

MORTGAGE REFORM AND ANTI-PREDATORY LENDING
ACT

MAY 4, 2009.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial
Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1728]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
 Strike all after the enacting clause and insert the following:

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 ORIGATION 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 ORIGINATION.

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

“§ 129B. Residential mortgage loan origination

“(a) FINDING AND PURPOSE.—

“(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(1)(2) of the Truth in Lending Act (15 U.S.C. 1639(1)(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 payment.

(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 con-

sumer'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 bank-

ruptcy 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, subject 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.—

“(1) 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.

“(l) **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 amended 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 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.—

“(1) 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 Hous-

ing 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;

“(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 governmental 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 difference 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.

"(l) 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";

(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 “;”;
and

(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;” and

(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 federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.

“(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the Council, the 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 under reporting of the number of appraisers working for or contracted by the appraisal management company."

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

(i) GRANTS AND REPORTS.—Section 1109(b) 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) RECIPROCALITY.—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) RECIPROCALITY.—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 such 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 com-

plaints 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 completion, 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 Housing 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.

PURPOSE AND SUMMARY

H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, is intended to reform mortgage lending practices to avert a recurrence of the current situation of unprecedented levels of defaults and foreclosures rates. The bill is fashioned after similar legislation that passed the House in November 2007 (H.R. 3915), but has been updated and contains a number of new provisions.

As reported, Titles I and II of H.R. 1728 set minimum standards for mortgages requiring that consumers must have a reasonable ability to repay at the time the mortgage is consummated and that mortgage refinancings must provide a net tangible benefit to the consumer. Under the bill, securitizers and other participants in the secondary mortgage market would for the first time under federal law be liable for supporting irresponsible lending. It provides that certain high-quality, low-cost loans (defined as Qualified Mortgages) will be presumed to meet these Federal standards. This is a limited safe harbor for these loans because the presumption can be rebutted.

The bill also prohibits financial incentives (including payments known as “yield spread premiums”) that encourage mortgage originators, including mortgage brokers and loan officers of lending institutions, to steer consumers to higher-cost and more abusive mortgages. In addition, it prohibits prepayment penalties for any adjustable rate mortgage and other mortgages that do not meet the definition of Qualified Mortgage, limits prepayment penalties charged to borrowers who wish to close out their loans, typically to refinance on more affordable terms, bans single premium credit insurance and prohibits mandatory arbitration clauses; and includes protections for renters of foreclosed properties. Finally, there are provisions to provide legal assistance to homeowners and tenants facing foreclosure.

H.R. 1728 requires creditors to retain an economic interest in a material portion of the credit risk for certain mortgages they originate. Another provision authorizes the Banking Agencies to address through rulemaking abusive mortgage terms and practices that may arise in the future. The bill permits consumers to obtain redress directly from firms involved in “securitizing” mortgages, unless the securitizer has performed appropriate due diligence to comply with the ability to repay and net tangible benefit standards and effected a modification or refinancing that provides the borrower with a loan that satisfies these standards.

Title III of H.R. 1728 expands the scope of and enhances consumer protections for high-cost loans under the Home Ownership and Equity Protection Act (HOEPA) and requires additional disclosures to consumers. This title revises the benchmark for determining these triggers from Treasuries securities to the “average prime offer rate,” which is determined by the Federal Reserve. In addition, it lowers the points and fee trigger from 8 percent to 5 percent for transactions of \$20,000 or more and including additional costs and fees in the trigger; prohibits the financing of points and fees; prohibits excessive fees for payoff information, modifications, or late payments; prohibits practices that increase the risk of foreclosure, such as balloon payments, encouraging a borrower to default, and call provisions; and requires pre-loan counseling.

Title IV of the bill establishes an Office of Housing Counseling at HUD that will carry out and coordinate homeownership and rental housing counseling programs; requires the launch of a national public service, multimedia campaign to promote housing counseling and the establishment of a website and toll-free hotline; authorizes the issuance of homeownership and rental housing counseling grants to HUD-approved housing counseling agencies and State housing finance agencies; and requires HUD to update the Mortgage Information Booklet to provide consumers with a greater understanding of the terms of the home buying process. Additionally, the bill requires increased information to consumers about the need for home inspections and ways to avoid foreclosure scams.

Titles V and VI of H.R. 1728 offer a comprehensive, balanced, and progressive set of solutions aimed at stopping or mitigating a number of abusive and deceptive practices related to escrow accounts, mortgage servicing, and appraisal practices. The two titles also build on the provisions previously incorporated by an amendment on the House floor into H.R. 3915.

Regarding the escrow provisions contained in Title V, H.R. 1728 requires all subprime borrowers to have accounts established in conjunction with their mortgages to provide protection against tax liens and the forced placement of insurance, among other things. In addition, the bill requires lenders to provide written disclosures about the need to pay taxes and insurance premiums to all borrowers if they opt out of creating escrow accounts. To ensure that lenders alert borrowers to all costs involved in a transaction, the bill requires the inclusion of escrow payments for taxes and insurance in any repayment analysis provided to consumers at the time of a quote on a mortgage.

With respect to mortgage servicing reforms, the Title V of H.R. 1728 also updates the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) to create new consumer protections. These protections include detailing when the servicer can impose force-placed insurance, mandating swifter responses to consumer written inquiries, increasing penalties for violations of RESPA, requiring the prompt crediting of payments, and mandating that borrowers receive payoff statement quotes within a reasonable amount of time after a request.

Concerning appraisal practices, Title VI of H.R. 1728 prohibits the lender from making a subprime mortgage without first obtaining a written appraisal of the physical property. The bill also protects these loan applicants against loan flipping by requiring a sec-

ond written appraisal, free of charge, if another loan on the property occurred in the past six months. Lenders must additionally provide mortgage applicants with copies of any and all written appraisal reports and valuations developed in connection with a mortgage transaction at least 3 days before the scheduled closing date on the property.

H.R. 1728 further creates enforceable Federal appraisal independence standards with penalties within TILA and amends the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) to require the Appraisal Subcommittee to monitor the effectiveness of State appraiser agencies in maintaining appraisal independence. These standards prohibit the parties involved in a real estate transaction from influencing the independent judgment of an appraiser through collusion, coercion, and bribery, among other activities. In addition to other stipulations, they require appraisers to have no direct or indirect interest in the property or transaction involving the appraisal.

Moreover, the bill's changes will provide the Appraisal Subcommittee with a consumer protection mandate and more authority to monitor the performance of State appraiser agencies. The Appraisal Subcommittee is also required to describe its activities in greater detail in an annual report to the Congress. Many of the additional appraisal changes are designed to strengthen licensing and education standards, as well as to establish a Federal grant program to the States.

The modifications to appraisal regulation found in H.R. 1728 also create a system for registering and supervising appraisal management companies, ensure the establishment of a national hotline for collecting appraisal complaints, provide for the production of reliable results by automated valuation models, and bar the use of broker price opinions as the sole basis for determining the value of a property for purchase mortgage loans. Finally, Title VI amends RESPA to require the separate disclosure of fees paid to appraisal management companies and appraisers.

BACKGROUND AND NEED FOR LEGISLATION

Mortgage crisis

It is now well documented that the explosive growth in subprime and Alt-A mortgage lending in the early part of this decade led many Americans to obtain mortgage credit that they could not afford. As a result, the country is facing an unprecedented foreclosure crisis and foreclosure rates are expected to increase.

This crisis can be traced in part to the movement of lenders and mortgage originators away from traditional commonsense underwriting practices during the real estate boom, giving rise to risky, exotic mortgages and practices such as “no doc” lending and allowing loans with “negative amortization” features, and to the proliferation of subprime mortgages, especially in refinancing. Many observers comment that the growth of mortgage securitization and the market in mortgage-backed securities—investment instruments backed by pools of loans purchased by investment firms—increased the number of lenders and propelled the sale of subprime products. Investors' demand for high-yield mortgage bonds in turn may have driven brokers and lenders to push borrowers to high-risk loans,

loosening underwriting standards. Government data and academic studies have suggested that a disproportionate amount of higher priced subprime lending was concentrated in the minority population and in minority neighborhoods.

In general, subprime mortgages are loans that have more costly terms and conditions than “prime” mortgages (e.g., they may have higher interest rates, additional fees, prepayment penalties, or other features). Many subprime loans were made to borrowers who, due to weakened credit histories, pose higher credit risks. These borrowers may have lower credit scores than prime borrowers or higher debt to income ratios on their properties. In other cases, subprime borrowers may actually have qualified for prime loans, but did not receive them, for various reasons ranging from the benign (such as an inability to produce full income documentation) to predatory practices such as loan steering.

Subprime lenders included banks, bank affiliates, and non-bank mortgage companies. According to Mortgage Bankers Association (MBA), more than half of subprime mortgages were made by mortgage brokers and lenders with no Federal supervision; a quarter were made by finance companies that are affiliates of bank holding companies and indirectly regulated by the Federal Reserve Board; and the rest were made by institutions directly regulated by Federal financial regulators such as banks, thrifts, and credit unions.

Additional controversy surrounded so-called subprime payment option adjustable rate mortgages (ARMs) in which the interest rate starts at a low “teaser” level and then ratchets upward after a set period, often two or three years. The term “hybrid” refers to the blend of fixed-rate and adjustable-rate characteristics found in such ARMs. Like other adjustable-rate products, hybrid ARMs transfer some interest rate risk from the lender to the consumer, thus allowing the lender to offer a lower initial rate.

Hybrid ARMs are referred to by their initial fixed period and adjustment periods, for example 3/1 for an ARM with a 3-year fixed period and subsequent 1-year rate adjustment periods. Two products that have drawn particular attention are 2/28s and 3/27s. For these loans, the rate resets every six months after the initial teaser rate period for the remaining 28 or 27 years of the loan at a margin over a particular designated short-term interest rate, such as the London Interbank Offered Rate (LIBOR). Interest-only, no-principal balloon loans often result in even steeper increases as a result of deferred unpaid principal.

Many of these loans also had prepayment penalties that may extend beyond the low initial payment period. When these loans reset, consumers may face penalties for refinancing or have a very short time in which to refinance. Prepayment penalties can, however, sometimes provide consumers with lower interest rates because they provide a more stable revenue stream and thus increase the value of the loan on the secondary market.

The number of hybrid ARMs and other subprime loans—and their share of the mortgage market—has significantly increased in the past few years. According to press reports, in 1998, the percentage of hybrids relative to 30-year fixed-rate mortgages was less than 2 percent. By 2004, this percentage had risen to 27.5 percent. Origination volumes of subprime mortgages grew from \$100 billion in 2001 to \$800 billion in 2005. Many homeowners took out these

loans because they couldn't afford the monthly payments that came with a 30-year fixed-rate loan. They were counting on having the value of their homes appreciate and then refinancing. Instead, home prices throughout the country have plummeted. In a period of declining home values, the principal amounts of many loans became greater than the value of the underlying assets, making refinancing difficult.

Many of these loans began to "reset" in 2007 from their two- and three-year teaser rates to significantly higher monthly payments for homeowners, pushing many borrowers into foreclosure. Foreclosures not only harm homeowners, who can lose their homes and the equity in them and suffer from tarnished credit records, but also can have negative effects on the broader community and the economy. Foreclosures can trigger domino effects that result in housing abandonment, declining property values in surrounding neighborhoods, and loss of property tax revenue to states and localities. Many observers also have cited the widespread apprehension over exposure to subprime mortgage-backed bonds as the root cause of the ongoing credit crisis.

Congress has enacted a number of consumer protection laws in the financial sector over the last few decades. These statutes include TILA, the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), and the Equal Credit Opportunity Act (ECOA). Most of these statutes have sought to address particular consumer problems in particular sub-sectors. TILA, for example, requires that consumers receive critical disclosures in a uniform manner before entering into credit transactions. In response to reports of predatory lending practices in home equity lending in the early 1990s, Congress enacted HOEPA in 1994, which covers home equity loans but not purchase-money mortgages. Loans classified as 'high-cost home loans' under HOEPA because of their high annual percentage rates (APRs) or points and fees trigger certain prohibitions or disclosures or both.

In July 2008, the Federal Reserve adopted final rules to address unfair, abusive or deceptive home mortgage lending practices and to restrict certain other mortgage practices. The rules also establish advertising standards and require certain mortgage disclosures to be given to consumers earlier in a transaction. The Federal Reserve's action adds four key protections to a newly defined category of "higher-priced mortgage loans" secured by a consumer's principal dwelling.

The four protections adopted for the newly defined category of higher-priced mortgage loans will:

- Prohibit a lender from making a loan without regard to borrowers' ability to repay the loan from income and assets other than the home's value. A lender complies, in part, by assessing repayment ability based on the highest scheduled payment in the first seven years of the loan. To show that a lender violated this prohibition, a borrower does not need to demonstrate that it is part of a "pattern or practice;"
- Require creditors to verify the income and assets they rely upon to determine repayment ability;
- Ban any prepayment penalty if the payment can change in the initial four years. For other higher-priced loans, a prepayment penalty period cannot last for more than two years; and

- Require creditors to establish escrow accounts for property taxes and homeowner's insurance for all first-lien mortgage loans.

While the Federal Reserve's rules addressed some of the practices that led to the current crisis, H.R. 1728 will compliment the Federal Reserve's rule and provide additional protections to mortgage borrowers.

Many States have enacted statutes modeled after HOEPA. Currently, at least thirty States, the District of Columbia, and roughly a dozen municipalities have enacted either comprehensive statutes or other limited statutory protections aimed at predatory lending practices, some addressing a specific practice, some generally tracking HOEPA, and others going far beyond it.

As more families face foreclosure, the need for affordable legal assistance for homeowners and tenants increases. Throughout the country, legal assistance organizations report a dramatic increase in unmet need for foreclosure-related legal services. Given this urgent need, the bill provides for grants to state and local legal organizations to provide legal assistance to low and moderate income homeowners and tenants with foreclosure-related issues.

Affordable housing advocates report that at least 20 percent of properties in foreclosure were rental properties and roughly 40 percent of families facing eviction due to foreclosure are tenants. To address this unintended impact of the foreclosure crisis, the bill allows bona fide tenants to remain in their residence, pursuant to their lease, following foreclosure on the property, except in certain limited circumstance.

Escrows

An escrow is a trust account set up in a borrower's name to ensure the timely payment of specified obligations affiliated with a property. Current Federal law permits all consumers to voluntarily establish escrow accounts with their lender or mortgage servicer to cover property taxes, hazard insurance, and certain other periodic expenses related to the property or the contract. The administration of these accounts is covered by RESPA and, if applicable, State law.

Borrowers with escrows pay an additional amount on their mortgage each month to fund the account. In addition to any principal and interest payments, lenders collect a pro-rata assessment of the total expected annual outlays for taxes and insurance using RESPA's established guidelines. Lenders then use these collected sums to guarantee the timely payment of property tax bills and insurance premiums. In a way, an escrow serves as a safety net to protect the lender and the borrower from tax liens and property losses.

In analyzing the recent problems related to the fallout in the subprime lending industry, some experts have noted that subprime borrowers, even though they are more likely to need budgeting assistance given their weaker credit histories, are less likely than prime borrowers to have escrows. In its 2006 benchmarking studies, for example, the Mortgage Bankers Association found that approximately 50 percent of all first lien subprime mortgages had escrows, compared to 71 percent of prime loans. Other experts have

suggested that the number of subprime borrowers with escrows is significantly lower.

In 2004, Fannie Mae updated its policies on escrows in its Selling and Servicing Guides. While it continued to allow the waiver of an escrow account requirement in certain instances, the updated policy recommends against waiving escrows for a borrower with a blemished credit record. In doing so, the enterprise noted that the borrower may find it difficult to maintain homeownership if he or she faces the need to make large lump-sum payments for taxes and/or insurance and any other periodic payment items.

In early 2007, the Federal banking regulators also issued guidance on disclosure notices for consumers who opt out of escrow services. The guidance laid out fundamental consumer protection principles for underwriting, including that consumers should be informed of their responsibilities to pay taxes and insurance, in addition to their loan payments, if not escrowed, and the fact that the costs for taxes and insurance costs can be substantial. Fannie Mae has adopted similar escrow opt-out disclosure policies, too.

Issues related to escrows have also arisen as part of the homebuying and refinancing process. Some mortgage originators, at the time of a payment quote, provide consumers only with details on principal and interest amounts. As a result, borrowers may underestimate the monthly payment actually needed to own a home. Moreover, because some quotes contain information regarding additional fees associated with a property like taxes and insurance premiums and some do not, borrowers sometimes lack the information needed to make accurate comparisons between different mortgage offers.

In its commentary in a rule promulgated last summer under the Home Ownership and Equity Protection Act (HOEPA), the Federal Reserve Board noted that “[c]onsumers in the subprime market tend to shop based on monthly payment amounts, rather than on interest rates. So creditors who are active in the subprime market, and who can quote low monthly payments to a prospective borrower, have a competitive advantage over creditors who quote higher monthly payments.” Both apples-to-apples comparisons of payments and more realistic expectations of monthly obligations are better accomplished by mortgage offers containing four payment obligations: principal, interest, taxes, and insurance, otherwise known as PITI.

As a result of its findings, the Federal Reserve Board’s recent HOEPA regulations require a creditor to establish an escrow account for taxes and insurance for subprime borrowers. These escrow accounts must remain in place for at least 12 months before a consumer can cancel them. The final rule also adopted changes to advertising practices to require the prominent disclosure that taxes and insurance are not included in promotional quotes.

Mortgage servicing

While much of the recent attention related to mitigating predatory lending practices has focused on the mortgage origination and underwriting process, the problems of abusive and deceptive lending also extends into mortgage servicing, which occurs after the consummation of a home loan. The problems that homeowners

have encountered with loan servicing have received media attention.¹

Under RESPA, servicers are the entities responsible for servicing a loan. Typically, servicers are large corporations servicing millions of mortgage loans at any one time. Servicers generally have no legal relationship with the owners or assignees of the loan and make their income from a small percentage earned on each payment made on the loan. Servicers may also earn income from the float from escrow accounts they maintain for borrowers to cover the required payments for property insurance on the loan.

Unfortunately, in recent years, some servicers have discovered that greater profits can be obtained by squeezing borrowers in a variety of ways. One problematic method used to increase revenue by servicers is the forced placement of insurance without a reasonable basis for doing so. The 2004 agreement between Ocwen Federal Bank and the Office of Thrift Supervision and the 2003 settlement between Fairbanks Capital Holding Corporation and the Federal Trade Commission and the Department of Housing and Urban Development (HUD) both resulted in internal servicing reforms to improve the process for the forced placement of insurance.

Force-placed insurance is a product obtained by lenders to protect their interest in the property in the event the borrower fails to maintain or renew hazard and flood insurance as required under the terms of the mortgage contract. Force-placed insurance generally costs at least twice the amount of standard homeowners insurance, even though it generally only covers the replacement value of the underlying collateral. By comparison, homeowners insurance would cover not only the costs of repairing or replacing the home, but also the contents of the home itself.

Another practice that raises the concerns of consumer advocates relates to the prompt crediting of payments. A servicer may sometimes hold a payment past the due date in order to impose a late charge. Servicers may also profit from the float that occurs when the borrower makes less than a full payment. In such instances, the servicer will deposit the partial payment into a suspense account rather than crediting the consumer's account for the amount paid.

There are still many other concerns related to mortgage servicing. A lender may refuse to provide a pay-off amount on a loan, thus limiting a borrower's ability to satisfy the obligation (and potentially to refinance into a cheaper loan). Servicers may also postpone refunding balances in escrow accounts or charge excessive fees, including when responding to borrower requests to correct errors. RESPA establishes affirmative obligations on servicers to answer questions and address concerns consumers have about the status of their loans and their escrow accounts after the consumer has sent a "qualified written request." Some servicers, however, will game the system by failing to respond adequately to each such request, forcing the consumer to make repeated inquiries, yet charging amounts for each response.

Finally, servicers currently have no enforceable obligation to provide consumers with information about the true owner of the mort-

¹ See Gretchen Morgenson, "Can These Mortgages Be Saved," *New York Times*, September 30, 2007, and Jack Guttentag, "Loan Servicers, the Lesser-Known Predators," *Washington Post*, November 3, 2007.

gage. A recent court case held that a consumer's attempt to rescind a loan under the Truth in Lending Act was ineffective when the rescission notice was served on the servicer, because the servicer was not an agent for the holder (even though the servicer is clearly an agent for purposes of receiving payments on the loan).

In its July 2008 HOEPA rulemaking, the Federal Reserve addressed several of the most problematic mortgage servicing issues, including those related to the prompt crediting of mortgage payments and the timely provision of pay-off statements. In response to the growing need to expeditiously help troubled borrowers to modify their loans, the HOPE Now coalition has also adopted best practices aimed at shortening the response times for processing requests. More, however, could be done to help protect consumer interests in the area of mortgage servicing.

Appraisals

Obtaining an appraisal is a key step in the mortgage underwriting process. It helps to verify a property's value for the buyer, seller, lender, investor, and others. For the process to work as intended, appraisers must act as unbiased arbiters. In other words, they ought to have independence in making their determinations of a property's worth.

In recent years, however, the appraisal process has experienced increased stress. According to the Appraisal Institute, appraiser-related mortgage fraud continues largely because:

- Unscrupulous third parties pressure appraisers to meet predetermined values;
- Appraiser regulators provide inadequate oversight over licensed appraisers;
- Too little attention is paid to improving appraisal quality; and
- Appraisals, in some areas of lending, have been reduced from an important safeguard role to merely a "speed bump" in the process of closing a loan.

Moreover, the October Research Corporation released a study in December 2006 finding that 90 percent of appraisers were pressured to raise property valuations to enable the completion of a transaction.² Such pressure can come from mortgage brokers, real estate agents/brokers, consumers, lenders, and appraisal management companies. The survey also found that 75 percent of appraisers reported "negative ramifications" if they did not cooperate by altering their appraisals.

Faulty appraisals can have real consequences: Individuals who obtained an overvalued appraisal may later encounter difficulty in refinancing or selling a home because the true value of the property used as collateral is less than the original mortgage.

The problems of inflated appraisals have also increasingly attracted the attention of enforcement officials. In January 2006, for example, State attorneys general announced a settlement with Ameriquest Mortgage Company. Among other things, the company agreed to take reasonable steps to ensure the accuracy of appraisals and enhance the independence of the appraisal process. The

²National Appraisal Survey, October Research Corporation, December 2006. www.octoberresearch.com

Ohio Attorney General additionally has filed and settled several cases against mortgage originators since the start of 2007 regarding violations of the State's new appraisal independence law.

Furthermore, New York Attorney General Andrew Cuomo filed a lawsuit on November 1, 2007 against one of the nation's largest real estate appraisal management companies (eAppraiseIT) and its parent corporation for colluding with a lender to inflate the appraised values of homes.³ As part of his examinations of the appraisal industry, the New York Attorney General also identified problems with the loan purchased by Fannie Mae and Freddie Mac. As a result, he finalized an agreement known as the Home Valuation Code of Conduct to promote appraiser independence. The agreement became effective on May 1, 2009.

Interest in enacting laws aimed at protecting the independence of appraisers has blossomed in recent years. Since the start of the decade, 25 States have passed such laws. Many of these laws aim to protect appraiser independence by ensuring that no one with an interest in a transaction involving an appraisal can influence or attempt to influence an appraiser through coercion, extortion, compensation, instruction, inducement, intimidation, bribery, or non-payment for services rendered. Many State legislatures around the nation also have similar bills under consideration.

Currently, no Federal statute specifically requires appraisal independence in the private mortgage markets, but the members of the Appraisal Subcommittee (ASC) have issued regulations and guidance to address this issue. These requirements, however, only apply to federally regulated banks, thrifts, and credit unions, as well as the parties affiliated with these federally regulated depositories.

In its 2008 HOEPA rulemaking, the Federal Reserve Board took further steps to address this issue. In its final rule, the Board determined that "[e]ncouraging an appraiser to overstate or understate the value of a consumer's dwelling causes consumers substantial injury." As a result, the Board adopted a standard "to prohibit creditors and mortgage brokers and their affiliates from coercing, influencing, or otherwise encouraging appraisers to misstate or misrepresent the value of a consumer's principal dwelling."

While this rule established a national standard for appraisal independence, to date Congress has not adopted a national law in this area to cover the vast majority of mortgage transactions. Moreover, the Federal Reserve rulemaking incorporated only some of the independence terms found in the growing field of State appraisal laws.

In the wake of the savings and loan crisis, the Congress established the ASC and housed it within the Financial Institutions Examination Council (FIEC) as part of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). Members of the ASC presently include the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Association, and the Department of Housing and Urban Development (HUD). Although it worked with New York Attorney General Cuomo to modify the Home Valuation Code of Conduct for Fannie

³http://www.oag.state.ny.us/press/2007/nov/nov1a__07.html

Mae and Freddie Mac and this agreement has significant implications for the entities currently regulated by the members of the ASC, the Federal Housing Finance Agency currently does not belong to the ASC. A formal membership on the ASC by this agency might have facilitated the agreement's adoption.

The ASC presently works to ensure that real estate appraisers, who perform appraisals in real estate transactions that could expose the United States government to financial loss, are sufficiently trained and tested to assure competency, independence, and high ethical judgment according to the Uniform Standards of Professional Appraisal Practice, or USPAP. The ASC also monitors the work of the Appraisal Foundation, a nonprofit educational corporation established by the U.S. appraisal industry.

The ASC additionally monitors appraisers using State-based laws and enforcement agencies. A survey of State appraisal regulators by the Government Accountability Office in 2003 reported resource limitations as the primary impediment in carrying out their oversight responsibilities.⁴ One of the critiques about the current oversight system often made by the Appraisal Institute and other professional appraisal organizations is that the ASC's 2006 annual report found that more than 60 percent of the State appraisal agencies failed to uphold their responsibilities in conducting enforcement activities. The ASC's 2007 report also found 18 instances in which a State failed to investigate and resolve complaints in a timely manner.

Moreover, the *Associated Press* reached similar conclusions in August 2008 about the effectiveness of current system to oversee appraisers and appraisals. After its 6-month investigation, which included the review of thousands of State and Federal documents and interviews with more than 35 real estate appraisers across the country, the *Associated Press* concluded that "the system is crippled by both the bumbling of its policemen and their inability to effectively punish those caught committing fraud." The study also found more than two dozen States and U.S. territories unable to investigate and resolve appraisal complaints within the one-year Federal deadline. The study additionally observed that both State appraisal boards and the ASC are chronically understaffed, many with only one full-time investigator to handle the hundreds of complaints that arrive each year.

The Congress has not taken any significant legislative action since establishing the ASC in 1989 to address newly identified shortcomings related to appraisal regulation. For example, the ASC presently lacks the authority to issue rules and enforce its own standards, and relies instead on policy statements. It additionally does not have a consumer protection mandate and provides very limited information in its annual report to the Congress. Short of decertifying a State's appraisal enforcement program for non-conformance with FIRREA, the ASC also lacks the power to pursue incremental improvements in State regulatory performance, like the prompt corrective action regime used by Federal banking regulators for monitoring depository institutions. The ASC also cannot make grants to the State appraisal regulators to improve their functioning.

⁴<http://www.gao.gov/text/d04580t.html>

Another problem with appraisals relates to consumer access. Under current Federal law, creditors must promptly furnish a borrower with a copy of the appraisal report used in connection with the application for a mortgage. Under regulations, a creditor may either routinely provide a copy of the appraisal report used in connection with a loan or send it within 30 days of receiving a written request. The receipt of the property appraisal typically comes at or after closing on the home loan. As a result, the consumer often cannot examine this document related to a purchase before the completion of the transaction.

In addition, sometimes the appraisal used to close the loan may not be the only appraisal performed in connection with the transaction. If an earlier appraisal comes in that is below the one needed to make the mortgage, then an originator may order another appraisal in order to “hit” the sales price and close the transaction. Borrowers affected by such a situation would only have access to the second appraisal report with the higher value instead of both appraisal reports.

Appraisal reforms could also help to address problems related to property flipping, which occurs when a recently acquired home is resold shortly thereafter for a profit, typically after undergoing some renovations and sometimes with an artificially inflated value. While the practice has been around for a long time, it has become increasingly popular and profitable during the last decade because of low interest rates and surging home prices. A number of reality television shows have even surfaced on the topic, such as Bravo’s “Flipping Out”, A&E’s “Flip This House”, and TLC’s “Flip That House”.

Many industry observers have further expressed concern that an individual flipping a property can often find an appraiser to inflate the home’s value. Concern about property flipping scams has caused entities like the Federal Housing Administration to protect consumers by adopting regulatory reforms that involve appraisal reforms.

In response to the implementation of the Home Valuation Code of Conduct, concerns about the oversight of the operations of appraisal management companies (AMCs) have also grown. Generally, AMCs are external third-party entities that manage the appraisal process for a mortgage originator. According to some estimates, AMCs are now involved in more than 60 percent of appraisals, and their market share is expected to grow as the Home Valuation Code of Conduct is implemented and mortgage originators seek outside parties to comply with the agreement’s appraisal independence stipulations.

AMCs, however, are subject to little direct oversight. Only in recent months have three States—Utah, Arkansas, and New Mexico—adopted laws requiring their registration and supervision. The ASC also currently has no explicit statutory authority with respect to AMCs. Moreover, there have been instances in places like Florida and New Hampshire where individuals who have lost their appraisal licenses or certifications have turned around and opened AMCs to manage the work of other appraisers.

Critics have also warned that that the growth of AMCs may lead to a decline in appraisal quality. In testimony before the Financial Services Committee in March, Mr. Jim Amarin on behalf of the Ap-

praisal Institute observed: “With many AMCs taking as much as 60 percent of the fee as their ‘management’ cost, many highly qualified appraisers are reluctant to perform mortgage appraisals for such entities.” Because all appraisal fees are disclosed in a single line on closing documents, consumers and regulators currently lack the information needed to determine whether the growth of AMCs has led to low-cost, lower-quality appraisals.

Finally, in testimony before the Financial Services Committee during the 111th Congress, entities like the National Community Reinvestment Coalition and the Appraisal Institute have raised additional concerns about other methods for home valuation. For example, witnesses questioned the reliability of and confidence in the automated valuation models often used to develop estimates of home values. They also raised apprehensions about the quality of home value estimates developed by real estate brokers that are used for collateral purposes, particularly for purchase mortgages.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on March 11, 2009 entitled “Mortgage Lending Reform: A Comprehensive Review of the American Mortgage System.” The following witnesses testified: Panel One: Ms. Sandra F. Braunstein, Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Mr. Steven L. Antonakes, Commissioner, Massachusetts Division of Banks, on behalf of Conference of State Bank Supervisors; Panel Two: Mr. David Berenbaum, Executive Vice President, National Community Reinvestment Coalition, Ms. Julia Gordon, Senior Policy Counsel, Center for Responsible Lending, Ms. Margot Saunders, Counsel, National Consumer Law Center, Ms. Stephanie Jones, Executive Director, National Urban League Policy Institute, Ms. Graciela Aponte, Analyst, National Council of La Raza, Mr. Donald C. Lampe, Partner, Womble Carlyle Sandridge & Rice, PLLC; Panel Three: Mr. Michael Middleton, President and CEO, Community Bank of Tri-County, on behalf of the American Bankers Association, Mr. David G. Kittle, Chairman, Mortgage Bankers Association, Mr. Marc S. Savitt, President, National Association of Mortgage Brokers, Mr. Charles McMillan, President, National Association of Realtors, Mr. Jim Amorin, President, Appraisal Institute, Mr. Joe J. Robson, Chairman of the Board, National Association of Home Builders, Mr. Laurence E. Platt, Partner, K&L Gates, on behalf of the Securities Industry and Financial Markets Association.

The Committee on Financial Services held a hearing on April 23, 2009 entitled “H.R. 1728: Mortgage Reform and Anti-Predatory Lending Act”. The following witnesses testified: Panel One: Ms. Sandra Braunstein, Director of the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Mr. Steven L. Antonakes, Commissioner of Banks for the Commonwealth of Massachusetts on behalf of the Conference of State Bank Supervisors; Panel Two: Mr. John Taylor, President and Chief Executive Officer, National Community Reinvestment Coalition, Mr. Michael D. Calhoun, President, Center for Responsible Lending, Ms. Margot Saunders, Counsel, National Consumer Law Center, Mr. Eric Rodriguez, Vice President of Public Policy, National Council of La Raza, Mr. Hilary O. Shelton, Vice President for Advocacy

and Director, Washington Bureau, NAACP; Panel Three: Mr. G. Gary Berner, Executive Vice President, Commercial Real Estate, First Niagara Bank on behalf of American Bankers Association, The Honorable John H. Dalton, President, Housing Policy Council, The Financial Services Roundtable, Mr. David G. Kittle, Chairman, Mortgage Bankers Association, Mr. Michael S. Menzies, Sr., President and Chief Executive Officer, Easton Bank and Trust Company on behalf of Independent Community Bankers Association, The Honorable T. Timothy Ryan, Jr., President and Chief Executive Officer, Securities Industry and Financial Markets Association, Ms. Denise M. Leonard, Vice President, Government Affairs, National Association of Mortgage Brokers, Mr. Charles McMillan, President, National Association of Realtors, Mr. Jim Amarin, President, Appraisal Institute, Mr. Jim Arbury, Senior Vice President, Government Affairs, on behalf of the National Multi Housing Council and the National Apartment Association.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 28, 2009, and on April 29, 2009, ordered H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, as amended, favorably reported to the House by a record vote of 49 yeas and 21 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill to the House with a favorable recommendation was agreed to by a record vote of 49 yeas and 21 nays (Record vote no. FC-28). The names of Members voting for and against follow:

RECORD VOTE NO. FC-28

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X	.....	.....	Mr. Bachus .....	.....	X	.....
Mr. Kanjorski	X	.....	.....	Mr. Castle	X	.....	.....
Ms. Waters	X	.....	.....	Mr. King (NY) .....	.....	X	.....
Mrs. Maloney	X	.....	.....	Mr. Royce .....	.....	X	.....
Mr. Gutierrez	X	.....	.....	Mr. Lucas .....	.....	X	.....
Ms. Velázquez .....	.....	.....	.....	Mr. Paul .....	.....	X	.....
Mr. Watt	X	.....	.....	Mr. Manzullo .....	.....	X	.....
Mr. Ackerman	X	.....	.....	Mr. Jones	X	.....	.....
Mr. Sherman	X	.....	.....	Mrs. Biggert	X	.....	.....
Mr. Meeks	X	.....	.....	Mr. Miller (CA)	X	.....	.....
Mr. Moore (KS)	X	.....	.....	Mrs. Capito	X	.....	.....
Mr. Capuano	X	.....	.....	Mr. Hensarling .....	.....	X	.....
Mr. Hinojosa	X	.....	.....	Mr. Garrett (NJ) .....	.....	X	.....
Mr. Clay	X	.....	.....	Mr. Barrett (SC) .....	.....	X	.....
Mrs. McCarthy	X	.....	.....	Mr. Gerlach	X	.....	.....
Mr. Baca	X	.....	.....	Mr. Neugebauer .....	.....	X	.....
Mr. Lynch	X	.....	.....	Mr. Price (GA) .....	.....	X	.....
Mr. Miller (NC)	X	.....	.....	Mr. McHenry .....	.....	X	.....
Mr. Scott	X	.....	.....	Mr. Campbell .....	.....	X	.....
Mr. Green	X	.....	.....	Mr. Putnam .....	.....	X	.....
Mr. Cleaver	X	.....	.....	Mrs. Bachmann .....	.....	X	.....
Ms. Bean	X	.....	.....	Mr. Marchant .....	.....	X	.....
Ms. Moore (WI)	X	.....	.....	Mr. McCotter .....	.....	X	.....
Mr. Hodes	X	.....	.....	Mr. McCarthy .....	.....	X	.....

RECORD VOTE NO. FC-28—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Ellison	X	.....	.....	Mr. Posey	X	.....	.....
Mr. Klein	X	.....	.....	Ms. Jenkins .....	.....	X	.....
Mr. Wilson	X	.....	.....	Mr. Lee .....	.....	X	.....
Mr. Perlmutter	X	.....	.....	Mr. Paulsen .....	.....	X	.....
Mr. Donnelly	X	.....	.....	Mr. Lance	X	.....	.....
Mr. Foster	X	.....	.....		
Mr. Carson	X	.....	.....		
Mr. Speier	X	.....	.....		
Mr. Childers	X	.....	.....		
Mr. Minnick	X	.....	.....		
Mr. Adler	X	.....	.....		
Ms. Kilroy	X	.....	.....		
Mr. Driehaus	X	.....	.....		
Ms. Kosmas	X	.....	.....		
Mr. Grayson	X	.....	.....		
Mr. Himes	X	.....	.....		
Mr. Peters	X	.....	.....		
Mr. Maffei	X	.....	.....		

During the consideration of the bill, the following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment by Mr. Frank (and Mr. Minnick), No. 9, relating to risk retention exceptions and adjustments, was agreed to by a record vote of 67 yeas and 1 nay (Record vote no. FC-17):

RECORD VOTE NO. FC-17

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X	.....	.....	Mr. Bachus	X	.....	.....
Mr. Kanjorski	X	.....	.....	Mr. Castle	X	.....	.....
Ms. Waters	X	.....	.....	Mr. King (NY)	X	.....	.....
Mrs. Maloney	X	.....	.....	Mr. Royce	X	.....	.....
Mr. Gutierrez	X	.....	.....	Mr. Lucas	X	.....	.....
Ms. Velázquez	X	.....	.....	Mr. Paul	X	.....	.....
Mr. Watt	X	.....	.....	Mr. Manzilla	X	.....	.....
Mr. Ackerman	X	.....	.....	Mr. Jones	X	.....	.....
Mr. Sherman	X	.....	.....	Mrs. Biggert	X	.....	.....
Mr. Meeks	X	.....	.....	Mr. Miller (CA)	X	.....	.....
Mr. Moore (KS)	X	.....	.....	Mrs. Capito	X	.....	.....
Mr. Capuano	X	.....	.....	Mr. Hensarling	X	.....	.....
Mr. Hinojosa	X	.....	.....	Mr. Garrett (NJ)	X	.....	.....
Mr. Clay	X	.....	.....	Mr. Barrett (SC)	X	.....	.....
Mrs. McCarthy	X	.....	.....	Mr. Gerlach	X	.....	.....
Mr. Baca	X	.....	.....	Mr. Neugebauer .....	.....	X	.....
Mr. Lynch	X	.....	.....	Mr. Price (GA)	X	.....	.....
Mr. Miller (NC)	X	.....	.....	Mr. McHenry	X	.....	.....
Mr. Scott	X	.....	.....	Mr. Campbell	X	.....	.....
Mr. Green	X	.....	.....	Mr. Putnam	X	.....	.....
Mr. Cleaver	X	.....	.....	Mrs. Bachmann .....	.....	.....	.....
Ms. Bean	X	.....	.....	Mr. Marchant	X	.....	.....
Ms. Moore (WI)	X	.....	.....	Mr. McCotter	X	.....	.....
Mr. Hodes	X	.....	.....	Mr. McCarthy	X	.....	.....
Mr. Ellison	X	.....	.....	Mr. Posey .....	.....	.....	.....
Mr. Klein	X	.....	.....	Ms. Jenkins	X	.....	.....
Mr. Wilson	X	.....	.....	Mr. Lee	X	.....	.....
Mr. Perlmutter	X	.....	.....	Mr. Paulsen .....	.....	.....	.....
Mr. Donnelly	X	.....	.....	Mr. Lance	X	.....	.....
Mr. Foster	X	.....	.....		
Mr. Carson	X	.....	.....		
Mr. Speier	X	.....	.....		
Mr. Childers	X	.....	.....		
Mr. Minnick	X	.....	.....		

RECORD VOTE NO. FC-17—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Adler	X	.....	.....		
Ms. Kilroy	X	.....	.....		
Mr. Driehaus	X	.....	.....		
Ms. Kosmas	X	.....	.....		
Mr. Grayson	X	.....	.....		
Mr. Himes	X	.....	.....		
Mr. Peters	X	.....	.....		
Mr. Maffei	X	.....	.....		

An amendment by Mr. Garrett (NJ) (and Mr. McHenry), No. 15, relating to a credit risk retention study, was not agreed to by a record vote of 27 yeas and 43 nays (Record vote no. FC-18):

RECORD VOTE NO. FC-18

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X	.....	Mr. Bachus	X	.....	.....
Mr. Kanjorski	X	.....	Mr. Castle	X	.....	.....
Ms. Waters	X	.....	Mr. King (NY)	X	.....	.....
Mrs. Maloney	X	.....	Mr. Royce	X	.....	.....
Mr. Gutierrez	X	.....	Mr. Lucas	X	.....	.....
Ms. Velázquez	X	.....	Mr. Paul	X	.....	.....
Mr. Watt	X	.....	Mr. Manzullo	X	.....	.....
Mr. Ackerman	X	.....	Mr. Jones	X	.....	.....
Mr. Sherman	X	.....	Mrs. Biggert	X	.....	.....
Mr. Meeks	X	.....	Mr. Miller (CA)	X	.....	.....
Mr. Moore (KS)	X	.....	Mrs. Capito	X	.....	.....
Mr. Capuano	X	.....	Mr. Hensarling	X	.....	.....
Mr. Hinojosa	X	.....	Mr. Garrett (NJ)	X	.....	.....
Mr. Clay	X	.....	Mr. Barrett (SC)	X	.....	.....
Mrs. McCarthy	X	.....	Mr. Gerlach	X	.....	.....
Mr. Baca	X	.....	Mr. Neugebauer	X	.....	.....
Mr. Lynch	X	.....	Mr. Price (GA)	X	.....	.....
Mr. Miller (NC)	X	.....	Mr. McHenry	X	.....	.....
Mr. Scott	X	.....	Mr. Campbell .....	.....	X	.....
Mr. Green	X	.....	Mr. Putnam	X	.....	.....
Mr. Cleaver	X	.....	Mrs. Bachmann .....	.....	.....	.....
Ms. Bean	X	.....	Mr. Marchant	X	.....	.....
Ms. Moore (WI)	X	.....	Mr. McCotter	X	.....	.....
Mr. Hodes	X	.....	Mr. McCarthy	X	.....	.....
Mr. Ellison	X	.....	Mr. Posey	X	.....	.....
Mr. Klein	X	.....	Ms. Jenkins	X	.....	.....
Mr. Wilson	X	.....	Mr. Lee	X	.....	.....
Mr. Perlmutter	X	.....	Mr. Paulsen	X	.....	.....
Mr. Donnelly	X	.....	Mr. Lance	X	.....	.....
Mr. Foster	X	.....			
Mr. Carson	X	.....			
Mr. Speier	X	.....			
Mr. Childers	X	.....			
Mr. Minnick	X	.....			
Mr. Adler	X	.....			
Ms. Kilroy	X	.....			
Mr. Driehaus	X	.....			
Ms. Kosmas	X	.....			
Mr. Grayson	X	.....			
Mr. Himes	X	.....			
Mr. Peters	X	.....			
Mr. Maffei	X	.....			

An amendment by Mr. McHenry, No. 17, striking title III (High-Cost Mortgages), was not agreed to by a record vote of 29 yeas and 41 nays (Record vote no. FC-19):

RECORD VOTE NO. FC-19

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters				Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Hensarling, No. 24, relating to legal costs, was not agreed to by a record vote of 29 yeas and 42 nays (Record vote no. FC-20):

RECORD VOTE NO. FC-20

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		

RECORD VOTE NO. FC-20—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Neugebauer, No. 25, striking tenant protection, was not agreed to by a record vote of 27 yeas and 43 nays (Record vote no. FC-21):

RECORD VOTE NO. FC-21

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle		X	
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones		X	
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		

RECORD VOTE NO. FC-21—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Wilson		X	.....	Mr. Lee	X	.....	.....
Mr. Perlmutter		X	.....	Mr. Paulsen	X	.....	.....
Mr. Donnelly		X	.....	Mr. Lance	X	.....	.....
Mr. Foster		X	.....			
Mr. Carson		X	.....			
Mr. Speier		X	.....			
Mr. Childers		X	.....			
Mr. Minnick		X	.....			
Mr. Adler		X	.....			
Ms. Kilroy		X	.....			
Mr. Driehaus		X	.....			
Ms. Kosmas		X	.....			
Mr. Grayson		X	.....			
Mr. Himes		X	.....			
Mr. Peters		X	.....			
Mr. Maffei		X	.....			

An amendment by Mr. Price, No. 26, regarding arbitration, was not agreed to by a record vote of 30 yeas and 40 nays (Record vote no. FC-22):

RECORD VOTE NO. FC-22

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X	.....	Mr. Bachus	X	.....	.....
Mr. Kanjorski		X	.....	Mr. Castle	X	.....	.....
Ms. Waters		X	.....	Mr. King (NY)	X	.....	.....
Mrs. Maloney		X	.....	Mr. Royce	X	.....	.....
Mr. Gutierrez		X	.....	Mr. Lucas	X	.....	.....
Ms. Velázquez .....		.....	.....	Mr. Paul	X	.....	.....
Mr. Watt		X	.....	Mr. Manullo	X	.....	.....
Mr. Ackerman		X	.....	Mr. Jones	X	.....	.....
Mr. Sherman		X	.....	Mrs. Biggert	X	.....	.....
Mr. Meeks		X	.....	Mr. Miller (CA)	X	.....	.....
Mr. Moore (KS)		X	.....	Mrs. Capito	X	.....	.....
Mr. Capuano		X	.....	Mr. Hensarling	X	.....	.....
Mr. Hinojosa		X	.....	Mr. Garrett (NJ)	X	.....	.....
Mr. Clay		X	.....	Mr. Barrett (SC)	X	.....	.....
Mrs. McCarthy		X	.....	Mr. Gerlach	X	.....	.....
Mr. Baca		X	.....	Mr. Neugebauer	X	.....	.....
Mr. Lynch		X	.....	Mr. Price (GA)	X	.....	.....
Mr. Miller (NC)		X	.....	Mr. McHenry	X	.....	.....
Mr. Scott		X	.....	Mr. Campbell	X	.....	.....
Mr. Green		X	.....	Mr. Putnam	X	.....	.....
Mr. Cleaver		X	.....	Mrs. Bachmann	X	.....	.....
Ms. Bean		X	.....	Mr. Marchant	X	.....	.....
Ms. Moore (WI)		X	.....	Mr. McCotter	X	.....	.....
Mr. Hodes		X	.....	Mr. McCarthy	X	.....	.....
Mr. Ellison		X	.....	Mr. Posey	X	.....	.....
Mr. Klein		X	.....	Ms. Jenkins	X	.....	.....
Mr. Wilson		X	.....	Mr. Lee	X	.....	.....
Mr. Perlmutter		X	.....	Mr. Paulsen	X	.....	.....
Mr. Donnelly		X	.....	Mr. Lance	X	.....	.....
Mr. Foster		X	.....			
Mr. Carson		X	.....			
Mr. Speier		X	.....			
Mr. Childers		X	.....			
Mr. Minnick	X	.....	.....		
Mr. Adler		X	.....			
Ms. Kilroy		X	.....			
Mr. Driehaus		X	.....			
Ms. Kosmas		X	.....			
Mr. Grayson		X	.....			

RECORD VOTE NO. FC-22—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Himes		X	.....			
Mr. Peters		X	.....			
Mr. Maffei		X	.....			

An amendment by Mr. Price, No. 27, relating to the effective date, was not agreed to by a record vote of 29 yeas and 41 nays (Record vote no. FC-23):

RECORD VOTE NO. FC-23

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X	.....	Mr. Bachus	X		.....
Mr. Kanjorski		X	.....	Mr. Castle	X		.....
Ms. Waters		X	.....	Mr. King (NY)	X		.....
Mrs. Maloney		X	.....	Mr. Royce	X		.....
Mr. Gutierrez		X	.....	Mr. Lucas	X		.....
Ms. Velázquez	Mr. Paul	X		.....
Mr. Watt		X	.....	Mr. Manzullo	X		.....
Mr. Ackerman		X	.....	Mr. Jones	X		.....
Mr. Sherman		X	.....	Mrs. Biggert	X		.....
Mr. Meeks		X	.....	Mr. Miller (CA)	X		.....
Mr. Moore (KS)		X	.....	Mrs. Capito	X		.....
Mr. Capuano		X	.....	Mr. Hensarling	X		.....
Mr. Hinojosa		X	.....	Mr. Garrett (NJ)	X		.....
Mr. Clay		X	.....	Mr. Barrett (SC)	X		.....
Mrs. McCarthy		X	.....	Mr. Gerlach	X		.....
Mr. Baca		X	.....	Mr. Neugebauer	X		.....
Mr. Lynch		X	.....	Mr. Price (GA)	X		.....
Mr. Miller (NC)		X	.....	Mr. McHenry	X		.....
Mr. Scott		X	.....	Mr. Campbell	X		.....
Mr. Green		X	.....	Mr. Putnam	X		.....
Mr. Cleaver		X	.....	Mrs. Bachmann	X		.....
Ms. Bean		X	.....	Mr. Marchant	X		.....
Ms. Moore (WI)		X	.....	Mr. McCotter	X		.....
Mr. Hodes		X	.....	Mr. McCarthy	X		.....
Mr. Ellison		X	.....	Mr. Posey	X		.....
Mr. Klein		X	.....	Ms. Jenkins	X		.....
Mr. Wilson		X	.....	Mr. Lee	X		.....
Mr. Perlmutter		X	.....	Mr. Paulsen	X		.....
Mr. Donnelly		X	.....	Mr. Lance	X		.....
Mr. Foster		X	.....			
Mr. Carson		X	.....			
Mr. Speier		X	.....			
Mr. Childers		X	.....			
Mr. Minnick		X	.....			
Mr. Adler		X	.....			
Ms. Kilroy		X	.....			
Mr. Driehaus		X	.....			
Ms. Kosmas		X	.....			
Mr. Grayson		X	.....			
Mr. Himes		X	.....			
Mr. Peters		X	.....			
Mr. Maffei		X	.....			

An amendment by Mr. Hensarling, No. 29, relating to ineligibility of non-qualified mortgages for taxpayer-funded assistance under the Hope for Homeowners program, was not agreed to by a record vote of 29 yeas and 41 nays (Record vote no. FC-24):

Record Vote No. FC-24

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Prize (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Miller (CA) (and Mr. Childers and Mrs. Bachmann), No. 34, regarding a moratorium on implementation of the Home Valuation Code of Conduct, was not agreed to by a record vote of 31 yeas and 39 nays (Record vote no. FC-25):

Record Vote No. FC-25

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)		X	
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		

Record Vote No. FC-25—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein	X			Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter	X			Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers	X						
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Hensarling, No. 39, striking legal assistance for foreclosure-related issues and inserting enhanced fraud investigation and prevention efforts, was not agreed to by a record vote of 29 yeas and 41 nays (Record vote no. FC-26):

RECORD VOTE NO. FC-26

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		

RECORD VOTE NO. FC-26—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Ellison		X	.....	Mr. Posey	X	.....	.....
Mr. Klein		X	.....	Ms. Jenkins	X	.....	.....
Mr. Wilson		X	.....	Mr. Lee	X	.....	.....
Mr. Perlmutter		X	.....	Mr. Paulsen	X	.....	.....
Mr. Donnelly		X	.....	Mr. Lance	X	.....	.....
Mr. Foster		X	.....			
Mr. Carson		X	.....			
Mr. Speier		X	.....			
Mr. Childers		X	.....			
Mr. Minnick		X	.....			
Mr. Adler		X	.....			
Ms. Kilroy		X	.....			
Mr. Driehaus		X	.....			
Ms. Kosmas		X	.....			
Mr. Grayson		X	.....			
Mr. Himes		X	.....			
Mr. Peters		X	.....			
Mr. Maffei		X	.....			

An amendment by Mrs. Bachmann, No. 36, relating to assignee or securitization conditions, was not agreed to by a record vote of 29 yeas and 41 nays (Record vote no. FC-27):

RECORD VOTE NO. FC-27

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X	.....	Mr. Bachus	X	.....	.....
Mr. Kanjorski		X	.....	Mr. Castle	X	.....	.....
Ms. Waters		X	.....	Mr. King (NY)	X	.....	.....
Mrs. Maloney		X	.....	Mr. Royce	X	.....	.....
Mr. Gutierrez		X	.....	Mr. Lucas	X	.....	.....
Ms. Velázquez		X	.....	Mr. Paul	X	.....	.....
Mr. Watt		X	.....	Mr. Manzullo	X	.....	.....
Mr. Ackerman		X	.....	Mr. Jones	X	.....	.....
Mr. Sherman		X	.....	Mrs. Biggert	X	.....	.....
Mr. Meeks		X	.....	Mr. Miller (CA)	X	.....	.....
Mr. Moore (KS)		X	.....	Mrs. Capito	X	.....	.....
Mr. Capuano		X	.....	Mr. Hensarling	X	.....	.....
Mr. Hinojosa		X	.....	Mr. Garrett (NJ)	X	.....	.....
Mr. Clay		X	.....	Mr. Barrett (SC)	X	.....	.....
Mrs. McCarthy		X	.....	Mr. Gerlach	X	.....	.....
Mr. Baca		X	.....	Mr. Neugebauer	X	.....	.....
Mr. Lynch		X	.....	Mr. Price (GA)	X	.....	.....
Mr. Miller (NC)		X	.....	Mr. McHenry	X	.....	.....
Mr. Scott		X	.....	Mr. Campbell	X	.....	.....
Mr. Green		X	.....	Mr. Putnam	X	.....	.....
Mr. Cleaver		X	.....	Mrs. Bachmann	X	.....	.....
Ms. Bean		X	.....	Mr. Marchant	X	.....	.....
Ms. Moore (WI)		X	.....	Mr. McCotter	X	.....	.....
Mr. Hodes		X	.....	Mr. McCarthy	X	.....	.....
Mr. Ellison		X	.....	Mr. Posey	X	.....	.....
Mr. Klein		X	.....	Ms. Jenkins	X	.....	.....
Mr. Wilson		X	.....	Mr. Lee	X	.....	.....
Mr. Perlmutter		X	.....	Mr. Paulsen	X	.....	.....
Mr. Donnelly		X	.....	Mr. Lance	X	.....	.....
Mr. Foster		X	.....			
Mr. Carson		X	.....			
Mr. Speier		X	.....			
Mr. Childers		X	.....			
Mr. Minnick		X	.....			
Mr. Adler		X	.....			
Ms. Kilroy		X	.....			
Mr. Driehaus		X	.....			

RECORD VOTE NO. FC-27—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Kosmas		X	.....			
Mr. Grayson		X	.....			
Mr. Himes		X	.....			
Mr. Peters		X	.....			
Mr. Maffei		X	.....			

The following other amendments were also considered by the Committee:

An amendment by Mr. Sherman (and Mr. Green), No. 1, relating to the definition of mortgage originator-real estate brokerage activities, was agreed to by a voice vote.

An amendment by Mr. Sherman, No. 2, relating to the definition of mortgage originator—five or fewer properties, was offered and withdrawn.

An amendment by Mr. Grayson, No. 3, relating to time shares, was agreed to by a voice vote.

An amendment by Mr. Donnelly, No. 4, relating to the definition of mortgage originator and exclusion of bona fide discount points, was agreed to by a voice vote.

An amendment by Mr. Carson, No. 5, relating to foreclosure rescue education programs, was agreed to, as modified, by a voice vote.

An amendment by Mrs. Biggert, No. 6, making technical corrections to housing counseling, was agreed to by a voice vote.

An amendment by Mr. Kanjorski (and Mrs. Biggert), No. 7, regarding appraisals, was agreed to by a voice vote.

An amendment by Ms. Waters, No. 8, regarding housing counseling-minorities, was agreed to by a voice vote.

An amendment by Ms. Velazquez, No. 10, regarding home inspection counseling, was agreed to, as modified, by a voice vote.

An amendment by Mr. Paulson, No. 11, relating to examining certain credit risk retention provisions, was agreed to by a voice vote.

An amendment by Ms. Bean, No. 12, regarding closing document inspection by borrowers, was offered and withdrawn.

An amendment by Mr. Ellison, No. 13, regarding fiduciary duties of mortgage brokers, was offered and withdrawn.

An amendment by Mr. Moore (KS), No. 14, regarding residential mortgage loan origination purposes, was agreed to, reconsidered, and withdrawn.

An amendment by Mr. Hodes, No. 16, regarding State attorney general enforcement authority, was agreed to by a voice vote.

An amendment by Ms. Waters (and Mr. Meeks), No. 18, prohibiting prepayment penalties, was not agreed to by a voice vote.

An amendment by Mr. Neugebauer, No. 19, requiring full recourse mortgage loans for civil actions, was not agreed to by a voice vote.

An amendment by Mr. Sherman, No. 20, regarding the definition of mortgage originator, was agreed to by a voice vote.

An amendment by Ms. Bean (and Mr. Castle), No. 21, regarding safe harbor and rebuttable presumption, as amended by an amendment by Mr. Lance (and Mr. Miller (CA)), No. 21a, was agreed to by a voice vote.

An amendment by Mrs. Biggert (and Mr. Hinojosa and Mr. Neugebauer), No. 22, regarding RESPA and TILA disclosure improvement, as amended by an amendment by Mr. Neugebauer, No. 22a, (as modified) was agreed to by a voice vote.

An amendment by Mr. Moore (KS), No. 23, regarding residential mortgage loan origination findings, was agreed to by a voice vote.

An amendment by Mr. Frank, No. 28, the first manager's amendment was agreed to by a voice vote. An amendment offered by Mr. Miller (CA), No. 28a, to the amendment was offered and withdrawn.

An amendment by Ms. Waters, No. 30, regarding excessive points and fees, was agreed to by a voice vote.

An amendment by Mr. Royce, No. 31, striking assignee and securitizer liability, was not agreed to by a voice vote.

An amendment by Mr. Ellison, No. 32, regarding tenant protection, was offered and withdrawn.

An amendment by Mr. Ellison, No. 33, regarding tenant protection, was agreed to by a voice vote.

An amendment by Mr. Hensarling, No. 38, expressing the Sense of the Congress regarding the importance of government sponsored enterprises reform, as modified, was agreed to by a voice vote.

An amendment by Mrs. Bachmann, No. 40, regarding a limitation on assistance, was agreed to by a voice vote.

An amendment by Ms. Moore (WI), No. 41, regarding foreclosure rescue fraud, was offered and withdrawn.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 1728 is intended to reform mortgage lending practices to avert a recurrence of the current situation of unprecedented levels of defaults and foreclosures rates.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MAY 4, 2009.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1728—Mortgage Reform and Anti-Predatory Lending Act

Summary: H.R. 1728 would amend the Truth in Lending Act to reform consumer mortgage practices, establish minimum standards for consumer mortgage loans, and provide other protections to borrowers and investors. The bill also would broaden the oversight of professional appraisers and require the Government Accountability Office to conduct a study on the effects of H.R. 1728 on the availability of credit for homebuyers. The bill would require the Board of Governors of the Federal Reserve (Federal Reserve), in consultation with other agencies that regulate the financial industry, to prescribe regulations and forms to implement the new requirements.

H.R. 1728 would authorize the appropriation of \$323 million over the 2009–2014 period for the Department of Housing and Urban Development (HUD) to support efforts to provide homeownership counseling and legal assistance to certain homeowners and tenants. In addition, CBO estimates that \$80 million would be required over the 2009–2014 period for HUD to establish an Office of Housing Counseling. In total, CBO estimates that implementing H.R. 1728 would cost \$403 million over the 2009–2014 period, subject to appropriation of the necessary amounts.

CBO estimates that enacting H.R. 1728 would increase revenues by \$13 million over the 2009–2014 period and by \$28 million over the 2009–2019 period. We estimate that direct spending would increase by corresponding amounts over the same time periods.

H.R. 1728 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on participants in the mortgage industry. While the costs of some of the mandates are likely to be small, the costs to comply with other mandates are uncertain. Consequently, CBO cannot determine whether the aggregate costs to comply with the mandates in the bill would exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$69 million and \$139 million in 2009, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1728 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—						
	2009	2010	2011	2012	2013	2014	2009–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Public Service Campaign:							
Authorization Level	3	0	0	0	0	0	3
Estimated Outlays	*	2	1	0	0	0	3
Housing Counseling Grants:							
Authorization Level	45	45	45	45	0	0	180
Estimated Outlays	1	38	49	45	40	7	180
Administrative Support for Office of Counseling:							
Estimated Authorization Level	16	16	16	16	16	16	96
Estimated Outlays	*	16	16	16	16	16	80
Legal Assistance:							
Authorization Level	35	35	35	35	0	0	140
Estimated Outlays	1	30	38	35	31	5	140
Total Changes:							
Estimated Authorization Level	99	96	96	96	16	16	419
Estimated Outlays	2	86	104	96	87	28	403
CHANGES IN REVENUES							
Estimated Revenues	*	2	2	3	3	3	13
CHANGES IN DIRECT SPENDING							
Estimated Budget Authority	*	2	2	3	3	3	13
Estimated Outlays	*	2	2	3	3	3	13

Note: * = less than \$500,000.

Basis of Estimate: For this estimate, CBO assumes that H.R. 1728 will be enacted around July 2009 and that the necessary amounts will be appropriated for each year.

Spending Subject to Appropriation: CBO estimates that implementing H.R. 1728 would cost \$403 million over the 2009–2014 period, subject to appropriation of the necessary amounts.

Public Service Campaign, Grants for Housing Counseling, and Administrative Support for the Office of Counseling. Title IV would establish the Office of Housing Counseling within HUD to support various activities related to providing counseling on homeownership and renting. Section 403 would authorize the appropriation of \$3 million over the 2009–2011 period to support a national campaign to publicize the existence of counseling for home buyers, homeowners, and renters. In addition, section 404 would authorize the appropriation of \$45 million annually over the 2009–2012 period to provide grants to states, local governments, and nonprofit organizations to support counseling services. In total, CBO estimates that implementing those provisions would cost \$183 million over the 2009–2014 period.

In addition, based on information from HUD, CBO expects that funds for additional personnel, contractors, and information technology would be necessary to run the Office of Housing Counseling. We estimate that support would cost \$80 million over the 2009–2014 period.

Legal Assistance for Foreclosure-Related Issues. Section 216 would authorize the appropriation of \$35 million annually for fiscal years 2009 through 2012 for grants to provide legal assistance to

low- and moderate-income homeowners and tenants related to home foreclosure prevention. Assuming appropriation of the authorize amounts, CBO estimates that implementing this section would cost \$140 million over the 2009–2014 period.

Revenues and Direct Spending: CBO estimates that enacting H.R. 1728 would increase both revenues and direct spending by \$28 million over the 2009–2019 period, as shown in the following table.

Appraisal Monitoring. Section 603 would expand the monitoring and oversight responsibilities of the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council. The ASC is responsible for ensuring that real estate appraisals used in certain transactions are performed according to uniform standards by appraisers that are certified and licensed by states. To do this, the ASC monitors the activities of the state agencies that are responsible for licensing real estate appraisers. The ASC is authorized to collect fees from licensed and certified appraisers to offset the costs of its operations.

	By Fiscal year, in millions of dollars—													2009–2014	2009–2019
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019				
	CHANGES IN REVENUES														
Net Revenues	*	2	2	3	3	3	3	3	3	3	3	3	3	13	28
	CHANGES IN DIRECT SPENDING														
Estimated Budget Authority	*	2	2	3	3	3	3	3	3	3	3	3	3	13	28
Estimated Outlays	*	2	2	3	3	3	3	3	3	3	3	3	3	13	28

Note: * = less than \$500,000.

H.R. 1728 would authorize the ASC to monitor companies that retain or contract with appraisers and manage the process of having an appraisal performed (appraisal management companies). The bill would require those companies to be registered with a state (or be subject to oversight by a financial regulatory agency) in order to provide appraisal services on transactions undertaken through federally regulated financial institutions. As a result, the ASC would be required to develop regulations that states must follow in licensing appraisal management companies. Further, the ASC would be required to maintain a registry of appraisal management companies that are registered with a state licensing agency. The bill would authorize the ASC to collect fees from this new group of licensed entities.

Other provisions of the bill would authorize the ASC to make grants to states to improve their compliance with ASC regulations and would require the ASC to establish a complaint hotline.

Licensed and certified appraisers pay a fee, capped at \$25 annually, to the ASC to support its operations. H.R. 1728 would raise the upper limit for the fee to \$40, and would authorize the ASC to charge fees to appraisal management companies that are registered with a state licensing agency. Based on information from the ASC, CBO estimates that enacting the new fees would increase federal revenues by \$13 million over the 2009–2014 period, and by \$28 million over the 2009–2019 period, net of income and payroll tax effects.

Based on information from the ASC, CBO estimates that enacting H.R. 1728 would increase direct spending by \$13 million over

the 2009–2014 period and by \$28 million over the 2009–2019 period to provide grants to states to improve their ability to comply with the requirements of the bill.

Spending by Federal Bank Regulators. According to Federal Reserve and other federal financial regulatory agencies, implementing H.R. 1728 would not have a significant effect on their workload or budgets. Any additional direct spending by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration would be offset by income from annual fees covering their administrative expenses. Similarly, the Federal Deposit Insurance Corporation would recover any added costs when it adjusts the premiums paid by insured depository institutions. Budgetary effects of spending by the Federal Reserve are recorded as changes in revenues, but current law requires the Federal Reserve to recover direct and indirect costs incurred in providing such services. Thus, CBO estimates that the additional activities of the agencies that regulate banks would have no significant net effect on direct spending or revenues.

Penalties. Under this legislation, certain civil penalties (which are recorded as revenues) currently applicable under the Truth in Lending Act would be increased and new civil penalties would be created for violations under this bill. CBO estimates that any increase in revenues resulting from those civil penalties would not be significant.

Intergovernmental and private-sector impact: H.R. 1728 contains several intergovernmental and private-sector mandates, as defined in UMRA, by placing new restrictions on entities that securitize mortgages, and on entities that purchase foreclosed properties. The bill also would impose intergovernmental mandates by preempting certain state property and securities laws. In addition, the bill would impose private-sector mandates by establishing new requirements for creditors, loan originators, mortgage servicers, real estate appraisers, and other entities that participate in the mortgage industry.

While the costs of some of the mandates are likely to be small (for example, the preemptions of state law), the costs to comply with other mandates are uncertain for several reasons. Many industry participants, including public entities, already comply with some of the bill's requirements. In addition, the cost of some of the requirements would depend on federal regulations to be issued under the bill, and the scope of those regulations is uncertain. Lastly, CBO does not have sufficient information about current business practices or how the requirements in the bill would affect industry income. Consequently, CBO cannot determine whether the aggregate costs to comply with the mandates in the bill would exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$69 million and \$139 million in 2009, respectively, adjusted annually for inflation).

The bill also would authorize grants to support state agencies that license and certify appraisers, which would benefit state, local, and tribal governments.

Estimate prepared by: Federal Spending: Chad Chirico and Susan Willie; Federal Revenues: Barbara Edwards; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delise; Impact on the Private Sector: Marin Randall.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis; Frank J. Sammartino, Acting Assistant Director for Tax Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1728 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title; Table of Contents

This section establishes the short title of the bill as the 'Mortgage Reform and Anti-Predatory Lending Act' (the Act).

TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION STANDARDS

Section 101. Definitions

This section establishes definitions for various terms, including: 'Federal banking agencies,' 'mortgage originator,' 'nationwide mortgage licensing system,' 'residential mortgage loan,' 'securitization vehicle,' 'securitizer,' and 'servicer.'

Section 102. Residential mortgage loan origination

Subsection (a) of this section is a Findings and Purpose provision in which 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 re-

mains available to consumers. It is the purpose of the new sections 129B and 129C of the Truth in Lending Act 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.

Subsection (b) of this section provides that all mortgage originators (including mortgage brokers and depository institutions that originate mortgages, and their loan officers) will be subject to a Federal duty of care that requires (1) licensing and registration under State or Federal law (including subtitle A of title I of this Act), (2) diligently working to present the consumer with a range of residential mortgage loan products for which the consumer likely qualifies and are appropriate to the consumer's existing circumstances (i.e., consumer has reasonable ability to repay and, in the case of refinancings, receives net tangible benefit and loan does not have predatory characteristics), (3) making full, complete, and timely disclosures to consumers, (4) certifying to creditors compliance with mortgage origination requirements under this section, and (5) including in all loan documents any unique identifier of the mortgage originator. Mortgage originators are not required, however, to present residential mortgage loan products of creditors that do not accept consumer referrals or applications from the mortgage originator, and creditors are not required to offer products that the creditor does not offer to the general public. The Act expressly does not create an agency or fiduciary relationship, but mortgage originators are free to become an agent or a fiduciary if they so desire. The Federal banking agencies, in consultation with the Secretary and the Federal Trade Commission (Commission), will jointly prescribe regulations to further define the Federal duty of care. The Federal banking agencies will prescribe regulations requiring depository institutions to establish procedures for monitoring compliance with the requirements of this section and the registration procedures of section 106 of the Act.

Section 103. Prohibition on steering incentives

This section provides that 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 amount of principal). In addition, the Federal banking agencies, in consultation with the Secretary and the Commission, will jointly prescribe regulations to prohibit (1) mortgage originators from steering any consumer to a residential mortgage loan that the consumer lacks a reasonable ability to repay, that does not provide net tangible benefit, or that has predatory characteristics, (2) mortgage originators from steering any consumer from a qualified mortgage (prime loan) to a loan that is not a qualified mortgage, (3) abusive or unfair lending practices that promote disparities among consumers of equal creditworthiness but of different race, ethnicity, gender, or age, and (4) mortgage originators from assessing excessive points and fees 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. However, nothing in the Act should be construed as permitting yield spread premiums or other similar incentive compensation, affecting the mechanism for providing the

total amount of direct and indirect compensation permitted to a mortgage originator, restricting a consumer's ability to finance origination fees if they were disclosed to the consumer and do not vary with the consumer's decision to finance such fees, or prohibiting incentive payments to a mortgage originator based on the number of loans originated.

Section 104. Liability

This section provides that a cause of action will exist under section 130(a) and 130(b) of the Truth in Lending Act (TILA) for a mortgage originator's failure to comply with this section. The maximum liability of a mortgage originator for violation of this section will not exceed the greater of actual damages or an amount equal to three times the total amount of direct and indirect mortgage originator fees, plus the consumer's costs including reasonable attorney's fees.

Section 105. Regulations

This section provides the Federal banking agencies discretionary regulatory authority to issue joint regulations to 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. The section makes clear that this new authority will not prevent regulations adopted by the Federal Reserve concerning mortgage lending (73 Fed. Reg. 44522 (July 30, 2008)) will take effect as decided by the Federal Reserve with such exceptions or revisions as the Federal Reserve determines necessary.

This section also provides that regulations under this title will be promulgated within 12 months of the enactment of the Act and take effect no later than 18 months after the enactment of the Act.

Section 106. RESPA and TILA Disclosure Improvement

This section requires HUD and the Federal Reserve, not later than six months after the date of enactment, to 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. The statute requires the disclosures to meet both the requirements of the TILA and RESPA. The section also suspends the rulemaking HUD issued relating to RESPA (73 Fed. Reg. 26204 (Nov. 17, 2008)) until the joint regulations are issued by the Federal Reserve and HUD.

TITLE II—MINIMUM STANDARDS FOR MORTGAGES

Section 201. Ability to Repay

This section provides that 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 (including all applicable taxes, insurance, and assessments). The Federal banking agencies, in con-

sultation with the Commission, will jointly prescribe regulations regarding this provision. A determination of reasonable ability to repay will include consideration of a 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 real property securing the loan.

Section 202. Net Tangible Benefit for Refinancing of Residential Mortgage Loans

This section provides that no creditor may extend credit for refinancing 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. The refinanced loan will not be considered to provide net tangible benefit if the costs of the loan, including points, fees, and other charges, exceed the amount of newly advanced principal without any corresponding changes in the terms of the refinanced loan that are advantageous to the consumer. The Federal banking agencies will jointly prescribe regulations further defining the term 'net tangible benefit.'

Section 203. Safe harbor and rebuttable presumption

This section provides that any creditor, assignee or securitizer may presume that a mortgage loan meets the minimum standards (reasonable ability to repay and net tangible benefit) if it is a 'qualified mortgage.' Qualified mortgages are loans—

- that do 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;
- that do not provide for a repayment schedule that results in negative amortization at any time;
- 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);
- which have an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction (set by the Federal Reserve), as of the date the interest rate is set—
 - by 1.5 or more percentage points for residential mortgage loans with principal amounts that do not exceed the conforming loan limits in section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (Freddie Mac); and
 - by 2.5 or more percentage points for residential mortgage loans with principal amounts that exceed the Freddie Mac conforming loan limit.
- for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;
- 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;

- 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;
- that do not cause the consumer's total monthly debts, including amounts under the loan, to exceed a debt-to-income ratio or ratios prescribed by the Banking Agencies;
- for which the total points and fees payable in connection with the loan do not exceed two 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)), as amended by this legislation; and
- for which the term of the loan does not exceed 30 years.

The Federal banking agencies may jointly prescribe regulations to revise, add to, or subtract from these safe harbor provisions to the extent necessary and appropriate to effectuate the purposes of section 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such section. In addition, HUD, the Secretary of Veterans Affairs, Secretary of Agriculture, the Federal Housing Finance Agency and the Rural Housing Service each are authorized to prescribe rules defining the types of loans they guarantee, insure, or administer, as the case may be, that are Qualified Mortgages.

Section 204. Liability

This section provides that a consumer has a cause of action against a creditor for rescission of the loan and the consumer's costs for a loan that violates the minimum standards for reasonable ability to repay or net tangible benefits as set forth by regulation. A creditor will not be liable for such rescission if the creditor provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer. In addition, for a loan that violates the minimum standards, a consumer has an individual cause of action against any assignee or securitizer for rescission of the loan and the consumer's costs. An assignee or securitizer that has exercised reasonable due diligence in complying with the ability to repay and net tangible benefit standards is not liable for violations of these standards if it provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer.

If any creditor, assignee or securitizer and a consumer fail to agree on a cure, or if the consumer fails to accept a cure, the creditor, assignee, or securitizer may provide the cure and the consumer may challenge the adequacy of the cure within six months of the cure. If a creditor, assignee, or securitizer cannot provide rescission, they can provide the financial equivalent of a rescission. Liability of a creditor, assignee, or securitizer will apply for three years after consummation of the loan or, for a variable rate loan or a negative amortization loan, the earlier of one year after the loan resets or six years after consummation of the loan. Liability will not apply to pools of loans, including the securitization vehicle, or investors in pools of loans. It is not intended that liability will apply to trustees or titleholders who in their capacity hold loans solely for the benefit of the securitization vehicle.

Securitizers are responsible for providing in any agreement providing for the transfer, conveyance, or the establishment of a securitization vehicle that they have the right and ability to (i) identify and obtain access to the loans, (ii) acquire the loans in the event of a violation of an ability to repay or net tangible benefit standard, and (iii) provide to the consumer any and all remedies provided for under the statute. Securitizers subject to a remedy under this section will be subject to additional exemplary or punitive damages not to exceed the original principal balance of the loan.

Servicers are required to provide a written notice to a consumer about the creditor, assignee and securitizers relating to that loan upon request, whenever there is a change in ownership of the loan and on a regular basis (not less than annually). In addition, the Federal Reserve will promulgate rules to govern the rescission process established for violations of the ability to repay and net tangible benefit standards.

Section 205. Defense to foreclosure

This section provides that, when the holder (including the securitization vehicle) of a residential mortgage loan or anyone acting on such holder's behalf initiates a judicial or non-judicial foreclosure, (1) a consumer who has a rescission right under this section may assert such right as a defense or counterclaim to foreclosure against the holder to forestall such foreclosure, or (2) if the foreclosure proceeding begins after the rescission right expires, the consumer may seek actual damages plus costs against the creditor or any assignee or securitizer. Such holder, anyone acting on behalf of such holder, or any other applicable third party may sell or assign a residential mortgage loan to a creditor, any assignee, or any securitizer, or their designee, to effect a rescission or a cure.

Section 206. Additional standards and requirements

This section prohibits prepayment penalties on loans that are not qualified mortgages as defined in section 203 of the Act and adjustable rate mortgages that are qualified mortgages. For qualified mortgages that are not ARMs, phased out penalties are permitted provided that all remaining prepayment penalties expire three months before a loan resets.

Single-premium credit insurance and mandatory arbitration on mortgage loans are prohibited. Securitizers must reserve the right in any document or contract establishing pools of loans to obtain access to such loans and to provide for and obtain a remedy under this title. Negative amortization loans to a first-time borrower are prohibited unless the creditor makes certain disclosures to the consumer and the consumer has received homeownership counseling from a HUD-certified organization or counselor.

Section 207. Rule of construction

This section provides that, except as otherwise expressly provided, no provisions of new TILA sections 129A and 129B added by the Act will be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of TILA or any other provision of Federal or State law.

Section 208. Effect on State laws

This section provides that the provisions of section 204 of the Act will supersede any State law to the extent that it provides additional remedies against any assignee, securitizer, or securitization vehicle for a violation of section 201 or 202 of the Act or any other State law other than a provision of such law the terms of which address the specific subject matter of sections 201 and 202 of the Act, and the remedies in section 204 of the Act will constitute the sole remedies against any assignee, securitizer, or securitization vehicle for those violations. No provision of this section will be construed as limiting the application of any state law or the availability of remedies, including equitable remedies such as injunctive relief, against creditors, even if they also act as assignees or securitizers or against assignees, securitizers or securitization vehicles for their own participation in or direction of the credit or underwriting decisions of the creditor in making mortgages. It also shall not be construed as limiting the application of state laws or the availability of remedies under State law against an assignee, securitizer or securitization vehicle other than laws the terms of which address the specific subject matter of sections 201 and 202 of the Act.

Section 209. Regulations

This section provides that regulations under this title will be promulgated within 12 months of the enactment of the Act, and take effect no later than 18 months after the enactment of the Act.

Section 210. Amendments to civil liability provisions

This section doubles the amount of certain statutory civil liability penalties currently applicable under TILA and extends the statute of limitations from one year to three years.

Section 211. Lender rights in the context of borrower deception

This provision provides that no creditor, assignee, or securitizer shall be liable to an obligor under section 129B and 129C if the 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.

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

This section requires a notice to consumers in connection with adjustable rate mortgage loans at least six months before the expiration of a fixed introductory rate that explains the rate adjustment process and the consumer's alternatives.

Section 213. Credit risk retention

This section requires the Federal banking agencies to prescribe regulations to require creditors that make residential mortgage loans that are not qualified mortgages, as defined by section 203, to retain an economic interest in a material portion of the credit risk for any loans they transfer, sell or convey. The regulations must prohibit creditors from hedging or otherwise transferring the credit risk, require creditors to retain at least 5 percent of the credit risk on any particular loan, specify the permissible forms of the

risk to be held (e.g., first loss position or pro rata vertical slice) and the minimum duration of the required risk retention. The Federal banking agencies have the discretion to apply the risk retention requirements to securitizers in addition to or in place of creditors if the agencies determine such change would help ensure high quality underwriting standards for mortgage lenders and facilitate appropriate risk management practices by mortgage lenders or improve access of consumers to mortgage credit on reasonable terms.

Section 214. Required disclosures

This section provides additional required disclosures under TILA. A creditor must disclose the maximum amount of regular payment a consumer has to make on a variable rate or otherwise variable payment mortgage. For a residential mortgage loan with an escrow or impound account for the payment of taxes, insurance, and assessments, a creditor must disclose that mortgage payments will be increased to cover taxes and insurance and the monthly dollar amount a consumer will pay to cover taxes and insurance in the first year of the mortgage. For a variable rate residential mortgage with an escrow or impound account, a creditor is required to disclose (1) the amount of initial monthly payment for principal and interest; (2) the amount of initial monthly payment including the amount deposited in an escrow or impound to pay for taxes, insurance, and assessments; (3) the amount of the fully indexed monthly payment for principal and interest; and (4) the amount of fully indexed monthly payment deposited in an escrow or impound to pay for taxes, insurance, and assessments. For all residential mortgages, a creditor must disclose the aggregate amount of settlement charges, the amount of charges included in a mortgage, the amount of charges a consumer must pay at closing, the approximate amount of the wholesale rate of funds, the aggregate amount of other fees or required payments, the aggregate amount of fees paid to a mortgage originator, the amount of fees paid directly by a consumer, and any additional amounts received by a mortgage originator from a creditor based on the interest rate of the loan. For all residential mortgage loans, the aggregate amount of fees paid to the mortgage originator in connection with the loan.

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

This section requires the new disclosures for monthly statements for all residential mortgage loans that require information about the remaining balance, interest and fees incurred on the account. The Federal banking agencies shall jointly prescribe a standard form for this disclosure.

Section 216. Legal assistance for foreclosure-related issues

This section authorizes funds for foreclosure-related legal assistance. The funds will be administered by HUD and distributed through a competitive grant process to state and local legal organizations to provide legal assistance to low- and moderate-income homeowners and tenants with foreclosure related issues, including civil litigation. In allocating these funds, HUD shall give priority consideration to state and local legal organizations that are operating in the 100 metropolitan statistical areas with the highest

home foreclosure rates. No funds authorized by this section may be used for class action lawsuits. Organizations eligible for the funding are state and local organizations whose primary business or mission is to provide legal assistance. No funds under this subsection may be distributed to any organization which has been or which employs an individual who has been indicted for a violation under Federal law relating to an election for Federal office.

Section 217. Effective date

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

Section 218. Report by the GAO

This section directs the Government Accountability Office to conduct a study to determine the effects of the bill on the availability and affordability of credit for homebuyers and mortgage lending, and submit a report to Congress within one year of enactment. The report will also include an analysis of the effect on the capital reserves and funding of lenders of credit risk retention provisions for non-qualified mortgages.

Section 219. State Attorney General enforcement authority

This section extends the current authority of State attorneys general to enforce HOEPA violations to authorize State attorneys general to enforce violations of section 129B and 129C of TILA (the sections creating the new standards under this Act) and section 219 of this Act.

Section 220. Tenant protections

This section allows bona fide tenants to remain in their residence, pursuant to their lease, following a foreclosure on the property except when the successor in interest or subsequent purchaser will occupy the unit as a primary residence. If the lease is to be terminated for subsequent occupancy by the successor in interest or purchaser, the tenant must receive notice to vacate at least 90 days before the effective date of such notice. A lease or tenancy is bona fide if it is the result of arms-length transaction and if the rent is not substantially less than fair market rent or is reduced or subsidized due to a Federal, state, or local subsidy.

The section also provides similar protections for section 8 tenants. In addition, for section 8 tenancies, during the initial term of the lease, the foreclosure cannot constitute good cause for termination of the lease. In subsequent lease terms, the lease may be terminated for good cause if the successor in interest or subsequent purchaser will occupy the unit as a primary residence or if the unit is unmarketable while occupied. If the lease is to be terminated, the tenant must receive notice to vacate at least 90 days before the effective date of such notice.

Also, the immediate successor in interest shall assume such interest subject to the lease between the prior owner and the housing assistance payment 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 rejection of payments or failure to maintain the unit, then after reasonable steps to notify the owner, the agency may use the funds that would have been used to pay rent to pay for utilities that perhaps: were the responsibility of the owner or for the family's reasonable moving costs.

TITLE III—HIGH-COST MORTGAGES

Section 301. Definitions relating to high-cost mortgages

This section expands the scope of the Home Ownership and Equity Protection Act (HOEPA) by revising the high-cost mortgage definition in 15 USC 1602(aa) in several respects. The new definition would cover purchase money loans, construction loans, and open-end loans, all of which specifically are excluded by the existing definition, that meet certain definitional triggers.

The new definition also would change the existing triggers for determining whether a loan is a high-cost mortgage. HOEPA currently has two triggers—one based on the amount by which the APR exceeds a benchmark rate, and another based on the level of the total points and fees payable in connection with the loan transaction. This section changes the benchmark against which to determine the APR trigger from the yield on Treasury securities to the “average prime offer rate,” which is determined, and updated at least weekly, by the Federal Reserve. This section also lowers the number of percentage points by which the APR at consummation must exceed the benchmark in order to be a high-cost mortgage, includes separate APR triggers for first lien and subordinate lien loans, and specifies how to determine the APR for variable rate loans. This section also lowers the points-and-fees trigger from 8 percent to 5 percent of the total transaction amount (or, for mortgages less than \$20,000, the lesser of 8 percent of the total transaction or \$1,000). This section adds a third trigger by providing that a mortgage is a high-cost mortgage if the creditor may charge or collect prepayment penalties more than 36 months after the transaction closing or may charge prepayments penalties that exceed, in the aggregate, 2 percent of the amount prepaid.

This section revises the definition of points and fees to include all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source (including a mortgage originator that originates a loan in the name of the creditor in a table-funded transaction), certain insurance premiums, prepayment penalty charges under the loan, and prepayment penalties actually charged in a refinance by the original creditor or the original creditor's affiliate.

Finally, this section excludes certain bona fide discount points (up to two points for near-market interest rate loans) from the determination of the amount of points and fees that trigger HOEPA protections.

Section 302. Amendments to existing requirements for certain mortgages

Section 206 bans prepayment penalties for any mortgage that is not a Qualified Mortgage. Because all high-cost mortgages subject to HOEPA (HOEPA loans) will, by definition, not be Qualified Mortgages, this section conforms HOEPA to section 206 by banning

prepayment penalties on HOEPA loans. This section also revises the balloon payment prohibition in HOEPA to provide that no high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments, unless the payment schedule is adjusted to the seasonal or irregular income of the consumer.

Section 303. Additional Requirements for Certain Mortgages

This section prohibits creditors from encouraging that borrowers default on an existing loan or other debt in connection with the planned refinancing of all or any portion of such existing loan or debt with a high-cost mortgage. This section also places amount, timing, frequency, and other restrictions on late fees for high-cost mortgages, including by prohibiting a creditor from charging more than one fee on the same delinquent payment and by capping a late fee at 4 percent of the amount of the past-due payment. This section also prohibits a creditor from unilaterally accelerating a high-cost mortgage, except in cases of default, pursuant to a due-on-sale provision, or pursuant to material violation of provisions of the loan document not related to the payment schedule. Finally, this section prohibits a creditor from directly or indirectly financing points and fees for high-cost mortgages if the creditor or its affiliate is the noteholder of the note being refinanced.

This section prohibits a creditor from structuring a mortgage transaction to evade the HOEPA protections that apply to high-cost mortgages, such as by structuring the loan in another form or dividing the loan transaction into separate parts with intent to evade HOEPA.

This section prohibits a creditor from charging a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the mortgage terms, unless such adjustment results in a lower APR on the mortgage and the fee amount is comparable to fees imposed for similar transactions.

This section generally prohibits a creditor or servicer from charging a fee to any person for informing or transmitting to them the payoff amount for a high-cost mortgage and requires that payoff balance information be provided within 5 business days of the consumer's request. This section includes limited exceptions that allow the creditor to charge service fees for providing a payoff statement by facsimile or courier service (provided that the creditor meets specified requirements) or for providing payoff statements to the same consumer more than 4 times during a calendar year.

This section prohibits flipping, which is defined as making a high-cost mortgage that refinances an existing mortgage when the new, high-cost mortgage does not have a net tangible benefit, as defined in rules promulgated under Title II, to the consumer consider all the circumstances.

Finally, this section permits a creditor or assignee, prior to the institution of any legal action, (1) to correct violations and non-bona fide errors within 30 days of the loan closing and (2) to correct bona fide errors within 60 days of the creditor's discovery or receipt of notification of the error. To avoid liability, a creditor must make appropriate restitution and make whatever adjustments are necessary to either, at the choice of the consumer, make the loan satisfy the applicable requirements of TILA (including requirements of

the Act), or, for a high-cost mortgage, change the terms of the loan so that the loan will no longer be a high-cost mortgage.

Section 304. Regulations

This Federal Reserve Board must publish final regulations to implement this title by the effective date of the Act may prescribe regulations encouraging or requiring creditors to provide consumer mortgage education to prospective customers or direct such customers to qualified consumer mortgage education or counseling program.

Section 305. Effective date

The amendments made by this title will take effect at the end of the 6-month period beginning on the date of enactment and will apply to HOEPA loans for which an application is received by a creditor after the end of such period.

TITLE IV—OFFICE OF HOUSING COUNSELING

Section 401. Short title

This section provides that this title may be cited as the ‘Expand and Preserve Home Ownership Through Counseling Act.’

Section 402. Establishment of Office of Housing Counseling

This section establishes the Office of Housing Counseling, headed by a Director of Housing Counseling (Director) appointed by the Secretary. The Director will be responsible for all homeownership and rental housing counseling programs for HUD, and will establish, coordinate and administer all regulations, requirements, standards, and performance measures under the programs that relate to housing counseling, homeownership counseling, mortgage-related counseling, and rental housing counseling. The Director shall establish rules for (1) counseling procedures, (2) carrying out all other related functions, including establishing a toll-free number, (3) information booklets, (4) carrying out the certification of counseling service providers, (5) providing assistance in the provision of counseling services, (6) carrying out functions the Secretary deems appropriate with regard to unscrupulous lending practices in the home mortgage business, (7) support the advisory committee created under this act, (8) collaborate with community-based organizations, and (9) provide for building capacity to provide housing counseling services in areas that lack sufficient services. The Secretary shall appoint an advisory committee composed of no more than 12 individuals representing the mortgage and real estate industry, including consumers and housing counseling agencies. Advisory committee members appointed by the Secretary will serve 3-year terms, except that initially, four will be appointed for 1-year terms and four will be appointed for 2-year terms. The Secretary may reappoint members at his discretion. Members will not be paid, but may receive travel expenses. The advisory committee has no role in reviewing or awarding housing counseling grants. Counseling services will cover the entire process of homeownership, including refinancing and foreclosure.

This section directs the Secretary to establish, coordinate, and monitor all HUD counseling procedures, including requirements,

standards, and performance measures that relate to homeownership and rental housing. 'Homeownership counseling' is defined as counseling related to homeownership and residential mortgage loans. 'Rental housing counseling' is defined as counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referral for renters and prospective renters to entities providing counseling. The Secretary shall establish standards for materials and forms used by counseling service providers, and provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The mortgage software system shall take into account (1) the consumer's financial situation and the cost of maintaining a home, including insurance, taxes, and utilities, (2) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan, and (3) any other factors to assist the consumer in making choices during the loan application process. The certified software programs shall be used to supplement, not replace, housing counseling, and the software programs initially will be used only in connection with the assistance of certified housing counselors. Additionally, the certification program for mortgage software systems will be implemented only to the extent that funds are made available in advance in appropriations Acts. The Secretary shall develop, implement, and conduct national public service multimedia campaigns to make potentially vulnerable consumers aware of the existence of homeownership counseling. 10 percent of the multimedia campaign funds shall be used to distribute literature on ways to avoid foreclosure rescue scams, predatory lending agreements, for-profit foreclosure counseling services, and to provide a list of local HUD-approved counseling resources. Appropriations not to exceed \$3 million are authorized for national public service multimedia campaigns for fiscal years 2009, 2010, and 2011. The Secretary shall provide advice and technical assistance to States, units of local government, and non-profit organizations regarding provisions of counseling services.

Section 404. Grants for housing counseling assistance

This section directs the Secretary to make financial assistance available for homeownership or rental counseling to HUD-approved counseling agencies and State housing finance agencies. The Secretary shall establish standards and guidelines for assistance eligibility. Appropriations of \$45 million are authorized for each of fiscal years 2009 through 2012 for the operations of the Office of Housing Counseling; homeownership and rental counseling assistance grants; and the establishment of materials and forms standards, computer software certification, and the national public service multimedia campaigns created in section 403 of the Act. This amount is meant to be in addition to the amounts currently authorized and appropriated for housing counseling activities. In making funds available, the Secretary will consider ways to streamline and improve the process for grant application, review, approval, and award. No funds under this section may be distributed to any organization which has been or which employs an individual who has been indicted for a violation under Federal law relating to an election for Federal office.

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

This section requires any homeownership counseling or rental housing counseling administered by HUD to be provided solely by organizations or counselors certified by the Secretary.

Section 406. Study of defaults and foreclosures

This section directs the Secretary to submit to Congress not later than 12 months after the enactment of the Act a preliminary report on the root causes of default and foreclosure of home loans and the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures. No later than 24 months after the enactment of the Act, the Secretary will submit a final report regarding the results of the study, which will 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.

Section 407. Definitions for counseling-related programs

This section provides definitions of “nonprofit organization,” “State,” “unit of general local government,” “HUD-approved counseling agency,” and “State housing finance agency.”

Section 408. Updating and simplification of mortgage information booklet

This section directs the Secretary to prepare a booklet at least once every 5 years to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Secretary must include specific topics in the information booklet in plain and understandable language, including explanation of (1) costs incident to real estate settlement or Federally related mortgage loan (including at a minimum balloon payments, prepayment penalties, and trade-off between closing costs and the interest rate over the life of the loan); (2) the uniform settlement statement; (3) unfair lending practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement; (4) questions that the consumer should ask about a loan; (5) the right of rescission; (6) variable rate mortgages; (7) home equity line of credit; (8) the availability and the value of homeownership counseling services; (9) escrow accounts; (10) available choices for providers of incidental services; (11) the buyer’s responsibilities, liabilities, and obligations; (12) appraisals; and (13) HUD brochure regarding loan fraud.

Section 409. Home inspection counseling.

This section requires HUD to publish outreach materials in both English and Spanish entitled “For Your Protection: Get a Home Inspection” and “Ten Important Questions To Ask Your Home Inspector”. HUD must make these materials available for electronic access and through toll free telephone hotlines and public service announcements, and include the materials as part of any home purchase counseling.

HUD is required to make special efforts to reach first-time and low-income homebuyers, to require FHA approved mortgagees to

provide these materials to prospective homebuyers at first contact, and to require HUD-approved housing counseling agencies to provide this information to clients as part of the home purchase counseling process.

HUD training of HUD-approved housing counseling agencies must include information about the home inspection process, including the reasons for specific inspections such as radon and lead based paint testing.

TITLE V—MORTGAGE SERVICING

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

This section establishes a new section in the Truth in Lending Act (TILA) to require that specified first-lien mortgages have an escrow account established at the time of consummation of the transaction to cover taxes and hazard insurance, and, if applicable, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or loan terms.

The instances in which an escrow account must be established include (1) when required by Federal or State law; (2) when a loan is made, guaranteed, or insured by a State or Federal lending or insuring agency; (3) when the rate on the first lien on the consumer's principal dwelling, as of the date the interest rate is set, exceeds the average prime offer rate for a comparable transaction by 1.5 percentage points; or (4) when required pursuant to regulation.

Escrow accounts established pursuant to this section, unless the underlying mortgage is terminated, must remain in existence for a minimum of 5 years and until the borrower has enough equity to no longer meet the requirements of maintaining private mortgage insurance, or such other period provided in regulations to address situations such as a borrower's delinquency. These standards exceed the 12-month period provided for in the Federal Reserve Board's 2008 rulemaking under the Home Ownership and Equity Protection Act (HOEPA).

Consistent with the HOEPA rulemaking, a limited exemption of the escrow account requirement is provided for loans secured by shares in a cooperative and for certain condominium units. For mortgages not meeting the specified tests established under the law, clarifications are further provided that nothing precludes the establishment of an escrow account on terms mutually agreeable to the parties to the loan, at the discretion of the servicer or lender pursuant to the contract, or pursuant to the Flood Disaster Protection Act (FDPA).

Servicers must administer such accounts in accordance with the Real Estate Settlement Procedures Act (RESPA), FDPA, and, if applicable, the law of the State where the real property securing the transaction is located, including making interest payments on the escrow account if required under such laws. The account must also be maintained in a federally insured depository institution, and the amounts escrowed must reflect the actual property value (land and improvements thereto). Clarification is also provided that any violation of RESPA for a mandated escrow established under TILA

does not also result in additional penalties under TILA unless the action or omission also constitutes a direct violation of TILA.

Consumers with mortgages covered by this section must also receive specific written disclosures about the establishment of an escrow account at least 3 business days before loan consummation or in accordance with timeframes established in prescribed regulations.

The Federal banking regulators and the Federal Trade Commission (FTC) have 180 days to adopt final regulations to implement the section. These regulations become effective and apply to all covered mortgages beginning one year after the publication of final rules.

Section 502. Disclosure notice required for consumers who opt out of escrow services

This section amends the new section of TILA established by section 501 to require all consumers, regardless of whether they must have an escrow account established at the time the loan is consummated, to receive specified written disclosures advising them of the responsibilities of the consumer and implications for the consumer in the absence of any such account. The Federal banking regulators and the FTC have 180 days to adopt final regulations to implement these new disclosure requirements. These regulations become effective 180 days after the publication of final rules.

Section 503. Real Estate Settlement Procedures Act of 1974 amendments

This section updates section 6 of RESPA and establishes new consumer protections related to servicer prohibitions, the administration of force-placed insurance, increased penalty amounts, servicer response times, and escrow account refunds.

Servicer prohibitions

The section prohibits mortgage servicers from obtaining force-placed hazard insurance unless they have a reasonable basis to believe that the borrower has failed to comply with the requirement to maintain property insurance. It also bars servicers from charging fees for responding to valid qualified written requests placed by the borrower, with regulations promulgated to determine the interpretation of what constitutes a valid qualified written request. The section further prohibits mortgage servicers from failing to take timely action to respond to a borrower's requests to correct errors relating to the allocation of payments, obtain final balances for purposes of paying off the loan, or avoid foreclosure.

The section additionally requires a servicer to respond within 10 business days to a request from a borrower to provide the identity of and contact information for the owner/assignee of the loan. Finally, the section requires servicers to comply with any other obligation to protect consumers established by the Secretary of the Department of Housing and Urban Development (HUD) via rule-making.

Force-placed insurance

The section further establishes a definition for force-placed insurance.

The procedures for the forced placement of hazard insurance require the servicer initially to send, by first-class mail, a written notice with certain disclosures about the need to obtain hazard insurance. After at least 30 days, the servicer must send a second notice by first-class mail containing the same disclosures. The servicer may then force place insurance if it has not received demonstration from the borrower in writing of any insurance coverage 15 days after sending the second notice. The borrower's response must include the existing insurance policy number along with the identity of and contact information for the insurance company or agent.

The section requires the servicer to terminate force-placed insurance within 15 days of the receipt of confirmation of a borrower's existing hazard insurance coverage. The section also requires lenders to refund amounts to the consumer for force-placed insurance that overlap in time with the hazard insurance obtained directly by the homeowner. It additionally allows for the concurrent administration of notices required by FDPA for the forced placement of flood insurance.

The section additionally requires that all charges for force-placed insurance to be bona fide and reasonable in amount.

Increase in penalties

The section doubles the maximum statutory RESPA penalties in individual cases from \$1,000 to \$2,000, and in class action cases from \$500,000 to \$1,000,000. The changes apply to all RESPA violations.

Response times

The section mandates decreases in response times to qualified written requests made pursuant to RESPA. Specifically, these changes require a servicer to acknowledge receipt of a qualified written request within 5 days (down from 20 days) and complete action on the inquiry within 30 days (down from 60 days) except that this 30-day period may be extended for not more than 15 days if the servicer notifies the borrower of the extension within the initial 30-day period and details the reasons for the delay in responding.

Prompt refund of escrow accounts

The section finally requires the prompt refund of escrow accounts that are within the servicer's control within 20 business days of a loan's payoff. Alternatively, borrowers may roll over existing escrowed amounts for a similar account established by a new mortgage with the same lender.

Section 504. Truth in Lending Act amendments

This section amends TILA to require the prompt crediting of mortgage payments and the timely provision to consumers of mortgage payoff amounts.

Requirements for prompt crediting of home loan payments

Consistent with the final HOEPA regulations adopted by the Federal Reserve Board in 2008, the section amends TILA to require servicers to credit payments made in connection with a credit transaction secured by a consumer's principal dwelling 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. For consumers who do not follow specified written requirements when making payments, an exception is provided to require the servicer to credit the payment as of 5 days after receipt.

Requests for payoff amounts

The section amends TILA to require a creditor or servicer of a home loan to 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.

Section 505. Escrows required in repayment analysis

The section amends TILA to require the inclusion of escrow payments for taxes and insurance in any monthly repayment analysis provided to consumers. The change will allow all consumers to make apples-to-apples comparisons in the mortgage quotes they receive and improve consumer understanding of the total costs of homeownership.

TITLE VI—APPRAISAL ACTIVITIES

Section 601. Property appraisal requirements

This section modifies TILA to require lenders to obtain a written appraisal, resulting from an interior assessment of a physical property visit made by a qualified appraiser, of the covered property before extending credit in the form of a subprime mortgage. If the purpose of the covered mortgage is to finance the purchase or acquisition of the mortgaged property within 180 days of the purchase or acquisition of such property at a price that was lower than the current sale price of the property, this section also directs lenders to obtain a second appraisal at no cost to the applicant.

Also, this section entitles covered applicants to 1 free copy of each such appraisal provided at least 3 days prior to the transaction closing date and requires certain notifications about the limits of appraisals. Creditors found to have willfully failed to obtain an appraisal for a subprime mortgage are liable to the applicant or borrower for the sum of \$2,000. The section defines a subprime mortgage consistent with metrics established by the Federal Reserve Board in its 2008 HOEPA rulemaking for first- and subordinate-liens on a residential mortgage loan.

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

The section creates a Federal unfair and deceptive practices standard for appraisals within TILA, with rules written and interpretative guidelines issued by the Federal banking regulators and the FTC. Specifically, this section prohibits the compensation, coercion, extortion, collusion, instruction, inducement, bribing, or intimidation or attempting any of the aforementioned activities for the purpose of causing the appraised value assigned to the property to be based on any fact other than the independent judgment of the appraiser.

This section further prohibits the mischaracterization of an appraised value, efforts to influence an appraiser to hit a targeted value, and withholding timely payment for an appraisal report. The bar against such withholding, however, is not intended to apply when an appraiser has breached the terms of a contract in the performance of duties. Exceptions are provided to permit valid communications about the property itself, to correct errors, and to obtain further detail about the appraiser's value conclusion.

The section additionally creates a statutory requirement that certified and licensed appraisers and appraisal management companies (AMCs) have no direct or indirect interest, financial or otherwise, in either the property or in the transaction involving the appraisal. The interest-in-property prohibition shall apply equally to both fee-for-service and staff appraisers. The interest-in-the-transaction bar, however, should not be construed as to prohibit work by staff appraisers within a financial institution or other organization, if such an entity has established firewalls, consistent with those outlined in the Home Valuation Code of Conduct, between the origination group and the appraisal unit designed to ensure the independence of appraisal results and reviews.

Moreover, the section establishes a requirement for those parties who have a reasonable basis to believe an appraiser is violating applicable laws or otherwise engaging in unethical or unprofessional conduct to report such matters to the applicable State appraisal agency. In addition, the section prohibits a creditor from extending credit in connection with a consumer credit transaction secured by a consumer's principal dwelling if the creditor knows of a violation of appraisal independence standards, 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.

This section establishes sanctions in addition to those already provided under TILA. These penalties are up to \$10,000 for first violations and \$20,000 for subsequent violations.

Section 603. Amendments relating to Appraisal Subcommittee of the Financial Institutions Examination Council, appraiser independence, and approved appraiser education

This section generally supplements, strengthens, and modifies the existing appraisal requirements contained in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

Appraisal Subcommittee reforms

Subsection (a) adds consumer protection to the mission and functions of the Appraisal Subcommittee (ASC). The section also requires the ASC to monitor the efforts of States and Federal banking regulators to protect consumers from improper appraisal practices and the predations of unlicensed appraisers in mortgage transactions. In order to reconcile this new consumer protection mandate with the existing safety-and-soundness mission of the ASC, the section amends the criteria and procedures by which Federal banking regulators establish the threshold below which a written appraisal by a certified or licensed appraiser is not required.

The Federal Reports Elimination and Sunset Act of 1995 (P.L. 104-66) effectively ended the ASC's annual reporting requirement as of May 15, 2000, although the ASC has continued in since then to produce such a document for Congress. Subsection (b) definitively reinstates the requirement that the ASC submit an annual report to Congress. This subsection additionally requires the ASC in its annual report to describe in greater detail its activities and the work of State appraisal agencies. The subsection further requires the ASC to provide information about the results of all audits of State appraisal agencies and details about disapprovals and warnings issued to State appraisal agencies.

Subsection (c) codifies the decision of the ASC to open its meetings to the general public.

Subsection (d) authorizes the panel to issue binding rules and regulations after public notice and opportunity for comment in several new areas: temporary practice, national registry, information sharing, and enforcement. The term "enforcement" covers the actions the ASC may take in evaluating State appraisal agencies and the gamut of sanctions that the ASC may impose against such agencies.

Subsection (e) statutorily defines what constitutes a complex transaction requiring the use of a certified appraiser in lieu of a licensed appraiser, consistent with Uniform Standards of Professional Appraisal Practice. The subsection also requires all appraisals performed at a property within a State to be prepared by appraisers licensed or certified in the State where the property is located. The subsection additionally requires all appraisal reviews by a lender, AMC, or other third-party organization to be performed by an appraiser who is duly licensed or certified by a State appraisal board.

Subsection (g) requires State appraisal agencies to transmit reports on sanctions, disciplinary actions, revocations, and suspensions to the ASC on a timely basis. These reports apply to both individuals and AMCs.

To account for inflation since the enactment of FIRREA in 1989, subsection (h) updates registry fee amounts annually paid by licensed and certified appraisers to support the activities of the ASC. The subsection additionally establishes a program for collecting fees from AMCs to support the additional work of the ASC. The subsection further requires the ASC to consider at least once every 5 years whether to adjust the dollar amounts for inflation and provides administrative flexibility to allow for the implementation of such adjustments in fee amounts. The incremental revenues raised by the fee increases are placed in the Appraisal Subcommittee Account within the U.S. Treasury.

Subsection (i) allows the ASC to use the amounts placed in the Appraisal Subcommittee Account to make grants to State appraisal agencies to help defray costs related to the complaint process, complaint investigations, and appraiser enforcement activities. The ASC may also use this funding to provide grants to States for the submission of data. It also requires the national registry to report to State appraisal agencies when a license or certification is surrendered, revoked, or suspended.

Subsection (k) improves the ability of the ASC to oversee State appraisal agencies in a number of ways. First, it adds funding and

staffing to the list of criteria against which the ASC must evaluate a State appraisal agency. It also requires the ASC to evaluate whether a State appraisal agency processes complaints and completes its examinations in a reasonable time period, whether a state appropriately disciplines sanctioned appraisers and AMCs, whether a state maintains an effective regulatory program, and whether a State appraisal agency reports claims and disciplinary actions to the national registry on a timely basis. The subsection further permits the ASC to impose interim sanctions and suspensions.

Subsection (n) requires the ASC to monitor each State appraisal agency for the purpose of determining whether such agency's policies, practices, and procedures are consistent with the purpose of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.

Finally, Subsection (s) expands the membership of the ASC to include the Federal Housing Finance Agency. The subsection also requires that at all times at least one member of the Appraisal Subcommittee shall be a certified or licensed appraiser.

Appraisal management company registration and supervision

In response to the growth of and concerns about AMCs, subsection (f) creates a State-by-State system for registering and supervising AMCs, with oversight of the States conducted by the ASC, and it generally requires the system to be in place within 3 years of enactment. The subsection provides for the establishment of minimum standards to be applied in the registration of AMCs. The subsection also ensures that those who complete appraisal fraud or those who lose their appraisal licenses or certifications cannot turn around and establish an AMC. The amendment additionally puts in place a parallel Federal system of oversight for an AMC that operates as a subsidiary of a financial institution overseen by a Federal banking regulator. The section also incorporates a definition for appraisal management company.

Appraiser education and licensing

Subsections (j), (l), (m) and (o) generally make a variety of changes to appraiser licensing and educational standards. Subsection (j) expands the ability of the ASC to set minimum licensing standards for appraisers in addition to its existing authority to establish minimum certification standards. The subsection also permits the establishment of minimum requirements for trainee appraisers and supervisory appraisers.

Subsection (l) provides for reciprocity in State appraiser licenses and certifications. To promote greater professionalism and advanced training within the appraisal industry, subsection (m) codifies language now found in the selling guides for government-sponsored enterprises to allow for special consideration of appraisers who have obtained special designations or training from professional appraisal organizations. Finally, subsection (o) requires the ASC to encourage State appraisal agencies to accept courses and seminars approved by the Appraiser Qualification Board's Course Approval Program for educational training requirements.

Appraisal complaint national hotline

If no national hotline exists to receive complaints about non-compliance with appraisal independence standards within one year of enactment, subsection (p) requires the ASC to put in place a national hotline, which shall consist of a toll-free phone number and an e-mail address. The ASC must refer complaints received by the national hotline to the appropriate State or Federal regulator, or other appropriate legal authorities. In order to determine the status of the resolution of the complaint, the subsection also provides the ASC with the authority to follow up on referrals made to State appraisal agencies and Federal banking regulators.

The Committee intends that the ASC will not need to establish a national hotline if the national hotline provided for in the Home Valuation Code of Conduct becomes operative within the 1 year after enactment timeframe established under the Act. If, however, such a national hotline ceases to exist, then the ASC will establish and maintain a national hotline at that point in time.

Automated valuation model quality control standards

To enhance confidence in the results produced by automated valuation models used to develop estimates of home values, subsection (q) establishes minimum standards and requires the development and enforcement of rules by Federal banking regulators and the Appraisal Subcommittee.

Broker price opinion limitations

To address concerns about the quality of home value estimates developed by real estate brokers that are used for collateral purposes, subsection (r) codifies a policy recently adopted by Freddie Mac to prohibit the use of broker price opinions as a sole method for determining the value of a purchase mortgage loan.

Technical corrections

Subsection (t) makes several technical corrections to title XI of FIRREA to fix drafting errors.

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

This section requires the Comptroller General to conduct a comprehensive study within 18 months of enactment of this Act on possible improvements in the appraisal process generally, and on the consistency in, the effectiveness of, and possible improvements to State compliance efforts and programs in accordance with FIRREA specifically. The study by the Government Accountability Office will also examine current exemptions to the use of certified appraisers issued by the Federal banking regulators and, in light of the new consumer protection mission of the ASC, explore the existing threshold levels below which Federal banking regulators do not require a written appraisal.

The section also requires a review of the quality of appraisals produced through different mechanisms and different distribution channels. It additionally mandates an analysis and statistical breakdown of the enforcement actions taken during the last decade against different types of appraisers. Finally, the study must examine the need to create a national repository to collect data related

to real estate property collateral valuations performed in the United States.

Section 605. Equal Credit Opportunity Act amendment

This section amends the Equal Credit Opportunity Act to provide mortgage applicants with access to a written appraisal report no later than 3 days before closing. This set of changes is generally consistent with the requirements of the Home Valuation Code of Conduct. The section also requires creditors to provide applicants with access to any other valuation report developed in conjunction with a mortgage transaction.

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

This section modifies RESPA to require the disclosure to consumers of the fees paid to licensed and certified appraisers, as well the fees paid to AMCs. These disclosures will help interested parties, including Federal and State regulators and other appropriate authorities, to make better determinations about the quality of appraisals facilitated by an AMC.

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

Section 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

This section provides findings and a sense of 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.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRUTH IN LENDING ACT

* * * * *

TITLE I—CONSUMER CREDIT COST DISCLOSURE

* * * * *

CHAPTER 1—GENERAL PROVISIONS

* * * * *

§ 103. Definitions and rules of construction

(a) * * *

* * * * *

[(aa)(1) A mortgage referred to in this subsection means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open end credit plan, if—

[(A) the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

[(B) the total points and fees payable by the consumer at or before closing will exceed the greater of—

[(i) 8 percent of the total loan amount; or

[(ii) \$400.]

(aa) *HIGH-COST MORTGAGE.*—

(1) *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.

(2)(A) * * *

[(B) An increase or decrease under subparagraph (A) may not result in the number of percentage points referred to in subparagraph (A) being—

[(i) less than 8 percentage points; or

[(ii) greater than 12 percentage points.]

(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.

* * * * *

(4) For purposes of paragraph (1)(B), points and fees shall include—

(A) * * *

[(B) all compensation paid to mortgage brokers;]

(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;

(C) each of the charges listed in section 106(e) (except an escrow for future payment of taxes), unless—

(i) * * *

(ii) the creditor receives no direct or indirect compensation 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; and

*(iii) the charge is paid to a third party unaffiliated with the creditor**;** and**],** except as provided for in clause (ii);*

(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

[(D)] *(G) such other charges as the Board determines to be appropriate.*

(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.

[(5)] *(6) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.*

* * * * *

(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.

(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.

* * * * *

§ 108. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under

(1) * * *

* * * * *

(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.*

* * * * *

CHAPTER 2—CREDIT TRANSACTIONS

Sec.

121. General requirement of disclosure.

* * * * *

128A. *Reset of hybrid adjustable rate mortgages.*

* * * * *

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

129B. *Residential mortgage loan origination.*

129C. *Minimum standards for residential mortgage loans.*

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

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

129F. *Requirements for prompt crediting of home loan payments.*

129G. *Requests for payoff amounts of home loan.*

* * * * *

§ 128. Consumer credit not under open end credit plans

(a) For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) * * *

* * * * *

(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)(1) * * *

* * * * *

(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.

(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.

* * * * *

(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.*

§ 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.*

SEC. 129. REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) * * *

* * * * *

(c) **NO PREPAYMENT PENALTY.—**

(1) * * *

[(2) **EXCEPTION.—**Notwithstanding paragraph (1), a mortgage referred to in section 103(aa) may contain a prepayment penalty (including terms calculating a refund by a method that is not prohibited under section 933(b) of the Housing and Community Development Act of 1992 for the transaction in question) if—

[(A) at the time the mortgage is consummated—

[(i) the consumer is not liable for an amount of monthly indebtedness payments (including the amount of credit extended or to be extended under the transaction) that is greater than 50 percent of the monthly gross income of the consumer; and

[(ii) the income and expenses of the consumer are verified by a financial statement signed by the consumer, by a credit report, and in the case of employment income, by payment records or by verification from the employer of the consumer (which verification may be in the form of a copy of a pay stub or other payment record supplied by the consumer);

[(B) the penalty applies only to a prepayment made with amounts obtained by the consumer by means other than a refinancing by the creditor under the mortgage, or an affiliate of that creditor;

[(C) the penalty does not apply after the end of the 5-year period beginning on the date on which the mortgage is consummated; and

[(D) the penalty is not prohibited under other applicable law.]

* * * * *

[(e) NO BALLOON PAYMENTS.—A mortgage referred to in section 103(aa) having a term of less than 5 years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance.]

(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.

* * * * *

(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.

(l) *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.

[(j)] (n) *CONSEQUENCE OF FAILURE TO COMPLY.*—Any mortgage that contains a provision prohibited by this section shall be deemed a failure to deliver the material disclosures required under this title, for the purpose of section 125.

[(k)] (o) *DEFINITION.*—For purposes of this section, the term “affiliate” has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956.

[(1)] (p) *DISCRETIONARY REGULATORY AUTHORITY OF BOARD.*—

(1) * * *

(2) *PROHIBITIONS.*—The Board, by regulation or order, shall prohibit acts or practices in connection with—

(A) mortgage loans referred to in section 103(aa) that the Board finds to be unfair, deceptive, or designed to evade the provisions of this section; and

(B) refinancing of mortgage loans referred to in section 103(aa) that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

(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.

(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.

(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.

(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).

(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 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.

(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.

* * * * *

§ 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 appli-

cable 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.

(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.

(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.

(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.

§ 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) *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.

(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.

(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 sub-

section (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.

(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.

(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 pen-

alty 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 mort-

gage), 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.

(l) **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. 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.

(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.

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, ex-

torts, 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.

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.

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.

§ 130. Civil liability

(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter,

including any requirement under section 125, or chapter 4 or 5 of this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) * * *

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than **[\$100]** \$200 nor greater than **[\$1,000]** \$2,000, or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than \$400 or greater than \$4,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of **[\$500,000]** \$1,000,000 or 1 per centum of the net worth of the creditor;

* * * * *

(e) **[Any action]** *Except as provided in the subsequent sentence, any action* under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation or, in the case of a violation involving a private education loan (as that term is defined in section 140(a)), 1 year from the date on which the first regular payment of principal is due under the loan. *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.* This subsection does not bar a person from asserting a violation of this title in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law. An action to enforce a violation of **[section 129 may also]** *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 be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 108 and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

(1) * * *

* * * * *

(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.

* * * * *

SECTION 8 OF THE UNITED STATES HOUSING ACT OF 1937

LOWER INCOME HOUSING ASSISTANCE

SEC. 8. (a) * * *

* * * * *

(o) VOUCHER PROGRAM.—

(1) * * *

* * * * *

(7) LEASES AND TENANCY.—Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit—

(A) * * *

* * * * *

(C) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence, *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;

* * * * *

(E) shall provide that any termination of tenancy under this subsection shall be preceded by the provision of writ-

ten notice by the owner to the tenant specifying the grounds for that action, and any relief shall be consistent with applicable State and local law; **[and]**

(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.

[(F)] (G) may include any addenda required by the Secretary to set forth the provisions of this subsection.

* * * * *

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ACT**

* * * * *

UNDER SECRETARY AND OTHER OFFICERS AND OFFICES

SEC. 4. (a) * * *

* * * * *

(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.

* * * * *

SECTION 106 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

* * * * *

TECHNICAL ASSISTANCE, COUNSELING TO TENANTS AND HOMEOWNERS, AND LOANS TO SPONSORS OF LOW- AND MODERATE-INCOME HOUSING

SEC. 106. (a)(1) * * *

* * * * *

(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 governmental 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.

* * * * *

(c) *GRANTS FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.*—

(1) * * *

* * * * *

(5) *NOTIFICATION OF AVAILABILITY OF HOMEOWNERSHIP COUNSELING.*—

(A) *NOTIFICATION OF AVAILABILITY OF HOMEOWNERSHIP COUNSELING.*—

(i) * * *

(ii) CONTENT.—Notification under this subparagraph shall—

(I) * * *

* * * * *

(III) notify the homeowner or mortgage applicant of the availability of homeownership counseling provided by nonprofit organizations approved by the Secretary and experienced in the provision of homeownership counseling, or provide the toll-free telephone number described in subparagraph (D)(i); **and**

(IV) notify the homeowner by a statement or notice, written in plain English by the Secretary of Housing and Urban Development, in consultation with the Secretary of Defense and the Secretary of the Treasury, explaining the mortgage and foreclosure rights of servicemembers, and the dependents of such servicemembers, under the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.), including the toll-free military one source number to call if servicemembers, or the dependents of such servicemembers, require further assistance**].**; *and*

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

* * * * *

(e) CERTIFICATION.—

[(1) REQUIREMENT FOR ASSISTANCE.—An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (c), or (d), unless the organization provides such counseling, to the extent practicable, by individuals who have been certified by the Secretary under this subsection as competent to provide such counseling.]

(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) STANDARDS AND EXAMINATION.—The Secretary shall, by regulation, establish standards and procedures for testing and certifying counselors *and for certifying organizations*. Such standards and procedures shall require **[for certification]**, *for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual, that the individual shall demonstrate, by written examination (as provided under subsection (f)(4)), competence to provide counseling in each of the following areas:*

(A) * * *

* * * * *

(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).

[(3)] (5) *ENCOURAGEMENT.*—The Secretary shall encourage organizations engaged in providing homeownership and rental counseling that do not receive assistance under this section to employ organizations and individuals to provide such counseling who are certified under this subsection or meet the certification standards established under this subsection.

* * * * *

(g) *PROCEDURES AND ACTIVITIES.*—

(1) *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 homeowner-ship 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;*

(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 re-

irement 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.

(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.

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

* * * * *

UNIFORM SETTLEMENT STATEMENT

SEC. 4. (a) * * *

* * * * *

(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.

[SPECIAL] HOME BUYING INFORMATION BOOKLETS

SEC. 5. [(a) The Secretary shall prepare and distribute booklets to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services. The Secretary shall distribute such booklets to all lenders which make federally related mortgage loans.

[(b) 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 clear and concise language—

- [(1) a description and explanation of the nature and purpose of each cost incident to a real estate settlement;
- [(2) an explanation and sample of the standard real estate settlement form developed and prescribed under section 4;
- [(3) a description and explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate;
- [(4) an explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incident to a real estate settlement; and
- [(5) an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

Such booklets shall take into consideration differences in real estate settlement procedures which may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.]

(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 difference 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.*

(c) Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Secretary. *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.*

(d) Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. *The lender shall provide the HUD-issued booklet in the version that is most appropriate for the person receiving it.* Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.

* * * * *

SERVICING OF MORTGAGE LOANS AND ADMINISTRATION OF ESCROW ACCOUNTS

SEC. 6. (a) * * *

* * * * *

(e) DUTY OF LOAN SERVICER TO RESPOND TO BORROWER INQUIRIES.—

(1) NOTICE OF RECEIPT OF INQUIRY.—

(A) IN GENERAL.—If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within **[20 days]** *5 days* (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

* * * * *

(2) ACTION WITH RESPECT TO INQUIRY.—Not later than **[60 days]** *30 days* (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall—

(A) * * *

* * * * *

(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.*

(f) DAMAGES AND COSTS.—Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) INDIVIDUALS.—In the case of any action by an individual, an amount equal to the sum of—

(A) * * *

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed **[\$1,000]** *\$2,000*.

(2) CLASS ACTIONS.—In the case of a class action, an amount equal to the sum of—

(A) * * *

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than **[\$1,000]** *\$2,000* for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of—

(i) **[\$500,000]** *\$1,000,000*; or

* * * * *

(g) ADMINISTRATION OF ESCROW ACCOUNTS.—If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due. *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.

* * * * *

(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.

(l) *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 no-

tion 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.

* * * * *

FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989

* * * * *

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—

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TITLE XI—REAL ESTATE APPRAISAL REFORM AMENDMENTS

Sec. 1101. Purposes.

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Sec. 1124. Appraisal management company minimum qualifications.

Sec. 1125. Automated valuation models used to value certain mortgages.

Sec. 1126. Broker price opinions.

* * * * *

TITLE XI—REAL ESTATE APPRAISAL REFORM AMENDMENTS

SEC. 1101. PURPOSE.

The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision *and to provide the Appraisal Subcommittee with a consumer protection mandate.*

SEC. 1103. FUNCTIONS OF APPRAISAL SUBCOMMITTEE.

(a) IN GENERAL.—The Appraisal Subcommittee shall—

【(1) monitor the requirements established by States 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;】

(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;*

* * * * *

(3) maintain a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions; 【and】

(4) transmit an annual report to the Congress not later than January 31 of each year which describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year【.】;

(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*

(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.*

(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.

* * * * *

SEC. 1104. CHAIRPERSON OF APPRAISAL SUBCOMMITTEE; TERM OF CHAIRPERSON; MEETINGS.

(a) * * *

(b) MEETINGS; QUORUM; VOTING.—The Appraisal Subcommittee shall meet *in public session after notice in the Federal Register* at the call of the Chairperson or a majority of its members when there is business to be conducted. A majority of members of the Appraisal Subcommittee shall constitute a quorum but 2 or more members may hold hearings. Decisions of the Appraisal Subcommittee shall be made by the vote of a majority of its members.

* * * * *

SEC. 1106. POWERS OF APPRAISAL SUBCOMMITTEE.

The Appraisal Subcommittee may, for the purpose of carrying out this title, establish advisory committees, hold hearings *prescribe regulations after notice and opportunity for comment,*, sit and act at times and places, take testimony, receive evidence, provide information, and perform research, as the Appraisal Subcommittee considers appropriate. *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.*

* * * * *

SEC. 1109. ROSTER OF STATE CERTIFIED OR LICENSED APPRAISERS; AUTHORITY TO COLLECT AND TRANSMIT FEES.

(a) IN GENERAL.—Each State with an appraiser certifying and licensing agency whose certifications and licenses comply with this title, shall—

(1) transmit to the Appraisal Subcommittee, no less than annually, a roster listing individuals who have received a State certification or license in accordance with this title; **[and]**

(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*

[(4) collect from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than \$25, such fees to be transmitted by the State agencies to the Council on an annual basis.

Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees, up to a maximum

of \$50 per annum, as necessary to carry out its functions under this title.】

(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.

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 under reporting of the number of appraisers working for or contracted by the appraisal management company.

(b) USE OF AMOUNTS APPROPRIATED OR COLLECTED.—Amounts appropriated for or collected by the Appraisal Subcommittee under this section shall be used—

(1) * * *

* * * * *

(3) to reimburse the general fund of the Treasury for amounts appropriated to and expended by the Appraisal Subcommittee during the 24-month startup period following the date of the enactment of this title; [and]

(4) to make grants in such amounts as it deems appropriate to the Appraisal Foundation, to help defray those costs of the foundation relating to the activities of its Appraisal Standards and Appraiser Qualification Boards[.];

(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).

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SEC. 1112. FUNCTIONS OF THE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES RELATING TO APPRAISER QUALIFICATIONS.

(a) * * *

(b) THRESHOLD LEVEL.—Each Federal financial institutions regulatory agency and the Resolution Trust Corporation may establish a threshold level at or below which a certified or licensed appraiser is not required to perform appraisals in connection with federally related transactions, if such agency determines in writing that such threshold level does not represent a threat to the safety and soundness of financial institutions, 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.

* * * * *

SEC. 1113. TRANSACTIONS REQUIRING THE SERVICES OF A STATE CERTIFIED APPRAISER.

[In determining] (a) *IN GENERAL.*—In determining whether an appraisal in connection with a federally related transaction shall be performed by a State certified appraiser, an agency or instrumentality under this title shall consider whether transactions, either individually or collectively, are of sufficient financial or public policy importance to the United States that an individual who performs an appraisal in connection with such transactions should be a State certified appraiser, except that—

(1) * * *

(2) 1-to-4 unit, single family residential appraisals may be performed by State licensed appraisers unless the size and complexity requires a State certified appraiser, where a com-

plex 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.

(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.

* * * * *

SEC. 1116. CERTIFICATION AND LICENSING REQUIREMENTS.

(a) * * *

* * * * *

(c) DEFINITION.—As used in this section, the term “State licensed appraiser” means an individual who has satisfied the requirements for State licensing in a State or territory *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.*

* * * * *

[(e) AUTHORITY OF THE APPRAISAL SUBCOMMITTEE.—The Appraisal Subcommittee shall not set qualifications or experience requirements for the States in licensing real estate appraisers, including a de minimus standard. Recommendations of the Subcommittee shall be nonbinding on the States.]

(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.

SEC. 1117. ESTABLISHMENT OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.

To assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State may establish a State appraiser certifying and licensing agency. *The duties of such agency may additionally include the registration and supervision of appraisal management companies.*

SEC. 1118. MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.

[(a) IN GENERAL.—The Appraisal Subcommittee shall monitor State appraiser certifying and licensing agencies for the purpose of determining whether a State agency’s policies, practices, and procedures are consistent with this title. 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, or procedures are found to be inconsistent with this title.]

(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.

(b) *DISAPPROVAL BY APPRAISAL SUBCOMMITTEE.*—The Federal financial institutions, regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation shall accept certifications and licenses awarded by a State appraiser certifying the licensing agency unless the Appraisal Subcommittee issues a written finding that—

- (1) * * *
- (2) *the State agency is not granted authority or sufficient funding by the State which is adequate to permit the agency to carry out its functions under this title; or*

* * * * *

SEC. 1119. RECOGNITION OF STATE CERTIFIED AND LICENSED APPRAISERS FOR PURPOSES OF THIS TITLE.

(a) *EFFECTIVE DATE FOR USE OF CERTIFIED OR LICENSED APPRAISERS ONLY.*—

- (1) * * *

(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the [council,] *Council*, the Appraisal Subcommittee may extend, until December 31, 1991, the effective date for the use of certified or licensed appraisers if it makes a written finding that a State has made substantial progress in establishing a State certification and licensing system that appears to conform to the provisions of this title.

* * * * *

SEC. 1121. DEFINITIONS.

For purposes of this title:

(1) * * *

* * * * *

(6) FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES.—The term “Federal financial institutions regulatory agencies” means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance [Corporations,] *Corporation*, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.

* * * * *

(8) CHAIRPERSON.—The term “Chairperson” means the Chairperson of the Appraisal Subcommittee selected by the [council] *Council*.

* * * * *

(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.

SEC. 1122. MISCELLANEOUS PROVISIONS.

(a) TEMPORARY PRACTICE.—

(1) IN GENERAL.—A State appraiser certifying or licensing agency shall recognize on a temporary basis the certification or license of an appraiser issued by another State if—

- (A) the property to be appraised is part of a federally related transaction,

(B) the appraiser's business is of a temporary nature,
and

(C) the appraiser registers with the appraiser certifying
or licensing agency in the State of temporary practice.

[(b) RECIPROCITY.—The Appraisal Subcommittee shall encourage the States to develop reciprocity agreements that readily authorize appraisers who are licensed or certified in one State (and who are in good standing with their State appraiser certifying or licensing agency) to perform appraisals in other States.]

(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 such 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.

(c) SUPPLEMENTAL FUNDING.—Funds available to the Federal financial institutions regulatory agencies may be made available to the [Federal Financial Institutions Examination Council] *Financial Institutions Examination Council* to support [the council's functions] *the Council's functions* under this title.

(d) PROHIBITION AGAINST DISCRIMINATION.—Criteria established by the Federal financial institutions regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation for appraiser qualifications in addition to State certification or licensing [shall not exclude a certified or licensed appraiser for consideration for an assignment solely by virtue of membership or lack of membership in any particular appraisal organization.] *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.*

* * * * *

(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.

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

(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.

* * * * *

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 federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.

(2) **EXTENSION OF EFFECTIVE DATE.**—Subject to the approval of the Council, the 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.

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 com-

puterized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

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).

* * * * *

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

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TITLE X—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

* * * * *

SEC. 1011. ESTABLISHMENT OF APPRAISAL SUBCOMMITTEE.

There shall be within the Council a subcommittee to be known as the “Appraisal Subcommittee”, which shall consist of the designees of the heads of the Federal financial institutions regulatory agencies and the Federal Housing Finance Agency. Each such designee shall be a person who has demonstrated knowledge and competence concerning the appraisal profession. *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.*

EQUAL CREDIT OPPORTUNITY ACT

* * * * *

§ 701. Prohibited discrimination; reasons for adverse action

(a) * * *

* * * * *

[(e) Each creditor shall promptly furnish an applicant, upon written request by the applicant made within a reasonable period of time of the application, a copy of the appraisal report used in connection with the applicant's application for a loan that is or would have been secured by a lien on residential real property. The creditor may require the applicant to reimburse the creditor for the cost of the appraisal.]

(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 completion, 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.

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DISSENTING VIEWS

Economists agree that the roots of the current problems in the mortgage market can be traced to earlier this decade, when falling interest rates encouraged lenders to significantly relax—and in some cases abandon—sound underwriting criteria when qualifying borrowers for mortgages. Lenders pushed the envelope as they raised loan-to-value ratios to grow near term profits. As a result, borrowers who at one time might have been denied credit or granted limited credit found themselves able to borrow larger sums, and they took advantage of this opportunity to buy larger, more expensive houses than they otherwise would have been able to afford.

As a consequence of low interest rates and weak underwriting standards, home ownership rates rose from the 64 percent range in the 35 years prior to 1995 to an all-time high of 69 percent in 2004. The growing demand for houses caused home prices to skyrocket: according to the National Association of Realtors, the national median home price went from \$110,500 in 1995 to \$190,000 ten years later. Economists have pointed out that compared to other economic fundamentals, such as rental prices or incomes, these soaring housing prices were simply unsustainable.

Despite the higher risk associated with mortgages to borrowers with checkered credit histories, the opportunities to earn higher rates of return from subprime mortgages induced many lenders to further loosen their underwriting standards during the period 2005 to 2007, introducing even more risk into the system. Instead of protecting themselves against this increased risk by requiring borrowers to make higher down payments, lenders engineered new loans that permitted borrowers to buy with little or no money down, and compensated for this increased risk by charging these borrowers higher interest rates and fees. Lenders further eroded the integrity of the underwriting process by permitting borrowers to sign up for so-called “low documentation” or “no documentation” loans, which became known in the mortgage industry as “liar loans,” so named because they often featured loan applications characterized by misstated or falsified income.

As long as housing prices continued to rise, the risks inherent in such shoddy underwriting practices remained hidden. Borrowers who had stretched to purchase homes that they otherwise could not afford either refinanced their mortgages against home price appreciation or sold to other buyers and paid off their mortgages. Investors in securities collateralized by subprime residential mortgages believed their risk was limited: even if risky borrowers defaulted, home price appreciation all but guaranteed that the houses that secured the underlying mortgages could either be resold to other buyers through voluntary sales or, if necessary, foreclosed upon and resold at auction with only minimal impairment of the collateral securing the loan.

H.R. 1728, the “Mortgage Reform and Anti-Predatory Lending Act,” attempts to correct past excesses in the mortgage market by establishing new standards for mortgage origination and imposing greater legal liability on the secondary mortgage market. This is not the first time the Committee has considered comprehensive mortgage reform legislation. In the 110th Congress, H.R. 3915 was reported favorably out of the Committee and passed the House by a vote of 291–127, although no action was taken in the Senate. Included in Title I of H.R. 3915 was the S.A.F.E. Act, which created a national licensing and registration regime for all mortgage loan originators. The S.A.F.E. Act later became law as part of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), and has, according to testimony by state regulators at the Committee’s legislative hearing on H.R. 1728, already begun to yield significant benefits in combating mortgage fraud and weeding bad actors out of the industry. Many Republicans supported H.R. 3915 on the ground that it struck the right balance by protecting consumers from unscrupulous originators without constricting the ability of the secondary market to fund suitable loan products for credit-worthy borrowers or increasing the cost of mortgage credit.

Unfortunately, while it carries over many of the useful reforms contained in H.R. 3915, H.R. 1728 strikes a far different balance than that earlier legislation, one that will undermine the mortgage market just as Americans are starting to see preliminary signs of a possible housing bottom. H.R. 1728 lacks the clarity needed to provide meaningful protection to consumers. Rather than focusing on basic underwriting standards, as the Federal Reserve has done in promulgating comprehensive regulations to combat abusive lending practices under the Home Ownership and Equity Protection Act (HOEPA), H.R. 1728 imposes new and untested mandates and duties that regulators and industry participants do not know how to implement, if they can be implemented at all, and that may end up punishing the very consumers the Majority wants to protect.

The Fed’s HOEPA rules, which are set to go into effect in October 2009, will bring an end to the shoddy underwriting standards that plagued the subprime market. Indeed, Chairman Frank has previously acknowledged that “the Federal Reserve . . . has adopted regulations . . . so that the predatory and deceptive lending practices that led to the subprime crisis will be prohibited.” But rather than allow the Fed’s carefully vetted regulations to take effect, the Majority has chosen to superimpose onto those rules its own set of policy prescriptions, which seem likely only to inject legal uncertainty into the lending process, thereby raising the costs and reducing the availability of mortgage credit to consumers.

At the only legislative hearing that the Majority convened to consider H.R. 1728’s complex and far-reaching provisions, representatives of the Federal Reserve, consumer advocacy groups, and affected industries expressed a number of concerns about various aspects of this bill. The director of the Federal Reserve’s consumer affairs division, Sandra Braunstein, testified that the bill seemed “intended to drive the market into 30-year fixed loans,” which “could have the consequence of very much limiting the kinds of products that become available when the markets reset.” Even after the Committee adopted an amendment to expand the scope of the safe

harbor and include certain prime ARMs within its coverage, the bill is still constructed in a way to expose to legal liability many safe and sustainable mortgage products, which will result in most lenders simply choosing not to offer those products. Interestingly, some of the most pointed criticism of H.R. 1728 came from consumer groups. Margot Saunders of the National Consumer Law Center, testifying on behalf of a coalition of consumer advocacy and labor organizations from across the country, called the bill “convoluted” and “virtually impossible as a mechanism to solve the current problem.”

One of the changes to last Congress’ legislation that has drawn the most concern is a new “credit risk retention” requirement that would force loan originators to hold 5 percent of any mortgage that does not fit the bill’s narrow safe harbor. While there was general consensus at the legislative hearing on H.R. 1728 that requiring lenders to retain more “skin in the game” was a worthy concept, there was general confusion as to how the execution of that concept in the bill language would work in practice, particularly for smaller non-bank lenders that do not enjoy the same reliable sources of funding as depository institutions. The Majority attempted to address those concerns through an amendment offered at the markup giving the Federal banking regulators greater discretion in writing rules to implement the “credit risk retention” requirement, but serious questions remain as to whether the requirement is either workable or necessary in light of the bill’s other reforms imposing more stringent mortgage underwriting criteria.

Like H.R. 3915, H.R. 1728 contains provisions imposing liability on assignees and securitizers for loans that violate the “ability to repay” and “net tangible benefit” standards, giving consumers a cause of action for rescission of the loan and costs, unless the assignee or securitizer provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer. These liability provisions are considerably more stringent than H.R. 3915’s, and eliminate one of the protections that H.R. 3915 offered to assignees: under H.R. 3915, assignees and securitizers could avoid liability if they could show that they had policies against buying loans that were outside the safe harbor, had exercised “reasonable due diligence” to adhere to such policies, and had obtained representations and warranties from the seller of the loans that the loans did not violate these minimum standards. Moreover, the Committee adopted an amendment authorizing suits by state Attorneys General to enforce H.R. 1728’s provisions, magnifying the already substantial legal risks faced by participants in the mortgage market under the bill.

As if creating new avenues for additional litigation were not enough, H.R. 1728 provides a taxpayer subsidy for such activity by authorizing a \$140 million fund for state and local legal organizations to provide foreclosure-related legal assistance to homeowners in default or foreclosure or tenants facing eviction due to foreclosure. Fortunately, the Committee adopted—with Chairman Frank’s support—an amendment offered by Mrs. Bachmann that would render groups like ACORN ineligible for these legal assistance funds. The Bachmann amendment is identical to language signed into law in the Housing and Economic Recovery Act of 2008

(HERA) which barred any group indicted for federal election fraud from receiving housing counseling funds. Republicans will strongly oppose any attempt to remove or modify the Bachmann amendment as H.R. 1728 moves through the legislative process.

Finally, H.R. 1728 includes so-called “tenant protection” provisions creating new federal requirements that purchasers of foreclosed properties honor both private leases and Section 8 vouchers. While well-intentioned, these provisions could have a chilling effect on efforts to promote purchases of foreclosed properties and on owner participation in the Section 8 program, by making such participation more onerous. Currently, foreclosure is grounds for termination of a lease in the majority of states. While we share the Majority’s concern for tenants facing eviction, we are not convinced that the provisions in H.R. 1728 are the most prudent way to provide tenant protections. It is important to note that a Section 8 tenant does not lose the government housing subsidy if his or her building goes into foreclosure. In fact, many new owners of these properties may well opt to renew existing Section 8 tenants or voluntarily agree to allow them to stay for the remainder of their Housing Assistance Payment (HAP) contract, but mandating owner adherence to a contract to which they were not a party is a dangerous precedent to set. It could also have the unintended consequence of discouraging sales of foreclosed properties, thereby frustrating the effectiveness of government policies designed to reduce the inventory of such properties and potentially prolonging the housing downturn. Mr. Neugebauer offered an amendment to strike these misguided restrictions from the bill, but it was defeated on a largely party-line vote.

Because we believe that the Majority’s failure to remedy the many problems with H.R. 1728 identified during the Committee’s consideration of the legislation will likely result in further damage to a fragile mortgage market in need of greater certainty—not untested and ill-defined mandates from Washington—we must reluctantly oppose it.

SPENCER BACHUS.
JEB HENSARLING.
RANDY NEUGEBAUER.
ERIK PAULSEN.
SCOTT GARRETT.

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