housing counseling agencies, whether such training is provided directly by the Department or otherwise, shall include—

(1) providing information on counseling potential homebuyers of the availability and importance of getting an independent home inspection;

(2) providing information about the home inspection process, including the reasons for specific inspections such as radon and lead-based paint testing;

(3) providing information about advising potential homebuyers on how to locate and select a qualified home inspector; and

(4) review of home inspection public outreach materials of the Department.

#### TITLE V—MORTGAGE SERVICING

##### SEC. 501. ESCROW AND IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

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

##### “SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

“(a) IN GENERAL.—Except as provided in subsection (b), (c), or (d), a creditor, in connection with the formation or consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

“(b) WHEN REQUIRED.—No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

“(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

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

“(3) the transaction is secured by a first mortgage or lien on the consumer’s principal dwelling and the annual percentage rate on the credit, at the date the interest rate is set, will exceed the average prime offer rate for a comparable transaction by 1.5 percentage points or more; or

“(4) so required pursuant to regulation.

“(c) DURATION OF MANDATORY ESCROW OR IMPOUND ACCOUNT.—An escrow or impound account 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 dwelling 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 to address situations such as borrower delinquency, unless the underlying mortgage establishing the account is terminated.

“(d) LIMITED EXEMPTIONS FOR LOANS SECURED BY SHARES IN A COOPERATIVE 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 master policy insuring condominium units.

“(e) CLARIFICATION ON ESCROW ACCOUNTS FOR LOANS NOT MEETING STATUTORY TEST.—For

mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property—

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

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

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

“(f) ADMINISTRATION OF MANDATORY ESCROW OR IMPOUND ACCOUNTS.—

“(1) IN GENERAL.—Except as may otherwise be provided for in this title or in regulations prescribed by the Board, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution.

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

“(A) the Real Estate Settlement Procedures Act of 1974 and regulations prescribed under such Act;

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

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

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

“(4) PENALTY COORDINATION WITH RESPA.—Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

“(g) DISCLOSURES RELATING TO MANDATORY ESCROW OR IMPOUND ACCOUNT.—In the case of any impound, trust, or escrow account that is subject to this section, the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:

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

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

“(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing 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) or the replacement costs of the property.

“(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if applicable) and any other required periodic payments or premiums.

“(5) The fact that, if the consumer chooses to terminate the account at the appropriate time in

the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required periodic payments or premiums on the property unless a new escrow or impound account is established.

“(6) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer.

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

“(1) FLOOD INSURANCE.—The term ‘flood insurance’ means flood 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’, ‘homeowner’s insurance’, or other similar term under the law of the State where the real property securing the consumer credit transaction is located.”

(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 Federal Deposit Insurance Corporation, the National Credit Union Administration Board, (hereafter in this Act referred to as the “Federal banking agencies”) and the Federal Trade Commission shall prescribe, 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 to covered mortgage loans consummated after the end of the 1-year period beginning on 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 129C (as added by section 201) the following new item:

“129D. Escrow or impound accounts relating to certain consumer credit transactions.”

**SEC. 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 501) is amended by adding at the end the following new subsection:

“(i) DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.—

“(1) IN GENERAL.—If—

“(A) an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction; or

“(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is established in connection with any such transaction and in accordance with any statute, regulation, or contractual agreement, to close such account,

the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

“(2) DISCLOSURE REQUIREMENTS.—Any disclosure provided to a consumer under paragraph (1) shall include the following:

“(A) Information concerning any applicable fees or costs associated with either the non-establishment of any such account at the time of the transaction, or any subsequent closure of any such account.

“(B) A clear and prominent notice that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

“(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

“(D) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer.”

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Federal banking agencies and the Federal Trade Commission shall prescribe, in final form, such regulations as such agencies determine 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.

**SEC. 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 subsections:

“(k) SERVICER PROHIBITIONS.—

“(1) IN GENERAL.—A servicer of a federally related mortgage shall not—

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

“(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Secretary shall prescribe) under this section;

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

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

“(E) fail to comply with any other obligation found by the Secretary, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

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

(1) REQUIREMENTS FOR FORCE-PLACED INSURANCE.—A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

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

“(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

“(i) a reminder of the borrower’s obligation to maintain hazard insurance on the property securing the federally related mortgage;

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

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

“(iv) a statement that the servicer may obtain such coverage at the borrower’s expense if the borrower 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 all the information described in each clause of such subparagraph; and

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

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

“(3) TERMINATION OF FORCE-PLACED INSURANCE.—Within 15 days of the receipt by a servicer of 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 borrower’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.

“(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.

“(m) LIMITATIONS ON FORCE-PLACED INSURANCE CHARGES.—All charges for force-placed insurance premiums shall be bona fide and reasonable in amount.”.

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

(1) in paragraphs (1)(B) and (2)(B), by striking “\$1,000” each place such term appears and inserting “\$2,000”; and

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

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

(1) in paragraph (1)(A), by striking “20 days” and inserting “5 days”; and

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

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

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

(d) PROMPT REFUND OF ESCROW ACCOUNTS UPON PAYOFF.—Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended by adding at the end the following new sentence: “Any balance in any such account that is within the servicer’s control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account

for a new mortgage loan to the borrower with the same lender.”.

#### SEC. 504. TRUTH IN LENDING ACT AMENDMENTS.

(a) REQUIREMENTS FOR PROMPT CREDITING OF HOME LOAN PAYMENTS.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129E (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, no servicer shall fail to credit a payment to the consumer’s loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, except as required in subsection (b).

“(b) EXCEPTION.—If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.”.

(b) REQUESTS FOR PAYOFF AMOUNTS.—Chapter 2 of such Act is further amended by inserting after section 129F (as added by subsection (a)) the following new section (and by amending the table of contents accordingly):

#### “SEC. 129G. REQUESTS FOR PAYOFF AMOUNTS OF HOME LOAN.

“A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.”.

#### SEC. 505. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.

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

“(5) REPAYMENT ANALYSIS REQUIRED TO INCLUDE ESCROW PAYMENTS.—

“(A) IN GENERAL.—In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust, or other type of account has been or will be established in connection with the transaction for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property, the information required to be provided under subsection (a) with respect to the number, amount, and due dates or period of payments scheduled to repay the total of payments shall take into account the amount of any monthly payment to such account for each such repayment in accordance with section 10(a)(2) of the Real Estate Settlement Procedures Act of 1974.

“(B) ASSESSMENT VALUE.—The amount taken into account under subparagraph (A) for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after 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 replacement costs of the property 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 subsection (v) (as added by section 303(f)) the following new subsection:

“(w) PROPERTY APPRAISAL REQUIREMENTS.—

“(1) IN GENERAL.—A creditor may not extend credit in the form of a subprime mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this subsection.

“(2) APPRAISAL REQUIREMENTS.—

“(A) PHYSICAL PROPERTY VISIT.—An appraisal of property to be secured by a subprime mortgage does not meet the requirement of this subsection unless it is performed by a qualified appraiser who conducts a physical property visit of the interior of the mortgaged property.

“(B) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES.—

“(i) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the 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.

“(ii) NO COST TO APPLICANT.—The cost of any second appraisal required under clause (i) may not be charged to the applicant.

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

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

“(ii) 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.

“(3) FREE COPY OF APPRAISAL.—A creditor shall provide 1 copy of each appraisal conducted in accordance with this subsection in connection with a subprime mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

“(4) 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 their own expense.

“(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.

“(6) SUBPRIME MORTGAGE DEFINED.—For purposes of this subsection, the term ‘subprime mortgage’ means a residential mortgage loan with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

“(A) by 1.5 or more percentage points for a first lien residential mortgage loan; and

“(B) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.”.

#### SEC. 602. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129D (as added by section 501(a)) the following new section:

#### “SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

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

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 repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, 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 judgment of the appraiser;

“(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 an appraisal report or for appraisal services rendered.

“(c) EXCEPTIONS.—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, 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) Consider 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 broker, appraisal management company, 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 and licensing agency.

“(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 dwelling.

“(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 later than 1 year after 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 a consumer credit 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; and

“(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 a consumer credit transaction secured by the principal dwelling of the consumer and 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), 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 which such person is subject.”

(b) 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 129D (as added by section 501(c)) the following new item:

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

**SEC. 603. AMENDMENTS RELATING TO APPRAISAL SUBCOMMITTEE OF FIEC, APPRAISER INDEPENDENCE, AND APPROVED APPRAISER EDUCATION.**

(a) CONSUMER PROTECTION MISSION.—

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

(2) FUNCTIONS OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended—

(A) by striking “and” at the end of paragraph (3);

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

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

“(5) monitor the efforts of, and requirements established by, States and the Federal financial institutions regulatory agencies to protect consumers from improper appraisal practices and the predations of unlicensed appraisers in consumer credit transactions that are secured by a consumer's principal dwelling; and”

(3) THRESHOLD LEVELS.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: “, and that such threshold level provides reasonable protection for consumers who purchase 1-4 unit single-family residences. In determining whether a threshold level provides reasonable protection for consumers, each Federal financial institutions regulatory agency shall consult with consumer groups and convene a public hearing”.

(b) ANNUAL REPORT OF APPRAISAL SUBCOMMITTEE.—

(1) IN GENERAL.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended at the end by inserting the following new paragraph:

“(6) transmit an annual report to the Congress not later than January 31 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.”

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

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

(1) by inserting “prescribe regulations after notice and opportunity for comment,” after “hold hearings”; and

(2) at the end by inserting “Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, and government agencies, and hold meetings as necessary to support the development of regulations.”

(e) FIELD APPRAISALS AND APPRAISAL REVIEWS.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

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

(2) in subsection (a) (as designated by paragraph (1)), by inserting before the period the following: “, where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical”; and

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

“(b) APPRAISALS AND APPRAISAL REVIEWS.—All appraisals performed at a property within a State shall be prepared by appraisers licensed or certified in the State where the property is located. All appraisal reviews, including appraisal reviews by a lender, appraisal management company, or other third party organization, shall be performed by an appraiser who is duly licensed or certified by a State appraisal board.”

(f) APPRAISAL MANAGEMENT SERVICES.—

(1) SUPERVISION OF THIRD PARTY PROVIDERS OF APPRAISAL MANAGEMENT SERVICES.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is further amended—

(A) by amending paragraph (1) to read as follows:

“(1) monitor the requirements established by States—

“(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

“(B) for the registration and supervision of the operations and activities of an appraisal management company;”;

(B) by adding at the end the following new paragraph:



“(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 operating subsidiaries of a Federally regulated 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; and

“(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 shall 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 certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

“(d) REGULATIONS.—The Appraisal 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 Appraisal Subcommittee shall also promulgate regulations for the reporting of the activities of appraisal management companies in determining the payment of the annual registry fee.

“(e) EFFECTIVE DATE.—

“(1) IN GENERAL.—No appraisal management company may perform services related to a fed-

erally 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 Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.”.

(3) STATE APPRAISER CERTIFYING AND LICENSING AGENCY AUTHORITY.—Section 1117 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: “The duties of such agency may additionally include the registration and supervision of appraisal management companies.”.

(4) APPRAISAL MANAGEMENT COMPANY DEFINITION.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350) is amended by adding at the end the following:

“(11) APPRAISAL MANAGEMENT COMPANY.—The term ‘appraisal management company’ means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 10 certified or licensed appraisers in a State or 25 or more nationally within a given year—

“(A) to recruit, select, and retain appraisers;

“(B) to contract with licensed and certified appraisers to perform appraisal assignments;

“(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

“(D) to review and verify the work of appraisers.”.

(g) STATE AGENCY REPORTING REQUIREMENT.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

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

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

“(2) transmit reports on sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

“(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and”.

(h) REGISTRY FEES MODIFIED.—

(1) IN GENERAL.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 603(g) of this Act) to read as follows:

“(4) collect—

“(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than \$40, such fees to be transmitted by the

State agencies to the Council on an annual basis; and

“(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

“(i) in the case of such a company that has been 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 Subcommittee’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 Subcommittee’s functions under this title.”; and

(B) by amending the matter following paragraph (4), as redesignated, to read as follows:

“Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (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 once 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 flexibility to the States for multi-year 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, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the underreporting 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) 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 (3);

(2) by striking the period at the end of paragraph (4) and inserting a semicolon;

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

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

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

“(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

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

Obligations authorized under this subsection may not exceed 75 percent of the fiscal year total of incremental increase in fees collected

and deposited in the "Appraisal Subcommittee Account" pursuant to subsection (h).

(j) **CRITERIA.**—Section 1116 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3345) is amended—

(1) in subsection (c), by inserting "whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers" before the period at the end; and

(2) by striking subsection (e) and inserting the following new subsection:

"(e) **MINIMUM QUALIFICATION REQUIREMENTS.**—Any requirements established for individuals in the position of 'Trainee Appraiser' and 'Supervisory Appraiser' shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements."

(k) **MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.**—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

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

"(a) **IN GENERAL.**—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

"(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

"(2) processes complaints and completes investigations in a reasonable time period;

"(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

"(4) maintains an effective regulatory program; and

"(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analyses of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency."

(2) in subsection (b)(2), by inserting after "authority" the following: "or sufficient funding".

(l) **RECIPROCITY.**—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:

"(b) **RECIPROCITY.**—A State appraiser certifying or licensing agency shall issue a reciprocal

certification or license for an individual from another State when—

"(1) the appraiser licensing and certification program of that other State is in compliance with the provisions of this title; and

"(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure."

(m) **CONSIDERATION OF PROFESSIONAL APPRAISAL DESIGNATIONS.**—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) is amended by striking "shall not exclude" and all that follows through the end of the subsection 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 criteria considered, though lack of membership therein shall not be the sole 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 by adding at the end the following new subsection:

"(g) **APPRAISER INDEPENDENCE MONITORING.**—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency's policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence."

(o) **APPRAISER EDUCATION.**—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by inserting after subsection (g) (as added by subsection (l) of this section) the following new subsection:

"(h) **APPROVED EDUCATION.**—The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board's Course Approval Program."

(p) **APPRAISAL COMPLAINT HOTLINE.**—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351), as amended by this section, is further amended by adding at the end the following new subsection:

"(i) **APPRAISAL COMPLAINT NATIONAL HOTLINE.**—If, 1 year after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint."

(q) **AUTOMATED VALUATION MODELS.**—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (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. 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) **ADOPTION OF REGULATIONS.**—The Appraisal Subcommittee and its member agencies shall promulgate regulations to implement the quality control standards required under this section.

"(c) **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 supervisor of such financial institution or subsidiary; and

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

"(d) **AUTOMATED VALUATION MODEL DEFINED.**—For purposes of this section, the term 'automated valuation model' means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling."

(r) **BROKER PRICE OPINIONS.**—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (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 to—

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

"(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 written appraisal, 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)."

(s) **AMENDMENTS TO APPRAISAL SUBCOMMITTEE.**—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

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

(2) by inserting at the end the following: "At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession."

(t) TECHNICAL CORRECTIONS.—

(1) Section 1119(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(2)) is amended by striking “council,” and inserting “Council.”

(2) Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking “Corporations,” and inserting “Corporation.”

(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking “council” and inserting “Council.”

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

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and

(B) in subsection (c)—

(i) by striking “Federal Financial Institutions Examination Council” and inserting “Financial Institutions Examination Council”; and

(ii) by striking “the council’s functions” and inserting “the Council’s functions”.

**SEC. 604. STUDY REQUIRED ON IMPROVEMENTS IN APPRAISAL PROCESS AND COMPLIANCE PROGRAMS.**

(a) **STUDY.**—The Comptroller General shall conduct a comprehensive study on possible improvements in the appraisal process generally, and specifically on the consistency in and the effectiveness of, and possible improvements in, State compliance efforts and programs in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, this study shall examine the existing exemptions to the use of certified appraisers issued by Federal financial institutions regulatory agencies. The study shall also review the threshold level established by Federal regulators for compliance under title XI and whether there is a need to revise them to reflect the addition of consumer protection to the purposes and functions of the Appraisal Subcommittee. The study shall additionally examine the quality of different types of mortgage collateral valuations produced by broker price opinions, automated valuation models, licensed appraisals, and certified appraisals, among others, and the quality of appraisals provided through different distribution channels, including appraisal management companies, independent appraisal operations within a mortgage originator, and fee-for-service appraisals. The study shall also include an analysis and statistical breakdown of enforcement actions taken during the last 10 years against different types of appraisers, including certified, licensed, supervisory, and trainee appraisers. Furthermore, the study shall examine the benefits and costs, as well as the advantages and disadvantages, of establishing a national repository to collect data related to real estate property collateral valuations performed in the United States.

(b) **REPORT.**—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for administrative or legislative action, at the Federal or State level, as the Comptroller General may determine to be appropriate.

**SEC. 605. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

Subsection (e) of section 701 of the Equal Credit Opportunity Act (U.S.C. 1691) is amended to read as follows:

“(e) COPIES FURNISHED TO APPLICANTS.—

“(1) **IN GENERAL.**—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant’s application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon comple-

tion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant’s request for credit or the application is incomplete or withdrawn.

“(2) **WAIVER.**—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

“(3) **REIMBURSEMENT.**—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

“(4) **FREE COPY.**—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

“(5) **NOTIFICATION TO APPLICANTS.**—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

“(6) **REGULATIONS.**—The Board shall prescribe regulations to implement this subsection within 1 year of the date of the enactment of this subsection.

“(7) **VALUATION DEFINED.**—For purposes of this subsection, the term ‘valuation’ shall include any estimate of the value of a dwelling developed in connection with a creditor’s decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.”.

**SEC. 606. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENT RELATING TO CERTAIN APPRAISAL FEES.**

Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:

“(c) The standard form described in subsection (a) shall include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

“(1) the fee paid directly to the appraiser by such company; and

“(2) the administration fee charged by such company.”.

**TITLE VII—SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT SPONSORED ENTERPRISES REFORM**

**SEC. 701. SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT-SPONSORED ENTERPRISES REFORM TO ENHANCE THE PROTECTION, LIMITATION, AND REGULATION OF THE TERMS OF RESIDENTIAL MORTGAGE CREDIT.**

(a) **FINDINGS.**—The Congress finds as follows:

(1) The Government-sponsored enterprises, Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), were chartered by Congress to ensure a reliable and affordable supply of mortgage funding, but enjoy a dual legal status as privately owned corporations with Government mandated affordable housing goals.

(2) In 1996, the Department of Housing and Urban Development required that 42 percent of Fannie Mae’s and Freddie Mac’s mortgage financing should go to borrowers with income levels below the median for a given area.

(3) In 2004, the Department of Housing and Urban Development revised those goals, increasing them to 56 percent of their overall mortgage purchases by 2008, and additionally mandated that 12 percent of all mortgage purchases by Fannie Mae and Freddie Mac be “special affordable” loans made to borrowers with incomes less than 60 percent of an area’s median income, a target that ultimately increased to 28 percent for 2008.

(4) To help fulfill those mandated affordable housing goals, in 1995 the Department of Hous-

ing and Urban Development authorized Fannie Mae and Freddie Mac to purchase subprime securities that included loans made to low-income borrowers.

(5) After this authorization to purchase subprime securities, subprime and near-prime loans increased from 9 percent of securitized mortgages in 2001 to 40 percent in 2006, while the market share of conventional mortgages dropped from 78.8 percent in 2003 to 50.1 percent by 2007 with a corresponding increase in subprime and Alt-A loans from 10.1 percent to 32.7 percent over the same period.

(6) In 2004 alone, Fannie Mae and Freddie Mac purchased \$175,000,000,000 in subprime mortgage securities, which accounted for 44 percent of the market that year, and from 2005 through 2007, Fannie Mae and Freddie Mac purchased approximately \$1,000,000,000,000 in subprime and Alt-A loans, while Fannie Mae’s acquisitions of mortgages with less than 10 percent down payments almost tripled.

(7) According to data from the Federal Housing Finance Agency (FHFA) for the fourth quarter of 2008, Fannie Mae and Freddie Mac own or guarantee 75 percent of all newly originated mortgages, and Fannie Mae and Freddie Mac currently own 13.3 percent of outstanding mortgage debt in the United States and have issued mortgage-backed securities for 31.0 percent of the residential debt market, a combined total of 44.3 percent of outstanding mortgage debt in the United States.

(8) On September 7, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship, with the Treasury Department subsequently agreeing to purchase at least \$200,000,000,000 of preferred stock from each enterprise in exchange for warrants for the purchase of 79.9 percent of each enterprise’s common stock.

(9) The conservatorship for Fannie Mae and Freddie Mac has potentially exposed taxpayers to upwards of \$5,300,000,000,000 worth of risk.

(10) The hybrid public-private status of Fannie Mae and Freddie Mac is untenable and must be resolved to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.

(b) **SENSE OF THE CONGRESS.**—It is the sense of the Congress that efforts to enhance by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit would be incomplete without enactment of meaningful structural reforms of Fannie Mae and Freddie Mac.

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, 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 not be subject to amendment, and shall not be subject to a demand for division of the question.

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AMENDMENT NO. 1 OFFERED BY MR. FRANK OF MASSACHUSETTS

The CHAIR. It is now in order to consider amendment No. 1 printed in House Report 111-98.

Mr. FRANK of Massachusetts. I offer amendment No. 1.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. FRANK of Massachusetts:

In section 103(cc)(2) of the Truth in Lending Act (as added by section 101 of the bill), insert at the end the following: "All rule writing by the 'Federal banking agencies' as designated by the Mortgage Reform and Anti-Predatory Lending Act will be coordinated through the Financial Institutions Examination Council in consultation with the Chairman of the State Liaison Committee."

In section 103(cc)(3)(C) of the Truth in Lending Act (as added by section 101 of the bill), insert before the semicolon the following: "and who does not advise a consumer on loan terms (including rates, fees, and other costs)"

In section 103(cc)(3) of the Truth in Lending Act (as added by section 101 of the bill)—

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

(2) in subparagraph (E), 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, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind."

In section 103(cc)(6) of the Truth in Lending Act (as added by section 101 of the bill), strike "128(a)(f) and 128(b)(4)" and insert "and 128(f)".

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(c) 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 ORIGINATOR 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 or mortgage originator.

"(B) EXCEPTION.—Notwithstanding paragraph subparagraph (A), a mortgage originator may arrange for a consumer to finance through rate an origination fee or cost if—

"(i) 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:

"(E) mortgage originators from—

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

"(ii) mischaracterizing or suborning 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 seeking a home mortgage loan secured by a consumer's principal dwelling from another mortgage originator."

In section 129B(c)(3)(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 105 of the bill), insert after "standards" the following: "necessary or proper to ensure that responsible, affordable mortgage credit remains available to 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 regulations under 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 for affordable homeownership, and enable homeowners at-risk of foreclosure to refinance or modify their mortgages.

(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 129C(a) of the Truth in Lending Act (as added by section 201(a) of the bill), insert after subparagraph (D) the following new subparagraph:

"(E) REFINANCE OF HYBRID LOANS WITH CURRENT LENDER.—In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which the sole net-tangible benefit to the mortgagor would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

"(i) consider the mortgagor's good standing on the existing mortgage;

"(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

"(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice."

In section 129C(a)(4)(D)(ii) of the Truth in Lending Act (as added by section 201 of the bill), strike "the contract's repayment schedule shall be used in this calculation" and insert the following: "the calculation shall be made (I) in accordance with regulations prescribed by the Federal banking agencies, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a com-

parable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan"

In section 129C(c)(2)(A)(iv)(I) of the Truth in Lending Act (as added by section 203 of the bill)—

(1) strike "does not exceed" and insert "is equal to or less than"; and

(2) strike the final "and".

In section 129C(c)(2)(A)(iv)(II) of the Truth in Lending Act (as added by section 203 of the bill)—

(1) strike "exceeds" and insert "is more than"; and

(2) strike the semicolon at the end and insert "; and".

In section 129C(c)(2)(A)(iv) of the Truth in Lending Act (as added by section 203 of the bill), add at the end the following:

"(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan;"

In section 129C(c) of the Truth in Lending Act (as added by section 203 of the bill), in the header of paragraph (3), after "rate" insert the following: "and APR thresholds".

In section 129C(c)(3) of the Truth in Lending Act (as added by section 203 of the bill)—

(1) in subparagraph (A), strike the final "and";

(2) in subparagraph (B), strike the period and insert "; and"; and

(3) add at the end the following:

"(C) shall adjust the thresholds of 1.50 percentage points in paragraph (2)(A)(iv)(I), 2.50 percentage points in paragraph (2)(A)(iv)(II), and 3.50 percentage points in paragraph (2)(A)(v)(III), as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act."

In section 129C(c)(4)(B)(i) of the Truth in Lending Act (as added by section 203 of the bill), after "are" insert the following: "necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section."

In section 129C(c)(4)(B)(ii) of the Truth in Lending Act (as added by section 203 of the bill), after "shall" insert the following: "in consultation with the Federal banking agencies."

In section 129C(d)(1)(B) of the Truth in Lending Act (as added by section 204 of the bill), strike "creditor provides" and insert "creditor, acting in good faith."

In section 129C(d)(3) of the Truth in Lending Act (as added by section 204 of the bill), strike "and (b) shall" and insert "and (b), consistent with reasonable due diligence practices prescribed by the Federal banking agencies, shall"

In section 129C(d)(10) of the Truth in Lending Act (as added by section 204 of the bill)—

(1) in the header, strike "Pools and" and insert "Trustees, pools, and"; and

(2) insert before "the pools of such loans" the following: "any trustee that holds such loans solely for the benefit of the securitization vehicle."

In section 129C(g)(2) of the Truth in Lending Act (as added by section 205 of the bill), after "designees," insert the following: "subject to the rights of the consumer described in this subsection."

In section 129C(h) of the Truth in Lending Act (as added by section 206 of the bill),

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 subsection (a) of this section) the following new subsection (and designated succeeding subsections accordingly):

“(1) **PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.**—

“(1) **DEFINITION.**—For purposes of this subsection, the term ‘anti-deficiency law’ means the law 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 provides 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 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 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 subsequent subsections of such section accordingly):

“(m) **POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.**—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

“(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”;

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

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

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

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

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

In section 129C(1)(1) of the Truth in Lending Act (as added by section 213 of the bill), strike “in section” and insert “under section”.

In section 129C(1)(2)(B) of the Truth in Lending Act (as added by section 213 of the bill)—

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

(2) strike “creditors are required” and insert “such creditor is required”.

In section 129C(1)(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 the semicolon the following: “by such creditor”.

In section 129C(1)(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), strike “mortgage lenders” and insert “such creditors”.

In section 129C(1)(4) of the Truth in Lending Act (as added by section 213 of the bill)—

(1) in the heading, strike “securitization sponsors” and insert “securitizers”; and

(2) strike “agencies shall have discretion to” and insert “agencies may jointly, in their discretion,”;

(3) strike “non-qualified mortgages in addition to or in place of creditors that make non-qualified mortgages if the agencies determine that applying the requirements to securitization sponsors rather than originators” and insert “residential mortgages (or particular types of residential mortgages) that are not qualified mortgages in addition to or in substitution for any or all of the requirements that apply to creditors that make such mortgages if the agencies jointly determine that applying the requirements to such securitizers”;

(4) in subparagraph (A), strike “mortgage lenders” and insert “creditors of residential mortgage loans that are not qualified mortgages”; and

(5) in subparagraph (B)—

(A) strike “mortgage lenders, or” and insert “such creditors,”; and

(B) before the period, insert “, or otherwise serve the public interest”.

After section 128(a)(18) of the Truth in Lending Act (as added by section 214(a) of the bill) add the following:

“(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 subsection (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 defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).”

In subsection (c) of section 218, insert “, including an analysis of the exceptions and adjustments authorized in section 129C(1)(3)(A) of the Truth in Lending Act and a rec-

ommendation on whether a uniform standard is needed” before the period at the end.

At the end of section 218, insert the following new subsection:

(d) **ANALYSIS OF CREDIT RISK RETENTION PROVISIONS.**—The report required by subsection (b) shall also include—

(1) an analysis by the Comptroller General of whether the credit risk retention provisions have significantly reduced risks to the larger credit market of the repackaging and selling of securitized loans on a secondary market; and

(2) recommendations to the Congress on adjustments that should be made, or additional measures that should be undertaken.

In section 130(e) of the Truth in Lending Act (as amended by section 219 of the bill), strike “section 219” and insert “section 220”.

In section 220 of the bill, insert after subsection (b) the following new subsection (and redesignate succeeding subsections accordingly):

(c) **LANDLORD NOTICE TO TENANTS.**—Notwithstanding the law of any State or the terms of any consumer residential lease, each person who owns a dwelling or residential real property—

(1) which is leased to a bona fide tenant (including a tenancy terminable at will), or which the landlord offers to lease to a prospective tenant; and

(2) which, pursuant to the terms of a valid loan to such person which is secured by such dwelling or property, is or becomes subject to foreclosure or with respect to which the person is in default,

shall promptly notify any such tenant or prospective tenant of the circumstances prevailing with respect to such property and the effect of any such default or foreclosure. The requirements of this subsection shall have no effect on any State or local law that provides additional notice or other additional protections for tenants.

In section 103(aa)(4)(B) of the Truth in Lending Act (as amended by section 301(c) of the bill)—

(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) in the header, strike “and prepayment penalties”;

(2) in the matter preceding paragraph (1)—

(A) strike “(4)” and insert “(2)”; and

(B) strike “may” and insert “shall”;

(3) redesignate paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(4) in paragraph (4), as redesignated by paragraph (3), strike “paragraph (1)” and insert “paragraphs (1) and (2)”; and

(5) strike paragraph (1) and insert the following:

“(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—

“(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, whichever is 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.).

“(2) Unless 2 bona fide discount points have been excluded under paragraph (1), 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—

“(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, whichever is 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 bill, strike “DEFERRAL FEES PROHIBITED.—A creditor” and insert “DEFERRAL FEES PROHIBITED.—

“(1) CREDITORS.—A creditor”.

At the end of paragraph (1) of subsection (r) of section 129 of the Truth in Lending Act, (as so designated by the preceding amendment) insert the following new paragraphs:

“(2) THIRD PARTIES.—A third-party may not charge a consumer any fee to—

“(A) modify, renew, extend, or amend a high-cost mortgage, or defer any payment 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 the terms of such 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 of the outstanding principal on 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.

“(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 ‘finance charge’ each place such term appears.”

In subsection (g)(3)(B)(ix) of section 4 of the Department of Housing and Urban Development Act (as added by section 402) insert “, 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 403(a) of the bill, in subsection (g)(1)(B)(xi), strike “and” after the semicolon.

In the matter proposed to be inserted by the amendment made by section 403(a) of the bill, in subsection (g)(1)(B)(xii), strike the period at the end and insert “; and”.

In the matter proposed to be inserted by the amendment made by section 403(a) of the bill, after clause (xii) of subsection (g)(1)(B) add the following:

“(xiii) section 106 of the Energy Policy Act of 1992 (42 U.S.C. 12712 note).”

In the matter proposed to be inserted by the amendment made by section 403(a) of the bill, in subsection (g)(5), strike “and home repair loans” and insert the following: “home repair loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage”.

In subparagraph (C) of paragraph (4) of the matter proposed to be inserted by the amendment made by section 404 of the bill,

before the period at the end insert the following: “and that ensures adequate distribution of amounts for rural areas having traditionally low levels of access to such counseling services, including areas with insufficient access to the Internet”.

In section 406, insert “, and the role of computer registries of mortgages, including those used for trading mortgage loans” before the period at the end of the 2nd sentence.

After section 406, insert the following new section (and redesignate succeeding sections in title IV accordingly):

**SEC. 407. DEFAULT AND FORECLOSURE DATABASE.**

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available.

(b) CENSUS TRACT DATA.—Information in the database shall be collected, aggregated, and made available on a census tract basis.

(c) REQUIREMENTS.—Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obligation amount that is greater than the value of the property for which the loan was made; and

(6) such other information as the Secretary considers appropriate.

In section 6(1)(B) of the Real Estate Settlement Procedures Act of 1974 (as added by section 503 of the bill), strike “clauses” and insert “clause”.

In section 129D(b) of the Truth in Lending Act (as added by section 501 of the bill), amend paragraph (3) to read as follows:

“(3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount that—

“(A) 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 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. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate for a comparable transaction by 1.5 or more percentage points; or

“(B) 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 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. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate for a comparable transaction by 2.5 or more percentage points; or”.

Redesignate section 128(b)(5) of the Truth in Lending Act (as added by section 505 of the bill) as section 128(b)(4) of the Truth in Lending Act.

Section 601 is amended to read as follows:  
**SEC. 601. PROPERTY APPRAISAL REQUIREMENTS.**

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after 129G (as added by section 504) the following new section:

**“SEC. 129H PROPERTY APPRAISAL REQUIREMENTS.**

“(a) IN GENERAL.—A creditor may not extend credit in the form of a subprime mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

“(b) APPRAISAL REQUIREMENTS.—

“(1) PHYSICAL PROPERTY VISIT.—An appraisal of property to be secured by a subprime mortgage does not meet the requirement of this section unless it is performed by a qualified appraiser who conducts a physical property visit of the interior of the mortgaged property.

“(2) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES.—

“(A) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the 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 1 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 their own 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.

“(f) 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 for 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 sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(2) by 2.5 or more percentage points, in the case of a first 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 sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(3) by 3.5 or more percentage points for a subordinate lien residential mortgage loan”.

In section 603, amend the header to read as follows: “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 1103(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 “; and” and insert a period; 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 1125(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 Standards 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 “institution or regulatory” and insert “institution 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 604, add at the end the following:

(c) ADDITIONAL STUDY REQUIRED.—The Comptroller General shall conduct an additional study to determine the effects that the changes to the seller-guide appraisal requirements of Fannie Mae and Freddie Mac contained in the Home Valuation Code of Conduct have on small business, like mort-

gage brokers and independent appraisers, and consumers, including the effect on the—

(1) quality and costs of appraisals;

(2) length of time for obtaining appraisals;

(3) impact on consumer protection, especially regarding maintaining appraisal independence, abating appraisal inflation, and mitigating acts of appraisal fraud;

(4) structure of the appraisal industry, especially regarding appraisal management companies, fee-for-service appraisers, and the regulation of appraisal management companies by the states; and

(5) impact on mortgage brokers and other small business professionals in the financial services industry.

(d) ADDITIONAL REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit an additional report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of 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’s views on how small businesses are affected by the Home Valuation Code of Conduct.

Insert after title VII the following new title (and conform the table of contents accordingly):

#### TITLE VIII—REPORTS

##### SEC. 801. GAO STUDY REPORT ON GOVERNMENT EFFORTS TO COMBAT MORTGAGE FORECLOSURE RESCUE SCAMS AND LOAN MODIFICATION FRAUD.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the current inter-agency efforts of the Secretary of the Treasury, the Secretary of Housing and Urban Development, the Attorney General, and the Federal Trade Commission to crackdown on mortgage foreclosure rescue scams and loan modification fraud in order to advise the Congress to the risks and vulnerabilities of emerging schemes in the loan modification arena.

(b) REPORT.—

(1) IN GENERAL.—The Comptroller General shall submit a report to the Congress on the study conducted under subsection (a) containing such recommendations for legislative and administrative actions as the Comptroller General may determine to be appropriate in addition to the recommendations required under paragraph (2).

(2) SPECIFIC TOPICS.—The report made under paragraph (1) shall include—

(A) an evaluation of the effectiveness of the inter-agency task force current efforts to combat mortgage foreclosure rescue scams and loan modification fraud scams;

(B) specific recommendations on agency or legislative action that are essential to properly protect homeowners from mortgage foreclosure rescue scams and loan modification fraud scams; and

(C) the adequacy of financial resources that the Federal Government is allocating to—

(i) crackdown on loan modification and foreclosure rescue scams; and

(ii) the education of homeowners about fraudulent scams relating to loan modification and foreclosure rescues.

Insert after title VIII the following new title (and conform the table of contents accordingly):

#### TITLE IX—MULTIFAMILY MORTGAGE RESOLUTION

##### SEC. 901. MULTIFAMILY MORTGAGE RESOLUTION PROGRAM.

(a) ESTABLISHMENT.—Subject to subsection (e), the Secretary of the Treasury, in con-

sultation with the Secretary of Housing and Urban Development, shall develop a program to stabilize multifamily properties which are delinquent, at risk of default or disinvestment, or in foreclosure.

(b) FOCUS OF PROGRAM.—The program developed under this section shall be used to ensure the protection of current and future tenants of at risk multifamily properties, where feasible, by—

(1) creating sustainable financing of such properties that is based on—

(A) the current rental income generated by such properties; and

(B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and city subsidies in effect as of the date of enactment of this Act; and

(3) facilitating the transfer, when necessary, of such properties to responsible new owners.

(c) COORDINATION.—The Secretary of the Treasury shall in carrying out the program developed under this section coordinate with the Secretary of Housing and Urban Development, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.

(d) DEFINITION.—For purposes of this section, the term “multifamily properties” means a residential structure that consists of 5 or more dwelling units.

(e) AUTHORITY.—This section shall not limit the ability of the Secretary of the Treasury to use any existing authority to carry out the program under this section.

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 the manager’s 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. So 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 Chairman 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 on their loan modifications.

I want to emphasize that not all counseling services by third parties are bad and not all middlemen are bad, but

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.

What has been incorporated in the manager's amendment that we put forward would prohibit third parties from charging fees to consumers for providing or negotiating on a consumer's behalf a modification 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 will be the impact on small lenders 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 creditors are covered by equal antisteering provisions, this amendment adds further inequity and confusion.

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 and origination fees associated with their loan.

In committee, Chairman FRANK said he felt that he and Mr. MILLER had agreed in principle about only banning incentivized 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 principal, the manager's amendment removes that option to finance through the rate completely.

Additionally, the manager's amendment says all origination fees must be collected either 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 as 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 prohibit this 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 have had an option to say, you know, 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 principal balance. But now 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 steering could be, well, I 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 bankers from offering two 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,

Washington, DC, May 7, 2009.

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 provisions in H.R. 1728, 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 any jurisdiction over 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.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FINANCIAL SERVICES,  
Washington, DC, May 6, 2009.

Hon. JOHN CONYERS, Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR CHAIRMAN CONYERS: Thank you for your letter concerning H.R. 1728, the "Mortgage Reform and Anti-Predatory Lending Act." This bill will be considered by the House shortly.

I want to confirm our mutual understanding with respect to the consideration of



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 expeditiously. I further agree 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 prerogatives on this or similar legislation. I would support your request for conferees 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 1½ 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 not 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 not 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 mischaracterizing of appraisals, prohibiting discouraging shopping around, prohibiting mischaracterization of credit scores and others.

Mr. NEUGEBAUER. Mr. Chairman, I appreciate the chairman'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 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 for my 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 moving too briskly on broad 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. There is no 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 delinquent, the housing market is still very fragile, and what is needed is a sense of certainty 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 should include provisions defining the future role of GSEs in the 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 limbo. I don't believe, and I don't think anybody does, we should be cutting off dollars to homebuyers and homeowners while trying to prevent a problem from happening again.

Mr. FRANK of Massachusetts. Mr. Chairman, I now yield 1½ 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 chairman, 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 an ability to repay mortgage law and has worked closely with the Department of Justice in these efforts on behalf of consumers.

□ 1215

This 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 concerns I have, I mean, there is a lot of people that 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 Federal 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 1½ 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 includes 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 intent of this 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 question is on the amendment offered by the gentleman from Massachusetts (Mr. FRANK).

The amendment was agreed to.

The CHAIR. The Committee will rise informally.

The Speaker pro tempore (Mr. PERLMUTTER) assumed the Chair.

## MESSAGES FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

## MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

The Committee resumed its sitting.

AMENDMENT NO. 2 OFFERED BY MR. FRANK OF MASSACHUSETTS

The CHAIR. It is now in order to consider amendment No. 2 printed in House Report 111-98.

Mr. FRANK of Massachusetts. Mr. Chairman, I offer amendment No. 2.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. FRANK of Massachusetts:

Strike section 216(e) and insert the following:

(e) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

(1) IN GENERAL.—None of the amounts made available under this section shall be distributed to—

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

(B) any organization which employs applicable individuals.

(2) DEFINITION OF APPLICABLE INDIVIDUALS.—In this subsection, the term "applicable individual" means an individual who—

(A) is—

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

(ii) contracted or retained by the organization; or

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

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

Strike section 106(a)(4)(D) of the Housing and Urban Development Act of 1968 (as added by section 404 of the bill) and insert the following:

“(D) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

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

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

“(II) any organization which employs applicable individuals.

“(i) DEFINITION OF APPLICABLE INDIVIDUALS.—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 convicted for a violation under Federal law relating to an election for Federal office.”.

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